

National Rapporteur on Trafficking in Human Beings

Report 2014

National Rapporteur on Trafficking in Human Beings Report 2014

**Assessment of the current state of action against human trafficking
and of the fulfilment in criminal proceedings of the rights of
victims of human trafficking subjected to sexual exploitation**

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ISBN (printed): 978-952-491-980-7
ISBN (pdf): 978-952-491-981-4

Grano, 2014

Contents

Foreword.....	5
Summary.....	7
1. Introduction.....	10
2. The Ombudsman for Minorities as the National Rapporteur on Trafficking in Human Beings	13
2.1. Authority and duties of the National Rapporteur on Trafficking in Human Beings	13
2.2. Right of the National Rapporteur to obtain information	15
2.3. Strategy of the National Rapporteur	17
3. Report of the National Rapporteur on Trafficking in Human Beings, 2010	22
3.1. Assistance system for victims of human trafficking.....	23
3.2. Residence permits and reflection periods	24
3.3. Refusal-of-entry procedures and identification of victims of human trafficking	25
3.4. Criminal proceedings and the application and interpretation of the essential elements of human trafficking	25
4. Parliament’s policy decisions concerning the report and their monitoring.....	27
4.1. Report of the Employment and Equality Committee	27
4.2. Policies on action against human trafficking and the Programme of Prime Minister Katainen’s Government	30
4.3. Assisting victims of human trafficking	31
4.3.1. Introduction	31
4.3.2. International law binding upon Finland.....	33
4.3.3. Improving the assistance system.....	36
4.3.4. Development of legislation concerning assistance for victims of human trafficking	42
4.4. Criminal law and criminal proceedings	44
4.5. Human trafficking for the purpose of labour exploitation, and employment supervision	49
4.5.1. Research findings	49
4.5.2. Convictions for human trafficking for the purpose of labour exploitation.....	51
4.5.3. Prevention of human trafficking for the purpose of labour exploitation, and identification of victims	53
4.6. Council of Europe Convention on Action against Trafficking in Human Beings	55
4.7. Duties of the national anti-trafficking coordinator	56

5. Application and interpretation of the provisions on procuring in the Criminal Code	58
5.1. Introduction	58
5.2. Provisions on procuring in the Criminal Code	59
5.3. Procuring at Thai massage parlours	62
5.3.1. Concept of “sexual intercourse or a comparable sexual act” in the procuring provision	62
5.3.2. Satisfying the essential element of financial benefit	63
5.3.3. Status of the women who sell sex at massage establishments	65
5.3.4. Characteristics of human trafficking in cases of procuring involving Thai massage parlours	66
5.4. Procuring at erotic shops and restaurants	68
5.4.1. Satisfying the essential element of financial benefit	68
5.4.2. Evaluation of intent on the part of business operators	69
5.5. The case of procuring Nigerian women	70
5.6. Drawing a line between procuring and human trafficking	74
6. Application and interpretation of the provisions on human trafficking in the Criminal Code	76
6.1. Introduction	76
6.2. Provisions on human trafficking in the Criminal Code	76
6.3. Provisions on human trafficking in legal practice	78
6.3.1. The case of the model agency	78
6.3.2. The case of the underage victim of human trafficking	80
6.3.2.1. <i>Decision of the District Court</i>	80
6.3.2.2. <i>Decision of the Court of Appeal</i>	82
6.3.3. The case of human trafficking resulting in a conviction for procuring	88
6.4. Criminal liability for sexual offences related to human trafficking	93
6.4.1. Legislation	93
6.4.2. Legal practice	95
6.4.3. Liability of a buyer of sex	98
6.5. Concept of sexual exploitation in the human trafficking provisions	103
6.5.1. Legislation	103
6.5.2. Legal practice	104
6.6. Dynamics of sexual exploitation and its consequences	108
6.6.1. Human trafficking as a form of sexual exploitation and violence	108
6.6.2. Human trafficking and factors making victims susceptible to exploitation	110
6.6.3. Consequences of exploitation and the importance of assessing them in criminal proceedings	111
6.7. Giving evidence in cases of human trafficking: using video recordings	114
6.7.1. Significance of the matter	114
6.7.2. Proposals for legislative amendments	116
7. Conclusions and recommendations	119

Foreword

The present document is the second report of the National Rapporteur on Trafficking in Human Beings to be submitted to Parliament. The first such report was submitted to Parliament in 2010. After a thorough discussion, Parliament outlined the objectives and possible legislative reforms in action against human trafficking for the following few years. I cannot recall any process comparable to this where a report evaluating the operations of the authorities was handled politically with such remarkably effective results in systematically improving those operations and the legislation governing them. At the time of publishing the present report, Parliament is debating two government proposals that were prompted by Parliament's discussion of the previous human trafficking report.

For Parliament to discuss such a report on human trafficking on a regular basis is a unique process even by international comparison, and as such is of great interest to other European countries, and also further afield. This is why the present report is being published in English in addition to Finland's official languages, Finnish and Swedish. So far, this process is demonstrably the most effective of its kind in advancing action against human trafficking and optimising the allocation of resources, besides raising public awareness of the topic. The EU Human Trafficking Directive also calls for the establishment of a national rapporteur or a similar system. On the strength of Finland's experiences in this field, we may say that granting the National Rapporteur independent status and a statutory right to obtain information, assigning the duties of the National Rapporteur to the Ombudsman for Minorities (and hence to the proposed future Ombudsman for Equal Treatment) and providing for regular reporting directly to Parliament once every electoral period have proved to be a worthwhile model that may serve as an example for many other countries and actors in the field of action against human trafficking. At the same time, we should note that the scant resources available to the National Rapporteur impose strict limits on the development of her activities and hence the results achieved.

The 2014 report of the National Rapporteur is, once again, the result of a review of an extensive body of criminal investigation materials and trial documents. It is helpful that the National Rapporteur receives information on the experiences of various actors concerning the situation of victims, on the work of the police and prosecutors, on challenges encountered at trials and on the work of the assistance system for victims of human trafficking, and it has also proved fruitful for the National Rapporteur to analyse trial documents concerning cases of human trafficking and similar or related offences. Identifying human trafficking and providing assistance to potential victims

of human trafficking are still the major challenges in action against human trafficking in Finland, and the documentation reviewed has revealed numerous indications of the shortcomings or circumstances that have proved particularly problematic in the process of identification for various authorities. These findings also demonstrate the continuing prevalence of a very narrow view of the nature of human trafficking as a serious offence.

Human trafficking is always an offence against human beings, their liberty and their personal integrity. The methods used to subjugate victims make for brutal reading. The violence and degrading treatment that victims of human trafficking subjected to prostitution or other sexual exploitation experience at the hands of third parties – buyers of sex – are also very painful to read about. Nevertheless, we have decided that the treatment endured by the victims must be discussed, and the acts must be described and made public. Glossing over the forms of exploitation is not in the victims' interests.

It is a common fallacy to imagine that exploitation and violence are somehow exceptional in prostitution. In reality, victims are traumatised with long-lasting effects, both physically and psychologically. It is necessary to be aware of this in order to be able to prevent the emergence of an extensive market for human trafficking in Finland. Human trafficking for the purpose of sexual exploitation in prostitution and other sectors of the sex trade has proved particularly difficult for the authorities to identify. The National Rapporteur considers that this is at least partly because of ignorance regarding the true nature and circumstances of this type of exploitation. It is our hope that the present report will serve as a foundation for Parliament to outline the objectives for action against human trafficking in the coming years, and to build a national action plan against human trafficking for the following electoral period.

I would like to extend my personal thanks to the staff of the Office of the Ombudsman for Minorities for their support in my duties as the National Rapporteur. Particular thanks are due to Senior Officer Venla Roth and Research Scientist Maija Koskenoja for preparing the present report. Their work has brought Finland's National Rapporteur on Trafficking in Human Beings, and these reports, international attention and recognition.

Helsinki, July 2014

Eva Biaudet

Summary

At the time of publishing of the present report, the Ombudsman for Minorities has been acting as the National Rapporteur on Trafficking in Human Beings for slightly over five years. Under the Act on the Ombudsman for Minorities and the National Discrimination Tribunal, the National Rapporteur monitors human trafficking and related phenomena, and promotes and monitors action against human trafficking and the fulfilment of the rights of victims of human trafficking.

In this report to Parliament, the National Rapporteur firstly evaluates the implementation of her first report, submitted to Parliament in 2010, and the demands for action presented by Parliament to the Government as a result. Secondly, the National Rapporteur evaluates how effectively sexual exploitation is identified and how well the rights of victims of human trafficking subjected to sexual exploitation are fulfilled in criminal proceedings. The National Rapporteur chose human trafficking for the purpose of sexual exploitation as a special focus area for this report, because Finland is internationally known to be particularly deficient in identifying this kind of human trafficking.

Based on the study conducted, the National Rapporteur notes that the 2010 report recommendations and the demands for action presented by Parliament to the Government have substantially advanced action against human trafficking and the fulfilment of the rights of victims. In retrospect, developments have in some areas been more rapid and more pronounced than the National Rapporteur could have anticipated when her office was established in 2009. Developments have been both qualitative and quantitative. Being a party separate from the administration responsible for human trafficking policy, the National Rapporteur is in a position to advance action against human trafficking from a human rights perspective. However, there is still much to be done. It is the considered opinion of the National Rapporteur that there are several obstacles to action against human trafficking that would be efficient and safeguard the rights of victims.

On the one hand, human trafficking is yet to be regarded as a social problem deserving of investment, prioritisation and/or resources. On the other, the authorities simply do not know enough about human trafficking. Officials do not have unambiguous legislation and official instructions to determine what they should do when encountering (potential) victims of human trafficking. Thirdly, action against human trafficking and the fulfilment of the rights of its

victims are complicated by the fact that this action is heavily biased towards the combating of crime and the control of foreign nationals, which threatens to overshadow consideration of the rights of the victims. A fourth challenge lies in the very definition of human trafficking, problems in applying and interpreting the provisions on human trafficking in the Criminal Code, and indeterminate items in the essential elements defined in those provisions. There is a shortage of competence in noticing, identifying and investigating the dynamics of exploitation and violence and the means of psychological intimidation and subjugation.

Based on the extensive criminal investigation and trial material compiled (covering cases of procuring and human trafficking from 2009 to summer 2013), the National Rapporteur noted that there must be more human trafficking for the purpose of sexual exploitation in Finland than we have hitherto been aware of. Despite this, potential victims of human trafficking are not referred to the assistance system for victims of human trafficking, and cases of sexual exploitation with characteristics of human trafficking are principally treated in investigation, prosecution and conviction as procuring offences, which deprives the potential victims of human trafficking of the right to a legal counsel and support person and to claim damages. In the worst cases, the potential victims are simply removed from the country without being offered any assistance at all.

The material reviewed by the National Rapporteur also indicates that the legal situation in applying and interpreting the provisions on human trafficking and procuring, and the relationship between these provisions, has scarcely changed with regard to the handling of cases where the action concerned seems to satisfy the essential elements of both procuring and human trafficking. Legal practice has failed to establish a clear picture of where the line between procuring and human trafficking should, in judicial terms, be drawn. Regarding the cases reviewed, what emerges as a very salient question is whether, and to what extent, the victim is considered to have originally consented to prostitution or the sex trade in some form. It is hoped the proposed amendments to the provisions on procuring and human trafficking in the Criminal Code will improve this situation, clarifying the boundary between the two offences and transferring characteristics of human trafficking from the essential elements of procuring to the essential elements of human trafficking.

The National Rapporteur also notes that it is still the case that nowhere in the criminal investigation process is there a full understanding or consideration of the dynamics of sexual exploitation and violence and of the impacts of exploitation on the victim. Human trafficking for the purpose of sexual

exploitation has yet to be recognised as an offence against the right of sexual self-determination and bodily integrity. This, combined with the fact that the essential elements are confusingly formulated and narrowly applied or interpreted, would seem to be the underlying reason why the legal practice is emerging as remarkably inconsistent. As a result, the potential of action against human trafficking to protect persons in a vulnerable or otherwise weak position remains unrealised.

In conclusion, the National Rapporteur notes that prevention of human trafficking is probably the most neglected area in action against human trafficking. Although the Human Trafficking Directive requires the EU Member States to combat human trafficking, and address the demand that drives it, the action taken so far consists of disparate measures whose implementation and effectiveness are not being subjected to coordinated monitoring. The measures designed to curb demand have proved insufficient. Domestic human trafficking has scarcely been addressed at all, even though a considerable percentage of the cases of human trafficking in which a conviction was reached concerned human trafficking within Finland, with Finnish victims and offenders.

In the present report, the National Rapporteur lists twenty (20) recommendations, addressing both legislative reforms and the development of official practices and cooperation. The recommendations include the preparation of a comprehensive action plan against human trafficking, and expansion of the powers of the occupational safety and health authorities and the Border Guard; the removal of the ban on selling sex in the Public Order Act; the safeguarding of the operating potential of the criminal investigation authorities, prosecutors and NGOs; and the establishment of a system for mental state assessments for injured parties in cases of human trafficking offences. The National Rapporteur also considers it important to continue improving the assistance system for victims of human trafficking so that an increasing number of (sexually exploited) victims would be referred to the system. Also, the National Rapporteur encourages the Ministry of Social Affairs and Health and local authorities to ensure that victims of human trafficking receive the services they require.

1. Introduction

In April 2013, Eurostat (the statistical office of the European Union) and the European Commission published their first statistical report on trafficking in human beings in the EU.¹ The report covers the years 2008, 2009 and 2010, and all EU Member States contributed to it. Collecting comparable and reliable data is a challenging process, and the figures must be read with caution, because it is suspected that they represent merely the tip of the iceberg. Because human trafficking tends to be unreported and difficult to identify, and because of ambiguities and disagreements concerning the very definition of human trafficking, it is difficult to give exact figures. Nevertheless, the statistical report does at least give an overview of the human trafficking situation in the EU and the challenges faced in action against it.

Firstly, the number of identified victims of human trafficking in the EU continues to rise year on year: some 9,500 were identified in 2010. The majority (68%) of these victims were women; 17% were men, 12% were girls and 3% were boys. Most victims of human trafficking (62%) were subjected to sexual exploitation. The next most common form of abuse was human trafficking for the purpose of labour exploitation (25%). Other purposes included the organ trade, coercion into criminal activity and trafficking in children (14%).

Most of the victims identified were citizens of EU Member States (61%). In other words, about two thirds of the human trafficking in the EU was internal. The next largest groups of victims were from Africa (14%), Asia (6%) and Latin America (5%). The majority of the victims identified in the EU Member States were Romanian and Bulgarian citizens. The major countries of origin outside the EU were Nigeria and China. During the aforementioned period, 2008–2010, the number of persons suspected of human trafficking in the EU decreased by about 17%. The majority of the suspects (75%) were men. About 84% of them were suspected of human trafficking for the purpose of sexual exploitation. The number of convictions for human trafficking decreased by 13% between 2008 and 2010.

The statistical report suggests that the EU Member States have become better at identifying human trafficking for the purpose of sexual exploitation in particular, but that there is still scope for improvement in identifying human trafficking for other purposes. On the other hand, the statistical report reflects problems in the criminal justice system: identified cases of human trafficking seemed not to have been pursued in a criminal process at all, or prosecution and conviction were no longer sought under the title of human trafficking but

¹ Trafficking in Human Beings. Eurostat/European Commission, 2013.

under other offences. The findings of the EU statistical report largely echoed investigations conducted by the United Nations Office on Drugs and Crime (UNODC) concerning the identification of human trafficking and the challenges therein for the criminal justice system.

The situation in Finland partly fits the above description, but in certain ways differs remarkably from that of the other EU Member States. Identification of human trafficking is clearly more successful than in the early years of action against human trafficking: the number of victims referred to the assistance system and the number of criminal investigations, prosecutions and convictions for human trafficking have increased. Unlike in other EU Member States, cases of human trafficking identified in Finland mainly concern labour exploitation and related forms of exploitation. As many as 3 out of 4 clients of the assistance system for victims of human trafficking are victims of human trafficking for the purpose of labour exploitation or other related forms of exploitation. Another significant group of victims consists of those who have become victims of sexual exploitation abroad, mainly in the Mediterranean, and who seek asylum in Finland. These victims are generally referred to the assistance system by reception centre employees or public legal aid attorneys.

Compared with other EU Member States, Finland's figures for cases of identified human trafficking for the purpose of sexual exploitation, prostitution and the sex trade in general are relatively low. This begs the question of whether there is actually very little trafficking for sexual exploitation in Finland or whether such cases fail to be identified, and if so, why? Also, very few cases of human trafficking for other purposes such as begging, forced marriages or criminal activities are identified in Finland.

In the present report, the National Rapporteur on Trafficking in Human Beings focuses particularly on human trafficking for the purpose of sexual exploitation in prostitution and the sex trade in general. The purpose of the National Rapporteur is to review extensive criminal investigation and trial documentation to explore whether human trafficking for the purpose of prostitution and the sex trade comes to the attention of the criminal investigation authorities at all, and if so, whether they and the prosecutors are competent in identifying it. Another aim is to consider whether the rights of the victims of human trafficking subjected to sexual exploitation are fulfilled in criminal proceedings, and to discuss factors in the Criminal Code and criminal proceedings that complicate the identification of victims of human trafficking and the fulfilment of their rights. The report also discusses the application and interpretation of penal provisions concerning human trafficking, based on judgments issued. This assessment and the subsequent recommendations

are based on universal human rights aspects, EU law and international treaties binding upon Finland.

Before evaluating sexual exploitation, the report explains the powers and duties of the Ombudsman for Minorities as the National Rapporteur on Trafficking in Human Beings, describes the strategy and practices of the National Rapporteur, and recalls the National Rapporteur's previous report to Parliament, the parliamentary debate on that report and the subsequent demands placed by Parliament on the Government. The report then discusses what action the Government has taken as a result of these demands, and how well the demands have been complied with in practice. Finally, the report presents recommendations for enhancing action against human trafficking, and for improving the status and promoting the rights of victims of human trafficking.

2. The Ombudsman for Minorities as the National Rapporteur on Trafficking in Human Beings

2.1. Authority and duties of the National Rapporteur on Trafficking in Human Beings

Section 1 of the Act on the Ombudsman for Minorities and the National Discrimination Tribunal (660/2001) states that the Ombudsman for Minorities works to prevent ethnic discrimination, promote good ethnic relations, safeguard the status and rights of ethnic minorities and foreigners, and supervise compliance with the principle of ethnic non-discrimination, and report on trafficking in human beings. The Ombudsman for Minorities is an independent actor. In the context of reporting on human trafficking, the Ombudsman for Minorities is referred to as the National Rapporteur on Trafficking in Human Beings. Section 2 of the Act states that in acting as the National Rapporteur, the Ombudsman for Minorities:

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

Under section 2a § of the Act, the National Rapporteur must submit an annual report to the Government and a report every four years to Parliament concerning human trafficking and related phenomena. Under section 4 of the Act, the National Rapporteur may assist, or appoint a subordinate official to assist, a victim of ethnic discrimination or a possible victim of human trafficking in securing the person's rights or, if necessary, obtain legal assistance for the person for this purpose if she considers that the matter is of considerable importance for preventing ethnic discrimination or for securing the rights of a possible victim of human trafficking.

According to the government proposal concerning national reporting on human trafficking, the duties of the Ombudsman for Minorities as the National Rapporteur include collecting data on human trafficking from the authorities, and on certain conditions from service providers, and analysing these data.² The duties of the Ombudsman for Minorities as the National Rapporteur further include monitoring of action against human trafficking in order to identify

² Government proposal, HE 193/2008 vp.

problem points. According to the preparatory materials, the National Rapporteur may also issue opinions on shortcomings observed and give advice to parties involved in activities addressing human trafficking. The National Rapporteur also monitors compliance with international obligations regarding human trafficking and the effectiveness of national legislation. Being an independent monitoring party, the National Rapporteur also supports the implementation of the National Plan of Action against Trafficking in Human Beings and legislative development.

The government proposal further notes that the National Rapporteur is authorised to monitor the human trafficking situation over a broad range, including not only actual human trafficking offences (trafficking in human beings and aggravated trafficking in human beings) but also occurrences and offences closely related to human trafficking (particularly extortionate work discrimination, aggravated procuring and aggravated facilitation of illegal entry). Thanks to this broad scope, it is possible to clarify the boundaries between various types of occurrence and offence in human trafficking reporting, thereby also facilitating the identification of victims of human trafficking in many cases.

The Employment and Equality Committee noted in its report on the matter that improving identification of human trafficking is important so that victims of human trafficking may receive the protection intended for them.³ Uprooting human trafficking and related international crime will also become more efficient. The Committee further considered that the National Rapporteur can significantly advance national efforts against human trafficking in Finland by keeping close contact with the authorities and third-sector operators, by collecting reliable data, and by highlighting shortcomings and development needs. Ultimately, responsibility for action against human trafficking rests with the Government, but the independent National Rapporteur can help in comprehending the phenomenon and in orienting the action against it through research, international contacts and development proposals.

Section 7 of the Act lays down provisions on the right of the Ombudsman for Minorities to obtain information. Under this section, the Ombudsman for Minorities has the right to obtain free of charge from other authorities any information necessary to carry out the duties laid down for her in this Act and the Aliens Act (301/2004), notwithstanding secrecy provisions. Obtaining up-to-date and comprehensive information is vital for the effective management of human trafficking reporting duties.

³ Employment and Equality Committee report, TyVM 15/2008 vp.

2.2. Right of the National Rapporteur to obtain information

In practice, obtaining information has proved a challenging task particularly with reference to certain criminal investigation authorities. Problems typically arise in situations where the National Rapporteur becomes aware of an ongoing criminal investigation and considers it important to find out whether the fulfilment of the (criminal procedural) rights of potential injured parties in human trafficking offences has been ensured, and whether such persons have been referred to the assistance system for victims of human trafficking. In the aforementioned Committee report, it was considered important for the National Rapporteur to have extensive rights for obtaining information. The Committee noted that such rights are consistent with comprehensive and objective reporting and lay a foundation for making suggestions on how to improve cooperation and streamline operations between the various actors.

In the instructions on the addressing of trafficking in human beings and related offences and the provision of assistance to victims of trafficking in human beings, issued in April 2012, the National Police Board aimed to acknowledge the concern voiced by the National Rapporteur.⁴ The instructions state that when the Ombudsman for Minorities (i.e. the National Rapporteur) requests specific information from the police for the purpose of managing her duties, such information must be disclosed without delay unless this would potentially compromise the investigation. When a criminal investigation or a police investigation is in progress, it is up to the head of the investigation or his/her supervisor to decide the extent of disclosure. The instructions also advise the head of the investigation to notify the Ombudsman for Minorities (i.e. the National Rapporteur) of any human trafficking offence subject to criminal investigation at the latest when the police begin interviewing the victims of the alleged offence, assuming that such notification can be made without compromising the investigation. Once the criminal investigation of a human trafficking offence has been completed, it is recommended to send copies of the criminal investigation records to the Ombudsman for Minorities (i.e. the National Rapporteur) at the same time as they are sent to the parties to the matter and the prosecutor.

The National Rapporteur welcomes these instructions and considers that for practical purposes they should be interpreted in the spirit of the Act on the Ombudsman for Minorities and the National Discrimination Tribunal to en-

⁴ Poliisihallitus: Ohje, Ihmiskauppaan ja sen kaltaisiin rikoksiin puuttuminen sekä ihmiskaupan uhrin auttaminen, 2020/2011/3768 (12.4.2012). [National Police Board: Instructions on the addressing of trafficking in human beings and related offences and the provision of assistance to victims of trafficking in human beings, 2020/2011/3768 (2012).] Updated version valid from the beginning of 2014.

sure that the National Rapporteur receives all the information needed to manage her duties. The National Rapporteur herself has the power to decide what information is relevant for human trafficking reporting. In practice, the National Rapporteur must actively seek information from the criminal investigation authorities in order to obtain the information needed. The criminal investigation authorities generally do disclose information to the National Rapporteur on request, which facilitates the management of monitoring duties and advocating for the status of victims and the fulfilment of their rights in individual cases of human trafficking.

Notwithstanding what is provided elsewhere in the law on secrecy and the supply of information, the Ombudsman for Minorities also has the right, in her capacity as the National Rapporteur on Trafficking in Human Beings, to obtain information from service providers who take part in the provision of services and support measures referred to in the Act on the Integration of Immigrants and Reception of Asylum Seekers or who receive state aid intended for combating human trafficking. The Ombudsman for Minorities has the right to obtain personal data on an individual victim of trafficking from the actors referred to only if obtaining such information is necessary to perform the duties laid down for the Rapporteur in the Act. The National Rapporteur does not systematically collect personal details. Generally, the National Rapporteur very rarely needs details on individual victims of human trafficking, an exception being when she is requested to take action in an individual client case. While the National Rapporteur collects information, this information is usually only used in addressing structural anomalies in action against human trafficking.

The government proposal concerning the establishment of the post of the National Rapporteur included no provisions on the right of the Ombudsman for Minorities to attend trials in camera in cases where the Ombudsman for Minorities is not providing legal assistance for the victim. However, the Employment and Equality Committee noted, as its opinion on the basis of the report received, that the provisions could be interpreted so as to allow her to attend such trials. The Committee stressed in its report that the Ombudsman for Minorities or her designated representative should have the opportunity to attend trials in camera insofar as the Ombudsman for Minorities considers such attendance necessary for obtaining information, for instance on how the essential elements of an offence are applied in practice.

The Committee considered it important that the Government monitor how these provisions are interpreted and, if necessary, amend them to make them more specific so as to safeguard the right of the Ombudsman for Minorities to

obtain information in this respect. In practice, the Ombudsman for Minorities in her capacity as the National Rapporteur has been able to exercise her right to obtain information with varying degrees of success. Some courts allow her to attend trials in camera, while others do not. The National Rapporteur considers it important that her right to obtain information in this context be secured, by legislative amendments if necessary.

2.3. Strategy of the National Rapporteur

The National Rapporteur works to ensure that human trafficking and related exploitation are not and do not become a significant problem in Finnish society. The National Rapporteur aims to contribute to efforts to prevent and reduce human trafficking, whether considered as a practice, a human rights challenge or a form of crime. The National Rapporteur also seeks to advance the identification and assistance of victims of human trafficking, and the fight against crime. The National Rapporteur further seeks to raise public awareness of the phenomenon of human trafficking, its social impacts and ways to address it. Supporting officials and NGOs engaged in addressing human trafficking and assisting its victims is an important part of the work of the National Rapporteur. There is one full-time expert at the Office of the Ombudsman for Minorities (National Rapporteur) assigned to reporting. The reporting function is also given administrative and communication support by the rest of the Office's personnel.

Independence is an absolute necessity for managing the duties falling under human trafficking reporting. Independence reinforces the confidentiality and credibility of the National Rapporteur and her capacity, as a party separate from the branch of government responsible for human trafficking policy, to analyse the current state of action against human trafficking and to submit proposals as to how that action might be improved.

In carrying out her duties, the National Rapporteur focuses on publicity and training, for instance concerning the content of legislation addressing human trafficking, the forms in which human trafficking manifests itself, and the rights of the victims of human trafficking. Another aim is to influence attitudes prevalent in society at large. The National Rapporteur monitors legislative and administrative processes that are relevant for the fulfilment of the rights of victims of human trafficking. The National Rapporteur further seeks to chart the parties that are of key importance for addressing human trafficking, victim identification, victim assistance and the combating of crime and to engage in close cooperation with these parties.

The fulfilment of the rights of victims of human trafficking is an essential aspect of the work of the National Rapporteur, in which action against human trafficking is considered from the perspective of the fulfilment of victims' rights and the obstacles that may hinder this, whether legislative or administrative. This approach influences which legislative and practical points the National Rapporteur focuses on and what kind of development proposals she issues. EU law and international human rights obligations and recommendations are important benchmarks in this work. The National Rapporteur seeks to highlight the victims' point of view and the impacts of legislation, current practices or non-intervention on victims of human trafficking and the fulfilment of their rights.

The duties of the National Rapporteur include the advancement of preventing human trafficking and of improving the status and rights of victims; the monitoring of action against human trafficking; and reporting on human trafficking issues to Parliament and the Government. To summarise, the duties of the National Rapporteur are:

1. reporting on human trafficking and related phenomena and on the current state of action against human trafficking and the fulfilment of the rights of victims, and reporting follow-ups,
2. monitoring of action against human trafficking, and
3. advancement of action against human trafficking.

Reporting. The National Rapporteur submits an annual report to the Government and a report every four years to Parliament concerning human trafficking and related phenomena. The preparatory materials for the Act on national reporting on human trafficking emphasise the importance of the reporting function, i.e. the collecting and analysing of information and the submitting of regular reports to Parliament and the Government. One of the key purposes of reporting is to make use of the collected and analysed information to pinpoint shortcomings in action against human trafficking and to address them, and to issue recommendations for the development of action against human trafficking. International experiences are of vital importance in the development of action against human trafficking.

The National Rapporteur submits an extensive evaluation report to Parliament on the current state of Finland's action against human trafficking, including recommendations for improvement, every four years, i.e. once in every electoral period. The annual report submitted to the Government, by contrast, is generally a review of the previous year's operations or a thematic report on a specific issue in the area of human trafficking. Another reason for

their existence is that they are a tool for the National Rapporteur to monitor the implementation of the recommendations in the reports to Parliament and of the positions of Parliament thereto. The National Rapporteur advises and supports actors involved in action against human trafficking concerning the implementation of her recommendations and the positions of Parliament.

All the reports of the National Rapporteur are available in Finland's official languages and have also been translated into English, allowing for wider awareness abroad of the work of Finland's National Rapporteur and action against human trafficking. Indeed, the National Rapporteur has attracted considerable international attention by virtue of her exceptional statutory and independent status and her operating practices, focused on the advancement of fundamental and human rights and grounded in collected and analysed information.

