

## Finland<sup>1</sup>

**This text is largely based on the report on the E-Notes, Report on the implementation of anti-trafficking policies and interventions in the 27 EU Member States from a human rights perspective (2008 and 2009), Fermo, (Italy) 2009; chapter on Finland, p. 139 – 1, written by Tiina Oikarinen, Pro-tukipiste, Helsinki.**

### The phenomenon

Finland is both a country of transit and of destination for trafficking in human beings. Trafficking and the related exploitation occurs in prostitution as well as in different sectors of the labour market, such as construction, cleaning, food industry, transport, domestic work and agriculture. Persons trafficked for sexual exploitation mainly come from the neighbouring Baltic countries and the Russian Federation, Thailand or different African countries. Victims of trafficking for labour exploitation allegedly come from the areas mentioned above, as well as Asia and Eastern Europe. Also Finns may fall into trafficking victims, either in Finland or abroad. Finland is also a transit country mainly for young Asian men and women on their way to other Western European countries. Trafficking for the purpose of organ removal has not emerged. Trafficking victims are both men and women. In 2008-2009, about 60% of victims who received assistance from the System of Victim Assistance, 40% were men and nearly 1% were children. In about 30% of the cases they were identified as victims of sexual exploitation and in about 70% of labour exploitation”.

### National anti-trafficking legislation and institutions

Provisions criminalizing trafficking in Finland came into force in August 2004. Regarding the acts, means and purposes constituting trafficking in persons, the Finnish Penal Code (FPC 25:3) is reproducing almost literally the Council Framework Decision 2002 and UN Trafficking Protocol. Also attempted trafficking is punishable (FPC 25:3) as it is the failure to report trafficking in persons in time to prevent the offence (FPC 15:10). Work discrimination amounting to usury (FPC 47:3a) and aggravated facilitation of illegal entry (FPC 17:8a) are referred to as “trafficking related offences”. The penal provisions on trafficking and pandering partly overlap. Thus a part of the cases that would be regarded trafficking according to international standards are considered as pandering in Finland. Obviously this circumstance hinders the rights of trafficking victims. The other relevant laws affecting prostitution-related trafficking include the penal provisions on the exploitation of a person subjected to sex trade (FPC 20:8), which criminalizes the purchase of sexual services from sex workers as well as victims of human trafficking and the purchase of sexual services from a child (FPC 20:8a). In addition, the Public Order Act (2:7) prohibits buying or selling sexual services in public places and the Aliens Act (148:1) states that if there are reasonable grounds to suspect that a person may sell sexual services, s/he can be removed from the country and/or banned from re-entering it. There are also some customary legal regulations that may be applied. For example, due to the fact



that prostitution is regarded as unethical, contracts made in the context of commercial sexual services are not considered valid and have no juridical cover. Other provisions relevant to trafficking cases include the reflection period & residence permit to trafficking victims envisaged by the Aliens Act and the Act on the Integration of Immigrants and Reception of Asylum Seekers (System of Victim Assistance) – see below.

Two National Plans of Action against Trafficking in Human Beings (NAPs) have been produced: the first one in 2005 and a revised one in 2008. The NAPs' approach is based on three main principles: victim-centered approach, gender-sensitiveness and multidimensional approach. Despite the good starting points, Finland's anti-trafficking actions are lacking exactly in these dimensions. The official

