

IWB for refugees: Finland

The international protection in Finnish legislation is regulated in the *Aliens Act* (Ulkomaalaislaki, Utlänningslag 30.4.2004/301) from 2004 with its amendments. The national legislation is based on the Convention Related on the Status of the Refugees from 1951 and European Union's Council Directive 2004/83/EC of 29 April 2004, on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted. All the other relevant international treaties as well as European Union legislation which Finland has ratified are also taken into account.

The Aliens Act is a general law, regulating all the residence permit types. Besides the general provisions, chapter 6 regulates the international protection. In May 2016 the humanitarian protection, which was a national protection type of international protection was abolished from the legislation.

According to the section 87 of Aliens' Act:

“(1) Aliens residing in the country are granted asylum if they reside outside their home country or country of permanent residence owing to a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion and if they, because of this fear, are unwilling to avail themselves of the protection of that country.

(2) Asylum is not granted to aliens if they have committed, or if there are reasonable grounds to suspect that they have committed: 1) a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes; 2) a serious non-political crime outside Finland before entering Finland as refugees; or 3) an act which violates the aims and principles of the United Nations.

(3) Asylum is not granted to persons who are eligible for protection or help from bodies or offices of the United Nations other than the United Nations High Commissioner for Refugees (UNHCR). Once such protection or help has ceased without final regulation of the status of the person in accordance with the valid resolutions adopted by the United Nations General Assembly, the person is entitled to refugee status. If the person has voluntarily relinquished the protection mentioned above by leaving the safe area for reasons other than those related to a need for protection, his or her right of residence is examined under this Act.

(4) Aliens are refused asylum if the competent authorities in the country where they have settled have granted them the rights and obligations attached to the citizenship of this country."

Furthermore, the section 88 of the Aliens' Act regulates the subsidiary protection, based on the EU law:

"(1) An alien residing in Finland is issued with a residence permit on grounds of subsidiary protection if the requirements for granting asylum under section 87 are not met, but substantial grounds have been shown for believing that the person, if returned to his or her country of origin or country of former habitual residence, would face a real risk of being subjected to serious harm, and he or she is unable, or owing to such risk, unwilling to avail him or herself of the protection of that country. Serious harm means: 1) the death penalty or execution; 2) torture or other inhuman or degrading treatment or punishment; 3) serious and individual threat as a result of indiscriminate violence in situations of international or internal armed conflicts.

(2) An alien is not issued with a residence permit on the basis of subsidiary protection if there are reasonable grounds to suspect that he or she has committed: 1) a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes; 2) an aggravated crime; or 3) an act which violates the aims and principles of the United Nations."

In law amendment 12.8.2016/646 the use of legal aid was limited only to the appeal. The use of state-paid legal counsel in the first instance procedure is only allowed in cases where the applicant is in a vulnerable position, such as an unaccompanied minor. If the asylum seeker wishes to use legal counsel in the immigration interview, this must be paid by the applicant. In the appeal to the Administrative Court, the legal aid is still provided.

If the case concerns a child, who is younger than eighteen years old, special attention shall be paid to the best interest of the child and to circumstances related to the child's development and health. Before a decision is made concerning a child who is at least twelve years old, the child shall be heard unless such hearing is manifestly unnecessary. The child's views shall be taken into account in accordance with the child's age and level of development. A child younger than 12 years may also be heard if the child is sufficiently mature to have his or her views taken into account. Furthermore, matters concerning minors shall be processed with urgency. A medical age assessment may be carried out to establish the age of a child applying for an asylum if there are reasonable grounds for suspecting the reliability of the information the person has given on his or her age. The performance of an examination requires that the person to be tested has given an informed consent in writing of his or her own volition. Anyone who refuses to undergo an examination is treated as an adult if there are no reasonable grounds for refusal. A refusal to undergo an examination may not as such constitute grounds for rejecting an application for international protection. Before obtaining consent, the applicant 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 detention of asylum seekers is enacted in the Aliens' Act, sections 121-129. Section 121 places the conditions for the detention of an alien in Finland. Other interim measures, obligation to report, confiscation of the travel tickets and giving security, are enacted in the sections 118-120. According to section 121, an alien can be detained, if there are reasonable grounds to believe that the alien will hide, escape or any other way would hinder the issue of a decision concerning him or her or the enforcement of a

decision on removing him or her from the country, if detention is necessary for establishing his or her identity, if an alien has committed a crime or is suspected and detention is necessary for the deportation, if an alien has filed a new application for the international protection while detained in order to prolong the process and avoid deportation, if the detention is necessary under the Dublin II regulation, article 28, or if an alien would, taking into account his or her personal features, cause a threat to the national security.

