



European Migration Network



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THE DIFFERENT NATIONAL PRACTISES CONCERNING GRANTING OF NON-EU
HARMONISED PROTECTION STATUSES

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Executive Summary

This study on different national practises concerning the granting of non-EU harmonised protection statuses was conducted in order to analyse the different practises on national level regarding non-EU harmonised protection statuses (versus Qualification Directive). An impulse to this study was given by the ever-growing percentage of applicants granted subsidiary protection or other kinds of protection statuses under national law rather than refugee status under Geneva Convention.

Chapter 2 describes the protection statuses granted in Finland defining first the EU statuses covering the definitions of Council Directives 2001/55/EC and 2004/83/EC then proceeding to national protection statuses not covered by the above two directives. The statuses covering the definitions of the Council Directive 2004/83¹/EC are asylum (Section 87 of the Aliens Act) and subsidiary protection (Section 88). As regards Directive 2001/55/EC, Section 109 defines the requirements for issuing temporary protection. There are still a variety of national protection statuses, residence permit on compassionate grounds (Section 52), temporary residence permit under Section 51 and last but not least the humanitarian protection defined in Section 88a.

Protection statuses under Directive 2004/83/EC as well as humanitarian protection introduced in June 2009 are issued within the asylum procedure. National protection statuses like residence permit on compassionate grounds or temporary residence permit may be issued either in the asylum process or while applying for residence permit on other grounds stipulated in the Aliens Act. Chapter 3 focuses on the procedures followed for the granting different types of protection as well as rights related to those statuses.

The national statistics (Chapter 4) on issuing different protection statuses reveal that the assumption of this study is correct; out of 5413 decisions in the asylum process were granted 160 refugee statuses between 2004 and 2009. Before the amendment to the Aliens Act, 1538 applicants were granted international protection under former Section 88 of the Aliens Act. Along the law amendment which came into force on June 9th 2009, 199 applicants were granted subsidiary protection in accordance with Directive 2004/83/EC. Humanitarian protection has been applied so far in 139 cases (June-August 2009). The number of residence permits on compassionate grounds is 14, 6 percents (791 decisions). Temporary residence permit under section 51 (actual removal from the country postponed) has been issued in 592 cases.

National opinion on the granting of protection is examined in Chapter 5. The Finnish asylum process and the statuses granted are often criticised in the media. It is, however, possible to draw a conclusion that national opinion tends to adapt to the prevailing economic situation. The recession of 2008 and 2009 has had an impact on public opinion, raising even xenophobic movements and criticism towards new legislation on asylum. Correspondingly, during economic prosperity asylum officials are accused of being incompetent and prejudiced. Residence permit on compassionate grounds has, however, gained public attention in cases of unsuccessful family reunification at all times: legal representatives tend to present grounds for residence permit on compassionate grounds at the appeal level though Section 52 was intended to be applied chiefly in the asylum process. On the other hand, what comes to unaccompanied minors, Section 52 has evoked suspicions on “anchor children”. A great portion of unaccompanied minors seeking asylum are allowed to stay in Finland on the basis of compassionate grounds as per Section 52 of the Aliens Act. Those minors will later sponsor family reunification for family members who are still abroad. Given the fact that residence permit on compassionate grounds allows family reunification, tightened family reunification policy in other member states has had a clear impact on the number of unaccompanied minors in Finland. Further, prior to media debate on Section 52, temporary residence permit under Section 51 evoked wide resistance among the NGO’s, media and legal representatives between 2004 and 2006 for restricting the rights

¹ In addition to Directive 2004/83/EC Section 3 of the Aliens Act was amended in 2009 by its definitions. Definition of international protection was extended to cover subsidiary protection and humanitarian protection.

of a residence permit holder. Interestingly, while transposing Directive 2004/83/EC into the Finnish Aliens Act, the planned mitigations to Section 51 were mostly overturned in the parliament.

1. Introduction

The European Migration Network (EMN)² was established through Council Decision 2008/381/EC³ and serves to provide up-to-date, objective, reliable and comparable information on migration and asylum, with a view to supporting policymaking in the EU. It provides this information also to the general public.

In accordance with these aims, this study on "*The Different national Practises Concerning Granting of Non-EU Harmonised Protection Statuses*"⁴ was undertaken in order to analyse the different national practises concerning the granting of non-EU harmonised protection statuses, i.e. everything which is not Refugee and Subsidiary Protection as defined in the Qualification Directive 2004/83/EC.

The outcome of the study is intended for national and EU officials concerned with the development of asylum policy as well as academic researchers who would find this study useful.

The Commission *Policy Plan on Asylum Communication* (COM(2008) 3602) identified three important trends in the granting of asylum. One of these, when looking at positive decisions, is an ever-growing percentage of applicants granted subsidiary protection or other kinds of protection status based on national law, rather than refugee status according to the Geneva Convention. This is probably due to the fact that an increasing share of today's conflicts and forms of persecution are not covered by the Geneva Convention. This is further explained in the accompanying *Impact Assessment* (SEC(2008) 20293) which notes that increasingly, people are seeking protection for reasons not foreseen in the traditional refugee regime, i.e. in the Geneva Convention and its Protocol, and are receiving protection statuses with lower guarantees. Examples of the reasons for the granting of protection are: for compassionate, humanitarian, or medical reasons; as a result of environmental changes in the country of origin; non-refoulement; or "tolerated status". Looking at the number of positive asylum decisions between 2003 and 2006, there was an ever-increasing percentage of subsidiary protection, or other forms of protection being granted based on national laws: the share of positive decisions under the Geneva Convention did not change significantly (5.09% vs. 7%) specially when considering that the percentage of positive decisions granting subsidiary or other forms of protection more than tripled in the years concerned (from 4.57% in 2003 to 15.24% in 2006).

The most recent data available indicate, however, that the trend towards an increasing share of subsidiary protection and humanitarian protection statuses within the total number of positive decisions may have stopped: in the last quarter of the year 2008, out of the 53 155 decisions taken in first instance in 24 Member States (all except Italy, Cyprus and Denmark), 5 780 (10.9%) granted refugee status, 4 820 (9.1%) granted subsidiary protection status and 1 250 (2.4%) granted protection for humanitarian reasons. But still the number of positive decisions granting subsidiary and humanitarian protection taken together is higher than the number of decisions recognising refugee status. On one hand, the trend outlined above can be partly explained by a growing mismatch between the nature of demand for protection and the criteria of the Geneva Convention. When the Convention was formulated, it was for certain types of persecutions at that time. However, today's refugees flee from newer forms of persecutions and conflicts not covered by the Convention. On the other hand, this depends on the fact that Member States have developed additional or subsidiary forms of protection, so as to give asylum-applicants proper protection where they are not covered by the Geneva Convention, but still need protection. This development reflects two major difficulties:

² More information on the EMN, including its outputs, is available from <http://emn.sarenet.es>.

³ Available from <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32008D0381:EN:NOT>.

- The risk of a weakening of the general levels of protection, due to the fact that recognition of refugee status according to the Geneva Convention is becoming relatively rare. The Geneva Convention status includes a large number of rights attached to it, but is only granted under strict conditions. The other protection statuses can be obtained more easily but include fewer rights and are often limited in time. More and more people are being protected with these 'residual' statuses, often of precarious nature.
- The risk of the amplification of substantial differences across the EU in terms of practices, procedures and decision-making process for granting protection, due to the fact that the alternative forms of protection have emerged without any coordination, and are constantly evolving in all the Member States. The proliferation of such diversity in national practices may appear to be incompatible with the often stated objective of harmonising asylum policy in the EU.

In this context, the *Policy Plan on Asylum* states that it will, therefore, be important during the second phase of the CEAS to pay particular attention to subsidiary and other forms of protection and that a study will be launched on the possible alignment of national types of protection statuses which do not currently fall under the EU's regime of international protection. Another aspect to consider, taking into account the different protection statuses and with broad demarcation into two groups (namely the EU statuses covered by the definitions of Directive 2004/83/EC and national statuses not covered by this Directive), is whether the group with national statuses could, and if so how, fall under the Council Directive 2003/109/EC4 (Long-Term Residents), specifically Articles 3 (2b & c) and 12 (plus Recitals (3) and (16))

1.1. Methodology

This report has been produced by the EMN contact point in Finland in co-operation with legal experts of the Finnish Immigration Service and Ministry of the Interior following specifications given.

The study covers the processes, official guidelines and regulations relating to the study topic. The contact persons were selected on the basis of their special expertise; they all work in organisations closely linked with the asylum process.

The principal challenge with regard to conducting the study was the provisions on humanitarian protection in accordance with Council Directive 2004/83/EC. The challenge was that there are no studies upon this topic. Moreover, Section 52 included in this study framework was initially meant to cover compassionate grounds for residence permit. The practise has shown that Section 52 has become a kind of protection status –people are seeking protection for reasons not foreseen in the traditional refugee regime and therefore receiving protection statuses with lower guarantees. There is hardly any research on this – the process in itself as well as practise had to be covered through case by case study. It was not enough to merely read the decisions: the political atmosphere, ever changing application practise in the Helsinki Administrative Court as well as changing security situation in the applicant's country of origin had to be taken into account.

The following details were given as guidance for the report. The report should cover the extent of protection statuses to cover in your Member State, examples to include are victims of trafficking; temporary protection under national law, including in cases of mass influx not covered by Council Directive 2001/55/EC); environmental migrants; medical cases; stateless persons in need of protection (but not covered by Council Directive 2004/83/EC) and "tolerated" (e.g. like Germany's "Duldung") status. An example of what not to include is large-scale regularisations, particularly if they are not related to providing some form of protection. The general approach is to provide details of status(es) which provide protection in accordance with the definitions given in Section 1(d) and/or national definitions.

The report was undertaken as desk analysis analysing and synthesising recent and current information on asylum process. The information was gathered from applicable legislation, contributions from legal experts, news media and case law reporting in the Immigration Service.

While reading this study one must note, however, that translations of national legislation are unofficial: the text is legally binding only in Finnish and Swedish.

Other publications of relevance in the same context:

There are scarcely any published studies on national asylum policy or commentaries on the Finnish Aliens Act. This study will be first of its kind.

IGC: Asylum Procedures in IGC Participating States 2009 (Finland pages 121-142).

Luopajarvi, Katja: Sexuellt våld som folkrättskränkning. Åbo Akademi 2001.

Ministry of the Interior: Näkökulmia turvapaikkapolitiikkaan 2009 (Perspectives on national asylum policy 2009)

Nykänen Eeva: Luvallista, rajatonta ja jotain siltä väliltä: ulkomaalaislaki ja turvapaikanhakijataustaisten maahanmuuttajien jäsenyys. Article in *Oikeus* 37/2008 p. 345-364.

Nykänen Eeva: Comparative Legal Study on Subsidiary Protection – Finland. In “Subsidiary Protection of Refugees in the European Union: Complementing the Geneva Convention?” Daphné Bouteillet-Paquet (edit.). Bruylant, 2002. p. 397-432.

Pirjola Jari: Shadows in paradise: exploring Non-refoulement as an open concept. Article in *International Journal of Refugee Law*. 19/2007 p. 639-660.

Pehkonen, Samu & Eeva Puumala (2008) "Kehojen koreografia - kamppailu ruumiista vailla turvapaikkaa", *Terra* 120:3, p. 159-168. Puumala, Eeva & Samu Pehkonen "Corporeal choreographies between politics and the political. Failed asylum-seekers moving from body politics to bodyspaces", *International Political Sociology* (will be published in 2010).

