

# The Finnish 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

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## To Parliament and the Government

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“Victims of trafficking in human beings rarely know enough to come and ring the Senior Officer’s doorbell themselves”, notes our Senior Officer responsible for reporting in *Rakentaja* magazine. Unfortunately, trafficking in human beings is not always recognised by authorities, either, even when it is reported by the victim. They are not always able to put together the varied aspects of the cruel exploitation that constitutes human trafficking and suspect trafficking. However, international experience highlights the priority of assisting the victim out of principle and practical considerations. When the position and rights of the victim are safeguarded, he or she is able and often willing to support the police in investigating this serious offence. A suspicion of human trafficking alone should give access to our system for victim assistance. Each potential victim of human trafficking should be entitled to a recovery period of three months. The effectiveness of our national legislation should be examined based on how successful it is in its tasks of protection and prevention.

The task of the National Rapporteur on Trafficking in Human Beings is to analyse and evaluate the implementation of legislation and activities to combat trafficking in human beings, and to issue recommendations to make the action against human trafficking more effective. You are now reading the first report by the National Rapporteur on Trafficking in Human Beings to Parliament. For this reason, the report is particularly inclusive, and it will hopefully also serve a general need for information on the human trafficking situation in Finland. I find the end of the parliamentary season a particularly good time for looking at our activities with future needs in mind. I hope that the recommendations of this report will also serve this purpose in concrete terms.

Trafficking in human beings threatens the victim’s health and safety and violates his or her human dignity and freedom. While this serious global crime shows no signs of abating, each woman, child, or man saved is a success story. We still have many possibilities for improvement – fortunately.

I would like to take this opportunity to express my heartfelt thanks to my predecessor, Johanna Suurpää. This report is based on the work carried out by Ms Suurpää together with Senior Officer Venla Roth. I would also like to extend my thanks to the entire team in the Office of the Ombudsman for Minorities, whose support has been invaluable in this work.

Helsinki, 9 June 2010  
Ombudsman for Minorities Eva Biaudet

## Summary

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As this report is being published, the Ombudsman for Minorities has acted as the National Rapporteur on Trafficking in Human Beings for slightly over a year. Under the Act on the Ombudsman for Minorities and the National Discrimination Tribunal, the task of the National Rapporteur on Trafficking in Human Beings is to monitor trafficking in human beings and related phenomena as well as to promote and oversee action against trafficking in human beings. During her first year in office, the Rapporteur has strived to build a sustainable foundation for these activities. In addition to drawing up this report, the Rapporteur has taken part in information and training activities concerning human trafficking, issued recommendations and statements on human trafficking and activities to combat it to authorities and third-sector actors, taken part in several working groups and meetings on human trafficking as an expert, speaker, and observer, both in Finland and abroad, and assisted victims of trafficking.

The National Rapporteur on Trafficking in Human Beings is an independent authority, which aims for good cooperation with other authorities and third-sector actors. The Rapporteur strives to bridge the gap between the authorities and NGOs. The Rapporteur examines action against trafficking in human beings from a victim-centred perspective, and evaluates the implementation of victims' rights and the obstacles for their implementation the Finnish system may present. As standards in such evaluations, international conventions and recommendations are used. This way, the Rapporteur attempts to improve the identification of victims of human trafficking and the implementation of their rights, to promote the fight against crime, and to prevent trafficking in human beings. At the same time, the Rapporteur makes efforts to raise awareness in parties working with victims of trafficking and the general public on trafficking in human beings and related exploitation.

In a short period of time, Finland has adopted a considerable number of legislative and other measures to prevent trafficking in human beings, assist and protect its victims, and fight trafficking in human beings. The action against trafficking in human beings in Finland is mainly based on three Acts: the Criminal Code, the Aliens Act, and the Act on the Integration of Immigrants and Reception of Asylum Seekers, which have all been amended to better respond to the challenges of human trafficking. The National Rapporteur on Trafficking in Human Beings feels that the measures taken have obviously facilitated combating human trafficking in Finland. A lot remains to be done, however, before the activities to combat human trafficking have achieved the level of effectiveness that we should expect. In this report, the Rapporteur points out that the greatest challenge in the

Finnish action against trafficking in human beings is identifying victims of trafficking: the victims may not be identified at all, or they are not identified as victims of trafficking. As a consequence of this failure to identify them, victims of trafficking are denied their statutory rights, such as services of the system for victim assistance, or they are not informed of the possibility of applying for a reflection period and residence permit as victims of trafficking.

In her first report, the National Rapporteur on Trafficking in Human Beings has strived to evaluate three of the most essential aspects of the activities to combat trafficking in human beings: (1) system for victim assistance; (2) procedures related to the victims' residence in Finland and their removal from the country; and (3) the criminal procedure and the application and interpretation of the penal provisions on trafficking in human beings. To examine the effectiveness of these aspects, the Rapporteur has collected and analysed the necessary information on human trafficking and the related phenomena as well as challenges to activities to combat trafficking. The Rapporteur has obtained information from other authorities, courts of law, and third-sector actors, and complemented this documentation with a wide-based round of hearings and formal and informal meetings called by her on issues relevant to human trafficking. Information has also been gathered as third-sector actors and authorities have contacted the Rapporteur, and by meeting and assisting victims of trafficking.

In her report, the National Rapporteur on Trafficking in Human Beings issues several recommendations to promote the identification of victims of human trafficking and implementation of the victims' rights, and to intensify crime combating and prevention of trafficking in human beings. Some of these recommendations are about reforming procedures and practices, while the implementation of others would require a parliamentary debate and legislative amendments. The most central recommendations are associated with developing the system for victim assistance. The Rapporteur recommends that (1) the threshold for inclusion in the system for victim assistance be consciously and methodically lowered; (2) the purpose and goals of the assistance system and its relationship with pre-trial investigation and the criminal procedure be clarified; and (3) the legal protection of victims and guarantees for appropriate administrative procedure be reinforced. The Rapporteur also recommends amendments in the Criminal Code and the Aliens Act, as well as the development of official practices in order to improve victim identification and make crime combating more effective. The recommendations are summarised in the Conclusions section of the report. The Rapporteur requests that the appropriate parties inform her within a year of the submission of this report on what measures each administrative sector has taken as a consequence of these recommendations.

# 1. Introduction

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## 1.1. Trafficking in human beings in Finland

Trafficking in human beings and related exploitation are considered one of the greatest human rights challenges of our time. Human trafficking is a serious crime and a violation of an individual's human dignity and integrity. Trafficking in human beings is about control, exploiting another human being, and profiting from vulnerability. The perpetrators aim to exploit their victim sexually and/or economically, abusing the victim's vulnerable state or dependent position and/or controlling him or her in various ways: restricting the freedom of movement or possibilities of choice, threatening or pressuring, causing him or her to become indebted, or using psychological or physical violence. The greatest share of human trafficking is believed to be associated with international migration, but trafficking may also take place within a country's borders. While estimates of the numbers of victims are inaccurate at best, it is obvious that the problem is considerable. Estimates of government sources and NGOs of the global numbers of victims vary between half a million and four million victims of trafficking annually. In the first National Plan of Action against Trafficking in Human Beings, it was estimated that Finland is the country of transit and destination of up to several hundred victims of human trafficking annually.

Trafficking in human beings takes many forms. Victims of trafficking may be sexually exploited, for example in prostitution or other sex industry and entertainment, such as the production of pornography. International experience indicates that sexually exploited victims of human trafficking have often gone with the perpetrators voluntarily and agreed to become prostitutes from the start, but after arriving in the country of destination, they have become victims of exploitation. Victims may also be exploited for the purposes of labour: this can be done by causing the victims to become indebted or making use of their indebtedness, underpaying them, having them work for unreasonably long hours without extra pay, neglecting their holiday rights, and giving them substandard housing. Human trafficking may also involve the trade of organs and tissues for financial gain, forced marriages, adoption trade, and debt bondage. Victims of human trafficking are women, children, and men. According to an estimate by the United Nations Office of Drugs and Crime (UNODC), 10% of victims of trafficking in Europe are children. This estimate has increased year by year, however, which may also reflect increasing awareness of the phenomenon of trafficking.<sup>1</sup>

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1 UNODC, *Trafficking in Persons: Analysis on Europe* (2009), pp. 20-21.

In Finland, trafficking in human beings and the related exploitation occurs in prostitution and organised procuring as well as in a number of labour market sectors that are labour-intensive and commonly use foreign labour. Sectors in which human trafficking and the associated exploitation of labour may occur include at least the construction, restaurant, cleaning and horticultural sectors as well as berry-picking. In begging, forced begging and human trafficking may also occur, and neither is trafficking for forced marriages out of the question in Finland. The risk group for human trafficking also includes as a minimum women arriving in Finland to marry, who may be dependent on their husbands and whose integration into the Finnish society succeeds poorly. The risk group for human trafficking and the related exploitation may also include au pairs, foreign students, and asylum seekers. Human trafficking within the country's borders and victimisation of persons of Finnish origin are also possible. Trade in organs and tissues has so far not been observed in Finland.

In addition to being a destination for trafficking in human beings, Finland is probably also a transit country for trafficking. Identifying potential transit cases as trafficking is quite challenging, however, as there is no evidence of an intent to exploit. This is why transit cases in which the authorities have raised a suspicion of potential trafficking may end up being processed, for example, as facilitation of illegal entry, a border offence or forgery. While it is not the purpose of this report to give a comprehensive account of facilitation of illegal entry, based on a few dozen court judgments on aggravated action to facilitate illegal entry and the associated pre-trial investigation material, we can say that the majority of subjects of facilitation of illegal entry known to the authorities have originated in Asia. Finland is frequently used as a transit country for smuggling to other Western European countries. It seems typical that the persons whose illegal entry is facilitated are young women and men who intended to leave their own country to achieve a better life and livelihood. They have typically paid sums of money that are significant considering their income for the journey, and they have usually obtained these funds by selling their home farm or borrowing from relatives. The objects of aggravated facilitation of illegal entry often lack language skills, and are thus rather dependent on their smugglers. Court judgments and pre-trial investigation material concerning such cases indicate that the smuggled immigrants often did not know their itinerary, the organisers of the journey, or their destination.

Smuggled immigrants often have started on their journey voluntarily, but they may have been threatened and deceived on the way. Because of the long journey and forged documents, they often are deeply indebted, and

some of them only intend to pay the money owed for the journey once they get to the destination. Many of the smuggled immigrants are confident that they will quickly find a well-paid job at the destination, and they hope that the pay received for the work will be sufficient to gradually pay off their debt and support their families in the home country. During the journey, the smuggled immigrants are often told to give up their own travel documents, and they are threatened not to provide information about the organisers to the authorities. Preconditions for exploiting the victim's vulnerable state and dependent position can in some cases be clearly observed, but it is difficult for a pre-trial investigation and a court hearing to determine how the journey would have ended. Proving an intention to exploit in potential transit cases of human trafficking is rather challenging, but it is important to note that even an attempt of trafficking is an offence subject to a penalty.<sup>2</sup>

Activities to combat trafficking in human beings have also proved challenging in cases where Finland is the destination of trafficking. Few victims of trafficking are identified, and trafficking in human beings is a rare offence category in pre-trial investigations and courts, both in Finland and in many other countries. Internationally, one of the essential reasons for the small number of identified victims and cases of trafficking heard by courts is considered to be the fact that the international definition of human trafficking and its national applications are difficult to apply and interpret in practical situations. On the other hand, another reason seen for this is that human trafficking continues to be confused with related phenomena, and the victims are treated as illegal immigrants, smuggled migrants, prostitutes, or illegal employees, rather than victims of trafficking who have been subjected to exploitation. We should stress that the cases known to the authorities and identified as trafficking are probably only a fraction of the whole phenomenon of trafficking in human beings.

Since the system for victim assistance was established, the authorities and third-sector actors in Finland have only managed to identify a few dozen victims. Particularly the number of identified victims of trafficking exploited in prostitution in Finland is low by international comparisons. The number of cases of trafficking in human beings that have been brought before the courts is similarly low. So far, only four cases have been heard by the courts under the category of human trafficking. Three of them concerned sexual and one labour exploitation. The numbers of offences that contain characteristics of human trafficking, or the so-called "offences re-

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<sup>2</sup> The Government proposal notes that "it is not a precondition for fulfilling the statutory definition (of trafficking in human beings) that the person has already been subjected, for example, to sexual exploitation or forced labour. It is sufficient that the perpetrator has intended to subject him or her to circumstances of this kind." Government proposal 34/2004.

sembling human trafficking”, are considerably higher. Offences regarded as resembling trafficking include aggravated procuring, discrimination at work tantamount to extortion, and aggravated facilitation of illegal entry.

Many factors influence the number of victims identified. Firstly, trafficking in human beings is a hidden crime. Both the perpetrators and victims try to stay hidden from the authorities. The victims are often afraid of revenge by the perpetrators and they are suspicious of the authorities. The victims also may not want to assume the identity of a victim of trafficking, as they are afraid it may stigmatise them and bring shame on them and their families. The threshold of appealing to the authorities may be extremely high, as the remuneration the victims receive for their work or services in Finland is more than what they could earn in their home countries. Sometimes the victims themselves have been involved in criminal or socially undesirable activities, and consequently they are afraid of being punished or removed from the country. Sexually exploited victims are difficult to find, as they are selling sexual services in the margins of society, afraid of being subjected to law enforcement measures themselves once they have been recognised as prostitutes. Human trafficking for the purposes of labour exploitation is difficult to identify, as an attempt is made to hide the exploitation from supervisory authorities as carefully as possible. Contacts with trade unions are restricted, which makes it even more challenging to discover these activities. Threats of violence against the victims and their families made by the perpetrators efficiently prevent the victims from contacting the authorities or other parties offering assistance. The threshold of seeking assistance is also high because the victims do not know their rights, or they believe themselves to be unable or too ashamed to demand them, as the perpetrators are often the victim’s family members, friends, or acquaintances. The victims may feel they owe a debt of gratitude to the perpetrators.

In addition to these practical challenges, the identification of victims of trafficking in human beings is influenced by how trafficking is understood and who is regarded as a victim. Before the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, adopted by the United Nations in 2000 (UN Protocol Against Trafficking in Persons), there was no shared international definition of trafficking in human beings. This was generally considered one of the most essential reasons for the lack of success of international legal instruments existing up until that time in combating human trafficking. The joint definition can indeed be considered the most central achievement of the UN Protocol Against Trafficking in Persons. This definition has later been adopted as the basis of numerous other international and regional legal instruments to combat

human trafficking. According to this definition, the states parties to the convention must establish human trafficking as a criminal offence, and this criminal law definition often offers a basis for other national actions against trafficking, such as activities of the system for victim assistance and application of aliens legislation.

In Article 3(a) of the Protocol, “trafficking in persons” is defined as the recruitment, transportation, transfer, harbouring, or receiving of persons under the threat or use of force or other forms of coercion, abduction, fraud, deception, the abuse of power or a position of vulnerability, or the giving or receiving of payments or benefits to receive the consent of a person having control over another person. Actions regarded as exploitation include, at minimum, exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude, and the removal of organs. The consent of the victim is irrelevant where any of the means listed under subsection (a) are used. Where a child has been recruited, transported, transferred, harboured, or received for the purpose of exploitation, he or she will always be regarded as having been trafficked, even if the means listed under subsection (a) had not been used. A child is defined as any person less than 18 years of age.

The complex and obscure nature of the definition of trafficking in human beings has resulted in difficulties in application and interpretation in many countries. The question of what constitutes human trafficking continues to present difficulties for law enforcement authorities and other actors working with trafficking. International reports indicate that criminal activities containing elements of human trafficking are often investigated, prosecuted, and sentenced as offences closely related to trafficking, such as procuring, labour offences, and smuggling of human beings, which in Finland have been established as criminal offences as facilitation of illegal entry. Similar problems seem to occur in Finland. Despite its expansive international definition, human trafficking is currently understood in a relatively narrow sense in this country. In both trafficking for the purposes of labour exploitation and trafficking for prostitution, only rather obvious cases are considered as victims of trafficking, while pursuant to the definition under international law or the penal provision in the Finnish Criminal Code, trafficking in human beings does not need to involve physical violence or deception as to the nature of the work to be realised. The most recent sentence for trafficking by the Helsinki Court of Appeal would, however, seem to change the interpretation towards the international definition, but we can still see that part of activities that could be considered trafficking based on the definition are investigated, prosecuted, and sentenced as offences close-

ly related to trafficking. The occurrence of trafficking in human beings may thus be more widespread in Finland than has so far been identified.

The National Rapporteur on Trafficking in Human Beings considers the identification of victims overwhelmingly the greatest challenge faced in activities to combat trafficking in human beings in Finland. In both prostitution and working life, exploitation can be seen that could be called trafficking, as defined in international law. The impact of the current recession may also be reflected in Finland as an increase in human trafficking and the related phenomena of exploitation in the country. The appearance of new nationalities in prostitution and procuring activities and the movement of foreign prostitutes from one country to another at an increasingly fast rate may be indications of this. In working life, the risk of exploitation may be increased, for example, by the use of employment companies and subcontracting. During the recession, we should also prepare for the economic upturn to arrive and a potential increase in the need for foreign labour in Finland, striving to find means for preventing and combating trafficking in human beings and the related exploitation more efficiently than today.

Appropriate identification plays a crucial role for the victims. Unless the victims of trafficking are identified, their legal rights to assistance and protection cannot be implemented. Unidentified victims are not referred to the system for victim assistance set up for them, nor do they have access to their other rights, such as the possibility of staying in the country as victims of trafficking in human beings. The failure to identify victims may result in a victim being penalised for involvement in illegal activities or, for example, illegal entry into the country. It may also lead to a potential victim of trafficking being removed from the country, continuation of the exploitation, and/or re-victimisation. In her first report, the National Rapporteur on Trafficking in Human Beings intends to examine the activities to combat trafficking in human beings in Finland to assess if victimisation in human trafficking is identified, and if the rights of victims of trafficking are implemented. Shortcomings in victim identification are also reflected in the possibilities of succeeding in crime combating and other action against human trafficking.

## **1.2. The powers and duties of the National Rapporteur on Trafficking in Human Beings and activities during the first reporting year**

### ***1.2.1. Legislative framework and resources***

The Ombudsman for Minorities has acted as National Rapporteur on Trafficking in Human beings since the beginning of 2009. The amendments to the Act on the Ombudsman for Minorities and the National Discrimination Tribunal (660/2001 and the relevant amendment 1109/2008) concerning the Ombudsman's role as National Rapporteur on Trafficking in Human Beings are based on the Revised National Plan of Action against Trafficking in Human Beings adopted by the Government in June 2008, in which the Government appoints the Ombudsman for Minorities as the National Rapporteur on Trafficking in Human Beings. The appointment of an independent Rapporteur on Trafficking in Human Beings is recommended in a number of international conventions, such as the Council of Europe Convention on Action against Trafficking in Human Beings adopted in 2005, the national ratification of which is currently being prepared. The Organization for Security and Co-operation in Europe (OSCE) and the European Union also recommend that the states establish the office of a National Rapporteur on Trafficking in Human Beings or a similar mechanism to collect and analyse information relevant to trafficking and to oversee action against trafficking. In addition to the Netherlands, where a Rapporteur on Trafficking in Human Beings has been in office for as long as ten years, Finland is the only country with an independent National Rapporteur on Trafficking in Human Beings.

In the preliminary work on the legislative amendment concerning the National Rapporteur on Trafficking in Human Beings (Government proposal 193/2008), appointing a National Rapporteur on Trafficking in Human Beings was considered necessary to ensure independent evaluation of measures against human trafficking and working international contacts. As an independent authority with extensive rights to obtain information, the Ombudsman for Minorities was regarded as a suitable party for the task. In the preliminary work, the Ombudsman for Minorities was seen to enjoy a sufficiently strong position to issue national proposals and recommendations. The preliminary work also specifies that the National Rapporteur on Trafficking in Human Beings will monitor action against trafficking, comment on any shortcomings observed and advise those performing tasks related to human trafficking in order to promote activities to combat human trafficking and to improve the victims' rights and position. The Act instituting

the Ombudsman for Minorities as the National Rapporteur on Trafficking in Human Beings came into force on 1 January 2009. Under section 2 of this Act, as the National Rapporteur on Trafficking in Human Beings, the Ombudsman for Minorities shall:

- monitor phenomena related to human trafficking, the fulfilment of international obligations and the effectiveness of national legislation,
- issue proposals, recommendations, statements, and advice relevant to combating human trafficking and to implement the rights of victims, and
- keep in contact with international organisations on issues related to human trafficking.

The Ombudsman for Minorities, or a public servant subordinate to the Ombudsman, can also assist a potential victim of human trafficking in securing his or her rights or, if necessary, obtaining legal aid, if the Ombudsman considers that the matter significantly affects the rights of this person.

The Act gives the National Rapporteur on Trafficking in Human Beings an extensive job description. The competence of the Rapporteur encompasses human trafficking and related phenomena. It is likely that the legislator has considered it important for the Rapporteur to be able to monitor the phenomena of exploitation in a wide sense, without restricting the activities to human trafficking, due to the ambiguity in definitions. The National Rapporteur on Trafficking in Human Beings collects and analyses information obtained from other authorities, and on certain preconditions, also from NGOs and producers of services and support measures for victims of human trafficking. The Rapporteur also monitors the fulfilment of international obligations concerning human trafficking and the effectiveness of national legislation, liaisons with international organisations and cooperation organs in human trafficking issues, and works together with the monitoring organs and mechanisms of international conventions on human trafficking. The most concrete outcome of this monitoring is an annual report on trafficking in human beings and related phenomena which, under section 2(a) of the Act on the Ombudsman for Minorities and the National Discrimination Tribunal, the National Rapporteur on Trafficking in Human Beings submits to the Government once a year and to Parliament once every four years.

Under section 7 of the Act, notwithstanding the secrecy provisions, the Ombudsman for Minorities as the National Rapporteur on Trafficking in Human Beings has the right to obtain information not only from authori-

ties but also from producers of services and support measures for victims of trafficking and from beneficiaries of state aid intended for combating human trafficking. Personal data of an individual victim is only available to the Ombudsman in cases where access to this information is vital in order to perform the reporting duty. The Ombudsman's rights to obtain information from NGOs are more extensive than the rights the Ombudsman for Minorities had previously. Obtaining information from NGOs involved in combating human trafficking is necessary, as in the light of international experiences, too, NGOs play rather a central role in identifying and assisting victims of human trafficking. Without information obtained from NGOs, the Rapporteur's work would remain incomplete, and this would undermine its effectiveness. The Rapporteur naturally has the duty to handle information subject to secrecy provisions in compliance with these provisions.

The Rapporteur named creating cooperation relationships and safeguarding access to information as a priority during her first year in office. While the National Rapporteur on Trafficking in Human Beings has a legal right of access to information subject to secrecy provisions, the Rapporteur has been obliged to bring the topic up several times with certain authorities and convince the actors of her statutory right to this information. With certain authorities, progress has been made, but the situation remains unsatisfactory, and the discussions on obtaining information must be continued. Comprehensive and real-time access to information is a precondition for appropriately performing the duties of the National Rapporteur on Trafficking in Human Beings. It is obvious that access to information has a direct bearing on the Rapporteur's possibilities of bringing to national action against human trafficking such added value that is expected of her in international documents and national legislation.

The Rapporteur must be strictly independent in order to perform her duties. The National Rapporteur on Trafficking in Human Beings must be a credible actor in her activities and an expert and reliable party whom both authorities and third-sector actors can easily contact when in need of advice, instructions, or assistance on issues relevant to human trafficking and actions to combat it in general, or questions associated with an individual victim. The Rapporteur strives to be easily contactable in order to promote the identification and guidance to the system for victim assistance and other actions to combat human trafficking. While the National Rapporteur on Trafficking in Human Beings is administratively working with the Ministry of the Interior, it is important for the Rapporteur to maintain her independent role vis-à-vis other parties working within the Ministry's administrative

sector. The Rapporteur's independence is also reflected in the fact that she is not a member of the Steering Group of the Revised National Plan of Action against Trafficking in Human Beings, which meets at the Ministry of the Interior with the aim of coordinating action against human trafficking between the various actors. The Rapporteur takes part in the meetings as an outside observer, which also gives her a possibility to keep track of the Steering Group's work and put forward proposals for its promotion. When she finds this necessary, the Rapporteur can also take part in the Steering Group's task forces as an observer. The Rapporteur has thus also taken part in the meetings of the information and training group appointed by the Steering Group, and she will be involved as a training officer in national training events on human trafficking organised by this task force in 2010.

In the Revised Plan of Action, the Government called for the Ministry of the Interior to assume responsibility not only for the legislative amendments necessary in connection with the appointment of a National Rapporteur on Trafficking in Human Beings, but also other needs in organising the activities, thus ensuring that the Ombudsman for Minorities has sufficient resources for acting as the Rapporteur. The Ministry of the Interior allocated a maximum of EUR 15,000 for the day-to-day costs incurred in the reporting tasks. This operating appropriation is already exceeded by the translation and printing costs of the statutory annual report. The personnel resources reserved for reporting also proved inadequate. The new post of Senior Officer was created in the Office of the Ombudsman for Minorities, which was filled in February 2009. During the first year in office, it became clear that in addition to taking care of day-to-day business, preparing the annual report required the work input of more than one person. In addition to preparing the actual report, the Rapporteur takes part in training provided for authorities and other parties involved in human trafficking issues and disseminating information on human trafficking. The National Rapporteur on Trafficking in Human Beings also assists victims of human trafficking and strives to offer her expertise to various parties, for example, by giving advice and instructions to authorities and third-sector actors. Time is also taken up by international cooperation activities, as well as by developing the implementation of the mandate. In other words, more assisting labour will be needed for national reporting on human trafficking in the future in order for the reporting to produce the kind of additional value expected of it.

### *1.2.2. Activities during the first reporting year*

The Ombudsman for Minorities started her work as the National Rapporteur on Trafficking in Human Beings by collecting and analysing the necessary information about human trafficking and related phenomena and the problems associated with combating human trafficking. This information has been obtained from the authorities, essential NGOs, labour market organisations, and courts of law. Based on the information received, the National Rapporteur on Trafficking in Human Beings has made an effort to evaluate the activities to combat human trafficking and the extent to which the rights of victims of human trafficking are implemented in Finland.

During her first year in office, the National Rapporteur on Trafficking in Human Beings identified three key areas in the action against human trafficking. The Rapporteur focused special attention on effectiveness in these areas, all of which play an important role in appropriately identifying victims of human trafficking, implementation of the rights of victims, and other activities to combat human trafficking. These areas are (1) assisting victims of human trafficking and the functioning of the system for victim assistance; (2) procedures related to victims' residence in Finland and their removal from the country; and (3) the criminal procedure and the application and interpretation of penal provisions on human trafficking. Activities to combat human trafficking obviously comprise many other aspects besides these three areas, including cooperation with neighbouring areas and development cooperation as factors preventing human trafficking. Because of the limited resources, however, a profound examination of these other areas was not possible during the first year in office.

In order to examine the effectiveness of the three areas listed above, the National Rapporteur on Trafficking in Human Beings asked authorities and courts of law to provide material on the working of the system for victim assistance, application of residence permit provisions, refusal of entry on various grounds, and application of penal provisions on human trafficking and related phenomena. The Rapporteur requested from the reception centres of Oulu and Joutseno, which are responsible for managing the system for victim assistance, their decisions on inclusion in the assistance system of customers and their removal from it, as well as the minutes of multidisciplinary evaluation groups, based on which the Rapporteur has made an effort to evaluate, such as the criteria for inclusion in the system for victim assistance and legal protection guarantees relevant to this system. The Rapporteur also asked to see the proposals concerning the inclusion of certain victims in the system.

In order to evaluate the application of the aliens legislation, the Rapporteur requested from the Finnish Immigration Service decisions on cases where appeal had been made to victimisation in human trafficking. In addition to looking at residence permits issued to actual victims, the Rapporteur also wished to examine the issuing of permits on other grounds, which could be relevant in cases of human trafficking. The Rapporteur also examined the granting of reflection periods.

In order to shed light on the possible problems of identifying victims of human trafficking, the Rapporteur also had a closer look at refusals of entry based on the Regulation on determining the Member State responsible for examining an asylum application by analysing decisions made in 2009 (before the end of August) and other documentation as far as they concerned minors or women aged less than 35 who were refused entry and returned to Greece or Italy. The Rapporteur also asked the Immigration Police unit of the Helsinki Police Department to submit to her decisions to refuse entry made in 2007, 2008, and 2009 (by the end of August), where the justification for refusal of entry was a suspicion of selling sexual services. Based on the refusal of entry decisions, the Rapporteur made an effort to determine to what extent potential victimisation in human trafficking is identified and how public servants react to possible indications of human trafficking in the decision-making process. The Rapporteur acquired more detailed information on the application of the latter justification for refusal of entry and identification of potential victims of human trafficking by a request for clarification addressed to the Immigration Service, the Border Guard Headquarters, and the Helsinki Police Department.

Decisions made by the courts and pre-trial investigation material played a key role in monitoring the legal practice, criminal procedure, and application and interpretation of the statutory definition of human trafficking. In addition to actual human trafficking cases, the Rapporteur examined the application of the Criminal Code with regard to phenomena related to human trafficking. As such phenomena, the Rapporteur considers procuring and discrimination at work tantamount to extortion. Due to limited resources, facilitation of illegal entry was excluded from the first report of the National Rapporteur on Trafficking in Human Beings.

Because the volume of court and pre-trial investigation documentation concerning human trafficking for the purposes of labour exploitation is rather small, the National Rapporteur on Trafficking in Human Beings considered it necessary to examine labour exploitation situations in more detail. For this purpose, the National Rapporteur on Trafficking in Human Be-

ings asked for reports of discrimination at work tantamount to extortion made by the Occupational Safety and Health Inspectorate of Uusimaa to the police in 2008 and 2009 (by the end of August). The Rapporteur also attempted to investigate labour exploitation on the basis of reports published on the grey economy and foreign labour. The Rapporteur strived to complement this information by organising a meeting of authorities on the grey economy and an extensive round of hearings.

In addition to this material obtained from the authorities, the Rapporteur asked certain NGOs to reply to a few individual questions, by means of which the Rapporteur wished to elicit more detailed information on such as the accessibility of the system for victim assistance and identification of victims of human trafficking at turning points represented, for example, by a refusal of entry based on suspicions of selling sexual services. The Rapporteur was also given access to other written documentation by the NGOs, which has helped her to focus more closely on the need to develop the system for victim assistance.

The National Rapporteur on Trafficking in Human Beings made an effort to complement the information from printed sources by meeting key authorities and third-sector actors. The purpose of these discussions was to take a closer look at the activities to combat human trafficking of these parties, to collect information and experiences of the needs to develop action against human trafficking, and to create cooperation relationships. The meetings were highly informative and useful, and they will continue to be a vital means of obtaining information necessary for performing the duties of the National Rapporteur on Trafficking in Human Beings. During her first year in office, the National Rapporteur on Trafficking in Human Beings met the following authorities:

- Helsinki Police Department: Crimes Against Persons and the labour and financial crime units
- Helsinki Police Department Immigration Police unit
- Joutseno reception centre
- National Bureau of Investigation: project on human trafficking and the real-time investigation unit
- Finnish Immigration Service
- Ministry of Justice: Law Drafting Department
- Oulu reception centre
- Border Guard Headquarters and Helsinki-Vantaa Airport
- Ministry of the Interior: Migration Department, International Protection Unit, International Affairs Unit, and Police Department

- Ministry for Foreign Affairs: Unit for Human Rights Policy, Unit for Development Policy, Unit for Passports and Visas, and the Unit for Human Rights Courts and Conventions
- Occupational Safety and Health Inspectorate of Uusimaa
- Finnish Prosecution Service

The National Rapporteur on Trafficking in Human Beings also met the following NGOs and religious communities:

- Amnesty International, Finnish section
- Federation of Mother and Child Homes and Shelters
- Helsinki Deaconess Institute: Rom po drom project
- The Finnish League for Human Rights
- International Christian Center
- The Finnish NGO Foundation for Human Rights KIOS
- Children's Fundamental Rights
- Multicultural Women's Association in Finland
- Oulu Congregation, international work
- Finnish Refugee Advice Centre
- Pro Centre Finland
- Victim Support Finland
- SOS Centre
- The Finnish Red Cross
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The National Rapporteur on Trafficking in Human Beings also had meetings with courts of law, the Helsinki District Court, the Helsinki Court of Appeal, and the Helsinki Administrative Court, as well as labour market organisations, the Confederation of Finnish Industries, the Central Organisation of Finnish Trade Unions (SAK), the Service Union United (PAM), the Metalworkers' Union (Turku), and the Finnish Construction Trade Union. The Rapporteur also organised an informal meeting on the grey economy and the exploitation of foreign workers in the labour market, the participants of which included experts from the inter-authority cooperation project (Virke), the Ministry of the Interior Police Department, Ministry of Social Affairs and Health, and the tax administration. The Rapporteur additionally met other, unnamed persons with the aim of collecting more in-depth information on human trafficking and related phenomena, and individual cases with indications of human trafficking in Finland. The National Rapporteur on Trafficking in Human Beings also gathered information by meeting victims and discussing matters such as the assistance system activities.

In addition to preparing a report, the National Rapporteur on Trafficking in Human Beings issued a recommendation concerning the right to legal advice and assistance of victims of human trafficking in March 2009. The recommendation is based on the Rapporteur's observation that legal advice and/or assistance is not always available to all potential victims of human trafficking, even though their situations involve special issues requiring legal expertise. In her recommendation, the Rapporteur states that, after preliminary identification, victims of human trafficking must, as soon as possible and without delay, be provided with information about the legal issues that concern them in a language that the victim understands. In addition to a printed general presentation, this information package should also be delivered orally to ensure that the victim understands his or her position and rights and is able to ask further questions concerning them. A printed information package should also be handed to those potential victims of human trafficking who contact third-sector actors and are only considering seeking help from the authorities. As far as possible, information should also be offered orally in this case, and adequate funding for this purpose should be allocated to third-sector actors.

In her recommendation, the Rapporteur stresses that giving a basic information package is not sufficient, as an effort should be made to describe the rights and position of a potential victim in greater detail. There may be significant differences between the situations of victims of human trafficking. The needs for legal advice and legal aid may be diverse and subject to individual variations. Due to this wide variety of legal needs, the National Rapporteur on Trafficking in Human Beings recommends that a personal support person be appointed for every person who is a potential victim of human trafficking. A legal advisor should also be appointed in cases where it can be assumed that victimisation in human trafficking will not lead to a pre-trial investigation and/or trial. A support person should be appointed for each potential victim of human trafficking as soon as possible after identification and referral to the assistance system of the victim. The quality of the legal aid should be high, and it should be able to adequately respond to the needs for specialised legal expertise emerging in the case. The support person should also be independent. The Rapporteur has been informed that a task force of the Steering Group for the National Plan of Action against Human Trafficking has taken steps to implement this recommendation.

The Rapporteur also sent requests for clarification concerning refusal of entry under the Aliens Act to the Immigration Office, the Border Guard Headquarters, and the Helsinki Police Department Immigration Police unit

in cases where the justification for refusal of entry is a suspicion of selling sexual services. The reason for this request was the Rapporteur's belief that there may be shortcomings in identifying victims of human trafficking in situations where foreign citizens are refused entry to the country under suspicion of selling sexual services. In her request for clarification, the Rapporteur asked the parties in question to provide information on how possible victimisation in human trafficking and the need for assistance and protection of persons who have been refused entry are taken into consideration in the refusal procedure. The Rapporteur also requested specific information on whether these persons are informed of their rights as potential victims of human trafficking and whether expert and impartial legal aid is provided for them to establish their rights. An analysis of the responses received by the Rapporteur to this request for clarification is provided under the relevant chapter of this report.

In November 2009, the National Rapporteur on Trafficking in Human Beings sent a request for clarification to the Ministry of the Interior Police Department, the National Bureau of Investigation and the Helsinki Police Department with the intent of examining the position of potential victims of human trafficking and the safeguarding of their rights in a criminal case related to beggars.<sup>3</sup> This request for clarification was associated with the Rapporteur's concern over the situation of beggars based on published reports claiming that organised crime and even human trafficking may be underlying factors in the phenomenon of begging. In her request, the Rapporteur asked the appropriate parties to provide an explanation of how the police will attempt to ensure the position and rights of potential victims of human trafficking in cases involving beggars. In her request for clarification, the Rapporteur asked the parties to provide specific information on (1) how the identification of potential victims of human trafficking is ensured, (2) how the right to a support person of potential victims of human trafficking is implemented, and (3) if potential victims of human trafficking are informed of their right to apply for inclusion in the system for victim assistance managed by the reception centres of Joutseno and Oulu, as well as of their other statutory rights. Regarding this request for clarification, the Rapporteur's work remains incomplete at the time of preparing this report. The Rapporteur also started examining a case of procuring related to Thai massage parlours and refusal of entry to employees with illegal status in early 2010.<sup>4</sup> At the time of submitting this report, this examination remains incomplete.

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3 Request for clarification VVT/2009/399, 19.11.2009.

4 Request for clarification VVT/2010/16, 15.1.2010.

During her first year in office, the Ombudsman for Minorities with the mandate of the National Rapporteur on Trafficking in Human Beings also focused attention on the situation of foreigners coming to pick wild berries. The Ombudsman for Minorities issued a recommendation concerning foreign berry-pickers on 9 December 2009.<sup>5</sup> In this recommendation, the Ombudsman for Minorities draws attention to the fact that some of the pickers had gotten into debt. This exposes the pickers to phenomena related to human trafficking. In her recommendation, the Ombudsman for Minorities considers that pickers who work full time should be able to achieve a minimum level of earnings after the costs have been reduced. A company in a stable financial position working in the sector that invites pickers to the country must be able to cover the picker's travel, accommodation, and tool costs, ensuring that the pickers are not worse off financially after working in Finland. In December 2009, the Ministry for Foreign Affairs issued instructions to Finnish missions on processing the visa applications and invitations of seasonal workers. This instruction refers to the recommendation issued by the Ombudsman for Minorities, instructing the missions to take the recommendation into account when examining the preliminary information. The Ministry considers that the mission can request a company engaged in the sector that fulfils its statutory obligations to provide information on the services offered to the visa applicants, how the services are arranged, and what they cost. The Ministry's instructions aim at avoiding situations where a seasonal worker is deprived of a net income despite working in compliance with a contract.

In addition to advocacy work, during her first year in office, the National Rapporteur on Trafficking in Human Beings took part in providing training for central actors working to combat human trafficking in the Finnish Prosecution Service, the Police College, the National Bureau of Investigation, and the Border Guard, where the target audience was the personnel of foreign missions in Finland. In cooperation with the Victim Support and Pro Centre (Tampere), the Rapporteur organised training and information events on human trafficking in Turku, Tampere, Oulu, and Joensuu. These training events will continue in 2010 in Vaasa and Rovaniemi. The training and information events have a large target group, encompassing the police, the Border Guard, the Prosecution Service, the occupational safety and health administration, labour market organisations, the social and health care services and immigrant services of cities, and third-sector actors. The Rapporteur also took part in other training events as a training officer and organised individual training events together with the partners, such as the Federation of Mother and Child Homes and Shelters and the reception

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<sup>5</sup> Recommendation VVT/2009/271, 9.12.2009.

centre of Joutseno. The Rapporteur also lectured at the Universities of Helsinki and Tampere and provided training for the personnel of the Metsälä detention unit on identifying victims of human trafficking.

The Rapporteur additionally gave a number of statements on issues relevant to human trafficking, took part as an observer or expert member in meetings organised by many partners, and responded to general requests for information concerning human trafficking and questions concerning matters related to individual victims of human trafficking of the authorities and the third sector. The National Rapporteur on Trafficking in Human Beings kept abreast of court hearings related to human trafficking, participated in several national and local meetings and international conferences on human trafficking, and met representatives of international organisations both in Finland and abroad. The Rapporteur also worked to set up partnerships, networks, and information channels with key authorities and third-sector actors. Furthermore, the Rapporteur assisted several victims of human trafficking and guided dozens of others in the system for victim assistance. The Rapporteur also gave a number of interviews to the media, students, and other parties and persons interested in human trafficking.

### ***1.2.3. Future outlook for reporting***

During her first year in office, the National Rapporteur on Trafficking in Human Beings strived to lay the foundation for a long-term, sustainable and human rights centred working method that has a genuine possibility of being effective in action against human trafficking and promoting the victims' position and rights. The Rapporteur has been well received by both authorities and third-sector actors. Independent supervision and the perspective of an outside observer have generally been considered a welcome addition to the development of action against human trafficking and internalisation of a victim-centred approach. Authorities and third-sector actors have contacted the National Rapporteur on Trafficking in Human Beings over a number of issues, both in connection with individual cases of human trafficking and more general requests for information and advice.

The Rapporteur will also strive to make her expertise available to various parties and thus promote the action against human trafficking in the future. The Rapporteur will focus on advice and training, as she believes they are an important means of increasing awareness of human trafficking issues, not only among central actors combating human trafficking but also the general public. Because of the limited resources, the Rapporteur will only

get involved in assisting individual victims of human trafficking in exceptional cases where there is a particular need for this.

