



RECEPTION OF CHILDREN ON THE MOVE IN FINLAND

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1. Application of international law in domestic law of Finland

1.1. Status of international treaties in domestic law:

The State of Finland is bound by international treaties in force. Finland has concluded both bilateral and multilateral treaties with foreign states and international organizations.²

Finland follows a dualistic approach when bringing into force international treaties in national context, which means that the Parliament enacts legislation that makes a treaty binding on Finland. The provisions of treaties and other international obligations, in so far as they are of a legislative nature, are brought into force by an act. Otherwise, international obligations are brought into force by a decree.³ After national enactment, an international agreement (i.e. international obligations) becomes a part of the national legal system and needs to comply with national authorities and courts.⁴

Thus, national courts use international treaties as a source of law like any other national legislation, when such treaties have been brought into force as described above. When there is a conflict between a treaty and purely national legislation, the conflict is resolved by statutory interpretation, which is the action of explaining and understanding the meaning of a piece of legislation.⁵

1.2. Ratified international treaties:

International treaties that Finland has ratified⁶ and that are or might be relevant to children in migration:

- European Convention on Human Rights (ECHR)⁷ (no reservations)
- Convention on the Rights of the Child (CRC)⁸ (no reservations)
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)⁹ (no reservations)
- Convention Relating to the Status of Refugees (the 1951 Refugee Convention)¹⁰ (some reservations)¹¹

² Ministry for Foreign Affairs of Finland, International treaties. Available in English at:

<http://www.formin.fi/public/default.aspx?contentid=325923&nodeid=49666&contentlan=2&culture=en-US>

³ Section 95 of the Constitution of Finland (731/1999, as amended). An unofficial translation of the Constitution of Finland into English is available at: <http://finlex.fi/en/laki/kaannokset/1999/en19990731.pdf>. Chapter 8, Section 93, of the Constitution of Finland includes sections on Finland's competence in the area of foreign policy issues; Section 94, on the acceptance of international obligations and their denouncement; and Section 95, on the bringing into force of international obligations.

⁴ Parliament of Finland, International Treaties. Available only in Finnish at:

<https://www.eduskunta.fi/FI/tietoaeduskunnasta/kirjasto/aincistot/kv-jarjestot/kansainvalisen-oikeuden-tietopaketti/Sivut/Valtiosopimukset.aspx>

⁵ Definition of "statutory interpretation" can be found on the TransLegal webpage:

<https://www.translegal.com/lesson/statutory-interpretation-2>

⁶ All international treaties which Finland has ratified can be found in Finnish at: <https://www.finlex.fi/fi/sopimukset/>.

⁷ Can be found in English at: http://www.echr.coe.int/Documents/Convention_ENG.pdf and in Finnish at:

<https://www.finlex.fi/fi/sopimukset/sopsteksti/1999/19990063>

⁸ Available in English at: https://www.finlex.fi/fi/sopimukset/sopsviite/1991/19910059?sopviite_id=1991005

⁹ Available in English at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>

¹⁰ Available in Finnish at: https://www.finlex.fi/fi/sopimukset/sopsteksti/1968/19680077/19680077_2

¹¹ Finland's reservation to the 1951 Refugee Convention: "[S]ubject to the following reservations: A general reservation to the effect that the application of those provisions of the Convention which grant to refugees the most favourable treatment accorded to nationals of a foreign country shall not be affected by the fact that special rights and privileges are now or may in future be accorded by Finland to the nationals of Denmark, Iceland, Norway and Sweden or to the nationals of any one of those Countries;

- Finland, as a member of the European Union, is bound by the Union's regulation (for example the Dublin III regulation¹² and the Schengen Agreement¹³)

1.3. How is the principle of “best interest of the child” interpreted in domestic law?

Finland has adopted the UN Convention on the Rights of the Child. It stipulates that in all matters relating to children the best interests of the child must be taken into account. The same principle is also included in numerous Finnish laws on children's rights and the articles contained therein.

Many laws mention the best interest of a child, but it is not always defined. For example, the Act on Child Custody and Right of Access (1983/361, as amended)¹⁴ mentions many times the best interest of a child but such interest is not defined in the said act. Some acts include a definition for the best interest of a child, for example the Social Welfare Act (1301/2014, as amended).¹⁵ Section 5 of the Social Welfare Act reads:

“In all social care activities related to a child, the best interests of the child must be taken into account. In addition to the matters in Section 4 of the Social Welfare Act, regarding the best interest of a client, attention should be paid in particular how the following options safeguard in the best way a child's:

- 1) balanced development and well-being;
- 2) possibilities to receive care, taken into account the child's age and level of understanding as well as other level of development;
- 3) safe growing environment and physical and mental integrity;
- 4) ability to become independent and responsible.”

Section 4, Subsection 2 of the Child Welfare Act (417/2007, as amended)¹⁶ states the following on the interests of the child:

“When assessing the interests of the child, consideration must be given to the extent to which the alternative measures and solutions safeguard the following for a child:

- 1) balanced development and wellbeing, and close and continuing human relationships;
- 2) the opportunity to be given understanding and affection, as well as supervision and care that accord with the child's age and level of development;
- 3) an education consistent with the child's abilities and wishes;
- 4) a safe environment in which to grow up, and physical and emotional freedom;

[...] (5) A reservation to article 24, paragraph 1 (b) and paragraph 3 to the effect that they shall not be binding on Finland; [...]” Available in English at: <http://www.unhcr.org/protection/convention/3d9abe177/reservations-declarations-1951-refugee-convention.html> p. 8.

¹² Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). Available in English at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R0604&from=en>

¹³ The Schengen Agreement, available in English at: https://www.ucc.ie/archive/hdsp/Shengen-agreement_io.pdf

¹⁴ An unofficial translation into English available at: <http://finlex.fi/en/laki/kaannokset/1983/en19830361.pdf>

¹⁵ An unofficial translation into English of the earlier act (not in force anymore) is available at: <http://finlex.fi/en/laki/kaannokset/1982/en19820710.pdf>. The current Act available only in Finnish at: <https://www.finlex.fi/fi/laki/alkup/2014/20141301>

¹⁶ An unofficial translation into English available at: <http://finlex.fi/en/laki/kaannokset/2007/en20070417.pdf>

- 5) a sense of responsibility in becoming independent and growing up;
- 6) the opportunity to become involved in matters affecting the child and to influence them; and
- 7) the need to take account of the child's linguistic, cultural and religious background.”

However, the Committee on the Rights of the Child has pointed out to Finland that the legislation does not refer to the child's best interests extensively enough. The Committee has also stated that the principle is not adequately understood and is sometimes ignored in decision-making regarding a child; the concept of a child's interest is understood more narrowly than in the Convention on the Rights of the Child. In Finland, it appears that the concept of the child's interest is often limited to the context of the Act on Child Custody and Right of Access where the concept of the child's interest is limited to safeguarding the well-being and development of the child in the family environment.¹⁷

1.4 Separated and unaccompanied children:

According to the Committee on the Rights of the Child and as defined in Article 1 of the Convention of the Rights of the Child, “Unaccompanied children” (also called unaccompanied minors) are children who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. “Separated children” are children who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.¹⁸

Finland is an EU member state and the EU defines an ‘unaccompanied minor’ as a minor who arrives on the territory of Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States.¹⁹ Thus, it can be concluded that the definitions are similar but not the same. There is no other definition for ‘separated children’ in national or in EU context.²⁰

2. Reception of children in Finland

2.1. Initial evaluation

According to the Aliens Act (301/2004, as amended)²¹, when the applicant is heard at the asylum interview a family member is allowed to be present only on reasonable grounds.²²

¹⁷ Esa Iivonen, Leading Expert, The Mannerheim League for Child Welfare. Article available in Finnish at: <https://www.mll.fi/2016/05/mika-lapsen-etu/>. The Mannerheim League for Child Welfare is an NGO promoting the wellbeing of children and of families with children, increases respect for childhood and seeks to make it more visible, and sees that children's views are taken into account in public decision making.

¹⁸ Committee on the Rights of the Child, General Comment No. 6 (2005), Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, Paragraphs 7 and 8. Available in English at: https://www.unicef.org/protection/files/CRCGC6_EN.pdf

¹⁹ Article 2 (l) of Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast). Available in English at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R0604&from=en>

²⁰ See definitions in *European Parliament: “Vulnerability of unaccompanied and separated child migrants”* Briefing, December 2016, p. 2: [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/595853/EPRS_BRI\(2016\)595853_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/595853/EPRS_BRI(2016)595853_EN.pdf)

²¹ An unofficial translation is available at: <http://finlex.fi/en/laki/kaannokset/2004/en20040301.pdf>

²² Section 97a of the Aliens Act.

