

Finland

by

Eeva Nykänen

LL.M. University of Turku, M.A.
International Institute for the Sociology of Law
Oñati

Prof. Dr Elina Pirjatanniemi

Director of the Institute for Human Rights
Professor of Constitutional and International Law
Åbo Akademi University

Olli Sorainen

LL.Lic. University of Turku, M.Sc.

Ida Staffans

Ll Lic University of Helsinki

2010



Published by:
Kluwer Law International
PO Box 316
2400 AH Alphen aan den Rijn
The Netherlands
Website: www.kluwerlaw.com

Sold and distributed in North, Central and South America by:
Aspen Publishers, Inc.
7201 McKinney Circle
Frederick, MD 21704
United States of America
Email: customer.service@aspublishers.com

Sold and distributed in all other countries by:
Turpin Distribution Services Ltd.
Stratton Business Park
Pegasus Drive, Biggleswade
Bedfordshire SG18 8TQ
United Kingdom
Email: kluwerlaw@turpin-distribution.com

The monograph *Finland* is an integral part of *Media Law* in the *International Encyclopaedia of Laws* series.

Printed on acid-free paper.

ISBN 978-90-411-3258-1
Migration Law was first published in 2010.

Nykänen, Eeva; Pirjatanniemi, Elina; Sorainen, Olli; Staffans, Ida. 'Finland'. In *International Encyclopaedia of Laws: Media Law*, edited by P. Valcke. Alphen aan den Rijn, NL: Kluwer Law International, 2010.

© 2010, Kluwer Law International BV, The Netherlands

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without written permission from the publisher.

Permission to use this content must be obtained from the copyright owner. Please apply to: Permissions Department, Wolters Kluwer Legal, 76 Ninth Avenue, 7th Floor, New York, NY 10011-5201, USA.
Email: permissions@kluwerlaw.com

The Authors



Eeva Nykänen (LL.M. University of Turku, M.A., International Institute for the Sociology of Law, Oñati), works as a researcher and teacher at the Faculty of Law, University of Turku (Finland), where she carries out research and lectures on international and European law as well as asylum and migration law. She has worked previously as a legal adviser to the Finnish Parliamentary Ombudsman, and as a senior adviser at the Immigration Department of the Finnish Ministry of the Interior. Ms Nykänen is a member of the Network on Free Movement of EU Workers commissioned by the European Commission, and the Odysseus Academic Network for Legal Studies on Immigration and Asylum Law in Europe. She is the author of a number of academic articles and research reports in the field of immigration and asylum law.



Prof. Dr. Elina Pirjatanniemi was born 21 August 1966 in Tampere, Finland. She studied Public International Law at Åbo Akademi University (Turku, Finland) and completed Master of Political Science in 1993. In addition, she studied law at the Faculty of Law at the University of Turku (Turku, Finland) and qualified with Master of Laws in 1995. She obtained her Doctor of Laws degree at the University of Turku in 2005. Her doctoral thesis focused on the role and limits of criminal law in environmental protection.

Prof. Dr. E. Pirjatanniemi was appointed Professor of Constitutional and International Law at Åbo Akademi University in 2009. She is also the Director of the Institute for Human Rights at the same university.

The Authors



Olli Sorainen (LL.Lic. University of Turku, M.Sc.) works as a Ministerial Adviser at the Ministry of Employment and the Economy. Sorainen has worked for more than one decade with the immigration legislation and policy issues at the responsible Ministry. Sorainen has, amongst others, drafted the provisions in the Aliens Act regarding foreigners' working and enterprise in Finland, the now-abolished Transition Period Act and a Government report to the Parliament thereof, etc. Sorainen has written a monograph on legal issues on foreigners' working in Finland.



Ida Staffans (LI Lic University of Helsinki, trained at the bench) works as a lawyer for the Refugee Advice Centre in Helsinki, Finland. Prior to this she carried out research in the field of immigration and asylum law at the University of Helsinki, within the framework of the Centre of Excellence on the Foundations of European Law and Polity. She has also previously carried out research projects as well for the UNHCR as for EU. Ms Staffans is the editorial secretary for the legal journal *Tidskrift utgiven av Juridiska Föreningen i Finland*. She is the author of a number of academic articles in the area of immigration and asylum law and will shortly publish her dissertation on the theme of evidence in European asylum procedure.

Table of Contents

The Authors	3
List of Abbreviations	11
Preface	13
General Introduction	15
§1. IMMIGRATION HISTORY AND STATISTICAL INFORMATION	15
§2. OVERVIEW OF NATIONAL LEGAL INSTRUMENTS	17
I. Historical Overview	17
II. Current Applicable Legislation	20
III. Administrative and Judicial Authorities	21
§3. OVERVIEW OF INTERNATIONAL LEGAL INSTRUMENTS APPLICABLE IN FINLAND	24
Selected Bibliography	27
Part I. Border Control and Entrance	29
Chapter 1. Organization of Border Control	29
§1. GENERAL	29
§2. ORGANIZATION	30
§3. LEGAL FRAMEWORK	31
Chapter 2. Right to Enter the Country	33
§1. CONDITIONS FOR THE RIGHT TO ENTER	33
§2. ADMINISTRATIVE PROCEDURES AND DOCUMENTS	40

Table of Contents

Chapter 3. Refusal of Entry	43
Part II. Right of Residence: General Provisions	47
Chapter 1. Short Stay	47
§1. CONDITIONS FOR SHORT STAY	47
§2. ADMINISTRATIVE PROCEDURES AND DOCUMENTS FOR SHORT STAY	50
§3. LEGAL POSITION IN THE EVENT OF SHORT STAY	50
§4. POSITION OF FAMILY MEMBERS	51
Chapter 2. Residence	53
§1. CONDITIONS FOR RESIDENCE	53
§2. ADMINISTRATIVE PROCEDURES AND DOCUMENTS FOR RESIDENCE	57
§3. LEGAL POSITION OF RESIDENTS	60
§4. POSITION OF FAMILY MEMBERS OF RESIDENTS	61
Chapter 3. Long-Term Residence	68
§1. CONDITIONS FOR LONG-TERM RIGHT OF RESIDENCE	68
§2. ADMINISTRATIVE PROCEDURES AND DOCUMENTS FOR LONG-TERM RESIDENCE	70
§3. LEGAL POSITION OF LONG-TERM RESIDENTS	70
§4. POSITION OF FAMILY MEMBERS OF LONG-TERM RESIDENTS	71
Part III. Right of Residence for Special Categories of Persons	73
Chapter 1. Nationals with Preferential Treatment	73
§1. EU CITIZENS	73
§2. CITIZENS WITH FINNISH ROOTS RETURNING FROM THE FORMER SOVIET UNION	75
§3. CITIZENS OF NORDIC COUNTRIES	76

Table of Contents

Chapter 2. Students	77
Chapter 3. Researchers and Teachers	80
Chapter 4. Labour and Economic Migration	83
Chapter 5. Humanitarian Reasons	84
§1. HUMANITARIAN GROUNDS: HUMANITARIAN STATUS	84
§2. UNACCOMPANIED MINOR CHILDREN	85
§3. VICTIMS OF TRAFFICKING IN HUMAN BEINGS	86
§4. OTHERS	86
Chapter 6. Asylum	87
§1. CONDITIONS	87
I. Refugee Status	87
II. Subsidiary Protection Status	90
III. Temporary Protection Status	92
IV. Other: Quota Refugees	93
§2. PROCEDURES	93
I. Asylum Procedure	93
A. Asylum Procedure	93
B. Asylum Applications from Persons Benefitting from Temporary Protection	95
C. Quota Refugees	96
II. Review of the Decision Rejecting the Application for Asylum	96
III. Unaccompanied Minor Asylum Claimants	97
IV. Safe Country of Origin and Safe Third Country	99
§3. LEGAL POSITION	99
I. Asylum Seekers	99
II. Recognized Refugees	100
III. Persons Benefitting from Subsidiary Protection	100
IV. Persons Benefitting from Temporary Protection	101
V. Quota Refugees	102
§4. POSITION OF FAMILY MEMBERS	102
Chapter 7. Others	104

Table of Contents

Part IV. Loss of Right of Residence	105
Chapter 1. Conditions Under Which the Right of Residence Might Be Lost	105
§1. LOSS IN THE EVENT OF NON-RENEWAL	108
§2. LOSS IN THE EVENT OF ABSENCE	110
§3. ENTRY BAN	110
Chapter 2. Legal and Administrative Procedures	112
Part V. Sanctions	115
Chapter 1. Sanctions	115
§1. ADMINISTRATIVE SANCTIONS	115
§2. PENAL SANCTIONS	117
§3. DETENTION	120
§4. EXPULSION AND REMOVAL MEASURES	121
Chapter 2. Sanctions against Persons Helping Illegal Immigrants or Residents	123
§1. HUMAN SMUGGLING	123
§2. HUMAN TRAFFICKING	125
Part VI. Legal Remedies and Procedural Safeguards	129
Chapter 1. Legal Remedies in Case of Refusal of the Right to Enter, Stay or Reside	129
§1. ADMINISTRATIVE DECISIONS ON ENTRY	129
§2. ADMINISTRATIVE DECISIONS ON THE RIGHT TO RESIDE	130
§3. EXPULSION MEASURES	131
§4. PROCEDURAL SAFEGUARDS	132

Table of Contents

§5. GENERAL PROCEDURAL SAFEGUARDS	133
§6. PROCEDURAL SAFEGUARDS IN THE ADMINISTRATIVE CONDUCT	134
§7. PROCEDURAL SAFEGUARDS IN PROCEDURES OF ADMINISTRATIVE JUSTICE	134
Chapter 2. Legal Remedies in the Case of Detention	136
Part VII. Access to the Labour Market	137
Chapter 1. Overview of Applicable Legislation	137
Chapter 2. Conditions for Entitlement to Work in the Country as an Employed Person	140
§1. GENERAL CONDITIONS	140
§2. ADMINISTRATIVE RULES AND PROCEDURES	145
§3. CONDITIONS FOR SPECIAL CATEGORIES OF WORKERS	145
I. Working on Grounds of Residence Permits Other than Workers' Residence Permits	145
II. Working on the Ground of a Visa or a Visa Waiver	147
Chapter 3. Sanctions against Illegal Participation in the Labour Market	149
§1. SANCTIONS AGAINST EMPLOYERS	149
§2. SANCTIONS AGAINST WORKERS	150
Chapter 4. Legal Remedies and Procedural Safeguards	151
Part VIII. Access to Self-employed Activities	153
Chapter 1. Overview of Applicable Legislation	153
Chapter 2. Conditions for Entitlement to Work in the Country as a Self-employed	154
§1. GENERAL CONDITIONS	154
§2. ADMINISTRATIVE RULES AND PROCEDURES	156

Table of Contents

§3. CONDITIONS FOR SPECIAL CATEGORIES OF SELF-EMPLOYED	156
Chapter 3. Sanctions against Illegal Exercise of Self-employment	157
Chapter 4. Legal Remedies and Procedural Safeguards	158

List of Abbreviations

APD	Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing of refugee status
BRÅ	Brottsförebyggande rådet, The Swedish National Council for Crime Prevention
CETS	Council of Europe Treaty Series
CPT	The European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment
DNA	Deoxyribonucleic acid
EC	European Communities
EEA	European Economic Area
EEC	European Economic Community
EED	Employment and Economic Development Centre
EU	European Union
EURODAC	European Dactyloscopy
FIS	Finnish Immigration Service
LPD	Local Police District
NGO	Non-Governmental Organization
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
UNTS	United Nations Treaty Series
QD	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
WW	World War

List of Abbreviations

Preface

Migration law is an area of law that often is placed outside the limelight of legal research and legal publications. It is a disperse field of law, where national, regional as well as international legal sources provide binding rules and sometimes collide. At the same time migration law is an area of law that is utterly commonplace in the everyday life of citizens and people in the modern world. Borders and boundaries are not longer perceived as obstacles for moving, and the practical impact of rules regarding as well immigration as emigration is important to acknowledge.

This volume aims as providing a structured overlook over the rules applicable to immigration to Finland. Emigration is not included in the particular study of normative guidance. The volume also aims at providing sufficient and adequate frameworks for the rules applied, so that their context in the legal system both theoretically and practically is clear. Also, the volume aims at highlighting some of the challenges in both the application of the rules as in their interpretation and development.

As immigration law is a particularly dynamic field of law the applicable legislation is ever-changing. In this volume, changes to the legislation have been followed until 31 January 2010.

Preface

General Introduction

§1. IMMIGRATION HISTORY AND STATISTICAL INFORMATION

1. Finland is traditionally perceived as a country of emigration, not immigration. During wars, famine and in other situations people have left Finland and migrated to Sweden, Denmark and US, and other countries.¹ Immigration to Finland has been scarce, and the country has not attracted either foreign workers or other immigrants in significant numbers.² The Finnish society, both in a very practical sense and referring to the structures of policymaking, has, hence, remained fairly homogeneous throughout the last century.³ Even if the situation has changed somewhat during recent years, with an increasing immigration from the EU and also third countries, Finland must still today be perceived as a country with only a small foreign population. The marginalized role of immigration is also, partly, notable in the immigration legislation, as this field of law became truly sensitive to the requirements posed by democratic legislative procedures and by Finland's international obligations, especially in the field of human rights, only during the 1990s.

1. For an overview of migration to and from Finland, see S. Sagne, S. Saksela & Niklas Wilhelmsson, 'Finland', in *European Immigration A Sourcebook*, ed. A. Triandafyllidou & R. Gropas (Aldershot: Ashgate, 2007), 99–111.
2. Finland has, nevertheless, received some relatively large groups of immigrants from neighbouring countries as a result of shifted borders and international agreements. For an overview of immigration into Finland during the last centuries see A. Leitzinger, *Ulkomaalaiset Suomessa 1812 – 1972* (Helsinki: East-West Books, 2008).
3. See also A. Leitzinger, *Ulkomaalaispolitiikka Suomessa 1812–1972* (Helsinki: East-West Books, 2008).

2. Finland gained independence in 1917.¹ Before this time, Finland as a region belonged first to the Swedish empire and then to the Russian empire. Naturally, these periods in history have affected the Finnish patterns of migration. Aside from the regular emigration and immigration on grounds of family-ties or other connections to these countries, Finland has experienced some very particular forms of migration during its independence as a result of the ties to these countries: Some 70,000 children from Finland were sent for safety to Sweden during World War II.² Some of these returned to Finland in the years to come, whilst some chose or were forced to stay with their host families. This 'programme' of resettlement to Sweden could, in the eyes of the modern spectator, be seen as an early form of temporary protection. Further, Finland hosted, at the turn of the century, around 20,000 return migrants from the Ingrian areas of Russia, close to the eastern Finnish border.³

These persons all have Finnish roots, as their families were transferred to the Ingrian areas from territories in what now is Finland during the Swedish reign in the seventeenth century. After World War II, these families found themselves living in the Soviet Union due to the re-drawing of the Finnish-Soviet border. The Finnish president Mauno Koivisto in 1990 made an official decision to grant this particular group of persons the right of return migration to Finland and to facilitate their resettling by special means. The decision resulted immediately in rather high numbers of return migrants arriving in Finland from the Ingrian areas. The policy towards the Ingrian return migrants has later been somewhat amended, and stricter requirements for language-skills and ties to Finland have been introduced.

1. On the history and background of Finland see J. Lavery, 'The History of Finland', in *The Greenwood Histories of the Modern Nations*, ed. F. Thackeray & J.E. Findling (Westport: Greenwood Press, 2006).
2. A. Korppi-Tommola, 'War and Children in Finland during the Second World War', *Paedagogica Historica: International Journal of the History of Education* 44, no. 4 (2008): 445–455.
3. For statistics and information on the resettlement of Ingrian returned see <www.migri.fi/netcomm/content.asp?path=8,2475,2525>, 20 Sep. 2009.

3. A second characteristic of the Finnish migration environment is the close forms of cooperation in which the legislative work and the forming of practice take place, originally in the form of Nordic cooperation and later within the frameworks of EU.¹ As Finland is, indeed, a small country in size, population, applicants and possibilities to enforce its will internationally, cooperation has long been a key factor in any policy invoked in the country, migration issues included.² Thus, an important aspect of the background framework to the Finnish legal system relating to migration is its connections to policies of external politics and cooperation within various frameworks – Nordic and European.³ A result of this cooperation is the long standing favourable treatment of Nordic persons as immigrants in Finland, and of Finns as immigrants in the rest of the Nordic countries.

1. The Nordic countries include Denmark, Finland, Iceland, Norway and Sweden.
2. For instance, when the discussions on a new Aliens Act and a restructuring of the entire asylum procedure were undertaken in the 1980s, Sweden functioned as a very strong role-model. See K. Törnudd, *Finland and the International Norms of Human Rights*, International Studies in Human Rights, vol. 6 (Dordrecht: Martinus Nijhoff Publishers, 1986), 83 ff. See also the report of the working group of the Finnish Ministry of the Interior from 2009 on developing the asylum procedure, which takes as a starting point the state of affairs in the other Nordic countries: <[www.intermin.fi/intermin/biblio.nsf/D71589287E4A2A63C22575D90031CC32/\\$file/nakokulmia_turvapaikkapolitiikkaan_020609.pdf.pdf](http://www.intermin.fi/intermin/biblio.nsf/D71589287E4A2A63C22575D90031CC32/$file/nakokulmia_turvapaikkapolitiikkaan_020609.pdf.pdf)>, 15 Jun. 2009.
3. For an overview of the history of the administrative procedures to which all decision-making in matters regarding the right to enter and stay in Finland belong, see H. Kulla, *Hallintolainkäyttö ja hallinto*, Suomalaisen lakimiesyhdistyksen julkaisuja, no. 148 (Vammala: Suomalainen lakimiesyhdistys, 1980), 8–50, 175–244.

4. Finland is, as said, still today a country with comparably low numbers of immigrants within its borders. Nevertheless, an opening up of the society towards immigration has clearly taken place during the last decades. This has included changes in the legislative framework governing immigration and a closer relationship between the Finnish legislation and international treaties and conventions governing rights and obligations in the field of immigration. The change is also evident when

looking at the immigrant community in Finland, which has grown considerably during the past few decades. During the last decade it is clear that the legislative work very much has concentrated on the needs and requirements springing from the European integration project. Finland has today transposed all directives relating to immigration and asylum that have been presented by the EU and is an active participant in the negotiations about new measures in the area at the regional level.

5. At the end of 2008 Finland hosted a community of in total 143,000 foreigners.¹ Additionally, some 90,000 persons live in Finland who are born abroad but have been naturalized before this date.² In total, the Finnish population at this time numbered some 5,300,000 persons. The largest groups of foreigners in Finland consist of people from Russian origin (26,887), Estonian origin (22,509) and Swedish origin (8,493). Other major groups include people from Somalia (4,919), China (4,515), Thailand (3,924), Germany (3,480), Turkey (3,437), the UK (3,243) and Iraq (3,219).³

1. For a demographic overview of the recent trends in immigration in Finland, see S. Sagne, S. Saksela & Niklas Wilhelmsson, 'Finland', in *European Immigration A Sourcebook*, ed. A. Triandafyllidou & R. Gropas (Aldershot: Ashgate, 2007), 103–109.
2. Statistics provided by Statistics Finland at <www.stat.fi/til/vaerak/2008/vaerak_2008_2009-03-27_tie_001_en.html>, 20 Sep. 2009.
3. For detailed statistics on individual groups of immigrants and forms of residence permits granted see the Finnish Immigration Service at <www.migri.fi/netcomm/content.asp?path=2762>, 20 Sep. 2009.

§2. OVERVIEW OF NATIONAL LEGAL INSTRUMENTS

I. Historical Overview

6. The first decree concerning immigration aimed at people moving into the territory of Finland was given in 1811.¹ Throughout the early nineteenth century decrees were passed regarding various forms of immigration and with different time-spans. During this time also the foundations for Finland's participation in the Nordic cooperation were established, introducing a form of free movement of persons from the autonomous, but Russian, Finland to Sweden, and vice versa. In 1888 the scattered norms on immigration were unified into a new decree on aliens' stay in Finland.² This decree also prescribed that monthly registers over foreigners present on Finnish territory were to be made by local authorities. The decree, despite the events of World War I, stayed in place for over thirty years.

1. Decree on Conditions for Foreign Travellers in Finland 23 Feb. 1811 (Förordning om det, som i anseende till ankommande utländske Resende till Finland iakttagas bör 23 Feb. 1811). See also A. Leitzinger, *Ulkomaalaispolitiikka Suomessa 1812–1972* (Helsinki: East-West Books, 2008), 299 ff.
2. Decree on Foreigners' Entry into and Stay in Finland 27 Jun. 1888 (Asetus ulkomaalaisten passeista matkoilla Suomeen ja Suomesta sekä maassa oleskellessansa 27 Jun. 1888).

7. Finland gained independence in 1917. Independent Finland's first legislative act on immigration issues was the Decree on Foreigners' Entry into and Stay in Finland from 1919.¹ This decree included general norms on the entry and residence

in Finland, special legislation for the movement of persons living on the borders between Finland and Sweden, diplomats and other, particular, groups of immigrants. Most decisions regarding immigration at this time were taken by the border authorities and the police. The competent authority to consider requests for review of decisions on entry taken by border authorities was the Ministry of the Interior. However, decisions on renewal of any residence permit were taken by the Foreign Ministry.

1. Decree on Foreigners' Entry into and Stay in Finland 2 Jul. 1919 (Asetus ulkomaalaisten maahantulosta ja oleskelusta valtakunnassa 2 Jul. 1919).

8. The decree from 1919 remained in force for a relatively long time, until 1942. During this time the decree was amended several times and new rules regarding, for instance, work permits and asylum were enacted and added to the decree. The policy of the Finnish Government at the time towards immigration, and especially with regard to refugees from Central Europe, was influenced by the strivings to maintain a good relationship with the Nazi Government in Germany, and can, thus, best be described as restrictive. This policy was also evident in the new aliens decree enacted in 1942, as the decree partly was based on the need for protection of national interests during times of war. Thus, revoking of residence permits and return of individuals from Finland was made easier.¹

1. Decree on Foreigners' Entry into and Stay in Finland 31 Jan. 1942/97 (Asetus ulkomaalaisten Suomeen tulosta ja oleskelusta maassa 31 Jan. 1942/97).

9. The next updating of the aliens legislation came about only in 1952 in connection with Helsinki hosting the Olympic Games, as Finland became a member of the Nordic Passport Union, and citizens of Norway, Sweden and Denmark were no longer obliged to carry passports when travelling to and in Finland. However, the update was carried out only as amendments of and additions to existing rules in the 1942 decree.

10. In 1958 a new, unified, Aliens Decree was, again, enacted.¹ The 1958 decree did not per se imply major changes or developments to the rules of immigration, but functioned as a modernizer of the scattered framework from earlier years. The 1958 decree remained in force until 1983 when Finland's first Aliens Act was enacted.²

1. Aliens Decree (187/1958).
2. Aliens Act (400/1983).

11. The 1983 Aliens Act was enacted as a response to the challenges of modern immigration and as an instrument for independent Finland to efficiently react to the demands placed with modern states. It came about, partly, as a result of increasing awareness of, for instance, the impact of human rights concerns also on the procedural and formal rights of immigrants in Finland. The act gained force in April 1984 and was also accompanied by a new Aliens Decree.¹ New administrative organs were introduced in order to more clearly structure the administration of immigration, while, at the same time, a first attempt also to move the decision-making and use of power away from the strictly political scene was made. The 1983 Act, among

other things, enacted a general right of appeal over decisions on entry and residence in Finland.