The Rapporteur emphasises wide-based networking and adequate and up-to-date access to information as preconditions for her effectiveness. In the future, it will also be vital to focus on international cooperation and networking with foreign actors. Gathering information from foreign partners will be a particular priority in the future. The Rapporteur believes that obtaining information on the assistance systems in other countries and their effectiveness may also promote action to combat human trafficking in Finland.

In the following reports, the National Rapporteur on Trafficking in Human Beings will make an effort to compare the status of action against human trafficking in Finland and in other countries. The ground work for this comparison will include visits to certain European countries and meetings with central parties working to combat human trafficking. The objective of this is to put the Finnish action against human trafficking in proportion compared to similar activities in other countries and to collect information on best practices that could also help develop the Finnish action against trafficking. The National Rapporteur on Trafficking on Human beings hopes that these visits will also contribute to establishing and developing cooperation and information exchange with parties combating human trafficking in other countries.

In February 2010, the Rapporteur visited the Netherlands, where she met not only the local Rapporteur on Trafficking in Human Beings but also personnel from a police specialist centre focusing on trafficking and smuggling of human beings (Expertisecentrum), an NGO coordinating services for victims of human trafficking (Comensha), the Ministry of Foreign Affairs, and the Ministry of Justice. The National Rapporteur on Trafficking in Human Beings also had discussions with the Dutch prosecutor specialising in human trafficking cases and a solicitor who assists victims. The Rapporteur intends to pay a similar visit to Sweden in 2010. Besides the Netherlands and Sweden, the Rapporteur will make an effort to visit Belgium in 2010, a country that has particular experience in combating human trafficking for the purposes of labour.

This report also attempts to describe human trafficking for the purposes of labour and the related phenomena of exploitation, but it is clear that the theme is extensive and requires more detailed investigation. Due to such reasons as limited legal practice, there is little information available on hu-

man trafficking for the purposes of labour exploitation. In this report, the Rapporteur aims to shed light on the nature of the problem and challenges of victim identification. In the reports of the next few years, however, it will be necessary to take a closer look at issues of human trafficking for the purposes of labour. Based on the information obtained, the Rapporteur will focus on discussing this theme in more detail in future reports. Human trafficking for the purposes of labour exploitation will be one of the Rapporteur's essential priorities, warranted by the expected wide scope and seriousness of this intention to exploit alone.

Another theme requiring a closer analysis that will interest the Rapporteur in the future is the use of Finland as a potential transit country for human trafficking. Due to limited resources, the National Rapporteur on Trafficking in Human Beings has only been able to put together the most blatant cases involving human trafficking that have become known to the Rapporteur and guided to the system for victim assistance. It is quite likely, however, that Finland is a transit country for human trafficking to a much greater extent. In the years to come, this is an area that the Rapporteur will concentrate on in more detail than what is possible in the current report. This report aims to demonstrate that this problem, too, is rather serious and may lead to violations of the individual's fundamental rights in the future country of destination. Because of the country's geographical situation and flight connections to Asia, which have become more frequent in recent years, Finland plays an important role in preventing human trafficking and the related phenomena of exploitation.

### **1.3. The basis and objectives of the report**

Finland was acknowledged as a country of transit and destination for human trafficking in 2005. This was to a great extent due to international pressures, even if exploitation similar to human trafficking could also be observed within the borders of the country, at least in prostitution and procuring. As early as 2003, reports by the National Bureau of Investigation and the National Research Institute of Legal Policy showed that the field of prostitution had changed and procuring had become a large-scale, organised activity aiming for considerable financial proceeds. The reports proved that foreign women working as prostitutes were subjected to various types of pressure and coercion by the procurers, and they were not allowed to leave prostitution. At that time, little was known about human trafficking

for labour, but the negative effects of the so-called Transition Period Act<sup>6</sup> which had come into force in spring 2004 in Finnish working life were acknowledged later, and the Act has been suspected of stimulating unhealthy phenomena in the Finnish labour market and creating opportunities for exploitation of foreign workers, to the extent of resembling human trafficking. In addition to the Transition Period Act, another noteworthy factor in connection with human trafficking is the increased use of employment companies, hired labour, and subcontracting.

Much was happening in the international forum at the same time. In December 2000, the United Nations adopted a Convention Against Transnational Organized Crime, and in this connection, a Protocol to Prevent Trafficking in Persons, Especially Women and Children (UN Protocol on Trafficking in Persons) was adopted. The European Union, too, played an active role by adopting a Framework Decision on combating trafficking in human beings in 2002, and a few years later, adopted a Directive on the residence permit issued to third-country victims of trafficking in human beings (who have been subjects of action to facilitate illegal immigration) -- the so-called Victims Directive. Both the UN Protocol and EU legislative instruments oblige states to establish trafficking in human beings as a criminal offence and to take certain other measures to prevent human trafficking and assist victims. The Council of Europe Convention on Action against Trafficking in Human Beings adopted in May 2005, the national implementation of which is currently being prepared, is an important addition to these instruments. The Convention aims at enhancing the protection of victims' human rights and to promote the identification and guidance to support measures of victims. The Organization for Security and Cooperation in Europe OSCE has also been actively involved in action against human trafficking.

It could be said that the first National Plan of Action against Trafficking in Human Beings resulted in the launching of measures to combat human trafficking in Finland. Over a short period, Finland has adopted a considerable amount of legislative and other measures aiming to prevent trafficking in human beings, to assist and protect its victims, and to combat offences of human trafficking. Action against human trafficking in Finland is mainly based on three acts: the Criminal Code, the Aliens Act, and the Act on the

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6 The Transition Period Act restricted the entry into the labour market of new EU citizens. The Act came into force on 1 May 2004 and remained in force for two years. The transition period applied to eight new Member States that joined the European Union at the beginning of May (Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovenia and Slovakia), only excluding Cyprus and Malta. Under this Act, the citizens of these countries still required a work permit to work in Finland.

Integration of Immigrants and Reception of Asylum Seekers, which have all been amended to better respond to the challenges of human trafficking. Penalties have been laid down for trafficking in human beings, victim support has been made more efficient by establishing a dedicated system for victim assistance, and the possibility of granting a so-called reflection period and issuing a temporary or permanent residence permit to victims of human trafficking was added in the Aliens Act. In June 2008, the Government adopted a Revised National Plan of Action against Trafficking in Human Beings, and a Steering Group convened by the Ministry of Interior was set up to monitor its implementation. In addition, cooperation networks have been developed, training has been provided for key authorities and third-sector actors, third-sector projects combating human trafficking have been supported, attention has been focused on the demand that creates human trafficking, and a National Rapporteur on Trafficking in Human Beings has been appointed.

These measures have promoted action against human trafficking in Finland. However, plenty still remains to be done. The National Rapporteur on Trafficking in Human Beings considers the identification of victims as the most central challenge faced by action against trafficking in human beings in Finland. It appears that trafficking in human beings has been acknowledged as a human rights challenge and serious crime affecting our country in principle, but the ideas of what human trafficking is and who the victims of trafficking are still seem to be rather incoherent. An essential problem lies in the excessive criminal law-centredness of action against human trafficking and supporting the victims, in which supporting the victims has strong links with the statutory definition of human trafficking in the Criminal Code. The National Rapporteur in Trafficking in Human Beings feels it is necessary to emphasise that, for the victims, being identified as victims of human trafficking is vital in terms of the appropriate implementation of their rights. The implementation of the legal rights of human trafficking victims depends on how successful the authorities and third-sector actors are in identifying persons who are victims or at risk of becoming victims of human trafficking.

The objective of this report is to evaluate action against human trafficking in Finland and to issue recommendations for the promotion of the activities and safeguarding the position and legal protection of victims of human trafficking. The report evaluates the effectiveness of action against human trafficking and examines what has been successful and what still has scope for improvement. National action against human trafficking is evaluated based on how the rights of the victims of human trafficking are

implemented and what obstacles may currently impede the implementation of the victims' rights. This perspective has a bearing on issues that the report draws attention to, questions that are highlighted, and proposals for improvements that are put forward. In addition to a general human rights perspective, a number of international conventions and recommendations are used as a standard in this evaluation. The aim of the report is to describe human trafficking as a phenomenon in a Finnish frame of reference and to highlight the victim's perspective, and the impact of measures taken or non-intervention on victims and the implementation of their legal protection. The National Rapporteur on Trafficking in Human Beings believes that improving the victims' position will also promote crime combating. At the same time, the report wishes to raise awareness of human trafficking as a phenomenon and a serious human rights challenge.

#### **1.4. Structure of the report**

The National Rapporteur on Trafficking in Human Beings has collected in this report the most essential observations made by her during her first year in office. The Rapporteur also aims to put forward proposals that would promote action against human trafficking and improve the position and rights of victims of human trafficking in this report. The report is divided into seven chapters, the three most essential ones of which concern the system for victim assistance, application of the aliens legislation, and the criminal procedure and application and interpretation of statutory definitions of human trafficking. The report issues several recommendations in order to develop actions against human trafficking.

This introductory chapter is followed by chapter 2, in which Finnish action against human trafficking is seen against the frame of reference of international and European law. The chapter describes the central instruments of international and European law concerning human trafficking. These include the UN Convention Against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (UN Protocol on Trafficking in Persons), Council of Europe Convention on Action Against Trafficking in Human Beings, ILO Forced Labour Conventions, and various legal instruments adopted in the European Union concerning trafficking in human beings.

Chapter 3 focuses on the effectiveness of the system for victim assistance. Some of the issues addressed are inclusion in the system and removal from it, and the procedure and decision-making process associated with inclu-

sion in and removal from the system. The report also looks at other targets for development that have emerged in the system for victim assistance.

Chapter 4 contains an evaluation of the application of the aliens legislation. At the centre of this examination is, first of all, residence permit decisions in cases where the application was based on human trafficking. The National Rapporteur on Trafficking in Human Beings also looks at the granting of reflection periods. Based on the Rapporteur's observations, the aliens legislation plays a major role in the identification of victims of human trafficking. This is why the Rapporteur has, in chapter 5, also examined procedures where the identification of a victim of human trafficking could take place. As such procedures, the Rapporteur has identified refusal of entry based on suspicions of selling sexual services and refusals based on the Regulation determining the Member State responsible for examining an asylum application.

Chapter 6 of this report evaluates the effectiveness of the criminal procedure and legal practice. The scope of this examination has been extended not only to the statutory definitions of human trafficking but also phenomena related to human trafficking, or procuring and discrimination at work tantamount to extortion. The National Rapporteur on Trafficking in Human Beings did not look at facilitation of illegal entry, even if such action often has characteristics of human trafficking. The aim of this chapter is to study the application and interpretation of statutory definitions of human trafficking and offences closely resembling it, and to evaluate how well victims of human trafficking are currently identified in pre-trial investigations and the criminal procedure, and where the boundaries between human trafficking and offences closely resembling it are currently drawn in pre-trial investigations and the criminal procedure. The chapter also deals with the application and interpretation of an exploitation offence involving sex trade within the competence of the National Rapporteur on Trafficking in Human Beings.

Chapter 7 of this report discusses the conclusions and most important recommendations of the report, the implementation and realisation of which the Rapporteur will actively monitor. Some of these recommendations are about reforming procedures and practices, while the implementation of others would require parliamentary debate and legislative amendments.

## 2. Provisions on trafficking in human beings under international and European law

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There is nothing new about trafficking in human beings, either as a phenomenon or a subject of regulation under international law. Attempts to combat human trafficking have been and are being made by means of international conventions and various forms of cooperation. Such organisations as the United Nations (UN), the International Labour Organization (ILO), the European Union (EU), the Council of Europe (CE), and the Organization for Security and Co-operation in Europe (OSCE), among others, engage in action against human trafficking.

At the level of international law, the origins of action against human trafficking are found in attempts to abolish slavery and the slave trade, which in addition to general human rights conventions<sup>7</sup> are also prohibited in a number of specialised conventions. An international Slavery Convention was adopted by the League of Nations in 1926. It was complemented by a Protocol adopted in 1953 and a separate Supplementary Convention adopted in 1956. Finland ratified both the international Slavery Convention (Finnish Treaty Series 27/27) and the Protocol amending it (Finnish Treaty Series 8/54). Finland also ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (Finnish Treaty Series 17/59). Under these conventions, Finland is committed to combating slave trade and laying down severe penalties for it. The Slavery Convention together with its amending protocol defines slavery and extends it to also cover practices resembling slavery, such as debt bondage and treating women and children as property.

Even before the adoption of these conventions on slavery and slave trade in the turn of the 19th century, states attempted to combat what was called the “white slave trade”, in which mainly European women and girls were recruited and transported to colonies for prostitution. The term “white slave trade” was used to distinguish the prostitution of women and girls from slave trade involving the black African population. Certain historians have since questioned if the white slave trade actually was as cruel and inhuman as was often claimed. Many of the women and girls were aware of having to work in prostitution when they left their home countries, where they often had already been working as prostitutes. Contemporary accounts indicate, however, that the conditions of prostitution in destination countries often

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<sup>7</sup> For example International Covenant on Civil and Political Rights (Finnish Treaty Series 8/1976), Art. 8. The prohibition of slavery also is a strict norm of international consuetudinary law, to which exceptions may be made under no circumstances.

were extremely poor, and the procurers and brothel owners took most of the money earned by the women and caused them to be in debt bondage. It appears that minor girls were also prostituted.

At that time, states adopted several international conventions in which they committed to preventing and combating white slave trade. Finland ratified the International Convention for the Suppression of the Traffic in Women and Children adopted by the League of Nations in 1921 (Finnish Treaty Series 3/27). This included being party to an International Agreement for the Suppression of White Slave Trade signed in Paris in 1904 and the International Convention for the Suppression of the White Slave Trade adopted in Paris in 1910. Finland had also joined in the 1933 International Convention for the Suppression of the Traffic in Women of Full Age (Finnish Treaty Series 29/37), which differed from its predecessors in that it aimed to prevent prostitution regardless of the victim's consent.

From the perspective of international law, this phase of combating human trafficking culminated in the UN Convention for the Suppression of the Traffic in Persons and Exploitation of the Prostitution of Others of 1949, under which the State Parties are committed to prohibiting procuring and brothel activities. This convention combined the earlier conventions on human trafficking from the years 1904—1933, also taking into account the draft convention against human trafficking prepared by the League of Nations in 1937. This Convention came into force in Finland in 1972 (Finnish Treaty Series 33/1972). The most essential provisions of the Convention are found in Articles 1 and 2. It obliges the parties to punish any person who, to gratify the passions of another, procures, entices or leads away, for the purposes of prostitution, another person, even with the consent of that person (Article 1). The parties further agree to punish any person who keeps or manages, or knowingly finances or takes part in financing, a brothel, or knowingly lets or rents a building or other place or any part thereof for the purposes of the prostitution of others (Article 2). Article 6 of the Convention also prohibits regulated brothel activities.

The international law instruments adopted in the 21<sup>st</sup> century were based on events in the 1990's: the dissolution of the Soviet Union, independence gained by ex-Soviet countries, armed conflicts in former Yugoslavia, and the consequent influx of refugees. Contributing factors to the increase in human trafficking within Europe that began in the 1990's included financial and political uncertainties, which resulted in people crossing borders to seek better and more secure lives elsewhere. In the mid-1990s, the international community became concerned over the increasing migration and

the operation of organised groups of criminals behind them, and started drafting new instruments of international law.

In December 2000, the United Nations adopted an International Convention Against Transnational Organized Crime and its Protocol on the Prevention, Suppression and Punishment of Trafficking in Persons, Especially Women and Children (UN Protocol on Trafficking in Persons, Finnish Treaty Series 20/2004 and 71/2006).<sup>8</sup> The Protocol is interpreted in conjunction with the Convention. The purpose of the Protocol on Trafficking in Persons is to prevent and combat trafficking in persons, paying particular attention to women and children, to protect and assist victims of such trafficking, with full respect for their human rights, and to promote cooperation among State Parties in order to meet those objectives (Article 2). The Trafficking Protocol contains the first internationally accepted definition of trafficking in persons, and it obliges the State Parties to adopt such legislative and other measures as may be necessary to establish human trafficking as a criminal offence and to take a number of other measures to combat human trafficking (Articles 3 and 5). The Protocol on Trafficking in persons shall apply to the prevention, investigation, and prosecution of the offences established in accordance with the Protocol, where those offences are transnational in nature and involve an organised criminal group, as well as the protection of victims of such offences. The UN Protocol on Trafficking in Persons also contains provisions on the assistance and protection of victims of trafficking (Article 6), status of victims in receiving states (Article 7), and repatriation of victims (Article 8). The Protocol also deals with various measures to prevent crimes (Article 9), cooperation (Articles 10-11) and security and control of documents.

The UN Protocol on Trafficking in Persons does not take a stand on the national regulation of procuring or prostitution. According to the official instructions for interpreting the Protocol (Article 64), the Protocol applies to exploitation for the purpose of prostitution and other sexual exploitation only in connection with the regulation of human trafficking. The Protocol does not provide definitions of exploitation for the purpose of prostitution and other sexual exploitation, and the instructions for interpretation consequently state that the Protocol has no bearing on how the State Parties regulate prostitution in their national legislation. It should be noted, however, that the Protocol obliges the State Parties to adopt or strengthen legislative or other measures to discourage the demand that fosters all forms of exploitation of persons (especially women and children) that leads to traffick-

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<sup>8</sup> Finland signed both the Convention and the Protocol on 12 December 2000 together with the other EU Member States.

ing (Article 9(5)). This provision makes the Protocol the first international convention in which attention is drawn to reducing the demand that fosters exploitation and in which legislative measures are referred to as a means for reducing such demand. The Convention came into force internationally on 29 September 2003, and the Protocol on 25 December 2003. The Convention has been valid in Finland since 12 March 2004 (Finnish Treaty Series 20/2004) and the Protocol since 7 October 2006 (Finnish Treaty Series 70-71/2006).

Human trafficking is also prohibited in many general human rights conventions adopted within the UN. The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, Finnish Treaty Series 68/1986), Article 6, obliges the State Parties to take all appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women. This Convention has an Optional Protocol, which came into force in Finland in 2001 (Finnish Treaty Series 21/2001). Under Article 2 of the Optional Protocol, communications may be submitted to the Committee defined in the Protocol, by or on behalf of individuals or groups of individuals, under the jurisdiction of the State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. The Committee will consider these communications in closed meetings and may issue recommendations for correcting the situation to the State Party the communication concerns.

Other central human rights conventions that also are relevant to human trafficking include the UN Convention on the Rights of the Child (Finnish Treaty Series 59-60/1991), which obliges the State Parties to undertake to protect the child from all forms of sexual exploitation and abuse, for example, the exploitative use of children in prostitution or other unlawful sexual practices (Article 34). The Convention also requires the State Parties to prevent the abduction, sale, or traffic in children (Article 35). The Optional Protocol to the Convention adopted in 2000 on the sale of children, child prostitution, and child pornography contains an express prohibition on the sale of children, child prostitution, and child pornography (Article 1) and obliges the State Parties to ensure that child trafficking is fully covered under their penal law (Article 3). Article 8 requires the State Parties to protect the rights and interests of victims of child trafficking at all stages of the criminal justice procedure, for example, by recognizing the vulnerability of child victims and adapting procedure to recognize their special needs. The Protocol also requires the State Parties to promote awareness of child trafficking, prevent trafficking in children, and assist victims of child trafficking. Finland signed the Protocol as early as in 2000, but its ratifica-

tion process remains unfinished. The entry into force of the Protocol will require legislative amendments.<sup>9</sup>

A Convention on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour was adopted by the International Labour Organization (ILO) in 1999. In Finland, it came into force in 2001 (Finnish Treaty Series 16/2000). The convention obliges the State Parties to take measures to eliminate the worst forms of child labour (Article 1). The worst forms of child labour include trafficking of children, sexual exploitation of children in prostitution or pornography, and the use of children (for example) in drug trafficking (Article 3). The worst forms of child labour cover all forms of slavery and practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom, and forced and compulsory labour, including forced or compulsory recruitment of children for use in armed conflict (paragraph a) and the use, procuring, or offering of a child for prostitution, for the production of pornography, or for pornographic performances (paragraph b). The worst forms of child labour referred to in the convention further include the use, procuring, or offering of a child for illicit activities, in particular for the production and trafficking of drugs (paragraph c) and work which, by its nature or circumstances in which it is carried out, is likely to harm the health, safety, or morals of the child (paragraph d).

In this connection, we should also mention the ILO Forced Labour conventions, which obligate the State Parties to take measures to eliminate compulsory labour. These conventions are relevant to eliminating human trafficking for labour, and forced labour. A Forced Labour Convention (Finnish Treaty Series 44/1935) was adopted in 1930, which obliges the State Parties to suppress the use of forced or compulsory labour in all its forms (Article 1). In this Convention, forced or compulsory labour is defined as all work or service which is exacted of any person under the menace of any penalty and for which the said person has not offered himself voluntarily (Article 2). In the Abolition of Forced Labour Convention adopted in 1957 (Finnish Treaty Series 17/1960), the State Parties undertake to suppress and not to make use of any form of forced or compulsory labour as a means of labour discipline or for purposes of economic development. The ILO has recently

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<sup>9</sup> Other human rights conventions also relevant to human trafficking include the UN International Covenant on Civil and Political Rights (Finnish Treaty Series 8/1976), the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Finnish Treaty Series 60/1989), the UN Convention on the Elimination of All Forms of Racial Discrimination (Finnish Treaty Series 37/1970), the UN International Covenant on Economic, Social and Cultural Rights (Finnish Treaty Series 6/1976) and the UN International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families adopted in 1990, which Finland has not ratified.

actively strived to update the term “forced labour” by examining when the performance of work or providing a service is compulsory in a manner that fulfils the definition of forced labour.

Finnish action against human trafficking is also guided by conventions adopted in the Council of Europe. The Council of Europe’s Convention on Human Rights was adopted in 1953, and it came into force in Finland in 1990 (Finnish Treaty Series 19/1990). This convention has later been supplemented with Protocols. The states that are parties to the convention commit to securing for everyone within their jurisdiction the rights and freedoms defined in the Convention. As regards human trafficking, the most important provisions are contained in Article 2 (right to life), Article 3 (prohibition of torture), Article 4 (prohibition of slavery and forced labour), and Article 5 (right to liberty and security). The implementation of the Convention is monitored by the European Court of Human Rights based on individual applications received by it.

The judgments of the European Court of Human Rights are legally binding to the contracting parties. The Court has passed at least two judgments relevant to human trafficking, *Siliadin v. France* (2005) and *Rantsev v. Cyprus and Russia* (2010). One of these cases was about unpaid housework, the other about forcing prostitution. The first case concerned a Togolese girl who had been brought to France to do housework as forced or compulsory labour in conditions resembling servitude. The victim worked long hours without pay, and she was not allowed to leave the residence except to attend mass. The Court found that France had violated the Convention on Human Rights. In its judgment, the Court referred to Article 4 of the Convention on Human Rights and Fundamental Freedoms and considered that the Convention obliges the states to make this type of exploitation a punishable offence and to punish for it. In the second case, a Russian woman had travelled on a so-called artiste visa to Cyprus, where she had become the victim of sexual exploitation. The victim was found dead under a balcony. Her father took the case to court. The European Court of Human Rights decided that both the country of origin, Russia (Article 4), and the country of destination, Cyprus (Articles 2, 4, and 5), were guilty of violations of the Convention for the Protection of Human Rights. The Court considered that the Convention on Human Rights obliges the states to prevent human trafficking offences by means of their aliens legislation, and to investigate human trafficking offences.

In 2005, the Council of Europe adopted a Convention on Action against Trafficking in Human Beings with the aim of improving the rights and

position of victims of human trafficking and creating an efficient monitoring mechanism for the Convention (GRETA). The Convention obliges the contracting parties to promote a human rights-based approach to human trafficking and to pay attention to the gender balance in human trafficking and the social nature of the problem. In the preamble, the Convention acknowledges that human trafficking constitutes a violation of human rights and an offence to the dignity and integrity of the human being. The scope of application of the Convention on Human Rights is wider than that of the UN Protocol on Trafficking in Persons, as it also strives to suppress human trafficking within the borders of countries, regardless of whether it involves organised crime. In addition to reinforcing the protection of victims' rights (for example, Articles 12, 13, 14, and 16), it contains an important provision on victim identification (Article 10). This Article acknowledges that victim identification is a precondition for other action against human trafficking and the implementation of the victims' rights. The Article obliges the contracting parties to ensure appropriate identification and prohibits the removal from the country's territory of a person, if there are grounds to believe that he or she has been a victim of trafficking.

The Council of Europe Convention on Action Against Trafficking in Human Beings came into force internationally on 1 February 2008. Finland signed the Convention on 29 August 2006, and its national enforcement is currently being prepared. For this purpose, a cross-administrative working group has been set up, which meets under the direction of the Ministry for Foreign Affairs. In this connection, the National Rapporteur on Trafficking in Human Beings would like to express her concern over the enforcement process of the Convention. As a human rights instrument, the convention would enable critical evaluations of national actions against human trafficking based on how well the rights of victims are currently being implemented in Finland. The Convention contains provisions on protecting the human rights of victims of human trafficking and evaluating the human rights effects of actions against human trafficking. The Rapporteur is not aware of any general evaluation looking at the implementation of rights being carried out in Finland. As far as the Rapporteur is aware, the working group, too, has mainly focused on those sections of the Convention that require actual legislative amendments in Finland. These sections of the Convention are few, which is partly because little progress has been made in the negotiations on this Convention from what had already been agreed in the European Union. Neither was the enforcement process particularly transparent. As far as the Rapporteur knows, third-sector parties have not been heard yet, and the National Rapporteur on Trafficking in Human Beings has not been consulted.

The European Union also acts to combat human trafficking. The entry into force of the Amsterdam Treaty made the European Union's actions against human trafficking more efficient. In 2002, the Council adopted a Framework Decision on combating human trafficking, and in 2004, a Directive on the residence permit of victims of trafficking and reflection period. The purpose of the Framework Decision on combating trafficking in human beings was to create a comprehensive approach to intervention in human trafficking, an essential part of which is the common statutory definition of the offence established within all Member States. The purpose of the Directive is to prevent illegal immigration, as part of which human trafficking is defined, and combat organised crime associated with illegal immigration. A residence permit, it is believed, will encourage victims of human trafficking to cooperate with the authorities and thus promote crime combating. The European Police Office, Europol, and the European Union judicial cooperation body, Eurojust, also have competence in human trafficking offences. The European border control agency, Frontex, strives to combat human trafficking by controlling the external borders of the Union. The European Union has also made efforts to reinforce action against human trafficking by engaging in justice and home affairs cooperation with third countries. A new Directive on combating human trafficking is being drafted.

The Organization for Security and Co-operation in Europe OSCE has also been active in combating human trafficking. In 2003, the Maastricht Ministerial Council adopted an OSCE Action Plan to Combat Trafficking in Human Beings. This Action Plan consists of measures to prevent human trafficking, protect victims, and bring perpetrators to justice. In this Action Plan, the member states are urged to establish a National Referral Mechanism within which participating States fulfil their obligation to protect and promote the human rights of the victims of trafficking in human beings in cooperation with the civil society and other actors working in this field.<sup>10</sup> The OSCE also has a particular anti-trafficking mechanism, a Special Representative, the purpose of which is to promote the implementation of the Action Plan and to mainstream action to combat human trafficking in the various aspects of the organisation's activities and to support anti-trafficking action in member states by working together with them.

In addition to those already mentioned, the National Rapporteur on Trafficking in Human Beings would like to bring up the Recommended Principles and Guidelines on Human Rights and Human Trafficking of the UN

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<sup>10</sup> OSCE Action Plan to Combat Trafficking in Human Beings, Decision No. 2/03 Combating trafficking in human beings, MC.DEC/2/03.

Ombudsman for Human Rights.<sup>11</sup> The purpose of these guidelines is to reinforce a human rights centred approach to human trafficking. The Guidelines can also be used to evaluate the impact on human rights of actions to combat human trafficking. The Guidelines set the human rights of the victims at the centre of all efforts to prevent trafficking. According to the UN Guidelines, the human rights of victims shall be taken into account in anti-trafficking measures. Anti-trafficking measures shall not adversely affect the implementation of human rights. The Guidelines include eleven more detailed guidelines on taking human rights into account in preventing trafficking, identification of trafficked persons, their protection and support, and implementation of law enforcement. They contain recommendations concerning the role of research and media in making anti-trafficking measures more effective. They also recommend that states establish independent mechanisms to monitor the human rights impact of anti-trafficking measures, and consider that NGOs should be encouraged to participate in the evaluation work.<sup>12</sup>

The National Rapporteur on Trafficking in Human Beings concludes that international conventions and recommendations as well as legislative instruments adopted within the European Union can and should be used to develop, implement, and evaluate action to combat human trafficking. They require of (contracting) parties active measures to prevent human trafficking, to support and protect victims, and to combat offences of human trafficking. General human rights conventions, such as the UN Convention on the Elimination of All Forms of Discrimination against Women and the UN Convention on the Rights of the Child, can be used as tools in the interpretation of the actual conventions on trafficking in human beings, UN Protocol on Trafficking in Persons and the Council of Europe Convention on Action against Trafficking in Human Beings. The conventions and recommendations enhance a victim-centred approach to human trafficking. The Council of Europe Convention on Action against Trafficking in Human Beings further reinforces the victim-centred approach to human trafficking. It acknowledges that human trafficking is a serious violation of human rights, and it requires of the contracting parties mainstreaming of gender equality in anti-trafficking action and an approach that takes children into consideration. It also enhances the significance of the principle of non-discrimination in action to combat human trafficking. The National Rapporteur on Trafficking in Human Beings evaluates Finnish action against human trafficking in light of these international conventions and recommendations.

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11 UNHCHR E/2002/68/Add.1.

12 See also the recommendations of the UN High Commissioner on Refugees on the application of the UN Convention on Refugees and its 1967 Protocol (HCR/GIP/06/07) and the UNICEF Guidelines on the Protection of Child Victims of Trafficking , UNICEF 2006.

### 3. Assisting victims of human trafficking and effectiveness of the system for victim assistance

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#### 3.1. Legislative framework

In the first National Plan of Action against Trafficking in Human Beings, assisting victims of human trafficking was enshrined as one of the most essential aspects of action against human trafficking. As the starting point for assisting victims, a multi-professional approach using existing service systems was selected. The Plan of Action lists the fundamental principles of the system for victim assistance and the starting points for planning practical support measures.<sup>13</sup> In order to implement these starting points and principles, the working group responsible for drafting the Plan of Action suggested that for victims or suspected victims of human trafficking, an adequate system of services and support measures be set up, which would be accessible to both permanent and temporary residents in the country.

The set aim of the support measures was to empower the victim and prevent re-victimisation. A human rights centred perspective was set as the foundation of all support measures. Cooperation between authorities and the third sector was regarded as an important precondition for the success of the support measures. The services include reaching out to victims, crisis therapy, victim support services (housing, financial support, education and training, employment, social support, psychological support, health services, and administrative support), legal aid, and advice and integration. To support minor victims, particular services were proposed, which should be provided in compliance with the Child Welfare Act. In the Plan of Action, the support measures also included establishing the legal basis for residence and laying down provisions on the possibility of a specific reflection period and issuing a residence permit on the grounds of victimisation in the Aliens Act.

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<sup>13</sup> The principles highlight such as funding that is readily available and immediately in use after identification, individual services, possibility of the services being "tailored" and flexibility according to the victim's needs as well as regional coverage of the services. An attempt should also be made to prevent any abuses of the system for victim assistance. The starting points for planning the support measures include a victim-centred approach, multiculturalism and cultural sensitivity, multi-disciplinary cooperation between the public and the third sector, informing victims of the availability of services and criteria for receiving them, and the security of victims and the parties providing services. The aim of the services should be at the empowerment and integration of the victim. The services may not be stigmatising, re-victimising or restrictive of normal life.

In September 2005, the Ministry of Labour set up a cross-administrative working group to look at the arrangement of support for victims of human trafficking in Finland. Third-sector actors were also represented in this working group. In June 2006, the working group published its report, in which it proposed the launching of a special system for victim assistance.<sup>14</sup> The working group proposed that the system be set up in connection with the reception system for asylum seekers. The system for victim assistance unofficially started its work in the same year. The legislative amendments related to the assistance system in the Act on the Integration of Immigrants and Reception of Asylum seekers came into force on 1 January 2007 (1269/2006).

Two state-run reception centres were appointed as the parties coordinating the system for victim assistance. The reception centre for asylum seekers located in Oulu is responsible for assisting unaccompanied minor victims, and that in Joutseno for adult victims of human trafficking, families and groups. The reception centres can provide services themselves or outsource them, for example, to third-sector actors or private service providers. The activities are financed under the heading on reception of refugees and asylum seekers.

In the Act on the Integration of Immigrants and the Reception of Asylum Seekers, supporting victims of human trafficking refers to the services and support measures provided by the reception centre of asylum seekers, the purpose of which is to look after victims of human trafficking and their livelihood, promote their recovery and integration, and support their functional ability and safe return. Under section 2 of the Act, the provisions on supporting victims of human trafficking can be applied to a person: 1) to whom a reflection period referred to in section 52(b) of the Aliens Act, or a residence permit referred to in section 52(a)(1), has been granted; or 2) who, based on the circumstances, can otherwise be assumed to be a victim of human trafficking or in need of particular assistance when investigating an offence of human trafficking. The last mentioned persons may be, among others, witnesses of a human trafficking offence and other persons in need of particular assistance and protection. In section 3 of the Aliens Act (301/2004), a victim of trafficking in human beings means an alien who, on reasonable grounds, can be suspected of having become a victim of trafficking in human beings.

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<sup>14</sup> Ministry of Labour, Supporting victims of human trafficking: Working group proposal on implementing services and support measures (2006).

Under section 25(a) of this Act, services and support measures may be provided for victims of trafficking in human beings, which may include legal and other advice, crisis therapy, social and health care services, interpreter's services and other support services, accommodation or housing, social assistance and other necessary care, and support for safe return. When providing services and support measures, the special needs arising from the age, vulnerable position, and physical and psychological state of the victim of trafficking in human beings should be taken into account, as well as the security of the victim and the personnel providing services and support measures. Under sections 25(c) and 25(d) of the Act, the decision to include or remove a person from the system for victim assistance is made by the director of the reception centre following a proposal by an authority, by the victim himself or herself, or by a provider of private or public services. Services and support measures may not, however, be provided against a person's will. The decisions are made in writing, and according to the current interpretation, they are administrative decisions that can be appealed. Under section 26, a representative must immediately be appointed for an unaccompanied minor who is a victim of human trafficking.

Under section 25(e) of the Act, the director of the reception centre is supported in decision-making by a multi-disciplinary evaluation group which, in addition to the director, includes an expert of social and health care and a representative of the police and the border control authority. The evaluation group may, when necessary, hear municipal authorities, occupational safety and health authorities, labour market organisations, experts in psychiatry and child welfare, and other parties whose expertise is needed in each individual case to assist a victim of trafficking in human beings. The evaluation groups not only discuss the needs for assistance of victims whose inclusion in the system for victim assistance is proposed and applying and ceasing to apply the provisions on assistance, but also looks at the placement and need for services of victims within the assistance system, assessment of the victim's security risks, and planning and arrangement of security measures, as well as ensures the flow of information between the authorities and parties involved in the system for victim assistance.

Under section 25(f) of the Act, the evaluation group is convened by the reception centre director. Notwithstanding the secrecy provisions, the director of the reception centre can disclose to the evaluation group, and the evaluation group may, in order to perform its duties, use personal data of an individual victim of trafficking in human beings, if the person in question gives his or her permission for this, or if it is necessary in order to assess the need for services, provide services, or to plan and arrange security

measures. The evaluation group may not disclose this information to third parties.

The system for victim assistance also offers assistance to Finnish citizens and victims who have a municipality of residence in Finland. In these cases, the costs incurred in assisting the victims are mainly assumed by the municipalities, while the system for victim assistance may compensate certain special costs, such as therapy services and safe housing. In addition, the municipalities receive compensation from the State budget as they would for refugees in cases where the victim of human trafficking stays in Finland on a more permanent basis, and when he or she has moved on from the system for victim assistance to become a resident in the municipality or has been directly issued with a continuous residence permit because of his or her particularly vulnerable position. A family member of other relation of a victim of human trafficking is also compared to a refugee if he or she has had a family tie with the victim having been issued a residence permit before the victim arrived in Finland. Such persons are also entitled to repatriation assistance if needed, but the party providing state aid in that case is the municipality, not the reception centre.

## **3.2. An evaluation of the effectiveness of the system for victim assistance**

### ***3.2.1. Introduction***

The objective of the system for victim assistance is to support the victims by providing them with social, health, and other services that they need to recover from their experiences of exploitation. The aim of the system is to assist the victim in integration in Finland or to support their return to their country of origin. The National Rapporteur on Trafficking in Human Beings is aware that the system for victim assistance is a recent and in many respects incomplete system, which is still taking shape. During her first year in office, the Rapporteur has observed shortcomings in the functioning of the system for victim assistance, even though the situation has recently improved in some parts. In other parts, it seems that the situation has deteriorated during the last year. When evaluating the effectiveness of the system for victim assistance, it is essential to look at the criteria for inclusion in and removal from the system, in other words, the scope of application of the system and the application of and cessation to apply provisions on the scope of application. On the other hand, it is important to

examine the actual accessibility of the system for victim assistance, seeking help from / referral to the system and the legal protection guarantees of the system. It is also important to look at the customer management and service provision, the coverage of the offer of services and how appropriately, predictably, and equally the services are offered to the customers of the system for victim assistance.

In the Rapporteur's opinion, decision-making on the system for victim assistance and the procedures complied with in the system are clearly part of public administration. Consequently, the requirements of good governance and legal protection also apply to the functioning of the system: the Rapporteur considers that decisions that have an impact on an individual's rights and duties are made in the system for victim assistance. The basic right to good governance enshrined in section 21 of the Constitution as well as the more detailed provisions on the processing of administrative matters in the Administrative Procedure Act must thus be complied with in decision-making within the scope of the system for victim assistance and the relevant procedures. The basic right to good governance includes, as a minimum, the right to receive a reasoned decision in an administrative matter and the right to appeal a decision issued in an administrative matter. It also contains the right to have a matter dealt with without undue delay, and the right to be heard in the processing of an administrative matter. The legal principles restricting the discretionary powers of the administration, such as the principle of equality, can be applied to the functioning of the system for victim assistance. The idea is to make sure that everyone is granted by an authority the benefits and rights that he or she is entitled to appropriately and in full, and that public government is legal, of high quality, and compliant with the principles of good governance.

Section 22 of the Constitution imposes on the public authorities a general duty to safeguard and promote fundamental rights, under which they shall guarantee the observance of fundamental rights and liberties and human rights. In order to implement this duty to guarantee the observance of rights, the authorities must ensure that fundamental rights and human rights are also implemented in practice. The administrative authorities must also interpret the applicable law in favour of fundamental rights, meaning that if several interpretations are possible, the authority should select the alternative that best and most effectively implements the fundamental rights. In other words, the authorities must use their discretionary powers to favour fundamental rights. An interpretation of the law that promotes fundamental rights can also be considered to promote a victim-centred approach to human trafficking, which is considered the cornerstone of action against

human trafficking internationally. A human rights-based or victim-centred approach to human trafficking has also been adopted as the foundation of Finnish activities to combat trafficking in National Plans of Action against Trafficking in Human Beings. A human rights-based or victim-centred approach to human trafficking highlights the implementation of the rights of victims of human trafficking as the basis of all action against human trafficking. In this report by the National Rapporteur on Trafficking in Human Beings, the effectiveness of the system for victim assistance is evaluated based on how well the guarantees of good governance and a human rights-based or victim-centred approach is currently being implemented in the activities of the system.

### *3.2.2. Referral to the system for victim assistance*

In its proposal published in 2006, the working group having proposed the setting up of the system for victim assistance stated that victim identification is a precondition for referring persons to services aiming to support victims of human trafficking and support measures. Listed as the foremost parties identifying victims were the border control authority, the police, the Immigration Service, Occupational Safety and Health Inspectorates, municipal social services, and other public social services, health care, churches and other religious communities, labour market and other organisations, reception centres for asylum seekers, and private persons. It was acknowledged that identifying victims of human trafficking would be challenging, and the initiative of those working with victims and risk groups of human trafficking was emphasised. The working group strived to develop sets of criteria to support identification, and it regarded training and information as the most important means of building up the capacities of professional groups to identify victims of human trafficking.<sup>15</sup>

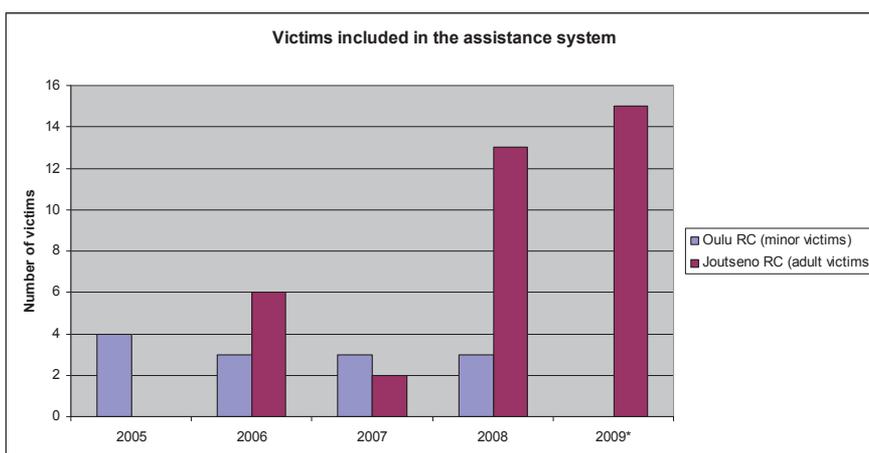
The Revised Plan of Action against Trafficking in Human Beings adopted by the Government in June 2008 acknowledges that identifying victims of human trafficking has proven even more challenging than expected and that it is likely that some victims of human trafficking remain unidentified.<sup>16</sup> The current report by the National Rapporteur on Trafficking in Human Beings also shows that the number of victims referred to the system has remained rather low. By mid-December 2009, a total of 48 people have been included in the system for victim assistance, of whom 12 were minors.