The Aliens Act²³ and the Administrative Procedure Act (434/2003, as amended)²⁴ apply to hearing a minor applicant.²⁵ The child's views shall be taken into account in accordance with the child's age and level of development, thus children are offered the possibility to make claims that are independent from the claims of adults traveling with them. According to the detailed explanations of the Aliens Act in the Government Proposal No. 28/2003, social workers are in a key role in finding out the child's opinion as well as the best interest of the child.²⁶ The importance of the best interest of the child as well as the sovereignty of a child are also emphasized in other acts relevant to social workers, e.g. in the Act on the Status and the Rights of a Customer of the Social Care.²⁷

The register of legal interpreters may be used as a tool to find a qualified interpreter for each matter. According to the Act on the Register of Legal Interpreters (2015/1590, as amended), only persons with a degree of a special legal interpreter or some other academic degree which is suited for an interpreter and which includes sufficient studies in legal interpretation, may be added in the register.²⁸

When it comes to processing matters related to minors, all matters concerning minors must be processed with urgency pursuant to the Aliens Act. There are no child-sensitive measures that are accessible for young people aged 18 to 25 years as they are treated as adults.²⁹

2.2. Establishment of identity /Age assessment

According to information available on the webpage of the Finnish Immigration Service, in the asylum procedure the age of the applicant is established primarily using documents and registers and by hearing the applicant. Age assessment forms a part of the establishment of identity. If no reliable evidence of the applicant's age is available, the age stated by the applicant is used as a starting point. However, if there are apparent reasons to doubt the credibility of the information provided, it may be necessary to perform a forensic examination. For example, the applicant's appearance and the information provided may raise doubts. The performance of an examination requires the written consent of the person to be tested and his or her parent, guardian or other legal representative. If the asylum seeker refuses to undergo an examination without an acceptable reason, he or she will be treated as an adult. A refusal to undergo an examination may not as such constitute grounds for rejecting an application for international protection. At present, the examination methods most commonly used

²³ Section 6 of the Aliens Act.

²⁴ Section 14 of the Administrative Procedure Act. An unofficial translation is available at: <http://finlex.fi/en/laki/kaannokset/2003/en20030434.pdf>

²⁵ In Finland, a minor is a person who is under the age of 18 (e.g. according to the Section 2 of the Guardianship Services Act (442/1999), available in English at: <http://www.finlex.fi/en/laki/kaannokset/1999/en19990442.pdf>

²⁶ Government Proposal No. 28/2003, detailed explanations, p. 119. Available in Finnish: <http://www.finlex.fi/fi/esitykset/he/2003/20030028.pdf>. The government prepares proposals for the legislation, which contain comments on the proposed act or proposed changes to an act. The proposal is accepted or denied in a plenary session held by the Finnish Parliament.

²⁷ Act on the Status and the Rights of the Customer of the Social Care (2000/812, as amended), available in Finnish at: <http://www.finlex.fi/fi/laki/ajantasa/2000/20000812>

²⁸ Section 5 of the Act on the Register of Legal Interpreters (2015/1590). Available only in Finnish at: <http://www.finlex.fi/fi/laki/ajantasa/2015/20151590#P5>

²⁹ Section 6 of the Aliens Act.

include dental and carpal bone age determination by x-ray and clinical examination.³⁰

A medical age assessment requires that the person to be tested has given an informed consent in writing of his or her own volition. Before obtaining consent, the applicant or sponsor³¹ and the applicant's or sponsor's parent, guardian or other legal representative shall be given information on the importance of age assessment, the examination methods used, potential health effects, and the consequences of having and of refusing an examination. The information shall be given in the native language of the applicant or sponsor and the applicant's or sponsor's parent, guardian or legal representative or in a language which he or she may reasonably be expected to understand.³²

Age assessment is conducted by medical professionals. The National Institute for Health and Welfare³³ will make a medical age assessment, conducted by medical professionals, for a foreigner at the request of the Finnish Immigration Service. Two specialists will make a joint statement on the outcome of the assessment and at least one of the specialists has to be employed by the National Institute for Health and Welfare. The specialists may be licensed physicians or dentists with the required qualifications.³⁴

If the applicant is under the age of 18 (i.e. a minor), the presence of an assistant in the asylum interview is included in the legal aid.³⁵

Medical age assessments are usually highly reliable and uncertain results occur only rarely. However, in the case of uncertain results or difference in opinions of the two medical doctors analyzing the results, age shall be resolved for the benefit of the child.³⁶

2.3. Migrant children victims of trafficking

There is a specific act regarding the victims of human trafficking; the Act on the reception of persons who are in need of international protection and the identification and assistance of victims of trafficking (746/2011, as amended, the "International Protection Act").³⁷ The victims of the human trafficking can be helped by the following means;

- a) counseling and guidance;
- b) safe accommodation;
- c) income support;
- d) social services;

³⁰ Finnish Immigration Service, Unaccompanied minors who arrive in Finland and age assessment. Available at: <http://migri.fi/en/age-assessment-or-establishment-of-age-of-a-person-younger-than-18>. The Finnish Immigration Service, subordinate to the Ministry of the Interior, is the agency that processes and decides on matters related to immigration, residence, refugee issues, and Finnish nationality.

³¹ Paragraph 15 of Section 3 of the Aliens Act defines the term "sponsor" as "a person residing in Finland whose residence is the basis for applying for a residence permit on the basis of family ties for a family member abroad".

³² Sections 6a and 6b of the Aliens Act.

³³ The National Institute for Health and Welfare studies and monitors, and develops measures to promote, the well-being and health of the population in Finland. They gather and produce information based on research and statistics. They also provide expertise and solutions, which their stakeholders can use in support of their decision-making and other work.

³⁴ Sections 6a and 6b of the Aliens Act.

³⁵ Section 9 of the Aliens Act.

³⁶ Yle News article on age assessment from teeth on September 27, 2015 (in Finnish: <https://yle.fi/uutiset/3-8331795>, Yleisradio Oy (Yle) is Finland's national public-broadcasting company. It is a public limited company owned by the Finnish state. It operates four national television channels, 13 radio channels and services, and 25 regional radio stations.

³⁷ Available only in Finnish at: <https://www.finlex.fi/fi/laki/ajantasa/2011/20110746>

- e) health care services;
- f) interpreter and translation services;
- g) legal advising and legal aid;
- h) tracking the parent or de facto caretaker of the child victim; and
- i) supporting safe return.³⁸

The Reception Center of Joutseno, located in the city of Lappeenranta in the southeastern Finland, is responsible for organizing protection for victims of human trafficking who do not have a place of domicile in Finland. If the victim of trafficking has a place of domicile in Finland, the authorities of the place of domicile of the victim are responsible for organizing protection.³⁹ The Reception Center of Joutseno cooperates with the child welfare authorities in helping a child who is a victim of trafficking or a child accompanying a victim of trafficking.⁴⁰ If a migrant child has been appointed with a legal representative, the representative assists the child to find adequate information on reporting of his/her status and on seeking protection.

Primarily the parents of a child are also the guardians of a child.⁴¹ Pursuant to information available on the webpage of the Finnish Immigration Services, in cases where the parents of a minor are not the guardians, guardianship must be demonstrated by a court decision or by other reliable official documentation. If the child's parents are divorced or deceased, a divorce certificate or a death certificate must be presented. Clarification of the child's guardianship must also be presented in the case of a divorce. In exceptional cases, a residence permit may also be granted to a foster child. This may happen if the sponsor residing in Finland is effectively the child's guardian but there are no official documents on the custody of the child. In order to get a residence permit for a foster child, the foster parent needs to present reliable documentation confirming the death or disappearance of the child's previous guardians. A further requirement is that they have already acted as the child's effective guardian before they arrived in Finland and that on the day when a decision on the residence permit application is made the child is still in the foster parent's custody and needs their care.⁴² If there remain uncertainties in relation to the application, for example where the applicant does not have sufficient documentation establishing family ties, the Finnish Immigration Service can arrange an oral interview with the applicants. It is generally necessary to interview the family members of a sponsor who has been granted a refugee status and has received international protection. The legal guardian of an underage applicant takes part in the interview.⁴³

Provided that there are no other means of sufficiently establishing family ties based on biological relationship, the Finnish Immigration Service may offer the applicant and the sponsor the opportunity to take a DNA test. A DNA test may be arranged if there are no documents concerning the biological relationship between the applicant and the sponsor or if the existing documents cannot be considered reliable, and if there remains uncertainty over the biological relationship after an oral interview. Neither the residence

³⁸ Section 38a of the International Protection Act.

