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**THE NEW ALIENS ACT OF FINLAND – HUMAN RIGHT
STANDARDS OF ASYLUM SEEKERS UNDER REVISION**

Bachelor Thesis

Supervisor, Lehte Roots, PhD

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I hereby declare that I am the sole author of this Bachelor Thesis and it has not been presented to any other university of examination.

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The Bachelor Thesis meets the established requirements

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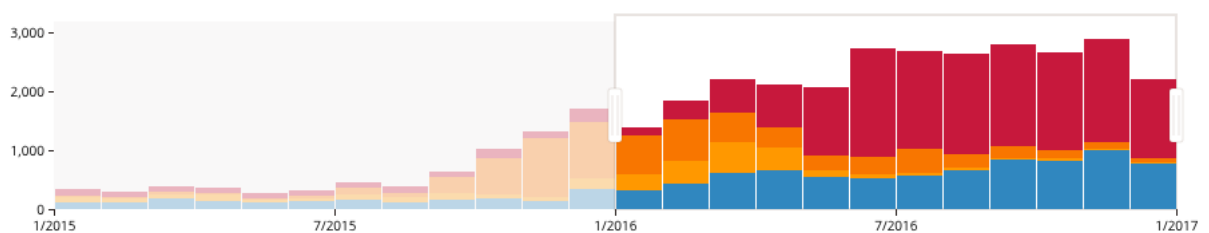
List of abbreviations

CAT	Convention Against Torture
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
ICCPR	International Covenant on Civil and Political Rights
UDHR	Universal Declaration of Human Rights

Introduction

During the year 2016 there were in total 28,208 asylum seekers applying for international protection in Finland.¹ Currently the immediate causes of refugee flows and internal displacement are armed conflicts, violence, insecurity and human rights. Major conflicts have grown and are causing even more fatalities particularly among civilians.²

Table 1, Asylum decisions in Finland 2/2016-1/2017.³



In Finland, the most essential source of law applicable to asylum seekers is Aliens Act. Purpose of the Aliens Act is to implement and promote good governance and legal protection in matters concerning aliens. In addition, the purpose of the Act is to promote managed immigration and provisions of international protection with respect of human rights and basic rights in consideration of international agreements binding on Finland.⁴

However, the new Aliens Act 646/2016 entered into force in Finland on 1.9.2016, and this new Act changed many of the rights of asylum seekers. This amendment is affecting over 28,208 asylum seekers and in addition lawyers working their cases. The most substantial changes of Aliens Act are decreased legal aid, shorter appeal periods, new time limits in delivering further clarifications for the case, the fact that Administrative Court decisions may be given without documents related to the matter, applications for renewal won't stop the expulsion given by an earlier application's refusal and changes in leave to appeal. These changes in the procedures are putting under the threat the human rights protection of asylum seekers.

¹ Finnish Immigration Service, <http://tilastot.migri.fi/#decisions/23330/49?l=en> (1.2.2017).

² UNCHR's strategic directions 2017-2021, www.unhcr.org/excom/announce/5894558d4/unhcrs-strategic-directions-2017-2021.html?query=asylum%20seekers (1.2.2017).

³ Finnish Immigration Service, <http://tilastot.migri.fi/#decisions/23330/49?l=en> (1.2.2017).

⁴ Alien Act 301/2004.

Main hypothesis of the thesis is that **the new Aliens Act 646/2016 of Finland does not respect certain human rights, for example that it is limiting asylum seekers' access to a fair trial.**

Universal Declaration of Human Rights provides under Article 6, point 1, that every person is entitled in a reasonable period of time to a fair and public hearing by an independent and impartial tribunal previously established by law.⁵ Everyone's rights to a fair trial is one of the most central human rights, one of the main principles of EU law⁶ and it assists to ensure the other rights, which makes it interesting for research.

Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection is for example stating that: "Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their application in a comprehensive manner and that asylum seekers receive proceeding assistance, which is taking into account their personal situation."⁷ After the new Aliens Act 646/2016 of Finland, it is possible that sections of Procedures Directive are violated, and the thesis is also giving a perspective for this issue.

The research question of this thesis is: **Does the new Aliens Act 646/2016 of Finland limit asylum seekers' access to a fair trial?** Thus, the aim of the research is to analyse the Finish laws and international obligations of Finland to respect human rights of asylum seekers.

This research is topical and related to the issues that are in the forefront in Finland. In today's circumstances, it is possible that many conflicts over the world are growing and increasing, and hence also the number of refugees' rises. The author is furthermore examining the meaning of fair trial, and how the new Alien Act is influencing asylum seekers' access to a fair trial.

The thesis will be divided to three main parts. Firstly, the definition of fair trial will be reviewed and analysed from the point of view of Universal Declaration of Human Rights Article 6 point 1, and after that also the asylum process in Finland is analysed. Secondly, rights of asylum seekers in Finland will be analysed in the light of the old and the new Alien Act. Changes of the Aliens Act will be also analysed in this chapter. For this thesis licensed legal counsel Eero Pellikka was interviewed, to survey possible problems of the amendment of the law. Thirdly, it is discussed if

⁵Council of Europe. European Convention on Human Rights, 4.9.1950.

⁶ Ervo, L., Gräns, M., Jokela, A., Europeanization of Procedural law and the New Challenges to Fair trial, Europa Law Publishing, Groningen 2009, p 104.

⁷ Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection.

the new Aliens Act 646/2016 is affecting asylum seekers' access to a fair trial. In the conclusion section the possible violations and alternative solutions will be discussed.

In this thesis, the author is using qualitative research methods and traditional legal dogmatic research method i.e. description and analysis of existing law.⁸ Author has selected to use legal dogmatic method, since the research is concentrating to changes in existing law and how these changes are affecting human rights of refugees' and asylum seekers'. Qualitative research methods are showing in the use of case-law and academic literature. Academic articles are giving different views for the research topic.

⁸ Van Hoecke, M. Methodologies of Legal Research, Hart Publishing Ltd, 2011, pp 11.

1 Fair trial in asylum cases

1.1 Concept of a fair trial in the sense of art. 6 of ECHR

Because Finnish law is influenced by international law⁹, it is important to first review international law and how it relates to Finland's refugee law. Universal Declaration of Human Rights provides under Article 6, point 1 the right of any person to a fair trial, i.e. the right to be recognised everywhere as a person before the law.¹⁰ In addition, this rights is also provided in the Section 21 of Finnish Constitution.¹¹ This Chapter will describe the legal meaning of Article 6, point 1 of European Convention on Human Rights and later specify the asylum process in Finland and how it is related to a fair trial.

As is well known, Article 6 of the European Convention on Human Rights is entitled "Right to a Fair trial" and paragraph 1 provides that: "In determination of his civil rights and obligations or any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties do require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice." ¹²

Article 6 ECHR will only be applicable if:

- There is a dispute of a serious and legal nature between two legal persons which are in some relation to the right,
- The disputed right has been recognised under national law,
- The outcome of the national proceedings is directly decisive under national law; and
- These rights are "civil" in the autonomous sense of the convention.¹³

⁹ Craig, P., De Burca, G. EU Law Text Cases and Materials, 5th edition. Oxford, Oxford University Press, 2011, p 363.

¹⁰ Crufts, S., Matthew Liao, S., Renzo, M. Philosophical Foundations of Human Rights, Oxford University Press, 2015, p 84.

¹¹ Suomen perustuslaki 11.6.1999/731.

¹² Council of Europe. European Convention on Human Rights, 4.9.1950.

¹³ Kuijer, M. Applicability of Article 6 ECHR, The Blindfold of Lady Justice – Juridical independence and impartiality in Light of the Requirements of Article 6 ECHR, Wolf Legal Publishers 2004 pp 1-42, p 2.

The applicability of Article 6 ECHR focuses primarily on trials in court.¹⁴ The judicial protection offered by Article 6 extends to the pre-trial stage as well, however the right of access to the courts is not absolute and according to the Strasbourg case law it may be subject to limitations.¹⁵ The Court will look at the totality of the domestic proceedings, but part of the pre-trial stage might influence to the right to a fair trial and to the fairness of the trial itself.¹⁶ Article 6 is applicable to pre-trial stage also in civil cases in case the party is obligated to be involved in the pre-trial stage, which means it is also applicable in asylum cases.¹⁷ In several cases the Court has identified, that the purpose of Article 6 is enshrining the fundamental principle of the rule of law.¹⁸

This text of the Convention leads to conclusions that according to the Convention the right to a fair trial consists of the following elements: free access to justice, fair, public and reasonable term in public hearing; hearing by an independent, impartial tribunal established by law and lastly public rendering of judgements.¹⁹ These different elements and their relation to refugees and asylum seekers will be discussed in detail next.

1.1.1 Free access to justice

At international level, free access to justice is stipulated by Article 6 point 1 of the ECHR, by Article 10 of the Universal Declaration of Human Rights²⁰ and by Article 14, point 1 of the International Covenant on Civil and Political Rights.²¹

The right of access to the courts is not expressly guaranteed by Article 6, point 1 ECHR, however, decision of the European Court of Human Rights has it clear that denial to access to national courts may lead to a breach of Article 6 ECHR.²² Free access to justice comprises the possibility of any person, including asylum seekers and refugees, to initiate an action in court. The right of access to a court is not absolute, but may be subjected to restrictions, if provided these pursue a legitimate

¹⁴ Kuijer, M. (2004) *supra* nota 13, p 12.

¹⁵ Jones, D. Article 6 ECHR and Immunities Arising in Public International Law, *International and Comparative Law Quarterly*, Vol. 52, Part 2, 2003, p 463.

¹⁶ Kuijer, M. (2004) *supra* nota 13, p 13.

¹⁷ Kuijer, M. (2004) *supra* nota 13, p 14.

¹⁸ Goss, R. *Criminal fair trial rights: Article 6 of the European convention on human rights*, Hart, 2014, p 23.

¹⁹ Gagu, C. And Gavrilă, C. The right to a fair trial – distinct interpretation from the sense outlined by the art . 6 of the European Convention on Human Rights, *Journal of Law and Administrative Sciences*, Special Issue/2015, 761-774, p 762.

²⁰ United Nations General Assembly. *The Universal Declaration of Human Rights*, 10.12.1948.

²¹ United Nations. *International Covenant on Civil and Political Rights*, 23.3.1976.

²² Fawcett, J.J. *The Impact of Article 6 (1) of the ECHR on Private International Law*, *International and Comparative Law Quarterly*, Vol. 56, Issue 1, 2007, pp 1-48 p 2.

aim and are proportionate.²³ However, these limitations must not restrict or reduce the relevant right in such a way, that its very essence is impaired. In addition, such limitations must pursue a legitimate aim and must be reasonable proportionate to the aim sought to be achieved.²⁴

When looking in more detail at what Article 6 ECHR requires, there can be seen two aspects.²⁵ First there must be trial somewhere, and taken literally this would mean that a Finnish court would be in breach of Article 6 ECHR, if Finland was the only forum available but refused the case.²⁶ Second, the trial must be before a tribunal in accordance with Article 6 ECHR, i.e. there is a fair and public hearing before an independent and impartial tribunal established by law.²⁷

In refugee cases, the obligations of States are influenced by a further factor.²⁸ Because contracting State cannot reject asylum seekers until it can be sure that they would not be at risk of persecution in the countries to which they are sent, it has two options: to start any action to turn the asylum seekers way if they have some other right to be allowed into the country on a permanent basis, or to take steps to determine whether they have refugee status.²⁹ In case the outcome of the screening is negative, the State may carry out measures to remove the person.³⁰ In case the outcome is positive, an obligation of protection arises and will endure as long as the conditions set out in Refugee Convention are met.³¹ The lack of access to court may be relied upon by anyone who states that he or she has not had the possibility to submit a claim to tribunal having the jurisdiction to examine all questions of fact and law relevant to the dispute before it and to adopt binding decision.³² Thus it can be said, that in asylum seeker and refugee cases free access to justice must be provided starting from the determination of refugee status to possible appeals to the Court.

²³ *ibid.*

²⁴ Loucaides, L. Questions of fair trial under the European Convention on Human Rights, Oxford University Press, 2003, pp, 27-51, p 41.

²⁵ Fawcett, J.J. (2007) *supra* nota 22, p 7.

²⁶ *ibid.*

²⁷ *ibid.*

²⁸ Cherubini, F. Asylum Law in the European Union, Routledge, 2015, p 62.

²⁹ *ibid.*

³⁰ *ibid.*

³¹ *ibid.*

³² INTERIGHTS manual for lawyers, Right to a fair trial under the European Convention on Human Rights (Article 6), 2009.

