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**ASYLUM SEEKERS WITH CRIMINAL BACKGROUND AND
THEIR ASYLUM PROCEEDINGS**

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Abstract

There is an on-going refugee crisis in Europe and Member States are struggling with the asylum process. The idea behind the Convention and Protocol relating to the Status of Refugees is to guarantee human rights for the asylum seekers but also guarantee the safety of the country of refuge. The Asylum process is outdated and the protection under the Refugee Convention is granted too lightly. The criminal backgrounds of the asylum seekers are not thoroughly investigated due to the outdated procedures and insufficient access to the needed registers. This thesis proceeds by first introducing the refugee definition and the legal framework. Next, the asylum process in Finland is reviewed demonstrating how the evaluation and investigations during the process are not sufficient. Finally, it is argued that the current asylum process is not in accordance with the principles of the 1951 Refugee Convention and its exclusion clauses.

Keywords: Asylum seeker, International Criminal law, Refugee Law, 1951 Refugee Convention.

Introduction

Europe is currently facing a refugee crisis and hundreds of thousands of potential asylum seekers are entering the European Union Member States.¹ There has been more than 1.4 million people fleeing from their homes trying to get to Europe since 2015.² United Nations' Convention and Protocol relating to the Status of Refugees determines the legal framework for asylum and refuge as well as defines who shall be considered a legal refugee. The Convention also states that individuals with a serious criminal background cannot benefit from the protection of the Convention. The core idea behind refuge and asylum is to protect the persecuted individuals from the persecution they face in the country they are fleeing from and the public safety of the country they seek refuge from. Therefore, not allowing the individuals committing serious crimes or participating in the persecution to benefit from the protection of the Convention is one of the main principles.³

There are asylum seekers with criminal backgrounds arriving to Europe and some commit crimes after arriving. Due to the nature of the crimes in question, some of these asylum seekers cannot be deported due to the fundamental human rights and the core principle of the Convention. Non-refoulement prohibits the deportation of an individual to their country of nationality or habitual residence if it may subject them to degrading and inhuman treatment and/or persecution.

During the asylum process, the official authorities try to determine the traveling route and the background of the asylum seeker questioning them in an asylum interview. The individuals conducting the asylum interviews do not ask the asylum seekers straight forwardly about their possible criminal background. Also, official authorities are unable to check the criminal records asylum seekers might have in other countries making the asylum procedure harder and enabling individuals falling outside of the scope of the Refugee Convention to enjoy the protection.⁴ The official authorities' access to necessary, and much needed, registers is also

¹ UNHCR, The UN Refugee Agency. Refugee Statistics. Accessible: <https://www.unrefugees.org/refugee-facts/statistics/> (5.2.2018)

² *Ibid.*

³ UNHCR, The UN Refugee Agency. Note on the Exclusion note. Accessible: <http://www.unhcr.org/excom/standcom/3ae68cf68/note-exclusion-clauses.html> (5.2.2018)

⁴ Finnish Immigration Service. Dublin Regulation: When will an asylum seeker be refused entry and returned to another European state? Accessible: https://migri.fi/artikkeli/-/asset_publisher/milloin-turvapaikanhakija-kaannytetaan-toiseen-euroopan-valtioon-?_101_INSTANCE_FVTI5G2Z6RYg_languageId=en_US (5.2.2018)

insufficient, partly due to the fact, that relevant registers, besides the European Union Fingerprint Database EURODAC, do not exist.

The main hypothesis of the thesis is that **the asylum process in Finland is outdated and the criminal background of the applicants is not thoroughly investigated.** The Convention and Protocol relating to the Status of Refugees states in Article 1F, points A-B, that the Convention shall not apply to individuals who have committed or are suspected of committing a serious crime against peace or humanity, a war crime or a serious non-political. It also excludes individuals who have committed or suspected of committing an act against the principles of the United Nations. The exclusion clauses were created so the individuals participating in the persecution of others would not be able to benefit from the protection offered by the Convention.⁵ The criminal backgrounds of the asylum seekers are not and cannot be thoroughly investigated due to above mentioned reasons and practice which causes the procedures to be outdated and against the core idea of refuge.

The research questions of this thesis are: **How the asylum process of asylum seekers with criminal records are being handled in Finland and if the asylum process is up to date with the principles of refugee law defined in the United Nations Convention and Protocol relating to the Status of Refugee and the international criminal law.** The research aims to analyze the international refugee law and the relevant Finnish laws with international criminal law perspective.

This thesis is divided in to three parts. The thesis proceeds by introducing the refugee definition and the relevant legal framework including international and national legislation in the first chapter. In the second chapter, the asylum process in Finland is reviewed demonstrating how the evaluation and investigations during the asylum process are not sufficient and effective. Finally, in the third and final chapter, it is argued that the current asylum procedures are not in accordance with the principles of the 1951 Refugee Convention and its exclusion clauses. This is done by analyzing the definition of serious crimes and their correlation to the refugee law and the effect they have on the asylum procedures.

Qualitative research methods are used in this thesis with traditional ‘black letter’ or dogmatic methodology where the letter of the law is interpreted and analyzed. ‘Black letter’

⁵ UNHCR, The UN Refugee Agency, *Supra nota*, 3.

methodology is used when analyzing the already existing laws and their implementation on domestic level. The qualitative part of the research consists of case law used with academic articles and interviews to give perspective and different interpretations to the research topic. This thesis also includes comparative analysis when analyzing the different branches of international law and their correlation to the research topic.

1. Legal Framework for Refugee and Asylum seeker status

1.1 International Human Rights Law

In order to start analyzing the asylum seeking process and procedures, it is necessary to understand the origins and definition for asylum and refuge. This section covers the definitions for asylum, refuge and the relevant legal framework.

United Nations was founded in an International Conference organized by the United States of America in 1945.⁶ During this Conference, a proposal was made for a “Declaration on the Essential Rights of Man” in addition to the United Nations Charter.⁷ After the horrors of the Second World War were revealed to the world it became evident that the United Nations Charter needed to be improved with an additional declaration to specify the rights of individuals.⁸ The 1945 Conference led to the creation of one of the most important documents considering the human rights, the Universal Declaration of Human Rights.⁹ The United Nations General Assembly ratified it on 10th of December 1948 in Paris.¹⁰ Articles 1 and 2 of the Declaration define the basic elements and freedoms for individuals stating that everyone is born free and equal.¹¹ Articles 3 to 25 lay out the individuals fundamental rights where the most important ones, considering the topic of the thesis, are the right to life specified in Article 3 and the right to asylum laid out in Article 14.¹²

There have been disputes considering the legal aspect of the Declaration. It has been argued by some legal scholars that the Declaration is so widely used and known it has become a customary norm and therefore binding to all States.¹³ Nevertheless it has been concluded by the Supreme Court of the United States of America and several other courts that the Universal Declaration itself is not part of domestic law and international law.¹⁴ In *Sosa v. Alvarez-*

⁶ United Nations, Introductory Note. Accessible: <http://www.un.org/en/sections/un-charter/introductory-note/index.html> (20.3.2018)

⁷ *Ibid.*

⁸ United Nations, Universal Declaration of Human Rights. 10.12. 1948.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² *Ibid.*

¹³ Hannum, H. (2001), The UDHR in National and International Law, *Health and Human Rights Journal*, vol. 3(2), Harvard University Press. p. 145.

¹⁴ US Supreme Court, *Sosa v. Alvarez-Machain*, 2004, United States of America.

