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**FAMILY REUNIFICATION OF UNACCOMPANIED MINORS**

Bachelor's thesis

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I hereby declare that I have compiled the thesis independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading. The document length is 8800 words from the introduction to the end of conclusion.

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## TABLE OF CONTENTS

ABSTRACT .....	4
INTRODUCTION .....	5
1. BEST INTEREST OF CHILD .....	8
1.1 International regulation.....	8
1.2 National regulation .....	9
2. FAMILY REUNIFICATION .....	12
2.1 Right to family life .....	12
2.2 Article 8 of ECHR .....	13
3. LEGISLATION REGULATING FAMILY REUNIFICATION IN FINLAND .....	16
3.2 Family members .....	18
3.3 Requirement for a child to be a minor.....	19
3.4 Requirement for sufficient financial resources.....	19
3.5 Actual family life.....	20
3.6 Key legislative and other reforms related to family reunification of beneficiaries of international protection in Finland 2010–2016 .....	21
4. ISSUES AND CHALLENGES OF UNACCOMPANIED MINORS IN FAMILY REUNIFICATION .....	23
4.1 The requirement of sufficient resources .....	23
4.2 The practice of Finnish Immigration service.....	25
5. SOLUTIONS TO IDENTIFIED PROBLEMS .....	27
5.1 The requirement of sufficient resources .....	27
5.2 The practice of Finnish Immigration service.....	27
5.3 Improvement of the best interest of child principle in the family reunification.....	28
CONCLUSION .....	30
LIST OF REFERENCES.....	32
APPENDICES .....	38
Appendix 1. Key legislative or other reforms related to family reunification of beneficiaries of international protection in Finland 2010–2016. ....	38
Appendix 2. Non-exclusive licence.....	40

## **ABSTRACT**

Children under 18 years who have arrived at the borders of another nation without adult supervision are referred to as unaccompanied minors. The purpose of this thesis is to address the challenges facing family reunification of unaccompanied minors in Finland as a form of legal and controlled immigration. The research question concerns how the current approach of Finnish authorities and legislation should undergo an amendment to facilitate family reunification of unaccompanied minors while taking into account the best interest of the child principle. Currently, the concept of the best interests of the child is not always the main assessment criterion in family reunification of unaccompanied minors. The reason for this is the openness and the narrow interpretation of the principle. The legislation and practices of Finnish authorities together hinders the realization and protection of fundamental rights of children from being in the company of their families. However, Finland is committed to all of the international treaties listed in this thesis, and as a result, the Finnish constitution and all other legislation must be interpreted in such a way that the interpretation is in line with these international agreements.

This research is done by using a qualitative research method. Information from published legislation, academic sources, and literature reviews will provide more insight into the matter. The best interest of the child principle which is derived from Article 3(1) of the United Nations Convention on the Rights of the Child (CRC), will be the basis of this analysis. After analyzing the best interests of the child principle as well as existing Finnish legislation and practices regarding the family reunification of unaccompanied minors, the research concludes that changes to the legislation and practices are clearly needed in order to serve more precisely the purposes of the best interest of child principle and conditions imposed by international obligations.

**Keywords:** Unaccompanied minors, Family reunification , Best interest of the child

## INTRODUCTION

The focus of this thesis is on family reunification of unaccompanied minors. Unaccompanied minors refer to children under the age of 18 who have arrived at the borders of another country without an adult in charge of them as well as those who have been left unaccompanied after entering the country's territory.<sup>1</sup>

Family reunification which is one of the forms of legal and controlled immigration is regulated at both national and EU level. Family reunification enables immigrants to enjoy the protection of family life, which is a fundamental and human right for both adults and children.<sup>2</sup> The decision to reunite with the family is considered to be an important legal decision, especially for a foreign child, as it has long-term effects.<sup>3</sup> Furthermore, the presence of the family has been considered to greatly facilitate the integration process.<sup>4</sup>

In many situations, the wish of unaccompanied minors living with their families cannot be fulfilled as family reunification has become a complicated procedure with numerous obstacles. Despite the fact that a few hundred unaccompanied minors arrive every year in Finland and obtain a residence permit, only a few of them get their families to Finland.<sup>5</sup> The reason can be found in Finland's strict immigration and asylum procedure. Legislative reforms made during recent years have considerably tightened the criteria for family reunification and significantly reduced the possibility of family reunification.<sup>6</sup>

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<sup>1</sup> Directive 2011/95/EU of the European parliament and of the council, article (2)

<sup>2</sup> Puotiniemi, H. (2018) Lapsen edun arvioiminen perheenyhdistämisessä. p. 1

<sup>3</sup> *Ibid.*

<sup>4</sup> Sisäasiainministeriö (2013) Maahanmuuton tulevaisuus 2020 – työryhmän ehdotus. Sisäasiainministeriön julkaisu, p.20

<sup>5</sup> European Migration Network (2017) Unaccompanied Minors Following Status Determination: Approaches in EU Member States and Norway – National Report of Finland. Available at:

[http://www.emn.fi/files/1855/EMN\\_UAM\\_EN\\_FI\\_NETTI3.pdf](http://www.emn.fi/files/1855/EMN_UAM_EN_FI_NETTI3.pdf)

<sup>6</sup> Declaration of the Advisory Board for Ethnic Relations (2019) - Wellbeing of minors who have arrived in Finland as unaccompanied asylum seekers – family reunification and aftercare, p.1, Accessible at:

<https://oikeusministerio.fi/documents/1410853/4737829/ETNO+Declaration+on+the+wellbeing+of+unaccompanied+minors.pdf/b2773742-8c1e-4f2f-155c-e795dfde0b37/ETNO+Declaration+on+the+wellbeing+of+unaccompanied+minors.pdf>

Finland has been at the front line in ratifying international legislations and agreements on children's rights. The United Nations Convention on the Rights of the Child which was adopted in 1989, is an international treaty meant to protect and cover children's human rights.<sup>7</sup> One of the four key principles originating from the UN Convention on the Rights of the Child (CRC) is the best interest of the child principle, which is derived from Article 3(1) of the convention.<sup>8</sup> This principle imposes a positive duty for countries to give a primary consideration to the best interests of children in all actions concerning the child.<sup>9</sup> In Finland, the principle in the family reunification of unaccompanied minors is not, in all situations, primary evaluation criterion.<sup>10</sup> The openness of the concept of best interests has led to debates and multiple interpretations.<sup>11</sup> This is because the constitutional constituent of the best interest of child principle is meagre. Unaccompanied minors remain vulnerable due to inadequate protection. Therefore, the narrow interpretation of the best interest of the child principle has hindered authorities from promoting the children's rights.

The thesis aims to look into the challenges associated with family reunification of an unaccompanied minors. In this thesis, the author gives answer to the research question: How the current approach of Finnish authorities and legislation should be amended in order to support the best interest of the child principle in family reunification of unaccompanied minors. The hypothesis is that current practice of Finnish authorities and legislation violates unaccompanied minors fundamental and human right to a family. The research will borrow mainly from published legislation, academic sources, and literature reviews on family reunification of unaccompanied minors. Thus, the study will rely on qualitative research techniques.