1.1.2 Meaning of term “civil rights and obligations”

Author is opening the meaning of term “civil rights and obligations” because there has been a discussion whether it applies to asylum and refugee cases. Meaning of the term “civil rights and obligations” in Article 6, point 1 is one of the most controversial areas of the jurisprudence and it has been unclear what is exactly meant by this phrase.³³ There has been a discussion, if the term “civil rights and obligations” as defined in Article 6 of the ECHR applies to asylum seekers as well. Instead, there is no doubt that the right to an effective remedy under Article 3 of the ECHR, Article 3 of the CAT or Article 7 of ICCPR exist for asylum seekers who claim that expulsion to their country of origin will lead to a violation of the prohibition of refoulement.³⁴ Until now no specific clear meaning or definition of the word ‘civil’ has been adopted in the Court’s jurisprudence and neither has that jurisprudence given any clear guidance as to which rights and obligations can be considered ‘civil’. Compared to provisions in other international human rights documents dealing with a fair trial, Article 6 ECHR is the only provision with this limitation clause.³⁵ Furthermore, civil rights or obligations have been determined simply on a case by case basis.³⁶ Civil rights under Article 6 ECHR bear the autonomous meaning that is given to them by ECtHR.³⁷

It is considered that disputes concerning the lawful stay of alien in the territory of a member state of the Council of Europe fell outside the scope of application of the civil limb of Article 6 ECHR.³⁸ Case law regarding this issue remained unchanged for more than 20 years and the result was that the Court was never able to define a standpoint because all the complaints were declared inadmissible and never reached the Court.³⁹

However, the standing case law has been confirmed in the *Maaouia* case⁴⁰ by Grand Chamber of the Court with the conclusion that expulsion order does not constitute a criminal charge.⁴¹ A lot of

³³ Kuijer, M. (2004) *supra* nota 13, p 1.

³⁴ Reneman, M. Access to an effective remedy in European asylum procedures, Amsterdam Law Forum Vol. 1, 2008, pp 65-98, p 65.

³⁵ Kuijer, M. (2004) *supra* nota 13, p 1.

³⁶ Loucaides, L (2003) *supra* nota 24, p 29.

³⁷ Anthony, G. Article 6 ECHR, Civil Rights, and the Enduring Role of the Common Law, European Public Law, Vol. 19, Issue 1, 2013, pp 75-96 p 78.

³⁸ *ibid.*

³⁹ Kuijer, M. (2004) *supra* nota 13, p 7.

⁴⁰ §38, ECtHR *Maaouia v. France* 5.10.2000.

⁴¹ Kuijer, M. (2004) *supra* nota 13, p 7.

importance was attached to the fact that expulsion orders are classified by national law in most member states as preventive measures for the purposes of immigration control, not as criminal sanctions.⁴² When asking whether expulsion cases determine “civil rights and obligations”, the Court prove that the Contracting states never intended that Article 6 would be applicable in expulsion cases and concluded: “The fact that the expulsion order incidentally had a major repercussion on the applicant’s private and family life or on his prospects of employment cannot suffice to bring those proceeding within the scope of civil rights protected by Article 6 § 1 of the Convention”.⁴³ However, concerning the *Maaouia v France* Judgement, Judge Loucaides gave dissenting opinion stating that: “I believe that the word “civil” when examined in the context in which it appears, has the meaning of “non-criminal”. Once the term “criminal charge” was used, inevitably for technical reasons, another term intended to cover the rest of the adjudicative procedures distinguishing them at the same time from the criminal procedures would also have to be used. The word “civil” seems appropriate to achieve this purpose. However, even if there are doubts about this conceptual approach, I think that it could reasonably be said that the word “civil” is at least capable of having the meaning just pointed out, in which case it should not be limited only to private-law disputes. I believe that if a term allows more than one interpretation, the one which enhances individual rights is more in line with the object and purpose of the Convention and should always be preferred.”⁴⁴ According to this the words “civil rights and obligations” should be given the broadest possible meaning which should extend to all legal rights and obligations of the individual whether *vis a vis* other individuals or *vis a vis* the State, and thus also apply to asylum- and refugee cases.

Disputes concerning the stay of aliens is closely related to the issues of sovereign real of states, and it is argued that the exception can be justified because of this fact.⁴⁵ This refers to the idea, that if discretionary powers are left to the administrative authorities, the can be no rights left.⁴⁶ However, in the Court case-law it has been held that Article 6 is applicable in other areas in which the authorities can act on the basis of discretionary powers.⁴⁷ Applicability of Article 6 ECHR might be denied by the Court because it does not want to create any impressions that a

⁴² *ibid.*

⁴³ §38, ECtHR *Maaouia v. France* 5.10.2000.

⁴⁴ ECtHR *Maaouia v. France* 5.10.2000.

⁴⁵ Kuijer, M. (2004) *supra* nota 13, p 9.

⁴⁶ *ibid.*

⁴⁷ ECtHR, *Pudas v Sweden* 27.10.1987 and ECtHR, *Mats Jacobssons v. Sweden* 28.6.1990.

substantive right of asylum is provided under the Convention, however, this should not have any implications to the procedural protection offered by Article 6 ECHR.⁴⁸

1.1.3 Fair and public hearing

The principle of fair hearing means that the fundamental principles of any trial are observed.⁴⁹ These are adversarial principle, principle of the right of defence, principle of equality between parties in trial.⁵⁰

Adversariality represents a fundamental principle of the civil procedural law and it means that in line with the rules established by the civil procedural law, the parties may submit requests, propose and produce evidences and submit arguments on all the de facto and de iure aspects relevant for the case.⁵¹ In relation with this principle the court has the obligation to submit to parties' debate all the de facto and de iure aspects occurred during the trial, defence actions, motions, de facto and de iure aspects circumstances on which the litigation will be settled, the judges grounding their decisions only on the de facto and de iure aspects that were subjected to parties' debate.⁵² The desire to save time and expedite the proceedings does not justify disregarding principle of adversarial proceedings as established in the case *Nideröst-Huber v. Switzerland*⁵³. According to the principle of the right of defence, the right to defence is guaranteed during the entire duration of the trial.⁵⁴ This obligation is fulfilled through the organization of the courts, procedural laws and by the legal assistance.⁵⁵

The principle of equality between the parties or the principle of "equality of arms" in a trial lays down the rule that stipulates the equality of parties in their relationship with the court⁵⁶, existence of the same concurrent judicial rights and, also the existence of same obligations according to the quality of each party in the trial.⁵⁷ The requirement of equality of arms, applies in principle to civil

⁴⁸ Kuijter, M. (2004) *supra* nota 13 p 9.

⁴⁹ Gagu, C. And Gavrilă, C.(2015), *supra* nota 19, p 762.

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² Gagu, C. And Gavrilă, C.(2015), *supra* nota 19, p 763.

⁵³ §30, ECtHR *Nideröst-Huber v. Switzerland*, 18.2.1997.

⁵⁴ Gagu, C. And Gavrilă, C.(2015), *supra* nota 19, p 762.

⁵⁵ *ibid.*

⁵⁶ Fredman, S. Discrimination law, Second Edition, Oxford University Press, 2011 p 2.

⁵⁷ Gagu, C. And Gavrilă, C.(2015), *supra* nota 19, p 762.

and to criminal cases, as stated in *Feldbrugge v. the Netherlands*.⁵⁸ The principle of equality of arms is maintaining a fair balance between the parties. The principle implies that each party must be afforded a reasonable opportunity to present his case, including his evidence, under conditions that do not place him at a substantial disadvantage *vis-à-vis* the other party ⁵⁹.

According to literal interpretation of Article 6 the rights to a fair hearing means only a right to have a trial conducted according to certain procedural requirements such as, for instance, the opportunity to examine witnesses or to produce relevant evidence. ⁶⁰ Publicity principle allows the parties to become aware of the judgement immediately after the deliberation of the court. ⁶¹ What comes to the publicity of the hearing, it must be noted that the guarantee of a public trial was never intended to protect any right of the public to be entertained.⁶² The main purpose of the guarantee of publicity is to prevent secret trials and to assure through the safeguards of appropriate public security, that the administration of justice is honest, efficient and in accordance with law.⁶³

1.1.4 The 'reasonable time' requirement

Case law regarding the Article 6, point 1 is rather straightforward. According to it, the first step is to determine the period to be taken into consideration, as the second step is to determine whether that period can be qualified as 'reasonable'.⁶⁴ As regards the starting-point of the relevant period, time normally begins to run from the moment the action was instituted before the competent court as stated in *Poiss v. Austria* ⁶⁵ and *Bock v. Germany* ⁶⁶, unless an application to an administrative authority is a prerequisite for bringing court proceedings, in which case the period may include the mandatory preliminary administrative procedure as in *König v. Germany* ⁶⁷; *X v. France*,⁶⁸; *Kress v. France* ⁶⁹. When determining whether the reasonable time requirement has been complied

⁵⁸ ECtHR *Feldbrugge v. the Netherlands*, 29.5.1986.

⁵⁹ ECtHR *Dombo Beheer B.V. v. the Netherlands*, 27.10.1993.

⁶⁰ Loucaides, L (2003) *supra* nota 24, p 30.

⁶¹ Gagu, C. And Gavrilă, C.(2015), *supra* nota 19, p 762.

⁶² Powell, L. The Right to a Fair Trial, American Bar Association Journal, Vol.51, 1965, pp 534-538, p 538.

⁶³ *ibid.*

⁶⁴ Kuijer, M. The Right to a Fair Trial and the Council of Europe's Efforts to Ensure Effective Remedies on a Domestic Level for Excessively Lengthy Proceedings, Oxford University Press, 2013, pp 777-794, p 780.

⁶⁵ § 50, ECtHR *Poiss v. Austria*, 23.4.1987.

⁶⁶ § 35, ECtHR *Bock v. Germany*, 29.3.1989.

⁶⁷ § 98, ECtHR *König v. Germany*, 28.6.1978.

⁶⁸ § 31, ECtHR *X v. France*, 31.3.1992.

⁶⁹ § 90, ECtHR *Kress v. France* [GC], 7.6.2001.

with, one must begin by ascertaining the moment a person was charged.⁷⁰ This may have occurred on a date when the case has come before the trial court, such as the date of the arrest or the date when the preliminary investigations were opened.⁷¹ In civil and administrative cases the time to be taken into consideration starts running with the institution proceedings.⁷² As to when the period ends, it normally covers the whole of the proceedings in question, including appeal proceedings⁷³ and extends right up to the decision which disposes of the dispute.⁷⁴ Thereby, the reasonable-time requirement applies to all stages of the legal proceedings aimed at settling the dispute and the time stops running when the proceedings have been concluded at the highest possible instance, when the determination becomes final and the judgement has been executed.⁷⁵ In asylum seeker and refugee cases this would mean, that time starts running from the first institution proceeding with the Finnish Immigration Office or police and stops running when proceeding have been concluded in the highest instance and the judgement has been issued for the applicant.

The next step is to determine whether the time-period can be qualified reasonable. There is no set time limits laid down in the Court's case law, but instead the Court focuses on several criteria: the complexity of the case, the conduct of the applicant and of the relevant authorities and what was at stake for the applicant in the dispute as stated in cases *Comingersoll S.A. v. Portugal*⁷⁶, *Frydlender v. France*⁷⁷ and *Sürmeli v. Germany*⁷⁸.⁷⁹ The reasonability of the time is also affected by the nature of the case and the meaning of the case for the parties. Lack of resources is not seen as excuse for an unreasonable delay.⁸⁰

Finland has lately received many judgements dealing with the reasonable time requirement from the European Court of Human Rights. In principle, the time starts from the case's instituted entry to giving the final judgement. In case *Nuutinen* 5.10.2000⁸¹ had been in hold for 5 years and 5 months, and ECtHR held this time-period as unreasonable. In case *Aho v Finland* 16.10.2007⁸²

⁷⁰ Kuijer, M. (2013) supra nota 64, p 780.

⁷¹ *ibid.*

⁷² *ibid.*

⁷³ ECtHR *König v. Germany*, 28.6.1978.

⁷⁴ ECtHR *Poiss v. Austria*, 23.4.1987.

⁷⁵ Kuijer, M. (2013) supra nota 64, p 781.

⁷⁶ ECtHR *Comingersoll S.A. v. Portugal* [GC], 6.4.2000.

⁷⁷ § 43, ECtHR *Frydlender v. France* [GC], 2000.

⁷⁸ § 128, ECtHR *Sürmeli v. Germany* [GC], 8.6.2006.

⁷⁹ Kuijer, M. (2013) supra nota 64, p 781.

⁸⁰ Maurici, J. Focus on Article 6, Judicial Review, Vol. 12, Issue 1, 2007, pp 56-74, p 64.

⁸¹ ECtHR, *Nuutinen v Finland*, 5.10.2000.

⁸² ECtHR, *Aho v. Finland* 16.10.2007.

