



NON-DISCRIMINATION

OMBUDSMAN

YHDENVERTAISUUSVALTUUTETTU
DISKRIMINERINGSOMBUDSMANNEN
OVTTAVEARDÁSAŠVUODÁÁITTARDEADDJI

Statement

1 (6)

28.2.2023

VTDno-2023-333

The Special Rapporteur on trafficking in persons, especially women and children

Call for input Trafficking in Persons and protection of refugees, stateless persons and internally displaced persons (IDPs)

Statement of the Non-Discrimination Ombudsman: Trafficking in persons and protection of refugees

The Non-Discrimination Ombudsman is an autonomous and independent authority. The task of the Ombudsman is to promote equality and to prevent discrimination. The Ombudsman also supervises removal from the country and has two rapporteur roles: the National Rapporteur on Trafficking in Human Beings and since 2022, the National Rapporteur on Violence against Women. The Ombudsman further works towards improving the rights and status of foreign nationals.

As the National Rapporteur on Trafficking in Human Beings, the Ombudsman has followed Finnish migration policy over the years. Findings in this statement are based on observations, studies and reports by the Ombudsman.

The Non-Discrimination Ombudsman expresses her gratitude to the Special Rapporteur on trafficking in persons, especially women and children, for collecting inputs on the topic. The Non-Discrimination Ombudsman would like to express her willingness to continue cooperation with the Special Rapporteur in the future.

Work of the National Rapporteur on Trafficking in Human Beings

As National Rapporteur, the Non-Discrimination Ombudsman follows action against human trafficking in Finland, human trafficking at large, compliance with international obligations and the effectiveness of national legislation. The Rapporteur issues suggestions, recommendations, statements, and advice and follows the implementation of the rights of victims.

The National Rapporteur submits an annual report to the Government and an extensive evidence-based report with recommendations to Parliament every four years. The Rapporteur has raised the problems in residence permit practices in the reports to the Parliament in 2018 and 2022, and in annual reports in 2016 and 2020.¹

The National Rapporteur also produce other reports and has produced two reports lately: on the application of the principle of non-punishment of victims of human trafficking in Finland (2022), and on the residence permit practice relating to victims of human trafficking (2021). In 2017, the Rapporteur has also produced a memorandum on the practice concerning the application of the Alien's Act concerning women of Nigerian origin in Finland who have been subjected to trafficking for sexual exploitation.

In her capacity as the National Rapporteur on Trafficking in Human Beings, the Non-Discrimination Ombudsman has the right, confidentiality provisions notwithstanding, to receive information from the authorities. The right to receive also classified information enables the Rapporteur to get a comprehensive view of the phenomenon and its developments as well as to detect deficiencies in the efforts against human trafficking. The National Rapporteur may also provide legal counselling and, in exceptional cases, assist victims in court cases.

The study of the residence permit practices concerning victims of human trafficking

In 2021, the Non-Discrimination Ombudsman carried out a study on the residence permit practices concerning victims of human trafficking², funded partially by the Ministry of the Interior and the Ministry of Economic Affairs and Employment. The study examined the types of cases in which victims of trafficking in human beings were identified, and how the

¹ English translation of the publications of the Non-Discrimination Ombudsman can be found online <https://syrijinta.fi/en/publications> Links to the reports of the Non-Discrimination Ombudsman to the Parliament [2018](#) and [2022](#). Annual report 2016 is available also in English, 2020 report in Finnish and Swedish.

² Summary of the study on the residence permit practice is included in the Ombudsman's report to the Parliament (pages 84-89).

Aliens Act was applied in processing their residence permit applications. The main focus was on studying the application of the residence permit for victims of human trafficking (section 52a) and the residence permit granted on individual compassionate grounds (section 52) and how the line was drawn between the sections of law. A key aspect was to investigate how the vulnerability of victims of trafficking in human beings was assessed and which factors were deemed significant in the assessment of vulnerability. The study did not focus on decisions to grant international protection (refugee status or subsidiary protection). Trafficking in human beings is seen as form of persecution and thus can be a reason to obtain international protection.

In legislation, Finland fully complies with the requirements of the Article 14 of the Council of Europe Convention and the Residence Permit Directive (2004/81/EC). In 2006, a special provision (section 52a) was included in the Aliens Act concerning a temporary or continuous residence permit granted for victims of human trafficking. A temporary residence permit may be issued if the residence of the victim of trafficking in human beings is justified on account of criminal proceedings. A residence permit may be issued on a continuous basis if the victim of trafficking in human beings is in a particularly vulnerable position. Victims of human trafficking may also receive international protection (sections 87–88) or they may receive a continuous residence permit on individual compassionate grounds (section 52). A residence permit granted on individual compassionate grounds can be received due to vulnerable position, for instance. To receive a continuous residence permit for a victim of human trafficking, a particularly vulnerable position is required.

