

Information documents

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**Report of the fact-finding mission to Finland by
Mr David Best, Special Representative of the
Secretary General on Migration and Refugees
21-23 May 2024**

TABLE OF CONTENTS

I. INTRODUCTION	3
I.1. Context of the mission	3
I.2. Objectives, dates and delegation	3
I.3. Meetings and sites visited	4
II. LEGAL AND INSTITUTIONAL FRAMEWORK	5
II.1. Relevant texts	5
II.2. Competent authorities	5
III. MIGRATION AND ASYLUM SITUATION IN FINLAND	6
III.1 Main characteristics of Finland's migration and asylum system	6
III.2. Ongoing reforms	10
IV. INSTRUMENTALISATION OF MIGRANTS AT FINLAND'S EASTERN BORDER	15
IV.1 Context of the instrumentalisation of migrants in Finland	15
IV.2 Act on temporary measures to combat instrumentalised migration	17
IV.3. Analysis of the challenges related to the instrumentalisation of migrants in Finland and the responses in the new law	22
IV.4. Points of concern regarding the Act of 16 July 2024	26
V. APPENDIX: programme of the visit	32

I. INTRODUCTION

I.1 CONTEXT OF THE MISSION

1. The Russian Federation's aggression against Ukraine on 24 February 2022¹, followed by Finland's accession to NATO and its inclusion on the list of countries considered unfriendly by the Russian Federation, has created a new security situation in Finland. In response to this situation, the Finnish Parliament amended the Border Guard Act and the Emergency Powers Act to strengthen border security and provide for exceptional asylum procedures in 2022.²
2. At the end of 2023 and in 2024, an unusually high number of asylum seekers arrived at Finland's eastern border as a result of alleged migrant smuggling operations blamed on the Russian Federation by the Finnish authorities. In 2023, the Finnish authorities responded to this situation by partially, and then completely, closing the border crossings along the entire eastern border and centralising the submission of asylum applications at Finland's air and sea borders.
3. In 2024, the Finnish government presented to Parliament a draft law on Temporary Measures to Combat Instrumentalised Migration, which was intended to provide a new legal framework for combatting these instrumentalisation operations, while making it possible to envisage the reopening of the border. This law was adopted by Parliament and promulgated on 16 July 2024.
4. In parallel, the Finnish government has launched a vast programme of reforms in the field of migration and asylum, marked by the desire to tighten the conditions of entry and residence for migrants and to streamline asylum procedures, while encouraging the immigration of workers from the European Union and highly skilled workers.
5. It was against this backdrop that the Special Representative of the Secretary General on Migration and Refugees³ (hereafter "the SRSG"), at the invitation of the Finnish Government, conducted a fact-finding mission to Finland from 21 to 23 May 2024.

I.2 OBJECTIVES, DATES AND DELEGATION

6. In accordance with the SRSG's mandate, the aim of the fact-finding mission was to gain a better understanding of the main challenges faced by Finland in the area of migration and asylum and to determine what the Council of Europe can do to help the authorities protect the fundamental rights arising from Council of Europe instruments.
7. This report gives an account of the fact-finding mission by highlighting the legal and institutional framework concerning migration and asylum and describes the recent legislative proposals on migration and asylum, access to international protection, the challenges linked to border management and national security, as well as the reception and detention of migrants and asylum seekers. It provides a detailed analysis of the concerns and considerations of the Finnish authorities on the current migratory context, in particular the phenomenon of the instrumentalisation of migrants, to which this report devotes a dedicated chapter.

¹ More than 47 000 people fled the war in Ukraine to Finland in 2022, where they received temporary protection.

² See the Ministry of the Interior website, Amendments to Border Guard Act help prepare for incidents, 8 July 2022 <https://valtioneuvosto.fi/en/-/1410869/amendments-to-border-guard-act-help-prepare-for-incidents> ; Border procedure could be introduced at the Finnish border in situations of mass influx of migrants or instrumentalisation of migration, 22 June 2022 <https://valtioneuvosto.fi/en/-/1410869/border-procedure-could-be-introduced-at-the-finnish-border-in-situations-of-mass-influx-of-migrants-or-instrumentalisation-of-migration>.

³ The fact-finding mission was conducted during the mandate of the former Secretary General, Ms Marija Pejčinović Burić.

8. The SRSG was accompanied by his legal adviser, Jean-François Goujon-Fischer, and the Action Plan co-ordinator, Viktoria Karpatszki. Ambassador Sini Paukkunen-Mykkänen, Permanent Representative of Finland to the Council of Europe, and Ms Marjaana Ettala, Desk Officer for the Council of Europe at the Ministry for Foreign Affairs, attended the meetings, with the exception of those devoted to the exchange with civil society representatives.
9. The SRSG expresses his gratitude to the Finnish authorities, and in particular to the Ministry of the Interior and the Ministry for Foreign Affairs, for their valuable support in planning and organising this fact-finding mission.

I.3. MEETINGS AND SITES VISITED

10. The SRSG met Ms Kirsi Pimiä, Permanent Secretary of the Minister of the Interior, Ms Minna Hulkkonen, Director General of the Department of Migration, Ms Sanna Sutter, Director of Migration in the Department of Migration, Mr Ilkka Haahtela, Director General of the Finnish Immigration Service, Mr Antti Lehtinen, Director of the Asylum Unit of the Finnish Immigration Service, Ms Elina Nurmi, Director of the Finnish Immigration Service's Reception Unit, Ms Berit Kiuru, Chief Specialist in the Department of Migration, Ms Eeva-Maija Leivo, Senior Specialist in the Department of Migration, Mr Tuomas Koljonen, Chief Specialist in the Immigration Service's Management Support Unit, and Mr Jari Kähkönen, Director in the Reception Unit of the Finnish Immigration Service.
11. Other meetings were held with Mr Pasi Rajala, State Secretary to the Minister for Foreign Affairs, Ms Elina Valtonen, and the Minister for Defence, Mr Antti Häkkänen, Mr Erik Lundberg, Deputy Director General of the Political Department at the Ministry for Foreign Affairs, Ms Tarja Kangaskorte, Director of the Unit for Human Rights Policy at the Ministry for Foreign Affairs, Mr Renne Klinge, Senior Adviser at the Ministry for Foreign Affairs, Ms Tuula Svinhufvud, Senior Adviser at the Ministry for Foreign Affairs.
12. The SRSG also held meetings with Ms Kristina Stenman, the Finnish Non-Discrimination Ombudsman, Ms Anne Niemi and Mr Petri Helander, Justices at the Supreme Administrative Court of Finland, and Mr Heikki Vestman, Chairman of the Constitutional Law Committee of the Finnish Parliament. He also visited the transit centre and detention unit of the Helsinki reception centre (Punavuori reception centre) and met its director, Mr Mikael Laurinkari, and his delegation.
13. The SRSG also met and discussed with the representative of the IOM and those of several non-governmental organisations (NGOs) active in providing aid and advice to migrants and refugees: the Finnish Refugee Advice Centre, Amnesty International, Finnish Red Cross, Save the Children Finland, the Finnish Multicultural Women's Association (MONIKA), the Coalition of Finnish Women's Associations (NYTKIS) and the multicultural co-operation network and immigration and integration expert (MONIHELI).

II. LEGAL AND INSTITUTIONAL FRAMEWORK

II.1. RELEVANT TEXTS

14. Finnish legislation relating to foreign nationals consists mainly of the 2003 Nationality Act, the 2004 Aliens Act, the 2011 Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings ("Reception Act") and the 2014 Non-Discrimination Act, all of which have been amended several times and have been the subject of a reform programme since 2023 (see III).
15. The Finnish Nationality Act, adopted in 2003, promotes the social integration of foreign nationals living permanently in Finland.
16. The 2004 Aliens Act includes provisions concerning migrants, refugees and beneficiaries of international protection. These relate in particular to asylum procedures and the examination of applications, accelerated procedures, judicial review and administrative detention.
17. The 2011 Reception Act aims to ensure the subsistence and care of persons seeking international protection, persons enjoying temporary protection and victims of trafficking, in line with fundamental and human rights. It covers border procedures, reception centres, benefits and social services, as well as legal representatives for unaccompanied and separated children.
18. The Non-Discrimination Act of 2014 promotes equality and aims to prevent discrimination. Its protection extends to migrants and refugees who are victims of discrimination.
19. The Border Guard Act no. 2005/578 and the Emergency Powers Act no. 1552/2011 were amended in 2022. The Border Guard Act now allows the authorities to temporarily close border posts, restrict border crossings and centralise the lodging of applications for international protection at one or more border posts in the event of a "serious threat to public order, national security or public health". The Emergency Powers Act allows the declaration of a state of emergency in the event of a serious hybrid operation against Finland.

II.2. COMPETENT AUTHORITIES

20. Several government departments under different ministries are competent in migration and asylum matters. The Finnish government directs migration policy in accordance with the objectives set out in the government programme. The Prime Minister's Office is responsible for co-ordinating European issues, particularly those relating to migration and asylum.
21. The Ministry of the Interior is responsible for drafting immigration legislation and running the migration and asylum administration. It also supervises the Finnish Security and Intelligence Service, the National Police Board (which in turn oversees the National Bureau of Investigation and the police departments), the Border Guard Service and the Finnish Immigration Service (in charge of reception centres).

22. The Finnish Immigration Service grants individual authorisation decisions relating to residence, asylum and citizenship. It is also responsible for the reception system for asylum seekers, detention units for foreign nationals and the assistance system for victims of human trafficking.
23. The Ministry of Economic Affairs and Employment, in close collaboration with various government departments, is responsible for the integration of migrants, legislation on integration and promoting the employment of migrants.
24. The Ministry of Justice operates the services of the Non-Discrimination Ombudsman, the National Non-Discrimination and Equality Tribunal and the Advisory Board for Ethnic Relations.
25. The Supreme Administrative Court of Finland is the court of final appeal in administrative cases. It examines appeals against administrative decisions on the rights or obligations of individuals, including irregular migrants and asylum seekers. It also issues opinions on draft legislation.
26. The Finnish Non-Discrimination Ombudsman is an independent authority responsible for promoting equality, preventing discrimination and improving the rights, living conditions and status of groups exposed to discrimination, including migrants and refugees.