ECtHR held that time-period started from May 1990 and ended in June 2001 and was together 11 years and one month. Article 6, point 1 had been breached.

1.1.5 Hearing of the case by an independent and impartial tribunal established by law

What comes to the application of the criterion regarding the term “independent”, it refers to independence *vis-à-vis the other powers*, as the executive and the Parliament as in *Beaumartin v. France*,⁸³ and also *vis-à-vis the parties* as in *Sramek v. Austria*⁸⁴.

In order to satisfy the required impartiality of a tribunal as an express condition of a fair trial in Article 6, point 1, the tribunal must comply with both a subjective and an objective test.⁸⁵ According to the case-law: “The existence of impartiality for the purposes of article 6 must be determined according to a subjective test, that is based on the personal conviction of a particular judge in a given case, and also according to an objective test, that is ascertaining whether the judge offered guarantees sufficient to exclude any legitimate doubt in this respect”.⁸⁶

If a decision violates Article 6 of the ECHR and it has been challenged before a competent, independent and impartial court or tribunal, States are enabled to be in composite compliance with their procedural obligation under the full jurisdiction requirement.⁸⁷ Initial determinations to administrative decision concerning Article 6 of the ECHR are often taken by legally disqualified persons or bodies.⁸⁸ These are for instance a government Ministers or local authority officials, and it is clear, that such decision makers cannot satisfy the minimum requirements of Article 6 ECHR.⁸⁹ Nevertheless ECtHR has held that this is not a violation of Article 6 ECHR as long the affected individuals have a subsequent right of recourse to a judicial body that, at its height, has the power to retake the decision.⁹⁰

The phrase “established by law” covers not only the legal basis for the very existence of a “tribunal”, but also compliance by the tribunal with the rules that govern it.⁹¹ The lawfulness of a

⁸³ ECtHR *Beaumartin v. France*, 24.11.1994.

⁸⁴ ECtHR *Sramek v. Austria*, 22.10.1984.

⁸⁵ Loucaides, L (2003) *supra* nota 24, p 44.

⁸⁶ § 46, ECtHR *Hauschildt v. Denmark*, 24.5.1989.

⁸⁷ Anthony, G. (2013) *supra* nota 37 p 80.

⁸⁸ *ibid.*

⁸⁹ *ibid.*

⁹⁰ Anthony, G. (2013) *supra* nota 37 p 81.

⁹¹ ECtHR *Sokurenko and Strygun v. Ukraine*, 20.7.2006.

court or tribunal must also cover its composition.⁹² The practice of quietly renewing judges' terms of office for an indefinite period after their statutory term of office had expired and pending their reappointment was for example held to be contrary to the principle of a "tribunal established by law".⁹³

1.2 Asylum procedure in Finland and Asylum Procedures Directive

1.2.1 Asylum procedure in Finland

Asylum procedure in Finland starts with submitting an asylum application.⁹⁴ When prospective asylum seeker arrives to Finland, she or he needs to inform border control authorities or the police about the fact that he or she wants to seek asylum.⁹⁵ The authorities will take care of the initial measures related to the application and person is directed to a reception centre, and accommodate there while the application is being processed.⁹⁶ When informing the police or the border control authorities about the fact the person wants to seek asylum, the police will register the details of the applicant, take photo and his or hers fingerprints. This is the first stage of the process.⁹⁷

Second step of the process is the asylum interview.⁹⁸ The Finnish Immigration Service will invite the applicant to an asylum interview as soon as possible after the submitting the application for asylum.⁹⁹ At the beginning of the asylum interview the Finish Immigration Service will establish: applicant's identity, travel route, how he or she entered Finland and information on the basis of which the Finnish Immigration Service will determine which state is responsible for examining the asylum application.¹⁰⁰ The actual asylum interview will be held after this. At the interview, the applicant may describe verbally the persecution he or she was subjected to in his or her home country or country of permanent residence, other violations of and threats to his or her rights, their

⁹² ECtHR *Buscarini v. San Marino* 4.5.2000.

⁹³ ECtHR *Oleksandr Volkov v. Ukraine*, 9.1.2013.

⁹⁴ www.migri.fi/asylum_in_finland/applying_for_asylum/submitting_the_application (1.2.2017).

⁹⁵ *ibid.*

⁹⁶ *ibid.*

⁹⁷ *ibid.*

⁹⁸ www.migri.fi/asylum_in_finland/applying_for_asylum/asylum_interview (1.2.2017).

⁹⁹ *ibid.*

¹⁰⁰ Aer, J. *Ulkomaalaisoikeuden perusteet*, Lakimiesliiton Kustannus, 2016, p 84.

grounds as well as any other problems the applicant may have.¹⁰¹ The applicant may describe in detail the facts related to his or her case and present any proof he or she may have.¹⁰²

During the interview, the Finnish Immigration service tries to determine all the facts that are of significance to applicant's case. The credibility of his or her account is taken into consideration.¹⁰³ Applicant is allowed to use an interpreter and have a legal counsel at the interview.¹⁰⁴ The Finnish Immigration service will provide interpreter if it is necessary.¹⁰⁵

The application for international protection will be processed either in a normal or an accelerated procedure.¹⁰⁶ The requirements for providing international protection are always assessed individually.¹⁰⁷ In the assessment, consideration is given to applicant's circumstances in his or her home country or country of permanent residence as described by the applicant and the information on applicant's circumstances in that state obtained by the Finnish Immigration Service as well as the information available to the Finnish Immigration Service about the general conditions in the country concerned.¹⁰⁸

The decision will be based on applicant's statement, any additional clarifications he or she might provide and the information obtained by the authorities. The matter shall be decided in the applicant's favour if he or she has contributed to the investigation of the matter and the authority involved is convinced that the grounds presented are credible. In addition, the applicant's situation must fulfil the requirements for obtaining asylum or subsidiary protection.¹⁰⁹

After the Finnish Immigration Service has decided applicant's matter, that is processed in the asylum procedure, the Finnish Immigration Service or the police will inform the applicant of the decision.¹¹⁰ Applicant has the right to be notified of the decision in his or her mother language or in a language that he or she is assumed to understand, or through an interpreter.¹¹¹

¹⁰¹ www.migri.fi/asylum_in_finland/applying_for_asylum/asylum_interview (1.2.2017).

¹⁰² *ibid.*

¹⁰³ *ibid.*

¹⁰⁴ *ibid.*

¹⁰⁵ *ibid.*

¹⁰⁶ www.migri.fi/asylum_in_finland/applying_for_asylum/processing_the_application (1.2.2017).

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

¹¹⁰ www.migri.fi/asylum_in_finland/applying_for_asylum/decision (1.2.2017).

¹¹¹ *ibid.*

In case if the applicant is not satisfied with the decision on international protection it is possible to appeal to the Administrative Court, An Administrative Court may either reject an appeal or overturn the decision of the Finnish Immigration Service for the new proceeding.¹¹² In case the Administrative Court rejects the appeal, it is possible to appeal to the Supreme Administrative Court.¹¹³

In 2015 over 30 000 asylum seekers in Finland have pointed out problems in the Finnish asylum procedure. Administrative procedures are not working and are not able to respond to the changing migration. People are changing routes and adapting to the environment. Asylum seekers are meeting many obstacles like language barriers, past trauma, limited legal knowledge and restricted access to basic social services.¹¹⁴ These obstacles often impede asylum seekers from effectively telling their stories and prevent asylum applicants from gathering the evidence necessary to carry their burden of proof.¹¹⁵ According to Eeva Puumala's research in 2011, both asylum seekers and Immigration Office official are dissatisfied with the process. Reasons for the dissatisfaction were very different, but both parties felt that the process was not serving its purpose.¹¹⁶ Asylum seeking is a political struggle for control on the other hand, and recognition and response on the other.¹¹⁷

Law Office Lex Gaudius has made a petition for Finnish Immigration Service, police and government relating to faulty decisions made by the Immigration Service to the asylum seekers and actions of the authorities related to those decisions.¹¹⁸ According to the petition, there has been many faulty decisions made by the Finnish Immigration Service.¹¹⁹ Generally, reasons for these faulty decisions have been: unprofessional translators and unprofessional new employees without proper training.¹²⁰ The employees responsible for valuating and making decisions regarding singular asylum requests are put under pressure because of the goals settled by the directors of the Immigration Service and law is interpreted more strictly than required, due to political pressure.¹²¹

¹¹² www.migri.fi/asylum_in_finland/applying_for_asylum/decision/appeal (1.2.2017).

¹¹³ *Ibid.*

¹¹⁴ Ardalan, S. Access to Justice for Asylum Seekers: Developing an effective Model of Holistic Asylum Representation, University of Michigan Journal of Law Reform, Vol.48, 2015, pp 1001-1038, p 1013.

¹¹⁵ *ibid.*

¹¹⁶ www2.uta.fi/ajankohtaista/uutinen/turvapaikkaprosessi-liian-raskas "Turvapaikka prosessi liian raskas", 24.1.2017 (10.2.2017).

¹¹⁷ Puumala, E. Asylum Seekers, Sovereignty, and the Senses of International – A politico-corporeal struggle, Routledge, 2017 p 20.

¹¹⁸ Annex 3: Petition for Immigration Service, Police and Government.

¹¹⁹ *ibid.*

¹²⁰ *ibid.*

¹²¹ *ibid.*

Sources used by the Immigration Service are not comprehensive, and should be updated and enlarged.¹²² A crucial matter is that the Immigration service is using a large amount of sources and facts given by human rights organizations' reports.¹²³ The Finnish Immigration Service's country reports regarding Iraq and Afghanistan are not in line with the Swedish one.¹²⁴ Often cases are not evaluated individually, but standard statements are copied to different kind of cases, even when it has nothing to do with person in question.¹²⁵

In single-cases there have been many contradictory and illegal decision where the Immigration Service has decided, that applicant is persecuted in his or her home country and that all the elements for granting a refugee status are fulfilled, but still it has been decided that the applicant may return to other part of their home country.¹²⁶ Asylum seekers coming from South and North Iraq are sent to Bagdad and Asylum seekers coming from Bagdad are sent to Southern Iraq.¹²⁷ Immigration Service also often claims that they apply the benefit of doubt in unclear cases.¹²⁸ However, in reality Immigration Office claims without further proofs that there is no persecutions or danger of persecution in the future.¹²⁹

In year 2015 almost 85 percent of Iraqi asylum seekers got positive decision and asylum was given to most of them. In year 2016 over 75 percent of Iraqi decision were negative.¹³⁰ In the same year approximately 61 percent of Iraqi asylum seekers in whole EU got positive decision.¹³¹ This is effect of Finland's political alignments. Immigration Service officials are feeling that, in the asylum interview it is hard to get interviews that would be in accordance with what they need when making a decision.¹³² Asylum seekers on the other hand feel that they haven't been heard or their story hasn't come out as they meant. One of the biggest problems in the asylum interview is that usually the applicant doesn't have any written documents about their phases, like for example

¹²² *ibid.*

¹²³ Annex 3: Petition for Immigration Service, Police and Government.

¹²⁴ *ibid.*

¹²⁵ *ibid.*

¹²⁶ *ibid.*

¹²⁷ *ibid.*

¹²⁸ Annex 3: Petition for Immigration Service, Police and Government.

¹²⁹ <https://migrileaks.wordpress.com/2017/02/13/he-sitoivat-katesi-ja-heittivat-sinut-pimeaan-huoneeseen/> (1.3.2017).

¹³⁰ <http://www.hs.fi/paakirjoitukset/art-2000005120686.html?share=6d794338259c4acfb80ed9c9b895f6d7> (20.3.2017).

¹³¹ *ibid.*

¹³² www2.uta.fi/ajankohtaista/uutinen/turvapaikkaprosessi-liian-raskas "Turvapaikka prosessi liian raskas", (10.2.2017).

arrest, imprisonment or abuse. Interaction is based on verbal communication which takes place via interpreter. Interaction is always prone to misunderstandings.¹³³

Asylum interview has all the elements that interaction may have. Parties are missing common language and culture. Asylum interview's form is very strict and formal. The goal is to figure out the reasons for asylum decision. Official is often directing the conversation to the goal, that the applicant might not understand. Asylum interview's language is technical and rights and obligations unclear. It is hard for the applicants to understand juridical terms, which are translated for them in the interview. Manner of writing the answer might vary and there are not specific instructions for writing down non-verbal communication. The standards of interpreters vary and interview is possible to do so that, interpreter is not physically present.¹³⁴ Pressure to conduct the interview in 3,5 hours and shortage of professional interpreters are jeopardizing the whole interview. Only small part of the applicants is getting legal advices before getting a decision from Immigration Office.¹³⁵ In Summer 2016 Immigration Office workers told about their problems and political pressure in public. It is hard for them to operate in the given time limit. After the new Aliens Act entered into force, the applicants are not automatically allowed to take counsellor with them to the interview to supervise their rights. Now the whole interview is on the official's responsibility.¹³⁶

Puumala states that, the interaction would be better if the people would be in the same level. Applicants could be informed better, so that they would understand the goals of the interview. It is also generally acknowledged that the asylum determination process can be traumatising and that asylum seekers suffer from mental disorders, distress and trauma.¹³⁷ It has been noted that detention in particular is harmful for asylum seeker's mental health.¹³⁸

¹³³ *ibid.*

¹³⁴ *ibid.*

¹³⁵ <http://www.hs.fi/paakirjoitukset/art-2000005120686.html?share=6d794338259c4acfb80ed9c9b895f6d7> (20.3.2017).

