

Children as victims of human trafficking

Policy brief



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NON-DISCRIMINATION OMBUDSMAN

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The Non-Discrimination Ombudsman's study "Children as victims of human trafficking" examined the kinds of trafficking offences committed against children and prosecuted in Finland, as well as the sentences given for them. The study is based on verdicts of guilty and not guilty given by the district courts and courts of appeal in human trafficking cases in 2012–2024.

Key results of the study:

- Based on the charges, sexual exploitation was the most common form of abuse in human trafficking offences committed against children. The second most common form of exploitation was subjecting the children to conditions that violate human dignity, followed by forced labour.
- The materials contained a total of 35 charges, only just over half of which resulted in a conviction.
- In human trafficking offences committed against a child, the typical offender was an adult man and the typical victim a teenage girl, and their age difference was significant in some cases.
- The exploitation had occurred almost entirely in Finland, and only very few international connections were described in the charges. Three quarters of the injured parties and slightly over half of the perpetrators were Finnish.
- The exploitation of the children described in the charges consisted of serious, protracted and repeated violence, which sometimes involved other people in addition to the person charged with the human trafficking offence.
- The definitional elements of human trafficking offences were not always interpreted in a child-oriented manner. The courts did not adequately recognise the unequal power dynamic between the child victims and the adults exploiting them.
- The courts differed in their evaluation of the definitional elements.

Introduction

The human trafficking of children is a serious form of abuse, which nevertheless often remains undetected. Minors are vulnerable due to their age alone and cannot defend themselves or seek help like adults. The children abused in the context of human trafficking are not usually aware that they are victims of trafficking in human beings, and even professionals specialising in phenomena related to violence have had difficulties with identifying the abuse.

Not much information is available on child trafficking in Finland, and the subject has not been studied much. The majority of human trafficking victims identified in Finland have been adults. The number of minors who have sought help from the National Assistance System for Victims of Human Trafficking has remained quite low. In 2016–2020, the Assistance System had an average of 15 new underage clients per year, corresponding to less than ten per cent of the total.

Most children referred to the National Assistance System for Victims of Human Trafficking have been exploited abroad and have usually been identified as victims of human trafficking in the asylum procedure. They have often been subjected to several forms of trafficking in human beings. For example, the child may have been forced to marry at a very young age but also subjected to forced labour and commercial sexual exploitation. Hardly any Finnish children have been referred to the Assistance System. Rather, such victims have been identified in other contexts or only after reaching adulthood. The exploitation was usually committed in Finland, and the perpetrator was someone close to the child or young person. The child's close relationship to the abuser hinders the detection of the case and its identification as human trafficking.

Legal framework

Finland made trafficking in human beings punishable as a separate offence in an amendment to the Criminal Code in 2004. The offence of trafficking in human beings was added to chapter 25, Offences against personal liberty, which criminalises trafficking in human beings (section 3) and aggravated trafficking in human beings (section 3a). The definitional elements of trafficking in human beings have three components: the means, the act and the purpose of the act, which must all be met. If the victim is under 18, however, use of the means described in the definitional elements of human trafficking offence is not required. Also, the victim's minority is one of the grounds for deeming trafficking in human beings to be aggravated.

The Criminal Code's definition of trafficking in human beings corresponds with the definition of the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children and the EU Directive on preventing and combating trafficking in human beings (2011/36/EU). In its legislation and international treaties, Finland has committed to preventing trafficking in human beings, assisting and protecting its victims, and promoting international cooperation. Finland has also committed to the Council of Europe Convention on Action against Trafficking in Human Beings. Furthermore, Finland is bound by the UN Convention on the Rights of the Child and the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse.

Commercial sexual exploitation. The exploiter makes the child sell sex or sexual acts to a third party in exchange for money or other compensation. Pandering is a form of commercial sexual exploitation.

Children. As stated in the Convention on the Rights of the Child, persons up to the age of 18 are considered children. In the study, 'children' refers to all underage persons.

Criminal Code, chapter 25 Offences against personal liberty

Section 3 Trafficking in human beings

A person who,

- 1) by taking advantage of the dependent position or vulnerable state of another person or by pressuring another,
- 2) by misleading another person or by taking advantage of a mistake made by that person,
- 3) by giving payment to a person who has control over another person, or
- 4) by receiving such payment,

takes control over another person, recruits, transfers, transports, receives or accommodates another person for the purpose of subjecting the person to sexual abuse referred to in chapter 20, section 10, subsection 1, paragraph 1 or comparable sexual exploitation, forced labour or other conditions that violate human dignity, or to removal of organs or tissues shall be sentenced for trafficking in human beings to imprisonment for at least four months and at most six years.