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15 Ministry of Labour, Supporting victims of human trafficking, Working group proposal on implementing services and support measures (2006), pp. 25-28.

16 Ministry of the Interior, Revised Plan of Action Against Trafficking in Human Beings (2008), p. 3.

The assistance system for minor victims managed by the Oulu reception centre began operating unofficially as early as 2005, at which time the Border Guard referred four minors to the reception centre, from where they later disappeared. In both 2006 and 2007, three new victims were included in the system. In 2008, another three victims were taken in, one of whom had already been in the system earlier. No minors were included in the system for victim assistance in 2009.<sup>17</sup> Based on the decisions made, the Joutseno reception centre included six victims in the system in 2006, two in 2007, 13 in 2008, and 15 in 2009 (data up till mid-December 2009). In other words, the number of those referred to the system for victim assistance has increased year by year. The National Rapporteur on Trafficking in Human Beings had access to decisions on removal from the system concerning 12 adult victims and 7 minors.



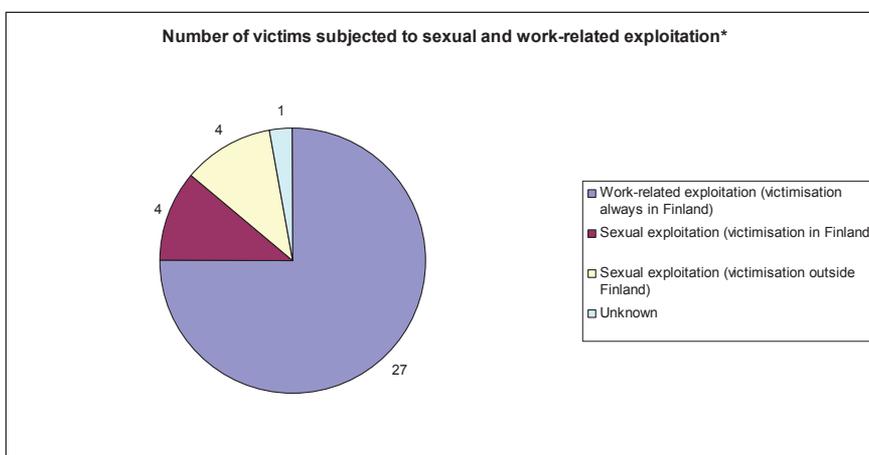
\* Data from 1 Jan–15 Dec 2009

Source: Decisions on inclusion in the system for victim assistance made by the Joutseno and Oulu reception centres.

Of the victims included in the system for victim assistance, 27 had been subjected to labour exploitation and 8 to sexual exploitation. In the case of one victim, the Rapporteur was unable to discover the intention to exploit. In cases of adult victims linked to labour exploitation, Finland has without exception been the country of destination. Of adults who had been ex-

<sup>17</sup> According to information received by the Rapporteur in December 2009, the evaluation group of Oulu reception centre intended in that month to discuss a proposal to include three minors in the system for victim assistance. These decisions, however, were made too late to be included in the Rapporteur's report. The National Rapporteur on Trafficking in Human Beings was only able to examine in detail the cases of eight minors, as some of the cases go back to the period before the provisions on the system for victim assistance were enacted and the system actually set up.

ploited sexually, one-half had been victimised in Finland and one half were victimised in another country. The victims subjected to labour exploitation have without exception been referred to the system for victim assistance by the authorities. In the case of sexually exploited victims, the role of the third sector as actors referring victims to the system for victim assistance was more significant, but the majority of these victims, too, were referred by the authorities. By mid-December 2009, the director of the Joutseno reception centre had made a total of 23 decisions to reject a proposal to include persons in the system. The majority of these decisions concerned Thai berry pickers known to the Rapporteur, and thus trafficking in human beings for the purposes of labour exploitation.



\* Data up till 15 Dec 2009.

Source: Decisions on inclusion in the system for victim assistance made by the Joutseno and Oulu reception centres.

As regards minor victims, verifying an intention to exploit is more difficult, as these cases included a great number of transit cases where the authorities had no evidence of possible future exploitation in the country of destination. In two cases, a minor is known to have already been victimised in a country other than Finland. Furthermore, in one case, the authorities suspected that a minor might be coerced into a forced marriage in Finland, which is why a decision was made to include her in the system for victim assistance. Minors have been referred to the system by authorities. By mid-December 2009, two minor victims whose inclusion in the system for victim assistance was proposed have been rejected.

Some of the minors were included in the system even before actual victimi-

sation in human trafficking had taken place. In these situations, the minors were in transit to another country when the authorities apprehended them in Finland on suspicion that they might become victims of human trafficking in the destination country. In these cases, the Border Guard has initiated criminal investigations of (aggravated) facilitation of illegal entry. Both cases have been heard by a court.

The first case was about transporting three young Chinese people to the United Kingdom via Finland. The pre-trial investigation discovered that the journey had been financed with a loan taken out by the young people's parents, and the young people intended to pay back this debt by working in the country of destination. The nature of the work they were intended to do in the United Kingdom remained unclear. Because of the debt, the young people were in an extremely dependent position and a vulnerable state vis-à-vis their parents, the members of the criminal organisation that arranged the trip, and money lenders. Illegal work in the country of destination could be expected to increase their dependence and vulnerability.

The second case concerned young people from Russia who apparently were being transported to Norway and Germany via Finland. The pre-trial investigation discovered that one of the minors was intended to end up with her husband. The marriage had been organised between the families, and the authorities suspected a forced marriage. According to the preliminary work, a forced marriage may meet the criteria for conditions violating human dignity referred to in the statutory definition of human trafficking. The preliminary work refers to the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, Article 1, which urges the State Parties to abolish institutions and practices similar to slavery. In both cases, the parents had played a central role in arranging the trip.

In other words, in compliance with the principle of the child's best interest, minors who had not yet been victimised were also included in the assistance system, where the authorities suspected that they might have become victims of human trafficking after their arrival in the destination country. The Rapporteur welcomes this approach. When examining the effectiveness of the system for victim assistance, the Rapporteur has also observed that persons who have not necessarily become victims of an actual human trafficking offence have been included in the system. The victims included in the system also included those subjected to discrimination at work tantamount to extortion, which enhances the victim-centredness of the assistance system.

In light of the information presented, it appears that victims are more easily referred to the system for victim assistance from situations of labour exploitation than from prostitution, even if sexual exploitation is estimated to be the most typical form of human trafficking in Europe. The information obtained by the National Rapporteur on Trafficking in Human Beings shows that many procuring cases involving foreign women associated with sexual exploitation are aggravated, but for some reason, the victims in these situations are not referred to the system for victim assistance. It may at the very least be presumed that the offence category the authorities select for the basis of pre-trial investigation affects referral to the system. In case human trafficking is not identified at that stage, we run the risk of not referring potential trafficking victims to the system for victim assistance. The Rapporteur regards as a possible additional explanation the prevailing attitude in the activities of the authorities and the legal system, whereby consenting to prostitution covers very serious violations of rights. We will return to this issue later on in this report.

The Council of Europe Convention on Action against Trafficking in Human Beings contains an express prohibition against discrimination (Article 3).<sup>18</sup> This prohibition imposes on the contracting parties a duty to secure the implementation of the provisions of the convention, in particular the enjoyment of measures to promote and protect the rights of victims, without discrimination on any grounds 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 Explanatory Report to the Convention explains in detail that the provisions in Articles 12 and 14 on assistance to victims and entitlement to residence permit shall be implemented without discrimination on such grounds as gender (see sections 63-69). The majority of foreign prostitutes operating in Finland and identified as victims of human trafficking subjected to sexual exploitation are women.

According to the information received by the Rapporteur, several victims of human trafficking or associated exploitation contact organisations without being included in the system for victim assistance managed by the authorities. The information obtained from the Pro Centre supporting third-sector actors by the human trafficking project shows that in 2007-2009, a total of 16 potential victims of human trafficking had been known to the organisations. Fifteen of the victims were women, and one was a man. All victims were adults, and two were Finnish. The other countries or areas

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<sup>18</sup> See also the UN High Commissioner for Human Rights Guidelines, which exhort the states to ensure that anti-trafficking measures are not applied "in a discriminatory manner". Guidelines of the UN High Commissioner for Human Rights, Guideline 1, para. 4.

of origin of potential victims were categorised as follows: Southeast Asia 3, the Middle East 2, Estonia 2, Russia 3, Ukraine, and Africa 3. In addition, the origins of several victims had been registered in a wider sense as being in the "Eastern block". At least twelve of the victims were sexually exploited, and at least three of the victims were sexually abused. Three persons had been subjected to labour exploitation. Two of the victims are believed to have been victimised through forced marriage or other violence/exploitation relevant to codes of honour. Five of the victims sought help from the system for victim assistance, and three of them were included. In many cases, the organisation lost contact with the customer before he or she had made a decision on seeking help from the system for victim assistance or while he or she was uncertain if his or her situation involved human trafficking and in what way the system could help. Reasons for turning down the system for victim assistance and a refusal to otherwise register with the authorities include:

- the victim does not want to get in touch with the police: the customer threatens to disappear if the organisation worker contacts the authorities, as he or she believes that the situation will only get worse if the police are informed (one case),
- the victim does not trust the authorities' ability to help, and he or she is not even certain that he or she requires help (2),
- the victim does not rely on the authorities to help, and he or she does not want to talk about the situation to the police in fear of being removed from the country (1), and
- the victim is hardly able to talk to the organisation worker, and he or she cannot even consider talking to the authorities (1).<sup>19</sup>

The National Rapporteur on Trafficking in Human Beings feels that the main responsibility for identifying victims of human trafficking rests with the authorities. The Rapporteur believes that pre-trial investigation authorities do not have enough information on human trafficking in order to be able to identify victims of trafficking and to refer them to the system for victim assistance. The Rapporteur has observed that the pre-trial investigation authorities encounter vulnerable groups in the course of their investigations, among whom they could identify potential victims of human trafficking. The Rapporteur suspects that all potential victims of human trafficking are not identified, and that all potential victims are not informed of their rights, including their possibility of accessing the system for victim assistance and

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<sup>19</sup> Information obtained by the human trafficking projects of the Pro Centre supporting third sector actors on identified potential victims of human trafficking, 2007-2009 (unpublished, received on 12 February 2010).

being granted a reflection period entitling them to a residence permit. The National Rapporteur on Trafficking in Human Beings recommends that the pre-trial investigation authorities be provided with more efficient and targeted instructions and training than today to ensure that potential victims of human trafficking will be informed of their rights and can make genuine and informed decisions for example on whether to seek help from the system for victim assistance. Training and instructions concerning human trafficking should also be provided for actors reaching out to victims in municipalities more comprehensively and with a wider geographical coverage than currently. In municipal social and health care services, resources should also be targeted to making possible in practice the identification and referral to the system for victim assistance, which is time-consuming and long-term work. Occupational safety and health inspectors working in the occupational safety and health administration should also be provided with training in victim identification to enable them to focus on indications of human trafficking better than today.

According to information available to the National Rapporteur on Trafficking in Human Beings, indications of human trafficking are rather common among asylum seekers and particularly in Dublin cases. In the future, the reception centres, the police, and the Immigration Service should pay more attention to the possibility of victims of human trafficking being found among asylum seekers. The Rapporteur recommends that the personnel of the reception centres, detention units, group homes, the police, and the Immigration Service be provided with more systematic training on human trafficking and associated issues. The training should primarily target the identification and rights of victims of human trafficking. The National Rapporteur on Trafficking in Human Beings emphasises that victims of human trafficking identified in the Dublin procedure for refusal of entry also have the right to be included in the system for victim assistance. The issue of identifying victims of human trafficking and the implementation of their rights in the Dublin procedure will be dealt with below in this report.

International experience indicates that third-sector actors play a central role in particular in identifying victims of human trafficking and assisting them in accessing support. The Rapporteur emphasises that third-sector actors have the possibility of reaching out to those victims in the most vulnerable positions who otherwise dare not or are unable to turn to the authorities. In these situations, third-sector actors can offer victims their help and support and promote action against human trafficking by building up the victims' trust in the authorities. Activities to combat trafficking by the third sector contribute to promoting the identification of victims of human trafficking

and the appropriate implementation of their rights. The Rapporteur considers long-term financial support for third-sector actors an essential part of successful action against human trafficking, and stresses that the support must extend to the stage where victimisation in human trafficking is only being examined. For example, the availability of adequate interpretation services and advice on rights and duties during and after the examination stage is a precondition for appropriate identification and referral to victim assistance. The National Rapporteur on Trafficking in Human Beings recommends that in the future, particular attention be focused on the availability of interpretation services and funding the outreach and advisory work performed by the NGOs. Third-sector actors should also be provided with training on human trafficking issues more efficiently than today.

During her first year in office, the Rapporteur has met representatives of several labour market organisations and noted that these organisations also play an important role in identifying potential victims of human trafficking and referring them to the system for victim assistance. The organisations may be better placed than the authorities to reach victims of human trafficking and associated exploitation and to inform the victims of their rights. On the other hand, the organisations can pass on information on phenomena of exploitation to the authorities and highlight targets for development encountered in the Finnish working life. Some of the organisations have been particularly active in action to combat trafficking of human beings and the associated phenomena of exploitation. The National Rapporteur on Trafficking in Human Beings aims to work together with the labour market organisations and urges other authorities to do likewise. In cooperation with the organisations, training should be organised for their personnel on human trafficking for labour to promote identification and referral to the system for victim assistance.

Finally, the National Rapporteur on Trafficking in Human Beings expresses her concern over the fact that all actors do not seem to know how victims of human trafficking can be included in the system for victim assistance and who can be included in it, what services the system offers, and when and on what grounds victims are removed from it. It seems that the actors of the system for victim assistance itself do not always have a clear answer to these questions. Neither is the legislation regulating the system clear and unambiguous in all parts, which enables variable interpretations that violate equality. As a result of this ambiguity, the operation of the system for victim assistance and the decisions made within it are not sufficiently predictable. This unpredictability, on the other hand, leads to a situation where victims of human trafficking do not dare or are not willing to seek

help from the system for victim assistance. These problems are partly due to the small number of cases and the casuistic nature of the administrative practice. The Rapporteur recommends that the legislation regulating the system for victim assistance be made less ambiguous and the practices of the two reception centres more predictable and consistent with each other to ensure that potential victims of human trafficking are willing to seek help from it.

### ***3.2.3. Initiating a case and access to legal protection***

During her first year in office, the National Rapporteur on Trafficking in Human Beings has noticed that the actors in the system for victim assistance sometimes are uncertain about whether a matter concerning an individual victim is pending in the system or not. The reception centres managing the system for victim assistance currently require a written proposal on including a victim in the system. They expect the proposal to contain basic personal data, grounds for inclusion in the system, the person's signed permission, and a notification address. The consent of the person is associated with informing him or her of the system for victim assistance. At the moment, this is being done orally, until the printed material that is being prepared has been completed. Once the matter is pending, the system for victim assistance collects as much of the information available on the person's situation as possible for the basis of decision-making. The Rapporteur considers the written proposal a clear procedure, but emphasises that in the proposal stage, detailed information on victimisation in human trafficking is not yet needed, as the need for assistance of victims is the essential factor in inclusion in the system for victim assistance and beginning of support measures. When a person is being referred to the system, indications of being a victim of human trafficking are enough: exact information should not yet be required at this stage.

The Rapporteur has noticed that there is uncertainty about the form of the decision on the inclusion in or removal from the assistance system of a victim made by the reception centre. These decisions have not always been regarded as administrative ones, and consequently they have not contained justifications and appeal instructions as provided in the Administrative Procedure Act. The Rapporteur has examined the question by analysing all decisions issued up till mid-December 2009. Few of the decisions issued by autumn 2009 complied with the provisions of the Administrative Procedure Act. From autumn 2009 on, the decisions have met the requirements of the Administrative Procedure Act better than before, but it appears that problems persist especially regarding appropriately justifying the decisions.

Decisions on inclusion in and removal from the system for victim assistance comprise a decision that is legally binding to the individual concerning the rights or obligations of the interested party. A decision on inclusion in the system for victim assistance means that the person whom the decision concerns is accepted as a reception centre customer in the capacity of a potential victim of human trafficking, after which the victim's housing and other required services are arranged and/or paid for by the reception centre. In the case of minors, the Child Welfare Act also applies. Another point of time that is significant for the implementation of the victim's rights is when he or she is no longer regarded as needing the services of the system for victim assistance, and a decision is made to remove him or her from the system. The decisions to include victims in and remove them from the system may play a crucial role in the victim's coping, breaking the circle of exploitation and prevention of re-victimisation. The general principle of the Administrative Procedure Act is that decisions made in an administrative procedure must always be justified, and they must be associated with the right of appeal. The objects of the decision-making have the right to know on what grounds the decision concerning them has been made and how they can appeal the decision, should they wish to do so. In order for the decision-making to be equal, predictable, and transparent, it must also be possible to oversee it in higher courts. The participation of the evaluation group as a party that must be heard does not eliminate these needs of appropriately safeguarding legal protection.

The Deputy Parliamentary Ombudsman requested the Ministry of the Interior Migration Department for clarification regarding the right of appeal in decisions on assisting victims of human trafficking. The Joutseno reception centre played an active role in highlighting this issue. In its clarification, the Migration Department refers to Government proposal 183/2006 on the Integration Act, in which the Government considers that the Administrative Procedure Act also applies to the party implementing the system for victim assistance. The Migration Department states that there is some uncertainty about whether the decisions can be appealed, and considers that it would be possible to examine any uncertainties associated with decision-making and needs for legislative amendments in connection with the project to reform the Integration Act. Finally, the Migration Department instructs the reception centre directors to attach appeal instructions to the decisions, as no prohibition of appeals is enacted in law and because the Administrative Procedure Act is applied to the implementation of assistance. Appeals to a decision should be filed with the Administrative Court within whose jurisdiction the reception centre implementing assistance is located. As the Migration Department is aware of the uncertainty about the right to appeal

such decisions, the Deputy Parliamentary Ombudsman states in his decision that this matter does not, at this stage, give cause for further measures, but the Ombudsman is monitoring the progress of the matter and requests the Migration Department to report by 30 April 2010 on any measures that may have been taken in connection with the ambiguity under scrutiny.

Currently, the reception centres of both Oulu and Joutseno attach appeal instructions to decisions concerning the system for victim assistance. The Rapporteur welcomes this trend, but she would like to additionally draw the attention of the reception centres to the justifications for decisions. The right to receive a reasoned decision is part of the guarantees of good governance referred to in section 21 of the Constitution and on which the Administrative Procedure Act contains more detailed provisions. The Rapporteur found that the justifications for decisions did not in all cases meet the criteria of the Administrative Procedure Act. The Rapporteur emphasises that the decisions should be sufficiently clear, specific, and understandable. The decisions should make it possible to evaluate how the authority has in each individual case applied their discretion, what matters or reports have affected the decision and what kind of legal significance has been attached to them. The simple fact that the reception centre finds the case does not meet the statutory definition of human trafficking is not adequate to justify an appropriate administrative decision. The significance of the justifications is naturally highlighted in refusals. Decisions to remove a person from the system for victim assistance should also be justified.

The National Rapporteur on Trafficking in Human Beings has also noted that the decisions made on certain victims whose inclusion in the system for victim assistance was proposed were identical to each other. This begs the question of how individually the administrative matter concerning each victim has been processed and if each victim has been heard in a matter concerning him or her. As regards victims whose inclusion in the system for victim assistance is proposed – also in case of a larger group of victims – it should be taken into consideration that the victims' experiences may vary and that the situation and need for assistance of each victim may be different. Treating the victims as “lots” is not part of good governance. The National Rapporteur on Trafficking in Human Beings urges the reception centres managing the system for victim assistance to be even more careful in ensuring that the rights of each individual victim are implemented in this process and that the case of each victim is processed and decided individually and in compliance with the requirements imposed on the authorities in the Administrative Procedure Act. The processing time should be as short as possible, as the victims of human trafficking often need immediate assistance.

### *3.2.4. Scope of application of the Act regulating the system for victim assistance*

The first National Plan of Action against Trafficking in Human Beings adopted by the Government in 2005 analysed the concept of human trafficking in the identification of and provision of assistance for victims and noted that in the support work, human trafficking should be understood in a wider sense than in the statutory definition (Ministry for Foreign Affairs 2005). According to the Plan of Action, a victim-centred approach should be aimed for in understanding the concept of human trafficking and reaching out to victims. The significant question in this respect is whether the person has been subjected to exploitation. According to the Plan of Action, a suspicion of victimisation indicating human trafficking alone should be adequate grounds for referring a person to the service system and support activities. In other words, criminal evidence of a human trafficking offence should not be a precondition for victim identification, and a suspicion of victimisation indicating human trafficking is adequate to launch support measures. The working group having proposed the setting up of a system for victim assistance considered that criminal proof of victimisation should not be a criteria for a referral to the system, and a suspicion of victimisation is enough to start the activities. Persons who because of their circumstances can be expected to be victims of human trafficking should have access to the system for victim assistance.<sup>20</sup>

The preliminary work on the system for victim assistance is inconsistent regarding the interpretation of provisions on applying and ceasing to apply the system. Government proposal 183/2006 contains an internal contradiction: the general and detailed justifications give a different impression. The general justifications of the government proposal are that the threshold for obtaining assistance should be adequately low, and should also apply to situations where human trafficking is only suspected. Supporting the victims should not be linked to whether or not this will lead to the prosecution of offenders, and the threshold for providing support should be lower than that for initiating a criminal procedure. In the detailed justifications, however, the link between the system for victim assistance on one hand, and complying with the penal provisions of the Criminal Code and launching a pre-trial investigation on the other, is stronger. The decisions to remove a person from the system for victim assistance are often justified by a paragraph in the detailed justification under which the application of provisions on the system for victim assistance ceases, once grounds for applying the system

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<sup>20</sup> Ministry of Labour, Supporting victims of human trafficking: Working group proposal on implementing services and support measures (2006), pp. 50-51.

no longer exist. The application is considered to cease in cases where an investigation of human trafficking is not initiated, is discontinued, or where sufficient evidence cannot be obtained.

When we look at the application of provisions on the system for victim assistance in the light of the opinions of parliamentary committees and Plans of Action against Trafficking in Human Beings, we find that compliance with the penal provisions in the Criminal Code, making a report of an offence and launching a pre-trial investigation, should not be afforded a crucial significance when applying the provisions of the Integration Act. Administration Committee report HaVM 23/2006 on the system for victim assistance considers that victims of human trafficking are in a vulnerable position and that it is important to respond to the need for assistance as early as possible to ensure that the victims can be reached and because their need for assistance is often urgent. The report states that the threshold for obtaining assistance should be adequately low, and should also apply to situations where human trafficking is only suspected. The Employment and Equality Committee emphasises in its report TyVL 21/2006 on this matter that the threshold for being excluded from the system for victim assistance should be adequately high, and the exclusion of the statutory definition of human trafficking in a criminal investigation should not automatically bar the person from access to the service system.

In its report, the Administration Committee considers it important that a victim-centred approach is also ensured when the system for victim assistance ceases to apply. The offence categories used in a criminal investigation may vary as the investigation progresses, and so may the person's position in the criminal procedure. Obtaining sufficient evidence of human trafficking offences is also challenging. The Committee stresses that it is also not always possible to identify or find a suspect for the offence or bring them to justice, even if it is obvious that a person has been subjected to human trafficking. Flexible regulation is justified because of the complexity of cases and in the interest of individual processing of cases and safeguarding the victim's future. The risk of re-victimisation must also be taken into consideration when removing a person from the system. Victim-centredness was also adopted as a starting point for action against human trafficking in the Government's Revised Plan of Action (Ministry of the Interior 2008). The position of the victim and protecting the victim's human rights were adopted as a principle guiding the implementation of action against human trafficking. In the Plan of Action, identifying victims and helping them receive assistance is considered both a human rights issue and a requirement for the success of all measures aimed against human trafficking. As

mentioned earlier in this report, such documents as the Council of Europe Convention on Action against Trafficking in Human Beings also support the human rights-based or victim-centred approach.

The National Rapporteur on Trafficking in Human Beings has during her first year in office observed that despite the declared intentions, the low threshold objective is not always realised in the administrative practice of the system for victim assistance. It appears that the offence category has become significant grounds for being included and remaining within the system for victims of human trafficking. The opinion of the pre-trial investigation authorities on whether or not the case involves a human trafficking offence seems in many cases to have significant importance for making decisions related to the system for victim assistance. This emerges, for example, from the minutes of the multi-disciplinary evaluation groups, in which the reception centre director has, after hearing the evaluation group, in the case of certain victims whose inclusion in the system has been proposed, decided that the victim will not be included in the system because the pre-trial investigation authority has investigated the case as an offence other than human trafficking. The Rapporteur has also noted that in some cases, making a report of an offence has been set as a condition for access to the system for victim assistance. The offence category and initiation or progress of the criminal procedure under the category of human trafficking has also been significant in situations where a victim of human trafficking was being removed from the system for victim assistance. In other words, a decision made by the pre-trial investigation authority not to investigate the offence as human trafficking may result in the removal of the victim from the system.

The National Rapporteur on Trafficking in Human Beings has made an effort to analyse refusals to include a person in the system and their justifications based on documentation available to her. In the majority of cases, if not all, as a reason for the refusal in the justifications is mentioned the fact that the case is not regarded as meeting the statutory definition of human trafficking in the Criminal Code. The case descriptions may show clear sexual or labour exploitation and the victims may even have been minors, but the exploitation has not been considered human trafficking in the sense referred to in the penal provision of the Criminal Code. Use of threats, restricting the victim's freedom of movement, and indebtedness may emerge in the case descriptions, but these were not regarded as indications of human trafficking, as it was considered that some feature assessed as important was missing in the cases. In many cases, the justifications of the decisions give rather a straightforward, simplified, and stereotyped image

of human trafficking. Human trafficking is expected to fulfil the criteria of coercion and involuntariness, even if according to international definitions, the Finnish Criminal Code, and the preliminary work on penal provisions, human trafficking may also be involved when the dependent position or vulnerable state of the victim have been exploited. No significance should be attached to the victim's consent, if one of the means referred to in statutory or other definitions of human trafficking have been used to obtain it. In the decision-making process, significance may also have been attached to the fact that the victim has been victimised in another country, and no concrete security threats have occurred in Finland, because of which the victim would have been in need of protection. What has also played a part is the fact that the possibility of re-victimisation has not been considered, and the victim may, based on the Dublin Regulation determining the Member State responsible for examining an asylum application, have been returned to the country where he or she had been victimised, also when the victimisation was due to inadequate reception conditions. The fact that the person may have been a minor has not changed the end result of the decision.

It is quite understandable that the definition of human trafficking in the Criminal Code is given weight when assessing if a person is a victim of human trafficking or not. However, the National Rapporteur on Trafficking in Human Beings finds it important to question such a strong link between the definition in the Criminal Code and the one applied in the system for victim assistance. The starting points and objectives of the criminal procedure and the system for victim assistance are partly different: while the criminal procedure seeks to ensure that the legal protection of a person accused of an offence is implemented while bringing him or her to criminal justice, the purpose of the system for victim assistance is to assist and protect victims of human trafficking, also when there only are implications of victimisation in human trafficking. The Rapporteur considers that the penal provisions on human trafficking laid down in the Criminal Code should not guide decision-making within the system for victim assistance. The Rapporteur stresses that the starting point for the system for victim assistance should be victim-centred, and decision-making within the system should be guided by the victims' need for assistance. There should be a low threshold for inclusion in the system for victim assistance. The low threshold is indicated by the wording of the provision on the system's scope of application, which states that a person who can be assessed (based on the circumstances) to be a victim of human trafficking can be included in the system for victim assistance. International experience indicates that a victim-centred approach also promotes crime combating and the prevention of human trafficking.

The Rapporteur has also observed undue delays in the decision-making process associated with the system for victim assistance on occasions, while the victims of human trafficking or exploitation related to it often are in immediate need for assistance. They may have no livelihood, home, or other basic requirements for living. The Administrative Procedure Act also makes it possible to issue an oral decision on inclusion in the system for victim assistance, and the working group drafting the proposal on setting up a system for victim assistance considered that in an urgent case, the proposal and the decision by the director or his or her subordinate may be made orally, and immediate support measures can be initiated based on an orally issued decision alone.<sup>21</sup> The Rapporteur believes, however, that in many of these cases the problem was not the inability to issue oral decisions. It was rather that the parties responsible for making decisions have been uncertain about the criteria for inclusion in the system for victim assistance and their fulfilment in the cases in question. This may in some cases have resulted in the authorities spending a considerable amount of time on examining the details of the case, before a decision to include or not to include a person in the system for victim assistance has been made. In certain cases, the need for information may have been considerable, and the processing of the matter may have gone on month after month in several meetings of the evaluation groups.

As the Explanatory Report to the Council of Europe's Convention on Actions against Trafficking in Human Beings states, identifying victims of human trafficking is a process that is challenging and time-consuming (section 131). During the identification process, the victim may not be removed from the country, and he or she must be offered the minimum services listed in the Convention (Articles 10 and 12). This may be interpreted to mean that victims whose cases are only being examined should also be included in the system for victim assistance. The system can thus also be used to complete the identification of victims of human trafficking: no certainty about victimisation in human trafficking is needed at the time when a person is referred to the system for victim assistance. As only incomplete, uncertain, and rapidly changing information can often be obtained on victimisation in human trafficking, the authorities managing the system for victim assistance should be able to make a decision on including a person in the system based on estimated information. If at a later date it turns out that a person included in the system is not entitled to its services, the person can be removed from it. The National Rapporteur on Trafficking in Human Beings finds that an interpretation supporting the identification

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21 Ministry of Labour, Supporting victims of human trafficking: Working group proposal on implementing services and support measures (2006), p. 29.

process would implement action against human trafficking in a manner that is considerably more victim-centred and in favour of fundamental rights. This is why the Rapporteur considers that the use of the system to support the identification process should be reinforced.

On the whole, it thus seems that the decisions to include a person in or remove him or her from the system for victim assistance are not very predictable, nor do they appear to guarantee the kind of equality that good governance would require from the system. Problems arise particularly from the contradictory contents of the preliminary work on the system for victim assistance. For these reasons, the Rapporteur recommends that when making decisions on assisting victims of human trafficking, justifications that are separate from the penal provisions on human trafficking in the Criminal Code be complied with in assessing the victim's situation, and on that basis, decisions made on inclusion in and removal from the system for victim assistance. The Rapporteur proposes that a specific list of indicators be drawn up, which would be adopted as a basis for identification. More importance than before should be attached to the victim's personal characteristics and subjective experiences of being exploited, as well as his or her need for assistance. The indicators could be used as tools for identification and referral to the system for victim assistance. Agreeing on the indicators might reinforce the low-threshold principle and promote the independence of the system for victim assistance in terms of pre-trial investigation and the criminal procedures as well as the application and interpretation of penal provisions on human trafficking. There are examples of defining human trafficking in a manner that is dissociated from the statutory definition in the Criminal Code, and the National Rapporteur on Trafficking in Human Beings will be happy to help in their identification and modification to suit the Finnish operating environment. The system for victim assistance in such countries as the Netherlands is based on indicators of this type. A precondition for introducing such indicators is that the authorities and third-sector actors trust each other's ability and skills in identifying victims of trafficking. These abilities and skills should be enhanced by training.

### ***3.2.5. Composition and activities of multi-disciplinary evaluation groups and the placement of the system for victim assistance***

During her first year in office, the National Rapporteur on Trafficking in Human Beings also looked at the composition of multi-disciplinary evaluation groups and their activities based on the minutes of meetings submitted to the Rapporteur by the reception centres. The Rapporteur also

visited both reception centres and took part in one meeting of the multi-disciplinary evaluation group held at the Joutseno reception centre. Participation in a similar meeting of the evaluation group in Oulu has been initially discussed.

According to information obtained by the Rapporteur, the members of the evaluation group of the assistance system for adult victims managed by the Joutseno reception centre are, in addition to the chairperson and the secretary, representatives of the police, the Immigration Service, the Border Guard, the National Bureau of Investigation, as well as a representative of the State Provincial Office of Southern Finland to contribute expertise in the social and health care sector to the activities of the evaluation group. The reception centre director acts as the chairperson of the evaluation group, and a social worker of the system for victim assistance assumes the tasks of the secretary. Compared to the composition appointed in spring 2009, the State Provincial Office has one representative less than original number, and the composition of the group no longer complies with the provisions of the Integration Act. Under section 25(e) of the Integration Act, the evaluation group must include at least one representative of the social care sector and one representative of the health care sector. The members of the evaluation group of the system for victim assistance for minors managed by Oulu reception centre are, in addition to the chairperson and the secretary, representatives of the police, the National Bureau of Investigation, the City of Oulu Child Welfare Office and the State Provincial Office. As regards the number of representatives of the social and health care sector, the composition of the evaluation group in Oulu does not appear to comply with the Integration Act, either, but the situation is balanced by the representation of the child welfare sector. From the beginning of the year 2010, the State Provincial Offices no longer exist, and the representatives to the multi-disciplinary evaluation groups now come from the Regional State Administrative Offices.

The National Rapporteur for Trafficking in Human Beings sees a number of valid reasons for the existence of the evaluation groups. Traditionally, the reception centres have not looked after crime victims but asylum seekers, whose situation may differ considerably from the situation and needs of victims of human trafficking. As their title indicates, the multi-disciplinary evaluation groups consist of experts in many different professions. The complex needs of victims of human trafficking often require multi-disciplinary evaluation, including establishing the victim's right to a residence permit and the perspectives of crime combating, social and health care and child welfare. The evaluation groups can support the reception centre direc-

tors in making decisions on the inclusion of victims in the system or their removal, the services provided and security issues. The Rapporteur finds the idea of multi-disciplinary evaluation groups positive in principle, and considers the support they give to reception centre directors useful. Many parties taking part in the work of the evaluation groups carry out excellent and pioneering work. The Rapporteur has observed, however, that the activities of the multi-disciplinary evaluation groups appear to make the threshold for inclusion in the system for victim assistance higher.

In order to lower the threshold of inclusion in the system for victim assistance, the Rapporteur would like to raise the question of possible amendments to the Integration Act as regards the evaluation groups. The National Rapporteur on Trafficking in Human Beings urges the parties to consider the objective and goals of the system for victim assistance: even if it may be of use in crime combating, it is not primarily a tool for the pre-trial authorities but a system for victim assistance created to assist and protect victims of human trafficking. The Rapporteur feels that the basic task of the system for victim assistance should be made clearer, and its boundaries vis-à-vis pre-trial investigations and the criminal procedure specified, also as regards the activities of the multi-disciplinary evaluation groups. For this reason, the Rapporteur recommends taking a closer look at the evaluation groups' competence in including victims in and removing them from the system for victim assistance. The party best qualified to resolve issues of need for services and their practical implementation are the social workers of the system for victim assistance. The Rapporteur feels that the composition of the evaluation groups should also be thought about in detail. She considers that the expertise and influence of the health and social care sector in dealing with issues concerning victims should be increased and the composition of the evaluation groups in this part reinforced further. The evaluation groups should also have expertise in human rights issues.

During her first year in office, the National Rapporteur on Trafficking in Human Beings has also focused attention on the fact that the system is managed by two reception centres, each of which has its own evaluation group. The fact that the system for victim assistance is managed by two different reception centres, each with its own evaluation group, may result in problems of equality. The Rapporteur has observed that the reception centres and evaluation groups of Joutseno and Oulu have partly adopted different procedures. In some cases, different procedures may be justifiable, in particular because the two reception centres have different target groups: when assisting minors, the best interest of the child must be taken into account, which affects inclusion in the system for victim assistance,

removal from it and the services offered by the system. However, the Rapporteur would like to draw the attention of the reception centres to ensuring that the system for victim assistance would work as equally as possible. The Rapporteur recommends that a single, uniform evaluation group be set up to guarantee the equality of victims.

The Rapporteur considers, however, that these changes would not necessarily be sufficient. The Rapporteur recommends that a single, wide-based expert organ be set up. The task of this group would be to issue more general policies and guidelines. The expert organ could still be requested to consult in the processing of individual cases, but its most important task would be to act as a multi-disciplinary expert organ in more general questions, guiding the activities of the system for victim assistance and, possibly, all action against human trafficking instead of the current Steering Group. The competence of the expert organ should be extensive enough to also issue instructions to other authorities. The National Rapporteur on Trafficking in Human Beings should be entitled to take part in the work of the expert group as an independent and impartial observer. The expert organ should also include representatives of the third sector, and it could work under the direction of the Immigration Service.

The Rapporteur considers the placement of the system for victim assistance in connection with the reception system for asylum seekers a challenging solution. The majority in the working group drafting the first Plan of Action against Trafficking in Human Beings felt that responsibility for assisting victims of human trafficking should be assigned to the Ministry of Social Affairs and Health. A decision was made to place the assistance system for victims of human trafficking in connection with the reception system for asylum seekers, however, as no other existing state-run system could be pinpointed. While some victims of human trafficking are asylum seekers, it is important to note that these two groups are not identical as to their needs and rights. One of the risks identified by the National Rapporteur on Trafficking in Human Beings in the current system is that in a situation of more stringent criteria being applied to the reception of asylum seekers, principles and provisions unsuitable for them will also be applied to victims of human trafficking, which may result in victims of human trafficking being denied their rights. As one such risk area, the Rapporteur highlights refusal of entry under the Dublin Regulation, which will be discussed later in this report.

### ***3.2.6. Customership management in the system for victim assistance and production of services***

Pursuant to current legislation, versatile assistance, support and advice may be offered to a victim of human trafficking. The type of assistance provided is affected by the probable duration of the victim's stay in Finland. When a victim has been included in the system for victim assistance, he or she is offered various services according to his or her individual needs and wishes. Adult victims of human trafficking take part in support measures on a voluntary basis. In case of a minor victim of human trafficking, decisions on assisting the victim will be made in the child's best interest, and the provisions of the Child Welfare Act will be taken into consideration. The authorities must safeguard the preconditions for the child's welfare, health, integrity, growth and development. The assistance may include crisis therapy, arrangement of accommodation, legal advice and legal aid as well as health care services among others. When arranging the support measures, the victim's security is taken into consideration. A victim of human trafficking may also receive social assistance, support in learning Finnish and other measures promoting integration. Return assistance (safe return and re-integration support) is also part of services that are available in the system for victim assistance.

In the early stage of providing assistance, the victim's situation and needs are analysed. Issues to be examined include establishing the legal basis for residence, security risks, housing, livelihood, physical and psychological health and well-being, social relationships, special services for minors and child welfare needs. In the early stage, it is necessary to appoint an assistant and often also a support person for the victim. Pursuant to the law, a representative must be appointed for minor victims of human trafficking. A network of actors is additionally created, the roles and responsibilities of the actors are clarified and the means and methods of communication are agreed. The practical support arrangements are influenced by whether the victim has a municipality of residence in Finland, whether he or she is an asylum seeker or whether the basic services are arranged in some other way. The assistance is planned and implemented in cooperation between the authorities, NGOs and other actors. The aim of the system for victim assistance is the recovery and rehabilitation of the customer. This objective is associated with the empowerment of the customer and supporting independence and life management on one hand, and increasing the customer's awareness of his or her rights and means by which he or she can promote the implementation of these rights. A proactive effort is made to prevent the risk of re-victimisation. The victim is supported for as long as he or she is

estimated to be in need for assistance. Individual level goals may include:

- Coping with the criminal procedure.
- Getting to know the Finnish society, service system and culture.
- Learning the language.
- Creating a foundation for ordinary life, living and coping with everyday life.
- Access to school, education and training or working life.
- Creating and maintaining social relationships.