1. Aliens Decree (232/1984).

12. Throughout the 1980s the aliens legislation and also the administration of immigration issues were vividly debated in Finland. It was considered that the 1983 legislation did not in all respects meet international standards, also due to the rapidly changing forms of immigration and the, for Finland, relatively new challenge of larger groups of asylum seekers arriving. It was considered that the Aliens Act did not sufficiently guarantee the rule of law in the field of immigration and that procedural safeguards for applicants and aliens were not adequate. The decision-making in immigration issues was also criticized for being too politically steered. Thus, a working group within the Ministry of the Interior was in 1988 established to draft a new Aliens Act. The work was finalized in 1990 and a new Aliens' Act was enacted on 22 February 1991.¹ In the same reform, also a new Aliens Decree was enacted.²

1. Aliens Act (378/1991).
2. Aliens Decree (142/1994).

13. The new legislation created, again, new authorities and new structures for the decision-making in issues concerning immigration in Finland, both in relation to individual applicants and on a more general level. An example was the establishment of a particular Asylum Appeals Board, competent to hear appeals on decisions on applications for asylum. However, the solutions presented in the Act were in practice not sufficiently efficient, and the 1991 Aliens Act was during the 1990s amended several times to ensure efficiency and good governance also within this area of administration. The aforementioned Appeals Board was, for instance, abolished in the mid 1990s in favour of a transfer of the jurisdiction over asylum appeals to the Helsinki District Administrative Court. New legislation was also introduced parallel to that of the Aliens Act; among others new legislation on the integration of aliens in Finland was put in place.¹

1. Act on the Integration of Immigrants and the Reception of Asylum Seekers (493/1999).

14. The new legislation on integration of immigrants and the reception of asylum seekers can be seen as evidence of the turn in politics of immigration in Finland during the 1990s. Finland had, at this time, officially become a country of immigration with an increasing number of foreign citizens within its borders, and the need for rules regarding reception and integration was apparent in everyday life. According to the rules in the Act on the Integration of Immigrants and the Reception of Asylum Seekers, municipalities are responsible for the practical arrangements in relation to integration, and aliens meeting the criteria of the law have a right to a personal integration plan, which includes education, language education and financial support during the time of integration. The Finnish legislation on integration and reception is still today, comparably progressive.

15. The preparations for the 1991 Aliens Act and the legislative work throughout the 1990s marked a shift in immigration legislative standards in Finland also in

another sense. The legislative work in the immigration sector had, until this time, been very focused on the work of the civil servants in the legislative committees of relevant ministries, and little attention had been paid to the democratic and parliamentary requirements affecting the legislative work. Only with the preparations of the 1991 legislation did, the Parliament effectively gain a more active role in the immigration debate and the democratic control over immigration standards was, thus, enforced. However, the legacy of the era of civil servant-focused legislative activity in the field of immigration can still be noticed in, for instance, the structure of the Aliens Act.

16. Towards the end of the 1990s, it became clear that Finnish membership of the European Union would require quite far-reaching legislative work in order to integrate the evolving European frameworks for immigration into Finnish legislation and practice. On the one hand, the free movement of European citizens required amendments to existing practices and legislation. On the other hand, for instance the work towards the Common European Asylum System would require vast changes also on a more practical level. It was considered that the fractioned legislation from the early 1990s would not be suitable ground for the implementation. Also, due to the numerous amendments throughout the 1990s, the 1991 Act was in itself difficult to read and implement. Further, Finland enacted a new Constitution in 1999 that includes rights which also affect the aliens' legislation.¹ It was, hence, at the turn of the century decided that, once again, new legislation would be enacted in order to draw together the results of the work during the 1990s and to better facilitate the challenges stemming from the European Union. A new Aliens Act was enacted, on the basis of lengthy preparations, in 2004.²

1. The Constitution (731/1999).
2. Aliens Act (301/2004).

17. The Finnish legislation on immigration can, thus, be characterized by a rather late awakening to the requirements of democratic principles and human rights concerns, but also by modern standards and a pragmatic approach to the needs of society.

II. Current Applicable Legislation

18. Today, the basis for Finland's legislation relating to immigration can be found in the Aliens Act.¹ This act includes rules on entry and stay in Finland in relation to different forms of immigration, norms on the rights and obligations of foreigners in Finland and rules relating to the procedures in matters of immigration. The Aliens Act constitutes in many ways the backbone of the regulation of immigration in Finland. Also, the transposition of norms adopted at the European level is, in the first place, carried out through transposition of the relevant norms into the Aliens Act.

1. *Ibid.*

19. Matters relating to immigration are dealt with as matters of administrative justice. Thus, the Act on Administrative Procedure (Hallintolaki) regulates the

administrative procedure carried out by the authorities dealing with immigration, mainly the Finnish Immigration Service.¹ In higher instances, administrative courts and the Supreme Administrative Court, the Act on Administrative Judicial Procedures (Hallintolainkäyttölaki) regulates matters of procedure.² These acts include procedural rules on the obligations of the authority or court towards the parties of the procedure, on the duties of the parties and also relating to particular procedural concerns, such as legal aid and right of representation. However, these acts are of general administrative character and do not, thus, particularly address questions relating to immigration. Nevertheless, as all immigration matters in the Finnish legal system are matters of administrative justice, these acts are applicable in all instances of decision-making: the Act on Administrative Procedures to the decision-making in first instance and the Act on Administrative Judicial Procedures to proceedings in higher instances.

1. Act on Administrative Procedure (434/2003).
2. Act on Administrative Judicial Procedures (586/1996).

20. Acts of interest particularly to the field of immigration are, part of the Aliens Act, the Nationality Act (Kansallisuuslaki),¹ the Act on Reception of Asylum Seekers and Integration of Foreigners (Laki maahanmuuttajien kotouttamisesta ja turvapaikanhakijoiden vastaanotosta)² and the Act on the Foreigners' Register (Laki ulkomaalaisrekisteristä).³ Also the Act on Non-Discrimination (Yhdenvertaisuuslaki),⁴ the Act on the Finnish Immigration Service (Laki maahanmuuttovirastosta)⁵ and the Act on the Ombudsman for Minorities and the National Discrimination Tribunal of Finland (Laki vähemmistövaltuutetusta ja syrjintälautakunnasta)⁶ are of importance, as these acts provide both substantive rules and a procedural framework in issues relating to discrimination on ethnical grounds. Further, the Act on Treatment of Detained Foreigners and on the Detention Facility (Laki säilöön otettujen ulkomaalaisten kohtelusta ja säilöönottoyksiköstä)⁷ impacts on matters relating to immigration.

1. Nationality Act (359/2003).
2. Act on Reception of Asylum Seekers and Integration of Foreigners (493/1999).
3. Act on the Foreigners' Register (1270/1997).
4. Act on Non-discrimination (21/2004).
5. Act on the Finnish Immigration Service (156/1995).
6. Act on the Ombudsman for Minorities and the National Discrimination Tribunal of Finland (660/2001).
7. Act on the Treatment of Detained Foreigners and the Detention Facility (116/2002).

21. It is impossible to list all acts and decrees that may be of interest when dealing with immigration in Finland. Depending on the matter in question acts and regulations in relation to vastly different forms of themes may be of importance.

III. Administrative and Judicial Authorities

22. Political responsibility for issues linked to immigration is, in the Finnish government, held by The Ministry of the Interior. Thus, the Ministry of the Interior

is the prime force also behind new legislation in the field. When enacting new laws and regulations also the Administrative Committee and the Constitutional Committee of the Parliament are consulted. Especially the role of the latter is important in relation to immigration matters, as it is for the Constitutional Committee to ensure conformity of all acts, pre-enactment, with the Finnish Constitution and Finland's international human rights obligations. Naturally, also numerous NGO's, representatives of academia and other stakeholders have a part to play in the legislative procedure and are often consulted in the course of the legislative work.

23. The main determining authority in immigration related issues is the Finnish Immigration Service (Finnish Immigration Service). The Immigration Service holds five offices around the country, the main office being in Helsinki. At the end of 2008 the Immigration Service employed 252 persons and its annual gross expenditure a bit under EUR 20 million. In 2009 the authority was granted vast extra resources which would add to both staff-numbers and gross expenditure. Apart from the Finnish Immigration Service, the local police, the Centres for Economic Development, Transport and the Environment and the Security Police have competences relating to immigration.

24. During 2008 the Finnish Immigration Service received in total 22,757 applications for different types of residence permits.¹ The largest groups of applications concerned residence permits on grounds of family ties (7,396), on grounds of work (6,786), for students (4,796) and requests for international protection (3,418). During the same year the Immigration Service made 22,205 decisions on applications for residence permits, of which 19,606 were decisions granting residence permit and 2,599 decisions refusing a residence permit.

1. *Ibid.*

25. Decisions concerning the right to enter and stay in Finland are judicially managed within the field of administrative justice. Finland, as many other continental countries, employs administrative courts separate from the general courts concerned with criminal and civil matters as the institutional backbone in the procedures of administrative justice. Thus, the regular complaints over decisions taken in administrative matters in the first instance, as for instance in the Finnish Immigration Service, are handled by the administrative court structure.

26. There are two levels of administrative courts: district administrative courts and the Supreme Administrative Court. As a ground rule, the district administrative court is competent to hear appeals on decisions taken by authorities in the area of the district court in question. If the authority concerned has a nation-wide competence, the competent district administrative court is determined by the residence of the sponsor or appellant if residing in Finland.¹ However, decisions directly linked to issues with international protection must all be appealed to the Helsinki district administrative court, which has exclusive competence in this field.²

1. Section 192 of the Aliens Act (301/2004).

2. Section 193 of the Aliens Act (301/2004).

27. The general rule is that all decisions taken in procedures of administrative conduct can be appealed within thirty days of service.¹ Nevertheless, legislation, for instance on issues of migration, includes also some prohibitions to this right of appeal and in relation to such decisions the decision by the authority in the administrative conduct is, hence, final.

1. Section 22 of the Act on Administrative Procedures (434/2003).

28. Apart from the general court appellate structure there are also a number of other procedures and bodies for safeguarding the rights of migrants. Firstly, there is the possibility of extraordinary appeal within the structure of the administrative courts.¹ This implies a right to file extraordinary appeals on as well issues of law as fact to the competent administrative court, disregarding possible prohibitions of appeal in matters in which the decision taken has already gained legal force. Extraordinary appeal can be lodged if the decision has been based on the wrong facts or law and this fault has impacted on the decision. The most common remedies as results of extraordinary appeals are the overthrowing of prior decisions or the enactment of new deadlines for legal actions in the matter.

1. Chapter 11 of the Act on Administrative Procedures (434/2003).

29. Lastly, there are institutions and bodies independent of the court structure. These include the Ombudsman for Minorities, the Parliamentary Ombudsman of Finland and the Chancellor of Justice. The Ombudsman for Minorities hears complaints on issues linked to discrimination or wrongful treatment of minorities in Finland, including foreigners.¹ The Parliamentary Ombudsman has a broad competence as monitoring the legality of decisions and actions taken by state agents and actors.² The Chancellor of Justice also supervises the lawfulness of actions and decisions taken and carried out by persons in the service of the state.³ The service of the ombudsman and chancellor offices are free to the person making the complaint. However, decisions of the ombudsman and chancellor-institutions cannot replace decisions taken by authorities or courts, but function as softer forms of recommendations. On the other hand, these institutions have the power to mediate and come to conclusions using a variety of means.

1. See <www.vahemmistovaltuutettu.fi/intermin/vvt/home.nsf/pages/index3>, 28 Sep. 2009.
2. See <www.oikeusasiamies.fi/Resource.phx/ea/index.htm>, 28 Sep. 2009.
3. See <www.chancellorofjustice.fi/index.html>, 28 Sep. 2009.

30. Further, the National Discrimination Tribunal of Finland, established under the Ministry of the Interior has competence to hear complaints and take decisions on issues concerning ethnic discrimination.¹ The Tribunal has the power to prohibit certain actions or customs, and can also, in support of their decisions, place and collect damages.

1. See <www.intermin.fi/intermin/hankkeet/sltk/home.nsf/pages/indexeng>, 28 Sep. 2009.

§3. OVERVIEW OF INTERNATIONAL LEGAL INSTRUMENTS APPLICABLE IN FINLAND

31. Finland is signatory to most international agreements and legal instruments relating to immigration, free movement, human rights and non-discrimination. An important dimension is, naturally, added by the agreements in relation to the European Union. There are additionally numerous agreements in support of the Nordic cooperation. Finland has also signed numerous bilateral agreements on issues relating to immigration.

32. Some of the most important international agreements and conventions to which Finland is signatory and that are of importance to questions of immigration and free movement are:

- European Convention for the protection of human rights and fundamental freedoms 4.11.1950/1990/18-19.
- European Social Charter (1961) 3.5.1996/2002/78-80.
- European Agreement on Abolition of Visas for Refugees 20.4.1959/1990/36.
- Convention Relating to the Status of Refugees 28.7.1951/1968/28 and Protocol Relating to the Status of Refugees 4.10.1967/1968/78.
- Convention relating to the status of stateless persons 28.9.1964/1968/80.
- Convention on the elimination of all forms of racial discrimination 21.12.1965/1970/37.
- International Covenant on Economic, Social and Cultural Rights 16.12.1966/1976/6.
- International Covenant on Civic and Political Rights 16.12.1966/1976/7-8.
- Convention Against Torture, Inhuman or Degrading Treatment or Punishment 10.12.1984/1989/59-60.
- Convention on the Rights of the Child 20.11.1989/1991/59-60.
- European Convention on Extradition 13.12.1957/1971/32-33.
- European Convention on Nationality 6.11.1997/2008/93-94.
- Convention on the Elimination of All Forms of Discrimination Against Women 3.9.1981/1986/67-68.
- Convention on the Nationality of Married Women 11.8.1958/1968/32.

33. So far, Finland has *not* acceded to the UN International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families 18 December 1990.

34. The following agreements are of particular importance when considering Finland's partaking in the European cooperation, which, naturally, has been and is of vast importance also in relation to immigration and free movement of persons.

- General agreement on passport requirements (EEC) 20.5.1987/67-68.
- Agreement on the European Economic Cooperation (Sopimus Euroopan talousalueesta) 2.5.1992.

- Agreement on the Finnish and Swedish membership of the European Union 24.6.1994/102-103.
- Agreement on the free movement of persons between the European Communities and Switzerland 21.6.2001/37-38.

35. Additionally, Finland has signed bilateral agreements on issues relating to immigration with numerous countries.

36. Agreements on freedom from visitation for Finnish citizens has been made with US 15.8.1958/27, Argentina 6.9.1961/27, Australia 21.2.1961/4 and Brazil 29.1.1969/20.

37. Agreements on exchange of trainees has been concluded with the Netherlands 11.7.1951/21, Belgium 20.3.1950/19, Brazil 30.5.1974/1975/1, Italy 28.2.1961/16, Poland 18.12.1963/43, France 15.4.1950/22, Slovenia 16.5.1955/19 and Switzerland 7.12.1951/1952/1.

38. Bilateral agreements relating to extradition of aliens on grounds of crime has been signed with the Netherlands 4.7.1996/72, US 11.6.1976/1980/15, Australia 7.6.1984/1985/24, Belgium 23.1.1928/13, Ireland 30.5.1930/40, United Kingdom 29.10.1975/1976/51, Canada 21.6.1978/1985/6, Kenya 16.8.1965/55, France 13.9.1991/96, Sri Lanka 30.5.1924/40, Thailand 17.10.1991/1992/38, Uganda 16.8.1965/56, New Zealand 30.5.1924/40 and Russia 8.11.1990/1993/81.

39. Within the framework of the European Union, the following legislative documents are of key importance to the norms and practice regarding immigration in Finland:

- Council Directive 2001/40/EC of 28 May 2001 on the mutual recognition of decisions on the expulsion of third-country nationals.
- Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, Official Journal L 187 of 10.7.2001.
- Council directive 2001/55/EC of 20 July 2001 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 2002/90/EC of 28 November 2002 defining the facilitation of unauthorized entry, transit and residence.
- Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents.
- Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) (hereafter Directive 2004/38/EC).

- 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.
- Council directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.
- Council Framework Decision 2002/629/JHA of 19 July 2002 on combating trafficking in human beings, Official Journal L 203 of 01.08.2002.
- Council framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorized entry, transit and residence, Official Journal L 328 of 5.12.2002.
- Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national.
- Council Regulation (EC) No 2725/2000 of 11 December 2000 concerning the establishment of ‘Eurodac’ for the comparison of fingerprints for the effective application of the Dublin convention.
- Regulation (EC) No 562/2006 of the European Parliament and of the Council of 15 March 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code).

Selected Bibliography

- Aus, J.P. 'Crime and Punishment in the EU: The Case of Human Smuggling'. *ARENA Report* no. 6 (2007).
- Buchanan, J.M. 'A two-country parable'. In *Justice in Immigration*, edited by W.A. Schwartz Cambridge Studies in Philosophy and Law, 1995.
- Fitzpatrick, J. & Bonoan, R. 'Cessation of Refugee Protection'. In *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, edited by E. Feller, V. Türk, & F. Nicholson. Cambridge: Cambridge University Press, 2003.
- Goodwin-Gill, G.S. & McAdam, J. *The Refugee in International Law*. Oxford: Oxford University Press, 2007.
- Joutsen, M., Lahti, R. & Pölönen, P. *Criminal Justice Systems in Europe and North America, Finland*. Helsinki: HEUNI, 2001.
- Kimpimäki, M. 'Ihmiskauppa kansallisenä ja kansainvälisenä ongelmana'. *Lakimies* 8 (1999).
- Korppi-Tommola, A. 'War and Children in Finland during the Second World War'. *Paedagogica Historica: International Journal of the History of Education* 44, no. 4 (2008).
- Kulla, H. *Hallintolainkäyttö ja hallinto*, Suomalaisen lakimiesyhdistyksen julkaisuja, no. 148. Vammala: Suomalainen lakimiesyhdistys, 1980.
- Lavery, J. 'The History of Finland'. In *The Greenwood Histories of the Modern Nations*, edited by F. Thackeray & J.E. Findling. Westport: Greenwood Press, 2006.
- Lehti, M. & Aromaa, K. *Trafficking in Human Beings, Illegal Immigration and Finland*, no. 38. Helsinki: HEUNI Publication Series, 2002.
- Leitzinger, A. *Ulkomaalaiset Suomessa 1812–1972*. Helsinki: East-West Books, 2008.
- Roth, V. *Defining Trafficking and Identifying Its Victims: A Study on the Impact and Future Challenges of International, European and Finnish Legal Responses to Prostitution-Related Trafficking in Human Beings*. Turku: Uniprint 2010.
- Sagne, S. Saksela, S. & Wilhelmsson, N. 'Finland'. In *European Immigration A Sourcebook*, edited by A. Triandafyllidou & R. Gropas. Aldershot: Ashgate, 2007.
- Staffans, I. *Förfarandet för bedömning av asylskäl i Finland samt därtill hörande säkringsåtgärder*. Helsinki: University of Helsinki, 2005, available at <<http://ethesis.helsinki.fi/julkaisut/oik/rikos/lt/staffans/>>, 12 Dec. 2009.
- Törnudd, K. *Finland and the International Norms of Human Rights*, International Studies in Human Rights, vol. 6. Dordrecht: Martinus Nijhoff Publishers, 1986.

Selected Bibliography

Ulrich, C.J. *Alien-smuggling and Uncontrolled Migration in Northern Europe and the Baltic Region*, no. 7. Helsinki: HEUNI Paper, 1995.

Reports and Plans and Guidelines

The Organization of Human Trafficking – A Study of Criminal Involvement in Sexual Exploitation in Sweden, Finland and Estonia. BRÅ Swedish National Council for Crime Prevention, Report 2008:21.

United States Department of State, Trafficking in Persons Report 2008 – Finland, 4 Jun. 2008, available at <www.unhcr.org/refworld/docid/484f9a162.html>, 1 Dec. 2009.

Council of Europe: Committee for the Prevention of Torture, Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 30 April 2008, 20 Jan. 2009, CPT/Inf (2009) 5, para. 39, available at <www.unhcr.org/refworld/docid/4975a20c2.html>, 4 Dec. 2009.

The report of the working group of the Finnish Ministry of the Interior from 2009 on developing the asylum procedure, which takes as a starting point the state of affairs in the other Nordic countries: <[www.intermin.fi/intermin/biblio.nsf/D71589287E4A2A63C22575D90031CC32/\\$file/nakokulmia_turvapaikkapolitiikkaan_020609.pdf](http://www.intermin.fi/intermin/biblio.nsf/D71589287E4A2A63C22575D90031CC32/$file/nakokulmia_turvapaikkapolitiikkaan_020609.pdf)>, 15 June 2009.

The report on SAR-missions by the Finnish Border Guard, published at <[http://raja.fi/rvl/home.nsf/files/2D7C48971E36C9AFC22574730034CAD3/\\$file/Meripelastussuoritteet_uusi.pdf](http://raja.fi/rvl/home.nsf/files/2D7C48971E36C9AFC22574730034CAD3/$file/Meripelastussuoritteet_uusi.pdf)>, 15 Oct. 2009.

National Plan of Action against Trafficking in Human Beings, Publications of the Ministry for Foreign Affairs of Finland 18/2005, available at <<http://formin.finland.fi/public/default.aspx?nodeid=38595&contentlan=1&culture=fi-FI>>, 1 Dec. 2009, 23.

Revised National Plan of Action against Trafficking in Human Beings, Publications of the Ministry of the Interior 29/2008, available at <[www.intermin.fi/intermin/biblio.nsf/527B78A391D0DEF7C22574DB004CFAAD/\\$file/292008.pdf](http://www.intermin.fi/intermin/biblio.nsf/527B78A391D0DEF7C22574DB004CFAAD/$file/292008.pdf)>, 1 Dec. 2009.

Government's Decision 27.10.2005 on the general guidelines on the use of the foreign labour.

Maahanmuuttovirasto. Ohje. Oleskelulupa perhesiteen perusteella. 25.5.2007. Voimassaoloaika 25.5.2007–31.12.2010. Finnish Immigration Service. Guidelines on Family Member's Residence Permit. 25.5.2007.

Maahanmuuttovirasto. Ohje toimeentuloedellytyksen soveltamisesta. 30.4.2009. Voimassaoloaika 3.4.2009–31.12.2012. Finnish Immigration Service. Guidelines on Application of the Income Requirement. 3.4.2009.

Instruction Dnro. SM-2004-02354/Tu-, 28.7.2004, Imposing a penalty payment on a carrier, Frontier Guard Department of the Ministry of Interior, available at <www.raja.fi/rvl/ksr/home.nsf/pages/B738B6337DFBDAA0C2256FF100324B91>, 4 Dec. 2009.

Part I. Border Control and Entrance

Chapter 1. Organization of Border Control

§1. GENERAL

40. Finland is one of the countries of the European Union with an exceptionally long border with a third country. The 1,340 km long eastern border with Russia inevitably calls for particular attention in the structuring and operations of Finnish border control. Additionally, Finland shares borders with Norway, Sweden and, across the Baltic Sea, with the Baltic countries. Finland operates heavily trafficked ports and Helsinki-Vantaa is an airport specialized in long-haul flights to Asia. It must also be remembered that the Finnish Border Guards, especially the Coast Guards, every year carry out large amounts of maritime so-called search-and-rescue missions – as well off the coast as on the seas inside of Finland, in relation to Finnish vessels as well as foreign ones.¹ Thus, the position of the border control is significantly in Finland, compared to the size and population of the country.