Staffans Ida: Bitrådet asylärenden: utsikter för en omorganisering. Article in *Defensor Legis* 87/2006 p. 483-493.

Staffans, Ida: Förfarandet för bedömning av asylskäl i Finland samt därtill hörande säkringsåtgärder, 2005. <http://ethesis.helsinki.fi/julkaisut/oik/rikos/lt/staffans/>

2. Protection statuses granted in member state

The asylum procedure and the competencies of asylum institutions are governed by the Aliens Act of 2004. The Act provides grounds for granting international protection as well as other, non-protection –related grounds for a residence permit, which must be considered during a single asylum procedure. The 1951 Convention relating to the Status of Refugees and the European Convention on Human Rights (ECHR) have been transposed into Finnish law. The government’s asylum policy is committed to the full application of the 1951 Convention. The requirements for granting asylum under the Aliens Act are identical to those in the 1951 Convention.

Council Directive 2004/83/EC was transposed into Aliens Act on 9th of June 2009. The scope of granting subsidiary protection was narrowed to meet the definition of subsidiary protection in the Directive. At the same time, a new, third protection category (humanitarian protection) was introduced to retain the level of protection granted in Finland.

The asylum process in Finland is a single process; all grounds for residence permit are assessed at the same time. The requirements for issuing a residence permit are assessed individually for each applicant by taking account of the applicant’s statements on his or her circumstances and relevant country of origin information (COI).

Section 98 of the Aliens Act governs the decision making in the asylum process. The applicant is obligated to contribute to the investigation of his or her asylum application. The requirements for residence permit are assessed individually for each applicant by taking account of the applicant’s statements on his or her circumstances in the home country or country of permanent residence, and of information on the circumstances in that particular country. It is of the Immigration Service’s duty to assess and gain the information on the circumstances in the applicant’s home country or country of permanent residence. If there is no clear evidence against the applicant’s claim for asylum, the Immigration Service shall decide on the matter in favour of the applicant.

Section 98

Decisions on applications for international protection

(1) Applications for international protection are processed in a normal or accelerated procedure.

(2) The requirements for issuing a residence permit are assessed individually for each applicant by taking account of the applicant’s statements on his or her circumstances in the State in question and of real time information on the circumstances in that State obtained from various sources.

(3) After obtaining the available statement, the authorities shall decide on the matter in favour of the applicant on the basis of his or her statement if the applicant has contributed to the investigation of the matter as far as possible and if the authorities are convinced of the veracity of the application with regard to the applicant’s need for international protection.

(4) If the application is rejected, a decision on refusal of entry or deportation is issued at the same time, unless special reasons have arisen for not making a decision on removing the applicant from the country.

2.1. EU statuses covered by the definitions of Council Directives 2001/55/EC and 2004/83/EC

The statuses covering the definitions of the Council Directive 2004/83⁴/EC are asylum and subsidiary protection. Since the amendments to Aliens Act came into force in June 2009, the translations are only unofficial.

Asylum will be granted if the applicant resides outside his or her home country or country of permanent residence owing to well-founded fear of persecution because of race, religion, nationality, membership of a particular social group, or political opinion. It is also required that, owing to such fear, the applicant be unwilling to seek the protection of the country.

Examples of persecution due to membership of a particular social group include possible persecution because of sexual orientation or membership of a trade union.

Also, gender-based persecution directed at women can be taken into consideration as grounds for asylum. In such cases, the reason for persecution is membership of a particular social group.

Asylum is not granted if the applicant has committed, or if there are reasonable grounds to suspect that he or she has committed a very serious political crime or another serious crime prior to arriving in Finland as a refugee.

The grounds for granting asylum specified in the Aliens Act are the same as in the Geneva Refugee Convention, which Finland is a signatory of.

Section 87 Asylum

Asylum is not granted to aliens who, in the State where they have settled, have the rights and obligations which relate to the citizenship of this State and are recognised by its competent authorities./ An alien is refused asylum if the competent authorities in the country where he or she has settled have granted them rights and obligations relating to the citizenship of this country. (323/2009)

Asylum is not granted to aliens if they have committed, or if there are reasonable grounds to suspect that they have committed:

- 1) a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes;
 - 2) a serious non-political crime outside Finland before entering Finland as refugees;
- or
- 3) an act which violates the aims and principles of the United Nations.

Asylum is not granted to persons who are eligible for protection or help from bodies or offices of the United Nations other than the United Nations High Commissioner for Refugees (UNHCR). Once such protection or help has ceased without final regulation of the status of the person in accordance with the valid resolutions adopted by the United Nations General Assembly, the person is entitled to refugee status. If the person has voluntarily relinquished the protection mentioned above by leaving the safe area for reasons other than those related to a need for protection, his or her right of residence is examined under this Act.

- 4) *Alien are refused asylum if the competent authorities in the country where they have settled have granted them the rights and obligations attached to the citizenship of his country.*

⁴ In addition to Directive 2004/83/EC Section 3 of the Aliens Act was amended by its definitions. Definition of international protection was extended to cover subsidiary protection and humanitarian protection.

Section 87a (323/2009)

Acts of persecution

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. An accumulation of various measures of the same level of seriousness, including violations of human rights, is also considered as persecution.

Acts of persecution may take the form of:

- 1) acts of physical or mental violence, including acts of sexual violence;*
- 2) legal or administrative measures or police or judicial measures which are in themselves discriminatory or which are implemented in a discriminatory manner;*
- 3) prosecution or punishment which is disproportionate or discriminatory;*
- 4) absence or denial of judicial redress resulting in a disproportionate or discriminatory punishment;*
- 5) prosecution or punishment for refusal to perform military service in a conflict where performing military service would include acts under section 87(2);*
- 6) acts of gender-specific or child-specific nature.*

Section 87b (323/2009)

Reasons for persecution

When assessing the reasons for persecution, account shall be taken at least of factors relating to origin, religion, nationality and political opinion, or membership of a particular social group, in the manner provided later in this section.

As reasons for persecution:

- 1) origin means colour, descent or membership of a particular ethnic group;*
- 2) 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 with others, other religious acts or expressions of view, or forms of personal or communal conduct based on or mandated by any religious belief;*
- 3) nationality includes citizenship or 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;*
- 4) political opinion means in particular the applicant's opinion, thought or belief on potential actors of persecution and on their policies or methods.*

When assessing the reasons for persecution, a group can be considered to form a particular social group where:

- 1) the members of the group share a common background or an innate characteristic or belief that is so fundamental to identity or conscience that they cannot be forced to renounce it; and*
- 2) the group is perceived as being different by the surrounding society.*

A common characteristic of a social group may also be sexual orientation, which, when assessing reasons for persecution, cannot include acts considered to be criminal. Gender related aspects do not themselves alone create a presumption of persecution.

When assessing if the applicant has a well-founded fear of being persecuted it is immaterial whether the applicant actually possesses the origin-specific, religious, national, social or political characteristic which attracts the persecution, provided that such a characteristic is attributed to the applicant by the actor of persecution.

If the requirements for granting asylum are not met, an applicant for international protection can be issued a residence permit on the basis of **subsidiary protection**.

A residence permit will be granted if the applicant is threatened with capital punishment, execution, torture or some other inhuman or degrading treatment or punishment in his or her home country or country of permanent residence. A permit may also be granted if the applicant cannot return to his or her home country or country of permanent residence without being exposed to considerable personal danger owing to armed conflict.⁵

88 §

Section 88

Subsidiary protection

An alien residing in Finland is issued with a residence permit on grounds of subsidiary protection if the requirements under section 87 of the Aliens Act are not met, but substantial grounds have been shown for believing that the person, if returned to his or her country of origin or country of former habitual residence, would face a real risk of being subjected to serious harm, and he or she is unable, or owing to such risk, unwilling to avail him or herself of the protection of that country. Serious harm means:

- 1) death penalty or execution;*
- 2) torture or other inhuman or degrading treatment or punishment;*
- 3) serious and individual threat as a result of indiscriminate violence in situations of international or internal armed conflicts.*

An alien is not issued with a residence permit on the basis of subsidiary protection if there are reasonable grounds to suspect that he or she has committed:

- 1) a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes;*
- 2) an aggravated crime; or*
- 3) an act which violates the aims and principles of the United Nations.*

5

An alien may be refused asylum or a residence permit under section 88 or 88a, if he or she, in a part of his or her home country or country of permanent residence, does not have a well-founded reason to fear to be persecuted nor face a real risk of being subjected to serious harm, and if he or she can reasonably be expected to reside in that part of the country (Section 88e of the Aliens Act).

When assessing if a part of the country is in compliance with subsection 1, account shall be taken of the common circumstances in the part concerned and of the applicant's personal circumstances.

Directive 2001/55/EC is covered by Section 109 of the Aliens Act.

Section 109

Temporary protection

(1) Temporary protection may be given to aliens who need international protection and who cannot return safely to their home country or country of permanent residence, because there has been a massive displacement of people in the country or its neighbouring areas as a result of an armed conflict, some other violent situation or an environmental disaster. Providing temporary protection requires that the need for protection may be considered to be of short duration. Temporary protection lasts for a maximum of three years in total.

(2) The Government decides in a plenary session on population groups that may be given temporary protection and on the period when residence permits may be issued on the basis of temporary protection.

Provisions on temporary protection in compliance with Council Directive 2001/55/EY were added to Aliens Act already in 2002. Section 109 stipulates that temporary protection status may be issued for population groups solely on basis of a Government decision. This rather complex and time consuming criterion has proven to be merely a dead letter: temporary protection status was considered to cover Sri Lankan victims of Tsunami, but ultimately found too stiff a procedure. On the other hand, Tsunami was not regarded as an environmental disaster. In practise, the provision was circumvented with Section 51 of the Aliens Act (temporary residence permit).

2.2. Non-EU harmonised protection statuses

2.2.1. Section 88a: humanitarian protection

Council Directive 2004/83/EC was included in the Finnish Aliens Act on May 8th 2009. Sections of the Aliens Act prior to the amendment did not include qualification for an asylum application or an application for international protection. The qualification for an asylum application was earlier derived from Sections 94, subsection 1 and Section 3 subparagraph 13. Furthermore, an alien who referred to his or her endangered human rights was regarded as applying for asylum, unless he or she especially stated otherwise (Aliens Act, Section 94).⁶ The qualification for subsidiary protection laid down in the Directive was, however, considered more restrictive than the concept of international protection in Section 88 of the Aliens Act. In order to maintain the level of protection, alongside the concept of subsidiary protection, a new Section 88a (humanitarian protection) was added to the Aliens Act. An alien is granted humanitarian protection, if there are no grounds for asylum or subsidiary protection and non refoulement –principle hinders his or her removal.

As the amendments to the Aliens Act came into force on June 1st 2009, the legal praxis is yet to take its form. The EU-statuses covered by the definitions of Council directives 2001/55/EC and 2004/83/EC regarding protection are the following:

If the requirements for granting asylum or subsidiary protection are not met, an applicant for international protection can be issued a residence permit on the basis of humanitarian protection.

⁶ Government Bill 86/2008.

A residence permit will be granted if the applicant is unable to return to his or her home country or country of permanent residence because of an environmental catastrophe occurring there, or because of prevailing poor security circumstances there which may be caused by armed conflict or a troubled human rights situation.

Section 88a

Humanitarian protection

An alien residing in Finland is issued with a residence permit on the basis of humanitarian protection, if there are no grounds under section 87 or 88 for granting asylum or providing subsidiary protection, but he or she cannot return to his or her country of origin or country of former habitual residence as a result of an environmental catastrophe or a bad security situation which may be due to an international or internal armed conflict or a poor human rights situation.