As there are considerable differences in the needs for assistance between victims, it is clear that the most extensive support is often needed by victims who are in the most vulnerable position and whose possibilities and abilities to look after their own rights may sometimes be quite limited. The traumatic experiences of the victims, as well as other factors resulting in vulnerability or insecurity, such as disability, may make supporting the victims even more challenging, if the victims do not know what they need or are unable to express their needs with adequate clarity. A foreign culture and language pose particular challenges to supporting the victim, and this should be taken into consideration, for example when explaining legal matters to the victim. Adequate legal aid and legal assistance play a central role in assisting victims in order for them to be aware of their rights and to avoid any losses of rights. Re-victimisation is a risk which must be taken seriously and the realisation of which should be prevented by any means. The shame and stigma associated with prostitution should also be taken into consideration, and an attempt should be made to minimise any potential hurt the victim or his or her family may suffer because of these. Supporting victims of human trafficking must consist of methodical and future-oriented activities, in which a conscious attempt is made to eliminate factors exposing a person to victimisation, or to reduce their significance or effectiveness in the victim's life.

The National Rapporteur on Trafficking in Human Beings has observed that the implementation of the services of the system for victim assistance has often worked well. The services are mainly coordinated and produced in a professional and victim-centred manner. Problems have occasionally occurred, however, in the appropriate implementation of the services. An assistant who could ensure the implementation of the victim's rights has not been appointed for all victims of human trafficking. Especially situations where the human trafficking offence has been committed outside Finland, and consequently it has not been possible to initiate a pre-trial investigation, have proven difficult. Victims of human trafficking also have other

legal needs, which may for example be associated with establishing the right of residence, position of family members, child welfare, outstanding earnings or compensation. For this reason the National Rapporteur on Trafficking in Human Beings considers that an independent and expert assistant should be appointed for each victim of human trafficking as soon as possible after identification and referral to the system for victim assistance. A possibility must be reserved for the assistant to attend any interviews and questionings of victims of human trafficking. Many victims of human trafficking, especially those who have been sexually exploited and are severely traumatised, often also need a support person to cope with everyday life, interviews with the authorities and a possible court hearing.

The Rapporteur has also observed that the right to a residence permit of all victims has not been established immediately after the victim has been identified and referred to the system for victim assistance. The victim is entitled to have his or her right to a residence permit established, and uncertainty about whether or not the victim has a right to stay in the country and on what grounds adds to the mental stress of a traumatised victim and does not promote his or her empowerment. This is why the Rapporteur feels that the right to a residence permit of every victim of human trafficking should be established as soon as possible after the victim has been identified and referred to the system for victim assistance, and the validity of the residence permit should be appropriately ensured. The reflection period that can be granted to a victim of human trafficking is a tool that the Rapporteur feels the authorities could make better use of than today in situations where a victim of human trafficking is only being identified.

The National Rapporteur on Trafficking on Human Beings does not find the reception centres the best possible place of accommodation for all victims. For victims who have been sexually exploited, in particular, the reception centres are frequently unsafe places to live in. In the selection of accommodation, the possible suspicions and accusations arising from having ended up as a prostitute to which the victim may be subjected by the other residents should be taken into account. The shame the victim feels over prostitution and sexual exploitation does not promote the victim's empowerment and getting over traumatic experiences. For this reason, the Rapporteur recommends that the parties responsible for managing the system for victim assistance also actively seek other alternatives, for example supported housing, mother and child homes and shelters and child welfare units.

The National Rapporteur on Trafficking in Human Beings has noted that the need for therapy or other psychological support has not been established

in case of all victims. The Rapporteur finds it highly important that these needs be established, especially in case of victims who have been sexually exploited. Professionals specialising in mental health problems can also help other parties working with victims of human trafficking to understand and appropriately take into consideration the depth of the trauma resulting from victimisation and its impacts on the victim's behaviour and ability to make decisions concerning him/herself and to look after his or her own affairs. Cooperation between the parties involved in supporting the victim is also incomplete in other respects. The support measures must be planned in cooperation with the victim / his or her guardian, assistant, representative and support person.

The system for victim assistance was established rather recently, and the number of victims referred to / seeking help from the system is small. As a result of the small number of victims referred to the system, little experience has been gathered of it. For this reason, it is understandable that the system has no established practices. In this situation, however, particular attention should be focused on ensuring that the functioning of the system for victim assistance and provision of services are logical and equal. It has been put to the Rapporteur that the system for victim assistance has no clear instructions on what services can be offered to the victim and to what extent or how often it is possible to obtain each service. The Rapporteur recommends that the parties responsible for managing the system for victim assistance prepare clear instructions on the offer of services, detailing the services the system for victim assistance offers. However, the Rapporteur welcomes the fact that the system for victim assistance has in practice been able to arrange almost all services needed by the victims, and in some cases no stone has been left unturned to arrange the services.

During her first year in office, the National Rapporteur on Trafficking in Human Beings has noticed that problems sometimes are encountered in managing the customerships within the system for victim assistance. The operating preconditions of the system have recently clearly improved, in particular in Joutseno, where the personnel working with human trafficking has been increased. The Rapporteur feels that the system for victim assistance should have adequate personnel resources available to it, and this way a possibility of assuming overall responsibility for the customerships.

One challenge in implementing the support measures lies in the fact that the reception centre directors making decisions on supporting victims do not appear to obtain all information that is significant in making decisions on supporting victims from other authorities. The Rapporteur finds the legislation ambiguous in this respect, and it should be clarified.

The National Rapporteur on Trafficking in Human Beings has noticed that third-sector actors often also end up looking after matters that do not belong to them under the law. Sometimes the authorities have asked the organisations to act as a kind of link between them and the victims. The probable reason for this has partly been a lack of sufficient personnel resources, as a consequence of which customership management has to an unnecessarily great extent been left to the third sector. On the other hand, the reason for this may be that the division of tasks and responsibilities between the authorities and the third sector has not in all situations been sufficiently clear. This is why the National Rapporteur on Trafficking in Human Beings recommends that the reception centres responsible for managing the system for victim assistance draw up Memoranda of Understanding with third-sector actors, in which tasks and areas of responsibility are divided between the authorities and third-sector actors. The reception centres should also conclude framework agreements with the third-sector actors containing more general provisions on reimbursing the costs to enable the third-sector actors who provide services in practice to also respond on real time to unexpected needs for assistance without contacting the reception centre for each service separately. Some framework agreements of this type have already been drawn up.

The National Rapporteur on Trafficking in Human Beings has, during her first reporting year, also focused attention on the activities of the third sector in providing services for victims of human trafficking. The Rapporteur has the impression that the standard of assistance provided by the third sector for victims has in most cases been rather high. However, the Rapporteur is to some extent concerned over the fact that service provision by the third sector is supervised by no-one. The provision of services is not guided by official duty, nor is it transparent. This is why the National Rapporteur on Trafficking in Human Beings recommends that central third-sector actors in cooperation with the authorities prepare a set of quality criteria that would guide service provision for victims of human trafficking by the third sector.

During her first year in office, the Rapporteur has also noticed that being included in the system for victim assistance does not necessarily have a bearing on procedures to remove the victim from the country: in other words, being included in the system does not necessarily stop the victim from being removed from the country. So far, the situation seems to have been actualised in Dublin cases. This interpretation appears to be endorsed by a decision of the Helsinki Administrative Court in January 2010. The Administrative Court states in its decision that "the final outcome in the

matter [decision to refuse entry and send the victim to Greece] need not be changed, even in consideration of the additional information submitted by the appellant that she has been included in the system for victim assistance”.<sup>22</sup> The National Rapporteur on Trafficking in Human Beings acknowledges that the task of the Administrative Court is to examine the legality of decisions issued by the Immigration Service, but finds that the judgment restricts the implementation of a human trafficking victim’s rights.

The Rapporteur hopes that the Immigration Service and reception centres will discuss this issue and reach an agreement. The legislation also enables a different interpretation, and consequently the Rapporteur does not consider legislative amendments necessary in order to safeguard the rights of victims of human trafficking at this stage. An interpretation that would ensure a better implementation of the rights of human trafficking victims is supported for example by the Council of Europe Convention on Action against Trafficking in Human Beings. The Convention prohibits removal from the country’s territory of persons believed on reasonable grounds to be victims of human trafficking (Article 10) and obliges the contracting parties to offer these persons at least the services listed in the Convention (Article 12). In Finland, these minimum services are available through the system for victim assistance. According to the Explanatory Report to the Convention, a victim of human trafficking may not be removed to his or her country of origin or a third country (section 133). The Explanatory Report to the Convention also states that Parties to the Convention must offer support to each victim of human trafficking in their territory (section 148).

The National Rapporteur on Trafficking in Human Beings considers that in decision-making concerning the system for victim assistance, no importance should be attached to the fact that the victim has been victimised in human trafficking in another country. There may be several reasons for the victim’s ending up in Finland and seeking help from the system for victim assistance, such as victimisation because of poor conditions of reception, the victim’s concern over his or her safety or a fear of re-victimisation. In connection with the entry into force of the Council of Europe’s Convention on Action against Trafficking in Human Beings, the obligation to protect all victims of human trafficking within a country’s territory is further reinforced. The Rapporteur feels that the system for victim assistance should assume responsibility for assisting and protecting the victim, if the case shows indications of exploitation that has characteristics of human trafficking. The so-called Dublin cases should also be included in the system for

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22 Helsinki Administrative Court, 05510/09/3106, 26.1.2010.

victim assistance, if they show indications of victimisation in human trafficking in another EU country. This procedure should be applied to minors in particular. The Rapporteur feels that decisions related to the system for victim assistance should also play a role when making decisions on refusal of entry based on the Regulation determining the Member State responsible for examining an asylum application.

### ***3.2.7. Training on the system for victim assistance***

The system for victim assistance is quite a new mechanism, and one essential precondition for its effectiveness is that actors possibly encountering victims of human trafficking in their work have sufficient information on the existence of the system, requirements for inclusion in the system, and the relevant procedures. The National Rapporteur on Trafficking in Human Beings has observed that many have so little knowledge of these matters that they are not always able to seek help from the system for victim assistance in practical situations. Raising awareness of the system is challenging, as the number of actors encountering victims of human trafficking in their work is quite large, especially including such groups as the social and health care personnel in municipalities. As the victim frequently does not identify himself or herself as a victim of human trafficking and seeks help for some other reason, the ability of the authorities to identify a victim based on a fragmented story is vital. The victim may seek help for reasons such as an assault, sexual violence, earnings owed to him or her, threats, fear of being removed from the country, or restrictions on his or her freedom of movement. Such small pieces may add up to what in a legal context is referred to as human trafficking. The conclusion of human trafficking is essential for the victim, as it enables the implementation of his or her statutory rights to assistance and support as a victim of human trafficking.

During her first year in office, the Rapporteur looked at how active the reception centres responsible for managing the system for victim assistance have been in disseminating information about the system through training. The Rapporteur asked the reception centres whether they had organised training in the system for victim assistance, and if so, what type of training was provided and who took part in it.

The reception centres of Oulu and Joutseno, which are responsible for managing the system for victim assistance, were allocated personnel resources for recruiting human trafficking coordinators for the system's first year of operation. The coordinators started their duties in early 2007. The duties

of the coordinators included planning the assistance systems, drawing up information plans, preparing training and information material on the phenomenon of human trafficking and the assistance system, and providing training for central partners and service providers in the assistance system. Both coordinators finished their tasks in late 2007, and no new coordinators have been recruited since then.

The Joutseno reception centre recruited a social worker for the system for victim assistance whose tasks include not only assisting individual victims but also disseminating information and providing training related to the system. The National Rapporteur on Trafficking in Human Beings welcomes the increased personnel resources, and also from the perspective of information and training in the system for victim assistance. In its response to the Rapporteur, the Joutseno reception centre informed her that during the term of office of the current director, who started in 2009, the reception centre has not organised training, but a representative of the centre has attended as a speaker at a number of events in which the system for victim assistance was discussed. This way, training has been provided for the employment conditions officers of the Central Organisation of Finnish Trade Unions (SAK), border guards, and the Ministry of the Interior telephone exchange operators.

In its response, the Oulu reception centre reported that while the human trafficking coordinators were in office, providing training was part of their tasks. The coordinator provided training on human trafficking as a phenomenon and strived to promote the identification and referral to the system for victim assistance. In addition to training provided by the coordinator for the reception centre personnel, training on how to deal with a traumatised customer was provided for interpreters, representatives of minor asylum seekers, social workers, and parties working with immigrants. The majority of training events had been organised by some other party. The reception centre personnel had attended these events as speakers. The multi-disciplinary evaluation group was additionally given training on legislation related to the system for victim assistance and child welfare.

Based on the responses received, the Rapporteur finds that representatives of both reception centres have played an active role in speaking at many events where information on the system for victim assistance could be disseminated. The Rapporteur welcomes this, but also believes that this type of random training, which is often initiated by other parties, is inadequate. The reception centres have so far focused too little on training, which may partly explain the low number of victims referred to the system for victim assistance.

The Rapporteur believes that personnel employed in the system for victim assistance are in the best position to provide high quality training. As a result of the lack of human trafficking coordinators or similar personnel, parties working with potential victims of human trafficking may not receive enough information on the system for victim assistance and may consequently be unable to refer victims identified by them to the system. The National Rapporteur on Trafficking in Human Beings recommends that the reception centres responsible for managing the system for victim assistance organise training on the assistance system and its functioning for authorities and third-sector actors who may encounter victims of human trafficking in their work. The reception centres should additionally ensure the availability of printed information on the system for victim assistance that can be handed to potential victims in situations where victims may be identified. This information should be available in several different languages. The Rapporteur has been informed that instructions concerning the system for victim assistance are currently being drawn up in the training and information coordination group working under the Steering Group.

The Rapporteur's recommendations are presented at the end of the following chapter, as implementing the changes would require amendments in both the Integration Act and the Aliens Act.

## 4. Residence permits and reflection periods in cases of human trafficking or similar exploitation

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### 4.1. Introduction

The Protocol to Prevent Trafficking in Persons supplementing the Convention against Transnational Organized Crime adopted by the United Nations in December 2000 is the first document under international law that encourages the State Parties to take measures that permit victims of trafficking in persons to remain in its territory, temporarily or permanently (Article 7). In April 2004, the Council of the European Union adopted Directive 2004/81/EC on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration (the so-called Victims Directive). This Directive obliges the Member States to inform third-country nationals of the possibility of obtaining this residence permit. Before initiating the residence permit procedure, the victims should be given a period in which to reflect on their position. The reflection period should put the victim in a position to reach a well-informed decision as to whether or not to cooperate with competent authorities in view of the risks that this may entail. The possibility of obtaining a residence permit is believed to encourage the victims to cooperate with the authorities freely and hence more effectively in order to bring the perpetrators of trafficking in human beings to justice.

The Directive highlights and stresses the objectives of crime combating. This is quite understandable from the perspective of states, as they also wish to prevent the use of this grounds for obtaining a residence permit as an instrument of illegal immigration and thus a loophole for abuse. From the victims' perspective, the Directive is not quite as successful, as it makes cooperation with the authorities a condition for obtaining a residence permit and requires the victims to sever contacts with perpetrators of the offence of trafficking, even if the perpetrators are the victim's family members, friends, or acquaintances. It could be said that the Directive is based on a rather stereotyped idea of human trafficking that portrays human trafficking as action arranged by an organised group of criminals unknown to the victim, in which the victims have been recruited by violence or by deceiving them as to the nature of the work. The Council of Europe Convention on Action against Trafficking in Human Beings strives to tone down this overemphasis on crime combating and prevention of illegal immigration by prohibiting the removal of a person from the country's territory when there are reasonable grounds to believe that the person has been victim

of trafficking in human beings (Article 10), and by obliging the Parties to grant victims a reflection period and residence permit on certain conditions (Articles 13 and 14), and to offer certain minimum services listed in the Convention to all victims in their territory (Article 12).

The National Rapporteur on Trafficking in Human Beings has looked at the application of the Aliens Act to human trafficking and related situations of exploitation. In order to investigate the situation, the Rapporteur requested the Immigration Service for all residence permit decisions issued by the end of June 2009, in which the grounds for issuing a residence permit were human trafficking or related exploitation. In addition, the Rapporteur requested the Immigration Service to provide information on rejected applications for a residence permit, where an appeal had been made to human trafficking or related exploitation as grounds in the application stage. In addition to a so-called victim's residence permit, an appeal can also be made to human trafficking or related exploitation when applying for permits issued on other grounds. In cases of human trafficking or similar situations of exploitation, a residence permit issued under section 52 of the Aliens Act may be possible ("compassionate grounds"). The victim's stay in the country does not, however, always require establishing their right to a residence permit. The Rapporteur has found that many victims of human trafficking already have a permit entitling them to residence in the country when they are referred to the identification and victim assistance system. Frequently, the victims have had a worker's residence permit. The victims may also be Finnish citizens or family members of Finnish citizens.

Victims of human trafficking may also apply for asylum and obtain international protection. When returned to his or her country of origin, the victim may run the risk of being persecuted by other parties than the state, while the state authorities, even though aware of the persecution, do not intervene or are unable to offer effective protection. While many international studies show that state authorities frequently are involved in human trafficking or knowingly allow it to proceed, the perpetrators usually are private parties, such as criminal organisations or family members. Revenge taken by the perpetrators may constitute reasonable grounds for fear. In the interpretation of being part of a social group, persecution to which victims of human trafficking may be subjected based on their gender may be specifically taken into account as a factor when assessing the grounds for granting asylum. In its Guidelines referred to earlier in this report, the UN refugee agency UNCHR considers that other reasons for persecution, such as ethnic origin, may also need to be assessed in this respect. The authorities' ability to protect the victim is assessed by examining if adequate legislation is in

place for this purpose, and if this legislation is appropriately implemented. On the victim's return, the mechanisms intended to assist a victim of human trafficking and prevent re-victimisation also need to be examined. The authorities are bound by the non-refoulement provisions in the Constitution and the Aliens Act, regardless of whether the person has applied for international protection or a residence permit.

#### **4.2. Residence permits**

The national implementation of the Directive and international conventions was seen as requiring legislative amendments. It was felt that the introduction of special grounds for issuing a residence permit promotes victim protection and contributes to raising public awareness of the problem. As Government proposal 32/2006 states, a special victim's residence permit aims to combat human trafficking offences, facilitate the apprehension of offenders, and protect the victims ensuring that their re-victimisation can be prevented. The definition of a victim of human trafficking was linked to the definition given in the penal provision on human trafficking in the Criminal Code. As will be discussed in greater detail below, this link has been significant when assessing to whom the so-called victim's residence permits can be issued in practice.

Under the Aliens Act, a temporary residence permit may only be issued for reasons related to an investigation or a court hearing, and the victims are expected to sever ties with those suspected of human trafficking and to cooperate with the authorities. According to the preliminary work on this Act, the essential element of issuing a residence permit is that the authorities will obtain information that is significant in crime combating on the offenders, the offence, and the circumstances in which the offence was committed, and that this information can efficiently be used in criminal intelligence and pre-trial investigation of offences. Assisting and protecting the victims appear to be secondary grounds of assessment in the issuing procedure. In the consultation phase, third-sector actors severely criticised this solution, as they considered that such stringent requirements set on the victims may in fact prevent victims with an illegal status from contacting authorities and seeking a way out of a situation where they are exploited. A positive aspect of the grounds for issuing a residence permit is that a permit can be issued regardless of the victim not having valid travel documents and that those having been issued with a permit have an unrestricted right to gainful employment under section 79 (5) of the Aliens Act. Issuing a residence permit is not conditional on the alien having a secure means of support.

The permit may be issued as a continuous one regardless of whether the requirements are met, if the victim of human trafficking is in a particularly vulnerable position. According to Government proposal 32/2006, the victim is in a particularly vulnerable position when it is impossible for a victim of trade in women to return to her country of origin because of a serious threat imposed by a criminal organisation, where the authorities of the state in question are unwilling or unable to intervene in the situation. A victim of trade in children or trade in organs in need of care may also in certain situations be in a particularly vulnerable position. The preliminary work seems to put the threshold for issuing a continuous residence permit rather high. The provisions on the so-called victim's residence permit in section 52(a) 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.

If the victim of trafficking in human beings is in a particularly vulnerable position, the residence permit may be issued on a continuous basis regardless of whether the requirements laid down in subsection 1(1) and (2) are met.

Issuing a residence permit is not conditional on the alien having secure means of support.

If a victim of trafficking in human beings is issued with a temporary residence permit, his or her family members staying abroad are not issued with a residence permit on the basis of family ties. If he or she is issued with a continuous residence permit, family members are issued with a residence permit under section 47(3).

A temporary residence permit for a victim of human trafficking is issued for a minimum of six months and a maximum of one year. A victim of traf-

ficking 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. An application for a temporary residence permit for a victim of human trafficking is filed with the District Police. However, the first residence permit to an alien who has entered the country without a residence permit will be issued by the Immigration Service.

By the end of August 2009, the Immigration Service had issued seven temporary residence permits under section 52 (a)(1) of the Aliens Act, and one permanent residence permit under subsection (2) of this section. All those having been issued with a temporary residence permit have applied for it as a consequence of exploitation of labour. One case, however, also involved sexual exploitation. One continuous permit was issued to a female victim as a consequence of exploitation of labour. In addition to the so-called victim's residence permits, victims of human trafficking have been issued with several residence permits on compassionate grounds. The National Rapporteur on Trafficking in Human Beings has observed that the applications where human trafficking was given as the purpose of residence in the country have, with rare exceptions, resulted in the victim being issued with a residence permit on some grounds.

The Rapporteur welcomes the large share of favourable residence permit decisions, especially considering the serious psychological, economical, and physical consequences that the victims of human trafficking frequently suffer, recovery from which may take a long time, and which also may expose the victims to re-victimisation. Based on international estimates, re-victimisation is surprisingly common, partly for the reason that the factors resulting in vulnerability have not been eliminated, and the situation may on the contrary even have taken a turn for the worse. Sexual exploitation in particular may in some countries bring such a degree of shame on the victims and their family members that the victim is excluded from his or her community or family, and as a result, is left to cope with a serious trauma by his or her own devices. In cases of labour exploitation, returning home may be difficult because the victims have nothing to go back to. They have managed the travel arrangements by selling or pawning everything they own, as their intention is to make so much money that they will no longer have financial worries when they return.

What seems to be more of a problem in the residence permit practices is the definition of human trafficking and the strong links with victimisation that

is the grounds for issuing a residence permit with the statutory definition of trafficking in human beings found in the penal provision of the Criminal Code. The fact that the applicant has in the criminal procedure been found a victim of human trafficking seems to be unexpectedly significant. This interpretation causes problems for victims because the criminal procedure is drawn out and because many cases containing characteristics of human trafficking have been investigated, charges have been brought, and sentences have been passed for another offence rather than human trafficking. The offences are regarded as meeting the criteria for either procuring or discrimination at work tantamount to extortion, in other words, an offence to whose victims no so-called victim's residence permits are issued under the Aliens Act. What may also cause problems is that no pre-trial investigation can be initiated in the case because the offence was committed in another country and the perpetrator cannot be reached.

The National Rapporteur on Trafficking in Human Beings questions this practice of interpretation in connection with issuing residence permits. The Rapporteur feels that limited importance should be attributed to the criminal procedure and interpretation of the case in connection with it when issuing residence permits. The importance of this question is highlighted by the analysis provided by the Rapporteur below, which indicates that consideration given to factors causing dependence and vulnerability in the victim is currently inadequate in the application and interpretation of the Criminal Code provisions. The Immigration Service should process the applications without delay and assess victimisation in human trafficking independently based on the information that is available at the time of making the decision. The valid Aliens Act, too, starts from the assumption that a so-called victim's residence permit is issued to an alien when there are *reasonable grounds* to suspect that he or she is a victim of human trafficking. In other words, certain knowledge or information verified in a court of victimisation in human trafficking is not a condition for issuing a so-called victim's residence permit under the Aliens Act, either. The grounds for issuing a so-called victim's residence permit, and other grounds for issuing residence permits, too, should be the fulfilment of certain indications of human trafficking and the victims' need for assistance and protection.

Even though residence permits can also be issued on other grounds, and not all victims of human trafficking need permits, the Rapporteur has reason to believe that the current provisions cannot entice all victims with an illegal status to seek help from the authorities. The Rapporteur believes that one of the major reasons for this situation is the obligation to cooperate as a condition for obtaining a residence permit. Another essential reason is the

fact that a temporary residence permit does not entitle the holder to family reunification. In other words, the victims must make their decisions on cooperating with the authorities trusting that the perpetrators will not take revenge on their family members living in the country of origin, or that the authorities in the country of origin are able to offer their family members effective protection. The case documentation available to the National Rapporteur on Trafficking in Human Beings shows that the perpetrators often pressure their victims by threats of violence against their family members. Unwillingness or inability to cooperate may also be due to severe traumatisation or distrust of authorities.

As a consequence, the National Rapporteur on Trafficking in Human Beings recommends that the requirement of cooperating with the (pre-trial) authorities as a condition for obtaining a residence permit is removed from the legislation. Trafficking in human beings is one of the most serious offences in the scale of penalties laid down in the Finnish Criminal Code. This calls into question the basic principle of the residence permit provisions under which only victims of trafficking in human beings who are in a particularly vulnerable position can be issued with a residence permit without the condition of cooperation. The Rapporteur considers that because of their personal characteristics and/or experiences due to victimisation, victims of human trafficking are always in a particularly vulnerable position. Cooperation with the Immigration Service during the residence permit procedure would, in the Rapporteur's opinion, reduce the risk that making appeal to human trafficking becomes a loophole for abuses. During the residence permit procedure, victims should also be encouraged to cooperate with the pre-trial authorities in order to bring the perpetrators to justice and to prevent human trafficking. The National Rapporteur on Trafficking in Human Beings finds that the requirement of severing ties should also be removed from the conditions of issuing a residence permit, as the perpetrators of human trafficking offences often are close to the victim. The threat against the victim's family members should also be taken into consideration when considering the grounds of issuing a residence permit.

### **4.3. Reflection period**

Under section 52(b) of the Aliens Act, before issuing a so-called victim's residence permit, a victim of trafficking in human beings may be granted a reflection period of at least thirty days and a maximum of six months, during which the victim must decide whether he or she will cooperate with the authorities. Government proposal 32/2006 provides further details by

stating that the purpose of the reflection period is to give the victim time to recover from his or her experiences and to escape the influence of the perpetrators of offences to enable him or her to make a reasoned decision on cooperating with the authorities. The reflection period may be suspended if the victim of human trafficking voluntarily, and on his or her own initiative, re-establishes ties with persons suspected of human trafficking, or if this is necessary on grounds of public order and security. The decision on granting or suspending the reflection period is made by the District Police or a border control authority. In principle, granting a reflection period is a procedure initiated by the authorities, even though the victim of human trafficking may also take an active approach in the matter. The victim of human trafficking is notified about the reflection period and its suspension in writing. The notification must give the purpose, starting date, and duration of the reflection period, make clear that the reflection period may be suspended, and give the grounds for suspending the reflection period. No right of appeal applies to the reflection period and its suspension.

During the reflection period, the victim is legally resident in the country. An actual refusal to grant a reflection period does not exist. A decision to remove a person from the country may be made, or a decision to remove the person from the country that may have been made before the beginning of the reflection period may be enforced. Under the Aliens Act, decisions to remove a person from the country may be appealed. A stay of enforcement may also be applied for in these situations. The reflection period may be characterised as a "flexible" procedure in between a refusal of entry and issuing of a residence permit, the essential purpose of which is to identify victims of human trafficking, refer them to the system for victim assistance, give them time to recover from their experiences, and make decisions concerning themselves and to make it possible to initiate a pre-trial investigation on human trafficking. The provision on the reflection period in section 52b of the Aliens Act states the following:

Before issuing a residence permit laid down in section 52a, a reflection period of at least thirty days and a maximum of six months may be granted to a victim of trafficking in human beings.

During the reflection period, a victim of trafficking in human beings must decide whether he or she will cooperate with the authorities referred to in section 52a(1)(2).

The reflection period may be suspended if the victim of trafficking in human beings has voluntarily and on his or her own initiative re-

established relations with those suspected of trafficking in human beings, or if this is necessary on grounds mentioned in section 36(1).

Few reflection periods have been granted so far. As errors have been made in their registration, their precise number is not known to the Rapporteur. However, the number of reflection periods granted is clearly less than ten, and some of those known to the Rapporteur have been granted to minors. During her first year in office, the Rapporteur has understood that there is an extensive need for using reflection periods or similar ways of legalising residence. This type of need seems to exist at least within the scope of prostitution. Third-country citizens engaged in prostitution in Finland do not necessarily dare to seek help from the authorities, as they are afraid of being refused entry on suspicion of selling sexual services. It appears to the National Rapporteur on Trafficking in Human Beings that the authorities have not yet internalised the possibility of using the reflection period, which may result in potential victims of human trafficking being refused entry and a failure to implement the victims' rights. The Rapporteur considers that a more efficient use of reflection periods in situations such as described above could encourage potential victims of human trafficking to seek help from the system for victim assistance and consequently facilitate crime combating. The reflection period granted should also be sufficiently long, as building up a relationship of trust between victims and the authorities may take time. The Rapporteur feels that granting reflection periods to minors is questionable if the purpose of the reflection period is to determine whether or not the victim will cooperate with the authorities. When establishing the right of residence of a minor, the child's best interest should play a decisive role.<sup>23</sup>

On the other hand, it has been put to the Rapporteur that the needs of pre-trial investigation and the criminal procedure are prioritised in granting reflection periods. The reflection period may be considered an instrument of investigation for the pre-trial authorities, meaning that the situation is not seen from the victim's perspective to an adequate degree. Under the valid Aliens Act, too, the victim must decide whether he or she will cooperate with the authorities during the reflection period. In the Rapporteur's opinion, this provision should be interpreted to acknowledge that cooperation should not yet be expected at this stage. This interpretation is supported by Government proposal 32/2006 which, regarding the reflection period, states that during the reflection period, the victim will recover from his or her experiences and be advised on what cooperating with the authorities would mean for him or her in practice, and adds that only after having re-

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covered and received appropriate advice, it is hoped that the victim would be in a position to make a decision on what measures would be best for him or her. The Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings also states that the reflection period in itself should not be conditional on the victim's cooperating with the authorities (section 175). The National Rapporteur on Trafficking in Human Beings understands that genuine respect for the reflection period may not necessarily be possible if the perpetrators have been caught together with the victim. Reconciling the reflection period and procedural time limits is a problem in situations where the perpetrators have been arrested or detained. Even in that case, questioning the victim should be carried out discreetly and in the presence of his or her assistant and representative and the possible support person.

Under the Council of Europe Convention on Action against Trafficking in Human Beings, a reflection period should be granted when there are "reasonable grounds to believe" that a person is a victim of trafficking in human beings (Article 13) and that the minimum services listed in the Convention should be offered to such persons (Article 12). The Rapporteur considers that the provision on the reflection period in the Aliens Act should be amended so that the most significant purpose of the reflection period would be reinforced in the wording of the provision: it should be used as the trafficking victim's means of recovering from experiences of exploitation and making informed decisions on his or her future. As discussed above, the reflection period should have stronger links with the system of victim assistance, so that all victims seeking help from the assistance system who have no other legal basis for their residence in the country would be granted a three-month reflection period. The reflection period and the first residence permit subsequent to it would be issued by the Immigration Service.

#### **4.4. Conclusions and recommendations: assisting the victim and residence in the country**

Setting up the system for victim assistance was a step in the right direction. However, during her first year in office, the National Rapporteur on Trafficking in Human Beings has observed shortcomings in the identification of victims of human trafficking and their referral to the system. The provisions in the system for victim assistance in the Integration Act are ambiguous and subject to unpredictable interpretations that violate equality. The provisions concerning the competence of various actors and the functioning of the system are also inadequate. The National Rapporteur on

Trafficking in Human Beings does not find the current situation satisfactory or functional, and for this reason she considers it necessary to clarify the provisions in the system for victim assistance. The system for victim assistance has the preconditions of becoming a party providing more useful assistance for the victims provided that 1) the threshold for access to the system for victim assistance is consciously and methodically lowered, 2) the purpose and goals of the system for victim assistance and its relationship with pre-trial investigation and the criminal procedure are clarified, and 3) the legal protection of victims of human trafficking and guarantees of an appropriate administrative procedure are reinforced.

The Rapporteur recommends that a better balance be found between the objectives of protecting the rights of human trafficking victims and combating crime. The Rapporteur believes that both objectives are important and not contradictory. International experience indicates that assisting victims of human trafficking also promotes crime combating and the prevention of human trafficking. The Rapporteur is also aware of the risk of the system being abused. For this reason, the National Rapporteur on Trafficking in Human Beings considers it justified that asylum seekers whose applications have been rejected could, as a rule, no longer be included in the system for victim assistance. A precondition for this type of a restriction would be that the Immigration Service would actively and on its own initiative also examine each asylum application from the perspective of identifying human trafficking. The Rapporteur stresses that in view of the factual effectiveness of the system and to ensure that the victims have access to services to which they are entitled under the law, it is important that the system is victim-centred and that the threshold for access to the system is low. The working of the system for victim assistance should be guided by the victims' need for assistance. At the stage where the victim is being referred to the system, certain or verified knowledge of victimisation in human trafficking is not required, and a suspicion of human trafficking is enough.

The National Rapporteur on Trafficking in Human Beings recommends that a specific Act be passed on the system for victim assistance, in which the conditions and procedures for inclusion in the system would be enacted in adequate detail to ensure the access of victims to the system and to reinforce their legal protection. The Rapporteur recommends that victims be included in the system for victim assistance once certain indicators jointly agreed by the Steering Group or the expert organ proposed by the Rapporteur are met. These indicators would guide the identification, so that indications of victimisation in human trafficking alone would be sufficient for inclusion in the system for victim assistance at the referral stage.

This would also clarify the referral of victims of offences related to human trafficking to the system. These indicators would be applied by all parties encountering potential victims of human trafficking, authorities and third-sector actors alike. The potential victim of human trafficking would be included in the system for victim assistance based on these indicators. Both the authorities and third-sector actors should be able to rely on each other's knowledge and skills in identifying victims of human trafficking and make the necessary conclusion of human trafficking. Their skills and capabilities would be enhanced by means of training and cooperation.

The National Rapporteur on Trafficking in Human Beings recommends that the threshold for inclusion in the system for victim assistance be low. The essential aspect would be a comprehensive assessment of the victim's situation, such as his or her dependence due to possible indebtedness or vulnerability due to his or her personal characteristics and experiences. The Rapporteur recommends that when applying the indicators to an individual case, situations that, on a general level or based on international experience, are known or suspected to contain characteristics of human trafficking, would also be taken into consideration. The Rapporteur recommends that each potential victim of human trafficking be informed of the system for victim assistance to enable him or her to make a decision on seeking help from the system. This information would be given them both in writing and, whenever possible, orally in a language that the victim understands. The Rapporteur recommends that the pre-trial investigation authorities work together with third-sector actors when investigating or monitoring activities in places where it is known that potential victims of human trafficking are being exploited. This could contribute to building up trust between the pre-trial investigation authorities and victims. The outreach and advisory activities of the third sector would be financially supported from the state budget, as laid out in the Government Programme.

The National Rapporteur on Trafficking in Human Beings recommends that all victims of human trafficking referred to the system for victim assistance who have no other legal basis for residence in the country and who are willing to take advantage of it would be granted a three-month period of reflection and recovery, during which the victims would have the possibility to recover from their experiences and weigh their options. Cooperation with the pre-trial authorities would not be set as a condition for inclusion in the system for victim assistance and granting of the reflection period,<sup>24</sup> but during the reflection period, possible victimisation in human traffick-

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<sup>24</sup> See also the Opinion of the Ombudsman for Minorities on the reflection period and residence permit issued during the drafting state of the Act 1423/65/2005TM 23 June 2005.

ing would be investigated. The pre-trial investigation authorities could take part in this investigation regarding the possible suspected offence and the Immigration Service regarding grounds for issuing a residence permit in the country. In this respect, the procedure would be similar to the asylum application system, where the asylum seekers must explain the grounds of their need for protection to the Immigration Service. The National Rapporteur on Trafficking in Human Beings recommends, however, that time during the reflection period be reserved as much as possible for the victim's recovery and making decisions on his or her options. During the reflection period, the victim could submit his or her application for a residence permit to the Immigration Service. The Rapporteur recommends that applications for residence permits in cases of human trafficking be centralised in the Immigration Service, which would also provide training for the personnel processing the applications. Adequate personnel and financial resources should be reserved for the Immigration Service to perform this task.

The Rapporteur recommends that the Immigration Service make decisions on issuing residence permits at its own discretion. Consequently, the initiation of a criminal procedure would not play a role in the procedure to issue a residence permit, and cooperation with the pre-trial investigation authorities would not be set as a condition for obtaining a residence permit. The requirement of cooperation as a condition for obtaining a so-called victim's residence permit would be removed from the Aliens Act. The requirement of severing ties with those suspected of human trafficking would also be removed from the Act, as the perpetrators of human trafficking offences often are acquaintances of the victim. If the Immigration Service's investigation showed that the case obviously involves an abuse of the system, the reflection period could be suspended. A right of appeal should apply to such a decision to suspend the reflection period. In any case, legal residence in the country would end after a reflection period of three months if the Immigration Service decided that no residence permit will be issued on grounds of victimisation in human trafficking. The National Rapporteur on Trafficking in Human Beings recommends, at least for the time being, that the provision of services for victims of human trafficking be assigned to specifically determined reception centres for asylum seekers. The Rapporteur also recommends that the responsibilities of municipalities regarding assistance to victims of human trafficking be clarified (provision of services and the costs incurred). The main rule should be that the municipalities assume costs incurred for the services provided for victims of human trafficking who have been issued a residence permit and placed in a municipality. However, the system for victim assistance would support the provision of these services financially if necessary, and offer

expert assistance to the municipalities.

In line with the Council of Europe Convention on Action against Trafficking in Human Beings, the National Rapporteur on Trafficking in Human Beings recommends that victims with a residence permit be entitled to a wider selection of services than those resident in the country based on a reflection period, but the victims with a reflection period would also be entitled to return assistance. Return assistance is already part of the services under the valid Integration Act. Several return assistance return projects are currently under way, and lessons learnt in these should be integrated in the practices of the system for victim assistance.

The Rapporteur recommends that the purpose and tasks of multi-disciplinary evaluation groups be modified. The Rapporteur proposes that a single multi-disciplinary expert organ be set up in Finland, which would operate under the direction of the Immigration Service. This expert organ would have an advisory and instructive role. It would monitor the functioning of the system for victim assistance and support its work by issuing general policies and instructions. Consequently, the expert organ would not play a role in the inclusion in or removal from the system for victim assistance of individual victims of human trafficking or in making decisions on the services needed, as a low threshold for including victims of human trafficking in the system for victim assistance for three months would be in operation. The expert organ could, however, be consulted in individual cases if necessary. The National Rapporteur on Trafficking in Human Beings recommends that the competence of the expert organ be strong enough for it to issue instructions applicable to the activities of other authorities. The Rapporteur recommends that the members appointed to the expert organ represent the authorities, NGOs, and labour market organisations, and that attention be paid to knowledge of human rights issues in the composition of the organ. The composition of the organ would, however, be rather limited. It could, for example, have a full and a limited composition if necessary. The National Rapporteur on Trafficking in Human Beings would also be entitled to take part in the meetings of the expert organ as an observer. In the proposed form, the system for victim assistance would resemble the system in place in the Netherlands. Regarding the system for victim assistance, reflection periods and residence permit, the National Rapporteur on Trafficking in Human Beings recommends that

1. A specific Act would be passed on the system for victim assistance, which would reinforce the legal protection of victims of human trafficking and guarantees of an appropriate administrative procedure.

2. Persons fulfilling certain indicators of human trafficking agreed in the expert organ would be included in the system for victim assistance.
3. Responsibility for providing the services would for the time being be assumed by the reception centres of Oulu and Joutseno, but a similar party coordinating the services would also be set up in the Helsinki Metropolitan area.
4. All persons included in the system for victim assistance who are in the country without a legal basis for their residence would, should they wish to do so, be granted a reflection period of three months (3 months or 90 days), during which the victim could also file his or her application for a residence permit. Both the reflection period and first residence permit would be issued by the Immigration Service.
5. In course of the three-month reflection period, the Immigration Service would interview the victim with the intent of establishing the grounds for the residence permit application possibly lodged by the victim.
6. The essential aspect in issuing a residence permit would be sufficient information on victimisation in human trafficking, in which case initiating a criminal procedure would not be set as a condition for issuing a residence permit.
7. The requirement of cooperating with the pre-trial investigation authorities as a condition for being issued a so-called victim's residence permit, similarly to the requirement of severing ties with those suspected of a human trafficking offence, would be removed from the Aliens Act. The victims should, however, be encouraged to cooperate with the authorities to bring perpetrators of human trafficking to justice and to prevent human trafficking. Other grounds for issuing permits, such as those under section 52 of the Aliens Act, could also be used, for example in cases where there are needs for a permanent permit because of the victim's personal characteristics, experiences, or otherwise due to the situation. When considering the grounds for a residence permit, such factors as a threat against the victim's family members would also be taken into consideration.
8. A single multi-disciplinary expert organ would be established, the task of which would be to guide the functioning of the system for victim assistance (and possibly all action against human trafficking) at a general level. The competence of this organ should be strong enough in order for it to issue instructions applicable to the activities of authorities.
9. The work of the multi-disciplinary expert group would be directed by the Immigration Service, and its members would include repre-

sentatives of the authorities, NGOs, and labour market organisations. In this group, the National Rapporteur on Trafficking in Human Beings would have the position of an independent observer.