1. For statistics see the report on SAR-missions by the Finnish Border Guard, published at <[http://raja.fi/rvl/home.nsf/files/2D7C48971E36C9AFC22574730034CAD3/\\$file/Meripelastussuoritteet_uusi.pdf](http://raja.fi/rvl/home.nsf/files/2D7C48971E36C9AFC22574730034CAD3/$file/Meripelastussuoritteet_uusi.pdf)>, 15 Oct. 2009.

41. The Finnish Border Guard is, further active within the European frameworks for cooperation and joint ventures in the sector of border control. As Finland shares maritime borders or borders towards international waters with many countries, such as Sweden, Estonia and Germany, there are also frequent joint operations and training within the framework of the Baltic Sea cooperation.¹

1. For more information see the Council of the Baltic Sea States information on ‘Creating a safe and secure region’ available at <www.cbss.org/Civil-Security-and-the-Human-Dimension/creating-a-safe-and-secure-region>, 15 Oct. 2009.

42. In 2008 the Finnish Border Guard carried out over 11 million controls of persons crossing the Finnish border.¹ The same year the collective workload of the Border Guard amounted to almost 1,200 man-years, and the costs for the missions and activities of the Border Guard amounted to around EUR 100 million. Lately the Border Guard in Finland has attempted to optimize its resources by introducing advanced technology as a rather frequent tool of assistance as well as along the eastern border with Russia as at airports and on the coasts of south and west Finland.

1. Rajanvartiolaitys: Taloussuunnitelma 2009, Toiminta- ja taloussuunnitelma 2010–2013, Sisäasianministeriön suunnitelma 1255/20/2008. Border Guards: Budget 2009, Strategy and Budget 2010–2013, Ministry of the Interior plan 1255/20/2008, Appendix 2.1 at 3.

43. The prime functions of the Finnish Border Guard are, naturally, connected to issues relating to border control and the safeguarding of the Finnish territory. Nevertheless, the Border and Coast Guards also carry out duties in relation to, for instance, the registration of applications for international protection, investigations of identity and travel routes concerning certain aliens, frequent search-and-rescue missions at sea and land and participation in the training of the third sector in the Finnish society in questions of border management and control.

§2. ORGANIZATION

44. Issues linked to border control and guarding of the borders belong to the competence of the Finnish Ministry of the Interior. This also means that the border control agency does not have independent budgetary competence or jurisdiction, but are given resources as included in the general budget for the area of the Ministry of the Interior – however, naturally, negotiated particularly for the purposes of the Border Guard.

45. The Finnish Border Guard is administratively led by the Chief of the Border Guard and the Deputy Chief of the Border Guard. As an administrative organization, the Border Guard consists of four distinct divisions: the personnel division, the legal division, the technical division and the border and coast guard division. These divisions, together with the Chief and the Deputy Chief of the Border Guards form the central staff at the Ministry of the Interior.

46. The Border Guard as an operative unit is divided into eight districts. These districts include the Southeast Finland Border Guard District, the North Karelia Border Guard District, the Kainuu Border Guard District, the Lapland Border Guard District, the Gulf of Finland Border Guard District, the West Finland Border Guard District, the Air Patrol Squadron and the Border and Coast Guard Academy. The Academy functions as a special academy for the training of personnel for the Border Guard and Coast Guard of Finland.

47. The Finnish Border Guard is equipped with six patrol vessels, thirty coast guard boats, thirty patrol boats, seven hovercrafts, eleven helicopters and two airplanes. In addition, the Finnish Border Guards use some 235 specially trained dogs in their work. The equipment clearly reflects the challenging environment for border control in Finland, a country with vast coastline and large, scarcely populated areas.

48. In Finland there were, in 2008, a total of thirty-four border guard stations and twenty-six coast guard stations. The Finnish Border Guard employed about 3,000 persons.

§3. LEGAL FRAMEWORK

49. Legally, the Act on the Administration of the Border Guard (2005/577) is the normative source for the actions, organization and tasks of the Border Guard. The Act is from 2005 and provides a modern and proactive framework. It confirms, in section 3, that the Finnish Border Guard, as an administrative institution, belongs to the jurisdiction or competence of the Ministry of the Interior and provides a legal basis for the administrative organization of the Border Guard into the above mentioned divisions and districts.¹ It also establishes the division of national and local actors within the Border Guard.² Whereas the Chief and the Deputy Chief as well as the divisions of their staff are considered national actors, the border and coast guard districts are local.

1. Section 3 of the Act on the Administration of the Border Guard (577/2005).
2. Section 4 of the Act on the Administration of the Border Guard (577/2005).

50. As the Finnish Border Guard is an agency under the aegis or competence of the Ministry of the Interior, the Act on the Administration of the Border Guard also provides for certain rights of the Minister of the Interior in relation to the Border Guard, its organization and actions. The Minister of Interior has the right to be informed, by the Chief of the Border Guard, about matters and concern to the Border Guard. Also, the Minister of the Interior will participate in the administration of matters relating to border control and patrolling within the Ministry of the Interior.¹ The Minister also has decisive power over issues concerning the establishment or withdrawal of border or coast guard stations.

1. Section 5 of the Act on the Administration of the Border Guard (577/2005).

51. In addition to the jurisdiction of the Minister of the Interior the Finnish President, as the commander of the Finnish army, has competence in relation to the Finnish Border Guard. In event of a need for decisive amendments to the military functions of the Border Guard or in event of a need for large-scale re-arrangements of the services and function of the Border Guard, impacting also on the military functions of the Border Guard, the Finnish President has the power to decide on the amendments necessary.¹ Decisions to this respect are made by the President outside his or her function inside the Government and as the Chief Commander of the Military. The president is, however, allowed to transfer, on his or her own initiative, matters relating to the military functions of the Border Guards to the Government for a decision there.

1. Section 4 of the Act on the Administration of the Border Guard (577/2005).

52. The persons in the service of the Border Guard are ranked in accordance with military rankings.¹ Thus, there are officers, special officers, college officers, coast guards and border guards within the Finnish Border Guard. In addition, special personnel and personnel employed for short periods of time are included in the personnel.

1. Section 8 of the Act on the Administration of the Border Guard (577/2005).

53. In order to serve in any position within the Finnish Border Guard the person in question must be a Finnish citizen. Further, the Act on the Administration of the Border Guard requires the person to be reliable and live a respectable life.¹ Further, there may be special requirements in terms of language skills and education dependent on the position in which the person would serve. Most often it is also required that the person has undergone military training in Finland (which still today has a compulsory army service for all men) and that the person is physically fit for the service in the Border Guards.

1. Section 10 of the Act on the Administration of the Border Guards (2005/577).

54. An interesting exception to the above mentioned rules on compulsory military training is that this requirement does not concern persons applying for positions within the Border Guards that come from the area of Ahvenanmaa in Finland. Ahvenanmaa is, in the Act on the Autonomy of Ahvenanmaa, allowed to function as a completely demilitarized part of Finland, which, naturally, leads to the fact that all persons from this area are exempted from the compulsory military service.¹

1. Act on the Autonomy of Ahvenanmaa (1144/1991).

55. The Chief and the Deputy Chief of the Border Guards are appointed to their positions by the Finnish President after negotiations in the Government.¹ Other officers are appointed by the President following a suggestion from the Ministry of the Interior.

1. Section 12 of the Act on the Administration of the Border Guards (2005/577).

Chapter 2. Right to Enter the Country

§1. CONDITIONS FOR THE RIGHT TO ENTER

56. Basic requirements for the entry in Finland are provided for in the Act on Border Control.¹ In section 12, this act states that borders between Finland and third countries shall be crossed at official border crossings during the time that these border crossings and stations are open. Finland today operates thirty-four border guard stations and twenty-six coast guard stations.²

1. Act on Border Control (578/2005).
2. For lists of the official border crossings on the Finnish border see the information provided under each district at the website of the Border Guards <www.raja.fi>, 16 Oct. 2009.

57. The Border Guard can grant a special permission allowing persons to cross the border on other places than at an official border crossing or at other times than during the official opening hours of the crossing. A prerequisite for the issuance of the permission is that the permission does not place any public interests at risk and that there is a valid reason for the wish to cross the border outside the designated space or time.

58. Border control is, according to the Act on Border Control, carried out in all instances when a person is crossing an external border and, thus, arrives in Finland.¹ It should be noted that the accession of Finland to EU has brought along the abolishment of border controls at so-called internal borders, implying borders between EU Member States. Thus, border controls are, as a starting point, only carried out at borders to third countries and at border stations where persons are arriving directly from third countries, such as airports or ports. Naturally, sporadic controls and controls in connection with special situations are, despite the division into external and internal borders, carried out at all borders.

1. Section 14 of the Act on Border Control (578/2005).

59. Despite the abolishment of the internal border controls the Government still has the power to decide ad hoc on the instalment of internal border controls again.¹ Also, the Ministry of the Interior can, if the need for the re-introduction of internal borders is very urgent, decide on necessary actions until the Government is given the possibility to take a stand in the matter.

1. Section 15 of the Act on Border Control (578/2005).

60. However, as said earlier, border control is, normally, carried out only at the external borders. Third-country nationals travelling within the EU have been subjected to the border formalities when they arrived in the EU, and border checks on the internal borders are, hence, only sporadic. EU citizens, as a starting point, have the full right to travel within the Union.

61. Naturally, also the Aliens Act includes norms on the right to enter Finland. These rules form the framework for the border control and are upheld by the Border Guard.

62. In order to enter Finland, it is required that the arriving alien can present a valid travel document.¹ What constitutes a valid travel document is, again, dependent on the citizenship of the alien, as the rules are divergent between, for instance EU citizens and third-country nationals. The Aliens Act defines travel document primarily as implying a passport issued by the authorities of the country of origin of the alien.² The Aliens Act lists the information that must be included in the passport in order for it to be considered valid. However, there are also other travel documents that are valid as documents for the purpose of entering Finland. Such travel documents include, for instance, diplomatic passports, refugee travel documents and collective passports. Collective passports are lists of aliens that all have the same nationality travelling together.³

1. Section 11 of the Aliens Act (301/2004).
2. Section 13 of the Aliens Act (301/2004).
3. Section 16 of the Aliens Act (301/2004).

63. Further, aside from a valid travel document, it is required that the alien can present the necessary permits for entry and stay in Finland. In practice, this means that the alien must present either a visa or a residence permit. Visas are required if the alien comes from a country that is not exempted from the visa-requirement and if the stay is of a short nature. If the stay is for a long nature, the alien must present a residence permit granted for the particular purpose of the stay. However, as said above, EU citizens are at large exempted from these rules. Also, persons applying for international protection at the border have the right to enter the territory without particular permits being granted.

64. The countries for which Finland at the time of writing has imposed visa-requirements are:¹

Afghanistan
Albania
Algeria
Angola
Armenia
Azerbaijan
Bahrain
Bangladesh
Belarus
Belize
Benin
Bhutan
Bolivia
Bosnia-Herzegovina
Botswana

Burkina Faso
Burundi
Cambodia
Cameroon
Cap Verde
Central African Republic
Chad
Colombia
Comoros
Congo
Cuba
Democratic Republic of Congo
Dominica
Dominican Republic
East Timor
Ecuador
Egypt
Eritrea
Ethiopia
Equatorial Guinea
Fiji
Gabon
Gambia
Georgia
Ghana
Grenada
Guatemala
Guinea
Guinea Bissau
Guyana
Haiti
Indonesia
India
Iraq
Iran
Ivory Coast
Jamaica
Jordan
Kazakhstan
Kenya
Kirgizia
Kiribati
Kosovo
Kuwait
Laos
Lebanon
Lesotho

Liberia
Libya
Macedonia
Madagascar
Malawi
Maldives
Mali
Marshall Islands
Mauritania
Micronesia
Moldova
Mongolia
Montenegro
Morocco
Mozambique
Myanmar
Namibia
Nauru
Nepal
Niger
Nigeria
North Korea
Oman
Pakistan
Palau
Palestine Areas
Papa New Guinea
Peru
Philippines
Qatar
Russia
Rwanda
Saint Lucia
Saint Vincent and Grenadines
Salomon Islands
Samoa
Sao Tome and Principe
Saudi Arabia
Senegal
Seychelles
Sierra Leone
Somalia
South Africa
Sri Lanka
Sudan
Surinam
Swaziland

Syria
Tadjikistan
Tanzania
Thailand
Togo
Tonga
Trinidad & Tobago
Tunisia
Turkey
Turkmenistan
Tuvalu
Uganda
Ukraine
United Arab Emirates
Uzbekistan
Vanuatu
Vietnam
Yemen
Zambia
Zimbabwe

1. Current lists of visa-requirements can be found at the webpage of the Foreign Ministry of Finland, <<http://formin.fi/Public/default.aspx?nodeid=15720&contentlan=1&culture=fi-FI>>, 16 Oct. 2009.

65. However, within the framework of the European Union the following countries' agreements on eased visa-requirements have been concluded: Albania, Bosnia-Herzegovina, Macedonia, Moldova, Montenegro, Serbia, Ukraine and Russia. Applications for visas by citizens of these countries are more easily accepted than applications from other countries.

66. Decisions taken in Finland regarding the application of visa-requirements, the procedures regarding visa applications and requirements for the granting of visas often have their background in common Schengen-norms, implemented either through the framework of the European Union or as separate Schengen agreements. Thus, also the above mentioned list of states, for which nationals visa-requirements are imposed in Finland, builds, to a large extent, on EU legislation and common European practice in the area of immigration. The EU, for instance, centrally negotiates visa agreements with certain countries, leading to freedom from visa-requirements.¹

1. For consolidated versions on regulations regarding visa-requirements to the EU see the listings on the official EU visa homepage <http://ec.europa.eu/justice_home/doc_centre/freetravel/visa/doc_freetravel_visa_en.htm>, 16 Oct. 2009.

67. The exemptions from the visa-requirement do, however, not imply exemptions from the requirement on residence permits for longer stays. If an alien arriving in Finland, or any other Schengen-country, is the national of a country for which exemptions from visa-requirements are in place the alien is, indeed, allowed to enter the country without a visa. Nevertheless, if the alien intends to stay in the country for longer than three months, a residence permit is required disregarding

1

the rules on visas. Thus, even if the visa-exemption allows the alien to travel freely within the Schengen area, this freedom elapses after three months, and if the alien after this wants to enter Finnish or other Schengen territory a residence permit is required.

68. The Alien Act lists the different forms of visas that are used. Primarily, the divergences between different forms of visas relate to the number of entries allowed under the same visa, as visas can be granted as a single entry visa or as a multiple entry visa.¹ The rules and practices for the granting of the different types of visas follow common Schengen-norms on the matter. Single entry visas allow for one entry into the Schengen area and a stay of a maximum of three months in the area. Multiple entry visas allow for several entries into the Schengen area, but only to a stay which does not exceed three months within a time period of six months.

1. Section 20 of the Aliens Act (301/2004).

69. An application for the granting of a visa is made to a Finnish mission. The application has been received by the mission when the application has been made and the application fee has been paid.¹ Whereas the general rule is that fees indeed are imposed on applicants for visas, at times ad hoc decisions regarding free visa applications can also be made. Free visa applications can, for instance, be used in instances of bigger sports or cultural events or in situations where humanitarian concerns call for this practice. A visa application should be accompanied with a valid travel document and documentation necessary to prove the purpose of the stay in Finland. Applicants for visas to Finland must be prepared to give statements in person to the Finnish mission where the application was made, if such statements are requested.² At times, requests for such statements or additional information may come some time after the application has been made, and may require the applicant to travel to and visit the mission an additional time.

1. The prize for a visa application is EUR 60, except for nationals of Albania, Bosnia-Herzegovina, Macedonia, Moldova, Montenegro, Russia and Serbia, for whom the fee is EUR 35.
2. Section 22 of the Aliens Act (301/2004).

70. A general requirement for the granting of any visa to Finland is that the applicant is not considered to misuse or abuse the rules and practices of immigration in Finnish legislation.¹ Thus, bogus applications are singled out immediately. Additionally, applicants are required to show proof of a valid health insurance and an insurance for accidents from a reliable insurance company if there are no bilateral or international agreements on the transfer of social welfare between the country of origin of the applicant and Finland.²

1. Section 23 of the Aliens Act (301/2004).
2. Section 24 of the Aliens Act (301/2004).

71. Schengen visas, such as all visas granted to Finland, are, generally, valid throughout the Schengen area.¹ However, if one or more states belonging to the Schengen cooperation have not approved of the travel document used by the applicant, the visa can be granted to a limited amount of states within the Schengen

area. The natural solution in these situations is that the visa is granted for the states that do recognize the travel document presented by the applicant. In some particular instances, where the visa is granted for humanitarian reasons or on grounds of national interests or international obligations, the visa can also be limited only to apply to Finland and Finnish territory.²

1. The Schengen countries are Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany Greece, Hungary Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal Slovakia, Slovenia, Spain and Sweden.
2. Section 25 of the Aliens Act (301/2004).

72. A visa that has been granted can be revoked if the general conditions for the granting do not longer exist. Also, if the alien despite the visa is refused entry into Finland, the visa can be revoked or its date of expiry altered.¹ An alien arriving in Finland with a visa can be refused entry if, for instance, the alien cannot present a valid travel document at the border, if the alien does not provide required information about his identity or travel-route, if the alien has given wrong or deceitful information in the application for the visa or if there are suspicions that the alien will use illegal means of support while in Finland. Further, the alien can be refused entry if he or she is suspected of selling sexual services or if he or she has entered Finland at another place than at a designated border crossing. Also, if there are reasons for believing that the alien may commit a crime, for which a sentence of imprisonment is stipulated, or repeated crimes or if the alien can be suspected for endangering Finnish public security or international relations, the alien can be refused to enter Finland and have his or her visa revoked.²

1. Section 28 of the Aliens Act (301/2004).
2. Section 148 of the Aliens Act (301/2004).

73. Both the granting of regular visas and the revoking of such are decided on by the Finnish missions. If the alien arrives to a Finnish border station, the Border Guard has the competence to refuse entry to the alien and revoke the visa. If the alien already has entered Finland, the revocation of the visa is carried out by the police.¹

1. Section 31 of the Aliens Act (301/2004).

74. All decisions on visas, also negative, are given in writing, either through the granting of the visa or through a written decision stating the reasons for the negative decision.¹

1. Section 32 of the Aliens Act (301/2004).

75. Aside from the requirements for the alien to present either a visa or a residence permit when entering Finland, there are general requirements valid for all aliens entering Finland irrespective of visa-requirements or alike. These requirements state that the alien must, irrespective of the reason for or the length of the stay, on request present documents that support his or her intentions for the stay in Finland and proof that he or she has the financial means to support himself or

herself during the stay.¹ Also, the alien must not have been given an entry-ban valid for Finland, and he must not be a threat to public order or safety, public health or the international relations of Finland.

1. There are also exceptions from the rules regarding the financial requirement. These will be examined in detail in relation to all respective forms of immigration later in the text.

§2. ADMINISTRATIVE PROCEDURES AND DOCUMENTS

76. The procedures for assessing applications for visas and residence permits in Finland are procedures of administrative conduct and justice. Thus, these procedures adhere to the general procedural framework created by general norms of administrative justice. Such norms are found in the Act on Administrative Procedures¹ and the Act on Administrative Judicial Procedures.² Naturally, also special legislation such as the Aliens Act and the Act on Border Control include specific legislation also valid for the procedures referred to in this chapter. However, these are *lex specialis* in relation to the general framework presented by the *lex generalis* above mentioned.

1. Administrative Procedure Act (434/2003).
2. Administrative Judicial Procedure Act (586/1996).

77. The individual procedural and substantive requirements valid for the application for particular forms of visas and residence permits will be examined in relation to the subject group (students, employees, asylum seekers, etc.) in chapters below. This presentation will, hence, concentrate on the general framework and common requirements.

78. Firstly, applications for a visa or residence permit must be made and approved before the alien arrives in Finland. Thus, the alien must, in order to be allowed to enter Finland, be able to present a valid travel document and, if requested, a valid visa or residence permit. There are, however, exceptions to this rule. Most notably applicants for international protection are not required to apply for a residence permit in advance, as their application is the asylum application made at the border or inside the country. Thus, for applicants for international protection it is sufficient that the application is filed when arriving in Finland. Also, aliens already present in Finland on residence permits granted for the purpose of studies, who want to pursue active employment after examination, can apply for a residence permit on the basis of employment while in Finland.

79. Secondly, documentary evidence in support of the application is often required. Depending on the country of origin of the applicant and also the reason for the stay in Finland, the nature of the required documents varies. If, for instance, a visa application is filed for the purpose of attending entry examinations to a Finnish university, documents must be attached to the application stating that the applicant indeed can take part in the exam. Or, if a residence permit on basis of employment is applied for, proof must be given of the availability of work in

Finland. Again, there are exceptions to these rules. The requirements on documentary evidence will be studied in more detail in relation to each sub-group of residence permits in the following chapters.

80. Further, there is a general requirement on means of support which is valid for most groups of aliens arriving in Finland.¹ This requirement implies that aliens arriving in Finland must, by way of documentary evidence, provide information that ensures Finnish authorities that the alien has or will acquire sufficient means of support for the stay in Finland in order to avoid reliance on social benefits. The purpose of this rule is to avoid dependence on Finnish social welfare and aid during the stay in Finland. Again, there are also some groups of aliens that are exempted from this rule – most notably applicants for international protection and certain categories of aliens with preferential treatment.

1. Section 39 of the Aliens Act (301/2004).

81. As said, applications for visas or residence permits are made to Finnish Missions or, in certain cases, on behalf of the applicant to the Finnish Immigration Service.

82. However, an important part of the administrative procedure surrounding entry to Finland is, naturally, the actual border control. This takes place at the border, and follows, thus, the granting of a visa or residence permit. The border control is also independent of the procedure granting the visa or residence permit, and it is, hence, fully possible that a person holding a visa or residence permit is denied entry to Finland.

83. Section 17 of the Act on Border Control gives the Border Guard the competence to carry out controls at the border.¹ The section also states that the Border Guard is the authority in charge of the cooperation on border issues in Finland and that it coordinates the actions of other authorities at the borders. This provision is important especially in relation to the actions and competences of the Customs Service, who, naturally, also operate at the borders of Finland.

1. Section 17 of the Act on Border Control (578/2005).

84. The Border Guard may also be given other tasks aside of border control in a narrow understanding. The Aliens Act, for instance, requires the Border Guard and the Customs authorities to accept applications for international protection. The Border Guard, but not the Customs authorities, is, further, competent and obliged to carry out investigations as to identity and travel-route in relation to asylum seekers arriving at the borders, as well as to take decisions on the use of coercive measures in connection to applications for international protection.¹

1. Section 123 of the Aliens Act (301/2004).

85. The Act on Border Control requires that border control is carried out promptly and without causing the person controlled unnecessary harm or damage.¹

The rules requiring avoidance of harm and damage are also applicable to the property of the alien seeking to enter Finland. The Act on Border Control further states that the Border Guard has the competence to require that the alien, and his or her belongings, stays in a confined space for the time of the control.

1. Section 18 of the Act on Border Control (578/2005).

86. There are two types of border control that can be undertaken at the Finnish borders: minimum control and rigorous control.¹ All border controls are, as a starting point, carried out as minimum controls. If either information available to the Border Guard or the information retrieved during the minimum control gives reason for a rigorous control, this can then be carried out.

1. Section 19 of the Act on Border Control (578/2005).

87. Minimum border control includes the establishment of the alien's identity for purposes of investigating the right of entry (including ensuring that no entry-bans or alike are imposed in respect of the alien in question), the verification of the travel document and other documents required for entry, a hearing of the person and possible investigations as to the abilities of the driver and the safety of the vehicle. The minimum border control is characterized by pragmatism, and the establishment of the identity of the alien, for instance, is carried out by examining the travel and entry documents presented. Naturally, assessments of the skills of the alien as a driver and checking of the safety of a vehicle only become important if there is a vehicle involved.