An alien can be refused a residence permit on the basis of humanitarian protection if there are reasonable grounds to suspect that he or she has committed:

- 1) a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes;*
- 2) an aggravated crime; or*
- 3) an act which violates the aims and principles of the United Nations.*

New Section 88a covers also situations under Section 51, when an alien cannot actually be returned to one's home country or country of origin. Section 51 is so called "duldung"-status, which was applied widely during 2004-2006 for the Afghan, Somali and Iraqi nationals without grounds for asylum/subsidiary protection or any other residence permit. As the new Section 88a came into force, it was stipulated that continuance for expiring temporary residence permits under Section 51 may be granted in accordance with Section 88a if removal is still impossible.⁷

Section 51

Issuing residence permits in cases where aliens cannot be removed from the country

- (1) Aliens residing in Finland are issued with a temporary residence permit if they cannot be returned to their home country or country of permanent residence for temporary reasons of health or if they cannot actually be removed from the country.*
- (2) Issuing a residence permit does not require that the alien have secure means of support.*
- (3) If aliens are issued with a residence permit under subsection 1, their family members residing abroad are not issued with a residence permit on the basis of family ties.*

⁷ A temporary residence permit will be granted if the applicant cannot be returned to his or her home country or country of permanent residence for health reasons or if his or her deportation is not possible in practice.

2.2.2. Residence permit on compassionate grounds

During the asylum interview, other possible grounds for granting a residence permit are also examined. These grounds are not related to the need or requirements for international protection. A continuous residence permit will be granted if rejecting the application is clearly unreasonable considering the applicant's health, ties established to Finland, or some other individual, humane reasons. In this case, the circumstances under which the applicant would find him or herself in the home country or his or her vulnerable position are taken into special consideration.

As mentioned earlier in this study, Finland applies single asylum procedure. Given the fact that an asylum applicant has an obligation to cooperate, he or she should present and provide all the evidence on one's case in the asylum process, including health condition. Further clarification may be provided during the process.

Section 52

Issuing residence permit on compassionate grounds

(1) Aliens residing in Finland are issued with a continuous residence permit if refusing a residence permit would be manifestly unreasonable with regard to their health, ties to Finland or on other compassionate grounds, particularly in consideration of the circumstances they would face in their home country or of their vulnerable position.

(2) Issuing a residence permit does not require that the alien have secure means of support.

(3) If aliens are issued with a residence permit under subsection 1, their family members are issued with a residence permit under section 47(3).

(4) If unaccompanied minor children who have entered Finland are issued with a residence permit under subsection 1, their minor siblings residing abroad are issued with a continuous residence permit. A requirement for issuing a residence permit is that the children and their siblings have lived together and that their parents are no longer alive or the parents' whereabouts are unknown. Another requirement for issuing a residence permit is that issuing the permit is in the best interest of the children. Issuing a residence permit does not require that the alien have secure means of support.

The intention of the legislator was that residence permit on compassionate grounds would be chiefly applied within the asylum process. It is, however, possible to grant residence permit on compassionate grounds outside the asylum process. Although the form for residence permit application does not include compassionate grounds as a separate ground for residence permit, compassionate grounds are regularly referred to in the application process by applicants' solicitors.

The implementation of section 52 has had different forms depending on the type of application. If the applicant has lodged an application solely for residence permit, residence permit on compassionate grounds has been granted to a great extent in medical cases (illness has usually emerged after entering Finland). The applicant's health condition hinders the removal usually for a longer period than one year and/or the circumstances in the applicant's home country would put him or her under a risk (lack of medical treatment etc). If the application was primarily attached to application for asylum (in Finland they are processed at the same time), residence permit on compassionate ground is granted for various reasons mentioned in Section 52 or there are multiple reasons and residence permit is granted after consideration. Residence permit on compassionate grounds is chiefly granted under the following circumstances:

- Health condition: mental disorder, PTSD, depression, internal disease (diabetes, coronary disease, cancer etc.). Granting residence permit with regard to applicant's health would require that

the disease is expected to shorten the applicant's lifetime and/or there is no adequate health care in applicant's home country.

- Age: the applicant is either a minor or an elderly person with no family relations or a social network in the home country (vulnerable position)
- Sex: typically young female; cultural grounds (Muslim) COI: Afghanistan, Iraq, Iran, Angola, Congo, and Serbia Montenegro (vulnerable position).
- Stateless persons (removal to the country of origin would be unreasonable) e.g. Iranian Kurds from Al Tash camp (Iraq).
- Ties to Finland: the applicant has resided in Finland at least three years due to prolonged process. -A typical case is a family with under aged children. Children have usually resided most of their lifetime in Finland and are already attending primary school. Parents are usually working, and refusing a residence permit would be manifestly unreasonable.
- Witnesses to a trial on human trafficking (no clear evidence on persecution or the claim is somewhat doubtful)
- Unaccompanied minors (usually no grounds for asylum or subsidiary protection)
- Determining of one's country of origin has been unsuccessful
- Culture related reasons –e.g. family members of quota refugees: in case of divorce returning to the country of origin would be unreasonable due to person's vulnerable situation as a single, divorced woman.
- Leading family life would be impossible in the parent's country of origin, best interest of the child (both guardians represent different nationalities)

2.3. Directive 2004/81/EC on victims of human trafficking

Trafficking in human beings and aggravated trafficking in human beings were criminalized as offences in the Penal Code of Finland in August 2004. According to the Penal Code, a person convicted for trafficking in human beings shall be sentenced to imprisonment for a minimum of four months and a maximum of six years, and for aggravated trafficking in human beings to imprisonment for a minimum of two years and a maximum of ten years.

The European Union Council Directive 2004/81/EC⁸ on residence permits issued to third-country nationals who are victims of trafficking and who cooperate with the competent authorities, has been transposed into national legislation in July 2006 by amending the Aliens Act. Victims of human trafficking are now entitled to a fixed-term residence permit issued for six months to one year when there are well-founded reasons to believe that they are victims of human trafficking, they have broken the contacts with the criminals and are willing to help the authorities to solve the crime. The residence permit may be renewed if the requirements are still valid. Victims in a particularly vulnerable position are issued a fixed-term residence permit of permanent nature, and in their case, cooperation with the authorities is not required. Before issuing the actual residence permit, authorities may provide victims with a reflection period, varying from 30 days up to six months. During this period the victims can recover from their experiences and decide whether they are willing to cooperate with the authorities.

⁸ Directive on victims of human trafficking is included in this study in order to meet the specifications for the study.

An amendment to the Act on the Integration of Immigrants and Reception of Asylum Seekers to set up a system of measures to help victims of human trafficking entered into force in the beginning of 2007. An Act criminalizing the purchase of sexual services from victims of human trafficking entered into force in October 2006. The penal scale imposes a fine or imprisonment for a maximum of six months.

In September 2006 Finland ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol). Finland is also a party to the UN Convention on the Rights of the Child and has signed its Optional Protocol on the sale of children, child prostitution and child pornography. Finland has also signed the Council of Europe Convention on Action against Trafficking in Human Beings in August 2006 and is currently defining the prerequisites for ratification.

Section 52a (Aliens Act)

Issuing a residence permit for a victim of trafficking in human beings

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(1) A victim of trafficking in human beings staying in Finland is issued with a temporary residence permit if:

1) the residence of the victim of trafficking in human beings in Finland is justified on account of the pre-trial investigation or court proceedings concerning trafficking in human beings;

2) the victim of trafficking in human beings is prepared to cooperate with the authorities so that those suspected of trafficking in human beings can be caught;

and

3) the victim of trafficking in human beings no longer has any ties with those suspected of trafficking in human beings.

(2) If the victim of trafficking in human beings is in a particularly vulnerable position, the residence permit may be issued on a continuous basis regardless of whether the requirements laid down in subsection 1(1) and (2) are met.

(3) Issuing the residence permit is not conditional on the alien having secure means of support.

(4) If a victim of trafficking in human beings is issued with a temporary residence permit, his or her family members staying abroad are not issued with a residence permit on the basis of family ties. If he or she is issued with a continuous residence permit, family members are issued with a residence permit under section 47(3).

Finland emphasizes that trafficking in human beings is also a human rights question and not only a question of security and organized crime.

Finland is mainly a country of transit but also a country of destination for trafficking in human beings. Victims are brought to Finland - and via Finland to other destinations - for the purposes of both sexual and labour exploitation. Due to the hidden nature of the phenomenon, it is difficult to give accurate numbers of human trafficking cases in or passing through Finland. The working group that in 2005 drafted the first National Plan of Action against Trafficking estimated that the number of victims might reach hundreds each year. Until the end of 2008, there have been more than 30 people within the scope of the support system for victims of trafficking. More than 20 pre-trial investigations concerning trafficking offences have been committed. However, there is only one court decision on trafficking crimes so far.⁹

⁹ A Revised National Plan of Action against Trafficking in Human Beings was adopted by the Government on 25 June 2008. It represents an update and further specification of the measures described in the first National Plan of Action against Trafficking in Human Beings adopted in 2005, based on experiences from the implementation of those measures. The Government also appointed the Ombudsman for Minorities the National Rapporteur on action against human trafficking, acting as an independent authority. Like its predecessor, the Revised Plan is built on a human-rights-based and victim-oriented approach and aims to take the child and gender

2.4. Non-refoulement principle

Section 147 of the Alien Act stipulates: no one may be refused entry and sent back or deported to an area where he or she could be subject to the death penalty, torture, persecution or other treatment violating human dignity or from where he or she could be sent to such an area.

In regard to non-refoulement principle, Finland has agreed to comply with the Geneva Convention, European Convention on Human rights as well as UN Covenant on Civil and Political Rights. They all include non-refoulement principle with an own definition. According to Government Bill 28/2003, by agreeing to obey above the conventions, Finland's possibility of refusing entry and sending aliens back to their home country is actually narrower than Article 33 of the Geneva Convention presumes. Given the fact that Article 3 of ECHR forbids removal from the country under conditions mentioned in the Article, it has been stated that removal could be exceptionally possible for those in need of international protection if Article 33 paragraph applies to the case in question. If Article 3 of the ECHR would apply to the same case, removal would be considered impossible.

1951 Geneva Convention Article 33: prohibition of expulsion or return ("refoulement")

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

2. The benefit of the present provision may not, however, be claimed by a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which he is, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country

ECHR Article 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

UN Covenant on Civil and Political Rights Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation

Within the scope of this study, non-refoulement principle covers all other statuses except residence permit on compassionate grounds (Section 52) and temporary residence permit (Section 51). Non-refoulement principle may be given broader interpretation than the literal interpretation of the principle and consider it covering some exceptional cases under Section 52. An illustrative case is Iranian woman who has applied for a new fixed-term residence permit. The first fixed-term residence permit was issued on the basis of family ties (e.g. marriage with a fellow citizen in Finland). Afterwards the couple has divorced and in those terms the requirements under which she was issued her first residence permit are not met in accordance with Section 54 of the Aliens Act.

Sections 87 and 88a of the Aliens lists cases in which the exclusion clause may be applied. Notwithstanding the exclusion clause, if the person would be in his or her country of origin or country of permanent residence under the threat of death penalty, torture, persecution or other treatment violating human dignity, he or she will be issued with a temporary residence permit (Section 89). Then there is not a possibility of being covered by the non-refoulement principle without gaining a residence permit.

aspect more closely into account in the implementation of measures. The importance of cooperation and a cross-discipline approach in action against human trafficking is further stressed. The Revised Plan pays particular attention to the identification of victims, increasing of awareness of human trafficking and preventive measures such as curbing demand.