³⁹ Section 38b of the International Protection Act.

⁴⁰ Section 38e of the International Protection Act.

⁴¹ Section 3 of the Act on Child Custody and Right of Access (1983/361), as amended. Unofficial translation available at: <http://www.finlex.fi/fi/laki/kaannokset/1983/en19830361.pdf>

⁴² Finnish Immigration Services: <https://migri.fi/en/who-is-the-childs-guardian>

⁴³ Finnish Immigration Services: Ilman huoltajaa turvapaikkaa hakevan lapsen edustaminen, s. 28 (in Finnish): <http://migri.fi/documents/5202425/6375722/Ilman%20huoltajaa%20olevan%20turvapaikanhakijalapsen%20edustaminen/419a1d23-855e-4c00-b8c1-ca4336c1a5e1>

permit applicant nor the sponsor may demand a DNA test but it should be offered by the Finnish Immigration Service. The DNA test is paid for by the Finnish government and it can only be performed once the person taking the test has given his or her written consent. Consent on behalf of an underage child is given by the child's guardian or other legal representative. If the child is 12 years of age or over, the child's own consent is also needed.⁴⁴

2.4. Application for international protection

An application filed by an unaccompanied minor who is considered to come from a safe country of origin where he or she may be repatriated must be decided in accelerated proceedings. Such application may be considered groundless. When considering the refusal of entry, deportation or prohibition of entry, the facts on which the decision is based and the facts and circumstances as a whole must be considered.⁴⁵ In Finland, there are no particular social groups for refugees' status.⁴⁶

The reason for persecution must be the origin, religion, nationality, membership in a certain social group or political opinions of the person. Another requirement is that the applicant cannot rely on the protection of the authorities of his or her home country of permanent residence because of the fear of persecution.⁴⁷ Acts are considered as persecution if they are sufficiently serious by their nature or repetition as to constitute a severe violation of fundamental human rights. Also an accumulation of various measures of the same level of seriousness is considered persecution.⁴⁸

When assessing whether a country is a safe country of origin, it is considered whether the state has a stable and democratic political system, whether the state has an independent and impartial judicial system, and whether the requirements for a fair trial are met. It is also considered, whether the state has signed and adheres to the main international conventions on human rights and whether the state has violated seriously human rights before.⁴⁹ Further, pursuant to the information available on the webpage of the Finnish Immigration Services, if the requirements for obtaining asylum are not met, a person might be granted a residence permit on the basis of subsidiary protection. The permit may be granted if the person is in danger of death penalty, execution, torture or other treatment or punishment that violates human dignity in his or her home country or country of permanent residence, or if the person cannot return to his or her home country or country of permanent residence without facing serious personal danger because of an armed conflict that causes indiscriminate violence in that country.⁵⁰ Section 100 of the Aliens Act includes a list of forms, which acts of persecution may take, and e.g. gender-specific or child-specific acts as well as acts of physical, mental and sexual violence are included in the list.

⁴⁴ Finnish Immigration Services: The Finnish Immigration Service may arrange a DNA test: <http://migri.fi/en/dna-analysis-for-family-members>

⁴⁵ Section 146 of the Aliens Act.

⁴⁶ Sections 101 and 104 of the Aliens Act.

⁴⁷ The webpage Finnish Immigration Services: <http://migri.fi/en/what-are-the-grounds-for-asylum->

⁴⁸ Section 87a of the Aliens Act.

⁴⁹ Section 100 of the Aliens Act.

⁵⁰ More information available in English at Finnish Immigration Service's website: <http://migri.fi/en/subsidiary-protection>

2.5. Migrant children's access to justice

The criteria for getting legal assistance are included in the Legal Aid Act (257/2002, as amended).⁵¹ The most central criteria for getting free legal assistance is the economic situation of the applicant and thus, migrant children are usually provided with free legal assistance. A child is always entitled to an assistant in an asylum interview.⁵²

The provision of a legal counsel is not automatic but dependent on the fulfillment of the conditions laid down in the Legal Aid Act. The Act on the Integration of Immigrants and Reception of Asylum Seekers (493/1999, as amended)⁵³ includes a specific chapter on the appointment of a guardian for a migrant child. A representative⁵⁴ may be appointed for a refugee child, a child granted temporary protection status, a child applying for a residence permit or asylum, or a child who is a victim of trafficking, if the child is in Finland without a guardian or other legal representative. An unaccompanied minor who is a victim of trafficking shall always be appointed a representative immediately. The representative exercises a guardian's right to be heard in matters pertaining to the child's person and assets, decides on the child's living arrangements and manages the child's assets.⁵⁵ Any legally competent, suitable and consenting person who is able to perform the required duties correctly while taking the child's interests into account may be appointed as a representative.⁵⁶ As a precondition to appointment, the person seeking to be appointed as a representative must submit an extract on his or her own entries in the criminal records⁵⁷ to the District Court. Representatives have been appointed particularly from the social sector and work experience in child protective services is deemed particularly desirable.⁵⁸ In the exercise of his or her duties, the representative must protect the child's interests, taking into account the child's ethnic, linguistic, religious and educational background. Before making a decision in a matter pertaining to the child's person or assets, the representative must discuss the matter with the child, if this is possible in view of the child's age and developmental level and the nature of the matter. Furthermore, when making decisions the representative must take the child's opinions and wishes into account. However, it is not the representative's duty to manage the immediate daily care or upbringing of the child or otherwise look after the child.⁵⁹

There is no legal requirement for the appointed lawyers to have specialized knowledge in trafficking or in working with migrant children victims but in practice lawyers working with these type of matters tend to specialize in among others immigration issues. In general, any legally competent, suitable and consenting person who is able to perform the required duties correctly while taking the child's interests into account may be appointed

⁵¹ Unofficial translation into English available at: <http://finlex.fi/en/laki/kaannokset/2002/en20020257.pdf>

⁵² Section 9 of the Aliens Act.

⁵³ Unofficial translation into English available at: <http://finlex.fi/en/laki/kaannokset/1999/en19990493.pdf>

⁵⁴ In the Act on the Integration of Immigrants and Reception of Asylum Seekers, the legislator uses both of the terms "legal representative" and "representative". Our understanding is that when using the term "legal representative" the legislator wants to emphasize that the representative is appointed by a court or other authority, and when using the term "representative" the legislator speaks on a more general level.

⁵⁵ Subsections 1-2 of Section 26 of the Act on the Integration of Immigrants and Reception of Asylum Seekers (493/1999).

⁵⁶ Section 25 of the Act on the Integration of Immigrants and Reception of Asylum Seekers.

⁵⁷ Within the meaning of Subsection 2 of Section 6 of the Criminal Records Act (770/1993). Unofficial translation into English available at: <https://www.finlex.fi/fi/laki/kaannokset/1993/en19930770.pdf>

⁵⁸ Finnish Immigration Services: Ilman huoltajaa turvapaikkaa hakevan lapsen edustaminen, s. 13 (in Finnish): <http://migri.fi/documents/5202425/6375722/Ilman%20huoltajaa%20olevan%20turvapaikanhakijalapsen%20edustaminen/419a1d23-855e-4c00-b8c1-ca4336c1a5e1>

⁵⁹ Subsections 3-5 of Section 26 of the Act on the Integration of Immigrants and Reception of Asylum Seekers.

as a representative.

The decisions made by the authorities are administrative decisions and thus, the children and/or their guardians may appeal to administrative court⁶⁰ about a decision that affects them. A decision, among others, of the Finnish Immigration Service, the police or a border control authority referred to in the act may be appealed to an administrative court as provided in the Administrative Judicial Procedure Act.⁶¹ However, there is an appeal prohibition in among others the following cases:

- 1) decisions on issuing a residence permit to an alien admitted to Finland under the refugee quota;
- 2) decisions on issuing a residence permit on the basis of other humanitarian immigration;
- 3) decisions on issuing a residence permit on the basis of temporary protection while the alien's application for asylum is still being processed;
- 4) decisions stating that the processing of an application for asylum is dropped under section 111(2);
- 5) decisions stating that the matter is dropped because the applicant has cancelled his or her application or there is reasonable cause to believe that the applicant has moved out of Finland.⁶²

For victims of human trafficking or in need of international protection, please see Section 2.3. of this report.