88. The rigorous control includes, aside from above mentioned regular elements of the border control, also a physical inspection of the alien and inspection of his or her belongings, property and possible vehicle. The rigorous control is only undertaken if it is necessary in order to establish the identity of the alien or in order to ensure that the alien is not in possession of property acquired by criminal means or other property that cannot be brought across the border.

89. In terms of procedures for border control it should also be remembered that the Border Guard, on application, can give permission for entry at other times or places than the official border stations. Requests for such decisions can be directed to the Border Guard. The decision of the Border Guard in this respect is not subject to appeal.¹

1. Section 13 of the Act on Border Control (578/2005).

Part II. Right of Residence: General Provisions

Chapter 1. Short Stay

§1. CONDITIONS FOR SHORT STAY

105. Under the Finnish Aliens Act, residence as a tourist or for other comparable temporary purposes that lasts for up to three months is considered as a short stay. A foreigner who has entered Finland lawfully, and who meets the general preconditions for entry and residence as defined in the Aliens Act, may stay in the country for this period without any administrative formalities such as registering her/his residence or applying for a residence permit.

106. One of the general preconditions for entry and residence that a foreigner must meet to be entitled to stay in Finland for a short term, is possession of a passport or other travel document that is issued by the authorities of the foreigner's country of citizenship or permanent residence, and that is valid throughout her/his entire period of stay in Finland.¹ There are, though, certain exceptions to this requirement. Citizens of the other EU states as well as citizens of Liechtenstein, Switzerland, and Nordic citizens (i.e., citizens of Denmark, Iceland, Norway and Sweden), may stay in Finland for up to three months even without a valid passport. EU and Swiss citizens as well as citizens of Liechtenstein must, however, have an official identity card to prove their identity and their right of residence. Nordic citizens are exempted even from this requirement provided that they are able to prove their identity by other reliable means, such as by other documents issued by the authorities of their home country. Nationals of the other EU States, Liechtenstein, Switzerland, Norway or Iceland, who stay in Finland as job-seekers, may continue their residence in the country under these same conditions for a reasonable period even after the first three months, if they keep on looking for employment and have a genuine chance of getting employed.² The legislation does not specify what is to be regarded as a reasonable period in this context and under which circumstances the person concerned shall be regarded to have a genuine chance of getting employed. In addition to the categories of persons already mentioned, asylum seekers are, regardless of their nationality, not required to hold a passport to enter and stay in Finland.

1. See ss 11 and 13 of the Aliens Act (301/2004).

2. Sections 157 and 158 of the Aliens Act (301/2004).

107. Another general precondition for entry and short stay in Finland is possession of a visa that is valid throughout the foreigner's entire stay in the country.¹ A number of categories of foreigners are, however, exempted from the visa-requirement.²

Firstly, regardless of their nationality, persons who hold a residence permit issued by the Finnish authorities are not required to hold a visa.

Secondly, certain categories of foreigners are exempted from the visa-requirement on the grounds of their nationality. This exemption is based on treaties or other arrangements concluded among Finland and the states concerned. For example citizens of the other EU and Nordic states and citizens of Switzerland and Liechtenstein are not required to hold a visa. There are also a number of third countries, or in other words, states other than EU and Nordic states, Switzerland and Liechtenstein, whose nationals are exempted from the visa-requirement. Such third-country nationals may stay in Finland for a maximum of three months within a period of six months following their entry into the Schengen area³ without other formalities than possession of a valid passport.

Thirdly, foreigners who hold a residence permit that is issued by another Schengen state may stay in Finland for three months by virtue of this residence permit. Such persons are exempted from the visa-requirement even though they would be citizens of states whose nationals would normally be required to have one.

Fourthly, regardless of their nationality, persons who hold a refugee travel document are not required to hold a visa.⁴

And finally, regardless of their nationality, asylum seekers may stay in Finland without a visa while their asylum application is being considered.

1. Sections 11(1)2 and 18 of the Aliens Act (301/2004).
2. For lists of countries whose citizens are required to hold a visa see Part I.
3. Following states belong to the Schengen area: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and Switzerland.
4. This exception is based on the European Agreement on the Abolition of Visas for Refugees (Treaty Series of the Statute Book of Finland 36/1990).

108. Finland uses only Schengen visas. As opposed to certain other Schengen states, no national visas are therefore available. It should, though, be noted that Schengen visas issued by Finland may contain regional restrictions and hence not be valid throughout the Schengen area.¹ A foreigner who holds a Schengen visa that is issued either by the Finnish authorities or by the authorities of another Schengen state may reside in Finland by virtue of this visa for a maximum of three months within a period of six months following her/his entry to Finland. Those who hold a national visa that is issued by another Schengen state are allowed to stay in Finland by virtue of this national visa for a maximum of three months from the first day of its validity.²

1. Section 25 of the Aliens Act (301/2004). Regionally restricted Schengen visas may be issued for instance to persons whose travel document has not been accepted by one or more of the other Schengen states. In such a case the Schengen visa is issued as regionally restricted visa for travel to those states that have accepted the travel document.
2. Section 40 of the Aliens Act (301/2004).

109. A further general condition for foreigners' entry and short stay in Finland is that the individual concerned does not constitute jeopardy to public order or security or public health, or to Finland's international relations.¹ Jeopardy to Finland's international relations does, however, not constitute an obstacle for entry and residence in case of certain categories of persons, such as EU citizens and their family members² as well as persons who have obtained a long-term residents' EC residence permit in another EU Member State under the conditions laid down in the Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents (hereafter Directive 2003/109/EC). An individual who is regarded to jeopardize public order, public security, or public health, or Finland's international relations when this criterion is applicable, may be refused from entering Finland or, once already entered, removed from the country. To constitute a ground for refusal of entry or for removal from the country, the danger that the individual's behaviour constitutes has to be real, immediate, and so serious that it threatens the fundamental interests of the Finnish society. For example, rendering oneself repeatedly guilty in serious crimes, such as serious drug offences, may constitute such jeopardy, whereas, for instance, commission of a minor crime, or causing disturbance to public order, may normally not. It should further be noted that foreigners against whom there is a valid decision on prohibition of entry to Finland issued by the Finnish authorities are not allowed to enter and stay in the country.³

1. Section 11(1)5 of the Aliens Act (301/2004).
2. This exception is based on the Directive 2004/38/EC of the European Parliament and of the Council of 29 Apr. 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Text with EEA relevance) (hereafter Directive 2004/38/EC).
3. Section 11(1)4 of the Aliens Act (301/2004). Pursuant to s. 150 of the Aliens Act, decisions on prohibition of entry are taken jointly with decisions on refusal of entry or deportation.

110. Finally, a foreigner who intends to stay in Finland must have secure means of support so that he or she is able to cover the costs for her/his stay there and for returning to her/his country of origin.¹ In addition to this, he or she must also be able to establish that he or she actually meets this income requirement and the other preconditions for entry and stay. It should, though, be noted that EU and Nordic citizens as well as citizens of Liechtenstein and Switzerland are not required to have secure means of support as a precondition for their short stay in Finland. If such persons, however, become during their short-term stay an unreasonable burden on Finland's social security system for instance by resorting repeatedly to social assistance or other comparable social benefits, they may be removed from the country.² Workers, self-employed persons, and job-seekers, who are EU citizens or comparable persons may, however, not be removed from Finland on this ground.³

1. Section 11(1)3 of the Aliens Act (301/2004).
2. Section 167(2) of the Aliens Act (301/2004).
3. Section 168a of the Aliens Act (301/2004).

111. It is important to note that from the *non-refoulement* principle, that flows from Finland's international human rights obligations¹ and is recognized also in the Finnish Constitution² and in the Aliens Act,³ follows that no one may be removed from Finland to an area where he or she faces a risk of being subjected to death penalty, torture, persecution, or treatment that violates human dignity, or to an area from where he or she could be sent further to such area. Therefore, if there is no country to which an individual can be returned safely, and that would be willing to receive her, he or she cannot be prevented from entering Finland or removed from there even if her behaviour constituted a threat to the fundamental interests of society, or he or she did not meet the other preconditions for entry and stay.⁴

1. For example, Art. 33(1) of the Convention Relating to the Status of Refugees, Art. 3(1) of the Convention against Torture, Art. 3 of the European Convention on Human Rights and Art. 7 of the International Covenant on Civil and Political Rights.
2. Section 9(4) of the Finnish Constitution (Suomen perustuslaki 731/1999).
3. Section 147 of the Aliens Act (301/2004).
4. Pursuant to s. 89 of the Aliens Act (301/2004), an individual who is excluded from international protection on the grounds that she/he is suspected of or has committed a felony in Finland, but who cannot be removed from the country due to the principle of *non-refoulement*, shall be issued with a temporary fixed-term residence permit with a maximum validity period of one year.

§2. ADMINISTRATIVE PROCEDURES AND DOCUMENTS FOR SHORT STAY

112. A foreigner who intends to reside in Finland for a short time does not have to undergo any administrative procedures or formalities apart from the regular border formalities. Those who enter Finland from outside the Schengen Area are requested to present at the border their passport or other travel document and a visa unless they are exempted from the visa-requirement. In addition to this, third-country nationals may be asked to produce documents that indicate the purpose of their intended stay and to prove that they meet the requirements for entry and residence. For this purpose they may, for instance, be asked to establish proof that they have sufficient funds to finance their entire stay in Finland.

113. At the internal Schengen borders there are no systematic border checks. Sporadic checks may, though, be carried out if there is particular need for that. Furthermore, systematic border control may be reintroduced temporarily under exceptional circumstances for the protection of public order, public security or public health.¹

1. See s. 15 of the Border Guard Act (Rajavartiolaitoslaki 578/2005) and Regulation (EC) No. 562/2006 of the European Parliament and of the Council of 15 Mar. 2006 establishing a Community Code on the rules governing the movement of persons across borders (Schengen Borders Code). On the border formalities and checks, see Part I above.

§3. LEGAL POSITION IN THE EVENT OF SHORT STAY

114. Everyone within the jurisdiction of Finland is entitled to protection of basic rights guaranteed in the Finnish Constitution and in the internal human rights

treaties to which Finland is a party. To these treaties belong, among others, the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of all Forms of Discrimination against Women; the Convention on the Rights of the Child; as well as the European Convention on Human Rights. There are, however, certain exceptions and limitations as to the reach of human rights protection: for example full range of economic rights as well as political rights, such as the right to vote, are reserved only to Finnish citizens and specified categories of foreigners who stay in Finland lawfully.

115. Foreigners who reside in Finland as tourists or for other temporary purposes are entitled to emergency health care and to emergency subsistence subsidy. They are, however, by and large excluded from the other public services and benefits. Persons who stay in Finland temporarily have a limited right to engage in economic activities. They may, for example, pick or harvest berries, fruit, or vegetables, or work on a fur farm. Those who arrive in the country on the basis of an invitation or agreement to work as interpreters, teachers, experts, referees, or as professional artists or athletes, may work in Finland for a maximum of three months without a residence permit.¹ Furthermore, persons who have applied for international protection in Finland have the right to gainful employment after they have resided in the country for three months until a final decision on their application has been taken.²

1. Section 81 of the Aliens Act (301/2004).

2. Section 81(1)5 of the Aliens Act (301/2004). It should be noted that the Finnish Government proposes this provision to be amended. According to the Government Bill to the Parliament for amending the Aliens Act (Hallituksen esitys eduskunnalle ulkomaalaislain muuttamisesta 240/2009) that is currently being handled by the Finnish Parliament, asylum seekers who have a travel document gain access to the labour market after three months of their entry to Finland. Those asylum seekers who don't have a travel document gain the right to gainful employment after six months of their entry to Finland.

116. It is to be noted that EU and Nordic citizens are entitled to preferential treatment compared with the other categories of foreigners even during their short-term residence in Finland. They have, for example, unrestricted right to engage in economic activities regardless of the duration of their stay.

117. Regardless of their nationality and the ground and duration of their residence, all foreigners who stay in Finland lawfully, be that for short or long term, have the right to move freely in the country and to choose their place of residence.¹

1. Section 41 of the Aliens Act (301/2004).

§4. POSITION OF FAMILY MEMBERS

118. In order to be entitled to reside in Finland for a short term, everyone, including each member of a foreigner's family, has to meet individually the conditions for short stay. Accordingly, each family member must hold a passport and a visa unless he or she belongs to one of the categories of individuals who are

exempted from the requirements of holding these documents. A foreigner's spouse and his or her children who are under sixteen years of age are, however, not required to hold their own travel documents if their name and date of birth, and with certain exceptions, photography, are included in their family member's passport. In addition to holding the required documents, each person who intends to enter and stay in Finland has to meet the precondition of not constituting jeopardy to public order or security or to public health, and there must not be a valid decision on refusal of entry against her. Furthermore, the family must have sufficient funds to cover the expenses of each family member's residence in Finland and returning to the country of origin.

119. A foreigner's family members who meet the preconditions for short stay are, during their residence, entitled to equal treatment as the other foreigners under comparable circumstances.

Chapter 2. Residence

§1. CONDITIONS FOR RESIDENCE

120. As the main rule all third-country citizens, that is foreigners other than EU and Nordic citizens and citizens of Liechtenstein and Switzerland, who intend to reside in Finland for longer than three months must apply for a residence permit. The Aliens Act defines residence permit as a permit that is issued upon application to a foreigner for a purpose other than tourism or a comparable short-term residence, and that entitles its holder to enter Finland repeatedly unlimited times and to reside there during the validity period of the permit.¹

1. Section 3(1)5 of the Aliens Act (301/2004).

121. Residence permits are either fixed-term or permanent. The first residence permit is always a fixed-term permit. Fixed-term permits are issued for a residence of either temporary nature (temporary residence permits) or of continuous nature (continuous residence permits). The authority that decides on the issuance of a permit decides whether the purpose of the applicant's residence is to be regarded as temporary or permanent and, hence, accordingly, whether he or she shall be issued with a temporary or continuous residence permit.¹ Among others, students, and persons who intend to work in Finland on a temporary basis, as well as beneficiaries of temporary protection, are issued with a temporary residence permit. On the other hand, for instance persons who move to Finland with the intention of working there for a long time or permanently, as well as persons who have previously been Finnish citizens, or whose parent or grandparent is or has been a Finnish citizen by birth, are issued with a continuous residence permit. This is the case also with refugees and persons receiving subsidiary or humanitarian protection: they, too, are issued with a continuous residence permit.

1. Section 33(1) and (2) of the Aliens Act (301/2004).

122. The type of a foreigner's residence permit has implications as regards his or her legal position. Continuous fixed-term residence permit provides its holder with a stronger legal status with a wider range of rights and freedoms than temporary fixed-term residence permits.¹ It is also important to note that only those who have resided in Finland by virtue of a continuous fixed-term residence permit may be issued with permanent residence permits. Persons residing in Finland by virtue of a temporary fixed-term residence permit may not be issued with a permanent residence permit, no matter for how long their residence in the country has de facto lasted.

1. See further under title §3. Legal position of residents.

123. As the main rule, the first fixed-term residence permit is granted for one year unless it is applied for a shorter period. Under exceptional circumstances it is possible, though, to issue the first permit also with a longer or a shorter validity period than one year. This is the case, for example, if the permit is issued for carrying out

a specified work assignment or studies that will be completed within a set period. The duration of the first fixed-term permit may, however, not exceed two years. Neither may it exceed the validity period of the applicant's passport. There are, though, special rules on the validity period of residence permits as regards certain specified categories of foreigners. For instance, the first fixed-term residence permit issued for refugees and beneficiaries of subsidiary protection is with the validity period of four years. Furthermore, a person who is 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.¹

1. See further s. 53 of the Aliens Act (301/2004).

124. Fixed-term residence permits are renewable upon application filed with the local police. The local police are responsible also for taking decisions on renewing of fixed-term residence permits. As the main rule, the permit is renewed, if the applicant continues to meet the preconditions on which the previous permit was issued. In case of beneficiaries of international protection, the condition for renewing fixed-term residence permits is more lenient. In such cases a new fixed-term permit is issued, unless it is likely that the requirements under which the foreigner was issued with the previous fixed-term residence permit are no longer met.¹ In practice, it happens only very rarely that residence permits of beneficiaries of international protection would not be renewed.

1. See further s. 54 of the Aliens Act (301/2004).

125. It should be noted that there are no restrictions on how many times a fixed-term residence permit may be renewed. The renewed fixed-term residence permit may be issued also on a new ground. A precondition for this is that the new ground for residence is such that it would qualify a foreigner for the first residence permit. From this follows that, for instance, a foreigner who has been issued with a residence permit on the basis of family ties may be issued with a new permit for instance on the basis of his or her close ties to Finland if the family relationship happens to break down.¹ Furthermore, a person who has been issued with a residence permit for studying in Finland may be issued with a temporary residence permit for the duration of six months for seeking work in Finland after he or she has completed his or her degree.² If he or she manages to find employment, he or she may, thereafter, be issued with a residence permit on this ground. A new fixed-term residence permit is issued for a maximum of four years.³

1. Section 54(6) of the Aliens Act (301/2004).
2. Section 54(4) of the Aliens Act (301/2004).
3. Section 55(1) of the Aliens Act (301/2004).

126. Residence permits are always issued on a particular ground such as for the purpose of working or studying in Finland, or, for example, on the basis of need of international protection, or a family tie. Hence, to be issued with a permit, the applicant must meet both the general requirements for a residence permit, and the requirements that are particular to the permit that he or she applies for. The present

Chapter focuses on the general residence permit requirements. The special grounds for obtaining different types of residence permit are discussed below in Parts VII and VIII.

127. One of the general requirements for obtaining a residence permit is that the applicant has a valid passport or other travel document. This requirement is, however, not applied in certain exceptional cases, such as when the individual concerned applies for a residence permit on the ground of need for international protection and he or she does not have the documents that would otherwise be required.¹

1. Section 35 of the Aliens Act (301/2004).

128. Another general condition for obtaining a residence permit is that the person concerned does not jeopardize public order, public security, or public health, or Finland's international relations. If the applicant is regarded to jeopardize these interests, his or her residence permit may be refused. It is, though, important to note that this requirement is not applied when considering applications for asylum and other international protection.¹ Furthermore, endangering public health may constitute an obstacle for issuing only the first residence permit; it does not prevent renewal of a fixed-term residence permit or issuance of a permanent residence permit. In addition to this, endangering Finland's international relations does not prevent the issuance of a residence permit on the basis of family ties, or issuance of a residence permit to a foreigner who has been issued with a long-term resident's EC residence permit by another EU Member State.²

1. See further Part III below.
2. Section 36 of the Aliens Act (301/2004).

129. To constitute a ground for rejecting an application for a residence permit, the danger that the applicant poses to public order or security has to be real, immediate, and so serious that it threatens the fundamental interests of the Finnish society. For example, rendering oneself repeatedly guilty in serious crimes, such as serious drug offences or violent crimes, may constitute such jeopardy, whereas, for instance, the commission of a minor crime, such as crime against property, or a traffic offence, does not normally. Furthermore, the decision on refusing a residence permit on this ground must be based on the behaviour of the person concerned and not on factors such as assumptions concerning a group to which he or she is considered to belong to. If there are particular grounds for that, the Finnish Immigration Service may ask for the Security Police to give an opinion on whether the applicant should be considered as jeopardy to public order or security or Finland's international relations. As it concerns jeopardy to public health, only very serious diseases with epidemic potential, such as ebola or Rift Valley fever, may be regarded to constitute such.¹

1. See Part IV below for further information on the notions of public order and security and public health as grounds for removal from Finland.

130. As the main rule, issuance of a residence permit requires that the applicant has secure means of support. The Aliens Act provides, though, several exceptions to this rule. The income requirement is not applied, for instance, when issuing a residence permit on the basis of need of international protection,¹ or on compassionate grounds.² In addition to this, the income requirement is not applied when granting residence permits on the basis of family ties to third-country national family members of Finnish citizens.³ Furthermore, it is possible to make an exemption from the income requirement in individual cases if there are exceptionally weighty reasons for that, or if the best interest of a child so requires.⁴ This may be the case, for example, when the parents of a child who resides in Finland by virtue of a residence permit apply for a permit on the basis of family ties to be able to live with their child in Finland. A further condition in this kind of cases is that it would be unreasonable to expect the family to resume their family life in the country where the parents reside. It should also be noted that decrease in income caused by an accident, illness, pregnancy, or other comparable ground, may also give cause for waiving the income requirement in individual cases.

1. Section 35(1) of the Aliens Act (301/2004).
2. Section 52(2) of the Aliens Act (301/2004). Pursuant to s. 52(1) of the Aliens Act (301/2004), '[a]lliens 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.'
3. Section 50(4) of the Aliens Act (301/2004).
4. Section 39(1) of the Aliens Act (301/2004).

131. The income requirement is considered to be met if the applicant is able to cover his or her living expenses by his or her income so that he or she is not expected to become dependent on social assistance in Finland. The Finnish Immigration Service has defined in the guidelines on the application of the income requirement indicative amounts of net income, that are regarded to satisfy the income requirement. In case of single adult persons, this amount is EUR 900/month. If there are two or more adults in the household, the amount is EUR 630/person/month. As regards minors, the amount is EUR 450/child/month.¹ Furthermore, in case of students, the required amount is EUR 500/month. The amounts defined in the guidelines are very high and they may, in practice, constitute impediments for obtaining a residence permit. It should, however, be noted that the defined amounts are only suggestive and therefore not strictly binding. Furthermore, the assessment on whether the income requirement is met should always be based on overall consideration taking account of all relevant circumstances. For instance in cases involving families with several children, it may be necessary to make an exemption from the guidelines, as otherwise the outcome would be unreasonable.

1. Maahanmuuttovirasto. Ohje toimeentuloedellytyksen soveltamisesta. 30 Apr. 2009. Voimassaoloaika 3 Apr. 2009–31 Dec. 2012. Finnish Immigration Service. Guidelines on Application of the Income Requirement. 3 Apr. 2009. Validity period 3 Apr. 2009–31 Dec. 2012.

132. When assessing whether the applicant meets the income requirement, account shall be taken *inter alia* of the income that he or she earns from his or her

employment and other economic activities, his or her pensions, and his or her property that can be converted into money. Furthermore, compensatory social benefits, such as maternity and child benefits, to which the foreigner is entitled, are counted as part of his or her income. Social assistance, however, is not. As the other general requirements for obtaining residence permits, the income requirement, too, is applied in context of both first and extended residence permits. It is, however, worth noting that temporary resort to social assistance does not necessarily prevent issuance of extended residence permits. Full dependency on social assistance would, though, normally prevent that.¹

1. Section 39 of the Aliens Act (301/2004).

133. EU and Nordic citizens as well as citizens of Switzerland and Liechtenstein, and such persons' family members, are treated more favourably than the other categories of foreigners as regards conditions for residence. The special treatment of individuals belonging to these groups is based on the EC law, in particular on the Directive 2004/38/EC, on the one hand, and on treaties concluded among the Nordic states, on the other. Individuals belonging to these groups do not have to apply for a residence permit to be able to reside in Finland. If they intend to reside in the country for longer than three months, they must register their right of residence with the local police at the municipality where they reside, or as regards family members who themselves are not citizens of these states, to apply for a residence card from the local police.¹

1. Preconditions for EU citizens' and their family members' right to reside in Finland for longer than three months are laid down in s. 158a of the Aliens Act (301/2004). See further on these preconditions Part III below.

§2. ADMINISTRATIVE PROCEDURES AND DOCUMENTS FOR RESIDENCE

134. As the main rule, a residence permit must be applied for before entering Finland in the country where the foreigner resides lawfully.¹ The Aliens Act provides, however, a number of exceptions to this rule.