System of Victim Assistance does not adequately function from a victim-centered perspective, the multidimensional approach often shrinks to mean the expertise of pre-trial officials and the narrow interpretation of the trafficking criminal provision – especially in prostitution-related cases – has restrained the enjoyment of rights of victims. Implementation of the Revised Plan of Action (2008) is managed by an inter-agency National Steering Group that is chaired by the Ministry of the Interior (Moi), who is also responsible for coordinating the implementation of the Plan. The Steering Group includes several Ministries, the Finnish Immigration Service (Migri), the Police and Border Guard, as well as NGOs, universities, research institutes and church-based organizations. The National Rapporteur participates as an observer. The Steering Group meets minimum six times a year and is expected to publish its recommendations on how to further develop anti trafficking measures by the end of 2010. The Steering Group also has a sub-working group focusing on information and awareness raising and has – among other activities – set up a web-portal about human trafficking ([www.trafficking.fi](http://www.trafficking.fi) / [www.ihmiskauppa.fi](http://www.ihmiskauppa.fi)). The sub-group will also publish a handbook about the rights of victims of trafficking and the System of Victim Assistance in 2010. The handbook will be disseminated to victims during the identification process. Stakeholders generally regard the Steering Group as a good platform for information sharing. They, however question the Steering Group's capacity to support the coordination of Finland's actions against trafficking. Currently, the Ministry of the Interior does not receive enough resources for its coordinating function: there are only 2 persons dedicated to the coordination of anti-trafficking activities, and they both have other duties to perform. The National Rapporteur and the representative of the Ministry of Interior have declared that the anti-trafficking work lacks a real coordinator. The lack of coordination and the broad variety of actors involved in the Steering Group lead to a certain degree of inefficiency.

### **Identification, protection of rights, and referral**

In Finland the officials responsible for formal identification of victims of trafficking (which triggers the right to assistance and protection) are the Police and the Border Guard (as it concerns reflection period), Finnish Immigration Service (issuing residence permits) and the directors of the reception centres (allowing access to the System of Victim Assistance). Identified victims of trafficking may be

granted a reflection period (30 days to 6 months) before receiving a residence permit. The reflection period may be terminated if the victim has re-established relations with persons suspected of trafficking. It can also be terminated if the person is considered to be a danger to public order, security, public health or Finland's international relations. Reflection periods are very scarcely applied in practice. From 2006 to May 2010 reflection period has been granted only in 4 cases. This explains why stakeholders seem not to be familiar with the exact application of this measure. Similarly, NGOs generally are not able to advice victims on the kind and quality of information that they have to give to the authorities in order to be granted a reflection period. One reason to explain these difficulties is that even though it is meant to allow some time for the victim to recover, the reflection period is by many stakeholders regarded as a way to legalize the person's residence status in Finland. A victim of trafficking may receive a temporary residence permit (the so-called "B permit"). The requirements are that the victim's residence in Finland is based on pre-trial investigation or court proceedings, that s/he cooperates with the authorities, and that the victim does not have any relations with the suspected perpetrators. Victims who are considered to be in particularly vulnerable situation are not required to cooperate with the authorities in order to receive a permit of stay ("A permit"). Neither is it a requirement under the A permit that the victim's residence in Finland would be necessary because of investigation or court proceedings. Relatively few residence permits have been issued so far. This is probably partly due to the fact that most of the identified victims were already legally residing in Finland. At the same time, the B permit is not very attractive to a presumed trafficking victim, because it "requires a lot, but gives very little".

Even though the victim intended to cooperate with justice, the reward he/she would get is just a right to reside in Finland until the authorities no longer need him/her for the criminal proceedings. Assistance to trafficking victims is provided within the official System of Victim Assistance whose services are defined in the Act on the Integration of Immigrants and Reception of Asylum Seekers. According to the above Act, individuals who have been granted a reflection period or a residence permit under the respective sections of the Aliens Act (52a&b, on the grounds of trafficking) or who may otherwise, judged on their circumstances, be considered to be trafficking victims or persons in need of special assistance, while investigations are on-going, may be referred to the System of Victim Assistance. This means that also witnesses of trafficking cases may receive assistance. The person can be excluded from the Assistance System when the above grounds no longer exist – e.g. the criminal proceedings do not start – or the need for assistance is no longer envisaged. Victims of trafficking may be provided with a large variety of support measures, including legal and other advice, crisis intervention, social and health care services, interpretation, accommodation, social assistance and other necessary services, as well as support to safely return to their country. According to the law, assistance has to be provided taking into consideration the victim's special needs arising from age, vulnerability, physical and mental state. There are, however, no provisions on minimum standards on the quality and quantity of services to be provided. The assistance and support system is meant for persons not residing in a municipality in Finland. Municipalities are