III. MIGRATION AND ASYLUM SITUATION IN FINLAND

III.1. MAIN CHARACTERISTICS OF FINLAND'S MIGRATION AND ASYLUM SYSTEM

III.1.1. Key figures on migration and asylum⁴

27. Finland has seen a steady increase in the number of migrants in recent years. In 2023 and 2024, immigration to Finland fell compared to 2022 but remains at a higher level than in previous years.
28. The number of persons entering Finland from Ukraine with a view to obtaining temporary protection has decreased significantly compared to 2022 (19 426 applications in 2023, 6 537 in the first half of 2024, compared to 47 302 in 2022).
29. A total of 5 372 asylum applications were lodged in Finland in 2023 (1 481 in the first half of 2024), a slightly lower number compared to previous years (5 827 in 2022). The main countries of origin of asylum seekers in 2023 were Somalia, Syria and Iraq. In 2023, 538 asylum applications were lodged by citizens of the Russian Federation (124 in the first half of 2024). In 2023, 348 unaccompanied minor asylum seekers entered Finland, a significant increase compared to 2022 (246). In 2023, Finland committed to accepting a quota of 1 050 resettled refugees. The government programme published in June 2023 states that Finland's refugee quota will be reduced to 500 from 2024.

⁴ The figures under this heading are taken from the website of the Finnish Immigration Service statistics department: <https://tilastot.migri.fi/#decisions?l=en> and from the [annual report on migration and asylum, Finland, 2023](#), by the European Migration Network (EMN).

30. 113 197 applications for residence permits were registered in 2023 (62 057 in the first half of 2024), compared to 97 989 in 2022. The number of first-time residence permits issued increased, in particular permits issued on the basis of family ties (20 278 compared to 15 000) and for studies (12 795 compared to 9 855), while the number of first-time residence permits issued on the basis of employment decreased compared to 2022 (15 081 compared to 16 081).
31. 1 638 removal orders and 3 506 refusals of admission or residence were issued in 2023 (1 076 and 1 572 respectively in the first half of 2024), relatively stable compared to 2022 (1 777 and 3 395).
32. At the end of 2023, Finland had 112 reception centres, 90 of which were for adults and families, and 22 were special units for minors. Two administrative detention centres were in operation (in Helsinki and Joutseno).
33. In 2023, an increase in the number of migrants arriving at Finland's eastern border, which, according to the Finnish authorities, was due to operations by the Russian Federation to instrumentalise irregular migrants had a major impact on the debate on migration and refugees in the country (see IV).

III.1.2. Resources dedicated to migration and asylum

34. The fact-finding mission provided an opportunity to exchange views with the Finnish authorities on the resources dedicated to migration and asylum. The Finnish asylum and reception system appeared solid and well established, with a high level of expertise on the part of government departments, staff training and the mobilisation of skills on the ground. The points raised below are those that were the subject of the main discussions during the fact-finding mission.

Processing applications for international protection

35. The Finnish Immigration Service presented the SRSG with the procedures for examining applications for international protection in Finland, which include a strong focus on addressing vulnerability.
36. Staff training is structured and thorough. Asylum officers are trained with the support of the European Union Asylum Agency (EUAA) and national modules. The compulsory EUAA module "Introduction to vulnerability" is part of the induction training for all new case workers. Training for staff includes modules on gender, gender identity and sexual orientation, human trafficking, as well as interviewing vulnerable people and interviewing children. A new asylum interview training module addresses issues relating to vulnerability, trauma and remembrance functions.
37. Designated senior advisers specialise in violence against women, gender-based violence, vulnerability, LGBTI people and minors. Case workers are supported in their work by written guidelines on vulnerability, minors, LGBTI people, gender-based violence, domestic violence, marginalised people, and potential victims of human trafficking.

38. The examination of applications for international protection includes, during interviews, the identification of vulnerabilities, exploitation, gender-based violence and human trafficking. If vulnerability is identified, applicants may contact a lawyer, with the help of the reception centre, and request legal assistance and/or a medical certificate. They are encouraged to disclose any experience of violence to the reception centre case worker, who can make the necessary arrangements. In cases of violence against children in Finland, child protection measures are taken and the offence is reported. Potential victims of trafficking are referred to the assistance system. Free legal advice is provided throughout the asylum procedure, including during the interview.
39. In reception centres, health staff and nurses are the main points of contact for access to health services and for providing essential care. If necessary, applicants are referred to the health services contracted by the Finnish Immigration Service or the public health services. On arrival, a voluntary medical examination is provided to identify any immediate health problems or injuries, including those related to violence. Regular access to personnel, including social workers and nurses, is provided.
40. Instructions from the Finnish Immigration Service are available in reception centres with regard to female genital mutilation of girls and women. The assistance system for victims of human trafficking helps those concerned by providing advice on how to report offences, to navigate the criminal justice system and inform them on how to proceed. It also helps them to report offences and, if necessary, to obtain a lawyer and victim support personnel.

Processing asylum seekers at the eastern border in 2023 and 2024

41. The Finnish Immigration Service presented the situation of asylum seekers who arrived at Finland's eastern border at the end of 2023 and in 2024. The total number of asylum seekers between 31 July 2023 and 12 May 2024 was 1 314. They were of 29 different nationalities, mainly from Syria (490), Somalia (360) and Yemen (120). Of these, 86% were men and 14% were women. 70% were aged between 18 and 29, and 4% were under 18.
42. Applicants were directed towards the regular asylum procedure, with all associated rights and obligations. Applications were registered by border guards and police at the border and/or in reception centres. Applicants were hosted in ordinary reception centres. Applications presumed to be unfounded were examined as a matter of priority. However, applications with a likely need for international protection (in particular Syria, Yemen, Afghanistan) were not given priority, with the exception of applications from unaccompanied and separated children.

Detention and transit centres

43. The Helsinki reception centre is a government-run entity which fulfils a triple function as an administrative detention unit, a service point for migrants hosted in private accommodation and a transit centre. During the fact-finding mission, the SRSG visited the administrative detention unit and the transit unit of the Helsinki reception centre.

44. The detention unit was set up in 2002. Its current premises will be replaced by a new building in 2027 or 2028. Its maximum capacity is 40 places, with shared rooms for 2 to 4 people. Separate accommodation has been set up for women to ensure their safety and privacy. The unit has 40 staff members, who are responsible for social services, healthcare and security.
45. The main services offered are counselling and psychosocial support, accommodation, food service, daily, acute and essential health, as well as social benefits. The detention unit has a team of 22 staff members in charge of providing accommodation, counselling, psychosocial support, organising daily activities, co-operating with other officials and actively promoting assisted voluntary return. These staff are trained in social services and healthcare (including, for example, interpersonal skills, communication, counselling, welfare, ethics, basic health principles, etc.). They receive additional training in immigration and detention. Staff are trained to identify signs of human trafficking and to react appropriately. Together, they have knowledge of more than 20 languages.
46. The unit also has an 11-member security team, responsible for security measures and assisting counsellors in providing services to the accommodated persons. Its members receive training in security, communication and fundamental rights, and additional training in immigration and detention. They are also trained in means of coercion and are authorised to carry equipment for the use of force. The unit is staffed by health and social workers. External service suppliers provide catering, cleaning and maintenance.
47. 712 people were held in the detention unit in 2023, 70% of whom were non-EU nationals, 682 men and 30 women, and 2 accompanied minors.
48. The Helsinki transit centre is one of the reception centres in Finland. These centres mainly host Ukrainian nationals (77%) and include family-type accommodation, private apartments and accommodation, as well as homes for unaccompanied and separated minors. It provides adults and families with a meal service. It has a capacity of 200 places and a staff of around 20. Some special groups are accommodated: particularly difficult people, people under the Dublin procedure, European Union citizens, and LGBTI people. The centre's tasks include welcoming of new arrivals 24/7, transit functions and operations, co-ordination of capacities in the Greater Helsinki region, reception services, accommodation, managing the reception allowances, healthcare and social services, interpretation, work and study activities, guidance and assistance with returning home.
49. The visit to the detention unit and transit centre revealed a high level of competence and commitment on the part of the management and staff, a very good level of maintenance of the premises and the availability of numerous facilities, including sports and leisure facilities.

III.2. CURRENT REFORMS

III.2.1. The Finnish government's reform programme in the field of migration and asylum

50. The Finnish government has launched a wide-ranging programme to reform its immigration system, consisting of a series of legislative texts designed to tighten the conditions for entry and residence of migrants and refugees, curtail alleged abuses of the system and encourage integration, work and respect for the norms of Finnish society. The government aims to speed up the processing of applications for international protection, facilitate the return of rejected asylum seekers to their country of origin and encourage voluntary returns. Attention is also being given to vulnerable groups, which mainly concerns children and people with disabilities. The main points of these reforms are discussed below⁵.

Introduction of an asylum procedure at the border

51. A border asylum procedure was introduced into the Finnish Aliens Act based on the European Union's Asylum Procedures Directive (2013/32/EU). This procedure applies to certain asylum seekers at the eastern border or at international airports whose applications are presumed to be unfounded. The text aims to speed up the examination of applications and the return of rejected applicants by avoiding secondary movements of asylum seekers to other EU countries. While their applications are being processed, applicants must remain at or near the border and are hosted in reception centres. In addition, the accelerated asylum procedure has been extended to all cases where the directive on asylum procedures allows it, in particular to applicants considered to be a threat to national security and public order. Approved on 27 June, the text entered into force on 1 September 2024.

Reduction in the duration of residence permits for persons under international protection

52. Residence permits issued to persons with refugee status or under subsidiary protection will be valid for three years and one year respectively (compared to four and three years at present), i.e. the minimum period stipulated by the European Union directive on the conditions for granting international protection⁶. The grounds for refusing to grant, refusing to renew and withdrawing these residence permits would be broadened, in particular for the perpetrators of particularly serious offences or offences that endanger national security, or for persons deemed no longer to be in need of protection. The bill was presented to Parliament in April, with the aim of coming into force in autumn 2024.

Reform of the procedure of registration and lodging of applications for international protection

53. The aim is to bring the procedure for examining applications for international protection in line with the minimum standards set out in the Asylum Procedures Directive (2013/32/EU). The text would clarify the information to be obtained during the registration and application phases. The review of the interview record with the asylum seeker would also be abolished. The text is expected to be examined by Parliament in autumn 2024.

⁵ [Government Programme measures to reform migration policy - Ministry of the Interior \(intermin.fi\)](#).

⁶ [Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted](#)

Tightening of rules on circumventing entry conditions in Finland

54. According to the new law, asylum seekers whose applications are being examined or have been rejected will no longer be able to apply for a residence permit for work or study purposes. The text also strengthens the requirements for verifying the identity of applicants for residence permits and plans to add biometric data to the Schengen Information System alerts on returns and refusals of entry or residence. The Aliens Act would be supplemented by new provisions making it possible to refuse a residence permit on the grounds of provision of false information, illegal residence, illegal employment or a marriage of convenience. The draft law was submitted to Parliament on 18 April 2024, and entered into force on 1 of September 2024.