Firstly, an application for international protection may be filed only at the Finnish border or after the applicant has already entered Finland, not abroad.² It is noteworthy that pursuant to Aliens Act, an asylum seeker's residence in Finland is regarded as lawful while his or her application is being processed until there is a final decision on the application and, if the decision is negative, an enforceable decision on the applicant's removal from the country.³

Another exception to the rule that a residence permit must be applied for before entering Finland concerns persons who themselves have been or at least one of whose parents or grandparents is or has been a Finnish citizen by birth. Such persons may be issued with a residence permit upon application that is filed after entering Finland.

Furthermore, in exceptional cases it is possible to issue a residence permit to a person who has already entered Finland if it was manifestly unreasonable to refuse the application, or in case of employees or self-employed persons, the refusal

would be unfounded from the point of view of the applicant or his or her employer.⁴ This may be the case for example if it is clear that the applicant meets the requirements for obtaining a permit, and requiring his or her to return to his or her country of origin to file the application and wait for the decision would be unreasonable because that would cause remarkable costs.

Also, a foreigner who has already before entering Finland lived together with his or her married spouse who lives in Finland, or has continuously lived together for at least two years in the same household in a marriage-like relationship with a person who lives in Finland, may be issued with a residence permit upon application filed after entering Finland.⁵

1. Section 60(1) of the Aliens Act (301/2004).
2. Section 95(1) of the Aliens Act (301/2004).
3. Section 40 of the Aliens Act (301/2004).
4. Section 49 of the Aliens Act (301/2004).
5. Section 49(2) of the Aliens Act (301/2004).

135. If the residence permit is applied before the applicant has entered Finland, the application is filed with a Finnish Mission abroad.¹ If the permit is applied for after the applicant has already entered Finland, the application is filed with the local police.² Application for international protection may be filed either with the local police or at the border with border authorities.³ These authorities refer the applications to the Finnish Immigration Service that is the authority responsible for taking decisions on issuance of the first residence permits.

1. Section 60(1) of the Aliens Act (301/2004).
2. Section 60(2) of the Aliens Act (301/2004).
3. Section 95(1) of the Aliens Act (301/2004).

136. As the main rule, an application for a residence permit must be filed in person. As an exception to this, a person who is already in Finland may lodge an application for a residence permit on the basis of a family tie on behalf of his or her family member who resides abroad. Alternatively, the family member who resides abroad may lodge the application herself.¹ A foreigner who applies for a residence permit may use a counsel when he or she files the application and when his or her matter is being handled in front of the authorities, as well as when an appeal concerning his or her residence permit application is handled by an administrative court.²

1. Section 62(1) of the Aliens Act (301/2004).
2. Section 8 of the Aliens Act (301/2004).

137. Decisions on the issuance of first residence permits are taken by the Finnish Immigration Service¹ except for where the applicant is a Finnish citizen's family member. In the latter situation the decision-making authority is the local police. In addition to this, the local police take decisions on renewal of fixed-term permits as well as on the issuance of permanent residence permits unless there is need to refer the case to the Immigration Service.² Such need may come up for instance if the local police consider rejecting the application on the grounds that the applicant

constitutes jeopardy to public order or security or if the case involves complex legal reasoning. The local police is the authority responsible for registering EU citizen's right of residence and issuing EU citizen's family member's residence cards.³

1. Section 67 of the Aliens Act (301/2004).
2. Section 68 of the Aliens Act (301/2004).
3. Section 159 of the Aliens Act (301/2004).

138. Under the Aliens Act and general administrative law, the authorities have a general obligation to ensure that the matters they decide are properly investigated. The applicant is obliged to present the grounds for his or her claim and generally contribute to the investigation of the matter. In case there is need for the applicant to submit further information or clarifications to support his or her claim, the authorities are under obligation to tell him or her what kind of proof or evidence he or she should present. A request for further clarification must be specified and it must be in proportion to the means that are available to the applicant taking account of his or her circumstances.¹

1. Section 7 of the Aliens Act (301/2004).

139. What documents or other proof the applicant for a residence permit must submit, depends always on the grounds on which the permit is applied for and on the other circumstances of the case. As the main rule, the applicant has to establish his or her passport. Asylum seekers are, however, exempted from this requirement. In cases where the applicant must meet the income requirement, he or she must present documents such as pay slips, bank statements, or statements on his or her taxable income or property, that attest that he or she has sufficient resources for his or her stay. Furthermore, for example those who apply for a worker's residence permit must submit a copy of the working contract, or a statement issued by the employer, or other such documentary evidence that attest the existence of the employment. For example students have to submit *inter alia* documents that attest that the applicant has been admitted to an educational institution in Finland and that he or she has taken out insurance with a solvent and reliable company.

140. Foreigners have the right to use an interpreter when a matter under the Aliens Act is being handled by the authorities. In certain situations it is the obligation of the authorities to provide the foreigner with free interpretation or translation services. This is the case if the person concerned does not understand Finnish or Swedish, or if he or she cannot be understood because of his or her disability or illness, and the matter is processed in the asylum procedure, or it pertains to refusal of entry or deportation, or is initiated by the authorities. The authorities may provide free interpretation or translation services in other cases as well, if the clarification of the matter requires that.¹ The person concerned has always the right to be notified of a decision in his or her mother tongue or in other language that he or she can be expected to understand.²

1. Section 203(1) and (2) of the Aliens Act (301/2004).
2. Section 203(5) of the Aliens Act (301/2004).

Part III. Right of Residence for Special Categories of Persons

Chapter 1. Nationals with Preferential Treatment

180. There are at least three groups of persons that are given preferential treatment in terms of the right to reside in Finland. These groups are citizens of other EU Member States, persons with Finnish roots returning to Finland from the territory of the former Soviet Union and citizens of Nordic countries.

§1. EU CITIZENS

181. First there is the large group of EU citizens that naturally has relatively far-reaching freedoms in terms of free movement and, thus, residence in Finland. The ground rule is, namely, that all EU citizens have the right to move, reside and work freely within the area of the Union. The only obligation is that the EU citizen, after residing in another EU Member State for three months, is obliged to report his or her presence in the state to the police.¹ An EU citizen who applies for work in Finland can stay in the country longer than three months also without registering with the police, if this is required in order to apply for work.²

1. Section 158 of the Aliens Act (301/2004).
2. Section 158 (3) of the Aliens Act (301/2004).

182. EU citizens and their family members are, naturally, allowed to enter Finland without further formalities. Nevertheless, if the family member comes from a country for which the EU has imposed visa-requirements, Finland can require the family member to present a visa, unless the family member can present a residence card issued by the Union.¹

EU citizens and their family members can be denied entry into Finland for reasons of public order and safety, and on grounds of public health.²

1. Section 155 a of the Aliens Act (301/2004).
2. Section 156 and 156 a of the Aliens Act (301/2004).

183. A Union citizen or his or her family member has the right to stay in Finland after three months if the citizen is employed or self-employed in Finland, if he or she has sufficient means of support from other sources than work or if he or she is enrolled as a student in Finland and has sufficient means of support not to be dependent on Finnish social aid.¹ If the stay in Finland is for the purpose of studies, as a family member is only considered the spouse and minor children.

1. Section 158 a of the Aliens Act (301/2004).

184. A family member to an EU citizen who registers the stay in Finland is granted a residence card as a proof of the legal stay in Finland.¹ An application for a residence card must be made within three months of arrival in Finland.²

1. Section 161 of the Aliens Act (301/2004).
2. Section 161 a of the Aliens Act (301/2004).

185. If the EU citizen emigrated from Finland dies, the family member's right of residence is not affected if the family member himself or herself is a Union citizen. Also, if the stay in Finland has exceeded one year, the residence right of the family member is not altered even if the family member is not an EU citizen.¹

1. Section 161 d of the Aliens Act (301/2004).

186. If the family member's right to residence in Finland is based on a marriage to an EU citizen and the spouse is an EU citizen, the right of residence is not altered in the event of a divorce. If the spouse, however, is a third-country national, the continuance of the right to residence requires that the marriage has lasted for more than three years and that the spouses have lived in Finland for a minimum of one year out of these three years. Also, the residence right remains unaffected if a child from the relationship is in the care of the third-country national. Lastly, in special cases, such as if the divorce is a result of domestic violence, the right to residence can also remain unaltered for the third-country national.¹

1. Section 161 e of the Aliens Act (301/2004).

187. Union citizens who have resided in Finland continuously for five years have the right to a permanent residence permit. This concerns also family members of EU citizens who have resided with the EU citizen in Finland for five years.¹ If the EU citizen has stayed in Finland as an employed or self-employed person for a minimum of twelve months and has stayed in Finland altogether for a minimum of three years, the EU citizen has a right to permanent residence when entering into retirement even if five years have not passed since their arrival in Finland.² Also, if the EU citizen, after having lived in Finland for a minimum of two years, becomes incapable of working or if the EU citizen after three years in Finland works as a posted worker from Finland, returning to Finland at least once a week, there is a right to a permanent residence permit even if five years have not passed from the day of arrival in Finland.

1. Section 161 g of the Aliens Act (301/2004).
2. Section 163 of the Aliens Act (301/2004).

188. Further, family members of EU citizens in many instances have the right to unaltered rights of residence in Finland if the EU citizen dies while being an active worker in Finland.¹

1. Section 163 of the Aliens Act (301/2004).

189. An EU citizen or his or her family member are denied the right to further stay in Finland if they continuously become dependent on social aid in Finland, if

they do not fulfil the requirements for residence in Finland or if they are given entry bans on grounds of public safety or order.¹ Deportation from Finland can be carried out as a result of problems with public safety, order or health.² In all instances of deportation, a general assessment of the situation must be carried out.³

1. Section 167 of the Aliens Act (301/2004).
2. Section 168 of the Aliens Act (301/2004).
3. Section 168 b of the Aliens Act (301/2004).

190. Further, third-country nationals who have received residence permits in other Member States often have the right to move freely within the Union.¹ This principle is, essentially, valid for persons having a status under the Long-Term Residents – Directive.² For long-term residents of another Member State, residence permits to Finland are granted either as fixed term or continuous, depending on the reason for the stay in Finland. Also the nature of the residence permit is, naturally, dependent on the reason for the stay in Finland. Family members to the long-term resident are according to the Aliens Act granted the same residence permits as the sponsors. Aliens with long-term resident status in another Member State must apply for residence permit at the latest after three months of arrival in Finland.³

1. Section 49 a of the Aliens Act (301/2004).
2. Council Directive 2003/109/EC of 25 Nov. 2003 concerning the status of third-country nationals who are long-term residents. Hence, for instance persons receiving international protection in Europe are not affected by this right as they are not, in the meaning of the Directive, long-term residents of the Union.
3. Section 60 a of the Aliens Act (301/2004).

§2. CITIZENS WITH FINNISH ROOTS RETURNING FROM THE FORMER SOVIET UNION

191. Persons with roots in Finland but who after WW II found themselves living in Soviet territory have certain special rights in terms of residence in Finland. This group of persons is defined in the Aliens Act section 48 as including persons that were resettled to the Soviet Union after WW II, persons that served in the Finnish army during the years 1939–1945 and persons, whose one parent or at least two of the grandparents have had a Finnish citizenship and who, additionally, has sufficient knowledge of Finnish or Swedish.¹

1. Section 48 of the Aliens Act (301/2004).

192. These persons and their family members are granted temporary, but continuous, residence permits to Finland on application to the Finnish Immigration Service. In order for the residence permit to be granted it is required that the person has informed the Finnish Immigration Service about their status as relocating from the territory of the former Soviet Union, that the person takes part in activities to prepare for the move to Finland arranged in their home area and that the person has a residence or accommodation arranged in Finland. Also, if there is a language requirement, the person must present documentation of his or her language skills.¹ However, there is no requirement for means of support.²

1. *Ibid.*
2. It has been suggested that the right of persons with Finnish ethnicity from the Russian areas to immigrate to Finland shall be removed in a near future.

§3. CITIZENS OF NORDIC COUNTRIES

193. Thirdly, there is the group consisting of citizens of Nordic countries (Denmark, Iceland, Norway and Sweden). The Nordic cooperation in terms of free movement of persons is well established. Even today, with the prominent position of EU citizens and their rights to free movement, Nordic citizens have some particular rights in relation to the right to reside in Finland.

194. Nordic citizens have the right to enter and stay in Finland without valid passports and without registering their stay. Bilateral agreements have been made regarding the transfer of citizen rights between the Nordic countries. However, also citizens of Nordic countries must on request be able to verify their identity and nationality.¹

1. Section 157 of the Aliens Act (301/2004).

195. Family members of Nordic citizens living in Finland are granted residence permits on grounds of family ties even without the requirements for means of support otherwise valid for family members to EU citizens.

Chapter 2. Students

196. Aliens, who have been accepted as students with an educational institution in Finland, are issued temporary residence permits.¹ The requirement is that the studies will lead to a degree or vocational qualification. On reasonable grounds, residence permits can also be granted for other types of studies, such as studies not directly aiming at degree of qualification but aimed at deepening the knowledge in a particular field of expertise. However, if there are no special grounds residence permits are not generally granted for studies at folk high schools, Christian colleges or similar institutions.

1. Section 46 of the Aliens Act (301/2004).

197. In practice applications for residence permits on the basis of education in Finland must, thus, be made and approved before the applicant arrives in Finland. It is also required that the applicant in fact is accepted as a student to a Finnish educational institution before the application can be accepted. As many educational institutions employ entrance exams, interviews or likewise, the applicant will at times also have to take part in such before filing any application for a residence permit. For the entrance exams a short stay entry-visa can be granted to the applicant so that he or she can travel to Finland to participate in the exams.¹ If the applicant has taken part in an entrance exam in Finland and is accepted, and the educational training will start soon after the exam, the applicant can also be allowed to apply for the residence permit based on the studies while staying in Finland. In these situations the applicant is, thus, not required to travel back to his or her home-country in order to apply for the residence permit, even if this is the general rule.

1. Naturally, this is only the case if visa-requirements are in place for the country in question.

198. Before a residence permit can be granted on the basis of studies there is also a requirement for the applicant to have signed a medical insurance agreement with a reliable company or institution in order to cover possible health-care service in Finland.¹ If the expected duration of the studies is no less than two years, it is sufficient for the insurance to cover the costs of medicines up to an amount of EUR 30,000. If the expected duration of the studies is less than two years, the insurance must cover the costs of medical treatment for an amount up to EUR 100,000.²

1. Section 46 of the Aliens Act (301/2004).
2. For information about the precise requirements see <www.migri.fi/netcomm/content.asp?path=2515&language=EN>, 21 Sep. 2009.

199. The decisions on the applications for residence permits based on studies are made by the Finnish Immigration Service. The decision-making process often involves interviews with the applicant carried out by staff at a Finnish mission in the country of origin of the applicant or in a country where he or she is resident. If a temporary residence permit is granted, the police will decide on the possible continuing of this permit if the studies continue after the time-period of the residence permit elapses. It is also possible for the student to be granted a residence permit in order to look for work after the studies have been completed.

200. The general requirement for means of support, as included in section 39 of the Aliens Act also applies to applications for residence permits based on education.¹ The requirement for means of support implies that the applicant must show that he or she has sufficient means of support for the stay in Finland and that he or she will not become dependent on social assistance in Finland. Exceptions to this rule are made if there are weighty reasons for doing so, but as a general rule also students are included in the requirement for sufficient means of support. The Aliens Act defines secure support as residence financed through gainful employment, pursuit of trade, pensions, property or income from other normal sources. However, especially in the student context also grants, scholarships or likewise are commonplace as means of support. The income is, for students, considered sufficient if it amounts to at least EUR 500 a month or EUR 6000 a year. However, if the educational facility in Finland provides for housing and meals, the income requirement may be lowered. Further, if the student arrives in Finland within the limits of a regular exchange programme, the means of support for the student can also be arranged within the framework of the programme.

1. Section 39 of the Aliens Act (301/2004).

201. Further, the general requirements of section 36 of the Aliens' Act referring to public safety and security and public health are, naturally, applicable also to prospective students applying for residence permits in Finland.¹

1. Section 36 of the Aliens Act (301/2004).

202. It should be noted that aliens resident in Finland with residence permits granted for studies have a limited right to work. The requirements of means of support can be met also through earnings from such work. Foreign students are, during the semesters, allowed to work for a maximum of twenty-five hours a week.¹ During holidays and other breaks, the right to work is unlimited.

1. Section 80 (1)1 of the Aliens Act (301/2004).

203. If a person is granted a temporary residence permit on the grounds of education, his or her family members have the right to receive residence permits for the same time period as the student. Section 37 of the Aliens Act defines family members as including spouse or same-sex registered partner and minor, unmarried children.¹ If the person residing in Finland is a minor, the guardian is considered to be a family member. Further, outside this core, persons living continuously in a marriage-like relationship within the same household as compared to spouses, require that they have lived together for at least two years. If the persons have a child, the two-year rule is not applied.

1. Section 37 of the Aliens Act (301/2004).

204. Finnish educational institutions provide the Finnish Immigration Service with lists of accepted students to their programmes. They also on a regular basis provide the Immigration Service with entry exam questions and alike as basic

material for the interviews conducted prior to decisions on applications for study-based residence permits.

205. Exempted from above-mentioned rules are, naturally, students that stay in Finland for a period of less than three months. Such students, arriving for instance for participating in a language course or likewise, are, however, not exempted from possible visa-requirements. Also, students arriving from EU Member States are treated in accordance with legislation on free movement of persons within the EU and, thus, constitute a group of persons with preferential treatment.

Part IV. Loss of Right of Residence

Chapter 1. Conditions Under Which the Right of Residence Might Be Lost

317. Residence permits and visas are, as we have seen, granted on many different grounds. As a basic rule, the validity of the residence permit or visa is tied to the reason for the granting of the permit. The ground for which the residence permit has been granted also determines the length of the permit.

318. Most residence permits are initially granted as temporary permits. They are granted for a certain term, and must after the elapse of this time be renewed if the alien wishes to stay in Finland. It is in the stages of renewal of the residence permit that the assessment of whether the conditions for the granting of the residence permit still are met is undertaken. Often the loss of the right of residence is connected to negative decisions on an application for renewal of a fixed-term residence permit, and not to circumstances like withdrawal or cessation of an already existing residence permit.

319. In the same manner as with issues relating to refusal of entry, it is clear that decisions regarding renewal of residence permits and decisions on withdrawal or discontinuing of the right to residence must be defensible in the light of vast considerations as to the rule of law and the legal security for the legal subject. This raises questions where the stakes are comparably high as well for the alien as for the state.¹ It is clear that issues regarding immigration and aliens' right to stay in Finland are issues that are linked to sovereign concerns regarding national security and other issues of public interest. Thus, the rules on loss of the right of residence include, despite the requirements posed by the rule of law, fairly broad margins of appreciation for the decision-maker. It is for the decision-maker to use these margins appropriately.

1. For a general questioning of the state interests in relation to immigration as a form of administrative decision-making see J.M. Buchanan, 'A two-country parable', in *Justice in Immigration*, ed. W.A. Schwartz (New York: Cambridge Studies in Philosophy and Law, 1995), 63–66.

320. Loss of the right of residence is traditionally connected with alterations to the validity of residence permits. However, the possibilities to stay on Finnish territory can also be altered due to alterations to the shorter form of permits for stay – visas. An alien holding only a visa to Finland can clearly not be said to reside on Finnish

territory, but his or her right to stay is affected by alterations in the validity of the permit in the same manner as for holders of residence permits.

321. Section 28 of the Aliens Act states the grounds on which a visa can be revoked, its validity shortened or the amount of days of stay the visa permits reduced.¹ These rules concern the validity of visas that already have been granted, and do not, thus, concern the criteria for the initial granting of visas.

1. Section 28 of the Aliens Act (301/2004).

322. Firstly, a visa can be revoked if it becomes apparent that the alien cannot produce a valid travel document or documents showing the purpose of the stay in Finland when entering the country.¹ Further, a visa can be revoked when the conditions for the granting of the visa are no longer present. This also implies that if the circumstances of relevance for the granting of the visa change before entry into Finland, a new visa must be applied for. Also, if the alien on any ground despite the existence of the visa is refused entry into Finland, the visa is revoked as a result of the refusal of entry. Lastly, if the alien on grounds of the particular ground for stay in Finland is required to present evidence of a valid health insurance, the visa can be revoked if such evidence cannot be presented.²

1. Section 28 of the Aliens Act (301/2004).
2. The requirement for a valid health insurance is raised in connection to the forms of residence permits requiring this at relevant sections of this study.

323. On any of above-mentioned grounds the validity of the visa can also be shortened and the amount of days of stay granted by the visa reduced.

324. The result of the revoking of the visa for any of above-mentioned grounds is that the visa is annulled.¹ Annulment is a natural result of the withdrawal or revocation of the visa, but can also be the result of wrongful granting of the visa or if the granting was a mistake by the authorities. In practice, the annulment is carried out by marking the visa.

1. Section 29 of the Aliens Act (301/2004).

325. However, most often the situations where an alien loses the right of residence are connected with the withdrawal of a residence permit or with situations where a residence permit is not renewed. Expulsion, as distinct from refusal of entry, concerns removals from Finland in instances where the alien resides legally and with required residence permits in the country and with proper registrations of his or her stay in the country, or instances where the alien continues to stay in Finland after the residence permit, the registered right to stay or other legal grounds for residing in Finland have elapsed.¹

1. Section 143 of the Aliens Act (301/2004).

326. An alien can, according to the Aliens Act, be expelled if the residence permit granted is no longer valid.¹ Aliens residing illegally on the territory are, thus,

expelled automatically. Further, all aliens who lose their rights of residence fall under the norm, and can, thus, be expelled.

1. Section 149 of the Aliens Act (301/2004).

327. The Aliens Act states that an alien can lose the right of residence and, thus, be expelled if the person has committed a crime, for which the maximum punishment by law is at least one-year imprisonment, or if the alien has committed crimes continuously. Further, if an alien has proven that he or she is a danger to the safety of others or if the alien can be suspected of initializing actions that would endanger Finnish public order, public security or public health, he or she can be expelled.¹

1. *Ibid.*

328. When a decision regarding the expulsion of an alien in Finland is taken, the alien must be heard in the process of decision-making. The same right to a hearing is applicable also to the possible spouse of the alien, if the spouse lives in Finland.¹ The definition of ‘spouse’ follows the general definitions of family members as prescribed by the Aliens Act. The law also requires all authorities involved in the decision-making regarding expulsion-matters to make a broad consideration of the effects of the decision.² The Aliens Act especially refers to the protection of family-life and the best interest of the child, the length and the purpose of the stay in Finland, possible ties to Finland and the ties to the alien’s country of origin in terms of culture and social surroundings.

1. Section 145 of the Aliens Act (301/2004).
2. Section 146 of the Aliens Act (301/2004).

329. It is imperative that the possibility to expel a person is not used in a way that would lead to a breach of Finland’s obligations arising from international law. More precisely, the prohibitions against refoulement of refugees and people benefiting from subsidiary protection to areas where their life or freedom would be endangered or they would face a risk of persecution or serious harm are, naturally, also valid in instances of expulsion.¹

1. The principle of non-refoulement is included in as well the Aliens Act (301/2004), s. 147, as in the Constitution of Finland (731/1999), s. 9(4).