Section 89 (323/2009)

Issuing residence permits when exclusion clauses are applied

Aliens residing in Finland who are not granted asylum or a residence permit on the basis of subsidiary protection or humanitarian protection because they have committed, or there are reasonable grounds to suspect that they have committed, an act referred to in section 87(2) or 88a(2) are issued with a temporary residence permit for a maximum of one year at a time if they cannot be removed from the country because they are under the threat of death penalty, torture, persecution or other treatment violating human dignity.

An alien with temporary residence permit under Section 89 is issued with a continuous residence permit after three years of continuous residence in Finland if the grounds for issuing a residence permit still exist (e.g. postponed removal).¹⁰

The exceptions to the non-refoulement principle given in Article 33 of the Geneva Convention may be applied when assessing national protection statuses. The exceptions to the non-refoulement principle are especially mentioned in Sections 88a (Humanitarian protection) and 36 (General requirements for issuing residence permits). Although humanitarian protection under Section 88a may be refused under certain circumstances, there is still the problem of removal to be solved. If the alien cannot be returned to one's home country for temporary reasons of health or one's actual removal is impossible, alien is issued with temporary residence permit in accordance with Section 51("duldung"). What comes to other national protection statuses (excluding temporary residence permit), general requirements for issuing residence permits mentioned in Section 36 are taken into account. All circumstances must be taken into consideration in order to decide, whether the exceptions to the non-refoulement principle are considered grave enough to refuse residence permit.

Section 36

General requirements for issuing residence permits

(1) A residence permit may be refused if the alien is considered a danger to public order, security or health or to Finland's international relations. Endangering public health does not, however, prevent the issuing of an extended permit, if the requirements for issuing a permit are otherwise met. Endangering international relations does not, however, prevent the issuing of a residence permit on the basis of family ties or issuing a residence permit to an alien who has been issued with a long-term resident's EC residence permit by a Member State of the European Union. (358/2007)

(2) A residence permit may be refused if there are reasonable grounds to suspect that the alien intends to evade the provisions on entry into or residence in the country.

2.5. Appeal

A decision of the Finnish Immigration Service may be appealed before the Helsinki Administrative Court within 30 days following the decision being served to the applicant. Helsinki Administrative Court is an independent judiciary which processes appeals under following categories:

- Rejection for an application for protection
- Rejection of an applicant for temporary protection
- Removal from the Country, prohibition of entry or cancellation of a travel document issued in Finland (in a decision taken under the asylum procedure concerning temporary protection)
- Withdrawal of refugee status and cancellation of a refugee travel document or withdrawal of subsidiary protection status and related cancellation of an alien's passport

¹⁰ Section 113 of the Aliens Act.

- Cancellation of refugee status and related cancellation of a refugee status and cancellation of a refugee travel document or cancellation of subsidiary protection status and related cancellation of an alien's passport

In matters related to residence permits issued outside the asylum process, the competent administrative court is the one in whose judicial district the applicant lives.

The decision of the Administrative Court may be appealed to the Supreme Administrative court if the latter gives leave to appeal. A leave to appeal may be given if its important for the application of the Act to other similar cases, for the sake of consistency in legal practise, or if there is some other compelling reason for granting leave.¹¹

Usually appealing a decision of the Finnish Immigration Service may lead to suspension of removal, but within the framework of this study appeal is not suspensive since statuses mentioned do not include removal from the country or refusal or entry. If a person appeals the decision issuing residence permit he or she is entitled to benefits of the residence permit holder regardless of the appeal.

3. Procedure(s) followed and rights provided

This chapter describes the different procedures in which protection statuses are granted. Asylum, subsidiary protection, humanitarian protection and residence permit on compassionate grounds may be issued within asylum process. Unaccompanied minors, stateless persons¹² and group based temporary protection are processed in special procedures.

3.1. Asylum procedures

All asylum applicants have the right to enter the territory and to remain in Finland for the duration of the asylum procedure, and until an enforceable decision on refusal of entry is made in the matter. Asylum applicants have the right to be heard during the procedure and to enjoy the basic legal guarantees such as interpretation and legal assistance.

It is not possible to lodge an application for asylum or international protection from abroad by any means. An application may be filed later than upon arrival in Finland under the following circumstances:

- The circumstances in the foreign national's home country or country of permanent residence have changed during his or her stay in Finland (*Sur place*)
- The person was not able to present a statement in support of his or her application any earlier.
- Other reasonable grounds for making an application at a later stage in accordance with Section 9 of the Aliens Act.

¹¹ Judicial system in Finland see <http://www.oikeus.fi/8108.htm>

¹² There are no special procedures in place to regularise stateless persons in Finland.

3.1.1. Processing the claim

Under the Dublin procedure, an asylum application filed in Finland may be transferred to be processed in another State party to the Dublin II Regulation. Dublin case may arise under the following circumstances:

- The asylum seeker applied previously for asylum in another country.
- Asylum applicant's dependant has obtained refugee status in another State party.
- The asylum applicant holds a residence permit or visa from another State party.
- The asylum applicant has entered Finland illegally through another State party.

If any of these criteria has been fulfilled, the Finnish Immigration Service will issue a decision to refuse the applicant's entry to Finland and to transfer him or her to another State party.

After the Police or Border Guard has established the identity, travel route and means of entry of the asylum applicant, the asylum application is examined by the Finnish Immigration Service. The asylum applicant is interviewed in the Immigration Service in order to find out whether there are protection-related or non-protection-related grounds for granting a residence permit. The requirements for issuing a residence permit are assessed individually for each applicant by taking account the applicant's claim for asylum and relevant country of origin information.

The Ombudsman for minorities may, on case by case basis, issue an opinion concerning an asylum applicant. The Immigration Service usually sets a reasonable deadline for issuing the opinion.

Once the asylum applicant has been interviewed, the Immigration Service may contact Security Police. This is done if the application reveals reasonable grounds to suspect that a person has committed a crime against peace, war crime or crime against humanity as defined by international agreements, or the applicant has committed a serious non-political crime before entering Finland as a refugee.¹³

A decision of the Finnish Immigration Service may be appealed before the Helsinki Administrative Court. The time limit for making an appeal is 30 days following the decision being served to the applicant. The decision of the Administrative Court may be appealed to the Supreme Administrative Court if the latter 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, for the sake of consistency in legal practise or if there is some other compelling reason for granting leave.

According to Section 40 of the Aliens Act, an asylum applicant may reside legally in the country while his or her application is being processed, and until there is a final decision on his or her removal from the country.¹⁴

A foreign national residing in Finland may make a subsequent appeal after his or her previous application was rejected by the Finnish Immigration Service or an Administrative Court. One can also file a subsequent application after he or she has left the country for a short time following a negative decision on his or her previous claim. If the previous claim is still being processed, a new application is submitted to the authorities processing the matter. A subsequent application is then considered as a new statement in the matter.

The Aliens Act leaves a possibility to issue a decision on a subsequent application without an asylum interview. A decision may be processed in an accelerated procedure and refusal of entry enforced immediately after serving to the applicant, unless otherwise ordered by an administrative court.

¹³ Section 87 of the Aliens Act.

¹⁴ If an asylum seeker leaves Finland during the asylum procedure without informing the authorities, the application may be regarded as implicitly withdrawn.

3.1.2. Asylum application made by citizens of European Union member states

Finland observes the Protocol on Asylum for Nationals of Member States of the European Union annexed to the Treaty of Amsterdam and presumes that EU member states are considered to be safe countries of origin. All applications are, however, examined on their merit under an accelerated procedure.

3.1.3. Special procedures

Unaccompanied minors, stateless persons and persons granted temporary group based protection is processed in special procedures.

All unaccompanied minors have access to the asylum procedure. The consideration of the best interest of the child and the hearing obligation have been dealt with in the motivations of the Government Bill on the Aliens Act and in the report of the Administration Committee (4/2004 to Parliament). Consideration should be given to the best interest of the child as a whole, taking into account the individual needs, wishes and opinions of the child. It should be noted that the interest of the child is always individual and linked to the child's life situation at any given time. Moreover, it should be established whether the interest of the child differs from that of the guardian.

When interviewing minors seeking asylum, consideration is paid to the interview guidelines issued by the Finnish Immigration Service (November 2001).

If a minor has arrived in Finland accompanied by a guardian, the Finnish Immigration Service will as a rule hear a minor who has reached the age of 15 by carrying out an asylum interview. According to Section 14(3) of the Administrative Procedure Act a minor who has attained the age of fifteen years and his/her custodian or other legal representative have a parallel and separate right to be heard in a matter pertaining to the person of the minor or his/her personal rights or interests.

When a child under the age of 15 is concerned the Finnish Immigration Service enquires of the child, in connection with the asylum interview of either guardian and in the presence of both or one of the guardians, whether the child has any facts which he or she wishes to bring forth. Where necessary, the Finnish Immigration Service will also hear a child under the age of 15 by carrying out an asylum interview, with consideration paid to the child's age and level of maturity. If the minor's guardian has been heard, and the minor is unable or unwilling to be heard for one reason or another, the hearing of the minor may be manifestly unnecessary.

In the transposition of the EU Asylum Procedures Directive, a proposal has been made to add in the Aliens Act an obligation to give a representative a possibility to be present at the asylum interview of an unaccompanied minor. This is the practise already.

The Aliens Act was amended in 2002 in order to implement the essential provisions of Council Directive 2001/55/EC. Temporary protection may be given to persons who need international protection and who cannot return safely to their home country or country of permanent residence because there has been a massive displacement of people in the country or its neighbouring areas as a result of an armed conflict, some other violent situation or an environmental disaster. Requirement for providing temporary protection is that the need for protection is considered to be of a short duration. Temporary protection is granted up to three years total. Foreign national in need of temporary protection are issued a residence permit for a maximum of one year at a time.

Stateless persons may lodge applications for asylum in Finland through same procedures as other asylum applicants. In the asylum procedure, statelessness is taken duly into account in order to assess, whether the applicant can receive protection in another country. If no such country exists, the applicant will be granted appropriate status in Finland. An Alien's passport may be issued to those with no citizenship. A refugee travel document is issued to applicants who are granted refugee status.

3.2. Decision making and status

The criteria for granting asylum laid out in Article 1 A (2) of the 1951 Geneva Convention is included in Section 87 of the Aliens Act. Section of the Aliens Act defines asylum as a residence permit issued to a refugee under the asylum procedure. A person is granted refugee status if he or she meets the requirements set out in Section 87.

Section 87

Asylum

(1) 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.

(2) Asylum is not granted to aliens if they have committed, or if there are reasonable grounds to suspect that they have committed:

1) a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes;

2) a serious non-political crime outside Finland before entering Finland as refugees;

or

3) an act which violates the aims and principles of the United Nations.

(3) Asylum is not granted to persons who are eligible for protection or help from bodies or offices of the United Nations other than the United Nations High Commissioner for Refugees (UNHCR). Once such protection or help has ceased without final regulation of the status of the person in accordance with the valid resolutions adopted by the United Nations General Assembly, the person is entitled to refugee status. If the person has voluntarily relinquished the protection mentioned above by leaving the safe area for reasons other than those related to a need for protection, his or her right of residence is examined under this Act.

If an asylum applicant does not meet the criteria mentioned above, he or she may be granted complementary form of protection, that is, subsidiary protection or humanitarian protection.