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<sup>7</sup> Josefsson, J. (2016) "Children's Rights to Asylum and the Capability Approach", *Ethical Perspectives* 23, 101-130.108 & Cohen, C. (1989). UNITED NATIONS: CONVENTION ON THE RIGHTS OF THE CHILD. *International Legal Materials*, 28(6), pp.1448-1476., p. 1448. Retrieved May 1, 2021, from <http://www.jstor.org/stable/20693385>

<sup>8</sup> Hakalehto-Wainio, S. (2011). Lasten oikeudet lapsen oikeuksien sopimuksessa. *Defensor Legis: Suomen asianajajaliiton äänenkannattaja*, pp.510-525. 510 & Kalverboer, M., Beltman, D., van Os, C., & Zijlstra, E. (2017). The Best Interests of the Child in Cases of Migration, *The International Journal of Children's Rights*, 25(1), 114-139. 117

<sup>9</sup> Sormunen, M. (2020) Understanding the Best Interests of the Child as a Procedural Obligation: The Example of the European Court of Human Rights, *Human Rights Law Review*, Volume 20, Issue 4, Pages 745–768, <https://doi.org/10.1093/hrlr/ngaa034>, Taylor, R. E. (2016). Putting children first? Children's interests as a primary consideration in public law. *Child and Family Law Quarterly*, 28(1), 45–65., p. 45-46  
Article 3 of United Nations Convention on the Rights of the Child

<sup>10</sup> Parsons, A. (2010): Lapsen edun toteutuminen turvapaikanhakija- ja pakolaislapsia koskevissa päätöksissä. Helsinki 2010. p.5

<sup>11</sup> Tolonen, H, Koulu, S. & Hakalehto, S. (2019) Best Interests of the Child in Finnish Legislation and Doctrine: What Has Changed and What Remains the Same?" In *Children's Constitutional Rights in the Nordic Countries*, pp. 159-184, p.160

In the first chapter, the best interest of the child principle will be defined. Furthermore, how it is regulated both international and national level will be reviewed. The second chapter examines the right to family life and international obligations set for the family reunification. Particular attention will be paid to Article 8 of the European Convention on Human Rights and to the EU Family Reunification Directive. In the third chapter, the conditions set for third-country nationals for family reunification in Finland are reviewed through the Aliens act. In addition, since 2010, the most important legislative amendments and other changes made concerning family reunification for beneficiaries of international protection in Finland will be presented. The fourth and fifth parts then analyses and highlights the main issues and challenges of unaccompanied minors in family reunification and provides solutions to identified problems. Lastly, the conclusion summarises the main findings of the research paper.

# 1. BEST INTEREST OF CHILD

## 1.1 International regulation

The best interest of child principle refers to a universally ratified norm enforced by legislative bodies and administrative authorities to protect children. The principle is enshrined in Article 3 of the UN Convention on the Rights of the Child and is primary consideration by the UNHCR when dealing with children's concerns<sup>12</sup>. The Article 3 (1) of the UNCRC states: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."<sup>13</sup> Under the principle, "Best interests" is a term used to refer to the children's concerns. In addition, best interest means that when making decisions concerning the child all relevant matters and factors should be taken into account<sup>14</sup>. Article 3 of the UNCRC contains welfare factors that decision-makers refer to when determining what lies in the child's best interest. Internationally, judges are guided with a checklist of educational needs, age, child's feelings, and parents' capabilities to promote children's rights. Article 3 obliges decision-makers to note issues impacting children's lives.<sup>15</sup> For example, attachment, education, and development are the values

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<sup>12</sup> George, M. & Noor Aziah Mohd Awal. (2019) The best interest principle within Article 3 (1) of the United Nations convention on the Rights of the Child." *International Journal of Business, Economics and Law*, Vol. 19, Issue 4, pp. 30-36.

<sup>13</sup>Pobjoy, J. (2015). THE BEST INTERESTS OF THE CHILD PRINCIPLE AS AN INDEPENDENT SOURCE OF INTERNATIONAL PROTECTION. *International and Comparative Law Quarterly*, 64(2), 327–363. doi: 10.1017/S0020589315000044, Collinson, J. (2020). Making the best interests of the child a substantive human right at the centre of national level expulsion decisions. *Netherlands Quarterly of Human Rights*, 38(3), 169–190, p. 173. <https://doi.org/10.1177/0924051920940167>

Article 3, para. 1, CRC: 'In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration'.

<sup>14</sup> Hakalehto-Wainio, S. (2011), *supra nota* 8,511.

<sup>15</sup> Salmerón-Manzano, Esther, and Francisco Manzano-Agugliaro. "Unaccompanied minors: worldwide research perspectives." *Publications* 7, no. 1 (2019): 2.



considered during decision making.<sup>16</sup> These values are essential for the achievement of the child's meaningful life. As per the UNHCR's guidelines, child participation is fundamental during the Best Interests Determination (BID). In this case, decision-makers are required to eliminate discriminatory factors that might hinder the best options' determination. The BID procedure is designed and provided by the UNHCR to be used in legal and customary procedures.<sup>17</sup>

The CRC general comments divide the best interests of the child principle at three dimensions. The first one, a substantive right, means that the child is entitled to have his/her interests assessed and prioritized.<sup>18</sup> Second dimension is, a fundamental interpretative legal principle which provides a chance for assessing several interpretations, among which the best interpretation is then chosen<sup>19</sup>. The third dimension, A rule of procedure requires whenever a decision is taken that affects one or more children, the decision must consider the effect on the child or children in question.<sup>20</sup>. Decisions must indicate how the rights of the child has been taken into account, what has been considered being in best interests of the child and how the best interests of the child has been balanced against other interests.<sup>21</sup> Furthermore, children themselves are not considered capable of determining what sort of decision is best for them. Adults have decision-making authority, which places a significant responsibility on them to thoroughly assess the situation while keeping the child's viewpoint in mind.

## 1.2 National regulation

Finland ratified the United Nations Convention on the rights of the child in 1991.<sup>22</sup> Since then is has been a legally binding document and national laws must be compatible with the UNCRC. The child's best interests have been taken into account in the Finnish domestic law to enhance

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<sup>16</sup> Collinson, J. (2020). Making the best interests of the child a substantive human right at the centre of national level expulsion decisions. *Netherlands Quarterly of Human Rights*, 38(3), 169–190, p. 173.

<https://doi.org/10.1177/0924051920940167>

<sup>17</sup> UNHCR Guidelines on Formal Determination of the Best Interests of the Child. Provisional Release, May 2006

<sup>18</sup> Committee on the rights of the child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration. p.4

<sup>19</sup> *Ibid.*

<sup>20</sup> *Ibid.*

<sup>21</sup> *Ibid.*

<sup>22</sup> Convention on the rights of the child, accessible at :<https://www.lastensuojelu.info/en/grounds-for-child-welfare/convention-on-the-rights-of-the-child/>

development and wellbeing. Furthermore, the Finnish domestic law has mandated authorities to be responsible and enforce regulations to meet the child's best interests. According to the Constitution of Finland section 6 “Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their development”.<sup>23</sup> According to the preliminary legislative work, the provision aims to emphasize that children must be handled equally not only with one another, but also with adults as they in principle has equal fundamental rights.<sup>24</sup> Although, the best interest of child principle has adopted to the Finnish legislation, it is not specifically mentioned in the constitution.<sup>25</sup>

The best interest of the child principle also plays significant role in Finland's aliens act, despite the fact that the national law is not entirely equivalent to international obligations due to its narrowness.<sup>26</sup> According to Section 6 (1) of the Aliens Act “ In any decisions taken under this Act that concern a child under the age of 18, special attention shall be paid to the best interest of the child and to circumstances related to the child’s development and health.”<sup>27</sup> It is worth noting that Finland's aliens act separates the best interest of the child principle from matters concerning a child's growth and wellbeing.<sup>28</sup> Whereas, in the United Nations Convention on the Rights of the Child, the concept of the child's best interests encompasses both of these aspects.<sup>29</sup> Furthermore, the best interests of the child concept in the Finnish aliens act is not entirely consistent with the definition in the Convention on the Rights of the Child.<sup>30</sup> Article 3 of the CRC states that the best interest of child principle “shall be a primary consideration” while the Finnish aliens act section 6 states that “special attention shall be paid”.<sup>31</sup> Despite the variation in wording, the legislator

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<sup>23</sup> Section 6 of the Constitution of Finland 11.6.1999/731

<sup>24</sup> HE 309/1993, Hallituksen esitys eduskunnalle perustuslakien perusoikeussäännösten muuttamisesta. (Government’s proposal to the Parliament on amending fundamental rights regulation) p. 45