Reinforcement of conditions for granting family reunification

55. A draft law amends the Finnish Aliens Act in order to add conditions for granting family reunification, as permitted by the European Union Directive on family reunification. The spouse applying for family reunification must be at least 21 years old. The text also requires applicants who are minors and beneficiaries of international protection to have sufficient financial resources. Any person receiving international protection will be required to have lived in Finland for two years before being able to be joined by family members. In addition, the definition of family for the purposes of family reunification could also be revised to cover only the spouse and children. The text is due to be examined by Parliament in autumn 2024⁷.

Reinforcement of rules on detention and entry bans

56. The Minister of the Interior has launched consultations on a proposal to strengthen the provisions on detention and entry bans, as permitted by the European Union's Return Directive. The maximum period of detention would be increased from 12 to 18 months in cases of detention linked to a removal order. A provision will be introduced to allow a person to be held in detention for up to 12 months (compared to six at present) if that person represents a danger to public safety or national security. The new legislation would also make it possible to detain a person on grounds of public order. The concept of "risk of absconding" will be clarified. The law will also make it easier to impose entry bans of up to 15 years (compared to five years or until further notice at present), particularly when a person has not left the country voluntarily within the stipulated period. The government intends to submit the bill to Parliament in autumn 2024⁸.

Temporary reduction in hospitality and expenses allowances⁹

57. The Act on the Reception of Persons Applying for International Protection and on the Identification of and Assistance to Victims of Trafficking in Human Beings (Reception Act) has been amended to reduce the reception allowance and expense allowance granted to applicants for international protection. The amount of these allowances is reduced to the minimum permitted by the Constitution and the Reception Conditions Directive, until the end of 2025, and re-evaluated as part of the reform of the Reception Act. The amendment was approved on 5 July 2024 and came into force on 1 August 2024.

⁷ Parliamentary session running from September to December 2024.

⁸ See footnote 8.

⁹ The reception allowance is a short-term benefit granted to people who need support and who are unable to earn a living from gainful employment or other income or financial means. The basic amount of this allowance helps recipients to pay for basic necessities such as clothing, some basic healthcare, public transport and food, if the reception centre does not provide meals. The expenses allowance is intended for children who receive full maintenance from the reception units for minors.

Reform of the Reception Act¹⁰

58. The aim is to implement the new EU directive laying down standards for the reception of applicants for international protection, which entered into force at the beginning of summer 2024, by allocating aid to the most vulnerable people and improving reception services, while preventing abuse and aligning standards with the general level in the Nordic countries. People who lodge a new asylum application after the rejection of a previous one are to benefit only from limited reception services. The amount of the reception allowance would be permanently reduced to the minimum required by the Constitution and the Reception Conditions Directive. There are also plans to reform the system of representation of unaccompanied minor asylum-seekers to clarify the role of the representative as the child's guardian. The bill is expected to be submitted to Parliament in autumn 2025 and enter into force at the beginning of 2026.

Tightening of conditions for granting permanent residence permits

59. The granting of a permanent residence permit will be conditional on a period of legal residence of six years (as opposed to four years at present), a command of Finnish or Swedish languages as demonstrated by a language test, a two-year work history, no dependence on unemployment benefit or social assistance other than for a short period, and a reinforced integrity requirement. The aim is to encourage migrants to follow the norms of Finnish society, to work, to study the language and to make permanent residence conditional on successful integration. The bill is due to be submitted to Parliament in autumn 2025.

Reform of the law on citizenship

60. Through this multi-pronged reform (3 bills), the government aims to make acquiring citizenship more difficult by tightening the conditions for naturalisation. The aim is to increase the period of legal residence required to obtain citizenship to eight years¹¹ and to introduce conditions relating to integrity and financial resources. The possibility of adopting the Danish approach to citizenship revocation will be examined¹². The possibility of introducing a citizenship test as part of the conditions for obtaining citizenship will also be examined. The dual nationality system could be reviewed to introduce a condition of reciprocity. The bills that have not yet been passed are expected to be submitted to Parliament in autumn 2024 and spring 2025¹³.

III.2.2. Points of concern with regard to Council of Europe standards

61. Several points of concern can be raised with regard to the effective protection of the human rights and fundamental freedoms recognised by the European Convention on Human Rights (hereafter the Convention) for migrants, asylum seekers and refugees, particular in relation to the most vulnerable.¹⁴ These points are based on the SRSG's discussions with the authorities, NGOs and other stakeholders, in particular the Non-Discrimination Ombudsman. This report does not make an assessment of the reforms submitted to the Finnish Parliament, which aims to respond to the current challenges with migration and asylum.¹⁵

¹⁰ Act on the Reception of Persons Applying for international protection and on identifying and assisting victims of human trafficking, known as the "Reception Act".

¹¹ The amendment was approved on 5 July 2024 and will come into force on 1 October 2024.

¹² This approach is likely to apply to situations where a person with dual nationality is involved in the activities of an armed terrorist group abroad (see [the page "Ministry of the Interior launches a reform of the Nationality Act"](#) on the Government's website).

¹³ See footnote 8.

¹⁴ For example, [ECtHR, M.S.S. v. Belgium and Greece \[GC\], no. 30696/09, 21 January 2011, §§ 232 and 251](#); [Popov v. France, no. 39472/07 and 39474/07, 19 January 2012](#); [S.F. and Others v. Bulgaria, no. 8138/16, 7 December 2017, § 79](#); [Orchowski v. Poland, no. 17885/04, 22 October 2009, § 120](#); [O.M. v. Hungary, no. 9912/15, 5 July 2016, § 53](#); [B and C v. Switzerland, no. 889/19 and 43987/16, 17 November 2020](#).

¹⁵ As the Court has stated in several of its judgments concerning aliens' rights, "it is a well-established principle of international law that States have the right, without prejudice to their treaty obligations, to control the entry, residence and removal of non-

62. The implementation of legislation aimed at tighter controls over the entry and residence of foreign nationals and the streamlining of asylum procedures should be accompanied by greater attention being given to vulnerable persons. Their particular needs call for specific protection and assistance, as a prerequisite for effectively respecting their fundamental rights. The competent authorities must ensure that these vulnerabilities are identified and provide persons identified as vulnerable with the guidance, information, assistance and protection they need during immigration and asylum procedures. Building the capacity of services and professionals is a key element in addressing vulnerabilities.
63. The NGOs the SRSG met with during the fact-finding mission stated that they did not have enough time to analyse the new draft laws and their possible impact in detail, nor could they give a full opinion and submit their comments within the required timeframe. Civil society organisations working in the field of migration and asylum have valuable experience in identifying the vulnerabilities of migrants and asylum seekers through their direct interaction with these groups, and Finland has a strong network of competent and active NGOs. In any case, the dialogue with civil society on the adoption and application of the current reforms should be continued and deepened.
64. Setting up an asylum procedure at the border requires the involvement of specialised services with well-informed and well-trained staff. Identifying vulnerabilities is an exercise that requires time, expertise and an environment conducive to the expression of any special needs of asylum seekers. This is the case for particularly vulnerable groups, such as victims of torture or ill-treatment, trafficking in human beings, gender-based violence, those threatened because of their gender identity or sexual orientation or unaccompanied and separated minors. Mobilising the resources available within civil society and specialised organisations would contribute to the quality of public services in this area and should be seen as an asset.
65. These particular vulnerabilities should be properly identified and the people concerned should have their applications for international protection examined in accordance with ordinary law, outside the border procedure. The provision of high-quality interpreters and legal aid is also essential in order to guarantee access to international protection for those who are entitled to it, including in the context of a border procedure. It is also important to ensure the quality of procedures and means of appeal, that applicants are properly informed of their rights and that they have a real opportunity to prepare for the asylum procedure and to gather evidence in support of their claims.
66. The freedom of movement of persons referred to an asylum procedure at the border should not be restricted to such an extent as to deprive them in practice of opportunities to interact with persons capable of identifying their possible particular needs and vulnerabilities, in particular legal advisers, associations or other appropriate visitors.

nationals on their territory. The Convention does not guarantee the right of an alien to enter or reside in a particular country". For example: [ECtHR, De Souza Ribeiro v. France \[GC\], no. 22689/07, 13 December 2012](#).

67. The identification of unaccompanied and separated minors is a key issue in asylum procedures, particularly if they are conducted at the border. This identification should comply with the principles of the best interests of the child, the presumption of minority and a multidisciplinary approach, in accordance with the case law of the European Court of Human Rights (hereafter the Court) ¹⁶ and the recommendations contained in the Recommendation CM/Rec(2022)22 of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration.¹⁷
68. The role of border guards has increased with the introduction of the asylum procedure at the border. It seems necessary to train them and strengthen their capacity to identify vulnerabilities.
69. Similar points of attention should be mentioned with regard to other accelerated procedures. Furthermore, in normal asylum procedures, the creation of a climate conducive to the expression of the reasons for the asylum application, the evidence and the possible vulnerabilities of the applicants should be encouraged. It would be desirable to limit as far as possible the use of asylum interviews organised by remote transmission technology, which deprives the persons concerned of direct contact with their interpreters, legal advisers or other persons acting in their interest and, in general, makes interaction more difficult.
70. The issue relating to administrative detention should be carefully examined. Administrative detention of asylum seekers must remain an exception, and it is important to watch out for situations of de facto detention resulting from reception conditions that are comparable, by their characteristics and intensity, to a deprivation of liberty. The prospect of introducing into the law the possibility of administrative detention of migrants or asylum seekers based solely on the risk of a threat to public order should be subject to a careful examination of its compatibility with the the European Convention on Human Rights (hereafter the Convention), in particular Article 5 § 4, as interpreted by the Court.¹⁸ The Finnish authorities could usefully approach the relevant sectors of the Council of Europe to examine this issue.
71. The voluntary return procedure should be used carefully, ensuring that rejected asylum seekers who opt for it do not do so solely because of the foreseeable difficulties of a request for reconsideration or an appeal against the decision rejecting their asylum application, or because of the negative consequences that domestic legislation attaches to forced returns.
72. Some of the new provisions of the law reduce the duration of residence permits granted to holders of international protection and extend the grounds for refusing to issue or renew and for withdrawing these permits. It would be desirable for decisions to be taken with restraint and under the careful supervision of the competent courts, to avoid undermining the status attached to the benefit of international protection or calling into question the right of residence of the persons concerned other than on exceptional grounds, compatible with the requirements of international and European law, in particular Articles 2, 3 and 8 of the Convention. It is also important that the application of the reform does not lead to the very status of refugee or subsidiary protection being discredited in the eyes of the public by contributing to their being seen as abuses of asylum legislation.

