

CHILDREN WITHOUT FAMILIES - FAMILY REUNIFICATION OF UNDER-AGE BENEFICIARIES OF INTERNATIONAL PROTECTION



This is a summary of the report. The complete report is available in Finnish and Swedish.

INTRODUCTION

Premise and research questions

The greatest wish of most unaccompanied minors is to have their parents and potential siblings join them in Finland. This wish is not always fulfilled. Applying for family reunification is often difficult in practice, and the prerequisites for family reunification may not be met. The legal prerequisites for family reunification have been made stricter in recent years, for example by extending the income requirement to underage sponsors (i.e. persons who want to have their families join them in Finland.

Based on discussions and contacts with various parties, the Non-Discrimination Ombudsman has found that family reunification does not always seem to happen even if the child’s best interests might require it. However, there is no clear impression of what negative decisions are based on – whether a rejection was based on the income requirement or disrupted family ties, for example. Nor is there a clear impression of the extent to which decision-making is affected by the objective of intervening in the evasion of entry provisions.

Under the Act on the Non-Discrimination Ombudsman (1326/2014), the Ombudsman’s duties include preparing and commissioning reports. In order to carry out their duties, the Ombudsman has a broad right of access to information. The Ombudsman’s statutory right to confidential information en-

ables the Ombudsman to make knowledge-based evaluations and analyses to support public debate.

The Non-Discrimination Ombudsman has produced a report on how the right of a child to their family is realised in the family reunification process with children who have been granted asylum or subsidiary protection. The aim has been to examine how the Finnish Immigration Service applies the Aliens Act when making decisions on applications regarding family ties. The purpose of the report is to answer the following questions:

- 1) How is the Aliens Act applied to the family reunification of persons who have been granted international protection when the sponsor is an unaccompanied minor?
- 2) On what grounds does the family of a minor who has been granted international protection receive a negative decision on an application based on family ties?
- 3) What is the status of human rights, especially the protection of family life and the best interests of the child, when assessing the prerequisites for family reunification?

The aforementioned research questions have been answered by examining the decisions made by the Finnish Immigration Service concerning family reunification and the grounds for these decisions. The material for the report consists of decisions where the sponsor is a minor who has arrived in Finland alone and has been granted either asylum or subsidiary protection. The report does not examine those minors who have applied for international protection and who have been grant-

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ed a residence permit on compassionate grounds (section 52 of the Aliens Act); the examination has been limited to those applicants who have been granted international protection. At the beginning of the report, Chapter 1.2 discusses the material, i.e. the decisions used to examine the current administrative practice.

The second chapter of the report examines the first two research questions: how the Aliens Act is applied to the family reunification of persons granted international protection when the sponsor is an unaccompanied minor, and what grounds the Finnish Immigration Service has used to make a negative decision in these situations. Chapter 2.1 first discusses what national norms guide the decisions made by the Finnish Immigration Service in relation to family reunification. Then, the application of these legal guidelines is examined in the administrative practice of the Finnish Immigration Service. The report pays particular attention to situations where the Finnish Immigration Service has assessed that the family has tried to evade the provisions of entry. In addition, attention is paid to how the Finnish Immigration Service has assessed the actual family life between the applicants, meaning the family members residing abroad, and the sponsor, meaning the child residing in Finland.

Chapter 3 of the report examines the third research question: how family reunification is affected by the fundamental rights defined in the Constitution of Finland as well as international obligations, such as human rights and EU legislation. The first part of the chapter examines the Convention on the Rights of the Child, the European Convention on Human Rights, the EU Directive on the right to family reunification, and the fundamental rights defined in the Constitution

of Finland. After this, the report examines how these fundamental and human rights have been taken into account in the administrative practice concerning family reunification. In this respect, particular attention is paid to the significance of the protection of family life in decision-making and how the best interests of the child have been assessed.

Chapter 4 briefly discusses how the income requirement impacts decision-making practices. The Conclusions examine the administrative practice as a whole as well as the special features of the Aliens Act, the related administrative practice in family reunification situations, and the wider legal and social significance of these special features. Finally, the Non-Discrimination Ombudsman presents their recommendations on the basis of the report.

CONCLUSIONS

The report of the Non-Discrimination Ombudsman assesses how the Aliens Act applies to family reunification of persons granted international protection when the sponsor is an unaccompanied minor. In addition, the report assesses the grounds for negative decisions and the role of fundamental and human rights in decision-making. Based on the report, concerns have emerged about the fulfillment of children's rights.