Besides the Aliens' Act, the Law on the Reception of the Asylum Seekers and Recognizing and Helping the Victims of Human Trafficking (Laki kansainvälistä suojelua hakevan vastaanotosta ja ihmiskaupan uhrin tunnistamisesta ja auttamisesta, Lag om mottagande av personer som söker internationellt skydd och om identifiering av och hjälp till offer för människohandel 17.6.2011/746) is an act important in the light of the asylum process. This so called *Reception Act* sets out the conditions for the reception of the asylum seekers. The act is based on the EU's reception condition directive.

Besides the above mentioned Aliens' Act and Reception Act, also the following acts set out the rights and obligations of the asylum seekers as well as the rights and obligations of the State in the asylum procedure:

-Constitution of Finland (Suomenperustuslaki, Finlands Grundlag 11.6.1999/731)

-Administrative Procedure Act (Hallintolaki, Förvaltningslag 6.6.2003/434)

-Administrative Judicial Procedure Act (Hallintolainkäyttölaki, Förvaltningsprocesslag 26.7.1996/586)

The Constitution of Finland includes a rather broad list of fundamental rights which are also applied to aliens residing in Finland. The most important provision of the constitution in the context of asylum legislation is the principle of the non-refoulement, enacted in the section 9(4) which provides that:

A foreigner shall not be deported, extradited or returned to another country,

if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity.

Also, according to the Constitution, the aliens' right to move within Finland cannot be restricted without legitimate reason. However, in 2016 the Finnish government introduced law proposal which would require asylum seekers to report to the local reception centre up to 6 times in a day. This has been criticized by the human rights experts as it would de facto restrict the rights guaranteed in Constitution. Also, the amendments to Aliens Act in September 2016 were highly controversial as the new law restricts the right to legal aid and limits the appeal time to Administrative Court to 21 days in asylum matters even though the general appeal time in Finnish legislation is 30 days. This was seen discriminatory and against the Constitution's equality provisions. However, the parliament passed this amendment and law entered into force on 1st September 2016.

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According to section 95 of the Aliens Act, an application for international protection shall be filed with police or border control authorities upon entry into the country or as soon after entry as possible. The application shall be registered by the police or border control authorities immediately. If the number of asylum applications has increased significantly, the applications must be registered within 10 days. Persons applying for international protection are informed of asylum procedures and of their rights and responsibilities throughout the process. The police or border control authorities shall provide such information to the applicant upon receipt of the application for international protection.

An alien who applies for international or temporary protection or who has entered Finland under the refugee quota may be issued with a card that shows that an application process concerning him or her has been initiated in Finland. The police, the Border Guard or Finnish Immigration Service issues

the card.

During the asylum process, the asylum seekers are provided a monthly living allowance which varies between €76,01 and €314,91, depending on the type of reception centre the applicant lives in and whether the person has a family or not. In some of the reception centres, the meals are provided for the asylum seekers whereas in other reception centres the applicants cook their own meals. This affects the amount of monthly living allowance.

Unaccompanied minors live in separate centres and are always provided with meals in the centres. Their monthly living allowance is €27,15 for those who are under 16 years and €48,86 for those who are 16-17 years. When an applicant turns 18, he is required to move to the adults' reception centre.

During the asylum investigation, the Finnish Immigration Service establishes the identity, travel route and entry into the country of an alien applying for a residence permit on the basis of international protection. When establishing an applicant's identity, personal data on the applicant's family members and other relatives are collected. This used to be done by the police, but the competence was given to the Immigration Service on 1st of January 2017.

The Finnish Immigration Service conducts an asylum interview to establish orally the grounds given by the applicant for the persecution he or she has faced in his or her home country or country of permanent residence or for other violations of his or her rights or related threats. In addition to the Finnish Immigration Service, the Finnish Security Intelligence Service can conduct an asylum interview, if Finland's national security or international relations so require.

At the asylum interview, the applicant is asked to give his or her opinion on the possibility of being removed from the country and sent to a safe country of asylum or a safe country of origin and prohibited entry into the country. In particular, the applicant is asked to give the grounds on which he or she believes that the State in question is not safe for him or her. The Finnish Immigration Service establishes whether there are grounds other than

international protection for giving the applicant the right of residence, such as family relations, employment or studying.

In the cases where the applicant claims to be a minor but he or she does not have official documents to prove it and there are suspects that he or she might be over 18 years old, a medical age assessment can be done. The age assessment is done by examining the teeth of the applicant as well as the wrist bones. If the applicant refuses the age assessment, he or she will be treated as an adult.

The decision by the Finnish Immigration Service may be appealed by the Administrative Court. The Administrative Procedure Act and Administrative Judicial Procedure Act have provisions on the procedural rules which shall be followed in all the asylum cases by all three authorities (the Immigration, Administrative Court and the Supreme Administrative Court). Every decision which the Immigration makes can be appealed by the Administrative Court. The asylum cases are always decided by the Helsinki Administrative Court, the other five regional Administrative Courts do not take asylum cases. After the appeal to the Administrative Court, the parties can apply for permission to appeal to the Supreme Administrative Court, but the Court itself decides whether the case is so significant that it should decide on it.

