

REVIEW NEEDS OF THE LEGISLATION WITHIN THE ADMINISTRATIVE BRANCH OF THE MINISTRY OF JUSTICE

The penal provisions on trafficking in human beings and aggravated trafficking in human beings in the Criminal Code entered into force in the beginning of August 2004. The provisions are based on international obligations, i.e. on the Additional Protocol on Trafficking in Persons, supplementing the UN Convention against Transnational Organized Crime, and on the Framework Decision adopted in 2002. In addition, the draft version of the Convention of the Council of Europe on Trafficking in Human Beings, which was under preparation at that time, was taken into account during the preparation stage of the penal provisions. Trafficking in human beings and aggravated trafficking in human beings are in Finland considered to be very serious offences, which is manifested by the maximum sentences provided for them in penal code provisions, imprisonment for six and ten years respectively.

In 2006, the abuse of a person subject to sex trade was established as a criminal offence. A person, who by promising or giving compensation with a direct economic value makes a person subject to pandering or trafficking in human beings to consent to sexual intercourse or a comparable sexual act, commits the said offence. The punishment is a fine or imprisonment for at most six months.

Corporate criminal liability has also been attached to the human trafficking offences, to be applied in cases where trafficking in human beings is exercised by a legal person. The punishment to be imposed on a legal person is a corporate fine of at most 850,000 euros.

At the moment, the Parliament is handling the Government proposal 122/2011 concerning the implementation of the Convention of the Council of Europe on Trafficking in Human Beings, adopted in 2005. In the Government proposal, it is proposed the legislation in Finland to be amended so that a person may be imposed a prohibition to exercise a business, if the person in the course of his or her business activities has committed a human trafficking offence. A prohibition to exercise a business may be imposed for a minimum of three and for a maximum of seven years. Imposing a prohibition to exercise a business is possible also by virtue of the current legislation in cases where the human trafficking offence has been committed against a person younger than 18 years of age, but the scope of application of the provision is about to be extended to cover all human trafficking offences.

The provisions on trafficking in human beings have so far been applied in Finland only rarely. By the end of year 2011, nine cases involving one or several people being accused of trafficking in human beings had been dealt with by the courts. In five of these cases, the perpetrators were convicted of trafficking in human beings for sexual exploitation. In the other four cases, the charges of trafficking in human beings for labour exploitation were dismissed. Thus, no one has so far been sentenced for trafficking in human beings for labour exploitation in Finland.

Apparently, Finland struggles with the same problem as several other countries: it is difficult to identify the cases involving trafficking in human beings as well as the victims of such

cases. It is a complex problem with no easy solutions available. This problem is closely related, for example, to the education and resources of the authorities. The protection of injured parties and witnesses is of key importance, because exposing and detecting offences of this kind mainly depend on these persons' courage to sufficiently and truthfully talk about the offence. The difficulty of identifying the victims of trafficking in human beings is one of the central themes in the National Action Plan against Trafficking in Human Beings, published in 2005 and updated twice since. A related problem is the difficulty of providing accurate information on the situation and especially on the extent of trafficking in human beings in Finland. Research on this subject area has also picked up speed only during the past few years.

The situation is, however, showing signs of change. In 2011, 28 reports concerning trafficking in human beings and seven reports concerning aggravated trafficking in human beings were recorded. These numbers clearly exceed the number of cases involving trafficking in human beings that have been investigated in the previous years. The increased number of reported cases has not yet been visible in the courts. The reason behind the increased number of cases is unclear for the time being. Neither do we have information on, for example, how many of these new trafficking in human beings cases are sexual exploitation cases and how many labour exploitation cases.

In Finland, trafficking in human beings has for a long time been primarily associated with sexual exploitation. This way, human trafficking offences are connected to pandering offences. The partial overlap of provisions concerning human trafficking and pandering offences has led to problems in separating these two offences from each other. It is considered possible that potential human trafficking offences are handled as pandering offences in the criminal proceedings.

