

Review of actions against labour trafficking in Finland



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Summary

Labour trafficking and exploitation of migrant workers is a widespread social problem in which vulnerable migrant workers are exploited for economic gain. Migrant workers are exploited by means of underpayment and they work long hours in poor conditions. The workers may also be threatened and controlled. In Finland, the phenomenon was identified already in the early 2000s, and over the years, anti-trafficking activities have improved and become established as part of the activities of various authorities and other parties.

THIS REVIEW examines the development, regulation and combating of labour trafficking and the exploitation of migrant labour on the basis of an extensive selection of written materials and previous literature. The review highlights findings regarding key actors, their roles, and the most significant changes that have taken place in Finland. In addition, the review briefly analyses Finnish legislation and case law and makes a comparison with other Nordic countries. Finally, an assessment of Finland's approach to tackle labour exploitation and the factors that have led to Finland's current situation is presented, and existing gaps are identified.

According to the review, Finnish authorities have in many ways a better ability to tackle labour trafficking and to support its victims than the authorities in the other Nordic countries. Finland has been able to intervene in labour exploitation at least to a certain extent, and the phenomenon has been widely recognized. On the other hand, many remaining problems have been identified, particularly with regard to pre-trial investigations and the enforcement of criminal liability. In the future there should be more consideration to the needs of victims of exploitation, even in situations where the case is not classified as human trafficking. In addition, structural multi-agency cooperation should be developed to combat labour exploitation. Structural multi-agency co-operation will help to ensure that cases of exploitation and trafficking are dealt with comprehensively, that perpetrators are brought to justice and that the rights of victims are respected.

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1

Introduction

Labour exploitation and human trafficking for the purpose of forced labour are a wide-reaching societal problem. These offences refer to the exploitation of migrant workers for financial gain, who are in a position of vulnerability and unaware of their rights. The root causes of exploitation and human trafficking include poverty, inequality, oppression, conflicts, and lack of social or economic opportunities.

LABOUR EXPLOITATION means that migrant workers are exploited by underpaying them or making them work very long hours in poor conditions. Workers may also be threatened and controlled or forced to pay recruitment fees or other illegal fees in exchange for employment. Labour trafficking is the most severe form of labour exploitation. (Jokinen et al. 2011.)

This review explores the development, regulation and prevention of labour trafficking and exploitation in Finland. Combating labour trafficking and exploitation has relatively long traditions in Finland. The first cases of exploitation of migrant workers surfaced more than 20 years ago. The case that received the widest coverage at the time was known as the Chinese stonemasons' case.¹ The men were working in poor conditions, and they were underpaid. This case was a catalyst for change in criminal law. Several official programmes and strategies created in the early 2000s also drew attention to the poor working conditions of migrant workers and took note of the links between exploitation and the grey economy in certain sectors (Ollus & Alvesalo-Kuusi 2012).

The aim of labour exploitation is to obtain financial gain. The business model is based on underpaying the workers, avoiding taxes and other statutory payments, and also charging excessive costs from the employees for accommodation, transport and tools (Jokinen & Ollus 2019). The concept of a 'continuum of exploitation' as a way of visualising the nature of exploitation and human trafficking as a pro-

¹ See also <https://yle.fi/aihe/artikkeli/2002/11/04/orjana-iittalassa-kasikirjoitus>

cess has been introduced in many studies (Andrees 2008; Skrivankova 2010; Jokinen et al. 2011; Ollus 2016). At one end of the continuum is decent work, followed by less severe forms of exploitation, whereas at the other end of the continuum is labour trafficking which is a severe form of exploitation. Even though by no means all forms of labour exploitation meet the constituent elements of human trafficking as provided in the law, it is important to intervene in these less serious cases of labour exploitation and minor offences and violations before the situation escalates and starts resembling human trafficking. (Jokinen & Ollus 2019.)

Several examples of labour exploitation have been covered in the media in Finland in recent years.² Authorities have similarly started to pay more attention to the issue, and this is reflected in several ongoing government projects. National anti-trafficking activities are more prominent. This is in part due to the detailed provisions of the Government Programme of Sanna Marin’s Government (2019–2023), which focus on the efficiency of preventive measures against human trafficking and the grey market. (Finnish Government 2019.)

The review was written by researchers at the European Institute for Crime Prevention and Control, affiliated with the United Nations (HEUNI). HEUNI’s researchers have studied labour exploitation since 2008. The first report by HEUNI on labour trafficking and exploitation entitled ”Ehdoilla millä hyvänsä” (“Work on any terms”) was published in 2011 (Jokinen et al. 2011). In the next HEUNI study, ”Tuulikaapissa on tulijoita” (“We’ve Got People Lined Up Behind the Door”) Jokinen and Ollus (2014) explored the restaurant and cleaning sectors in particular. Since then, HEUNI has continued to study the various dimensions of labour exploitation and labour trafficking and produced guidelines for the police and labour inspectors on how to approach such cases (Jokinen & Ollus 2019; Ylinen et al. 2020). HEUNI has also published materials targeted at businesses and public procurement entities on the prevention of labour exploitation in subcontracting chains, in particular when working in high-risk sectors (Lietonen et al. 2020; Lietonen & Ollus 2021).³

This review was written in connection with the project “Creating policy models for the police to support the planned management of multi-authority action – MOVI” of the Finnish Police University College.⁴ HEUNI is a partner of the Finnish Police University College in this project. The review is descriptive in nature, and it can also be used as an introduction to the final report completed in the project (Kuukasjärvi et al. 2022). The aim of the text is to give insights in to 20 years of work against labour exploitation and trafficking to any professionals who encounter such issues in their professional activities and anyone who is interested in understanding the development

² See also, e.g., HS 30 March 2019 <https://dynamic.hs.fi/2019/nepal/>; HS 5 July 2020 <https://dynamic.hs.fi/a/2020/siivotonala/>; HBL 22 January 2022 <https://www.hbl.fi/artikel/tiotala-vietnamesiska-vaxthusarbetare-ofer-i-omfattande-ockerharva-i-narpes/>

³ Publications by HEUNI are available at: <https://heuni.fi/publications>

⁴ More information on the Finnish Police University College’s project “Creating policy models for the police to support the planned management of multi-authority action” can be found here: <https://polamk.fi/en/creating-policy-models-for-the-police-to-support-the-planned-management-of-multi-authority-action>

of actions against labour exploitation and trafficking in Finland. This review discusses reasons and features of labour trafficking, the most recent developments in the area, and statistics. It also briefly covers the developments in legislation relevant to labour trafficking and legal practice and evaluates Finnish trends in comparison with the other Nordic countries. The original review was written in 2022 and this English version has been updated in 2023 to include recent legislative changes as well as statistics from 2022. The views expressed in this review are those of its authors.

1.1 Research framework, materials, and methodology

THIS REVIEW is based on previous literature and reports produced by different anti-trafficking stakeholders. It introduces observations of the key actors in the field and the most important changes that have taken place. We also analyse the legal practice in Finland and compare it with other countries. To conclude the study, we present an evaluation of the Finnish approach and the factors that have led to the current state of affairs.

The review aims to provide answers to the following research questions:

- **WHAT KIND** of measures have been employed in Finland to combat labour trafficking and exploitation in 2000–2022?
- **HOW HAS** the understanding of labour trafficking and relevant legislation evolved in 2000–2022?
- **WHAT KIND** of challenges continue to exist in Finland regarding action against labour exploitation?

FOR THIS review, we have collected and analysed literature that includes Government proposals, anti-trafficking action plans, policy documents and research, as well as studies and reports that are relevant to the topic. We have also followed the societal debate on this theme for the past 15 years and ourselves contributed to it actively. The authors of this report have also been members of different types of working groups and networks that have focused on questions of human trafficking and exploitation. Our long-term insights and understanding of the phenomenon were important resources in writing this review.

In Chapter 6, court documents have been used as sources, with judgments on labour trafficking and exploitation cases (N=40) from

both district courts and courts of appeal in 2004–2020.⁵ An analysis of the judgments and their qualitative coding has been completed using the Nvivo software with focus on the constituent elements of human trafficking and elements of forced labour, which have been combined under wider themes. The analysis of these judgments offers an opportunity to study how the various actors in the criminal justice system define human trafficking and its elements: modus operandi, measures, and purpose of exploitation; and how the understanding of human trafficking and the evolution of legislation are reflected in the judgments and the grounds provided (see also Viuhko & Jokinen 2021). The judgments are presented in an anonymous form, and any names of injured parties and defendants as well as information on their home countries have been removed.

⁵ The judgments were compiled as a part of a Nordic project, "Law in action! – Policy and legal responses to the exploitation of migrant workers in the Nordic countries", financed by the Nordic Research Council for Criminology. Participants included, in addition to HEUNI, researchers from the University of Lund (Sweden), Aalborg University (Denmark) and the Norwegian research institute NORCE.

1.2 Key terminology

Labour exploitation refers to cases where a migrant worker is subjected to poor terms of employment, works long hours, is underpaid or works in poor or unsafe conditions and has little chance of changing the situation. These cases can be defined as different work-related crimes or as human trafficking or related crimes depending on the seriousness of the situation. For example, mere underpayment is not criminalized in Finland, but if in addition to it, a person works in poor conditions for long hours, it may be a case of, e.g., extortionate work discrimination.

Labour trafficking or trafficking in human beings for the purpose of forced labour refers to a serious exploitation of a person for financial gain. Trafficking in human beings is a crime in which the perpetrator takes advantage of the victim's dependent status or insecure state to lead them into forced labour. The victim may be misled about the terms and content of the work, their movement may be restricted, their wages may be withheld in part or in full, they may be held in debt bondage and threatened, intimidated or face violence.

Forced labour refers to any work or service which a person is forced to do, under threat of punishment. In Finland, forced labour is criminalized as a form of exploitation in human trafficking.

The grey economy refers to companies' attempts to seek financial gain by neglecting their legal obligations and payments such as taxes and pension contributions. The grey economy is linked to economic and work-related crime and is thus a part of the phenomenon of labour exploitation.

Migrant workers refer to migrants from both within and outside the EU (including asylum-seekers and refugees) who work outside of their home country.

2

Societal context

2.1 Changes in working life

EXPLOITATION OF migrant workers is directly linked to more extensive structural changes in the labour market and the conditions of employment that have taken place over the past 30–40 years. Global economic and societal changes have made working conditions and employment more volatile (Beck 2000, Sennett 1998; Siltala 2004; Julkunen 2008). In Finland, the changes in working life appear to have taken place especially in the time following the recession that hit the country in the early 1990s. Work became more independent in nature and the number of responsibilities increased. While these changes improved the working conditions of many, the changes also meant a shift into more temporary, flexible and uncertain conditions (Julkunen 2008; Siltala 2004).

Increased work flexibility is connected to the changes in the conditions of working life that are rooted in profitability and effectivity demands (Gray 2004). The demand for flexibility has resulted in new types of employment in addition to permanent employment: temping, light entrepreneurship⁶, and zero-hours contracts (Lähtenmäki 2013; Kautonen et al. 2009). The changes in working life have had an influence on workers in more vulnerable positions, as their negotiation positions are weak. Many migrant workers are in a poorer position than Finnish employees to start with, due to factors like insufficient language skills, residence permit status and ignorance.

⁶ A light entrepreneur is someone who is self-employed but does not have their own company. They typically invoice the customer through an invoicing service company. (Tax Administration 2022.)

Labour immigration did not really start in Finland until in the late 1990s, after the country had joined the EU (Forsander 2002). After the Baltic States' accession to the European Union in 2004, Finland applied for a two-year transition period, during which immigration from the new EU Member States was restricted. A mass immigration of employees, Estonian workers in particular, was anticipated and feared in Finland, but this never became reality. (Kyntäjä 2008.) Initially, migrant workers were often employed in the service and construction sectors (Forsander 2002). The number of migrant workers has continued to grow steadily in Finland for the past ten years. The group is heterogeneous; some migrant workers have a very high educational background, while others are illiterate.

The most common citizenships of migrant workers arriving in Finland in 2020 were Ukraine, Russia, India, the Philippines and China (The European Migration Network 2021). In addition to these, EU citizens migrated to Finland for work (the largest number coming from Estonia) and there were also asylum seekers who have the right to work for the duration of the asylum application process (*ibid*). Migrant workers were usually employed in low-wage industries, including cleaning services, transport, restaurants and the construction sector (Ministry of Economic Affairs and Employment 2019). These are the exact industries where labour exploitation cases of different degrees have emerged, with the most severe cases meeting the criteria of human trafficking (Jokinen & Ollus 2019; Jokinen & Ollus 2014).