¹³⁶ www2.uta.fi/ajankohtaista/uutinen/turvapaikkaprosessi-liian-raskas "Turvapaikka prosessi liian raskas", 24.1.2017 (10.2.2017).

¹³⁷ Puumala, E. (2017) *supra* nota 117, p 138.

¹³⁸ *ibid.*

1.2.2 Asylum Procedures Directive 2013/32/EU

In this sub chapter the author is briefly explaining the content of the Asylum Procedures Directive and, also analysing the Articles that are relevant for the topic. The purpose of the Directive is to establish common procedures for granting and withdrawing international protection pursuant to Directive 2011/95/EU. It contains procedural guarantees for the asylum seeker, such as right to be informed, the right to personal interview, right to an interpreter and legal aid.¹³⁹ The Directive is applying to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection.¹⁴⁰

Guarantees for applicants are determined in the Article 12 of the Directive. According to the Article, applicants shall be informed in a language which they understand or are reasonably supposed to understand of the procedure to be followed and their rights and obligations during the procedure and the possible consequences of not complying with their obligations and not cooperating with the authorities.¹⁴¹ Applicants can use the services of an interpreter for submitting their case to the competent authorities whenever necessary.¹⁴² Applicants shall not be denied the opportunity to communicate with UNCHR or with other organisations providing legal advice or other counselling to applicants in accordance with the law of the Member State concerned.¹⁴³ Applicants and their legal advisers or other counsellors shall have access to the information, where the determining authority has taken that information into consideration to the purpose of taking a decision on their application.¹⁴⁴ Applicants shall also be given a notice in reasonable time of decision by the determining authority on their application, or it is possible to give the notice to the counsellor of the applicant instead.¹⁴⁵ Lastly applicants shall be informed of the results of the decision in a language they understand or are reasonably supposed to understand when they are not assisted or represented by a legal advisor or a counsellor.¹⁴⁶

¹³⁹ Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection.

¹⁴⁰ *ibid.*

¹⁴¹ *ibid.*

¹⁴² *ibid.*

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*

¹⁴⁵ *ibid.*

¹⁴⁶ *ibid.*

According to Article 15, point 3, “Member States shall take appropriate steps to ensure that personal interviews are ac-conducted under conditions which allow applicants to present the grounds for their applications in a comprehensive manner.”¹⁴⁷ After the amendment, applicants are not allowed to take assistants to the interviews, and this will notably impair applicants position in the interview.

The Procedures directive also contains a provision regarding right to an effective remedy. Article 46 states that: “Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal against a decision taken on their application”.¹⁴⁸ This can be understood as right to a fair trial as well. The Asylum Procedures Directive in principle binds member States to “ensure that the examination procedure is concluded within six months of the lodging of the application”.¹⁴⁹ Appeal periods are most likely getting longer because of the decreased legal aid, shorter appeal periods and new time limits when delivering further clarifications. One of the major guarantees that EU Member States must follow, is set out in Article 46 of the Directive, which allows asylum seeker to remain in the Member Sate, for the purpose of the procedure, until determining authority has made a decision on their case.¹⁵⁰ This might be violated because of the fact that in the new Aliens Act application for renewal won’t stop the expulsion given by an earlier application’s refusal of entry decision.

¹⁴⁷ *ibid.*

¹⁴⁸ Reneman, M. (2008) *supra* nota 34, p 66.

¹⁴⁹ Article 31(3) Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection.

¹⁵⁰ Cherubini, F (2015) *supra* nota 28, p 65.

2 Aliens Act

2.1 Refugee and asylum seeker definitions in international and national context

In order to start analysing the Aliens Act one must understand the relationship of the definitions in international and national context and their possible differences. This chapter is introducing refugee's and asylum seeker's definition in international and national context and after that the Finnish Aliens Act.

The origins of the 'right to seek and enjoy asylum from persecution in other countries' are traced back to the 'rights of sanctuary' in ancient Greece, Rome and early Christian civilisation.¹⁵¹ It's modern form was recognised first by the States in the Article 14 of the Universal Declaration of Human Rights.¹⁵² The first international treaty regulating the right of asylum the Geneva Convention Relating to the Status of Refugees. The Articles of the treaty were drawn up essentially in order to supply a definition of persons in need of protection and to provide them with a system of support.¹⁵³

A refugee in the context of international law, is a person to whom the refugee definition of the 1951 Convention relating to the Status of Refugees applies.¹⁵⁴ Number of rights is attached to the status of refugees in the context of the 1951 Convention.¹⁵⁵ The Convention includes obligations for signatory states in respect of plausible refugees, such as asylum seekers, but does not include an obligation to grant refugees asylum.¹⁵⁶ It however refers to obligation not to return refugees to areas where their life or freedom would be endangered.¹⁵⁷

According to Article 1 a of the 1951 Convention a refugee is a person, who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear, in unwilling to avail himself to the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of

¹⁵¹ Edwards, A. Human Rights, Refugees, and The Right 'To Enjoy' Asylum, Oxford University Press, 2005, pp 293-330, p 299.

¹⁵² *ibid.*

¹⁵³ Cherubini, F (2015) *supra* nota 28, p 65.

¹⁵⁴ Staffans, I. Immigration and Asylum and Policy in Europe: Evidence in European Asylum Procedures, Brill, 2012, p 19.

¹⁵⁵ *ibid.*

¹⁵⁶ United nations General Assembly. United Nations Convention Relating to the Status of Refugees, 1.1.1951.

¹⁵⁷ Staffans I. (2012) *supra* nota 154, p 19.

such events, is unable or, owing to such fear, is unwilling to return to it.”¹⁵⁸ However, this definition relates to refugees *ipso iure*, which means that recognition of a person’s status as a refugee does not make them such, it merely ascertains that status.¹⁵⁹ A person becomes a refugee as soon as he or she meets the requirements set out in Article 1 of the Convention.¹⁶⁰ This definition of the concept of refugee includes five core requirements:

- “The applicant is outside his or her country of origin;
- The applicant belongs to a certain group in his or her home country and this is due to the applicant’s religion, race, nationality, social group or political opinion;
- There is a well-founded fear that the applicant will be persecuted in his or her home country;
- This well-founded fear for persecution is linked to the group belongings; and that
- The applicant due to the well-founded fear does not wish to or cannot avail himself or herself of the protection of the home country.”¹⁶¹

A person meeting the criteria is a refugee, unless the Convention’s articles regarding exclusion apply.¹⁶² However, these requirements are not fully respected in all countries, and one example of this is refugee status determination procedure in Jordan.¹⁶³ According to the Convention the provisions shall not apply to: “any persons with respect to whom there are serious reasons for considering that:

- He or she has committed a crime against peace, a war crime, or a crime against humanity, as defined in the international instruments drawn up to make provision in respect of such crimes;
- He or she has committed a serious non-political crime outside the country of refugee prior to his or her admission to that country as a refugee;
- He or she has been guilty of acts contrary to the purpose of principles of United Nations”.¹⁶⁴

¹⁵⁸ United nations General Assembly. United Nations Convention Relating to the Status of Refugees, 1.1.1951.

¹⁵⁹ Cherubini, F (2015) *supra* nota 28, p 9.

¹⁶⁰ *ibid.*

¹⁶¹ United nations General Assembly. United Nations Convention Relating to the Status of Refugees, 1.1.1951.

¹⁶² *ibid.*

¹⁶³ Stevens, D. Legal Status, Labelling, and Protection: the case of Iraqi ”Refugees” in Jordan, Oxford University Press, 2013, pp 1-38, p 13.

¹⁶⁴ United nations General Assembly. United Nations Convention Relating to the Status of Refugees, 1.1.1951.

Additionally, persons who are receiving aid from other UN agencies than UNCHR are excluded from refugee status.¹⁶⁵ It is well known that the definition of ‘refugee’ is relatively narrow, in the sense that it does not include significant numbers of people whose lives or basic human rights are at serious risk in their home states.¹⁶⁶

UK’s Refugee Council has defined asylum seeker as a person who has left their country or origin and formally applied for asylum in another country, but whose application has not yet been concluded.¹⁶⁷ Asylum seeker is a person who seeks safety from persecution or serious harm in a country other than his or her own and awaits a decision on the application for refugee status under relevant national instruments.¹⁶⁸ Refugee status means, that person has been acknowledged as a refugee according to United Nations Convention Relating to the status of Refugees.¹⁶⁹ In case a person gets a negative decision, the person must leave the country and may be expelled, unless permission to stay is provided by humanitarian or other related grounds.¹⁷⁰

Aliens Act’s purpose is to implement and promote good governance and legal protection in matters concerning aliens.¹⁷¹ Aliens Act apply to aliens’, meaning a person who is not a Finnish citizen, entry into and departure from Finland and their resident and employment in Finland.¹⁷² According to Finnish Aliens Act 301/2004 Section 87 aliens residing in the country are granted asylum if they reside outside their home country or country of permanent residence owing to a well-founded fear of being persecuted for reasons of ethnic origin, religion, nationality, membership in a particular social group or political opinion and if they, because of this fear, are unwilling to avail themselves of the protection of that country.¹⁷³ When assessing if the applicant has a well-founded fear of being persecuted, it is immaterial whether the applicant possesses the origin-specific, religious, national, social or political characteristic which attracts the persecution, if provided that such characteristic is attributed to the applicant by the actor of persecution.¹⁷⁴

¹⁶⁵ *ibid.*

¹⁶⁶ Piotrowicz, R. Asylum Seekers, Good Faith and the State, *International Journal on Minority and Group Rights* 20, 2013, pp 263-278, p 264.

¹⁶⁷ www.refugeecouncil.org.uk/policy_research/the_truth_about_asylum/the_facts_about_asylum (18.2.2017)

¹⁶⁸ Popescu, A. The EU cost of the Refugee Crisis, *Europolicy: Continuity and Change in European Governance*, Vol. 10, Issue 1, 2016, pp 105-120, p 109.

¹⁶⁹ Aer, J. (2016) *supra* nota 100 p 242.

¹⁷⁰ Popescu, A. (2016) *supra* nota 168, p 110.

¹⁷¹ Aliens Act 301/2004.

¹⁷² *ibid.*

¹⁷³ Aliens Act 301/2004.

¹⁷⁴ *ibid.*

Acts are considered as persecution if they are sufficiently serious by their nature or repetition as to constitute a severe violation of fundamental human rights. Acts of persecution may take a form of physical or mental violence, legal or administrative measures of police or judicial measures which are themselves discriminatory or which are implemented in discriminatory manner, prosecution or punishment which is disproportionate or discriminatory, absence or denial of judicial redress resulting in a disproportionate or discriminatory punishment, prosecution or punishment for refusal to perform military service in a conflict where this would include acts under section 87 (2) or acts of gender-specific or child-specific nature. ¹⁷⁵

When assessing the reasons of persecution origin means colour, descent or membership of ethnic group. ¹⁷⁶ Religion includes in particular the holding of theistic, non-theistic and atheistic beliefs, the participation in, or abstention from, formal worship in private or in public, either alone or in community, other religious acts or expressions of view, of forms of personal or communal conduct based on or mandated by any religious belief. ¹⁷⁷ Nationality includes citizenship of a State, of a lack thereof and membership of a group determined by its cultural, ethnic or linguistic identity, common geographical or political origins or its relationship with the population of another State. ¹⁷⁸ Political opinion means in particular an opinion or thought of belief on potential actors of persecution and their policies or methods. ¹⁷⁹

International and national definition bears resemblance and it is clear that the national definition is derivative of the international equivalent. Nevertheless, the national definition is much more precise. Section 87 of the Alien Act is the most essential element when deciding whether an asylum is granted. Thus, this Section is also vitally important when appealing against faulty decisions.