Attention has, however, lately been paid also to trafficking in human beings for labour exploitation. In this connection, the ambiguity of the concept of "forced labour", used in the international obligations and therefore also in the Criminal Code, has also attracted some attention. It has also been considered necessary to clarify the distinction between trafficking in human beings and extortionate work discrimination, which is established as a criminal offence in Chapter 47, section 3 a of the Criminal Code. Cases concerning extortionate work discrimination have been dealt with more often than before in the criminal proceedings, and features typical of trafficking in human beings have been observed in many of them.

Observations concerning the application practices of the penal provisions do not, as such, necessarily mean that the provisions need to be amended. Many practical circumstances may affect the choice of the offence to be investigated in a given situation. Obtaining evidence for human trafficking offences is time-consuming and requires a lot of resources. In order to detect a human trafficking offence, contacts with the victim's home country may be necessary, which in turn may cause some additional difficulties in the detection process.

Neither is it in any way exceptional that the application of new penal provisions, in this case those concerning trafficking in human beings, takes shape during the first couple of years of application. The interpretation of the provisions is governed by the formation of case law, which in the case of human trafficking offences has taken place exceptionally slowly. Awareness of the contents of the penal provisions grows and the understanding of their scope develops gradually, for example based on education and views presented in the legal literature.

In April 2011, the Directive on Trafficking in Human Beings was adopted in the European Union, replacing the Framework Decision of 2002. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 April 2013. In the course of the assessment of the Directive, a need to examine the correspondence between Article 2 of the Directive and the provisions on trafficking in human beings in the Criminal Code has come up. Begging and exploitation of criminal activities are specifically mentioned in the Article. In addition, the phrasings concerning forced labour, forced services and slavery have to some extent been changed in comparison to the Framework Decision. Some of the Articles in the Directive concern assistance and support for victims of trafficking in human beings, and the organisation of these services and the needs to develop these services are being assessed within a law drafting project led by the Ministry of the Interior. It has been assessed that the Directive does not entail any other legislative amendments.

Although the Finnish legislation with the above mentioned reservations already complies with the requirements set out in the international obligations, this does not mean that there is no room for improvement in the measures against trafficking in human beings, both in respect of the legislation and the practices. In November 2011, the Ministry of Justice set up a working group to deal with the questions relating to trafficking in human beings in the administrative branch of the Ministry of Justice. The term of the working group will expire in September 2012. Thereafter, the report of the working group will be circulated for comments, and based on the comments a Government proposal including the proposed amendments to the legislation will be drafted and submitted to the Parliament.

The tasks of the working group set up by the Ministry of Justice are as follows:

- 1) To examine the criminalisation of trafficking in human beings in the light of the Directive and to draft the necessary amendments.
- 2) To assess the needs to amend the legislation when it comes to the distinction between trafficking in human beings and pandering, and to draft the necessary amendments.
- 3) To review the questions relating to the status of object person of pandering as an injured party, including the needs to clarify the legislation in this respect. Object persons of pandering offences do not usually have the status of an injured party in the criminal proceedings, but instead they are regarded as witnesses. It has been considered that giving the status of an injured party to the object persons of pandering offences would improve their standing in the criminal proceedings.
- 4) To review the legal relevance of the consent of a victim of trafficking in human beings, including the possible needs to clarify the legislation. Contrary to the international criminalisation obligations, there are no provisions in the Criminal Code on the legal relevance of the victim's consent when assessing exploitation in connection to a human trafficking offence. For the time being, legal science and case law have been applied when dealing with this question.
- 5) To evaluate the needs to amend the legislation concerning the distinction between trafficking in human beings and extortionate work discrimination, and to draft the required amendments to the legislation.
- 6) To examine the concept and status of "forced labour" in the context of trafficking in human beings.
- 7) To review the practices relating to the protection of victims of trafficking in human beings and their family, witnesses and other people involved in the processing of human trafficking offences, and to draft the necessary proposals for the development of the practices. The Finnish legislation includes a lot of provisions on the protection of persons involved in the criminal proceedings, but there may be some room for improvement when it comes to the sufficient and comprehensive application of these provisions.