

Article 22 of the Constitution of the ILO

Report for the period from 1 June 2014 to 31 May 2017 made by the Government of Finland
on the

Forced Labour Convention, 1930 (No. 29)

(ratification registered on 13 January 1936)

Direct request 2014.

The legislation on community service has been amended. The Act on Enforcement of Community-Based Sanctions (400/2015) entered into force on 1 May 2015. This Act specifies the various community-based sanctions that are applied, their characteristics and their essential features. Section 1 of the Act concerning its scope specifies that the Act applies to the enforcement of the following community-based sanctions imposed by a court:

1. community service;
2. monitoring sentence;
3. supervision to reinforce conditional imprisonment;
4. juvenile penalty.

The Act on Enforcement of Community-Based Sanctions is also applied in case of supervision of a suspended sentence, which is at the discretion of the Criminal Sanctions Agency. The aforementioned sanctions are provided for in Chapter 6 of the Criminal Code (39/1889): community service (section 11), monitoring sentence (section 11a), supervision to reinforce conditional imprisonment (section 10(2)) and juvenile penalty (section 10a).

Community service may comprise a minimum of 14 hours and a maximum of 240 hours. These numbers are directly equivalent to the number of days of imprisonment in the comparable prison sentence. For an offence committed while under the age of 21, community service may include particular assignments and programmes for enhancing social functioning, designed for young persons, and related support and guidance. For an offence committed while under the age of 21, it might be possible to deviate from the restriction of having no more than 30 hours of activities other than work in the community service imposed and from the requirement that work must constitute at least half of the duration of the community service. The purpose of the provision is to avoid sentencing young people to unconditional imprisonment and to better enable young persons to perform community service. No other amendments have been made to the provisions on community service.

I–IV.

1. Bringing into force of Protocol P029 to the ILO Forced Labour Convention

On 26 October 2016, the Finnish Parliament adopted the Government proposal concerning ratification of the Protocol to the Forced Labour Convention and enacted the Act on bringing into force the legislative provisions of the Protocol. The President of the Republic ratified the Protocol

on 18 November 2016. The instrument of ratification was deposited with the Director-General of the International Labour Organization on 27 January 2017. Under the Government Decree on bringing into force the Protocol to the Forced Labour Convention and on the entry into force of the Act on bringing into force the legislative provisions of the Protocol (126/2017), the Protocol to the Forced Labour Convention of 1930 made on Geneva on 11 June 2014 shall enter into force in Finland on 27 January 2018.

Even before the ratification of ILO Protocol P029, Finland had comprehensive provisions in place criminalising human trafficking and forced labour and providing for assistance for victims. Therefore the ratifying of said Protocol required no legislative amendments. However, Parliament did stipulate that the Government should if necessary extend the protection now given to victims of forced labour to victims of certain other offences less serious than human trafficking.

Legislation concerning the combating of human trafficking and assistance for victims

Finland's Government Action Plan against Human Trafficking 2016–2017 was published in 2016. Link to the publication website: <http://julkaisut.valtioneuvosto.fi/handle/10024/75563> (in Finnish). The Action Plan includes a specific measure entitled 'Detection of human trafficking in official proceedings'. This measure includes certain actions to be taken by the occupational safety and health authorities. The measure also includes an action that is the responsibility of the Ministry for Foreign Affairs: 'Update material intended for Finnish missions abroad, on the prevention of illegal immigration related to human trafficking during the visa and residence permit processes'. We should also note that Finland is participating in a project under the Nordic Council of Ministers' initiative to combat human trafficking where means related to corporate social responsibility are leveraged to prevent human trafficking and other labour-based exploitation.

Furthermore, the IOM has published a guide in Finnish and Swedish entitled 'Use of foreign seasonal labour in horticulture, berry growing and wild berry harvesting'. The purpose of the guide is to help employers and enterprises understand the nature of human trafficking, to identify its hallmarks and to address the risk of human trafficking in seasonal employment. The guide was prepared in cooperation with authorities and experts involved in combating human trafficking and with the relevant professional organisations. Link to web page about the guide (in Finnish): <http://iom.fi/fi/node/123>. Regarding berry pickers, the Ministry of Economic Affairs and Employment and the Ministry for Foreign Affairs are also parties to the berry companies' joint letter of intent covering matters such as the conditions for pickers in Finland and the reasonableness of charges made to foreign pickers.