The criteria for subsidiary protection are defined in Section 88 of the Aliens Act. Subsidiary protection may be granted where there are substantial grounds to believe that the person concerned, if returned, would face a real risk of suffering serious harm, and is unable or owing to such risk unwilling to avail himself or herself of the protection of the State (one's country of origin or permanent residence). Examples of serious harm would be death penalty or execution, torture or inhuman or degrading treatment or punishment, serious and individual threat by reason of indiscriminate violence in situations of international or internal armed conflict.

88 §

Section 88

Subsidiary protection

An alien residing in Finland is issued with a residence permit on grounds of subsidiary protection if the requirements under section 87 of the Aliens Act are not met, but substan-

tial grounds have been shown for believing that the person, if returned to his or her country of origin or country of former habitual residence, would face a real risk of being subjected to serious harm, and he or she is unable, or owing to such risk, unwilling to avail him or herself of the protection of that country. Serious harm means:

- 1) death penalty or execution;*
- 2) torture or other inhuman or degrading treatment or punishment;*
- 3) serious and individual threat as a result of indiscriminate violence in situations of international or internal armed conflicts.*

An alien is not issued with a residence permit on the basis of subsidiary protection if there are reasonable grounds to suspect that he or she has committed:

- 1) a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes;*
- 2) an aggravated crime; or*
- 3) an act which violates the aims and principles of the United Nations.*

An asylum applicant may be granted humanitarian protection if he or she is unable to return to the country of origin because of an environmental disaster or a poor security situation resulting from an international or internal armed conflict or a serious human rights situation.

Section 88 a ***Humanitarian protection***

An alien residing in Finland is granted humanitarian protection status, if there are no grounds under section 87 or 88 for granting asylum or providing subsidiary protection, but he or she cannot return to his or her country of origin or country of former habitual residence as a result of an environmental catastrophe or a bad security situation which may be due to an international or internal armed conflict or a poor human rights situation.

An alien can be refused a residence permit on the basis of subsidiary protection if there are reasonable grounds to suspect that he or she has committed.;

- 1) a crime against peace, war crime or crime against humanity as defined by international agreements concerning such crimes;*
- 2) an aggravated crime; or*
- 3) an act which violates the aims and principles of the United Nations.*

Asylum procedure in Finland can be defined as single procedure. All grounds, both protection and non-protection related, are examined when determining whether an asylum applicant may be granted residence permit. The non-protection-related grounds in traditional sense that may form the basis for being granted a residence permit are: compassionate grounds and cases where a foreign national cannot be removed from the country.

Section 52 (compassionate grounds) is chiefly applied in the asylum process. If there are no grounds for asylum or international protection but applicant's situation as a whole reflects impossibility of returning back to the country of origin or permanent residence, one is granted residence permit on

compassionate grounds. Residence permit on compassionate grounds is for fixed term but continuous by its nature.

Section 52 is usually applied when processing asylum applications of unaccompanied minors. As concerns unaccompanied minors, individual grounds for seeking asylum are rarer than those relating to the security situation in the home country. Any individual grounds have typically involved domestic violence or sexual abuse. In 2008 a total of 228 decisions were issued for unaccompanied minors seeking asylum, of which 157 were positive¹⁵. As regards the positive decisions, three were for asylum whereas 130 applicants were granted a residence permit on the basis of the need for protection (security situation in the country of origin). A residence permit on individual compassionate grounds was granted to 23 applicants. Owing to the nature of the matter, it is rare that an unaccompanied minor seeking asylum is deemed to be a refugee and granted asylum in accordance with Section 87 of the Aliens Act. Refugee status requires individual threats of persecution relating to one's person, which is generally not the case for children, small children in particular. On the other hand, many minors are deemed to be otherwise in need of international protection, chiefly on the basis of the general living conditions in their home country or country of permanent residence, even if no evidence of the threat of persecution or severe human rights violations has been presented (cf. Section 88 of the Aliens Act). Although all applications for asylum submitted by minors are processed individually as concerns the grounds for persecution, it has been suggested that Section 87 of the Aliens Act be amended to include so-called child-specific grounds for persecution.

An application for protection may be rejected with refusal of entry under the following circumstances:

- the application does not present grounds for granting asylum or a complementary form of protection
- The situation in asylum applicant's country of origin or country of permanent residence does not warrant the need of international protection
- The application does not reflect any non-protection-related grounds for residence permit

If the application has been rejected but the applicant cannot be removed from the country for e.g. technical or health reasons, the removal can be suspended. The applicant is then granted temporary residence permit (type B) in accordance with Section 51 of the Aliens Act. The public opinion has been widely against temporary residence permits. Previously temporary residence permit did not allow working without applying for working permit which affected the livelihood of rejected applicants. Right to restricted employment was included in the Aliens Act with the law amendment of 2009. If the work exceeds the time limits set in Section 80, the alien is required to have a residence permit for an employed person. Further, if the residence permit under Section 51 is granted for temporary reasons of health or actual impediment for removal, the alien is not entitled to family reunification.

Section 51

Issuing residence permits in cases where aliens cannot be removed from the country

(1) Aliens residing in Finland are issued with a temporary residence permit if they cannot be returned to their home country or country of permanent residence for temporary reasons of health or if they cannot actually be removed from the country.

(2) Issuing a residence permit does not require that the alien have secure means of support.

(3) If aliens are issued with a residence permit under subsection 1, their family members residing abroad are not issued with a residence permit on the basis of family ties.

¹⁵ Out of the 63 negative decisions 50 were issued within the Dublin procedure. Nine minors seeking asylum were granted a completely negative decision after they were found by age determination to be adults and had no credible grounds for persecution.

3.2.1. Statuses granted outside asylum procedure

Nevertheless Finland applies single asylum procedure; there are statuses that may be granted outside the procedure such as temporary protection (Section 109 of the Aliens Act) or other humanitarian immigration (section 93 of the Aliens Act).

Alongside asylum procedure, there is a system for admitting foreign nationals into Finland on special humanitarian grounds or to fulfil international obligations. The process begins with the Ministry of the Interior and the Ministry of Foreign Affairs preparing a joint proposal for a government decision whether to grant a residence permit on humanitarian grounds. The Government makes the final decision in plenary sessions while the Finnish Immigration Service will issue the residence permit. The possibility of granting a residence permit on special humanitarian grounds has been applied with witnesses who have appeared at international criminal tribunals like International Criminal Tribunal for the former Yugoslavia.

Section 93

Other humanitarian immigration

(1) The Government may decide in a plenary session on admitting aliens into Finland on special humanitarian grounds or to fulfil international obligations.

(2) The Ministry of the Interior and the Ministry for Foreign Affairs prepare a joint proposal for Government decision.

Providing temporary protection in accordance with EU Temporary Protection Directive requires that the need for protection is considered to be of short duration. As with humanitarian immigration, the Government decides in a plenary session on population groups that may be granted temporary protection and on the period during which residence permits may be issued on the basis of temporary protection.

Residence permit on temporary protection grounds is issued for a maximum of one year at a time.

Section 109

Temporary protection

(1) Temporary protection may be given to aliens who need international protection and who cannot return safely to their home country or country of permanent residence, because there has been a massive displacement of people in the country or its neighbouring areas as a result of an armed conflict, some other violent situation or an environmental disaster. Providing temporary protection requires that the need for protection may be considered to be of short duration. Temporary protection lasts for a maximum of three years in total.

(2) The Government decides in a plenary session on population groups that may be given temporary protection and on the period when residence permits may be issued on the basis of temporary protection.

There are no special procedures in order to regularise stateless person in Finland.

3.3. Rights provided

Recognised refugees and beneficiaries of complementary protection are allowed to **work** (Section 79 of the Aliens Act) and have access to social assistance, **health care and accommodation**. The extent of health care is the same as that of Finnish citizens. Health Centres are responsible for public primary health care and children have access to school health care.

Aliens with temporary residence permit under Section 51 of the Aliens Act are entitled to restricted employment, included in the Aliens Act with the law amendment of 2009. If the work exceeds the time limits set in Section 80, the alien is required to have a residence permit for an employed person.

Local authorities on municipal level support the integration into Finnish society. They also have a right to family reunification for nuclear family members (spouse and unmarried children under 18 years of age).

3.3.1. Length of authorisation to reside and renewal

Section 53

Validity of first fixed-term residence permits

(1) First fixed-term residence permits are issued for one year, however for no longer than the validity period for the travel document, unless requested for a shorter period.

(2) If a residence permit is issued on the basis of family ties, the validity period for the residence permit must not, however, exceed the validity period for the family member's residence permit which was the basis for issuing the residence permit.

(3) A residence permit may be issued for a period longer or shorter than one year if it is issued for carrying out a legal act, an assignment or studies that will be completed within a set period. However, the duration of a fixed-term residence permit must not exceed two years.

*.
. .*

(6) A victim of trafficking in human beings is issued with a residence permit for at least six months and for a maximum of one year. (619/2006)

(7) A residence permit on the basis of refugee status or subsidiary protection is issued for four years. (323/2009)

Recognized refugees and beneficiaries of subsidiary humanitarian protection are first issued a fixed-term residence permit (type A). The first residence permit is issued for four years and the requirement for issuing a new fixed term residence permit is that the conditions under which the person was issued his or her previous residence permit are still valid. In order to transpose the EU Qualification Directive into national law, the first fixed term residence permit (type A) for refugees and beneficiaries of subsidiary protection was changed from one year to a four-year permit in 2009.

Section 54 (34/2006)

Issuing extended permits

(1) A new fixed-term residence permit is issued if the requirements under which the alien was issued with his or her previous fixed-term residence permit are still met.

(2) If an alien has been issued with a residence permit on the basis of international protection, a new fixed-term residence permit is issued, unless it is likely on the basis of facts

that have emerged that the requirements under which the alien was issued with the previous fixed-term residence permit are no longer met.

.....

(5) An alien who has been issued with a temporary residence permit under section 51 because he or she cannot be removed from the country and a victim of trafficking in human beings who has been issued with a temporary residence permit are issued with a continuous residence permit after a continuous residence of two years in the country if the circumstances on the basis of which the alien was issued with the previous fixed-term permit are still valid.

(6) A new fixed-term residence permit is issued on new grounds if such grounds would qualify the alien for the first residence permit. An alien who has been issued with a temporary or continuous residence permit on the basis of family ties may be issued with a residence permit on the basis of close ties to Finland after these family ties are broken.

Residence permit granted under section 52 of the Aliens Act is issued for one year. A new permit may be issued for a maximum of four years. In practice, former asylum applicants with residence on non-protection-related grounds are usually issued a new one year residence permit.

Foreign nationals (incl. refugees and beneficiaries of other types of protection) may become eligible for a permanent residence permit (type P) after four years of continuous legal residence in Finland if there are no obstacles to issuing a permanent residence permit under the Aliens Act.

Section 56

Issuing permanent residence permits

(1) A permanent residence permit is issued to aliens who, after being issued with a continuous residence permit, have resided legally in the country for a continuous period of four years if the requirements for issuing an alien with a continuous residence permit are still met and there are no obstacles to issuing a permanent resident permit under this Act. Residence is considered continuous if an alien has resided in Finland for at least half the validity period of the residence permit. Absence resulting from ordinary holiday or other travel or work at a work site abroad on secondment by a Finnish employer is not considered an interruption of continuous residence.

....

(3) The period of four years is calculated from the date of entry into the country if the alien held a residence permit for continuous residence upon entry. If the residence permit was applied for in Finland, the period of four years is calculated from the first day of the fixed-term residence permit issued for the first continuous residence in the country.