¹⁷⁵ *ibid.*

¹⁷⁶ *ibid.*

¹⁷⁷ *ibid.*

¹⁷⁸ *ibid.*

¹⁷⁹ *ibid.*

2.2 Asylum seekers' rights in Aliens Act

2.2.1 Weighing the differences between Aliens Act 103/2004 and Aliens Act 646/2016

In Finland, the Aliens Act is the main source when defining the rights and obligations of asylum seekers and refugees. New Aliens Act 646/2016 is changing the Sections: 9, 128, 196, 198, 199 and 201 of the Aliens Act 301/2004. The most substantial changes of Finnish Aliens Act are: decreased legal aid, shorter appeal periods, new time limits in delivering further clarifications for the case, Administrative Court decisions can be given without documents related to the matter, applications for renewal won't stop the expulsion given by an earlier application's refusal and changes in leave to appeal. Main reason behind the changes of Aliens Act is money.¹⁸⁰ Ministry of Justice states that when processing time is kept short, major savings will be achieved. Legal aid's quality and increasing costs of legal aid are being curbed by decreasing legal aid from asylum seekers.¹⁸¹

Section 9 of the Aliens Act 646/2016 is decreasing the legal aid provided for the applicants. According to Section 9 of the old 103/2004 Aliens Act, provisions on aliens' rights to legal aid are laid down in the Legal Aid Act 257/2002. When an administrative matter is being handled, the counsel assigned to an alien may be a person with legal training other than public legal aid attorney. A court may grant legal aid to an alien without requiring a statement on the financial position of the applicant for legal aid, since the counsel's fee is paid out of State funds as provided in the Legal Aid Act.¹⁸²

In the meaning of the new Section 9, legal aid does not include counsel's or assistant's presence in the asylum interview, unless counsel's presence is necessary because of particularly weighty reasons.¹⁸³ It is stated in the Legal Aid Act 257/2002, Section 1 that: "Legal aid is provided at the expense of the state to persons who need expert assistance in a legal matter and who are unable to meet the costs of proceedings as a result of their economic situation."¹⁸⁴ It is also stated that legal aid covers legal advice, necessary measures and representation before a court of law and other

¹⁸⁰ www.oikeusministerio.fi/fi/index/valmisteilla/lakihankkeet/oikeudenkayntijaioikeuslaitos/ulkomaalaislainmuuttaminen.html (2.3.2017).

¹⁸¹ *ibid.*

¹⁸² Annex 1: Comparison between changes of Aliens Acts.

¹⁸³ *ibid.*

¹⁸⁴ Legal Aid Act 257/2002.

authority.¹⁸⁵ In addition, legal aid is provided if the matter is to be heard before a Finnish court or if there are special reasons for legal aid to be provided.¹⁸⁶ For both asylum applicant and the Finnish Immigration Service, the asylum interview is the most important opportunity to clarify an applicant's grounds for asylum.¹⁸⁷

A successful interview is the best base for reaching a decision that is both appropriate and legally sound, and this is why asylum seekers' must be given the best possible chance to explain their grounds for asylum.¹⁸⁸ Assistant's job in the interview is to ask additional questions from the interviewer.¹⁸⁹ Asking additional question in the overall case is the best alternative from the point of view of clarifying the applicant's grounds for asylum and the applicant's legal security.¹⁹⁰ Refusal of assistant's presence in the interview is thus highly influencing applicant's success in the interview and also his or her legal security.

Section 190 of Aliens Act 646/2016 is notably changing the appeal period. According to Section 190 of 103/2004, A decision of the Finnish Immigration Service, the police, a border control authority, an employment office, a Finnish diplomatic or consular mission or the Ministry of Education referred in the Act may be appealed to an administrative court as provided in the Administrative Judicial Procedure Act.¹⁹¹ According to the Administrative Judicial Procedure Act the appeal period was 30 days.¹⁹²

However, Aliens Act 646/2016 is limiting the appeal time to 21 days.¹⁹³ In addition, appeal and leave to appeal for Supreme Administrative Court should be made in 14 days instead of 30 days.¹⁹⁴ "Main reason behind this change is to abbreviate processing time in asylum cases", states Merja Muilu from Ministry of Justice.¹⁹⁵ However, wanted time saving might backfire when quickly drafted appeals need to be supplemented later. Shorter appeal times are also effecting applicant's legal security. It is often taking time from asylum seeker to find a lawyer, get a meeting for drafting the appeal and to provide all the needed documents for the appeal. Appeal made in hurry might

¹⁸⁵ Legal Aid Act 257/2002.

¹⁸⁶ *ibid.*

¹⁸⁷ Recommendations for improving asylum interviews, Refugee Advice Centre, 2009, p 5.

¹⁸⁸ *ibid.*

¹⁸⁹ Recommendations for improving asylum interviews, Refugee Advice Centre, 2009, p 24.

¹⁹⁰ *ibid.*

¹⁹¹ Annex 1: Comparison between changes of Aliens Acts.

¹⁹² Hallintolaki 6.6.2004/434.

¹⁹³ Annex 1: Comparison between changes of Aliens Acts.

¹⁹⁴ *ibid.*

¹⁹⁵ www.kaleva.fi/uutiset/kotimaa/turvapaikanhakijoiden-valitusajat-lyhenivat/737093/ (2.3.2017).

lead to wrongful negative decisions which again lead to new appeals and make the process even more longer and expensive for the state.

Section 196 of 646/2016 is limiting appeal and leave to appeal for Supreme Administrative Court from 30 days to 14 days. Section 196 of 301/2004 states that; “a decision of an administrative court referred in the Act may be appealed to the Supreme Administrative Court if the Supreme Administrative court gives leave to appeal”.¹⁹⁶ A leave to appeal may be given if it is important for the application of the Act to other similar cases, or for the sake of consistency in legal practise, to submit the case to the Supreme Administrative Court for a decision or if there are some other weighty reasons for giving the leave.¹⁹⁷ Appeal and leave to appeal for Supreme Administrative Court should be made in 14 days.¹⁹⁸ This change has very similar effects as the decreased appeal period, possible wrongful negative decision leading to longer process.

Section 197 of 646/2016 is stating new time limits for delivering further clarifications for the case. According to Section 197 point 1: “an appeal document shall be submitted to the authorities who issued the decision, who shall submit its opinion and the documents on which it based on its decision to the Administrative Court without delay”. According to point 2: “in asylum matters, an appeal document may also be submitted to the Administrative Court of Helsinki or the police. Immediately after being notified of the appeal, the Finnish Immigration Service shall submit the document on which it based its decision to the Administrative Court”. According to point 3: “Abroad, an appeal document ay be submitted to a Finnish mission. A person held in detention may submit his or her appeal document to the person in charge of the detention facilities, the recipient of an appeal document is submitted without delay to the authorities who issued the decision. At the same time, the Administrative court shall be notified of the appeal”. However, Section 197 of 646/2016 gives Administrative Court permission to set a reasonable time limit for the parties to provide possible further clarification to the matter.¹⁹⁹ However, if a party delivers the clarification after the time limit, Court may ignore it.²⁰⁰ In asylum-cases further clarifications are the main reasons for appeals, and thus this new change might be affecting the final decisions and the number of negative decision might be increasing.

¹⁹⁶ Annex 1: Comparison between changes of Aliens Acts.

¹⁹⁷ *ibid.*

¹⁹⁸ *ibid.*

¹⁹⁹ *ibid.*

²⁰⁰ *ibid.*

Section 199 of 646/2016 is stating, that Administrative Court decisions can be given without documents related to the matter. According to Section 199 of 301/2004, An administrative court was able decide, upon representation, a petitionary matter relating to prohibition or stay of a decision with only the chairman present.²⁰¹ The decision could be issued without documents submitted by the authorities concerned, if the facts necessary for deciding the matter appear from the appeal document otherwise.²⁰² However, Section 199 of 646/2016 states that the Supreme Administrative Court may decide the matter relating to prohibition or stay of enforcement of a decision without documents related to the matter.²⁰³ It is needless to say, that this change will be as well influencing the amount of negative decision if it is possible to decide the matter without document related to the matter. As mentioned earlier asylum seekers often have problems, since they don't know the language or get proper legal assistance.

Lastly, Section 201 of 646/2016 states, that applications for renewal won't stop the expulsion given by an earlier application's refusal and changes in leave to appeal. According to Section 201 of 302/2004, point 1: "a decision on refusal of entry may be enforced regardless of appeal, unless otherwise ordered by an Administrative Court. However, a decision of the Finnish Immigration Service on refusal of entry concerning an alien who has applied for a residence permit on the basis of international or temporary protection may not be enforced until a final decision has been issued on the matter, unless otherwise provided in subsection 2 or 3".²⁰⁴ However, section 201 of 646/2016 states that, if the applicant refuses his or her appeal in an international protection matter, an application for renewal won't stop the expulsion given by an earlier application's refusal of entry decision.²⁰⁵ This change might lead to situation where applicant has been expelled even his or her new application would still be in proceeding.

2.2.2 Problems arising from Aliens Act 646/2016

In order to elaborate the underlying problems arising from the Aliens Act, the author has interviewed Finnish licensed legal counsel Eero Pellikka, who is currently working with asylum seekers and refugees in law office Lex Gaudius and is very familiar with problems arising from the amendment. Pellikka frequently conducts representation and assistance in cases where the new

²⁰¹Annex 1: Comparison between changes of Aliens Acts.

²⁰² *ibid.*

²⁰³ *ibid.*

²⁰⁴ *ibid.*

²⁰⁵ *ibid.*

Aliens Act has direct influence. Purpose of this chapter is to bring out problems that this amendment is bringing for Finnish lawyers, but also problems that are affecting asylum seekers.

Pellikka states that naturally the new time limitations for appeals are complicating lawyers work. Time limit of 21 days is adequate, in case the client contacts lawyer early and lawyer doesn't have too many other clients. For some reason, it is common that lawyers working with asylum seekers suddenly disappear without notice or are very difficult to reach. Pellikka has been in situations where client has had only 7 days left of the appeal period since time has been wasted because of incapable old lawyer. Amendment has clearly added the need of flexibility from the lawyers. Also, since the appeal must be sent faster, it might increase the need of further clarifications, for example in the cases where translations of client's evidences are not ready before the deadline. This might again prolong the whole process.

Nowadays lawyer also get fixed fee from making an appeal. This has both positive and negative effects. From the positive side, it increases predictability and encourages lawyers to work effectively. Negative sides are the lawyers who are increasingly breaking their duties for example making too short appeals which also effects client's legal security. Pellikka concludes that the lack of surveillance encourages abuses, and lowers the threshold to conduct abuses. Amendment has added a new Section 197 a, which enables court to ignore further clarifications after deadline. Pellikka states that he hasn't yet notice that court would have set any time limits for further clarifications, which is very good, because this provision would be against common sense. In case a client can't deliver further clarifications when the process is in hold, it is possible that he or she will do a new application with further clarifications for asylum after receiving a negative decision. As the meaning of the amendment has been to save money and speed up the process it is doing exactly opposite, Pellikka notes.

What comes to the decreased legal aid, my presence has been important, states Pellikka. However, in cases where applicant is reasonable and healthy adult and interpreter is professional, it is possible that the applicant can present his or her reasons without the assistant. Pellikka feels that in these situations applicant's legal protection has not been violated by the amendment. He however states that interview situations are variable and many other assistants would disagree with him.

Pellikka concludes that this amendment has purely been created to save states funds by compromising asylum seekers' legal protection. Amendment has it's positive and negative sides,

thus it depends which factors person attaches weight to. Pellikka's opinion is, that time limits should not have been abbreviated and the possibility of further clarifications should not have been changed, since they are not speeding up the process and they do now more harm than good. The author agrees with Pellikka with this fact. However, the author disagrees with the statement that applicant's legal protection has not been violated by the amendment. In the following chapter these underlying problems of the amendment will be analysed in the light of such issues limiting the access to a fair trial.

3 Is 646/2016 limiting the access to a fair trial?

3.1 Decreased legal aid

In this final chapter the research question “is Aliens Act 646/2016 limiting asylum seeker’s access to a fair trial” will be analysed. Subchapters are named according to the most substantial amendments of Aliens Act. Under every subchapter author will be analysing if the elements of fair trial (free access to justice, fair and public hearing, the ‘reasonable time’ requirement and hearing of the case by an independent and impartial tribunal established by law) might be violated because of the changes in the Aliens Act. Author will be concentrating on the elements that most likely would be violated because of a certain amendment, and dismissing those which are not as relevant.

As already stated in the chapter 2.2.1, Section 9 of the Aliens Act 646/2016 is decreasing the legal aid provided for the applicants. In the meaning of the new Section 9, legal aid does not include counsel’s or assistant’s presence in the asylum interview, unless counsel’s presence is necessary because of particularly weighty reasons.²⁰⁶ Next the fact of decreased legal aid will be compared to the elements of fair trial, starting from the free access to justice.

