

# Prioritizing National Interest at the Expense of Narrowing Regular Migrant Mobility and Residence

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## **Abstract**

This article examines how Finnish national legislative amendments have restricted the space of regular, cross-border migration and stay, possibly resulting in forms of increased irregular mobility and residence. Aside from addressing legal science, this article has political, cultural, and sociological dimensions. Restrictive legislative amendments in a general European context are often validated with state arguments based on prioritizing national interests, such as the state economy or national security. At the national level in Finland, there have been dozens of government proposals that have resulted in amendments to the Aliens Act (301/2004) since its renewal in 2004. I look at these amendments systematically, and, by providing key examples based on the data studied, I show how these amendments have restricted regular mobility and residence for migrants coming mostly from third countries. These observations show that the Finnish government resorts to arguments concerning the state economy, the alleged favorability and attractiveness of Finnish legislation, and the management of migration while at the same time limiting rights to regular mobility and residence. As a result, issues regarding the generation of irregular mobility and residence continue to be ignored in the preparation and application of the Aliens Act, despite certain amendments being likely to maintain a legislative framework that generates irregular mobility and presence.

**Keywords:** Aliens Act, regular and irregular mobility, irregular residence

## **Introduction**

In 2015, over one million migrants, mostly refugees and asylum seekers, arrived in Europe in a search for better living conditions. At the same time, Europe was experiencing a remarkable increase in the number of asylum seekers it received. Finland's share of this was 32,476 asylum seekers, almost ten times more than it had ever received before (Annual Report

of the Finnish Immigration Service 2015, 3). It may rightfully be assumed that not all of these migrants are expected to leave Finland and return to their countries of origin, even when they are issued a negative residence decision. Therefore, there is a need to assess the constructed legal framework which may produce irregular migrant mobility and presence.

The increase in the number of asylum seekers in 2015 clearly put into action certain political and legislative amendments in countries all over Europe, including Finland. In following different European states, introducing even stricter immigration policies has to some extent affected the Finnish government's actions, and so fueled national legislative amendments to the Aliens Act. State interference has changed from the traditional management of migration to the preventive management of migration, especially by making references to national security (Mitsilegas 2010, 65). For Finland, the preventive management of migration is combined with arguments of economic capacity and the favorability and attractiveness of Finnish legislation. Moreover, the increased number of asylum seekers was represented in proportion to the numbers of the Finnish population (Government proposal 43/2016, 16–17), which affected the general perspective considerably.

In autumn 2015, the Finnish government included in its action plan the assurance that all actions must be based on safeguarding and respecting the basic and human rights of migrants (Finnish Government 2015b, 1). A short while later, the government acted against its own assurances; the government's more recent political will is represented in the Finnish Government's action plan submitted in December 2015 (Finnish Government 2015a), which states more clearly that uncontrolled migration must be managed better, and then lists ways in which these management goals may be reached.

However, the national Aliens Act (301/2004) had been in transition long before the events of autumn 2015, and corrections and further specifications to the Aliens Act are believed to improve the transparency of decision making, to increase trust in the authorities, and to ensure equal treatment and better legal protection (Government proposal 9/2014, 12; 133/2016, 23). The amendments of the Aliens Act have been aimed at reducing malpractice and the circumvention of the provisions of the Act, as well as at reducing the incentives for migration to Finland; the amendments also refer to the conditions of the state economy and to reducing Finland's attractiveness as a target country.

Sovereignty signifies that it is a matter of national discretion regarding which migrants are allowed to enter a country. A migrant has no absolute right to settle in a specific country, and a migrant's residence rights are always ruled upon under national legislation. A migrant's right to enter and reside in Finland forms an exception to the purpose of the Finnish Constitution, which, as a rule, guarantees basic rights for everyone, including non-Finnish citizens (Constitutional Law Committee 16/2010, 2). The Constitution of Finland (731/1999) regulates freedom

of movement, and this is different for citizens and non-citizens. The right of migrants to enter Finland and to remain in the country is particularly regulated by the Aliens Act.

States have sovereignty, although not unlimitedly, to pursue their actions, for example, based on the doctrine of the margin of appreciation established by the European Court of Human Rights (*Case of Handyside v. The United Kingdom*, application no. 5493/72, § 49). Therefore, a state's actions must take into account three core elements: that they are in accordance with or prescribed by law, that they pursue a legitimate aim, and that they are deemed as necessary in a democratic society (Arold Lorenz, Groussot, and Petursson 2013, 77).

The immigration authorities have discretionary powers to consider the general requirements for issuing residence permits and refusing residence rights. Government proposals highly emphasize that the national authorities (and not the migrants themselves) are best placed to assess whether or not migrants deserve the right to reside in the country they choose (Government proposal 170/2014, 33). Aside from international obligations, the exercise of discretion must occur in the framework of the national Aliens Act, and it is therefore subject to any nuanced interpretations of amendments that are made to it.