2.2 Developments in international regulation on human trafficking

HUMAN TRAFFICKING is not a new phenomenon, nor is anti-trafficking legislation. The international community was concerned about what is known as white slavery in the late 1800s. The underlying reason for this was the fear – even moral panic – of European women being sexually exploited outside their home country (Leppänen 2006; Doezelema 1999). Early international conventions were drafted in the beginning of 20th century to prevent the trafficking of women. The purpose of them was to stop the exploitation, but also to prevent the migration of (white) women that was considered immoral (*ibid*). These early international conventions also contained the first definitions of the phenomenon of human trafficking (known as “traffic” at the time). To some extent, these same definitions are found in the UN Trafficking Protocol.

After the First World War, states became concerned about the impacts that the war had on crime, migration and unemployment (Knepper 2011, 9–32). Cross-border crime and trafficking of women

became issues that the newly established League of Nations sought to address (ibid, 167–169). Around these times, the Commonwealth of Nations' Slavery Convention was adopted followed by the Forced Labour Convention of the International Labour Organization (Ollus 2015, 226). The international community has, from the early 1900s until 1979, made efforts to fight the trafficking of women and children with several international conventions (Bruch 2004, 7–11).

The threats of organised crime became a topic of discussion within the United Nations in the late 1980s and early 1990s. Italy in particular expressed concern over organised crime in the country and called for better international cooperation to combat the phenomenon. This was around the same time as the Soviet Union collapsed and organised crime started to grow in many parts of Europe. Towards the end of the 20th century, the UN started negotiations on a convention against international organised crime. Human trafficking – of women and children in particular – was introduced as a theme, and it was added to the agenda of the debate against organised crime. This resulted in the first comprehensive international anti-trafficking convention, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, adopted in 2000. The protocol sought to prevent human trafficking, protect the victims and prosecute the traffickers ("prevention, protection, prosecution"). (Ollus 2015.)

This trafficking protocol pays specific attention to women and children, but the definition also covers other types of exploitation, including forced labour. The protocol was written as a part of the UN Convention against Transnational Organized Crime that seeks to prevent and tackle organized crime and stop illegal immigration. Human trafficking was initially understood as the trafficking of women for the purpose of sexual exploitation in prostitution (Gallagher 2010). This starting point has affected both the understanding of human trafficking and anti-trafficking action, at the beginning of the 21st century in particular. This is why it took a while, also in Finland, before other forms of human trafficking, such as forced labour, became more widely recognised and prevention was properly initiated, after awareness of human trafficking as more than an area of organised crime increased (Ollus & Alvesalo-Kuusi 2012).

Human trafficking was criminalised in Finland in 2004. At the turn of the millennium, the debate on human trafficking focused on sexual exploitation and whether human trafficking is connected to organised pandering and prostitution in Finland (Leskinen 2002; Lehti & Aromaa 2002). The US State Department report on human trafficking around the world in 2003 classified Finland in Tier 2 (US State De-

partment 2003). Tier 2 includes countries and territories whose governments do not fully comply with the minimum standards but are making significant efforts to bring themselves into compliance with those standards. Human trafficking was not separately criminalised in Finnish legislation at that point, and trafficking or related crimes were not sufficiently addressed in the Criminal Code according to the analysis presented by the United States. It has been argued that the criminalisation of human trafficking in Finland was accelerated by this critique presented by the United States (Haaste 2021).

The Trafficking Protocol contains the first comprehensive definition of human trafficking. It has been widely ratified and is at present enforced at national level in 178 countries worldwide.⁷ The definition of the Protocol also forms the basis of legislation on human trafficking around the world, including Finland. The definition and structure of the protocol have impacted other anti-trafficking regulations that bind Finland and other Member States, including the EU Directive (2011/36/EU) on preventing and combating trafficking in human beings and protecting its victims and the Council of Europe Convention on Action against Trafficking in Human Beings, adopted in 2005. Legislation on human trafficking and other forms of labour exploitation is covered in more detail in Chapter 5.

Next, we will look at the action to combat human trafficking and the key actors who have contributed to the development of activities against labour trafficking and exploitation in Finland.

⁷ https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=xviii-12-a&chapter=18

3

Anti- trafficking action and key actors

To better understand the work undertaken to combat labour exploitation in Finland, we must first explore what has been done. Action plans and strategies of various kind are a key source of information in which authorities determine the different forms of exploitation while prioritising the measures that can be taken to combat them. In this chapter we also explore the status of the victims of human trafficking and the development of the national assistance system and go over the roles of authorities and different parties in the anti-trafficking efforts.

3.1 Action plans

HUMAN TRAFFICKING was criminalised in Finland in 2004. Soon after this, the development of authorities' anti-trafficking activities began. The first national action plan against human trafficking was published in 2005, and a more detailed national action plan was adopted in June 2008 (Ministry for Foreign Affairs 2005; Ministry of the Interior 2008). The Minority Ombudsman (nowadays the Non-Discrimination Ombudsman) was appointed as the National Rapporteur on Trafficking in Human Beings in 2009. The rapporteur's reports to the Finnish Parliament in 2010–2014 contained numerous recommendations which resulted in new developments. The rapporteur also requested that the Government prepare a new national action plan to support the anti-trafficking action. The next Action Plan was published in 2016 (Ministry of the Interior 2016). The most recent Action Plan covers 2021–2023 and includes several measures to combat human trafficking in Finland (Roth & Luhtasaari 2021).

In the first action plans, the focus was on the prevention of human trafficking for the purpose of sexual exploitation. Combating labour exploitation was mentioned in connection with action against illegal work, and the exploitation of migrant workers was seen as a specific problem of the grey labour market, especially in the restaurant and construction sectors (Ministry for Foreign Affairs 2005). Labour exploitation was associated with the grey economy, and the

exploitation was found to take place in domestic work, self-employment, services and in the construction, cleaning, logistic, metal and hotel sectors (Ministry of the Interior 2008).

The more recent action plans (Ministry of the Interior 2016; Roth & Luhtasaari 2021) put labour exploitation and trafficking at the centre of preventive measures, which goes to show that the understanding of labour exploitation has significantly changed since the early 2000s. The most recent Action Plan (2020–2023) is based on five strategic objectives and 55 actions. The objectives include improved detection of human trafficking, improvement of the victims' status, more effective realisation of criminal liability, mainstreaming anti-trafficking action and making it a part of the Government activities on a larger scale, as well as closer cooperation with civil society. (Roth & Luhtasaari 2021.) The actions listed include better resources for the supervision of migrant labour, development of supervision by labour inspectorates and improvement of exchange of information between the occupational safety and health administration, employment agencies and the Finnish Immigration Service. The measures taken to improve anti-trafficking activities in the police include an information-driven approach to duties and effective investigations, strengthening the supervision and resources and taking advantage of multidisciplinary models of operation and international cooperation. Criminal investigation authorities are also offered supplementary training, and modelling is used for efficient prevention of human trafficking crime and their investigation. (Ibid.)

The strategy and action plan for tackling the grey economy and economic crime (2020–2023) similarly feature many actions, reports and projects that have a direct or indirect link to the prevention of labour exploitation.⁸ The goals of the strategy include the promotion of healthy competition and a fair labour market, and the proactive prevention of the grey economy and financial crime. The strategy furthermore seeks to secure the operating conditions of authorities combating the grey economy and financial crime and to develop the control efforts and cooperation between authorities. (Vero 2022.) The Government Resolution regarding the strategy and action plan identifies labour trafficking as a problem in Finland (Finnish Government 2020). The Ministry of Economic Affairs and Employment has also nominated a multidisciplinary subcommittee for 2020–2021 with the tasks of preventing, detecting and combating the exploitation of migrant workers.

In January 2022, the steering group on combating the grey economy discussed the progress of the action plan projects and reached the conclusion that the projects focused on the prevention of exploitation of migrant labour are progressing well. In order to con-

⁸ The Finnish Police University College's ongoing project Creating policy models for the police to support the planned management of multi-authority action (<https://polamk.fi/en/creating-policy-models-for-the-police-to-support-the-planned-management-of-multi-authority-action>), to which this review is linked; the Finnish Police University College's report on the lack of exchange of information and analysis in multi-authority action in the supervision of labour immigration "Selvitys tietojenvaihdon ja analyysitoiminnan katvealueista työperäisen maahanmuuton valvonnan moniviranomaisyhteistyössä" (Kuukasjärvi et al. 2021); the report on the prevention of exploitation of migrant labour in different countries, completed by HEUNI for the Ministry of Economic Affairs and Employment ("Selvitys ulkomaisen työvoiman hyväksikäytön torjunnan menettelyistä eri maissa", Pekkarinen et al. 2021); and the report on the prevention of exploitation of migrant labour force by the Migration Institute of Finland ("Ulkomaisen työvoiman hyväksikäytön ehkäisy. Viranomaistyön tuen tarpeet ja tietokatteet", Raunio et al. 2022).

tinue the efforts, the steering group accepted a new proposal for a project on creating a model for multi-authority action on the investigation of human trafficking crimes. The goal of the project is to accelerate the detection of human trafficking crimes and their investigation, and to improve the victims' trust in the Finnish system. The steering group also set up a committee to prepare a long-term strategy and action plan for preventing and combatting the exploitation of migrant labour. The Ministry of Economic Affairs and Employment and Ministry of Justice will also complete a report on trade unions' right to take class action (Ministry of Economic Affairs and Employment 2022a.) In addition, a project for the efficient implementation of employer supervision based on flows of information in the UMA4 data system of the Finnish Immigration Service will be carried out (Marttinen 2022).

3.2 Status of victims and the assistance system

FINLAND SET up a national assistance system for victims of human trafficking in 2006. Since the beginning, the assistance system has operated under the immigration administration, and its operations are coordinated by the Joutseno reception centre. The reason for initially setting up the assistance system under the administration of the Ministry of the Interior was that the anti-trafficking activities were initially under the authority of the Ministry of Employment. After the work of the Ministry of Employment as an independent ministry was discontinued, human trafficking issues were transferred to the Ministry of the Interior. In the early 21st century, combatting trafficking was viewed as an issue that was entirely the task of the police and border guards, and the role of, e.g., the Ministry of Social Affairs and Health, was considered limited. (Koskenoja et al. 2018.)

The Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings (746/2011) is an act that lays down provisions on support for victims of human trafficking in Finland. This act includes provisions on the tasks and obligations of the assistance system for victims of human trafficking, administered by the Finnish Immigration Service, and details the services to which a person identified as a victim of human trafficking is entitled. According to the review of the functioning of the act, the act was applied unequally in different parts of the country as regards victims of human trafficking. It has also been noted that the linking of victim support and the criminal justice process has complicated victims' access to support. (Koskenoja et al. 2018.)

Victims of labour trafficking are entitled to assistance by the

National Assistance System for Victims of Human Trafficking if their case is processed in the criminal procedure under the heading of human trafficking. Previously the problem was that if the title of the offence changed during the criminal investigation or the consideration of charges from trafficking in human beings to a different offence, the victim was not necessarily longer entitled to the support available for trafficked persons, and they were removed from the assistance system (Koskenoja et al. 2018, 50.)⁹ If the case does not include features that indicate human trafficking, but the person is in need of help, they can be referred to NGOs, such as Victim Support Finland, other NGOs or the trade unions.

The reorganisation of assistance for victims of human trafficking was under consideration in a multi-sector committee set up by the Ministry of Social Affairs and Health, with the aim of clarifying the existing legislation and the practices for assisting victims of human trafficking by the end of 2022 (Ministry of Social Affairs and Health 2020.) However, the aim of drafting a separate law on assistance to victims of trafficking was dropped in 2021, and instead, the Ministry of the Interior suggested amendments into the Act on Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings (Government Proposal HE 220/2022 vp; Report by the Administration Committee HaVM 30/2022 vp; Ministry of the Interior 2022). The resulting changes to weaken the connection between support for victims and the criminal procedure were approved by the Parliament in the end of 2022 and entered into force on 1 January 2023.

The Finnish Institute for Health and Welfare completed a report on accommodation services for victims of human trafficking, which was assigned by the Ministry of Social Affairs and Health in connection with a section of the Government Programme. The report analyses, inter alia, the preparedness of the services as such, and their possible shortcomings in answering the needs that the victims of human trafficking have with regard to accommodation services. (Lampela & Ruuska 2021.)

In the spring of 2021, the Ministry of the Interior published the Action Plan for the Prevention of Irregular Entry and Stay for 2021–2024. Improving the detection of human trafficking is one of the cross-cutting principles of the Action Plan. The Action Plan recognises that persons who do not have a right of residence or who are otherwise in a vulnerable position run a higher risk of becoming a victim of human trafficking and other forms of exploitation. The proposals for action seek to improve the authorities' abilities to identify victims of human trafficking and exploitation and to refer the victims to the assistance system. The Action Plan furthermore proposes investigat-

⁹ The legislation was amended on 1 January 2023 to weaken the link between assistance and the criminal justice process.

ing whether a firewall should be set up. This would encompass procedures intended for persons living in the country without a right of residence, which enable them to contact the authorities without a fear of immediate return. The implementation of the Action Plan is monitored by the Ministry of the Interior and the National Police Board. (Ministry of the Interior, 2021.)

