**Replies by the Government of Finland to the questionnaire by the Special Rapporteur on the human rights of migrants**

**Questions 1-4**

**15 May 2020**

The Government of Finland presents the following replies to questions 1-4 of the questionnaire sent by the Special Rapporteur on 17 March 2020.

**Question 1: Please provide information on any legislation or policy that prohibits or restricts the use of immigration detention of children and their families in your country. Grateful if you could kindly submit the original text of the legislation or policy, accompanied by an English translation if it is in a language other than English, French or Spanish.**

The provisions on detention of Finnish national legislation are based on the European Union Reception (2013/33/EU) and Return (2008/115/EC) Directives.

The Aliens Act (301/2004) and the Act on the Treatment of Detained Aliens and on Detention Units (116/2002, hereinafter the Detention Act) were amended in 2015. The amendments of the Detention Act improved the position and legal protection of detained aliens and aimed at decreasing problems relating to human and fundamental rights and practical issues connected to detention. The amendment also implemented the EU Reception Directive at the national level. The purpose of the amendment of the Aliens Act was to restrict the detention of minors.

Chapter 7 of the Aliens Act provides for precautionary measures and monitoring of aliens. In accordance with section 117a of the Act, precautionary measures referred to in sections 118-122 and 122a of the Act may be imposed on an alien if this is essential and proportionate for establishing that the alien meets the conditions for entry into or stay in the country in accordance with subsection 1, paragraph 1 or preparing a decision to remove the alien from the country or ensuring the enforcement of such a decision, or otherwise supervising his or her departure from the country in accordance with paragraph 2. The alien who is subject to the precautionary measures shall be notified of the grounds for the precautionary measures. The precautionary measures are in force until it has been established that the alien meets the conditions for entry into or stay in the country, a decision on removal from the country has been enforced or the processing of the matter has ended otherwise. The precautionary measures shall be immediately ordered to end when they are no longer essential for ensuring the issue or enforcement of a decision. The precautionary measures are an obligation to report, handing over of travel documents and travel tickets or giving of the address where the alien may be reached, giving of a security, a residence obligation and detention of the alien on the basis of an individual assessment.

Under section 122 of the Aliens Act, an unaccompanied child under 15 years of age may not be detained. An unaccompanied child aged 15 years or more who is applying for international protection may not be detained before a decision on his or her removal from the country has become enforceable. A condition for detention is that other precautionary measures have been ascertained to be insufficient and detention declared necessary as a last resort. The child shall be heard before the decision is made and a social worker in a public-service employment relationship who has been appointed by the body responsible for social services has been reserved an opportunity to be heard. A detained unaccompanied child shall be released no later than 72 hours after the start of the detention. For special reasons the detention may be extended by up to 72 hours.

If a child is held in detention with the person who has custody of him or her, the detention shall be essential for maintaining the family contact between the child and the person who has custody of him or her.

Under section 123 of the Aliens Act, a decision to detain, when taken by the police, is made by a commanding police officer at the local police department, the National Bureau of Investigation or the Finnish Security Intelligence Service, and when taken by the Border Guard, by an official of the Border Guard with the power of arrest or a border guard of at least the rank of lieutenant. The person detained or his or her legal representative shall be notified in writing immediately, in a language that he or she understands or which he or she can reasonably be expected to understand, of the grounds for detention and given information about the processing of the matter on which the detention is based and of the possibility of obtaining legal aid.

Detention of an unaccompanied child is exceptional in Finland. Unaccompanied children under 15 years of age may not be detained at all. The possibility to detain a child aged 15 years or more has, however, been deemed justified for example in a situation where the child has repeatedly committed offences while staying in Finland and his or her removal from the country is under preparation. Detention is always the last resort.

Please find attached an unofficial English translation of Chapter 7 of the Aliens Act on precautionary measures and monitoring of aliens.

**Question 2: Please provide information on existing non-custodial alternatives to immigration detention of children in your country (e.g. community-based reception solutions) and elaborate how these alternatives effectively enhance the protection of the rights of migrant children and their families.**

When submitting the government proposal on amending the Aliens Act and the Detention Act in 2014 (GP 172/2014), the Government entered a statement according to which the aim of the Government was to remove the age limit of 15 years set in the proposal and to extend the prohibition of detention to apply to all unaccompanied minors to be removed from the country. The statement required that the Ministry of the Interior prepared a report on international comparison of alternatives to the detention of aliens. The report was to pay special attention to alternatives applied in countries that have prohibited the detention of unaccompanied minors. The report was to include assessments of the applicability of the alternatives in Finland and proposals for their implementation. The aim of the report was to describe the alternatives to detention proven in other EU States but lacking in the Finnish system. The objective was to carry out international comparison especially from the perspective of how the detention of unaccompanied minors could be rendered unnecessary. As the detention of unaccompanied minors is already uncommon in Finland, the report also sought solutions to decrease the detention of families with children and adults.