As shown in the chapter 1.1.1 free access to justice comprises the possibility of any person to initiate an action in court. The right of access to a court is not absolute, but may be subjected to restrictions, if provided these pursue a legitimate aim and are proportionate.²⁰⁷ The lack of access to court may be relied upon by anyone who states that he or she has not had the possibility to submit a claim to tribunal having the jurisdiction to examine all questions of fact and law relevant to the dispute before it and to adopt binding decision.²⁰⁸ Thus it can be said, that in asylum cases the free access to justice must be provided starting from the determination of refugee status to possible appeals to the Court. Decreased legal aid can lead to violations of free access to justice when limiting the possibility of applicants to use assistants in the asylum interview and thus it might lead to situation where important facts of the case won’t be examined.

²⁰⁶ Annex 1: Comparison between changes of Aliens Acts.

²⁰⁷ Fawcett, J.J. (2007) *supra* nota 22, p 2.

²⁰⁸ INTERIGHTS manual for lawyers, Right to a fair trial under the European Convention on Human Rights (Article 6), 2009.

According to Stephan Anagnost following trends are noted in European countries; recognition rates are low, appeals are common, legal aid in some form is mentioned in the legal framework of each State, but nature of legal aid is not specially mentioned, educational background and quality of legal aid provider is not specified and minimum standards for legal aid are non-existent.²⁰⁹ Lack of funding will continue to translate in faulty decisions and reduced quality of legal aid and this is threat to the asylum seekers and is an abuse of the international protection.²¹⁰

According to literal interpretation of Article 6 the rights to a fair hearing means only a right to have a trial conducted according to certain procedural requirements such as, for instance, the opportunity to examine witnesses or to produce relevant evidence.²¹¹ The principle of fair hearing also means that adversariality principle, principle of the right of defence, principle of equality between parties in trial are observed.²¹² Adversariality means that in line with the rules established by the civil procedural law, the parties may submit requests, propose and produce evidences and submit arguments relevant for the case.²¹³ For asylum applicants who often do not speak Finnish or English, it might be a huge problem to submit requests or submit arguments without an assistant who has been declined from them. Same issues apply to the principle of the right of defence, which is guaranteed during the entire duration of the trial.²¹⁴

The principle of equality between the parties or equality of arms principle lays down the rule that stipulates the equality of parties in their relationship with the court, existence of the same concurrent judicial rights and, also the existence of same obligations according to the quality of each party in the trial.²¹⁵ The equality of arms principle was found to have been breached in the case *Steel and Morris v. the United Kingdom*, because one of the parties had been placed at a clear disadvantage. The denial of legal aid to one of the parties deprived them of the opportunity to present their case effectively before the court in the face of a far wealthier opponent.²¹⁶ Based on this, it cannot be stated that parties would be equal in their relationship to the court without providing proper assistance for foreign applicants.

²⁰⁹ Anagnost, S. *The Challenge of providing high quality, low cost legal aid for asylum seekers and refugees*, Oxford University Press, 2000, pp 577-588, p 581.

²¹⁰ Anagnost, S. (2000) *supra* nota 209, p 586.

²¹¹ Loucaides, L (2003) *supra* nota 24, p 30.

²¹² Gagu, C. And Gavrilu, C.(2015), *supra* nota 19, p 762.

²¹³ *ibid.*

²¹⁴ *ibid.*

²¹⁵ *ibid.*

²¹⁶ §72, ECtHR *Steel and Morris v. the United Kingdom*, 15.2.2005.

The question whether or not Article 6 requires the provision of legal representation to an individual litigant will depend upon the specific circumstances of the case as stated in *Steel and Morris v. the United Kingdom*,²¹⁷ and *McVicar v. the United Kingdom* ²¹⁸. According to case *McVicar v. the United Kingdom*, what has to be ascertained is whether, in the light of all the circumstances, the lack of legal aid would deprive the applicant of a fair hearing. Whether Article 6 implies a requirement to provide legal aid will depend, among other factors, on the importance of what is at stake for the applicant ²¹⁹ the complexity of the relevant law or procedure ²²⁰, the applicant's capacity to represent him or herself effectively ²²¹ and the existence of a statutory requirement to have legal representation. ²²²

Next the author will be dealing with the reasonable time requirement and how decreased legal aid may affect it. As previously mentioned in chapter 1.1.4. in asylum cases under reasonable time requirement, the time starts running from the first institution proceeding with the Finnish Immigration Office or police and stops running when proceeding have been concluded in the highest instance and the judgement has been issued for the applicant. The asylum interview is the most important opportunity to clarify an applicant's grounds for asylum.²²³ As noted earlier, a successful interview is the best base for reaching a decision that is both appropriate and legally sound, and that is why asylum seekers must be given the best possible chance to explain their grounds for asylum.²²⁴ Refusal of assistant's presence in the interview is thus highly influencing applicant's success in the interview.²²⁵ When applicant is not able to give his or her best in the interview, some important facts or grounds for asylum might remain hidden.²²⁶ This might lead to faulty decision and appeals against these decisions which makes the process even more longer and puts the reasonable time requirement under threat.

²¹⁷ § 61, ECtHR *Steel and Morris v. the United Kingdom*, 15.2.2005.

²¹⁸ § 48, ECtHR *McVicar v. the United Kingdom*, 7.5.2002.

²¹⁹ § 61, ECtHR *Steel and Morris v. the United Kingdom*, 15.2.2005.

²²⁰ § 24, ECtHR *Airey v. Ireland*, 9.10. 1979.

²²¹ § 48-62, ECtHR *McVicar v. the United Kingdom*, 7.5.2002.

²²² § 26, ECtHR *Airey v. Ireland*, 9.10. 1979.

²²³ Recommendations for improving asylum interviews, Refugee Advice Centre, 2009, p 5.

²²⁴ *ibid.*

²²⁵ *ibid.*

²²⁶ *ibid.*

3.2 Shorter appeal periods

As already stated in the chapter 2.2.1, Section 190 of Aliens Act 646/2016 is notably changing the appeal period. According to the Administrative Judicial Procedure Act the appeal period was 30 days before Aliens Act 646/2016 entered in to force.²²⁷ However, Aliens Act 646/2016 is now limiting the appeal time to 21 days.²²⁸ In addition appeal and leave to appeal for Supreme Administrative Court should be made in 14 days instead of 30 days.²²⁹

According to case law, when determining reasonable time, the first step is to determine the period to be taken into consideration, and then to determine whether that period can be qualified as 'reasonable'.²³⁰ As already stated, in asylum cases the time starts running from the first institution proceeding with the Finnish Immigration Office or police and stops running when proceeding have been concluded in the highest instance and the judgement has been issued for the applicant. Shorter appeal times are effecting applicant's legal security and they might lead to wrongful decisions. It is always taking time from asylum seeker to find a lawyer, get a meeting for drafting the appeal and to provide all the needed documents for the appeal. Appeal made in hurry might lead to wrongful negative decisions which again lead to new appeals and make the process even more longer and expensive for the state.

Naturally shorter appeal periods may also affect the elements of free access to justice and fair and public hearing. In asylum cases the free access to justice must be provided starting from the determination of refugee status to possible appeals to the Court and this may be compromised when there is only 21 or 14 days time for making the appeal. Eero Pellikka from law firm Lex Gaudius has stated, that since the appeal must be sent faster, it might increase the need of further clarifications, for example in the cases where translations of client's evidences are not ready before the deadline. This might again prolong the whole process. Shorter appeal period may affect the possibility of the parties to submit requests, propose and produce evidences or to submit arguments relevant for the case.

²²⁷ Hallintolaki 6.6.2004/434.

²²⁸ Annex 1: Comparison between changes of Aliens Acts.

²²⁹ *ibid.*

²³⁰ Kuijer, M. (2013) *supra* nota 64, p 781.

3.3 New time limits in delivering further clarifications

As already stated in the chapter 2.2.1, Section 197 of 646/2016 is stating new time limits for delivering further clarifications for the case. Section 197 of 646/2016 gives Administrative Court permission to set a reasonable time limit for the parties to provide possible further clarification to the matter.²³¹ If a party delivers the clarification after the time limit, Court may ignore it.²³²

The principle of fair hearing means that adversariality principle, principle of the right of defence, principle of equality between parties in trial are observed.²³³ Adversariality means that in line with the rules established by the civil procedural law, the parties may submit requests, propose and produce evidences and submit arguments relevant for the case.²³⁴ Administrative Court has permission to set a reasonable time limit for the parties to provide possible further clarification to the matter.²³⁵ If a party delivers the clarification after the time limit, Court may ignore it.²³⁶ In case applicants won't have possibility to deliver further clarifications this would be against the adversariality principle. National complaint mechanism, access to legal aid and counseling may be seriously impaired for a refugee who has never even been in Europe.²³⁷ Pellikka states that he hasn't yet notice that court would have set any time limits for further clarifications, which is very positive, because this provision would be against common sense. In case client can't deliver further clarifications when the process is in hold, it is possible that he or she will do a new application with further clarifications for asylum after receiving a negative decision. In asylum-cases further clarifications are the main reasons for appeals, and thus this new change might be affecting the final decisions and the number of negative decision might be increasing.

In case Bahaddar²³⁸ the applicant failed to submit grounds within the four-month time-limit decided by the Court, because supporting documents were not ready yet. The appeal was declared inadmissible. The ECtHR stated that: "it should be borne in mind in this regard that in applications for recognition of refugee status it may be difficult, if not impossible, for the person concerned to supply evidence within a short time, especially if such evidence must be obtained from the country

²³¹Annex 1: Comparison between changes of Aliens Acts.

²³² *ibid.*

²³³ Gagu, C. And Gavril, C. (2015), *supra* nota 19, p 762.

²³⁴ *ibid.*

²³⁵Annex 1: Comparison between changes of Aliens Acts.

²³⁶ *ibid.*

²³⁷ Gammeltoft-Hansen, T. Access to asylum: international law and the globalisation of migration control, Cambridge, Cambridge University Press, 2011, p 5.

²³⁸ ECtHR, *Bahaddar v The Netherlands*, 19.2.1998.

from which he or she claims to have fled. Accordingly, time-limits should not be so short, or applied so inflexible, as to deny an applicant for recognition of refugee status a realistic opportunity to prove his or her claim". The ECtHR has also recognized under Article 13 that very short time limit to introduce a remedy may render a remedy ineffective.²³⁹ It is possible that the 'reasonable time' requirement would also be breached with this amendment, since it is probably prolonging the whole process.

3.4 Administrative Court decisions given without documents related to the matter

Section 199 of 646/2016 of states that the Supreme Administrative Court may decide the matter relating to prohibition or stay of enforcement of a decision without documents related to the matter.²⁴⁰

As all other amendments, this will be also affecting the principle of fair hearing and more specifically principles of adversariality and the right of defence.²⁴¹ As stated earlier adversariality principle means that in line with the rules established by the civil procedural law, the parties may submit requests, propose and produce evidences and submit arguments relevant for the case.²⁴² The principle of the right of defence is also guaranteed during the entire duration of the trial. In case it is possible for administrative Court to give decision without documents related to the matter, these two principles will be breached. This change will be as well influencing the amount of negative decision if it is possible to decide the matter without document related to in the matter.

3.5 Applications for renewal won't stop the expulsion

Lastly, Section 201 of 646/2016 states, that applications for renewal won't stop the expulsion given by an earlier application's refusal and changes in leave to appeal. Section 201 of 646/2016 states that, if the applicant refuses his or her appeal in an international protection matter, an application for renewal won't stop the expulsion given by an earlier application's refusal of entry decision.²⁴³ However, Asylum Procedures Directive, Article 9 states that: "applicants shall be allowed to remain in the Member State, for the purpose of the procedure, until the determining authority has made a decision in accordance with the procedures at first set out in Chapter 3. That

²³⁹ Para 74, ECtHR, *Albanese v Italy*, 23.3. 2006.

²⁴⁰ Annex 1: Comparison between changes of Aliens Acts.

²⁴¹ *Gagu, C. And Gavrilă, C. (2015), supra nota 19, p 762.*

²⁴² *ibid.*

²⁴³ Annex 1: Comparison between changes of Aliens Acts.

right to remain shall not constitute an entitlement to a residence permit.”²⁴⁴ When comparing the Asylum Procedure Directive Article 9 and the amendment of the Aliens Act; it would appear, that the Aliens Act amendment is violating the Article 9 of the Directive.

Free access to justice will be breached with this change of law. Free access to justice comprises the possibility of any person to initiate an action in court. The lack of access to court may be relied upon by anyone who states that he or she has not had the possibility to submit a claim to tribunal having the jurisdiction to examine all questions of fact and law relevant to the dispute before it and to adopt binding decision.²⁴⁵ This amendment might lead to situation where applicant has been expelled even his or her new application would still be in proceeding. The principle of fair and public hearing might be also violated since the expelled applicants might not have possibilities to defend themselves. State cannot reject asylum seekers until it can be sure that they would not be at risk of persecution in the countries to which they are sent, and also this provision might be violated because of the amendment.²⁴⁶

²⁴⁴ Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection.