<sup>25</sup> Hakalehto, S & Sovela, K (2018) Lapsen etu ja sen ensisijaisuus ulkomaalaisasioita koskevassa päätöksenteossa. Teoksessa: Ulkomaalaisoikeus, toim. Heikki Kallio, Toomas Kotkas, Jaana Palander, Helsinki, pp. 407–448, p. 415

<sup>26</sup> Parsons, A. (2010), supra nota 8, 31. & Knuutila, R., & Heiskanen, H. (2014). Lapsen etu viranomaistoiminnassa: katsaus eräisiin Maahanmuuttoviraston viimeaikaisiin kielteisiin päätöksiin. *Oikeus*, 43, p. 314

<sup>27</sup> Aliens Act (301/2004; amendments up to 1163/2019 included), section 6

<sup>28</sup> Puotiniemi, Heidi (2018) Lapsen edun arvioiminen perheenyhdistämisessä, p.14, Accessible in: <https://lauda.ulapland.fi/handle/10024/63591>, Hakalehto, S & Sovela, K (2018), supra nota, 25

<sup>29</sup> Hakalehto, S & Sovela, K (2018), supra nota, 25.

<sup>30</sup> Puotiniemi, Heidi (2018), supra nota, 28, p.15

<sup>31</sup> Tolonen, H., Koulu, S. & Hakalehto, S. (2019), supra nota 11, 177.

intended the wording to be consistent with the meaning in the CRC and not to restrict giving priority to the principle.<sup>32</sup>

Furthermore, the best interest of the child principle is also referred in other sections of the Aliens act. Provision 39§ of the Aliens Act, which is often invoked in family reunification situations, allows in certain situations to make exemption to the requirement of sufficient resources if the best interest of the child requires so.<sup>33</sup> Furthermore, the hearing of the child is also central in the best interests of the child principle<sup>34</sup>. According to 6(2) of the Aliens act, a child who has reached the age of twelve must be heard before any decisions concerning him has made unless the hearing is unnecessary<sup>35</sup> The provision aims that children's views are observed based on their age and developmental level. Furthermore, this implies that children can make claims that are independent of the adults' views.

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<sup>32</sup>*Ibid.*, Government proposal HE 28/2003 vp, p. 8–10. Hallituksen esitys eduskunnalle ulkomaalaislaiksi ja eräksi siihen liittyviksi laeiksi, Administration Committee Report HaVM 4/2004 vp, p. 8. Hallintovaliokunnan mietintö hallituksen esityksistä (HE 28/2003 vp, HE 151/2003 vp) ulkomaalaislaiksi ja eräksi siihen liittyviksi laeiksi.

<sup>33</sup> Aliens Act (301/2004) section 39

<sup>34</sup> Pirjatanniemi, E, Lilja, I. Helminen, M, Vainio, K., Lepola, O & Alvesalo-Kuusi, A. (2021) Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja: Ulkomaalaislain ja sen soveltamiskäytännön muutosten yhteisvaikutukset kansainvälistä suojelua hakeneiden ja saaneiden asemaan. p.195, Available at: [https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162850/VNTEAS\\_2021\\_10.pdf](https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/162850/VNTEAS_2021_10.pdf)

<sup>35</sup> Aliens act (301/2004) section 6

## 2. FAMILY REUNIFICATION

### 2.1 Right to family life

All the rights guaranteed by International human rights treaties belongs equally to children despite of their age<sup>36</sup>. According to article 12 of the United Nations declaration of Human rights, “no one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation”.<sup>37</sup> “Everyone has the right to the protection of the law against such interference or attacks”.<sup>38</sup> Furthermore, article 16(3) of the same declaration states that “ family is the natural and fundamental group unit of society and is entitled to protection by society and the State”.<sup>39</sup> This article emphasizes the obligation countries have to protect family unity. <sup>40</sup>However, despite of the great influence and widespread attraction, the declaration is not legally binding.<sup>41</sup>

Corresponding principles can be found in the article 8 of the European convention of human rights which guarantees the right to respect one’s private and family life and states that authorities should

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<sup>36</sup> Sigurdson, R. (2019). "Chapter 2 Children’s Right to Respect for Their Human Dignity". In *Children’s Constitutional Rights in the Nordic Countries*, p.20

<sup>37</sup> Article 12 of Universal Declaration of Human rights, 10.12.1948, General assembly 217 A

<sup>38</sup> *Ibid.*

<sup>39</sup> Article 16 of Universal Declaration of Human rights, 10.12.1948

<sup>40</sup> Roos,C. & Zaun, N. (2014) “Norms matter! The Role of International Norms in EU Policies on Asylum and Immigration “. *European Journal of Migration and Law* 16: 45-68. 57

<sup>41</sup> Glendon, M-A (2004) “*The Rule of Law in the Universal Declaration of Human Rights,*” *Northwestern Journal of International Human Rights*, Volume 2, Issue 1, 1-19. p.5

Available at: <https://scholarlycommons.law.northwestern.edu/njihr/vol2/iss1/5>

not interfere with the exercise of his right unless it is lawful, necessary, and proportionate in a democratic society.<sup>42</sup> Furthermore, the authorities must take appropriate steps to ensure that the reverence is observed. The Charter of the fundamental rights of European Union also enshrines the right to respect for private and family life.<sup>43</sup> In addition to these, article 16 of the UN Convention on the Rights of the Child specially protects children's right to a family.<sup>44</sup>

In Finland, section 10 of the constitution guarantees the right to privacy for everyone.<sup>45</sup> However, like other international agreements it does not include a separate reference to the protection of family life as the definition of the family was considered problematic.<sup>46</sup> Despite the fact that protection of family life is not stated in the article of right to privacy, preliminary works of the law have found article 10 of the constitution to include also the protection of family life.<sup>47</sup> Furthermore, as the right to family life is both a human right and a fundamental right, foreigners do not have absolute rights to exercise this right due to the sovereignty of the country.<sup>48</sup> Under international law, each sovereign state has the exclusive power to decide which aliens enter and reside in the territory of their country.<sup>49</sup>

## 2.2 Article 8 of ECHR

International obligations play an important role in family reunification, although there is no universal human rights instrument that would allow all aliens to reunite with their families.<sup>50</sup> Article 8 of the European Convention on Human Rights guarantees the right to protection of family life.<sup>51</sup> However, article 8 of European Convention on Human Rights of does not contain an

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<sup>42</sup> European Court of Human rights (2018) Guide on Article 8 of the Convention – *Right to respect for private and family life, home and correspondence*, p.7, Article 8 of European Convention of Human rights

<sup>43</sup> Pirjatanniemi, E, Lilja, I. Helminen, M, Vainio, K., Lepola, O & Alvesalo-Kuusi, A. (2021) , supra nota 34,

<sup>44</sup> United Nations Human Rights (1989) Convention on the Rights of the Child, article 16

<sup>45</sup> Article 10 of the Constitution of Finland, 11 June 1999 (731/1999, amendments up to 817/2018 included)

<sup>46</sup> Pirjatanniemi, E, Lilja, I. Helminen, M, Vainio, K., Lepola, O & Alvesalo-Kuusi, A. (2021), supra nota 34,, 143.

<sup>47</sup> HE 309/1993, supra nota 24, 53.