## **5. Refusal of entry procedures and identification of victims of human trafficking**

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### **5.1. Introduction**

In its proposal for a Refined Plan of Action, the Steering Group of the National Plan of Action against Trafficking in Human Beings acknowledges that those refused entry to the country may include victims of human trafficking who remain unidentified.<sup>25</sup> The National Rapporteur on Trafficking in Human Beings has made an effort to establish to what extent the authorities have identified potential victimisation in human trafficking in connection with procedures to remove a person from the country. When compiling the current report, the Rapporteur regarded as particular risk groups minors to be removed from the country and women under 35 for whom a decision has been made based on the Regulation on determining the Member State responsible for examining an asylum application to refuse entry to either Greece or Italy. In order to investigate the matter, the Rapporteur has analysed all of the so-called Dublin decisions targeting these groups of people in January – August 2009.

While preparing her report, the Rapporteur regarded as another risk group persons who have been refused entry under section 148(1)(6) of the Aliens Act. This ground for refusal of entry makes it possible to refuse entry to persons suspected of selling sexual services. Other grounds may also be used to refuse entry to potential victims of human trafficking encountered in prostitution, but the Rapporteur did not have the opportunity to investigate these decisions on refusal of entry during her first year in office. The results obtained convinced the National Rapporteur on Trafficking in Human Being of the need to also monitor and report on decisions on refusal of entry as an essential issue in the future.

### **5.2. Refusal of entry on suspicion of selling sexual services**

In the Rapporteur's opinion, refusals of entry under the Aliens Act to persons suspected of selling sexual services are another possible situation for identifying victims. Under section 148(1)(6), an alien may be refused entry if there are reasonable grounds to suspect that he or she may sell sexual

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<sup>25</sup> Ministry of Labour, *Invisible victims: Steering Group proposal for a Revised Plan of Action against Trafficking in Human Beings* (2007), pp. 12-14.

services. The Government proposal<sup>26</sup> states that knowing that a person on a previous occasion had sold sexual services constitutes adequate grounds for a refusal of entry. The intention of this provision, came into force in 1999, is to prevent crime associated with prostitution and to promote public order and security. As far as the Rapporteur knows, this grounds for a refusal of entry was frequently used until the Baltic countries joined the European Union in spring 2004, after which the figures went down. This is because the majority of persons who were refused entry were Estonians, who could no longer be refused entry after Estonia joined the European Union.

Even if weighty justifications exist for these grounds for refusal of entry, there has also been criticism. A study published by the National Research Institute of Legal Policy indicates that the amendment to the Aliens Act enacted in 2003 increased the influence of procurers and undermined the position of women in prostitution. The study claims that the offence of procuring in the background of women encountered in prostitution is not always investigated, nor is the possible victimisation of the women in human trafficking established.<sup>27</sup> Third-sector actors have also criticised the amendment for pushing foreign prostitutes into an even more marginalised position in Finland.

In Norway, where Nigerian women were found in prostitution earlier than in Finland, the position of these women and their potential victimisation in human trafficking has been studied.<sup>28</sup> In 2004, unprecedented numbers of Nigerian women began arriving in Norway, and by 2005, the majority of street prostitutes in Norway were Nigerian. The women interviewed by the researchers had paid considerable sums to their smugglers for their illegal journey to Norway. The women reported that they had ended up in prostitution to pay their debts arising from the journey and the arrangement of travel documents to the smugglers. As a guarantee for this debt, the women had also been threatened with juju myths.

The study indicated that these women did not originally intend to sell sexual services in Europe. The majority of them had been recruited to prostitution through private agents or so-called “madams”. In some cases, the women’s departure from Nigeria had been a decision made by their families. On arrival in Norway, the women did not know about prostitution or the conditions in which they were forced to sell sexual services. The women had no real possibility of leaving prostitution before they had paid their debts.

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26 Government proposal 50/1998.

27 Lehti and Aromaa (2003).

28 Skilbrei and Tveit (2008).

Some of them felt obliged to continue as prostitutes even after having paid their debts, because they were illiterate and uneducated and had no other possibility of earning their living and providing money for family members waiting in Nigeria. As their conclusion, the researchers state that the actual possibilities of these women to dissociate themselves from or leave prostitution were small after they left Nigeria, and even smaller once they had been engaged in prostitution.

In order to establish whether adequate attention in the procedure to refuse entry is paid to potential victimisation in human trafficking of foreign women and whether the authorities who are competent to make decisions on refusal of entry are aware of the possibility of human trafficking, the Rapporteur requested the Immigration Service, the Helsinki Police Department Immigration Police unit, and the Border Guard Headquarters for their reports on how potential victimisation in human trafficking and the need for assistance and protection of persons who are refused entry are taken into consideration in the procedure to refuse entry. In this request for clarification, the Rapporteur also asked the authorities to specify whether these persons are informed of their rights as potential victims of human trafficking and if expert and impartial legal aid is provided for them in order to establish their rights.<sup>29</sup>

In its response to the request for clarification, the Immigration Service reported that the Service has not observed cases referred to by the Rapporteur. Only three decisions to refuse entry had been made on these grounds during the years 2007-2009, and none in 2009. The small number of decisions made by the Immigration Service may be explained by the fact that refusals of entry on these grounds usually take place within the first three months of residence in the country, and the responsibility for refusals of entry is thus assumed by the police and the Border Guard.

In its statement, the Helsinki Police Department specifies that about 20 persons were refused entry in the years 2008-2009 by the Immigration Police unit (as of 9 October 2009). Of these, some were Nigerian citizens, the majority of whom were returned to another EU country in which they had a valid residence permit at the time. Those refused entry were usually in possession of a travel document entitling them to entry, and also had the required visa or residence permit. Of the persons who had been refused entry, some had advertised their services on websites that are known to be used as an advertising channel for sexual services provided for money, and some had been encountered in a hotel selling sexual services. The police

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<sup>29</sup> Request for clarification VVT/2009/304, 11.9.2009.

state that no circumstances emerged in the cases that would have resulted in a pre-trial investigation as a suspected human trafficking offence or that would have given cause to suspect that the person who was refused entry was a victim of human trafficking. The observations did not give grounds to presume that the persons in question were selling sexual services in Finland against their will or that they were otherwise in a vulnerable position.

The Helsinki Police Department further specified that before a decision on a pending refusal of entry is made, the relevant person is heard on how he or she feels about the decision to refuse entry and the possible associated prohibition from entering the country and decision to revoke his or her visa. Before the hearing, the person is informed of his or her right to use an assistant, and when the person who is refused entry is notified about the decision to refuse entry, instructions on how to appeal to the Administrative Court are included. The Immigration Police takes into consideration in its activities the instructions prepared by the National Bureau of Investigation on identification of victims of human trafficking and actions when a person is suspected to be a victim of human trafficking. If the person is applying for asylum, the police establish the applicant's identity, method of entry into the country, and itinerary, as usual in an asylum investigation.

In its statement, the Border Guard Headquarters reports that all persons refused entry under the relevant section of the Aliens Act have usually become known to the border control authorities in connection with border checks. The Headquarters provides statistical information related to the number of border checks and refusals of entry in its statement, which show that the number of refusals of entry made by the Border Guard on these grounds is minor compared to the total number of refusals. In 2007, the Border Guard refused entry to 17 persons on suspicion of selling sexual services. In 2008, there were only three, and in 2009 there were four such persons. The Border Guard Headquarters notes in its statement that identifying a potential victim of human trafficking is especially challenging during a brief border check. Discovering and verifying the victim's position is extremely difficult, as persons who have been selling sexual services basically take a negative attitude to assistance offered by Finnish authorities. On the other hand, the Border Guard Headquarters further points out that this group also includes persons who do not feel they are victims.

The Border Guard Headquarters reports in its statement that the Border Guard has for years applied a very low threshold of intervening in potential cases of human trafficking, and particular attention is paid to identification of victims of human trafficking. In connection with preparing refusals of

entry, the Border Guard conducts administrative investigations by interviewing the persons whose refusal of entry is being considered. One purpose of interviewing such persons is to examine hints that might indicate victimisation in human trafficking or the need for international protection in case of the person to be refused entry. Through profiling and sets of questions, the goal is to establish information related to a potential victim of human trafficking that might indicate human trafficking. This includes asking if the person has been forced into a dependent position by somebody by taking possession of his or her travel documents or by otherwise keeping him or her under supervision and control, and if the suspected victim is kept under control by means of violence or threat of violence. The Headquarters states that all activities in case of persons to be refused entry are based on informing them of their right to an interpreter and an assistant, pursuant to the Aliens Act. A person will not be refused entry, if he or she has involuntarily been subject to illegal actions, and he or she will be provided expert and impartial legal aid as soon as possible as well as appropriate assistance and guidance, for example, by informing him or her of the reflection period available for victims of human trafficking. The Border Guard has also provided training and instructions for its personnel.

In order to complement the responses received per the request for clarification, the Rapporteur completed a brief analysis for the years 2007, 2008, and 2009 (until the end of August), specifically examining refusals of entry on these grounds. The analysis indicated that refusals of entry implemented by the Helsinki Immigration Police based on these grounds in the Aliens Act have mainly involved young or youngish Russian and Nigerian women. The persons who had been refused entry had usually been encountered in connection with searches of premises targeting restaurants, hotels, or private residences, and according to information obtained from the police. The decisions to refuse entry show that sexual services were marketed on websites and that the women were often assisted by a third party in marketing and other organisational activities of prostitution, such as reserving hotel rooms. During autumn 2009, the Rapporteur has also been informed of several refusals of entry made on these grounds, both by various police districts and the Border Guard. The decisions mainly do not indicate that the possibility of human trafficking had been investigated in these cases or that the person in question had been informed of the system for victim assistance.

The National Rapporteur on Trafficking in Human Beings considers that the Finnish authorities should also be more aware of the possibility of human trafficking in these situations. This idea is supported by the fact that

according to information obtained by the Rapporteur, such groups as Nigerian women have as a rule been refused entry, and the Rapporteur is not aware that, for example, a single reflection period would have been granted in situations where these people have been encountered in prostitution. As the women are unable or too afraid to report exploitation, the pre-trial investigation authorities may decide that they are not even needed as witnesses in the pre-trial investigation and court hearing of a procuring case that may be initiated, in which case they can be refused entry. The documentation available to the Rapporteur shows that in some cases, the women have been sentenced to conditional imprisonment for a border offence, violation of the Aliens Act, and forgery.

The National Rapporteur on Trafficking in Human Beings finds it unlikely that these women would have arrived in Finland on their own initiative, independently, and with no assistance whatsoever, acquired their forged travel documents themselves, had the knowledge to advertise their sexual services on the appropriate websites, and arranged their hotel rooms or other venues for selling sex by themselves. The Rapporteur considers it probable that in Finland, as in the rest of Europe, some party or parties organising the activities are operating in the background, and it is in their interest that the women do not dare report exploitation when meeting a police officer, but rather accept a decision to refuse entry and a prohibition from entering the country issued to them by the authorities.

The National Rapporteur on Trafficking in Human Beings points out that indicators of human trafficking are not necessarily ones that can be observed clearly, such as use of violence or physical restrictions to freedom of movement, but they may involve more discreet psychological pressure and coercion. Under the penal provisions on human trafficking, indebtedness is an essential cause of dependence (dependent status), which may also meet the criteria for the statutory definition of human trafficking. The fact that persons encountered in prostitution are unwilling to talk to the authorities about their experiences may also be an indication of human trafficking. Eliciting such issues and building up trust requires long-term, victim-centred work from the authorities, as well as time and a secure environment. Identifying a victim of human trafficking is the duty of the authority, and the victim does not need to be able to define himself or herself as a victim of human trafficking or know how to seek help as a victim of human trafficking. It is part of the authority's professional skill to notice that in these vital turning points for the implementation of an individual's legal protection, which the procedure to refuse entry also represents, they are able to avoid measures as a result of which a potential victim of human trafficking

may remain unidentified and consequently denied of the rights to which he or she is entitled under the law.

### **5.3. Dublin procedure under the Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application in a case of human trafficking**

#### ***5.3.1. Introduction***

Victims of human trafficking may also be asylum seekers. It is also important to identify victims of human trafficking amongst asylum seekers, as under the law, victims of human trafficking are in some respects entitled to a wider selection of services than asylum seekers (see section 25a of the Integration Act). Identification is even more vital when the victim's right to stay in the country is dependent on victimisation in human trafficking being identified. One of these sensitive areas of identification include the Dublin procedure under the Regulation on determining the Member State responsible for examining an asylum application (343/2003/EC), which is one of the most central instruments of the European Union's common asylum and immigration policies.

This Regulation is about sharing responsibility between the EU Member States, about which the state examines a person's asylum application. The aim is to have the application of each asylum seeker examined, as a rule, in only one EU Member State. The determination of responsibility is affected by whether the person has already applied for asylum in another EU Member State, and where he or she has crossed the external border of the EU. The Eurodac fingerprint register of asylum seekers introduced in 2003 is used to determine the state responsible for processing the asylum application. The Dublin procedure thus makes it possible to refuse entry to asylum seekers and return them to the country that, under the Regulation, is responsible for processing the application. Under Article 3(2) of the Dublin Regulation, however, each Member State may examine an application, even if it is not obliged to do so, based on the grounds provided in the Regulation.

The risk of the Dublin procedure is that victims of human trafficking also end up being refused entry based on the Dublin Regulation. In the Dublin procedure, the asylum seeker is only questioned by the police, whose task it is to establish the applicant's itinerary and identity. Other grounds for granting asylum and issuing a residence permit are only examined in an interview by the Immigration Service.<sup>30</sup> The Dublin procedure thus ends before an examination of grounds for granting asylum and issuing a residence permit have even started, or before proper opportunities for identifying a victim of human trafficking have even presented themselves. In practice, indications of human trafficking may, however, become known to the authorities in an interview by the police and in the Administrative Court.

In the Revised National Plan of Action against Trafficking in Human Beings, Finland is also committed to refraining from refusals of entry in Dublin procedures in cases where there are reasons to suspect human trafficking, unless another Member State has arranged assistance and this system is known to be feasible for the case in question.<sup>31</sup> Additionally, the Council of Europe Convention on Action against Trafficking in Human Beings signed by Finland in 2006 states that in case the authorities have reasonable grounds to believe that the person has become a victim of human trafficking, this person may not be removed from the territory of the country until the identification process has been completed (Art. 10). The Explanatory Report to the Convention specifies that the victim may not be removed to his or her country of origin or a third country (section 133). The Parties must offer support to each victim of human trafficking in their territory (section 148). Under the Convention, victims of human trafficking must be offered the services listed in Article 12. In individual cases of which she has been informed, the National Rapporteur on Trafficking in Human Beings has issued her opinion on refusals of entry under the Dublin Regulation in cases of human trafficking. The Rapporteur has considered that if the suspicion of victimisation arises in Finland, the grounds of the asylum application must be examined in Finland, even if the person had originally applied for asylum in another EU Member State. Refusals of entry should not be used, especially when the subject of the procedure is a minor.

### ***5.3.2. Characteristics of human trafficking in the documentation***

The examination of the Dublin procedure by the National Rapporteur on

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<sup>30</sup> The police, too, may enquire why the applicant cannot return to the country from which he or she arrived. In case the applicant is unwilling or unable to describe his or her experiences at this stage, he or she will not be reported to the authorities at any time.

<sup>31</sup> Ministry of the Interior, Revised Plan of Action Against Trafficking in Human Beings (2008), p. 6.

Trafficking in Human Beings concerns 15 decisions to refuse entry and to return the person in question to Greece or Italy made under the Dublin Regulation in the period 1 January – 31 August 2009, which concern either women under 35 or minor girls and boys. The number of cases analysed by the Rapporteur is limited. When we take the seriousness of indications of human trafficking into account, however, the Rapporteur finds that the results obtained give cause for concern. The Immigration Service informed the Rapporteur that it is preparing instructions to promote the identification of victims of human trafficking in the Dublin procedure. These instructions will also clarify the procedures in identified cases of human trafficking. The National Rapporteur on Trafficking in Human Beings welcomes the preparation of such instructions. The Rapporteur hopes that the Immigration Service might focus on providing training for police officers conducting asylum interviews in order to improve their capabilities in identifying victims of human trafficking.

Of the persons concerned in the decisions to refuse entry that were analysed, ten were women and five were men. In nine cases, the applicant had previously been registered in the Eurodac system in Greece, and in six cases, in Italy. The Member State responsible for processing the asylum application was considered to be Greece in six cases, and Italy in another six cases, while three cases in which the applicant had a Eurodac entry made in Greece were examined in Finland. The decision to refuse entry to the other applicants was mainly made on two grounds. Either the person had already applied for international protection in Greece or Italy, or he or she had been registered in the Eurodac system in one of these countries on some other grounds, in which case it was possible under the Dublin Regulation to return him or her to that country. All applicants appealed the asylum decision to the Administrative Court and demanded a stay of enforcement of the decision, but as a rule, the Administrative Court rejected appeals lodged with it.

Several of the applicants reported that they had been subjected to sexual exploitation, violence, or political persecution in their home countries. Because of the harsh conditions, they had decided to depart for Europe aided by a smuggler. The conditions of smuggling often were inhuman, and the persons were not able to describe their itinerary. Neither did the applicants have personal identification documents, and some of them reported that the smugglers or other persons had taken the documents from them. The applicants also mentioned that they owed money to the smugglers or their family members and acquaintances, who had paid for their journey to Greece or Italy. Consequently, they had not been released from their dependence

on the smugglers even after the journey. Many of the applicants said they could not return to Greece or Italy because they had problems with the smuggler. This is why they said that if they were refused entry, they would prefer to return to their countries of origin rather than to Greece or Italy.

In nearly all cases examined by the National Rapporteur on Trafficking in Human Beings, the applicants had also been subjected to physical and/or sexual violence in Greece or Italy. In the majority of the cases, the applicants said that the violence they encountered had been either perpetrated or condoned by the authorities, or an indirect consequence of inadequate reception conditions for asylum seekers. The applicants also reported having been assaulted by the police in prison or while being interrogated because they were unable to give a precise account of their personal data or itinerary. The material also contained cases where the applicant reported that the prison personnel had known that several male prisoners had raped the applicant, but failed to intervene.

In addition to violence, the documents clearly indicated that human trafficking had already taken place in more than half the cases. In four of these cases, the applicant said he or she was a minor. The exploitation had taken place in prostitution or work in a bakery or on a farm, or the applicants had been forced to carry drugs. The applicants usually reported that the exploitation was preceded by being deceived about the quality of the work and conditions, exploitation of their dependent position, or abduction. In most cases, the applicants said that due to inadequate reception facilities in Greece or Italy, they had been forced to live on the street, where they had met the person who offered them work that led to exploitation. Lacking better options, they had gone with that person and ended up as victims of exploitation.

Many of the victims had been tied to exploitative situations by means of aggravated physical and sexual violence, threats, being locked up in the facilities where the exploitation took place, or by promises of arranging entry into a safe European country. In some cases, their identification documents had also been taken. The applicants had as a rule been able to escape the exploitative situations with the assistance of a third party, who also had assisted them in arranging their travel to Finland. This had only led into one relationship of dependence being replaced with another, as many of the applicants now also owed money to the new party who arranged their travel.

The cases analysed by the National Rapporteur on Trafficking in Human

Beings showed many characteristics indicating human trafficking that had already taken place. As victims of rape, serious physical violence, or human trafficking that had already taken place, many of the victims could also be considered to be in a vulnerable position that may expose them to victimisation in human trafficking and that under the Qualification Directive 2004/83/EC should be taken into account in the asylum procedure.

What seems to have emerged as a challenge in the cases analysed by the National Rapporteur on Trafficking in Human Beings is that the Dublin procedure did not enable an extensive enough examination of the victim's position to discover the possibility of human trafficking. In many cases, the documents show that the authorities took no measures concerning ambiguities in the applicants' travel arrangements, becoming victims of sexual or labour exploitation, physical and sexual violence, abductions, or deception as to the nature of the work that came up. In light of the documents, it appears that since the applicant had already been registered in the Eurodac system in Greece or Italy, the decision to refuse entry was issued without looking at the person's situation in detail.

Almost no information on examining the possibility of human trafficking was recorded in the decisions to refuse entry, even in those cases where the applicant's assistant in their appeal described the exploitation to which the applicant had been subjected as human trafficking or referred to their concern over the great risk of the applicant becoming re-victimised in human trafficking if he or she were refused entry. Neither did the decisions indicate how informing and protecting a person in a vulnerable position were to be ensured if a decision were made to refuse entry. Such questions as whether there is a system for victim assistance in the relevant country and how well it works in practice had not been answered.

The documents perused by the National Rapporteur on Trafficking in Human Beings show that the stories of many applicants become extended and more detailed as time passes. In the first interview records, some applicants said they had not been resident or applied for asylum in any other EU Member State. At the same time, they omitted to report the violence and exploitation they had encountered in Greece or Italy. After they were notified that the authorities had found them in the Eurodac register, the applicants complemented their stories, and information emerged about inadequate reception conditions in Greece and Italy and the violence and exploitation the applicants had encountered in these countries. When looking at the stories of potential victims of human trafficking, however, we must take into account the fact that becoming a victim of exploitation may be traumatising.

Studies indicate that the majority of victims who have been released from a situation involving exploitation suffer from health problems associated with cognitive functions, such as headaches, exhaustion, and memory problems. These cognitive symptoms have a bearing on how quickly, logically, and accurately potential victims of human trafficking are able to tell their stories.<sup>32</sup>

Consequently, it appears that the administrative procedure works in a way contrary to the applicants' stories in these cases. The procedure ends when indications of human trafficking begin to emerge. It is important to note that in the analysed cases, however, indications of human trafficking showed clearly. Features of this type should be adequate grounds for refraining from removing a person from the country under the Council of Europe Convention on Action against Trafficking in Human Beings, thus making it possible to identify victims of human trafficking and refer them to the system for victim assistance.

Instead of reacting to indicators of human trafficking, the decisions ended up describing the reception conditions for asylum seekers in Greece and Italy. It was stated that these countries as European Union Member States were committed to respecting fundamental rights and urged the applicants to address the authorities of the state responsible for processing the asylum application about their possible health problems or violations of rights.

The national asylum programme in Italy was described in the decisions to refuse entry by noting that it has been developed following the instructions of the European Fund for Refugees EFR. Under this programme, an asylum seeker who has no means of support is entitled to reception services during the asylum procedure. The decisions also referred to a report according to which, in addition to ordinary reception centres, there are seven reception centres in Italy intended totally or partly for special groups, and there are also projects that concentrate on receiving and supporting minor asylum seekers. The Immigration Service thus considered that the rights of asylum seekers are fully implemented in Italy.

The documents showed, however, that Italian authorities had requested that the returning of persons in a vulnerable position to Italy be restricted. When the local authorities acknowledge that their resources are inadequate, the state making a decision on refusal of entry should carefully consider its decisions and assess the relevant persons' vulnerable position and risk of becoming re-victimised in human trafficking.

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<sup>32</sup> Zimmerman et al. (2003 and 2006).

In its decisions, the Immigration Services also stated that it is aware of the criticism against reception conditions in Greece. Severe criticism has been expressed for example by the United Nations refugee organisation UNHCR and the Council of Europe Commissioner for Human Rights, Thomas Hammarberg. The UNHCR has advised Governments to refrain from returning asylum seekers to Greece and to make use of Article 3(2) of the Dublin Regulation, allowing States to examine an asylum application lodged even if such examination is not its responsibility under the criteria laid down in this Regulation.<sup>33</sup> According to the UNHCR, this is the only way to implement the Member State's obligation to ensure access to fair and effective asylum procedures. UNHCR has stated that the conditions in the reception units of Greece and the country's coping with the asylum seekers' basic needs do not comply with the standard required by law. Commissioner for Human Rights Hammarberg has also highlighted problems in the reception conditions in Greece.<sup>34</sup> Mr. Hammarberg focused attention on such issues as the delays in receiving asylum applications, which have resulted in the reception of applications being suspended. Hammarberg has also pointed out inadequacies in interpretation and legal advice services offered to the applicants. In several of its judgments, the European Court of Human Rights has suspended returns to Italy, Greece, and Malta.

In its decisions, the Immigration Service responded to criticism of reception conditions in Greece by reporting on its fact-finding visit and stating that it returns no persons in a vulnerable position to Greece under the Dublin Regulation. In the cases analysed by the National Rapporteur on Trafficking in Human Beings, it turned out that the applications examined in Finland concerned applicants who had a Eurodac registration completed in Greece. In these three cases, the manner in which the authorities dealt with the case enabled the identification and assistance of victims.

### ***5.3.3. Examination of a child's best interest in the cases***

The Council of Europe Convention on Action against Trafficking in Human Beings (Article 5) and the Recommendations of the UN High Commissioner for Human Rights also impose a duty to take the child's best interest into account in all action against trafficking in human beings (Principle 10). This requirement is in line with the UN Convention on the Rights of the Child ratified by Finland under Article 3(1), under which in all actions

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33 UNHCR, Position on the return of asylum-seekers to Greece under the "Dublin regulation", 15 April 2008.

34 Commissioner for Human Rights, Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Greece on 8-10 December 2008 (CommDH(2009)6).

concerning children taken by administrative authorities, the best interests of the child shall be a primary consideration. This means active measures, as no single definition of the best interest of the child exists, and the interests of the child should be determined separately in each individual case. The best interests determination must be documented in preparation of any decisions.<sup>35</sup>

In Finnish national legislation, both the Aliens Act and the Child Welfare Act (417/2007) contain provisions on the best interest of the child. Under the Aliens Act (section 6), in any issues that concern a child under eighteen years of age, special attention shall be paid to the best interest of the child and to circumstances related to the child's development and health. While the national legislation does not contain a conclusive definition of the child's best interest, either, under section 4 of the Child Welfare Act, in any assessment of the child's best interest, attention should be focused on establishing how the alternative measures will secure the child's balanced development and welfare, on the possibility of receiving understanding and affection as well as supervision and care determined by their age and level of development, and on his or her physical and psychological integrity. In order to ensure the implementation of the child's best interest, under section 26 of the Integration Act, a representative can be appointed for a minor asylum seeker who is in Finland without a guardian or other legal representative. An unaccompanied minor who is a victim of trafficking must always be appointed a representative immediately. This representative must be present in the asylum processing and during interviews conducted by the police and the Immigration Service.

Under Article 6 of the Dublin Regulation (343/2003/EC), where the applicant for asylum is an unaccompanied minor, the Member State responsible for examining the application shall be that where a member of his or her family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application shall be that where the minor has lodged his or her application for asylum. It is important to note, however, that although the Dublin Regulation makes it possible to return a minor to another Member State, it does not eliminate the requirements in international obligations and national legislation to assess the best interest of the child in all action taken by the administrative authorities. The Council of Europe Convention additionally specifies that in potential cases of trafficking in human beings, an assessment of the child's best interest requires a risk assessment also in situations where a minor could be returned to his or her country of origin

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35 The Committee on the Rights of the Child, General Comment No. 6 (2005).

or a third country. If the return is not in the best interest of the child, the states should refrain from returning him or her. The convention also states that 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 (Articles 16 and 10).

In the fifteen cases analysed by the National Rapporteur on Trafficking in Human Beings, the applicant said he or she was a minor. In many cases, Eurodac hits revealed that the applicant had previously been registered as an adult in Greece or Italy. The applicants justified these discrepancies by reporting that the smugglers had advised them to lie about their age. The applicants had done this because they thought that as adults it would be easier for them to find jobs. The analysis also included cases where the applicant had already been registered as a minor in Greece or Italy, and his or her story was not questioned in this respect. In the majority of the cases, the Immigration Service decided that as the applicant had already been registered in the Eurodac system as an adult, he or she could be regarded as an adult.

The potential problems inherent in the Dublin procedure also came to light in those decisions to refuse entry where the Immigration Service took the discrepancies associated with the applicant's age determination into consideration. The decisions to refuse entry were justified by stating that even if the applicant were a minor, under Article 6 of the Dublin Regulation, the Member State in which the minor has lodged his or her asylum application is responsible for processing the asylum application of a minor.

On the other hand, in cases where the Immigration Service considered that the applicant was a minor, the determination process of the child's best interest was not documented in great detail in the decisions to refuse entry. If the Immigration Service referred to the implementation of the child's best interest in its decisions at all, the child's best interest was described as having access to the asylum procedure and having his or her asylum issues appropriately resolved. This referred to refusing entry to the applicant and examining the asylum issue in Italy or Greece. This examination, however, seemed to contradict the applicants' reports indicating that their asylum procedures had not progressed in these countries, or that due to inadequate reception conditions, they were forced to live on the street, where they were at risk from violence and exploitation.

It thus appears that in the Dublin procedure cases analysed by the National Rapporteur on Trafficking in Human Beings, the best interest of the child had not been appropriately taken into consideration. The process of deter-

mining the child's best interest was not adequately documented in the decisions to refuse entry, and this and the outcome of the process suggest that neither was this determination completed as required by international commitments and national legislation. In addition, in only one case did the documents show that a representative had been appointed for a minor asylum seeker. Similar issues emerge in the report, 'The best interests of the child in asylum and refugee procedures in Finland', drawn up in the Office of the Ombudsman for Minorities.<sup>36</sup>

The observations made by the Rapporteur based on the documentation give rise to concern over the implementation of the rights of minor asylum seekers, but from the perspective of implementing the rights of human trafficking victims, the situation is even more serious. Taking in consideration the serious violence and aggravated exploitation reported by minor asylum seekers in the cases analysed by the Rapporteur, in the Rapporteur's opinion, the current procedure is not adequate to guarantee that the best interest of the child is appropriately determined.

#### **5.4. Conclusions and recommendations: refusal of entry procedures**

The National Rapporteur on Trafficking in Human Beings considers it important that potential victimisation in human trafficking would be examined in connection with the refusal of entry procedures and the relevant persons' needs for legal aid and safeguarding of their rights as victims of human trafficking would be taken into consideration. As the Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings notes, the rights secured for victims of trafficking in human beings would be purely theoretical and illusory, if such people were removed from the country before identification as victims is possible (section 131). The UN High Commissioner for Human Rights also stresses in the Guidelines on Human Rights and Human Trafficking that a failure to identify a trafficked person correctly is likely to result in further denial of that person's rights. States are therefore under an obligation to ensure that such identification can and does take place (Guideline 2). The judgment of the European Court of Human Rights in the case, *Rantsev v. Cyprus and Russia*, Cyprus as a country of destination for human trafficking was sentenced for a violation of human rights, as it had failed to investigate the circumstances having led to the death of a potential victim of human trafficking and had illegally taken her into custody. Referral to the system for victim assistance, granting a reflection period and providing adequate

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<sup>36</sup> Parsons (2010).

and expert legal aid to potential victims of human trafficking is the first step towards an outcome that safeguards the rights of a victim of human trafficking.

A precondition for action against human trafficking based on international commitments and national Plans of Action against Trafficking in Human Beings as well as legislation is identifying victims and securing their rights in all procedures of the authorities, including the Dublin procedure. To enable the identification of victims of human trafficking and to safeguard the implementation of the victims' rights, the National Rapporteur on Trafficking in Human Beings recommends that the Immigration Service, as a rule, refrains from refusing entry to victims of human trafficking in Dublin cases and starts examining their asylum applications under Article 3(2) of the Dublin Regulation. The Rapporteur stresses that under the Qualification Directive, minors must always be considered as persons in a vulnerable position with special needs. If the age of an asylum seeker is uncertain and there is cause to believe that he or she is a minor, he or she should be treated as a minor and a representative should be appointed for him or her. Victims of human trafficking must always be referred to the system for victim assistance. At this stage, verified information on victimisation in human trafficking is not yet required, and indications of human trafficking should be sufficient to have the person in question referred to the system for victim assistance. To enable victim identification and to safeguard the implementation of victims' rights, the National Rapporteur on Trafficking in Human Beings issues the following recommendations:

1. Potential victims of human trafficking encountered in prostitution, including massage parlours, striptease joints and similar, would not be refused entry on any grounds of the Aliens Act before individually and with adequate accuracy establishing that the case does not involve human trafficking. Potential victims of human trafficking would be informed in writing of their rights, including inclusion in the system for victim assistance, a reflection period, and the possibility of being issued with a residence permit, as well as the right to an assistant.
2. In so-called Dublin cases, the authorities would as a rule refrain from refusals of entry in cases where indicators of human trafficking are found. The asylum applications of these persons would be examined under Article 3(2) of the Dublin Regulation. This would particularly apply to minor victims of human trafficking.
3. Victims of human trafficking identified in the so-called Dublin procedure would be referred to the system for victim assistance, regard-

less of whether or not it is possible to initiate a pre-trial investigation in the case. An assistant should be appointed for the victims, and the assistant should be given the genuine possibility to be present when the victim is interviewed and questioned.

4. If the age of an asylum seeker is uncertain and there is cause to believe that he or she is a minor, he or she should be treated as a minor.

## **6. Criminal procedure and the application and interpretation of statutory definitions of human trafficking**

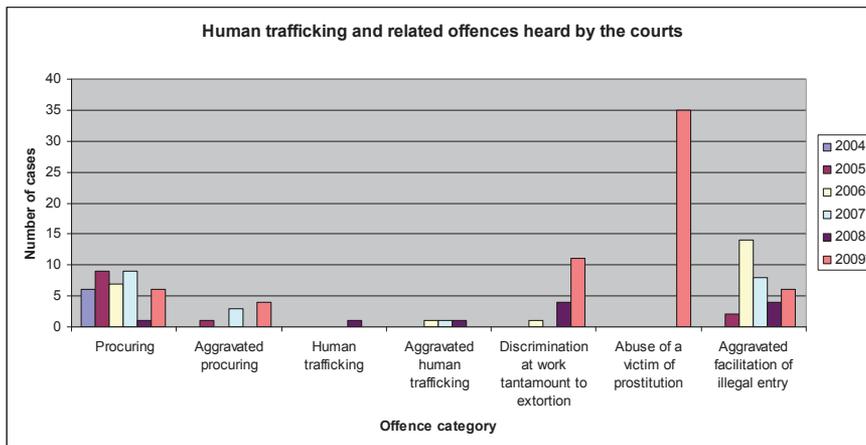
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### **6.1. Introduction**

The analysis of the criminal procedure and application and interpretation of statutory definitions in the first report by the Rapporteur is based on cases that were heard by courts as human trafficking by the end of 2009 as well as cases involving procuring, aggravated procuring, and discrimination at work tantamount to extortion. Some of the decisions in the material are legally valid, some are not, and a small portion of the cases go back to the period before the penal provisions on human trafficking came into force. In addition to court decisions, the National Rapporteur on Trafficking in Human Beings requested from the pre-trial investigation authorities for pre-trial investigation records concerning those cases of procuring and human trafficking as well as discrimination at work tantamount to extortion on which additional information was required. As few cases concerning human trafficking for the purposes of labour exploitation have so far been subject to pre-trial investigations and court hearings, the Rapporteur has seen it necessary to complement the material with other sources of information, such as other printed material and a wide round of hearings. The National Rapporteur on Trafficking in Human Beings also felt it was necessary to examine, within the limits of her competence, the application and interpretation of the penal provisions on abusing a victim of prostitution.

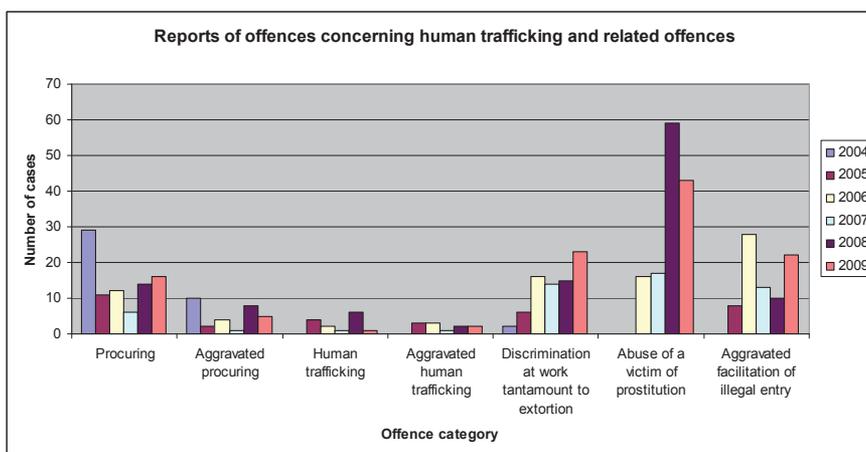
By the end of 2009, only four cases had progressed to the courts as human trafficking, even though human trafficking had been one of the offence categories in a larger number of cases in the pre-trial investigation phase. Three of the cases concerned human trafficking with the purpose of sexual exploitation, and one case concerned human trafficking for the purposes of labour. As this report was being prepared, the defendants were sentenced for human trafficking in three cases. In one of these cases, the court considered that the definition of human trafficking had only been met regarding one injured party. All decisions have become legally valid. A considerably greater number of sentences have been passed for offences related to human trafficking, and the victims of these offences number many times that of identified victims of human trafficking. The Steering Group of the Plan of Action against Trafficking in Human Beings noted in its report published in 2008 that in 2006, 17 victims of human trafficking offences and 207 victims of offences related to human trafficking had been identi-

fied.<sup>37</sup> Offences related to human trafficking include aggravated procuring, discrimination at work tantamount to extortion, and aggravated facilitation of illegal entry.



\* Data from 1 Jan–18 Dec 2009. Data on the offence category of abuse of a victim of prostitution is from 1 Jan–31 Dec 2009. (Cases in this offence category have also been heard in 2007 and 2008.)

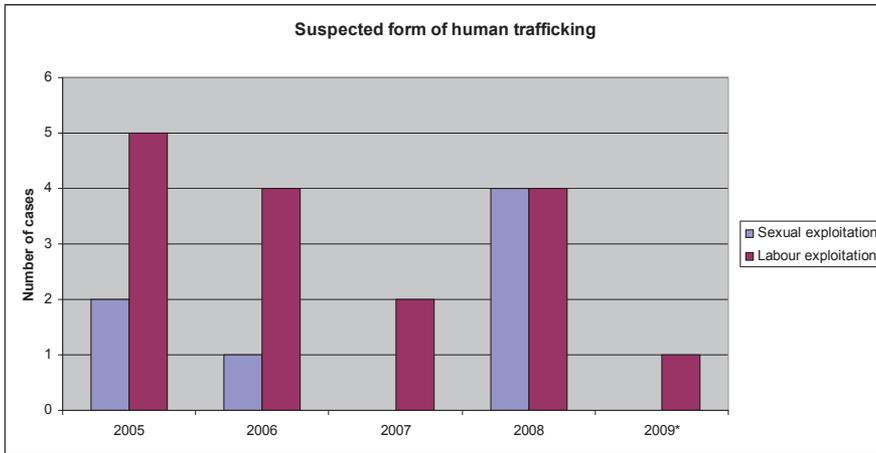
Source: Ministry of Justice



\* Data from 1 Jan–15 Dec 2009, except for the offence category of abuse of a victim of prostitution, where the data is from 1 Jan–31 Dec 2009.

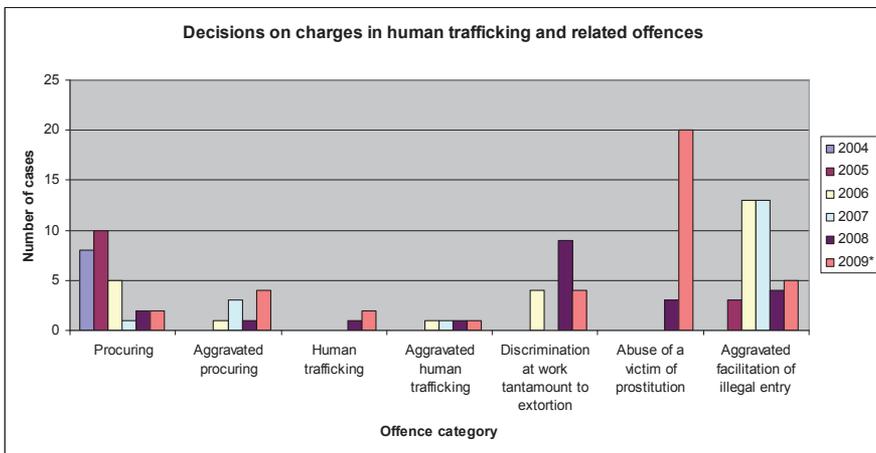
Source: National Bureau of Investigation

<sup>37</sup> Ministry of Labour, *Invisible victims: Steering Group proposal for a Revised Plan of Action against Trafficking in Human Beings* (2007), p. 8.



\* Data from 1 Jan–30 Oct 2009.

Source: National Bureau of Investigation



\* Data from 1 Jan–6.Oct 2009, except for the offence category of abuse of a victim of prostitution, where the data is from 1 Jan–31 Dec 2009.