¹⁶ [ECtHR, Darboe and Camara v. Italy, no. 5797/17, 21 July 2022.](#)

¹⁷ [Recommendation CM/Rec\(2022\)22 of the Committee of Ministers to member states on human rights principles and guidelines for age assessment in the context of migration](#) (Adopted by the Committee of Ministers on 14 December 2022 at the 1452nd meeting of the Ministers' Deputies).

¹⁸ See in particular [ECtHR, B.A. v. Cyprus, no. 24607/20, 2 July 2024.](#)

73. The tightening of the conditions for family reunification, in particular the financial resources requirements, should be applied taking into account specific situations and the requirement not to interfere disproportionately with the right to respect for private and family life in relation to the aims pursued by domestic law, which derives from Article 8 of the Convention. Particular attention should be paid to applications made by holders of international protection and, a fortiori, by those of them who are unaccompanied minors.
74. Finally, it would be appropriate to examine the combined effect of the bills submitted to Parliament, the Finnish authorities being the best placed to carry out such an impact study. As the NGOs have pointed out, the new rules on border procedures and accelerated asylum procedures, the ban on rejected asylum seekers applying for residence permits for work or study purposes, the new restrictions on access to reception conditions for rejected asylum seekers who submit a new asylum application and other points of the migration policy reform could, through a cumulative effect, place some asylum seekers in a difficult situation, including those who are rightly seeking international protection.
75. The Council of Europe is open to all possibilities of co-operation with the Finnish authorities on all the points raised.

IV. INSTRUMENTALISATION OF MIGRANTS AT FINLAND'S EASTERN BORDER

IV.1. CONTEXT OF THE INSTRUMENTALISATION OF MIGRANTS IN FINLAND

76. On 16 November 2023, on the basis of section 16 of Act 578/2005 on border guards, the Finnish authorities temporarily closed the Vaalimaa, Nuijamaa, Imatra and Niirala border posts on the land border between Finland and the Russian Federation and decided to centralise the lodging of applications for international protection at the Vartius and Salla border posts, excluding this possibility for the seven other posts.¹⁹
77. This decision was taken in response to a sudden and significant increase in the number of irregular migrants arriving at Finland's 1 340-kilometre-long eastern border with Russia. The Finnish authorities have accused the Russian authorities and organised crime groups of being behind these irregular arrivals and see them as a threat to public order and national security.
78. On 22 November 2023, the Finnish authorities also closed the Kuusamo, Vartius and Salla border crossings and concentrated the collection of applications for international protection at the Raja-Jooseppi border post, which remained open. On 28 November 2023, the Raja-Jooseppi border post was also closed and the possibility of lodging applications for international protection remained open only at air and sea border crossings.
79. The authorities reopened the Vaalimaa and Niirala border posts on 12 December 2023, concentrating the collection of applications for international protection there. However, 29 people then crossed the border irregularly and these two border posts were closed again on 14 December 2024. The closure was extended by decisions on 11 January, 8 February and 14 April 2024, the latter decision applying until further notice. The border posts at Haapasaari, the port of Nuijamaa and Santio, for pleasure boat traffic, were also closed until further notice. The other air and sea crossings were the only ones where applications could be submitted.

¹⁹ Vaalimaa, Nuijamaa, Imatra, Niirala, Kuusamo, Raja-Jooseppi and Vainikkala.

80. The Finnish authorities considered that the closure of the eastern border was a necessary and proportionate measure to put an end to the instrumentalisation of migrants and limit its consequences for national security and public order.²⁰ They said they had evidence that the Russian Federation was using migrants as part of "hybrid influence activities"²¹ to destabilise Finland following its entry into NATO and its inclusion on the list of countries deemed unfriendly by the Russian Federation. Russia has officially denied being behind the migratory movements.
81. According to the Finnish authorities, almost 1 300 migrants (mostly from the Middle East and Africa) entered Finland illegally via the eastern border between autumn 2023 and the date of closure of the border posts, compared to a few dozen a year previously. They note that the Russian border guards no longer check whether people wishing to cross the border have the required documents. The irregular entry of migrants is therefore the result of deliberate action by the Russian border guards or is at least tolerated, which the Finnish authorities find difficult to imagine without the approval of the central Russian authorities.
82. The Russian Federation is also suspected of having issued entry visas to third-country nationals and tolerated their illegal stay in Russia so that they could continue their migratory route to Finland. In addition, the Finnish authorities have noted an upsurge in the activities of criminal networks of smugglers, to which the Russian authorities remain passive. Lastly, they claim that the Russian services are actively helping irregular migrants by directing them to border posts or to the areas between these border posts, which are more difficult to control.
83. Fearing that this phenomenon will persist and intensify, the Finnish government believes it is urgent to strengthen the protection of the eastern border and to counter the exploitation of migrants upstream. It was against this backdrop that a draft Act on temporary measures to combat instrumentalised migration was drawn up in February 2024 by the Minister of the Interior and submitted to Parliament. Following a consultation process, the law was adopted by Parliament on 12 July 2024 and promulgated by the President of the Republic on 16 July. It came into force on 22 July 2024 for a period of one year.

²⁰ On this point, see [the letter](#) sent by the Commissioner for Human Rights to the Finnish Minister of the Interior and the latter's [reply](#).

²¹ Term used by the Finnish authorities, particularly in the explanatory memorandum to the Act of 16 July 2024.

IV.2. ACT ON TEMPORARY MEASURES TO COMBAT INSTRUMENTALISED MIGRATION²²

IV.2.1. Presentation of the Act²³

84. The new Act provides that the Government, in plenary session, may restrict the possibility of lodging applications for international protection in a limited area within Finland's national borders and their immediate vicinity, for a maximum period of one month at a time.²⁴ This decision may be taken if the President of the Republic and the Government find that all of the following conditions have been met:
- it is established or there are reasonable grounds to suspect that a foreign state is seeking to exert influence over Finland by exploiting migrants;
 - efforts to exert such influence seriously jeopardise Finland's sovereignty or national security;
 - the restriction on the right of entry is necessary to safeguard Finland's sovereignty or national security;
 - no alternative means are sufficient to achieve this objective.
85. Substantive and procedural guarantees are provided for: the lodging of applications for international protection may not be restricted to an extent or for a period longer than is necessary to combat the serious danger to Finland's sovereignty or national security; the Government must regularly review the content and scope of the decision in plenary session, taking account of developments in the situation, in co-operation with the public authorities; the decision must be revoked if it is no longer necessary to achieve the objective pursued; lastly, the Ministry of the Interior must ensure that the decision is properly publicised.
86. If such a decision is adopted, any migrant suspected of being exploited by a foreign state as part of "efforts" to influence Finland who is in the region covered by the decision is banned from entering the country, and any migrant already in the country is removed and guided to a place where he or she can apply for international protection. The person to be removed must be informed in writing of the reasons for his or her removal, the fact that he or she may request a review of the decision and the place where he or she may apply for international protection.²⁵
87. There is no right of appeal against a removal order. However, the person to be removed may request a review of the removal order from the Border Guard, in writing, within 30 days of the removal. This request for review does not suspend enforcement of the removal order and must be dealt with as a matter of urgency.²⁶ The review may not be appealed.

²² See [the English translation of the law](#) published by the Finnish authorities. For the full legislative procedure, see [the Finnish Parliament website](#).

²³ This section presents the text of the law on the basis of the English translation published by the Finnish authorities, without comment or analysis.

²⁴ The text stipulates that the government must immediately submit a report on this decision to the parliamentary committees concerned: the Administrative Committee, the Foreign Affairs Committee and the Defence Committee. These committees may submit an opinion on the report to the Council of State or the Ministry. The Administrative Committee may also draw up a report for the plenary session on the basis of the report, if it considers that the importance of the issue so requires.

²⁵ The text of the law, in the English translation published by the Finnish authorities, does not state that people who are refused entry must also be informed of the place where they can apply for international protection.

²⁶ The review may be carried out without hearing the person concerned, on the basis of the application and the written documents attached to it, as well as any other relevant information held by the Border Guard. The review is notified by post or e-mail to the address indicated by the person concerned.

88. The Act does, however, provide for the possibility of derogating from these measures in favour of certain migrants, whose application for international protection may, exceptionally, be lodged. This is the case if a border guard, who has received appropriate training and instructions, considers that it is necessary to safeguard the rights of a child, a disabled person or another person in a particularly vulnerable situation. This assessment will take into account the best interests of the child and the risk that the removal order will create an immediate danger to the life or health of the person in question.
89. An application for international protection may also be lodged by a person whose child, disabled person or other particularly vulnerable person appears to be effectively dependent during the assessment.
90. Lodging an application is also possible if the person concerned asserts or if the border guard, having received adequate training and instructions, assesses that there are circumstances that clearly establish a real risk that the person concerned will be subjected to the death penalty, torture or other treatment violating human dignity, primarily in the country from which he or she arrived in Finland. In particular, account is taken of documents and electronic material submitted by the person concerned, externally observable facts relating to the person concerned and up-to-date information obtained from various sources on the security situation in the country of return.
91. The assessment shall be conducted in such a way as to safeguard the rights of the person, border security or national security and in the light of other relevant circumstances. During the assessment, the border guards shall ensure that they fully understand the person and that the person has an effective opportunity to present the facts relevant to the assessment. Relevant information relating to the assessment, the person and their situation, as well as to the outcome of the assessment, shall be adequately recorded and identified.
92. Finally, the border guards may immediately and without case-by-case examination prevent the entry into the country by force or by means of a large number of persons, if this is necessary to preserve the life and health of the persons and if the procedure, assessed as a whole, can be considered justifiable.