In October 2021, amendments also entered into force in the Aliens Act (554/2021), which seek to prevent the exploitation of migrant labour and improve the status of victims. Following these amendments, a residence permit can be refused if there are reasonable grounds to suspect that the employer or provider of work intends to evade the provisions on entry into or residence in the country. This does not affect the employee's chances of being granted a residence permit with another employer. If there is justified reason to suspect that a migrant worker with a residence permit for work in Finland has been exploited, they are allowed to continue working for a new employer without restrictions on occupation, or they can be granted a new residence permit for one year for the purpose of looking for work. (Government Proposal HE 253/2020 vp; Aliens Act 301/2004.)

In early 2022, the Migration Institute of Finland published, as per the commission of the Ministry of Economic Affairs and Employment, a report on the needs for support and knowledge gaps of the authorities in preventing the exploitation of migrant labour (Raunio et al. 2022). This report particularly highlights the implementation of the amendments of 1 October 2021 to the Aliens Act, as the new types of permits introduced mean a new process for the Finnish Immigration Service, and the related administrative and legal practice will only be developed over the course of time (Ministry of Economic Affairs and Employment 2022b). According to this report, the increased internationalisation of the labour market and the legislative changes will mean that the authorities will have a more notable role in safeguarding the rights of migrant labour in addition to issuing permits and conducting supervision. Building trust between the authorities and victims will mean that the victims of exploitation can be encouraged to report suspected exploitation to the authorities without having to fear they will be sanctioned and lose their residence permit for example. (Raunio et al. 2022.)

3.3 The National Rapporteur on Trafficking in Human Beings and the Anti-Trafficking Coordinator

AN IMPORTANT step in the development of anti-trafficking efforts in Finland was the appointment of the Minority Ombudsman (nowadays the Non-Discrimination Ombudsman) as the National Rapporteur on Trafficking in Human Beings in 2008. The National Rapporteur on Trafficking in Human Beings is an independent authority tasked with monitoring phenomena in connection with trafficking in human beings, meeting international obligations, and the effectiveness of national legislation. They also give out recommendations, statements and guidance on anti-trafficking efforts and the realisation of victims' rights. The rapporteur has the right to obtain information from other authorities without provisions on confidentiality restricting their right of access.¹⁰ The National Rapporteur on Trafficking in Human Beings collects information on human trafficking and reports this information to the Government and the Parliament.

In their first report to the Parliament, the National Rapporteur on Trafficking in Human Beings assessed the assistance system for victims of human trafficking, the practices relating to the victims' stay in the country and the criminal procedure and criticised the insufficiency of Finland's measures of addressing labour trafficking until then (Minority Ombudsman 2010). Following this report, the Finnish Parliament in 2011 obliged the Government to act and submit reports of its measures to the Minority Ombudsman. More efficient anti-trafficking action was included in the Government Programme of Jyrki Katainen's Government in 2011, including measures such as amendments to legislation, training given to authorities and improving the process of victim identification. (Minority Ombudsman 2012.) The amendment of the provisions on trafficking in human beings in the Criminal Code, which entered into force in 2014, resulted from the first report to the Parliament by the National Rapporteur on Trafficking in Human Beings. In their later reports, the National Rapporteur on Trafficking in Human Beings has introduced further recommendations that have significantly affected anti-trafficking efforts. The National Rapporteur on Trafficking in Human Beings has estimated that the 2010 report and its recommendations and the Parliament debate that followed, including its proposals for legislation, steered the course of anti-trafficking efforts in Finland. The Government initiated several legislative processes as an outcome of the process, authorities developed their activities, and awareness of human trafficking as a social problem increased. (Minority Ombudsman 2014, 111.)

The National Rapporteur on Trafficking in Human Beings has also influenced many practical measures and the improvement of

¹⁰ The duties are laid down in the Act on the Non-Discrimination Ombudsman (1326/2014), section 4.

practices by various authorities. The rapporteur offered, *inter alia*, support to the Ministry of Social Affairs and Health and the National Police Board when they prepared their initial guidelines on this topic in 2012. The Ministry of Social Affairs and Health's policy addressed the supervision of migrant labour, whereas the National Police Board's guidelines focused on combating human trafficking and helping the victims (Minority Ombudsman 2012, 6).

In 2013, a committee of the Ministry of the Interior proposed that the position of a National Anti-Trafficking Coordinator should be established for the purpose of monitoring anti-trafficking action across different sectors. The tasks of the Anti-Trafficking Coordinator would include monitoring and coordinating authorities' anti-trafficking measures, promoting the realisation of victims' rights at multi-authority level and boosting anti-trafficking work between authorities and civil society actors. (Ministry of the Interior 2013.) The first Anti-Trafficking Coordinator was appointed in 2014, and the post was assigned to the Police Department of the Ministry of the Interior.

In 2018, the Ministry of the Interior commissioned a report on the Government's mechanisms of coordination and reporting on issues of human trafficking, and different parties involved in the field were interviewed during the work. The report concluded that the anti-trafficking coordination work was not as effective as hoped. The coordination work was considered unclear, inefficient and the mechanisms of coordination were found insufficient. It was suggested that the Anti-Trafficking Coordinator should become a permanent position and the coordinator would need a team partner to assist in their duties. (Ministry of the Interior 2018, 19, 31–37.) After the review was completed, the post of the Anti-Trafficking Coordinator was transferred to the Ministry of Justice and became a joint position of the Government, pursuant to the Government Programme (Finnish Government 2019). In March 2022, the Ministry of Justice published a report on the organisation of anti-trafficking coordination at the government level. The report reviewed the current activities and discussed various alternative modes of coordination. The report recommended that coordination efforts become established through statute. (Kleemola et al. 2022.) The ministerial working group subsequently decided that the coordination of anti-trafficking work within the Government will become permanent, and that the function would be under the Ministry of Justice also in the future (Ministry of Justice 2022).

3.4 Roles of the occupational safety and health authority and the police

OCCUPATIONAL SAFETY and health authorities play a key role in identifying labour trafficking and exploitation. The first anti-trafficking action plan was published in 2005, and it indicates that it is possible for the occupational safety and health administration to identify these phenomena, in particular work discrimination and extortionate work discrimination. It was proposed that the number of inspections should be increased in risk sectors and workplaces, including restaurants and the cleaning sector, as a measure to address the issue (Ministry for Foreign Affairs 2005, 52–53). Thus, it was understood already in the early 2000s that the risk of exploitation for migrant workers was high, even though at this point such exploitation was not seen as connected to human trafficking but instead, was considered mainly in the context of extortionate work discrimination.

Labour inspectors specialised in monitoring the use of migrant labour started work in 2005 in line with the action plan. There were 11 inspectors in 2011, and 17 in 2014 (Jokinen & Ollus 2014, 17). The number of inspectors was significantly increased in 2021 when 13 new inspectors were hired to work for occupational health and safety authorities with the help of an additional appropriation issued by the Finnish Parliament. Thus, at the end of 2021, there were a total of 29 specialised inspectors working for the occupational safety and health administration. (Nupponen 2022.)

The occupational safety and health administration carries out foreign inspection tasks, focusing on the supervision of the right to work and ensuring the minimum conditions. Labour inspectors have the right to interview employees without the presence of the employer. In recent years, the inspectors have provided employees with information on their rights in different languages and the contact information of parties that help victims (Ylinen et al. 2020). The inspections seek to ensure that the employer has verified the right to work of all migrant workers and that working conditions, working hours and pay, irrespective of their nationality are in order. Occupational health services, records of working hours and accident insurance policies are also checked during the inspections. Occupational health and safety inspections are governed by law (Act 44/2006). According to this Act, the labour inspectors are required by law to report certain offences to the police. Trafficking in human beings was not initially one of the offences included, even though the inspectors have identified several cases of migrant labour exploitation, and even cases of human trafficking. In 2021, the offence of trafficking in human beings was added to the Act, with the amendment entering into force on 15 November 2021. (Ministry of Social Affairs and Health 2021, Government

Proposal 94/2021 vp.) This amendment had been proposed in several reports by the National Rapporteur on Trafficking in Human Beings (Non-Discrimination Ombudsman 2018; Minority Ombudsman 2013, 25) and HEUNI (Jokinen & Ollus 2014, 17; Koskenoja et al. 2018, 178–181). Labour inspectors work in cooperation with the police, and they are involved in joint inspections and supervision.

The police have a key role in the work against labour trafficking and exploitation, with regard to preventive measures as well as to the realisation of criminal liability. A debate on the police's need for specialisation has been long ongoing, as human trafficking investigations are often demanding in nature. Initially, in their first report to the Finnish Parliament in 2010, the National Rapporteur on Trafficking in Human Beings proposed that a specialised, trained unit for the pre-trial investigation of human trafficking crimes should be established (Minority Ombudsman 2010, 127, 163). HEUNI has given a similar recommendation in their first report on labour trafficking, in 2011 (Jokinen et al. 2011). The police made the decision to prioritise the investigation of human trafficking offences in 2011 (HS 23.12.2011). The following year, the National Police Board issued guidelines on how to address offences of trafficking in human beings (National Police Board. 2012).

In the review on the effectiveness of the law to support victims of human trafficking, published in 2018, the authorities who were interviewed communicated that the guidelines provided by the National Police Board on the investigation on human trafficking were important. Some of the people interviewed found, however, that the guidelines were insufficient, if other measures to develop anti-trafficking work within the police were not prioritised. In the interviews conducted for the report, the comparison with the investigation of drug offences arose, as did the need to make human trafficking investigations effective and intelligence based. Nearly all representatives of pre-trial investigation authorities interviewed for the report thought that specialisation was vital in investigating human trafficking offences, even though some found that the lack of resources was problematic for this to be realised. (Koskenoja et al. 2018, 176–177.)

In the guidelines of the National Police Board, updated in 2020, it is indicated that police units must ensure that they have access to sufficient expertise so that they can manage to investigate the special features of human trafficking criminality. The guidelines furthermore state that the preconditions for the effectiveness and impacts of anti-trafficking measures include the ability to identify potential victims of human trafficking in all police activities and to refer them to the assistance system. (The Office of the Chancellor of Justice 2021, 12.)

In early 2021, the police set up an investigation team specialised in human trafficking offences at the Helsinki Police Department. The team has 19 members including two Head Investigators, and it was set up with additional appropriations granted by the Ministry of the Interior. The team also works at the national level, and it is responsible for large-scale cases that require special expertise. Two human trafficking investigators have also been appointed for each police department. In addition, three persons are placed in the National Bureau of Investigation (NBI) and tasked with forming an overall picture of the situation, producing various analyses and engaging in international cooperation. (HS 17 January 2022.)

3.5 Other key authorities and the exchange of information

THE FINNISH Border Guard is a criminal investigation authority referred to in the Criminal Investigation Act (805/2011). A more detailed description of its role in crime prevention is provided in the Act on Crime Prevention by the Border Guard (108/2018). Trafficking in human beings is one of the crimes that falls within the mandate of the Border Guard in cases where it is associated with the facilitation of illegal entry, as referred to in chapter 17, section 8 and section 8a of the Criminal Code of Finland (39/1889). The Border Guard has the right to data monitoring and covert intelligence gathering if there is justified reason to suspect that aggravated facilitation of illegal entry or related trafficking in human beings will be committed (108/2018). One of the actions listed in Action Plan against Trafficking is to establish whether it would be possible to extend the mandate of the Border Guard to the investigation of offences of trafficking in human beings in which the facilitation of illegal entry is not included (Roth & Luhtasaari 2021, 56). It is possible to identify possible victims of human trafficking during border controls, either when arriving in Finland or when passing through Finland to another country. The Border Guard works in cooperation with other authorities and organisations and assists potential victims of human trafficking to get help from the national assistance system for victims of human trafficking. The Border Guard is also involved in international cooperation in anti-trafficking with Frontex and Europol (Ministry of the Interior/ Border Guard Department 2018), and officers from the Border Guard have worked as contact persons in countries of departure and transit, such as Nigeria, Russia, Estonia, and China (Yle 10 July 2017).

Prosecutors work in close cooperation with criminal investigation authorities to ensure the realisation of criminal liability. Special prosecutors work in particularly demanding criminal cases that fall

within their field of specialisation. Some prosecutors are also specialised in cases of human trafficking cases and they can provide professional assistance to other prosecutors. (The Finnish Prosecution Service 2021.) When suspecting human trafficking or similar offences, a notification referred to in the Criminal Investigation Act, chapter 5, section 1 must always be submitted to the prosecutor. From the perspective of a prosecutor's duties, launching an investigation into labour trafficking should have a low threshold, and no category of crime should be excluded from the possibilities. When labour trafficking is investigated, the offence of extortionate work discrimination is also investigated, as their constituent elements overlap to some extent. In labour trafficking cases, the prosecutor usually presses secondary charges for extortionate work discrimination or, occasionally, for aggravated usury. This is done to ensure that a sentence is passed for at least one offence and the defendant is held criminally liable. (Ylinen et al. 2020, 42.)