Machain, a Mexican citizen was abducted by a bounty hunter and brought to the United States of America for a trial. He claimed it was a violation of Article 35 of the Universal Declaration of Human Rights but the U.S Supreme Court ruled against him stating that the Universal Declaration of Human Rights is not part of the law of nations which the US justice system follows.¹⁵

The creation process of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights started at the same Conference than the Universal Declaration of Human Rights.¹⁶ They are based on the same proposal of the Essential Rights of Man and follow the structure of the Declaration.¹⁷ They are multilateral treaties which together with the Universal Declaration of Human Rights form the International Bill of Human Rights.¹⁸

The Universal Declaration of Human Rights and its Article 14 created the base for international legislation considering refugees and asylum in the form of the 1951 Refugee Convention.¹⁹ The Universal Declaration of Human Rights was also used as a base for the European Convention on Human Rights.²⁰ The European Convention of Human Rights was signed 4th of November 1950 and its main goal is to protect human rights in Europe.²¹ The European Convention has same fundamental freedoms than the Declaration, where Article 1 itself binds the signatory states to the Convention and gives the Convention its legislative power.²² The Convention itself does not include the right to asylum but Article 2 guarantees the right to life for every human beings and Article 3 prohibits torture and degrading treatment or punishment which includes the principle of not returning individuals to countries where they might be subjected to inhuman and degrading treatment or punishment.²³ These articles strengthen the European Convention's intentions to respect the concept of asylum.²⁴ The

¹⁵ *Ibid.*

¹⁶ United Nations, Introductory Note, *Supra Nota*, 6.

¹⁷ *Ibid.*

¹⁸ *Ibid.*

¹⁹ University of Minnesota, Human Rights Library, Study Guide: The Rights of Refugees. Accessible: <http://hrlibrary.umn.edu/edumat/studyguides/refugees.htm> (15.3.2018)

²⁰ Council of Europe, European Convention of Human Rights, 4.11.1950

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ *Ibid.*

Universal Declaration of Human Rights and its main articles have also been included in international legislation in the form of the 1951 Refugee Convention and other treaties.²⁵

1.2 1951 Refugee Convention and Protocol 1967

The 1951 Refugee Convention, officially called The Convention Relating to the Status of Refugees, is a multilateral treaty by the United Nations.²⁶ The first edition of the Convention was created after the Second World War in order to protect the European refugees who had fled the horrors and terror caused by Nazi's and Stalin.²⁷ The scope of the Convention was expanded later with the 1967 Protocol which removed the limitations of geographic regions and time of the event causing persecution.²⁸ The 1951 Refugee Convention is one of the most important international legal frameworks and it is widely ratified amongst states.²⁹ The thing that makes this Convention different from other international treaties is the fact that a state can only ratify either the Convention or the Protocol.³⁰ For example, United States of America has only ratified the Protocol and not the Convention.³¹

The Convention sets a legal framework for refugees and asylum seekers and specifically defines who is considered a refugee and sets out the rights and obligations for individuals who are granted asylum.³² The Convention also includes the obligations of signatory states considering possible refugees but it does not oblige states to grant asylum.³³ One of the most important principles of the convention is non-refoulement which means that refugee should not be returned areas where their life or freedom would be jeopardized.³⁴

The 1951 Refugee Convention defines a refugee in Article 1A as a person who has left their country of nationality or habitual residence, has a fear of persecution because of their race, religion, nationality, membership of a particular social group or political opinion and cannot

²⁵ United Nations General Assembly, United Nations Convention and Protocol Relating to the Status of Refugees, 1.1.1951.

²⁶ UNHCR, Frequently Asked Questions. Accessible: <http://www.unhcr.org/news/stories/2001/6/3b4c06578/frequently-asked-questions-1951-refugee-convention.html> (15.2.2018)

²⁷ Jan Klabbers (2017), *International Law 2nd Edition, England*, Cambridge University Press. p 133.

²⁸ United Nations, Universal Declaration of Human Rights, *Supra nota*, 8.

²⁹ *Ibid.*

³⁰ United Nations General Assembly (1951), *Supra nota*, 25.

³¹ *Ibid.*

³² University of Minnesota, Human Rights Library, Study Guide: The Rights of Refugees, *Supra nota*, 19.

³³ *Ibid.*

³⁴ *Ibid.*

return or seek protection from the country of their nationality or habitual residence.³⁵ Persecution is defined as an act that is serious in nature and violates fundamental human rights. Persecution by race means it within the broadest purpose and it includes different ethnic groups as well as social groups of common origin, which means any persecution or mistreatment related to the individual's race is included.³⁶ Religious persecution is defined as persecution or mistreatment based on the religious beliefs of an individual or a group or their connection religion.³⁷ Nationality as a reason for persecution has a slightly narrower scope but ethnic background as well as linguistic and cultural groups can be included with persecution based on the individual's nationality.³⁸ Persecution based on belonging to a particular social groups includes mistreatment and persecution based on a background, habits or social status a group of people may have.³⁹ Within the broad guidelines for persecution based on particular social group, persecution itself does not define an individual to be a part of a particular social group and there is no exhaustive list of groups.⁴⁰ Political opinion as a reason for persecution holds ideas that are not accepted by the authorities, including critical thoughts and opinions about the government and their actions.⁴¹ The persecution has to be caused by one of the five reasons listed above and in article 1A(2) of the Convention and the person must be unable or in a fear, which makes him or her unwilling to seek protection of their country of nationality or habitual residence.⁴² Throughout the time and place, the definition has varied, but the increased concern for the refugee's distress lead to a general agreement of the definition which later became a custom.⁴³ Article 2 of the Convention lays out the general obligations for the refugees.⁴⁴ Main duty is to obey and conform to the laws of the country of refuge.⁴⁵

When the Convention was drafted after the Second World War to protect the people fleeing from the persecution in Europe, there was a concern that people who do not deserve the protection would benefit from it.⁴⁶ The idea of exclusion is related to the concepts of humanity, equity and core idea of refuge itself.⁴⁷ That lead to Article 1F which established exclusion in

³⁵ *Ibid.*

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ UNHCR (2002), *Guidelines on International Protection: "Membership of a particular social group" within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees*, p 2.

⁴⁰ *Ibid.* p 2.

⁴¹ University of Minnesota, Human Rights Library, Study Guide: The Rights of Refugees, *Supra nota*, 19.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ United Nations General Assembly (1951), *Supra nota*, 25.

⁴⁵ *Ibid.*

⁴⁶ UNHCR, The UN Refugee Agency. *Supra nota*, 3.

⁴⁷ *Ibid.*

to the Convention.⁴⁸ It includes a definition for who cannot benefit from the protection of this Convention and for what reasons, it will be analyzed later in this thesis.⁴⁹

1.3 Non-refoulement

Non-refoulement is one of the main principles of the United Nations and refugee law.⁵⁰ This principle prohibits the removal or deportation of a refugee to a territory where their life is in danger or they might face persecution or inhuman treatment or punishment.⁵¹ Article 32 of the 1951 Refugee Convention prohibits the contracting states to expel refugees who are lawfully residing in their territory unless it is essential to the public safety and national security.⁵² The actual non-refoulement clause is found in Article 33 of the Convention and it considers refugees and asylum seekers with criminal background.⁵³ Article 33(2) allows refoulement for persons convicted of a serious crime or who constitute a danger to the public safety.⁵⁴ Also, the 1966 International Covenant on Civil and Political Rights impose a strict prohibition on removal or deportation to a territory where death and/or persecution and inhuman treatment and punishment would be likely to happen.⁵⁵

1.4 Asylum in the European Union and Asylum Procedures Directive 2013/32/EU

This section explains the European Union's Asylum Procedures Directive and analyses its relevancy with the topic of the thesis. The European Parliament and the Council of the European Union adopted the Asylum Procedures Directive 2013/32/EU in 2013.⁵⁶ The Directive's aim is to set common procedures within the EU Member States considering asylum procedures and granting asylums.⁵⁷ The main goal in harmonized legislation within the EU

⁴⁸ *Ibid.*

⁴⁹ United Nations General Assembly (1951), *Supra nota*, 25.