Monitoring. The National Rapporteur manages her monitoring duties through advisory services and instructions provided for parties addressing human trafficking and working with its victims, and through client work. Although the law also allows the National Rapporteur to provide assistance for individual victims of human trafficking, this is only undertaken in exceptional cases where legal aid is not otherwise available. The National Rapporteur may, at her discretion, issue expert opinions on specific client cases on request. The National Rapporteur may also give legal or other advice to victims of human trafficking, to parties assisting them and to the authorities.

Monitoring action against human trafficking is important, not only for the purpose of safeguarding the rights of individual victims of human trafficking, but also because monitoring allows the National Rapporteur to discover practical problems, the addressing of which can strengthen action against human trafficking in general and advance the fulfilment of the rights of the victims. The National Rapporteur may also, on her own initiative, address any shortcomings observed in the investigation of human trafficking offences and the treatment of victims.

Promotion. The National Rapporteur seeks to promote action against human trafficking using a variety of means, for instance by participating in development projects to improve legislation and action against human trafficking; by providing training on human trafficking and related phenomena; by issuing recommendations for the development of action against human trafficking; by publishing articles on human trafficking; by increasing public awareness of human trafficking through seminars, public debates, public information campaigns, etc.; by collecting information on best practices in action against human trafficking abroad and distributing this information to Finnish actors;

by interviewing victims of human trafficking concerning their experiences in Finland; by assisting NGOs in action against human trafficking; by visiting workplaces where exploitation related to human trafficking is suspected to be taking place; or by otherwise assisting the authorities and third-sector actors in improving their action against human trafficking.⁵ The principal target groups for training are legal aid attorneys, criminal investigation authorities, prosecutors and court personnel. The National Rapporteur also keeps the media informed of her activities.

Supporting action against human trafficking is particularly important because until recently the central government administration had no anti-trafficking coordinator or similar designated official for pursuing the development of action against human trafficking within central government. It was at the recommendation of the National Rapporteur that the Ministry of the Interior appointed a working group on 20 March 2013 to draft a proposal for organisation by the Government of cross-sectoral monitoring and coordination of action against human trafficking. The working group proposed that the anti-trafficking coordinator be assigned to the Ministry of the Interior Police Department. The powers and job description of the anti-trafficking coordinator will be discussed below.

The establishing of a government position for a comparable national rapporteur (commissioner, supervisory authority, etc.) on human trafficking is currently being contemplated in a number of countries, including Germany, the UK, Ireland and Poland. Finland's National Rapporteur has been consulted in these processes and has provided advice, instructions and opinions, besides reporting on her experiences of the National Rapporteur's powers, job description and day-to-day work. The National Rapporteur is also in demand as a speaker abroad, and has contributed to the shaping of action against human trafficking in the European Union.⁶ However, due to a shortage of resources it is not possible to accept all international requests for information or lectures received by the National Rapporteur.

Several international organisations – including the United Nations, the Council of Europe, the Nordic Council of Ministers and the Council of the Baltic Sea States (CBSS) – have requested expert assistance from the National Rapporteur on issues related to action against human trafficking. The National Rapporteur

5 See for instance the award-winning public awareness campaigns implemented jointly with the International Organization for Migration (IOM) and the King advertising agency: Työ, jota kukaan ei haluaisi tehdä [The work that no one wants to do], 2011; and Ihmiskauppa ei ole satua [Human trafficking is not a fairy tale], 2012.

6 Senior Officer Venla Roth LL.D. is responsible for human trafficking matters and is a member of the European Commission's Group of Experts on Trafficking in Human Beings.

has also participated in international meetings of experts convened by the UN Special Rapporteur on Trafficking in Persons for the purpose of surveying policy outlines and operating models for national bodies engaged in the monitoring and coordination of action against human trafficking worldwide.

3. Report of the National Rapporteur on Trafficking in Human Beings, 2010

In June 2010, the National Rapporteur submitted her first report on human trafficking to Parliament.⁷ The purpose of the report was to review an extensive body of literary and interview material to chart the volume and severity of the phenomenon of human trafficking in Finland and to evaluate the state of action against human trafficking and the fulfilment of the rights of the victims. The summary of the National Rapporteur's review was that there was a general failure to identify human trafficking and that action against human trafficking was not as effective as might reasonably be expected.

In her report, the National Rapporteur named the identification of victims of human trafficking as the major challenge in Finland's action against human trafficking. Based on the material reviewed, she concluded that there is exploitation in prostitution and in working life of a kind that could be described as tantamount to human trafficking on the basis of its definition in international law and, indeed, in the Criminal Code of Finland. The National Rapporteur found shortcomings in the identification of victims in all the areas of action against human trafficking that she reviewed. She noted that failure to identify victims of human trafficking leads to failure to safeguard their rights under legislation and international obligations.

The National Rapporteur noted that while human trafficking was acknowledged as a human rights challenge and a serious offence at the time of the report, there was some confusion as to what human trafficking actually is and who its victims are; human trafficking was understood on a narrower basis than that provided for in the international definition of human trafficking or in legislation. The extensive review of materials indicated that in the areas of both prostitution and labour exploitation only the obvious victims were considered actual victims of human trafficking. Only a fraction of the activities consistent with the definition of human trafficking were actually investigated, or led to prosecution and conviction as human trafficking offences. Accordingly, the National Rapporteur concluded that there may in fact be more human trafficking in Finland than we are aware of.

Another major problem noted by the National Rapporteur was the fact that action against human trafficking tended to be weighted towards criminal proceedings and the combating of crime, which meant that assisting and protecting the victims were firmly tied to the provisions on human traffick-

⁷ National Rapporteur on Trafficking in Human Beings: Report 2010 – Trafficking in human beings, phenomena related to it, and implementation of the rights of human trafficking victims in Finland. Ombudsman for Minorities, 2010.

ing in the Criminal Code. In other words, referring victims to the assistance system depended crucially (it must be assumed) on the category of the offence selected by the authorities as the basis for the criminal investigation in each case. The report postulated that if human trafficking were not identified at this point in the process, there would be a danger of the potential victims of human trafficking not being identified as such, and therefore not being referred to the assistance system. Moreover, some persons requiring help, and some persons who had obviously been subjected to exploitation, were removed from the assistance system on the grounds that the criminal investigation authorities found insufficient evidence of a human trafficking offence. The National Rapporteur considered this problematic for the fulfilment of the rights of the victims. In her report, the National Rapporteur issued nearly 30 recommendations for enhancing action against human trafficking and for improving the status of the victims. Some of the recommendations involved reforms of practices and procedures, but some required legislative amendments.

3.1. Assistance system for victims of human trafficking

The legislative amendments concerning the assistance system for victims of human trafficking, made to the Act on the Integration of Immigrants and Reception of Asylum Seekers, entered into force in January 2007. (The Act has since been replaced by the Act on the Reception of Persons applying for International Protection (746/2011), or the Reception Act.) Today, the assistance system for victims of human trafficking is based at a single government reception centre in Joutseno, where the director, with the support of a multi-professional evaluation team, decides on whom to accept into or remove from the assistance system.

The National Rapporteur noted in the report that establishment of the assistance system was a step in the right direction, although the effectiveness of the system was complicated by the imprecision and insufficient coverage of the relevant legislative provisions, and by the fact that the connection between the provisions governing the assistance system and other relevant legislation (such as the Administrative Procedure Act and the Child Welfare Act) was unclear. The National Rapporteur commended the reception centres and multi-professional evaluation teams responsible for the assistance system (at that time, there was a second centre and team in Oulu) for doing pioneering work in the field of assisting victims of human trafficking. The number of victims referred to the assistance system had increased year on year, and the capacity of the system to respond to clients' needs had improved remarkably.

The National Rapporteur noted that the assistance system had the potential to evolve into a useful framework for assisting victims of human trafficking, and thereby for promoting the combating of crime prevention and other action against human trafficking, if 1) the threshold of access to the assistance system were consciously and systematically lowered; 2) the purpose and goals of the assistance system were clarified and its relationship vis-à-vis criminal investigations and criminal proceedings were established more distinctly; and 3) legal protection and guarantees of appropriate administrative procedure for victims of human trafficking were strengthened. In the report, the National Rapporteur presented several recommendations for improving the assistance system and a model for resolving then current problems. The most important of these recommendations involved enacting a separate Act on the assistance system.

3.2. Residence permits and reflection periods

Amendments to the Aliens Act (301/2004) concerning the residence in Finland of victims of human trafficking entered into force in summer 2006. A victim of human trafficking may be issued a temporary residence permit because of a criminal investigation or criminal proceedings. If the victim is in a particularly vulnerable position, the residence permit may be issued on a continuous basis regardless of whether the requirements are met ('victim permit'). Before being issued a 'victim permit', a victim may be granted a reflection period during which he/she must decide whether to cooperate with the authorities. By the time the first report of the National Rapporteur was published, only a few 'victim permits' had been issued and reflection periods granted. Some victims had been issued a residence permit on other grounds, such as compassionate grounds.

The National Rapporteur considered it positive that giving human trafficking as grounds for applying for a residence permit often led to a permit being issued; however, she also advised the authorities to consider why there are so few applications and so few permits issued. The National Rapporteur surmised that the current legislation is not conducive to inviting victims who are in the country illegally to turn to the authorities for help. The logical conclusion is that these victims are also never referred to the assistance system and the exploitation to which they are subjected is never brought to criminal investigation. The National Rapporteur gave several recommendations in the report for improving this situation, proposing a model where acceptance into the assistance system would automatically constitute the granting of a reflection period, securing a sufficient recovery period for the victims.

3.3. Refusal-of-entry procedures and identification of victims of human trafficking

The National Rapporteur also addressed certain refusal-of-entry procedures and the identification of victims of human trafficking in that context. Cases where entry was refused under the refoulement procedure based on the Dublin Regulation included several where the documentation indicated that human trafficking was involved. In some of these cases, the applicant declared him- or herself to be underage. In several cases, the documentation revealed that the discovery of irregularities in the applicants' travel arrangements, of the applicants being subjected to sexual exploitation or labour exploitation, of physical or sexual violence, of abduction, or of the applicants being given misleading information as to the nature of their work, did not lead to action being taken by the authorities; in other words, the fulfilment of the rights of the victims was not safeguarded.

The National Rapporteur especially mentioned the increasing number of prostitutes of Nigerian origin, and the fact that refusal-of-entry decisions concerning them did not indicate whether the possibility of human trafficking or other infringements of their rights had been investigated individually and in sufficient detail in their cases. The decisions did not also indicate whether the persons refused entry had been informed of the assistance system for victims of human trafficking. The National Rapporteur noted that officials should have greater awareness of the possibility of human trafficking in such situations. The National Rapporteur was not aware of any prostitutes having been granted a reflection period and considered this point alarming.

3.4. Criminal proceedings and the application and interpretation of the essential elements of human trafficking

Penal provisions concerning human trafficking were added to the Criminal Code (39/1889) in 2004. By the time the first report on human trafficking was submitted to Parliament, only a small number of criminal investigations and considerations of charges for human trafficking offences had been conducted, and accordingly there were also very few convictions. In fact, only three convictions of human trafficking had been made in Finland by then. Based on her extensive materials analysis, the National Rapporteur noted in her report that it was unlikely that human trafficking in Finland would be such a marginal phenomenon as it appeared to be on the basis solely of the number of criminal investigations, prosecutions and court decisions, especially since there was a considerably higher number of criminal investigations, prosecu-

tions and convictions for related offences. Some of the latter cases included obvious characteristics of human trafficking.

It was the opinion of the National Rapporteur that there was not yet sufficient competence in identifying human trafficking and distinguishing it from related offences such as procuring and extortionate work discrimination; also, the opacity of the penal provisions on human trafficking and the overlap of the essential elements of human trafficking with those of related offences may have partly explained why so few cases progressed to criminal proceedings specifically as human trafficking offences. The National Rapporteur noted that another explanation for the low number of cases may have been that the judicial authorities had a narrow view of the concept of human trafficking and were not aware of how human trafficking is defined in international conventions, for instance. The National Rapporteur gave several recommendations for improving the identification of human trafficking and for safeguarding the rights of its victims, including amendments to the penal provisions on human trafficking and procuring in the Criminal Code, and improvements to the criminal procedural status of witnesses in cases involving procuring offences.

4. Parliament's policy decisions concerning the report and their monitoring

The National Rapporteur submitted her report to the Speaker of Parliament at the beginning of June 2010. Parliament referred the report to four committees in the following autumn: the Administration Committee, the Legal Affairs Committee, the Social Affairs and Health Committee and the Employment and Equality Committee, the last-mentioned being the committee that made the committee report. The Social Affairs and Health Committee did not return a statement. After the committee reading, the report of the Employment and Equality Committee with legislative resolutions was adopted by Parliament in plenary session.⁸ In its communication to the Government, Parliament required the Government both to introduce legislative amendments and to improve official procedures. The communication of Parliament, including legislative resolutions, outlined the policy for the development of legislation concerning action against human trafficking and improvements to the action itself for several years to come. Parliament's policy was translated into a National Plan of Action against Trafficking in Human Beings.

4.1. Report of the Employment and Equality Committee

After an extensive round of expert consultation and committee discussion, the Employment and Equality Committee of Parliament returned a sizeable and detailed report.⁹ The Committee considered the report of the National Rapporteur to have been expertly compiled and commendable, and the National Rapporteur's independent valuation of the current situation in human trafficking was appreciated. The Committee noted that the recommendations for further action given in the report were important and necessary for the development and enhancement of action against human trafficking.

Advancing identification of human trafficking. The Committee advised the responsible ministries to draw up more detailed instructions for instance for the police and for occupational safety and health inspectors regarding the identification of victims of human trafficking and how to refer them to the assistance system. The Committee considered that the authorities, such as the police, should make more widespread use of the assistance system in completing the identification process. The Committee further stressed the urgency of providing funding for identification of victims of human trafficking undertaken by the third sector. The Committee concurred with the statements of the Legal Affairs Committee and the Administration Committee, which

⁸ Parliament communication, EK 43/2010 vp.

⁹ Employment and Equality Committee report, TyVM 13/2010.

were in favour of enacting an Act on the assistance system. The Committee considered it important for legislation to provide consistent support for the identification of victims of human trafficking and for the effectiveness of the assistance system for the purpose of empowering the victims and helping them to escape.

The Committee also addressed the issue of refusing entry to potential victims of human trafficking on the basis of the Dublin Procedure, returning them to the countries where they first became victims of human trafficking. The Committee considered this practice indefensible from the perspective of protecting victims and inconsistent with the international obligations binding upon Finland.

Amending the Criminal Code and improving the status of victims of human trafficking subjected to sexual exploitation. The Committee concurred with the statement of the Legal Affairs Committee, which drew attention to the overlap between the provisions on human trafficking and those on procuring, and the problems of application and interpretation thereby caused. It advised investigation into whether the current legislation could be clarified, for instance by revising the essential elements of procuring offences.¹⁰ The Employment and Equality Committee stipulated in its report that the Government must take steps to eliminate the overlap between the penal provisions on human trafficking and those on procuring. The Committee also concurred with the views of the Legal Affairs Committee concerning the legal status of a victim of a procuring offence and the importance of the victim's consent, requiring the Government to take steps to improve the legislation so as to strengthen these aspects.

The Committee particularly underlined the low number in the assistance system of victims of human trafficking subjected to sexual exploitation, and concurred with the policies contained in the Report on Gender Equality adopted in 2010, where the importance of evaluating and developing action against human trafficking and related legislation from the gender perspective was stressed.¹¹ It was also noted by the Committee that even a person who has become a prostitute voluntarily may be a victim of human trafficking if it is practically impossible for him or her to discontinue his or her activities, for instance because of his or her dependent status or vulnerable state, because of the circumstances of the procuring to which he or she is subjected, or because of violence or threat of violence against him or her.

¹⁰ Legal Affairs Committee statement, LaVL 16/2010 vp.

¹¹ Government report, VNS 7/2010 vp.

Enhancing prevention of human trafficking for the purpose of labour exploitation. With regard to human trafficking for the purpose of labour exploitation, the National Rapporteur recommended that the existing legislative framework be more closely reviewed to assess its sufficiency in the prevention of human trafficking, the identification of victims and the fulfilment of their rights, together with the social partners and the occupational safety and health administration. The Committee concurred with this statement and stressed the urgency of conducting a survey of employment legislation and developing legislation so as to enhance the prevention of human trafficking for the purpose of labour exploitation. The Committee also called for the Aliens Act to be amended as a matter of urgency so that residence permits would no longer need to be employer-specific.

Promoting referrals to the assistance system. The Committee concurred with the recommendation of the National Rapporteur whereby potential victims of human trafficking should not be refused entry before it has been established through individual and detailed investigation that human trafficking is not involved. The Committee considered it important that potential victims of human trafficking be given information on the assistance system and on their opportunities under the Aliens Act to be granted a reflection period and to apply for a ‘victim permit’. The Committee also pointed out that human trafficking does not only involve foreigners; Finns can fall victim to human trafficking just as well. The Committee considered that young women are at particular risk of being subjected to sexual exploitation, and advised the relevant parties to undertake measures to prevent human trafficking.

Enhancing criminal investigations and prosecutions. The Committee consulted several police experts with practical experience who commended the National Rapporteur’s recommendation of establishing a unit trained and specialised in the discovery of human trafficking for the purpose of investigating human trafficking offences. The Committee considered that the greatest impact in the fight against crime could be achieved by establishing a special unit with sufficiently robust resources, which would operate nationwide, and which would also investigate offences related to human trafficking such as procuring, facilitation of illegal entry and work discrimination. The Committee noted that detecting and solving such offences calls for extensive expertise from the police and a proactive investigative approach drawing on partner networks. A welcome boost could be brought to criminal investigations by having the special unit work in close collaboration with specific key prosecutors. Accordingly, the Committee required the police to establish a national special unit for investigating human trafficking and related offences which would enter into close collaboration with prosecutors specialising in

these offences. The Committee concurred with the views of the Legal Affairs Committee and the Administration Committee concerning the needs for providing information and training for the criminal investigation authorities and the judicial authorities.¹² Finally, the Committee stressed the urgency of ratifying the Council of Europe Convention on Action against Trafficking in Human Beings.

4.2. Policies on action against human trafficking and the Programme of Prime Minister Katainen's Government

Parliament adopted the report of the Employment and Equality Committee and required the Government to undertake several legislative and other measures:

1. to begin preparations for a separate Act on the assistance system for victims of human trafficking,
2. to eliminate overlap in the penal provisions on human trafficking and procuring,
3. to strengthen the legal status of persons subjected to procuring by granting them injured party status in criminal proceedings,
4. to establish a national special unit specialising in the investigation of human trafficking and associated offences and to appoint specific key prosecutors specialising in these offences,
5. to develop employment legislation and monitoring of the employment relationships of foreign employees so as to step up the prevention of human trafficking for the purpose of labour exploitation,
6. to amend the Aliens Act as a matter of urgency so that residence permits will no longer need to be employer-specific,
7. to submit the ratification of the Council of Europe Convention on Action against Trafficking in Human Beings to Parliament as a matter of urgency, and
8. to require the relevant authorities to report to the Ombudsman for Minorities by the end of 2011 on measures they have undertaken in order to implement the recommendations for action given at the end of the report of the National Rapporteur.

Human trafficking is mentioned several times in the Programme of Prime Minister Katainen's Government. Among other things, the Government Programme states that legislation will be developed in order to prevent trafficking in human beings in all its forms, to protect the victims of human trafficking, and to improve legal protection. In this context, the means for preventing

¹² Administration Committee statement, HaVL 21/2010 vp.

organised begging will be ensured. Training in issues related to human trafficking will be provided for authorities, prosecutors and judges. The Government Programme also states that the role of civil society organisations, the Ombudsman for Minorities and the occupational health and safety authorities in the recognition and prevention of human trafficking will be strengthened and the need to reform the legislation concerning the facilitation of illegal entries will be assessed. The following is an evaluation of how well these policies on action against human trafficking have been implemented.

4.3. Assisting victims of human trafficking

4.3.1. Introduction

Identifying victims of human trafficking and referring them to assistance have proved more challenging than anticipated almost all over the world. Nearly all parties involved in addressing human trafficking and helping its victims consider the identification of victims of human trafficking to be one of the most substantial problems in action against it. Most of the victims are referred to assistance by the authorities, mainly the police. Some are referred by NGOs and other authorities. It is rare for victims to seek assistance on their own initiative.

There is an added challenge in Finland in that the assistance system for victims of human trafficking is maintained by the authorities. This may cause fear in many victims who are afraid of or suspicious of the authorities and sceptical of whether the authorities would be willing or able to help them. They suspect that the authorities would not see the violence and abuse that the victims have endured but would instead take prompt action to remove the victims from the country, for instance. The victims fear that instead of taking their stories seriously the authorities would belittle them or believe their problems to be their own fault. They may have had earlier experiences of dealing with the authorities where they have felt the authorities to be dismissive, offensive, rude or prejudiced. Indeed, some victims may have fallen prey to human traffickers because the authorities in their home countries were corrupt or even contributed directly to their exploitation.

Seeking help and explaining their experiences of exploitation to the authorities may entail risks that the victims are anxious to avoid at all costs. In telling the authorities of their experiences of exploitation, the victims are making a decision whose negative, threatening and even frightening consequences may involve not just their abusers but also the victims themselves and their families: victims may feel that they will be responsible for any consequences

arising from contacting the authorities, even if such consequences would be completely beyond their control. By keeping their experiences secret, the victims protect themselves and their families. Sometimes, of course, the victims themselves are guilty of one or more offences or of otherwise participating in illegal or illicit activities such as prostitution (especially in the case of persons from outside the EU), and if they disclose this to the authorities, they may be liable to be removed from the country and to have a prohibition of entry imposed on them. Some victims are in fear of their abusers because either they themselves or their family members have been subjected to violence or threats of violence. There have been cases in Finland where the offenders have threatened or killed victims' family members to silence the victims, or in revenge for the victims contacting the authorities.

It is part and parcel of the dynamics of sexual violence and exploitation that the victims do not necessarily see themselves as victims of a crime; they accept the exploitation as a natural and inescapable part of their life situation, or of their status as a member of a particular ethnic group, or as a member of a particular family, or as a woman. The abusers persuade the victims to believe that the exploitation they are experiencing is normal for the sector in which they work (for instance in the case of employment in the construction, cleaning or restaurant sectors, or in the erotic or modelling business). In many cases, the longer the exploitation continues, the more difficult it is to stand up to it. The closer the offender is to the victim, the harder it is to break free from the abusive relationship. For some victims, seeking help may mean losing people close to them and leaving their community.

Victimisation is often caused by indebtedness or by a firm belief that the victim him- or herself or his or her family will be destroyed if the victim seeks assistance. Victims of human trafficking may be hugely ashamed at becoming victims, and some may even feel guilty about it and are unwilling to admit what has happened to them even to themselves, let alone to their family or friends. Losing face can be a fate worse than exploitation. The options available may seem impossible, unreasonably difficult or insufficient from the victim's perspective, and therefore unrealistic. Some of the victims have spent a long time living on the margins of society, and as such are unaware of the values and rights embraced by the majority population, besides lacking the ability or the strength to escape exploitation. Nor do victims often have a network of people close to them who would support them when needed. Simply going through the motions of everyday life may seem overwhelming.

Victims of human trafficking subjected to sexual violence and exploitation often suffer from severe mental health problems, such as post-traumatic stress

disorder, depression or psychosis. A significant percentage of the victims of human trafficking who have come to the attention of the National Rapporteur have had to undergo psychiatric medical treatment, some of them repeatedly, because of being traumatised by exploitation. It is not only the victims who suffer, but their friends and family, especially their underage children: parents subjected to exploitation do not have the energy to take care of the basic needs of their children. Such situations may lead to the children being taken away from the victims, to being taken into care through urgent placement, and even to being adopted.

4.3.2. International law binding upon Finland

When discussing human trafficking and its victims, we should remember that under international obligations binding upon Finland these victims have the right to receive assistance for recovering from their experiences of exploitation and to be protected against their abusers. The Directive of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims (the Human Trafficking Directive) declares that human trafficking is a gross violation of fundamental rights.¹³ Article 11 stipulates that Member States must take the necessary measures to ensure that a person is provided with assistance and support as soon as the competent authorities have a reasonable-grounds indication for believing that the person might have been subjected to a human trafficking offence. Member States must also ensure that assistance and support for a victim are not made conditional on the victim's willingness to cooperate in the criminal investigation, prosecution or trial.¹⁴ Paragraph 19 of the preamble to the Directive of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime (the Victim's Directive) states that a person should be considered to be a victim regardless of whether an offender is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between them.¹⁵

The Human Trafficking Directive states that Member States must take the necessary measures to establish appropriate mechanisms aimed at the early identification of, assistance to and support for victims, in cooperation with relevant support organisations. The assistance and support shall include at least standards of living capable of ensuring victims' subsistence through measures such as the provision of appropriate and safe accommodation and

¹³ Directive 2011/36/EU.

¹⁴ See also The EU rights of victims of trafficking in human beings. Publications Office of the European Union, 2013.

¹⁵ Directive 2012/29/EU.

material assistance, as well as necessary medical treatment including psychological assistance, counselling and information, and translation and interpretation services where appropriate. Member States shall attend to victims with special needs, where those needs derive, in particular, from whether they are pregnant, their health, a disability, a mental or psychological disorder they have, or a serious form of psychological, physical or sexual violence they have suffered. Article 12 states that Member States must ensure that victims of trafficking in human beings have access to legal counselling and legal representation, including for the purpose of claiming compensation. Member States shall ensure that victims of trafficking in human beings receive appropriate protection on the basis of an individual risk assessment. Separate provisions on assistance and support for child victims with regard to their individual needs are laid down in Article 14.

Article 10 of the Council of Europe Convention on Action against Trafficking in Human Beings lays down provisions on the identification of victims of human trafficking:¹⁶ Paragraph 1 requires each Party to provide its competent authorities with persons who are trained and qualified in identifying and helping victims and to ensure that the different authorities collaborate with each other as well as with relevant support organisations such as NGOs.¹⁷ Paragraph 2 requires that each Party must adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations. Each Party must ensure that, if the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking in human beings, that person must not be removed from its territory until the identification process as victim of an offence has been completed, and they must likewise ensure that that person receives the assistance referred to in Article 12.

According to the Explanatory Report on the Convention, failure to identify a trafficking victim correctly will probably mean that victim's continuing to be denied his or her fundamental rights. Identification is also important for criminal proceedings and the prevention of human trafficking. The Explanatory Report refers to identification as a process where competent authorities seek and evaluate different circumstances, according to which they can consider a person to be a victim of trafficking. At the beginning of the identification process, simply a suspicion of a person having been a victim of human traf-

16 CETS No. 197. The Council of Europe has published a summary of the rights of victims of human trafficking pursuant to the Convention. This information package may be found at:

http://www.coe.int/t/dghl/monitoring/trafficking/Leaflets/Victims/GBR_victims.pdf.

17 According to the Explanatory Report, "by 'competent authority' is meant the public authorities which may have contact with trafficking victims, such as the police, the labour inspectorate, customs, the immigration authorities and embassies or consulates".

ficking should be enough to refer that person to the assistance system. The Convention notes that if the competent authorities have reasonable grounds to believe that a person has been victim of trafficking in human beings, that person must not be removed from its territory until the identification process as victim of an offence has been completed. The Explanatory Report points out that the Convention does not require absolute certainty.

The Explanatory Report also stresses that if there are reasonable grounds to believe that the person is a victim, the authorities must not remove the person from the territory of the receiving states. The words ‘removed from its territory’ refer both to removal to the country of origin and removal to a third country. This means that neither may such a person be sent to another EU Member State before the identification process has been completed. The authorities are obliged to ensure that such persons receive the assistance referred to in Article 12, paragraphs 1–2 of the Convention (minimum assistance). It is further noted in the Explanatory Report that the identification process as specified in the Article is not dependent on criminal proceedings or the progress thereof. What this means is that identified victims of human trafficking are entitled to assistance and protection regardless of whether a criminal investigation is to be initiated and whether such an investigation leads to a conviction for human trafficking.

Article 12 of the Convention lays down provisions on measures to assist victims. According to the Explanatory Report on the Convention, Article 12 applies to all victims, whether victims of national or transnational trafficking. During the identification process, the possible victims are entitled to certain minimum services under paragraphs 1 and 2 of the Article. This minimum assistance comprises legislative or other measures as may be necessary to assist victims in their physical, psychological and social recovery. Such assistance must include at least: standards of living capable of ensuring their subsistence, through such measures as: appropriate and secure accommodation, psychological and material assistance; access to emergency medical treatment; translation and interpretation services, when appropriate; counselling and information, in particular as regards their legal rights and the services available to them, in a language that they can understand; assistance to enable their rights and interests to be presented and considered at appropriate stages of criminal proceedings against offenders; and access to education for children. The Convention also requires its Parties to take due account of the victim’s safety and protection needs. Victims are also entitled to these services during the recovery and reflection period.

Once the identification process has been completed, victims must be offered all the services specified in the Article, including medical or other treatment, entry to the labour market, and vocational and general education. The Parties to the Convention are required to ensure that assistance to a victim is not made conditional on his or her willingness to act as a witness. According to the Explanatory Report, the Party in whose territory the victim is located must ensure that the assistance measures are provided for him or her. The Parties may provide the services specified in the Convention in cooperation with NGOs, for instance. However, the Explanatory Report points out that it is nevertheless the Parties that are responsible for taking the steps necessary to ensure that victims receive the assistance they are entitled to in time. The Parties must ensure that the services are adequately funded.