3. Child protection system

3.1. Guardianship system

There is a guardianship system in place in Finland. According to the Guardianship Services Act (1999/442, as amended), guardians look after the rights and interests of persons who cannot do it themselves.⁶³ This applies to children under the age of 18 years (minors) as well as to persons who have attained the age of 18 but who have been declared legally incompetent.⁶⁴ As stated above in Section 2.3. of this questionnaire, primarily the parents of a child or other persons who have been awarded custody of a child have the custody of the child and are the guardians of the child.⁶⁵ The purpose of child custody is to ensure the welfare and balanced development of a child while taking into account the child's individual needs and wishes as well as protection and supervision appropriate for his or her age and stage of development.⁶⁶ In case the parents are not able to exercise their parental responsibilities, a district court may appoint a guardian for the

⁶⁰ In Finland the district courts deal with criminal and civil cases, and their decisions can normally be appealed in a court of appeal. The administrative courts review the decisions of the authorities. The decisions of the administrative courts can be appealed in the Supreme Administrative Court. For more information on the Finnish courts, please see: <https://oikeus.fi/tuomioistuimet/en/>

⁶¹ Section 190 of the Aliens Act.

⁶² Section 191 of the Aliens Act.

⁶³ Section 1 of the Guardianship Services Act. An unofficial translation into English available at: <http://www.finlex.fi/fi/laki/kaannokset/1999/en19990442.pdf>

⁶⁴ Section 2 of the Guardianship Services Act.

⁶⁵ Section 3 of the Act on Child Custody and Right of Access.

⁶⁶ Section 1(1) and 1(2) of the Act on Child Custody and Right of Access.

minor.⁶⁷

In Finland, guardianship functions are entrusted with the local register offices⁶⁸, which act as guardianship authorities and supervise the guardians.⁶⁹ A guardian is appointed by a local register office or a district court.⁷⁰ Everyone who has the right to bring the matter before a court shall have standing to appeal against a court order on the appointment of a guardian⁷¹. The guardianship authorities and the Population Register Centre⁷² maintain a register for guardianship affairs, which is a nationwide register for the supervision of the activities of guardians and the safeguarding of third parties' rights.⁷³

Each unaccompanied minor who does not have a guardian is designated a legal representative, whose responsibility is to look after the child's interest in all situations. Even though a representative is not a guardian of a child, the representative uses the right of action that belongs to the guardian of a minor child, helps the child with official matters or takes care of the child's matters on his or her behalf with the Finnish authorities. For example, the representative participates in the child's asylum interview which is a part of the processing of his or her asylum application.⁷⁴

3.2. Appointment of guardians for migrant children

Instead of appointing a guardian for a minor who enters Finland seeking international protection without a guardian or another legal representative, a legal representative is appointed to the minor without delay. A legal representative is also appointed to a minor who receives temporary protection or is a victim of human trafficking and does not have a permit of residence. An application for a legal representative must be filed by the reception center to which the minor has been registered. Before the legal representative has been appointed, the director of the reception center uses the right of action of a guardian in matters concerning the minor and the property of the minor.⁷⁵ Before filing the application, the child must be heard in order to ensure that the best interests of the child in relation to the appointment of a legal representative are taken into account. The application must be processed without delay.⁷⁶ A legal representative is formally appointed by a district court that has jurisdiction in the area where the reception center is located.⁷⁷

The person accompanying a separated child is not automatically appointed as his or her guardian in Finland. As stated above in Section 2.3. of this questionnaire, the parents of a

⁶⁷ Section 9 of the Act on Child Custody and Right of Access.

⁶⁸ Section 84 of the Guardianship Services Act. Local register offices are local state administrative authorities in Finland. There are nine local register offices nationwide. The operation area of each local register office is comprised of one or more jurisdictional districts. In addition, the local register offices have a number of service units in order to ensure that its services are as available to the public as possible.

⁶⁹ Section 46 of the Guardianship Services Act.

⁷⁰ Section 4 of the Guardianship Services Act.

⁷¹ Section 80 of the Guardianship Services Act

⁷² The Population Register Centre maintains and develops the Population Information System, and provides information services based on that system. It is responsible for the provision of certified electronic services in Finland.

⁷³ Section 64 of the Guardianship Services Act.

⁷⁴ Finnish Immigration Service: Representative of an unaccompanied minor asylum seeker: <http://migri.fi/en/representative-of-an-unaccompanied-minor-asylum-seeker>

⁷⁵ Section 39 of the International Protection Act.

⁷⁶ Section 5 of the International Protection Act.

⁷⁷ Section 39 of the International Protection Act.

child are normally the guardians of the child. In cases where the parents of a child are not his or her guardians, guardianship must be demonstrated by a court decision or by other reliable official documentation.⁷⁸ The person applying for residence on the basis of family ties must prove the authenticity of his or her family ties by presenting original documents, such as the child's birth certificate in the case of biological parents. If the person is unable to provide documentation as evidence of family ties, he or she must make a written explanation of this and attach it to the residence permit application. The matter will then be investigated by the Finnish Immigration Service.⁷⁹

3.3. Other categories of persons /organs that may carry out guardianship functions

Please see Section 3.4. of this questionnaire regarding legal representatives of unaccompanied minors.

3.4. Responsibilities and duties of guardians for migrant children

Instead of appointing a guardian, a legal representative is appointed to a minor who enters Finland without a guardian or a legal representative. The rights and duties of the legal representative are stated in Chapter 5 of the International Protection Act.

A legal representative has the right to act in matters concerning the minor as a person and the minor's property. The representative must take care of the property of the minor insofar as the minor is not able to do it himself or herself as well as to see to it that the child's own right to act in certain circumstances is taken into account. However, the act excludes daily care, upbringing and other similar care from the duties of a legal representative.⁸⁰ In practice, a legal representative's right to act on behalf of the child includes e.g. filing applications for benefits and services for the child as well as attending to the child's interests when communicating with the authorities and the courts. A legal representative must also take care that the best interest of the child is taken into account in the asylum investigation and in the process of obtaining a residence permit. The duties include keeping in touch with the child's lawyer during the above-mentioned processes.⁸¹ In addition, a legal representative must assist the child in contacting his or her relatives and to converse about the child's future with the relatives or the ethnic community the child is connected with. The legal representative must also communicate with the reception centers and with the municipal authorities, as well as discuss of the decisions with the child and to support him or her during the mentioned processes.⁸²

In order to be competent to make certain decisions relating to the child's property, a legal representative must be permitted to do so by the guardianship authority.⁸³

A legal representative must make the decision whether to get a lawyer for the child. The

⁷⁸ Finnish Immigration Service: Who is the child's guardian?: <http://migri.fi/en/who-is-the-childs-guardian>

⁷⁹ Finnish Immigration Service: Missing documentation of family ties: <http://migri.fi/en/missing-documentation-of-family-ties>

⁸⁰ Section 41 of the International Protection Act.

⁸¹ Lepola, Outi: Ei omainen eikä viranomainen – Selvitys ilman huoltajaa Suomeen tulleiden lasten edustajajärjestelmästä. Lastensuojelun keskusliitto, 2012, p. 33. Lastensuojelun keskusliitto, or the Central Union for Child Welfare, is a central organisation that works as an active and uniting force in matters relating to children's rights on a national and European level. Their mission is to develop child welfare and to promote cooperation between NGOs, municipalities and state authorities.

⁸² Lepola, Outi: Ei omainen eikä viranomainen – Selvitys ilman huoltajaa Suomeen tulleiden lasten edustajajärjestelmästä. Lastensuojelun keskusliitto, 2012, p. 33.

⁸³ Section 34 of the Guardianship Services Act

child's lawyer is allowed but not required to participate in the police examinations and when addressing the Immigration Service. If the child has a lawyer, the legal representative is present in the meetings with the lawyer. The legal representative may, for example, organize a meeting with the lawyer for preparing for the asylum addressing by the Immigration Service and for the interview by the police and the border authorities. The child's lawyer must be kept up to date of the child's status.

If a child's legal representative changes, the reception center must inform the lawyer of the change. If the new legal representative decides that the child needs a lawyer, he or she may decide to authorize the previous lawyer or choose a new one.⁸⁴

The role of a legal representative is not specifically defined in the International Protection Act but in general, the responsibilities of a legal representative include substantially the duties listed in the UN Guidelines for the Alternative Care of Children.⁸⁵

A legal representative whose task is terminated or whose task has been restricted must without delay provide the guardianship authority with a statement of accounts relating to the property no longer managed by the legal representative.⁸⁶

3.5. Profile of guardians

There is a legal representative system instead of guardianship system in use in Finland and, therefore, this section addresses the profile of legal representatives.

For the guardianship system in general and the process of appointment of a legal representative, please see Sections 3.1 and 3.2 of this questionnaire.