⁵⁰ UNHCR, The UN Refugee Agency. Note on Non-Refoulement (Submitted by the High Commissioner). Accessible: <http://www.unhcr.org/excom/scip/3ae68ccd10/note-non-refoulement-submitted-high-commissioner.html> (17.3.2018)

⁵¹ *Ibid.*

⁵² United Nations General Assembly (1951), *Supra Nota*, 25.

⁵³ *Ibid.*

⁵⁴ Rikhof, J. (2017), Prosecuting of Asylum Seekers Who Cannot be Removed – A feasible Solution? Journal of International Criminal Justice, Oxford University Press. P.99

⁵⁵ United Nations General Assembly, International Covenant on Civil and Political Rights. 19.12.1966.

⁵⁶ Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection. OJ L 180, 29.6.2013.

⁵⁷ European Commission Migration and Home Affairs, Asylum procedures, Accessible: https://ec.europa.eu/home-affairs/what-we-do/policies/asylum/common-procedures_en (15.2.2018)

Member States is to avoid situations where asylums could be made to multiple Member States simultaneously or after getting a negative decision from one Member State.⁵⁸ Under European Union law, asylum seekers are applying for international protection.⁵⁹ Article 2 of the Directive lays out definitions relevant to the directive, such as who is considered a refugee and who is eligible to seek protection from European Union Member States.⁶⁰ These unified legal frameworks and procedures are also referred to EU Asylum acquis.⁶¹

The Directive's motive is to create a system that is coherent and makes sure that decisions on international protection applications are processed effectively and fairly.⁶² The Directive determines certain set of rules for filing application, in order to make sure that individuals applying for international protection are able to do so rapidly and efficiently.⁶³ One of the key elements of the Directive is the timeline it sets for the examination of the asylum application. Under the article 31(3) of the Asylum Procedures Directive, the application shall to be examined within 6 months.⁶⁴ The rights and obligations that applicants have during the application process are determined in Article 12 of the Directive.⁶⁵ Under the article, applicants shall be informed about the procedure and its different stages in a language they understand or are expected to understand.⁶⁶ The rights given also include a right to communicate with the United Nations High Commissioner for Refugees (UNHCR), the Refugee Agency, and other organization and the right to have legal counsel as well as to use an interpreter during the process or other services due to their special needs if necessary.⁶⁷ The Directive also defines what kind of sanctions the applicants can face if they do not comply with the authorities or the obligations they have.⁶⁸ Also, the directive give the applicant's legal counsel the right to access all relevant information regarding the applicants application.⁶⁹ The directive also points out that the applicants shall be given notice within reasonable time regarding the decision made

⁵⁸ Graig, P., De Burca, C. (2016), *EU law - text, cases and materials 6th edition, England, Oxford University Press*, p. 968.

⁵⁹ FRA (2014), *Handbook on European Law relating to asylum, borders and immigration 2nd edition*, Luxembourg, Publications Office of the European Union, p 43.

⁶⁰ European Parliament, Directive 2013/32/EU, *Supra nota*, 56.

⁶¹ UNHCR, The UN Refugee Agency, EU Asylum Acquis. Accessible: <http://www.unhcr.org/ceu/159-en/resources/legal-document/eu-asylum-acquis-html.html> (16.3.2018)

⁶² European Commission Migration and Home Affairs, Asylum procedures, *Supra nota*, 57.

⁶³ European Parliament, Directive 2013/32/EU, *Supra nota*, 56.

⁶⁴ European Commission Migration and Home Affairs, Asylum procedures, *Supra nota*, 57.

⁶⁵ European Parliament, Directive 2013/32/EU, *Supra nota*, 56.

⁶⁶ *Ibid.*

⁶⁷ European Commission Migration and Home Affairs, Asylum procedures, *Supra nota*, 57.

⁶⁸ European Parliament, Directive 2013/32/EU, *Supra nota*, 56.

⁶⁹ European Commission Migration and Home Affairs, Asylum procedures, *Supra nota*, 57.

on their application and the notice shall be given in a language they understand or are expected to understand.⁷⁰

1.5 International Criminal Law

International criminal law is part of public international law and its goal is to prohibit certain acts that are considered to be barbaric or inhuman and serious violations to human rights.⁷¹ It is not as extensively codified as human rights law since international criminal law's goal is to punish the actions carried by a state or individuals due to state policy at the time of the act.⁷² The International Criminal Court (ICC) was established at 2002 and its purpose is to complement the already existing national legal systems.⁷³ Prosecution is done on an international level due to the state's public policy and style of administration which often causes them to ignore the wrongdoings and disregard prosecution on domestic level.⁷⁴ The core crimes are defined by the International Criminal Court and their jurisdiction and these core crimes are genocide, war crimes, crimes against humanity and the crime of aggression.⁷⁵

International criminal law is a relevant topic when examining the asylum process and the requirements set out for an individual to be considered a legal refugee and able to enjoy the protection provided by the international refugee law.⁷⁶ The United Nations Refugee Agency, UNHCR, uses the international criminal law's definitions to help interpret the Exclusion clause 1F of the Convention.⁷⁷ The functionality of the domestic legal system when determining if the individual is in actual danger to be persecuted in their country of nationality or habitual residence if returned forms the connection between international criminal law and the interpretation of the 1951 Refugee Convention.⁷⁸ The lack of a functioning and non-discriminatory legal system contributes to the level of persecution which also increases the importance of the Convention.⁷⁹

⁷⁰ *Ibid.*

⁷¹ Klabbers, J. International Law, *Supra nota*, 18, p 237.

⁷² *Ibid.*, p 238-239.

⁷³ Smith, M. (2008), The Relevance of the Work of the International Criminal Court to Refugee Status Determinations, *International Journal of Refugee Law Vol.20(1)*, pages 166-185, Oxford University Press, p 167.

⁷⁴ Klabbers, J. International Law, *Supra nota*, 18, p. 238-239.

⁷⁵ *Ibid.*, p 243.

⁷⁶ Bond, J. (2012), Excluding Justice: The Dangerous Intersection between Refugee Claims, Criminal Law, and "Guilty" Asylum Seekers, *International Journal of Refugee Law Vol.24* pages 37-59, Oxford University Press, p 37.

⁷⁷ *Ibid.*, p 39.

⁷⁸ Smith, M. The Relevance of the Work of the International Criminal Court to Refugee Status Determinations, *Supra nota*, 71, p. 169.

⁷⁹ *Ibid.*, p 169.

2. Asylum Process in Finland

Before examining the asylum procedures and process in Finland it is necessary to examine the legal framework governing the asylum matters. Main sources of law regarding the asylum matters are the Constitution of Finland and the Finnish Aliens Act.