The Finnish Tax Administration also plays an important part in combatting the grey economy. Cooperation and the exchange of information between the Tax Administration and other authorities means that a comprehensive approach can be applied, and proactive as well as real-time measures can be taken in supervision activities, for example. International cooperation and information exchange are also significant factors. (Vero 2021.) The Finnish Tax Administration also has its own risk management procedures. The risk-based selection of areas of supervision in action against the grey economy has been successful, as the 2020 statistics indicate that 90 per cent of the subjects of inspection selected on risk basis led to the imposition of taxes. (Vero 2021.) In the Tax Administration's inspections to combat the grey economy in 2021, taxes were imposed in 94 per cent of the cases (Valsi 2022).

The Grey Economy Information Unit of the Finnish Tax Administration studies the grey economy by producing and publishing reports and other studies on the phenomenon and its effects. The information unit also prepares obligation compliance reports and customer classifications to assist other authorities in performing their duties. (Laki harmaan talouden selvitysyksiköstä 1207/2010.) With these, other authorities can target and carry out their supervisory inspections on high-risk subjects. The strategy and action plan for tackling the grey economy and financial crime also extended the immigration administration's right to obtain information on 1 September 2020 (Laki henkilötietojen käsittelystä maahanmuuttohallinnossa 615/2020). The immigration administration was assigned the right to use obligation compliance reports for the purpose of completing their tasks (Laki harmaan talouden selvitysyksiköstä annetun lain 6 §:n

muuttamisesta 1264/2020). The obligation compliance report service was initiated with the immigration administration on 1 June 2021, and in the first six months the Grey Economy Information Unit responded to 24,996 requests (Marttinen 2022).

The Finnish Tax Administration works in close cooperation with other criminal investigation authorities. Of the subjects of inspection on combatting the grey economy that were completed in 2020, in approximately 11 per cent of the cases cooperation was pursued with the police or the Finnish Customs' crime prevention unit, combining elements of both a tax audit and criminal investigation in a manner that was as real-time as possible. In connection with supervisory tasks, issues are often detected that fall within the sphere of another authority's competence. In 2020, for example, supervisory notifications were used in approximately 505 cases to communicate information to other authorities. These included, for example, notifications on cases of social benefit fraud and negligence of employer insurance plans. (Vero 2021.)

Efficient exchange of information is in a key role in multi-authority cooperation. In a report completed at the Finnish Police University College, Kuukasjärvi, Rikkilä and Kankaanranta (2021) studied the blind spots regarding the exchange of information and analysis in multi-authority action in the supervision of labour migration. The report states that the legislation concerning supervisory activities is broad and in parts open to interpretation, which can complicate the exchange of information. As a part of the study, a survey for authorities was carried out in which the respondents expressed wishes for a network or a system for sharing mass data and a centralised analysis function in which various authorities could enter their information and observations on the phenomena. (Ibid. 65–67.)

3.6 Trade unions and non-governmental organisations

THE ACTORS involved in work to help victims of human trafficking are also important in the recognition of exploitation and its new forms. NGOs and trade unions can encounter victims of human trafficking and labour exploitation who are in a particularly vulnerable situation, which the authorities might not become aware of at all.

Trade unions have the responsibility to supervise compliance with all-binding collective agreements¹¹. In certain fields, including construction, the trade unions are also entitled to carry out inspections at workplaces by virtue of the collective agreements. In risk sectors, such as services, construction and agriculture, trade unions have been actively involved in combatting labour exploitation in Finland.

¹¹ In Finland there are about 160 universally binding collective agreements which have been negotiated through collective bargaining by one or more trade unions and employer's associations and which specify terms and conditions of employment such as wages, working hours etc. in more detail than the law. Universally binding collective agreements are binding in their respective sectors also on unaffiliated employers, i.e. employers that do not belong to an employers' organisation. (Occupational Safety and Health Administration in Finland 2021.)

Trade unions often have a complex stance towards migrant workers, however, in particular if they do not belong to a trade union, as unions fear social dumping, i.e., that migrant workers diminish the rights of union members (Alho 2012; Ristikari 2012).

The Central Organisation of Finnish Trade Unions SAK and its member unions run a hotline for migrant workers. The number of contacts made to the hotline has increased in recent years. The hotline seeks to help migrant workers who are not trade union members and workers who are in Finland temporarily, such as seasonal and posted workers. (SAK 2020.) SAK updated its services for migrant workers in 2021, launching a new website Fair Play At Work¹² which features an ABC guide to working in Finland. The site features information on the basics of Finnish working life in 20 languages and a chatbot that answers questions on the basic rules of working life 24 hours a day. The hotline received a total of 417 recorded contacts in 2021, although it is estimated that the actual number is a little higher. Digital interpretation was also introduced for testing on mobile devices. Of the individuals who contacted the service, nine per cent said they were members of a trade union. (Pulliainen 2022.)

The NGO Victim Support Finland has offered specialised services for victims of human trafficking and labour exploitation since 2015. The role of Victim Support Finland in advocating for victims' rights has grown much more important in the past five years, and their number of clients has also significantly increased (see also the next chapter). Victim Support Finland has also produced an animated video on employee rights in 16 languages in an effort to prevent labour exploitation.¹³ In the summer of 2021, Victim Support Finland introduced a hotline especially for seasonal workers, supported by financing from the Ministry of Economic Affairs and Employment, which offered services not only in Finnish and Swedish but also in English and Russian. Victim Support Finland, MONIKA – Multicultural Women's Association Finland, the Finnish Refugee Advice Centre and Pro-tukipiste together make up a network of cooperation (Nelipilajärjestöt, "Four-Leaf Clover Associations"), established in 2015. The network helps victims of human trafficking and similar crimes, increases awareness of the identification of vulnerabilities associated with human trafficking, advocates for the rights and status of the victims, and seeks to ensure sufficient support services that meet the needs of victims. The following timeline displays the key events in anti-trafficking action during 2000–2021.

¹² <https://tyoelaman-pelisaannot.fi/en/>

¹³ <https://www.riku.fi/en/various-crimes/labor-exploitation/>

The development of the work against trafficking in Finland

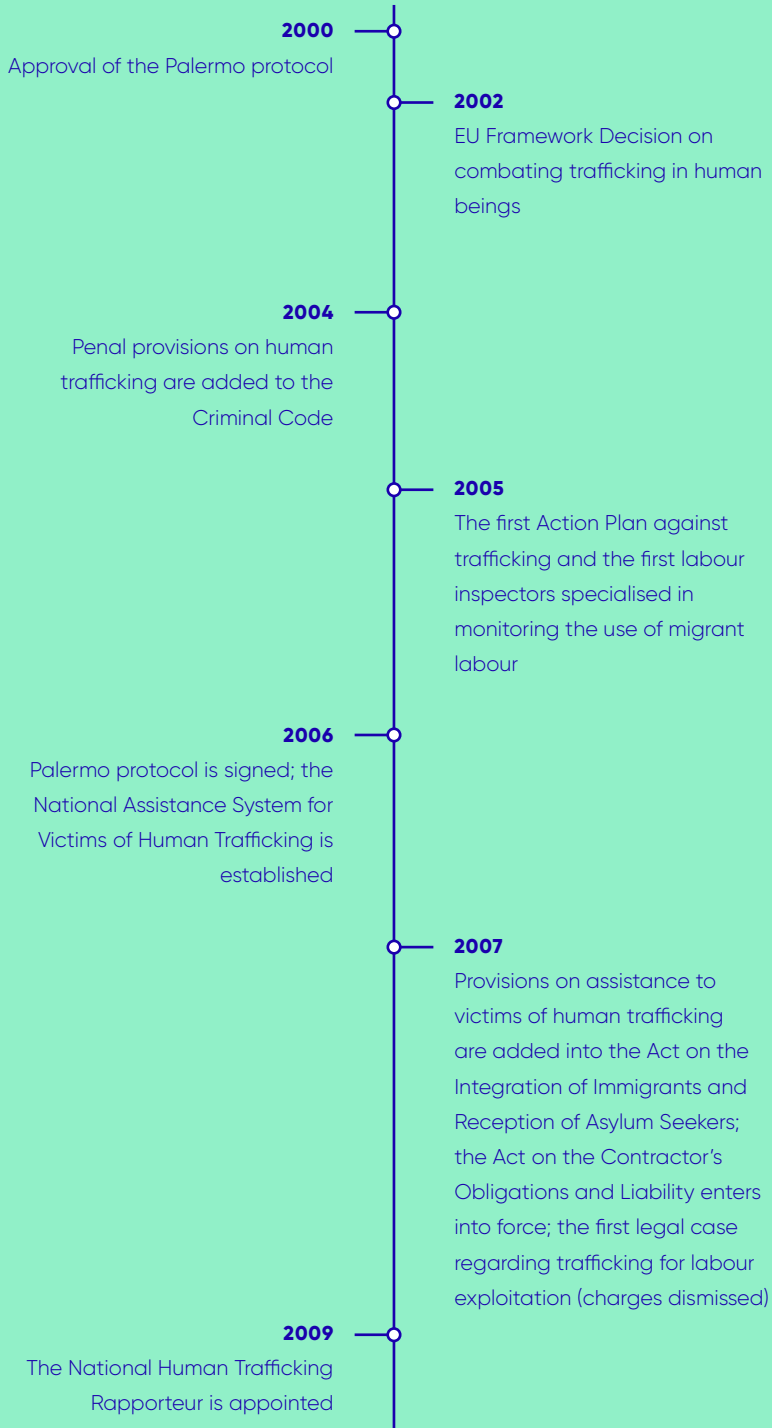




FIGURE 1. Timeline of anti-trafficking action

4

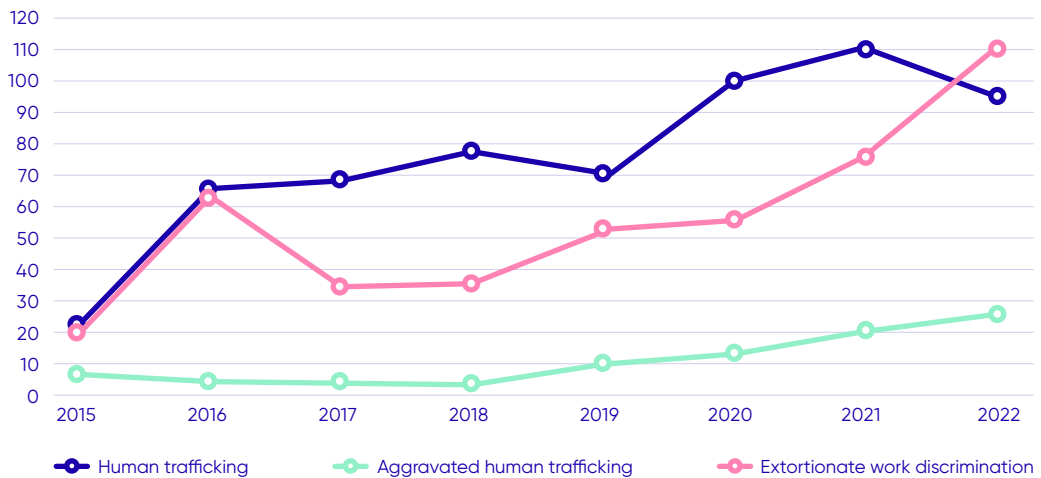
Statistics on human trafficking and exploitation

Human trafficking is, by nature, a criminal activity that often remains hidden (Laitinen & Aromaa 1993). It is likely that most of the human trafficking and related crimes are unreported and thus never included in the statistics. The victims may be afraid of the authorities and do not seek help and, or even if they do, the cases are not necessarily recorded or investigated as human trafficking (Viuhko & Jokinen 2021; see also Viuhko 2019).

VARIOUS AUTHORITIES and organisations collect statistics on human trafficking. The National Assistance System for Victims of Human Trafficking and the network of associations that support victims keep statistics on their own customers, the police keep track of their cases and the Finnish Prosecution Service compiles statistics on cases received by the prosecutors concerning trafficking in human beings, (aggravated) pandering or extortionate work discrimination. It is also possible to collect data on judgments passed based on the title of offence. The statistics are not comparable, as not all victims of human trafficking who have filed a case with the police contact the organisations offering assistance, and vice versa. Similarly, not all cases reported to the police lead to a criminal investigation, charges or judgments.

The police recorded 206 offence reports concerning human trafficking and related crimes¹⁴ in 2021. The number has more than quadrupled since 2015, when 45 reports were filed. The most common offences are human trafficking and extortionate work discrimination, and their numbers have also seen the highest increase in recent years. (2015–2021 from Polstat, extracted on 17 Jan 2022; preliminary data added regarding 2022 from Official Statistics of Finland, published 1 Feb 2023.) The table below indicates the increase in the number of reported cases of human trafficking, aggravated human trafficking and extortionate work discrimination.