Legal representatives are recruited by social workers, but appointed by a district court.⁸⁷

The International Protection Act requires legal representatives to be legally competent persons, to give their consent to the role and to be able to handle their duties in an impeccable manner while taking care of the best interest of the child. Further, a legal representative cannot have a criminal record.⁸⁸ Even though the role of a legal representative is not tied with any specific educational background or work experience, legal representatives are often social workers.⁸⁹ Work as a legal representative is neither voluntary nor official work. Legal representatives may be for example students, pensioners

⁸⁴ Finnish Immigration Service: Representing an unaccompanied child seeking asylum, 15 December, 2014, p. 23. Available in Finnish at: <http://migri.fi/documents/5202425/6375722/Ilman+huoltajaa+olevan+turvapaikanhakijalapsen+edustaminen/419a1d23-855e-4c00-b8c1-ca4336c1a5e1>

⁸⁵ UN Guidelines for the Alternative Care of Children, Art. 104. The role and specific responsibilities of the designated person or entity should include:

- (a) Ensuring that the rights of the child are protected and, in particular, that the child has appropriate care, accommodation, health-care provision, developmental opportunities, psychosocial support, education and language support;
- (b) Ensuring that the child has access to legal and other representation where necessary, consulting with the child so that the child's views are taken into account by decision-making authorities, and advising and keeping the child informed of his/her rights;
- (c) Contributing to the identification of a stable solution in the best interests of the child;
- (d) Providing a link between the child and various organizations that may provide services to the child;
- (e) Assisting the child in family tracing;
- (f) Ensuring that, if repatriation or family reunification is carried out, it is done in the best interests of the child.

⁸⁶ Section 52 of the Guardianship Services Act.

⁸⁷ Lepola, Outi: Ei omainen eikä viranomainen – Selvitys ilman huoltajaa Suomeen tulleiden lasten edustajajärjestelmästä. Lastensuojelun keskusliitto, 2012, p. 16.

⁸⁸ Section 40 of the International Protection Act.

⁸⁹ Lepola, Outi: Ei omainen eikä viranomainen – Selvitys ilman huoltajaa Suomeen tulleiden lasten edustajajärjestelmästä, p. 14.

or people who are on leave from their regular work.⁹⁰

A person who has or might have a conflict of interest with the minor cannot be appointed as a legal representative to such minor.⁹¹

The law does not require any compulsory pre-qualification training for the legal representatives, and participating in trainings is only recommended. Certain organizations and authorities organize trainings for the appointed legal representatives. Such organizations and authorities include e.g. the Central Union for Child Welfare, the Finnish Red Cross, the Ministry of Economic Affairs and Employment and the Finnish Immigration Service.⁹² However, these trainings cannot be seen as systematic training for the role of a legal representative and legal representatives or persons interested in the role of a legal representative may attend these trainings on a voluntary basis. Regular participation in educational trainings increases the proficiency of a legal representative; but whether they provide for any monetary benefits for the legal representatives depend on the particular training and its organizer's policies on benefits.⁹³

A legal representative could be a person who has experience from the social sector, especially from child protection. A legal representative should be familiar with questions regarding immigrants and especially international protection and human trafficking. Further a legal representative should understand the permit granting procedures relating to international protection and the human trafficking. He/she should also know how to work with children. Knowledge of child's linguistic, cultural and religious background would be seen as an advantage.⁹⁴

3.6. Child Bride

According to the Marriage Act (1929/234, as amended), a person under 18 years cannot get married. However, the Ministry of Justice may for special reasons grant a person under 18 years the right to marry. In such a case, the guardian of the minor must be reserved an opportunity to be heard if his or her whereabouts can be determined with reasonable measures.⁹⁵

A marriage concluded by two individuals in a foreign state before an authority of that state is valid in Finland, if the marriage is valid in the state where it was concluded, or in a state in which either spouse was a citizen, or where either spouse was habitually resident at the conclusion of marriage.⁹⁶ A marriage is, however, not legally binding in Finland, if it is in violation of the judicial system of Finland even though the aforementioned provisions are met.⁹⁷ An example of such is a marriage where the other spouse is seemingly a minor and the age difference between the spouses is significant.⁹⁸

⁹⁰ Ibid., p. 8.

⁹¹ Section 40 of the International Protection Act.

⁹² Lepola, Outi: Ei omainen eikä viranomainen – Selvitys ilman huoltajaa Suomeen tulleiden lasten edustajajärjestelmästä, p. 27.

⁹³ Ibid., p. 27-28.

⁹⁴ The Government Bill 266/2010 vp, p. 63.

⁹⁵ Section 4 of the Marriage Act. Unofficial translation available at:
<http://www.finlex.fi/en/laki/kaannokset/1929/en19290234.pdf>

⁹⁶ Section 115 of the Marriage Act.

⁹⁷ Subsection 2 of Section 139 of the Marriage Act.

⁹⁸ National Institute for Health and Welfare, information regarding child marriages, available only in Finnish:
<https://www.thl.fi/en/web/maahanmuuttajat-ja-monikulttuurisuus/maahanmuuttajien-terveys-ja-hyvinvointi/maahanmuuttajien->

Performing a sexual act on a child below the age of 16 years is a crime in Finland with a possible sentence of imprisonment for sexual abuse of a child or aggravated sexual abuse of a child.⁹⁹ In case a spouse is seemingly younger than the other spouse, the essential elements of an offence may be fulfilled even though the spouses are married to each other.¹⁰⁰ The authorities working with asylum seekers are obliged to file a report of an offence and a report of child welfare, if the other spouse in the marriage is seemingly younger than the other one and less than 16 years old, and it can be shown that the spouses perform sexual acts (e.g. they have children together or an underage girl is pregnant). The issue must also be discussed with the spouses and it must be brought to their attention that performing a sexual act with a person under 16 years is a crime in Finland.

Notwithstanding the above, in cases where it seems that the marriage is between two equal partners who do not differ significantly by age and mental and physical maturity, though one or both of the spouses are less than 16 years, the authorities are not obliged to report an offence. However, if such situation includes pressure or persuasion for sexual acts, the authorities need to report the offence. In unclear matters the authorities working with asylum seekers are obliged to consult child welfare and the police.¹⁰¹

4. Family reunification

4.1. Family tracing:

The tracing of the parents and family of the children is a priority and must be pursued in accordance with the Aliens Act. The Finnish Immigration Service begins the tracing immediately and continues to trace the family of the child throughout the residence permit process. If necessary, the tracing continues even after the child has been admitted a residence permit.¹⁰²

4.2. Reunification in Finland or resettlement:

In order for the family to be reunited in Finland the child's family applying for residence permit has to get in touch with the Finnish Embassy in the country of origin for examination of the connection between the parties.¹⁰³ In order to issue a residence permit to a family member of a minor, the child has to be a minor on the date when the family member's residence permit application is decided upon.¹⁰⁴ Due to extensive and time consuming processes, it has become very unusual for an unaccompanied minor arriving in

seksuaali-ja-lisaantymisterveys/lapsiavioliitto

⁹⁹ Section 6 of Chapter 20 of the Criminal Code of Finland (39/1889), available in English here:

<https://www.finlex.fi/fi/laki/kaannokset/1889/en18890039.pdf>

¹⁰⁰ Webpage of the National Institute for Health and Welfare on child marriages, available only in Finnish:

<https://www.thl.fi/en/web/maahanmuuttajat-ja-monikulttuurisuus/maahanmuuttajien-terveys-ja-hyvinvointi/maahanmuuttajien-seksuaali-ja-lisaantymisterveys/lapsiavioliitto>.

¹⁰¹ Ibid.

¹⁰² Section 105b of the Aliens Act.

¹⁰³ A publication by Ministry of Economic Affairs and Employment: Ilman huoltajaa tulleiden alaikäisten turvapaikanhakijoiden vastaanotto ja järjestelmän kehittämistarpeet in Työ- ja elinkeinoministeriön julkaisuja 29/2014, available only in Finnish at:

<https://tem.fi/documents/1410877/2859687/Ilman+huoltajaa+tulleiden+alaikaisten+turvapaikkahakijoiden+vastaanotto+05092014.pdf>

¹⁰⁴ Section 38 of the Aliens Act.