The material consists of decisions that concern children who the Finnish Immigration Service has already found to be at a particularly serious risk in their home country during the process regarding international protection. Based on the findings of the report, it seems that the child's safety is reassessed in the family reunification process after the asylum process, this time using prerequisites that have not been explicitly laid down in legislation. [The report shows that by applying the regulation concerning the evasion of entry provisions, it is possible to significantly limit the fundamental and human rights – the right to live together with one's family – of children who have been granted international protection.](#)

[Based on the report, the Ombudsman finds that the regulation concerning the evasion of entry provisions does not fulfill the requirements laid down in the Finnish Constitution on the specificity and precision of legislation; in its current state, it leaves the person applying the legislation with too much discretion in terms of the implementation of fundamental and human rights.](#)

Broad application of the regulation concerning the evasion of entry provisions

The report examines the application of the Aliens Act and the reasons why half of the children granted international protection cannot have their families join them in Finland. Most of the negative decisions are based on the provision in Section 36 of the Aliens Act, which states that “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.” This provision is one of the general prerequisites for a residence permit, and the Government proposal that drafted the regulation does not refer to its use for refusing family reunification, except for marriages deemed to be disingenuous.

The report assesses in more detail the following five key findings on the decision-making practice concerning the evasion of entry provisions.

- [Individual compelling reason.](#) A key observation regarding the evasion of entry provisions has been that even

though a child has already been assessed by the authorities to be in need of international protection, the child's application for family reunification may, however, be refused. The reason has been that the family has lacked an *individual compelling reason* to send the child to apply for asylum. As a result, either the family ties have been deemed disrupted or it has been deemed that there was an attempt to evade entry provisions. Decisions do not always indicate which assessment is linked to the concept of *compelling reason*, which makes it difficult to understand the decision-making practice and justifications. In later decisions, family ties no longer seem to be disrupted as often, but it has still been deemed that the lack of an *individual compelling reason* indicates the intention to use the child as a means of obtaining a residence permit. An *individual compelling reason* seems to be associated with a threat to a child's personal safety. However, the concept of an *individual compelling reason* is not defined in legislation.

- [Additional conditions for family reunification.](#) The chances of a successful family reunification decision are influenced by several factors that are not as such required by law. It is more difficult for those who have been granted subsidiary protection to have their family reunified than for those who have been granted refugee status. This is because, according to the Finnish Immigration Service, a subsidiary protection status is often based on a more general security threat and is therefore not necessarily an *individual compelling reason* for a minor's departure. In addition, it is more difficult for a sponsor leaving a third country to get their family in Finland. The circumstances in the country of origin may be described as difficult but not compelling. One important factor in consideration seems to be the age of the child. Older children get their families in Finland less often than younger children.
- [The general nature of regulation.](#) The regulations concerning the evasion of entry provisions are of a general nature. Apart from marriages of convenience, the evasion of entry provisions related to residence permits issued on the basis of family ties is not specified in more detail. Only the reports of the Administration Committee of the Parliament refer to the use of a minor arriving in Finland alone as a means of entry. Any ways to intervene are not defined in the preliminary work of the Aliens Act or elsewhere. As the application of the regulations concerning the evasion of entry provisions regarding unaccompanied persons who have been granted protection has not been clearly specified or limited, the Finnish Immigration Service has formed a fairly broad discretion to determine what it means in practice. More than ten years ago, the Supreme Administrative Court is-

sued a preliminary ruling on the matter; however, it did not concern a child granted international protection.

- **A constitutional perspective.** The above points raise a constitutional question. The basic principle of the Finnish Constitution is that the rights and obligations of individuals are laid down in legislation (section 80 of the Constitution of Finland). Other legislative sources support the interpretation of the act. When a section restricts the implementation of a fundamental right – such as the protection of family life – this restrictive provision must be precise and specific. Based on the report, these prerequisites are not met, and the child’s right to family life is restricted on the basis of regulation that is too general.
- **Transparency of residence permit requirements.** Legislation being of a general nature, the right of children to their family, regarding children who have been granted protection, is only essentially specified in application practices, which is mainly confidential information. There are no preliminary rulings of the Supreme Administrative Court. This prevents children and their parents from further clarifying their rights and their real possibilities for family reunification. This is another aspect that is not in line with the requirements on legislation.

A child’s right to family life is inadequately implemented

The report also sought answers to what kind of role fundamental and human rights have in the decisions. The report found that the best interests of the child are easily forgotten in family reunification. The implementation of the protection of family life is typically assessed briefly in the decisions of the Finnish Immigration Service. The interpretation practice that family ties can be disrupted merely due to a child leaving alone to seek international protection does not correspond to the case law of the European Court of Human Rights (ECHR), according to which the family relationship between a parent and child can only be broken in exceptional cases. Based on the material, it seems that a suspicion of evading entry provisions is often considered a heavier factor in the assessment than a child’s right to family life.

Regarding the best interests of a child, when a negative decision is made, the Finnish Immigration Service considers the parents’ activities contrary to the child’s best interests, the child’s age and statements by a social worker and representative. The decisions do not examine which solutions would best reflect the best interests of the child; the assessment is mainly related to whether

the decision would be seriously against the best interests of the child or not. The study also found that age affects the assessment of the best interests of the child in such a way that children aged over 16 are more likely to receive a negative decision because they are approaching adulthood or have already reached the age of 18 during the process.