Under Finnish immigration legislation, it is possible to grant a right of residence to victims of forced or compulsory labour who meet the residence permit conditions laid down in the Aliens Act (301/2004). In such cases, the following permits and grounds under the Aliens Act may apply depending on the circumstances: a residence permit for a victim of trafficking in human beings under section 52a; a residence permit under section 52d to a third-country national who has resided and worked in the country illegally; international protection under Chapter 6 or a residence permit under section 52 issued on compassionate grounds if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position.

If the conditions laid down in the Aliens Act are met, the right of residence in Finland is granted by the Finnish Immigration Service. Issuing a temporary residence permit for a victim of trafficking in

human beings under section 52a(1) requires that the person is prepared to cooperate with the authorities in apprehending those suspected of trafficking in human beings. Issuing a residence permit under section 52a(2) to a victim of trafficking in human beings in a particularly vulnerable position does not require cooperation with the authorities.

Finland has a system of assistance for victims of human trafficking provided for in the Act on the Reception of Persons Applying for International Protection and on Identifying and Assisting Victims of Trafficking in Human Beings (746/2011). The system of assistance facilitates the offering of advice, legal counsel, interpreter services, help with accommodation and income and eventual assistance with return to victims of human trafficking. In case of a victim of human trafficking who has a registered domicile in Finland, the relevant local authority is responsible for providing this assistance. In all other cases, the Joutseno Reception Centre is responsible.

Slavery and forced or compulsory labour are criminalised as trafficking in human beings punishable under Chapter 25 of the Criminal Code. The elements of trafficking and aggravated trafficking in human beings also include transferring and transporting the person. Under Chapter 25 sections 3–3a of the Criminal Code, trafficking in human beings is punishable by imprisonment for a minimum of four months and a maximum of six years, and aggravated trafficking in human beings by imprisonment for a minimum of two and a maximum of ten years. Attempted trafficking and aggravated trafficking in human beings are also punishable.

Extortionate work discrimination, the elements of which are quite similar to those of trafficking in human beings, is criminalised under Chapter 47 of the Criminal Code. Chapter 47 section 3a stipulates that it is punishable by a fine or imprisonment for a maximum of two years.

Link to the Aliens Act: <http://www.finlex.fi/en/laki/kaannokset/2004/en20040301.pdf>

Link to the Criminal Code: <http://www.finlex.fi/en/laki/kaannokset/1889/en18890039.pdf>

Other international obligations binding upon Finland concerning the combating of trafficking in human beings

Finland has also ratified other international conventions concerning the combating of human trafficking and implemented related EU obligations. Finland is bound for instance by Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA (Anti-trafficking Directive); and by Directive 2012/29/EU of the European Parliament and of the Council establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA (Victims' Directive).

In addition, Finland has ratified the 2000 Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime, in 2006. In 2012, Finland ratified the 2005 Council of Europe Convention on Action against Trafficking in Human Beings.

These Directives and Conventions also apply to combating forced or compulsory labour, and their implementation requires active measures to combat human trafficking.

Statistics and reports

It is difficult to estimate the number of victims of human trafficking subjected to forced labour, because not all cases are necessarily reported to the authorities. Also, it is sometimes difficult to distinguish between human trafficking and various other forms of labour-based exploitation tantamount to human trafficking. Having said that, we may note that the number of human trafficking offences reported to the police and the Border Guard in Finland in recent years has been a few dozen per year.

According to Statistics Finland, district courts issued six convictions for trafficking in human beings in its basic form in 2012 and three in 2013. The number of suspects convicted of aggravated trafficking in human beings was seven in 2006, five in 2008 and one each in the years 2011 to 2013.

The latest annual reports of The Finnish National Rapporteur on Trafficking in Human Beings can be found on the following links:

2015 (in English):

https://www.syrjinta.fi/documents/14490/0/Englanti_YHDENV_VUOSIKERTOMUS_2016.pdf/153ed14a-b602-457a-aa12-a07e9d372e01

2016 (in Finnish):

<https://www.syrjinta.fi/documents/10181/0/Vuosikertomus+2016/792ec552-e8ef-4beb-81f9-49b35f3720ae>

2. Forthcoming legislative amendments: Amending the Imprisonment Act and the Pre-Trial Detention Act

The Imprisonment Act (767/2005) and the Pre-Trial Detention Act (768/2005) are to be amended regarding benefits paid to prisoners. Parliament adopted the Government proposal concerning the amendment, which is scheduled to enter into force on 1 January 2018.