<sup>48</sup> Puotiniemi, Heidi (2018), *supra nota*, 28, p.39

<sup>49</sup> Hannikainen. L (2014) Kansainvälisen oikeuden käsikirja, p. 35,

Klaassen, M. (2019). Between facts and norms: Testing compliance with Article 8 ECHR in immigration cases. *Netherlands Quarterly of Human Rights*, 37(2), 157–177. p.158, <https://doi.org/10.1177/0924051919844387>

<sup>50</sup> Perruchoud, R (2012) *State sovereignty and freedom of Movement: Foundations of International migration law*. Cambridge University Press, p. 123-125

<sup>51</sup> Article 8 of ECHR , accessible : [https://www.echr.coe.int/documents/convention\\_eng.pdf](https://www.echr.coe.int/documents/convention_eng.pdf)

explicit right to family reunification.<sup>52</sup> Moreover, it does not place on the state a general duty to respect an immigrant's choice of residence. European Court of Human Rights has ruled that state can only have a positive obligation to promote the family life of foreigners and only in exceptional circumstances.<sup>53</sup> In this context, positive obligation means that the state has an obligation to take measures in order to ensure that the right of individuals to respect family life is upheld.<sup>54</sup>

According to the case law of ECHR concerning family reunification, in situations where there is an insurmountable barrier to family life in a family member's home country, the state has an obligation to grant a residency permit based on family relations.<sup>55</sup> Furthermore, the investigation of an insurmountable obstacles shouldn't be based on the problems that lead to family members' breakup, but whether there are other ways to spend family life together and how that family life can be arranged.<sup>56</sup> The case law of the ECHR has also stated that a proportionate balance should be struck between the interests of the individual and society as regards to the positive and negative obligations of the State.<sup>57</sup> In addition, the court has also considered that in situations concerning refugee, family reunification should be permitted on less stringent grounds.<sup>58</sup>

### 2.3 Directive 2003/86/EC- on the right to family reunification

The European Union's Family Reunification directive recognises the right to family reunification. The aim of the Family Reunification Directive is to protect family life while also defining the minimum conditions under which lawfully residing third-country nationals' family reunification can be permitted if the directive's conditions are met.<sup>59</sup> The directive establishes the basic

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<sup>52</sup> Palander, J (2018) Perheenyhdistäminen ja perhe-elämän suoja. Teoksessa: Ulkomaalaisoikeus, toim. Heikki Kallio, Toomas Kotkas, Jaana Palander, Helsinki. pp. 357–406, p. 399

<sup>53</sup> *Ibid.*

<sup>54</sup> Hirvelä, P & Hivelä, S (2018) Ihmisoikeudet-käsikirja EIT:n oikeuskäytäntöön. p. 628

<sup>55</sup> Yhdenvertaisvaltuutettu (2020) Lapset ilman perhettä- kansainvälistä suojelua saaneiden alaikäisten perheenyhdistäminen, p.16, available at:

<https://syrjinta.fi/documents/25249352/54194583/Lapset+ilman+perhettä+-+Kansainvälistä+suojelua+saaneiden+alaikäisten+perheenyhdistäminen+%28PDF%29.pdf/9a5d54b9-82c9-4961-a865-f6037110b2a7/Lapset+ilman+perhettä+-+Kansainvälistä+suojelua+saaneiden+alaikäisten+perheenyhdistäminen+%28PDF%29.pdf?t=1609832005738>

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> *Ibid.*

<sup>59</sup> Miettinen, A., Paavola, J-H., Rotkirch, A., Säävälä, M. & Vainio, A. (2016) Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja : Perheenyhdistämisen edellytysten tiukentaminen ja sen vaikutukset Suomessa sekä kokemuksia viidestä Euroopan maasta. p.16, Available at:

requirements, which are binding for all member states as well as the additional conditions, which are applied at the discretion of the member states.

Directive 2003/86/EC is only applicable when the person responsible for unifying the family and the applicant are citizens of third-world countries<sup>60</sup>. In addition, it can be applied when a family reunifier has had a residency permit for at least one year and has justified possibilities for obtaining a permanent residence.<sup>61</sup> Thus, this directive is inapplicable when the unifier is a citizen of Finland or a country that is a part of the European Union. For example, sponsors whose refugee status is still in the application stage or those third-country nationals whose residency is based on temporary or subsidiary protection are not eligible for this directive.<sup>62</sup> In situations where the family reunification directive does not apply, for example in the case of a national from a third-world country who has received subsidiary protection, the conditions for family reunification is regulated by national law. In Finland the requirements set for the family reunification for refugees and beneficiaries of subsidiary protection are at the same level.

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<https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/79812/perheenystämisen%20edellytysten%20tiukentamien%20ja%20sen%20vaikutukset%20Suomessa.pdf?sequence=1>

<sup>60</sup> Staver, A. (2013). Free Movement and the Fragmentation of Family Reunification Rights, *European Journal of Migration and Law*, 15(1), 69-89. p.72

<sup>61</sup> Miettinen, A., Paavola, J-H., Rotkirch, A., Säävälä, M. & Vainio, A. (2016), *supra nota* 59

<sup>62</sup> Palander (2018), *supra nota* 52, p. 359-361 & Directive 2003/86/EC article 3(2)

### **3. LEGISLATION REGULATING FAMILY REUNIFICATION IN FINLAND**

Family reunification is a procedure where a person living in Finland applies for a residency permit for his family members.<sup>63</sup> Family reunification can be applied by family gatherers who have either received a residence permit or are nationals of the region.<sup>64</sup> In Finland, the terms and conditions for family reunification are determined by the Finnish Alien Act. Furthermore, the Finnish Immigration Service is the authority in charge of making decisions on family reunification and leading the process in Finland.<sup>65</sup> Thus, this chapter reviews the applicable legislation in Finland regulating the family reunification and conditions set for it.

#### **3.1 General conditions for residence permit**

Section 36 of the Aliens Act sets out the general conditions for issuing a residence permit. The general conditions for residence are conditions which, with a few exceptions, must be met by an applicant, regardless of the type of residence permit. First and foremost, all forms of residency permits require that the applicant's travel document must be valid at the time of issuance. To qualify as a travel document, applicants must first have a national passport issued by their country of origin.<sup>66</sup> A valid alien's passport also fulfils the travel document condition. Furthermore, in

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<sup>63</sup> Tiilikainen, M. E., Fingerroos, O., & Tapaninen, A-M. (2016). Perheenyhdistäminen: Kuka saa perheen Suomeen, kuka ei ja miksi? Vastapaino. p. 73

<sup>64</sup> *Ibid.*, 66.

<sup>65</sup> *Ibid.*

<sup>66</sup> Kallio, H. (2018) Maahantulo ja maassa oleskelu. Teoksessa: Ulkomaalaisoikeus, toim. Heikki Kallio, Toomas Kotkas, Jaana Palander, Helsinki. pp.121–171, p.133



situations where it is impossible to obtain a travel document for reasons beyond the applicant's control, an exception to the travel document requirement is made.<sup>67</sup>This exception is mainly for Somali citizens, as Finland does not accept travel documents issued by Somalia.<sup>68</sup>

According to section 36 of the Aliens act, an application for a residence permit may be refused if there is reason to suspect that the application for a residence permit has been applied for incorrectly or by circumventing the entry rules.<sup>69</sup> Furthermore, this also applies accordingly, if the family gatherer has obtained her residence permit by circumventing the entry provisions. This provision serves as one of the conditions for obtaining a residence permit. However, what is meant by circumvention of entry rules are not separately defined in the Aliens act. According to the Aliens Act, circumvention of entry rules can be regarded as providing false information about identity or family relationships<sup>70</sup>. Article 16 of The EU Family Reunification Directive specifies in more detail the circumstances in which an application can be refused in case there is reason to suspect that there is circumvention of entry rules.<sup>71</sup>

The general conditions of stay also include the condition that the applicant has not been refused entry. In addition, a residence permit will not be given may not be issued if the alien is deemed to be a threat to Finland's international relations or public health, or public order and security.<sup>72</sup> Furthermore, if a family member who has given refugee or subsidiary protection is considered to be a danger as stated in section 114 of the Aliens act, an overall consideration is carried in accordance with section 114(2) of the Aliens act.<sup>73</sup> During the assessment, the possibility of the sponsor living family life with the family member in another country will assessed while taking into account the importance of family ties for the parties involved.<sup>74</sup>