IV.2.2. Practical application of the Act

93. The explanatory memorandum which accompanied the bill provides a number of details on the practical application of the temporary measures.
94. It states that the efforts of a foreign state to exert influence on Finland by exploiting migrants will be established on the basis of practical information from the authorities, information received from people crossing the border and observations from the border guards, the Finnish Security Intelligence Service, the Finnish Defence Forces and the National Bureau of Investigation. Given the difficulty of providing formal proof, they may also be established on the basis of "reasonable suspicion".
95. Violation of sovereignty and national security will be assessed on a case-by-case basis, depending on the impact of the operations on Finnish society, the intention to create disorder and instability, to undermine the law, public order and health, life, peace and vital interests, particularly economic interests. The existence of a serious threat to national sovereignty or security will also be examined on a case-by-case basis. The decision to restrict the lodging of applications for international protection may be taken without it being necessary for the migrants to have already entered Finnish territory, or for alternative means to have first been tried unsuccessfully.

96. In accordance with the Border Guard Code, the restriction of access to the territory will be implemented by the Border Guard through advice, requests, orders or information given to migrants, or by means of physical barriers and, if necessary, by the use of force, which must be necessary and justifiable and must comply with the principles of proportionality and minimum intervention.
97. Children will be identified through an examination of their physical characteristics, their identity papers and any other reliable document, as well as through an interview. The identification of vulnerable persons should take into account their age and psychological state. The identification of persons at risk of being subjected to the death penalty, torture or other treatment violating human dignity will take into account, in particular, documents presented, computer data or information present on mobile phones or other digital devices.
98. The requirement that the migrants concerned be fully understood during their interaction with the border guards will be met, if necessary, by the use of interpreters or translators over the telephone.
99. Finally, the explanatory memorandum specifies that a refusal of entry under the new law will not be considered as a refusal of entry under the Schengen Borders Code. The same applies to removal measures, which will not be considered as removals within the meaning of the European Union's "return" directive.

IV.2.3. Impact assessment of the Act

100. In its explanatory memorandum to the Act, the Government admits that the temporary measures envisaged restrict the fundamental rights of the persons used, in particular the principle of non-refoulement (Article 9 of the Constitution²⁷) and the right to a remedy and a fair trial (Article 21 of the Constitution²⁸). However, on the basis of the Constitutional Law Committee's case law, it states that these restrictions may be based on Finland's national security and sovereignty, legitimate interests that are themselves protected by the Constitution (Articles 1²⁹ and 22³⁰).
101. According to the government, the new law seeks to protect children's rights and family life, as required by international human rights treaties, the Convention on the Rights of the Child and Article 10 of the Finnish Constitution.³¹ It points out that the rights of minors who are almost 18 years old may not be guaranteed in practice if they do not have an identity document indicating their age and cannot be identified as minors by other means, given the difficulties of carrying out in-depth research in the context of a brief interaction. In the event of an application for international protection being made by a minor, the authorities would consider on a case-by-case basis whether applications from the minor's family members could be accepted, taking into account the best interests of the child.

²⁷ Article 9 of the Constitution of Finland: "(...) No foreign citizen may be expelled, extradited or repatriated if he is thereby exposed to the death penalty, torture or any other treatment violating human dignity".

²⁸ Article 21 of the Constitution of Finland: "Everyone has the right to have his or her affairs properly considered without undue delay by the court having jurisdiction under the law or by any other authority, and the right to have decisions relating to his or her rights and obligations reviewed by a court or other independent tribunal. / The publicity of proceedings and the right to be heard, to receive reasoned decisions and to appeal, as well as other guarantees of a fair trial and good administration, are guaranteed by law."

²⁹ Article 1 of the Constitution of Finland: "Finland is a sovereign republic (...)".

³⁰ Article 22 of the Constitution of Finland: "The State guarantees respect for fundamental rights and human rights", these rights including, according to the Constitutional Law Committee, the right to personal security.

³¹ Article 10 of the Constitution of Finland: "Everyone's privacy, honour and inviolability of the home are guaranteed (...)".

102. The explanatory memorandum acknowledges that there may be "tensions" between the new Act and the right to seek asylum, which is protected by international instruments. However, it draws on the judgment in *N.D. and N.T. v. Spain*³², in which the Court declared, on the basis of Article 4 of Protocol no. 4 to the Convention, that a state party may refuse admission to its territory to persons who have attempted to enter it illegally by crossing the border at a place other than an official border crossing point, taking advantage of their large numbers and using force.
103. The Government recalls the requirements of the right to appeal in the field of asylum, as they result from Articles 2, 3 and 13 of the Convention, as well as from Article 21 of the Constitution, including the right of an asylum seeker to ask a court to suspend the execution of his removal during the processing of his appeal. It accepts that the new Act places a limitation on this right, which means that it should not be adopted under the ordinary legislative procedure, but under the extraordinary procedure provided for in Article 73 of the Constitution.
104. The explanatory memorandum does, however, highlight the minimum guarantees contained in the new law, namely the possibility for each migrant to present the circumstances in the light of which he or she considers that he or she belongs to one of the exceptional categories of vulnerable migrants covered by the law, the obligation to ensure that each migrant is fully understood, if necessary through the use of an interpreter, the provision of appropriate instructions to border guards on how to apply the law and the responsibility of border guards in applying the provisions governing acts carried out in the exercise of their duties.
105. The explanatory memorandum also examines the absolute and therefore non-derogable nature of the principle of non-refoulement resulting from Article 33 of the 1951 Geneva Convention, Articles 2 and 3 of the Convention, Articles 6 and 7 of the International Covenant on Civil and Political Rights, Article 19 of the Charter of Fundamental Rights of the European Union, as well as other international instruments and Article 9 of the Constitution. It examines the case law of the Court, which states in particular that an asylum seeker must not be refused access to a country without an adequate examination of the risks that refusal of access or removal would entail.
106. However, the Finnish authorities note that the Court has not yet had to examine cases of instrumentalisation of migrants such as those found at Finland's eastern border. The new Act is supposed to guarantee compliance with the principle of non-refoulement through the summary assessment it provides for. This assessment would focus on the risks incurred in the country from which the migrants are attempting to enter Finland (in this case, the Russian Federation), on the basis of the individual situation of the person, any documents or visas issued by that country and any violence or ill-treatment that might be observed immediately at the border.
107. The explanatory memorandum also refers to the prohibition on collective expulsions laid down in Article 4 of Protocol No. 4 to the Convention, which precludes any measure forcing a group of foreigners to leave the territory of a state party without them being given the opportunity to present their individual points of view against the expulsion to which they are subject. It points out that the case law of the Court takes into account the existence of real and effective access to means of legal entry and whether the person seeking entry had a valid reason, attributable to the state, for not using these means of legal entry.³³

³² [ECtHR, *N.D. and N.T. v. Spain*, Nos. 8675/15 and 8697/15, 13 February 2020.](#)

³³ [ECtHR, *N.D. and N.T. v. Spain*, Nos. 8675/15 and 8697/15, 13 February 2020, §§ 201 and 209-211.](#)

108. Finally, the Government points out that the new law could pose difficulties for compliance with the principles of equality and non-discrimination set out in Section 6 of the Constitution.³⁴ On the one hand, asylum seekers would be treated differently depending on whether they were trying to enter Finland in an area where the government has restricted the possibility of lodging an application for international protection or in another area. On the other hand, the Act could place asylum seekers in different positions to benefit from the derogation provisions depending on whether or not their disabilities or vulnerabilities are easily identifiable during the summary assessment and their brief interaction with border guards. The Government is aware of these difficulties and for this reason felt that the Act could not be passed through the ordinary legislative procedure³⁵.

IV.2.4. Opinion of the Constitutional Law Committee

109. The new Act had to be adopted under the special legislative procedure provided for in Articles 73 and 74 of the Constitution.³⁶ According to Article 73, any draft text containing a limited derogation from the Constitution must be the subject of a vote at second reading deciding by a majority of the votes cast to leave it in abeyance until the first session of Parliament following the legislative elections, unless the draft text is declared urgent by a decision taken by a majority of five-sixths of the votes cast. In this case, the draft text may be adopted by a decision taken by a two-thirds majority of the votes cast. In accordance with Article 74, Parliament's Constitutional Law Committee gives an opinion on the constitutionality of the draft text. It is also competent to give an opinion on the conformity of the text with international agreements on human rights.³⁷ This opinion is legally binding.

³⁴ Article 6 of the Constitution of Finland: "All persons are equal before the law / No one shall be discriminated against without good reason on the grounds of sex, age, origin, language, religion, beliefs, opinions, state of health, disability or any other reason related to the person / Children must be treated as full persons and must be able to influence matters that concern them personally to an extent commensurate with their level of maturity / Gender equality shall be developed in social activities and in life / Children must be treated as full persons and must be able to influence matters that concern them personally to an extent commensurate with their level of maturity. / Children shall be treated as individuals in their own right and shall be able to influence matters affecting them personally to an extent appropriate to their maturity. / Equality of the sexes shall be developed in social activities and in working life, in particular in the determination of remuneration and other conditions of work, in accordance with more specific provisions laid down by law".

³⁵ In her observations to Parliament, the Non-Discrimination Ombudsman stressed the importance of the risks of discrimination and emphasised that the exceptions provided for by the law of 16 July 2024 for the benefit of certain people were not sufficient to eliminate such risks, given the very high threshold required by the Act to benefit from these exceptions.

³⁶ Article 73 - Procedure for the adoption of a constitutional law: "Any draft text concerning the adoption, amendment or repeal of a constitutional law or a limited derogation from a constitutional law must, on second reading, be the subject of a vote deciding by a majority of the votes cast to leave it in abeyance until the first session of Parliament following the general election. The draft text must then, after the committee has delivered its report, be adopted in plenary session, without any substantive changes, in a single reading, by a decision taken by a two-thirds majority of the votes cast. / The draft text may be declared urgent by a decision taken by a five-sixths majority of the votes cast. In this case, the draft text shall not be held in abeyance and may be adopted by a decision taken by a two-thirds majority of the votes cast". Article 74 - Review of constitutionality: "It shall be the duty of the Constitutional Law Committee to give an opinion on the constitutionality of draft legislation and other matters submitted for its consideration, and on their relationship with international agreements on human rights".

³⁷ It is therefore possible for Parliament to adopt laws derogating to a limited extent from the Constitution if these laws are approved according to a procedure identical to that required for an amendment to the constitutional text. See [the opinion of the Venice Commission on the Constitution of Finland, 7 April 2008, no. 420 / 2007](#). As the Constitutional Law Committee pointed out in its opinion of 18 June 2024, a derogation is only considered to be a limited exception if two criteria are met. On the one hand, the derogation must be clearly delimited with regard to the Constitution as a whole, which involves not only the number of derogation provisions in the text of the law, but also the fact that these derogations do not undermine fundamental bases of the Constitution, such as the system of fundamental rights or the role of Parliament as the supreme body of the state. Secondly, the derogatory provisions of the law must themselves be limited in scope, particularly in time. Furthermore, derogations may only be allowed in particularly exceptional cases and for overriding reasons. They must be necessary to achieve the objective pursued by the legislature and proportionate to that objective.