(4) If a person has been issued with a residence permit on the basis of refugee status, subsidiary protection or humanitarian protection, the period of four years is calculated from the date of entry into the country. (323/2009)

Section 55 (34/2006)

Duration of extended permits

(1) A new fixed-term residence permit is issued for a maximum of four years. (358/2007)

(2) The provisions of section 53 on the duration of the first fixed-term residence permit apply to the cases referred to in section 54(3) and (5) if the temporary grounds for a residence permit become permanent.

A person with refugee status is issued a refugee travel document. A person who has been issued a residence permit on the basis of subsidiary protection or humanitarian protection is issued Alien's passport. It should be mentioned, however, that issuing a travel document is discretionary.

Section 35

Attaching residence permits to travel documents

(1) A requirement for issuing a residence permit is that the alien has a valid travel document. However, a residence permit may be issued even if the alien does not have a valid travel document if the permit is issued under section 51, 52, 52a, 87, 88, 88a, 89 or 110. (323/2009)

.....

3.3.2. Family reunification

Family members of an alien who has been issued with a continuous or permanent residence permit, are issued with a continuous residence permit. If unaccompanied minor children who have entered Finland are issued with a residence permit under Section 52, subsection 1, their minor siblings residing abroad are issued with a continuous residence permit upon application. A requirement for issuing a residence permit is that the children and their siblings have lived together and that their parents are no longer alive or the parents' whereabouts are unknown. Another requirement for issuing a residence permit is that issuing the permit is in the best interest of the children. Issuing a residence permit does not require that the alien have secure means of support

If an alien is issued with a residence permit under Section 51, his or her family members residing abroad are not issued with a residence permit on the basis of family ties.

3.3.3. Right to integration plan

Act on Integration of Immigrants and Reception of Asylum Seekers (Act on Integration) governs the integration of refugees and also applies to persons granted residence permit on the basis of subsidiary protection or humanitarian protection under Section 113. Likewise persons with residence permit granted under Section 51, 52 and 93 are covered with the same provisions.

An integration plan is made with every recognised refugee and beneficiaries of complementary protection for three years¹⁶. The municipality is in charge of the drafting, implementation and development of the integration programme, as well as of the monitoring of programme realisation and impacts. At the initiative of the municipality the Employment Office and other authorities where necessary shall participate in the drafting and implementation of the programme concerning their sector. Immigrants, non-governmental organisations operating in the municipality, employee and employer organisations and other parties shall be heard during the drafting and implementation of the programme. Measures and services shall be planned so as to enable the efficient and correctly timed promotion and support of immigrant integration.

The integration plan consists of language courses, vocational training, and preparatory training for vocational studies. The studies include Finnish and everyday skills, communication skills and information technology as well as an introduction to Finnish society and culture.

An individual plan on the care and upbringing is drawn up for each minor in the asylum process. Concerning minors who have been granted a residence permit, the care or rearing plan forms part of

¹⁶ After three years it is every municipality's own choice, whether they are willing to provide further education etc.

the integration plan drawn up by the municipality of domicile. According to the Act on the Amendment of Act on the Integration of Immigrants and Reception of Asylum Seekers (1215/2005) the right to an integration plan lasts for three years from the date of entry into the Population Information System of the immigrant's first domicile (Section 11). Where necessary the time may be extended based on personal reasons. According to Section 7 of the same Act the integration programme shall contain plans on measures, services, cooperation and responsibilities promoting and supporting integration as well on taking considerations of the immigrant's needs in the planning and organisation of other service measures. The programme shall also incorporate the promotion of ethnic equality and favourable ethnic relations and the prevention of discrimination.

The municipality is in charge of the drafting, implementation and development of the integration programme as well as monitoring programme's realisation and impacts. At the initiative of the municipality the Employment Office and other authorities where necessary shall participate in the drafting and implementation of the programme as concerns their sector. Immigrants, non-governmental organisations operating in the municipality, employee and employer organisations and other parties shall be heard during the drafting and implementation of the programme. Measures and services shall be planned so as to enable efficient and timely promotion and support of immigrant integration.

Section 7 of the Act on Integration lists measures and services which the Employment Office and municipalities may use to support and promote integration. Such services include teaching in Finnish or Swedish, interpretation services, labour training and teaching complementing basic education.

Since unaccompanied minors have not been placed in care or placed through open care measures, municipalities are not obligated to provide after-care measures in accordance with the Child Welfare Act. According to a Government decision (512/1999, Section 5(1)) the state may only compensate municipalities for measures comparable to child protection after-care for special reasons. Some municipalities have organised after-care at their own expense; the costs of services comparable to after-care have also been compensated to municipalities in the form of preventive income support and in certain cases as special compensation. It is evident that the organisation of after-care at the municipality's expense will be increasingly difficult during times of recession. Concerns over the lack of after-care have been expressed, for example, by the Monikulttuurinen Lapsen Etu network (Multicultural Interest of the Child) who pleaded with the Finnish Government on 20 March 2009 to extend after-care measures to cover asylum-seeking children who reach adulthood shortly after arriving in the country for the purpose of preventing social exclusion.

Section 3a **Refugees under this Act (649/2004)**

(1) The provisions of this Act on refugees also apply to:

1) persons who have been granted a residence permit on the basis of subsidiary protection or humanitarian protection under section 113(1) of the Aliens Act; (324/2009)

2) persons who have, following the temporary protection under section 112(1)(1) of the Aliens Act, been granted a residence permit under section 113(2) of the same Act, though not if this residence permit has been granted because they are studying, working or engaged in self-employment, or because of marriage;

3) persons who have been granted a residence permit under section 51, 52 or 89 of the Aliens Act after they have applied for international protection; (1269/2006)

4) persons who have been admitted to Finland on special humanitarian grounds or by way of fulfilling international obligations under section 93 of the Aliens Act; and (1269/2006)

5) persons who have been granted a continuous residence permit under section 52a(2) or 54(5) of the Aliens Act. (1269/2006)

(2) Persons who are family members of or otherwise related to a refugee or persons under paragraphs 1-5 are also considered refugees, provided that the relationship existed before the person in question entered Finland. (1269/2006)

Section 7a of the Act on Integration gives guidance for drawing up an integration plan. An integration programme is drawn up to promote and support the integration of immigrants. The programme contains a plan concerning both the measures, services, cooperation and responsibilities involved in promoting and supporting integration, and consideration for the needs of immigrants in planning and organising other public services and measures. It also covers the promotion of ethnic equality and good ethnic relations, and the prevention of discrimination. Municipalities are responsible for drawing up, implementing and developing an integration programme and for monitoring its implementation and impact. Employment offices and, where necessary, other authorities shall, on the initiative of the respective municipalities, participate in drawing up and implementing the programme regarding their respective sectors. Immigrants and NGOs, employee organisations and employers' organisations operating in the municipality, together with other parties, are consulted when the immigration programme is drawn up and implemented. The measures and services are planned so as to promote and support the integration of immigrants in an efficient and timely fashion

Immigrants who are a resident in Finland, unemployed and registered in the information system of the labour administration customer service, are entitled to an integration plan. Immigrants under 18 years of age who do not have the right to an integration plan under subsection 1 shall be offered the opportunity to have an integration plan drawn up if they themselves or their parents so request, or if the municipality considers they would benefit from the services and measures covered by an integration plan.

An immigrant's right to an integration plan lasts for three years from his or her initial entry in the Population Information System in his or her first municipality of residence. This period may be extended by a maximum of two years if necessary for the immigrant to learn to read and write or to complete basic education, or if necessary because of the age of the immigrant or an injury or illness or a need related to child protection measures, or for the duration of the equivalent of maternity or paternity leave, or on similar reasonable grounds. The period during which an immigrant is not entitled to labour market support under Chapter 3, section 4(1)(3) of the Unemployment Security Act is not counted in the period during which the immigrant is entitled to an integration plan.

Integration assistance is financial support paid to an immigrant to ensure that he or she has secure means of support for the duration of the integration plan. Its purpose is to improve and promote the immigrant's opportunities to find employment or further training, and, an ability to become an active member of Finnish society. Integration assistance consists of labour market support under the Unemployment Security Act and social assistance under the Act on Social Assistance. Immigrants are granted integration assistance as soon as their integration plan has been agreed upon. Integration assistance is reviewed if there are changes in the circumstances or in the needs of the recipient or his or her family.¹⁷

In order to retain their right to integration assistance, immigrants shall report on the progress of their integration plan, any need for change and any interruption, as agreed in the plan. Immigrants shall, as necessary, submit a statement to the municipality and to the local office of the Social Insurance Insti-

¹⁷ The amount of the integration assistance is same as the subsistence allowance paid for Finnish citizens. See http://www.stm.fi/en/income_security/benefits

tution with details of their income in order for the appropriate level of integration assistance to be determined, and with any other information necessary for the granting and paying of assistance.

Users of social and health care services may be charged in accordance with the Act on Client Fees in Social Welfare and Health Care (734/1992). The charge is imposed by the director of the reception centre. The charge is paid to the reception centre cashier or into a bank account specified by the reception centre. The provisions of section 13 of the aforementioned Act do not apply to asylum applicants, beneficiaries of temporary protection or victims of trafficking.

3.3.4. Victims of trafficking: Service and support measures for victims of human trafficking

A system providing services and support measures for victims of human trafficking under Section 52a of the Aliens Act was formalised in the beginning of 2007. This support system can encompass persons suspected or identified to be victims of human trafficking and can also include witnesses.

Activities that are provided to victims (or persons suspected to be victims) include the reception of customers and the necessary emergency help, arranging housing, social and health care services, advisory and legal services as well as support for integration or safe return. Ensuring the customers safety while within the scope of the support system has also been taken in consideration, and there are separate measures concerning special services required by minors. Outreach work and maintenance of contact channels as well as part of the other support measures associated with the system are ensured by NGOs through project funding and operative financial assistance.

The customers come into the system directed by the police, border control authorities, other authorities and organisations, at their own request or directed by a private person. The decision on including a customer in the system is made by the director of either of the two asylum reception centres that coordinate the support system. One of the centres (Joutseno) concentrates on adults and another (Oulu) on minors. The director is assisted in the decision-making and evaluation of the need for help by a multi-professional evaluation group that includes social welfare and health care experts, police and border authority representatives and other possible experts.

Persons entering the system through other channels than the police are brought to the attention of the police. The reception centres and organisations together ensure that the customers are informed of the fact that their coming within the scope of the system is reported to the police and that co-operation between authorities is considered in order to bring the criminals to justice.

The services and support measures are ensured by the municipalities for those customers who have a municipality of residence. The Government can compensate a municipality for the costs of special services required because of victimization for a person resident in the municipality.

3.3.5. Naturalisation

Nationality Act (359/2003) governs the naturalisation process. Aliens recognised as refugees and aliens granted international or humanitarian protection: naturalisation as a Finnish citizen is possible after four years of domicile in Finland without interruption. With every other status included in this study the requirement would be six years of domicile without interruption.

Section 20

Exceptions pertaining to refugees and involuntarily stateless persons

- (1) An alien may be granted Finnish citizenship notwithstanding section 13(1)(2) if:*
- 1) he or she has refugee status in Finland, or a residence permit based on the need for protection or he or she is involuntarily stateless; and*
 - 2) he or she is and has been permanently resident and domiciled in Finland:*

- a) for the last four years without interruption; or
- b) for a total of six years since reaching the age of 15 years with the last two years without interruption.

(2) A citizenship application made by a person referred to in subsection 1 above is processed expeditiously.

General requirements for naturalisation:

A foreigner may acquire Finnish citizenship upon application if his/her identity has been reliably established and he or she

- is of age (18 years) or married before the age of 18,
- has resided in Finland long enough before applying for Finnish citizenship,
- has not committed a punishable act or been placed under a restraining order,
- has not failed to pay any maintenance or other fees under public law,
- can provide reliable evidence of his/her means of support, and
- has knowledge of Finnish or Swedish or of Finnish sign language.