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<sup>67</sup> Aer, J. (2016). Ulkomaalaisoikeuden perusteet, p 97

<sup>68</sup> European Migration Network (2015) Ad-Hoc Query on biometric passports issued by Somalia, p.3, Available at: [https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/networks/european\\_migration\\_network/reports/docs/ad-hoc-queries/border/2015\\_652\\_emn\\_ahq\\_on\\_biometric\\_passports\\_issued\\_by\\_somalia\\_update\\_wider\\_dissemination.pdf](https://ec.europa.eu/home-affairs/sites/default/files/what-we-do/networks/european_migration_network/reports/docs/ad-hoc-queries/border/2015_652_emn_ahq_on_biometric_passports_issued_by_somalia_update_wider_dissemination.pdf)

<sup>69</sup> Aliens Act (301/2004) section 36 (2-3)

<sup>70</sup> *Ibid.*

<sup>71</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, article 16

<sup>72</sup> Aliens Act (301/2004) section 36(1)

<sup>73</sup> Aliens Act (301/2004), section 114(2), 115(1)

<sup>74</sup> Kuosma, T. (2016) Turvapaikka ja pakolaisasema: kansainvälisen suojelun periaatteet, p. 46

## 3.2 Family members

Defining family members is especially important in family reunification as there are different perceptions of the family and its members in different cultures and different states. In Finland, the aliens act determinate persons who are considered to be family members. According to 37§ of the Aliens Act,” the spouse of a person residing in Finland, and unmarried children under 18 years of age of whom the person residing in Finland or his or her spouse has custody are considered family members”<sup>75</sup>. In case of an unaccompanied minor the family members are, in principle his or her parents. Other persons relating to the unaccompanied minor are considered to be relatives such as siblings. Such relatives can receive a residence permit “if refusing the residence permit would be unreasonable because the persons concerned intend to resume their close family life or the family relation is fully dependent on the sponsor living in Finland”.<sup>76</sup>

Furthermore, spouses mentioned in the Aliens Act, section 37 are equated with the parties to a registered partnership as well as cohabiting spouses regardless of their gender.<sup>77</sup> The prerequisite is living together for at least two years or having a child together.<sup>78</sup> In addition, an unmarried child under the age of 18 is equated with a so-called foster child who is in the actual custody of his or her guardian, but for whom no official statement of custody is available.<sup>79</sup> For assimilation to take place, a reliable statement is required that the former parents of the child in question have either died or disappeared in a verifiable manner.<sup>80</sup> In addition, it is required that the child has had an actual custody relationship with the family gatherer or his or her spouse before the family gatherer has arrived in Finland.<sup>81</sup>

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<sup>75</sup> Aliens act (301/2004), section 37(1)

<sup>76</sup> Aliens act (301/2004), section 115 (1)

<sup>77</sup> Aliens act (301/2004), section 37 (2)

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.* section 37(3)

<sup>80</sup> Juvonen, A.M. (2012), *Maahanmuuton juridiikkaa – käytännön käsikirja*. Helsinki, p.126, 133-134

<sup>81</sup> Aliens Act (301/2004), section 37(3)

### **3.3 Requirement for a child to be a minor**

According to the Aliens Act section 38, in order to receive a residence permit based on a minor unmarried child's family relations or a family member of a minor family sponsor, the child must be a minor on the day the residence permit application is decided.<sup>82</sup> Before amending the Aliens Act in 2016, a family gatherer was only required to be a minor on the date of application request.<sup>83</sup> Furthermore, since 2016, an applicant who has reached the age of 18 cannot be refused a residence permit on the basis of maturity if the processing delay is not due to the applicant's fault.<sup>84</sup>

### **3.4 Requirement for sufficient financial resources**

In principle, the alien's livelihood must be secured in order to receive a residence permit. This general rule also applies to residence permits issued on the basis of family ties. Family members of beneficiaries of international protection are also subject to the requirement of financial sources. The only exception is made for the family members of those who have been granted refugee status, if they apply for a residence permit within three months of being informed by the family gatherer of the decision on asylum or admission to the refugee quota.<sup>85</sup> Nevertheless, the requirement of sufficient sources can be waived if the best interests of the child so require or there are serious grounds for it as stated in the Aliens act section 39§.<sup>86</sup> The purpose of the requirement for sufficient financial sources is to ensure that the state does not incur unreasonable costs for the alien's stay in the state.<sup>87</sup>

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<sup>82</sup> Ibid, section 38(1)

<sup>83</sup> Puotiniemi,H. (2018) Lapsen edun arvioiminen perheenyhdistämisessä. p.48

<sup>84</sup> Aliens act (301/2004),section 38(2)

<sup>85</sup> Aliens act (301/2004), section 114

<sup>86</sup> Aliens act (301/2004), section 39

<sup>87</sup> Knuutila & Heiskanen (2014) p.320

### 3.5 Actual family life

The existence of actual family life between the family sponsor and the family member is one of the conditions assessed when it comes to granting a residency permit based on family relations.. The severance of family ties is considered one of the reasons for a refusal of a residence permit application.<sup>88</sup> The residence permit will be refused if it can be shown that the previous family life has been interrupted or even ended.<sup>89</sup> In such a situation, attention must be paid to the factors which originally led to the termination or interruption of family life. In case the family connection is broken, parents and siblings of the minor sponsor cannot be considered his family members according to the Aliens Act's section 37.<sup>90</sup>

For refugees and beneficiaries of international protection, in certain situations, it might be difficult to demonstrate that the family life they spend is in accordance with the requirements of aliens act.<sup>91</sup> It is very common for refugees and beneficiaries of international protection that the physical connection is broken as the living together is not in certain situations possible. For this reason, the actual family life of the parties can be demonstrated for example through active and regular communication and constant mutual care.<sup>92</sup> However, the fulfilment of a maintenance obligation itself is not a sufficient ground to prove actual family life between the parties.<sup>93</sup>

According to the Finnish immigration service, most common reasons where family ties have been considered to be broken have been the long separation, parents who have sent their child without a compelling reason and as a result has caused the break in family ties.<sup>94</sup> Furthermore, during the assessment the Finnish Immigration Service seeks to find out whether living apart was a conscious

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<sup>88</sup> Yhdenvertaisvaltuutettu (2020) Lapset ilman perhettä- kansainvälistä suojelua saaneiden alaikäisten perheenyhdistäminen, p.13, available at: <https://syryjinta.fi/documents/25249352/54194583/Lapset+ilman+perhettä+-+Kansainvälistä+suojelua+saaneiden+alaikäisten+perheenyhdistäminen+%28PDF%29.pdf/9a5d54b9-82c9-4961-a865-f6037110b2a7/Lapset+ilman+perhettä+-+Kansainvälistä+suojelua+saaneiden+alaikäisten+perheenyhdistäminen+%28PDF%29.pdf?t=1609832005738>

<sup>89</sup> *Ibid.*

<sup>90</sup> Aliens act (301/2004), section 37

<sup>91</sup> Nykänen, E. (2008) Luvallista, luvatonta ja jotain siltä väliltä – ulkomaalaislaki ja turvapaikanhakija- taustaisten maahanmuuttajien jäsenyys. p. 345–364. 354

<sup>92</sup> Puotiniemi, Heidi (2018), *supra nota*, 28, p.52

<sup>93</sup> *Ibid.*

<sup>94</sup> Yhdenvertaisvaltuutettu (2020) Lapset ilman perhettä- kansainvälistä suojelua saaneiden alaikäisten perheenyhdistäminen, *supra nota* 88, p.14

choice or due to compelling reasons.<sup>95</sup> The family bond may be assumed to have been broken willingly if living apart was a deliberate decision or a long-lasting one.<sup>96</sup>

### 3.6 Key legislative and other reforms related to family reunification of beneficiaries of international protection in Finland 2010–2016