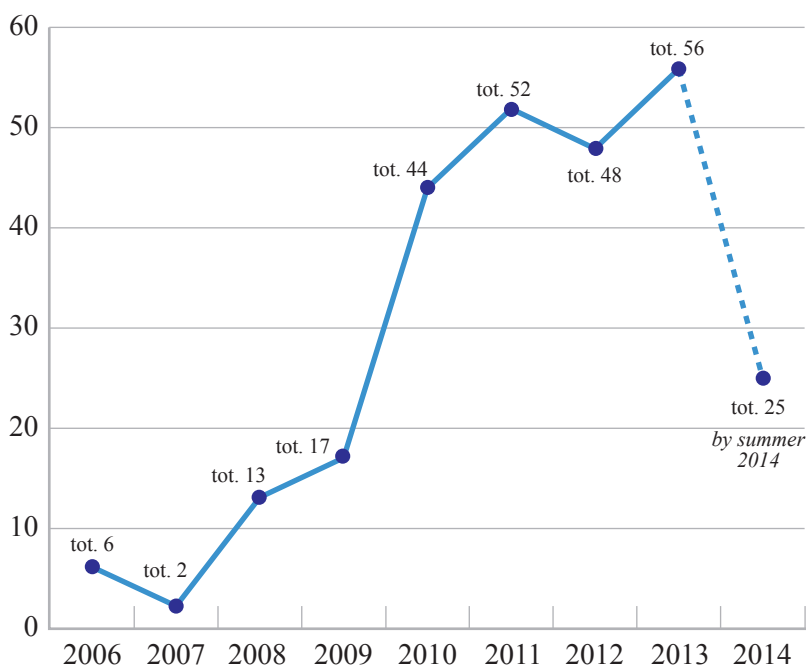
GRETA, the Group of Experts on Action against Trafficking in Human Beings, is an independent expert group established for monitoring the Convention. In its evaluation reports, it has issued numerous recommendations and instructions to assist the Parties to the Convention in the Convention's interpretation and implementation. The National Rapporteur discussed these recommendations and instructions in her 2013 report with a view to increasing awareness of the Convention, to promoting implementation of its provisions and to ensuring that the human-rights foundation of the Convention is embraced. At the time of the present report going into print, Finland is undergoing an evaluation. GRETA visited Finland in June 2014. During this visit, members of GRETA met the National Rapporteur and representatives of NGOs and authorities. GRETA is scheduled to confirm the evaluation report on Finland in March 2015.

4.3.3. Improving the assistance system

The National Rapporteur considers it important that the State take primary responsibility for assisting victims of human trafficking and that the system be funded by the State. Local authorities, NGOs and private and public service providers support the State in its assistance efforts. The National Rapporteur considers it a positive trend that over the years the assistance system for victims of human trafficking has become more victim-oriented, transparent and predictable. It is also a good thing that an increasing number of victims of exploitation are getting help from the system. The number of victims referred to and accepted into the assistance system has increased year on year. So far, the system has helped hundreds of victims of human trafficking and related offences. A contributing factor is that there is now a low threshold for accept-

ing people into the assistance system for the purpose of clarifying facts. The help provided in the system seems to be increasingly better matched to the victims' individual needs for assistance and protection, which can sometimes be quite diverse. The National Rapporteur also noted that the quality of the grounds given in decisions to accept people into the assistance system and to remove them from the system has clearly improved, and the legal protection issues that could be found in the earlier decisions no longer occur.

Number of clients in the assistance system (trend)

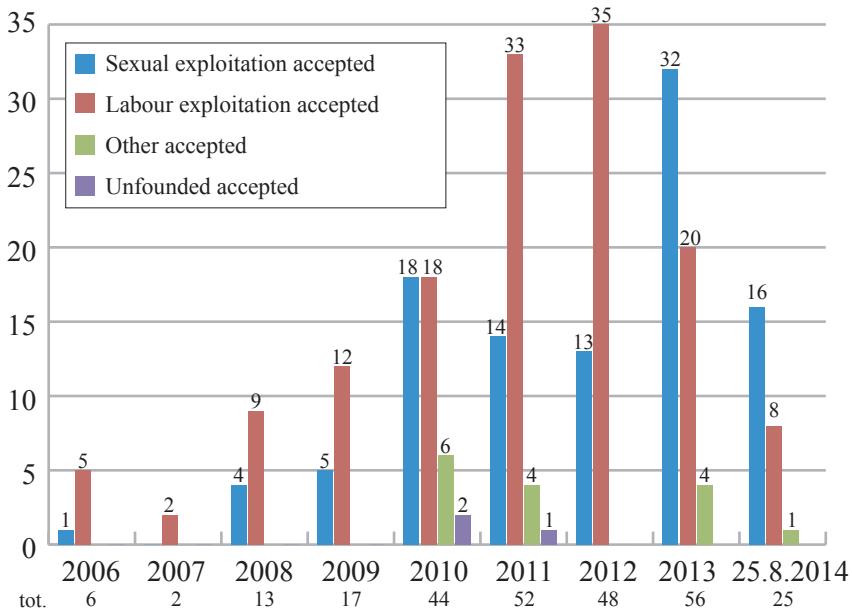


Source: Assistance system for victims of human trafficking.

It is the considered opinion of the National Rapporteur that one of the greatest challenges in helping victims of human trafficking is in referring them to the assistance system. As noted above, there are two principal channels for referring victims to the assistance system: 1) the criminal investigation authorities refer an injured party subjected to work-related exploitation to the assistance system when the criminal investigation is already in progress, and 2) reception centre employees or legal aid attorneys refer victims of human trafficking or asylum seekers that have experienced sexual exploitation elsewhere in Europe. What is conspicuous here is that the number of victims of human trafficking subjected to sexual exploitation in Finland who

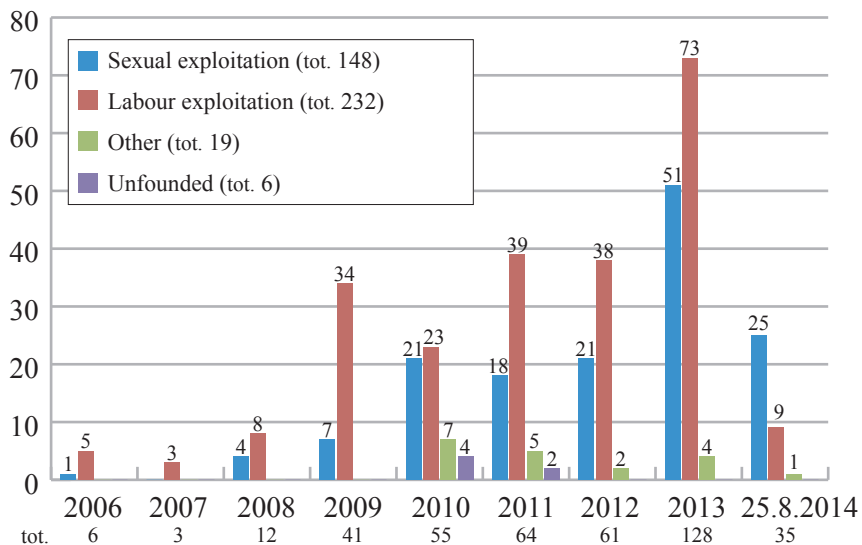
are referred to the assistance system is very low. Another issue is that local authorities, particularly the social welfare and health care authorities, have so far referred victims of human trafficking to the assistance system relatively rarely. More generally too, local authorities have highly varying levels of capacity for meeting the needs of victims of human trafficking. In particular, the capacity of child welfare authorities to offer assistance and support to children subjected to exploitation, or to the underage children or families of victims of human trafficking, has proved inadequate.

Purpose of exploitation (clients accepted into the assistance system)



Source: Assistance system for victims of human trafficking.

Purpose of exploitation (clients applied for the assistance system)



Source: Assistance system for victims of human trafficking.

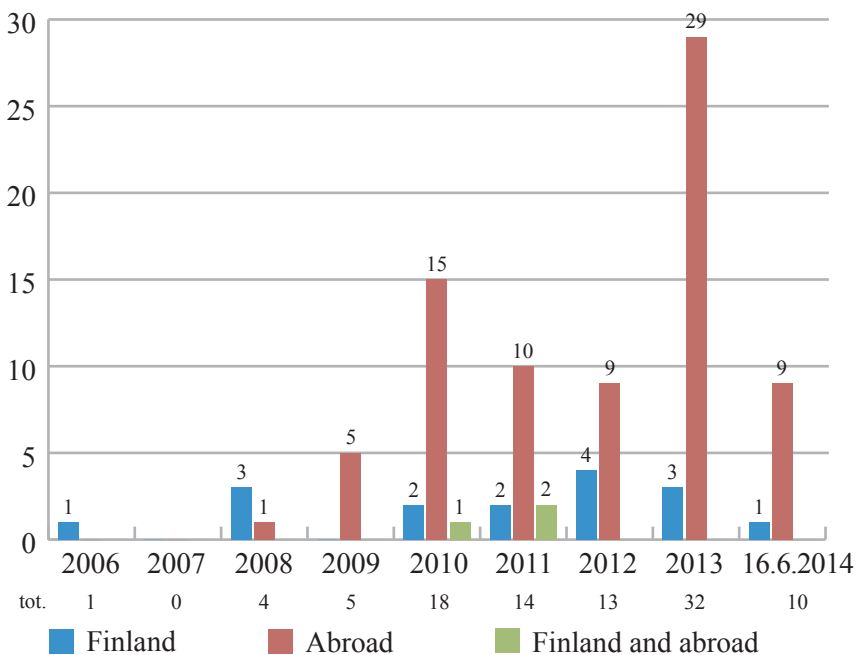
The National Rapporteur would like to draw attention to the disparity between the number of people who have applied for the assistance system and the number of people accepted. In all, between 2006 and August 2014 a total of 405 persons have applied for the system, of whom 263 have been accepted. The acceptance rate is thus about 65%. Of these, 148 applicants were victims of sexual exploitation, of whom 103 were accepted, or about 70%; 232 applicants were victims of trafficking for labour exploitation, of whom 142 were accepted, or about 61.2%. The rejection decisions include one involving a group of several dozen wild-berry pickers. The National Rapporteur considers it surprising that such a large number of applicants were rejected, and stresses that the provision of assistance should be even more strongly associated with indicators of human trafficking and the applicant's/client's actual need for assistance.

The decisions made in the assistance system indicate that, even for a person accepted into the system, assistance is often terminated when a criminal investigation stalls, an offence other than human trafficking is selected in the investigation, or no conviction is achieved for a human trafficking offence in the matter. The National Rapporteur would like to emphasise here that at no point and in no manner should assisting the victims be contingent on the progress of criminal proceedings, or lack thereof. Such a practice contravenes both international obligations binding upon Finland and EU law. Moreover,

the National Rapporteur considers that registration in a municipality or being granted a residence permit should not lead to the client being automatically removed from the assistance system. Victims of human trafficking may have needs for assistance that require the special expertise of the assistance system and longer-term government funding (compensation for local authorities from the Ministry of Employment and the Economy).

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

Country where a client of the assistance system became a victim (sexual exploitation)



Source: Assistance system for victims of human trafficking.

Prevention of human trafficking within Finland or from Finland to other countries has largely been ignored, because Finland is commonly considered to be only a country of transit and a destination for victims of human trafficking from abroad. The National Rapporteur considers it possible that young people who are at risk of exclusion, suffering from mental health problems and substance abusers are at particular risk of falling victim to human trafficking or similar exploitation. The National Rapporteur notes that in future more attention should be paid to the prevention of human trafficking within Finland and the identification and assisting of its victims.

The National Rapporteur has observed that the number of victims referred to the assistance system by NGOs has substantially declined in recent years. This is worrying, because NGOs are in a position to reach the most vulnerable victims of all, or those who are the most afraid and dare not approach the authorities, at least not in the first instance. It may be detrimental to the identification of victims of human trafficking that there are still only few NGOs in Finland with the expertise and experience to allow reliable identification of human trafficking and its victims and to refer them to the assistance system. NGOs are also at a disadvantage because their funding tends to be project-based. The National Rapporteur has further noted that NGOs may find the assistance available from the assistance system insufficient and too slow with regard to the need, leading to frustration. Also, NGOs and the assistance system may have diverging goals in assisting the victims, which may complicate cooperation between them, and lead to contradictions from the victim's point of view.

Increasingly, providing assistance for victims of human trafficking is seen among other things as a way of reinforcing their trust in the criminal investigation authorities and thereby advancing the bringing to justice of the perpetrators of human trafficking, and by extension the prevention of human trafficking in general. The National Rapporteur considers it important that the criminal investigation authorities should refer to the assistance system all persons whom they believe to be victims of human trafficking, with a very low threshold. This is vital for launching the process of identification and helping the victim. It should make no difference whether the person in question has become a victim in Finland or abroad, or whether the person in question has a Finnish residence permit or not. Under current legislation, the criminal investigation authorities may grant a victim of human trafficking a reflection period if necessary, and thereby legalise the status of a person who is in the country illegally.

The principal purpose and task of the assistance system is to help victims of human trafficking. These victims have rights, by law and based on international obligations, simply by virtue of having become victims of human trafficking. The assistance system is independent of any criminal investigation, having its own purpose and task, and it is not up to the criminal investigation authorities to decide who gets help from the system, what kind of help they get or when that help is to be discontinued.

Many victims of human trafficking who have been sexually exploited particularly need comprehensive support: someone to stay with them, to help them with everyday life, to talk to them, to guide them and to advise them. The challenge that has arisen in practice regarding the provision of services is that there are no separate shelters for victims of human trafficking where services could be provided in proximity to the victims, and by competent personnel. Victims are housed for instance in private rented dwellings, safe houses, reception centres, mother and child homes or shelters for women fleeing from domestic violence, where personnel may not have experience in dealing with victims of human trafficking.

This works well enough for some victims of human trafficking, but for others their personal situation is such that they require constant attention and support, and in terms of personality are not such persons that could comfortably occupy the same premises with other asylum seekers, or with persons who have suffered intimate partner violence or domestic violence. Finding suitable accommodation has proved particularly difficult in the case of victims of sexual exploitation and violence. If the service system were seen by the victims to be more predictable and safer than it is now, more victims of human trafficking who have been sexually exploited might seek help from the assistance system.

4.3.4. Development of legislation concerning assistance for victims of human trafficking

The effectiveness of the assistance system is impaired by a lack of specific legislation. Legislation does not contain sufficient provisions on acceptance into or removal from the system or the provision of services. It is unclear how assisting victims of human trafficking relates to other processes and other legislation such as the Child Welfare Act, the Social Welfare Act or the Aliens Act. This lack of specificity means that the authorities have remarkably wide powers of discretion with regard to any individual applicant/client. This is not conducive to increasing victims' confidence in the authorities, including the assistance system.

The unpredictability of the assistance process may prove an obstacle to applying for the assistance system. The situation is insufferable for victims, since they cannot know what the consequences of being identified and referred to the assistance system will be: they can be promised virtually nothing, yet they are required to submit information to the authorities and to expose themselves to the arbitration, decision-making and actions of officials in a situation where they themselves are at their weakest and most vulnerable.

In January 2012, the Ministry of the Interior appointed a working group to prepare an Act on human trafficking. The working group completed its survey of legislative development needs in late 2013.¹⁸ The working group proposed that a separate Act should not be prepared at this point but that the Act on the Reception of Persons applying for International Protection should be amended instead. It was suggested that the title of the Act should be changed so as to include providing assistance for victims of human trafficking. The working group also stated as its opinion that other legislation, such as the Aliens Act and the Child Welfare Act, should be reviewed from the perspective of better identifying and assisting victims of human trafficking. The goal set was to achieve a more predictable and transparent system, where victims can find protection and their human rights and equal treatment will be safeguarded. The working group proposed that providing assistance for victims of human trafficking should continue not to be contingent on whether the victims are willing to cooperate in criminal investigations, prosecutions or trials. The working group considered it important to improve the operating potential of NGOs in identifying and assisting victims of human trafficking.

Legislative preparation was initiated immediately on the basis of the working group's survey. The working group was converted into the steering group for the legislative project. The Ministry's proposal was completed in June 2014 and contains a number of improvements on the existing legislation. It enshrines in law certain practices that have evolved in the assistance system; this may help increase the system's predictability and transparency. The improvements mainly have to do with accepting people into the assistance system (initiating assistance), granting recovery and reflection periods and removing people from the system (discontinuing assistance).

The National Rapporteur considers it important that the impacts of the proposed legislative amendments should be monitored and action taken to correct any problems observed as necessary. Particular attention should be paid to the problem that victims of human trafficking who have been sexually

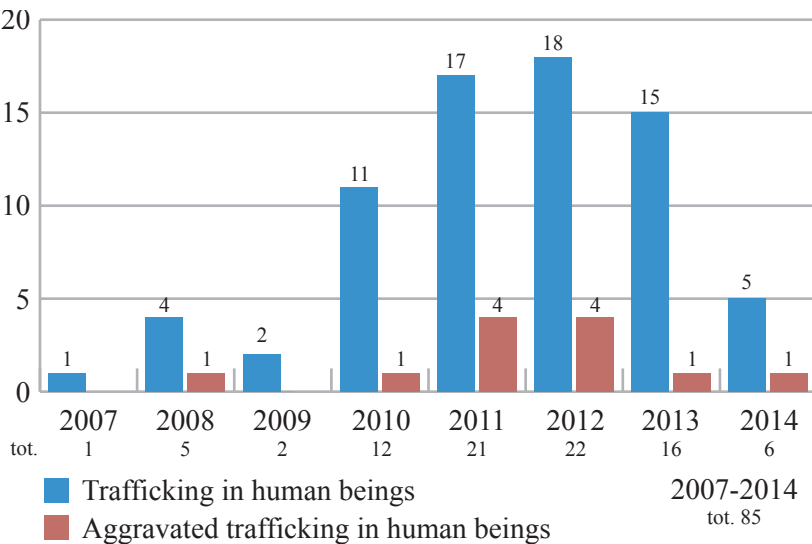
18 Ihmiskaupan uhrin auttamista koskevan lainsäädännön kehittäminen. Työryhmän selvitys. Sisäasiainministeriö, 2013. [Development of legislation on assistance for victims of human trafficking. Working group report. Ministry of the Interior, 2013.]

exploited are currently not ending up in the assistance system in Finland. At the time of printing of the present report, the Ministry had just circulated its proposal for comment. The National Rapporteur will issue a separate, more detailed opinion on the proposal.

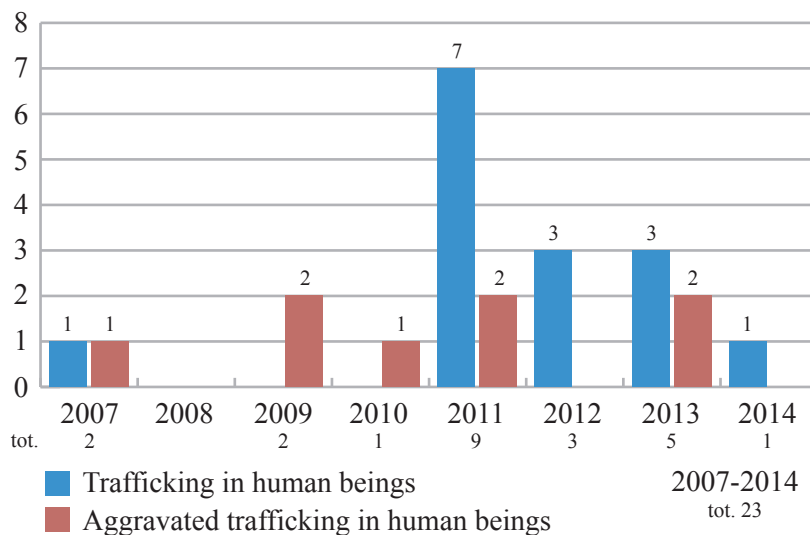
4.4. Criminal law and criminal proceedings

Specific penal provisions concerning trafficking in human beings and aggravated trafficking in human beings were added to the Finnish Criminal Code in August 2004. By spring 2014, Finnish courts had issued about a dozen judgments on human trafficking. Some of these decisions are not yet final. The first conviction for sexual exploitation in human trafficking was made in summer 2006. The first convictions for human trafficking for the purpose of labour exploitation were made in 2012. Other instances of human trafficking for the purpose of exploitation, such as cases of begging or forced marriage, have not yet been brought to trial. As the tables below show, the number of criminal investigations concerning human trafficking has clearly increased in recent years.

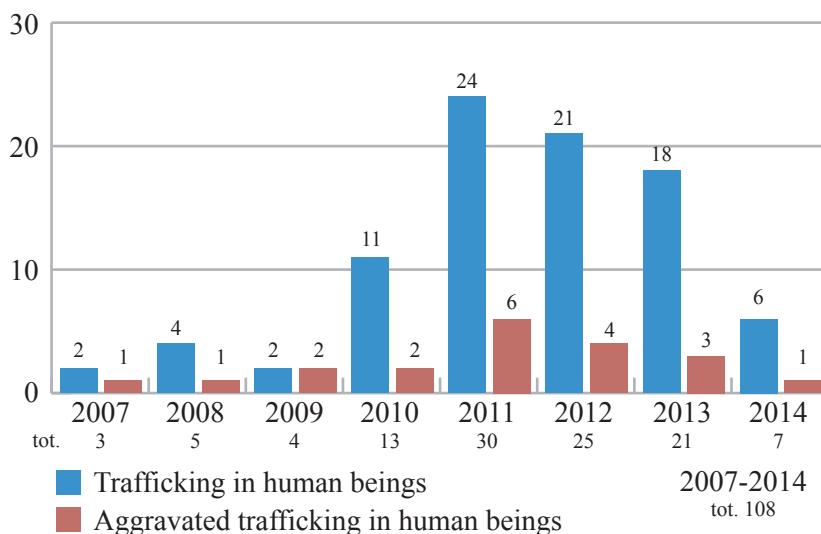
Reported trafficking in human beings (Police)



Reported trafficking in human beings (Border Guard)



Reported trafficking in human beings (total)



Source: National Police Board.

Nevertheless, the number of criminal investigations being launched concerning human trafficking remains relatively low. The disparity between the number of victims referred to the assistance system and the number of criminal investigation launched (or referred to prosecution) is great, and can be explained

for instance by the fact that the assistance system and the criminal justice system operate under somewhat different premises and principles, and their objectives do not always coincide: the assistance system provides help on a low-threshold principle even for persons whose status as victims of human trafficking has yet to be established. The criminal investigation authorities may decide after considering a case that the offence is not serious enough to qualify as a human trafficking offence or that, for whatever reason, a human trafficking offence cannot be proven. The low number of criminal investigations of offences treated as human trafficking may also be explained in part by a lack of expertise in the identification of human trafficking and the investigation of human trafficking offences, and by the fact that many criminal investigation authorities and prosecutors still have a rather stereotypical conception of victims of human trafficking, and of human trafficking offences, that takes insufficient account of the obliteration of the victim's mental control and protection mechanisms typical of human trafficking (exploitation of a dependent status or vulnerable state).

Because of the aforementioned problems in the penal provisions concerning human trafficking and their application, the National Rapporteur recommended in her report to Parliament in 2010 that penal provisions on human trafficking and related offences, particularly procuring, should be amended so as to enhance the identification of victims of human trafficking and the investigation of human trafficking offences. In its communication to the Government, Parliament concurred with the National Rapporteur's recommendations and required the Government to take action *inter alia* to eliminate the overlap between the penal provisions concerning human trafficking and procuring. In November 2011, the Ministry of Justice appointed a working group to review human trafficking legislation in the Ministry's branch of government.

At the end of September 2012, the working group submitted its unanimous proposal for a government proposal to Parliament concerning legislative amendments on human trafficking and procuring offences and on extortionate work discrimination.¹⁹ Among other things, the proposal involves removing "pressuring" as a means of commitment from the penal provision on procuring (Chapter 20, section 9) and adding it under trafficking in human beings. The proposal also involves removing violence and comparable means of commitment from the penal provision on aggravated procuring (Chapter 20, section 9a), these already being included in the essential elements of aggravated trafficking in human beings. It was also proposed that the status of a victim of procuring should be improved in criminal proceedings by pro-

19 Ihmiskauppatyöryhmän mietintö. Oikeusministeriö, 63/2012. [Report of the human trafficking working group. Ministry of Justice, 63/2012.]

viding for legal aid and a support person through a legislative amendment. Under this amendment, a court may assign a legal counsel to the victim of a procuring offence for the criminal investigation and trial if necessary. The provision on trafficking in human beings (Chapter 25, section 3) is proposed to be amended so that the means of commitment “takes control over another” be replaced by “subjugates another”. It is further proposed that criminal liability for legal persons be connected to extortionate work discrimination so that a prohibition to pursue a business could be imposed on a legal person found guilty of extortionate work discrimination. The government proposal based on the working group’s report will probably be submitted to Parliament in autumn 2014.

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

The Employment and Equality Committee of Parliament suggested in its report that to advance the identification of victims of human trafficking and to refer them to assistance, the police should draw up instructions on how to identify victims of human trafficking and refer them to the assistance system. In spring 2012, the police worked with the National Rapporteur to draft instructions on how to improve the identification of human trafficking and criminal investigation of human trafficking offences.²⁰ The purpose of the instructions was to harmonise measures for intervening in human trafficking and related offences, criminal investigations of these offences and procedures for as-

20 Poliisihallitus: Ohje, Ihmiskauppaan ja sen kaltaisiin rikoksiin puuttuminen sekä ihmiskaupan uhrin auttaminen, 2020/2011/3768 (12.4.2012). [National Police Board: Instructions on the addressing of trafficking in human beings and related offences and the provision of assistance to victims of trafficking in human beings, 2020/2011/3768 (2012).]

sisting victims of human trafficking. Another purpose was to promote equal treatment of potential victims of human trafficking, and to raise awareness among the police of the assistance system for victims of human trafficking. The instructions were revised at the beginning of 2014. The police and the Border Guard have also organised training on human trafficking.

In accordance with the recommendation of the National Rapporteur, Parliament called in its policy decisions for the Government to establish a national special unit focusing on human trafficking and related offences and to assign key prosecutors specialising in these offences. What is noteworthy is that the Helsinki Police Department and the National Bureau of Investigation, who are closely involved in the practical work in this area, were in favour of establishing such a unit. The National Police Board, however, did not consider it necessary. The police recently decided to set up a centrally coordinated expert network to ensure that expertise in human trafficking is distributed to police units across the country. The National Rapporteur has been informed that the effective prevention of human trafficking and related offences will be taken into account in the performance guidance for the National Police Board.

It is the considered opinion of the National Rapporteur that insufficient resources have been allocated to the detection and investigation of human trafficking offences, particularly those involving sexual exploitation. The criminal investigation authorities working with human trafficking have told the National Rapporteur that detecting and investigating these offences would require firmer prioritisation within the police administration, and sufficient human resources. Detecting and investigating human trafficking is a time-consuming effort, and success often depends on long-term, real-time surveillance and cross-border cooperation with authorities in other countries.

Inadequacies in the powers of the Border Guard have also proved a problem. Under section 42 of the Border Guard Act (578/2005), the Border Guard may conduct a criminal investigation of a human trafficking offence if there is also reason to suspect facilitation of illegal entry. Put simply, ‘facilitation of illegal entry’ as defined in Chapter 17, section 8 of the Criminal Code is committed when a person brings or attempts to bring to or transport through Finland a foreigner who is not in possession of a valid passport, other travel documents, a visa or a residence permit, or if such a document is false or forged. As far as is currently known, the vast majority of victims of human trafficking cross the border legally, which means that some of the powers of the criminal investigation authorities are not taken up in the combating of crime. This is regrettable, because the Border Guard has the expertise required

for detecting and investigating cross-border crime. The National Rapporteur considers that the legislation should be reviewed again in this regard.

According to information received by the National Rapporteur, the problem in the prosecution system is that prosecution departments have no prosecutors specialising in human trafficking offences. This would not necessarily be a problem if there were enough prosecutors specialising in labour and sexual offences. It would be most important for prosecutors handling human trafficking cases to improve their expertise and to concentrate in sufficient depth on the handling of demanding criminal cases that establish precedents. If necessary, two prosecutors should be appointed to demanding human trafficking cases. The National Rapporteur has discussed this with the Prosecutor General, highlighting her wish that prosecutors should be provided with specialisation and training opportunities and guaranteed sufficient resources.

4.5. Human trafficking for the purpose of labour exploitation, and employment supervision

4.5.1. Research findings

Since the National Rapporteur's previous report on human trafficking, human trafficking for labour exploitation and the severe exploitation associated with it have been studied more in Finland than human trafficking for sexual exploitation. Two studies have been published by the European Institute for Crime Prevention and Control (HEUNI). The study published in 2011 was the first ever extensive study on human trafficking for labour exploitation in Finland.²¹ The purpose of the study was to describe human trafficking for labour exploitation and the exploitation of foreign labour in Finland in order to demonstrate how human trafficking for labour exploitation may manifest itself in Finland. Various materials were drawn on in the study: interviews with experts and victims, courts' judgments, police criminal investigation records, press articles and other media material.

The study showed that exploitation of foreign labour does occur in Finland and that at its worst it shows features of human trafficking and forced labour. The study showed that the most serious cases of exploitation of foreign employees were found in the restaurant, construction and horticulture sectors. The exploited persons come from various parts of the world, including Asia, eastern Europe and Finland's neighbouring areas. The exploiters include both

21 Anniina Jokinen, Natalia Ollus & Minna Viuhko: Ehdolla millä hyvänsä. Työperäinen ihmiskauppa ja ulkomaalaisten työntekijöiden hyväksikäyttö Suomessa. Heuni, 2011. [On any terms. Human trafficking for labour exploitation and the exploitation of foreign employees in Finland. HEUNI, 2011.]

native Finns and foreigners. According to the study, foreign labour is brought to Finland through recruitment or brokering enterprises, or on a smaller scale through family or friends.