responsible for ensuring the service and support measures to victims who were assigned a municipality of residence, but they have the possibility to claim compensation from the System of Victim Assistance. The System of Victim Assistance is administrated in the refugee reception centres of Joutseno (adults and groups) and Oulu (unaccompanied and separated children). The decision to refer a person to the System of Victim Assistance or to remove him/her from the system is taken by the director of the respective reception centre. To support the director of the reception centre in taking this decision, reception centres have established a multi-professional evaluation group, including representatives of the Police, the Border Guard, the Finnish Immigration Service, as well as social welfare and health care specialists.

Victims can be referred to the System of Victim Assistance by the Police, the Border Guard or the Immigration Service. In addition other private or public service providers, NGOs, victims themselves or any private person may submit a request for the acceptance in the system of the presumed victim of trafficking, although filing such a claim requires specific expertise. That is why some NGOs, in order not to endanger the victim, would not make a proposal without the help of a lawyer. If filing a request for assistance entails judicial expertise, clearly the threshold has become too high. The National Rapporteur (2010) has stated, too much value is given to the opinion of the pre-trial investigation officials when deciding whether a person is granted assistance or not and she also confirms that some victims have not been taken to the system, because the police have not investigated the case as trafficking, but as some other offence. There have also been cases where getting into the system has been made conditional on reporting the case to the police. As one NGO described it, the process resembles a small-scale trial, where the director of the reception centre is the judge and the one applying for assistance is the defence lawyer of the victim. As many respondents pointed out, the threshold to get into the system has risen in the recent years: while in 2008 all the 17 persons proposed to the System of Victim Assistance were accepted to it, in 2009, out of the 42 persons who were proposed for assistance, only 17 were accepted into the system. The System of Victim Assistance is also obliged to report cases to the Police, which means that assistance given to victims is connected to the criminal proceedings even at an early stage. Until June 2010, all victims who entered the System of Victim Assistance have cooperated with law enforcement. Most of the cases accepted to the System of Victim Assistance have been cases of the so called labour-related trafficking and there have been difficulties in identifying sexually exploited victims. According to the National Rapporteur, several authorities believe that once a person consents to prostitution he/she cannot be considered as a victim, no matter the abuses s/he suffered. This flawed point of view hinders the identification of possible victims, as they are regarded merely as prostitutes.

This distinction between labour and sexual exploitation is not very helpful and may on the contrary complicate the identification of trafficking victims. Many governmental and nongovernmental stakeholders also believe that the stigma attached to prostitution may prevent possible trafficking victims from seeking help. The process of formal identification experienced by different NGOs also

varies tremendously: some victims have been accepted to the System, very quickly, while at times the process has taken up to several months. Representatives of the System of Victim Assistance confirmed that it may take even 2 months from the filing of the application until the decision is made. The delay is often due to the lengthy discussions among the multi-professional group before deciding on a case. Even after a decision has been taken, NGOs stated that they might have to wait for several days before they or the person concerned are informed about the results. In addition to other problems, apparently the multi-professional evaluation group lacks expertise on how to assess the situation of a person in a vulnerable situation. The way a referral process progresses seems to depend on personal contacts with authorities who make decisions, as well as and on NGOs' expertise to fill in an application that mirrors the penal provisions regarding trafficking. Once a person is accepted in the system, support and assistance is made widely available, but much of the coordination responsibility rests on the shoulders of the service providers who need to be very proactive. Apart from translation services, before 2010 there have also been no updated formal agreements among service providers and the System of Victim Assistance. Instead, service providers had to ask for permission for every expense from the director of the reception centre spending a lot of time and energy this way. According to the National Rapporteur, the System of Victim Assistance does not have clear guidelines on what and for how long services shall be provided to clients and the process of removing a person from the Assistance System is not clear. Persons are not "hastily" removed from the system, but neither are adequate risk assessments made or safe return procedures followed.