In most cases, negative asylum decisions given by the Immigration Service are appealed. After the negative decision from the first authority, the asylum seekers are allowed to stay in Finland to wait for the decision by the Administrative Court. The deportation order is given in the Administrative Court's decision and can be executed 30 days after the Administrative Court's decision. If the Supreme Administrative Court has accepted the case to have the right to appeal to the Supreme Administrative Court, it can order the prohibition on deportation before the case is decided by the Supreme Administrative Court.

If the Supreme Administrative Court does not accept the case to be reviewed, the decision of the Administrative Court will become final. 30 days after the Administrative Court has given its decision, the asylum seekers' right to

reside in the reception centre ends. This means that after 30 days of the Administrative Court's decision, the asylum seeker will either a) be deported, b) leave the country with the assisted voluntary return or c) becomes undocumented migrant, and resides in Finland illegally.

An applicant can cancel his application at any time during the process. This can be done by a letter of cancellation, which is given to the Immigration Service, police or border guards. After the cancellation of an asylum application, the applicant can apply for money for the assisted voluntary return from IOM. Also, for example, the police department of Helsinki has organized free return flights to Baghdad.

If the applicant is granted asylum or subsidiary protection, he or she can apply for family reunification. In general, the family reunification must be applied in the closest Finnish embassy where the family members currently reside. However, the family members applying for family reunification in a Finnish embassy must reside legally in that particular country. If the family reunification is applied for within 3 months of when the first applicant was granted asylum, there is no income requirement. If the family reunification is applied for later, the first applicant's monthly income should be €1700 after taxes to be able to support his spouse, €2200 after taxes for spouse and one minor child and €2600 after taxes for spouse and two minor children. The income requirements were highly criticized by human rights organizations after their introduction in 2016, because a vast majority of Finns do not earn more than 2600€ after taxes.

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If the asylum seeker is not granted asylum status under the Geneva 1951 convention, They are considered for subsidiary protection under the EU legislation. This is done in one process, so with one application, it is estimated whether the person has grounds for refugee status or subsidiary protection. If neither of these forms of protection is granted, and the

immigration service's decision is appealed to the Administrative Court, and if the court's decision is also negative, under the Reception Act 14a§, the asylum seeker has 30 days to leave the reception centre. After these 30 days, the person will be deported to his/her country of origin or, in the cases where it is not possible to deport them, they will remain in Finland as undocumented migrants.

Whether or not the person can be deported depends greatly on the country of origin of each asylum seeker. Currently Finland does not have the repatriation agreement with Iraq, which is the largest country of origin of asylum seekers residing in Finland. Due to the lack of a repatriation agreement, it has been very difficult to deport Iraqi citizens to Iraq. It is estimated that thousands of Iraqis will stay in Finland without a residence permit. The government of Iraq has been reluctant to conduct such an agreement despite the fact that Finnish government is working hard to find consensus with them. Despite the lack of a repatriation agreement, some Iraqi citizens have been deported.

If the person is not granted international protection, they can still apply for a residence permit on the grounds of work, study or family relationship. Also, after receiving a negative asylum decision, the applicant can seek asylum again. If there are no new grounds for granting asylum, the application is usually rejected very quickly. In theory, the rejected asylum seeker can travel to another EU country to seek asylum, but due to the Dublin regulation, they are usually sent back to Finland.

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Finland



Capital: **Helsinki**

Location: **North-Eastern Europe**

EU-member since **1995**

Currency: **Euro**

Population: **5,426,700**

GDP:

Min. wage:

Poverty line:

Population under poverty line:

IWB Researchers

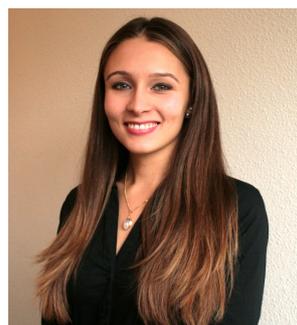


Heidi Nihtila



"I have been interested in human rights issues for my whole life and the refugee crisis gave me an opportunity to meet amazing people from different countries. Prejudices and misunderstandings create conflicts which could be avoided by raising the awareness of the refugee rights."

Elisa Ahovouri



“Since the migration crisis the concerns for the newcomers’ reception in Europe have become increasingly important. After writing my thesis on a related topic, and working as a volunteer with refugees, I see it as a logical continuation to join the IWB. It is an organisation that has a future and a voice. Research should be more taken into account in political decisions related to immigration regimes, and IWB can make this happen.”

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