Source: Finnish Prosecution Service

Based on her material, the National Rapporteur on Trafficking in Human Beings finds it unlikely that human trafficking would be such a marginal phenomenon in Finland as the number of pre-trial investigations, decisions on charges, and court decisions would indicate, especially as the number of investigations, prosecutions, and sentences in offences related to human trafficking is considerably higher. It is likely that the authorities are not yet

able to fully identify human trafficking and separate it from related offences such as procuring and discrimination at work tantamount to extortion. The obscurity of the penal provisions on human trafficking and statutory definitions overlapping with those of offences related to human trafficking may partly explain why so few cases have been heard by courts as human trafficking. The small number may partly also be explained by restricted ideas of human trafficking and a lack of knowledge of what human trafficking refers to under international conventions.

For victims of human trafficking, it is not without significance whether they are identified as victims of human trafficking or one of the related offences. Persons believed to be victims of human trafficking are entitled to the services of the system for victim assistance and other special support measures during the pre-trial investigation and criminal procedure<sup>38</sup>, and it is possible for them to apply for a special reflection period and residence permit under the Aliens Act. This identification is even more significant for a person who has been sexually exploited than for a victim of labour exploitation, as the subjects of procuring in the current practice have the position of witness in the pre-trial investigation and criminal procedure, whereas victims of human trafficking are in the position of an interested party. The victims of labour exploitation are interested parties regardless of whether their cases are heard as discrimination at work tantamount to extortion or human trafficking for the purposes of labour. The National Rapporteur on Trafficking in Human Beings considers this practice of putting victims into different positions to be discriminatory.

The interpretation given by the courts to human trafficking indirectly affects the way in which the pre-trial investigation authorities and other parties working with trafficking in human beings define human trafficking and whom they identify as a victim of trafficking. Court decisions affect the way in which the authorities identify victims of human trafficking and under what offence categories the cases are investigated and prosecuted. By their decisions, the courts also have an influence on who is entitled to the services of the system for victim assistance intended for victims of human trafficking, reflection periods, and residence permits. The Rapporteur emphasises that the implementation of the rights of human trafficking victims has strong links to how the courts apply and interpret the penal provisions on human trafficking and their relation to offences related to human trafficking.

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<sup>38</sup> Chapter, 2 sections 1a and 3 of the Criminal Procedure Act (689/1997), .

The intention of this section of the report is to look at the picture of human trafficking and related phenomena given by court decisions already issued in Finland. It also intends to evaluate how well indications of human trafficking are identified in pre-trial investigations and court hearings and what legal meanings are attributed to penal provisions on human trafficking in these procedures. The activities of prosecutors and decisions made in connection with consideration of charges will be evaluated in future reports by the National Rapporteur on Trafficking in Human Beings.

The purpose of this analysis of pre-trial investigations and court hearings is to trace and evaluate the most central challenges of the criminal procedure and to issue recommendations to central actors, such as the legislator, pre-trial investigation authorities, prosecutors, and judges in order to promote action against human trafficking and to improve the victims' rights and position. In her first report, the National Rapporteur on Trafficking in Human Beings focuses on human trafficking with the intention of sexual exploitation where Finland is the country of destination for this type of exploitation.

## **6.2. Human trafficking for the purposes of sexual exploitation and procuring**

### ***6.2.1. Cases heard by the courts as human trafficking***

As a consequence of the adoption of the UN Protocol on Trafficking in Persons and the European Union Council Framework Decision on combating trafficking in human beings, specific provisions on trafficking in human beings were added to the Criminal Code. Formulating a joint definition of human trafficking can be considered the most central achievement of the UN Protocol on Trafficking in Persons. The definition included in the Framework Decision is based on the one in the UN Protocol against Trafficking in Persons, which has also been adopted as the basis for the Council of Europe Convention on Action against Trafficking in Human Beings. The Finnish penal provisions on human trafficking came into force in August 2004. Under chapter 25, section 3, a person who

- (1) by abusing the dependent status or vulnerable state of another person,
- (2) by deceiving another person or by abusing a mistake made by that person,
- (3) by paying remuneration to a person who has control over another person, or

(4) by accepting such remuneration, takes control over another person, recruits, transfers, transports, receives, or harbours another person for purposes of sexual abuse referred to in chapter 20, section 9, subsection 1(1) or comparable sexual abuse, forced labour or other demeaning circumstances or removal of bodily organs or tissues for financial benefit shall be sentenced for *trafficking in human beings* to imprisonment for at least four months and at most six years.

Also a person who takes control over another person under 18 years of age or recruits, transfers, transports, receives or harbours that person for purposes mentioned in subsection 1 shall be sentenced for trafficking in human beings even if none of the means referred to in subsection 1(1) – (4) have been used.

An attempt is punishable.

Under the same chapter, section 3 a of the Criminal Code if, in trafficking in human beings, (1) violence, threats or deceitfulness is used instead of or in addition to the means referred to in section 3, (2) grievous bodily harm, a serious illness, or a state of mortal danger or comparable particularly grave suffering is intentionally or through gross negligence inflicted on another person, (3) the offence has been committed against a child younger than 18 years of age or against a person whose capacity to defend himself or herself has been substantially diminished, or (4) the offence has been committed within the framework of a criminal organisation referred to in chapter 17, section 1a, subsection 4, and the offence is aggravated also when considering as a whole, the offender shall be sentenced for *aggravated trafficking in human beings* to imprisonment for at least two years and at most ten years. Also a person who enslaves or keeps another person in servitude, transports or trades in slaves shall be sentenced for aggravated trafficking in human beings if the act is aggravated when assessed as a whole. An attempt of aggravated trafficking in human beings is punishable.

In July 2006, the Helsinki District Court passed the first sentence for human trafficking in Finnish history.<sup>39</sup> In this case, the members of an Estonian-Finnish criminal organisation were accused of compelling an Estonian woman to engage in prostitution in a manner that was considered to meet the statutory definition for an aggravated human trafficking offence. By threatening her with fines and a debt that she had already gotten into, the woman had been forced to travel to Finland, where she had been locked up in a flat in Helsinki and directed to engage in prostitution. The wom-

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<sup>39</sup> Helsinki District Court R 06/5204, 20.7.2006.

an received three to fifteen customers a day, but was not allowed to keep any of the money paid by the customers. The members of the criminal organisation threatened the woman with violence if she refused to work as a prostitute. The woman's vulnerability was increased by her inability to speak Finnish. One of the defendants promised to marry the woman if she "worked" well. Fearing detection, the defendants sent the woman back to Estonia via Sweden, and she was warned by threats not to tell anyone about what had happened. The woman has subsequently suffered from mental health problems.

According to the District Court, the statutory definition of trafficking in human beings was fulfilled when the defendants deceitfully persuaded the woman to become a prostitute by promising her a job as a child-minder in Finland. The criterion of a vulnerable state was considered to have been met, as the woman was mentally disabled. The criterion of dependent status was met in the form of threats concerning the debt. The act was considered aggravated, as its subject was a person whose capacity to defend herself was substantially diminished, and because threats of violence and deceitfulness had been used in the act.

The total number of injured parties in the case was 14 women, but the District Court considered that regarding the other injured parties, the defendants had been guilty of aggravated procuring. The court acknowledged that these women, too, were in a vulnerable state, but it did not consider their relationship with the defendants dependent to the extent that the violations of their right of self-determination would have constituted an offence of human trafficking. In its statement of reasons, the court referred to Report LaVM 4/2004 of the parliamentary Legal Affairs Committee, which urges the courts to interpret the open concepts of dependent status and vulnerable state in the statutory definition in a restricted sense and considers that in human trafficking, the subject's status of dependence on the perpetrator is more intensive and extensive than in procuring. In its statement of reasons, the District Court said:

"[a]ll injured parties reported that working hours were imposed on the women, their movements outside were restricted, and goals were set for their work. Compliance with the rules was supervised, and fines were imposed for violations of the rules. At least [some of the women] were threatened with violence. As all injured parties who reported that fines had been imposed on them also said they had paid these fines at least in part, it was not proven that a financial dependence had in this way been created between the injured parties and

the defendants. Excluding X [the disabled woman], it was not proven that threats of violence by the defendants rendered the injured parties to a vulnerable state referred to in the above-mentioned preliminary work.”

The court considered relevant the fact that the other women had engaged in prostitution voluntarily, or at least had understood that they would have to offer “intimate services”. The court also attributed significance to the fact that the women had earned money by prostitution. Threats of violence against the women or their family members, binding them by debt and considerable restrictions of their freedom of movement did not alter the District Court’s interpretation of the relationship between procuring and human trafficking. The District Court strived to distinguish between procuring and human trafficking by stating that the majority of the women had followed the perpetrators voluntarily and had given their consent to working as prostitutes. The District Court considered the original voluntariness significant, despite the fact that some of the women had openly reported threats of violence against them and their family members, which could even fulfil the definition of aggravated human trafficking. The District Court stated:

”[o]f the injured parties, A, B, C, D, and E reported that they had come to Finland on a voluntary basis to work as prostitutes and to earn money in these activities. F said she had come to engage in an escort service, which she understood also involved offering intimate services, and G consented to working as a prostitute while she was in Finland.

”[w]hen F had no customers, Y was angry and threatened to slash F’s face with a razor blade, beat her up, and burn her hair.”

For one injured party, the District Court also stated:

”In Finland, A had been told that they were not allowed to leave the flats without permission ... If they did leave the flat without permission, fines were imposed on them, and A had been ordered to pay a fine. They could not visit the corner shop without permission. In addition to a fine, A was also threatened by Y’s friends who were coming to beat her up. She had also received threats of having her face slashed, and her family had been threatened ... In addition, A was told that the weekly fee she had to pay was EUR 200, but the payment was unilaterally increased to EUR 500. Originally, A came to Finland for two months. After this period, however, she was not

allowed to stop working as a prostitute.”

The National Rapporteur on Trafficking in Human Beings considers that the District Court did not adequately examine the conditions in which the women were selling sexual services. The focus on voluntariness at the recruitment stage could also be seen in the pre-trial investigation, in which the committing of a human trafficking offence was only investigated in case of one injured party, a disabled woman who had been deceitfully compelled to engage in prostitution by promising her a job as a child-minder. The other women who were injured parties in the court were heard as witnesses in the pre-trial investigation. As a result of this procedure, it appeared that attention was only paid to violations of the rights of the disabled woman, who was an injured party. The restrictions of freedom of movement, fines, and threats of violence reported by the other women were treated as evidence of a procuring offence rather than violations of an individual’s rights or indications of their dependent status as to the defendants. The prosecutor, on the other hand, had decided to bring charges of human trafficking against the defendants for all of the women. The same tendency to “lump together” the injured parties’ stories also continued in the Court of Appeal, where the restrictions of freedom of movement, fines, and threats of violence were understood as rules associated with procuring.<sup>40</sup> The Court of Appeal, too, paid attention to the restrictions of movement, fines, and threats of violence, but did not find it necessary to review the District Court’s interpretation in this respect. In its statement of reasons, the Court of Appeal stated:

”When determining the length of the sentence for aggravated procuring activities, on the other hand, the fact that this did not involve international organised crime must be taken into consideration. Stringent rules on the working hours had been imposed on the prostitutes who took part in the procuring activities, and they were prohibited from leaving the flat without permission. The prostitutes were controlled by telephone calls and visits to the flat. The prostitutes had been threatened with violence and fines imposed for violations of the rules.”<sup>41</sup>

The line drawn between penal provisions on procuring and human trafficking also seems to be significant in compensation orders. One of the injured parties, in whose case the District Court decided to sentence the defend-

<sup>40</sup> Helsinki Court of Appeal R 06/2317, 1.3.2007.

<sup>41</sup> The Court of Appeal made for example the following observation: “[b]ecause F had gone out to party, which was against the rules, she had been moved to the Tampereentie flat in Hämeenlinna, and W had imposed a fine of EUR 500 on her. During the car journey, W had also threatened to ‘throw her into the electrical wires’ if she reoffended.”

ants for aggravated procuring, claimed compensation from her procurers in court. The District Court rejected the claim, as the charge of aggravated human trafficking had been rejected. The District Court stated that a witness of a procuring offence was not entitled to compensation based on the offence. According to Government proposal 167/2003, procuring may in individual cases constitute such substantial violations of a person's right of sexual self-determination that this would entitle the injured party to compensation for her suffering under the provision. In this case, however, the circumstances must make the violation of sexual self-determination evident.

In the second case related to sexual exploitation in summer 2008, three Finnish men and two women, who had subjected a young Finnish woman to sexual abuse or other demeaning circumstances as referred to in the provision on trafficking in human beings, were sentenced for aggravated trafficking in human beings.<sup>42</sup> The entire chain of events was based on a fabricated snitching debt, which the defendants forced the injured party to pay them by selling sexual services. In addition, the defendants forced the injured party to give them her savings, take fast loans, order goods from on-line stores and take Internet and telephone subscriptions. The defendants took possession of the injured party's personal property, for example, the keys to her flat, her bus ticket, and her telephone. The injured party's movements were watched, she was locked up in a basement, she received death threats, she was repeatedly subjected to serious violence, and finally, she was forced to sell sexual services to get money. The District Court considered that by means of restricting her freedom of movement, the debt, threat of violence, and violence, the defendants had put the injured party in a position where she no longer had other options than to submit to all types of abuse. In its assessment of the means used in the case, the District Court stated:

”When threatened by violence, she [the injured party] attempted to minimise her injuries by making choices that were not based on voluntariness and free will. She dared not run away or refuse to sell sexual services. Only fear of death gave her the incentive to seek help, accompanied by a person who had intended to buy sex [...]. The [defendants] were aware of her lack of options, dependent status, and vulnerable state, and they used it for their own and other persons' financial benefit.”

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<sup>42</sup> Kotka District Court R 08/1069, 9.12.2008. The District Court assessed the offence as aggravated, as violence and threats had been used in it. Considering the deprivation of personal liberty, threats and seriousness of the violence, the act was aggravated also when considered as a whole.

Regarding the manner of committing the offence, the District Court considered that the criterion of taking control had been met, because in addition to deprivation of personal liberty, the injured party was also considered to have been subjected to the control of the persons who had deprived her of her liberty. This condition was seen as having been met, because the injured party had been deprived of her personal liberty, her property had been stolen, and she could not influence the terms and circumstances of selling sexual services or the duration of these activities. According to the District Court, the purpose of the act met the criteria of both sexual abuse and demeaning circumstances. According to the District Court, the injured party had been, by means of deprivation of her personal liberty, the threat of violence, and violence, compelled to have sexual intercourse or to perform a sexual act, where she had to hand over all the money gained from these activities to the defendants. The District Court also found that the injured party had been put in demeaning circumstances in order to pay off a snitching debt, or in a position where the only possibility of paying the debt was through criminal means and finally selling sexual services. The District Court also considered that the snitching debt, which it compared to a drug debt, had no legal basis whatsoever. Even if no legal protection is afforded to a drug debt, according to the District Court it is different in that the debtor has received something in return for the debt, the drugs. The District Court commented on the drug use of the defendants and the injured parties by stating that drug users cannot be regarded as having “rules of their own”, and they, too, have the right to live their lives with human dignity. The Court of Appeal did not alter the decision issued by the District Court.

The third court case associated with sexual exploitation concerned an Estonian woman who had been brought to Finland to work as a prostitute.<sup>43</sup> The defendants, two Estonian men, had persuaded the woman to come to Helsinki, where she had worked as a prostitute. The defendants and the injured party disagreed about whether prostitution had been referred to in the recruitment stage: the injured party denied having known about the prostitution, whereas the defendants claimed the injured party knew that the purpose of the journey was to earn money through prostitution. When the injured party, after arriving in Finland, found out that the purpose of her journey was to engage in prostitution, she no longer dared to refuse, as she was afraid that the defendants would leave her in Helsinki alone, without money, and unable to speak Finnish. The defendants had also persuaded the injured party to continue in prostitution by telling her about the possibility of going to Sweden to work in a different sector, once she had

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43 Helsinki Court of Appeal R 08/10613, 28.11.2008.

first made enough money in prostitution. The money earned by the injured party alone in prostitution had been shared between the defendants and the injured party. After staying in Helsinki for two weeks, the defendants had left Finland without informing the injured party. In order to make a living and to pay for the hotel room, the injured party had continued working as a prostitute for approximately one week before she was caught by the police.

In its judgment, the District Court considered that the defendants were only guilty of procuring. When assessing the case, however, the District Court confused the means and the manner of committing a human trafficking offence. Consequently, it required in its decision the fulfilment of two different means, or exploitation of a dependent status and vulnerable state as well as deception, and failed to look at the manner of committing the offence defined in the Criminal Code, or taking control of another person, recruiting, transferring, transporting, receiving, and harbouring. The District Court found that the injured party had known about prostitution when she arrived in Finland, and the criteria of deception concerning the nature of the work in Finland was not fulfilled. The District Court pointed out, however, that the deception does not need to concern the quality of work. This is why it examined the promises of moving on to Sweden made by the defendants and considered that they had deceived the injured party to the extent that the injured party had been persuaded to continue in prostitution by making deceitful promises to her. The District Court considered this exploitation of deception as tempting, by means of which the defendants persuaded the injured party to continue in prostitution, and took this into account as a matter that increased the sentence for the procuring offence. In this connection, the National Rapporteur on Trafficking in Human Beings would like to point out that under the penal provision on human trafficking, abusing a mistake made by another person also meets the criteria for the means required in this provision.

The District Court further assessed the injured party's dependent status on the defendants by focusing attention on the fact that her freedom of mobility had not been restricted, nor did she have to comply with all the requests of the customers. As to the injured party's vulnerable state, the District Court examined it based on her intellectual capacity. As the injured party had taken the matriculation examination, knew at least some English, and had been able to set up Web pages, according to the District Court the injured party was not helpless in a sense that left her no option to act differently. The injured party's story and witness accounts would, however, have also made it possible to look at the dependent status or vulnerable state from another perspective. According to Government proposal 34/2004, the

dependent status may be caused by family relationships. The injured party had previously had a relationship with one of the defendants. The National Rapporteur for Trafficking in Human Beings points out that, based on international experience, the so-called “lover boy” recruitment method is frequently used in human trafficking. An intimate relationship entices the victim to trust the exploiter. The victim is not prepared for the idea of the person he or she loves trying to exploit him or her. When the victim understands he or she has been deceived, the trauma caused by the betrayal may be deep. Leaving this type of exploitation may also be more difficult because of the relationship between the victim and the perpetrator.

According to Government proposal 34/2004, the vulnerable state may refer to the victim’s age, characteristics, financial, social, or psychological situation or previous experiences, which may expose him or her to exploitation by the perpetrator. When assessing the injured party’s vulnerable state, however, the District Court failed to pay attention to the assessments of psychiatrists heard as experts in court, according to which the injured party was exposed to exploitation because of her development and previous experiences. Exploitation of the injured party’s vulnerable state was also indicated by the fact that even before her arrival in Finland, the defendants had rendered the injured party to a poor financial situation. On request of one of the defendants, the injured party had taken fast loans, which the defendant had failed to pay back to the injured party. Because of her psychological characteristics and experiences of exploitation, the injured party was also unable to leave prostitution after the defendants had left Finland. The police officer heard as a witness in court reported that the injured party could not have left prostitution on her own initiative, as she was trapped in her situation. The hearings of those accused of the offence of abuse of a victim of prostitution also supported the idea that the injured party was not happy to work in prostitution. They described the injured party as passive, absent, and reserved, thus differing from women who usually sell sexual services. In some of those heard, the injured party’s behaviour had raised suspicions of whether the injured party was involved in prostitution on a voluntary basis. In its decision, the District Court attributed significant importance to whether the injured party had understood that the purpose of the journey was to come and sell sexual services in Finland.

The prosecutor appealed the District Court decision to the Court of Appeal, which finally sentenced the defendants for trafficking in human beings.<sup>44</sup> In its decision, the Court of Appeal dissociates itself from the original voluntariness (awareness of the nature of the work) and its significance when

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44 Helsinki District Court R 06/385, 29.12.2009.

applying and interpreting the penal provisions on trafficking in human beings. The Court of Appeal looks at all the contributing factors to the human trafficking offence separately: acts, manners, and means. In its decision, the Court of Appeal considers that the defendants had recruited or tempted the injured party to engage in an activity, the purpose of which was to compel her to have sexual intercourse for money. The Court of Appeal considers that another manner of committing an offence of human trafficking, or harbouring, was also fulfilled, as the defendant had reserved hotel rooms and flats for the purpose of accommodation, in which the injured party had also received customers and sold sexual services to them.

Regarding the means, the Court of Appeal found that the defendants had subjected the injured party to sexual abuse by using her vulnerable state and dependent status. The criteria for vulnerable state and dependent status were met in the means, because the injured party was, due to her lack of language skills and safety network (no support persons), her indebtedness and the resulting poor financial standing, and psychological properties so helpless that she had no other real and actual option than to submit to continuing the selling of sexual services. In its decision, the Court of Appeal also notes that the defendants must have observed a particular vulnerability to exploitation in the injured party, and their act was thus intentional. The Court of Appeal considers relevant the fact that the injured party was easily led and guided (indebtedness), the injured party did not have adequate linguistic skills to make her way around the city, she did not feel she could return to Estonia after her family members had heard about her engagement in prostitution, and after the defendants left Finland, she had been forced by the circumstances to continue in prostitution to be able to make a living. Finally, the injured party was in a mental state that made it impossible for her to leave prostitution on her own initiative. The Court of Appeal accepted the injured party's claim for compensation, as it considered that the injured party's post-traumatic stress reaction was caused by the prostitution in which the defendants had compelled the injured party to engage.

The National Rapporteur on Trafficking in Human Beings considers that the interpretation of the Court of Appeal, rather than that of the District Court, is in line with the human trafficking instruments under international and European law and the definitions of human trafficking contained in them. The decision of the Court of Appeal illuminates the meaning of the difficult-to-apply concepts of vulnerable state and dependent status in a manner that broadens the relatively restricted idea of trafficking in human beings and a victim of human trafficking prevalent in Finland. In its decision and statement of reasons, the Court of Appeal distances itself from

the relevance of original voluntariness and pays attention to the experiences and individual characteristics of the person subjected to sexual abuse, which may make him or her vulnerable to exploitation and make it difficult or impossible for the victim to leave the exploitative situation. The court cites certain factors that indicate helplessness, which also makes this decision a significant standard for the future application and interpretations of the provisions on trafficking in human beings. The Court of Appeal reinforces the perpetrators' responsibility for their actions, and refocuses attention away from the victim's possible motives, original voluntariness, sufficient resistance, or unawareness of the nature of the work promised to him or her in the country of destination. Based on this decision by the Court of Appeal, the case may also constitute trafficking in human beings when the perpetrators have not resorted to the most extreme means of committing human trafficking, such as coercion by violence or deceitfulness. The National Rapporteur in Trafficking in Human Beings welcomes this development.

### ***6.2.2. Indications of human trafficking in the material on procuring cases***

As the number of cases heard as human trafficking is small, the National Rapporteur on Trafficking in Human Beings also found it necessary to establish whether other procuring cases in which pre-trial investigations were initiated in recent years contained indications of human trafficking. Between 1 January 2004 and 31 March 2009, District Courts have issued a total of 32 decisions in which the most serious part of the charges concerned procuring or aggravated procuring. The Rapporteur additionally chose to look at certain decisions issued after this period. Based on these procuring cases, the Rapporteur aimed to assess if the pre-trial authorities had identified indications of human trafficking in these cases, and how they responded to any indications that possibly emerged. At the same time, the Rapporteur strived in general to gather information on the state of prostitution and procuring activities involving foreigners known to the authorities and the conditions in which foreign prostitutes sell sexual services in Finland. The Rapporteur's investigation does not cover independent prostitution of Finnish women, for example, and it thus cannot be considered an all-inclusive report on prostitution in Finland.

The court decisions known to the National Rapporteur on Trafficking in Human Beings indicate that the majority of foreign prostitutes selling sexual services in Finland under a procurer are from Russia or Estonia. Accord-

ing to pre-trial investigation records, the procured prostitutes have often come to Finland voluntarily and knowing that they will be working as prostitutes in Finland. Many of them cite such reasons as a lack of money due to the serious illness of a friend or family member as the cause for engaging in prostitution. The prostitutes, who as a rule are women, have in most cases contacted their procurer through an acquaintance or an on-line advertisement. When in Finland, the prostitutes mainly live in a flat rented for them by the procurer, in which they also sell sexual services. The customers, or buyers of sexual services, usually contact the prostitutes through advertisements posted by the procurer on a website. The subjects of procuring rarely post their advertisements on the Internet themselves. The procurer imposes working hours on the prostitutes and agrees on the pricing of the services with the customers, and the prostitutes themselves usually cannot influence the price of their services. The prostitutes usually pay about one-third, or even one-half, of their earnings to the procurer. In addition, they often also pay a high rent for the flat arranged by the procurer.

The cases analysed by the Rapporteur show that the prostitutes are often obliged to pay a fixed rent and advertising fees to the procurers, even when they have not had a single customer. The procurers may collect weekly fees exceeding one thousand euros from the subjects of procuring, and when the number of customers is low, the prostitutes may become indebted to the procurers. In addition to binding the prostitutes in debt, the procurers may control the subjects of procuring by telephoning them daily to ask about customer numbers, or by visiting the flats without prior arrangement. The procurers or their assistants may also act as drivers for the prostitutes on “house calls” and wait outside the flat, hotel, or hotel room while the prostitute is with a customer. The procurers may control customer numbers and money transactions through telephone operators. The operators take the customers’ calls and guide them to the prostitutes. The operators keep a record of the customers, and the subjects of procuring must inform the operators when a customer has left and they are again “free” to receive the next one. The operators’ records show how many customers the prostitute has had and how much money she should be able to “account” for to her procurer.

In the cases analysed by the Rapporteur, controlling the prostitutes by threats of physical or sexual violence seems to be rather widespread. During the pre-trial investigation, the prostitutes may report that the procurers had threatened them or their family members. Sometimes they say they know that other women engaged in prostitution had received threats, or they had heard rumours of threats. Many subjects of procuring say in the

pre-trial investigation that they have heard rumours of the procurer's violent behaviour and that if necessary, he will send his "henchmen" after prostitutes who express a wish to leave prostitution. The material also contains cases where the procurer has threatened to report to the police women who are illegally resident in the country, or send his "messengers" to the prostitutes in case they were not able to pay their rent on time. On occasions, the procurers or their "agents" may take revenge for a failure to pay rent by burning the passports of the subjects of procurement to stop them from leaving the country before they have paid their debts.

In light of the analysis conducted by the National Rapporteur on Trafficking in Human Beings, it seems that rough measures are used in the procuring of foreign prostitutes known to the police, and the conditions of prostitution are often poor. Many subjects of procurement known to the police do not seem to have a genuine possibility of leaving the activities or the country, should they wish to do so. Regardless of this, the material indicates that limitations of the prostitutes' right of self-determination, threats of violence, or binding them in debt are interpreted as "rules" associated with procuring, to which the prostitutes have voluntarily consented when arriving in Finland. The threats of physical or sexual violence that emerged in the pre-trial investigations of cases analysed by the Rapporteur are not necessarily referred to again in the court hearing. In other words, circumstances known to the police that are essential in terms of human trafficking are often not heard in court.<sup>45</sup> Consequently, the conditions of procuring activities or the terms on which the subjects of procuring had been selling sexual services in Finland and the way in which these circumstances may have affected the prostitutes' possibilities to leave prostitution or protect themselves from sexual exploitation are not necessarily examined at all, or they are not examined carefully enough, at any stage of the criminal procedure.

In more recent cases, it appears that the authorities are increasingly better able to identify indications of human trafficking in pre-trial investigations and court hearings. Their identification seems to be limited to easily observable indicators, however, such as compelling a person to engage in prostitution or physical restrictions on the freedom of movement. The more discreet means of control still do not necessarily emerge in the pre-trial investigation, or if they do, they are ignored. It seems that the pre-trial authorities ask the right questions at times, but they are not necessarily able to

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<sup>45</sup> One of the problems in procuring offences is that the victims "disappear" and cannot be used as witnesses. Some procuring decisions involved dozens of prostitutes, but none of them could be persuaded to witness in court.

interpret the answers as indications of human trafficking or pose additional questions when necessary that could lead to a conclusion of human trafficking. In many cases, the financial and social position of the subjects of procuring is not assessed, nor the manner in which they arrived in Finland. Consequently, it remains unclear if the subjects of procuring are indebted to their procurers, or if the procurers have taken possession of the subjects' travel documents. It often also remains unclear whether the subjects of procuring have been afraid of their procurers and therefore consented to continuing in prostitution for longer than they originally intended. Instead of these questions, attention is usually focused on the original consent of the subject of procuring to working as a prostitute. Additionally, the way voluntariness is often interpreted is that if the subject of procuring has not been coerced into prostitution, he or she is selling sexual services on a fully voluntary basis

In other words, the identification of milder means used in human trafficking seems to remain a challenge. It appears that of the means referred to in the provision on human trafficking, in particular the one concerning abuse of another person's dependent status or vulnerable state has proven difficult to apply and interpret in practice. As already mentioned in this report, procurers may resort to many types of means that restrict the self-determination of the subjects of procuring. They may bind the prostitutes in debt by collecting considerable rent or daily and weekly fees for advertising, regardless whether or not the prostitutes have customers. By means of this debt, the procurers may keep the subjects in prostitution even when they would like to leave. The procurers may also unilaterally impose "working hours" on the prostitutes and determine the prices of the services. They may control the movements of the prostitutes and their activities through the telephone or using telephone operators. By restricting the prostitutes' freedom of movement and threats of physical and sexual violence, the procurers may create an atmosphere where the prostitutes rarely have any option other than accepting the "rules" imposed on them.

The analysis prepared by the National Rapporteur on Trafficking in Human Beings indicates that in procuring, it appears to be considered normal that the power relationships between the subjects and the procurer are imbalanced and that the prostitute has consented to taking part in the activities on the procurer's terms. In other words, even if several procuring cases showed that the physical or psychological self-determination of the prostitutes had been restricted in some way, no particular attention was paid to these restrictions in the pre-trial investigation or court hearing. The subjects of procuring are considered to have accepted the restrictions despite

the fact that the consent precepts in criminal law actually set rather stringent restrictions for an acceptable consent of the victim. To be legally valid, consent must be sufficiently precise and given voluntarily and in advance. It must also always be possible for the person to withdraw his or her consent. While the milder means of exerting pressure and coercion are seen as part of the definition of procuring, extortion, coercion, or other offences against the person are usually not investigated separately, even if these offences would give the subjects of procuring the position of an injured party in the pre-trial investigation and criminal procedure. In the Rapporteur's opinion, in certain cases analysed by her, the statutory definition of trafficking in human beings would also have been met.

One reason for this situation may be that in pre-trial investigations and court hearings of procuring offences, the main objective is to prosecute and sentence the perpetrators who organise procuring activities. Representatives of the police have in many contexts also pointed out that as the scales of penalties for procuring and trafficking in human beings are in practice identical, from their perspective it is not relevant whether the defendants in a court hearing are accused of aggravated procuring or human trafficking. This is why indications of human trafficking are not always brought up, even if they were obvious. The pre-trial investigation authorities strive to find evidence of a procuring offence as a priority, and in a court hearing, the taking of evidence focuses on the defendant's awareness of the fact that sexual services are sold in flats arranged or rented by him or her, and that he or she receives a share of the proceeds of prostitution. The statutory definition added in the Criminal Code at the same time with the provisions on trafficking in human beings has found its way into the practices of pre-trial investigation authorities. The pre-trial investigation authorities find the penal provisions on procuring easier to apply. Under the valid law, a procuring offence may also be committed by exerting pressure.

Crime combating is undeniably a significant part of action against human trafficking and related phenomena, and the Rapporteur finds the views of the police very understandable. The criminal procedure appears rather different, however, when we look at it from the perspective of the implementation of victims' rights. As the implementation of the victims' rights is to a great extent dependent on their identification and the offence category used in the pre-trial investigation, it is not irrelevant for the victims whether they are defined as victims of human trafficking or prostitutes who have been subjects of procuring. Not only the system for victim assistance but also the criminal procedure appear different to the victim, depending on which offence category is selected. Both the Council of Europe Convention on Ac-

tion against Trafficking in Human Beings (Article 15) and the Guidelines of the UN High Commissioner for Human Rights (Guideline 9) consider that the criminal procedure and court hearings are not only part of crime combating but also an important means of securing the victim’s rights, including the victim’s right to compensation. For this reason, too, it is important that the pre-trial investigation authorities and the prosecutor bring charges of trafficking in human beings whenever appropriate.

### 6.2.3. Drawing a line between human trafficking and procuring

<i>Procuring</i>	<i>Aggravated procuring</i>
<p>A person who, in order to seek financial benefit for himself or herself or for another person,</p> <p>(1) provides a room or other facilities where sexual intercourse or comparable sexual act or manifestly sexually obscene act performed by a child younger than 18 years of age offered for remuneration,</p> <p>(2) as an established part of his or her business, harbours a person engaging in such an act and thereby substantially promotes such an act,</p> <p>(3) provides contact information of or otherwise markets another person engaging in such an act, knowing that his or her actions substantially promote the performance of such an act,</p> <p>(4) otherwise takes advantage of the fact that another person engages in such an act, or</p> <p>(5) tempts or coerces another person to engage in such an act,</p> <p>shall be sentenced for <i>pandering</i> to a fine or imprisonment for at most three years.</p> <p>An attempt is punishable.</p>	<p>If, in procuring,</p> <p>(1) considerable financial benefit is sought,</p> <p>(2) the offence is committed in a particularly methodical manner,</p> <p>(3) grievous bodily harm, a serious illness, or a state of mortal danger or comparable particularly grave suffering is inflicted intentionally or through gross negligence on another person, or</p> <p>(4) the object is a child younger than 18 years of age</p> <p>and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated pandering to imprisonment for at least four months and at most six years.</p> <p>An attempt is punishable.</p>

The statutory definitions of trafficking in human beings and procuring

partially overlap. This is also acknowledged in the Government proposal concerning penal provisions on trafficking in human beings. Government proposal 34/2004 strives to distinguish between these two penal provisions by stating that the subject of the act is to a greater extent under the control of another person in human trafficking than in procuring. In human trafficking the perpetrator may, for example, abuse another person's vulnerable state to control him or her and to compel him or her to engage in prostitution. The proposal also states that when both definitions are met, the provision on trafficking in human beings should take priority over procuring provisions, including aggravated procuring. Procuring may also turn into human trafficking, if the prostitute is compelled to continue the activities by using the means described in the provisions on trafficking in human beings. In other words, the penal provisions on trafficking on human beings may also be met when the victim has voluntarily consented to go to Finland, in the knowledge that he or she will sell sexual services in the country.

The Legal Affairs Committee report 4/2004 on this issue further states that in trafficking in human beings, the submissive relationship is more intensive and all-inclusive than in procuring. The Legal Affairs Committee also considers that the open concepts of a "vulnerable state" and "dependent status" should be interpreted in a restricted sense. It appears that this statement of the Legal Affairs Committee is often used as a justification for restricting the scope of application of the human trafficking definition, even in cases where the restrictions of self-determination have been severe. The National Rapporteur on Trafficking in Human Beings consequently urges a reflection of what type of submissive relationship in procuring is normal, and when this relation turns into human trafficking. The Rapporteur considers that the exploitation of a vulnerable state and dependent status should not be interpreted in so restricted a sense that the scope of application of the penal provisions on trafficking in human beings is unreasonably restricted and that action against trafficking in human beings is for this reason watered down in practice. The Rapporteur's view is also supported by conventions and recommendations on trafficking in human beings under international and European law. The Rapporteur feels that human trafficking is about exploiting another person. The perpetrators commit this exploitation by resorting to one of the means cited in the international definition and the penal provisions in the Criminal Code based on it.

The definition of trafficking in human beings under international law consists of three aspects: action, means, and purpose. All these criteria have to be fulfilled in order for the act to constitute human trafficking. Consequently, under the international definition of human trafficking, traffick-

ing may be committed, for example, by recruiting or transporting another person by threat of violence, coercion, or by means of betrayal or deception for the purposes of sexual exploitation, forced labour, or trade in organs. In this context, however, the Rapporteur would like to stress that human trafficking can also be committed by receiving or concealing (in the Finnish Criminal Code, harbouring). Under the Criminal Code, human trafficking can also be committed by taking control of another person. The National Rapporteur on Trafficking in Human Beings considers that committing a human trafficking offence does not require transporting a person from one place to another. Human trafficking may also be involved when a person has already been engaged in prostitution, but such physical or psychological control is exerted over him or her that he or she cannot in fact leave prostitution, should he or she wish to do so, or protect himself or herself from exploitation. When assessing the fulfilment of the penal provisions on trafficking in human beings, in the Rapporteur's opinion, particular attention should be paid on the actual possibilities the victim had to leave procuring activities or otherwise protect himself or herself. In other words, attention should be focused on the actual possibilities as subjectively seen by the exploited person.

The Rapporteur would like to stress that in addition to obvious means, human trafficking can also be committed by abusing a vulnerable position (vulnerable state) or a position of power (dependent status). In fact, Government proposal 34/2004 presumed that relatively little violence or threats of violence occur at least in human trafficking associated with prostitution, and the criminalisation of human trafficking in Finland in general was only seen necessary because the earlier legislation did not cover the milder means used in human trafficking. In the Rapporteur's view, the means required for committing a human trafficking offence should be interpreted so that they may be used both at the so-called recruitment stage and in the actual exploitative relation. At the recruitment stage, the means may refer to such as deception as to the nature of the work or direct physical coercion, but they may also refer to exploitation of a vulnerable state or dependent status after the victim has already been engaged in prostitution. In other words, the means of human trafficking may be used at any stage of the human trafficking process, and activities that started out as procuring may turn into human trafficking, if the said means are used to keep a person in prostitution.

When assessing the abuse of a vulnerable state or dependent status, the personal characteristics and background of the victim as well as the relationship between the victim and the perpetrator should be taken into account. A vulnerable state may be understood through aspects of the person himself

or herself, or circumstances related to his or her life situation, whereas a dependent status can be seen as referring to an imbalanced relationship of power between the victim and the perpetrator. Under the international definition, exploitation of a vulnerable state is about making use of a person's vulnerability and exposure to exploitation. Examining the personal relationship between the perpetrator and the victim is also important when assessing the fulfilment of the penal provisions on trafficking in human beings. A personal relationship between the victim and the perpetrator may result in a dependence that may make it more difficult for the victim to protect himself or herself from exploitation. It is also important to note that a personal relationship of trust may facilitate the commission of an offence rather than prevent it, and the violation of a relationship of trust may result in a severe trauma of long duration in the victim.

*A vulnerable state may be due (for example) to the person's:*

- young age,
- serious illness,
- drug or alcohol addiction,
- financial and social position (culture-specific interpretation)
- psychological state,
- disability,
- previous traumatic experiences of sexual exploitation or earlier prostitution, or
- being a foreigner.

*A person may be in a dependent status due to the following factors (for example):*

- family or intimate relationship,
- employment relationship,
- relationship between lessor and lessee,
- a debt,
- residence in an institution,
- drug addict's dependence on provider of drugs,
- a threat of disclosing to the authorities that the victim is illegally resident in the country, or
- taking possession of travel documents.

According to the definition of human trafficking under international law, the victim's consent to (intended) exploitation is irrelevant if one of the means cited in the definition is used to obtain it. As regards the criminalisation of human trafficking in Finland, the preliminary work on the provisions mentions that the victim's consent to exploitation is irrelevant if one of the means cited in the provision has been used to obtain it. In international legal practice, a consent can be considered legally invalid in such offences as rape, even if no physical violence had been used in the

situation, or if the victim had not actively resisted.<sup>46</sup> As factors that legally indicate a lack of consent, psychological means of coercion, manipulation, and compelling circumstances can be looked at. Even if the use or threat of physical violence is more visible and more easily verifiable than binding in debt, the milder means are equally significant when assessing the fulfilment of the penal provisions on trafficking in human beings as coercion into prostitution by violence. The Rapporteur emphasises that “rules” imposed on prostitutes by their procurers enable exploitation and may thus fulfil the definition of a human trafficking offence. When assessing the validity of the consent, the circumstances in which the consent had been given should be taken into account. Submission to continuing in prostitution does not signify consent in Government proposal 34/2004.

As stated by the District Court of Kotka when hearing the above-mentioned human trafficking case, drug users cannot be regarded as having their own rules separately from the rest of the society, which would condone demeaning treatment. This idea should also prevail when looking at prostitution in the margins of the society. Prostitution is not an unregulated area separate from the rest of the society in which any kind of exploitation is justified. Even if a person consents to working in prostitution, this consent does not cover all manner of sexual exploitation. The Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, for example, mentions that the consent of a person to engage in prostitution does not mean that they consent to be subject to abuse of all kinds (sections 84 and 97). Naturally, neither is it possible to consent to deprivation of personal liberty, violence, or threat of violence. Consequently, the Criminal Code should also protect prostitutes from exploitation and violence, regardless of whether they have originally consented to working as prostitutes.