Date of entry into force	Content of the change
1.8.2010	<p><b>Act amending the Aliens Act (549/2010)</b></p> <ul style="list-style-type: none"> <li>- A forensic analysis can be used to determine the age of an alien or family gatherer applying for a residence permit.</li> <li>- A residence permit based on family ties can be denied if the family gatherer has given false information about himself or herself or his family relations when applying for his own residence permit.</li> <li>- Minor foster children are equated with their own children</li> <li>- A minor applicant must be under 18 years of age when the application for a residence permit is decided (before: under the age of 18 at the time the application is initiated)</li> <li>- When a family member's application for a residence permit is determined, the minor family sponsor must be under the age of 18. (before: under the age of 18 at the time the application is initiated)</li> <li>- The requirement for sufficient sources was applied to family members of beneficiaries of international protection status in case of family formation (so-called new family)</li> </ul>
1.3.2011	<p><b>Guidelines of Finnish Immigration Service</b></p> <p>Applicants applying for family reunification in a third country or at a Finnish mission must be lawfully residing in a third country. Proof of legal residence can be a visa or an acceptable travel document</p>

<sup>95</sup> *Ibid.*

<sup>96</sup> *Ibid.*

1.1.2012	<p><b>Act amending the Aliens Act (631/2011)</b></p> <p>The application for family reunification must be made in the applicant's home country and can only be made by the person applying for a residence permit (in other words, from 1 January 2012, the family reunifier can no longer initiate the application)</p>
16.5.2016	<p><b>Decree of the Ministry of the Interior (340/2016) and Act Amending the Aliens Act (332/2016)</b></p> <p>- Starting from 16 May 2016, residence permit applications was subjected to fees for family members of beneficiaries of international protection. (adult à 455€, child à 230 €)</p> <p>- The category of humanitarian protection was removed from residence permits obtained on the basis of international protection.</p>
1.7.2016	<p><b>Act amending the aliens act (505/2016)</b></p> <p>The requirement of sufficient resources was extended to all family reunification of beneficiaries of subsidiary protection status, regardless of when the application for a residence permit was submitted, and to family members granted refugee status if the application is submitted within three months of the family reunifier being informed of refugee status.</p>
11.11.2016	<p><b>Finnish Immigration Service</b></p> <p>Electronic transactions became possible in the submission of family reunification applications</p>

**Source of the table:**<sup>97</sup> Miettinen, A. , Paavola, J-H. , Rotkirch, A. , Säävälä, M. & Vainio, A. (2016) Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja : Perheenyhdistämisen edellytysten tiukentaminen ja sen vaikutukset Suomessa sekä kokemuksia viidestä Euroopan maasta. Available at : [https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/79812/perheenyhdistämisen%20edellytysten%20tiukentaminen%20ja%20sen%20vaikutukset%20Suomessa.pdf?sequence=1](https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/79812/perheenyhdistamisen%20edellytysten%20tiukentaminen%20ja%20sen%20vaikutukset%20Suomessa.pdf?sequence=1)

<sup>97</sup> The original table was written in Finnish, but I translated it into English.

## 4. ISSUES AND CHALLENGES OF UNACCOMPANIED MINORS IN FAMILY REUNIFICATION

### 4.1 The requirement of sufficient resources

Finland's current immigration policy and practices violates the right of unaccompanied minors right to family life. The legislative amendments made to the Aliens act and the requirement of sufficient resources have become unreasonable for those who have received international protection. In 2016, the requirement of sufficient resources was expanded to include the family reunification of beneficiaries of subsidiary protection, regardless of when the application for a residence permit was submitted.<sup>98</sup> The requirement for sufficient resources does not apply to family members of a person who has been granted refugee status if family reunification has been applied for within three months after the family sponsor has received a decision on asylum or access to a refugee quota.<sup>99</sup> However, the three-month time limit is very strict, as family members must submit their residence permit applications to the nearest Finnish embassy, and in certain situations finding the nearest embassy requires traveling to another state, which can incur expensive travel costs.<sup>100</sup> Furthermore, beneficiaries of subsidiary protection do not even have such a possibility, placing beneficiaries of international protection in a different position without an acceptable reason.<sup>101</sup>

Nevertheless, the decision to extend the requirement of sufficient sources to unaccompanied minors is very problematic and unreasonable. According to the UN Convention on the Rights of the Child, "a child has the right to both parents and the child may not be separated from his or her parents against his or her will except in exceptional cases and then only if it is in the best interest of the child."<sup>102</sup> It is very clear that these children, taking also into account their young age, do not

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<sup>98</sup> EMN Focussed study (2016) Family reunification of third country nationals in the EU- National report of Finland, available at: [http://www.emn.fi/files/1518/EMN\\_Family\\_Reunification\\_EN\\_FI.pdf](http://www.emn.fi/files/1518/EMN_Family_Reunification_EN_FI.pdf), p.10

<sup>99</sup> *Ibid.*

<sup>100</sup> Unicef, Ilman perhettä- Tiukka lainsäädäntö perheenyhdistämisestä loukkaa lapsen oikeuksia. Accessible: <https://www.unicef.fi/blogi/ilman-perhetta/> (27.2.2019)

<sup>101</sup> Niinistö, V. (2018) Kirjallinen kysymys KK 504/2018 vp, p.1, Available at: [https://www.eduskunta.fi/FI/vaski/Kysymys/Documents/KK\\_504+2018.pdf](https://www.eduskunta.fi/FI/vaski/Kysymys/Documents/KK_504+2018.pdf)

<sup>102</sup> General Assembly resolution (1989) Convention on the rights of the child, article 9(1)

have any means of securing the livelihood of their family members. The government's preliminary work has also stated that these children do not have the opportunity to secure their families' livelihoods due to school attendance.<sup>103</sup> The state's decision not to exempt minor family gatherers from the strict subsistence requirement stems from the belief that exempting children from the subsistence requirement would encourage further immigration and expose children to abuse.<sup>104</sup>

Although, the Finnish Aliens Act section 39 contains the possibility to deviate from the requirement of sufficient resources, the government has set a derogation threshold very high especially with regard to the best interests of the child principle.<sup>105</sup> The government has referred in its own preliminary work that in order to derogate from the requirement of sufficient resources, it is not enough that it is in the best interests of the child to have a family with him or her, but other individual factors or circumstances that have a concrete effect on the best interest of the child are also required.<sup>106</sup> In their explanatory memorandum, the government has referred to a decision made by the Finnish Supreme Court. A case (KHO: 2014:50) which has been criticised for failing to disclose in sufficient detail the individual factors which could be regarded as conditions for derogating the requirement of sufficient resources also sets the threshold for deviating very high.<sup>107</sup>

As recent case law demonstrates, there have been usually certain health-related reasons for making an exception based on the best interests of the child, in most cases sickness or injury.<sup>108</sup> However, granting a residence permit and waiving the subsistence requirement on the grounds that the child needs hospital care does not mean that the best interests of a healthy child could not equally require making an exemption based on the best interest of the child.<sup>109</sup> Such interpretation and practice place the children in an unequal position and is not in accordance with the Convention on the Rights of the Child.<sup>110</sup>

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<sup>103</sup> HE 43/2016 vp, p.26

<sup>104</sup> *Ibid.*, p. 23

<sup>105</sup> Aliens Act (301/2004) section 39 & Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja (2021) Ulkomaalaislain ja sen soveltamiskäytännön muutosten yhteisvaikutukset kansainvälistä suojelua hakaneiden ja saaneiden asemaan, p. 214

<sup>106</sup> HE 43/2016 vp, p.30

<sup>107</sup> Knuutila, R., & Heiskanen, H. (2014). Lapsen etu viranomaistoiminnassa: katsaus eräisiin Maahanmuuttoviraston viimeaikaisiin kielteisiin päätöksiin. *Oikeus*, 43, pp. 320-321.