¹⁴ 2021: Trafficking in human beings (109); aggravated trafficking in human beings (20); attempted trafficking in human beings (1); attempted aggravated trafficking in human beings: (0); extortionate work discrimination (76) (Polstat 17 January 2022)



The prosecutor received 34 cases under the titles of trafficking in human beings or aggravated trafficking in human beings in 2020, whereas the number in 2015 was only 12. The number of cases of extortionate work discrimination and pandering or aggravated pandering has remained fairly stable in recent years. In 2020, the prosecutor received 12 cases of extortionate work discrimination and 9 cases of (aggravated) pandering. In 2015, the number of cases were 18 and 6, respectively. (Roth & Luhtasaari 2021, refers to The Finnish Prosecution Service 2021.) It is of interest that in 2020 the number of charges pressed for trafficking in human beings and aggravated trafficking in human beings increased significantly (41%) compared with previous years, when charges were pressed in 16 per cent of cases, on average (Roth & Luhtasaari 2021, 75). The number of charges brought still remains low in relation to the number of cases reviewed by the prosecutor. In some of the cases where a criminal investigation could not be completed, or it had been discontinued, the case has involved human trafficking that took place outside Finland, which means that the criminal investigation could not be conducted in Finland (Koskenoja et al. 2018, 167–171).

A recent study on legal practice (Koivukari et al. 2022) states that in 2010–2020 a total of 160 reports of human trafficking in the standard form of the crime were recorded in the police data system. Of these cases, the police concluded the investigation by proceeding to consideration of charges in 53 cases. In approximately one hundred cases, the case did not proceed to consideration of charges. Of these one hundred cases, in 17 cases it was recorded as the grounds for the decision that no crime had been detected; in 39 cases the prosecutor made the decision to restrict the investigation on the basis of chapter

FIGURE 2. Number of reported cases of human trafficking, aggravated human trafficking and extortionate work discrimination recorded by the police during 2015–2021 (Polstat 17 January 2022) and preliminary data from 2022 (Official Statistics of Finland 2023)

3, sections 10.1–2 of the Criminal Investigation Act (expenses or procedural reasons); in 44 of the cases, the decision to restrict the criminal investigation had been made for “other reason”, according to the statistics provided by the police. Recorded under “other reason” were also cases where the offence had taken place outside Finland, and it had not been considered appropriate to carry out the investigation in Finland (Criminal Investigation Act, chapter 3, section 8), or the case had been transferred to the National Bureau of Investigation. Furthermore, in 12 cases, the criminal investigation had been discontinued (Criminal Investigation Act, chapter 3: section 13.) (Koivukari et al. 2022, 62.) The number of convictions also remains low, as shown in the table below.

	2015	2016	2017	2018	2019	2020	2021
Human trafficking	5	5	0	31 ¹⁵	5	7	1
Aggravated human trafficking	2	1	1	1	1	0	1
Extortionate work discrimination	4	2	8	3	7	6	3

TABLE 1. Number of convictions for human trafficking, aggravated human trafficking and extortionate work discrimination in 2015–2021 (Official Statistics of Finland 2022)

The network of four associations (Four-Leaf Clover Associations), including MONIKA – Multicultural Women’s Association Finland, the Finnish Refugee Advice Centre, Pro-tukipiste and Victim Support Finland, offer support to victims of human trafficking as a part of their activities. In 2020, a total of 120 suspected victims of human trafficking, of whom 67 were women and 53 were men, were identified in these associations. Of these victims, 63 per cent sought help in the assistance system for victims of human trafficking, and 58 per cent filed a police report. Eighteen per cent of the victims did not wish to proceed with their case, which was due to e.g., fear of what would follow, their own safety and the wish to protect the suspected offender. (Roth & Luhtasaari 2021, 68–70.) In 2021, a total of 221 new clients received assistance from Victim Support Finland regarding human trafficking and related crimes. A total of 675 victims of human trafficking or related crimes were clients of the organization’s special support service in 2021. This figure included current clients who had made initial contact in previous years. (Marttila 2022.) Approximately 70 per cent of the clients had faced labour exploitation.¹⁶

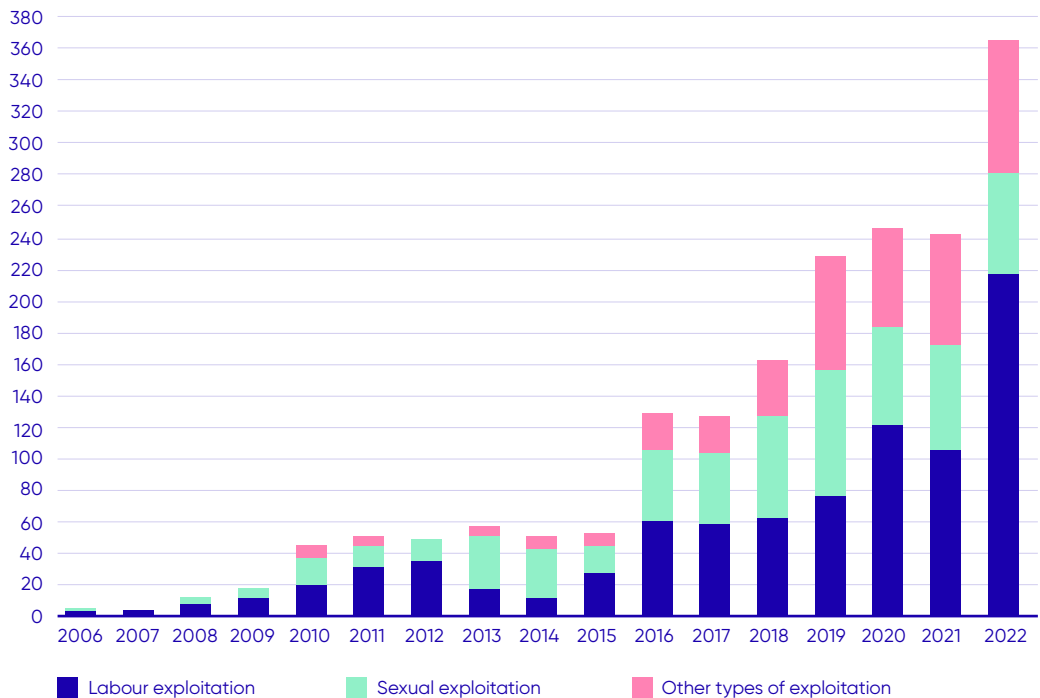
In 2022, 367 individuals were admitted into the National Assistance System for Victims of Human Trafficking (National Assistance System for Victims of Human Trafficking 2023). In comparison, nine clients were admitted into the assistance system in 2006, its

¹⁵ In 2018, a conviction was given on a case for 26 counts of human trafficking, which explains the spike.

¹⁶ Pia Marttila (Specialist Coordinator, assistance of victims of human trafficking, Victim Support) on Twitter <https://twitter.com/piamarttila/status/1485695703955484677>

first year of operation. Most of the persons accepted in the system had a legal right to stay in Finland. In 2006–2020, victims of labour exploitation (552) made up the largest group of the customers, with victims of sexual exploitation (451) in second place. Other types of exploitation are related, in particular, to forced marriages, the number of which has increased significantly since 2016. There are also cases in which persons have been exploited in criminal activity, begging or benefit fraud, and cases where persons have been subjected to organ trade or becoming child soldiers abroad. Most of the victims of sexual exploitation or forced marriages are women and girls, whereas the majority of men were exploited in forced labour. (National Assistance System for Victims of Human Trafficking 2021.) During 2015–2020, 58% of new clients were women, 41% were men, and some identified as non-binary (Roth & Luhtasaari 2021, 71–72). Underaged children of clients, who are also admitted into the system, are not included in the figures.

FIGURE 3. The persons admitted into The National Assistance System for Victims of Human Trafficking in 2006–2022, classified by purpose of exploitation (National Assistance System for Victims of Human Trafficking 2021; 2022; 2023)



THE STATISTICS of the National Assistance System for Victims of Human Trafficking clearly indicate that since the system was introduced, the number of victims of labour exploitation identified in Finland has been higher than that of sexual exploitation. In this respect, the Finnish situation differs from many other European countries: in the EU Member States, most of the identified victims of human trafficking have been subjected to sexual exploitation, and only 15 to 22% of the identified victims have been subjected to labour exploitation (European Commission 2020).

5

Legislation on human trafficking and labour exploitation

5.1 Definition of human trafficking and forced labour

THE DEFINITION of human trafficking in Finland complies with the formulation of the UN Trafficking Protocol, the Council of Europe Convention on Action against Trafficking in Human Beings (2005) and the Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims. The offence of trafficking in human beings (Criminal Code 39/1899, chapter 25, sections 3 and 3a) contains three separate elements: act, means, and purpose. These elements are introduced in Table 1.

Act	Means	Purpose of exploitation
<ul style="list-style-type: none"> • Taking control of, • Recruiting, • Transferring, • Transporting, • Receiving, or • Harboursing a person 	<ul style="list-style-type: none"> • Taking advantage of the dependent status or insecure state, • Pressuring, • Deceiving another person or taking advantage of a mistake made by that person, or • Paying a person who has control over another person or accepting such payments 	<ul style="list-style-type: none"> • Sexual exploitation • Forced labour • Other circumstances contrary to human dignity • Removal of organs or tissue

TABLE 2. Elements of human trafficking.

ALL THREE elements must be met for the crime to qualify as trafficking in human beings. This means that only transporting or recruiting a person for work, without the means referred to in the act, such as deceiving or taking advantage of their dependent status or vulnerable state, does not qualify as meeting the constituent elements of the crime of trafficking in human beings. Furthermore, a connection must exist between the three elements, which means that the act, means and purpose of the act must all be proved (Government Proposal HE 34/2004, 93). The penalty scale for trafficking in human beings is from four months to six years of imprisonment; for aggravated trafficking in human beings, from two to ten years of imprisonment.

In trafficking crimes, the offender takes advantage of the dependent status or insecure state of the victim to subject them to exploitation. This table introduces the characteristics of dependent status and insecure state.

Dependent status	Insecure state
<ul style="list-style-type: none"> • family circumstances or personal relationships • employment relationship • being a tenant • debt • residence in an institution • a substance addict's dependency on the dealer/provider • threat of denouncing an illegally residing victim to the authorities • retention of travel documents • exploiting the dependent status of a close family member 	<ul style="list-style-type: none"> • young age • serious illness • substance dependency • serious illness or substance dependency of a close family member • difficult economic situation • homelessness • psychological state • physical or mental disability • previous traumatic experiences, e.g. previous sexual exploitation or prostitution • status of being a foreigner, asylum seeker or refugee

TABLE 3. Table of characteristics of dependent status and insecure state (see also Government Proposal HE 34/2004, 93–94).

THE PURPOSE of exploitation includes forcing a person to be the subject of sexual exploitation, forced labour or other circumstances contrary to human dignity, or the removal of their organs or tissue for financial benefit. Circumstances contrary to human dignity include conditions resembling slavery, including debt bondage (Government Proposal HE 34/2004, 97).

For the constituent elements of the crime of labour trafficking to be met, the purpose of forced labour must be proved, which is not separately defined in the Finnish legislation. With regard to the definition of forced labour, the International Labour Organization ILO's Forced Labour Convention of 1930 (Treaty Series 44/1935) and the ILO's Convention on the elimination of forced labour of 1957 (Treaty

Series 17/1960) are referred to in the preparatory materials. According to the ILO's Forced Labour Convention, forced labour is understood as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (Article 2).

In the definition by the ILO, exacting work, or service under the menace of penalty refers to various elements of exploitation that can indicate a potential situation of forced labour (ILO 2005, 20–21).

These elements indicating forced labour include the following aspects:

- **PHYSICAL OR** sexual violence
- **RESTRICTION OF** movement of the worker
- **THE EMPLOYEE** is subjected to debt bondage, e.g., due to the expenses of arranging entry into the country or unreasonably priced accommodation.
- **WITHHOLDING WAGES** or refusing to pay the worker at all.
- **RETENTION OF** passports and identity documents
- **THREAT OF** denunciation to the authorities

IN ADDITION, the ILO issued a detailed list of the six dimensions of forced labour in 2009. They facilitate the assessment of whether there is reason to suspect labour trafficking in a case, or if it involves only poor working conditions. The indicators have been divided into weak, medium and strong elements. Each indicator is assessed separately, and if enough concrete examples are revealed, the person involved is a potential victim of human trafficking. (ILO 2009a; see also Jokinen et al. 2011, 189–190; 251–254.)

Similarly, if elements such as giving misleading information or deceiving are included in the recruitment, the employee's consent cannot be considered informed and voluntary (ILO 2015). A report published by the ILO in 2009 similarly states that forced labour includes the most serious breaches of labour legislation and working conditions. However, low pay or poor working conditions alone cannot be considered as forced labour, and a case does not qualify as forced labour in a situation where the employee feels they are unable to quit a job because of their poor chances of finding other work. (ILO 2009b, 5.)