The child’s best interest does not seem to be a priority to the extent required by the Convention on the Rights of the Child. The current administrative practice does not seem to be fully in line with the Convention on the Rights of the Child and may endanger the implementation of the rights of the child.

The report shows an interpretation practice where the implementation of the rights of the child depends on the Finnish Immigration Service’s judgement of the motives behind the parents’ actions that are usually years past and outside Finnish jurisdiction. The realisation of children’s fundamental rights cannot depend solely on the actions of their parents or on how the authorities assess the motives of the parents’ actions.

Over the past year, the administrative practice of the Finnish Immigration Service has demonstrated a change in a direction that is more favourable to fundamental and human rights. Family ties and their potential disruption are assessed on a more individual basis and more in accordance with established ECHR case law. This development is not based on changes in legislation or new preliminary decisions; instead, the changes seem to be mainly based on changes made by the Finnish Immigration Service in their practices.

These changes have a significant impact on the implementation of rights. The more children receive international protection instead of a residence permit with a weaker possibility of family reunification, and the more positively the preconditions for family reunification are interpreted, the more children can get their parents and potential siblings to Finland. Changes in interpretation practices are not entirely unproblematic. The premise of rule of law is that changes in the individual’s legal status are implemented by means of legislation. When restricting fundamental and human rights, this is the absolute minimum requirement.

Conclusion

In recent years, the Non-Discrimination Ombudsman has paid attention to the broad application of the regulations concerning the evasion of entry provisions. Based on ob-

servations, the provision is applied fairly extensively in all residence permit considerations and often in a manner where an authority's assessment of the applicant's previous activities and motives prevents the applicant from obtaining a residence permit based on work, for example, even if the other conditions for obtaining a residence permit have been met.

The Ombudsman has found that the provision affects the possibilities of gaining official residence for persons already in Finland. [The pertinent observation obtained from the report is that by applying the general regulation in question as described above, the implementation of the essential fundamental and human rights is significantly restricted also with children who have received protection. One of the broader conclusions of the report is that the regulation concerning the evasion of entry provisions seems to have a significant impact on the realisation of the rights of foreigners in Finland.](#)

The report shows that a child's rights to their family are seriously restricted when the activities of the parents are not considered acceptable. Decisions where family reunification is denied make it severely more difficult for children to live a safe childhood and youth in Finland. Such a significant restriction of the rights of the child must be provided for in legislation with a strict scope and, as far as possible, emphasising the rights of the child.

Recommendations of the Non-Discrimination Ombudsman

Based on the report on family reunification of unaccompanied minors who have been granted international protection in Finland, the Non-Discrimination Ombudsman makes the following recommendations.

1. The regulation concerning the evasion of entry provisions leaves the authorities with too much discretion in terms of the implementation of fundamental and human rights. The Ministry of the Interior must implement legislative amendments to ensure that section 36 of the Aliens Act more clearly meets the requirements laid down in the Finnish Constitution on specificity and precision as well as on the protection of family life. The regulation's scope of application should be more clearly defined, especially for family reunification, but also for other grounds for residence permits.

2. When assessing the amendment to the regulation concerning the evasion of entry provisions, the Ministry of the Interior must also ensure that the implementation of the rights of the child does not depend on the actions or motives of the parents. The Ombudsman finds that a minor receiving international protection demonstrates that the conditions in

which the child has left their family have not involved evasion of entry provisions.

3. According to the Convention on the Rights of the Child, the best interests of the child must prevail in the administrative process. In accordance with the Convention, the Finnish Immigration Service must identify the primary nature of the child's best interests in decision-making. The Immigration Service must ensure that the child's right to family reunification is realised and only deviated from if the child's best interests so require or in weighty situations required by public order and safety.

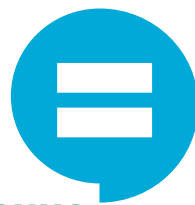
4. Based on the report, it appears that children approaching 18 years of age have been treated in decision-making as nearly adults and independent of their families. The Finnish Immigration Service must treat all persons under the age of 18 as children in accordance with the Convention on the Rights of the Child and thus guarantee the full implementation of children's rights for all children.

5. Family ties between a child and their parents can only be disrupted in very exceptional circumstances. The Ministry of the Interior must assess whether legislation should be specified in order to strengthen the protection of family life in this respect.

6. The income requirement did not seem to affect the refusal of residence permits for children granted international protection. However, the Ministry of the Interior must implement legislative amendments that remove the income requirement for residence permits granted on the basis of family ties in situations where a minor is the family sponsor. This should concern refugee status, subsidiary protection and also children who have been granted a residence permit under section 52 of the Aliens Act.

7. The applicant of a residence permit must know the prerequisites for obtaining the permit. The Finnish Immigration Service must inform applicants of the conditions for family reunification in a transparent and comprehensive manner so that the applicants are aware of all the matters required of them.

8. The Finnish Immigration Service must take into account the findings of this report when updating their guidelines concerning family reunification for unaccompanied minors.



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