2.1 Constitution of Finland

The latest version of the Finnish Constitution was adopted in 1999 when four constitutional level laws were combined into one Constitution.⁸⁰ It lays out basic rights for everyone in Finland. Article 19 of the constitution guarantees everyone who is unable of achieving a life of dignity the right to receive subsistence and care.⁸¹ It guarantees everyone the same rights to access social security and health care. Article 6 of the Constitution states that everyone is considered equal and no one shall be discriminated against their sex, race, age, language, religion, opinion, health, disability or other reason that might be related to the person. It also includes children's rights and gives children the right to have a say in matters considering them in correlation to their personal development.⁸² The right to life and personal as well as bodily integrity are guaranteed in Article 7 of the Constitution.⁸³ It also prohibits inhumane and degrading treatment and punishment.⁸⁴ Article 21 defines the right to fair trial and due process mirroring the similar rights within the European Convention of Human Rights and the Universal Declaration of Human Rights.⁸⁵ These articles mirror the fundamental human rights and guarantee the fundamental rights in domestic law. Article 22 of the Constitution obliges the state to protect and guarantee the enforcement of these articles.⁸⁶

2.2 The Finnish Aliens Act

The main source of law regarding asylum seekers and refugees in Finland is the Aliens act. It sets the legal framework for national law in Finland regarding people from different states. Aliens Act's main purpose is to implement and promote good governance in matters

⁸⁰ Husa, J. (2011). *The Constitution of Finland: a contextual analysis*. Oxford, Hart Pub. p 8.

⁸¹ The Finnish Constitution, 11.6.1999/731.

⁸² *Ibid.*

⁸³ *Ibid.*

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

concerning aliens. Asylum process and proceedings in Finland are governed by the Aliens Act and the European Union's directives and regulations. The Aliens Act was recently amended and in the new act application procedure times were shortened as well as the amount of legal aid was decreased.⁸⁷ The Finnish Aliens Act defines an Alien in Article 3 as a person who is not a Finnish citizen and might reside in Finland for employment or other purposes.⁸⁸ The matters concerning asylum seekers are covered in chapter 6 of the Finnish Aliens Act.⁸⁹ It defines motives and methods of persecution as well as the procedural standard.⁹⁰

2.3 Asylum process in Finland

The first stage of asylum seeking process starts when a potential asylum seeker enters Finland and notifies the officers at the Finnish Border Guard or the police that they want to seek asylum from Finland.⁹¹ After this the potential asylum seeker's basic information including fingerprints is checked and registered.⁹² The authority to whom the intentions of seeking asylum were first told takes care of the first steps of the application and sends it to the Finnish Immigration Service. The person seeking asylum goes to a reception center for the time it takes for the application to be processed.⁹³

Before the application can be processed it is necessary to investigate whether the application can be processed in Finland.⁹⁴ The Finnish Immigration Services will conduct the investigation based on an interview by the police, the goal of this interview is to gather information about the applicant's identity and the route they took when arriving to Finland.⁹⁵ They might for example check the European Union fingerprint database, EURODAC, if the applicant's fingerprints are already registered in another EU Member State or in Iceland, Norway or Switzerland.⁹⁶ The goal of this investigation is to determine if another country is responsible for processing the application under the Dublin III Regulation.⁹⁷

⁸⁷ The Finnish Aliens Act 103/2014. 30.04.2014.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

⁹⁰ *Ibid.*

⁹¹ Ministry of the Interior Finland, You may seek asylum only in Finland – not abroad. Accessible: <http://asyluminfofinland.info/you-may-seek-asylum-only-in-finland/> (16.2.2018)

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ Finnish Immigration Service, What is asked during the interview. Accessible: <http://migri.fi/en/what-is-asked-during-an-interview-> (16.2.2018)

⁹⁶ *Ibid.*

⁹⁷ *Ibid.*

If the application is examined in Finland, the applicant will be invited to the actual asylum interview which is also handled by the Finnish Immigration Service.⁹⁸ In this interview the applicant is asked to tell why they are seeking asylum and what kind of threats they were experiencing in their home country or country of permanent residence.⁹⁹ The applicant can provide evidence and documents supporting their statement during the interview.¹⁰⁰ The applicants statement and the documents they provided are also used to assess the credibility of the applicant's statement when making the decision on the asylum application.¹⁰¹ The applicant is also allowed to use an interpreter during the interview and have legal counsel.¹⁰² The Finnish Immigration Service is known to use Country Information Services from the areas asylum seekers are fleeing from.¹⁰³ The Finnish Immigration Service claims the information is accurate and up to date and this information is used when investigating the backgrounds of the applicants.¹⁰⁴

After the interview is conducted the application proceeds to a decision maker and the applicant may live in the reception center while waiting for a decision.¹⁰⁵ When the Finnish Immigration Service has decided on the asylum application the applicant will be informed within their mother tongue or another language the applicant has stated to understand.¹⁰⁶ Positive decision will give the applicant either an asylum or a refugee status, subsidiary protection or a residence permit on some other grounds.¹⁰⁷ If the decision is negative, the applicant can appeal to the Administrative Court.¹⁰⁸

According to the Finnish Immigration Service, even if the applicant meets the requirements for asylum the application can be refused under the exclusion clauses of the 1951 Refugee

⁹⁸ European Commission Migration and Home Affairs, Asylum procedures, *Supra nota*, 57.

⁹⁹ Finnish Immigration Service, What is asked during the interview, *Supra nota*, 95.

¹⁰⁰ *Ibid.*

¹⁰¹ *Ibid.*

¹⁰² Finnish Immigration Service, Interpreting at the Asylum. Accessible: <http://migri.fi/en/interpreting-at-the-asylum-interview> (16.2.2018)

¹⁰³ Finnish Immigration Service, Country Information Service. Accessible: <http://migri.fi/en/country-information-service>

¹⁰⁴ *Ibid.*

¹⁰⁵ Finnish Immigration Service, Waiting for the Decision. Accessible: <http://migri.fi/en/waiting-for-the-decision> (16.2.2018)

¹⁰⁶ Finnish Immigration Service, Negative Decision. Accessible: <http://migri.fi/en/asylum-in-finland/negative-decision> (16.2.2018)

¹⁰⁷ Finnish Immigration Service, Positive Decision. Accessible: <http://migri.fi/en/asylum-in-finland/positive-decision> (16.2.2018)

¹⁰⁸ European Commission Migration and Home Affairs, Asylum procedures, *Supra nota*, 57.

Convention.¹⁰⁹ The application is refused if the applicant has committed a serious crime against humanity or a war crime, a non-political crime before seeking asylum or an act against the aims and principles of the United Nations.¹¹⁰ Genocide is not specifically mentioned on the list but since the International Criminal Court defines genocide as a serious crime and a crime against humanity and the Convention follows that definition of serious crimes, it is included in the exclusion clause in the Convention.¹¹¹

2.4 Conclusion

As demonstrated above, the applicant's criminal record or possible criminal background is not specifically checked in any of these above mentioned stages, since national authorities are unable to access other countries' criminal registers.¹¹² The possible criminal record may come up during the asylum interview or when the authorities check the applicant's fingerprints from EURODAC to see if he applicant has been refused entry in another Member State, but the Finnish Immigration Service will not try to verify the information from the applicant's country of nationality or habitual residence themselves.¹¹³ The interview itself has many weak areas too. It has been argued that during the interviews, the meaning of certain words and phrases can change depending on the translators choice of words.¹¹⁴ There has also been reports worldwide where applicants have been telling other refugees' stories as their own trying to seem credible and secure asylum.¹¹⁵ Also, the way applicants speak and tell their stories has been proved to have an effect on their claims.¹¹⁶ This is explained by the lack of harmonized guidelines for the interviews.¹¹⁷

The insufficiency of the Common European Asylum system and the lack of methods during the asylum interviews and proceedings are also a problem in other European Union member states. For example, Belgium had a case where a Turkish woman with Kurdish descent was

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ Klabbers, J. International Law, *Supra Nota*, 18, p 243.