330. If a decision on expulsion is taken in respect of a citizen of the European Union, special rules apply. Firstly, if the EU citizen has arrived in Finland in search of employment, is an employee or is self-employed, and can prove that this is the case, the right of residence can only be revoked on grounds of public order, public security or public health.¹ Secondly, any other EU citizen can only be extradited on grounds of public order, public security, public health or if the citizen has proved to be a burden for the Finnish social security system.² Family members to EU citizens quite by far enjoy the same privileges to a large extent, but in instances where the family-bond is broken, their right to stay in Finland may not be valid any more. If the EU citizen, or his or her family member, has been granted a permanent

residence permit in Finland, expulsion can only take place with reference to public order or safety. The same rule is applicable to any EU citizen who has legally lived in Finland for the last ten years, even if a permanent residence permit has not been granted, and to minor EU citizens.

1. Section 168 a of the Aliens Act (301/2004).
2. Section 168 of the Aliens Act (301/2004).

331. Also third-country nationals who have been granted an EU residence permit as a long-term resident of the EU can only be expelled if he or she is a threat to public order, safety or health.

332. Another group with special privileges in relation to measures of expulsion are the Nordic citizens living in Finland. Citizens of another Nordic country can, if their residence is properly registered, only be expelled on grounds of public order, safety or health. If a Nordic citizen has stayed in Finland for more than five years, his or her right of residence can only be revoked on serious grounds of public safety.¹

1. Section 169 of the Aliens Act (301/2004).

§1. LOSS IN THE EVENT OF NON-RENEWAL

333. Further, the right of residence can be lost if a residence permit is not renewed. As said, residence permits are always initially fixed-term, but may be renewed by a decision by the local police. However, the renewal is by no means automatic and the right of residence may be lost for a number of reasons. The basic rule is that a new residence permit is granted if the grounds for the granting of the first residence permit are still present.¹ It is for the applicant to show that the circumstances have not changed, and that he or she, for instance, still is a student, employee or alike, depending on the reason for the granting of the initial residence permit. However, if the initial residence permit was granted for reasons of international protection, the applicant is not per se required to show that the grounds for protection still exist. In these situations, the assumption is that the need for international protection is continuous. Assessments of the need for renewal are only undertaken if there are very clear indications that the need for protection has ceased. These indications can be connected to the grounds for cessation of refugee status as presented in international law.²

1. Section 54 of the Aliens Act (301/2004).
2. On cessation of refugee status see J. Fitzpatrick & R. Bonoan, 'Cessation of Refugee Protection', in *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection*, ed. E. Feller, V. Türk & F. Nicholson (Cambridge: Cambridge University Press, 2003), 491–544.

334. An alien, whose residence permit expires, may have other grounds for staying in Finland apart from those for which the initial residence permit was granted. The basic rule in the practice of the Immigration Services is that all residence permits must be applied for from abroad and that inland applications in Finland are not

possible. Thus, the basic rule is that also aliens present in Finland, who wish to apply for a residence permit on new grounds must do so from abroad, in practice from the Finnish mission in their country of origin. However, there are exceptions to this basic rule and the application of the rule is undertaken in an ad hoc manner, taking into account the circumstances in the individual matter.

335. Nevertheless, if the alien, after the expiration of a residence permit wants to apply for a new residence permit on other grounds than the initial residence permit, he or she can do so and the new residence permit will be granted, as a fixed-term residence permit, if the conditions set out in law for the granting of the residence permit are met.

336. If the initial residence permit was granted on grounds of temporary employment or self-employment, a continuous residence permit is granted after two years' stay in Finland. After the granting of the continuous residence permit the alien is no longer required to continuously show that the prerequisites for the residence permit are met.¹

1. The grounds for granting a residence permit on the basis of temporary employment are laid down in s. 45 of the Aliens Act (301/2004).

337. Also, if the initial residence permit was granted on grounds of hindrance for refusal of entry or deportation, or as a special residence permit for victims of trafficking, a continuous residence permit is granted after two years of stay on fixed-term residence permits in Finland. Thus, after two years of consecutive stay in Finland, these persons are considered to have a continuous right of stay.

338. There is also a particular rule in place for aliens who previously have stayed in Finland on the basis of a fixed-term residence permit for the purpose of study. When the residence permit for such aliens elapses and the alien receives an exam from a Finnish institution of education, the right of residence is not, necessarily, lost. The Aliens Act, namely, prescribes that these aliens can be granted a fixed-term residence permit for the purpose of looking for a job in Finland after receiving their diploma.¹ Also, even if the residence permit then is granted for another reason than the initial residence permit, the alien does not have to apply for this from abroad.

1. Section 54 of the Aliens Act (301/2004).

339. Similarly, if an alien has been granted a residence permit to Finland on grounds of family ties to Finland, and the family ties cease to exist, grounds for renewal of the residence permit are no longer present. However, there is a particular form of residence permit, based on ties to Finland as a country that can be granted to the alien despite the discontinuance in the family ties.¹ Naturally, an application to this respect must be made.

1. *Ibid.*

§2. LOSS IN THE EVENT OF ABSENCE

340. As said earlier, most often the assessment of the continuance of the right of residence is undertaken in connection with applications for renewal or continuing of fixed-term residence permits. However, at times the assessment can also be made with regard to already-granted residence permits that are still valid, and have not, thus, expired. Residence permits can be annulled if the alien either has permanently moved away from Finland or if the alien has stayed outside Finland for a continuous time of two years.¹ Care must, thus, be taken also when the alien wishes to move abroad for a non-permanent time, in order to ensure that Finnish authorities are aware of the temporary nature of the arrangement.² If an alien in risk of having her of his residence permit withdrawn on these grounds wants to prevent such action, the alien can file an application for not having the residence permit withdrawn with the Immigration Service. Such applications are not automatically granted, but decisions are taken *in concreto*.

1. Section 58 of the Aliens Act (301/2004).
2. A frequent mistake made by aliens is to re-address mail to a new address abroad and in the application for this announce that they are moving permanently.

341. If the alien in question falls under the definition of a long-term resident according to relevant EU legislation, the residence permit can be withdrawn only after the alien has stayed for two years consecutive or six years all together outside the EU territory.

342. Also, any residence permit can be withdrawn if it comes to the attention of the authorities that the alien in the stages of application for the residence permit has given the authorities wrongful information about his or her identity or other circumstances that could have had an effect on the decision. The same rule applies for applicants who have hid information that could have had an effect on the decision had the information been known.

343. Further, if the residence permit has been granted on grounds of a reception agreement under the EU researchers' directive, the residence permit can be withdrawn when the reception agreement with the Finnish research institution ends.¹ However, if the reception agreement is terminated as a result of the completion of the research, or as a result of the classification of the research institution as valid for the directive, the residence permit can be withdrawn at the earliest six months after the decision on termination is taken.

1. Council directive 2005/71/EC of 12 Oct. 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research.

§3. ENTRY BAN

344. Temporary and permanent as long-term resident permits can be withdrawn at any time if another Schengen-state requests the withdrawal on grounds that an

entry-ban has been imposed on an alien and a decision on his or her removal from the Schengen territory has been taken based on the criminal conduct of the alien or the perception of the alien as a danger to the society.

345. The validity of any residence permit, lastly, ceases if the alien in question is expelled from Finland, or when the alien in question is granted Finnish nationality.¹

1. Section 59 of the Aliens Act (301/2004).

Part V. Sanctions

Chapter 1. Sanctions

§1. ADMINISTRATIVE SANCTIONS

359. Penal administrative law has not been systematically developed in Finland. Certain types of administrative sanctions have been adopted, but their scope of application is limited to specific areas of law. As far as illegal immigration is concerned, two forms of administrative sanctions are applied. Firstly, there are sanctions directed against employers using illegal labour force. These will be discussed in detail in Part VII, Chapter 3. The second form of administrative sanction is directed against carriers. They have an important role in preventing illegal entry to the territory and constitute the focus of this subchapter.

360. According to section 173 of the Aliens Act a carrier shall ensure that an alien whom it brought to Finland by air, land, rail or sea from outside the Schengen area and who is not an EU citizen or comparable person, holds a travel document required for entry into the country and the required visa or residence permit.

361. The more detailed provisions concerning these reporting obligations are laid down in the Act on the Processing of Personal Data by the Border Guard.¹ According to the Act, the driver of the vehicle and the master of the vessel or aircraft must provide a detailed passenger and/or crew list to the border control authority. The list must specify the surname, first name, date of birth, sex and citizenship of each person listed as well as the nationality of the persons on board. The basis for this legislation is Council Directive 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985.² This Directive harmonizes, for example, the financial sanctions imposed on carriers transporting into the territory of the Member States third-country nationals lacking the documents necessary for admission.

1. Act on the Processing of Personal Data by the Border Guard (579/2005).
2. Council Directive 2001/51/EC of 28 Jun. 2001 supplementing the provisions of Art. 26 of the Convention implementing the Schengen Agreement of 14 Jun. 1985, Official Journal L 187 of 10.7.2001.

362. If the carrier violates the obligations described above, it is liable to financial penalty. The penalty for violation of section 173 of the Aliens Act amounts to EUR 3,000 per transported person. The penalty for violation of the Act on the

Processing of Personal Data by the Border Guard amounts to EUR 3,000 per journey where passenger information is missing or inadequate, or where false information has been supplied. The penalty is imposed in conjunction with a border check by the border control authority.

363. The penalty shall not be imposed if the carrier proves that it has fulfilled its duty to ensure that the alien, when taken on board, held the required travel documents. If the required documents have proven to be falsified and the falsification has not been easily detectable, the penalty should neither be imposed. The same is true if the transport of the person, all circumstances considered, has been due to forgivable carelessness or if the imposition of the payment was otherwise unreasonable.¹ The penalty is thus based on strict liability for the carrier. The carrier can be discharged from liability, but only if the carrier shows that some of the circumstances described above are relevant in the case at hand.²

1. Section 179 of the Aliens Act (301/2004).

2. See also Instruction Dnro SM-2004-02354/Tu-, 28.7.2004, Imposing a penalty payment on a carrier, Frontier Guard Department of the Ministry of Interior, available at <www.raja.fi/rvl/k-sr/home.nsf/pages/B738B6337DFBDAA0C2256FF100324B91>, 4 Dec. 2009.

364. The penalty shall be revoked if the alien may stay in the country on the grounds that he or she is issued with a residence permit on the basis of refugee status, a need for protection or of temporary protection. It is obvious that the carrier neither has the obligation nor the competence to assess whether an alien is entitled to international protection. The carrier has nevertheless the duty to inspect that all the required travel documents exist. Correspondingly, the mere fact that a person is seeking international protection does not constitute a ground for the elimination of the penalty payment; it can be eliminated only after a residence permit is issued for the person in question.¹ The financial penalty on carrier shall also be revoked if the carrier is sentenced to punishment for facilitation of illegal entry under Chapter 17, section 8 or for aggravated facilitation of illegal entry under Chapter 17, section 8a of the Penal Code.²

1. See also Instruction Dnro SM-2004-02354/Tu-, 28.7.2004, Imposing a penalty payment on a carrier, Frontier Guard Department of the Ministry of Interior, available at <www.raja.fi/rvl/k-sr/home.nsf/pages/B738B6337DFBDAA0C2256FF100324B91>, 4 Dec. 2009.

2. Section 182 of the Aliens Act (301/2004).

365. Administrative sanctions have, as the term already reveals, a sanctioning character. A person or an organization is imposed an administrative sanction because there has been an infraction of some sort. It is nevertheless possible that certain interim measures, such as the alien's duty to report at regular intervals to police or the obligation to hand over the travel documents to authorities, may include elements that correspond to sanctions even if they do not constitute sanctions per se. The content of these measures is analysed in subchapter §3, but their linkage to sanctions is worth mentioning already in this context.

366. The only administrative sanctions available as regards illegal stay or residence are those directed against employers in case of using illegal labour force. These will be discussed in Part VII, Chapter 3.

§2. PENAL SANCTIONS

367. The basic statute in Finnish criminal law is the 1889 Penal Code.¹ The general principle regarding sentencing states that the sentence shall be determined so that it is in just proportion to the harmfulness and dangerousness of the offence, the motives for the act and the other culpability of the offender manifest in the offence.² The general forms of punishment are imprisonment, community service, fine and the summary penal fee.³

1. For more information about the fundamental principles of Finnish criminal law see, e.g., M. Joutsen, R. Lahti & P. Pölönen, *Criminal Justice Systems in Europe and North America, Finland* (Helsinki: HEUNI, 2001).
2. Chapter 6, s. 4 of the Penal Code (39/1889).
3. Chapter 2, s. 1 of the Penal Code (39/1889).

368. A sentence of imprisonment shall be passed either for a fixed period or for life.¹ Life sentences are passed for the most serious offences, such as murder or genocide. Life sentences are relatively rare; usually imprisonment is passed for a fixed period. The court establishes this period within the specific minimum and maximum sentence set by the penal provision for the offence in question. The general minimum period of imprisonment is fourteen days. The general maximum is twelve years or, when combining several sentences, fifteen years.

1. Chapter 2, s. 2 of the Penal Code (39/1889).

369. A sentence of imprisonment for a fixed period not exceeding two years may be conditional (conditional imprisonment), unless the seriousness of the offence, the culpability of the offender or the criminal history of the offender requires the imposition of an unconditional sentence of imprisonment.¹ An offender who is sentenced to a fixed term of unconditional imprisonment of at most eight months shall be sentenced instead to community service, unless unconditional sentences of imprisonment, earlier community service orders or other weighty reasons hinder the imposition of the community service order.²

1. Chapter 6, s. 9 of the Penal Code (39/1889).
2. Chapter 6, s. 11 of the Penal Code (39/1889).

370. The most common form of penalty is a fine.¹ Finland applies the day fine system. Accordingly, a fine shall be passed as day fines. The number of them ranges from 1 to 120. The number of the day fines shall be determined so that it is in just proportion to the harmfulness and dangerousness of the offence and culpability of the offender. The amount of a day fine shall be set so that it is reasonable in view to the solvency of the person fined. The amount is dependent on the monthly income and assets of the offender. The total amount of the fine is equal to the number of day fines times the amount of a day fine.

1. See further Ch. 2a of the Penal Code (39/1889).

371. A summary penal fee is a pecuniary penalty of a fixed amount and less severe than a fine. Summary penal fees are used for various kinds of minor infractions, such as littering or exceeding the speed limits.

372. Corporate fine is the most novel form of punishment in Finland. It was introduced in Finland in 1995. Corporate fines can be imposed on corporate bodies, in whose operations a specified offence has been committed. It is noteworthy that corporate fines can be utilized only if such a sanction has explicitly been provided for the offence in question.

373. A prerequisite for the use of a corporate fine is that a connection between the individual offender and the corporation is established. However, it is not necessary to punish or even identify the individual offender. It must nevertheless be proved that a person who is part of its statutory organ or other management or who exercises actual decision-making authority therein has been an accomplice in an offence or allowed the commission of the offence or it must be established that the care and diligence necessary for the prevention of the offence has not been observed in the operations of the corporation.

374. Corporate fines are imposed as a lump sum; the minimum amount is 850 Euros and the maximum is EUR 850,000.¹

1. See further Ch. 9 of the Penal Code (39/1889).

375. The basic penal provision criminalizing illegal entry is in Chapter 17, section 7 of the Penal Code. According to this provision, a person who (1) crosses the border of Finland without a valid passport or another travel document, or does this elsewhere than at authorized crossing-points or against a prohibition stated in law or attempts the same; (2) otherwise breaches the provisions on border crossing, or (3) without permission stays, moves or undertakes prohibited measures in the border zone, as referred to in the Act on Border Control (587/2005)¹ shall be sentenced for a border offence to a fine or imprisonment for at most one year.

1. The criminal provision refers, mistakenly, to the old Border Zone Act (403/1947). The right reference would nevertheless be the Act on Border Control (578/2005), which repealed the Border Zone Act.

376. Nevertheless, a foreigner who is refused entry or deported as a result of the illegal entry shall not be sentenced for a border offence. Likewise, a foreigner who seeks asylum or applies for a residence permit as a refugee in Finland shall not be sentenced for a border offence. This exception is also applicable for persons subjected to trafficking in human beings. If the border offence, in view of the short duration of the unauthorized stay or movement, the nature of the prohibited act, or the other circumstances of the offence is petty when assessed as a whole, the offender shall be sentenced for a petty border offence to a fine.

377. The applicability of the law remains, even theoretically speaking, very limited. Consequently, there are only a small number of persons sentenced for border offences per year and all of them are sentenced to small fines. The average punishment has been twenty-one day-fines.¹

1. See C.J. Ulrich, *Alien-smuggling and Uncontrolled Migration in Northern Europe and the Baltic Region*, no. 7 (Helsinki: HEUNI Paper, 1995), 7. See also M. Lehti & K. Aromaa,

Trafficking in Human Beings, Illegal Immigration and Finland, no. 38 (Helsinki: HEUNI Publication Series, 2002), 5.

378. If the person has entered the country by making use of counterfeit documents, the act may also meet the criteria of forgery offences. These are criminalized in Chapter 33 of the Penal Code. A person who without acceptable reason receives, procures, transports or possesses a false or falsified piece of evidence, such as a passport, shall be sentenced for possession of forged materials to a fine or to imprisonment for at most six months. If the falsified documents are used as misleading evidence, the crime meets the criteria of forgery. The penalty for forgery is a fine or imprisonment for at most two years. It is noteworthy that the mere attempt to forgery is punishable.

379. The number of passport and other travelling document forgeries recorded by the border authorities has grown steadily. The total number of persons using forged or illegal travel documents, apprehended in border controls was over 200 in the year 2000. Only a few cases have nevertheless resulted in prosecution.¹

1. M. Lehti, K. Aromaa: *Trafficking in Human Beings, Illegal Immigration and Finland*, no. 38 (Helsinki: HEUNI Publication Series, 2002), 5.

380. It is important to notice that violations against the reporting obligations imposed on carriers that were discussed in the previous subchapter may also lead to penal sanctions. According to the Aliens Act a person who deliberately or through gross negligence fails to comply with these obligations shall be sentenced to a fine for violation of the Aliens Act.¹

1. See s. 185 of the Aliens Act (301/2004).

381. The most important difference between the administrative sanction (financial penalty on a carrier) and the penal provision concerning violation of the Aliens Act is linked to the culpability of the offender. The former sanction is based on the violation as such and the motive or *culpa* of the offender is irrelevant. The latter sanction is a true criminal penalty, which means that the focus is on the culpability of the offender. What is unclear though is the relationship between these two provisions. It is in other words uncertain whether a person can be imposed both a financial penalty on a carrier and a penalty for a violation of the Aliens Act. The legislator has not given any advice on this matter, which is unfortunate. The logical starting point is, however, that administrative sanctions and criminal penalties should not be used simultaneously. This argument is based on the prohibition of double punishment. Consequently, if the carrier is sentenced for a violation of the Aliens Act, the administrative sanction should be revoked.

382. The role of penal sanctions in preventing illegal stay or residence is relatively small in Finland. The possibility of refusing entry is generally seen as a more efficient way of controlling illegal immigration. It is, however, possible to impose penal sanctions on those staying illegally in the country. The relevant penal provision is found in section 185 of the Aliens Act. If an alien resides in the country without the required travel document, visa or residence permit, or through negligence

fails to comply with the obligation to register his or her residence or apply for a residence card or permanent residence card, he or she shall be sentenced to a fine for violation of the Aliens Act.

§3. DETENTION

383. If the identity of an alien or his or her travel route is unclear, it is possible that the authorities put him or her in detention upon arrival to Finland. Detention should, however, be used as a last resort. The application of the Aliens Act should not restrict aliens' rights any more than necessary. Accordingly, there are other interim measures that should be applied prior to detention. Firstly, an alien may be obliged to report at regular intervals to police or border check authorities. The obligation to report can be ordered if this is necessary for establishing that he or she meets the requirements for entry into the country or preparing or ensuring the enforcement of a decision on removing the alien from the country, or for otherwise supervising that the alien leaves the country.¹ Secondly, an alien may be ordered to hand over his or her travel document and travel ticket to police or border check authorities or to give them the address where he or she may be reached.² Lastly, an alien may be obliged to give a security to the State for the expenses related to his or her residence and return.³

1. Section 118 of the Aliens Act (301/2004).

2. Section 119 of the Aliens Act (301/2004).

3. Section 120 of the Aliens Act (301/2004).

384. The requirements for holding an alien in detention are found in section 121 of the Aliens Act. According to this provision an alien may be ordered to be held in detention if there are reasonable grounds to believe that the alien will prevent or considerably hinder the issue of a decision concerning him or her or the enforcement of a decision on removing him or her from the country by hiding or in some other way. Detention may also be ordered if it is necessary for establishing his or her identity or if there are reasonable grounds to believe that he or she will commit an offence in Finland. If the person placed in detention is under 18 years, the representative of social welfare authorities shall be heard.

385. The decision on holding an alien in detention is made by high-ranking officers of the Police or the Border Guard. The detained alien or his or her legal representative must be informed of the grounds for detention.

386. A detained alien must be placed in a special detention unit referred to in the Act on the Treatment of Aliens Placed in Detention and on Detention Units¹ (Laki säilöön otettujen ulkomaalaisten kohtelusta ja säilöönottoyksiköstä) as soon as possible. In exceptional cases, the alien may be placed in police detention facilities or in Border Guard detention facilities. The law on the specific detention unit for aliens taken into custody came into force on 1 March 2002. Prior to that detained aliens were kept in police cells and county prisons.

1. Act on the Treatment of Aliens Placed in Detention and on Detention Units (116/2002).

387. There is only one detention unit for aliens in Finland; it was opened in July 2002. This unit is usually operating close to its full capacity, which means that aliens are relatively frequently detained in police or Border Guard establishments. The European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) has recommended the Finnish authorities to carefully consider the possibility of opening a second detention unit for aliens in order to prevent, as far as possible, the use of police and Border Guard premises for the holding of persons detained under the Aliens Act.¹

1. Council of Europe: Committee for the Prevention of Torture, Report to the Finnish Government on the visit to Finland carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 20 to 30 Apr. 2008, 20 Jan. 2009, CPT/Inf (2009) 5, para. 39, available at <www.unhcr.org/refworld/docid/4975a20c.html>, 4 Dec. 2009.

388. The official responsible for a decision on holding an alien in detention shall, without delay and no later than the day after the alien was placed in detention, notify the District Court of the municipality where the alien is held in detention. The District Court shall hear a matter concerning the detention of an alien without delay and no later than four days from the date when the alien was placed in detention.¹ If the Court is of the opinion that there are no grounds for holding the alien in detention, he or she shall be released immediately.² If the Court orders the detention to be continued, it must rehear the matter no later than two weeks after the decision.³

1. Section 124 of the Aliens Act (301/2004).
2. Section 126 of the Aliens Act (301/2004).
3. Section 128 of the Aliens Act (301/2004).

389. A decision on detention made by the authorities or by a District Court is not subject to appeal. The person held in detention may nevertheless make a complaint about the decision of a District Court. There is no deadline for these kinds of complaints. In addition, they shall be handled with urgency.

§4. EXPULSION AND REMOVAL MEASURES

390. The enforcement of decisions on expulsion, either following a withdrawal of a residence permit or visa, or following other situations of loss of the right to residence, is carried out by the police or border guards. The Aliens Police, situated in the Helsinki police district, have particular responsibility for the enforcement of expulsions from the area, and functions, in practice, as the enforcement agent in most cases of expulsion.

Most aliens faced with a decision requiring the alien to leave Finnish territory do so voluntarily. In these instances, the expulsion is facilitated by the alien himself or herself. However, decisions on expulsion can also be enforced involuntarily. In situations of so-called forced return, the police has, by the Aliens Act, been given a number of interim measures that can be used in order to ensure the expulsion.¹

1. On coercive measures in Finland and their use in practice see I. Staffans, *Förfarandet för bedömning av asylskäl i Finland samt därtill hörande säkringsåtgärder* (Helsinki: University of Helsinki, 2005), available at <<http://ethesis.helsinki.fi/julkaisut/oik/rikos/lt/staffans/>>, 12 Dec. 2009.