Victims of human trafficking only rarely receive a continuous residence permit based on their particularly vulnerable position. The threshold for deeming that a victim of trafficking in human beings is in a particularly vulnerable position was remarkably high. The assessment of the vulnerability of a victim of human trafficking is not consistent with the provision in accordance with section 52 of the Aliens Act, either.

The study also showed that only a few temporary residence permits had been granted to victims of human trafficking for reasons related to a criminal investigation into a trafficking offence. In cases, in which the presence of the victim of human trafficking during pre-trial investigation was not considered necessary, the victim was not granted a right of residence. The right of residence is necessary for the victims of human trafficking as the injured parties in the offence to be able to exercise their rights in the criminal procedure.

The Non-Discrimination Ombudsman recommended changes to the Aliens Act based on the research:

- The Aliens Act must be changed so that more victims of human trafficking can meet the requirements for granting a continuous residence permit.
- The right of victims of human trafficking to remain in Finland for the whole duration of the criminal procedure must be ensured.

Forced returns may expose victims of human trafficking to further victimisation

A key issue in returns of victims of human trafficking is taking account of how the victim can access help and support in the country of return. The goal is to prevent the victim from becoming a victim of human trafficking again. This is required by Article 4 of the European Convention on Human Rights, according to which states have an obligation to protect people from slavery and forced or compulsory labour.

In its decisions, the Supreme Administrative Court has imposed two obligations on the executive authority, in order to ensure that the victim's access to an assistance system in the destination country is realised. With the victim's consent, the executive authority must notify a party specialising in assisting victims in the destination country about the victim of human trafficking being returned. If the victim of human trafficking being returned does not consent to this, the executive authority must offer the victim the contact information of parties that provide assistance in the destination country.

The Non-Discrimination Ombudsman investigated the identification of vulnerability in persons being returned and taking this into account in the preparation and enforcement of removal from the country in 2020–2021, in a project funded by the Asylum, Migration and Integration Fund (AMIF). According to the information received during the project, victims of human trafficking rarely consent to their information being handed over to the authorities in the destination country. Notifying the receiving country and receiving confirmation of the victim being admitted within the scope of services may nevertheless be the only factor protecting the victim of human trafficking from exploitation.

Based on the information received from authorities during the project, the Non-Discrimination Ombudsman was left with the impression that the obligation laid out in the Supreme Administrative Court's practice guarantees the victim of human trafficking an opportunity to access help only in rare cases. There are two reasons for this. First, gaining the consent of the victim of human trafficking for the disclosure of information is challenging. Second, the decision of the Supreme Administrative Court was considered problematic due to practical matters as well as problems with jurisdiction, in addition to the fact that the obligation does not in reality guarantee the victim a right to access help in the

destination country. This means that the assistance provided by the obligation is often only superficial. The current situation exposes the victims to further victimisation.

The Non-Discrimination Ombudsman considers it important that in the work against human trafficking, structures are created for cross-border referrals that ensure that victims of human trafficking removed from a country also have access to assistance in the destination countries in return situations. The EU anti-trafficking networks are discussing a transnational referral mechanism for identifying victims of human trafficking and referring them to assistance. The goal should be taking the unique situation of a victim of human trafficking into account and referring her to concrete support measures in a return situation. **Victims of human trafficking must not be returned to a country where they are at risk of being victimised again.**

Other remarks on trafficking in human beings and international protection

Persons with disabilities: The Non-Discrimination Ombudsman finds it important that the rights of trafficked persons with disabilities are respected in asylum and international protection procedures. The Convention on the Rights of Persons with Disabilities (CRPD) must be implemented in the international protection procedures. Understanding the variety of disabilities and making reasonable accommodations are required, as well as equality planning by the authorities.

Children: In the work to promote the rights of foreigners in recent years, the Ombudsman has observed and been informed about an increasing number of cases, in which the fundamental rights of a child are not implemented. Based on the Ombudsman's observations, the statements of social workers or child welfare authorities do not appear to have any real significance when the decision-makers assess the best interests of the child. The best interest of the child is not always properly evaluated or given importance when for example a single mother with a very young child or children would be returned to a country of origin or to another EU Member State.

In matters related to foreigners, the best interests of the child seem to be a criterion that is only very rarely given any real importance. This applies to victims of trafficking but is a much wider problem.

Prevention of trafficking: The number of asylum seekers grew rapidly in Finland, as in other EU Member States, in 2015. Negative decisions and staying in Finland as irregular migrants exposed many asylum seekers to exploitation and trafficking in human beings. Practice has shown that some persons without a residence permit will stay in Finland,

even in a poor situation. Therefore, there must be other available solutions to the situation than the enforcement of the refusal of entry. Regularising the residence of persons who work in Finland, have lived here for years and are integrated into the society would, from the society's viewpoint, be a more reasonable alternative than allowing the shadow society and possibilities for exploitation grow.

Based on the experiences after 2015, the Non-Discrimination Ombudsman finds the efforts to prevent trafficking of Ukrainian refugees very important. Finland is allowing Ukrainian holders of temporary protection status to register as residents of municipalities, which entails them access to ia. employment services and full healthcare services.



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