The attention of the National Rapporteur on Trafficking in Human Beings was also attracted to the terminology used in pre-trial investigation records on procuring cases, which subjects of procuring or victims of sexual exploitation may find insulting and stigmatising. In questionings, terms such as “hooker” or “streetwalker” had been used for the women. The Rapporteur recommends that in the future, the pre-trial authorities pay particular attention to not taking a disrespectful attitude about prostitutes or using stigmatising phrases, thus perpetuating the violations of potential victims of exploitation.

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<sup>46</sup> EIT M.C. v. Bulgaria (App. 39272/98), 4.12.2003 and Prosecutor v. Akayesu (No. ICTR-96-4-T), 2.9.1998.

#### *6.2.4. Conclusions and recommendations*

It appears to the National Rapporteur on Trafficking in Human Beings that the threshold of applying the penal provisions on trafficking in human beings has been set high both in pre-trial investigations and court hearings. In cases associated with prostitution, the penal provisions on trafficking in human beings have only been regarded as being fulfilled in obvious cases of exploitation. It also appears to the Rapporteur that an unnecessarily great deal of attention is focused in both pre-trial investigations and court hearings on the so-called recruitment stage, and circumstances indicating exploitation are not examined to a sufficient degree. If the means of human trafficking are employed at a later stage to control prostitutes, this is often interpreted as procuring. It also seems that pre-trial investigations and courts focus too much attention on the victim's original consent to work as a prostitute, and this consent is used to distinguish between offences of procuring and human trafficking. It appears that if the person has not been deceived as to the nature of the work, if he or she has engaged in prostitution without violent coercion, or if he or she is not disabled or "child-like", the threshold of investigating the offence as human trafficking is too high. Both pre-trial investigations and courts pay little attention to milder means fulfilling the definition of human trafficking. The National Rapporteur on Human Trafficking has noted some advancement, however. The above-discussed decision of the Helsinki Court of Appeal in a human trafficking case in December 2009 can be considered an opening for an interpretation model that indicates progress towards the international definition of human trafficking.

The Rapporteur feels that no amendments are required in the provisions on trafficking in human beings at this stage, as the existing ones enable an interpretation that is in compliance with international and European commitments in principle. On the other hand, we should consider if amendments are required in the provisions on procuring. When drafting the amendments, we should ensure that the provisions on procuring do not overlap with the penal provisions on human trafficking. In other words, such features of the definition that refer to exertion of pressure and coercion indicating human trafficking should be removed from the procuring provisions. The Rapporteur also recommends that to the subjects of aggravated procuring in particular, the position of an injured party should be afforded in the criminal procedure. Alternatively, violations of the rights of persons subjected to aggravated procuring should be investigated and prosecuted separately, and they should not be considered to be part of procuring, an offence that in the current situation is not seen as having an injured party. The subjects of aggravated procuring should also be systematically informed of

the possibility to be included in the system for victim assistance.

The National Rapporteur on Trafficking in Human Beings stresses that procuring and human trafficking crime should be efficiently investigated and that offence categories of human trafficking should be used whenever appropriate in the cases. The prosecutors also play a central role in this. The National Rapporteur on Trafficking in Human Beings recommends that key prosecutors be appointed to prosecute criminal cases with indications of human trafficking. The penal provisions on trafficking in human beings have only existed for a short period, and no strong legal practice has yet been formed. It is now possible for the pre-trial investigation authorities, prosecutors, and courts to elaborate on what human trafficking means in the Finnish circumstances and where the line between human trafficking and the related offences are drawn. These lines are relevant, above all, to victims of human trafficking. The Rapporteur recommends that more efficient training on human trafficking be provided for pre-trial authorities, prosecutors, and judges. This training should prioritise the application of provisions on and identification of victims of human trafficking. The training should make use of international experience.

In order to make the investigations of procuring and human trafficking offences more effective, the Rapporteur also recommends the setting up of a trained specialist investigation unit. The establishment of an investigation unit of this kind is also recommended in the Guidelines of the UN High Commissioner for Human Rights (Guideline 5). The Council of Europe Convention on Action against Trafficking in Human Beings also mentions specialised entities of this type as one method of making action against trafficking in human beings more effective (Article 29). The Rapporteur's recommendations on making the investigations more effective are also supported by the judgment of the European Court of Human Rights in the case, *Rantsev v. Cyprus and Russia*. In this judgment, the Court of Human Rights found Cyprus as a country of destination for human trafficking guilty of human rights violations, as it had not carefully enough investigated the case and established whether the person in question had been a victim of human trafficking. The National Rapporteur on Trafficking in Human Beings recommends that:

1. The overlapping penal provisions on procuring and trafficking in human beings be removed by amending the procuring provisions. This could be implemented by removing from the procuring provisions those features of the definition that refer to exertion of pressure or coercion indicating human trafficking.

2. Subjects of aggravated procuring be granted the position of an injured party in pre-trial investigations and the criminal procedure, and their referral to the system for victim assistance be made more effective by informing them in writing of the assistance system and the possibility of obtaining a reflection period and residence permit in situations in which they are encountered. An assistant would be appointed for injured parties in an aggravated procuring offence for the criminal procedure.
3. A trained specialist unit be established for the pre-trial investigations of human trafficking offences.
4. Key prosecutors be appointed to prosecute human trafficking offences. These key prosecutors would be systematically assigned to cases with indications of human trafficking. The early-phase cooperation in investigations by pre-trial investigation authorities and prosecutors would be made more effective.
5. More systematic training be provided for pre-trial investigation authorities, prosecutors, and judges on human trafficking and the rights of victims of human trafficking.
6. The witness protection methods be urgently improved.

### **6.3. Human trafficking for the purposes of labour exploitation**

#### ***6.3.1. Introduction***

In addition to prostitution, human trafficking and related exploitation may also occur in the various sectors of the Finnish labour market. Characteristics of human trafficking and related exploitation are found, for example, in the exploitation of foreigners and immigrants in the restaurant, construction, and cleaning sectors, the horticultural sector, berry-picking, and domestic work. During her first year in office, the National Rapporteur on Trafficking in Human Beings has strived to examine potential problems associated with the use of foreign labour by looking at court decisions concerning industrial discrimination and discrimination at work tantamount to extortion, where the injured party was a person with a foreign background or which showed indications of human trafficking. Decisions concerning usury and extortion were also requested if the cases involved foreigners or indications of human trafficking. The total number of decisions examined was 14. Because of the small number of cases heard by the courts, the Rapporteur has also looked at certain reports made by Occupational Safety and

Health Inspectorates to the police for pre-trial investigation and other documentation. This documentation was complemented with the wide-reaching round of hearings conducted by the Rapporteur mentioned earlier in the report.

Based on the Rapporteur's analysis, it appears that the use of foreign labour in Finland is associated with indications of human trafficking for the purposes of labour exploitation. The exploitation cases known to the Rapporteur can be roughly divided into three categories. One type seems to involve cases where a Finnish employer exploits the vulnerable position and potential ignorance of their rights of foreign employees and, for example, compels them to work for excessively long days and weeks without separate compensation. On the other hand, a large share of the cases appear to be related to exploitation within a so-called ethnic group, where persons with an immigrant background arrange for citizens of their country of birth to come and work in Finland, exploiting their vulnerable state, dependent status, and potential ignorance of the Finnish labour legislation. In these cases, family relationships between the persons in question play a major role, because the defendants, injured parties, and their respective families all know each other. Thirdly, the analysis revealed cases where persons who are nationals of the same country have established a company in Finland and arranged it so that one of the persons acts as the employer and the others act as employees. In these cases, too, the employees may work for long days and weeks without specific compensation, nor do the activities fully comply with the labour legislation in other parts. In these cases, the injured parties do not usually bring charges against the defendant, nor do they claim compensation from their employer.

When discussing the problems of using foreign labour, the fact that foreign employees are not familiar with the Finnish labour legislation is often highlighted. Even though this may very often be true, it is important to note that the employee's possible ignorance of his or her rights is only a circumstance that facilitates exploitation. The actual exploitation is above all based on abusing an unequal power relationship and a dependant status: the employer aims to benefit from the fact that foreign employees are often in a vulnerable position in Finland, and possibly almost totally dependent on their employers. This is why the Rapporteur points out that even if disseminating information on the labour legislation and employees' rights is an important way of preventing situations of exploitation, it is essential to understand that information about one's rights is not sufficient as such. If the employee is dependent on his or her employer, for example because of family ties or because his or her residence in the country is tied to the em-

ployment relationship or the employer, the employee does not necessarily have realistic possibilities of leaving the exploitation relationship. In these cases, knowledge of one's rights may help the employee to understand that the situation is not compliant with the Finnish legislation. However, attention should increasingly be focused on ensuring that foreign workers would, when encountering difficulties, have a genuine possibility to both leave the exploitative relationship and to request and obtain the assistance they need from the authorities without fear of being removed from the country.

During her first year in office, the National Rapporteur on Trafficking in Human Beings has come across inefficiencies in the legislation relevant to working life. The Rapporteur feels that the adequacy of our current legislation should be more accurately assessed from the perspective of prevention of human trafficking and promotion of victim identification in cooperation with the labour market organisations. The Rapporteur also regards efficient and authority-led ex post supervision essential in identifying and referring to the system for victim assistance of victims of human trafficking. Government proposal 269/2009 for Acts amending the Aliens Act and the Act on the Register of Aliens does not contain concrete proposals concerning ex post supervision of compliance with working conditions. The Rapporteur considers that both ex ante and ex post supervision should be conducted to an adequate degree to secure the legal protection of foreign employees. We should additionally ensure that adequate resources for this supervision are guaranteed to the authorities performing ex post supervision. Further, we should commit to granting additional resources and providing training, also on human trafficking and the related exploitative situations in working life, to authorities engaged in ex ante supervision (in the proposal on amending the Aliens Act, the Immigration Service).

The Rapporteur considers that in addition to other supervisory authorities, the Occupational Safety and Health Inspectors are in a position to observe indications of human trafficking, even if their inspections mainly target the employers. Statements of the occupational safety and health administration are valuable tools in the pre-trial investigations and court hearings of cases concerning human trafficking for the purposes of labour exploitation. The supervision also targets employers who employ foreign labour and customers who use foreign subcontractors or rented labour. The purpose of inspections is to ensure that all foreign employees working for the employer have a right to work in Finland. Other objectives of the supervision are making sure that all employees in Finland, regardless of their nationality or ethnic origin, enjoy legal and equal working conditions. To the Rapporteur's knowledge, in 2009 the supervision efforts especially targeted the

construction, cleaning, transport, hotel, and restaurant sectors as well as the metal industry. The inspections were either authority-led, i.e., conducted on the Occupational Safety and Health Inspectorate's own initiative, or based on contacts to the Inspectorate. The National Rapporteur on Trafficking in Human Beings finds that investigations and supervision must be made more effective, and that inter-authority cooperation to improve victim identification and enhance crime combating should be made more close-knit.

There is little research on human trafficking for the purposes of labour in Finland, and the information on the situation is fragmented.<sup>47</sup> The Rapporteur's analysis of human trafficking for the purposes of labour exploitation should be regarded as a general investigation and an attempt to arouse debate rather than an exhaustive report on the situation. In the Rapporteur's opinion, some of the exploitative situations are rather serious, and they challenge Finnish society to take a firmer grip on the problem. The National Rapporteur on Trafficking in Human Beings feels that, based on an initial analysis, it is possible that the problems associated with the use of foreign labour will expand and take a turn for the worse, unless we urgently focus adequate attention and supervision by authorities on this phenomenon and reflect on how human trafficking for the purposes of labour exploitation could in the future be prevented and combated more effectively than before. The Rapporteur feels that in addition to financial crime, pre-trial investigations should also focus more on violations of the individual employees' rights. In her future reports, the National Rapporteur on Trafficking in Human Beings intends to discuss human trafficking for the purposes of labour and the related phenomena of exploitation in greater detail than in the current report.

### ***6.3.2 A case of forced labour heard as human trafficking***

In the only case of human trafficking related to labour exploitation heard by the courts so far, two men who were Finnish citizens but of an Indian background were accused of aggravated trafficking in human beings. They had arranged for the arrival of an Indian man in Finland with the intention of making him work in market trade and in a restaurant without pay.<sup>48</sup> The injured party had arrived in Finland on a tourist visa and paid the defendants a considerable sum of money for his travel arrangements. After his arrival in Finland, the injured party had been accommodated in a flat arranged for him by the defendants and started working in the jobs they assigned to him.

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<sup>47</sup> Hetzen-Oosi von, Nina, Henna Harju, Niina Haake and Timo Aro (2009).

<sup>48</sup> Vantaa Court of Appeal R 07/1363, 13.7.2007.

At times he had also lived at his place of work. The defendants had taken possession of the injured party's passport, directed him to seek asylum in Finland under a false name, assisted him in leaving the reception centre and collected a fee for this assistance, tried to arrange for the injured party's marriage with a Finnish woman, and threatened him with violence in the event that he sought help from the authorities. The threats had been reiterated when the injured party had demanded the return of his passport. The injured party had worked in the defendants' various business enterprises from summer 2005 until autumn 2006, but claimed he had received no wages for his work. After the authorities started investigating a suspected human trafficking offence in early 2007, however, a sum of money had been paid to the injured party's parents in India.

The pre-trial investigation sought to establish whether the injured party had known what he would do and what his wages would be for the work in Finland, and how active a role he had himself played in the activities. The pre-trial investigation authorities were interested in knowing if he had wanted to come to Finland and if he had contacted the defendants while he was in the reception centre. The pre-trial investigation concluded that the statutory definition of human trafficking had been fulfilled, as the defendants were considered to have deceived the injured party as to the wages, and this deception was considered to put the injured party in a dependent status in terms of the defendants. The injured party's freedom of movement had been restricted by taking possession of his passport, and he had been threatened with violence. It was considered that of the ways of committing a human trafficking offence, recruitment, transport, and harbouring had been fulfilled. As to the purpose, it was considered obvious that the defendants had arranged for the arrival of the injured party in Finland to obtain labour that was practically free. In the pre-trial investigation, it was considered that the injured party was rendered into demeaning circumstances and forced labour, or at least into circumstances where he had to make his living by criminal means or illegal work. The aggravated manner of committing a human trafficking offence was considered having been fulfilled, because the injured party had been threatened with violence and because the act was committed as part of the activities of an organised crime group.

Unlike cases of human trafficking associated with prostitution, no attention was paid in the pre-trial investigation to whether the injured party had been working against his will or why he had not left the exploitative situation. Neither was the injured party asked how the defendants had compelled him to act in a situation that went against his wishes. As sufficient evidence was considered the fact that no wages had been paid to him, his freedom

of movement had been restricted by taking his passport, and he had been threatened with violence. When the court assessed the fulfilment of the penal provisions on trafficking in human beings, on the other hand, based on its decision, it seemed to also consider relevant the fact that he had originally left his home country on a voluntary basis.

In the District Court, the accounts given by both the injured party and the witnesses changed and were partly toned down compared to what had been said during the pre-trial investigation. Charges of aggravated trafficking in human beings were accordingly rejected, and one of the defendants was sentenced for facilitation of illegal entry. It also transpired that shortly before the court hearing, the parents of the defendant had visited the parents of the injured party in India and settled the matter. According to the court, it was obvious that the injured party had left his home country on his free will, but the court considered it had not been proven that the injured party had been deceived by promising him paid employment in Finland. The court stated that it had also not been proven that the injured party had been coerced to work. The threats that were mentioned were not, according to the District Court, in any way relevant to working, and consequently the activities cannot be said to meet the criteria of forced labour. On the other hand, the court found it evident that the defendants had assisted the injured party in obtaining a tourist visa, while they knew his intention was to stay in Finland. As the reported information thus was partly untrue, one of the defendants was found guilty of facilitation of illegal entry. The prosecutor did not appeal the District Court decision. The decision is legally valid.

To a great extent, the National Rapporteur on Trafficking in Human Beings finds the procedure followed by the authorities justified and appropriate: the injured party was granted a reflection period and he was referred to the system for victim assistance in an early phase, and the pre-trial investigation authorities and the prosecutor genuinely reflected on the possibility of human trafficking in the case from various angles. The authorities could not anticipate that the injured party's report would change so crucially in court. As this was the first case of human trafficking for labour, it might have been appropriate to also examine the exploitation as discrimination at work tantamount to extortion, which could have induced the court to consider the potential exploitative situation in a more versatile manner. As the subject of facilitation of illegal entry does not have the position of an injured party, and he or she is in other words not regarded as a victim of an offence, the decisions of the pre-trial investigation authorities may have a significant impact on whether the person is allowed to stay in the system for victim assistance and/or whether he or she is issued a residence permit or removed from the country.

The National Rapporteur on Trafficking in Human Beings would further like to draw attention to the relevance of the victim's consent or original voluntariness in the application and interpretation of penal provisions on human trafficking. In accordance with definitions under international law or penal provisions on trafficking in human beings in the Criminal Code, the victim's consent is irrelevant to the fulfilment of the definitions if one of the means mentioned in the definitions is used to obtain it. Deception, for example, is not required in order for the act to fulfil the definition of human trafficking, and human trafficking may also be involved when the dependent status or vulnerable state of the victim has been abused. These means had been resorted to in the above-mentioned case. The Rapporteur also stresses that labour exploitation should be assessed in light of the Finnish labour law and collective agreements: the victim's happiness about or consent to working on certain conditions or in certain circumstances should be irrelevant, even if the victim disagreed. Ensuring the employees' equality also protects more general interests in the Finnish labour market.

What may prove a challenge is the fact that the victims do not report their experiences of exploitation to the authorities. The Rapporteur believes, however, that by informing the victims of their rights, the possibilities of getting the victim to speak out will be improved. The National Rapporteur on Trafficking in Human Beings recommends that the authorities, and above all police officers and Occupational Safety and Health Inspectors, be given training in victim identification and victims' rights, including the system for victim assistance, the reflection period, and the possibility of being issued a residence permit. Disseminating information on rights is not adequate, however, if you cannot enjoy your rights because you are removed from the country. This is why the Rapporteur finds that foreigners illegally resident or working in the country should not be removed until it has been established individually and with sufficient accuracy that the case does not involve human trafficking or related exploitation. If there are grounds to suspect that a person has been a victim of human trafficking, consequences under criminal and immigration law should be waived. This would also implement the intention of the Council of Europe Convention on Action against Trafficking in Human Beings and in particular its Article 26 (non-punishment provision). Under the non-punishment provision, no penalties should be imposed on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so. The National Rapporteur on Trafficking in Human Beings considers it important that in addition to any evasion of immigration provisions, attention should be paid to any violations of rights to which an individual may have been subjected.

### *6.3.3. Characteristics of human trafficking in other cases*

#### *6.3.3.1. Introduction*

The material analysed by the National Rapporteur on Trafficking in Human Beings indicates that the greatest problems in the use of foreign labour are associated with underpayment of wages and overwork without extra pay. A record is not always kept of the hours worked by the employees, or all of their working hours are not entered in it. Foreign workers may even be required to work for 12 hours a day, 7 days a week without overtime pay. The employees may be clearly underpaid, and the components of their pay are not specified in detail. In the construction sector, for example, a contract rate seems to be one way of avoiding payment of wages that appears legal. The documentation indicates that similar payments of "lump sums" are used not only in the construction sector but also in the restaurant sector and in horticultural work. Another method of avoiding payment of wages that appears legal is employing persons as trainees, regardless of the fact that they actually perform independent and responsible tasks. Practices of this type occur at least in the construction industry.

The material analysed by the Rapporteur also shows that foreign employees may work in Finland without an employment contract, or their employment contracts may be drawn up in a language the employee does not understand. This way, the employees can be persuaded to formally commit to working conditions that may be extremely poor. The employment contract may also have been modified after reaching an oral agreement, the wages may have been reduced, and the number of working hours increased after the work has started. Cases also emerge in the material where the employer prevented the employees from returning to their home country before they had signed a contract that violated their rights.

Based on the documentation available to the National Rapporteur on Trafficking in Human Beings, the employees may also be accommodated in inhuman conditions, or ones that are clearly worse than the usual Finnish standard. For example, the employees may live in the winter in a caravan that has no sanitary or washing facilities. Additionally, several workers may be accommodated in the same, relatively cramped and basic rooms, and considerable sums may be collected from them for the accommodation. The worse conditions of foreign workers may be found acceptable because they are "not used to" the Finnish standard of living, and can thus "make do" with less. The documentation analysed by the Rapporteur also contains

cases where occupational health care was inadequate or nonexistent.

The material also shows that the employees may be forbidden to talk to Finnish people or other people to prevent them from understanding that their treatment is inappropriate or illegal. In some cases, they may even be forbidden to learn Finnish. Contacts with trade unions may also be restricted, and the employees may be threatened with an immediate termination of the employment relationship. In the documentation she analysed, the Rapporteur also came across cases where the employers had taken possession of the employees' travel documents or other personal property, thus making them dependent of the employer. Tying the residence permit to a certain sector may also increase the employee's vulnerability to exploitation. The material shows that the employer may sometimes tell the employee that he or she is not entitled to change jobs, after which the employee consents to working in the poor working conditions imposed on him by the employer.

The analysis prepared by the National Rapporteur on Trafficking in Human Beings indicates that often there is indebtedness in the background of human trafficking for the purposes of labour exploitation. Before arriving in Finland, the foreign workers may have not only sold all their belongings but also borrowed money, which they aim to gradually pay back by working for the lenders. It has been estimated that the recruitment fee paid to the brokerage organisation by an employee sent out from China, for example, usually corresponds with roughly two years' wages.<sup>49</sup> On arrival, the employees may have a mistaken idea of the living costs in Finland, which is why the money they can save and send home turns out to be less than they had hoped for. In case the worker is also underpaid and/or unreasonable payment is collected from him or her for accommodation or food, it may be practically impossible to pay back the debt to the organisation. According to the International Labour Organization ILO, debt bondage means that a person becomes a security against a debt or a loan: he or she works partly or exclusively to pay off the debt. In most cases, the debt is perpetuated, because the work provided may be undervalued, or the employer provides food or accommodation at inflated prices.<sup>50</sup>

Certain cases with indications of human trafficking for the purposes of labour exploitation have been heard by the courts. Based on the court decisions, discrimination at work tantamount to extortion has occurred mostly in the restaurant and construction sector, but it appears that problems have

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49 Mighuan (2010).

50 International Labour Office, Human Trafficking and Forced Labour Exploitation. Guidance for Legislation and Law Enforcement (2005), p. 20.

also been found in the cleaning and horticultural sectors and concerning foreign berry pickers. Below, the National Rapporteur on Trafficking in Human Beings will discuss certain cases heard by courts that appeared to contain indications of human trafficking. The purpose of this limited account is to describe the phenomena of exploitation related to working in Finland and to show that this phenomenon is not as marginal as we often think. The exploitation is usually associated with the particular vulnerability of the employees arising from the fact that they are foreigners.

#### *6.3.3.2. Construction sector*

Since 2004, the use of employees posted from another country in the construction sector seems to have resulted in a situation where the position of foreign employees is often rather vulnerable. Problems occur in health care. Even if the employees were given immediate first aid in acute cases, the consequence in milder cases may be that the employee is sent back to his or her home country. The living conditions may be basic, and a high rent may be exacted for the accommodation. The greatest problem regarding foreign workers, however, is likely to be underpayment in certain cases. The foreigners may also be compelled to work long hours. Sometimes the employers or employment companies recover wages already paid from the employees once they return to their home country.

Perhaps the best-known case associated with exploitation of foreign labour in the construction sector was the so-called case of Chinese stone workers, which was heard by the Hämeenlinna District Court in 2004, and later by the Turku Court of Appeal.<sup>51</sup> The managing director of a stone dressing company was accused of industrial discrimination, giving a false statement, and working hours offence. A total of 12 Chinese stone workers were employed in a stone dressing business, some of them for nearly three years. The Chinese employees were compelled to cut stone in poor conditions for an hourly wage of three euros. In the court hearing, attention was paid to whether the managing director acted in the role of an employer, even if the employees had been arranged through a Chinese company.

Indications of human trafficking in the case included the fact that the Chinese men reported having paid a sum corresponding to about four years' wages to a Chinese employment company to be able to go and work in Finland. As their family members had often helped pay this sum, the persons were in their debt. The Finnish employer was aware of the agreements

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<sup>51</sup> Turku Court of Appeal, R 04/1963, 13.6.2005 and R 06/364, 14.9.2007.

made with family members as guarantors and the employment company, and the consequences to be expected in China in the event that the employees violated their employment contract. The Chinese workers had had “guarantors”, who in a letter of guarantee had committed to financial responsibility on behalf of the employees going to Finland. The employees claimed that the employer had directly or indirectly threatened them with consequences to the injured parties. Because of their brokerage agreements, the workers were defenceless, and they had no real possibility of leaving their work. The employment contract prohibited the employees from changing jobs or telling anybody about their working conditions. The injured parties reported that their passports had been taken as soon as they arrived in the country. They were subjected to miserable working conditions. Seven of them lived together in a small, 30-square metre flat. One of the injured parties had broken a bone in his arm as a result of an accident, but after a visit to the hospital, he had been brought back to work. What put the workers in an even more vulnerable position was that the Chinese authorities were in some way involved in the case.

The case would thus evidently have met at least the definition of discrimination at work tantamount to extortion, if the penal provision had been in force at the time the offence was committed. The offence would probably also have met the definition of a human trafficking offence if the provisions on human trafficking had been in force at the time the offence was committed.

In 2008, a case was heard by the Helsinki Court of Appeal where a company specialising in work practice and exchange programmes, as well as its employers, were found guilty of discrimination at work tantamount to extortion.<sup>52</sup> In this case, a company specialising in work practice opportunities had lured Bulgarian, Latvian, and Polish students to summer jobs in their own fields in Finland in 2004. The students ended up doing underpaid work with inadequate equipment on construction sites, in the food industry, and other sectors that were not associated with their fields of study. The employees were compelled to work long hours, and the employment company failed to organise the language studies or cultural programme that it had promised. The students reported having paid more than EUR 1,000 for the brokerage service and their travel costs, and they had been promised earnings of EUR 1,000-2,000, while in fact their wages were only about EUR 500 per month. The students said they had borrowed money from family members to pay for their trip. Some of them said they could not stop work-

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52 Helsinki Court of Appeal R 07/92, 29.5.2008. See also the District Court decision on the case 06/2381, 22.11.2006.

ing in Finland because they had paid so much for the travel arrangements and owed money to their families. The pre-trial investigation also uncovered threats against the students' families and promises of work permits in case the employers were satisfied with their work performance.

#### *6.3.3.3. Restaurant sector*

In the restaurant sector, human trafficking and related cases of exploitation have above all been encountered in so-called ethnic restaurants. The problems have primarily concerned the payment of wages, excessively long working hours, and organisation of occupational health care. One of the best-known cases is associated with a judgment issued by the Savonlinna District Court in spring 2009. The case showed clear indications of human trafficking. The pre-trial investigation revealed that a couple who were originally from China but were Finnish nationals had for ten years employed Chinese persons in a restaurant they owned. The employers underpaid their employees, compelled them to work for up to 24 hours at a time, and controlled the employees during their time off. The pre-trial investigation also revealed that the employers had not approved of their employees interacting with Finnish people or studying Finnish. Some of the employees were forced to live in a small room in the employers' tofu factory, which contained hot steam and windows that could not be opened. The employees had their meals in the restaurant, but their diet was limited.

The pre-trial investigation established that the employees had no access to the account into which their wages should have been paid without the employers' permission. The employees' work and residence permits were tied to the restaurant. The employees had no acquaintances in Finland, they could not speak Finnish, and they did not have enough money to return to China. The employees were dependent on the employers, and they had no real possibility of leaving work. In the pre-trial investigation, the case was investigated as human trafficking, but the prosecutor brought charges of discrimination at work tantamount to extortion against the employers, for which they were also sentenced. The court confirmed an agreement under which the employers committed to paying the employees considerable compensations as outstanding wages.<sup>53</sup>

A similar case of discrimination at work tantamount to extortion was heard by the Helsinki District Court in 2008. According to the charges, three

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<sup>53</sup> Savonlinna District Court R 08/206, 20.2.2009 and R 08/206, 29.1.2009.

injured parties had worked in a pizzeria owned by an employer of the same nationality for six euros per hour. The District Court found, however, that the offence for which charges had been brought was not proven, as the injured parties told the court that they had assisted the defendant in starting a business and had mutually agreed on the arrangements. Neither did they claim compensation. The court regarded this as an indication that the injured parties had not been put in an unfavourable position because of their nationality, and consequently the definition of discrimination at work tantamount to extortion was not fulfilled.<sup>54</sup>

#### *6.3.3.4. Cleaning sector*

Human trafficking and related labour exploitation has also been encountered in the cleaning sector in Finland. Over the last few years, a case involving Chinese cleaners has attracted a wide publicity. This case is an example of violations of the employees' rights that the activities of employment companies may entail. The case has not yet been heard by a court except in regard to certain civil claims.<sup>55</sup> Because the pre-trial investigation is not finished, the National Rapporteur on Trafficking in Human Beings refrains from further comment.

The Rapporteur considers it important that the role of employment companies and the potential risks to employees in using these companies are better understood in Finland. While there are companies in the market that operate perfectly legally and appropriately, their increasing role also involves significant risks, which we should be aware of, especially when workers are recruited in China, where unofficial employment companies and other private brokers operate in addition to official ones.<sup>56</sup> Each part of the long chain of brokers collects its share, and the brokerage fee payable by the immigrant worker may be very high. The sum to be paid to the broker depends on the expected standard of income and the difficulty of the travel arrangements and locating the employee in the destination country. It is estimated that the recruitment fee usually equals two years' wages. As the sums are large and often borrowed using unofficial channels, pressures to pay back the debt are considerable. The recruited workers thus end up in a dependent status in relation to their employer. The recruitment companies may also exert control by frightening employees posted abroad and by urg-

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<sup>54</sup> Helsinki Court of Appeal R 08/3476, 13.10.2008.

<sup>55</sup> Helsinki District Court S 08/20599, S 08/20604 and S 08/20607, 31.12.2009.

<sup>56</sup> The share of employment companies in the market saw an exponential growth in China in the 1990s as China started a strong transition towards a market economy.

ing them to avoid cooperating with the authorities and the police.<sup>57</sup>

#### *6.3.3.5. Horticultural sector and berry-picking*

Human trafficking for the purposes of labour and the related exploitation may also occur in the seasonal picking of wild berries. In recent years, the Ombudsman for Minorities, in her capacity of the National Rapporteur on Trafficking on Human Beings, has been contacted a number of times about problems related to the situation of berry pickers. As far as the Rapporteur is aware, many pickers have lost money after the travel and accommodation costs have been deducted, despite a reasonable crop of berries and long working hours. Problems have also been observed in the accommodation and diet of the berry pickers. As for the authorities' activities, the difficulty is that the conditions of berry pickers are not adequately supervised.

The vulnerability of berry pickers due to indebtedness has been a particular problem, which may expose them to human trafficking and related exploitation. The pickers, who mainly come from Thailand, often have to borrow money to come and work in Finland. The pickers are not in an employment relationship, as they are considered to be picking berries at an entrepreneurial risk. As they are ignorant of the conditions and their rights in Finland and possibly lack linguistic skills, however, they cannot assess the risks and may thus be put in a rather vulnerable position. Additionally, the pickers do not necessarily understand that they are working at an entrepreneurial risk, and may believe they are in an employment relationship. Picking berries in Finland may trap persons who are in a vulnerable position into a vicious circle of debt.

The Ombudsman for Minorities has consequently issued to the Ministry for Foreign Affairs and the Ministry of the Interior the recommendation mentioned earlier in this report on improving the minimum protection of berry pickers. According to the Ombudsman for Minorities, a visa should also be granted to a host company that covers the costs of travel, accommodation, and tools, to ensure that the picker will not incur losses after working in Finland. It would also be reasonable to consider some minimum level of earnings, or compensation for losses, for pickers that work full time. In late 2009, the Ministry for Foreign Affairs issued the above-mentioned instruction, according to which a mission may request a company engaged in the field that meets its obligations to inform the applicant for a visa about the services offered, the way in which they are arranged, and their cost. The

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<sup>57</sup> Mighuan (2010).

Ministry's instructions are an attempt to avoid situations where a seasonal worker is left without a net income, regardless of working as agreed.

The analysis produced by the National Rapporteur on Trafficking in Human Beings indicates that problems appear to be associated not only with berry picking but also with the horticultural sector. In the Hyvinkää District Court, a case was heard in 2008 where the managing director and board chairperson of a horticultural company were sentenced for industrial discrimination and a working hours offence.<sup>58</sup> The District Court considered that the defendants had abused their Estonian employees' willingness to work and ignorance of their rights by failing to pay them the statutory compensation for overtime, Sunday work, and breach of the weekly rest period. All the injured parties said that they had themselves been willing to work more to increase their earnings and that they had been ignorant of their right to overtime pay and other compensation. According to the District Court, however, the employer cannot let an employee work overtime without paying a special compensation, not even at the request of the employee. Consequently, the District Court considered that the defendants had put the Estonian workers in an unequal position compared to the Finnish employees of the company, who had been working on a monthly salary and who worked 5-day weeks and no more than 8-hour days.

In addition, a case was heard in the Vaasa District Court in which the managing director of a vegetable company was sentenced for industrial discrimination against his Thai employees.<sup>59</sup> The defendant had recruited the employees through family members and acquaintances of his wife and her mother, and he had not concluded employment contracts in writing with the injured parties. The employees reported that he had compelled them to work excessively long days and weeks without specific compensation, taken possession of their bank cards and PIN numbers, and collected payments for their accommodation and food from the employees' accounts without their knowledge. Even if their monthly working time could amount to 260 hours, the employees always received the same net salary of EUR 250. Some of the injured parties also reported that the defendant had not allowed them to return to their home country before signing an agreement where they declared that they had no claims exceeding EUR 200-250, as the defendant paid for their accommodation, food, and other costs. The injured parties included persons who came to work in Finland for the second time, as they or their family members owed money to the defendant after working in Finland for the first time, and they now had to pay back the

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<sup>58</sup> Hyvinkää District Court R 08/417, 21.11.2008.

<sup>59</sup> Vaasa District Court R 08/791, 29.10.2009.

debt by working. The District Court sentenced the defendant for industrial discrimination.

#### ***6.3.4. Identification of forced labour and human trafficking for the purposes of labour exploitation***

In the Rapporteur's view, problems arise from determining what kind of exploitation should be regarded as serious enough to fulfil the definition of human trafficking. The uncertainty on this point is specifically associated with the interpretation of forced labour, and Finland does not seem to be the only country facing this problem. This concept and its interpretation in practical situations gives rise to difficulties in many other countries, too. Drawing the line between human trafficking for labour and discrimination at work tantamount to extortion is unlikely to arise in the most aggravated cases involving violent recruitment and coercing the victim to work in conditions resembling slavery. Neither are problems caused by the milder cases, such as those in which overtime pay of a foreign worker is neglected. The most challenging questions of drawing the line are likely to be associated with situations where the exploitation is somewhere between these two extremes. The National Rapporteur on Trafficking in Human Beings does not in this report express an opinion on where the line between the two penal provisions should be drawn, but attempts to give some guidelines to clarify the definition of forced labour.

The Forced Labour Convention No 29, adopted by the International Labour Organization in 1930, defines forced labour as all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily (Article 2). Essential factors as to the definition of forced labour are exacting under the menace of a penalty and lack of consent. The convention excludes five different types of work from forced labour: work exacted in virtue of compulsory military service laws for work of a purely military character; work which forms part of normal civic obligations; work exacted as a consequence of a conviction; work exacted in cases of emergency; and minor communal services in the direct interest of the community. Neither is work related to education and training forced labour. Since the convention was adopted, forced labour has changed in that in its current form, it is not as closely linked to the state, and today it is mostly private persons and companies who are guilty of using forced labour.

The menace of a penalty referred to in the definition of forced labour does

not only mean consequences under criminal justice. Penalties employed in forced labour may involve all types of physical or sexual violence, restrictions of movement, debt bondage, or bonded labour, for example, by exacting an inflated price for the costs of recruitment and transportation, or by undervaluing the work to the extent that the debt is not reduced in practice, withholding wages or refusing to pay the worker at all until after the work is finished, retention of passports and identity documents, and threat of denunciation to the authorities of an employee illegally resident in the country, which is compared to blackmail.<sup>60</sup>

In the Rapporteur's opinion, restrictions on the freedom of movement should not only be understood as being locked up in the place of accommodation or work, but when assessing forced labour, circumstances factually restricting the employee's movements should also be taken into consideration, as well as the entire situation that affects the employee's possibilities of leaving the situation. The Rapporteur's opinion is supported by the judgment of the European Court of Human Rights in the case of *Siliadin v. France*, where the Court considered that forced labour may also be involved when the freedom of movement of the victim is restricted by other means than locking him or her up at the place of work. The Court considered that in practice, the young age of the victim residing illegally in the country and her fear of being apprehended prevented the victim from reporting her exploitation to the authorities when she left her place of work without supervision.

Debt bondage, on the other hand, may be involved when the employee is partly or exclusively working to pay off the debt incurred because the employer undervalues the work or provides accommodation for the employee at an inflated price. The debt may also be incurred during the process of recruitment or transport, in which case it may affect the degree of freedom of the employment relationship in the final stage.<sup>61</sup> In the first National Plan of Action against Trafficking in Human Beings in Finland, indebtedness was considered one indication of human trafficking. Based on indicators of human trafficking, a suspicion of human trafficking may arise, for example, when a person has had to pay unreasonable fees for access to work in Finland, or that he or she owes considerable sums of money to another person.<sup>62</sup>

In addition to the actual act of consent, looking at forced labour from the

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60 ILO, *Human Trafficking and Forced Labour Exploitation* (2005), pp. 19-21.

61 ILO, *Human Trafficking and Forced Labour Exploitation* (2005), p. 20.

62 Ministry for Foreign Affairs, *Plan of Action against Trafficking in Human Beings* (2005), pp. 41-43.

perspective of lack of consent highlights the influence of external circumstances on the validity of the consent and the possibility of revoking the consent at any time. In that case, circumstances with a physical or psychological influence that prevent the victim from leaving a situation involving exploitation will also be taken into consideration. Deception and deceitful promises as well as taking possession of identity documents may be indications of forced labour. Work may also turn into forced labour if the employee is not allowed to leave the employment relationship. When assessing the validity of the victim's consent, attention should be paid to the circumstances in which the person works, as well as to each act or measure to which the employee is subjected. The victim's vulnerability (in penal provisions on trafficking in human beings; 'vulnerable state', in the Finnish Criminal Code) must be taken into account when applying the definition of forced labour.<sup>63</sup>

In its judgment in the case of *Van der Müsselle v. Belgium*, the European Court of Human Rights stated that when determining whether the case falls within the definition of forced labour, only a relative weight should be attributed to the victim's prior consent. The validity of the consent should be looked at in the light of all circumstances of the case.<sup>64</sup> In many cases concerning discrimination at work tantamount to extortion, Finnish courts have also considered that the satisfaction of the employees with their conditions of employment and working conditions does not eliminate the punishable nature of the offence. Even if the injured parties had not felt that their rights had been violated, courts have considered that the cases also involved a general interest of the society and general law abidance: the employees must be treated equally, and the employees' ignorance of their rights due to being foreigners must not be exploited. In their decisions, courts may also have highlighted the need to protect the Finnish working life at a general level and to prevent certain employers from obtaining an unfair competitive advantage over others. The International Labour Organization outlines the elements of the definition of forced labour as follows:

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63 See for example Helsinki District Court R 08/1514, 2.7.2008, Helsinki District Court R 07/8030, 17.3.2008 and Helsinki Court of Appeal R 07/92, 29.5.2008. See also the District Court decision on the latter case R 06/2381, 22.11.2006.

64 ECHR *Müssele v. Belgium* (Series A, No.70, para. 37), 23.11.1983.

<b>Lack of consent to (involuntary nature of) work (the “route into” forced labour)</b>	<b>Menace of a penalty (the means of keeping someone in forced labour) Actual presence or credible threat of:</b>
Birth/descent into “slave” or bonded status	Physical violence against worker or family or close associates
Physical abduction or kidnapping	Sexual violence
Sale of person into the ownership of another	(Threat of) supernatural retaliation
Physical confinement in the work location – in prison or in private detention	Imprisonment or other physical confinement
Psychological compulsion, i.e. an order to work, backed up by a credible threat of a penalty for non-compliance	Financial penalties
Induced indebtedness (by falsification of accounts, inflated prices, reduced value of goods or services produced, excessive interest charges, etc.)	Denunciation to authorities (police, immigration, etc.) and deportation
Deception or false promises about types and terms of work	Dismissal from current employment
Withholding and non-payment of wages	Exclusion from future employment
Retention of identity documents or other valuable personal possessions	Exclusion from community and social life
	Removal of rights or privileges
	Deprivation of food, shelter or other necessities
	Shift to even worse working conditions
	Loss of social status

Source: ILO 2005.

Indicators of human trafficking and forced labour may be sought, for example, by asking the following questions:

- Is the person afraid or restless?
- Has he or she experienced violence or a threat of violence (physical, psychological, or sexual)? Have his or her family members been threatened?
- Has the person’s freedom of movement been restricted physically or otherwise, for example by threats?
- Has the person his or her identity documents and travel documents in his or her own possession?
- Does the person owe money to another person? How much? To whom? How did the debt arise? How does he or she intend to pay back the debt? Is the loan interest unreasonable?
- Can the person move around and conduct business without

permission?