A person who takes control over another person under 18 years of age or recruits, transfers, transports, receives or accommodates such a person for a purpose mentioned in subsection 1 shall also be sentenced for trafficking in human beings, even if none of the means referred to in subsection 1, paragraphs 1–4 have been used.

An attempt is punishable.

Section 3a Aggravated trafficking in human beings

If, in trafficking in human beings,

- 1) violence, threat or deception is used instead of or in addition to the means referred to in section 3,
- 2) a grievous bodily injury, a serious illness or a state of mortal danger or other particularly grave suffering comparable to these is intentionally or through gross negligence inflicted on another person,
- 3) the offence is directed against a child under 18 years of age or against a person whose ability to defend himself or herself is substantially diminished, or
- 4) the offence is committed as part of the activities of an organised criminal group referred to in chapter 6, section 5, subsection 2, and the offence is also aggravated when assessed as a whole, the perpetrator shall be sentenced for aggravated trafficking in human beings to imprisonment for at least two years and at most ten years.

A person who enslaves another person or keeps another person in servitude, or transports slaves or trades in slaves shall also be sentenced for aggravated trafficking in human beings, if the act is aggravated when assessed as a whole.

An attempt is punishable.

Premises for the study

The Non-Discrimination Ombudsman studied the kinds of trafficking offences against children prosecuted in Finland and the types of sentences given for them. The Ombudsman collected the judgments given by district courts and courts of appeal in 2012–2024 in cases of human trafficking and aggravated human trafficking with children as victims. Based on the judgments, the Ombudsman examined the forms of exploitation in question, the factors taken into account in the legal assessment of the cases, and how the children’s special need for protection had been recognised.

The study materials consisted of 15 cases involving a total of 35 charges for trafficking in human beings or aggravated trafficking in human beings. A total of 25 judgments were issued in these cases, 16 by the district courts and 9 by a court of appeal.

Thirteen of the charges resulted in a conviction for trafficking in human beings or aggravated trafficking in human beings. Offenders were convicted on secondary charges, such as pandering or aggravated assault, in six of the judgments. Proportionally, this means that just over half (54%) of the charges resulted in a conviction. Sixteen of the charges, that is 46 per cent, were dismissed. This is an exceptionally high number. Only about five per cent of all criminal charges brought in 2018–2022 were dismissed on average in Finland.

The reasons for dismissing charges examined in this study included insufficient evidence and questions related to the interpretation of the definitional elements. The appeal process was still ongoing in three of the cases at the time of publication of this study, so the number of convictions and exonerations may still change.

There were 24 offenders and 21 child victims in the human trafficking cases involving children. The offender was usually an adult man (75%) and the child victim a girl (86%). Most of the victims were teenaged. In some of the cases, there was a remarkable age difference between the offender and the child victim.