The report on alternatives to detention (Publications of the Ministry of the Interior 35/2014) was published in December 2014. The conclusion of the report was that residence obligations and electronic surveillance could be considered as new precautionary measures. The report stated that electronic surveillance is an alternative that is still relatively rarely used internationally. According to the report, Finland lacked only the possibility to impose a residence obligation, which is in general use in many countries.

Instead of prohibiting detention, a new alternative for detention was introduced with the aim of decreasing the detention of minors. In 2017, a child’s residence obligation was added to the Aliens Act as a new precautionary measure concerning asylum seekers who are unaccompanied minors being removed from the country. This has been deemed to have a positive impact on the position of children and the best interests of the child. Instead of being detained, an unaccompanied child aged 15 years or more who has been issued a negative asylum decision and a removal decision that has become enforceable may be imposed a child’s residence obligation if the conditions for detaining the child are met. Instead of a detention unit, the child’s residence obligation would be implemented in a group home or a supported housing unit or in another accommodation meant for children.

The procedures laid down on decision-making and court proceedings concerning detention apply to the imposition of a child’s residence obligation. A child’s residence obligation is a more lenient alternative to detention: the child is not kept in locked premises but he or she has, for example, the possibility to move within the grounds of the reception centre. The Act states that the child shall be released after one week from the start of the residence obligation at the latest. The child’s residence obligation can be extended by no more than one week if this is necessary to ensure enforcement of the removal from the country.

**Question 3: Please provide information on any existing good practices or measures taken in your country to protect the human rights of migrant children and their families while their migration status is being resolved, including inter alia their rights to liberty, family life, health and education (e.g. by ensuring effective access to inter alia adequate reception, healthcare, education, legal advice, family reunion).**

Adult asylum seekers in Finland are entitled to urgent and necessary care. Urgent treatment includes urgent medical treatment, urgent oral health care, emergency mental health care, substance abuse and psychosocial support, as well as childbirth. Necessary treatment means any examination, diagnosis, and associated treatment that the health care professional deems necessary.

Minor asylum seekers are entitled to health care on the same basis as municipal residents. Municipalities must ensure access to public preventive health services for children, schoolchildren and pregnant women. This means that children seeking asylum are referred to the municipal child welfare clinic, schoolchildren have access to school and student welfare, and that pregnant women are referred to maternity clinics.

Adults and children are also entitled to essential welfare services. The municipality is responsible for child welfare activities in its area.

The Basic Education Act (628/1998) obligates every local authority to arrange basic education for children of compulsory school age residing in its area and pre-primary education during the year preceding compulsory schooling. This also applies to asylum seekers. Education in Finland is free at all levels from pre-primary to higher education. In pre-primary and basic education the textbooks, daily meals and transportation for students living further away from the school are free for the parents. An asylum seeker who is not of compulsory school age may apply for and accept a study place if this is not against the rules and regulations of the educational institution in question.

The best interests of the child are taken into account in the detention procedure. The special needs of a child in the detention conditions are always taken into account. Some of the instructors at the detention units have received training in child protection matters and they also have previous work experience in child protection. Care is always provided to families with children and the emphasis is always on activities in accordance with the age and level of development of the child. During a short detention, the aim is to identify and address the special needs of a minor as well as possible.

Legal aid is granted for everyone who is eligible for legal aid according to the Legal Aid Act (257/2002). The available means of the applicant determine whether the applicant is given legal aid for free or against a deductible. According to the Aliens Act , provisions on aliens’ right to legal aid are laid down in the Legal Aid Act. When handling a matter referred to in Aliens 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 Act.

When a person is held in detention, they or their legal representative must be notified of the possibility to receive legal aid.

**Question 4: Please indicate any challenges and/or obstacles in the development and/or implementation of non-custodial alternatives to immigration detention of children and their families.**

Limitation of detention has been globally demanded by several international organisations and non-governmental organisations, including the UN Refugee Agency. Criticism of the detention procedure has both internationally and also in Finland especially concentrated on the position of minors.

All in all, children are very rarely detained in Finland. Detention is always considered case-by-case and used only if none of the more lenient precautionary measures are sufficient. New alternative precautionary measures should be developed to decrease the detention of children.

In accordance with the Government Programme of Prime Minister Sanna Marin, an assessment will be made during the Government’s term of office of alternatives to the detention of children over 15 years of age. Finland’s Presidency of the Council of the European Union started soon after the beginning of the Government’s term of office in July 2019 and, for this reason, the start of the preparations of the assessment was moved forward.

The authorities imposing precautionary measures still deem that detention is a necessary precautionary measure of the last resort to ensure the objectives of the Aliens Act, especially the enforcement of a decision to remove a person from the country.

The Ombudsman for Children in Finland considers that the detention of all children should be prohibited. The Ombudsman considers electronic surveillance, referred to in the Government Programme of Prime Minister Sanna Marin as an alternative for detention, as a step forward. The Ombudsman for Children emphasises that the possible implementation of electronic surveillance should not in any case lower the threshold for taking precautionary measures.

The Central Union for Child Welfare states that the detention of all unaccompanied children should be prohibited and the detention of families with underage children should be applied only in exceptional cases.

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