In its report of 2012, the anti-trafficking committee appointed by the Ministry of Justice of Finland discussed whether the definition of forced labour should be added to the Criminal Code. However, this could not be put into practice on account of the legality principle, as

it is impossible to lay down a provision that would provide for the elements indicating forced labour in an exhaustive manner. The committee furthermore stated in its report that it is possible for new factors affecting the issue to appear as the *modus operandi* develop and the views on the dimensions of forced labour change. (Ministry of Justice 2012, 74.)

The criminalisation of human trafficking was amended in 2015 to better correspond to the obligations concerning criminalisation found in the international treaties binding Finland and to clarify the difference between the crimes of human trafficking and pandering. In this amendment, criminal liability for extortionate work discrimination was also extended by adding corporate criminal liability to the offence. Following these amendments, it became possible to impose a business prohibition on a party who has committed extortionate work discrimination in their business activities. (Government Proposal 103/2014.)

The provision on human trafficking was slightly amended by replacing the mode of operation of “being in control” by the mode of operation “takes control over another” in the description of the act. The Government (HE 103/2014) emphasises that in the sense of the seriousness or reprehensibility of the act, whether the victim has been deprived of their freedom or not is not decisive. The essential element is whether the victim has lost their possibility to act in the manner they wish as a result of the offence. The Government Proposal finds that the offender employing control over the victim, usually by taking advantage of the dependent status or insecure state of the victim, should qualify as such to a sufficient extent. “In a situation like this, a victim of human trafficking can, for example, have their own apartment, but they can still be considered to be under the offender’s control.” (HE 103/2014, p. 24.)

According to the Government Proposal (HE 103/2014), forced labour is a permanent state where the employee does not have the usual rights to refuse job duties or discontinue them and which is maintained by credible threats against the victim’s life, health or sexual autonomy or other serious threat (e.g. the threat of reporting the victim to the authorities), or by restricting the employee’s freedom of movement, or through a debt relationship between the employee and employer, or by confiscating the victim’s passport or similar means of identification. The Government Proposal furthermore states that it must be noted that even in situations where the victim himself or herself does not even realise that they are being subjected to exploitation, a case of human trafficking may be at issue. In cases of labour trafficking in particular, such situations may arise when the victim is a migrant and unaware of Finnish legislation and employee rights. (Ibid.)

The Government Proposal similarly emphasises that in order for the definition of forced labour to be met, the element of forcing a person into demeaning circumstances does not need to be realised simultaneously. The report indicates that “at the conceptual level, the possible connection between forced labour and demeaning circumstances is justified due to the overall assessment of the situation, and not just in relation to the working conditions.” At the same time, the report indicates that giving the circumstances of work a decisive weight can lead to a narrow interpretation of the concept of forced labour. (HE 103/2014, 37.)

5.2 Extortionate work discrimination and differences to human trafficking

THE CRIMINALISATION of extortionate work discrimination entered into force in 2004. According to chapter 47, section 3a of the Criminal Code, if in a case of work discrimination, a job applicant or an employee is placed in a considerably inferior position through the exploitation of the job applicant's or employee's economic or other distress, dependent position, lack of understanding, thoughtlessness or ignorance, the perpetrator shall be sentenced for extortionate work discrimination to a maximum of two years imprisonment. Criminalisation became necessary as more cases started to emerge as a result of the increased use of migrant labour, and its purpose was to protect migrant workers and other workers in a more vulnerable position. Extortionate work discrimination is defined through work discrimination, but it is not an aggravated form of work discrimination, but a specific type of work discrimination. For a sentence to be passed for extortionate work discrimination, the act does not need to be deemed aggravated as a whole. (Government Proposal HE 103/2014vp, 12–13.)

In practice, defining the difference between extortionate work discrimination and human trafficking is not always clear or uncomplicated (Nuutila & Melander 2008; Jokinen et al. 2011; Jokinen & Ollus 2014; Koskenoja et al. 2018; Ylinen et al. 2020; Koivukari et al. 2022). The Master's thesis by Kaikkonen (2008) includes an early review of the differences in the definitions of labour trafficking, extortionate work discrimination, and aggravated extortion from a legal standpoint. According to Kaikkonen, the definitions being open to interpretation may mean that cases are easier to investigate as extortionate work discrimination than as trafficking in human beings. (Kaikkonen 2008, 88.) According to Soukola (2009), a detailed comparison of the constituent elements of the crime shows that extortionate work discrimination is not just a petty form of the offence of human trafficking or forced labour. In the constituent elements of the offence of work

discrimination, on which the offence of extortionate work discrimination is based, the substance of “being placed in a considerably inferior position” has not been defined or restricted, and Soukola finds that typical situations include being paid less than the minimum wage, poor employment conditions or harmful working conditions, which are not elements of forced labour. Soukola furthermore emphasises that none of the acts indicated in the constituent elements of human trafficking are required for the offence of extortionate work discrimination, which means that the employee does not have to be misled regarding the conditions of the employment, for example. (Ibid, 281.)

Roth (2010), however, studied two court cases, in which a sentence of extortionate work discrimination was passed for one, and a sentence for work discrimination in the other. Roth found plenty of elements of human trafficking in both cases. According to Roth, instead of applying and interpreting the definition of human trafficking narrowly, an approach of overall consideration should be used in cases of human trafficking, and work and employment conditions of the case should be taken into account. Additional factors to consider include what kind of possibilities the victim has for their free time, their accommodation conditions, and the factors that increase the dependent status and insecure situation of the victim. (Roth 2010, 282, 287.) In their study on labour exploitation, Jokinen et al. (2011) discussed the definitions and classification of human labour and forced labour and placed emphasis on the controlling measures due to which the employee cannot quit their job. These include, for instance, dependency on the employer due to debt, and their insecure situation due to ignorance and lack of alternatives. The measures used in human trafficking and the measures with which forced labour is exacted “under the menace of penalty” largely overlap, which may result in the standard of proof becoming excessive. Therefore, human trafficking for the purpose of labour exploitation can be seen as a situation where a person has been recruited or forced to work in conditions they have been deceived about, in which they are subjected to serious exploitation, and from which it is difficult or impossible to leave due to threats, violence or other form of control being used. (Jokinen et al. 2011, 190–191; also Ollus 2015.)

Kaikkonen (2015) finds that courts must be able to assess if the elements of forced labour are realised, from the viewpoint of the victim and not the person making the assessment and to consider if there are subtle details that have impacted the victim to submit to forced labour. A situation of forced labour must be assessed as a whole, and the elements of menace of penalty can in reality overlap. Kaikkonen also points out that when the elements of menace of penalty in forced labour are considered, misleading and taking advantage

of a vulnerable situation overlap with the measures indicated in the constituent elements of human trafficking. According to Kaikkonen, this can mean that if a person is in debt, and thus insecure, this status can be used as a measure, and its importance can also be reviewed as an element of forced labour. (Ibid 50–51.)

Human trafficking and extortionate work discrimination are on different levels of gravity as offences. Whereas extortionate work discrimination is clearly intended for cases of discrimination in particular, human trafficking first and foremost focuses on freedom. What causes them to overlap, in particular, is the similarity between the means of “taking advantage of the dependent status and insecure state” in human trafficking offences and the “considerably inferior position” in extortionate work discrimination. (Ylinen et al. 2020, Kimpimäki 2021.)

In her article analysing judgments passed on human trafficking and extortionate work discrimination, Kimpimäki (2021) has pointed out that it is difficult to differentiate between human trafficking and extortionate work discrimination because it is mostly a question of severity. Acts of very similar type can be investigated, charged, and sentenced under different titles of offence. In many cases, charges have been pressed for extortionate work discrimination instead of human trafficking or aggravated extortion. The cases of extortionate work discrimination often involve underpayment and ignoring the payment of proper allowances or compensation. Many employees have worked long hours, and, in some cases, they have been dependent on the employer due to accommodation arrangements, residence permits, family relations or a lack of social contacts. According to Kimpimäki, the existing legislative framework is sufficient as such, but more work is needed to make its implementation more effective. (Ibid.)

In a recent study that discusses the application practices of provisions on human trafficking and related offences (Koivukari et al. 2022), a comprehensive set of court judgements was used to conclude that the case law remains inconsistent. Subtle and complex means of psychological influence are particularly often left unidentified or ignored by the courts. Based on legal practice, for the elements of forced labour to be met, there must be serious shortcomings in paying wages and the conditions of work, but also restrictions on the victims’ freedom of movement e.g., in the form of lack of free time and their life in other respects, and/or exceptionally poor living conditions. The researchers assessed that the threshold for meeting the definitional elements of forced labour is high and, in practice, an additional requirement is that the conditions are demeaning, even if the preparatory materials of the provision state that no other demeaning conditions

are needed on top of forced labour. The study found that the legislative framework is sufficient in its present form but recommended organising training for public officials and attorneys who are engaged in the application of criminal legislation. (Koivukari et al. 2022, 310–312.)

5.3 Other relevant offences

IN ADDITION to trafficking in human beings and extortionate work discrimination, relevant crimes in the Finnish Criminal Code include work discrimination (Chapter 7: Section 3), employment agency offence (Ch: 47 Section 6), unauthorised use of foreign labour (Ch 47: Section 6a; usury (Ch. 36: Section 6), aggravated usury (Ch. 36: Section 7) and working hours offence (Ch. 47: Section 2). Similarly, some of the provisions of the Aliens Act (301/2004) are relevant to the exploitation of migrant labour. These include violation of the Aliens Act (Aliens Act, Ch. 12: Section 185) and employer’s violation of the Aliens Act (Aliens Act, Ch. 12: Section 186).

Labour trafficking is committed for financial gain and the maximisation of proceeds of crime. This means that financial crime and other types of offences are typical companions of human trafficking. Financial crimes, such as tax fraud and bookkeeping offences are commonly detected. Money laundering, fraud, document offences, online card fraud and work safety violations also often occur. (Jokinen & Ollus 2019, 25.)

Moreover, according to study by Hautala (2020), cases of underpayment of wages rarely result in criminal procedure. Based on the analysis of court cases on work discrimination and extortionate work discrimination in 2014–2017, other financial crimes, such as tax fraud or bookkeeping offences, are by no means always heard in connection with these cases. It is highly likely that other financial crimes are in fact related to cases of underpayment, but they are not detected for some reason. Moreover, the grounds of discrimination are hard to prove and, as a result, many cases of the underpayment of wages are not heard in court, following either a decision by the police to restrict the criminal investigation or a prosecutor’s decision not to bring charges. One reason for the low overall number of criminal cases is, according to Hautala, the short period of time before the offence exceeds the statute of limitations. Many resolutions by the Parliamentary Ombudsman prove that cases of labour offences often become time-barred at different stages of the criminal process. (Hautala 2020, 29.)

6

Cases and legal practice

6.1 Finnish legal practice

THE DEFINITION of forced labour in particular has raised questions in the various court instances that have processed cases of labour trafficking and exploitation. Case law remains scarce, but it contains interesting elements that we will investigate below from the perspective of the sociology of law.¹⁷

The first charges of labour trafficking in Finland were heard at the District Court of Vantaa in 2007 in the case of the so-called Indian market vendor. In this case, two men of Indian background were suspected of forcing a third Indian man to work as a market vendor and in a restaurant business without pay. The charges of trafficking in human beings were dismissed due to insufficient evidence. (Vantaa District Court, 13 July 2007.) Further, in 2009, the District Court of Ostrobothnia heard a case where a man of Vietnamese origin was suspected of forcing his nephew to work in a restaurant, he owned in Pietarsaari. The nephew had worked very long days in the restaurant for a very small wage, with his uncle controlling him in many ways. Ultimately, the charges of human trafficking were dismissed in this case, too. (District Court of Ostrobothnia, 30 April 2010.)

The first conviction for human trafficking for the purpose of forced labour was not given until 2012, when the District Court of Helsinki gave its ruling in the so-called nail studio case. In this case, a Vietnamese woman, who was pregnant, was exploited in Helsinki where she

¹⁷ An analysis of the sociology of law includes a study of how laws are interpreted and understood (Alvesalo & Ervasti 2006, 5–7).

was forced to work in a nail studio and do household work without pay. Her husband was also deceived into coming to Finland and had to pay a recruitment fee. He only worked in the nail studio for a couple of weeks. The victims had poor language skills, and they were found to have a dependent status and to be in an insecure state. (Helsinki District Court 30 March 2012.)