110. The Constitutional Law Committee issued its opinion on 18 June 2024.³⁸ It confirmed that the law could not be adopted under the ordinary legislative procedure, insofar as it did not comply with constitutional principles and several international human rights treaties (non-refoulement and right to an effective remedy). It acknowledged that the objective of combatting foreign influence was a legitimate one. It considered that the derogation from the principle of non-refoulement was sufficiently circumscribed, in view of its limited scope in time and space and the exceptions provided for in favour of certain migrants.
111. On the other hand, it deemed it necessary to open up a means of appeal against removal orders, which the initial version of the Act did not allow, and recommended the introduction of a means of appeal to the hierarchical authority to examine the legality and regularity of the removal order, without requiring this appeal to have suspensive effect.
112. The Constitutional Law Committee stressed the importance of individual examination in the case of family members or persons accompanying children, disabled persons or particularly vulnerable persons, the need for sufficient interaction between border officials and migrants when assessing their situation, the need for adequate training and instructions for border guards and the importance of recording information about these migrants in border guard databases.
113. Furthermore, the Constitutional Law Committee pointed out that the new law could conflict with Finland's international commitments³⁹ due to the absolute nature of the principle of non-refoulement. However, it suggested that the limited derogations made by the Act were acceptable, particularly in the light of European Union law, taking into account the provisions of Article 4(2) and Article 72 of the Treaty on the Functioning of the European Union, which reserve to states the exercise of responsibilities for maintaining public order and safeguarding internal security and may justify certain limitations on fundamental rights. The opinion of the Constitutional Committee seems to suggest that similar accommodations could be found on the basis of other international instruments, in particular the Convention.
114. Subject to the reservations expressed, the Constitutional Law Committee concluded that there was no obstacle to the adoption of the Act in accordance with the procedure set out in Article 73 of the Constitution.

IV.3. ANALYSIS OF THE CHALLENGES RELATED TO THE INSTRUMENTALISATION OF MIGRANTS IN FINLAND AND THE RESPONSES OF THE NEW ACT

115. In accordance with the objectives of the fact-finding mission, this analysis details the elements mentioned by the Finnish authorities to explain the specific challenges linked to the use of migrants and to justify the temporary measures envisaged. This analysis seeks to put these elements into perspective with regard to the Council of Europe's standards and to initiate a reflection on the means of responding to the challenges of the instrumentalisation of migrants in accordance with these standards.

³⁸ [Notice PeVL 26/2024 vp HE 53/2024 vp of 18 June 2024](#), in Finnish only.

³⁹ The opinion of the Constitutional Law Committee mentions Article 33 of the 1951 International Convention relating to the Status of Refugees, Articles 2, 3 and 13 of the European Convention on Human Rights, Articles 18 and 19 of the Charter of Fundamental Rights of the European Union, Article 6 of the International Covenant on Civil and Political Rights, Article 7 of the United Nations Convention against Torture, the provisions of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the International Convention for the Protection of All Persons from Enforced Disappearance and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

IV.3.1. Reality and nature of the threats linked to the instrumentalisation of migrants

Reality of the threats

116. The interviews conducted during the SRSG's fact-finding mission and the documents consulted have shown the value of a better understanding of the reality of the threats linked to the instrumentalisation of migrants. The Finnish authorities consider that a large number of migrants are already close to the Finnish borders or could be rapidly directed towards Finland as part of Russian instrumentalisation operations. They see a high risk of the phenomenon worsening in view of the continuing war in Ukraine and the Russian Federation's desire to retaliate against Finland as a member state of the European Union and NATO.
117. The Finnish authorities rely on information provided by the Border Guard, the Finnish Security Intelligence Service, the Defence Forces and the National Bureau of Investigation. The SRSG has not had access to this information. Publicly available information indicates that approximately 1 300 migrants will arrive between autumn 2023 and the closure of the border crossings with the Russian Federation. The brief reopening of the Vaalimaa and Niirala border crossings between 12 and 14 December 2023 allowed the irregular entry of 29 migrants. While these figures are certainly higher than those Finland has seen in previous decades, these migrant arrivals can hardly be described as massive in themselves. The number of arrivals is also likely to fluctuate significantly.
118. Given the impact that operations of instrumentalisation can have on the rights of the persons concerned, it seems useful to document as accurately as possible the reality and scale of the threat posed by these operations. Measures restricting the rights of migrants or framing their exercise should only be taken in a manner that is proportionate to the likelihood of the instrumentalisation of migrants occurring again, their scale, their degree of imminence and their foreseeable consequences. The SRSG therefore invites the Finnish authorities to consider, taking into account the standards of the Council of Europe, in particular the case law of the Court, how these risks could be documented and how the available information could be brought to the attention of the relevant actors⁴⁰.

Nature of the threats

119. In the explanatory memorandum to the Act of 16 July 2024, the Finnish authorities set out the nature of the threats and fears relating to the use of migrants attributed to Russia. Overall, they identified three types of threat or fear which, in their view, are the aims pursued by the Russian authorities.

⁴⁰ In her submissions to the SRSG, the Non-Discrimination Ombudsman stressed that the temporary measures envisaged at the eastern border were based on classified information, leaving out also civil society actors who monitor human rights and she called for transparency in this area, as well as a constructive dialogue with non-governmental and humanitarian organisations.

120. The first type concerns the risks of disruption to public order and national security, in particular the possibility of violent incidents at the border, the violent or mass entry of migrants, the risks to the life and health of the migrants themselves, the risks of infiltration into Finland of dangerous individuals, in particular agents in the service of third states, criminals, including war criminals, radicalised people, etc., as well as the discrediting of the Finnish authorities as regards respect for fundamental rights. The second type of threat concerns the tensions and divisions that may arise in Finnish society over the reception of migrants and asylum seekers, the erosion of social cohesion, the polarisation of political life and the spread of a feeling of insecurity. The third type of threat concerns the overstretching of the public authorities' capacities, in particular the congestion of the asylum system, the system for registering applications for international protection, emergency accommodation, the overloading of social, health, police and justice services, as well as administrative detention centres.
121. Ultimately, what is feared is a global destabilisation of the Finnish state, which would affect its ability to govern. Such a situation is seen as a breeding ground for more serious threats, including the use of armed force.
122. While these threats do indeed correspond to the aims pursued by "hybrid influence activities", they cannot, in the SRSG's view, be invoked solely in a general and abstract manner. The measures taken to deal with them should be closely correlated with the extent of the phenomenon of instrumentalisation assessed *in concreto*.

IV.3.2. Alternative solutions considered

123. In the explanatory memorandum to the Act of 16 July 2024, the Finnish authorities set out alternative options and the reasons why they were not chosen.
124. The first alternative would have been, on the basis of existing law, to maintain the closure of the border crossings on the eastern border⁴¹ or to reopen them in full or in part, providing for an increased and more targeted mobilisation of administrative resources. Maintaining the status quo – the total closure of the border posts – was deemed too detrimental to all cross-border activities.⁴² Reopening without further legislative change was also ruled out as it would have required considerable additional resources for the immigration service as well as for legal aid, interpreters, processing appeals and organising returns, with the need for all procedures to be made significantly faster and more efficient in a short space of time.
125. The second alternative would have been to consider the Russian Federation a safe third country and, subject to individual examination, to reject the applications for international protection as inadmissible. This option was not chosen either, as it would not have been possible to enforce the removal measures until the appeals had been decided, and the processing of these appeals would have had to be considerably accelerated. In addition, the safe third country procedure would have been of limited value if the Russian Federation had not agreed to take back the people concerned.

⁴¹ In her submissions to the SRSG, the Non-Discrimination Ombudsman emphasised that the status quo was likely to prevent asylum seekers at eastern border crossings from accessing the Finnish asylum procedure.

⁴² Setting up asylum procedures at the border on the basis of current European Union law was not an option for the Finnish authorities either, as the profile of migrants arriving at the border does not, in most cases, correspond to that of asylum seekers eligible for these procedures. Article 78(3) of the Treaty on the Functioning of the European Union would certainly allow urgent measures to be taken, such as extending the deadline for registering applications for international protection, extending the scope of procedures at the border, limiting reception conditions to essential needs and facilitating returns, but the Finnish authorities pointed out that the Court of Justice of the European Union has strictly circumscribed the possibility of using these exceptional measures.

126. The third alternative would have been for border guards to register applications for international protection directly at the border. However, this solution would have required too many human resources⁴³ and risked clogging up the border posts.
127. The fourth alternative would have been to set up sorting procedures authorising the border guards to make a summary assessment of the need for international protection, directing those persons assessed *a priori* as being in need of protection towards normal asylum procedures, and processing the applications of the other persons and their return on the spot. This option was not chosen because of the requirements relating to the right of the persons concerned to a suspensive appeal, their right to be heard and to have their application duly examined, and the need for co-operation with the Russian Federation for the return of the persons removed.
128. Finally, the last alternative examined was that of filing asylum applications outside Finnish territory. This solution would have required the use of a service provider on Russian territory, with the agreement of the Russian authorities. Its feasibility was questionable, particularly with regard to the right normally granted to asylum seekers to remain on the territory of the host state while their application was being examined, while their right to remain in Russia was not guaranteed. Above all, such an option raised the question of effective access for asylum seekers to the asylum procedure, given the requirements arising from the judgment handed down on 22 June 2023 by the Court of Justice of the European Union against Hungary and its so-called "embassy procedure".⁴⁴
129. All in all, the Finnish authorities considered that the temporary measures set out in the Act of 16 July 2024 were the most appropriate solution to the situation. Three main considerations appear to have been taken into account:
- they consider these measures to be a necessary and proportionate response to a situation that is exceptional because of the threats it poses to Finland's sovereignty and national security and because of the singular nature of the phenomenon of instrumentalisation as a hybrid threat; they also consider that they have an obligation to protect national security and to restore the exercise of rights and freedoms, in particular freedom of movement, the right to respect for private and family life, the right to property, freedom of trade and the right to work;
 - The Finnish authorities consider that they must have a legal instrument to deter new instrumentalisation operations;
 - In the medium term, they are open to solutions on a European scale; in addition to the European Union addressing situations of crisis and force majeure in the field of migration and asylum, which is due to come into force in 2026, they have mentioned in particular the possibility of exceptional measures under Article 78(3) of the Treaty on the Functioning of the European Union.