391. The Aliens Act includes a number of common provisions regarding the removal of aliens from the country. The primary principle is stated in section 145 according to which an alien and his or her spouse or comparable partner residing in Finland shall be given an opportunity to be heard in a matter relating to refusal of entry, deportation or prohibition of entry concerning him or her.

392. Another important principle is the importance of overall consideration as regards expulsion measures. When considering refusal of entry, deportation or prohibition of entry, account must be taken of the facts on which the decision is based and the facts and circumstances otherwise affecting the matter as a whole. Particular attention must be paid to the best interest of the children and the protection of family life. Other facts to be considered should include the duration and purpose of the alien's residence in Finland, the nature of the residence permit issued to him or her, the alien's ties to Finland and the cultural and social ties to the home country of his or her family.¹ Obviously, 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.²

1. Section 146 of the Aliens Act (301/2004).
2. Section 147 of the Aliens Act (301/2004). In the case of *N. v. Finland* the European Court of Human Rights held that the expulsion of N to the Democratic Republic of Congo at the time of the judgment would amount to a violation of Art. 3 (prohibition of inhuman and degrading treatment) of the European Convention of Human Rights. The Court concluded that sufficient evidence had been adduced to establish substantial grounds for believing that the applicant would be exposed to a risk of treatment contrary to Art. 3, if expelled to the Democratic Republic of Congo. Accordingly, the enforcement of the order issued to that effect would violate that provision as long as the risk persists. See *Case of N v. Finland*, judgment of 26 Jul. 2005, para. 167.

393. Illegal entry, or an attempt to it, constitutes a ground for refusal of entry. According to section 148 of the Aliens Act an alien may be refused entry into the country if he or she does not meet the requirements for entry laid down in the Aliens Act or if he or she refuses to give the necessary information on his or her identity or journey, or deliberately gives false information on these. In addition, an alien may be refused entry if he or she crossed the border from outside or through a border crossing point without permission to cross the border at a time when the border crossing point was closed.

Part VI. Legal Remedies and Procedural Safeguards

Chapter 1. Legal Remedies in Case of Refusal of the Right to Enter, Stay or Reside

§1. ADMINISTRATIVE DECISIONS ON ENTRY

421. Refusal of entry concerns, on the one hand, persons that are denied the right to enter Finland at the borders of Finland and, on the other hand, persons either in or outside of Finland whose applications for the right to enter into Finland legally are refused. The latter instance includes, naturally, decisions on visas, but also decisions on international protection taken in the asylum procedure. Finally, decisions on the refusal of the right to enter Finland concern persons who are apprehended while in Finland and who do not have the legal right to stay in the country.

422. Section 148 of the Aliens Act presents a list of individual circumstances that can lead to refusal of entry.¹ These include the above mentioned situations where the alien does not have the right to enter Finland, but the section also mentions situations where the alien does not cooperate in the investigation of identity or travel-route, where false information has been given to the authorities, where the alien during the stay in Finland has proved not capable of caring for himself or herself, where the alien can be suspected of selling sexual service or is engaged in other criminal activity. Also situations concerning the safe-guarding of public safety and health are included.²

1. Section 148 of the Aliens Act (301/2004).
2. *Ibid.*

423. Firstly, section 191 of the Aliens Act prescribes prohibitions of appeal for certain decisions within the category of refusal of entry.¹ This prohibition concerns any decision on the granting or withdrawal of entry-visas and all decisions by the Ministry of Foreign Affairs in relation to applications for residence permits by staff at Finnish missions abroad. Thus, refusals of entry carried out in the form of negative decisions on visa applications are not appealable, and there is no legal remedy within the regular appeals system as outlined above. Nevertheless, extraordinary appeal is a possibility, as well as referring the matter to the various bodies outside the court structure.

1. Section 191 of the Aliens Act (301/2004).

424. Ordinary remedies are, nevertheless, available in relation to all other forms of refusal of entry – for instance decisions taken in the asylum procedure. As stated, the competent court at the first appellate level is the District Administrative Court in the area where the authority that took the decision is placed. However, if the appellant lives abroad the competent court is the Helsinki District Administrative Court unless there are relatives or other persons of concern to the appeal that live in Finland, in which case the District Administrative Court in the area of these persons is competent. Appeals on decisions taken in the asylum procedure, concerning the claim for international protection, are heard by the Helsinki District Administrative Court.¹

1. Section 192 of the Aliens Act (301/2004).

425. Decisions from the District Administrative Courts are, in turn, appealable to the Supreme Administrative Court in Helsinki.¹ The appeal is, however, only heard by the Supreme Administrative Court pending leave to appeal, which, in turn, is granted only for matters of importance as precedents, on grounds of the severity of the fault in earlier decision or for other weighty reasons.²

1. Section 9 of the Act on Administrative Procedures (434/2003).
2. Section 13 of the Act on Administrative Procedures (434/2003) and s. 196 of the Aliens Act (301/2004).

426. An appeal can be made both on grounds of fact and law. Appeals must be made in writing to the competent court within thirty days of notice of the appealed decision.¹

1. Section 22 of the Act on Administrative Procedures (434/2003).

427. Section 201 of the Aliens Act concerns the relationship between appeals and enforcement of decisions in matters of refusal of entry.¹ The ground rule is that appeals do not have suspensive effect, and that decisions are enforceable disregarding the possible filing of appeals. The only exception to this rule concerns decisions taken in the asylum procedure. Such decisions are, if taken in the regular procedure, enforceable only after the decision by the Helsinki District Administrative Court has gained legal force. If the decision at the Finnish Immigration Service has been taken in the accelerated procedure, however, the decision is enforceable either immediately after notice (subsequent applications and applications that give rise to the use of Dublin-rules) or on the eighth day after notice (all other forms of decisions taken in the accelerated procedure).

1. Section 201 of the Aliens Act (301/2004).

§2. ADMINISTRATIVE DECISIONS ON THE RIGHT TO RESIDE

428. Administrative decisions on the right to reside concern, firstly, decisions on applications for residence permits made by aliens abroad. Secondly, aliens legally present in Finland are faced with such decisions after applying for a continuance of the right to reside.

429. The Aliens Act prescribes certain prohibitions of appeal also in relation to this group of decisions.¹ Thus, decisions concerning the granting of residence permits to persons selected as quota-refugees or on grounds of special humanitarian grounds cannot be appealed. Also, decisions on the granting of temporary protection during the time that the applicant's claim for asylum is still being processed cannot be appealed. These decisions can, nevertheless, be subjected to extraordinary appeal or to complaints to tribunals or ombudsman offices.

1. Sections 191(3), (4) and (5) of the Aliens Act (301/2004).

430. Ordinary remedies are, nevertheless, available in relation to all other forms of decisions regarding the right to reside. As stated, the competent court at the first appellate level is the District Administrative Court in the area where the authority that took the decision is placed. However, if the appellant lives abroad the competent court is the Helsinki District Administrative Court unless there are relatives or other persons of concern to the appeal that live in Finland, in which case the District Administrative Court in the area of these persons is competent.¹

1. Section 192 of the Aliens Act (301/2004).

431. Decisions from the District Administrative Courts are, in turn, appealable to the Supreme Administrative Court in Helsinki.¹ The appeal is, however, only heard by the Supreme Administrative Court pending leave to appeal, which, in turn, is granted only for matters of importance as precedents, the severity of the fault in earlier decision or for other weighty reasons.²

1. Section 9 of the Act on Administrative Procedures (434/2003).
2. Section 13 of the Act on Administrative Procedures (434/2003) and s. 196 of the Aliens Act (301/2004).

432. An appeal can be made both on grounds of fact and law. Appeals must be made in writing to the competent court within thirty days of notice of the appealed decision.¹ The ground rule is that decisions are not enforceable unless having gained legal force.

1. Section 22 of the Act on Administrative Procedures (434/2003).

§3. EXPULSION MEASURES

433. Expulsion measures concern aliens present in Finland receiving a decision on expulsion. There is a clear difference between refusal of entry and decisions on expulsion, as the former concerns aliens without a legal right to reside in Finland and the latter aliens with this right. Decisions on expulsion are, thus, made in respect of aliens whose legal right to stay in Finland is interrupted and discontinued.

434. A decision on expulsion can be taken in respect of aliens who are present in Finland without required residence permits, who have been found guilty of

crimes for which the punishment is a minimum of two years or to several crimes, who have proven to be a danger to others' safety or who have engaged in dishonest activities in Finland.¹ There are special rules prohibiting the expulsion of aliens that either are long-term residents under the EU directive for reasons other than public order or safety. Refugees can, naturally, never be expelled to the country from which they are protected.

1. Section 149 of the Aliens Act (301/2004).

435. All decisions on expulsion with reference to public order or safety must be subjected to a general assessment of the situation of the alien.¹

1. Section 168b of the Aliens Act (301/2004).

436. All decisions on expulsion can be appealed using the regular appeals' procedure in the administrative courts.¹ At times, decisions on expulsion are attached to decisions, for instance regarding the withdrawal of asylum applications, which are not appealable. In these instances the decision on expulsion is separately appealable.

1. Section 190 of the Aliens Act (301/2004).

437. Appeals must be made within thirty days of notice of the decision on expulsion.¹ Appeals generally have suspensive effect, as the exception from this rule in section 201 of the Aliens Act concerns only decisions on refusal of entry. Thus, a decision on expulsion can only be enforced after it has gained legal force.

1. Section 22 of the Act on Administrative Procedures (434/2003).

438. Naturally, outside the regular means for appeal within the court structure, there is also the possibility for extraordinary appeal. This implies the filing of an appeal to the competent administrative court on the basis of errors of law or facts that impact on the decision. Extraordinary appeals can be filed outside the time limits for regular appeal – even if the appealed decision has gained legal force, that is.¹

1. Chapter 11 of the Act on Administrative Procedures (434/2003) concern extraordinary appeals.

439. Lastly, there is, as a result of a decision on expulsion, naturally also the possibility to contact one or the organs outside the court structure to file complaints. These bodies include the Chancellor of Justice, the Ombudsman for Minorities, the National Discrimination Tribunal and the Parliamentary Ombudsman.

§4. PROCEDURAL SAFEGUARDS

440. There are, in the Finnish administrative conduct and procedure relating to issues of entry and residence in Finland, a number of procedural safeguards awarded to the applicant or appellant in order to either ensure the non-arbitrariness of the

decision-making or to strengthen the procedural position of the applicant or appellant. These safeguards can be divided into, essentially, three groups: Procedural safeguards that are only applicable to the administrative conduct, or, in other words, to the decision-making within the authorities; procedural safeguards that are only applicable in the stages of appeal; and, procedural safeguards that are applicable throughout the procedures.

441. Clearly, there is also a division between the procedural safeguards in respect of their inclusiveness: Some of the procedural safeguards are only applicable to, for instance, asylum seekers whereas others are afforded to all applicants and appellants irrespective of their status.

§5. GENERAL PROCEDURAL SAFEGUARDS

442. General procedural safeguards applicable to all forms of judicial procedures and conduct in matter relating to entry and stay in Finland can be found in the Aliens Act.

443. Firstly, the Aliens Act requires all authorities involved in decision-making within its area of application to adhere to the *Offizialmaxime*, or, in other words, places a responsibility for the thorough and sufficient investigation of any matter with the authorities.¹ It is the task of the authorities to ensure that all matters before them are investigated sufficiently, so that decisions can be taken on an adequate basis of knowledge. Further, the Aliens Act provides for the right to make use of attorney or counsel in any proceedings according to the Act, but also gives authorities and courts the possibility to request appearances in person.²

1. Section 7 of the Aliens Act (301/2004).
2. Section 8 of the Aliens Act (301/2004).

444. Important procedural safeguards are included in sections 9 and 10 of the Aliens Act.¹ Section 9 provides for a possibility to extend legal aid to cover a broader spectrum of situations than in other forms of administrative matters. If the matter at hand is connected to the Aliens Act, legal aid can, namely, be granted for the use of other legal representatives than those working in legal aid offices. However, there are still requirements listing financial limits for the access to legal aid.

1. Sections 9 and 10 of the Aliens Act (301/2004).

445. Section 10, together with section 203, provides for rules relating to interpretation and translation.¹ A customer, applicant or appellant in matters regulated in the Aliens Act always have the right to make use of the service of interpreters and translators. Additionally, if the matter concerns asylum, expulsion or refusal of entry or is a matter that has been initiated by an authority, the state must cover the expenses of any interpreters or translators used in the procedure.² However, in all other matters, the costs for these services must be paid by the customer, applicant or appellant.

1. Sections 10 and 203 of the Aliens Act (301/2004).
2. Section 203 of the Aliens Act (301/2004) and s. 77 of the Act on Administrative Procedures (434/2003).

§6. PROCEDURAL SAFEGUARDS IN THE ADMINISTRATIVE CONDUCT

446. The Act on Administrative Conduct includes numerous obligations for the authority and rights for the applicant that are designed to function as procedural safeguards. The Act states, on an abstract level, that an authority must treat all applicants equally and that the powers of the authority may only be used for the purposes laid down in law.¹ It also states that all actions by an authority must be impartial and proportionate. Further, the Act presents the authorities of Finland with an obligation to offer all customers and applicants advice and guidance if this is necessary in order for the applicant to manage his or her administrative matters.²

1. Section 6 of the Act on Administrative Procedures (434/2003).
2. Section 8 of the Act on Administrative Procedures (434/2003).

447. Section 12 of the Act on Administrative Conduct provides all customers and applicants with the right to use attorneys or counsels in the dealings with the authority.¹ However, the customer or applicant may be required to appear in person before the authority if this is called for with reference to the nature of the matter at hand. Further, the Act on Administrative Conduct provides the customers of the administration with a far-reaching right to be heard. The basic rule is that all customers and applicants must be heard before a decision is taken in their matter.² There is also a right for guardians or other legal representatives to be heard, and, additionally, an opportunity for the customer or applicant to, if necessary, make claims in an oral hearing.

1. Section 12 of the Act on Administrative Procedures (434/2003).
2. Section 34 of the Act on Administrative Procedures (434/2003).

448. In terms of the decision, the Act on Administrative Conduct, quite naturally, requires the decision to be motivated and reasoned, in order to give the customer of the administration a possibility to understand and evaluate the decision.¹ Also, the law requires all decisions to be given in writing.² Lastly, the law requires that the decision includes instructions for appeal.

1. Section 45 of the Act on Administrative Procedures (434/2003).
2. Section 43 of the Act on Administrative Procedures (434/2003).

§7. PROCEDURAL SAFEGUARDS IN PROCEDURES OF ADMINISTRATIVE JUSTICE

449. In procedures of administrative justice, procedural safeguards are provided for in the Act on Administrative Procedures. The Act provides all appellants with the right to be heard and the right to use attorney and council.¹ Also legally incompetent

persons shall be heard, as well as possible guardians and alike. As in the administrative procedures, applicants also in the procedures of administrative justice can be required to appear in person, if the nature of the matter so requires.

1. Section 34 of the Act on Administrative Procedures (434/2003).

450. Section 38 of the Act states that administrative courts must conduct oral hearings in the matters before them, if a party so requests.¹ However, this obligation is not absolute, as the same section, further, states that the oral hearings must not necessarily be arranged if the court considers the oral hearing to be manifestly unnecessary. The appellant, naturally, also has the right to call witnesses and present other evidence during the procedure.

1. Section 38 of the Act on Administrative Procedures (434/2003).

451. Lastly, the appellant is, in procedures of administrative justice, also protected by rules on disqualification of members of the court.¹ The rules regarding the qualification of judges and other participants from the court's side in any proceeding follow the same rules as for general courts. Thus, judges can be disqualified, for instance, on grounds of general bias or connections to either of the parties involved.²

1. Section 76 of the Act on Administrative Procedures (434/2003).
2. See Ch. 13 of the Code of Judicial Procedure (4/1734).

452–452

Chapter 2. Legal Remedies in the Case of Detention

452. The legal remedies in the case of detention have been discussed in Part V, Chapter 1, §3.

Part VII. Access to the Labour Market

Chapter 1. Overview of Applicable Legislation

453. Provisions regarding the access to the labour market are found in the Aliens Act (28/2003). The act came into force 1 May 2004, in other words, on the day when EU enlarged and the ‘traditional’ supplier of labour to Finland, Estonia, joined the Union. The new citizens of EU could not, however, enjoy the free mobility of labour until 1 May 2006 when the transition period restricting the free mobility of labour was abolished. Finland did not, on grounds of negative experiences with the transition period 2004–2006, apply restrictions against the labour mobility when the EU enlarged the next time in 2007.

454. Citizens of the EU and the EEA countries have an unlimited right to work in Finland. Citizens of the countries which joined the EU 1 May 2004 had, however, a temporary obligation to declare the employer and the working contract terms to the employment and economic development office. This obligation was abolished 30 April 2009.

455. Finnish labour law includes provisions regarding the employer’s obligation to inform authorities and the elected representatives in the work place and to negotiate with the personnel when the use of labour force from outside of the company is planned. Any contractor using posted workers in Finland has an obligation to foresee that the foreign employer designates a representative in Finland and that the foreign employer has fulfilled appropriate duties and obligations in the country where the company is located.

456. According to the Aliens Act citizens of countries outside the EU and the EEA in most cases need a specific permission, a worker’s residence permit, for work in Finland. The worker’s residence permit is granted for a fixed period and is to its nature either continuous (A) or temporary (B). It can be extended without limitations if the work continues. As the ground rule, the permit allows working in one or several occupational fields. Only when there are exceptional circumstances, as for instance in the case of posted workers or the passing through of a transport, the worker’s residence permit can be limited to a certain employer. Geographical limitations are not possible.¹

1. Section 41 of the Aliens Act (301/2004) provides that an alien residing legally in the country has the right to move freely in the country and choose his or her place of residence.

457. The assessment of applications for workers' residence permits is made in two stages. First, the Centre for Economic Development, Transportation and the Environment (CED) considers the labour market requirements in its own partial decision, and then the Finnish Immigration Service grants a first residence permit if there are no obstacles for doing so. In the case on extension the final decision is made by the local police department.

458. The CED-office, when considering the granting of the permit, takes into consideration the availability of suitable labour force on the labour market. This availability test reflects the community preference, or in other words, the priority for EU and EEA citizens to get employed. In addition, it aims at ensuring that those already on the labour market are not prevented from finding employment. The terms and conditions of employment must correspond to the applicable legislation and the collective agreements in Finland also in case the employer is not Finnish. This applies when the collective agreement is universally binding. When this is not the case, the wage and other working terms must be at the same level with terms normally applied in similar employment in Finland.¹

1. There are plans to simplify the permit system and to ease the access to the labour market. The Government actually wrote in its programme that worker's residence permit should be granted without the partial decision of the CED-office and the availability test. Due to the downturn of the economy the reshaping of the workers' residence permit system has not (yet) taken place. The Government policy in Finland differs slightly from the Commission approach where simplifying the permit system is one of the goals but with full respect for the community preference and thus maintaining the labour market test.

459. The application for the worker's residence permit can be made either by the worker or by the employer. The application can be submitted either to the Finnish mission abroad, the CED-office or the local police.

460. The Aliens Act defines the tasks, branches and positions in which the foreigner has a right to work without a worker's residence permit. In these cases, however, another residence permit than a workers' residence permit (the 'regular residence permit'), a visa or a visa waiver is required.

461. Foreigners are allowed to work without a workers' residence permit if they have been granted a continuous (A) or permanent (P) residence permit on other grounds than employment. If the residence permit is granted on the ground of family ties or a temporary need for protection or other humanitarian grounds the access to the labour market is also free. Some fields of occupation are classified as such that the workers' residence permit is not required. The list includes groups like professional sportspersons, trainers, employees of a religious or non-profit organization, professionals in the field of research, culture or the arts, corporate seniors or middle management, persons in expert position requiring special competence and professionals in the field of mass media. Some other groups are listed as 'positive' as well for further notice or for a restricted period. In order to work in any situation other than a listed sector the foreigner needs a workers' residence permit.

462. When considering the relevant permit category, the authority should find the best possible alternative from the foreigner's point of view. According to the Aliens Act, the authorities should not restrict foreigners' rights more than necessary.¹

1. Section 78 of the Aliens Act (301/2004).

Chapter 2. Conditions for Entitlement to Work in the Country as an Employed Person

§1. GENERAL CONDITIONS

463. Citizens from countries outside the EU and the EEA in most cases need a worker's residence permit for work in Finland. The 'worker's residence permit' is the only specific permit category in the Aliens Act with a corresponding chapter in the Act. Other residence permits are not classified as separate permissions but as one universal residence permit with different grounds (family ties, humanitarian grounds, employment, etc.) for granting the permit.¹

1. The reason for this is that when drafting the actual Aliens Act (301/2004) foreigners working in Finland was a hot topic in two different ways. On the one hand, the excessive supply of Estonian workers was foreseen by some observers. So there was a reason to strengthen the administrative structures and institutions in general. On the other hand it was foreseen that in the future considerably more foreign workers will be needed in Finland due to the ageing of the working force. This led to the need to create a specific permit category where the labour issues could have the decisive role in permit assessment and not the internal security issues. The EED-offices was meant to receive a key role in the labour immigration. This was reflected in the outcome of the EED-office which was not anymore an *opinion* but a *partial decision* with a possibility to appeal.

464. The worker's residence permit is a kind of principal permit allowing access to the Finnish labour market. The Aliens Act includes several specific provisions regarding this permit category. Many of the provisions applied to the worker's residence permit are applied also to other categories of residence permits that can be granted on the grounds of employment.

465. The workers' residence permit is also the sole residence permit for which a specific purpose has been provided for in the law. The purpose of the workers' residence permit system is to support the availability of labour in a systematic, prompt and flexible manner, with consideration for the legal protection of employers and foreign employees and the employment opportunities for labour already in the labour market.¹

1. Section 70 of the Aliens Act (301/2004).

466. The social partners, especially The Central Organization of Finnish Trade Unions have been very active during the past decade in the field of labour immigration. The tripartite consensus between the actors is reflected in many of the provisions in the Aliens Act. The most concrete formulation is found in section 71. According to the provision, the labour market organizations participate in monitoring and assessing practices related to issuing worker's residence permits and in preparing national and regional policy guidelines related to the general requirements for using foreign labour. National guidelines are issued by Government decision and regional guideline by decisions of relevant CED-centres.¹ The guidelines are meant to guide the permit assessment.

1. Section 71 of the Aliens Act (301/2004).

467. By legal definition the workers' residence permit is a permit required from a foreigner for residence in Finland or on board a Finnish vessel if the foreigner intends to take part in gainful employment to which he or she would not have the right under another residence permit or without a residence permit. By gainful employment is understood working for payment in an employment relationship in the private or public sector, or some other employment relationship.¹ Thus, also different fees which are not 'salary' in terms of labour and which are received without any employment relationship code being presented constitute 'gainful employment' and require a workers' residence permit if the earning has taken place in Finland.

1. Section 3 of the Aliens Act (301/2004).

468. A worker's residence permit may be granted on the grounds of employment that is either temporary or permanent in nature. A promissory note for employment must be expressed and signed by the future employer. A workers' residence permit cannot be granted for job-seeking or for expected jobs. The permit, according to the nature of employment is temporary (B) or continuous (A).¹ Both permit categories are fixed-term.

1. Sections 33, 34, 45 and 47 of the Aliens Act (301/2004).

469. The type and duration of a residence permit for an employed person are based on the employment contract made. If an employment contract is valid until further notice, even the first residence permit on the basis of employment may be granted as continuous (A) unless the intention is temporary residence.