The granting of Finnish citizenship by application is discretionary. Citizenship can be granted even if some requirements are not met. On the other hand, citizenship can be denied even if all requirements stipulated by law have been met.

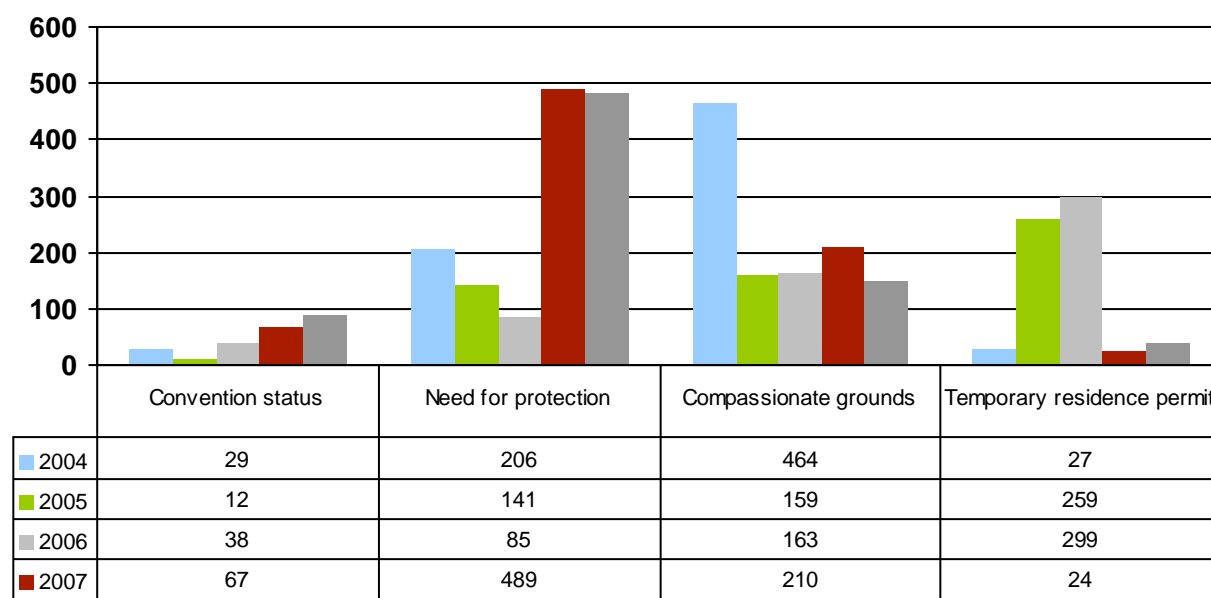
4. Statistics on protection

All data used in this annex are unofficial. For the early years data was not available except for total numbers of applications and decisions, and even in the later years the accuracy might not be perfect, although the figures are indicative of the trends.

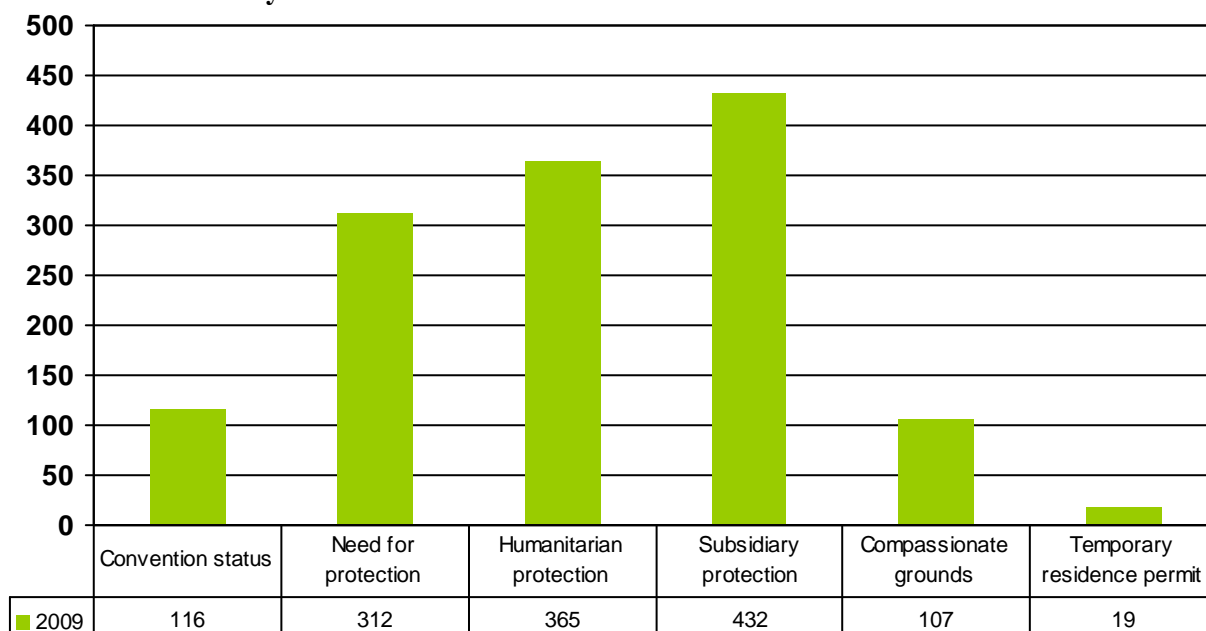
In the following template yellow indicates the type of protection which is not covered by non-refoulement. The decisions issued on compassionate grounds (Section 52) may be in some cases compatible with non-refoulement-principle. In the following figure there is no distinction made between the grounds given in Section 52 since such data was not available.

The numbers given as “rejected” indicate the number of negative decisions given in the asylum process. As the asylum process in Finland is a single process and all grounds for residence permit are assessed at the same time.

As for the numbers of decisions issued under Section 52a, statistics show (not included) that only six permits has been issued for victims of human trafficking since 2007. Several victims however, apply for assistance within the national action plan yearly.



Decisions on asylum in 2009¹⁸



In the following template there is given a number of persons disaggregated by nationality benefiting from the protection statuses described in this study from 2004 onwards. The statistics include also negative decisions. It should be taken into account that the figures may not be accurate. The yellow colouring indicates persons not covered by non-refoulement.

NATIONALITY	DECISION	2004	2005	2006	2007	2008	2009	Total
Afghanistan	Humanitarian protection/conflict or security						10	10
	Humanitarian protection/security or other						6	6
	Need for protection	3	3	9	47	57	20	139
	Subsidiary protection						6	6
	Temporary residence permit		43	102	2			147
	Compassionate grounds		11	30	70	17	30	158
	Convention status				3		9	12
	Exclusion clause		2	1			1	4
	Rejected							56
Albania	Need for protection		1					1
	Rejected							21
Algeria	Need for protection					1		1

¹⁸ Figures in 2009 are not compatible with those in 2004-2008; law amendment in June introduced new categories of protection.

	Temporary residence permit		1					1
	Compassionate grounds			1	1	1		3
	Rejected							23
Angola	Humanitarian protection/security or armed conflict						2	2
	Need for protection	3	19	6	4	14	3	49
	Temporary residence permit		1					1
	Compassionate grounds			4	12	17	3	36
	Convention status						1	1
	Rejected							41
Armenia	Compassionate grounds					5		5
	Rejected							20
Azerbaijan	Compassionate grounds				5			5
	Convention status			3				3
	Rejected							9
Bangladesh	Compassionate grounds		1		1			2
	Rejected							45
Belize	Need for protection			1				1
	Rejected							
Bhutan	Rejected							1
Bosnia and Herzegovina	Compassionate grounds			9	8	3	2	22
	Rejected							20
Bulgaria	Rejected							1
Burundi	Compassionate grounds						1	1
	Rejected							1
Not known	Need for protection					2		2
	Compassionate grounds			1	1	5		7
	Rejected							9
Egypt	Rejected							2
Eritrea	Need for protection					1		1
	Compassionate grounds						1	1
	Convention status		1		1			2
	Rejected							2
Ethiopia	Need for protection			4	6	1		11
	Temporary residence permit			1				1
	Compassionate grounds		1	1	11	5	1	19
	Convention status				2	2		4
	Rejected							31
Gambia	Need for protection				1			1
	Compassionate grounds				1			1
	Convention status						1	1
	Rejected							15

Georgia	Rejected								4
Ghana	Compassionate grounds				1	3	1		5
	Rejected								20
Guinea	Compassionate grounds		1	1	2	1	1		6
	Rejected								9
Guinea-Bissau	Rejected								1
Honduras	Compassionate grounds				2				2
	Rejected								3
India	Need for protection						3		3
	Compassionate grounds				3		1		4
	Rejected								11
Iraq	Humanitarian protection/human rights situation							3	3
	Humanitarian protection/armed conflict							73	73
	Humanitarian protection/other grounds							9	9
	Need for protection		1	8	169	182	144		504
	Subsidiary protection							15	15
	Subsidiary protection							7	7
	Temporary residence permit		52	81	27	38	15		213
	Compassionate grounds		12	12	16	6	7		53
	Convention status			12	20	43	16		91
	Exclusion clause						1		1
	Rejected								22
Iran	Need for protection		11	21	23	16	6		77
	Subsidiary protection							3	3
	Temporary residence permit		2	1	3	1			7
	Compassionate grounds			4	12	17	5		38
	Convention status		1		4	3	6		14
	Rejected								159
Israel	Rejected								4
Jordania	Compassionate grounds			1	3				4
	Rejected								3
Yugoslavia	Need for protection		1						1
	Compassionate grounds		7		1	4			12
	Rejected								28
Republic of Yugoslavia	Need for protection		4						4
	Compassionate grounds		1	4	1	2			8
	Rejected								48
Kambodza	Need for protection			1	1				2
	Rejected								1
Cameroon	Need for protection			2					2
	Temporary residence permit				1				1
	Compassionate grounds		3	3	4	2	1		13
	Rejected								49

Stateless	Need for protection		5					5
	Temporary residence permit		2					2
	Compassionate grounds		8	8	3		3	22
	Convention status					1		1
	Rejected							26
China	Need for protection		4	4	2	2	2	14
	Compassionate grounds			1	2			3
	Convention status				3	1	2	6
	Rejected							6
China, the republic of	Need for protection			1				1
	Rejected							
Kirgisia	Compassionate grounds		6		1			7
	Rejected							18
Columbia	Need for protection			1				1
	Rejected							2
Congo	Need for protection					1		1
	Compassionate grounds					2		2
	Convention status					1		1
	Rejected							5
Congo, the democratic republic of the	Need for protection		3	1	5	8	1	18
	Temporary residence permit			1				1
	Compassionate grounds		8	14	14	17	1	54
	Convention status					2	2	4
	Rejected							75
Korea, Republic of	Rejected							1
Kosovo	Need for protection					1		1
	Temporary residence permit						5	5
	Compassionate grounds						10	10
	Rejected							5
Croatia	Compassionate grounds					8		8
	Rejected							14
Cuba	Compassionate grounds					1		1
	Rejected							5
Lebanon	Need for protection		1					1
	Compassionate grounds			1	6	1		8
	Convention status					1		1
	Rejected							7
Liberia	Rejected							7
Libya	Compassionate grounds					1	1	2
	Rejected							14
Macedonia	Temporary residence permit					1		1
	Compassionate grounds			1	1		1	3
	Rejected							40
Malawi	Compassionate grounds				2	2		4
	Rejected							
Marocco	Compassionate grounds					1		1
	Rejected							4
Mauretania	Compassionate grounds				1	1		2
	Convention status			1				1
	Rejected							4
Moldova	Rejected							1
Mongolia	Rejected							1