Figure 1: Number of judgments

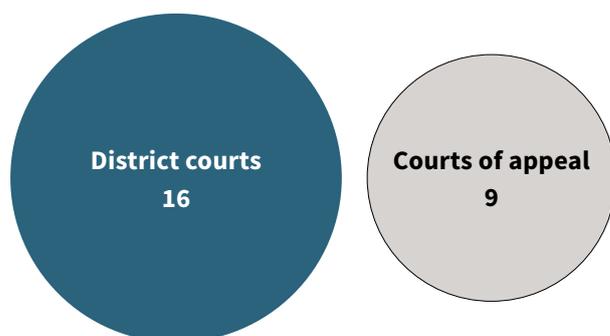


Figure 2: Number of charges, convictions, and dismissals

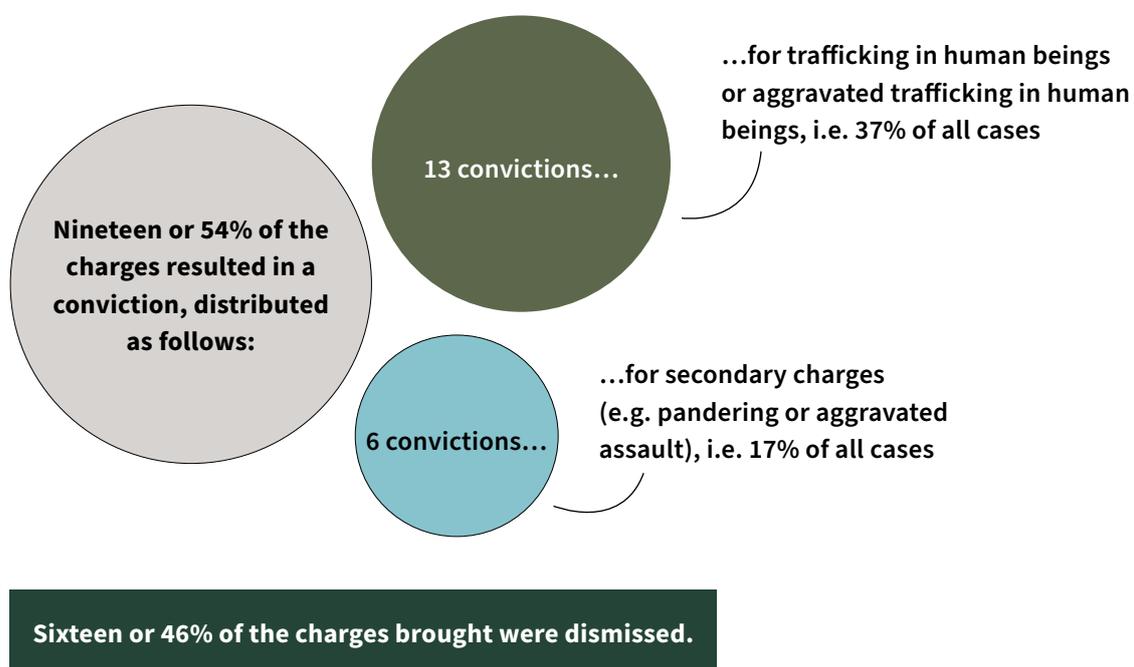


Figure 3: Number and gender of offenders and victims



The need for child-oriented approach

According to many of the charges, there was a close relationship between the exploiter and the child, usually an intimate relationship or other close relationship. The serious nature of the exploitation of these children was manifested in the long duration of the exploitation, repeated use of violence against the child, and damage to the child's health.

The number of different offences listed in the charges also indicates the seriousness of these cases. In addition to trafficking in human beings, the offenders were accused of sex offences, such as aggravated rape or aggravated sexual abuse of a child. According to the charges, such abuse had been committed almost entirely in Finland, and very few international connections were described. There were no signs of organised crime in the materials.

Sexual violence. In the study materials, sexual abuse was the most common purpose of exploitation in the charges for trafficking in human beings. The charges for sexual abuse were the most successful and usually led to a conviction for either trafficking in human beings or the secondary charge of pandering. All the victims of sexual abuse were girls.

According to the charges, these offences often involved using the child victim in different types of commercial sexual exploitation, such as selling sex, or performing sexual acts. The offenders had usually benefited financially from exploiting the child, but this was not always the case. The definitional elements of trafficking in human beings

do not require the perpetrator to receive monetary compensation for exploiting the child, even though this is common. In some cases included in the study materials, the child victim had been subjected to sexual abuse solely by the offender.

The sexual abuse was serious in many of the cases. This was manifested as acts leading to sexual intercourse, the long duration of the sexual abuse, the demeaning nature of the abuse or use of outright physical violence against the child, and several persons taking part in the abuse. According to some of the judgments, the child victims of commercial sexual exploitation had to receive numerous “customers”, in some cases as many as several dozens or even hundreds of them. It can put further strain on the victim of human trafficking if the inducement to commercial sexual exploitation takes place in the context of a intimate relationship.

Conditions that violate human dignity. The second most common purpose of trafficking in human beings described in the charges was subjecting the child victim to conditions that violate human dignity. Such conditions usually involved domestic violence or intimate partner violence, and several problems related to the interpretation of the evidence and definitional elements were evident in their judicial assessment.

In the study materials’ charges for trafficking in human beings, the conditions that violated human dignity usually occurred in connection with other purposes of exploitation. Only in two of the cases were the charges built entirely on conditions that violated human dignity.