²⁴⁵ INTERIGHTS manual for lawyers, Right to a fair trial under the European Convention on Human Rights (Article 6), 2009.

²⁴⁶ Cherubini, F (2015) *supra* nota 28, p 62.

Conclusions

The main hypothesis of the thesis is that the new Aliens Act 646/2016 of Finland does not respect certain human rights, for example that it is limiting asylum seekers' access to a fair trial. In addition, the author has studied if the Asylum Procedures Directive is violated by the said amendment. This matter is important, because Asylum Procedures Directive will be applied from 20 July 2018, and transposed to national law even earlier. If these possible violations of the Directive are dismissed on the day the Directive will be applied, it may cause major problems. The author has also brought up problems relating to the new amendment and Finnish asylum procedure.

The right to an effective remedy should be guaranteed for asylum seekers and refugees in all situations. It has been a debate, whether term "civil rights and obligations" applies to asylum seekers in the meaning of Article 6 and thus also if the whole Article 6 can apply to asylum seekers. The author however agrees with the dissenting opinion of Judge Loucaides in case *Maaouia*. According to opinion the words "civil rights and obligations" should be given the broadest possible meaning which should extend to all legal rights and obligations of the individual whether *vis a vis* other individuals or *vis a vis* the State. There are also other cases in the Court's case-law where it has been held that Article 6 is applicable in other areas in which the authorities can act on the basis of discretionary powers.²⁴⁷ Thus, author believes that Article 6 can be and it should be applicable to asylum seekers.

The right to a fair trial consists of the following elements: free access to justice, fair, public and reasonable term in public hearing; hearing by an independent, impartial tribunal established by law and lastly public rendering of judgements.²⁴⁸ Amendment 646/2016 is changing the Sections: 9, 128, 196, 198, 199 and 201 of the Aliens Act 301/2004. The most substantial changes of Finnish Aliens Act are: decreased legal aid, shorter appeal periods, new time limits in delivering further clarifications for the case, Administrative Court decisions can be given without documents related to the matter, applications for renewal won't stop the expulsion given by an earlier application's refusal and changes in leave to appeal. These changes are most likely limiting asylum seekers' right to a fair trial.

²⁴⁷ ECHR, 27.10.1987, *Pudas v. Sweden* and ECHR, 28.6.1990, *Mats Jacobsson v. Sweden*,

²⁴⁸ Gagu, C. And Gavril, C.(2015), *supra* nota 19, p 762.

In the meaning of the new Section 9 of 646/2016, legal aid does not include counsel's or assistant's presence in the asylum interview, unless counsel's presence is necessary because of particularly weighty reasons.²⁴⁹ Decreased legal aid can lead to violations of free access to justice when limiting the possibility of applicants to use assistants in the asylum interview and thus it might lead to situation where important facts of the case won't be examined. For asylum applicants who often do not speak Finnish or English, it might be a huge problem to submit requests or submit arguments without an assistant who has been declined from them, and thus principle of fair hearing and principle of adversariality might be violated. Same issues apply to the principle of the right of defence, which is guaranteed during the entire duration of the trial.²⁵⁰ The denial of legal aid to one of the parties deprived them of the opportunity to present their case effectively before the court in the face of a far wealthier opponent.²⁵¹ Based on this, it cannot be stated that parties would be equal in their relationship to the court without providing proper assistance for foreign applicants, thus the principle of equality between the parties might be breached. Refusal of assistant's presence in the interview is thus highly influencing applicant's success in the interview.²⁵² When applicant is not able to give his or her best in the interview, some important facts or grounds for asylum might remain hidden.²⁵³ This might lead to faulty decision and appeals against these decisions which makes the process even more longer and puts the reasonable time requirement under threat.

Aliens Act 646/2016 is limiting the appeal time to 21 days instead of 30 days.²⁵⁴ In addition, appeal and leave to appeal for Supreme Administrative Court should be made in 14 days instead of 30 days.²⁵⁵ Shorter appeal times are effecting applicant's legal security and they might lead to wrongful decisions. Eero Pellikka from law firm Lex Gaudius has also stated, that it is often taking time from asylum seeker to find a lawyer, get a meeting for drafting the appeal and to provide all the needed documents for the appeal. Appeal made in hurry might lead to wrongful negative decisions which again lead to new appeals and make the process even more longer and expensive for the state. Naturally shorter appeal periods may also affect the elements of free access to justice and fair and public hearing. In asylum cases the free access to justice must be provided starting

²⁴⁹ Annex 1: Comparison between changes of Aliens Acts.

²⁵⁰ Gagu, C. And Gavril, C.(2015), *supra* nota 19, p 762.

²⁵¹ ECtHR *Steel and Morris v. the United Kingdom*, 15.2.2005.

²⁵² Recommendations for improving asylum interviews, Refugee Advice Centre, 2009, p 5.

²⁵³ *ibid.*

²⁵⁴ Annex 1: Comparison between changes of Aliens Acts.

²⁵⁵ *ibid.*

from the determination of refugee status to possible appeals to the Court and this may be compromised when there is only 21 or 14 days time for making the appeal. Eero Pellikka has stated, that since the appeal must be sent faster, it might increase the need of further clarifications, for example in the cases where translations of client's evidences are not ready before the deadline. This might again prolong the whole process. Shorter appeal period may affect the possibility of the parties to submit requests, propose and produce evidences or to submit arguments relevant for the case.

Section 197 of 646/2016 gives Administrative Court permission to set a reasonable time limit for the parties to provide possible further clarification to the matter.²⁵⁶ If a party delivers the clarification after the time limit, the Court may ignore it.²⁵⁷ In case an applicant won't have possibility to deliver further clarifications this would be against the adversariality principle. National complaint mechanism, access to legal aid and counseling may be seriously impaired for a refugee who has never even been in Europe.²⁵⁸ In case client can't deliver further clarifications when the process is in hold, it is possible that he or she will do a new application with further clarifications for asylum after receiving a negative decision. In asylum-cases further clarifications are the main reasons for appeals, and thus this new change might be affecting the final decisions and the number of negative decision might be increasing. It is possible that the 'reasonable time' requirement would also be breached with this amendment, since it is probably prolonging the whole process.

Section 199 of 646/2016 states that the Supreme Administrative Court may decide the matter relating to prohibition or stay of enforcement of a decision without documents related to the matter.²⁵⁹ As all other amendments, this will be also affecting the principle of fair hearing and more specifically principles of adversariality and the right of defence.²⁶⁰ In case it is possible for Administrative Court to give decision without documents related to the matter, these two principles will be breached. This change will be as well influencing the amount of negative decision if it is possible to decide the matter without document related to the matter.

Lastly, Section 201 of 646/2016 states, that applications for renewal won't stop the expulsion given by an earlier application's refusal and changes in leave to appeal. This amendment might

²⁵⁶ Annex 1: Comparison between changes of Aliens Acts.

²⁵⁷ *ibid.*

²⁵⁸ Gammeltoft-Hansen, T. (2011) *supra* nota 237, p 5.

²⁵⁹ Annex 1: Comparison between changes of Aliens Acts.

²⁶⁰ Gagu, C. And Gavrila, C. (2015), *supra* nota 19, p 762.

lead to situation where applicant has been expelled even his or her new application would still be in proceeding. The principle of fair and public hearing might be also violated since the expelled applicants might not have possibilities to defend themselves.

What comes to the violation of Asylum Procedures Directive, author claims that they are also possible because of the amendment. The Procedures Directive contains procedural guarantees for the asylum seeker, such as right to be informed, the right to personal interview, right to an interpreter and legal aid.²⁶¹ According to Article 15, point 3: “Member States shall take appropriate steps to ensure that personal interviews are conducted under conditions which allow applicants to present the grounds for their application in a comprehensive manner”.²⁶² After the amendment, applicants are not allowed to take assistants to the interviews, and this will notably impair applicants position in the interview. The Procedures directive also contains a provision regarding effective remedy. Article 46 states that: “Member States shall ensure that applicants for asylum have the right to an effective remedy before a court or tribunal against decision taken on their application”.²⁶³ This can be understood as right to a fair trial as well. The Asylum Procedures Directive in principle binds member States to “ensure that the examination procedure is concluded within six months of the lodging of the application.”²⁶⁴ However, appeal periods are most likely getting longer because of the decreased legal aid, shorter appeal periods and new time limits when delivering further clarifications. Article 46 of the Directive allows asylum seekers to remain in the member State, for the purpose of the procedure, until determining authority has made a decision.²⁶⁵ This might be violated because of the fact that in the new Aliens Act application for renewal won't stop the expulsion given by an earlier application's refusal of entry decision.

All together Finnish asylum procedure has many problems. According to petition made by Law Office Lex Gaudius for Finnish Immigration Service, police and government, there has been many faulty decisions made by the Finnish Immigration Service.²⁶⁶ Generally, reasons for these faulty decisions have been: unprofessional translators and unprofessional new employees without proper training.²⁶⁷ The employees responsible for valuating and making decisions regarding singular

²⁶¹ Reneman, M. (2008) *supra* nota 34, p 66.

²⁶² Official Journal of the European Union. Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection.

²⁶³ *ibid.*

²⁶⁴ Article 31(3) Official Journal of the European Union. Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection.

²⁶⁵ Cherubini, F (2015) *supra* nota 28, p 65.

²⁶⁶ Annex 3: Petition for Immigration Service, Police and Government.

²⁶⁷ *ibid.*

asylum requests are put under pressure because of the goals settled by the directors of the Immigration Service and law is interpreted more strictly than required, due to political pressure.²⁶⁸ Sources used by the Immigration Service are not comprehensive, and should be updated and enlarged.²⁶⁹ Immigration Service officials are feeling that, in the asylum interview it is hard to get interviews that would be in accordance with what they need when making a decision.²⁷⁰ Asylum seekers on the other hand feel that they haven't been heard or their story hasn't come out as they meant. One of the biggest problems in the asylum interview is that usually the applicant doesn't have any written documents about their phases, like for example arrest, imprisonment or abuse. Interaction is based on verbal communication which takes place via interpreter and thus interaction is always prone to misunderstandings.²⁷¹ Author agrees with Eeva Puumala about possible solutions. Puumala states that, the interaction would be better if the people would be in the same level. Applicants could be informed better, so that they would understand the goals of the interview. If State would concentrate more in the actual problems, instead of financial savings, the situation might be totally different.

Based on used materials and case law, the author considers the hypothesis to be at least partly proven. There are clearly issues which have got worse after the amendment and might lead to situations where they are limiting asylum seekers' access to a fair trial. If these violations of the Asylum Procedures Directive are dismissed on the day the Directive will be applied, it most likely causes major problems. Asylum Act should be in compliance with the Asylum Procedures Directive. Author also states, that decent asylum process need to be restored to Finland and authorities needs to act to rectify wrongful decisions regarding asylum from years 2015-2016. For example, after the new Aliens Act 646/2016 the legal assistance in the personal interviews should be granted with some other ways than legal aid.

²⁶⁸ *ibid.*

²⁶⁹ *ibid.*

²⁷⁰ www2.uta.fi/ajankohtaista/uutinen/turvapaikkaprosessi-liian-raskas "Turvapaikka prosessi liian raskas", 24.1.2017 (10.2.2017).

²⁷¹ *ibid.*

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Annex 1: Comparison between changes of Aliens Acts

Comparison between the changed Sections of Alien Act 301/2004 and Alien Act 646/2016.

Alien Act 301/2004	Alien Act 646/2016
<p data-bbox="225 577 368 611">Section 9</p> <p data-bbox="225 658 368 692"><i>Legal aid</i></p> <p data-bbox="225 730 775 813">(1) aid is laid down in the Legal Aid Act (257/2002).</p> <p data-bbox="225 860 828 1032">(2) However, when administrative matter is being handled, the counsel assigned to an alien may also be a person with legal training other than a public legal attorney.</p> <p data-bbox="225 1061 839 1279">(3) When handling a matter referred to in this Act, a court may grant legal aid to an alien without requiring a statement on the financial position of the applicant for legal aid. The counsel's fee is paid out of State funds as provided in the Legal Aid Acts.</p>	<p data-bbox="855 577 999 611">Section 9</p> <p data-bbox="855 658 999 692"><i>Legal aid</i></p> <p data-bbox="855 730 1469 976">Legal aid does not include counsel's presence in the asylum interview, unless counsel's presence is necessary because of particularly weighty reasons. In case the applicant is under 18 years old and without care taker, legal aid however includes counsel's presence in the interview.</p>
<p data-bbox="225 1361 400 1395">Section 190</p> <p data-bbox="225 1442 336 1476"><i>Appeal</i></p> <p data-bbox="225 1523 839 1872">A decision of the Finnish Immigration Service, the police, a border control authority, an employment office, a Finnish diplomatic or consular mission or the Ministry of Education referred to in this Act may be appealed to an administrative court as provided in the Administrative Judicial Procedure Act.</p>	<p data-bbox="855 1361 1031 1395">Section 190</p> <p data-bbox="855 1442 967 1476"><i>Appeal</i></p> <p data-bbox="855 1523 1469 1839">Appeal should be made in 21 days from the date of service, if the application concerns Immigration office's decision on international protection of asylum seeker. Appeal should be made in below-mentioned time limit also if the appealed decision concerns decisions of residence permit, deportation and alerts. According to Section 193, the court has to process the appeal as urgent.</p>

Section 196*Appeals to the Supreme Administrative Court*

A decision of an Administrative Court referred to in this Act may be appealed to the Supreme Administrative Court if the Supreme Administrative Court gives leave to appeal. A leave to appeal may be given if it is important for the application of the Act to other similar cases, or for the sake of consistency in legal practice, to submit the case to the Supreme Administrative Court for a decision or there are some other weighty reasons for giving the leave.