When reviewing the conditions of the woman and whether they constituted forced labour, the Helsinki District Court stated that “[Victim A] worked for almost one year at a nail studio without pay and at the defendants’ home doing household chores seven days a week from early morning until late at night until she gave birth. In addition to not paying her, A had been in debt bondage, as she was told that she was working without wages for an undetermined period of time to pay for her entry into Finland.” Due to this, the District Court finds that “A’s freedom of movement has been limited de facto, as she has been told to work for practically all her waking hours. Taking into account the aforementioned factors, A was required to work under menace of penalty pursuant to the principles of interpretation by ILO.” With regard to consent, the District Court found that even if victim A had arrived in Finland “voluntarily and continued to work despite not receiving pay, her consent cannot be assigned any significance as she was misled into entering Finland by promising her that she would be paid for work, and further misled while in Finland by promising her that she would be paid later once the defendants’ situation improved”. (Helsinki District Court, 30 March 2012, 22–23.)

Since this, a total of 11 sentences for labour trafficking cases¹⁸ have been passed.¹⁹ In Finnish legal practice, with regard to the constituent elements of forced labour, reference is usually made to the definition of forced labour by ILO, in which attention is paid in particular to limiting the freedom of movement, not paying wages to the employee, debt and menace of penalty. In the case of human trafficking involving a chef from South Asia, the District Court of Helsinki commented that the victim’s working hours+ had been inhumane. “[Victim A] did not have any free time or normal days off. A lived in the small back room of the restaurant. As a foreigner without any free time, A’s freedom of movement was limited to a small park near the restaurant, and he was phoned if he was needed back at work. (Helsinki District Court 1 October 2015.)

In another case of labour exploitation of a chef from South Asia, the Turku Court of Appeal stated that the defendants have subjected the victim to forced labour and acted together for the purpose of financial gain. [Victim A] had a poor financial situation, he was threatened with being fired and defendant X had attacked him. “A was unable to stop working in the fear of losing his apartment, and he was unable to acquire an apartment of his own. A had no other alternative than to continue,

¹⁸ Please note that this is the number of cases: there may be judgements from several court instances and, e.g., in one case, a conviction was given for 26 counts of human trafficking.

¹⁹ In this chapter, we focus on the details of judgments in which a sentence was passed, as understanding these can help readers of the review notice elements of forced labour in their own work. We are not, however, going to go through the large number of cases in which various courts have not found evidence for labour trafficking.

even though he no longer worked voluntarily.” The Court of Appeal also pointed out that the victim was in an insecure state, and his dependency on the defendants was furthermore shown by A’s passport and all his documents being in the possession of defendant Y. (Turku Court of Appeal 27 May 2014.)

In a case of human trafficking of men from Central Asia, the District Court of Ostrobothnia found that the men, who worked in a company in the woodworking sector, were victims of forced labour. The men had initially come to Finland to work voluntarily, but the District Court found that their labour conditions had to be considered forced labour in accordance with the definition of the ILO Convention on Forced Labour of 1930. The District Court gave a detailed account of the elements to consider. According to the District Court, “the injured parties were not free to stop working at any time; instead, they were required to work for at least one, later two, years without a holiday, and a fine was set as a sanction for a breach of this obligation, as was the threat of their wages being withheld.” Additional elements of forced labour listed included unreasonably long workdays, restrictions on free movement, the confiscation of passports and the victims’ debt to the defendant. (District Court of Ostrobothnia 28 February 2013, 73.) The judgment for human trafficking was later confirmed by the Court of Appeal (Vaasa Court of Appeal 20 November 2013).

Similarly, in a case heard at the District Court of Vantaa concerning a pizza restaurant worker from Asia, the indicators issued by ILO (ILO 2009a) were utilised for the analysis. The District Court found the restrictions on the victim’s free time, environment, social life and freedom of movement, his debt bondage and excessively long working days and the fact that the victim was not in possession of his passport or bank card to be strong indications of forced labour. The District Court of Vantaa furthermore stated that A’s “wages, unlawfully low in relation to his working hours, the fact that he worked without receiving wages and that his wage payments were manipulated beyond his reach are strong indications of forced labour.” The judgment thus concluded that “in practice, A had no alternative but to work exactly as much as required. As a result, he was completely without normal free time for a period of almost one year and three months. A has experienced at least financial distress (not being able to repay the debt) and the fear of losing his home. Mental distress was added by circumstances whereby A was dependent on the defendants and in an insecure state.” The District Court furthermore found that the victim was deceived with regard to the terms and conditions of his employment and their legality; he was recruited by giving false promises and by imposing a fabricated debt on him. “On the basis of the aforementioned facts, there is no doubt whatsoever that A was subjected to forced labour as defined in the essential elements of traffick-

ing in human beings.” (Vantaa District Court, 20 April 2016, 32–32.) This human trafficking sentence was also confirmed at the Court of Appeal (Helsinki Court of Appeal, 3 April 2017).

Sometimes, in cases with several victims involved, the abuse and the conditions experienced by the victims can vary significantly. For example, in the judgment passed by the District Court of Pirkanmaa in a case of 10 victims from South Asia, who were exploited in ethnic restaurants, the chefs had suffered more serious and long-term exploitation than the waiters. At the beginning of their employment relationships in particular, the chefs had very low pay, approximately EUR 500–700 per month, their working days were long, and they had no holidays. After they had demonstrated that they were trustworthy and hard-working, the chefs started to receive slightly better pay. They were also given the chance to visit their home country and bring their families to Finland. Their spouses ended up working in the same restaurants as waiters, but with shorter workdays than the chefs. The offenders were sentenced for human trafficking for the exploitation of the chefs, but the waiters’ cases were qualified as extortionate work discrimination. It also emerged that family members of the perpetrators and those with Finnish language skills had worked in the same restaurants under normal or nearly normal working conditions, and that they had been paid properly. Consequently, the employees who were recruited from outside Finland were unquestionably in a poorer situation than other employees in this case. (Pirkanmaa District Court 29 June 2012.)

Pirkanmaa District Court found that, in the case of the chefs, threatening to send them or their families back to Vietnam was a menace of penalty in the manner referred to in the definition of forced labour in ILO’s Forced Labour Convention. The judgment furthermore concludes that the victims were “dependent on the apartments provided by or offered through the defendants, and they did not have a social safety network, and they were in a nearly continuous debt relationship with the defendants. It is also likely that having worked overly long hours for several years, having had hardly any holidays or days off has already affected their mental capacity to make decisions concerning their own lives.” (Pirkanmaa District Court, 29 June 2012, 114–116.) The judgments were affirmed at Turku Court of Appeal. The definition of forced labour did, however, divide the opinions of the judges of the Court of Appeal, with one of them expressing an opinion that forced labour is an independent definitional element, which means that being ‘forced’ must mean something other than the person merely working while being under someone’s control in the manner referred to in the constituent elements. (Turku Court of Appeal 30 September 2013.) According to Kaikkonen’s analysis, the decision by Turku Court of Appeal reflects how open to interpretation the definition of forced labour is, and how deeply moral values are embedded (Kaikkonen 2015, 36).

6.2 Comparison with other countries

AS SHOWN in the previous chapter, the Finnish court judgements indicate that forced labour is understood fairly broadly in Finland, and the judgments by district courts and courts of appeal quite commonly refer to ILO's definition of forced labour and related indicators. On the other hand, Koivukari and colleagues (2022) noted in their study on legal practice concerning human trafficking that the threshold of sentencing for forced labour remains high in Finland, too. In fact, the study suggests that it seems to be easier or more likely to meet the elements of human trafficking in cases where the purpose of the act has been to subject a victim to forced prostitution or comparable sexual exploitation than in cases of trafficking for the purpose of forced labour (*ibid.*, 122–123). If Finnish legal practice and case law regarding labour exploitation is compared with other Nordic countries, it can be noted, however, that the threshold for exploitation to be qualified as forced labour is in fact much higher in the other Nordic countries than it is in Finland. (Johansson 2020; Schoulz et al. *upcoming*). In Norway, the number of cases of forced labour in legal practice is the second highest after Finland, but experts find the threshold high there as well (e.g., Jahnsen 2014; FAFO 2019).

Only two sentences have been passed for labour trafficking in Sweden, both of which over 10 years ago. The Swedish courts' interpretation of forced labour significantly differs from the international definitions, hardly referring to the ILO definition at all. The definition of forced labour usually includes three elements: work, the menace of penalty and involuntariness. In Swedish legal practice, it has been demanded that proof must be presented for the "forced state" (*tvångstillstånd*) of the victim. This has led to the situation where, following a lack of proof of forced state even if the three elements of forced labour have been proven, the offender has been sentenced for work under unreasonable conditions (*arbete under orimliga villkor*). (Johansson 2020, 27–28.)

Following the difficulties in application, the new criminal offence of human exploitation (*människoexploatering*) was added to the Swedish Criminal Code in 2018, specifically as a means to combat labour exploitation that does not meet the elements of human trafficking (Johansson 2020, 6). This offence corresponds in part to the Finnish criminal offence of extortionate work discrimination. So far, only two cases of human exploitation have been taken to court. In one of the cases, the charges were dropped in the District Court, and the other case was acquitted by the Court of Appeal (*ibid.*, 6–7). In the latter case, however, the Supreme Court of Sweden passed a sentence in 2022 (SVT 15 February 2022; *Dagens Juridik* 15 February 2022).

In Norway, the discussion on labour exploitation has largely revolved around social dumping and more recently, around work-life crime. Some sentences have been passed for labour trafficking.²⁰ The

²⁰ A total of 10 judgments were passed for labour trafficking and forced services in Norway in 2003–2020 (KOM 2021, 4). Several judgments for begging are included, which means that they do not concern labour exploitation.

first judgement in a case of labour trafficking was issued by the District Court of Jære in 2008.

In the case, a group of young British men in a particularly vulnerable position – being homeless and unemployed – were persuaded to take up paving and asphaltting work in England. After a couple of months of work, the perpetrators took the men to Norway, where they worked in paving and asphaltting projects for approximately three months. The men were severely underpaid, they lived in trailers in poor conditions, worked long hours, were constantly under supervision, and were threatened with violence. The court concluded that the men were unable to quit their jobs and were thus victims of forced labour. The court believed the employers had consciously exploited the insecure state of the men for the purpose of forced labour. (Jokinen et al. 2011, 186–187.) It was not until 2017, however, that the first labour trafficking case advanced to the Supreme Court. This concerned three Indian seasonal workers who were exploited in the agricultural sector. (CBSS 2020, 106.)

The number of labour trafficking cases reported in Norway remains low, and the threshold of applying the offence of human trafficking is high (Jahnsen 2014). According to the Norwegian experts interviewed by HEUNI, a significant amount of serious exploitation remains between the provisions on human trafficking and the Working Environment Act that does not comply with the constituent elements of human trafficking offences. If a person is a victim of labour exploitation but the constituent elements of human trafficking are not met, their chances of compensation and accessing other services and support mechanisms are meagre. (Pekkarinen et al. 2021, 80, 90.)

FAFO, the Norwegian Institute for Labour and Social Research has estimated that in cases of labour exploitation, the ambiguity of concepts and their content could have led to a situation in Norway in which cases relating to labour are not as widely recognised and consequently, not as frequently investigated as other forms of exploitation. It has been found particularly difficult to establish differences between labour trafficking and other types of exploitation. (FAFO 2019.) In a study completed in 2020, male victims of labour trafficking were interviewed (Lingaas et al. 2020). This study suggests that labour exploitation in particular often goes without punishment and the authorities are not sufficiently aware that men can also be victims of human trafficking (ibid.).

In 2022, Norway criminalised wage theft. Ordinary wage theft is punishable by imprisonment for up to two years, while gross wage theft may result in imprisonment for up to six years. In assessing whether the wage theft is gross, emphasis is placed on the amount of pay that has been stolen from the employee, whether the theft ap-

pears to be systematic or organised or whether for other reasons the offence is especially grievous or socially harmful. (Frifagbevelse 2022.)

In Denmark, little attention has been paid to labour trafficking. The Danish Centre against Human Trafficking (CMM) published several reports in 2011 covering exploitation of migrant labour in cleaning services, agriculture and as au pairs. The reports concluded that migrant workers are subjected to exploitation, but the phenomenon has not been examined as human trafficking. (Lisborg 2011; Korsby 2011). A more recent study contained interviews with migrant workers who were engaged in the fields of construction, services and cleaning services, as well as gardening and agriculture. This study suggested that the employees ended up in working conditions that were inappropriate, even exploitative in many ways, due to their insecure state. (Spanger & Hvalkof 2020.)

In comparison, dozens of judgments for labour trafficking have been passed in Belgium. The Belgian legislation provides that for the constituent elements of a human trafficking offence to be met, the means of human trafficking need not be established, rather they are aggravating factors. In addition, forced labour does not need to be proved as a form of exploitation. In the Belgian formulation, labour trafficking refers to trafficking for economic exploitation, wherein a person provides work or services in conditions contrary to human dignity. If means such as deception or abuse of position of vulnerability of the victim were utilised, it is a case of aggravated human trafficking. (Weatherburn 2021, 58–61, see also Weatherburn 2019.) This goes to show, again, that a broader definition has made it possible to address the issue on a completely different scale than in Sweden, for example (see also Länsstyrelsen Stockholm 2017).