Forced labour. According to the charges in the study materials, some of the children had been subjected to forced labour. The forced labour of children differed from that of adults. Adults in forced labour typically work for a company, whereas the children’s forced labour described in the charges typically consisted of household work or working for a closed community. The exploiter usually had a close or intimate relationship with the child.

In nearly all of the cases, forced labour occurred in connection with charges for sexual abuse and/or subjecting the child to conditions that violate human dignity. All of the charges for forced labour in the study materials were dismissed. It was especially challenging to obtain evidence in these cases, since household work or voluntary work in a closed community, does not generate evidence in the same way as adults working for companies, for example.

Unequal power dynamic. According to the study materials, the courts had particular trouble identifying the exercise of power and control, especially in the context of intimate relationships. Some of the underage girls were in intimate relationship with adult men who used many forms of intimate partner violence on them. In some of the judgments, the man was convicted of assault, for example, but the use of violence was not considered to have significance in the assessment of whether the definitional elements of trafficking in human beings had been met. These assessments appeared to focus excessively on individual incidents instead of looking at the unequal relationship and power dynamic between the child and adult as a continuum or process, as would be possible in the assessment of trafficking offences.

With regard to the definitional elements of trafficking in human beings, it is essential to examine the relationship between the parties to the criminal case as a whole and identify the factors and circumstances that can be exploited to make the child act as desired by the adult exploiter. It is especially problematic if no significance is assigned to the violence used by the exploiter. On the contrary, the use of violence should be one of the aggravating grounds for trafficking in human beings and should in any case be given significance, for example in the assessment of taking control over another person. It seemed that the children's need for protection and the need for a child-oriented approach were not sufficiently identified in examining the definitional elements of trafficking in human beings.

Means are not required but are assessed in connection with the act

The use of means is not required if the victim is a minor. In many of the cases in the study materials, the courts nevertheless discussed the child's dependent or vulnerable position, that is, means specified in the definitional elements, when assessing whether the definitional element of taking control over another person was met. Taking control over another person was one of the most common form of trafficking acts in the study materials.

The dependent or vulnerable position was used to express the child's vulnerability. In addition to fulfilling the method requirement, these means employed by the offender also had judicial significance in the assessment of the aggravated nature and reprehensibility of the act.

The charges discussed the vulnerable position of the child victim from diverse perspectives, such as by highlighting the close, trusting or intimate relationship between the parties, the age difference between them, and how difficult it was for the child to oppose the exploiter's will. The children were subject to a variety of factors conducive to vulnerability, such as stressful life experiences, sexual violence and mental health problems. In some of the cases, the child also relied on the offender for their basic needs, which increased the child's dependence on the offender.

Some of the judgments which led to a conviction assigned significance to these factors demonstrating vulnerability and the fact that the adult offender had exploited them to subject the child to abuse. However, the courts applied a clearly higher threshold to the definitional elements of trafficking in human beings, for example with regard to taking control over another person, than the prosecutors did. There was also variance between the judgments in how taking control over another person and the vulnerable position of the child victim was assessed.

Judging from the study materials, establishing the connection between the means and method of an offence has been difficult in legal practice, and it would seem that the child's status as a victim of human trafficking has not been interpreted in a child-oriented manner in a many of the cases. Since the use of means is not required if the victim is a minor, it should be easier to establish the criminal liability of a person exploiting a child than in the trafficking of adults. The Criminal Code must also be interpreted so that the definitional element of taking control over another person is met more easily in the case of children than adults.

The child's consent and strong agency assigned to the child

The premise for the criminalisation of trafficking in human beings is that the victim's possible consent is legally irrelevant when assessing the offender's guilt. This premise is especially clear if the trafficking victim is a child. Regardless of this, the child's possible consent to the exploitation was discussed in several cases in the study materials.

The courts had also assessed how well the child was able to oppose the exploiter's will or what possibilities the child had for acting differently. Some of the judgments made it clear that the adult is responsible for the situations related to the exploitation and the child's possible consent should not be given any legal significance.

On the other hand, some judgments assigned quite strong agency to the child, so that the grounds for the judgment could be read to imply that the child could have refused the exploitation and detached themselves from the exploiter's sphere of influence if they had wanted to. According to a few of the judgments, the child had already been subjected to commercial sexual exploitation in the past, which was considered to support the conclusion that the child was again acting of their own free will. Such justifications are highly problematic from the perspective of child protection. It is the premise of the Criminal Code and the international conventions against human trafficking and the sexual abuse of children that children require special protection from sexual violence and abuse. The child's possible prior experiences of commercial sexual exploitation must be understood to increase the child's vulnerability and not by any means to decrease it.