### Access to justice

Until June 2010, there have been four court cases for trafficking (three for sexual and one for labour exploitation), three of which resulted in convictions for trafficking. Even though it can't be said that a legal praxis has yet formed, there has been a discussion on the narrow interpretation of existing trafficking provisions. In prostitution-related cases the issue of consent has been interpreted differently depending on whether the victim is deceived as to the nature of the work or the working conditions. If a person is deceived about the nature of the work, the case has been classified as trafficking. But if a person is deceived about the working conditions, the cases have been classified as pandering. However, a recent decision of the Court of Appeal in late 2009 showed a positive development in the interpretation of anti-trafficking norms. The problem is partly due to the fact that the penal provisions of trafficking and pandering overlap, which enables law enforcement officials to view the limitations of the prostitutes' autonomy, risk of violence or debt bondage as "rules" to which the prostitutes have given their consent to, when consenting to work in prostitution. This is not in line with the international standards and thus the National Rapporteur (2010) has recommended that the situation be clarified by removing all elements that refer to coercing or intimidation from the pandering provisions. If the case is taken to the court, legal advice and counselling provided seem to be adequate in general, although according to the National

Rapporteur, in those cases that do not reach the court, there is the risk that adequate legal advice has not been provided.

## Prevention

Actions that Finland intends to undertake in order to prevent trafficking can be divided into 6 types, as presented in the National Plan of Action (2005): Implementation of international agreements; Development cooperation and cooperation with neighbouring countries; Prevention of labour exploitation:

- Visa policy as part of immigration control
- Civilian crisis management and peacekeeping missions
- Dissemination of information and awareness raising

In addition, the Plan of Action addresses the issues of identification, assistance and prosecution of traffickers. The Revised Plan of Action (2008) did not add any new “categories” for prevention trafficking, but pointed to some specific problems, such as inadequate identification of victims, that had occurred in implementing the activities listed above. Dissemination of information and awareness rising has been actively carried out, even though there is always a need for further education, reaching also key stakeholders. It is positive that attention to human trafficking is paid in development cooperation and neighbouring cooperation agreements, as well as in civilian crisis management. Unfortunately, the amount of development cooperation funds (0.55% GDP) does not stand up to international recommendations. While stricter immigration control is no solution in itself, more efforts to empower at-risk groups could be made, for instance providing information in the context of the visa application process. It is also positive that trafficking in legal labour market sectors has been recognized from the beginning of anti-trafficking activities, although resources to address it were not adequately allocated. It is also bothersome that the Plan of Action (2005) does not actually include any measures to tackle trafficking in the sector of prostitution. When the plan was drafted, the “prostitution issue” was knowingly dropped out, because working group members could not reach a common position on the issue. Thus, in order to achieve some results, exploitation that happens in prostitution was not discussed at all, while the “prostitution issue” was addressed in a different working group within the Ministry of Justice, which later on produced a governmental bill criminalizing the purchase of sexual services. The parliament however changed the bill so that only the purchase of sexual services from procured prostitutes or victims of human trafficking is punishable.

## Monitoring and evaluation system

Since the beginning of 2009, the Ombudsman for Minorities has acted as National Rapporteur on trafficking in human beings. The Rapporteur is an independent authority and its duties include: monitoring phenomena relating to human trafficking, overseeing action against human trafficking and issuing proposals, recommendations, statements and advice relevant to develop anti-trafficking work and to promote victims' rights. The Ombudsman also provides legal advice and can assist victims of trafficking and related crimes in claiming their rights. The Ombudsman submits a report on human trafficking and related phenomena to the Government on an annual basis, and every four years to the Parliament. The first report of the Rapporteur was published in June 2010 and now the second one is available for 2011 and can be downloaded from [www.vahemmistovaltuutettu.fi](http://www.vahemmistovaltuutettu.fi).

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<sup>i</sup> Based on the Report on Finland, written by Tiina Oikarinen, Pro-tukipiste ry, Helsinki, published in E-notes report, 2010.