

ENDING IMMIGRATION DETENTION OF CHILDREN IN FINLAND AND SEEKING ADEQUATE RECEPTION AND CARE FOR THEM

AMNESTY INTERNATIONAL SUBMISSION TO THE UN SPECIAL RAPPORTEUR ON THE HUMAN RIGHTS OF MIGRANTS

Amnesty International opposes the detention of all children – whether accompanied or unaccompanied, whether migrants or asylum-seekers – solely for migration-related purposes, since such detention can never be in the child’s best interests. Amnesty International takes the position that a presumption against detaining family units of parents and children for immigration-related reasons should be enshrined in law.

The detention of children is strictly prohibited in international law as it can never be in their best interests. Further, according to the Working Group on Arbitrary Detention, “Children must not be separated from their parents and/or legal guardians. The detention of children whose parents are detained should not be justified on the basis of maintaining the family unit, and alternatives to detention must be applied to the entire family instead.”¹

1. Legislation or policies that prohibit or restrict the use of immigration detention of children and their families

Finland continues to detain unaccompanied children and families with children based on their migration status. In 2011, the government committed to prohibit the detention of children and to seek alternatives to detention² but failed to do so in practice. In 2015, the government restricted the detention of unaccompanied children under 15 years of age but unaccompanied children over 15 years as well as children of all ages together with their parent(s) can still be detained.³

In 2015, the detention of unaccompanied children aged between 15 and 17 was restricted to 72 hours once there is an enforceable decision on their removal from Finland. The period of detention can be extended by 72 hours for extraordinary reasons.⁴ The Aliens Act also allows for families with children to be held in detention for up to 12 months.⁵

Placing a child in detention has specific prerequisites under the Aliens Act⁶: the detention must be considered necessary, it must be used as a last resort, the child has been consulted before making the decision and a social worker has been given an opportunity to be heard on the case. With regard to a child detained with his or her guardian, it is required that the detention is considered necessary to maintain family ties. Unaccompanied children aged 15-17 can only be detained

¹ UN Human Rights Council 39th session Agenda item 3, 2 July 2018, Report of the Working Group on Arbitrary Detention: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/196/69/PDF/G1819669.pdf?OpenElement>

² Programme of Prime Minister Jyrki Katainen’s Government <https://valtioneuvosto.fi/documents/10184/367809/Programme+of+Prime+Minister+Katainen%E2%80%99s+Government/64238eca-58cd-43bb-81dc-963a364a422e/Programme+of+Prime+Minister+Katainen%E2%80%99s+Government.pdf>

³ Aliens Act, section 122

⁴ Aliens Act, section 122

⁵ Aliens Act, section 127

⁶ Aliens Act, section 122

once their return decision has become enforceable. However, even these restricted circumstances should not be permissible when it comes to detaining children.

2. Existing non-custodial alternatives to immigration detention of children and their effect on the protection of the rights of migrant children and their families

There is only one alternative measure in the Aliens Act tailored specifically for children, and it only applies to unaccompanied children between the ages of 15 and 17 - a requirement to reside in a specific accommodation accompanied with a requirement to report.⁷ This directed residence requirement for children means that a child is ordered to live in a specific reception centre as well as to stay in its vicinity and to report there up to four times per day. These reporting requirements are excessive as they severely restrict the child's freedom of movement, including attending school. The directed residence and reporting requirement may thus unlawfully restrict the right to education.

A child can be directed to reside in a specific accommodation for a maximum period of one week, with the possibility of a one-week extension if necessary to ensure the child's removal from the country. During this time, the child is not allowed to leave the premises of the reception centre/housing where he or she has been directed to stay. The child has the right to a judicial review within four days of the decision ordering him or her to directed residence and reporting.

In practice, the residence requirement may amount to detention. Furthermore, compared to detention, where an unaccompanied child must be released after 72+72 hours, the time limits are considerably longer. In this sense, the residence requirement is an even more restrictive measure, as it allows limiting the child's freedom of movement for up to two weeks. The directed residence requirement, which in the case of children, is always accompanied with the reporting requirement, cannot be considered a proportionate limitation to a freedom of movement as it effectively limits all movements outside the immediate surroundings of the accommodation.

Amnesty International is thus concerned that this alternative to detention for unaccompanied children is in fact a form of detention, with the only differences being that: it takes place in a reception centre instead of a traditional detention centre; the length of detention is up to two weeks; and judicial review is possible only four days after the initial decision. In fact, the legal change that was meant to restrict child detention has made the deprivation of liberty of unaccompanied children easier than before. However, it is unclear whether this measure is used in practice as information on such decisions is not available. This leads to a lack of transparency of decisions as well as accountability as information and statistics on the use of the residence requirement are not provided, allowing authorities to bypass reporting requirements under immigration detention.