<sup>108</sup> KHO 2014:51 & Tolonen, H, Koulu, S. & Hakalehto, S. (2019) Best Interests of the Child in Finnish Legislation and Doctrine: What Has Changed and What Remains the Same?" In *Children's Constitutional Rights in the Nordic Countries*, pp. 159-184. 177

<sup>109</sup> Lapsen oikeuksien toteutuminen vaarantuu ulkomaalaislain muutoksissa. Accessible:

<https://perustuslakiblogi.wordpress.com/2016/06/10/milka-sormunen-lapsen-oikeuksien-toteutuminen-vaarantuu-ulkomaalaislain-muutoksissa/> (10.6.2016)

<sup>110</sup> *Ibid.*



## 4.2 The practice of Finnish Immigration service

A recent report done by Non-Discrimination Ombudsman “Children without families – family reunification of under-age beneficiaries of international protection” points out that there are other challenges to family reunification for unaccompanied minors than the requirement of sufficient resources.<sup>111</sup> The study shows that the decisions of the Finnish Immigration Service violates unaccompanied minors right to family life. Furthermore, the Finnish Immigration Service does not properly assess the best interests of the child principle and family ties are considered to be easily broken and parents' motives for sending the child are suspected.<sup>112</sup> The study was based on family reunification decisions made Finnish Immigration Service during a certain period of time concerning unaccompanied minors who have been granted a residency permit based on refugee or subsidiary protection.<sup>113</sup>

The study reveals among others, that the Finnish Immigration Service applies the provisions of the Aliens Act, significantly restricting the child's right to live with his or her family.<sup>114</sup> In most cases the decision has been negative and the reasoning has been based on the fact that the Finnish Immigration Service has found that the child's parents have not had an individual compelling reason to send the child alone to seek asylum.<sup>115</sup> In those situations, the Finnish Immigration Service considered that there has been circumvention of the entry rules, even if the conditions for

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<sup>111</sup> Yhdenvertaisvaltuutettu (2020) Lapset ilman perhettä- kansainvälistä suojelua saaneiden alaikäisten perheenyhdistäminen.

<sup>112</sup> *Ibid.*

<sup>113</sup> Yhdenvertaisvaltuutettu (2020) Lapset ilman perhettä- kansainvälistä suojelua saaneiden alaikäisten perheenyhdistäminen, *supra nota* 88, 5

<sup>114</sup> Report of Non-Discrimination Ombudman (2020) Children without families- family reunification of under-age beneficiaries of international protection. p.3

<sup>115</sup> *Ibid.*

family reunification were otherwise met.<sup>116</sup> Nevertheless, the requirement of having an individual compelling reason is not determinate in law nor in the government proposals.<sup>117</sup>

Moreover, the study also reveals that the Finnish immigration service punishes unaccompanied minors for previous actions or motives of their parents.<sup>118</sup> The realisation of the rights of the child should not depend on the status or activities of the parents<sup>119</sup>. In the decision making, Finnish Immigration service does not assess “which solutions would best reflect the best interests of the child rather the assessment is mainly related to whether the decision would be seriously against the best interests of the child or not”.<sup>120</sup> Such approach is incoherent and contradicts what the phrase "best interests of the child" entails.

The provision of the Aliens Act concerning the circumvention of the entry regulations does not fulfil the conditions laid down in the Constitution. It gives the Finnish Immigration Service too much discretion as this provision is not defined in relation to residence permit granted on the basis of family ties.<sup>121</sup> Thus, the existing practice of the Finnish Immigration Service, together with ambiguous laws, has created a barrier to the family reunification of unaccompanied minors.

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<sup>116</sup> *Ibid.*, Pakolaisapu: Suomi ei turvaa edes kansainvälistä suojelua saaneen lapsen oikeutta perhe-elämään. Accessible: <https://pakolaisapu.fi/2020/03/03/suomi-ei-turvaa-edes-kansainvalista-suojelua-saaneen-lapsen-oikeutta-perhe-elamaan/#> (3.3.2020)

<sup>117</sup> *Ibid.*, Pakolaisapu: Suomi ei turvaa edes kansainvälistä suojelua saaneen lapsen oikeutta perhe-elämään. Accessible: <https://pakolaisapu.fi/2020/03/03/suomi-ei-turvaa-edes-kansainvalista-suojelua-saaneen-lapsen-oikeutta-perhe-elamaan/#> (3.3.2020)

<sup>118</sup> Report of Non-Discrimination Ombudman (2020) Children without families- family reunification of under-age beneficiaries of international protection. p.4

<sup>119</sup> *Ibid.*

<sup>120</sup> *Ibid.*

<sup>121</sup> *Ibid.*, 3

## **5. SOLUTIONS TO IDENTIFIED PROBLEMS**

### **5.1 The requirement of sufficient resources**

The requirement of sufficient resources may be considered contrary to the Convention on the Rights of the Child as it gives better rights those children who can meet the requirement of sufficient resources. The requirement of sufficient resources provided in the Aliens act should be changed so that it does not apply at all to those who have received international protection. In addition, section 39§ (1) of the Aliens Act should further define the individual circumstances and exceptional situations that would require a derogation from the requirement of sufficient resources. Under current case law, only seriously ill or injured in practice, usually gets an exemption from the requirement of sufficient resources based on the best interest of the child principle.

### **5.2 The practice of Finnish Immigration service**

The government should make the necessary changes to make family reunification easier for the beneficiaries of international protection in the future. In particular, it is important to eliminate all practices that are not based on existing legislation. The Finnish Immigration Service's condition of individual compelling reason to leave is not based on law, so that interpretation must be removed. Obtaining international protection can be considered as a sufficient indication that a person has had an overriding need to leave his or her home country. The interests and rights of the children should not be jeopardized by the Finnish Immigration Service's interpretations. The

Finnish Immigration Service must change its interpretation and base its decision on the rules written in the law. In their actions, the authorities should promote the realization of the rights of vulnerable children and not restrict or impose insurmountable obstacles more than is necessary. Beneficiaries of international protection should be subject to the same conditions for family reunification, regardless of category. With regard to the circumvention of the entry provision, it is necessary to clarify and specify the provision as to how and under what conditions it would apply in the future to family reunification for unaccompanied minors. The change should also take into account that the actions or motives of the parents do not constitute an obstacle for the child in the decision making. In addition, it would also be good if applicants were clarified sufficiently at early stage about their rights and the conditions required of them in a transparent and comprehensive manner.

### **5.3 Improvement of the best interest of child principle in the family reunification**

Finland has repeatedly received feedback from the Committee on the Rights of the Child that the primacy of the principle of the best interests of the child has not been understood and is being applied narrowly compared to what would be required by the UN Convention on the Rights of the Children.<sup>122</sup> The best interest of child principle should be a primary consideration and taken into account all matters concerning the children and based on all legal decisions<sup>123</sup>. Despite the fact that the concept of the child's best interests is broad and difficult to grasp, any decision must open up the relevant legal provisions used, and the statement of the reasons should clearly state how the child's best interests were assessed and balanced against other interests<sup>124</sup>. Furthermore, the aim should be to give a credible and acceptable justification and, in particular, the reasons for the decision cannot be considered sufficient if it only states that the decision is or is not in the best interests of the child.<sup>125</sup> It is important to define and highlight what the best interests of the child principle means in each case, as well as what specific factors were relevant to that particular child's decision. Furthermore, it is in the best interest of the child to live together with his or her parents and family.<sup>126</sup> However, a solution that is in the best interests of the child may not always be found.

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<sup>122</sup> UN Committee on the rights of the child (2011), Concluding observations: Finland, CRC/C/FIN/ CO/ 4 para 27.