In the Belgian court cases of labour exploitation (N=47) analysed by Weatherburn (2021, 63), the situation of the individuals has been analysed comprehensively. In their work, the courts and prosecutors have taken advantage of the various indicators on whether conditions related to remuneration and working conditions are contrary to human dignity. With regard to the constituent elements, the significant factors to consider concern the victims' working conditions, accommodation, travel and identity documents, their freedom of movement, wages and physical integrity. According to Weatherburn, in order for a case to qualify as exploitation, there must be evidence of more than one of the aforementioned indicators in the same case. Attention must also be paid to the living conditions and accommodation of the person, and to whether they have had access to health care and subsistence. Overall, the focus is very much on the totality of the situation, not just the working conditions (Ibid.)

7

Conclusions and assess- ment of the realisation of criminal liability and victims' rights

Next, we will analyse the measures taken in Finland against labour trafficking and exploitation and discuss the factors that have impacted the current state of affairs. As shown in this review, the situation concerning labour trafficking in Finland is in many ways exceptional compared with the other Nordic countries.

WE FIND that there are some key factors impacting this, and we will discuss these below. The situation in Finland remains, however, somewhat conflicting: the issue of labour trafficking has started to become acknowledged and addressed, but many gaps remain in the co-operation among the authorities, and the realisation of criminal liability is incomplete. We conclude by discussing the needs to develop, in particular, multi-authority cooperation in Finland.

Public awareness of labour exploitation started to grow and national measures against it first emerged in Finland at the turn of the millennium. The exploitation of migrant labour came to be acknowledged both in legislation – in the form of extortionate work discrimination – and in various action plans and policies. However, the concept of migrant labour exploitation was not defined through the phenomenon of human trafficking at this point. Coming into the 2010s, the understanding of the many forms of human trafficking started to expand, including the understanding that labour exploitation could actually be one form of human trafficking. As we see it, both the National Rapporteur on Trafficking in Human Beings as well as research have played a part in widening the perspective.

The National Rapporteur on Trafficking in Human Beings has had a key role in raising awareness of human trafficking and related crimes in Finland. The National Rapporteur on Trafficking in Human Beings is able to bring matters to the Parliament for discussion through the reports that the Non-Discrimination Ombudsman (previ-

ously Minority Ombudsman) submits to the Parliament. In our view, this is one of the most important mechanisms that has advanced the concrete development of anti-trafficking action in Finland. Many of the recommendations suggested by the National Rapporteur in the report have led to actions, even though their realisation has sometimes been time-consuming. The independent, autonomous position of the National Rapporteur on Trafficking in Human Beings and their possibility to submit issues for Parliamentary discussion mean that the Finnish reporting function stands out from the rapporteurs in, for instance, the other Nordic countries. The role of the National Rapporteur on Trafficking in Human Beings also explains, at least in part, the fact that Finland is ahead of the other Nordic countries, especially in addressing labour trafficking.

In addition, more research studies have been conducted in Finland than in the other Nordic countries on the topic of labour trafficking and exploitation in recent years. Research on the subject started relatively early compared with other European countries. The research studies have discussed, for example, the challenges of conducting research on human trafficking and labour exploitation (Jokinen et al. 2011; Jokinen 2012; Alvesalo et al. 2014). Alvesalo and Jauhainen (2006) studied labour crime investigations, and they found the level of appreciation for labour crime investigation to be low. They also found that the unit investigating the case – whether it was a financial crime unit or a violent crimes unit – affects the emphasis and progress of the case (Alvesalo et al. 2014; Ylinen et al. 2020). Studies have also shown that the title of human trafficking, the definition of forced labour and the concept of extortionate work discrimination are challenging to define, and they overlap to a certain degree which have made criminal investigations more difficult. (Nuutila & Melander 2008, 1279; Soukola 2009; Roth 2010; Kaikkonen 2015; Ollus 2016a; Kimpimäki 2021; Koivukari et al. 2022.) Some representatives of criminal investigation authorities have also expressed being less motivated to conduct complex investigations when such lenient sentences are passed for the offences (as is the case for extortionate work discrimination, for instance) (Jokinen et al. 2011; Jokinen 2012; Alvesalo et al. 2014; Ollus 2016a).

Several successful investigations on human trafficking cases have been carried out in Finland, but human trafficking remains such a rare offence that the head investigator and prosecutor are often faced with the issue for the first time. This results in challenges in conducting the investigation. (Ylinen et al. 2020, 57–60.) A more recent study on legal practice similarly reveals how human trafficking and extortionate work discrimination are not always identified in the framework of financial crime in the pre-trial investigation stage. De-

mands are made for the confiscation of proceeds of the crime only occasionally, even when they would be justified and the case concerns financially profitable operations. Confiscation of assets also takes place very rarely during the pre-trial investigation, as the criminal investigation is often complex to start with, and the parties concerned are unwilling to complicate it more with details connected to the proceeds of the crime. It has no direct impact on whether the offence is punishable either. Furthermore, corporate criminal liability is rarely applied. (Koivukari et al. 2022.)

Research has helped to expand the awareness and understanding of the phenomenon of exploitation of migrant labour and its manifestations, and it has in part contributed to reducing the misunderstandings and stereotypes that prevail around human trafficking. With the help of the reports by the National Rapporteur on Trafficking in Human Beings, Finland has seen the development of a wide interpretation of the provisions on human trafficking and the definition of forced labour. This has contributed to labour exploitation cases proceeding in the criminal process under the title of trafficking in human beings, which has been proven much more complicated in the other Nordic countries. A similar informational basis or wide understanding of forced labour has not existed in the other Nordic countries.

In our understanding, the fact that little research-based information has been available in the other Nordic countries has led to a situation where initiating authority action against labour exploitation has been more difficult, and there is little legal practice on labour trafficking. Without research-based information and critical debate, the understanding of the forms, dimensions and definition of labour exploitation and trafficking will remain limited and undefined. We argue that this applies to Sweden in particular, where there has until very recently been very little action against labour exploitation. Another factor that has made tackling exploitation more challenging in Sweden is that human trafficking has widely been understood as sexual exploitation and a form of violence against women, which excludes labour-related exploitation to a large degree.²¹

In Finland, the police and the border guard have investigated labour exploitation and trafficking offences since the legislation entered into force, that is for almost 20 years. In cases involving human trafficking for the purpose of forced labour which have been investigated, a sentence for trafficking in human beings has only been passed in 11 cases. Even though the number is higher than in all the other Nordic countries combined, the threshold for the application of the law can still be considered high (e.g., Koivukari et al. 2022; Kimpimäki 2021; Kaikkonen 2015). According to our assessment, the exceptional situation in Finland is also explained by the introduction

²¹ However, there have been recent developments in this field in Sweden, which include the establishment of the Delegation against Work-related Crime, as well as new A-krim centers in which different authorities work together against work-related crime (see *Delegationen mot arbetslivskriminalitet 2023*; *Regeringskansliet 2022*).

of labour inspectors specialised in monitoring the use of migrant labour in Finland in the early 2000s, known as ‘foreign inspectors’. Individual labour inspectors have actively brought up shortcomings and examples of exploitation that they have detected, even though human trafficking as such has not fallen under the notification obligation of occupational health and safety authorities. The police and the National Prosecution Authority have dedicated professionals, who have investigated cases of exploitation under the title of human trafficking. We find that legal practice on labour trafficking has evolved in Finland in the past 10 years, thanks to the active efforts of these individual public officials in particular.

Victims of human trafficking – irrespective of the form of exploitation they have faced – have been entitled to assistance and support offered by the state since 2006. The number of victims seeking help from the National Assistance System for Victims of Human Trafficking has increased from year to year. The number of victims of labour trafficking has exceeded that of victims of other forms of exploitation several times through the years. In recent years, the four NGOs that provide help to victims of human trafficking (Four-Leaf Clover Associations) have also supported victims of human trafficking and exploitation increasingly. Victim Support Finland offers services that specialise in issues of human trafficking and exploitation, which have been particularly important in advocacy work for the rights of labour trafficking victims and in making their voices heard, especially since 2015.

It seems that in Finland, the ability to tackle labour trafficking and support the victims is, in many ways, better than in the other Nordic countries. Finland has succeeded in combating exploitation, at least to some degree, and the phenomenon is widely recognised. However, several challenges connected to criminal investigation processes and criminal liability have drawn public attention recently (HS 25 April 2021; see also HS 4 March 2022). Following the Helsingin Sanomat article in 2021, the Office of the Chancellor of Justice initiated an assessment process on whether the police acted without delay in the cases and, in particular, whether the constituent elements of the offences of human trafficking and related offences have been identified in the decision-making process concerning the launch of the criminal investigation, its discontinuation and restrictions, as well as in the consideration of charges. The decision was based on the review of 50 cases in which a criminal investigation by the police was either pending or had been completed, and unlawful procedure was found in 12 of them. It is noted that the anti-trafficking measures within both the police and the prosecutor’s office need improvement. The appropriate identification of the victims also contributes to the

prevention of crime and human trafficking. It is equally essential, according to the decision, to complete the criminal investigation without delay and comprehensively, so that criminal liability is ultimately realised. The Chancellor of Justice points out that this requires action against human trafficking to be developed in the long term and in a variety of ways, the assumption of responsibility, as well as resources. (Office of the Chancellor of Justice 2021.)

Koivukari and colleagues (2022) assess, based on legal analysis, that there are problems in the realisation of criminal liability, in particular when it comes to labour trafficking. This is, to some extent, connected to the lack of clarity of the concept of forced labour, and to its various interpretations in courts of law. It is also relevant in defining the scope of application of provisions concerning extortionate work discrimination. Moreover, according to the researchers, the status and conditions of the injured party and the power relationship between the parties are not understood or considered adequately. (Ibid. 99, 110–111.) The investigation of criminal proceeds and cooperation in the pre-trial investigation phase should also be developed to consider the nature of labour trafficking and extortionate work discrimination as financial crime, and to make sure that the proceeds of crime can be confiscated. This is significant also for the effectiveness of crime prevention in relation to human trafficking offenses. (Ibid. 238–240.)

When assessing the Finnish measures for combatting labour exploitation and trafficking, it can be concluded that even though the phenomenon has been identified relatively early in Finland and measures have been taken to address it, the anti-trafficking actions must be further intensified. In addition to the realisation of criminal liability, the main challenges are linked to multi-authority cooperation. To strengthen the case law, further training for relevant authorities is also needed, as suggested by Koivukari and colleagues (2022). Measures taken in 2021 concerning the specialisation of the police and improved resources for occupational safety and health are also likely to improve the realisation of criminal liability. Currently, Finland still lacks systematic, structural multi-authority measures for the specific purpose of combatting labour exploitation (Pekkarinen et al. 2021).

Measures against the exploitation of migrant labour require solid structural cooperation by the labour inspectors, the police, the tax administration and other key actors. More efficient multi-authority cooperation promotes the realisation of criminal liability and victims' rights, and it also facilitates addressing less serious forms of exploitation proactively (see also Pekkarinen 2021; Raunio et al. 2022). Efficient communication of information and the development of centralised analytical activities will also make it possible for the various authorities to cooperate. Furthermore, it will help to allocate super-

vision and resources to high-risk areas. (See also Kuukasjärvi et al. 2021.) In recent years, the immigration services' rights to access information have been extended, and obligation compliance reports by the Grey Economy Information Unit have been introduced as a means of gathering information.

Finding a mutual aim and approach between the authorities and the third sector has also played a key part in combatting the exploitation and trafficking of migrant workers. The needs of persons who have been subjected to exploitation, i.e., the victims of crime, must be considered more efficiently. Victims of labour trafficking can receive help from the National Assistance System for Victims of Human Trafficking if their case is defined as human trafficking during the criminal process. In order to combat exploitation and ensure the realisation of criminal liability the rights of labour trafficking victims must be further strengthened, also in situations where the case is not defined as human trafficking during the criminal process (see also Pekkarinen 2021, 132) Moreover, encouraging migrant workers to disclose their experiences to authorities enables better detection of cases. Migrant workers' awareness of their rights in working life should also be increased. Organisations that help the victims as well as trade unions and occupational safety and health authorities have a central role in this.

Updates to the Aliens Act provisions on the residence permits of exploited workers are an important instrument in improving the rights of the victims, but a lot remains to be done to improve the identification of cases of human trafficking. The Finnish Police University College's project on operational models for supporting systematic management of multi-authority cooperation is of great importance. As a part of the project, the competences of different authorities and the exchange of information between them has been explored, and a model of multi-authority cooperation was developed (Kuukasjärvi et al. 2022). This model will help to instil supervision of labour exploitation into the structures, and it will mean that, in the future, it will be possible to assess and develop the activities based on experiences accrued. Systematic cooperation between authorities can help to ensure that exploitation cases are detected and investigated comprehensively, that offenders face criminal liability and that the rights of the victims are respected and fulfilled.

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