Conclusions – the protection of children under the Criminal Code must be improved

In an alarming number of the cases, the exploitation had lasted long before being found out. Such long periods of exploitation speak to the fact that the offender has been able to keep the child victims under their control for a long time without anyone noticing or intervening in the exploitation. The abuse and exploitation of children should be identified as early as possible.

The study materials showed incoherence in the legal practice, with the definitional elements of trafficking in human beings applied differently in cases with similar characteristics. The courts did not draw a clear line between the basic and aggravated forms of trafficking in human beings, or between trafficking in human beings and pandering. Neither was the assessment of the child victims' vulnerable position or consent, nor of the taking of control over another person, uniform between different courts.

There appear to be clear difficulties in enforcing criminal liability for trafficking in human beings. The high dismissal rate of cases with child victims is a surprising result, given that, according to the Criminal Code, the definitional elements of trafficking in human beings are easier to apply to children than adults.

The special protection afforded to children should be reflected in the interpretation and application of the definitional elements of trafficking in human beings. The study

materials nevertheless show that this is not the case. It is evident that the courts have had difficulties both with obtaining evidence of human trafficking offences and with their legal interpretation, and the definitional elements of such offences have not always been interpreted in a sufficiently child-oriented manner. In light of international and European regulations and guidelines, there are clear shortcomings in the realisation of the rights of the child in Finland, and the Criminal Code has not been used sufficiently to protect children from exploitation in the context of human trafficking.

Recommendations of the Non-Discrimination Ombudsman

1. The protection of children under the Criminal Code must be improved

- When a child has been subjected to commercial sexual exploitation, charges must be brought for aggravated trafficking in human beings.
- In addition to the main perpetrators of commercial sexual exploitation, the individuals who have bought sex from the child must also be brought to justice.
- The police, prosecutors, judges, and legal counsels must be trained in identifying the vulnerability of a child and taking it into account in the application of the definitional elements of trafficking in human beings.

2. Children's need for protection must be taken better into account in the interpretation of the definitional elements of trafficking in human beings, and the elements must be interpreted in a more child-oriented manner

- The definitional elements of trafficking in human beings must be interpreted in a child-oriented manner by taking the child's vulnerable position into account. The dominant position of adults over children must be recognised. The definitional element of taking control over another person must be found to be met more easily in the case of children than adults.
- An expert statement must be obtained on vulnerability and the consequences of the exploitation.

3. The exploitation of children must be identified and addressed at an early stage

- Child welfare workers and other professionals working with children and young people must be trained to recognise forms of human trafficking, taking into account the gendered nature of exploitation and violence and the diverse nature of the phenomenon.

4. Children must be taken into account in all measures taken to combat trafficking in human beings

- Children must be given special attention in action plans and measures to combat trafficking in human beings.
- Human trafficking must continue to be included as a form of violence in action plans concerning children, such as the Non-Violent Childhoods action plan. Intervening in exploitation and human trafficking, as well as measures to prevent re-victimisation, must be taken better into account in the implementation of such plans in the future.

5. More information and research is needed about child trafficking

The Non-Discrimination Ombudsman is an autonomous and independent authority tasked with promoting equality and addressing discrimination. The Ombudsman serves as the National Rapporteur on Trafficking in Human Beings. In addition, the Non-Discrimination Ombudsman serves as the National Rapporteur on Violence against Women and is tasked with monitoring the enforcement of removals from the country, and promoting the rights and status of foreign nationals.

As the National Rapporteur on Trafficking in Human Beings, the Non-Discrimination Ombudsman examines efforts to combat human trafficking in Finland. The Ombudsman monitors phenomena connected with trafficking in human beings and supervises Finland's compliance with international obligations and the effectiveness of national legislation.

The Ombudsman conducts reports, gives advice and recommendations, and participates in national and international cooperation as well as legislative and development projects. The Ombudsman can provide legal counseling to ensure the rights of victims of human trafficking. A requirement for independent reporting is the Non-Discrimination Ombudsman's extensive right to receive information, including confidential material.

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