<sup>123</sup> Pajulammi, H. (2014) *Lapsi, oikeus ja osallisuus*, p. 183-184

<sup>124</sup> Hakalehto & Sovela (2018), *supra nota* 25, p. 410

<sup>125</sup> Pajulammi, H. (2014) *Lapsi, oikeus ja osallisuus*, p. 187

<sup>126</sup> Puotiniemi, H. (2018) *Lapsen etu perheenyhdistämisessä*. 106

In some situations, it may be in the best interests of the child to live apart from their parents. It is also good to understand that taking the best interests of the child principle into account in decision-making as a primary consideration does not ultimately lead to positive decision.<sup>127</sup>

The current Aliens Act does not give sufficient weight to the best interest of the child principle nor it automatically determine the outcome of the case. The aliens act should be amended so that the best interests of the child principle in the Finnish Aliens act is consistent with the definition in the Convention on the Rights of the Child. The current “special attention shall be paid” should be changed to match the definition of Article 3 of the CRC, which states that the best interest of child principle “shall be a primary consideration”. In addition to this, the elements of the best interest of the child should be included to the Aliens act as listed in the current Child welfare act 4 §(2). Moreover, the assessment of the best interests of the child can also be developed by creating more preliminary rulings of the Supreme Court that could lead and guide the activities and decisions of the Finnish Immigration Service. Existing preliminary rulings would help families to better understand their own rights and opportunities for family reunification. Moreover, there should be more transparency in the work of the Finnish Immigration Service. An independent authority should ensure that the Finnish Immigration Service, in its decision-making, identifies the best interests of the child and elements related to it. Thus, it will ensure that all activities adhere to the law and that human rights are upheld.

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<sup>127</sup> Knuutila & Heiskanen (2014), *supra nota* 107, p. 321

## CONCLUSION

The aim of the thesis was to address challenges facing family reunification of unaccompanied minors in Finland as a form of legal and controlled immigration. The research question concerned how the current approach of Finnish authorities and legislation should undergo an amendment to facilitate family reunification of unaccompanied minors while taking into account the best interest of the child principle. The best interest of the child principle, which is derived from Article 3(1) of the United Nations Convention on the Rights of the Child, served as the foundation for this study. The author also analyzed the existing Finnish legislation as well as the practices regarding the family reunification of unaccompanied minors.

Although Finland's current line can be interpreted as complying with the obligations imposed on it, based on this qualitative analysis, it can be concluded that there are significant challenges facing unaccompanied minors in family reunification. The study revealed that the application of the best interests of the child principle in family reunification decisions is insufficient and superficial. Furthermore, the principle has not been fully incorporated into legislation as in the United Nations Convention on the Rights of the Child.

Another challenge facing the reunification of unaccompanied minors is the inappropriate practices of the Finnish Immigration Service. The current practice used by the Finnish Immigration Service violates the right of unaccompanied minors to family life as the immigration authority of Finland applies the provisions of the Aliens Act in a restrictive manner, thus the hypothesis was proven to be true. In many cases, the Finnish Immigration Service has considered that there was no reason for the child to leave or that the parents have sent the children to obtain asylum for themselves and thus considered that there has been circumvention of the entry regulations although the requirements of family reunification are otherwise met. Since the circumvention of the entry regulations are not specifically regulated in relation to family reunification and no guidelines have been provided by the supreme court, the Finnish Immigration Service has been granted too much discretion.

In this thesis the author has proposed solutions to identified problems facing the reunification of unaccompanied minors. The author suggested changes to the legislation and to the current practice of Finnish immigration service in order to serve more precisely the purposes of the best interest of child principle. The author proposed changes to the legislation insofar as the Aliens act should be amended so that the best interests of the child principle in the Finnish Aliens act is consistent with the definition in the Convention on the Rights of the Child. In addition, the elements of the best interest of the child should be included to the Aliens act as listed in the current Child welfare act 4(2). Furthermore, the author also proposed that the circumvention of the entry regulations should be more defined with regards to family reunification. This will prevent or reduce the failure of family reunification decisions due to the excessive discretion of the Finnish Immigration Service.

With regard to the general conditions for family reunification, the author is in favor of removing the subsistence requirement for unaccompanied minors, as these children in reality do not have any means to meet the requirement of sufficient resources. Furthermore, the precedents of the Supreme Court are needed to guide the Finnish Immigration Service's interpretation. In addition, it is required that the Finnish Immigration Service bases its decision solely on law or existing case law. Practices that are not based on the law such should be removed.

The principle of the best interests of the child should be addressed extensively in each case and decision. A mere superficial treatment and a finding that the decision is not in the best interests of the child is not enough. Each decision must be able to be opened and also justified on the grounds relied on in the decision. In the future, the concept of the best interests of the child can be substantially better applied in the reunification of unaccompanied minors by making the required improvements to existing laws and practices. This way we can ensure that the best interest of the child principle is primary evaluation criteria and unaccompanied minors right to family reunification is realized.

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## APPENDICES

### Appendix 1. Key legislative or other reforms related to family reunification of beneficiaries of international protection in Finland 2010–2016.

Date of entry into force	Content of the change
1.8.2010	<p data-bbox="603 891 1145 925"><b>Act amending the Aliens Act (549/2010)</b></p> <ul data-bbox="651 958 1428 1686" style="list-style-type: none"><li data-bbox="651 958 1428 1059">- To determinate the age of an alien or family gatherer applying for a residence permit, a forensic examination may be performed.</li><li data-bbox="651 1070 1428 1216">- A residence permit based on family ties can be refused if the family gatherer has given false information about himself or herself or his family relations when applying for his own residence permit.</li><li data-bbox="651 1227 1428 1261">- Minor foster children are equated with their own children</li><li data-bbox="651 1272 1428 1395">- A minor applicant must be under 18 years of age when the application for a residence permit is decided (before: under 18 years of age at the time the application is initiated)</li><li data-bbox="651 1406 1428 1529">- The minor family reunifier must be under 18 years of age when the family member's application for a residence permit is decided (before: under 18 years of age at the time the application is initiated)</li><li data-bbox="651 1541 1428 1686">- The requirement for sufficient sources was extended to family members of beneficiaries of international protection status in the case of family formation (so-called new family)</li></ul>

1.3.2011	<p><b>Guidelines of Finnish Immigration Service</b></p> <p>Applicants applying for family reunification in a third country or at a Finnish mission must be legally resident in a third country. Proof of legal residence can be a visa or an acceptable travel document</p>
1.1.2012	<p><b>Act amending the Aliens Act (631/2011)</b></p> <p>The application for family reunification must be made in the applicant's home country and can only be made by the person applying for a residence permit (in other words, from 1 January 2012, the family reunifier can no longer initiate the application)</p>
16.5.2016	<p><b>Decree of the Ministry of the Interior (340/2016) and Act Amending the Aliens Act (332/2016)</b></p> <ul style="list-style-type: none"> <li>- Residence of family members of beneficiaries of international protection permit applications became subject to a fee as of 16 May 2016 (adult à 455€, child à 230 €)</li> <li>- The category of humanitarian protection was removed from the criteria for residence permits issued on the basis of international protection</li> </ul>
1.7.2016	<p><b>Act amending the aliens act (505/2016)</b></p> <p>The requirement of sufficient resources was extended to all family reunification of beneficiaries of subsidiary protection status, regardless of when the application for a residence permit was submitted, and to family members granted refugee status if the application is submitted within three months of the family reunifier being informed of refugee status.</p>
11.11.2016	<p><b>Finnish Immigration Service</b></p> <p>Electronic transactions became possible in the submission of family reunification applications</p>

**Source of the table:** Miettinen, A. , Paavola, J-H. , Rotkirch, A. , Säävälä, M. & Vainio, A. (2016) Valtioneuvoston selvitys- ja tutkimustoiminnan julkaisusarja : Perheenyhdistämisen edellytysten tiukentaminen ja sen vaikutukset Suomessa sekä kokemuksia viidestä Euroopan maasta.

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