¹¹² Finnish Immigration Service. Dublin Regulation: When will an asylum seeker be refused entry and returned to another European state?, *Supra nota*, 4.

¹¹³ *Ibid.*

¹¹⁴ Zambelli, P. (2017), Hearing differently: knowledge-based approaches to assessment of refugee narrative, *International Journal of Refugee Law* Vol. 29(1), Pages 10-41, Oxford University Press. p. 13-20

¹¹⁵ *Ibid.*, p. 13-20.

¹¹⁶ Byrne, R. (2007), Assessing Testimonial Evidence in Asylum Proceedings: Guiding Standards from International Criminal Tribunals, *International Journal of Refugee Law* Vol. 19(4), pages 609-638, Oxford University Press. p. 612-613

¹¹⁷ *Ibid.* p. 613.

subjected to abuse and persecution by her own family and husband but denied asylum three times.¹¹⁸ She would have met the requirements for asylum but the Belgian authorities did make inquiries of the situation of Kurdish females or victims in Turkey.¹¹⁹ She was later granted refuge from Belgium once the situation was investigated thoroughly.¹²⁰ This case would have had benefitted from cooperation between Member States and harmonized guidelines for the asylum interview. An investigating journalist Shams Ul-Haq pointed out the weak security when posed as an asylum seeker and managed to seek asylum multiple times with false identities.¹²¹ He reported giving his finger prints multiple times but was not caught once when traveling from one country to another.¹²² Ul-Haq also reported a disturbing security risk claiming that there were asylum seekers supporting the ISIS ideology.¹²³

It is understandably hard at times to verify the applicant's story due to the lack of resources and harmonized guidelines. EURODAC has not been proved successful since there has been evidence of Member States not following the guidelines and registering finger prints efficiently.¹²⁴ There have been suggestions on how to prevent this type of conduct and encourage Member States to be more active on the implementation. The reformation of the Dublin regulation is one attempt to make the asylum process more effective and harmonized in the European Union.¹²⁵ The reform's main point is to improve the Common European Asylum by adding more security measures and better the implementation and use of the EURODAC system.¹²⁶

The lack of independent authority overseeing the implementation of the Refugee Convention and the lack of effective asylum procedures have a strong correlation. The UNHCR has generally acted in a supervisory role but the guidelines they provide have not been updated properly in years even when the situation with refugee has drastically changed throughout the

¹¹⁸ Case Law Summaries, International Journal of Refugee Law, Vol. 29(1), pages 138-143, Oxford University Press. p. 139-140.

¹¹⁹ *Ibid*, p.139-140.

¹²⁰ *Ibid*, p. 139-140.

¹²¹ Sputnik International, Undercover refugee: Pakistani Terror Expert Reveals Life at EU Asylum Camp.

Accessible: <https://sputniknews.com/europe/201601191033389409-refugee-camp-europe-undercover-report/> (10.5.2018)

¹²² *Ibid*.

¹²³ *Ibid*.

¹²⁴ Pedersen, M. (2015) The intimate relationship between security, effectiveness, and legitimacy: a new look at the Schengen compensatory measures, European Security, Vol.24(4), pages 541-559. p. 553

¹²⁵ European Commission Press Release Database, Towards a sustainable and fair Common European Asylum System. Accessible: http://europa.eu/rapid/press-release_IP-16-1620_en.htm (10.5.2018)

¹²⁶ *Ibid*.

years.¹²⁷ In the article “A Proposal for Enhanced Supervision of the Refugee Convention” Alysia Blackham brings up several options on how to strengthen compliance with intensified supervision. She argues for two different Committees where the first one would give “authoritative but non-binding opinions” about the interpretation of the Refugee Convention and the other would serve as the official supervisor of the first Committee.¹²⁸ Implementing stronger supervision on the compliance of the Convention could help improve the efficiency of the asylum process in national level.

¹²⁷ O’Byrne, K. (2013), Is there a Need for Better Supervision of the Refugee Convention?, *Journal of Refugee Studies*, Vol. 26(3), Pages 330–359, Oxford University Press. p. 340

¹²⁸ Blackham, H. (2013), A proposal for Enhanced Supervision of the Refugee Convention, *Journal of Refugee Studies* Vol. 26(3), pages 392-415, Oxford University Press. p. 394

3. Criminal Background as an influential factor

3.1 Effect of crimes when seeking asylum

As stated previously, international crimes are defined by the International Criminal Court and the Rome Statute as crimes against humanity or peace and war crimes.¹²⁹ Under the Article 1F of the 1951 Refugee Convention a person who has committed, or it is reasonable to suspect to have committed, a serious crime is not able to enjoy the protection offered by the Convention.¹³⁰ In order to examine the cases and asylum procedures of asylum seekers with criminal background, it is necessary to go over the definitions of serious crimes.

3.1.1 Serious crimes in the refugee context

The 1951 Refugee Convention states that when there are “serious reasons for considering” that the asylum seeker has committed certain serious international criminal actions they are not able to enjoy the protection of the Convention.¹³¹ The Convention does not set a clear definition on how the “serious reasons for considering” should be interpreted which leaves it up to the national jurisdiction.¹³² This creates different definitions and interpretations between national legislations.¹³³ Certain countries define the standard lower than their civil or criminal standard of proof when other countries define it as an independent an autonomous mode.¹³⁴ Some countries have not incorporated the definition to their law and follow the guidelines provided by the UNHCR.¹³⁵

The definition of international crime is also left undefined and to be understood as the core crimes defined by the International Criminal Court.¹³⁶ These core crimes are genocide, crimes

¹²⁹ International Criminal Court (1998), *Supra nota*, 107.

¹³⁰ United Nations General Assembly (1951), *Supra nota*, 25.

¹³¹ *Ibid.*

¹³² Bond, J (2013), Principled Exclusions: A Revised Approach to Article 1(F)(a) of the Refugee Convention, Michigan Journal of International Law Vol. 35(1), pages 15-78, p. 38-39

¹³³ Holvoet, M. (2014), Harmonizing Exclusion under the Refugee Convention by Reference to the Evidentiary Standards of International Criminal Law, Journal of International Criminal Justice, Oxford University Press. p. 1041-1042

¹³⁴ *Ibid.* p. 1042-1043

¹³⁵ *Ibid.* p. 1043-1047

¹³⁶ *Ibid.* p. 1041

against humanity, war crimes and the crime of aggression.¹³⁷ Article 1F of the Convention lays out a list of exclusions and states that anyone who has committed a crime against peace or humanity, a war crime, a serious non-political crime outside the country they seek asylum from or an act against the aims and principles of the United Nations shall not be able to enjoy the protection of the Convention.¹³⁸ Like previously stated, it does not specifically mention genocide, but genocide is included in the core crimes defined by the International Criminal Court and therefore is included in the exclusion clause.¹³⁹

Crime against peace is defined in Article 1 of the Charter of the United Nations as planning, preparing, initiating or waging of war in violation of international treaties or out of aggression.¹⁴⁰ Rome Statute of the International Criminal Court reflects the current and latest agreement on the definition within the international law community, and it defines crime against humanity in Article 7 as a widespread or systematic attack against any civilian population.¹⁴¹ It lays out a descriptive list of acts that can be considered as crimes against humanity which includes

- “Murder;
- Extermination;
- Enslavement;
- Deportation or forcible transfer of population;
- Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- Torture;
- Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- Enforced disappearance of persons;

¹³⁷ International Criminal Court, Rome Statute of the International Criminal Court, 17.7.1998

¹³⁸ *Ibid.*

¹³⁹ Klabbers, J. International Law, *Supra Nota*, 19, p 243.