In the case of children (either unaccompanied or with families) detention should never be an option and thus measures that do not restrict their freedom of movement should be used instead of detention or directed residence in the case where precautionary measures are deemed necessary.⁸

3. Good practices or measures taken to protect the human rights of migrant children and their families while their migration status is being resolved

When an unaccompanied child arrives in Finland as an asylum seeker, a District Court assigns him or her a representative.⁹ The representative's task is to ensure that the child's best interests are taken into account in different situations. The representative uses the right of action that belongs to the child's guardian, helps the child with official matters or takes care of the child's matters on his or her behalf before the Finnish authorities. For example, the representative participates in the child's asylum interview.

⁷ Aliens Act, section 120 b

⁸ See for example Aliens Act, sections 118 to 120

⁹ Act on the Reception of Persons applying for International Protection, section 39

However, there are challenges in the use of representatives. The representative has the right to be consulted on matters concerning the child in the legal process, but studies show that this consultation does not have much impact on the final decision.¹⁰ Furthermore, the quality of representatives varies and in some cases children have even experienced difficulties in reaching their representatives.¹¹ The representative's tasks are also not sufficiently clearly defined in the legislation which causes differences in interpreting what the representative is expected to do.¹² Moreover, the legislation does not define competence requirements for the representative - thus no specific educational background or level of knowledge on migration issues is needed.¹³

4. Challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families

The best interests of the child do not seem to be a primary consideration in asylum and migration decisions in Finland. The authorities do not always consider which one of the possible solutions would be in the best interests of the child, but rather whether or not the decision would be seriously contrary to the best interests of the child.¹⁴ This tendency can be recognised in the treatment of families when deciding on detention. Thus, there is a risk that a decision to place a family in detention is being based primarily on the need to detain a parent and on maintaining family relations. In Amnesty International's view, considering the best interests of the child would result in finding an alternative measure for the whole family.

The authorities fail to provide comprehensive, accurate, up-to-date information in a transparent way of the use of detention as well as alternatives to detention which makes it difficult to assess how detention and its alternatives are used. Much of the statistics concerning detention of asylum seekers and others held solely for immigration purposes is available, on request, through the detention Centres of Helsinki and Joutseno, who host the majority of detained persons. However, there continues to be a lack of comprehensive and reliable statistics. Statistics on detention remain scattered and incomplete. The numbers provided by different authorities - police, border guard and immigration service whom detention centres belong to - are not consistent and there is no reliable way of knowing exactly how many children are either placed in detention or have been directed non-custodial measures. In particular, the statistics provided by the police do not provide enough information to get an understanding of how detention is used - often their statistics don't match with numbers provided by other authorities and it is not clear whether someone is being detained several times or where detainees are moved to from the police facilities. Moreover, statistics on the use of alternatives to detention are missing completely.

According to the Government proposal HE 172/2014 vp, in 2010-2013, 81 % of immigration detention decisions were based on removal related reasons. The most common reason for detention was preparing for implementation of the deportation decision (43 % of all decisions).¹⁵ According to Statistics Finland, in 2019 the most common reason for detention was a fear that a foreigner would hamper or hinder the preparation and enforcement of a decision concerning him or her by hiding. This was the basis for around 2,400 cases. Another common reason for detention was that a foreigner was suspected of a crime and detention was necessary to ensure the preparation or enforcement of the decision of deportation. This reason was used around 1,800 times.¹⁶ More specific reasons for detention are unknown.

¹⁰ A report from the Non-Discrimination Ombudsman (in Finnish):

<https://www.syrjinta.fi/documents/10181/36404/Lapset+ilman+perhett%C3%A4+%E2%80%93+Kansainv%C3%A4list%C3%A4+suojelua+saaneiden+a+laik%C3%A4isten+perheenyhdist%C3%A4minen/9a5d54b9-82c9-4961-a865-f6037110b2a7>

¹¹ A study on the asylum process from 2019 (in Finnish), page 88:

<https://intermin.fi/documents/1410869/3723692/Turvapaikkaprosessia+koskeva+selvitys+27.6.2019/60bd290f-ffbd-2837-7f82-25fb68fe172c/Turvapaikkaprosessia+koskeva+selvitys+27.6.2019.pdf>

¹² Act on the Reception of Persons applying for International Protection, section 41: the representative exercises the custody of a guardian in matters concerning the child's person and property.