Myanmar	Need for protection		1	2	1			4
	Convention status				2			2
Namibia	Rejected							1
Nepal	Need for protection				1			1
	Compassionate grounds					2		2
	Rejected							5
Soviet Union	Compassionate grounds				1			1
Niger	Convention status						1	1
Nigeria	Need for protection			1				1
	Compassionate grounds			3		3	4	10
	Rejected							177
Ivory Coast	Compassionate grounds		1			2	2	5
	Rejected							5
Pakistan	Need for protection					1		1
	Compassionate grounds			1		1		2
	Convention status		1	1	2			4
	Rejected							7
Peru	Rejected							1
Equatorial Guinea	Compassionate grounds						3	3
Romania	Rejected							3
Rwanda	Need for protection		1					1
	Subsidiary protection						2	2
	Compassionate grounds		1	1	5		1	8
	Rejected							11
Saudi-Arabia	Subsidiary protection						1	1
Senegal								4
Serbia	Humanitarian protection/security sit. or other						5	5
	Need for protection					1		1
	Compassionate grounds				18	19		37
	Rejected							46
Serbia and Montenegro	Temporary residence permit		5	3				8
	Compassionate grounds		11	23	30	1		65
	Rejected							136
Sierra Leone	Rejected							7
Slovakia	Rejected							2
Somalia	Humanitarian protection/security sit or armed conflict						29	29
	Humanitarian protection/security sit or other						2	2
	Need for protection	1	23	23	239	149	122	557
	Subsidiary protection						2	2
	Subsidiary protection						10	10
	Subsidiary protection						144	144
	Temporary residence permit		81	121				202
	Compassionate grounds		24	39	1			64
	Convention status		3		1		1	5
	Rejected							4

Sri Lanka	Need for protection		1		3	38	8	50	
	Subsidiary protection						1	1	
	Temporary residence permit		1					1	
	Compassionate grounds				3	1		4	
	Rejected							55	
Sudan	Need for protection				1			1	
	Compassionate grounds		1					1	
	Rejected							3	
Syrian Arab republic	Need for protection		4			5		9	
	Subsidiary protection						1	1	
	Compassionate grounds			3	6	1		10	
	Rejected							33	
Tadzikistan	Need for protection				6			6	
	Rejected							1	
Tansania	Need for protection					1		1	
	Rejected							1	
Togo	Need for protection			1				1	
	Rejected							7	
Tsad	Need for protection				1			1	
Unknown	Compassionate grounds				1	1		2	
	Convention status					1		1	
	Rejected							3	
Tunisia	Rejected							1	
Turkey	Need for protection		13	3		1	7	24	
	Temporary residence permit			1				1	
	Compassionate grounds		8	8	7	7		30	
	Convention status			1		1	4	6	
	Rejected							188	
Turkmenistan	Compassionate grounds						2	2	
Uganda	Need for protection					1		1	
	Rejected							1	
Ukrainia	Compassionate grounds					4		4	
	Rejected							19	
Uzbekistan	Need for protection			1		2		3	
	Compassionate grounds			7	3			10	
	Convention status			1	1			2	
	Rejected							15	
Belarus	Need for protection					2		2	
	Convention status					1		1	
	Rejected							94	
Russian federation	Need for protection		26		3		3	32	
	Subsidiary protection					3	7	10	
	Compassionate grounds		3	5	1	6	3	18	
	Convention status		3	21	28	45	19	116	
	Rejected							126	
Vietnam	Rejected							2	
Zaire	Rejected							1	
Zimbabwe	Rejected							5	
Total			7	427	627	877	803	795	5398

5. National opinions on the granting of protection

The Finnish Ministry of the Interior¹⁹ is well aware of the critic towards any new legislation relating on asylum issues. The ministry, however, considers that finalising of high standard EU provisions in the field of international protection is a basic precondition for further development of the Common European asylum system.

The Ministry of the Interior and the Immigration Service (as the law applying authority) both agree that Common legal foundation supported by the judicial guidance of the EC Court of Justice and active practical cooperation is needed for the Common European Asylum System to function. Genuine common system is imperative because of the Schengen and Dublin systems. It would also lay the foundation for the mutual recognition of a uniform international protection status, an aim supported by Finland. It is a prerequisite for any development of joint processing of asylum applications as well.

For the same reasons The Ministry supports the Commission's proposal to open discussion on the situation of those applicants to whom no international protection is granted but who for some reason cannot be returned. The Ministry sees clear need for future harmonization there as well. It is of key importance that all Member States can provide effective protection to those who need it, including a fair asylum process and adequate reception conditions. Providing access to asylum procedures should also be an integral part of dealing with mixed migratory flows.

Section 52 of the Finnish Aliens Act has emerged in the media from time to time. When family reunification has not been successful, public opinion is that one should be granted at least residence permit on compassionate grounds.²⁰ The scope of family reunification is narrow –the Finnish Aliens Act does not recognise the extended family concept prevailing outside Europe. On the other hand, what comes to unaccompanied minors, Section 52 has evoked suspicions on “anchor children”. A great portion of unaccompanied minors seeking asylum are allowed to stay in Finland on the basis of compassionate grounds as per Section 52 of the Aliens Act. Those minors will later sponsor family reunification for family members who are still abroad. Given the fact that residence permit on compassionate grounds allows family reunification, tightened family reunification policy in other member states has had a clear impact on the number of unaccompanied minors in Finland. Further, prior to media debate on Section 52, temporary residence permit under Section 51 evoked wide resistance among NGO's, media and legal representatives between 2004 and 2006 for restricting the rights of a residence permit holder. Interestingly, while transposing Directive 2004/83/EC into Finnish Aliens Act, the planned mitigations to Section 51 were mostly overturned in the parliament.

Temporary residence permit under Section 51 of the Aliens Act has had rather negative impacts. The public opinion is of the view, that although the person should be removed from the country, one should have same benefits as those with status A.²¹ Temporary residence permit does not allow working during the first year of legal residence. One should apply for worker's residence permit, but gaining work as a rejected asylum applicant is difficult. This has led to living at subsistence level and minor offences like pilfering. The Aliens Act was amended in June 2009 and provisions on temporary residence permit under Section 51 were also improved. Person with residence permit under Section 51 is now entitled to Alien's passport –earlier there was no provision on issuing travel documents for persons with temporary residence permit. As temporary residence permit holders were considered to be subject to deportation, the opinion was that issuing alien's passport would be unnecessary. Supreme Administrative Court found rejecting applications for Alien's Passport hindering the freedom of movement which led to the current practice and a reform of Section 35 of the Aliens Act.

Asylum procedure has been criticised often in the Finnish media. NGO's even state that asylum officials are incompetent and prejudiced.²² These claims are often made after analysing the statistics on

¹⁹ The Ministry of the Interior is the responsible part for law drafting on migration issues.

²⁰ http://www.yle.fi/uutiset/news/2007/05/kosovo_grandmothers_deportation_suspended_237067.html

http://yle.fi/uutiset/news/2008/06/elderly_russian_human_rights_activist_appeals_again_303019.html

²¹ http://yle.fi/uutiset/news/2005/12/improvements_needed_for_refugee_law_193776.html

²² http://yle.fi/uutiset/news/2007/09/human_rights_group_immigration_officials_too_strict_250150.html

http://yle.fi/uutiset/news/2007/04/authorities_draw_criticism_over_residency_permit_decision_234385.html

asylum: figures show that the asylum rate is rather low comparing to other statuses. Further, some cases have attracted serious attention in the media. The Finnish Immigration Service has been criticised for incompetence in recognising women's rights. This was the case e.g. in 2007 when the case Naze Aghai was drawn to public debate. Aghai's application for asylum was rejected and Aghai requested for help from two churches in the town of Turku. The outcome was that the Helsinki Administrative Court required Immigration Service to grant her subsidiary protection.²³ This case was first of its kind and lead to a wide debate on the role of the Church.²⁴ Judicial practise in regard new Section 88a is gradually shaping. The authorities applying the Aliens Act welcomed Section 88a crystallising the determination of refugee status (difference between individual threat and overall security situation in applicant's home country or country of permanent residence).

²³ <http://yle.fi/uutiset/news/article249386.ece>

²⁴ http://yle.fi/uutiset/news/2007/09/immigration_director_criticises_church_250026.html

Annexes

List of sources

Legislation

Aliens Act 301/2004

Act on the Integration of Immigrants and Reception of Asylum Seekers (493/1999; amendments up to 324/2009 included)

Constitution of Finland

Directive 2001/55/EC on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof.

Council Directive 2004/81/EC of 29 April 2004 on the residence permit issued to third-country nationals who are victims of trafficking in human beings or who have been the subject of an action to facilitate illegal immigration, who cooperate with the competent authorities.

Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

Publications

IGC: Asylum Procedures in IGC Participating States 2009.

Luopajarvi, Katja: Sexuellt våld som folkrättskränkning. Åbo Akademi 2001.

Ministry of the Interior: Näkökulmia turvapaikkapolitiikkaan 2009

<http://www.intermin.fi/intermin/biblio.nsf/vwbyyear/D71589287E4A2A63C22575D90031CC32>

Nykänen Eeva: Luvallista, rajatonta ja jotain siltä väliltä: ulkomaalaislaki ja turvapaikanhakijataustaisien maahanmuuttajien jäsenyys. Article in *Oikeus* 37/2008 p. 345-364.

Nykänen Eeva: Comparative Legal Study on Subsidiary Protection – Finland. In “Subsidiary Protection of Refugees in the European Union: Complementing the Geneva Convention?” Daphné Bouteillet-Paquet (edit.). Bruylant, 2002. p. 397-432.

Pirjola Jari: Shadows in paradise: exploring Non-refoulement as an open concept. Article in *International Journal of Refugee Law*. 19/2007 p. 639-660.

Staffans Ida: Bitrådet asylärenden: utsikter för en omorganisering. Article in *Defensor Legis* 87/2006 p. 483-493.

Staffans, Ida: Förfarandet för bedömning av asylskäl i Finland samt därtill hörande säkringsåtgärder, 2005. <http://ethesis.helsinki.fi/julkaisut/oik/rikos/lt/staffans/>

UNHCR: Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

Internet pages

<http://yle.fi/uutiset/news/article249386.ece> (News article)

http://yle.fi/uutiset/news/2007/09/immigration_director_criticises_church_250026.html (News article)

http://www.yle.fi/uutiset/news/2007/05/kosovo_grandmothers_deportation_suspended_237067.html
(News article)

http://yle.fi/uutiset/news/2008/06/elderly_russian_human_rights_activist_appeals_again_303019.html
(News article)

http://yle.fi/uutiset/news/2008/06/thors_wants_adjustments_to_alien_act_302674.html (News article)

http://yle.fi/uutiset/news/2007/09/human_rights_group_immigration_officials_too_strict_250150.html
(News article)

http://yle.fi/uutiset/news/2007/04/authorities_draw_criticism_over_residency_permit_decision_234385.html (News article)

http://yle.fi/uutiset/news/2005/12/improvements_needed_for_refugee_law_193776.html (News article)

<http://www.oikeus.fi/8108.htm> (Judicial system in Finland)

http://www.stm.fi/en/income_security/benefits (Income benefits)

www.migri.fi/statistics

www.finlex.fi/en/

Statistics



Asylum applications
2004_2009_...



Decisions on
protection 2004_2...