¹⁴⁰ United Nations, Charter of the United Nations. 26.6.1945.

¹⁴¹ United Nations Office on Genocide Prevention, Crimes Against Humanity
<http://www.un.org/en/genocideprevention/crimes-against-humanity.html> (16.2.2018)

- The crime of apartheid;
- Other inhuman acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”¹⁴²

Also, the act of crime does not need to be linked to any armed conflict, it can take place during peacetime too.¹⁴³ Prohibition of crimes against humanity has not yet been codified in international law. Nevertheless, it is still considered a customary norm and binding to all States, derogations are not allowed.¹⁴⁴

A serious non-political crime has not been explicitly defined in Article 1F(b) and it is left to the domestic law to be specified.¹⁴⁵ The definition in the 1951 Refugee Convention limits the crime to be committed outside the country of refuge.¹⁴⁶ The Finnish Aliens Act does not specifically mention serious non-political crime but Article 149 states that an alien with residence permit can be deported if they somehow impose a threat to the public safety or if they have committed a crime which constitutes at least one year of imprisonment or has repeatedly committed crimes.¹⁴⁷ Article 1F(b) is problematic due to its vague definition and broad scope in different legislations. Professors of the Vrije University of Amsterdam, Maarten P. Bolhuis and Joris Van Wijk go over several different crimes in different countries in their article “Alleged Terrorists and Other Perpetrators of Serious Non-Political Crimes: The Application of Article 1F(b) of the Refugee Convention in the Netherlands”. According to the article the definition differs from country to country and can cover almost anything from assault to an act of terrorism as well as murder and human smuggling.¹⁴⁸

Also, an act that goes against the main goals and principles of the United Nations can be a reason for not be able to enjoy the protection of the 1951 Refugee Convention. These crimes are not listed or specifically defined in the Convention or the United Nations Charter.¹⁴⁹ Since it is not specifically defined, the scope can be broad. The main purpose and principles of the

¹⁴² International Criminal Court, Rome Statute of the International Criminal Court, 17.7.1998

¹⁴³ United Nations Office on Genocide Prevention, *Supra nota*, 103.

¹⁴⁴ *Ibid.*

¹⁴⁵ Djordjevic, N. (2014), *Exclusion under Article 1F(b) of the Refugee Convention: The Uncertain Concept of Internationally Serious Common Crimes*, Journal of International Criminal Justice Vol. 12(5), pages 1057- 1074, Oxford University Press, p 1059.

¹⁴⁶ United Nations General Assembly (1951), *Supra nota*, 25.

¹⁴⁷ The Finnish Aliens Act 103/2014, *Supra nota*, 87.

¹⁴⁸ Bolhuis, M.P., Van Wijk, J. (2016), *Alleged Terrorists and Other Perpetrators of Serious Non-Political Crimes: The Application of Article 1F(b) of the Refugee Convention in the Netherlands*, Journal of Refugee Studies, Volume 29(1), Pages 19–38, Oxford University Press. p. 26-27.

¹⁴⁹ UN Charter, *Supra nota*, 97.

United Nations can be considered to be to maintain peace and security internationally, therefore it has been argued that international law should be used as a guide to when defining acts under the exclusion clause.¹⁵⁰ These are left for the national legislation to define and interpret in accordance with the guidelines provided by the United Nations.¹⁵¹ The courts of UK and Ireland have ruled that generally human rights violations, terrorism and specific attacks against United Nations fall within the scope of the Article.¹⁵²

3.1.2 Criminal background in asylum applications in Finland

The Finnish Immigration service states that a crime committed outside of Finland before seeking asylum might cause the asylum application to be processed in the expedited processing.¹⁵³ They also state that crimes might not necessarily influence the asylum application in a negative way.¹⁵⁴ Under the 1951 Refugee Convention and the Finnish Aliens Act, asylum must be granted to applicants who meet the requirements. Only serious international crimes committed outside the country of refuge can influence the asylum decision negatively. The 1951 Refugee Convention determines its own exclusion clauses which only covers serious international crimes. The exclusion clauses for residence permits in the Article 36 of the Finnish Aliens Act cannot be used in the cases of asylum but can be applied in cases of subsidiary protection.¹⁵⁵ If the applicant does not meet the requirements for asylum he can be granted subsidiary protection based on the possibility of being persecuted or subjected to degrading or inhumane treatment if returned or deported back to their country of nationality or permanent residence.¹⁵⁶

The applicant can be rejected of subsidiary protection if the crime committed is a threat to public safety and even then, the applicant cannot be usually deported due to the non-

¹⁵⁰ Singer, S. (2014), Terrorism and Article 1F(c) of the Refugee Convention: Exclusion from Refugee Status in the United Kingdom, *Journal of International Criminal Justice*, Vol. 12(5), Pages 1075–1091, Oxford University Press. p. 1077-1078.

¹⁵¹ Sivakumaran, S. (2014), Exclusion from Refugee Status: The Purposes and Principles of the United Nations and Article 1F(c) of the Refugee Convention, *International Journal of Refugee Law*, Vol. 26(3), Pages 350–381, Oxford University Press. p. 351

¹⁵² *Ibid.* p. 351-352

¹⁵³ Finnish Immigration Service, Expedited Processing. Accessible: <http://migri.fi/en/expedited-processing> (22.3.2018)

¹⁵⁴ Finnish Immigration Service, Effect of a crime on asylum applications. Accessible: http://migri.fi/artikkeli/-/asset_publisher/nain-rikos-vaikuttaa-turvapaikkaprosessiin?_101_INSTANCE_FVTI5G2Z6RYg_languageId=en_US (21.3.2018)

¹⁵⁵ Nykänen, A (2016), Rikos oleskeluluvan esteenä. Turun Yliopisto, Oikeustieteellinen tiedekunta. p. 25.