Section 196*Appeals to the Supreme Administrative Court*

A decision of an Administrative Court referred to in the Act may be appealed to the Supreme Administrative Court if the Supreme Administrative Court gives leave to appeal. A leave to appeal may be given if it is important for the application of the Act to other similar cases, or for the sake of consistency in legal practise, to submit the case to the Supreme Administrative Court for a decision or if there are some other weighty reasons for giving the leave. Appeal and leave to appeal for Supreme Administrative Court should shall be made in 14 days.

Section 197*Submitting an appeal document*

(1) An appeal document shall be submitted to the authorities who issued the decision, who shall submit its opinion and the documents on which it based its decision to the Administrative Court without delay.

(2) In asylum matters, an appeal document may also be submitted to the Administrative Court of Helsinki or the police. Immediately after being notified of the appeal, the Finnish Immigration Service shall submit the documents on which it based its decision to the Administrative Court. (973/2007)

(3) Abroad, an appeal document may be submitted to a Finnish mission. A person in detention may submit his or her appeal document to the person in charge of the detention facilities. The recipient of the document shall ensure that the appeal document is submitted without delay to the

Section 197 a*Submitting an appeal document*

Administrative Court may set a reasonable time limit for the parties to provide possible further clarification to the matter. If a party delivers the clarification after the time limit, Court may ignore it.

authorities who issued the decision. At the same time, the Administrative Court shall be notified of the appeal.

Section 199

Deciding petitionary matters relating to enforcement

(1) An administrative court may decide, upon presentation, a petitionary matter relating to prohibition or stay of enforcement of a decision with only the chairman present. The decision may be issued without documents submitted by the authorities concerned if the facts necessary for deciding the matter appear from the appeal document or otherwise.

(2) A decision of the Administrative Court in a matter relating to prohibition or stay of enforced may not be appealed separately.

(3) Similarly, the Supreme Administrative Court may decide, upon representation, on a petitionary matter relating to prohibition or stay of enforcement with only one member present. The decision may be issued on the grounds laid down in subsection 1 without document accumulate in the matter.

Section 199

Deciding petitionary matters relating to enforcement

Administrative Court may issue a decision without document submitted by the authorities in case if the facts necessary for deciding the matter appear from the appeal document or otherwise. The Supreme Administrative Court may decide the matter relating to prohibition or stay of enforcement of a decision without documents related to the matter.

Section 201

Enforcing decisions on refusal of entry

(1) A decision on refusal of entry may be enforced regardless of appeal, unless otherwise ordered by Administrative Court. However, a decision of the Finnish Immigration Service on refusal of entry concerning an alien who has applied for a

Section 201

Enforcing decisions on refusal of entry

If the applicant refuses his or her appeal in an international protection matter, application for renewal according to Section 102 won't stop the expulsion given by an earlier application's refusal of entry decision

residence permit on the basis of international or temporary protection may not be enforced until a final decision has been issued on the matter, unless otherwise provided in subsection 2 or 3. (973/2007)	
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Annex 2: The Frame of the Interview of Eero Pellikka

Why do you think that the new Act 646/2016 was adopted?

Do you feel that the new changes are effecting asylum seekers' legal protection?

Do you feel that new time limits are affecting lawyers' work?

How are the new time limits affecting lawyers' work?

What kind of problems the amendment will bring to asylum seekers?

What kind of problems these new time limits are bringing to asylum seekers or refugees?

What kind of problems might arise from the fact that asylum seekers are not allowed to have assistant in the asylum interviews?

Do you feel that it is important for asylum seeker to have assistant in the asylum interview?

Lawyers' are now getting a fixed fee from drafting an appeal. What are the positive and negative effects of this change?

Have you noticed in your work any effects of new 197 a Section?

Annex 3: Petition for Immigration Service, Police and Government

Lakiasiaintoimisto

LEX GAUDIUS

Law office

IMMIGRATION SERVICE, POLICE AND GOVERNMENT

PETITION

Dossier

Faulty decisions made by the Immigration Service to the asylum seekers and actions of the authorities related on them.

Underwrites

Representatives of the asylum seekers from Afghanistan and Iraq;

In cooperation with

International law firm Lex Gaudius
Hämeentie 19, 00500 Helsinki
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PERUSTELUT:**I. FAULTY DECISIONS MADE BY THE FINNISH IMMIGRATION SERVICE**

- (GENERAL) There have been many faulty decisions depending on different reasons some as:
 1. Unprofessional translators;
 2. Unprofessional new employees, who did not receive a proper training in such a delicate matters as issues regarding asylum requests;
 3. The employees who were responsible on valuating and making the decisions regarding singular asylum requests, were put under pressure because of the goal settled by the directors of the Immigration Service;
 4. Sources used by the Immigration Service are not comprehensive. Sources should be updated and enlarged. A crucial matter is that the Immigration service uses a large amount of sources and facts given by the Human Right organizations' reports;
 5. The Finnish Immigration Service's country reports regarding Iraq and Afghanistan are not in line with the Swedish one. Country reports are not in line with the Swedish or international Human Rights organizations;
 6. The Finnish Immigration Service is interpreting the law more strictly than required, due to political pressure. For example, the Finnish Immigration service is applying the internal flight option against recommendations by international Human Rights organizations or the Swedish guidelines. For example, Sweden does not apply internal flight to Sunni Arabs in Iraq;
 7. Many times cases are not evaluated individually. Standard statements are copied to different kinds of cases, even when it has nothing to do with the person in question.

- (SINGULAR) There have been many contradictory and illegal decisions some as:
 1. Huge amount of asylum cases where it is applied the article 88 e of the Finnish Law for the foreigners (Ulkomaalaislaki is applied 2004/301). There are too many cases where the Immigration service believes that the asylum seeker is persecuted in his home country and that he would have all the grounds for being granted a refugee status, but still the Immigration service decides that the asylum seeker can return safely in another part of his/her home country. Asylum seekers coming from South and North Iraq are sent in Bagdad and asylum seekers coming from Bagdad are sent to Southern Iraq;
 2. Three brothers from Bagdad with same personal stories and backgrounds, one living in Helsinki and the other two living in Seinäjoki. The one living in Helsinki got refugee status while the 2 brothers living in Seinäjoki got negative decisions by the Immigration service and are now appealing to the administrative court.
 3. Two brothers, one gets asylum and the other one not, although they have the same case. The only difference is that the one with a positive decision is 13 years old;¹
 4. The Finnish Immigration service claims that they apply the benefit of doubt in unclear cases. However, reality is quite the opposite – in many cases the Immigration service claims without further proof that there is no persecution or danger of persecution in the future;²
 5. Breaking the UN convention of the Rights of the Child, article 10 (families whose members live in different countries should be allowed to move between those countries so that parents and children can stay in contact, or get back together as a family). The Finnish Immigration stated in this decision that is in the best interests of the child to grow up without the presence of the father.³

1 <https://migrileaks.wordpress.com/2017/02/06/>

2 <https://migrileaks.wordpress.com/2017/02/13/he-sitoivat-katesi-ja-heittivat-sinut-pimeaan-huoneeseen/>

3 <https://migrileaks.wordpress.com/2017/01/23/aidin-ja-vauvan-kaannyttaminen-mig-lapsen-etu-on-kasvaa-erossa-isastaan/>

The administrative court has serious difficulties in finding a remedy to all deficiencies made by the Immigration Service. All of those negative decisions given by the Immigration service on wrong grounds, put in danger the legal rights of some asylum seekers.

The Finnish Chancellor of Justice, Jaakko Jonkka, has criticized the methods of the Immigration service when its employees examined the cases of the asylum seekers. This is extremely serious criticism, that has to be taken in consideration properly. The Immigration Service has admitted its mistakes but still many of those faulty decisions have now power of law, meaning that all this new information, which is coming out, can't rectify the faulty decisions.

II. FORCED RETURNS FOR THE ASYLUM SEEKERS

- This argument is connected with the principle that Immigration Service needs to find a remedy for all those negative faulty decisions given by the Immigration service to the asylum seekers.
- Regarding Iraq in specific, it is crucial to remember that Finland and Iraq do not have any state agreement. This means that the Iraqi authorities can't protect their citizens, so they accept only asylum seekers who want to return voluntarily to Iraq or those asylum seekers who have been plead guilty for a crime. What is the official statement of the Finnish authorities regarding forced return to Iraq of Iraqi asylum seekers who have not been plead guilty nor want to return in Iraq voluntarily?
- We ask in general to be more delicate and to seek in the best way possible to fulfil the principle of good governance when executing an expulsion of an asylum seeker. Police should also valuate every singular case of expulsion of an asylum seeker and not automatically execute it. Forced expulsion of asylum seekers should be avoided (or put on hold) if the asylum seeker has another pending proceeding regarding his/her residence permit.
- The media has been reporting about several cases where the police has executed forced expulsions and used methods which are against the principle of good governance.
- There are many asylum seekers whose asylum process is ended and now the negative faulty decision has achieved power of law. Executing by force the expulsion of those asylum seekers would be in contrast with international law, especially with the right for a fair trial.
- It is a great concern from the Human Rights point of view that Finland deports asylum seekers by force to Iraq before their case has been assessed by the Supreme Administrative Court.

III. EVICTION FROM THE CAMP

- There is no common guideline with the municipalities regarding the social care and assistance for those asylum seekers who are waiting the final decision of their asylum process but are already evicted from their camp. We ask that urgent action is taken by the Finnish authorities where precise instructions are given to the directors of camps in Finland. Directors of the camps should not evict any asylum seeker from his/her camp until the supreme administrative court has made its final decision. (Vastaanottolaki 2015/673; 14a §:n kolmas momentti).
- Now there are hundreds of homeless asylum seekers who can't return voluntarily to their home countries. Soon there will be thousands of those people. The municipalities do not have the capacity to deal with such a massive problem. If measures are not taken now, soon it will be too late. There will be some kind of negative consequences from the international community; Finland has much to lose because its reputation has always been internationally brilliant.
- This argument is also connected with the principle that Immigration service needs to find a remedy for all those negative faulty decisions given by the Immigration service to the asylum seekers.
- The method suggested by us is much more convenient to the Finnish tax payers. There are already existing infrastructures (camps) all over Finland. It is unproductive to close those existing camps and transfer the responsibility of the health -and social care to the municipalities. Secondary we suggest an urgent instruction from the Internal Ministry to all the municipalities where the minimum standards required by law in giving social assistance to the asylum seekers are explained. One method could be giving instruction to municipalities on how to make agreements with the existing camps.

IV. GRANTING TEMPORARY RESIDENT PERMIT WITHOUT APPLYING THE VOLUNTARY RETURN –CONDITION

- An foreigner who have in his/her possession a temporary resident permit (ulkomaalaislaki 2004/301; 51 §) can work and is obliged to contribute to the tax paying system of Finland.
- Sweden and Germany have invested in foreigners. For many asylum seekers the governments of these two states have created the basis for the foreigners to find a job or in some other way to be granted a resident permit. Both countries' GDP is now increasing. We hope that Finnish politicians would see the same possibilities as Germany and Sweden.
- This argument is also connected directly with the principle that Immigration service needs to find a remedy for all those negative faulty decisions given by the Immigration service to the asylum seekers.
- Granting a temporary resident permit would significantly cut down the amount of undocumented persons in Finland.

Based on all above we demand that the Immigration service will pronounce a plan with concrete measures on how they will find a remedy to all the mistakes made by the Immigration service. We demand at least to re-examine all those negative decisions regarding international protection which faulty given so that the legal rights of asylum seekers in Finland are protected as those rights have been protected in Finland for the last 60 years!

HELSINGISSÄ 27.2.2017