Finland to be reunited with his or her family, since the child often turns 18 during the process before a decision is made regarding the applicant's residence permit.¹⁰⁵

4.3. Reunification with other relatives:

Family reunification for a minor in Finland only applies to the child's legal guardian, which usually is the child's father or mother or both. A requirement for getting a residence permit is that the applicant must lead a family life with the child.¹⁰⁶ The reunification of unaccompanied minors is facilitated with adult relatives, who are not legal guardians, unless it is not in the best interest of the child.¹⁰⁷ The purpose behind the deliberation is to protect the minor's genuine interest in obtaining a secure family life, which is to be determined on a case-by-case basis. A mere formal familial bond is not sufficient.¹⁰⁸

4.4. Grounds for refusal:

A ground for refusal of family reunification is that the child turns 18 before the guardian's residence permit application is decided upon. Also, granting of a residence permit requires that the applicant has secure means of support in Finland. The applicant has to demonstrate that they can support themselves in Finland with incomes from for example salary or other payments. This condition can in some cases be diverged from if it is for the child's best.¹⁰⁹

5. Placement of migrant children

5.1. Temporary shelter/1st reception center

Children asylum seekers are provided with accommodation in group homes and supported housing units intended for children. Group homes are intended for children under 16 years of age and supported housing units are for young people who are 16 or 17 years old. Group homes and supported housing units have more employees than reception centres for adults and families. They put an emphasis on care and upbringing. For this reason, full board and lodging is often offered to asylum seekers under 18 years of age.¹¹⁰

The Child Welfare Act regulates the number of children and young people to be cared for together in the same unit. The maximum number of children or young people cared for in a residential unit is seven. A maximum of 24 children or young people may be placed in

¹⁰⁵ A publication by the non-discrimination Ombudsman Annika Parsons: Selvitys lapsen edun toteutumisesta turvapaikanhakija- ja pakolaislapsia koskevissa päätöksissä (2010), available only in Finnish at: https://www.syrjinta.fi/documents/10181/10850/31685_vv_lapsen_etu_2010_paino_verkkoversio.pdf/0b0a7142-4109-4dfb-b4ad-14de6b5564f5

¹⁰⁶ The webpage of the Finnish Immigration Service: Moving to Finland to be with a family member: <http://migri.fi/en/moving-to-finland-to-be-with-a-family-member>

¹⁰⁷ The webpage of the Finnish Immigration Service: http://www.migri.fi/moving_to_finland_to_be_with_a_family_member/filling_in_the_application/family_member_of_a_recipient_of_international_protection/guardian (as available on November 6, 2017).

¹⁰⁸ The Government Bill 28/2003 regarding the Aliens Act: <https://www.edilex.fi/he/20030028#OT103>

¹⁰⁹ Section 39 of the Aliens Act.

¹¹⁰ The webpage of the Finnish Immigration Service: Accommodation of an unaccompanied minor asylum seeker: <http://migri.fi/en/accommodation-of-an-unaccompanied-minor-asylum-seeker>

another building than a residential building. In a residential unit there must be a minimum of seven employees in care and upbringing work. In urgent cases it is possible to make temporary exceptions to the number of children placed per unit.¹¹¹

A child that has turned 16 can be placed at a supported housing unit if it is in accordance with his or her development and well-being. A maximum of 40 children can be placed at a supported housing unit. There must be a minimum of three employees in care and upbringing work per ten children. In urgent cases it is possible to make exceptions to the number of children placed in each supported housing unit.¹¹²

If a minor is seeking asylum together with his/her family, they will be accommodated at a reception center. Immigration center always organizes accommodation in a way that makes it possible for family members to live together in the same place if they want to.¹¹³

In addition to accommodation, other basic needs of children asylum seekers are taken care of at group homes and supported housing units. The children receive, inter alia, food, social and health care services, financial support, interpretation, and legal aid if required.¹¹⁴ Reception centres pay special attention to children, their development and matters that affect their health.¹¹⁵ Children receive public health care services on the same grounds as those who have a home municipality in Finland and they have the right to participate in basic education and pre-primary education.¹¹⁶ No data regarding disabled children is available.

The monitoring of reception activities in Finland is organized by the Finnish Immigration Service on behalf of the governmental institutions. What comes to monitoring by NGOs, organizations such as Amnesty International and the Finnish Refugee Advice Centre contribute to control by issuing reports and articles concerning migration and providing documents and research to the media.¹¹⁷

5.2. Placement of migrant children

To prevent homelessness the children are placed in family group homes, supported housing units or in private accommodation.¹¹⁸ In accordance with the Children Welfare Act, the child has to be given the opportunity to present his or her opinion in accordance with his or her age and level of development when considering different placement

¹¹¹ Section 59 of the Children Welfare Act.

¹¹² Section 17 of the International Protection Act.

¹¹³ The webpage of the Finnish Immigration Service:
<http://migri.fi/en/living-in-a-reception-centre>

¹¹⁴ The webpage of the Finnish Immigration Service: Daily life in a reception centre: <http://migri.fi/en/daily-life-in-a-reception-centre>, the Finnish Immigration Service: Children asking for international protection: <http://migri.fi/documents/5202425/6246482/Children+asking+for+international+protection+%28en%29>

¹¹⁵ The webpage of the Finnish Immigration Service: <http://migri.fi/en/social-services>

¹¹⁶ The webpage of the Finnish Immigration Service: <http://migri.fi/en/health-care>, the webpage of the Finnish Immigration Service: <http://migri.fi/en/work-and-study-activities>

¹¹⁷ The Finnish webpage of Amnesty International: <https://www.amnesty.fi/tyomme/teemat/pakolaiset>, Section 129a of the Aliens Act.

¹¹⁸ A publication by the non-discrimination Ombudsman Annika Parsons: Selvitys lapsen edun toteutumisesta turvapaikanhakija- ja pakolaislapsia koskevissa päätöksissä (2010), available only in Finnish at: https://www.syrjinta.fi/documents/10181/10850/31685_vv_lapsen_etu_2010_paino_verkkoversio.pdf/0b0a7142-4109-4dfb-b4ad-14de6b5564f5

options. The aim is to find the most suitable housing option for the child.¹¹⁹

During the asylum process, unaccompanied minor asylum seekers live in group homes or supported residential units intended for minors. After receiving a residence permit, migrant children usually move onto family group homes. The activities of the family group homes are coordinated by the ELY Centres¹²⁰, and the operation of the group homes is the responsibility of the Finnish Immigration Service. A minor who is an asylum seeker or who has been issued with a residence permit may also live in private accommodation while being registered with a group home or a family group home.¹²¹

Particular attention must be paid to the child's needs and maintenance of relations with siblings and other close human relations. Therefore, in case a child arrives together with a sibling, attention is paid to place the siblings together to guarantee the best interest of the child.¹²²

If the minor arrives together with family members, accommodation must be organized in a way that makes it possible for the family members to live together in the same place if they want to.¹²³ The first place where the family will stay is called a transit centre and it is primarily meant for new asylum seekers who have just arrived in Finland. After the asylum interview, the family will be transferred to another reception center to wait for a decision. The family also has the option of staying in private accommodation, for example with relatives or friends. The family members will need to be registered at a local reception centre in order to receive reception services, such as health care services and a reception allowance.¹²⁴

After the child has turned 18 the young person is entitled to after-care. The after-care is provided by the municipal bodies responsible for social services. A client plan is drawn up for the young person, that has turned 18, on the basis of the needs of the young person concerned. The after-care includes services like organizing education or work, financial support and supported housing.¹²⁵

5.3. Detention/Retention

An asylum seeker can only be detained in situations that are specified in the law. A person may be detained for example if his or her identity is unclear or there are reasonable grounds to suspect that the person would try to stop the police from removing him or her from Finland. A person may also be detained if there is a reason to suspect that he or she will commit a crime in Finland. The detention units are closed areas which the detained persons cannot leave. The decision to detain someone is made by police or border

¹¹⁹ A publication by Ministry of Economic Affairs and Employment: Ilman huoltajaa tulleiden alaikäisten turvapaikanhakijoiden vastaanotto ja järjestelmän kehittämistarpeet in Työ- ja elinkeinoministeriön julkaisu 29/2014, available only in Finnish at: <https://tem.fi/documents/1410877/2859687/Ilman+huoltajaa+tulleiden+alaikaisten+turvapaikkahakijoiden+vastaanotto+05092014.pdf>, Sections 5, 20 and 21 of the Children Welfare Act.

¹²⁰ The Centres for Economic Development, Transport and the Environment (ELY Centres) are responsible for the regional implementation and development tasks of the central government. Finland has a total of 15 ELY Centres.

¹²¹ The webpage of Integration.fi (upheld by the Ministry of Economic Affairs and Employment of Finland): Family group homes: <http://kotouttaminen.fi/en/family-group-homes>

¹²² Section 50 of the Children Welfare Act.