The study describes many ways in which foreign employees are exploited in Finland. In addition to non-payment of wages due to them and the imposition of excessive working hours, employees are threatened and coerced – for instance by violence or threat of dismissal – and their movements and freedom restricted, for instance by confiscating their passports; accident insurance and occupational health services are also not provided. Employees can also be bound to an exploitative employment relationship through debts that are difficult and sometimes impossible to repay. The authorities are misled by the drawing up of two dissimilar employment agreements, only one of which is shown to the authorities.

The study shows that victims of labour exploitation and human trafficking very rarely themselves contact providers of assistance or the authorities. The victims are usually in such a dependent position that they are unable or do not dare to seek help, or do not know what assistance is available, or are afraid of the authorities. The study shows that victims are not sufficiently reliably identified even when the exploitation itself is discovered by the authorities, because the authorities lack knowledge of the indicators of human trafficking, and identifying victims is not really anyone's first priority. Regarding criminal investigations, it was found that investigating the exploitation of foreign labour is challenging for the authorities for a number of reasons, for instance because the criminal investigation authorities are unfamiliar with the penal provisions on human trafficking. The study gave several recommendations for improving the situation, including increasing awareness of human trafficking for labour exploitation and adding resources to criminal investigations.

In another study on human trafficking for labour exploitation published in 2014, HEUNI scientists examined exploitation in the restaurant and cleaning sectors.²² There are many foreign employees in these sectors, and numerous instances of exploitation of foreign employees have been uncovered there. The study material consisted of interviews with experts and victims, criminal investigation material and media material. The findings of the study show that human trafficking for labour exploitation is not an isolated phenomenon; it is connected to the broader exploitation of foreign employees and the shadow economy. In the restaurant sector, serious exploitation is often

22 Anniina Jokinen & Natalia Ollus: "Tuulikaapissa on tulijoita": Työperäinen ihmiskauppa ja ulkomaalaisten työntekijöiden hyväksikäyttö ravintola- ja siivouspalveluilla. Heuni, 2014. ["There are people in the vestibule waiting to come in." Human trafficking for labour exploitation and the exploitation of foreign employees in the restaurant and cleaning sectors. HEUNI, 2014.]

linked to systematic off-the-books sales and illegal labour. In the cleaning sector, underpriced tenders caused by stiff competition and chained subcontracting increase the risk of exploitation at the ends of the chains. Exploitation is possible because foreign employees very rarely complain about their situation to an outside party.

The study shows that in many cases the exploitation of foreign labour is conscious and systematic. The employers engaging in exploitation are generally motivated by money and profit; they are not members of employers' associations. A lack of sufficient sanctions makes it difficult to address labour exploitation and human trafficking. This means that, in extreme cases, unscrupulous employers are able to keep up their illicit practices for years.

It was recommended in the study that awareness of exploitation must be raised among clients of restaurant and cleaning services and among ordinary consumers. The authorities' monitoring mechanisms must also be enhanced, and the availability of official services in various languages must be ensured. Cooperation between occupational safety and health authorities, tax authorities, police, immigration authorities, civil society and business life is of crucial importance for addressing this problem more effectively. The study emphasised the prevention of human trafficking, for instance by addressing the factors that enable the exploitation of foreign employees.

4.5.2. Convictions for human trafficking for the purpose of labour exploitation

The first convictions for human trafficking for the purpose of labour exploitation were made in 2012. One of these judgments concerned an ethnic restaurant in the Tampere region. Between 2006 and 2012, the employers had recruited at least 10 Vietnamese employees to their restaurants. The employees were obliged to work long days on modest pay. The employees lived in accommodation provided by the employers, and some had to work as domestic help for the employers after their working day. The employees owed money to the employers. The employers intimidated the employees and controlled them in a variety of ways, for instance by threatening to send them back to their home country if they complained about their treatment. In June 2012, the Pirkanmaa District Court sentenced the employers to unconditional imprisonment for 6 years and 10 months for human trafficking and extortionate work discrimination in respect of eight injured parties, for tax fraud and for accounting offences.²³ In September 2013, the Turku Court of Appeal convicted the defendants of a human trafficking offence in respect

²³ Pirkanmaa District Court, R 12/2271, 29 June 2012.

of six injured parties and of extortionate work discrimination in respect of the other two injured parties. The Court of Appeal mitigated the sentence to 5 years of imprisonment.²⁴

The National Rapporteur considers these convictions highly justified. Both the District Court and the Court of Appeal refer not only to the legal literature but also to international conventions on forced labour and their interpretation. The Court of Appeal, for instance, conducted an overall estimate of the definition of forced labour and whether that definition was fulfilled, taking into account among other things the threat of sending the victims back to their home country and the phenomenon of loss of face in their culture, the restriction of their movement and shortage of free time, and the debtor-creditor relationship between the injured parties and the defendants. The Court of Appeal specifically states in the grounds for its judgment that the consent of the injured party is not of decisive relevance in evaluating whether the essential elements of forced labour have been satisfied, since such consent was obtained by inappropriate means. The Court of Appeal rejected the charges of human trafficking associated with two of the injured parties and instead sentenced the defendants for extortionate work discrimination under these counts, because the Court of Appeal ruled that forced labour could not be proven to have occurred in their case. This was because these two employees were in better circumstances than those employees who were ruled to have been subjected to forced labour.²⁵ The Court of Appeal sentenced the defendants to pay significant compensation. Among other things, the Court of Appeal stated:

“The injured parties came to Finland voluntarily in order to work in the employ of the defendants. Therefore they gave their consent to be employed by the defendants. However, the injured parties’ consent was obtained by inappropriate means. They were [...] misled as to their working hours and free time. They were also given misleading promises that their working conditions would get better. Moreover, in the course of the employment relationships the injured parties became indebted to the defendants, and their freedom of movement was otherwise [...] restricted. Under these circumstances, the consent originally given by the injured parties cannot be of decisive relevance. [...] Considering the aforementioned points as a whole, the Court of Appeal hereby concludes that the injured parties who worked as cooks were actually subjected

24 Turku Court of Appeal, R 12/1529, 30 September 2013.

25 The working days of these employees were shorter than those of the employees considered to have been subjected to forced labour; also, they were not obliged to work at weekends, their free time and mobility were not restricted, and they had been allowed to take a Finnish language course.

to forced labour as referred to in Chapter 25, section 3 of the Criminal Code.²⁶

Over the past three years, other convictions for human trafficking for labour exploitation have been made. However, the National Rapporteur has been advised that sometimes cases involving characteristics of human trafficking are treated as cases of extortionate work discrimination or extortion. Sometimes an investigation may take years, and in many cases the investigation is simply discontinued, or a decision taken not to prosecute. It would seem that development of the legal practice for human trafficking for labour exploitation is also uneven, and that there are still shortcomings in the detecting, identifying and investigating of characteristics of human trafficking, specifically the means of psychological intimidation and coercion, or the weak position of the victim, or the victim's dependence on the employer. The National Rapporteur intends to explore in more detail in the future how the penal provisions on human trafficking are applied and interpreted, and their relationship to less serious offences such as extortionate work discrimination and extortion.

4.5.3. Prevention of human trafficking for the purpose of labour exploitation, and identification of victims

On the basis of information received, the National Rapporteur considers it likely that problems in the use of foreign labour will continue to increase and worsen unless sufficient attention is paid to this phenomenon and official supervision increased. There is also a need to plan for better prevention and combating of human trafficking for labour exploitation and related exploitation. Parliament's demand for conducting a survey of employment legislation and developing the legislation so as to enhance the prevention of human trafficking for labour exploitation has not yet been met. For this reason, the National Rapporteur again recommended in her 2013 report that a comprehensive plan of action should be drawn up for the prevention of human trafficking.

The National Rapporteur drew particular attention to the exploitation of wild-berry pickers, which clearly shows features of human trafficking and which should be addressed, if for no other reason than to curb human trafficking. The most problematic point here, as far as the National Rapporteur can see, is that legislation and official practice do not sufficiently support the prevention of exploitation and the provision of assistance to victims of exploitation: foreign berry pickers are in a weak position, with next to no legal protection. The National Rapporteur endorses the conclusions of the report by

²⁶ Turku Court of Appeal, R 12/1529, p. 8.

special rapporteur Markku Wallin published in February 2014, where it is recommended that the enterprises buying the berries and the berry pickers should sign employment agreements, creating an employment relationship for the berry-picking work.²⁷ Although this would be unlikely to eliminate all the problems involved in the picking of wild berries, an employment relationship would give the victims a legal status that would make it easier to address anomalies and probably also prevent the emergence of problems in the first instance.

The National Rapporteur emphasised that in investigating employment offences the criminal investigation authorities should focus not only on financial offences and the evasion of provisions on entry into the country but also on the infringement of the rights of individual employees and on providing assistance and protection for victims. The National Rapporteur also considers that the occupational safety and health authorities and the social partners have an important role to play in the prevention and identification of human trafficking in working life. However, the occupational safety and health authorities only rarely refer victims to the assistance system.

At the request of the National Rapporteur, the occupational safety and health authorities were provided with operating instructions for victim identification and referral to assistance during 2012.²⁸ Formulated as a memorandum, these instructions note that in their inspections, the occupational safety and health authorities must take account of the possibility of human trafficking and contact the assistance system for victims of human trafficking immediately for assessment if a suspicion of human trafficking emerges. The occupational safety and health authorities can make a proposal for accepting the victim into the assistance system on the victim's behalf if necessary. The assistance system has a low threshold and will also admit victims of offences related to human trafficking, such as extortionate work discrimination. The occupational safety and health administration has organised some courses on human trafficking. The National Rapporteur would like to see this training become more frequent and more systematic.

The legislative framework may complicate the identifying of human trafficking for labour exploitation and the referring of its victims to the assistance system. Under section 50 of the Act on Occupational Safety and Health En-

27 Markku Wallin: Ehdotuksia ulkomaalaisten metsämarjanpoimijoiden olosuhteisiin liittyvien epäkohtien korjaamiseksi. [Proposals for correcting anomalies in the circumstances of foreign wild-berry pickers.] The report is available in Finnish at: https://www.tem.fi/files/39114/Metsamarjanpoimijoiden_selvitystyön_raportti.pdf.

28 Sosiaali- ja terveystieteiden ministeriö, työsuojeluosasto: Työsuojeluvalvonnan ohjeita 2/2012, Ulkomaisen työvoiman valvonta. [Occupational safety and health monitoring guidelines 2/2012. Supervision of foreign labour. Ministry of Social Affairs and Health, Department of Occupational Safety and Health.]

forcement and Cooperation on Occupational Safety and Health in the Workplace (44/2006), the occupational safety and health authorities are required to report a case to the police for criminal investigation if there are reasonable grounds to suspect that an offence punishable under any Act within the domain of the occupational safety and health authorities or the Chapter on employment offences in the Criminal Code has been committed. Current legislation allows for such reporting in the case of an offence related to human trafficking – extortionate work discrimination – but not human trafficking itself. The National Rapporteur recommends that the aforementioned Act be amended so that it would better provide for human trafficking as falling within the domain of the occupational safety and health authorities.

4.6. Council of Europe Convention on Action against Trafficking in Human Beings

The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), hereinafter the Convention, was adopted by the Committee of Ministers of the Council of Europe on 3 May 2005. The Convention is a human rights convention that declares human trafficking to be a violation of human rights and an offence against human dignity and integrity. Human trafficking is considered to contravene the fundamental values of democratic societies. All provisions of the Convention rest on the foundation of human rights, from identifying and assisting victims to investigating and prosecuting human trafficking offences and engaging in international cooperation. The Convention entered into force internationally on 1 February 2008. Finland signed the Convention on 29 August 2006, and it entered into force in respect of Finland on 1 September 2012.

In 2013, the National Rapporteur published a themed report whose purpose was to evaluate Finland's action against human trafficking vis-à-vis the provisions of the Convention. In this report, the National Rapporteur highlighted shortcomings in the identifying of human trafficking, particularly human trafficking for the purpose of sexual exploitation; in the prevention of human trafficking; in the detecting and investigation of human trafficking offences; in assisting and protecting victims; and in official cooperation. The National Rapporteur also pointed out that the resources available to the authorities and NGOs for action against human trafficking were very limited. The entire report may be found on the website of the Ombudsman for Minorities.²⁹

29 National Rapporteur on Trafficking in Human Beings: Report 2013 – Finland's actions against trafficking in human beings in view of the relevant Council of Europe Convention. Ombudsman for Minorities, 2013.

4.7. Duties of the national anti-trafficking coordinator

A working group appointed by the Ministry of the Interior made a proposal in June 2013 whereby cross-sectoral monitoring and coordination should be assigned to a newly-created government appointment: an anti-trafficking coordinator.³⁰ A steering group will be established to guide action against human trafficking, with representatives of the senior public officials at the Ministry of the Interior, the Ministry of Justice, the Ministry for Foreign Affairs and the Ministry of Social Affairs and Health. The meetings of the steering group will be prepared by a secretariat consisting of public officials from the aforementioned ministries. The working group also proposed the establishment of a coordination network for action against human trafficking, with representatives not only from the relevant authorities but also from NGOs and research institutions. The working group proposed the following duties for the anti-trafficking coordinator:

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

Initially, the anti-trafficking coordinator should prepare a presentation for the steering group about how action against human trafficking should be organised in the future, including specifications for the composition and duties of the secretariat and the network, and draw up a proposal together with the secretariat for a cooperation agreement between the authorities and NGOs. The coordinator will also be drawing up a draft strategy for action against human trafficking together with the secretariat, the steering group and the network. On the basis of experiences gained from the first year of operations, the anti-trafficking coordinator and the secretariat will draw up a proposal for the

30 Ihmiskaupan vastaisen toiminnan poikkihallinnollisen seurannan ja koordinoinnin järjestäminen valtionhallinnossa. Työryhmän ehdotus. Sisäasiainministeriön julkaisuja, 15/2013. [Organisation of cross-sectoral monitoring and coordination of action against human trafficking in the central government administration. Working group proposal. Ministry of the Interior publications, 15/2013.]

regulation of the coordinator's duties and legislation amendment needs. The National Rapporteur collaborates closely with the anti-trafficking coordinator. The anti-trafficking coordinator, having the official title of senior specialist, began work at the Ministry of the Interior Police Department on 1 June 2014.

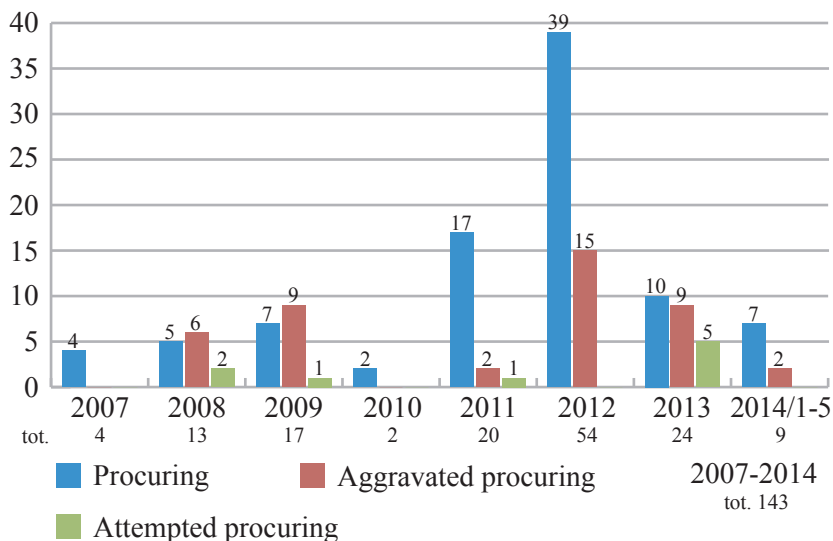
5. Application and interpretation of the provisions on procuring in the Criminal Code

5.1. Introduction

This second part of the report of the National Rapporteur concerns the application and interpretation of the penal provisions on human trafficking and procuring. This discussion is divided into two main chapters: one for cases treated as procuring, and the other for cases treated as human trafficking. Regarding procuring, the discussion is based on criminal cases of procuring brought to trial between 2009 and 2013. Not all the court decisions in the material studied were final. The material includes not only the court decisions but also the criminal investigation records for the cases in question. Other sources were used to augment the material, including interviews with criminal investigation authorities, prosecutors and members of NGOs.

The purpose of the chapter on procuring is to discuss what kind of procuring activities are detected by the criminal investigation authorities, how procuring is investigated and which points are addressed in the investigations. Another purpose is to explore how the penal provisions on procuring are applied and interpreted by the courts. In reviewing the material, the National Rapporteur sought in particular to establish whether the offences treated as procuring showed indications of human trafficking, the status of the victims of procuring, and how the overlap of the penal provisions on procuring and human trafficking (which had already been found problematic) might manifest itself in the determination of types of offence, in the consideration of charges and in the court decisions. The National Rapporteur intends to find out where the line between procuring and human trafficking lies, judicially speaking, and whether the legislators' instruction, whereby the provisions on human trafficking should take precedence over the provisions on procuring in cases where both could apply, is being followed.

Reported procuring



Source: National Police Board.

5.2. Provisions on procuring in the Criminal Code

The current provisions on procuring were enacted in 2004. Chapter 20, section 9 of the Criminal Code runs as follows:

Section 9 – Procuring

A person who, in order to seek financial benefit for himself or herself or for another person,

1. provides a room or other facilities where sexual intercourse or a comparable sexual act or a manifestly sexually offensive act performed by a child younger than 18 years of age are offered for remuneration,
 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,
 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,
 4. otherwise takes advantage of the fact that another person engages in such an act, or
 5. tempts or pressures another person to engage in such an act,
- shall be sentenced for procuring to a fine or imprisonment for at most three years.

An attempt is punishable.

The penal provision on aggravated procuring is given in section 9a in the same Chapter. This provision runs as follows:

Section 9a – Aggravated procuring

If, in procuring,

1. considerable financial benefit is sought,
2. the offence is committed in a particularly methodical manner,
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
4. the object is a child younger than 18 years of age
5. and the offence is aggravated also when assessed as a whole, the offender shall be sentenced for aggravated procuring to imprisonment for at least four months and at most six years.

An attempt is punishable.

Procuring has historically been considered the most negative phenomenon in the field of prostitution, since it is considered an activity that produces, maintains and propagates prostitution and related crime. Also, benefiting from the prostitution of another person is seen as immoral. Ever since the first criminal code enacted in the Kingdom of Sweden-Finland in 1734, there has been a provision on procuring, the aim being to prevent any person from benefiting from the prostitution of another by prohibiting the provision of a room or other facilities for the purpose of another person engaging in prostitution. Subsequently, multiple means of committing a procuring offence have been added to the provision on procuring, their purpose being to make it more difficult to commit such an offence by addressing changes in the practices of procuring. Despite these changes, the focus in investigating procuring offences is in establishing whether sufficient evidence can be found of the suspect having attempted to benefit from the prostitution of another by providing a room or other facilities against remuneration.

In order for an action of procuring to be a punishable offence, it must have been committed with the purpose of obtaining financial benefit for the offender himself or herself or for another person. This is the most crucial essential element of procuring and is entered in the first sentence of the basic provision on procuring. Another essential element in the procuring provision is that of providing a room or other facility for the purpose of another person

engaging in prostitution.³¹ Here, too, for the offence to be punishable the action must have the purpose of obtaining financial benefit for the offender or for another person. Financial benefit may mean for instance compensation paid to the person providing the room or other facility by the person engaging in prostitution based on the number of buyers of sex or the time spent.

The provisions on procuring are in Chapter 20 of the Criminal Code, which concerns sex offences. The general purpose of this Chapter is to safeguard the right of sexual self-determination. The provisions on procuring have been criticised for their inability to safeguard the right of sexual self-determination because the victims of procuring offences are generally not given the status of an injured party in criminal proceedings. This may be due to procuring often not being considered an offence violating the right of sexual self-determination but more an offence with the purpose of criminal financial gain.

The provisions on procuring in the Criminal Code are currently being revised. In November 2011, the Ministry of Justice appointed a working group to review human trafficking legislation. At the end of September 2012, the working group submitted its unanimous proposal for a government proposal to Parliament concerning legislative amendments on human trafficking and procuring offences and extortionate work discrimination.³² This proposal includes removing “pressure” as a means of commitment (paragraph 5) and entering it as a means of commitment under human trafficking instead. The proposal also involves removing violence and comparable means of commitment from the penal provision on aggravated procuring (paragraph 3), these already being included in the essential elements of aggravated trafficking in human beings. It was also proposed that the status of a victim of procuring should be improved in criminal proceedings by providing for legal aid and a support person through a legislative amendment. Under this amendment, a court may assign a legal counsel to the victim of a procuring offence for the criminal investigation and trial if necessary. The government proposal concerning these legislative amendments is likely to be submitted to Parliament in autumn 2014.

Regarding the application of the procuring provision, the National Rapporteur is particularly interested in two points: firstly, the status of victims of procur-

31 The concept of prostitution is described in the provision on procuring as “sexual intercourse or a comparable sexual act [...] offered for remuneration”. According to government proposal 6/1997, this may involve heterosexual or homosexual intercourse or any other kind of sexual intercourse as defined in section 10 in the same Chapter (section 10: “sexual intercourse refers to the sexual penetration, by a sex organ or directed at a sex organ, of the body of another”), or such sexual acts pursuant to the description in section 10 that may be considered comparable to sexual intercourse, e.g. the intense manipulation of the genitals of another.

32 Ihmiskaupputyöryhmän mietintö, 63/2012. Oikeusministeriö, 2012. [Report of the human trafficking working group. Ministry of Justice, 63/2012.]

ing and how the partial overlap between types of offences manifests itself in the treatment of cases in criminal investigation and in the consideration of charges; secondly, whether the core of the procuring provision – the prohibition of providing a room or other facility for the purpose of another person engaging in prostitution – actually works. Because cases of procuring seem disconcertingly to involve exploitation of persons in a vulnerable position especially in connection with Thai massage parlours, the National Rapporteur placed particular focus in her report on procuring at massage establishments. Such activities, which as noted above are currently usually treated as procuring, show strong indications of human trafficking. The women involved are principally either foreigners or of foreign origin, poorly integrated into Finnish society and lacking in safety nets or other contacts to the normal functions of society and hence channels for finding help. This exposes them to sexual exploitation tantamount to human trafficking.

5.3. Procuring at Thai massage parlours

The National Rapporteur reviewed material concerning all cases of procuring brought to trial in Finland over the past few years that have involved Thai massage parlours. There were some two dozen of these. Some cases involved a single establishment, with a charge of procuring brought against only one operator. However, a large number of cases were such that they involved several establishments held by the same entrepreneur (in various places in Finland) and charges brought against several operators at once.

It is not clear to the National Rapporteur, on the one hand, how large a percentage of all massage establishments selling sex is represented by the establishments featured in the procuring investigations. On the other hand, there are also massage establishments and persons employed at them who do not sell sex. It is impossible for the National Rapporteur to estimate how large a percentage the latter amount to on the basis of the material available.

5.3.1. Concept of “sexual intercourse or a comparable sexual act” in the procuring provision

In cases of procuring involving traditional prostitution practised in a room or in the street, the “sexual intercourse or a comparable sexual act” as specified in the provisions on procuring can usually be established without dispute. The parties agree that the buyer of sex is buying sex as referred to in the provisions on procuring. This is not, however, undisputed in cases of procuring involving Thai massage parlours. The material reviewed by the National Rapporteur suggests that it is not clear to the women working at Thai

massage parlours (and sometimes not even to the operators) which sexual acts are actually covered by the provisions on procuring. It is apparent from the criminal investigation and trial documentation that the women working in massage parlours commonly believe that only actual sexual intercourse (and in some cases oral sex) would be considered a sexual act under the provisions on procuring. The women seem to be of the opinion that if they pleasure a buyer of sex by hand they are not selling sex, and therefore the operator of the massage parlour is also not guilty of procuring or any other offence. Any transaction involving sex between a woman and a buyer of sex is considered a private matter between the two of them rather than an action involving criminal liability.³³

It is commonly assumed that the procuring provision requires that one party must be coerced into undertaking the activity in question; this, in fact, could already constitute human trafficking under the Criminal Code. Operators attempt to circumvent criminal liability by signing an agreement where the women employed are formally forbidden from selling sex at the establishment. When selling sex is never mentioned in day-to-day business and the matter is ostensibly prohibited by agreement, the reasoning is that no criminal liability is incurred, or this practice represents an attempt to conceal it. This reasoning and these practices seem to be followed remarkably consistently at Thai massage parlours around Finland, judging by the cases of procuring reviewed.

5.3.2. Satisfying the essential element of financial benefit

In legal terms, the distinction between procuring and human trafficking is that procuring entails the intent of gaining financial benefit for the offender or another person. By contrast, an offence may be ruled to have satisfied the elements of human trafficking even if financial benefit was not gained or even sought. In view of the criminal investigation material and judgments reviewed, it would seem that at Thai massage parlours operators generally attempt to avoid being seen to gain financial benefit and hence criminal liability by nominally separating the revenue streams for the actual Thai massage on the one hand and the sex being sold on the other. The customer pays the massage fee to the cashier when arriving at the establishment but pays the payment for the sex (the ‘tip’) directly to the masseuse in the massage room.³⁴ Most or all of the massage fee is retained by the operator, while the masseuse retains the payment for sex, the ‘tip’, in full. The purpose of this

33 In this report, the buying and selling of sex is considered as an objectively verifiable act (prostitution in the sense of “against remuneration”) that involves criminal liability and is not a legitimate purchase/sale transaction. The term “sexual services” is avoided in this report except in text quoted from legislation or trial documents.

34 This term is routinely used in criminal investigation records.

separation of financial benefits is for the operator to avoid criminal liability for procuring, as the payment for the sex is received and retained by the masseuse herself. The reasoning behind this is that in this way the operator neither attempts to gain nor actually gains financial benefit from the prostitution of another person.

In the trial materials concerning Thai massage parlours, this procedure has been subjected to systematic legal evaluation to determine whether the revenue streams for massage and for sex are actually legally distinct and whether the requirement of financial benefit specified in the essential elements of procuring is satisfied. The trial documentation includes judgments where the massage and the selling of sex were considered legally separate practices because payment for them was made to different persons and the masseuses retained all the payments for sex made to them. In these cases, it was ruled that the operator never gained any part of the revenue from selling sex, and cannot therefore be considered to have provided a room for the purpose of gaining financial benefit for himself or another person and thus to be guilty of a procuring offence. Some such cases were never even brought to trial, the prosecutor having made a decision not to prosecute even if there might have been evidence of sex having been sold.

This approach was invalidated in judgment no. 261 of the Helsinki Court of Appeal, issued on 31 January 2012. In this judgment, the Court ruled that even though the masseuses retained the payments they received for selling sex, the operators of the Thai massage parlours benefited financially from the selling of sex in their business premises in the form of the massage fees paid by customers, because customers had to pay a massage fee when entering the establishment in order even to be able to buy sex. In other words, paying the massage fee was a requirement for being allowed to buy sex, and the operator's revenue stream from massages was therefore directly linked to the selling of sex.

Judgments issued by district courts in the past two years often refer to the aforementioned decision by the Helsinki Court of Appeal, and financial benefit has thereafter generally been evaluated accordingly, an operator's revenue stream from massages being ruled as being directly linked to the selling of sex. The legal business and the illegal provision of a room or other facility for the purpose of another person engaging in prostitution have thus been considered to form an inseparable entity at the Thai massage parlours subjected to criminal investigation. On the other hand, it has been noted in these judgments that a general reference to the reputation of Thai massage parlours as places where sex is offered and sold is not a sufficient indication

of criminal intent. In evaluating proceeds of crime, the legal business is considered distinct from the illegal procuring activities.

5.3.3. Status of the women who sell sex at massage establishments

The women who work at massage establishments come from varied backgrounds. Some arrive in Finland through marriage to a Finnish man and end up working at a massage establishment because of financial difficulties after a divorce. Some are Thai women married and resident in Finland. Some women have been recruited directly from Thailand. Some reside in Finland on a residence permit from another EU Member State (often Italy) for short periods of some weeks, or in some cases for extended periods of up to several years. There are also women whose legal residence has expired and who, being homeless and destitute, have had no choice but to accept the conditions imposed by the operator of a massage establishment. Some of the masseuses are in debt, and most are supporting a family back in Thailand.

Formally, most of these women are private entrepreneurs and are entered in the Trade Register as massage workers, providers of beauty services or providers of other health services. The purpose of this is to obscure the criminal liability of the operators of massage establishments and to make it more difficult for the authorities to intervene. Operators have reported in criminal investigations that one of the reasons for this practice is that when the masseuses are private entrepreneurs, they can work at the establishment every day to contribute to the operator's financial benefit. This allows for flexibility in operations but leaves the masseuses themselves in a very disadvantaged and vulnerable position.

Most of the women know when they come to work at a massage establishment that the business involves the selling of sex. In the majority of cases and in principle, the women are allowed to decide for themselves whether they will sell sex at the massage establishment or not. In practice, however, there is no real choice, because often the only income that the women are allowed is in the form of payments for sex. The material reviewed also describes women recruited to Finland from other countries who have only been informed when arriving in Finland that they are required to offer sex for payment. Women finding themselves in such situations have reported that having no language skills and no money and being dependent on their recruiters they had no other option than to accept the conditions imposed by the operator of the massage establishment. Many such women are forced to sell sex whether they want to or not in order to support themselves and their families.¹

The status of these women in criminal proceedings is unclear. The role in which masseuses are questioned in criminal investigations of procuring offences varies depending on the police department conducting the investigation. Since the women are objects of procuring offences, they are (principally) treated as witnesses, and as such are not entitled to legal counsel and receive insufficient information on their opportunities for applying for compensation for damages or being referred to the assistance system for victims of human trafficking. In some cases, the women involved have been heard as injured parties even if procuring was the only offence being investigated. However, even in such cases the women are relegated to the status of witnesses by the time of the trial. The fulfilment of the rights of these women is prevented in many cases by the fact that those of them who are in the country illegally are removed from the country immediately after being questioned in the criminal investigation.