¹⁵⁶ *Ibid.*, p. 25.

refoulement principle.¹⁵⁷ In these cases, the applicants will receive a temporary residence permit which will be renewed each year.¹⁵⁸ However, crimes committed in Finland and being suspected of crimes may be enough for the Finnish Immigration Service to not renew the temporary residence permit.¹⁵⁹ Especially if the circumstances on the applicant's country of nationality or permanent residence has changed and deportation would be safe.¹⁶⁰

During the asylum application process, the asylum investigations are held in order to determine whether or not there is a reason to suspect the asylum applicant's story and background and also to determine if the applicant meets the requirement for asylum. During these interviews the goal is to verify the story and to check if the applicant has a criminal background.¹⁶¹ The case Finland v. François Bazaramba serves as one example of the importance of thorough investigation behind the asylum applications. The case Finland v. François Bazaramba is about an asylum seeker who was granted asylum but later found guilty of war crimes, more specifically genocide.¹⁶² Finland prosecuted and tried Bazaramba under the universal jurisdiction principle and the principle of 'aut dedere aut judicare' which translates to 'extradite or prosecute'.¹⁶³ Finland had a choice to extradite Bazaramba but his background as asylum seeker and the conditions in Rwanda made it impossible to do so.¹⁶⁴ Rwandan authorities requested Bazaramba to be transferred there for the trial but Finnish authorities denied the request based on the likelihood of Bazaramba not facing a fair trial in Rwanda.¹⁶⁵

In 2003 a Rwandan citizen, François Bazaramba, applied for asylum in Finland and was later granted one.¹⁶⁶ In 2007 after four years in Finland, he was taken into custody when the investigation for his alleged war crimes started.¹⁶⁷ According the Court, Bazaramba was preaching and encouraging Hutus to kill Tutsis.¹⁶⁸ The Court found him guilty of arranging fatal attacks towards the Tutsis as well as torching their homes.¹⁶⁹ He was sentenced to life in

¹⁵⁷ *Ibid*, p. 64-65.

¹⁵⁸ *Ibid*, p. 64-65.

¹⁵⁹ *Ibid*, p. 64-65.

¹⁶⁰ *Ibid*, p. 64-65.

¹⁶¹ Finnish Immigration Service, What is asked during the interview, *Supra nota*, 95.

¹⁶² District Court of Porvoo, Prosecutor v. François Bazaramba, 2010, Finland

¹⁶³ Bolhuis, M. P. (2014), Refugee Exclusion and Extradition in the Netherlands, *Journal of International Criminal Justice* Vol.12(5), pages 1115-1139, Oxford University Press. p. 1115-1116.

¹⁶⁴ Reuters, Finnish court sentences Rwandan pastor to life. Accessible: <https://af.reuters.com/article/topNews/idAFJJOE65A0JD20100611> (4.5.2018)

¹⁶⁵ *Ibid*.

¹⁶⁶ BBC News, Finland sentences Rwanda preacher to life for genocide. Accessible:

<http://www.bbc.com/news/10294529> (16.4.2018)

¹⁶⁷ *Ibid*.

¹⁶⁸ Prosecutor v. François Bazaramba, *Supra Nota*, 162.

¹⁶⁹ *Ibid*.

prison in 2010.¹⁷⁰ His affiliation to the 1994 Rwandan Genocide did not surface during the asylum procedures, which demonstrates on its own the inadequacy of the asylum procedures. Under the exclusion clauses of the 1951 Refugee Convention, like mentioned above, war criminals are not able to enjoy the protection provided by the Convention. This case is particularly interesting since Bazaramba was tried and sentenced after he had already applied asylum from Finland.

According to the Finnish Immigration Service, there are a handful of asylum seekers in Finland who are suspected of committed serious crimes before seeking asylum.¹⁷¹ These people have been granted temporary residence permit which will be renewed each year due to the principle of non-refoulement.¹⁷² The director of the Finnish Immigration Service's Asylum Unit, Esko Repo, has said that these suspicions the Finnish Immigration Service has are based on tips from outside sources and have been forwarded to the police.¹⁷³ Repo states that according to the law, the Finnish Immigration Service will investigate the grounds for asylum application if they receive information of the applicants involvement in serious crimes or participation in hostile activities.¹⁷⁴ So far the François Bazaramba genocide case is the only one in Finland that has proceeded to Court and lead to a conviction.¹⁷⁵

There is another case where asylum seekers were prosecuted from war crimes. In the late 2016 Iraqi twins were prosecuted for participating in genocide and terroristic actions in Iraq at Camp Speicher in 2014.¹⁷⁶ The twins had arrived to Finland as asylum seekers in 2015 and they were detained in 2016.¹⁷⁷ National Bureau of Investigation claimed they had probable cause and enough evidence to prosecute them.¹⁷⁸ During their trial witnesses were heard from Iraq and the evidence consisted of their testimonials and video evidence of the shootings they were accused of.¹⁷⁹ They were eventually found not guilty because of inconclusive evidence. The witnesses were heard in Iraq and wanted to be anonymous.¹⁸⁰ According to the defense lawyer

¹⁷⁰ *Ibid.*

¹⁷¹ Yle Uutiset, Suomesta hakenut turvapaikkaa kymmenkunta turvapaikanhakijaa, jotka saattavat olla sotarikollisia. Accessible: <https://yle.fi/uutiset/3-6770083> (16.4.2018)

¹⁷² *Ibid.*

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ Aamulehti, Todistajien anonyymiyys nousi ratkaisevaan asemaan – Irakilaiskaksoset syyttömiä joukkomurhaan. Accessible: <https://www.aamulehti.fi/kotimaa/tampereen-irakilaiskaksoset-ovat-syyttomia-joukkomurhaan-vapautetaan-vankilasta-valittomasti-200160977/> (4.5.2018)

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*

¹⁷⁹ *Ibid.*

¹⁸⁰ *Ibid.*

Kaarle Gummerus, the methods used by Iraqi police and court were questionable making the testimonials unreliable and not credible.¹⁸¹ There has not been any public information about their status as asylum seekers and if they still reside in Finland.¹⁸²

It can be concluded that there has been a slight improvement on the investigation of possible serious crimes committed by the asylum seekers when comparing the case of François Bazaramba to the Iraqi twins. The Iraqi twins' case does not show improvement on the asylum process itself since the suspicion on their possible involvement on the terrorist actions and war crimes has been speculated to have come from an outside source and not from the asylum interview.¹⁸³

3.2 Effect of crimes during the asylum proceedings

In Finland, the alleged criminal offences are investigated by the local police officials separate from the asylum application.¹⁸⁴ There has been a public outcry due to criminal offences committed by refugees.¹⁸⁵ Most serious one was a stabbing in Turku on 18th of August 2017, where a Moroccan asylum seeker, Abderrahman Bouanane, stabbed 10 people.¹⁸⁶ Two of the 10 victims died and one was paralyzed from the stabbing.¹⁸⁷

The Finnish Immigration Service has confirmed that Abderrahman Bouanane is an asylum seeker and his attack was the first terrorist attack in Finland.¹⁸⁸ At the time of the interview by YLE News in August 2017, the Director-General of the Finnish Immigration Service, Jaana Vuorio, was unable to say how the terrorist attack would affect Bouanane's asylum application.¹⁸⁹ Bouanane's case is currently in preliminary hearing in the District Court of

¹⁸¹ *Ibid.*

¹⁸² *Ibid.*

¹⁸³ MTV, Isis-kaksosten taustasta tiedettiin: ”miesten katseita vältettiin, koska katse oli tappava. Accessible: <https://www.mtv.fi/uutiset/ulkomaat/artikkeli/irak-kaksosista-tiedettiin-miesten-katseita-valtettiin-koska-katse-oli-tappava/5612478#gs.6ov5aMY> (10.5.2018)

¹⁸⁴ Finnish Immigration Service, Effect of a crime on asylum applications, *Supra nota*, 154.