¹³ Act on the Reception of Persons applying for International Protection, section 40

¹⁴ A report from the Non-Discrimination Ombudsman (in Finnish):

<https://www.syrjinta.fi/documents/10181/36404/Lapset+ilman+perhett%C3%A4+%E2%80%93+Kansainv%C3%A4list%C3%A4+suojelua+saaneiden+a+laik%C3%A4isten+perheenyhdist%C3%A4minen/9a5d54b9-82c9-4961-a865-f6037110b2a7>

¹⁵ The Government proposal in Finnish, page 4: https://www.eduskunta.fi/FI/vaski/HallituksenEsitys/Documents/he_172+2014.pdf

¹⁶ Statistics Finland: https://www.stat.fi/til/rpk/2019/14/rpk_2019_14_2020-02-28_tie_001_en.html

5. Other relevant information

5.1. The Family Detention unit of Joutseno Detention Centre

Following an amendment to the law on 1 July 2015, it is not possible to place children in detention facilities of police or at the border.¹⁷ When placing a child in detention, he or she must be placed in a migration detention unit. In terms of the treatment of children, Finland has also adopted an operating model in which the staff of the detention units have received training in the social field.

Children are usually taken to one of the two detention centres in Finland, the Joutseno Detention Centre which has a separate facility to host families. The other detention centre, Metsälä, also sometimes accommodates children but Joutseno Detention Centre is designed to pay specific attention to vulnerable people and families.¹⁸

The family detention facility is making efforts in creating their spaces accommodating for children and families but its premises are nonetheless not suitable for children. The Joutseno Detention Centre is located in an old prison with bars on the windows and high walls around the outdoor space. Joutseno has divided its space into a men's facility and a family facility which can also host single women as well as vulnerable people, including unaccompanied children. However, when an unaccompanied child turns 18, if male, he is moved to the men's facility. This practice assumes that a child becomes an adult overnight and there are no interim arrangements in place before the person has to move in with adults. Also, if the family facilities are full, the father of the family could be placed in the men's facility, thus separating him from his family.

Families have more privacy than others in the Joutseno Detention Centre – they get their own rooms. The family facilities consist of a one double-room and two quadruple rooms. The unit also has a playroom for children and a play area outside in the courtyard. However, the courtyard is surrounded by walls with barbed wire above them.

There is crisis support available for families as well as a family counsellor whom the families can meet. Volunteers from the Finnish Red Cross visit the family unit occasionally to provide activities for children. Attending school is usually not possible as the school in the area would need to know attendance two weeks in advance, and the detention with families does not usually last that long.

In addition to Joutseno Detention Centre, children (either unaccompanied or with families) are sometimes held in Metsälä Detention Centre, in Helsinki. The Metsälä Detention Centre does not have specific facilities for families and it is not suitable for children. In Metsälä Detention Centre, convicted criminals facing deportation are sometimes held together with asylum seekers and irregular migrants, including children.

Also, the facilities are not always up to human rights standards. The Finnish Parliamentary Ombudsman criticized in 2018 that the Detention Centres have a legal right to have video surveillance also in sanitation rooms – unlike any other institution in Finland. There is no clear reason for this.¹⁹

Amnesty reiterates that children should never be detained – even when they are together with their families – as detention can never be in the best interest of the child.

5.2. Other concerns

Amnesty International has also several other concerns regarding immigration detention in general in Finland. Even though District Courts consider decisions to place a person in detention or to directed residence, there is no right to appeal.²⁰ It is possible to make a complaint²¹ or to request the District Court to re-examine the decision to detain a person

¹⁷ Aliens Act, section 123 a

¹⁸ Amnesty International has received the details on detention centre facilities and practices through statistics and information provided for us on request as well as through other NGOs which have visited the centres.