5.3.4. Characteristics of human trafficking in cases of procuring involving Thai massage parlours

Characteristics of human trafficking often seem to be found in cases of procuring involving Thai massage parlours. The material collected by the National Rapporteur indicates that the women who sell sex in Thai massage parlours have a poor understanding of Finnish society and how it works. Awareness of Finland's legislation and of how Finnish authorities operate is low particularly among women recruited from other countries, but also, to an astonishing extent, among women who have been living in Finland for a long time. The women working at Thai massage parlours are often isolated from Finnish society, in an emphatically subordinate position and lacking in everyday contacts with society at large and its functions and services.

They are often accommodated at the establishment where they work, or at the very least spend all their waking hours working there. The only people they meet are other Thai women working at massage parlours and clients who buy sex or require a massage. Indeed, massage establishments seem to be a world unto themselves, with rules and regulations distinct from those of society around them. Transactions are handled in cash, and the services of financial institutions are not used. Wages, if any are paid on the legal business at all, are paid in cash; the employees stash their earnings in a cupboard or under a mattress in their place of accommodation, and debts are made and serviced through a circular debt system within the community. Also, the operators often charge the women 'key money' for allowing them to sell sex at their establishments.

The masseuses often have no language skills and are inextricably bound to their place of employment and thereby dependent on the operators. The operators often claim that they are managing all their statutory payments and requirements even if they are not. They charge various fees from their employees, calling them taxes, residence permit fees or Internet fees, but none of these have any basis in reality. Sometimes these fees amount to more than the women are able to earn with massages and selling sex. They are then forced to borrow money from one or more people in the same community and as a result must sell even more sex so that they can repay their debts.

The women are also assured that the owners of the massage establishments have unofficial contacts to the authorities, particularly the police, and that thanks to these the operators can evade their statutory requirements. The operators also use these alleged contacts as a means of intimidation, pressuring the women to comply with the conditions and rules imposed. Considering the women's lack of language skills, their segregation from society around them and the notions of debts of gratitude and hierarchy inherent in Thai culture, it is no wonder that they are inhibited from contacting the authorities and remain unaware of their status or their rights in Finland by the standards of Finnish society.

The National Rapporteur does not consider it a favourable trend that illegal procuring and other exploitation are being masked under apparently legal business operations. What makes it particularly difficult for these women is that Thai massage parlours seem to be isolated from the normal rules of society and that the women working there are deprived of the protection and support that society should be offering them. They form the conception that the operations, practices and procedures of Thai massage parlours are legal: after all, they have registered themselves as private entrepreneurs with the appropriate authority, and they work at a place of business that on the face of it is quite legitimate. Many women believe that simply registering as a private entrepreneur entitles them to work in Finland and grants them legal residence. Operators lead the women to believe that the practices of Thai massage parlours are practices generally employed in society at large. Because of their social and financial status, the women working at Thai massage parlours are particularly vulnerable and susceptible to exploitation, against which they have little protection. These features of vulnerability could well be considered to satisfy the means of commitment defined as "exploitation of the dependent status and/or vulnerable state of a person" in the provision on human trafficking.

It is the considered opinion of the National Rapporteur after reviewing the material at hand that the operations of these massage establishments involve the methodical seeking of financial benefit, which in the case of any operator may amount to tens of thousands if not hundreds of thousands of euros per each individual masseuse. According to information received by the National Rapporteur from the criminal investigation authorities, massage establishments increasingly also engage in drug dealing and other criminal activities.

5.4. Procuring at erotic shops and restaurants

The material reviewed included two cases of procuring involving erotic shops and restaurants; both cases were ruled on by a Court of Appeal. These cases concerned erotic dancing and other selling of sex in private rooms at sex shops, erotic shops and erotic restaurants. The selling of sex involved touching, erotic and intimate massage, SM sex and sexual intercourse. The majority of the persons selling sex (80% to 90%) were of foreign origin, mainly Estonians or Estonian Russians, but many of them had been living in Finland for a long time, several years in some cases.

Procuring at erotic shops and restaurants is largely similar to that undertaken at massage establishments. In judicial terms, there are two key issues: firstly, have activities been undertaken in these premises that satisfy the requirement of a sexual act comparable to sexual intercourse in the provision on procuring; and secondly, to what extent can the operator of the business be considered to have been aware of the selling of sex satisfying the requirements of the provision on procuring that was being conducted in the shop or restaurant. In other words, the investigations and trials in these cases focused on what kind of sex was available for sale at the establishment, how much there was of it, how much of the sex sold satisfied the requirements of a sexual act as referred to in the provisions on procuring and to what extent the operators were aware of these activities being conducted on the premises.

5.4.1. Satisfying the essential element of financial benefit

As described above regarding procuring at Thai massage parlours, erotic shops and restaurants also separate the revenue stream for sex from the revenue stream to the operator for the erotic dancing or massage. A client entering the establishment pays a fee to watch erotic dancing, which is a legitimate business activity. Part of this fee goes to the operator and part to the dancer. In one of the two cases reviewed, the dancer received 40% to 50% of the entrance fee paid by the customer, and in the other the performer received EUR 5 out of the total fee of EUR 20–30 paid by the customer. In addition to

these legitimate activities, the establishments engaged in illegal procuring in the form of services offered in ‘private rooms’, including intimate massage. This intimate massage qualifies as a sexual act comparable to sexual intercourse as referred to in the provisions on procuring in the Criminal Code. The payment made by the client for the intimate massage is retained by the seller of sex in full.

In legal practice, business operators have been considered to have gained financial benefit from the selling of sex in two ways: firstly, the operator’s revenue increased because clients were required to pay the entrance fee for the legitimate business (mainly erotic dancing) in order to be able to buy sex in the first place; and secondly, the turnover of the establishment as a whole increased with the increased number of clients, many of whom visited the establishment for the specific purpose of buying sex. In the judgments, the number of persons who bought sex or to whom sex was offered for purchase was assessed mainly on the basis of testimony from customers. It was concluded that these persons would first have had to pay the operator for the massage or other legitimate erotic service in order to be able to buy sex, and that these payments constitute criminal financial benefit and as such are forfeit to the State. This calculation follows the legal practice established for evaluating criminal financial benefit at Thai massage parlours.

5.4.2. Evaluation of intent on the part of business operators

An essential part of consideration of guilt in cases of procuring at erotic shops and restaurants is evaluating to what extent the business operators were aware of what the ‘private rooms’ were being used for. There were a number of features indicating intent or awareness, such as the discovery of equipment and price lists for intimate massage at the establishment, the long experience of the operators in the industry, and testimony from customers and performers to the effect that selling sex (i.e. intimate massage) was a regular occurrence at the establishments. Another argument was that the revenue from the legitimate services – only EUR 5 per customer – was insufficient to make a living and that hence the selling of sex must have been of crucial importance to the livelihood of the women involved. It was therefore concluded in the judgments that the entire business idea of the establishments was predicated on the selling of sex to clients in addition to the legitimate business and that the operators must thus have been aware of the activity.

As in the cases of procuring involving Thai massage parlours, a significant precedent regarding intent in the cases involving erotic shops and restaurants was found in Supreme Court precedent 2005:17, concerning the ‘Punainen

talo' (Red house) case. In this precedent, the Supreme Court ruled that criminal liability does not depend on the formal purpose that may exist for letting the premises; the crucial factor is whether the lessor is aware of what those premises are actually being used for. The Supreme Court ruled that the lessor must have been aware of prostitution being engaged in at the house even if he was not proven to have had detailed information of the activity or of the buyers of sex or to have witnessed them personally. The lack of personal observations, and detailed information being irrelevant when there are other indications of intent, is referred to remarkably often in subsequent judgments.

5.5. The case of procuring Nigerian women

Compared with previous years, the National Rapporteur considers it surprising that the material reviewed includes only a handful of cases concerning traditional cross-border procuring (systematic and on a large scale). One such case concerns the procuring of women of Nigerian origin in the Helsinki metropolitan area. The National Rapporteur reviewed this case in order to analyse the problems caused by the overlap of the essential elements of human trafficking and procuring, and in order to issue recommendations on how to apply the provisions on human trafficking. The case was treated and prosecuted as aggravated procuring. According to the written documentation reviewed by the National Rapporteur, there could have been scope for treating and prosecuting the case as human trafficking, at least for some of the victims of procuring.

Between April and June 2009, police intelligence and immigration control revealed that dozens of women of Nigerian origin had been engaging in prostitution in Finland during that period. Some of them had arrived in Finland using false travel documents, while others had residence permits issued in Italy or Spain. The criminal investigation revealed that the women had been recruited in Italy and Spain and that the operation was being led from Spain. The women were being sent not only to Finland but also to other Nordic countries and to central Europe. There were several persons handling the operation, which was divided into areas of responsibility. The organisation recruited women of Nigerian origin as prostitutes, provided accommodation, posted advertising on the Internet, bought travel tickets and organised travel within Finland, and obtained false travel documents as required. This criminal organisation engaged in procuring involving some 60 women in 24 different communities in Finland. The women only worked for a few weeks or a month at a time and relocated several times during their stay in the country.

The organisation charged the prostitutes compensation for selling sex in the employ of the organisation, sometimes amounting to tens of thousands of euros. The women made monthly repayments on their debts to the organisation. The prostitutes were also obliged to pay middlemen for all other arrangements made. The proceeds of crime obtained by the organisation were substantial, amounting to several hundred thousand euros. According to the police, it was found in the criminal investigation that all the women were involved “voluntarily”.³⁵ There was no compulsion or sanction involved, and the women’s freedom of movement was not physically restricted. However, the operation involved one-sided agreements at best. The women recruited to work in Finland had no influence on the content of the agreements. If they wished to work here, they had to accept the unilateral conditions of the organisation. The procurers in Finland charged the prostitutes EUR 2,500–5,000 in ‘key money’ and a weekly fee of EUR 200–250.

The National Rapporteur would like to draw particular attention to one individual emerging from the material (hereinafter referred to as ‘X’) whom the prosecutor charged with aiding and abetting aggravated procuring. According to the description of the action, X had aided the intentional offence committed by the principal offender in Finland by advising women arriving in the country and by assisting the principal offender in creating Internet ads. X played a significant role in the acquisition of evidence, being very forthcoming when questioned about the operation of the procuring organisation. Because of the facts that emerged during the main session in court, the prosecutor waived the charges against X, who was acquitted. The other women who had sold sex subordinate to the organisation were removed from the country immediately after being interviewed in the criminal investigation, and the criminal investigation records do not indicate that any of them were provided with legal counsel or offered the option of seeking help in the assistance system for victims of human trafficking.

The key issues in investigating this case were the traditional issues related to procuring: who handled the hotel bookings and money transfers and how; who booked the airline tickets and how; how many clients there were; and what prices they paid. However, with regard to X referred to above, the National Rapporteur noted that there are several points in the criminal investigation record indicating the vulnerable status of X, on the strength of which the investigation could have considered the personal characteristics of X and the circumstances in which she was obliged to sell sex. X stated in the questioning that she had no previous involvement in prostitution or procurement. She did not know how to use the Internet or how to book tickets or hotels

³⁵ Expression used in the criminal investigation record.

or how to do anything in Finland. She also relocated at quite short intervals at the orders of the principal offender. The principal offender charged X for weekly expenses, for instance for ads on the Sihteeriopisto ('Secretary college') website, which had no basis in reality. X was also charged numerous indeterminate additional fees that had not been agreed on before her arrival in Finland. The principal offender also forbade the woman from having contact with any other persons in the procuring organisation. X referred to persons working for the principal offender as the principal offender's "slaves", who delivered the money from the selling of sex to the principal offender.³⁶ It is also clear from the material that X had debts incurred through the renewal of her Spanish residence permit.

The criminal investigation should have focused more closely (in addition to the factors indicating procuring) on factors indicating that the essential elements of human trafficking may have been satisfied. For this purpose, it would have been crucial to establish whether X was in a vulnerable state for financial reasons, whether she was subordinated by the principal offender (referred to as "taking control" in the provisions on human trafficking) or dependent on the principal offender and what her actual chances were for discontinuing her activities in the operation and protecting herself from exploitation. Her characteristics and the circumstances of her activities could have been explored for instance with questions such as these:

- What made X become a prostitute? Did she have a debt of which the principal offender was aware, for instance?
- What were the circumstances in which X lived in Spain? What was her alien status in Spain on the one hand and in Finland on the other?
- Did X know how to read and write? Did she have any other characteristics that might have made her liable for exploitation (e.g. a history of sexual abuse or violence)?
- Did X have children and if so, where were they? How did she provide for them?
- Why was X not allowed to contact any other persons in the procuring organisation? What was the purpose of isolating X?
- What had happened in X's life before she was recruited in Spain to work in Finland?
- Was X afraid of what consequences the discontinuing of her prostitution and procuring activities could have caused for her or her family?

The National Rapporteur notes with regard to the criminal investigation in this case that the prostitutes were removed from the country after being ques-

³⁶ Expression used in the criminal investigation record.

tioned. The National Rapporteur is aware that prostitutes of Nigerian origin are often removed from the country.³⁷ The National Rapporteur considers it important that when the provision on refusal of entry in the Aliens Act (section 148) is applied, the situation and circumstances of the person to be refused entry be investigated in detail so as to avoid removing possible victims of human trafficking from the country. Specifically, when the authorities intend to remove from the country a citizen of a third country found to be engaging in prostitution or other sex trade, it should be recorded in the decision of refusal of entry exactly how the authorities sought to establish whether the person in question was a victim of human trafficking. If indications of human trafficking are found in the person's situation or circumstances, the person must be offered the opportunity to seek help in the assistance system for victims of human trafficking, and a reflection period must be granted if necessary. It would be a clear message from the legislators concerning the safeguarding of the rights of victims of human trafficking to remove from the Aliens Act the provision whereby an alien may be refused entry into the country if there are reasonable grounds to suspect that he or she may sell sexual services.

The National Rapporteur has noticed that victims of human trafficking who have been subjected to sexual exploitation, such as the aforementioned women of Nigerian origin, are very rarely referred to the assistance system by the criminal investigation authorities. Although the number of sexually exploited victims of human trafficking of Nigerian origin in the assistance system has clearly increased recently, the referral to the assistance system is in most cases made on behalf of the women by a legal counsel assigned to an asylum process or a social worker at the reception centre housing the victim. These are cases where the person in question has become a victim of human trafficking outside Finland, for instance in Italy, Spain or Greece. The National Rapporteur notes that in these cases a criminal investigation is rarely undertaken at all when the case is brought to the attention of the criminal investigation authorities: in most cases, the person's falling victim to human trafficking is only investigated in the context of the asylum investigation. Sometimes this aspect is investigated in more detail, but usually only in the form of a brief additional hearing, following which the criminal investigation authorities close the investigation. The reason for doing so is usually that the criminal investigation authorities consider it not possible to conduct a criminal investigation in Finland because the offence was committed abroad.

The National Rapporteur considers it important for the criminal investigation authorities to be allocated resources for the purpose of establishing international cooperation in investigations so that extensive cases of procuring and

³⁷ The National Rapporteur is notified of all decisions on refusal of entry and removal from the country.

human trafficking with international dimensions could be investigated, and so that investigations could extend to principal offenders located outside Finland. To this end, it would be crucially important to extend the powers of the Border Guard to include human trafficking offences that do not involve facilitation of illegal entry. The National Rapporteur also considers it important to train the criminal investigation authorities in how to encounter and interview suspected victims of human trafficking. It is well known internationally that victims of human trafficking find it difficult to talk about their exploitation experiences to the (criminal investigation) authorities. Some of them are too frightened to talk, and others are so traumatised that they are unable to verbalise their experiences until they have recovered. Referrals to the assistance system could be made easier if the criminal investigation authorities were to collaborate closely with the assistance system as soon as the authorities gain any suspicion that a person they are talking to is a victim of human trafficking. Cooperation between the criminal investigation authorities and NGOs at the early stages of providing assistance should also be improved.

5.6. Drawing a line between procuring and human trafficking

The essential elements of human trafficking and procuring in the Criminal Code overlap to some extent insofar as human trafficking involves sexual exploitation (purpose of the action). However, in the preparatory materials to the provisions it is noted that if procuring is indicated but the other essential elements of human trafficking are found – acts and means – then the provisions on human trafficking must take precedence over the provisions on procuring. The legislators' intent in enacting penal provisions on human trafficking was to narrow the scope of application of the provisions on procuring.³⁸ It would seem that this intent has not been achieved in legal practice, as shown by the material reviewed by the National Rapporteur on Thai massage parlours, if nothing else.

In situations where a suspect's actions seem to satisfy the essential elements of both procuring and human trafficking, the authorities primarily investigate and prosecute the cases as procuring offences and not human trafficking offences. Instead of considering the violence or threat of violence used, the aggravated financial exploitation of the victim, the victim being underage, the victim's vulnerable state or the victim's dependent status in evaluating the essential elements and selecting human trafficking as the offence to investigate or prosecute, these factors tend only to be considered in evaluating the severity of a procuring offence, in considering the offence as a whole (aggravated procuring) and in meting out punishment. Because the choice

³⁸ Government proposal, HE 34/2004 vp.

of law is made at a relatively early stage in the case – in the criminal investigation or when the prosecutor considers charges – it has not been possible to create precedents in legal practice as to where the line between procuring and human trafficking lies when there is overlap between the provisions that concern them.

For the object of the action (i.e. the victim of the procuring or exploitation), the selection of essential elements is of vital importance. If an offence is treated as procuring, such a person is in most cases treated as a witness, having no right to be assigned a legal counsel.³⁹ The National Rapporteur is particularly concerned about the status of underage victims. The material covers several underage victims concerning whom a criminal investigation has been begun and/or whose case is being treated as procuring or some other offence instead of human trafficking. Even here, where underage victims should be considerably better protected than adults, the legislators' intent fails to be achieved. In legal practice, procuring parallels human trafficking as an offence of exploitation that features violence, aggravated financial exploitation, coercion and domineering relationships where the victims rarely have any other realistic option but to submit to the exploitation.

³⁹ It has been suggested that the status of a victim of procuring in criminal proceedings be improved through a legislative amendment providing for the appointment of a legal counsel and a support person. Under the revised provision, a court may appoint a legal counsel to a victim of procuring in the criminal investigation. The relevant government proposal will probably be submitted to Parliament in autumn 2014.

6. Application and interpretation of the provisions on human trafficking in the Criminal Code

6.1. Introduction

The National Rapporteur's assessment of the application and interpretation of the provisions on human trafficking presented herein is based on cases of human trafficking brought to trial between 2009 and 2013. Because as yet there are not very many convictions for human trafficking for the purpose of sexual exploitation (7), the material reviewed includes certain court decisions from before 2009 that are relevant for assessing the application of certain essential elements. Not all court decisions in the material studied were final. The material includes not only the court decisions but also the criminal investigation records for the cases reviewed. Other sources were used to augment the material, including interviews with criminal investigation authorities, prosecutors and members of NGOs. The National Rapporteur also investigated the application and interpretation of the penal provision on the exploitation of a victim of prostitution. The use of the material was restricted to some extent by the fact that some of the judgments and related criminal investigation records have been declared confidential.

The application of the law was assessed specifically with regard to items in the essential elements for which no precedent exists (such as the concept of "sexual exploitation") or for which legal practice has been highly contradictory or apparently difficult in application (such as the concepts of "dependent status" and "vulnerable state"). The National Rapporteur also highlights particularly successful application and interpretation practices that it is hoped will serve as a model for future practices.

Another important issue concerns the liability of the offenders, specifically how to define the extent of the intent of the offenders in terms of criminal liability. In reviewing the material, the National Rapporteur also noted how well the authorities applying the legislation have learnt to apply those provisions that concern means of psychological pressure and exploitation of the victim's weakness, specifically the exploitation of the dependent status and vulnerable state of the victim.

6.2. Provisions on human trafficking in the Criminal Code

The penal provisions on human trafficking entered into force in 2004. Chapter 25, section 3 of the Criminal Code runs as follows:

Section 3 – Trafficking in human beings

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 exploitation referred to in Chapter 20, section 9(1)(1) or comparable sexual exploitation, 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 the 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.

The penal provision on aggravated human trafficking runs as follows:

Section 3a – Aggravated trafficking in human beings

If, in trafficking in human beings,

1. violence, threats or deceitfulness are 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 inflicted intentionally or through gross negligence 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(4),

and the offence is aggravated also when assessed 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 is punishable.

The penal provisions on human trafficking are included in Chapter 25 of the Criminal Code, ‘Offences against personal liberty’. Although there was an actual domestic need for provisions on human trafficking, the enacting of these penal provisions was due above all to international obligations, particularly the Protocol to Prevent, Suppress and Punish Trafficking in Persons to the UN Convention against Transnational Organized Crime (the Palermo Convention).⁴⁰ The principal purpose of the provisions on human trafficking is to prevent and combat human trafficking, procuring and prostitution.

6.3. Provisions on human trafficking in legal practice

6.3.1. The case of the model agency

In an extensive and complicated case filed at the Helsinki District Court in December 2011, the director of a Finnish model agency was charged with several counts of sexual offences against 24 young Finnish women and three counts of human trafficking.⁴¹ The offender had dishonestly led the injured parties – young women aspiring to be models – to believe that he was in an influential position in the modelling world. The offender enticed the injured parties to an interview where they were required to pose nude for photographs against their will and were sexually abused and in some cases raped. By providing misleading and selective information, the offender had managed to persuade some of the injured parties to sign an employment agree-

⁴⁰ The European Council Framework Decision on Combating Trafficking in Human Beings was subsequently replaced with Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011.

⁴¹ The National Rapporteur wishes to highlight the nationality of the victims of human trafficking and of the offenders, because it is relevant for the purpose of assessing the essential elements of the provisions on human trafficking, specifically the status of the victim (e.g. vulnerable state) and the relationship between the victim and the offender (e.g. dependent status). The nationality information also reveals that in a remarkable percentage of cases of human trafficking for the purpose of sexual exploitation the injured parties were Finnish young women or girls, and the offenders in these cases were Finnish too. Of course, this finding may also be indicative of the difficulty of detecting and investigating cross-border human trafficking offences and of the fact that cross-border human trafficking offences tend to be treated as procuring instead of human trafficking, leading in most cases to a weaker criminal procedural status for the victims.

ment to work at the offender's booking agency, which principally offered erotic performances. The women in question were forced against their will to perform striptease dancing for a live audience and to give private striptease performances where they were sexually abused by third parties. The young women were offered plenty of alcohol backstage at the performance venues, and both at the performance venues and in their accommodation the defendant and persons within his sphere of influence sexually abused them. Some of the women were not only sexually abused but raped.

At the District Court, this case was heard at two separate trials. In the first, the defendant was convicted of sexual abuse, coercion into a sexual act, attempted rape, rape, aggravated rape and aggravated trafficking in human beings and sentenced to imprisonment for 12 years and six months. The second trial concerned the charges pertaining to offences against the remaining 12 injured parties, for which the defendant was convicted of sexual abuse, coercion into sexual intercourse, rape and aggravated rape and sentenced to imprisonment for six months. The sentence of imprisonment imposed in the first trial was considered as a mitigating factor in sentencing.

The case was appealed and heard at the Court of Appeal at a single hearing. The Court of Appeal upheld the convictions for sexual offences with only minor adjustments. The defendant was convicted not only for sexual offences but also for (basic) trafficking in human beings. One count of trafficking in human beings was dismissed by both the District Court and the Court of Appeal. The Court of Appeal reduced the imprisonment sentence to 11 years and four months. The defendant was ordered to pay the injured parties damages to the amount of more than EUR 200,000. This decision is not final as regards the human trafficking, as the case has been appealed to the Supreme Court.

There were thus three counts of human trafficking in this case. Under these counts, the defendant was charged with misleading the injured parties and abusing their dependent status and vulnerable state to recruit them and subject them to sexual exploitation. The women who were injured parties in the case had assumed that they had signed a modelling agreement, whereas in actual fact they were being recruited for the purpose of sexual exploitation in public and private erotic performances, where they were subjected to acts that infringed their right of sexual self-determination. The processing of the case involved points that are of crucial importance for legal practice as regards the application of the essential elements. The judgment included a legal appraisal for instance of the scope of sexual exploitation as referred to in the provision on human trafficking; of who is criminally liable for the sexual abuse to which the injured parties were subjected; and how the con-

cepts of dependent status and vulnerable state may be applicable in a situation where the defendant used psychological means of control. The application of essential elements in this particular case is discussed in more detail below.

6.3.2. The case of the underage victim of human trafficking

6.3.2.1. *Decision of the District Court*

In a case filed at the Helsinki District Court in December 2012, two Romanian men were charged with subjecting an underage Romanian girl to prostitution in Helsinki between March and May 2012. According to the charge, the men had enticed the girl to travel with them via Norway to Finland by promising to get her a job. When they arrived in Finland, the injured party had realised that the job in question was prostitution. The injured party was required to sell sex on the street on a daily basis. She was obliged to receive 200 to 300 clients over a period of two months and to have unprotected sexual intercourse with more than half of them. The woman was very young, being underage; she did not know where she was, and the offenders treated her with violence and contempt. Her vulnerable state was exacerbated by the fact that for part of the time in question she had to live in a car (bearing in mind that this was in late winter) and did not have enough to eat. She was also forced to turn over all her cash to the offenders. The action inflicted serious mental and physical trauma on the girl.

The case was heard at two separate trials at the District Court, because the second defendant was not apprehended until the case had already been heard for the first defendant. Both defendants were sentenced to unconditional imprisonment for aggravated trafficking in human beings, one for four years and eight months and the other for four years and two months. They were also sentenced to pay the injured party damages for temporary disability (EUR 6,000) and mental suffering (EUR 17,000). The money earned by the injured party on the street (EUR 6,000) was deemed forfeit to the injured party as loss of income instead of being deemed forfeit to the State as proceeds of crime.

Both defendants were convicted of aggravated trafficking in human beings but on slightly different grounds. In the first trial involving the first apprehended defendant, the defendant was considered to have misled the injured party and exploited her vulnerable state.⁴² In assessing whether a vulnerable state could be considered to have existed, the court considered the characteristics of the injured party and the circumstances that made her vulnerable and susceptible to exploitation. Her young age was a consideration along with

⁴² Judgment by the Helsinki District Court, R 12/4994, 7 June 2012.

her having no money and no language skills and being in a completely alien environment far from her family. The Court considered in its judgment that these factors together with the fact that the injured party was not allowed to keep the money she earned and was thus unable to return to her home country prevented the injured party from discontinuing the exploitative activities.

The misleading element was assessed in the judgment with regard to whether the injured party knew that she would be obliged to become a prostitute in Finland and with regard to whether she had been misled concerning the circumstances of the work, especially the compensation to be paid. The misleading element was, very commendably, assessed on the basis of what the defendant actually gave as the reason for their leaving Romania, not what the injured party should have understood to be the reason for leaving. The Court considered that not even insinuations on the part of the injured party's girl friend that she might end up as a prostitute were sufficient to disprove the possibility of deception.

In the second trial, in which a decision was issued in February 2013, the criminal liability of the second apprehended defendant was assessed.⁴³ Unlike the first defendant, the second defendant denied being guilty of human trafficking. In its judgment, the Court considered it to have been proven that the defendant was aware of the age of the injured party. However, concerning the means of commitment the District Court ended up with a ruling differing from the previous decision. The misleading element was assessed only as a qualified act, i.e. from the perspective of whether the injured party had been aware when leaving Romania that she would become a prostitute in Finland. It was noted in the judgment that reasonable doubt remained in the case as to whether the injured party had already been aware in Romania of the forthcoming "prostitute work".⁴⁴ However, in the conclusions of the judgment the Court ruled that because the injured party was underage and the defendant had been proven to have been aware of this, it was irrelevant whether the injured party had been aware in advance of the nature of the work and whether she had consented to it. The grounds for the imputation as regards the satisfying of the conditions for "vulnerable state" were very thin, the injured party being noted as being in a vulnerable state due to her young age and financial position.

In the judgment of the first trial, the defendant was ruled to have satisfied all the items in the essential elements as set forth in the description of the action. In the judgment of the second trial, it was ruled that some of the items

43 Judgment by the Helsinki District Court, R 12/12129, 20 February 2013.

44 The quoted expression was used in the judgment.

in the essential elements had not been satisfied, and accordingly the charge was dismissed with regard to certain items in the essential elements. The Court ruled that deception had not been proven. With regard to the actions, the Court ruled that recruitment had not been proven, because the defendant was not considered to have enticed the injured party to leave Romania and travel to Finland. It was ruled in the judgment that the injured party had herself wished to work abroad. The reasoning that led to this assessment of recruiting is somewhat difficult to decipher from the judgment. Recruiting was considered as a means of commitment for human trafficking, even though recruiting is an act of human trafficking, not a means. The grounds for dismissing this item in the charge lead the reader to believe that the District Court did not consider that the reciprocity inherent in the recruiting process had been proven. As noted in the relevant government proposal, recruitment requires both an action of enticement on the part of the offender and an agreement to undertake the activity proposed in the enticement on the part of the subject of exploitation. The grounds for the judgment give the impression that the reciprocity requirement for recruiting was considered not to have been satisfied because the trip was made because both parties had wanted it, i.e. the injured party had wanted to go on the trip of her own free will.