In the future, all prisoners will be paid a spending allowance for the duration of their imprisonment. In addition to the spending allowance, prisoners involved in activities – work, training or other – will be paid an activity allowance. Financial benefits will be more equally distributed across activities and types of institution. The amendments will also simplify the calculation and payment of financial benefits payable to prisoners. Payment of the activity allowance will be more closely connected than at present to how the prisoner’s plan for the prison term is realised. A prisoner may be promoted to a higher grade of activity allowance according to progress with his/her plan for the prison term. There are three grades of activity allowance, the two lowest to be applied in high-security prisons and the two highest in low-security prisons. Prisoners will only be paid wages for work where the Criminal Sanctions Agency is not the employer. The spending allowance will be at the same level as at present. The spending allowance and activity allowance will be paid per day instead of per hour as at present. Prisoners have the right to appeal decisions concerning benefits.

V. A copy of this report has been sent to the following labour market organisations:

1. The Confederation of Finnish Industries (EK)
2. The Central Organisation of Finnish Trade Unions (SAK)
3. The Finnish Confederation of Professionals (STTK)

4. The Confederation of Unions for Professional and Managerial Staff in Finland (Akava)
5. Local Government Employers (KT)
6. The Office for the Government as Employer (VTML)
7. The Federation of Finnish Enterprises

Statements of the labour market organisations

The Central Organisation of Finnish Trade Unions (SAK), the Finnish Confederation of Professionals (STTK) and the Confederation of Unions for Professional and Managerial Staff in Finland (Akava) refer to the statement they returned last year for Conventions Nos. 29 and 105 (Expert statement 19 May 2016, HE 69/2016 vp) on the Government proposal concerning ratification of the Protocol to the Forced Labour Convention and enacted the Act on bringing into force the legislative provisions of the Protocol:

“Labour-based discrimination and trafficking in human beings have increased, and it is probable that forced labour of all kinds will continue to increase, even if the situation in Finland would seem to be better than elsewhere in the world. As mobility increases and the number of refugees grows, the number of undocumented workers will also increase, as some of those arriving in Europe are not granted asylum. The matter should be addressed before the number of cases of forced labour begins to increase substantially. Forced labour is a human rights offence and as such must be addressed effectively. It is important for Finland to have a national action plan concerning national and international measures to be taken to eliminate forced labour effectively and permanently.

The detailed preambles to articles 2 and 5 in the Government proposal contain a fairly general description of measures to be taken to prevent forced labour. Further investments must be made in combating the black economy in Finland, because that is an effective way of preventing forced labour and human trafficking. Monitoring of forced labour must be enhanced. It is important to allocate more resources to monitoring of forced labour. The responsibilities of contractors based in Finland must be increased so that employers are more responsible than at present for their subcontractors’ employees. It is also important to invest in publicity and training.

Article 2 of the Protocol requires protection against abusive and fraudulent practices. Article 5 requires international cooperation.

Finland has seen berry pickers from Thailand and nurses from the Philippines. Neither of these countries has ratified the ILO Private Employment Agencies Convention (No. 181). Finland should require in the future that the Convention must be ratified before cooperation may continue with these or other countries that have not ratified this Convention or other relevant ILO Conventions. On the other hand, Finnish companies are relocating their functions and production to countries which have not ratified all relevant ILO Conventions or which do not comply with the Conventions that they have ratified. This means that Finnish jobs are being lost to countries where employee protection and status do not comply with internationally agreed minimum standards.”

SAK, STTK and Akava also add, that in accordance with section 52d of the Aliens Act, a temporary residence permit may be granted to a person who has worked illegally in Finland only if their labour has involved specific abuse. This allows some victims of forced labour, whose situations do not meet all the essential elements of human trafficking, to gain a residence permit.

In addition, it must be noted that, in the current situation, persons who can be classified as victims of forced labour in accordance with ILO's forced labour indicators, and who are in situations that do

not entirely meet the essential elements of human trafficking and where the crime they are victim of is being investigated under another denomination, are also not entitled to assistance from the help system. Such crime denominations may include, for example, extortion-like labour discrimination or aggravated extortion.

The victims' right to access to the help system for victims of human trafficking, and also to protection, should be extended to cover also those whose situation indicates forced labour in accordance with ILO's indicators of forced labour, even when the essential elements of a human trafficking crime are not entirely met. This is also supported by the fact that few instances come to the attention of the authorities, although it is known even at this moment that there may be thousands of people in the country who have been given a negative decision on asylum, who are especially susceptible to abuse.