- Is he or she free to form social relationships, or are his or her contacts outside the place of work restricted (including trade unions)?
- Does the person feel he or she has other real alternatives than to submit to exploitation? Does the person feel he or she can leave the unsatisfactory situation?
- Has the person been threatened by removal from the country, deportation, the police, prison, immediate termination of the employment relationship, or similar?

Additional questions related to work:

- Do the person's wages correspond to the employment contract? Are the wages in compliance with general collective agreements?
- Has the person independent access to and control of his or her income and property? Is the person allowed to keep the full salary for himself or herself?
- Are other circumstances of the employment relationship in order (including holidays, breaks, leaves of absence due to sickness, and occupational health and safety)?
- How is the person's accommodation arranged? Are the costs of the accommodation reasonable? Is the person living at the place of work?
- Has the person's employment contract been drawn up in writing or orally, or does it exist? Do the tasks and working times comply with the contract?
- Does the person feel that he or she can leave the job, should he or she wish to?

### ***6.3.5. Conclusions and recommendations***

It appears to the National Rapporteur on Trafficking in Human Beings that the threshold for applying the penal provisions on trafficking in human beings has been set high, both in pre-trial investigations and in court hearings. The Rapporteur's preliminary analysis indicates that the scope of application for the definition of discrimination at work tantamount to extortion is wide, while the definition of human trafficking is applied in few cases, although prerequisites for its application might exist. The penalties handed down to those sentenced for discrimination at work tantamount to extortion are rather lenient (a fine or a few months of conditional imprisonment). The employer has not in all cases been ordered to pay the employees the outstanding wages (the employees have not always even claimed

these), which makes exploitation of employees rather lucrative. Based on her initial analysis, the National Rapporteur on Trafficking in Human Beings recommends that:

1. The whole body of valid legislation and its adequacy be evaluated in greater detail from the perspective of prevention of human trafficking, identification of victims, and implementation of victims' rights in cooperation with labour market organisations and the occupational safety and health administration.
2. Pre-trial investigation authorities, prosecutors, and Occupational Safety and Health Inspectors be provided training on human trafficking to promote victim identification and referral to the system for victim assistance, as well as to make crime combating more effective.
3. Both ex ante and ex post supervision be carried out to an adequate degree to secure the legal protection of foreign workers, and adequate resources be allocated for this supervision. In these situations of supervision, printed information would be handed out on Finnish labour legislation and employees' rights. Printed information would also be disseminated on human trafficking and the rights of trafficking victims in order to make victim identification more effective.
4. Inter-authority cooperation between the occupational safety and health administration, the police, and the tax administration would be made more close-knit and increasingly effective to identify human trafficking and related phenomena of exploitation.
5. The authorities refrain from removing from the country foreign employees that are resident and working illegally in the country until it has individually and with adequate accuracy been established that the case does not involve human trafficking or related labour exploitation. Potential victims of human trafficking would be informed of their rights, including inclusion in the system for victim assistance, and of the possibility of obtaining a reflection period and a residence permit.
6. Foreigners coming to work in Finland be informed in writing about Finnish labour legislation and workers' rights before they leave their countries of origin. More systematic training would be provided for the personnel in Finnish foreign missions on human trafficking.
7. Key prosecutors be appointed to prosecute human trafficking offences. These key prosecutors would be systematically assigned to cases with indications of human trafficking. Cooperation at an early stage between the pre-trial investigation authorities and prosecutors in investigations would be made more effective.
8. More systematic training be provided for pre-trial investigation au-

thorities, prosecutors, and judges on human trafficking and the rights of victims of human trafficking.

## **6.4. Abuse of a victim of prostitution**

### **6.4.1. Introduction**

The National Rapporteur on Trafficking in Human Beings also felt it was necessary to evaluate the penal provision on abuse of a victim of prostitution in the Criminal Code within her competence. The Criminal Code penal provision on abuse of a victim of prostitution (Criminal Code 20:8) came into force in October 2006 (743/2006). It was preceded by a lively debate, which resulted in a compromise between various views on prostitution policy. The view assumed by the Constitutional Law Committee had a crucial impact on the final wording of the penal provision.

Under this provision, buying sex from victims of prostitution, or subjects of procuring and victims of human trafficking, is penalised. The perpetrator of this offence may be sentenced to a fine or imprisonment for at most six months. The statutory definition of the offence specifically aims to protect the subjects of sex trade, because using a human being as an object in the manner that is typical of human trafficking and procuring is a clear violation of human dignity. The provision also strives to prevent and reduce procuring and human trafficking and to obstruct the operating preconditions for organised international crime.<sup>65</sup> Buying sexual services from a minor was criminalised in 1998.

Abuse of a victim of prostitution is relevant to the job description of the National Rapporteur on Trafficking in Human Beings to the extent that the issue concerns monitoring human trafficking and related phenomena of exploitation. In this respect, the relevant issue is assessing whether a link exists between demand for sexual services and occurrence of human trafficking related to sexual exploitation that the penal provision aims to prevent. On the other hand, the Rapporteur looks at the application of this penal provision and evaluation of indirect intent that the proof is based on by examining cases that have so far been heard by the courts. In addition, the Rapporteur focuses, within her mandate, attention on such issues of the criminal procedure and compensation law that are significant to the injured parties of an offence. The Rapporteur refrains from commenting on more general prostitution policy

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<sup>65</sup> See also preliminary work on the Act HE 34/2004, HE 221/2005, LaVM 10/2006, PeVL 17/2006 and HaVL 24/2006.

decisions.

The National Rapporteur on Trafficking in Human Beings has informed the Ministry of Justice of her observations contained in this report by responding to the Ministry's request for statement in autumn 2009. The Rapporteur has also had access to a summary of the statements of other parties.<sup>66</sup> These statements show that views on the penal provisions remain rather diverse. Some of the parties having issued a statement defend the legislative solution that is currently valid; others wish to expand it; and yet others wish to have the penal provision repealed. The summary of the statements shows that the provision involves problems regarding both the obtaining and evaluating of proof and the position of the injured party, to which the National Rapporteur on Trafficking in Human Beings has also focused attention in her statement and the present report. The Rapporteur has further collected information on the application of this penal provision by attending certain court hearings in which charges have been brought under the penal provision in question.

#### ***6.4.2. On the connection between demand for sexual services and occurrence of human trafficking***

One objective of criminalisation is to reduce the demand for sexual services, which is an underlying cause of human trafficking, and to protect persons subject to the sex trade by establishing the buying of sex from subjects of procuring and victims of human trafficking as a criminal offence. International studies – which so far are few – indicate that while there seems to be a link between human trafficking related to sexual exploitation and demand for sexual services, this link is not as straightforward as we often presume. Studies also seem to suggest that a large number of prostitutes and a growing sex industry may increase human trafficking related to sexual exploitation.

Certain international studies indicate that prostitution policy decisions seem to have an impact on the prevalence of human trafficking related to sexual exploitation. In countries where legislation that decriminalises or regulates prostitution is in force, the number of sexually exploited victims of human trafficking identified is higher than in countries where the legislation takes a more negative view on prostitution. The studies point out, however, that a negative attitude to prostitution may also result in prostitu-

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<sup>66</sup> Report on the application of the penal provision on abuse of a victim of prostitution (OM/16/49/2009), 2.11.2009.

tion going into hiding, and consequently obstruct the identification of trafficking victims. Additionally, in countries where the structures in place to identify and assist victims of human trafficking are clearly more advanced than in Finland, for example, the number of victims that are identified may be higher. It may thus be difficult to say for certain why the number of identified victims of human trafficking in these countries is higher. Studies suggest that other factors also influence the occurrence of human trafficking. Financial and political factors of uncertainty have gender-specific impacts. Increasing unemployment of women, growth of the grey economy, a large pay gap between women and men, and a lack of social safety networks create a breeding ground for victimisation in human trafficking. As a result of the current global economical downturn, we should also prepare for this type of effects in Finland.<sup>67</sup>

Preventing and reducing human trafficking as a whole requires a range of measures. The Rapporteur would like to stress that establishing the abuse of a subject of the sex trade as a criminal offence may at its best work as one part of the whole in action to combat human trafficking. From a victim-centred perspective, what is significant is above all making the identification of victims of human trafficking more effective and building a functioning and approachable system for victim assistance, where the threshold for referral is kept sufficiently low by means of conscious decisions.

#### ***6.4.3. On the application of the penal provision and the requirement of imputability***

When the Act was being drafted, it was expected that offences fulfilling the statutory definition in question would in practice be uncovered when investigating procuring and human trafficking offences. So far, these penal provisions have been applied on rare occasions, and in principle in connection with a single procuring / human trafficking case.<sup>68</sup> A partial explanation for this may be the fact that few procuring cases are investigated annually. To the Rapporteur's knowledge, the number of pre-trial investigations of procuring has gone down since the early 2000's. This may partly be due to the limited police resources for investigating procuring and human trafficking crime and the fact that these offences are not a priority in policing. Because of the meagre legal practice, far-reaching conclusions on the application of this penal provision cannot yet be made. We can, however, present a few

<sup>67</sup> See for example Anderson and O'Connell Davidson (2003); Di Nicola et al. (2005); ILO, *The Demand Side of Human Trafficking in Asia: Empirical Findings* (2006); Pearson (2005); UNODC, *Trafficking in Persons: Global Patterns* (2006).

<sup>68</sup> Helsinki District Court R 08/10613, 28.11.2008, R 08/11681, 17.3.2009 and R 09/2217, 23.6.2009.

preliminary observations. The penal provision prohibits the abuse of a victim of prostitution as follows:

”A person who, by promising or giving remuneration involving direct economic benefit, induces a person referred to as a victim in section 9 or 9a or in chapter 25, section 3 or 3a to engage in sexual intercourse or in a comparable sexual act shall be sentenced, unless the act is punishable pursuant to section 8a, for *abuse of a victim of prostitution* to a fine or imprisonment for at most six months.

Also, a person who takes advantage of the remuneration referred to in subsection 1 promised or given by a third person, by engaging in sexual intercourse or a comparable sexual act with the victim referred to in said subsection, shall be sentenced for abuse of a victim of prostitution.

An attempt is punishable.”

Under this chapter 20, section 8, of the Criminal Code, the abuse of a person subject to sex trade is punishable. Unlike the model adopted from Sweden, the penal provision does not criminalise all buying of sex, only the abuse of a person subject to sex trade. Subjects of procuring and victims of human trafficking are considered to be subjects of sex trade. This policy was supported in the Constitutional Law Committee report 17/2006, which concluded by supporting a penal provision that was ”more restricted and fulfilled the requirement of correct proportions better”. The Committee presumed that the more restricted model would not be associated with such interpretation problems in terms of the requirement of accuracy and predictability contained in the legality principle as it felt an extensive model criminalising all buying of sex would have been.

Consequently, the statutory definition was limited to concern cases considered particularly reprehensible where the object of the act was himself or herself the victim of an offence regarded as rather serious. According to the Statutory Law Committee report 10/2006, this section is about the so-called indirect intent, in which certain characteristics of the activities indicate procuring or human trafficking. The essential question is what kind of knowledge the perpetrator is expected to have of the circumstances that the fulfilment of the so-called objective aspect of the statutory definition requires. In its report, the Statutory Law Committee specifies the circumstances based on which the perpetrator perceives the indications of the situation as required to meet the criterion of imputability. As typical indicators of procuring, the Statutory Law Committee considers the fact that the subject of sex trade is contacted through a third party or that the payment

is made to a person other than the subject of the act. As an indication of human trafficking, on the other hand, is the fact that the freedom of movement of the person who is the subject of the act is noticeably limited, or that the person is not psychologically fully functional. These circumstances do not necessarily emerge in a real situation, however, which is why intent may be difficult to prove in this respect. The National Rapporteur on Trafficking in Human Beings would like to point out that the control exerted over victims of human trafficking frequently is not quite so visible and obvious, and it may often involve more discreet mental pressurising and coercion, which is not always easily noticeable to an ordinary customer.

The question of when the perpetrator is regarded as guilty of abuse of a victim of prostitution has, surprisingly enough, not proven such a great problem in the legal practice and evaluation of proof as was expected while drafting the Act. Excluding the first case heard by the Salo District Court<sup>69</sup>, courts have widely interpreted the penal provision regarding imputability and indirect intent. Under the legal practice that so far is rather limited, the conclusions the defendants have made concerning the injured party, or the conclusions they should have made concerning him or her based on the circumstances, have been significant grounds for passing a sentence for this offence. Other circumstances that have increased the vulnerability of the injured party and his or her inability to protect himself or herself from exploitation have also been considered to be relevant.

Based on decisions examined by the National Rapporteur on Trafficking in Human Beings, it appears that in their hearings, the courts have focused attention on characteristics the defendants have observed in the injured party and his or her behaviour. The decisions analysed by the Rapporteur indicate that in certain persons accused of abuse of a victim of prostitution, suspicions had been aroused of the circumstances being doubtful. In a court hearing, some of the defendants had described the injured party as reserved, withdrawn, shy, quiet, introverted, or distant. It appears that some of the defendants either did not notice these features in the injured party or did not care. What the Rapporteur finds essential are the conclusions the defendant made or should have made concerning the injured party, and how these conclusions affected the defendant's decision to continue or withdraw from committing the offence. The accounts of the customers of a trafficking victim are important evidence in pre-trial investigations and court hearings in cases of human trafficking.

In their statements of reasons, the courts have on occasions made appeal to

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<sup>69</sup> Salo District Court R 07/141, 18.4.2007.

rather generalised assumptions, such as the “general knowledge” that persons selling sex who come from the Baltic countries and Russia are, almost without exception, subjects of procuring. The Rapporteur finds this type of generalisation and the consequent strong association of procuring with certain nationalities to be a problem. In two decisions, merely contacting the injured party and meeting him or her was in several cases sufficient at least to sentence the defendant for an attempt. In some cases, the defendant was also sentenced when he reported that he had withdrawn his intent and left the room because of the injured party’s behaviour. In other words, the court did not in these cases allow withdrawing from an attempt. The National Rapporteur on Trafficking in Human Beings does not consider this pattern of interpretation successful, as the restricted penal provisions should also make possible withdrawing from the attempt on one’s own initiative, if the conclusions made based on the circumstances have persuaded the defendant to refrain from buying sexual services.

The Rapporteur also focuses attention on the use of coercive measures in investigations of this offence. Unlike aggravated procuring (Criminal Code 20:9a), abuse of a victim of prostitution is an offence subject to a relatively lenient penalty, which as such does not enable the use of coercive measures targeting telecommunications under the Coercive Measures Act (450/1987). Telecommunications monitoring and technical surveillance may, however, also uncover information that is not relevant to the investigated offence, but concerns an offence committed by the suspect other than the one based on which the permission for telecommunications monitoring was granted, or an offence committed by a person other than the suspect, such as an abuse of a victim of prostitution offence. The legal status of using so-called superfluous information of this type is so far unclear, as it is not actually prohibited in the legislation. The issue of using superfluous information is relevant to whether the pre-trial investigation authorities can use information that has come to their knowledge while using coercive measures in telecommunications for investigating a procuring or human trafficking offence when investigating an abuse of a victim of prostitution offence. Based on the proposals of the committee on pre-trial investigations and coercive measures, this type of superfluous information could not be used to investigate an abuse of a victim of prostitution offence.<sup>70</sup>

#### ***6.4.4. The victim’s position in the criminal procedure***

A victim of human trafficking and the injured party in an abuse of a victim

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<sup>70</sup> Ministry of Justice, Ministry of Justice Committee Report 2009:2.

of prostitution offence is entitled to claim compensation under chapter 5 of the Tort Liability Act (412/1974). Among others, they may claim compensation for suffering and invalidity. Regardless of claims, in none of the hearings has the court sentenced the defendant to pay compensation to the injured parties. The court found that medical reports and the related evidence did not support the fact that the post-traumatic stress reaction caused to the injured parties would have been caused by the defendants. The court considered that only those sentenced for an actual procuring offence will be liable for the consequences caused to the injured parties.

In the view of the National Rapporteur on Trafficking in Human Beings, this interpretation is not justified. The Rapporteur considers that the perpetrators of actual procuring and human trafficking offences should have a greater liability for actual procuring or human trafficking offences. This does not mean, however, that each customer having bought sexual services could not be independently liable for the consequences caused by their actions to the injured party. Without the customers, the activities of the perpetrators of procuring or human trafficking offences would not be lucrative and productive. The Rapporteur stresses that persons subject to sex trade are obliged to be witnesses, both in court hearings of procuring or human trafficking offences and hearings of an abuse of a victim of prostitution offence. In the above-mentioned case, the defendants had, because of their considerable number, been divided into several court hearings, in each of which an essential part of the evidence consisted of hearing the injured party. A long-term procedure with multiple phases of this type is mentally stressful for the victim. It is difficult to see what use a procedure like this could be to the injured party, if it is not viewed as appropriate to sentence the defendant to pay compensation. The Rapporteur finds it obvious that the possibility of compensation will also motivate the victim to cooperate with the police and give an account of his or her abusers.

The Rapporteur believes that the interpretation of sentencing the defendant to pay compensation may have been affected by the fact that in the very first court hearing of a human trafficking case, the court rejected the charge of human trafficking, and sentenced the defendant for a basic offence of procuring based on the alternative charge brought by the prosecutor. This interpretation was reconsidered by the Court of Appeal. Drawing the line between procuring and human trafficking is currently one of the most central problems in action against human trafficking; and in the Rapporteur's opinion, it is one reason for the small number of persons who have been

identified as victims of human trafficking subjected to sexual exploitation. From the perspective of a trafficking victim, it is also vital in an investigation of an abuse of a victim of prostitution offence that the original offence committed against him or her is defined as human trafficking, if the statutory definition is fulfilled. As mentioned earlier in this report, many assistance mechanisms created specifically for victims of human trafficking are not launched unless human trafficking is identified. The position in the criminal procedure of the subject of the offence seems to vary, based on whether the criminal matter is investigated as procuring or as human trafficking. While victims of human trafficking are in the position of an injured party in the criminal procedure, subjects of procuring usually are witnesses, whose possibilities of receiving compensation seem to be more limited.

Finally, the National Rapporteur on Trafficking in Human Beings finds it important to discuss the arrangements for court hearings. The Rapporteur has attended a number of hearings of these cases in court and observed that the court has not always necessarily understood how mentally stressful a situation the hearing is for the injured party. Secure rooms are not used, nor is the screen preventing a visual contact between the injured party and the defendants respected. It is a problem for the injured party if the proof needed for sentencing is obtained by the defendants taking turns to be "identified" by the injured party behind the screen. The Rapporteur finds that secure rooms should be used, and the screen put up to protect the injured party should be respected. From the start, an attempt should be made to gather sufficient proof of the incidents by some other means.

#### ***6.4.5. Conclusions and recommendations***

The offence of abuse of a victim of prostitution is relevant to the job description of the National Rapporteur on Trafficking in Human Beings to the extent that the issue concerns monitoring human trafficking and related phenomena of exploitation. In this respect, what is relevant is assessing if a link exists between a demand for sexual services and human trafficking related to sexual exploitation that the penal provision aims to prevent. On the other hand, the Rapporteur looked at the application of this penal provision and evaluation of indirect intent that the proof is based on by examining cases that have been heard by courts before the end of 2009. In addition, the Rapporteur, within her mandate and using a victim-centred approach, focuses attention on issues of the criminal procedure and compensation law that are significant to injured parties of an abuse of a victim of prostitution

offence. The National Rapporteur on Trafficking in Human Beings does not comment on prostitution policy decisions within her competence.

As a conclusion, the National Rapporteur on Trafficking in Human Beings states that the application of this penal provision involves problems arising from the position of the injured party, which should be appropriately taken into account when improving the legislation. The Rapporteur does not find justified the opinion assumed by courts, whereby only defendants sentenced for an actual procuring or human trafficking offence are liable for the consequences caused to the injured parties of exploitation and compensations. Customers buying sexual services make the procuring or abuse of the injured party possible, and consequently they should also be regarded as liable to pay compensation. The Rapporteur believes that the possibility of receiving compensation would motivate the victims to report exploitation to the authorities and to cooperate in bringing charges against those suspected of an abuse of a victim of prostitution offence. The Rapporteur also focuses attention on the arrangements of court hearings and finds that secure rooms should be used, and the screen set up to protect the injured party should be respected. The Guidelines of the UN High Commissioner for Human Rights, too, stress that the legal proceedings should not be prejudicial to the physical or psychological well-being of trafficked persons (Guideline 6). The National Rapporteur on Trafficking in Human Beings recommends that

1. In drafting of legislation on an abuse of a victim of prostitution offence and application of the provision, the rights of victims of human trafficking and subjects of procuring be better taken into account as injured parties of the offence, including the possibility of receiving compensation.
2. In arrangements of court hearings, the needs for protection of injured parties in human trafficking and procuring offences be taken in account better and an attempt be made to reduce the possible negative consequences to the well-being of the injured parties in the hearings, for example, by using secure rooms and screens preventing a visual contact between the injured party and the defendants. The courts should also take other measures to actively prevent further trauma being caused to the injured party of a human trafficking offence.

## **7. Conclusions and recommendations of the National Rapporteur on Trafficking in Human Beings**

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As this report is published, the Ombudsman for Minorities has been acting as the National Rapporteur on Trafficking in Human Beings for slightly more than a year. Under the Act on the Ombudsman for Minorities and the National Discrimination Tribunal, the task of the National Rapporteur on Trafficking in Human Beings is to monitor trafficking in human beings and related phenomena as well as to oversee action against trafficking in human beings. Independent supervision and the perspective of an outside observer have generally been considered a welcome addition to the development of action to combat human trafficking. During her first year in office, the Rapporteur has aimed to lay a sustainable foundation for her activities. The Rapporteur has strived to establish cooperation relationships and secure adequate access to information from authorities and organisations. In addition to drawing up this report, the National Rapporteur on Trafficking in Human Beings has during her first year in office taken part in information and training activities concerning trafficking in human beings, given recommendations, statements, and advice on trafficking in human beings and activities to combat it to authorities and third-sector actors, taken part in several working groups and meetings on trafficking in human beings as an expert, speaker, and observer both in Finland and abroad, and assisted victims of trafficking in human beings.

The powers and duties of the National Rapporteur on Trafficking in Human Beings are exceptional: she has no equal in the central government. For this reason, during her first year of office the Rapporteur has worked to clarify her own role in action against trafficking in human beings. The activities of the Rapporteur are guided by certain basic principles. Firstly, the National Rapporteur on Trafficking in Human Beings is an independent authority who strives for good cooperation with both other authorities and third-sector actors. At the same time, the Rapporteur aims to bridge the gap between the authorities and NGOs, and in this way promote the identification of victims of human trafficking and the implementation of their rights. The Rapporteur strives to be an independent and reliable party whose reports and other activities are based on verified, accurate information and in-depth analysis. The National Rapporteur on Trafficking in Human Beings offers her expertise to authorities and third-sector actors, thus aiming to promote action against human trafficking. In order to achieve these objectives, the Rapporteur also strives to network with international organisations and actors in other countries and to introduce best practices learnt from these to national activities. In a recent judgment, the European

Court of Human Rights considered that states have a duty to ensure they identify victims of human trafficking and take the need for assistance and protection of victims of human trafficking appropriately into account, and to properly investigate human trafficking offences already committed.

The second principle guiding the activities of the National Rapporteur on Trafficking in Human Beings is a victim-centred approach to human trafficking and action against it. The Rapporteur looks at activities to combat trafficking in human beings based on how the rights of victims of trafficking in human beings are implemented and what types of obstacles to the implementation of the victims' rights the Finnish system may present. This perspective naturally affects the issues emerging in legislation and practices to which the Rapporteur pays attention and the types of improvements she suggests. As standards for this evaluation, international conventions and recommendations are used. The Rapporteur's aim is to highlight the victim's perspective and the impact of legislation, practices, or non-intervention on the victims and the implementation of their legal protection. In this way, the National Rapporteur on Trafficking in Human Beings strives to promote the identification of victims of human trafficking and the implementation of their rights. The National Rapporteur on Trafficking in Human Beings believes that improving the victims' position also promotes crime combating and prevention of human trafficking. This view appears to be supported by international experience. At the same time, the National Rapporteur on Trafficking in Human Beings makes an effort to increase the awareness of parties working with victims of human trafficking and the general public on trafficking in human beings and the related phenomena of exploitation.

Over a short period of time, Finland has adopted a considerable number of legislative and other measures aiming to prevent trafficking in human beings, to assist and protect its victims, and to prevent offences of human trafficking. The action against trafficking in human beings in Finland is mainly based on three Acts: the Criminal Code, the Aliens Act, and the Act on the Integration of Immigrants and Reception of Asylum Seekers, which have all been amended to better respond to the challenges of trafficking in human beings. Penalties for trafficking in human beings have been laid down, assisting the victims has been made more effective by establishing a dedicated system for victim assistance, and the possibility of granting a so-called reflection period and issuing a temporary or permanent residence permit to victims of human trafficking were added to the Aliens Act. In June 2008, the Government adopted a Revised National Plan of Action against Trafficking in Human Beings, and a steering group meeting

under the Ministry of Interior was set up to monitor its implementation. In addition, cooperation networks have been developed, training has been provided for key authorities and third-sector actors, projects combating human trafficking of the third sector have been supported, attention has been focused on the demand that creates human trafficking, and a National Rapporteur on Trafficking in Human Beings has been appointed. The National Rapporteur on Trafficking in Human Beings considers it obvious that the measures taken have promoted action against trafficking in human beings in Finland. Plenty remains to be done, however, before the action against trafficking in human beings has achieved the level of effectiveness that we should be able to expect of it.

In her first report on human trafficking and related phenomena, the National Rapporteur on Trafficking in Human Beings has collected her observations of human trafficking and related phenomena and the state of action against them made during her first year in office. In her report, the National Rapporteur on Trafficking in Human Beings points out that the greatest challenge in the Finnish action against trafficking in human beings is to identify victims of trafficking: the Rapporteur has strived to demonstrate that human trafficking and the related phenomena of exploitation are more common in Finland than we often realise. However, the victims are not identified: they are not necessarily identified at all, or they are not identified as victims of trafficking in human beings. As a consequence of this failure to identify victims, the victims of human trafficking are denied their statutory rights, such as services of the system for victim assistance, or are unaware of the possibility of applying for a reflection period and a so-called victim's residence permit. As the Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings states, failure to identify a trafficking victim correctly will probably mean that victim's continuing to be denied his or her fundamental rights and the prosecution to be denied the necessary witness to gain a conviction of the perpetrator of trafficking in human beings. The Rapporteur finds that Finnish action against trafficking in human beings should be made more effective by lowering the threshold for referring victims of human trafficking to the system of identification and victim assistance, thus also promoting crime combating. The most essential needs for change concern developing the functioning of the system for victim assistance.

In her first report, the National Rapporteur on Trafficking in Human Beings has strived to evaluate three of the most essential aspects of action against trafficking in human beings: 1) the system for victim assistance, 2) procedures related to the victims' stay in Finland and their removal from the

country, and 3) the criminal procedure and the application and interpretation of the penal provisions on trafficking in human beings. To examine the status of these aspects, the National Rapporteur on Trafficking in Human Beings has collected and analysed the necessary information on trafficking in human beings and related phenomena, as well as challenges to action against human trafficking. The Rapporteur has obtained information from other authorities, courts, and third-sector actors. The Rapporteur has complemented this documentation with a wide-reaching round of hearings and formal and informal meetings convened by her on issues relevant to trafficking in human beings. Information has also been gathered through contacts with the third sector and authorities, as well as by meeting and assisting victims of trafficking.

The legislative amendments relevant to the system for victim assistance in the Act on the Integration of Immigrants and Reception of Asylum Seekers came into force in January 2007. The system for victim assistance is based on two state reception centres (in Oulu and Joutseno), whose directors make the decisions on including victims in the system for victim assistance and their removal from it with the support of multi-disciplinary evaluation groups. By mid-December 2009, a total of 48 victims had been included in the system for victim assistance, of whom 12 were minors. To the Rapporteur's knowledge, the reception centres have rejected a total of 25 persons. The majority of adult victims included in the system for victim assistance had been subjected to exploitation of labour or related exploitation. The share of victims of human trafficking who have been subjected to sexual exploitation has remained surprisingly low in the system for victim assistance. Some of the minor victims were so-called potential transit cases. They were included in the assistance system because the authorities suspected that they could be victimised after arrival in their country of destination.

The National Rapporteur on Trafficking in Human Beings sees the establishment of an assistance system as a step in the right direction. The reception centres and multi-disciplinary evaluation groups responsible for managing the system for victim assistance have performed pioneering work to assist victims of human trafficking. Their activities have been obstructed to a considerable degree by the fact that the provisions of the Act concerning the assistance system are rather vague, and the links of the Integration Act with the Administrative Procedure Act have not been clear to the actors. The National Rapporteur on Trafficking in Human Beings has also paid attention in her report to referral to the assistance system, initiating a case and access to legal protection, scope of application of the Acts, composition

of the multi-disciplinary evaluation groups and location of the assistance system, customership management and service provision in the assistance system, providing training on the assistance system, and developing the system.

As her conclusion, the Rapporteur notes that the system for victim assistance has the preconditions for becoming a useful party providing assistance to the victims of human trafficking and thus also promoting crime combating and other action against human trafficking, if 1) the threshold for inclusion in the system for victim assistance will be consciously and methodically lowered, 2) the purpose and goals of the system and its relationship with pre-trial investigations and the criminal procedure are clarified and made more distant, and 3) the legal protection of victims and guarantees for appropriate administrative procedure are reinforced.

The Rapporteur has looked at the practice of granting reflection periods and issuing residence permits to victims of human trafficking, as well as the identification of victims in certain refusal of entry procedures under the Aliens Act. Based on this examination, the Rapporteur notes that the Immigration Service seems to act in a rather victim-centred manner in cases of human trafficking by issuing a temporary or continuous residence permit when victimisation in human trafficking has been given as the purpose of the stay in the country. However, relatively few reflection periods have been granted and residence permits issued on grounds of victimisation in human trafficking. The National Rapporteur on Trafficking in Human Beings considers that the provisions on the so-called victim's residence permit and reflection period in the Aliens Act should be amended to encourage victims of human trafficking with an illegal status to seek help from the authorities. The Rapporteur suspects that victims of human trafficking are not necessarily always identified when they come into contact with the authorities. The Rapporteur pinpoints refusals of entry under the Aliens Act when a person is suspected of selling sexual services as one possible situation where victims could be identified. Another essential situation where identifications could be made is the Dublin procedure, or determining which EU Member States is responsible for examining a person's asylum application. The National Rapporteur on Trafficking in Human Beings considers that the Aliens Act and practices should be amended and improved to promote identification of victims of human trafficking and their referral to the system for victim assistance and to make crime combating more effective. In connection with the system for victim assistance, reflection periods and residence permits, the National Rapporteur on Trafficking in Human Beings recommends that:

1. A specific act be passed on the system for victim assistance, which would reinforce the legal protection of victims of human trafficking, and guarantees of an appropriate administrative procedure.
2. Persons who fulfil the indicators agreed in an expert organ be included in the system for victim assistance.
3. For the time being, the reception centres of Oulu and Joutseno assume responsibility for providing the services, but a similar party coordinating the services be also set up in the Helsinki Metropolitan area.
4. Should they wish to avail themselves of this possibility, all persons included in the system for victim assistance who are in the country without a legal basis for their residence be granted a three-month reflection period (3 months or 90 days), during which the victim could also lodge his or her application for a residence permit. The reflection period would be granted and the first residence permit issued by the Immigration Service.
5. During the three-month reflection period, the Immigration Service interview the victim with the intention of establishing the grounds for an application for a residence permit the victim may have lodged.
6. The essential aspect in issuing a residence permit be considered adequate information about victimisation in human trafficking, while initiation of a criminal procedure would not be a condition for issuing a residence permit.
7. The requirement of cooperating with pre-trial authorities that is a condition for issuing a so-called victim's residence permit as well as the requirement of severing ties with those suspected of a human trafficking offence be removed from the Aliens Act. The victims should, however, be encouraged to cooperate with the authorities to implement criminal responsibility of those guilty of human trafficking and to prevent human trafficking. Other grounds for issuing a residence permit, such as that enacted in section 52 of the Aliens Act, could be used, for example, in cases where there is a need for a residence permit of a permanent nature because of the victim's individual characteristics and experiences or otherwise arising from the circumstances. When considering the grounds for issuing a residence permit, threats against the victim's family members would be taken into consideration.
8. A single multi-disciplinary expert organ be set up, the task of which at a general level would be to guide the functioning of the system for victim assistance (and possibly all action against trafficking in human beings). This organ should have strong enough a mandate to issue instructions guiding the activities of other authorities.
9. The multi-disciplinary expert organ be directed by the Immigration

Service. It would include representatives of authorities, NGOs, and labour market organisations. The National Rapporteur on Trafficking in Human Beings would have the position of an independent observer in this organ.

10. Potential victims of human trafficking encountered in prostitution, massage parlours, striptease joints, etc., be not refused entry on any grounds under the Aliens Act before it has individually and with adequate accuracy been established that the case does not involve human trafficking. Potential victims of human trafficking would be informed in writing of their rights, including the system for victim assistance, and of the possibility of obtaining a reflection period and a residence permit.
11. In so-called Dublin cases, the authorities as a rule refrain from refusing entry in cases that fulfil the indicators of human trafficking. The asylum applications of these persons would be examined under Article 3(2) of the Dublin Regulation. This would particularly apply to minor victims of human trafficking.
12. Victims of human trafficking identified in the so-called Dublin procedure be referred to the system for victim assistance without regard to whether a pre-trial investigation can be initiated in the case. An assistant should be appointed for the victim, and this assistant should have a real possibility of attending when the victim is being interviewed or questioned.
13. If the age of an asylum seeker is unclear and there are grounds to believe that he or she is a child, he or she be treated as a child.

The National Rapporteur on Trafficking in Human beings has also examined the identification of indicators of human trafficking and application and interpretation of penal provisions on human trafficking in pre-trial investigations and the criminal procedure. At the same time, the Rapporteur has made an effort to look at the state of prostitution and procuring activities as known to the authorities. The Rapporteur has also attempted to analyse the occurrence of human trafficking for the purposes of labour and the related phenomena of exploitation in Finland. Based on her material, the Rapporteur finds it unlikely that human trafficking would be such a marginal phenomenon in Finland as the number of pre-trial investigations, considerations of charges, and court decisions concerning human trafficking would suggest. By the end of 2009, a total of four cases of human trafficking (charges of human trafficking) had been heard by the courts, three of which were about sexual exploitation and one about labour exploitation. Based on her material, the Rapporteur believes that indications of human trafficking remain unidentified, and human trafficking is confused with related offences such as procuring and discrimination at work

tantamount to extortion. The problems of identification may partly be due to the complexity of the provisions on human trafficking and the fact that they overlap with provisions on related offences, but partly this is also a consequence of a limited understanding of human trafficking in pre-trial investigations and courts that is incoherent with international definitions of human trafficking. The National Rapporteur on Trafficking in Human Beings stresses that identifying the victims of human trafficking is a precondition for implementing the victims' rights. Appropriate victim identification also facilitates crime combating and prevention of human trafficking. The Rapporteur considers that the capacities of the police and the occupational safety and health administration are inadequate considering the extent and seriousness of the phenomenon, and the standard of knowledge about human trafficking issues of all parties is not yet of an adequate standard. The National Rapporteur on Trafficking in Human Beings recommends that:

1. The overlapping penal provisions on procuring and trafficking in human beings be removed by amending the procuring provisions. This could be implemented by removing from the procuring provisions those features of the definition that refer to exertion of pressure or coercion indicating human trafficking.
2. Subjects of aggravated procuring be granted the position of an injured party in pre-trial investigations and the criminal procedure, and their referral to the system for victim assistance be made more effective by informing them in writing of the assistance system and the possibility of obtaining a reflection period and residence permit in situations in which they are encountered. An assistant would be appointed for injured parties in an aggravated procuring offence for the criminal procedure.
3. A trained specialised unit be established for the pre-trial investigations concerning human trafficking offences. This unit would focus on activities aiming to uncover offences.
4. The entire legislation in force and its adequacy be evaluated in greater detail from the perspective of prevention of human trafficking, identification of victims, and implementation of victims' rights in cooperation with labour market organisations and the occupational safety and health administration.
5. Training be provided for pre-trial investigation authorities, prosecutors, and Occupational Safety and Health Inspectors on human trafficking to promote victim identification and referral to the system for victim assistance, as well as to make crime combating more effective.
6. Both ex ante and ex post supervision be carried out to an adequate degree to secure the legal protection of foreign workers, and this

supervision be allocated adequate resources. In these situations of supervision, printed information would be disseminated on the Finnish labour legislation and workers' rights. Printed information would also be disseminated on human trafficking and the rights of trafficking victims in order to make victim identification more effective.

7. Key prosecutors be appointed to prosecute human trafficking offences. These key prosecutors would be systematically assigned to cases with indications of human trafficking. Cooperation at an early stage between the pre-trial investigation authorities and prosecutors in investigations would be made more effective.
8. Inter-authority cooperation between the occupational safety and health administration, the police, and the tax administration be made more close-knit and increasingly effective to identify human trafficking and related phenomena of exploitation.
9. The authorities refrain from removing from the country foreign employees that are resident and working illegally in the country, until it has individually and with adequate accuracy been established that the case does not involve human trafficking or related labour exploitation. Potential victims of human trafficking would be informed of their rights, including the system for victim assistance, and of the possibility of obtaining a reflection period and a residence permit.
10. Foreigners coming to work in Finland would be informed in writing of Finnish labour legislation and the workers' rights as well as the rights of victims of human trafficking before they leave their countries of origin. More systematic training would be provided for the personnel in Finnish foreign missions on human trafficking.
11. In legislation relevant to the abuse of a victim of prostitution offence and in the application of this provision, the rights of victims of human trafficking and subjects of procuring as injured parties of the offence be better taken into account, including the possibility of compensation.
12. In the arrangements for court hearings, the needs for protection of injured parties in human trafficking and procuring offences be better taken into consideration, and an attempt be made to reduce any negative consequences caused by the court hearings to the well-being of the injured parties by using secure rooms, for example. The courts should also take other measures to actively prevent further trauma being caused to the injured party of a human trafficking offence.
13. More systematic training be provided for pre-trial investigation authorities, prosecutors, and judges on human trafficking and the rights of victims of human trafficking.
14. Witness protection methods be urgently improved.

The National Rapporteur on Trafficking in Human Beings has broad competence and extensive duties. Her competence covers not only human trafficking but also its related phenomena. This is justified because of the ambiguities in the definitions alone. The National Rapporteur on Trafficking in Human Beings employs various means to oversee and promote action against human trafficking. The most essential of these means is the annual report, but in between published reports, the Rapporteur aims to influence action against human trafficking by means of instructions, recommendations, statements, and advice, and by working together with both Finnish and international actors. During her first year in office, the Rapporteur has noted that the financial and personnel resources allocated by the Ministry of the Interior to the reporting duty are insufficient considering the nature and extent of the tasks. The National Rapporteur on Trafficking in Human Beings hopes that her appropriation will be increased and that she will be granted the possibility of employing one person to assist in the preparation of the annual report for at least a few months every year (4-6 months). The Rapporteur also considers that timely and adequate access to information is a prerequisite for appropriately performing her duties. During her first year in office, the Rapporteur has had negotiations with authorities and NGOs on access to information. Even though the right to access secret information is laid down in the Act on the Ombudsman for Minorities and the National Discrimination Tribunal (section 7), access to information has not in all respects progressed as could be wished.

The National Rapporteur on Trafficking in Human Beings considers that the action against human trafficking in Finland has progressed significantly in the last few years, but the current situation also has scope for suggested improvements. Some of the suggested improvements are associated with reforming procedures and practices, while the implementation of others would require parliamentary debate and legislative amendments. The National Rapporteur on Trafficking in Human Beings hopes that the suggestions issued will be noted and that the relevant parties will inform the Rapporteur within a year of the date on which the report is submitted on the measures each administrative sector has taken to make action against human trafficking more effective and to improve the victims' position. The National Rapporteur on Trafficking in Human Beings also offers her assistance in promoting her suggested improvements and their more precise specification.

In her next reports, the Rapporteur intends to monitor the implementation of her suggestions and add depth to her analysis by looking at action against

trafficking in human beings in certain other countries. The aim of the National Rapporteur on Trafficking in Human Beings is to promote action against human trafficking by presenting best practices on one hand, and by presenting cautionary examples of activities in other countries on the other. In her future reports, the National Rapporteur on Trafficking in Human Beings will also strive to take a closer look at human trafficking for the purposes of labour exploitation in Finland. The Rapporteur considers some of these phenomena quite serious, and expects that the situation will take a turn for the worse in the future unless determined measures to prevent this are taken. In the future, the National Rapporteur on Trafficking in Human Beings also aims to look in greater detail at potential transit cases of human trafficking and facilitation of illegal entry that may have characteristics of human trafficking.

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