The crucial difference between the legal appraisal in these two judgments is that in the second judgment it is noted that in the case of an underage victim it need not be proven whether the means of commitment defined in the essential elements of a human trafficking offence were used. In both judgments, the District Court's assessment of whether the essential elements were satisfied included an assessment of whether the means of commitment specified in the charge – deception and exploiting a vulnerable state – had been proven. In the second judgment, the Court unambiguously stated with regard to the means of commitment that if the victim is under 18 years of age, the essential elements may be considered to have been satisfied even if the relevant means of commitment – in this case, deception and exploiting a vulnerable state – have not been proven.

6.3.2.2. Decision of the Court of Appeal

After the first trial, both the prosecutor and the defendant appealed the decision of the District Court to the Court of Appeal. After the second trial, all parties – the prosecutor, injured party and defendant – appealed the decision of the District Court to the Court of Appeal. The Court of Appeal heard both cases at a single main session.

Concerning imputation, the Court of Appeal upheld the decision of the District Court for the first defendant. For the second defendant, the imputation was rendered more severe: deception and violence were also imputed to the defendant. Also, the second defendant was ruled to have acted with joint liability with the first defendant over the entire period of the actions taken. As for meting out punishment, the Court of Appeal upheld the sentences of the District Court for both defendants. In its decision, the Court of Appeal assessed all the elements of the action – acts, means and purpose – and gave grounds for the imputation separately for each element.⁴⁵

Underage. Regarding the injured party being underage, the Court of Appeal ruled it to have been proven that the defendants were aware that the injured party was 16 years of age throughout the period referred to in the charge. The girl's age must have become apparent to the defendants when crossing borders and when purchasing ferry tickets. The fact that all the parties came from the same small village where people knew one another well, together with the external appearance of the injured party, reinforced the notion that the defendants must have been aware that they were dealing with an underage child.

Finnish legal practice to date shows that in the case of human trafficking (for the purpose of sexual exploitation) involving underage children, the victims are often aged 16 or 17, i.e. almost adults. It is often difficult to estimate or conclude objectively, based on their external appearance, whether they are over or under 18. In such cases, the question of whether the defendants were aware of the injured party's age often becomes a disputed issue at the trial. Insofar as the defendant's awareness of the injured party's age is proven, the defendant is criminally liable for human trafficking even if none of the means of commitment specified in the essential elements (e.g. deception or exploiting a vulnerable state) had been used. The threshold for criminal liability is thus lower than for adult victims and requires only the acts and purpose to be proven. The argument for this more severe criminalisation is that children need particular protection. Underage children are in a particularly vulnerable position by virtue of their age alone and obviously less able than adults to protect themselves against exploitation.

Even though by law the use of the means of commitment specified in the essential elements does not need to be proven in the case of underage victims, the means of commitment used by defendants (particularly deception, exploiting dependent status or vulnerable state, and violence) have been legally appraised in legal practice. Prosecutors routinely enter the means of

⁴⁵ Judgment by the Helsinki District Court, R 12/2045 and R 12/1107, 17 March 2014. This judgment is final.

commitment used by the defendant in the description of the action, and hence they are assessed at trial and in judgments.⁴⁶ There are two likely reasons for this. Firstly, the defendants' awareness of the injured parties being underage is often disputed at trial. If the defendant cannot be proven to have been aware of the injured party's age, the use of the means of commitment specified in the essential elements of human trafficking must be proven in order for a human trafficking offence to be imputed to the defendant. The means of commitment are included in the charge for this reason, and resorted to in the event of the defendant's intentionality, as far as the age of the victim is concerned, not being proven. Secondly, even though the means of commitment are irrelevant for imputation in the case of underage victims, they may be relevant in assessing the severity of the offence and whether the offence when assessed as a whole is aggravated. If the defendant has used the means of commitment specified in the essential elements of human trafficking against an underage victim, this naturally increases the severity of the offence and should be noted in the meting out of punishment.

Vulnerable state. In assessing whether the essential elements of human trafficking had been satisfied, the Court of Appeal also addressed the means of commitment (exploiting a vulnerable state and deception) even though the victim was underage and the defendants were ruled to have been aware of the fact. Because the victim was underage, assessing the means of commitment was not necessary for imputation. It seems obvious that the means of commitment were assessed in the judgment because the prosecutor had referred to them in the description of the action. The court gave meaning to the means used by the defendants in assessing whether the offence was aggravated, in assessing the offence as a whole and in meting out punishment. The decision of the Court of Appeal provided very good tools for exploring the means defined in the essential elements of human trafficking, which is why the decision is discussed here.

The Court of Appeal ruled in its judgment that the defendants had exploited the vulnerable state of the injured party. Exploiting of the injured party's vulnerable state was considered to have been proven because the injured party spoke no English and was obliged to hand over all her cash to the defendants, not even being allowed money for food. The injured party also did not know where she was, had no knowledge of Finland and did not know how she could have got back to her home country. She was far from her family and the protection they could have provided. The Court ruled that because of this the injured party had no realistic options but to submit to sexual exploitation at the hands of the defendants.

⁴⁶ Except in one case of human trafficking tried in Finland.

In assessing the vulnerable state of the injured party, the Court of Appeal focused on characteristics of the injured party's personality and circumstances indicating that she was unable to protect herself and discontinue the activity. In the judgment, the exploiting of the victim's vulnerable state was assessed very much in the same way as in a previous judgment on human trafficking issued by the Helsinki Court of Appeal in 2009.⁴⁷ In both these judgments, the Court of Appeal imposed liability on the defendants for their actions and paid less attention to the victim's possible motives, initial consent or active resistance. Both judgments pointed to the injured party's capacity for taking action in the circumstances she was in. The earlier judgment described the injured party's functional capacity as being impaired because of her psychological characteristics, her being in a poor financial situation and her having no language skills. In the more recent judgment, the injured party's functional capacity was described as being impaired by her young age and a lack of language skills and money, the latter resulting in a shortage of food.

In both judgments, the Court of Appeal noted by way of limitation to the injured party's functional capacity that she was in an environment completely alien to her, with no family members or other support networks available, and with no knowledge or understanding of how she might get back home. In short, in these judgments the Court of Appeal assessed the injured party's functional capacity in view of her personal characteristics and her circumstances at the time. In view of these characteristics and circumstances, the issue of the injured party's consent or free will became irrelevant and legally invalid. The National Rapporteur commends this approach taken in legal practice in assessing whether the element "exploiting a vulnerable state" has been satisfied and whether this has resulted in dependence on the offenders.

Deception. Deception is assessed in widely varying ways in legal practice. Legal practice demonstrates that there is at the moment no clear and consistent way of assessing deception. In the matter at hand, the Court of Appeal assessed deception differently from the District Court:

"The Court of Appeal [...] considers it to have been proven that A had not been told in Romania before the trip that she would have to engage in prostitution abroad. She was thus deceived by B and C as referred to Chapter 25, section 3(1)(2) of the Criminal Code for purposes of sexual abuse in Finland, contrary to the ruling of the District Court in its judgment regarding C. Since A was told of a completely different job abroad, the Court of Appeal considers that this deception concerned a matter so essential that A's going on the trip must be considered to have

⁴⁷ Judgment by the Helsinki District Court, R 09/385, 29 December 2009.

been the result of deception by B and C using deceitfulness as referred to in Chapter 25, section 3a(1)(1) of the Criminal Code.”

The court ruled that it had been proven that the injured party had not been told before the trip that she would have to “work as a prostitute”.⁴⁸ Therefore the victim was considered to have been deceived as referred to in the provision on (basic) human trafficking. The Court of Appeal then addressed the question of whether that proven deception had been undertaken using deceitfulness as per the provision on the aggravated form of the offence. Because the injured party had been told of a completely different job abroad, the deception concerned a matter so essential according to the Court of Appeal that it must be regarded as deceitfulness as referred to in the provision on aggravated human trafficking.

The matter at hand also gives cause to discuss how deception might be assessed in a case where the charge is for aggravated human trafficking but the description of the action allows for the assessment of whether the element of deception as per the penal provision on (basic) human trafficking was satisfied. In some such cases, the court has assessed the element of deception from the perspective of aggravated human trafficking without considering the evidence at all from the perspective of (basic) human trafficking. This is exactly what happened in the District Court decision in the aforementioned case. The Court of Appeal, by contrast, first assessed the evidence for deception from the perspective of (basic) human trafficking, and only then considered whether the already proven deception had been committed with deceitfulness, as per the provision on aggravated human trafficking.

It is the considered opinion of the National Rapporteur that the way in which the Helsinki Court of Appeal assessed the element of deception is sound and justified. The threshold for deception being proven is lower for (basic) human trafficking. In keeping with the government proposal, it would be justifiable to assess whether the victim had been given false information about the circumstances of the job or the operation or of the compensation payable. Deception with deceitfulness is one of the essential elements of aggravated human trafficking. The point here would be to assess whether the victim was aware before the fact that she was going to be engaged in prostitution. If the element of deception is assessed only through the provision on aggravated human trafficking, the assessment may remain incomplete.

Recruiting. As noted above, the act of recruiting was ruled not to have been proven in one of the two District Court judgments cited. The District Court

⁴⁸ The quoted expression was used in the judgment.

noted in that judgment that the injured party herself had wanted to go abroad to work and that enticement had therefore not been proven. With a view to this ruling by the District Court, the National Rapporteur notes that the injured party's own initiative or desire should not exempt the offender from liability as regards enticement. In the matter at hand, the injured party had not known, while still in the country of origin, the actual purpose of the recruiting (enticing her to travel to Finland). The defendant had acted dishonestly for the purpose of subjecting the injured party to sexual exploitation. The elements of human trafficking involved here – the act of recruiting and the purpose of sexual exploitation – are connected.

The Court of Appeal disagreed with the District Court in its assessment of recruiting. The Court of Appeal ruled that the defendants had enticed the injured party to travel to Finland. In assessing recruiting, the Court of Appeal noted that the fact that the injured party herself desired to go abroad to work is irrelevant for the purposes of the assessment. What was relevant was that the defendants had “enticed and requested” the injured party to travel to Finland with them.⁴⁹ The National Rapporteur commends the fact that recruiting was assessed from the perspective of the defendants' actions in particular in this judgment. The judgment clearly stated that the injured party's motives or desires are irrelevant in assessing whether recruiting was committed. It should be sufficient that the defendants were proven to have enticed or asked the injured party to undertake a specific action and that the injured party undertook the action into which she had been enticed.

Assessment as a whole. The Court of Appeal ruled in its judgment that it had been proven in the case that violence and deceitfulness had been used and that the victim of the offence was underage. The Court also spelt out the elements that rendered the offence aggravated when assessed as a whole. These included: the fact that the victim was underage; the large number of instances of exploitation (200–300 over a period of two months); neglect of the injured party's basic needs such as the need for food, shelter and safety; and the mental and physical trauma inflicted on the victim.

So the factors assessed as being relevant were those that exposed the injured party to exploitation, the circumstances into which the injured party was placed and the consequences inflicted on the injured party as a result of the action. The Court addressed not just the elements traditionally considered to increase the severity of the offence from the perspective of the provision on procuring, such as whether the action was planned or the amount of proceeds of crime, but also the elements concerning the victim and the circumstances

⁴⁹ The quoted expression was used in the judgment.

of the exploitation. The National Rapporteur considers this approach to be consistent with the legislators' intent and Finland's international obligations.

6.3.3. The case of human trafficking resulting in a conviction for procuring

In a case filed at the Helsinki District Court in April 2013, two Czech men were charged with aggravated human trafficking of a Czech woman. According to the charge, the men had exploited the woman's dependent status and vulnerable state arising from her financial situation, lack of language skills, social status and mental and physical condition. The men were also ruled to have deceived the woman with regard to the nature of the work that she was to do in Finland. The charge stated that the men had recruited the woman in the Czech Republic and taken her first to Prague and then to Finland, accommodating her at a hotel in Helsinki for the purpose of sexual exploitation. The prosecutor charged the defendants secondarily with aggravated procuring and negligent bodily injury. The charge of negligent bodily injury derived from the serious physical and mental injuries incurred by the woman in selling sex.

At the District Court, the charge of human trafficking was dismissed, and the defendants were sentenced to conditional imprisonment for procuring.⁵⁰ The charge of negligent bodily injury parallel to the procuring charge and the injured party's demand for compensation were dismissed. With regard to the charge of human trafficking, two of its elements – act and purpose – were considered to have been satisfied. The two defendants and a third, unknown person, were found to have colluded in recruiting, transporting and accommodating the injured party for the purpose of sexual exploitation, as referred to in the provisions on human trafficking. However, with regard to the means itemised in the charge, the District Court ruled that it had not been proven that the defendants had committed the action by exploiting the injured party's dependent status or vulnerable state, by deceiving her or abusing her mistake, or by deceitfulness. Therefore the defendants' action was not considered to satisfy the essential elements of human trafficking or aggravated human trafficking.

Deception. It was stated in the charge that the injured party was deceived with regard to the nature of the employment on offer and that the defendants abused that mistake in order to subject her to sexual exploitation. What was disputed in the case was whether the injured party knew that she would be engaging in prostitution in Finland or not. The injured party herself stated that she had not known she would be engaging in prostitution when she left for Finland. She further stated that she was under the impression that she was

⁵⁰ Helsinki District Court, R 13/3613, 27 May 2013 (public version). This judgment is not final.

going to Finland to join an escort service, which only involves social interaction. The defendants, on the other hand, contended that the injured party had arrived in Finland voluntarily and deliberately to engage in prostitution. In assessing the injured party's awareness of the forthcoming prostitution, the court noted firstly that the injured party had previously offered "sexual services" in the Czech Republic and secondly that she had posted two ads online offering erotic services before travelling to Finland.⁵¹ The court further noted that because of the injured party's limited language skills – she only knew Czech and German – her statement about believing the employment in Finland to be with an escort service and only to involve social interaction was not credible. The District Court considered it highly unusual and therefore highly unlikely that the injured party would have accepted a job offer from persons previously unknown to her without knowing what the work was to be and where it was to be done.

Without addressing the issue of assessing the evidence regarding the element of deception, the National Rapporteur would like to draw attention to the assessment of the injured party's circumstances and the injured party's decisions based on her own deliberation. The apparent irrational or unconventional nature of the injured party's actions and decisions was considered by the Court to undermine the credibility of the account. The evidence could have suggested a different conclusion. It is stated in the judgment that a medical report on the injured party explains that as early as one year before travelling to Finland, because of difficulties in her personal life, the injured party had posted an ad where she had stated that she would accept any employment. She had drifted into prostitution as a result. The judgment mentions the injured party's history of profound trauma and her indecision in extreme situations, also discussed in the medical report.

Indeed, the apparently unconventional, contradictory or irrational actions of the injured party might be taken as signs of her weak and vulnerable status, as she had very few options in what was then her life situation.⁵² International experiences show that when victims of human trafficking make decisions that on the face of it seem irrational or unusual, this often stems from their weak and vulnerable status and an absence of real choices; it does not necessarily follow that this undermines the credibility of the victim's account. Instead,

51 The quoted expression was used in the judgment.

52 Judgment by the Helsinki District Court in a case of human trafficking, R 09/385, 29 December 2009: "The injured party had, in the course of about one month of dating the defendant, taken out a loan at the defendant's encouragement and given the money to [the other defendant] and also acquired a phone account in her name for his use. The fact that the injured party after a brief period of acquaintance went into debt in favour of the defendant, who had been previously unknown to her and who was impoverished, indicates that the injured party was abnormally gullible, readily manipulated and therefore susceptible to exploitation. The defendant must have been aware of these characteristics by that time."

the actions of the victim should be assessed in view of what the victim's realistic options had been in the situation in question. Decisions that may objectively seem irrational or unusual could make perfect sense in the victim's life situation at the time, in the absence of any other options.

In human trafficking, the offenders consciously and purposefully seek to exploit the desperation of their victims. The majority of victims of human trafficking have a compelling situation (often financial hardship) that drives them to make choices that do not always seem rational or usual to the outside observer. Promises given by offenders to the victims may seem remarkably good in view of the victim's other options. Indeed, instead of attributing guilt to the victims, the criminal justice system should focus on those who commit human trafficking offences. The National Rapporteur further notes that the life situation of an injured party and the underlying factors that might indicate a vulnerable state should be explored at the criminal investigation stage and an expert opinion on the injured party's current (mental) condition requested as necessary. This will be discussed in more detail below.

Dependent status and vulnerable state. With regard to satisfying the element of exploitation of the injured party's dependent status and vulnerable state, the prosecutor referred to the injured party's financial situation, lack of language skills, social status and physical and mental condition. The judgment indicates that the injured party had begun "prostitution work" in her home country because of her financial difficulties.⁵³ Her intent was to earn as much money as possible through prostitution in order to be able to pay her debts and regain custody of her children, who had been taken into care. The injured party had been in a physically and mentally poor condition. She had been sexually exploited before, she had been in a violent relationship, and during her time in Finland she continued to be dependent on psychotropic drugs. Because of the anal sex demanded by buyers of sex, her sphincter had weakened, leading to incontinence. The defendants had been aware of the above but had not stopped sending buyers of sex to the injured party – even though the injured party had said that she did not want buyers to have anal sex with her. The witnesses heard at the trial – the police officer present at the police intervention, a member of the hotel staff and a man who bought sex from the woman on two occasions – testified that the woman seemed anxious, under pressure, unfocused and in need of help. In its conclusions, the Court noted with regard to the satisfying of the element of exploiting a dependent status and vulnerable state:

⁵³ The quoted expression was used in the judgment.

“The injured party was not forced to offer services as a prostitute as claimed in the description of the action. She had engaged [in prostitution] voluntarily with the intent of earning money in order to resolve the financial issues waiting for her in her home country and in order to regain custody of her children, who had been taken into care. [...] Considering what is stated above regarding the injured party’s motive to engage in the work she performed in Finland and the fact that, as noted above, she could have left the hotel room if she so wished and sought help earlier than the incident in question regardless of her inadequate language skills, the District Court rules that while in Finland she was not dependent [on the defendants] as referred to in law.”

With regard to satisfying the element of exploiting a vulnerable state, the prosecutor referred to the injured party’s physical and mental condition. The judgment refers to a medical report that indicates that the injured party’s mental trauma was caused by the sexual exploitation to which she was subjected. This trauma had a long-lasting impact on the injured party’s health. A portion of the medical report describing the consequences of the action on the mental health of the injured party runs as follows:

“The coercing of the injured party to engage in prostitution against her will in Helsinki in November 2012 as described by her in the interview and the related psychosexual trauma were inflicted upon a person who due to earlier mental traumatisation was particularly susceptible to a psychiatric disorder triggered by a new episode of mental traumatisation. [...] The acute period of post-traumatic stress disorder and the related severe depression can with justification be considered to have been directly caused by the actionable offence described by the injured party. These mental disorders significantly restrict her functional capacity and cause considerable mental suffering besides constituting an acute health risk in the form of suicidal tendencies. The post-traumatic symptoms experienced by the patient as a result of the abuse she was subjected to is long-term in nature, and even after seeming externally recovered she may experience residual symptoms causing mental anguish and functional restrictions. The tendency for episodes of post-traumatic symptoms to recur, often in connection with external events recalling the original trauma, will persist for the rest of the patient’s life.”

The injured party was addicted to psychotropic drugs, and the defendants were aware that her continued use of the drugs was a requirement for the continuation of the prostitution and procuring. When the drugs ran out and the injured party’s health collapsed, apparently for that reason, the injured

party was no longer able to sell sex. The judgment also indicates that it was important for the defendants to maintain the functional capacity of the injured party so that she could continue to earn money. It follows that the defendants should have been able to anticipate and understand that she was not engaging in prostitution voluntarily. However, the Court never took this point into account in assessing whether the element of abuse of vulnerable state had been satisfied. Despite the fact that the defendants were aware that the injured party was addicted to psychotropic drugs and that a direct causal relationship was established between the injured party's mental trauma and the activity into which she had been forced, the Court ruled:

“It is the considered opinion of the District Court that for the injured party to present with mental symptoms of the kind noted above could not have been anticipated by the defendants on the basis of their knowledge of the injured party's mental health problems, and at the time of the action [in the matter at hand] the symptoms could not have been observed by the defendants. The deterioration of the injured party's physical condition [...] was very rapid. Considering that ‘exploitation of a vulnerable state’ refers to a situation where the victim has no other realistic or acceptable option than to submit to the exploitation, the District Court rules that exploitation of dependent status or vulnerable state due to the injured party's physical and/or mental state has not been proven in the matter at hand.”

In other words, the District Court ruled that the defendants had not acted with intent, not having been aware of the mental factors that may have made the injured party vulnerable. The defendants were thus ruled to have acted with intent with regard to the acts and purpose but not with regard to the means. Because intent was considered not to have been proven, the causal relationship was ruled as irrelevant even though the medical report stated that the activity to which the injured party was subjected had had serious consequences for the injured party's mental health and her future in general. Among other things, the injured party was considered to be an acute suicide risk, and her post-traumatic symptoms and severe depression were estimated to cause her significant mental anguish.

The Court also referred to the narrow interpretation issued as a recommendation by the Legal Affairs Committee of Parliament, namely that abuse of vulnerable status is only indicated when the victim has no other realistic or acceptable option but to submit to the exploitation. The District Court ruled that on the basis of the evidence the injured party would have had a realistic chance of protecting herself against the exploitation and refusing to partici-

pate in the activity, even though the injured party had originally not been able to travel or acquire tickets by herself, she had no money and she was in a strange country with no safety nets to rely on.

The District Court referred to the injured party's own motives for travelling to Finland: her desire to correct her desperate financial situation and to regain custody of her children, who had been taken into care. On these grounds, the injured party was considered to have consented to prostitution in a legally valid way. However, the motives underlying the injured party's departure could also have been assessed from the perspective of whether those motives themselves rendered the injured party's position vulnerable and susceptible to exploitation, considering in particular that the defendants were aware of these motives. A psychiatrist called as a witness at the trial described the injured party's mental state as unstable and stated that the injured party had attempted to cope with a stressful situation until her survival mechanisms had finally failed. Yet despite all the above, which was known to the defendants, the District Court assigned responsibility for becoming a prostitute and the consequences of this decision solely to the injured party.

The National Rapporteur notes that the District Court assessed the issue of the exploitation of the injured party's dependent status and vulnerable state in a somewhat different way than in earlier legal practice. The District Court paid considerable attention to the victim's potential motives and original consent. In assessing the functional capacity of the injured party during the time of the offence, the Court ignored the fact that the defendants had through their action further weakened her already weak position. The threshold for intent being proven was also set remarkably high compared to earlier legal practice.

6.4. Criminal liability for sexual offences related to human trafficking

6.4.1. Legislation

It is relatively easy for the essential elements of human trafficking to be satisfied: it does not require a person to have actually been subjected to sexual exploitation. It is sufficient that the offender had the purpose of subjecting the victim to such treatment. If this purpose is realised and the sexual exploitation satisfies the essential elements of any sexual offence, then the offender will be convicted separately of the sexual offences.⁵⁴ These application instructions from the legislators are understandable simply on the principle that there is more than one object of legal protection involved in cases of human trafficking. Human trafficking as a whole is an offence against personal liberty: the

⁵⁴ Government proposal, HE 34/2004 vp, p. 96.

victim is brought under the offender's control and deprived of the freedom to act as he or she wishes. When the purpose of the action (sexual exploitation) is realised, other objects of legal protection are violated, including the right of sexual self-determination and bodily integrity. In such a case, the human trafficking offences and sexual offences (sexual exploitation) are dealt with in separate processes of prosecution and punishment. This is of particularly great significance from the victim's point of view.

According to the relevant government proposal, the wording "takes control [...] for the purposes of sexual exploitation" in the Criminal Code is meant to imply primarily that the offender is assumed to deliver a victim of human trafficking to a third party for the purposes of sexual exploitation. Consequently, the question is who has criminal liability for the resulting sexual offences – the principal offender, i.e. the offender committing the human trafficking offence, or the physical perpetrator who commits the actual act of sexual exploitation, e.g. the buyer of sex?

Human trafficking is by its nature an offence such that the party who commits the actual sexual offence, the physical perpetrator, generally remains unknown and undetected. Victims of human trafficking are usually unable to analyse or identify instances of exploitation or the course of events as regards individual buyers of sex. They may have endured hundreds of such encounters, and as a result it is impossible to find or identify the physical perpetrators. It may therefore be difficult to bring the physical perpetrators to criminal justice. These situations may also be problematic as regards the assessment of intent. A buyer of sex may not necessarily know that what he is doing is a sexual offence, not being aware that the seller of sex is a victim of sexual exploitation, or at least it may not be possible to prove such awareness in criminal proceedings. In such situations, criminal liability may be ascribed, through the principle of commission of an offence through an agent, to the principal offender, i.e. the person committing the human trafficking offence (the non-physical perpetrator).⁵⁵ The non-physical perpetrator may thus be prosecuted for sexual exploitation and any other sexual offences associated with the human trafficking.

Chapter 5, section 4 of the Criminal Code lays down provisions on the commission of an offence through an agent. Under this section, a person is sentenced as a perpetrator if he or she has committed an intentional offence by using, as an agent, another person who cannot be punished for said offence due to the lack of criminal responsibility or intention or due to another reason connected with the prerequisites for criminal liability. According to the

⁵⁵ Chapter 5, section 4 of the Criminal Code.

preparatory materials, this section may apply for instance in situations where the physical perpetrator is unaware of the actual or legal nature of the action or is mistaken as to same, or where the physical perpetrator lacks a specific purpose or motive specified in the essential elements of the offence.⁵⁶ Indirect criminal liability may then be ascribed to the non-physical perpetrators who have caused the physical perpetrator to commit such an offence by way of committing a human trafficking offence.

6.4.2. Legal practice

Criminal liability for sexual offences related to human trafficking has been poorly enforced in legal practice. In the early days, this point was not addressed at all. In Finland's first-ever case of human trafficking, heard at the Helsinki District Court with members of an Estonian-Finnish criminal organisation as defendants in 2006, no charges of sexual offences were brought against the defendants or indeed any other responsible party.⁵⁷ The same happened in the decision on human trafficking issued by the Kotka District Court where three Finnish men were charged (the 'grassing debt' case).⁵⁸ In legal practice, investigations of sexual offences (being the purpose of human trafficking offences) have resembled investigations of procuring offences. Attention has been focused on the number of instances of selling sex, the prices paid, the provision of rooms and the assessing of proceeds of crime. In cases where the purpose of sexual exploitation was realised, the investigation did not consider whether the sexual exploitation possibly satisfied the essential elements of a sexual offence. A case where several buyers of sex were convicted of exploitation offences against victims of prostitution but not of any other sexual offences is discussed below.

The legislators' instructions to issue separate convictions for sexual offences where actions satisfy the essential elements of sexual offences were applied for the first time in the 'case of the model agency'. In that matter, the owner of the model agency as employer abused the injured party's dependent status and vulnerable state and subjected the injured party to sexual exploitation in 'private performances' involving striptease dancing. The injured party was able to specify three acts that realised the purpose of the principal offence, describing the course of events, the venues and the appearance of the buyers of sex, i.e. the physical perpetrators. However, it was no longer possible to identify the physical perpetrators, because they were anonymous clients in a crowd who purchased a private striptease. With regard to these offenc-

⁵⁶ Government proposal, HE 44/2002.

⁵⁷ Helsinki District Court, R 06/5204, 20 July 2006.

⁵⁸ Kotka District Court, R 08/1069, 9 December 2008.

es, the prosecutor brought charges of coercion into a sexual act pursuant to Chapter 20, section 4 of the Criminal Code against the defendants who were also charged with the principal offence (a human trafficking offence). With regard to these charges, the Helsinki Court of Appeal noted in its judgment:

“On the basis of the credible account given by J, the Court of Appeal considers it to have been proven that J gave three private striptease performances. These are the instances of coercion into a sexual act imputed to the defendant under counts 17 and 18 and the instance of coercion into a sexual act dismissed under count 20. The Court of Appeal has noted that the purpose of the penal provisions on sexual offences laid down in Chapter 20 of the Criminal Code is to protect the right of sexual self-determination of a person. The penal provisions on human trafficking arise from the premise that human beings may not be traded as commodities. The provisions on human trafficking protect general social equality, since the social status of victims of human trafficking is weak. The Court of Appeal considers that the essential elements of the offences referred to under counts 17 and 18 on the one hand and count 27 [human trafficking] on the other are not mutually exclusive. Besides, a victim need not have been actually subjected to sexual exploitation for the essential elements of human trafficking to be satisfied; it is enough for the offender to have had the purpose of subjecting the victim to such treatment. Therefore punishment is meted out separately for sexual offences if the consequent action satisfies the essential elements of a sexual offence.”⁵⁹

The National Rapporteur considers it important that the Court imposed liability for the sexual offences on the defendants convicted of the human trafficking offences when charges could not be brought against the physical perpetrators who actually committed the sexual offences. This policy is consistent with the legislators’ instructions on criminal liability in human trafficking. The National Rapporteur also considers it significant for the rights of victims of human trafficking and the fulfilment of international obligations that when the intention of sexual exploitation is realised, the action as a whole is also assessed from the perspective of infringement of the right of sexual self-determination and bodily integrity.

The importance of this is highlighted in one of the cases included in the material reviewed by the National Rapporteur.⁶⁰ In this case, the prosecutor had brought charges of aggravated human trafficking against the defendant.

⁵⁹ Helsinki Court of Appeal, R 12/699, 5 July 2013, public report.

⁶⁰ Helsinki District Court, R 12/4663, 21 June 2012 and Helsinki Court of Appeal, R 12/2224, 5 July 2013.