¹²³ Section 16 of Chapter 3 of the Act on the Reception of Persons Seeking International Protection.

¹²⁴ The webpage of the Finnish Immigration Service: <http://migri.fi/en/living-in-a-reception-centre> ; <http://migri.fi/en/living-in-private-accommodation>

¹²⁵ Chapter 12 of the Children Welfare Act.

guard.¹²⁶

A child can be placed in a detention center with his or her guardian if it is absolutely necessary. The child has to be heard before making the decision of placement in a detention center. A social worker has also to be given the opportunity to be heard regarding the decision. For a child to be placed in detention with his or her guardian, the placing has to be necessary for maintaining the relationship between the child and the guardian.¹²⁷

An unaccompanied child under 15 years cannot be placed in detention. An unaccompanied child that is 15 years or older can be placed in detention only when an expulsion decision has been made and it has become enforceable. In this case the child can be held in detention for a maximum of 72 hours. For exceptional reasons the detention can be extended over 72 hours.¹²⁸

The child and the guardian or legal representative have to be informed immediately of a decision to place the child in detention. The information including the grounds for the detention has to be given in a language that the child, the guardian or the representative understands.¹²⁹

The child taken into detention must be moved to a detention center. Finland has two detention units: one in Helsinki and the other connected to the reception centre in Joutseno.¹³⁰ As all other detained asylum seekers, the child and his or her family will be placed in one of these detention units or, in exceptional circumstances, in police detention facilities. The detention can be executed in police detention facilities if the detention centers are full or if the child is located very far away from the nearest detention center. In the latter case, the detention in police detention facilities can last for a maximum of 48 hours.¹³¹

6. Access to fundamental rights

6.1. Education

The purpose of the Finnish Non-Discrimination Act (2014/1325, as amended) is to promote equality and prevent discrimination. The act applies to both work and education. All discrimination on the basis of age, origin, nationality, language, religion or otherwise is prohibited. Therefore, migrant children have the same rights to education as local children.¹³² The right to education is also safeguarded in the Finnish Constitution.¹³³

Migrant children are entitled to education whatever their status is, but there is no public

¹²⁶ The webpage of the Finnish Immigration Service: <http://migri.fi/en/detention>

¹²⁷ Section 122 of the Aliens Act.

¹²⁸ Section 122 of the Aliens Act.

¹²⁹ Section 123 of the Aliens Act.

¹³⁰ The webpage of the Finnish Immigration Service: <http://migri.fi/en/detention>

¹³¹ Section 123 of the Aliens Act.

¹³² The Non-discrimination Act (1325/2014, as amended), English version available: <https://www.finlex.fi/fi/laki/kaannokset/2014/en20141325.pdf>

¹³³ Section 16 of The Constitution of Finland, English version available: <https://www.finlex.fi/fi/laki/kaannokset/1999/en19990731.pdf>

information available as to whether this is enforced in practice or not. They have the same rights to attend both preschool and primary education as local children. However, for children seeking asylum, participation in primary education is voluntary.¹³⁴ For children living permanently in Finland, education is compulsory for nine years from approximately the age of seven to the age of sixteen, and free of charge for all children, including textbooks and other materials. In addition, the children are entitled to one free warm meal every day as well as health care services.

The municipalities, not the reception centers, are responsible for organizing and funding preschool and primary education.¹³⁵ Immigrant pupils are placed in the grade which best corresponds to their age, knowledge and skills.¹³⁶ After completing the compulsory nine-year comprehensive school the children can apply for upper secondary education on the same grounds as local children.¹³⁷

A child that enters Finland at an age when education is no longer compulsory can apply for upper secondary education or a vocational education on the same terms as a local child. When a young person arrives a plan for education and/or work opportunities is established.¹³⁸ Many foreign children apply for a vocational education instead of upper secondary school. The majority of migrant children arriving in 2015 ended up in vocational education.¹³⁹

Migrant children with special needs have the same rights to support measures as local children. Support measures can include e.g. the use of a teaching assistant and an individual education plan.¹⁴⁰

As the right to education is a fundamental right even protected by the Finnish Constitution, children placed in immigration detention centers have the right to education on the same grounds as all other children in Finland. It seems that the actual access to education for the children in detention centers is poor and often not guaranteed. Several NGO's have protested against taking children into detention for the reason that their fundamental rights, such as the right to education, are not guaranteed while in detention.¹⁴¹

¹³⁴ The webpage of the Finnish Immigration Service: <http://migri.fi/documents/5202425/6375722/Ilman%20huoltajaa%20olevan%20turvapaikanhakijalapsen%20edustaminen/419a1d23-855e-4c00-b8c1-ca4336c1a5e1> (available only in Finnish).

¹³⁵ Ibid.

¹³⁶ The webpage of the Finnish National Agency for Education: http://www.oph.fi/koulutus_ja_tutkinnot/perusopetus/kieli-ja_kulttuuriryhmat/maahanmuuttajataustaiset_oppilaat (available only in Finnish).

¹³⁷ A publication by the Ministry of Education and Culture: Maahanmuuttajien koulutuspolut ja integrointi – kipupisteet ja toimenpide-esitykset II in Opetus- ja kulttuuriministeriön julkaisuja 2017:5, <http://minedu.fi/documents/1410845/4240776/okm5.pdf/c8ba5acf-5038-4be0-80fd-80d75a00f8e7> (available only in Finnish).

¹³⁸ The webpage of the Ministry of Education and Culture: <http://minedu.fi/turvapaikanhakijoiden-opiskelu> (available only in Finnish).

¹³⁹ Ibid.

¹⁴⁰ A publication by the Ministry of Education and Culture: Maahanmuuttajien koulutuspolut ja integrointi – kipupisteet ja toimenpide-esitykset II in Opetus- ja kulttuuriministeriön julkaisuja 2017:5, <http://minedu.fi/documents/1410845/4240776/okm5.pdf/c8ba5acf-5038-4be0-80fd-80d75a00f8e7> (available only in Finnish).

¹⁴¹ Statements by the Central Union for Child Welfare: <https://www.lskl.fi/kannanotot-ja-lausunnot/lasten-sailoonotto-loukkaa-yakavasti-lapsen-oikeuksia/>, <https://www.lskl.fi/kannanotot-ja-lausunnot/lasten-sailoonoton-rajoittamisesityksessa-puutteita-2/>, statement by Unicef: <https://www.unicef.fi/tiedotus/uutisarkisto/2013/lasten-sailoonotto-on-lopetettava-suomessa-jarjestojen-kannanotto/>

6.2. Health care

Both adults and children are always entitled to urgent and essential hospital care regardless of their status. All municipalities have to guarantee children, pregnant women and other vulnerable persons (e.g. older persons, persons with disabilities, persons with long-term illnesses, traumatized persons) the health services they need.¹⁴² Migrant minor children have the right to healthcare on the same terms as local children. In practice, children under school age receive health and development screening at child health clinics. Children in school age are in the scope of the education system's health care services. Typically, there is a school nurse at the school who will send the children to a doctor's appointment if necessary. If the child is over the age of compulsory education, the child is directed to the health care offered by the municipality.¹⁴³ In practice the social welfare and healthcare services are often purchased from municipalities and private enterprises by the Finnish Immigration Service, so that the municipalities' health care centers would not be strained excessively.¹⁴⁴

According to a report published in 2016 by the National Institute for Health and Welfare, there have been considerable shortcomings in securing adequate healthcare services for migrant children in practice, mainly due to the refugee crisis and the consequent lack of sufficient resources. Despite the situation improving during the period covered by the report, the differences in levels of care between municipalities remain considerable.¹⁴⁵

7. Expulsion

7.1. Exclusion clauses

A crime committed in Finland does not immediately lead to the removal of an asylum seeker. The granting of an asylum is always subject to a total evaluation of all aspects in the situation. The need for protection is considered the most important aspect in the asylum process. Committing a crime can have a negative effect on the granting of an asylum.

According to the Aliens Act, asylum is not granted to aliens if they have committed, or if there are reasonable grounds to suspect that they have committed a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes, a serious non-political crime outside Finland before entering Finland as refugees or an act which violates the aims and principles of the United Nations.¹⁴⁶

Crimes committed by asylum seekers are reported by the police to the Finnish Immigration Service. If a person is found guilty of crimes, the refugee status and subsidiary protection may be withdrawn. If the crime in question is a serious crime, the Finnish Immigration Service pays special attention to the grounds of protection, and

¹⁴² Section 26 of the International Protection Act.