A temporary permit (B) is granted for temporary employment, in other words where the employment contract has been made for a short, fixed term. As to the rights and obligations of the foreigner in Finland, the nature of the fixed-term residence permit is essential.

470. The Aliens Act includes a backup mechanism for those who work repeatedly for short periods but in fact reside in Finland on a continuous basis. When a foreigner has resided in Finland for an uninterrupted period of two years with a temporary residence permit granted on the basis of employment, he or she may apply for a continuous residence permit. Such a permit may be granted if the foreigner still meets the requirements for being granted a residence permit.¹

1. Section 54 of the Aliens Act (301/2004).

471. The duration of the workers' residence permit varies quite flexibly according to the case. Unless a shorter period is requested, the first worker's residence permit is issued for one year, without however exceeding the validity period of the travel document. The worker's residence permit may be issued for a period longer or shorter than one year if it is issued for employment that will be completed within a set period. However, the duration of a fixed-term residence permit must not exceed two years.¹ In practice, problems sometime arise when the CED-office considers that the employment or the employers' capability to offer employment is

shorter than one year but there is no ‘set period’ and a short permit has not been requested.

1. Section 53 of the Aliens Act (301/2004).

472. A workers’ residence entitles the holder to work in one or several professional fields. An employee may switch jobs within the sector for which the residence permit was granted. If the foreigner wishes to move to an occupational sector other than the one to which your permit entitles, he or she must submit an application for a new workers’ residence permit to the local police. For special reasons, a workers’ residence permit may be restricted to employment for a certain employer.¹ According to the government’s guideline, this restriction can be considered for instance when the foreigner is a posted worker and thus in fact not ‘in the labour market’ or in case of road transport through Finnish territory.²

1. Section 77 of the Aliens Act (301/2004).
2. Government’s Decision 27 Oct. 2005 on the general guidelines on the use of the foreign labour.

473. An application for a worker’s residence permit may be filed either by the foreigner or, on the foreigners’ behalf, by the employer. The employer does not need a specific authorization.¹ In order to enjoy this possibility, the employer must be located in Finland. All other parties – an employer without an office in Finland, a contractor or subcontractor – must present the EED office a power of attorney in order to be able to file an application for worker’s residence permit.

1. Section 82 of the Aliens Act (301/2004).

474. The principle in the Aliens Act is that the first residence permit should be applied for before entering the country. This principle is not directly expressed in the law but in the Government Bill for the Aliens Act.¹ In the Aliens Act there is a provision for cases when a foreigner applies for the first residence permit after entering the country.

1. Government Bill 28/2003 (Hallituksen esitys 28/2003 eduskunnalle ulkomaalaislaiksi ja eräiksi siihen liittyviksi laeiksi).

475. The first residence permit can be granted to a foreigner who has entered the country without a residence permit if the general requirements for issuing a residence permit abroad are met, and if refusing a workers’ residence permit would be unfounded from the alien’s or employer’s point of view or if refusing a residence permit would be manifestly unreasonable.¹ The meaning of this provision was to support recruiting of foreign personnel in cases when the recruitment process requires interviews, etc. and these must be arranged in Finland. The provision must be interpreted, however, against the general principle of applying for the first residence permit before entering the country.

1. Section 49 of the Aliens Act (301/2004).

476. The application for a worker's residence permit may be filed with a Finnish mission, a CED office or the local police department.¹ The authority saves the application and the attachments in the information system that is shared with all relevant authorities. All respective authorities receive a signal and can start with the processing of the application.²

1. Section 82 of the Aliens Act (301/2004).
2. The administering authority, the FIS, is preparing to open a possibility for clients to file applications through the internet.

477. The worker's residence permit is processed in two stages. The permit includes the decision by the CED office regarding labour market aspects (first stage) and the final residence permit decision by the Finnish Immigration Service. In the case on extension the final decision is made by the local police department (second stage).

478. When considering the partial decision regarding labour market issues the EED office must consider if there is labour suitable for the work available in the labour market within a reasonable time and also ensure that issuing a workers' residence permit will not prevent a person who is already in the labour market from finding employment. This assessment is normally conducted with the aid of the information system containing employment possibilities and information about persons seeking employment. The CED office must also ensure that a workers' residence permit is only issued to persons who meet the requirements, if the work requires specific qualifications or a particular state of health. These requirements refer to the criteria constituted in the legislation which usually applies to either restricted professions or personnel in the food industry or health sector.

479. When considering the granting of workers' residence permits, account shall be taken of the guidelines drafted in cooperation with the social partners.¹ These guidelines are expressed in the Government's Decision from 2005² or in local policies expressed in the CED centre's decision. It is possible, based on the guidelines, to, for example, carry out the availability test in a lighter way without opening a vacation in the employment and job-seeker information system.

1. Section 72 of the Aliens Act (301/2004).
2. Government's Decision 27 Oct. 2005 on the general guidelines on the use of the foreign labour.

480. When assessing the matter the CED office shall ensure that the alien's means of support are secured by gainful employment, pursuit of a trade or in some other way.¹ The provision is relevant when the employment is part-time. The means of support criteria is assessed by the CED office taking into account the instructions used by the Finnish Immigration Service. When the employment is full-time the means of support criteria is fulfilled by the salary, as long as it is being paid in accordance with the collective agreement.

1. Section 72 of the Aliens Act (301/2004).

481. When assessing applications for workers' residence permits the Finnish Immigration Service or the local police must consider the general requirements for issuance of residence permits in Finland. 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 prevent the issuance of a residence permit on the basis of family ties or 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. A residence permit may also 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.¹

1. Section 36 of the Aliens Act (301/2004).

482. A workers' residence permit can, in principle, be extended without limitations. According to the Aliens Act a new fixed-term residence permit is issued if the requirements under which the foreigner was issued with his or her previous fixed-term residence permit are still met.¹

1. Section 54 of the Aliens Act (301/2004).

483. When a foreigner who is residing in the country on the grounds of studies files an application for a worker's residence permit, the case is not considered as an application for a new permit but as an extension. According to the Aliens Act a new fixed-term residence permit is issued on new grounds if such grounds would qualify the alien for the first residence permit.

484. In cases of extension the consideration in the CED office is lighter than in the cases of first permits. If the application concerns the same line of work, the CED office does not carry out the assessment of availability of suitable labour force in the labour market, or the assessment regarding if issuing a workers' residence permit would prevent a persons in the labour market from finding employment, or the assessment regarding specific qualifications or a particular state of health.

485. According to the law it is not possible to start working before the granting of the residence permit. In cases of extension, however, the expiration of the previous residence permit does not turn the working illegal even when the new permit is still being processed by the authority. If an application for a workers' residence permit was filed while the previous residence permit was still in force, an alien may continue the work until a decision has been made on the application.¹

1. Section 80 of the Aliens Act (301/2004).

486. In the case of worker's residence permits, there is a possibility for an advance ruling. Upon written application by an employer or contractor, the employment and economic development office submits advance written information on the requirements for issuing a residence permit for an employed person as regards the matter referred to in the application. The employment and economic development

office shall give the advance information without delay. At the employer's request, the employment and economic development office shall observe the advance information for the duration mentioned in the advance information when a residence permit is applied for.¹

1. Section 78 of the Aliens Act (301/2004).

§2. ADMINISTRATIVE RULES AND PROCEDURES

487. Applications for workers' residence permits can be filed personally or by using a representative with a power of attorney, except in cases when it is necessary to hear the foreigner or the employer in person or if his or her appearance in person is necessary for establishing the applicant's identity.¹ The foreigner has the right to use an interpreter or translator at their own expense.²

1. Section 8 of the Aliens Act (301/2004).
2. Section 10 of the Aliens Act (301/2004).

488. The application for a workers' residence permit is completed on a form which can be printed out from the web page of the Finnish Immigration Service. The application includes instructions on how to fill it in and a list of required attachments. The applicant shall attach to the application a form which contains the information regarding the employment and the employer. Also this form can be printed out from the same web page or the CED office.

489. When the application is submitted, a processing fee is charged. When the first application for the worker's residence permit is submitted to the employment and economic development office, one should enclose a payment receipt showing that the charge of EUR 200 has been paid to the bank account.

§3. CONDITIONS FOR SPECIAL CATEGORIES OF WORKERS

I. Working on Grounds of Residence Permits Other than Workers' Residence Permits

490. Although the worker's residence permit is the principal permit category issued for employment in Finland, also other residence permits can be issued for employment. When a regular residence permit is the relevant permit category, the permit is granted without intervention of the CED office and with no availability test or verification of the wages or other employment contract terms. The issuing authority is the Finnish Immigration Service (first permits) and the local police station (extensions). The application can be filed at a Finnish mission abroad or at the local police in Finland. The application cannot be filed at the CED office.

491. The regular residence permit can normally be extended as a worker's residence permit. The permit allows employment in the particular task or position

for which the permit has been granted. Other limitations – for instance limitations as to the employer – are not allowed. In general, the principles applicable for employment under the specific worker's residence permit are also applicable to employment on grounds of the regular residence permit.

492. The instances when gainful employment without a worker's residence is possible are listed in the sections 79 and 80 of the Aliens Act. The lists included in these two articles are concretized in the Government's Decision.¹

1. Government's Decision 27 Oct. 2005 on the general guidelines on the use of the foreign labour.

493. First of all, foreigners who have been issued with a permanent residence permit (P), a long-term resident's EC residence permit (P-EY) or a continuous residence permit (A) on grounds other than employment or self-employment have free access to the labour market. Also foreigners who have been issued with a residence permit on the basis of family ties have the same right.

494. Foreigners who have been issued with a temporary residence permit on the basis of temporary protection or other humanitarian immigration, those who have received a degree or other qualification in Finland or foreigners who have been issued with a temporary residence permit as a victim of trafficking in human beings also have access to the labour market.

495. Some fields of business have a preferential treatment with permit requirements. Foreigners who have been issued with a fixed-term residence permit and who work in expert duties in the middle or top management of a company or in expert duties that require special expertise, or as professional athletes, coaches or umpires, or in the service of a religious community or non-profit association, or professionally in science, culture or the arts, restaurant musicians excluded, or in an international organization or in duties concerning official cooperation between States have a right to gainful employment in Finland.

496. Foreign posted workers are normally given the same treatment in the permit system as those who are directly employed in Finland. Section 79 of the Aliens Act includes, however, some exceptions. Foreigners whose employer or contractor does not have an office in Finland do not need a worker's residence permit for employment if they work professionally in the mass media, do market research, prepare for a company's establishment in Finland, negotiate and acquire customer orders or supervise the fulfilment of orders or have other similar duties.

497. In the case of diplomatic personnel the permit issuing authority is the Ministry of Foreign affairs. The residence permit issued for diplomatic personnel includes an access to the labour market in one case: Foreigners who have been issued with a residence permit for the construction, repair or maintenance of a mission do not need a worker's residence permit. Diplomatic personnel are not mentioned in the exception lists of the Aliens Act. This means that if the diplomatic person wants to work outside the mission facilities in the Finnish labour market, he or she needs

the regular permit which is required for that work if he or she comes from the country outside the EU or EEA area.

498. As a general rule, residence permits issued for employment can be extended without limitations if the work continues. As an exception to this principle, section 80 of the Aliens Act lists positions, fields of business and circumstances when access to labour market is allowed with restrictions, mostly regarding the possibility for extension.

499. According to section 80 of the Aliens Act gainful employment is allowed without the worker's residence permit if the alien has been issued with a residence permit on grounds of education and the employment constitutes a traineeship required for a degree or other qualification or part of the preparation of a research paper required for the studies. Employment is also possible if the average amount of work is twenty-five hours a week at a time when there are classes at the educational institution, or if full-time employment takes place at a time when there are no classes at the educational institution.

500. There is no need for a worker's residence permit if a residence permit has been issued for work as a visiting teacher, lecturer, trainer, consultant or researcher on the basis of an invitation or agreement and if the work lasts for a maximum of one year, or for performing work under a supply contract related to an individual machine, device, product line or expert system imported into or exported from the country if such work lasts for a maximum of six months. Neither is the permit required for employment or traineeship that is part of an intergovernmental agreement or an exchange programme organized by non-governmental organizations if such employment or traineeship lasts for a maximum of eighteen months or, for an alien holding a university degree, is an intra-company transfer for a maximum of a year. Also trainees that are 18–30 years old and study Finnish or Swedish at a foreign university are free to work. Further, if the employment constitutes a traineeship corresponding to the education of the alien and lasts for a maximum of eighteen months, employment is possible. Lastly, if the alien has been issued a residence permit on grounds of hindrance for removal from the country, the alien can take up employment if one year has passed since the first residence permit was issued.

II. Working on the Ground of a Visa or a Visa Waiver

501. There are certain cases where foreigners may undertake paid employment in Finland without any form of residence permit. In these cases a valid visa is, nevertheless, required if the alien comes from a country whose nationals are not visa-exempt under an agreement with Finland.

502. The cases when this is possible are listed in section 81 of the Aliens Act. Also this list is concretized in a government's decision.¹

1. Government's Decision 27 Oct. 2005 on the general guidelines on the use of the foreign labour.

503. The visa must be applied for in the normal way at the Finnish mission abroad. Although Finland is a part of the Schengen visa system, other member countries do not process visa applications for working in Finland but the applications are forwarded to the Finnish mission. The application processing is quite simple and the normal visa application requirements apply. The Finnish mission is the deciding authority. There is no availability test or verification of working contract terms.

504. The right to work on the basis of the visa is valid only in Finland and not in the other Schengen countries. Employment on the ground of the visa or the exemption of the visa is allowed in the framework of the validity of the visa or as a maximum for three months within a period of six months. If the employment continues after this period, the alien must apply for the regular worker's permit.

505. According to section 81 of the Aliens Act foreigners have the right to gainful employment without a residence permit if they arrive in Finland on the basis of an invitation or agreement to work as interpreters, teachers, experts or umpires for a maximum of three months, or if they arrive in Finland on the basis of an invitation or agreement to work as professional artists or athletes, including assisting, technical or training staff, for a maximum of three months.

506. Seamen who work either on board a vessel entered in the list of merchant vessels in international trade or, if they have entered the service outside Finland, on board a vessel which mainly sails between foreign ports, are allowed to work without a residence permit.

507. Foreigners who arrive in the country to pick or harvest berries, fruit, specialty crops, root vegetables or other vegetables or to work on a fur farm for a maximum of three months, or who have, after applying for international protection, resided in Finland for three months are allowed to work without a residence permit. The same goes for foreigners who arrive in Finland as permanent employees of a company operating in another Member State of the European Union or the European Economic Area to perform temporary contracting or subcontracting under the freedom to provide services, if they hold permits entitling them to reside and work in that other State, and if the permits remain in force once they have completed the work in Finland.¹

1. Section 81 of the Aliens Act (301/2004). The Parliament is processing (December 2009) a draft for amending the Aliens Act to tighten up the asylum seekers' right to employment. According to the Government bill the time limit of three months would apply only to those who have a valid personal documentation. For others, the time limit would rise to six months.

508. There is also another exception regarding posted workers. If the employer or the contractor does not have an office in Finland any foreigner has the right to gainful employment without a residence permit as a product demonstrator or as a member of a film crew for a maximum of three months, or as a member of the crew of a motor vehicle in foreign ownership or possession, if the alien drives the vehicle. This is valid if the alien has no place of residence in Finland. Similar rules apply to leaders of tourist groups travelling to Finland from abroad.¹

1. Section 81 of the Aliens Act (301/2004).

Part VIII. Access to Self-employed Activities

Chapter 1. Overview of Applicable Legislation

524. When applying for a residence permit for business activities in Finland, the permit category is the residence permit for a self-employed person. The criteria for granting the permit are profitability of the business activity and that the individual's means of support are guaranteed. There is no other than general professional and qualifications-related limitations as to the field of business.

525. Foreigners who are residing in Finland on the ground of residence permits other than the residence permit for a self-employed person are also allowed to engage in business in Finland. The definition of the self-employed person by the law is quite narrow including only person who is acting by his or her own unlimited business responsibility. The residence permit for a self-employed person is basically relevant only when this definition is met and there is no other ground for residing in the country.

526. Like the worker's residence permit, the residence permit for a self-employed person is applied for at the local police, but is processed in two stages by two authorities. At the first stage, the estimation is realized by the CED centre. The issuance of residence permits for self-employed persons is based on consideration to ensure that the intended business operations meet the requirements for profitable business. When considering the issue of residence permits for employed or self-employed persons, the CED centre shall ensure that the alien's means of support are secured by gainful employment, pursuit of a trade or in some other way.

527. In the second stage the Finnish Immigration Service or, in the case of extension, the local police, issues the permit if there are no general obstacles against the positive decision.

Chapter 2. Conditions for Entitlement to Work in the Country as a Self-employed

§1. GENERAL CONDITIONS

528. By definition the residence permit for a self-employed person is a permit required for residence in Finland if the residing foreigner intends to pursue a trade or business activity.¹ If the foreigner has other grounds for residing in the country (working for another person, studies, family ties) and the residence permit is granted on the grounds of these, there are no limitations against conducting business activities. The residence permit for a self-employed person is used when the sole ground for residing in the country is pursuing trade or business.²

1. Section 3 of the Aliens Act (301/2004).
2. Section 3 of the Aliens Act (301/2004).

529. On the contrary for the worker's residence permit or other residence permits for employment, the decision by the authorities does not include limitations regarding the field of business. This means that once a residence permit for a self-employed person has been granted the foreigner is free to engage in business activities also in other fields of business.

530. The definition of a self-employed person is narrow. The Aliens Act defines a self-employed person as a person who pursues a trade or profession in his or her own name (person pursuing a trade) or is comparable to such a person on the basis of his or her corporate responsibility.¹ This definition means that only persons who have unlimited business responsibility are qualified for the permit category. Corporate shareholders working in the country are not issued with a residence permit for a self-employed person but a worker's residence permit.

1. Section 3 of the Aliens Act (301/2004).

531. The issuance of a residence permit for self-employed persons takes place in two stages. First the CED centre assesses the profitability of the business activity and the individual's means of support. The profitability is estimated on the basis of various reports that are obtained in advance, such as the business plan or binding preliminary contracts and funding agreements.

532. The individual's means of support are estimated on the ground of, for instance, the regular income from the profits of the operations, salary received if employed at the same time, personal funding withdrawals, or such items as sales profits, in an amount above the threshold for basic income support throughout the residence permit's period of validity.

533. In the second stage the Finnish Immigration Service or, in the case of extension, the local police, issues the permit if the general requirements for issuing

a residence permit are met, and the foreigner has not been prohibited from entering the country.¹

1. Section 76 of the Aliens Act (301/2004).

534. The principle of the Aliens Act that the first residence permit should be applied for before entering the country applies also to the residence permit for a self-employed person. This principle is not directly expressed in the law but in the Government Bill for the Aliens Act.¹ Instead there is, in the Aliens Act, a provision for cases when a foreigner applies a residence permit after entering the country:

1. Government Bill 28/2003 (Hallituksen esitys 28/2003 eduskunnalle ulkomaalaislaiksi ja eräiksi siihen liittyviksi laeiksi).

535. The first residence permit can be granted to an alien who has entered the country without a residence permit if the requirements for the granting of a residence permit abroad are met, and if refusing a residence permit for a self-employed person would be unfounded from the foreigner's (or employer's) point of view or if refusing a residence permit would be manifestly unreasonable.¹

1. Section 49 of the Aliens Act (301/2004).

536. The residence permit for a self-employed person may be granted on the basis of employment that is either temporary or permanent to its nature. The permit accordingly is temporary (B) or continuous (A).¹ The type and duration of a residence permit for a self-employed person are based on the nature of the trade or business activity.

1. Section 33, 34, 45 and 47 of the Aliens Act (301/2004).

537. When a foreigner has resided in Finland for an uninterrupted period of two years with a temporary residence permit granted on the basis of self-employment, he or she may apply for a continuous residence permit. Such a permit may be granted if the foreigner still meets the requirements for being granted a residence permit.

538. The first residence permit for a self-employed person is issued for one year, however for no longer than the validity period for the travel document, unless requested for a shorter period. The residence for self-employed person may be issued for a period longer or shorter than one year if it is issued for carrying out a legal act or an assignment that will be completed within a set period. However, the duration of a fixed-term residence permit must not exceed two years.¹

1. Section 53 of the Aliens Act (301/2004).

539. An application for a residence permit for a self-employed person may be filed with a Finnish mission or the local police.¹ Applications cannot be filed with the CED Centre or the Finnish Immigration Service.

1. Section 82 of the Aliens Act (301/2004).

540. The residence permit for a self-employed person can, in principle, be extended without limitations. According to the Aliens Act a new fixed-term residence permit is issued if the requirements under which the foreigner was issued with his or her previous fixed-term residence permit are still met.¹ When a foreigner who is residing in the country on the ground of studies files an application for residence permit as a self-employed person, the case is not considered as a new permit but as an extension. According to the Aliens Act a new fixed-term residence permit is issued on new grounds if such grounds would qualify the alien for the first residence permit.

1. Section 54 of the Aliens Act (301/2004).

541. The criteria and the assessment by the CED Centre and the other authorities is the same regardless if the application concerns the first permit or the extension.

§2. ADMINISTRATIVE RULES AND PROCEDURES

542. An application for a residence permit for a self-employed person may be filed with a Finnish mission or the local police.¹ The application for a residence permit for a self-employed person is completed on a form that can be printed out from the Finnish Immigration Service web site. The application includes instructions on how to fill it out and a list of required attachments.

1. Section 82 of the Aliens Act (301/2004).

543. When the application is submitted, a processing fee of EUR 200 is charged to cover the processing costs.

§3. CONDITIONS FOR SPECIAL CATEGORIES OF SELF-EMPLOYED

544. A foreigner's residence for self-employment purposes in Finland does not always require a residence permit for a self-employed person. As stated earlier, due to the definition of a self-employed person in the Aliens Act, for example, the permit required of the managing director of a limited company is usually a worker's residence permit.

545. Picking of wild berries and mushrooms under the everyman's right provision usually takes place outside employment relationships. However, a residence permit for a self-employed person is also not required if the picking takes place on a visa or in accordance with the maximum allowable visa exempt period of residence.

Chapter 3. Sanctions against Illegal Exercise of Self-employment

546. From the point of view of the Aliens Act, the residence in the country may be illegal but exercising of the self-employment, as such, cannot be judged as illegal. The reason for this is that the Aliens Act does not impose limitations for self-employment other than that the business is profitable business and that the means of support of the foreigner are secured.

547. There is some specific legislation concerning requirements for self-employed persons in some sectors (medical doctors, attorneys, etc.) with provisions laid down for cases on violation of provisions.

Chapter 4. Legal Remedies and Procedural Safeguards

548. A decision of the Finnish Immigration Service, the police, a border control authority, an employment and economic development office or a Finnish mission referred to in this Act may be appealed to an administrative court as provided in the Administrative Judicial Procedure Act.¹

1. Section 190 of the Aliens Act (301/2004).

549. The Finnish Immigration Service has the right to appeal against a decision of an administrative court quashing or amending a decision of the Finnish Immigration Service.¹

1. Section 195 of the Aliens Act (301/2004).

550. A decision of an administrative court referred to in this Act may be appealed to the Supreme Administrative Court if the Supreme Administrative Court gives leave to appeal. A leave to appeal may be given if it is important for the application of the Act to other similar cases, or for the sake of consistency in legal practice, to submit the case to the Supreme Administrative Court for a decision or if there is some other weighty reason for giving the leave.¹

1. Section 196 of the Aliens Act (301/2004).