⁴³ Particularly given the legal deadline (10 days) for registering applications.

⁴⁴ [CJEU, 22 June 2023, Commission v. Hungary, C-823/21](#). The CJEU ruled that by making the possibility for certain third-country nationals or stateless persons present on the territory of Hungary or at the borders of that member state to submit an application for international protection subject to the prior lodging of a declaration of intention with a Hungarian embassy situated in a third country and to the grant of a travel document enabling them to enter Hungarian territory, Hungary has failed to fulfil its obligations under Article 6 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection.

IV.4. POINTS OF CONCERN REGARDING THE TEMPORARY MEASURES OF THE ACT OF 16 JULY 2024

IV.4.1. Principle of non-refoulement, prohibition of collective expulsions and right to an effective remedy

130. Temporary measures to combat the exploitation of migrants raise questions, particularly with regard to the principles of non-refoulement, the prohibition of collective expulsions and the right to an effective remedy.⁴⁵

Principle of non-refoulement

131. The principle of non-refoulement is a standard of customary international law and a principle set out in particular in Article 33(1) of the 1951 Geneva Convention and Article 19 of the Charter of Fundamental Rights of the European Union. The case law of the Court also emphasises that Articles 2 and 3 of the Convention preclude the removal of a person to a territory where his or her life would be threatened or to which he or she would be exposed to torture or inhuman or degrading treatment or punishment. In view of their absolute nature, Articles 2 and 3 of the Convention are not subject to any exception or to any balancing against any public interest whatsoever, in particular national security⁴⁶, and cannot give rise to the derogations provided for in article 15 of the Convention in time of war or other public emergency threatening the life of the nation.⁴⁷

132. The prohibition of refoulement includes the protection of asylum seekers both in the event of non-admission and rejection at the border.⁴⁸ It therefore precludes the return to the country of immediate transit of persons who have applied for asylum or expressed fears for their safety, without it having been assessed whether the person has access to an adequate asylum procedure in a transit country offering effective protection against non-refoulement.⁴⁹ In the absence of sufficient guarantees, the state party must allow the asylum seeker to remain on its territory until the application has been properly examined.⁵⁰

133. The state may not refuse access to its territory to persons who claim to be subject to ill-treatment in the country of transit, unless adequate measures are taken to eliminate this risk.⁵¹ If the state suspects that an asylum application is unfounded, it still has an obligation under Article 3 either to carry out a substantive asylum examination or to carefully assess whether the person would have access in the host country to a proper asylum procedure offering protection against non-refoulement.⁵²

⁴⁵ See in the same vein the observations of the Office of the High Commissioner for Refugees of 25 March 2024 on the draft law on temporary measures: [UNHCR Observations on the proposal to enact a law on temporary measures](#). See also the [Letter addressed by the Commissioner for Human Rights to the President of the Finnish Parliament and to several committee chairmen](#), published on 17 June 2024.

⁴⁶ [ECtHR, Hirsi Jamaa and Others v. Italy \[GC\], no. 27765/09, 23 February 2012 \[GC\], no. 27765/09, 23 February 2012, § 179](#), and [Sharifi and Others v. Italy and Greece, no. 16643/09, 21 October 2014, § 224](#); [N.D. and N.T. v. Spain, 13 February 2020, paras 209 and 232](#).

⁴⁷ European Court of Human Rights, Guide to Article 15 of the European Convention on Human Rights, updated 30 April 2021, available at: https://www.echr.coe.int/documents/Guide_Art_15_ENG.pdf. See also [ECtHR, Saadi v. Italy \[GC\], no. 37201/06, 28 February 2008, §§ 125, 127 and 138](#); [Hirsi Jamaa and Others v. Italy \[GC\], no. 27765/09, 23 February 2012, § 122](#).

⁴⁸ [ECtHR, N.D. and N.T. v. Spain, Nos. 8675/15 and 8697/15, 13 February 2020 \[GC\], § 178](#).

⁴⁹ [ECtHR, Ilias and Ahmed v. Hungary, no. 47287/15, 21 November 2019, §§ 131, 134 and 137](#).

⁵⁰ [ECtHR, Ilias and Ahmed v. Hungary, no. 47287/15, 21 November 2019, § 134](#); [M.K. and Others v. Poland, no. 40503/17, 14 December 2020, §§ 173 and 185](#); [D.A. and Others v. Poland, no. 51246/17, 22 November 2021, § 59](#).

⁵¹ [ECtHR, M.K. and Others v. Poland, no. 40503/17, 14 December 2020, § 178-179](#).

⁵² [ECtHR, Ilias and Ahmed v. Hungary, no. 47287/15, 21 November 2019, §§ 136 and 138](#).

134. Whether or not a foreign state is involved in migrants arriving at the Finnish border to seek international protection should have no bearing on the applicants' right to have their applications examined and on the application of the principle of non-refoulement. In circumstances involving summary removals, the Court has already ruled that the scale of migratory challenges cannot relieve a state of its obligations with regard to the rights guaranteed by Article 3 of the Convention, which are absolute in nature.⁵³ In the light of the current case law of the Court⁵⁴, it is unlikely that acts of hybrid threat would be more likely to waive the requirements of the Convention.
135. The Act of 16 July 2024 also makes it possible to refuse entry to the country to any migrant in a restriction zone and to remove any migrant already in this zone and guide them to a place where they can apply for international protection. This does not make it impossible for these instrumentalised migrants to submit applications for international protection throughout Finland. However, the actual possibility given to migrants to reach a place where the lodging of their application is still authorised is decisive for access to international protection to be considered effective.⁵⁵ If this is not the case, any refusal of entry or removal measures could possibly be assimilated to refoulement contrary to Articles 2 and 3 of the Convention.

Prohibition of collective expulsion

136. Article 4 of Protocol no. 4 to the Convention prohibits collective expulsions. For the purposes of this article, as well as Articles 3 and 13 of the Convention, "expulsion" means "*any forcible removal of an alien from a State's territory, irrespective of the lawfulness of the person's stay, the length of time he or she has spent in the territory, the location in which he or she was apprehended, his or her status as a migrant or an asylum-seeker and his or her conduct when crossing the border*"⁵⁶. It follows that Article 4 of Protocol no. 4 and Article 3 of the Convention are applicable "*to any situation coming within the jurisdiction of a Contracting State, including to situations or points in time where the authorities of the State in question had not yet examined the existence of grounds entitling the persons concerned to claim protection under these provisions*".⁵⁷
137. A "collective" expulsion within the meaning of Article 4 of Protocol no. 4 is any measure forcing "*aliens, as a group, to leave a country*", "*except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual alien of the group*".⁵⁸ However, the decisive criterion is not the number of people, but the absence of "a reasonable and objective examination of the particular case of each individual alien of the group".⁵⁹

⁵³ [ECtHR, Hirsi Jamaa and Others v. Italy \[GC\], no. 27765/09, 23 February 2012, § 122.](#)

⁵⁴ Notably [ECtHR, C.O.C.G. and Others v. Lithuania, no. 17764/22](#); [R.A. and Others v. Poland, no. 42120/21](#); [H.M.M. and Others v. Latvia, no. 42165/21](#).

⁵⁵ In its observations of 25 March 2024, the UNHCR expressed particular concern about the obstacles posed by the 1 340-kilometre-long eastern border and the long distances between international border crossing points, combined with natural barriers.

⁵⁶ [ECtHR, N.D. and N.T. v. Spain, nos. 8675/15 and 8697/15, 13 February 2020 \[GC\], § 185.](#)

⁵⁷ [ECtHR, N.D. and N.T. v. Spain, nos. 8675/15 and 8697/15, 13 February 2020 \[GC\], § 186.](#) Given this autonomous interpretation of the term "expulsion", the way in which the measure is qualified in domestic law is not decisive: [ECtHR, N.D. and N.T. v. Spain, Nos. 8675/15 and 8697/15, 13 February 2020 \[GC\], § 186](#); [Khlaifia and Others v. Italy, no. 16483/12 \[GC\], 2016, §§ 243-244.](#) The immediate and forced removal of foreign nationals from a land border, following an attempt by a large number of migrants to cross that border irregularly and en masse, is therefore an "expulsion" within the meaning of Article 4 of Protocol no. 4: [ECtHR, N.D. and N.T. v. Spain, nos. 8675/15 and 8697/15, 13 February 2020 \[GC\], §§ 189-191.](#)

⁵⁸ [ECtHR, N.D. and N.T. v. Spain, Nos. 8675/15 and 8697/15, 13 February 2020 \[GC\], § 193](#); [Khlaifia and Others v. Italy, no. 16483/12 \[GC\], 2016, § 237.](#)

⁵⁹ [ECtHR, N.D. and N.T. v. Spain, Nos. 8675/15 and 8697/15, 13 February 2020 \[GC\], §§ 194-195.](#)

138. To argue that the measures contained in the Act of 16 July 2024 comply with the Convention, the Finnish authorities emphasised the solution reached by the Court in the case of *N.D. and N.T. v. Spain*. According to this judgment, there is no violation of Article 4 of Protocol no. 4 if the removal of a migrant without examination of his or her individual situation occurs when the state has offered real and effective access to legal channels of entry, in particular to border procedures enabling an application for protection to be made, and the applicant has not made use of them, without compelling reasons attributable to the respondent state.
139. The question of whether the measures taken in application of the Act of 16 July 2024 provide real and effective access to legal channels of entry should, however, depend on the opportunities given to instrumentalised migrants to actually access the places where asylum applications can be lodged.⁶⁰

Right to an effective remedy

140. At the request of its Constitutional Law Committee, the Finnish Parliament introduced into the Act of 16 July 2024 a mechanism for administrative appeal against temporary measures to combat instrumentalisation. However, the law expressly excludes the possibility of appealing to a court and obtaining a stay of execution of entry refusals or removal orders. The compatibility of this provision with the right to an effective remedy guaranteed by Article 13 of the Convention, in conjunction with Articles 2 or 3 or Article 4 of Protocol no. 4 to the Convention, is open to question. The Court has held that where individuals can "arguably" claim that their removal would expose them to treatment contrary to Article 2 or 3 of the Convention, domestic law must, under Article 13 of the Convention, provide them with an effective remedy, in practice as well as in law, which must permit an independent and rigorous examination of any complaint that there are grounds for believing that there is a real risk of treatment contrary to Article 2 or 3, and a remedy which has suspensive effect as of right.⁶¹ Furthermore, the absence of any access to an independent and impartial tribunal does not seem to allow the requirements of Article 13 to be met.
141. Apart from the fact that it could deprive the persons concerned of the possibility of having the legality of the measures taken against them reviewed, the absence of an effective remedy under domestic law could also lead a large number of people to refer the matter directly to the Court. In this context, the Finnish authorities could usefully discuss with the relevant departments of the Council of Europe ways of ensuring that the remedies available against the temporary measures of the Act of 16 July 2024 comply with the Convention.