According to the charge, the defendant had, by deception and exploitation of the injured party's dependent status and vulnerable state, taken control of her, transported and accommodated her for the purpose of marketing her for 'private performances' where the injured party had been forced against her will to dance naked in front of buyers of sex. The prosecutor noted in the consideration of charges that the sexual exploitation to which the defendant subjected the injured party satisfied the essential elements of sexual exploitation as per Chapter 20, section 5 of the Criminal Code, and accordingly charged the defendant not only with human trafficking but also with sexual exploitation over a period of eight years. According to the charge, the defendant had persuaded and coerced the injured party into performing as a strip-tease dancer and submitting to various acts that violated her right of sexual self-determination.

At both the District Court and the Court of Appeal, the charge concerning the principal offence – human trafficking – was dismissed. At the District Court, the human trafficking charge was dismissed primarily on the grounds that the purpose of the action was considered not to have been realised. The Court of Appeal, on the other hand, ruled that the essential elements had not been satisfied as regards means – deception and exploitation of dependent status and vulnerable state. What was significant for the rights of the injured party was that both courts convicted the defendants for sexual exploitation. The courts noted that the exploitation had continued for a period of about eight years and consisted of hundreds of instances of exploitation that had caused serious long-term and possibly permanent damage to the injured party. The defendant was sentenced to pay the injured party damages for anguish pursuant to Chapter 5, section 6(1) of the Tort Liability Act for “sexual exploitation with characteristics of human trafficking” in the amount of EUR 22,000.⁶¹ Regarding the payment of these damages, the Court of Appeal ruled that the decision of the District Court and its grounds should stand.⁶²

This case and how it was decided illustrate how important it is in a case of human trafficking for the purpose of sexual exploitation to explore already at the criminal investigation stage whether the sexual exploitation to which the victim was subjected might satisfy the essential elements of a sexual offence. If this exploration is not done and the appropriate charges not brought, the infringement of the right of sexual self-determination is completely excluded from the scope of criminal liability. If the charge of human trafficking is then dismissed, the defendant will also not be held criminally liable for the sexual

61 The quoted expression was used in the judgment.

62 The judgment is not final regarding the ruling in human trafficking. The Supreme Court granted leave to appeal on this count.

offences committed, and the injured party cannot even claim damages for anguish pursuant to the Tort Liability Act for these offences.

It is the considered opinion of the National Rapporteur that the aforementioned case is an excellent example of complying with the legislators' instructions in that punishment is also meted out for the sexual offences that satisfy the purpose of the principal offence. The National Rapporteur encourages the criminal investigation authorities and prosecutors to pay special attention to this point. Not all criminal investigation authorities or prosecutors have the required expertise, and therefore resources should be allocated to improving competence in this respect.

6.4.3. Liability of a buyer of sex

In some cases, the victims of human trafficking for the purpose of sexual exploitation have been able to name the physical perpetrators of sexual offences and to describe the acts and where they were committed. Sometimes the physical perpetrators have been found with the investigative methods of the police. The physical perpetrators may have been friends, acquaintances or associates of the principal offender, i.e. the offender committing the human trafficking offence. In other cases, they had no prior contact with the principal offender. Assigning criminal liability for sexual offences in such situations often requires assessment of intent on the part of the physical perpetrator, i.e. assessing whether the physical perpetrator was aware of the victim not undertaking the activity voluntarily but being obliged to do so because of coercion or subjugation on the part of the principal offender. This applies to sexual exploitation offences and other sexual offences against a victim of human trafficking. The penal provision on the exploitation of a victim of prostitution in the Criminal Code runs as follows:

Section 8 – Exploitation of a victim of prostitution

A person who, by promising or giving remuneration involving direct economic benefit, induces a person referred to as 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 exploitation 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 exploitation of a victim of prostitution.

An attempt is punishable.⁶³

In Finland's third-ever case of human trafficking for the purpose of sexual exploitation brought to trial, the court assessed whether the requirement of intent was satisfied in a sexual exploitation offence. The case involved the bringing of a young Estonian woman to Finland for prostitution purposes. The Helsinki Court of Appeal ruled that the two Estonian men had subjected the woman to sexual exploitation by exploiting the injured party's dependent status and vulnerable state. It was noted in the judgment that the essential element of exploitation of dependent status and vulnerable state specified in the provision on human trafficking was satisfied, because the injured party was completely unable to act due to her inadequate language skills and lack of networks, indebtedness and resulting poor financial position, and also due to her mental health characteristics, and therefore had no other realistic and acceptable option but to submit to prostitution.

In the criminal investigation, more than 100 men who had bought or attempted to buy sex from her were investigated. The woman was able to identify some of the men, but she was unable to describe instances of exploitation or the course of events except in the case of a handful of men. Some 40 of the men were called as witnesses at the District Court, and most of them stated that the woman had been passive in the (exploitation) situation, that she had behaved strangely, that she had been distant and reserved and that her behaviour had caused the men to suspect that she was not engaging in prostitution voluntarily. With regard to sexual offences, the prosecutor only brought charges for exploitation of a victim of prostitution (Chapter 20, section 8 of the Criminal Code). No other charges for sexual offences were brought, neither against the principal offender (the offender committing the human trafficking offence) nor the physical perpetrators of the exploitation offences.

For one of the defendants charged with exploitation of a victim of prostitution, the case progressed all the way to the Supreme Court. According to the charges, the buyer of sex had given the injured party monetary compensation of about EUR 150, thereby enticing the woman, a victim of procuring,

63 Chapter 20, section 8 of the Criminal Code has an alternative provision, section 8a – Purchase of sexual services from a young person: "A person who, by promising or giving remuneration, induces a person younger than 18 years of age to engage in sexual intercourse or to perform another sexual act shall be sentenced for purchase of sexual services from a young person to a fine or imprisonment for at most two years. Also, a person who uses the sexual services referred to in subsection 1 for which another person has promised or given remuneration shall be sentenced for purchase of sexual services from a young person. An attempt is punishable."

to engage in sexual intercourse.⁶⁴ In the criminal investigation, the buyer of sex had admitted to having sexual intercourse against payment with a woman unknown to him. The woman had also reported in the criminal investigation that the person in question had bought sex from her. The District Court sentenced the buyer to 20 day fines for exploitation of a victim of prostitution pursuant to Chapter 20, section 8(1) of the Criminal Code. The buyer of sex appealed the District Court decision to the Court of Appeal, demanding that the charges be rejected because he had not acted with intent. He contended that he was not aware that the woman was a victim of procuring or human trafficking. The Court of Appeal upheld the decision of the District Court.

The buyer then applied to the Supreme Court for leave to appeal, which was granted. Ultimately, the Supreme Court overturned the decision of the Court of Appeal, principally on the grounds that the buyer of sex had not acted with intent.⁶⁵ In this precedent, the Supreme Court adhered to the definition of intent established in legal practice (probable intent). According to this requirement of intent, assigning criminal liability would in this case have required that the buyer had considered it quite probable that the person selling sexual services was a victim of either procuring or human trafficking. The Supreme Court stated that the description of the personality, appearance or language skills of the seller as presented in the case were insufficient to prove that the buyer must have considered the aforementioned circumstance quite probable.

In the grounds for its precedent, the Supreme Court considered whether a lower threshold of culpability could be upheld *inter alia* because of the need to protect victims of prostitution or their weak social status or because of difficulties of proof, or because attempts are often made to conceal the status of a prostitute who is a victim of procuring or human trafficking from potential buyers, and buyers have no way of finding this out, even if they wanted to. The Supreme Court noted that “sexual services” often involve the possibility of procuring and human trafficking, and it is difficult for a buyer to completely exclude this possibility.⁶⁶ Having said that, the Supreme Court upheld the probable intent model in the interests of the underlying values of the rule of law, above all predictability and uniformity of the application of the law. The Supreme Court further noted that a person cannot be considered to have acted with intent if that person can be considered to have been ignorant of an element of the criminal liability thereof.

64 With regard to the principal offence, i.e. the human trafficking offence, the prosecutor charged the defendants primarily with human trafficking and secondarily with procuring. At the District Court, the defendants were convicted of procuring and sentenced to imprisonment. The Court of Appeal, by contrast, convicted the defendants of human trafficking.

65 Supreme Court, 2012:66.

66 The quoted expression was used in the judgment.

The Supreme Court dedicated a considerable portion of the justifications to evaluating the evidence. The Supreme Court conducted a preparatory session and an oral main hearing in the matter, which is relatively rare. The Supreme Court noted firstly that nothing had emerged in the matter that would indicate procuring, circumstances referred to in the preliminary materials of the Act. On the other hand, the Supreme Court considered that the diminished mental capacity of the person selling sexual services could not have been easily discerned by an outside observer. She was also capable of communicating to a sufficient extent, even if her language skills were not good. The Supreme Court stated in its precedent:

“The Supreme Court notes that a discernibly diminished mental capacity and complete lack of language skills may strongly indicate that the person is incapable of independent action but is instead a victim of procuring or human trafficking. Young age or foreign origin are not in and of themselves grounds for such a suspicion. The above description of the personality, appearance, language skills and background of A, whether the characteristics are taken separately or considered as a whole, and taking other circumstances into account, does not demonstrate that X must have considered it quite probably for A to be a victim of procuring.”⁶⁷

The physical perpetrator, for instance the buyer of sex, is not always able to assess the true situation of the victim. He sees a very narrow sample of the victim’s situation, and the offenders may have created an environment such that it is difficult for clients to estimate the true circumstances in which the victim is living. It is also typical of the dynamics of human trafficking that a victim generally does not reveal her true status in an exploitation situation. Indeed, it does not even occur to the victims that they might be able to negotiate their position with the perpetrators. They are afraid and ashamed and in many cases manipulated to act according to the offender’s demands. In most cases, they would not dare defy the offender’s control over them, because they believe they would themselves face the consequences caused by exposing the true nature of the situation.⁶⁸

67 After the Supreme Court issued the precedent overturning the aforementioned decision, the North Karelia District Court issued a decision in a case of procuring involving a Thai massage parlour, R 13/1326 (20 September 2013). The District Court convicted a buyer of sex of exploitation of a victim of prostitution and sentenced him to a fine, ruling that the buyer was aware of the facts indicating a procuring offence. The buyer had admitted to buying sex from the “employees” at the Thai massage parlour (the quoted expression was used in the judgment), and the Court ruled that he must therefore most probably have been aware of the masseuses being victims of procuring. The judgment is final regarding this count.

68 Information on the behaviour of sex buyers may be found in a recent research report published in spring 2014: <http://www.stoptraffick.ie/wp-content/uploads/2013/03/STOP-TRAFFICK-full-report.pdf>

Because of the above, a partial ban on buying sex is not at all well suited to human trafficking situations, being insufficient for preventing or curbing human trafficking for the purpose of sexual exploitation or for protecting victims of the sex trade effectively. The Parliamentary Assembly of the Council of Europe and the European Parliament, for instance, have recently recommended a ban on buying sex as being a significant policy measure against prostitution. Both international representative bodies consider a ban on buying sex to be an effective and needed means for addressing the demand that fuels human trafficking, and thereby an instrument for curbing and preventing human trafficking itself and associated crime. This kind of prostitution policy is also considered to promote gender equality.⁶⁹

It is the considered opinion of the National Rapporteur that Finland should seriously consider expanding the current partial ban on buying sex to make it comprehensive.⁷⁰ This has already been enacted (or will possibly shortly be enacted) in Sweden, Norway, Iceland, France and Canada, and legislators in the UK and Ireland are also considering it.⁷¹ The Ministry of Justice in Finland is currently preparing an amendment to the provisions on sexual exploitation. If the proposal is enacted as law, the exploitation of a victim of prostitution will become a punishable offence even if committed through negligence. The purpose of the proposal is to improve the protection of victims of prostitution in criminal proceedings and to reduce the demand for paid sex.⁷² The National Rapporteur further recommends the removal of the prohibition on selling sexual services from the Public Order Act (section 7) to prevent persons in a vulnerable state who may be victims of human trafficking from being subjected to controlling actions by the authorities.

The National Rapporteur further draws attention to the relationship between the offence of exploitation of a victim of prostitution and other sexual offences under Chapter 20 of the Criminal Code. In a situation where the physical perpetrator of a sexual offence can be identified in connection with a human trafficking offence, it is possible in the view of the National Rapporteur to apply simultaneously the provisions on sexual offences (e.g. Chapter 20, section 5 of the Criminal Code) and the provision on the exploitation of a victim

69 See e.g. Parliamentary Assembly: Prostitution, trafficking and modern slavery in Europe (Doc. 13446, 20.3.2014); European Parliament: Report on sexual exploitation and prostitution and its impact on gender equality (A7-0071/2014, 3.2.2014).

70 A comprehensive ban on buying sex is also recommended in a study commissioned by the Ministry of Justice. Seksikaupan kohteen hyväksikäyttö: Seksinostokiellon toimivuuden arviointi. Oikeusministeriö, 39/2013. [Exploitation of victims of prostitution: Feasibility study on the ban on buying sex. Ministry of Justice, 39/2013.]

71 A feasibility study by the Swedish Chancellor of Justice on the ban on buying sex (Förbud mot köp av sexuell tjänst: En utvärdering 1999–2008. [Ban on buying sexual services: An evaluation 1999–2008.]) may be found in Swedish at: <http://www.regeringen.se/content/1/c6/14/91/42/ed1c91ad.pdf>.

72 The National Rapporteur will submit a separate opinion to the Ministry of Justice on this matter.

of prostitution. This is because the objects of legal protection in these provisions diverge in part. The purpose of the (partial) criminalisation of buying sex is to prevent and curb prostitution and to protect victims of prostitution from exploitation generally, whereas the purpose of provisions on individual sexual offences is primarily and specifically to protect the right of sexual self-determination and bodily integrity of the victim. Moreover, legal practice shows that victims of prostitution (Chapter 20, section 8 of the Criminal Code) are usually not treated as injured parties in criminal proceedings and are not awarded damages for exploitation offences.

It is therefore the position of the National Rapporteur that there is no concurrence of offences between the aforementioned provisions and that the actions of physical perpetrators acting with intent should be assessed both as an individual sexual offence and as a violation of the partial ban on buying sex. If this is not done, part of the criminal behaviour may remain completely unpunished. The criminal investigation authorities and prosecutors have an important task to perform in this respect to enable criminal liability for sexual offences to be brought to trial in the first place.

6.5. Concept of sexual exploitation in the human trafficking provisions

6.5.1. Legislation

In human trafficking for the purpose of sexual exploitation, the offender subjects the victim to sexual exploitation. In the provisions on human trafficking, this is described as “for purposes of sexual exploitation referred to in Chapter 20, section 9(1)(1) or comparable sexual exploitation”. The provision referred to is the clause on sexual exploitation in the provision on procuring in the Criminal Code, and indeed prostitution is the most common purpose of human trafficking for sexual exploitation.⁷³ However, what is essential to note is that the concept of sexual exploitation in the context of human trafficking is broader than that considered in the provision on procuring, or indeed the criminal acts described in the provisions on sexual offences in Chapter 20 of the Criminal Code. The broader definition includes actions that in themselves are not punishable as sexual offences, such as employing a person in the production of pornography or in prostitution.

73 Under the provision on procuring (Chapter 20, section 9 of the Criminal Code), prostitution involves sexual intercourse or a comparable sexual act. ‘Sexual intercourse’ refers to the sexual penetration, by a sex organ or directed at a sex organ, of the body of another. ‘Comparable sexual act’, according to the relevant government proposal (HE 6/1997 vp.), refers at least to the intense manipulation of the genitals of another. In legal practice, the provision on procuring has been taken to cover vaginal, oral and anal sexual intercourse and sexual gratification of the genitals of another by hand. These definitions are neutral with respect to gender and sexual orientation.

The broader definition is based on international conventions and EU legislation underlying the national provisions on human trafficking. In the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the Palermo Convention, the concept of sexual exploitation is defined as “prostitution of others or other forms of sexual exploitation”. The most recent international instrument on human trafficking, Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, states that exploitation must include, as a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation. Sexual exploitation is thus understood to include more than just prostitution.

6.5.2. Legal practice

The concept of sexual exploitation as understood pursuant to the provisions on human trafficking has been assessed in legal practice. In the ‘case of the model agency’, the defendant was charged *inter alia* with three counts of human trafficking.⁷⁴ The defendant deceived the injured parties into giving erotic performances by claiming that the work offered was modelling work. In actuality, the injured parties were forced to dance in striptease performances in substandard conditions. After these performances, members of the audience were allowed to pay for the women to give them private striptease performances. In these, the injured parties were obliged to let the buyers touch their breasts and buttocks, and the buyers had masturbated during the performances. In some situations, the buyers had abused the injured parties by physical touching and fondling of intimate areas. Regarding the purpose of the act, the legal issue was whether the infringements of the rights of the injured parties in these private performances constituted sexual exploitation as understood pursuant to the provisions on human trafficking.

At the District Court, this case was heard at two separate trials. At the first session, the defendant was charged with one count of human trafficking. The purpose of the act was to cause an adult injured party to strip her clothes off and give an erotic performance in a ‘private striptease’ and to perform sexual acts for the buyers of sex against her will and to submit to such acts on their part. These acts involved contact with both the buyer’s and the performer’s intimate areas, i.e. intense manipulation of the other person’s genitals.⁷⁵ The District Court ruled in its decision that these acts fell within the scope of sexual exploitation pursuant to the provisions on human trafficking but gave

74 Helsinki District Court, R 12/4663, 21 June 2012; and Helsinki District Court, R 11/7955, 7 December 2011.

75 See government proposal, HE 6/1997.

no grounds for this ruling. The other essential elements of human trafficking were also considered to have been satisfied.

At the second session for the same case, the defendant was charged with two counts of human trafficking. One of these involved an underage injured party and the other an adult injured party. In the act involving the underage victim, the sexual exploitation consisted of three striptease performances where the injured party was obliged to strip naked in front of an audience and one 'private striptease' performance in a separate room. Regarding the purpose of the act, the legal issue was whether this activity constituted sexual exploitation as understood pursuant to the provisions on human trafficking even though it involved no contact with intimate areas and whether this activity constituted a pornographic performance as referred to in the provisions on human trafficking.

The District Court ruled that the purpose was not satisfied, and the charge of aggravated human trafficking was dismissed. The Court noted in the judgment that the matter did not involve, for instance, the prominent display or touching of genitals, a sexual act, masturbation or any other action that could be categorised as pornography or obscene. The Court ruled that "simply having to strip naked in the context of an erotic dance in public, or even in private, does not constitute sexual exploitation pursuant to the provisions on human trafficking even if the victim is under 18 years of age". In its grounds for the judgment, the Court referred to the provisions on obscenity in Chapter 17 of the Criminal Code and the explanation of sexually offensive acts in the preparatory materials for the provisions in question.⁷⁶ The District Court arrived at this ruling despite the fact that victims under the age of 18 enjoy more comprehensive protection than adult victims also as regards the purpose of the offence. The threshold for the essential elements of a human trafficking offence being satisfied is lower for underage victims.

The other count of human trafficking tried at the same session involved an adult injured party. The purpose of the action was to cause the injured party to strip naked erotically in 'private striptease' performances several hundred times over a period of eight years. These performances were held in substandard circumstances, including toilet cubicles and premises used for storing refuse. The injured party was obliged to let the buyers touch her on the breasts and buttocks and to masturbate during the performance. In some cases, there were several buyers watching a performance. About half the buyers also demanded sex from the injured party because the defendant had

⁷⁶ Government proposal, HE 6/1997 vp.

led them to believe that this would be possible at an extra price. The District Court assessed the satisfying of the purpose of the action as follows:

“It is undisputed in this matter that the injured party was not forced into sexual intercourse. Erotic dancing and stripping for which compensation is paid by the employer cannot be equated with sexual intercourse. Judging by the description of the action, the prosecutor only refers to the private performances as tantamount to human trafficking; these performances involved individual customers paying a fee for a few minutes alone with the injured party, being allowed to touch the naked body of the injured party on the breasts and buttocks. The injured party was paid for these private performances. While this activity was tantamount to prostitution, it was not submission to “sexual intercourse or a comparable sexual act”. The provision on human trafficking makes direct reference to the provision on procuring, Chapter 20, section 9(1)(1) of the Criminal Code, where the “comparable sexual act”, according to the preparatory materials for the provision, the grounds given in government proposal 6/1997 vp, is not intended to cover any and all sexually significant acts as defined in Chapter 20, section 10 of the Criminal Code but only acts comparable to sexual intercourse; according to the aforementioned grounds, this would require at least the intense manipulation of another person’s genitals. The injured party’s genitals were not touched in the matter at hand, and judging by the injured party’s account, she was not obliged to prominently display her genitals. The act as it happened also did not constitute submission to a pornographic performance or production, which according to the aforementioned grounds in the government proposal could have been interpreted as sexual exploitation comparable to sexual intercourse, and which could be taken as cause for imputation of a human trafficking offence, assuming that all other essential elements were satisfied. The sexually tinted act considered in the matter at hand, while being humiliating and an infringement of human dignity, did not satisfy the element of purpose under the provision on human trafficking; instead, it is only punishable under count 3 as sexual exploitation, in which context it is naturally possible in the meting out of punishment and the consideration of awarding of damages to take into account the extended duration of the activity and its severity bordering on human trafficking.”

In the decision quoted above, it is possible only with some difficulty to decipher what the District Court actually meant in ruling that the matter at hand did not involve sexual exploitation in a pornographic performance. The decision gives no concrete grounds as to why the activity described should not be

considered a pornographic performance pursuant to the provisions on human trafficking in the Criminal Code. The District Court clearly considered that sexual exploitation pursuant to the provisions on human trafficking requires at least the intense manipulation of the injured party's genitals in order to be punishable. The District Court thus dismissed two counts of human trafficking primarily on the grounds that the purpose of the action was considered not to have been satisfied. The sexual exploitation was ruled not to have satisfied the definition of sexual exploitation in the provisions on human trafficking even though the offence was imputed to the defendant as sexual exploitation pursuant to Chapter 20, section 5(1)(4) of the Criminal Code. Regarding the underage injured party, the action was considered to have consisted of three separate acts; regarding the adult injured party, the action was considered to have consisted of hundreds of separate acts.

The case for all three counts of human trafficking was appealed to the Court of Appeal. The defendant appealed because of the imputed human trafficking offence, and the prosecutor and injured party appealed the two dismissed counts of human trafficking. All counts were heard at the same main session. In its decision, the Court of Appeal ruled on all three counts that the sexual exploitation to which the injured parties had been subjected did satisfy the means of sexual exploitation referred to in the provision on human trafficking. The Court of Appeal noted that the 'private performances' involved not only dancing and stripping naked but also sexual advances on the part of the buyers of sex. The Court of Appeal ruled that the performances must be regarded as pornographic performances. Therefore the injured party was considered to have been subjected to sexual exploitation pursuant to the provision on human trafficking. The National Rapporteur considers the decision of the Court of Appeal to be justified.

The concept of 'pornography' is not known in Finnish legislation. The term and its content are touched upon in the government proposal for the provisions on sexual offensiveness in Chapter 17 of the Criminal Code.⁷⁷ According to the proposal, in everyday language the term 'pornographic' is equivalent to the phrase "sexually offensive or obscene" used in legislation. It is also noted that the definition of pornography is culture-dependent and value-dependent; it varies according to time and place, age group and social group. In evaluating the conceptual content of the "pornographic performance" referred to in the provisions on human trafficking, it should be noted that the provisions in Chapter 17 of the Criminal Code are intended to protect persons from encountering pornography otherwise than by their own choice. In the context of Chapter 17 of the Criminal Code, pornography is to be evaluated on the

⁷⁷ Government proposal, HE 6/1997 vp.

basis of whether it is disapproved of and whether it is found to be sexually offensive or obscene.

In human trafficking, pornography (performance or production) is understood to cover not just the kind of pornography that is punishable under the Criminal Code; the concept is broader. In addition to understanding that the concept is broader, pornographic performances in the context of human trafficking must also be assessed taking into account the fact that the performer, i.e. the injured party in the human trafficking offence, did not give a legally valid consent to participating in an erotic performance. From the point of view of legal protection, the concept of “offensive” has to do with an infringement of the performer’s right of sexual self-determination, not with how offensive a viewer or viewers generally might find the performance. Pornographic performances in the context of a case of human trafficking should therefore be assessed from the perspective of how they infringe upon the right of sexual self-determination of the performers, not from the perspective of how offensive or obscene they may be generally.

In other words, pornography should here be defined as something that infringes upon the performer’s right of sexual self-determination regardless of whether the activity in question outwardly complies with the everyday definition or understanding of pornography or a pornographic performance. Because the purpose of human trafficking for sexual exploitation is specifically defined as subjecting a person to sexual exploitation, it should be further emphasised that human trafficking is an offence not only against personal liberty but against the right of sexual self-determination.

6.6. Dynamics of sexual exploitation and its consequences

6.6.1. Human trafficking as a form of sexual exploitation and violence

In order to understand human trafficking it is necessary to understand the dynamics of sexual exploitation. In reviewing cases of human trafficking for sexual exploitation discovered in Finland, one is struck by a conspicuous characteristic found in all of them: the victims seem to be completely under the control of the offenders despite leading apparently normal lives. They move among other people, use public transport, are not confined to their accommodation and indeed often live in their own homes; yet they have no realistic possibility of discontinuing the exploitative activity, to protect themselves from exploitation or to seek help for their plight. It is often difficult for outsiders to identify or comprehend such complete absence of self-determination,

even though the dynamics of sexual exploitation are very similar to those of intimate partner violence or sexual exploitation/violence generally.

The characteristics that enable the offender to exploit the victim are usually not discernible by an objective outside observer. Human trafficking for the purpose of sexual exploitation is a process of depriving victims of their right of self-determination and bodily integrity and subjugating them so that the victims gradually submit. It is often difficult for the victims themselves to identify the actual moment when they were no longer undertaking the activity voluntarily and the moment when they simply caved in to the offender's control. It is a key feature of the dynamics of subjugation that the victims never even consider that they might be able to negotiate with the offender concerning their situation. The victims see no possibility of protecting themselves against exploitation or of escaping from the offender.

Exploitation establishes a hierarchy of power between the offender and the victim, with the offender possessing all the power, even over matters concerning the victim. There are many factors that facilitate this. Experts in psychiatry and traumatisation giving evidence on the dynamics of exploitation at trials describe the submission of the victim as evolving for instance as a result of the manipulation of the victim by the offender. The manipulator emphasises his position in relation to the victim, although initially he may ingratiate himself and appeal to the victim in ways that are not normal. Gradually, the manipulation becomes belittling, oppressive, threatening and sometimes violent. The offender manipulates the victim into believing that the victim herself is responsible for the exploitation. The victim then believes that she has brought the exploitation on herself, and the sense of guilt feeds her shame. Shame and guilt are what eventually silence victims: they are often silent and do not talk to anyone about what has happened to them, possibly not even in psychiatric care. A victim's mind develops various survival mechanisms in order to cope with the unbearable emotional state brought on by the exploitation. The victim establishes a parallel reality of sorts, attempting to deal with the experiences that have fractured her mind. The victim may block out memories, numb her mind or detach herself from unbearable emotional states.

It is also characteristic of the dynamics of exploitation that the victim exposes herself to new exploitation situations. This phenomenon has been clinically verified in various cases of abuse and exploitation, including domestic violence and sexual abuse of children. By doing so, the victim is attempting to cope with traumatising memories and bad experiences in the belief that the new such situation might end more favourably. She seeks a corrective experience and in doing so may develop a compulsion to repeat the trauma. While

this is ultimately a survival technique in which the victim's mind seeks to control the traumatic experience, it will lead to serious psychological trauma whose symptoms will worsen as the exploitation continues. Regardless of such trauma, the exploitation may last for a long time.⁷⁸

It is useful to understand the dynamics of sexual exploitation and violence for a number of reasons. Firstly, an understanding of the dynamics helps to realise that human trafficking for the purpose of sexual exploitation and involving violence is an exploitation offence. There are items in the essential elements of human trafficking that reflect the victim being exploited and under the control of the offender. This control can and often does emerge through the use of psychological means of control. Someone unfamiliar with the dynamics of exploitation and violence will have a difficult time applying and interpreting the penal provisions on human trafficking in accordance with international obligations and the legislators' intent.

Secondly, it is important to understand the dynamics of exploitation because the (mental) consequences of exploitation for the victim have a crucial impact on how or whether the victim is able to talk about events. This should be taken into account in criminal investigations and at trials by creating an environment conducive to the victim feeling safe enough to describe what happened to him or her. Thirdly, it is also important to understand the dynamics of exploitation in order to be able to refer the victim to the kind of assistance and treatment that he or she needs in that situation.

6.6.2. Human trafficking and factors making victims susceptible to exploitation

Based on the material reviewed, the National Rapporteur notes that some of the sexually exploited victims of human trafficking identified in Finland were found to have been in a particularly vulnerable position simply because of their background. This has emerged in assessments of the (mental) state of the injured parties at the criminal investigation stage. The victims may have a slight developmental disability, they may be borderline mentally retarded or childlike for their age, or they may have a developmental disorder. Some have had psychiatric disorders or a history of traumatic experiences involving sexual exploitation and violence, rendering them more readily susceptible to exploitation. There are also underage victims who may be deemed vulner-

⁷⁸ For more on human trafficking for the purpose of sexual exploitation, see e.g. John O'Reilly: *Sex Slavery the Way Back*. This publication contains several references to the dynamics of exploitation and other research on the mental health symptoms of victims of human trafficking. The publication is available here: http://www.victimsliberation.com/Sex_Slavery_the_way_back.pdf.

able due to their age alone. Vulnerable victims, by definition, are less able to protect themselves against exploitation or to escape from it.