¹⁴³ The webpage of the National Institute for Health and Welfare: Turvapaikanhakijoiden palvelut: <https://www.thl.fi/en/web/maahanmuuttajat-ja-monikulttuurisuus/maahanmuuttajien-terveys-ja-hyvinvointi/turvapaikanhakijoiden-terveys-ja-hyvinvointi/turvapaikanhakijoiden-palvelut> (only in Finnish).

¹⁴⁴ An article by Yleisradio (the Finnish Broadcasting Company): <https://yle.fi/uutiset/3-8299100>.

¹⁴⁵ Report by the National Institute for Health and Welfare: Turvapaikanhakijoiden terveydenhuollon toteutuminen 2015-2016: http://www.julkari.fi/bitstream/handle/10024/131610/RAP2016_19_Turvapaikan_vok_korj.22.1.2018_WEB.pdf?sequence=1 (only in Finnish).

¹⁴⁶ Section 87 of the Aliens Act (301/2004)

whether or not they are sufficient. The more serious the crime, the bigger impact it can have on the asylum process. As mentioned, the process of granting an asylum is an evaluation of every relevant aspect.¹⁴⁷ There is no specific information available on children asylum seekers who have committed crimes.

There are no recorded cases concerning the application of exclusion clauses as in Article 1F of the 1951 Convention on children asylum seekers.

7.2. Internal relocation/expulsion to country of origin

A person can be relocated or expelled to their country of origin. This also applies to children. The best interest of the child is taken into consideration when deciding on the internal relocation of a child back to his country of origin.¹⁴⁸ The children's age and level of development is always taken into consideration when executing internal relocation or expulsion.¹⁴⁹ In practice, it has to be made sure that the child is returned to an adult person (e.g. a family member).¹⁵⁰

7.3. Resettlement to a third country

Finland is subject to the EU resettlement plans and does accept refugees/asylum seekers under the resettlement schemes based on the quotas agreed upon by the member states of the EU. The resettlement to a third country is guided by the best interest principle.¹⁵¹

8. Data Collection

8.1. Data regarding migrant children on the move collected by the public authorities:

The Finnish Immigration Service maintains and controls the Register of Aliens, which is a register of persons mainly used for processing and control of matters relating to the entry and departure from Finland, residence of aliens in Finland, carrying out basic security investigation and for keeping records of the acquisition and loss of Finnish citizenship.¹⁵²

The following information is collected and kept in the register:

- who has applied for a visa or a residence permit;
- who has participated or finished a language degree as stated in Section 48 of the Aliens Act (301/2004);

¹⁴⁷ Press Release of the Finnish Immigration Service, December 7, 2015. Available here: http://migri.fi/artikkeli/-/asset_publisher/rikolliset-poistetaan-maasta-aina-kun-laki-sallii?p_auth=RM44jJGs, Webpage of the Ministry of the Interior, available in Finnish here: <http://intermin.fi/maahanmuutto/turvapaikanhakijat-ja-pakolaiset/ukk>

¹⁴⁸ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or stateless person (recast), available in English at: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32013R0604&from=EN>

¹⁴⁹ The webpage of the Finnish Ministry of Interior: <http://intermin.fi/maahanmuutto/vapaachtoinen-paluu-ja-palauttaminen/kenet-voidaan-palauttaa-ja-miten>

¹⁵⁰ Esko Repo, the Manager of the Asylum Unit at the Finnish Immigration Service in a news article: <https://www.suomenuutiset.fi/maahanmuuttoviraston-perusteita-alaikaisen-turvapaikanhakijan-ikatestille-harmaat-hiukset-ja-yahva-parta>

¹⁵¹ A press release by the European Commission: "Relocation and Resettlement: EU Member States urgently need to deliver": https://europa.eu/rapid/press-release_IP-16-829_en.htm

¹⁵² Finnish Immigration Service's webpage on Register of Aliens: <http://migri.fi/en/registers>

- whose residence permit has been registered under Aliens Act or information regarding their working has been registered under some other act;
- who has applied for international protection or whose application is still under process;
- who has applied for an aliens passport or a refugee's travel document or for whom the Finnish authorities have given a one-way travel document to exit the country; and
- who has been granted with the reflection period for a victim of trafficking in human beings.¹⁵³

The above-mentioned information is also collected of migrant children, as applicable.

In addition, the Finnish Immigration Service is entitled to receive information from the reception centers regarding date of birth and family members and their whereabouts of unaccompanied minors.¹⁵⁴ Further, child-related information is collected in the register of legal representatives, which is held for managing, steering, planning and monitoring the representation of children applying for asylum without a guardian. The information contained in the Register of Aliens and the representative register may be used for compiling national and international statistics within the limits of the Finnish Personal Data Act.¹⁵⁵

8.2. Data protection: Is confidentiality of data regarding children secured?

Personal data collection and processing is governed by the Personal Data Act (523/1999, as amended) which sets out the principles to be followed in data collection. The controller of a register shall carry out the technical and organizational measures necessary for securing personal data against unauthorized access, accidental or unlawful destruction, manipulation, disclosure and transfer.¹⁵⁶ Therefore, the Finnish Immigration Service as the controller of the mentioned data has to ensure that the personal data of the registered is adequately secured.

9. International relations

9.1. Foreign aid that addresses root causes of migration of minors (in particular of unaccompanied minors) in countries of origin and transit countries.

The Finnish Immigration Service is active in raising awareness and helping the victims of human trafficking. There are also a number of NGOs raising awareness on migration in Finland. To name a few, especially the Central Union for Child Welfare¹⁵⁷ has an active role in matters relating to children's rights on a national and European Level. There have been several campaigns on raising the awareness regarding migration and asylum seekers in general but not regarding unaccompanied minors. There does not seem to be any specific agreement in place to prevent the root causes of migration of unaccompanied minors.¹⁵⁸

¹⁵³ Section 5 of the Act on Register of Aliens (1997/1270).

¹⁵⁴ Section 8 of the Act on Register of Aliens (1997/1270).

¹⁵⁵ Finnish Immigration Service's webpage on Register of Aliens: <http://migri.fi/en/registers>

¹⁵⁶ Section 32 of the Personal Data Act (523/1999).

¹⁵⁷ The webpage of the Central Union for Child Welfare is available in English at: <https://www.lskl.fi/english/>

¹⁵⁸ The webpage of Kepa (Kepa is an NGO platform and an expert on global development. They represent more than 300 Finnish civil society organisations and promote action aiming to build a just world): <https://www.kepa.fi/> and the annual report of

Foreign aid is by many organizations directed to the countries from where refugees come to Finland. The Finnish Church is canalizing its funds to Syria, Greece and Jordania.¹⁵⁹ The Finnish Red Cross, on the other hand, is targeting the root causes in, among other countries, Afghanistan, Iraq and Syria. All of these are countries in need of help, since a majority of the refugees coming to Finland have fled from them.¹⁶⁰

9.2. Cooperation with civil society:

Many Finnish NGOs cooperate with international associations and organizations, mainly for exchange of information and opinions.¹⁶¹ One of the values of the Finnish Immigration Service is to influence their networks by exchanging information with different NGOs.¹⁶²

9.3. Visa policies

The provisions of the Aliens Act regarding issuing residence permits to asylum seekers was tightened in 2016, the provision allowing asylum seekers to be granted a residence permit on the basis of humanitarian protection was repealed. That said, Finland has no system of humanitarian visa/parole.¹⁶³

10. Additional Remarks

N/A

the Finnish Church Aid (Finnish Church Aid is the largest Finnish development cooperation organization and the second largest provider of humanitarian assistance): <https://www.kirkonulkomaanapu.fi/en/us/annual-report-2016/>

¹⁵⁹ The annual report of the Finnish Church Aid: https://www.kirkonulkomaanapu.fi/wp-content/uploads/2014/01/Kirkon-Ulkomaanavun-vuosikertomus_2016.pdf?x80383

¹⁶⁰ The webpage of the Finnish Red Cross: <https://www.punainenristi.fi/node/799/lahi-ita-pohjois-afrikka>

¹⁶¹ The webpage of the Finnish Refugee Advice Centre: <http://www.pakolaisneuvonta.fi/index.html?lid=33&lang=suo>

¹⁶² The webpage of the Finnish Immigration Service: http://www.migri.fi/about_us (as available on November 6, 2017).

¹⁶³ The webpage of the Finnish Immigration Service: http://migri.fi/en/artikkeli/-/asset_publisher/humanitaarista-suojelua-ei-myonneta-ena-uudet-maalinjaukset-afganistanista-irakista-ja-somaliasta?p_auth=I4qNcIVV