IV.4.2. Guarantees offered under the Act of 16 July 2024

142. The Act of 16 July 2024 provides that certain asylum seekers may be admitted to Finland and authorised to submit an application for international protection despite the possible introduction of restrictive measures by the government. These exceptions raise a number of questions and concerns.

⁶⁰ A number of cases have been brought before the ECtHR concerning individuals who have crossed a border irregularly and been summarily expelled, following the judgment in *N.D. and N.T. v. Spain*, which concerns the question of whether the state concerned has discharged the burden of proving that the applicants had real and effective access to regular entry procedures. In this respect, the ECtHR has examined the location of border posts, the procedures for lodging applications there, access to interpreters/legal assistance to enable asylum seekers to be informed of their rights and evidence that applications were actually lodged at these border posts: [ECtHR, *N.D. and N.T. v. Spain*, nos. 8675/15 and 8697/15, 13 February 2020 \[GC\], §§ 212-217; *Shahzad v. Hungary*, no. 12625/17, 8 July 2021, §§ 63-67; *M.H. and Others v. Croatia*, nos. 15670/18 and 43115/18, 18 November 2021, §§ 295-304; *A.A. and Others v. Northern Macedonia*, nos. 55798/16 and 4 others, 5 April 2022, §§ 116-122.](#)

⁶¹ [ECtHR, *M.S.S. v. Belgium and Greece* \[GC\], no. 30696/09, 21 January 2011, § 293; *M.K. and Others v. Poland*, no. 40503/17, 14 December 2020, §§ 142-148 and 212-220.](#)

143. The first concern relates to the examination of situations of particular vulnerability. The examination of these situations is in fact left to the border guards, for whom the law stipulates that they must have received appropriate training and instructions. However, doubts may be expressed as to whether border guards can adequately conduct a vulnerability assessment, which in principle requires specialist knowledge. The situations of vulnerability to be examined can also be many and varied. In particular, they concern migrant women and girls, victims of human trafficking, torture or violence, people suffering from physical or mental illnesses, etc. It would therefore be desirable for this examination to be carried out with the help of professionals, if necessary through specialised non-governmental organisations.
144. Determining the age of children is also an important point. While children may be exempted from measures to combat instrumentalisation, the Finnish authorities have acknowledged that the age of migrants claiming to be minors will be assessed on the basis of their identity documents and their physical appearance. They admit that the rights of minors close to the age of 18 may not be guaranteed in practice if they do not have identity documents showing their age and cannot be identified as minors by other means.
145. This situation could seriously undermine the rights and interests of minors, even though their numbers do not necessarily preclude age determination methods that comply with the principles of the best interests of the child and the presumption of minority applicable to unaccompanied migrant children, recalled by the Court⁶², or the principles set out in Recommendation CM/Rec(2022)22 of the Committee of Ministers to member states on human rights principles and guidelines on age assessment in the context of migration.⁶³
146. The Act of 16 July 2024 provides that an application for international protection may also be made by a person whose child appears to be effectively dependent during the assessment carried out by the border guards. The parents of a child admitted on an exceptional basis or an adult who has taken charge of the child may therefore also be admitted. However, this possibility will be examined on a case-by-case basis, taking into account the best interests of the child, and would only apply to persons on whom the child is dependent, not to all members of the same family. The possibility of children being admitted on the territory without their parents or at the cost of separation from other close family members is a cause for concern in terms of the right to respect for private and family life and the best interests of the child.
147. Persons who would clearly run a real risk of being subjected to the death penalty, torture or other treatment violating human dignity, primarily in the country from which they arrived in Finland, may also benefit from a derogation from the restrictive measures of the Act of 16 July 2024. However, the principle of non-refoulement applies to forced removal to any third country where a person has a well-founded fear of persecution, serious violations of human rights or other serious harm, or from which he or she risks being returned to his or her country of origin. It is therefore up to the host state to assess the risks of indirect or chain refoulement, and in particular to determine whether the person concerned would have access to an adequate asylum procedure in the third country, offering effective protection against non-refoulement.⁶⁴

⁶² [ECtHR, Darboe and Camara v. Italy, no. 5797/17, 21 July 2022.](#)

⁶³ [Recommendation CM/Rec\(2022\)22 of the Committee of Ministers to member states on human rights principles and guidelines for age assessment in the context of migration](#) (Adopted by the Committee of Ministers on 14 December 2022 at the 1452nd meeting of the Ministers' Deputies).

⁶⁴ [ECtHR, Ilias and Ahmed v. Hungary, no. 47287/15, 21 November 2019, §§ 131, 134, 137, and paragraph 133 above.](#) See also [ECtHR, T.I. v. the United Kingdom, no. 43844/98, 7 March 2000](#), in which the Court stated that "the indirect removal in this case to an intermediate country, which is also a Contracting State, does not affect the United Kingdom's responsibility to ensure that the applicant is not, as a result of his decision to remove, exposed to treatment contrary to Article 3 of the Convention". See also [ECtHR, K.R.S. v. United Kingdom, no. 32733/08, 2 December 2008](#), as well as in [Abdolkhani and Karimnia v. Turkey, no. 30471/08, 22 September 2009, §§88-89](#), in the case of [M.K. and others v. Poland, nos. 40503/17, 42902/17 and 43643/17, 14 December 2020](#), as well as in the case of [M.A. and others v. Lithuania, no. 59793/17, 11 March 2019](#).

IV.4.3. Recommendations regarding the Act of 16 July 2024

148. The following avenues should be explored in order to deal effectively with the phenomenon of the instrumentalisation of migrants while respecting fundamental rights and the rule of law, which are the essential foundations of the Council of Europe and its member states.
149. In view of the risks that the application of the temporary measures of the Act of 16 July 2024 would entail for effective access to international protection and respect for the principles of non-refoulement, prohibition of collective expulsion and the right to an effective remedy, it is desirable that these exceptional measures remain unapplied. Any influx of migrants and asylum seekers at Finland's eastern border should preferably be treated in accordance with the ordinary law applicable in Finland.
150. If the Act of 16 July 2024 were nevertheless to be applied, its implementation should be accompanied by sufficient guarantees to ensure that the exceptional measures comply with the Convention. The conditions laid down by the law would then have to be interpreted strictly.
151. In particular, any decision to restrict the lodging of applications for international protection should only be taken in the event of an exceptional situation, which clearly poses a serious threat to Finland's sovereignty or national security. In such a case, the area to which the restrictive measures would apply and their duration should be limited to what is strictly necessary to enable the authorities to prevent or put an end to this exceptional situation.
152. It would also be essential for the Finnish authorities to take the necessary steps to ensure or facilitate the transport of applicants for international protection to the places where they are authorised to lodge their applications, in sufficiently safe conditions.
153. The derogations provided for by the Act of 16 July 2024 for the benefit of certain migrants should be carefully examined, including the following concerns:
- it is desirable that persons refused entry to Finland should benefit from the same information guarantees as those provided by the Act of 16 July 2024 to persons subject to a removal order⁶⁵. In addition, persons refused entry should be given a practical opportunity to explain their personal situation to the border guards so that, where they are eligible, they can effectively benefit from the exceptions provided for in the new Act⁶⁶ for certain categories of persons.
 - for vulnerability assessments, the training and instructions given to border guards should be accompanied by the presence of professionals and, when necessary, representatives of specialist non-governmental organisations;

⁶⁵ These information guarantees cover the reasons for the measure taken, the possibility of requesting a review of such a measure and the place in Finland where the person concerned can apply for international protection.

⁶⁶ As a reminder, these exceptions apply to children, disabled persons, persons in particularly vulnerable situations and persons who are in manifest danger of being subjected to the death penalty, torture or other treatment violating human dignity.

- the age of migrants who declare themselves to be minors should be assessed taking into account the principles of the best interests of the child and the presumption of minority and the recommendations of the Recommendation of the Committee of Ministers to member states on human rights principles and guidelines for assessing age in the context of migration;
- parents and family members of children admitted to apply for international protection should also be admitted to the territory in order to avoid family separation;
- when considering the real risk of a person being subjected to the death penalty, torture or other treatment violating human dignity, this assessment should be made not only with regard to the situation in the country from which the person arrived in Finland, but also with regard to the risks of indirect or chain refoulement.

154. It is also suggested that the Finnish authorities explore with the relevant sectors of the Council of Europe ways to ensure that the remedies available against the temporary measures of the Act of 16 July 2024 are in conformity with the Convention, including when it comes to decisions to refuse entry to Finland.

V. ANNEX: PROGRAMME OF THE VISIT

Tuesday 21 May 2024

- 09.30 - 11.00** Meeting with the Finnish Non-Discrimination Ombudsman, Kristina Stenman
- 11.00 - 12.00** Meeting with the Permanent Secretary of the Ministry of the Interior, Ms Kirsi Pimiä
- 12.00 - 13.30** Working lunch with the Director General of the Migration Department of the Ministry of the Interior, Ms Sanna Sutter
- 13.30 - 15.30** Meeting with the Migration Department of the Ministry of the Interior and the Finnish Immigration Service
- 16.00 - 17.30** Meeting with the Justices of the Supreme Administrative Court, Ms Anne Niemi and Mr Petri Helander

Wednesday 22 May 2024

- 10.00 - 11.00** Meeting with Mr Pasi Rajala, State Secretary to the Minister for Foreign Affairs, Ms Elina Valtonen, and the Minister for Defence, Mr Antti Häkkänen
- 11.00 - 12.30** Visit to the detention unit at the Helsinki reception centre, Finnish Immigration Service
- 12.30 - 14.00** Working lunch with the Deputy Director General of the Political Department at the Ministry for Foreign Affairs, Mr Erik Lundberg
- 14.30 - 15.30** Visit to the transit centre of the Helsinki reception centre, Finnish Immigration Service
- 16.00 - 17.30** Meeting with Finnish NGOs
- 18.00 - 19.00** Meeting with the IOM

Thursday 23 May 2024

- 12.15 - 13.15** Meeting with the Chairman of the Constitutional Law Committee of the Finnish Parliament, Mr Heikki Vestman