The vulnerable state of an injured party is relevant for the assessment of criminal liability for the offence. Exploitation of the victim's vulnerable state is one of the means mentioned in the essential elements of human trafficking. In a case of human trafficking, it is essential to assess whether the action was committed by taking advantage of the victim's vulnerable state. Many aspects of the victim's dependent status or vulnerable state can be discovered by traditional criminal investigation methods, by interviewing the injured party. The investigation may focus, for instance, on the financial or social position of the injured party or other factors in the victim's personality, life or circumstances that the offender might have used as leverage, exposing the victim to exploitation.

However, assessing the mental or intellectual capacity of the victims and how their experiences may have affected their mental state requires a professional medical assessment. If suspicion of the aforementioned factors is aroused in the course of interviewing the injured party, an assessment of the injured party's mental state should be conducted at an early stage in the criminal investigation so that his or her condition can be taken into account and an evaluation made of how he or she is to be interviewed and what professional expertise is required of the interviewer.

6.6.3. Consequences of exploitation and the importance of assessing them in criminal proceedings

For some victims, there is no particular factor in their background or personal characteristics that could have made them more readily susceptible to exploitation. However, it is evident from the material reviewed by the National Rapporteur and from other research findings that the majority of victims of human trafficking subjected to sexual exploitation have suffered serious, mainly psychological trauma as a result. Medical reports and psychological evaluations of victims identified in Finland indicate that a multitude of mental health disorders have been diagnosed in victims as a consequence of exploitation, including post-traumatic stress disorder, (severe) depression, anxiety disorder, psychotic episodes, insomnia, panic attacks and severe suicidal tendencies. A significant percentage of the victims have received medical treatment, medication and in many cases long-term therapy to cope with such damage. The damage inflicted is of a lasting nature, and in some cases exploitation has been found to cause a permanent impairment to the victim's mental health. It would be important to survey these matters at an early stage

in the criminal investigation to ensure fulfilment of the injured party's rights. Such a survey is of significance in drawing up claims for damages pursuant to Chapter 5 of the Tort Liability Act and in establishing the need for therapy and treatment. The survey may also be used as evidence in criminal proceedings. The reviewed material indicates that evaluation of an injured party's mental state is managed with varying degrees of diligence in Finland. In some cases, injured parties have not been subjected to any mental state assessment at all in the criminal investigation, nor has the existence of a pre-existing therapeutic relationship been explored (through which a medical report on the injured party's mental state could be obtained).

The National Rapporteur would like to draw attention to the many factors due to which a mental state assessment was never conducted for an injured party. Firstly, in some cases the injured party had no legal counsel at the criminal investigation stage. Secondly, in some cases the investigation was launched treating the action as procuring. Thirdly, in some situations attempts at obtaining a mental state assessment were frustrated by the psychiatric care unit refusing because of a shortage of resources. Fourthly, professional expertise in trauma psychology was sometimes difficult to find, as there is no established official channel for managing this. In these cases, procedural deadlines and the time required for a mental state assessment, together with uncertainty as to who is liable for the cost, further complicate matters. However, according to information received by the National Rapporteur, the assistance system for victims of human trafficking has assumed liability for the cost on request when a private service provider has been employed. In light of the material reviewed, it seems evident that conducting a mental state assessment depends on the resources and professional expertise available to the criminal investigation and also to a significant extent on the familiarity of the injured party's legal counsel with the case.

It seems that there is no established system in Finland for conducting mental state assessments on injured parties. The National Rapporteur is concerned about the fulfilment of the rights of victims of human trafficking in situations such as this. The National Rapporteur therefore recommends exploring how the official system in Finland should be reformed in order to have mental state assessments conducted on victims of human trafficking as a matter of course.

What to do? Checklist for safeguarding the rights of injured parties

In the early part of the criminal investigation

1. Contact the assistance system and make a proposal for accepting the injured party into the assistance system.
2. Survey potential security threats in cooperation with the assistance system and the criminal investigation authorities as necessary.
3. Explore the client's situation together with the assistance system.
4. Explore the injured party's acute need for psychological support together with the assistance system.
5. Arrange for the injured party to have a mental state assessment.
 - The assessment should be conducted by a psychiatrist with expertise in traumatisation due to sexual exploitation. The injured party's physical health and possible need for therapy should also be examined. Because of procedural deadlines, cases are handled quickly by the courts. A mental state assessment takes time, and it is often difficult to find a person to conduct the assessment who has trauma experience. Therefore this process should be set in motion as early as possible in the criminal investigation. The injured party's legal counsel is of crucial importance in this.
6. Explore the injured party's current life situation and background.
 - The legal counsel must liaise with the care personnel and become acquainted with the client's current life situation and background; these may be of great significance in assessing the vulnerability of the injured party's status when the offence was committed.

Before the trial

1. Arrange screens or a separate room for fearful witnesses, or other procedures to ensure that the defendant has no visual contact with the injured party during the main session, and separate waiting rooms.
2. Have a support person provided for the duration of the main session, if necessary.
3. If necessary, submit a request to the court on the injured party's behalf that the injured party's presence be required only during her own testimony.
4. Request that the case be tried in camera.
5. Draw up claims for damages (including medical expenses, future therapy expenses, temporary disability, anguish; Tort Liability Act).

6.7. Giving evidence in cases of human trafficking: using video recordings

6.7.1. Significance of the matter

The National Rapporteur has been informed of several cases of human trafficking for the purpose of sexual exploitation where the injured parties have expressed a desire to return to their home country as soon as possible after the intervention of the authorities but their continued presence in Finland has been necessary for criminal proceedings. The injured parties have wanted to return home to an environment that is safe and familiar for them, where they know the language and where they can be with their family. Injured parties in poor mental health have wanted to return to familiar (psychiatric) care available in their native language. Other relevant factors affecting the desire of injured parties to return to their home country include children, family, finances or housing.

The injured parties' wishes notwithstanding, their continued presence in Finland has been necessary for the criminal investigations on human trafficking. The need to interview the injured parties in the criminal investigation and to have them testify at the trial imposes a considerable burden on them and at the very least hinders recovery from the consequences of exploitation. An injured party's desire to return home constitutes a considerable risk for the criminal investigation: however much effort is invested in the criminal investigation, the case will never be brought to court if the injured party returns to her home country in the middle of the criminal investigation or before the main session of the trial at the District Court. It has also proved difficult to contact injured parties in their home countries and to persuade them to return to Finland to give evidence when a case progresses to a Court of Appeal.

In Finnish judicial procedure, there are certain procedural provisions that require the presence in person of an injured party (or witness). These are non-negotiable and include the principle of direct testimony and the principle of orality. Basically, an injured party must always be present in person at the main session and give evidence orally and directly in the presence of the parties to the matter and the judges who will decide the matter. The defendant must also be reserved the opportunity to ask questions of the injured party (witness). Fulfilling these procedural principles has proved problematic in certain human trafficking trials.

In a case filed at the Helsinki District Court in May 2012, the injured party declared at the criminal investigation stage that she wished to return to her

home country as soon as possible, and did not wish to testify against the defendants in fear of them taking revenge for her going to the authorities, by punishing either herself or her family. The injured party had been summoned to the session at the District Court in due course, but as per her earlier declaration she did not attend. Because the testimony of the injured party was of crucial importance in resolving the matter, the prosecutor sought to safeguard the main session by having the injured party's account, given in the criminal investigation, recorded on video under circumstances that fulfilled the requirement of a fair trial. The prosecutor considered that the video recording of the injured party's testimony could have been entered as evidence at the trial. The requirements of direct testimony and the right of parties to the matter to pose questions, pursuant to the European Convention on Human Rights and the Finnish Code of Judicial Procedure, were satisfied at the video recording session by having present the defendant, his legal counsel and the legal counsels assigned to the other, as yet absent, suspects in the matter. The defendant and the legal counsels were given the opportunity to ask questions of the injured party.

However, when the case was tried at the District Court, the defendant's legal counsel objected to the procedure, claiming among other things that it did not satisfy the requirement of direct testimony. The prosecutor demanded a procedural ruling on the matter. In its ruling, the District Court rejected the prosecutor's request to enter the video testimony as evidence and decided that the video recording of the interview with the injured party would not be viewed at the main session. In its grounds for the decision, the District Court referred to Chapter 17, section 32 of the Code of Judicial Procedure, which stipulates that testimony must be oral. The Court also ruled that under the principle of direct testimony a statement entered in the criminal investigation record or any other document, or recorded in any other way, must not be admissible as evidence.⁷⁹ The Court considered that the matter at hand did not satisfy the requirement of exceptional circumstances in which by law it would be permissible to enter a recorded statement as evidence. According to the relevant preparatory materials, such exceptional circumstances may arise if a witness is dead or seriously ill or if a witness has been unreachable (for instance abroad) for an extended period of time.

In legal practice regarding such exceptional cases,⁸⁰ reference is made to the policy of the European Court of Human Rights, according to which entering a statement given by a witness in a criminal investigation as evidence at trial is admissible if it has proved impossible to contact the witness despite

79 Chapter 17, section 11(1)(2) of the Code of Judicial Procedure.

80 E.g. Supreme Court 2007:101.

an active search conducted by the competent authorities.⁸¹ Referring to the above grounds, the District Court noted that the injured party had been summoned to the main session by proper procedure but had failed to attend and instead had left the country. The injured party had thus not been unreachable for an extended period of time, nor had there been an active search for her conducted by the authorities. On these grounds, the District Court rejected the prosecutor's request to have the injured party's video testimony heard as evidence in court in lieu of a hearing of the injured party in person.

The prosecutor appealed this procedural decision to the Court of Appeal, which overturned the decision of the District Court.⁸² The Court of Appeal ruled that the injured party had been heard in the criminal investigation and that the hearing had been recorded on video. The suspects had been assigned legal counsels who were present at the hearing, and they were given the opportunity to pose questions to the injured party. The injured party was summoned to the main session but failed to attend. Her whereabouts were unknown. The Court of Appeal also ruled that the absence of summoned parties from the main session rendered moot the issue of whether attempts had been made to reach them or to bring them to the trial. In summary, the Court of Appeal admitted the presenting of criminal investigation interviews recorded on video as evidence in court but did not address the issue of whether attempts should have been made to contact the injured party, as per earlier legal practice, in order to justify the entering of a recorded statement as evidence.

6.7.2. Proposals for legislative amendments

The Government recently proposed three amendments to Chapter 17 of the Code of Judicial Procedure to broaden the range of procedural means available for instance in cases of human trafficking.⁸³ These amendments would apply to cross-border human trafficking in particular, where both the victims and the offenders are foreign nationals. The first proposed amendment with relevance for human trafficking is to section 24(2), addressing a situation where an injured party has disappeared (after a trial) and cannot be contacted. The new provision would allow a statement recorded in the criminal investigation to be entered as evidence in a situation such that the decision on the matter can no longer be postponed. In practice, the grounds for urgency pursuant to subsection 2 would, according to the government proposal, apply in a case where a person (injured party) designated as a witness remains unreachable

81 European Court of Human Rights: *Delta v. France*, 19 December 1990; *Aigner v. Austria*, 10 May 2012; and *Bocos-Cuesta v. Netherlands*, 10 November 2005.

82 Helsinki District Court, R 12/2045, 10 April 2013.

83 Government proposal, HE 46/2014.

but that person's statement is available as recorded in the criminal investigation record. Similarly, material accumulated in a trial at a District Court could be entered as evidence if a person cannot be reached for attendance at the main session of the Court of Appeal.

The second significant amendment would apply to subsection 3(2) of the same section, whereby the testimony of an injured party between 15 and 17 years of age and in particular need of protection could be admissible in the form of a video recording made in the criminal investigation, assuming that the defendant's right of questioning the witness has been satisfied in that context. The government proposal specifically names human trafficking as an offence in the context of which a victim might be in particular need of protection. According to the government proposal, the evaluation of a particular need of protection would need to take into account the injured party's personal circumstances and the nature of the offence. Relevant personal circumstances might include the injured party's state of health or disability. With regard to the nature of the offence, a particular need of protection might arise from sexual exploitation or violence or gender-based violence, hate crime, human trafficking, offences related to organised crime and terrorism offences.

The third significant amendment would apply to subsection 3(3) of the same section, whereby testimony of an injured party in a case of rape, coercion or exploitation could be admissible in the form of a video recording made in the criminal investigation, assuming that the defendant's right of questioning the witness has been satisfied in that context. It is further noted in the government proposal that in cases involving such offences the injured parties should be asked whether they wish to testify at the trial. In case of a refusal or if the situation otherwise so warrants, the recording of the testimony made in the criminal investigation could be entered as evidence if all other requirements regarding evidence were satisfied. Such a video recording would then be admissible in all courts. The above amendments stem from the legal practice of the European Court of Human Rights, where it is acknowledged that trials for sexual offences have certain special characteristics. The European Court of Human Rights has noted that a trial for a sexual offence is an ordeal for the injured party especially if he or she is unwilling to confront the defendant. It is the opinion of the Court that protection of the injured party and respect for his or her privacy should be considered in criminal procedure in the case of such offences.

The National Rapporteur has submitted to the Legal Affairs Committee of Parliament that the right to enter video testimony as evidence pursuant to section 24(3)(3) should be extended to cover injured parties not only in sexual

offences (Chapter 20 of the Criminal Code) but also in human trafficking offences, at least in cases where the injured party has been subjected to sexual exploitation.⁸⁴ Human trafficking for the purpose of sexual exploitation is to a great extent a sexual offence where the injured party's right of sexual self-determination and bodily integrity are violated and where the dynamics of exploitation are very similar to sexual offences.

This amendment would advance the prevention and combating of human trafficking and protection of victims of human trafficking pursuant to the requirements of the Human Trafficking Directive (2011/36/EU) adopted in 2011. Article 12, "Protection of victims of trafficking in human beings in criminal investigation and proceedings", specifies among other things that Member States must ensure that victims of trafficking receive specific treatment aimed at preventing secondary victimisation by avoiding, as far as possible, unnecessary repetition of interviews during investigation, prosecution or trial.

⁸⁴ Statement submitted to the Legal Affairs Committee of Parliament on 3 June 2014.

7. Conclusions and recommendations

The 2010 report of the National Rapporteur with recommendations and the requests for action presented by Parliament to the Government have substantially advanced action against human trafficking and the fulfilment of the rights of victims. What has happened in practice is that the recommendations in the National Rapporteur's report and its handling in Parliament with the resulting legislative resolutions laid the groundwork for action against human trafficking for several years to come. The Government set up two separate legislative projects, and several authorities began to step up their efforts in action against human trafficking. The process resulted in heightened public awareness of human trafficking, acknowledged as a problem that required more effective action on the part of the authorities and a better safeguarding of victims' rights.

The National Rapporteur has contributed to advancing action against human trafficking and to improving the status and rights of victims of human trafficking. Being a party separate from the administration responsible for policy against human trafficking, the National Rapporteur is in a position to evaluate the current state of action against human trafficking and to make concrete proposals for its improvement. The National Rapporteur examines action against human trafficking from the perspective of the fulfilment of victims' rights and the obstacles that may obstruct those rights, whether legislative or administrative. This has solidified the human rights foundation for action against human trafficking. The National Rapporteur enjoys useful and fruitful collaboration with authorities and NGOs, and her proposals and opinions have largely been taken on board in the development of action against human trafficking.

In retrospect, developments have in some areas been more rapid and more pronounced than the National Rapporteur could have anticipated when her office was established in 2009. Developments have been both qualitative and quantitative. It is becoming easier for an increasing number of victims of human trafficking and related exploitation to receive professional help. Also, human trafficking offenders are increasingly brought to justice, as a result of which the victims of human trafficking receive compensation, including pay for their work that was denied them. Identification of human trafficking for the purpose of labour exploitation is an area where particular improvement has been shown in Finland. However, there is still much to be done. By comparison, identification of human trafficking for the purpose of sexual exploitation is still low. At the moment it would seem that cross-border procuring offences are scarcely investigated at all in Finland. Also, very few cases of

human trafficking for other purposes such as begging, forced marriages or criminal activities are identified in Finland.

It is the considered opinion of the National Rapporteur that there are several obstacles to action against human trafficking that would be efficient and safeguard the rights of victims. On the one hand, human trafficking is still not regarded as a social problem deserving of investment, prioritisation and/or resources. The reason for this may be that the overwhelming majority of its victims are women of foreign origin. Investment needs to be made not only by the authorities but also by NGOs. The National Rapporteur notes that the authorities and NGOs would be able to identify more victims of human trafficking and to detect and investigate more human trafficking offences if they had more resources at their disposal and if action against human trafficking were given a higher priority. The National Rapporteur also notes that action against human trafficking may have discriminatory impacts on the basis of gender and ethnic origin.

On the other hand, action against human trafficking is hampered by a shortage of information: the authorities who may encounter victims of human trafficking do not know enough about human trafficking in order to be able to identify victims and refer them to assistance. The situation is complicated by the fact that the legislation is non-comprehensive and ambiguous, and official procedures have not been fully specified. Because the legislation is imprecise and the authorities do not have clear instructions, it is not always clear to them what they should do in identifying (potential) victims of human trafficking. Action against human trafficking does not form part of the everyday job descriptions of various authorities, and this may go some way towards explaining why the victims of human trafficking that have been subjected to sexual exploitation are so few in number in the assistance system.

A third problem in action against human trafficking is that its focus is firmly on the combating of crime and the immigration control, and the rights of the victims of human trafficking tend to be ignored. The effectiveness of action against human trafficking is impeded by the fact that in international contexts, too, human trafficking is considered primarily a matter of organised crime and illegal entry. The risk here is that the aspects of human trafficking as an offence infringing upon the fundamental rights of its victims, and as a form of violence against women, tend to be neglected.

A fourth challenge in action against human trafficking lies in the very definition of human trafficking and how it relates to procuring, problems in applying and interpreting penal provisions on human trafficking, and indeterminate

items in the essential elements defined in those provisions. It seems fair to say that there are shortcomings in the applying and interpreting of the essential elements of human trafficking. Psychological intimidation, coercion and subjugation and the imbalance of power between offender and victim are at the very core of the provisions on human trafficking. It is the considered opinion of the National Rapporteur that understanding this is a requisite for being able to observe, identify and investigate, in actual situations, the dynamics of exploitation and violence inherent in human trafficking.

In the present report, the National Rapporteur draws special attention to human trafficking for the purpose of sexual exploitation because the number of cases of human trafficking specifically for the purpose of sexual exploitation identified in Finland is low by international comparison. Judging by the material reviewed (cases of procuring and human trafficking between 2009 and summer 2013), there is more human trafficking taking place in Finland than has hitherto been identified. In many cases, potential victims of human trafficking are not referred to the assistance system for victims of human trafficking (at least not according to the criminal investigation records). Also, cases of sexual exploitation with characteristics of human trafficking are mainly treated in investigation, prosecution and conviction as procuring offences. Thus, the rights of the potential victims of human trafficking to be assigned a legal counsel and a support person and to claim damages remain unfulfilled, and in the worst case the potential victims of human trafficking are removed from the country without being offered any assistance at all (at least not according to the criminal investigation records).

It is obvious on the basis of the material reviewed that the essential elements of a human trafficking offence remain difficult to comprehend, the concepts involved opaque and the legal appraisal of the essential elements challenging. The challenge is compounded by the fact that the relevant government proposal gives only a very brief description of the contents of the essential elements and how they are related to the provisions on procuring, and also that there is as yet very little legal practice in this area. The judgments that exist are in some cases written in ways that make it difficult to decipher the key legal issues or the court's position on these issues.

The material reviewed by the National Rapporteur indicates that the legal situation in applying and interpreting the provisions on human trafficking and procuring and the relationship between these provisions has scarcely changed with regard to the handling of cases where the action concerned seems to satisfy the essential elements of both procuring and human trafficking. As a result, even now – ten years after the entry into force of the provisions on

human trafficking – legal practice has failed to establish a clear picture of where the line between procuring and human trafficking should, in judicial terms, be drawn. The overlap of the provisions has not led in the choice of offence to a bias in favour of the provisions on human trafficking; the overlap principally manifests itself in the consideration of whether a procuring offence is aggravated, in the assessment of the reprehensibility of an action, and in the meting out of punishment. This is problematic from the perspective of the fulfilment of the rights of the victims.

In view of the cases reviewed, what emerges as a very salient question is whether and to what extent the victim is considered to have originally consented to prostitution or the sex trade in some form. The National Rapporteur would like to point out that in legal practice the victim is still often unreasonably assigned liability just because originally he or she voluntarily chose to engage in prostitution: the victim is also assumed also to have agreed in a legally valid way to certain infringements of his or her rights tantamount to exploitation, even though in many cases this is more about submission in the absence of any other realistic option. It is frequently concluded that by becoming a prostitute the victim waives the protection under criminal law that the justice system should afford him or her. This anomaly appears particularly in the case of the procuring offences investigated at Thai massage parlours. The women selling sex were almost without exception in a weak financial and social position and thereby susceptible to exploitation with characteristics of human trafficking. The National Rapporteur would like to point out in this context that the sexual exploitation of victims of human trafficking often brings the offenders substantial financial benefit and is thus profitable.

The National Rapporteur also notes that it continues to be the case that nowhere in criminal justice system is there a full understanding or consideration of the dynamics of sexual exploitation and violence and of the impacts of exploitation on the victim. Human trafficking has yet to be recognised as an offence against the right of sexual self-determination and bodily integrity. This, combined with the fact that the essential elements are confusingly formulated, would seem to be the underlying reason why the legal practice is emerging as remarkably inconsistent. There remains a lack of competence in applying and interpreting the core of the provisions on human trafficking – the means of psychological intimidation, subjugation and humiliation and the abuse of power – in a way that would make use of all the opportunities provided by the definition of human trafficking, and the action against human trafficking that is based upon it, in the protection of persons in a weak or vulnerable state. It is hoped that the proposed amendments to the provisions on procuring and human trafficking in the Criminal Code will improve this

situation, clarifying the boundary between the two offences and transferring characteristics of human trafficking from the essential elements of procuring to the essential elements of human trafficking.

The National Rapporteur would also like to draw attention to the language used in trial documents. Severe sexual exploitation and violence is sometimes referred to in a belittling way, playing down the experiences of the victim and implying that the victim consented in a legally valid way to the sexual exploitation and violence. This kind of language, combined with the selection of offence (procuring vs. human trafficking) and failures to understand the dynamics of sexual exploitation and violence, creates the impression that sexual exploitation and violence are somehow less reprehensible in the eyes of the criminal justice system when perpetrated against a prostitute.

The National Rapporteur stresses that prostitutes and other persons involved in the sex trade are often so heavily marginalised in society that they need strong protection from the criminal justice system in order for their fundamental rights, including the right of sexual self-determination and bodily integrity, to be fulfilled. Being subjected to sexual exploitation and violence could in itself lead the victim to feel alienated or marginalised, detached from the society to which she used to belong. The victim may feel that society has failed to protect her. The criminal justice system plays an important part in the process where the victim can have justice, recover from her experiences and feel herself an accepted member of society or the community again. For this reason, it is vital to consider how the victim is treated and how she is spoken to and spoken of in criminal proceedings.

The National Rapporteur notes that, in many international legal documents, trafficking in women (i.e. human trafficking for the purpose of sexual exploitation) is considered a form of violence against women. In international law, violence against women is an infringement of human rights, and governments as States Parties to human rights conventions are obliged within their territories to ensure that they do not engage in infringements of human rights by commission or omission. Also, governments must guarantee the fulfilment of rights by ensuring that no non-governmental actors are guilty of infringing these rights.

Known as the ‘due diligence’ principle, this includes the responsibility of preventing, investigating and punishing infringements committed by private individuals, and compensating their victims.⁸⁵ The aspect of human trafficking as a form of violence against women has yet to be comprehended in Finland,

⁸⁵ See also Government report, VNS 7/2010 vp.

as is apparent from the fact that action against human trafficking is not given priority or resources commensurate to needs. Also, actors whose domain includes the prevention and curbing of violence against women have so far not contributed sufficiently to enhancing action against human trafficking.

In conclusion, the National Rapporteur notes that prevention of human trafficking is probably the most neglected area in action against human trafficking. The measures undertaken are disparate, and monitoring of their implementation and effectiveness has not been coordinated. Measures addressing the demand causing human trafficking have proved inadequate. Prevention of human trafficking within Finland or from Finland to other countries has largely been ignored, because Finland is commonly considered to be only a country of transit and a destination for victims of human trafficking from abroad. This conception notwithstanding, a large percentage of convictions for human trafficking to date have been issued in cases concerning domestic human trafficking, both the offenders and the victims being Finnish. The National Rapporteur underlines that young people who are at risk of exclusion, suffering from mental health problems and substance abusers are at particular risk of falling victim to human trafficking or similar exploitation. The EU Human Trafficking Directive, for instance, requires that Member States must take appropriate measures to discourage and reduce the demand for human trafficking (Article 18).

In order to enhance action against human trafficking and to advance the status and rights of its victims, the National Rapporteur on Trafficking in Human Beings recommends that the Government implement the following measures:

1. Prepare a comprehensive action plan for the prevention of human trafficking. This action plan should include measures specifically aimed at curbing human trafficking for the purpose of labour exploitation and human trafficking within Finland, and at reducing demand for human trafficking, including demand for buying sex. The action plan should embrace both the gender perspective and the child perspective.
2. Monitor whether the proposed legislative amendments concerning the identification of and assistance for victims of human trafficking are sufficient to respond to the current problem of victims of human trafficking sexually exploited in Finland not being referred to the assistance system for victims of human trafficking. Where necessary, the Government must undertake legislative and other measures to resolve this issue.

3. Ensure that all authorities who may encounter victims of human trafficking (including municipal social welfare and health care employees, child welfare employees, the police, the Border Guard and the occupational safety and health authorities) are able to identify victims of human trafficking and refer them to the assistance system. Means for achieving this might include systematic, regular training and the issuing of written instructions. Particular attention should be paid to ensuring that the current official instructions and practice facilitate the identification of victims of human trafficking and referring them to assistance even if said victims are in Finland illegally or are suspected of selling sex in Finland (particularly in the case of citizens of third countries).
4. Develop local government action against human trafficking (for instance in the social welfare and health care sectors and in child welfare services) so that victims of human trafficking and their underage children (or the underage children with them) receive the assistance they need, and that the provision of that assistance is also actively monitored. This might involve service guidance and the drawing up of individual service plans, and then monitoring how they are implemented, and also inter alia a plan/instructions prepared by the Ministry of Social Affairs and Health together with the Association of Finnish Local and Regional Authorities on how to provide services for victims of human trafficking and on the founding of shelters for victims of human trafficking.
5. Develop collaboration between the criminal investigation authorities and the assistance system for victims of human trafficking so that victims of human trafficking would be referred to the assistance system immediately the criminal investigation authorities have (reasonable) grounds to believe that a person they are dealing with is such a victim. For the purpose of attaining this goal, the assistance system should be available on a 24/7 basis, and assistance including suitable accommodation available nationwide.
6. Further develop the assistance system for victims of human trafficking so that as many victims as possible would be referred to the assistance system and receive the help they need, including suitable accommodation and sufficient support for mental health and everyday life. The threshold of entry to the assistance system must remain low, and in some cases should be further lowered. At the same time, care must be taken that providing assistance for victims of human trafficking is in no way tied to the criminal proceedings or progress therein.
7. Improve collaboration between the assistance system and NGOs so that more victims of human trafficking identified by NGOs would be referred to the

assistance system. Mutual trust between actors is vital in this collaboration, and accordingly any means to make the assistance system better planned, more systematic and more predictable (independent of the discretion of the authorities in an individual case) would be welcome. Such means might include jointly agreed indicators of identification and a formal cooperation agreement that would grant NGOs the right to offer certain services at the identification stage, before the potential victim has even been referred to the assistance system.

8. Begin preparing legislation governing the work of the anti-trafficking coordinator (a special advisor at the Ministry of the Interior Police Department).
9. Facilitate the integration of persons immigrating to Finland through marriage.
10. Improve the status of foreign wild-berry pickers so as to render this activity principally subject to an employment relationship.
11. Extend the specific powers of the occupational safety and health authorities to cover human trafficking offences.
12. Extend the powers of the Border Guard to include human trafficking offences that do not involve facilitation of illegal entry.
13. Remove the prohibition on the selling of sex in the Public Order Act and ensure that no potential victims of human trafficking are removed from the country because of being forced to sell sex in Finland. One means for ensuring this might be to remove the specific provision in the Aliens Act stipulating that the selling of sexual services is grounds for refusal of entry.
14. Increase and secure the availability of specialist resources (procuring, human trafficking, labour exploitation) particularly in the criminal investigation authorities and in the prosecution service. If necessary, two prosecutors should be appointed to demanding human trafficking cases. The criminal investigation authorities and the prosecutors should work closely together from the beginning of the criminal investigation.
15. Provide the criminal investigation authorities, prosecutors, legal counsels and court employees with training on human trafficking and increase the volume of such training. The training should include information on the provisions on human trafficking, on how those provisions relate to the provisions on procuring, and on the dynamics of sexual exploitation and violence. The training

should also cover the impacts of sexual exploitation and violence on victims and on the progress of criminal proceedings.

16. Extend the range of procedural means available under the Code of Judicial Procedure so that video testimony by injured parties recorded during the criminal investigation process could be entered as evidence at trials in cases of human trafficking for the purpose of sexual exploitation.
17. Establish a system for performing mental status assessments on injured parties in human trafficking offences.
18. Secure funding for action against human trafficking in NGOs so as to facilitate systematic, long-term efforts.
19. Ensure the right of the National Rapporteur to obtain information, specifically by providing the National Rapporteur with the right to attend human trafficking trials held in camera.
20. Provide further human resources for the National Rapporteur so that action against human trafficking may be monitored and advanced more effectively. At present, one full-time expert is assigned to this work.

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