¹⁸⁵ YLE Uutiset, Poliisi vahvistaa: Turun Puukottajalla kymmenen uhria – Useita Poliisioperaatioita, neljä otettu kiinni. Accessible: <https://yle.fi/uutiset/3-9785468> (21.3.2018)

¹⁸⁶ *Ibid.*

¹⁸⁷ *Ibid.*

¹⁸⁸ YLE Uutiset, Maahanmuuttoviraston Ylijohtaja: Turvapaikanhakijaa ei ole aikaisemmin epäilty näin vakavasta terrorismirikoksesta. Accessible: <https://yle.fi/uutiset/3-9786387> (21.3.2018)

¹⁸⁹ *Ibid.*

Finland Proper.¹⁹⁰ During the investigation related to the stabbing, new information about Bouanane's movements within Europe has surfaced.¹⁹¹ Bouanane had arrived in Germany in 2015 and used multiple false identities there.¹⁹² He had sought asylum from Switzerland and used another false identity when applying asylum in Finland in 2016.¹⁹³ Bouanane arrived to Finland in Spring 2016 under a false identity claiming to be an unaccompanied minor called Abderrahman Mechkah.¹⁹⁴ The Swiss authorities had a suspicion Bouanane would re-locate to north.¹⁹⁵ During his asylum application his finger prints are run through the EURODAC database to check if he has sought asylum somewhere else in Europe or if he has committed crimes somewhere within Europe.¹⁹⁶ According to on-going trial, Bouanane's co-habitants at the reception center had noticed his radicalized behavior and notified the staff as well as police but this did not lead to an investigation either.¹⁹⁷ According to the interpretation of the 1951 Refugee Convention and the Finnish Aliens Act, Bouanane's actions can be seen as a threat to public safety and health.¹⁹⁸ Therefore, he can be denied asylum but he might be granted subsidiary protection due to the non-refoulement principle. He will also serve his sentence in Finland which automatically forces him to stay in Finland.

Bouanane's case points out the weakness and inadequacy of the asylum process in Finland. Bouanane's movements and acts in Europe never came up during the different stages at the asylum process specifically meant to verify them.

¹⁹⁰ Helsingin Sanomat, Bouanane oli omasta mielestään tekemässä terroritekoa mutta kiistää ”terroristisessa tarkoituksessa tehdyt murhat” – Näin oikeuskäsittely alkoi. Accessible: <https://www.hs.fi/kotimaa/art-2000005610497.html> (21.3.2018)

¹⁹¹ CBC News, Finland public stabbing suspect had been denied asylum. Accessible: <http://www.cbc.ca/news/world/finland-stabbing-suspect-asylum-1.4257070> (16.4.2018)

¹⁹² *Ibid.*

¹⁹³ Suomenkuvalehti, Turun puukottaja oleskeli myös Sveitsissä. Accessible: <https://suomenkuvalehti.fi/jutut/kotimaa/turun-puukottaja-oleskeli-myo-sveitsissa/> (16.4.2018)

¹⁹⁴ *Ibid.*

¹⁹⁵ *Ibid.*

¹⁹⁶ Lehte, R. (2015) The New EURODAC Regulation: Fingerprints as a Source of Informal Discrimination. *Baltic Journal of European Studies*, Vol. 5(2). p. 113.

¹⁹⁷ MTV seuraa: Turun puukotusoikeudenkäynnissä kuultiin Bouananen huonetoveria. Accessible: <https://www.mtv.fi/uutiset/rikos/artikkeli/mtv-seuraa-turun-puukotusoikeudenkaynnissa-kuultavana-bouananen-huonetoveri-han-kertoi-minulle-tappaneensa-jonkun/6900014#gs.7kfWUPE> (9.5.2018)

¹⁹⁸ Nykänen, A. (2016), *Supra nota*, 136. p. 25.

Conclusion

Like demonstrated above, European countries, including Finland, have had their share of dishonest asylum seekers with hidden agendas. The on-going refugee crisis imposes a security threat to the European Union and its Member States. The increased risk of terrorism and fear for public safety has only been encouraged by the insufficient methods of investigating asylum seekers' backgrounds and their motives to immigrate. The previous chapters show that the asylum process is lacking of efficient methods of investigation. During the interviews the applicants are not asked if they have committed crimes. The evidence they bring to support their story might not be questioned or investigated thoroughly enough either. The practices the Finnish Immigration Service and other Member States' official follow are not strict enough and the practices themselves are inadequate and weak.

The insufficiency of the asylum procedures in Finland have been demonstrated with the earlier mentioned cases. The Finnish Immigration Service have some methods of identifying possible threats to public safety but they do not seem to be in active use. The 1951 Refugee Convention has an exclusion clause in place to prevent war criminals and people who have committed or there a reason to suspect to have committed other serious crimes to benefit the protection granted to refugees. Like previously mentioned, the director of the asylum unit of the Finnish Immigration Service, Esko Repo, says there have been at least a handful of asylum seekers in Finland during the recent years who have been reasonably suspected of committing serious crimes or being part of actions relating to these serious crimes. Still only a couple of cases involving asylum seekers suspected of committing serious crimes have been investigated properly. The insufficiency of the asylum procedures in Finland have been demonstrated with the earlier mentioned cases. So far there has been only one case in Finland that has led to a conviction and one where the evidence was deemed insufficient due to the weak investigation.

The fact that Bazaramba was granted asylum before investigating his connections to the Rwandan genocide goes directly against the principles of the 1951 Refugee Convention and the United Nations. The laws governing asylum process in Finland has changed since 2003 when Bazaramba arrived to Finland due to the changes in European Union law, but the recent years have not shown much progress on the actual process. Earlier, the on-going trial of Abderrahman Bouanane was discussed as an example of the inadequacy of the Finnish asylum process and to demonstrate the importance of thorough investigation. If the asylum procedures

were handled according to the guidelines set by European Union for its Member States and countries participating in the harmonized Common European Asylum system, Bouanane's finger prints would have been in the EURODAC –database. It is unclear where the mistake was made but it is safe to say the blame is not on just one country. Bouanane was able to travel freely in Europe using false identities, he was suspected of crimes in Germany and was even able to seek asylum from Switzerland after disappearing and re-locating to Finland. According to the testimonials in the trial, Swiss authorities had suspicions of him traveling to north but failed to notify anyone until it was too late. In Finland Bouanane's radicalized behavior was noticed at the reception center he was residing but even after multiple notifications from other inhabitants of the reception center and their staff the police did not follow up on it. If the asylum process was sufficient and thorough investigation conducted the deaths of innocent bystanders could have been prevented. When considering the asylum process in Finland and why it is not satisfactory it can be concluded that Finnish authorities rely too much on the cooperation between Member States and the use of EURODAC database.

This thesis demonstrates that the cooperation between the Member States is weak and not valued. It should not be possible for an asylum seeker to travel around Europe freely with forged identification documents and apply for asylum from multiple countries participating in the cooperation under the Dublin Regulation. The entire idea behind the harmonized immigration laws in the European Union are redundant if they are not enforced as they were meant to. It should not be possible that finger prints do not show up from EURODAC when the entire point of the database is to alert the national authorities investigating asylum claims, that there have been previous applications for asylum or refusal of entry. It is also unacceptable, that the proper investigations considering asylum seekers movements before seeking asylum are only conducted after they have done something irreversible. The weakness of the asylum process in Finland and all over the Europe make it possible for asylum seekers to take advantage and decide which country would be the best for them to seek asylum from.

The author suggests that a unified and independent task force is established to monitor the Member States participation on implementing and enforcing the current legislations considering asylum matters. Also, a harmonized legislation considering the asylum interview shall be established. The author also suggests a monetary sanction to be imposed to Member States for violating or neglecting said legislations.

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