¹⁹ The Parliamentary Ombudsman's report (in Finnish), page 87: <https://www.oikeusasiamies.fi/rfi/ratkaisut/-/eoar/5145/2018>

²⁰ Aliens Act, section 129

²¹ Administrative Judicial Procedure Act, section 60

after two weeks of detention.²² However, this does not correspond to appealing a decision (where a higher court examines the appeal and gives preliminary rulings thus creating case law). It is questionable whether due process rights are fulfilled. This is particularly important because detention and alternative measures restrict a person's human rights significantly. Amnesty International has concerns that District Courts might accept decisions to place a person in detention almost without questioning the reasons for it, which would imply that court proceedings are only a formality.²³

The average time spent in the Family Detention Unit of Joutseno Detention Centre is 16,6 days. Longest period spent there was over 72 days in 2016 and 48 days in 2018. However, most families spend maximum of 5 days in the department.²⁴

The new Government program²⁵, published on 3 June 2019, states that a process of amending the Aliens Act will be initiated to lay down provisions on technical monitoring of persons whose asylum applications have been refused. This will be an alternative to detention and the residence obligation, constituting a less restrictive and more appropriate precautionary measure. In practical terms this would require the use of an electronic monitoring device.

Even though this statement is included in the Government program, it is unclear whether this change will be carried out in practice. There is also a risk that technical monitoring would become a default measure to be used with all foreigners who have received a negative decision on their asylum or migration-based application.

6. Recommendations

Amnesty International recommends that Finland ends all detention of children, whether they are unaccompanied or with their families. Placing a child in detention can never be in their best interest. Furthermore, directed residence and reporting requirements shall not be used in a way that they in fact amount to detention.

The best interest of the child should be followed as the main principle when making decisions that concern children. Amnesty International is concerned that Finnish authorities do not always follow this principle when making decisions concerning asylum seekers.²⁶ Amnesty International recommends that the best interest of a child is made as a leading principle also in decision on detention, even when the decision mainly applies to an adult member of a family and a child is placed in detention together with the family.

Authorities should provide comprehensive, accurate and up-to-date statistics and information on the use of detention in general as well as regarding children. This data should include the reasons for detention so that the decisions made by police, border guard and the immigration authorities as well as the courts would become more transparent and make decision-makers accountable.

There should be a right to appeal a decision to place a person in detention. The decisions should also be more transparent so that the decision-makers can be held accountable if decisions would restrict the rights of the child more than necessary. It is also difficult to assess whether other less intrusive alternatives have been considered and detention has genuinely been used as a measure of last resort.

²² Aliens Act, sections 128 and 129

²³ A news article from 2015 (in Finnish): <https://www.kansanuutiset.fi/artikkeli/3331800-raportti-ulkomaalaisten-sailoonottojen-perusteluissa-pahojaputteita>. Similar court practices are also brought to Amnesty International's attention more recently.

²⁴ Statistics provided on request to Amnesty International as well as information gathered in a visit to Joutseno Detention Centre by another NGO.

²⁵ The Government Program:

https://julkaisut.valtioneuvosto.fi/bitstream/handle/10024/161664/Inclusive%20and%20competent%20Finland_2019_WEB.pdf?sequence=4&isAllowed=y

²⁶ See for example the report from the Non-Discrimination Ombudsman (in Finnish):

<https://www.syrjinta.fi/documents/10181/36404/Lapset+ilman+perhett%C3%A4+%E2%80%93+Kansainv%C3%A4list%C3%A4+suojelua+saaneiden+al%C3%A4isten+perheenyhdist%C3%A4minen/9a5d54b9-82c9-4961-a865-f6037110b2a7>

There are challenges in the use of representatives for unaccompanied children who come to Finland as asylum seekers. This requires that an effective quality-control of those representing unaccompanied children is put in effect.²⁷

As an alternative to immigration detention, electronic monitoring should not be used as a default measure against irregular migrants who would not otherwise be detained. It must only be used to achieve a legitimate objective and applied in accordance with relevant principles of international law.

Under international law, electronic monitoring should be used only after a careful assessment of the extent to which the specific measure will restrict the human rights of the individual, as well as its proportionality and necessity to fulfill a legitimate objective. And it should only be used if, and for so long as, there is no less restrictive measure likely to achieve the same objective. It should also be subject to review by an independent judicial or other competent authority, to ensure that its application is necessary and proportionate for the legitimate stated purpose at that particular time, and is not discriminatory, arbitrary or unduly prolonged. However, when considering alternatives, it should be clear that children (either unaccompanied or with families) should never be detained and thus using electronic monitoring as an alternative to detention should exclude children. It should be clearly envisaged in legislation that migration detention cannot be used on children.

²⁷ A study on the asylum process from 2019 (in Finnish), page 88:
<https://intermin.fi/documents/1410869/3723692/Turvapaikkaprosessia+koskeva+selvitys+27.6.2019/60bd290f-ffbd-2837-7f82-25fb68fe172c/Turvapaikkaprosessia+koskeva+selvitys+27.6.2019.pdf>