Migration occurs in multiple forms, being work or studies based, but also in forms of irregular migration, trafficking, and smuggling. No state structures and legislative frameworks can fully hold back even undesired forms of migration. Yet, emotions may drive migration policy and influence political will (Last, Spijkerboer, and Ulusoy 2016, 20). Indeed, the political will to reduce the number of un-grounded asylum and residence applications has been seen in Finland since 2009 (Administration Committee 2/2009, 2), and it is even claimed in government proposals that preventing malpractice and un-grounded residence applications would improve the status of those applicants who are honest and who do not seek to circumvent the provisions of the Aliens Act (Government proposal 240/2009, 30; 43/2016, 27).

It is generally recognized that migrants use irregular routes and means to reach Europe. Still, states have done little to improve the legal ways to enter and reside in a country. This also applies to Finland, regardless of the fact that the Finnish government has emphasized that unmanaged migration must be brought under control and that people need to be directed toward safe and legal routes (Finnish Government 2015b). Moreover, the earlier Permanent Secretary of the Ministry of the Interior noted that Finnish legislation is explicit in the sense that it requires that every person must have a clear status in the Finnish society, and that no one should reside irregularly in the country (Nerg 2016). These views may rightly be questioned as being too optimistic, considering that states informally admit the existence of irregular mobility and residence.

It must be kept in mind that people have different capabilities in fighting for their human rights (Sen 2005, 153; Nussbaum 2011, 18–20).

Irregularly resident migrants are especially vulnerable as they lack the recognition and protection of the country they reside in. The realization of human rights is therefore dependent on the regularized status, and those with regularized status are offered more possibilities. This depends largely on the fact that those who are legally resident in a country are recognized: they exist in terms of a national jurisprudence that is better able to reach them, and they are thus better regarded by societal structures.

Law and policy go hand in hand. Restricted immigration policy has the ability to limit the space of regular mobility and residence by prioritizing national interests such as the state economy or matters of national or legislative attractiveness. These restrictive measures may result in the irregular status of a migrant, and this is likely to generate multiple problems for the individual. In this article, I observe whether the gradual amendments made to the national Aliens Act are likely to generate an outcome where irregular mobility and residence are in fact increased in opposition to the original aim of managed migration by the Finnish government.

### **Research Data and Central Characteristics**

Legislative amendments and preparations are affected, *inter alia*, by the rulings of national courts such as the Supreme Administrative Court, or by international and European courts such as the European Court of Human Rights. Legislative amendments and preparations are also affected by European Union migration law, as reflected in the directives and in national political assurances presented on government platforms.

This study was conducted by looking systematically at the existing and ongoing amendments made through government proposals to the Finnish Aliens Act, dating back to the year 2004. The observation period therefore covers the years between 2004 and 2016. By the end of September 2016, there had been sixty-six amendments made to the Act, as well as one new government proposal issued on September 15, 2016. Alongside government proposals through which amendments were made, committee statements and reports, the conflicting opinions of government representatives, associated literature, and national and European court cases were also studied. These data were analyzed by way of identifying qualitative argumentation based on prioritizing the national interest. Accordingly, the data were observed in light of the possible recognition of irregular mobility and residence and their possible generation.

The high number of amendments to the Aliens Act does not necessarily tell us whether the actual situation has impacted a migrant's possibilities for regular mobility and residence either negatively or positively. Almost all of the amendments interfered with a migrant's entry, residence, or stay in Finland, although approximately 30 percent of the amendments were rather technical in nature, for instance, amendments that were made as a result of the changed names of national authorities.

Most recognizably, the government proposals have often remained intact, and passed through the legislative process mostly unaltered. The

committees that provide statements concerning the government proposals would often comply with the actual proposals, without offering suggestions of amendment. Only rarely did committees provide statements that required additional or specific legislative attention. Nonetheless, the separate opinions of government representatives attached to the committees' statements were more brave and outspoken, but unfortunately few in number.

Also noteworthy is the fact that the preparations featured in these government proposals were often linked with comparisons to other European states. Indeed, comparisons between European and northern countries were, and still are, essential when defining the national immigration policy. Comparisons were made mainly with Sweden, Denmark, Norway, Great Britain, and Germany, but also with Canada and Australia. However, these comparisons tended to focus on very narrow areas, and the conditions created in other states were not viewed as a whole (regardless of the possibilities of doing so). Still, such comparisons were always a feature when they served to defend the standpoint of the government proposal. Restrictions were based on international, mainly European, comparisons, such as arguing that an early right to work had been seen as an incentive for many asylum seekers who arrived in European countries, and which also then affected an increase in the number of asylum seekers (Government proposal 240/2009, 21–22). The preliminary hypothesis of these observations rested on the fact that reasons which prioritized national interest were and are used to restrict the space of regular mobility and residence in Finland, and that these amendments may collectively lead to even more migrants falling into an unregulated status.

## **Results and Analysis**

### *Restrictive political trends*

For Finland, the observations showed that when the amendments had restrictive effects, they were mainly based on references to the state economy and the supposedly more favorable legislative conditions and attractiveness of Finland in comparison to other European and northern countries, as well as on the overall context of the management of migration.

From the viewpoint of restricting regular mobility and residence in the government proposals through which amendments were made to the Aliens Act, two distinct political trends stood out. First, the amendments mainly expressed goals that related to a harmonization of national migration law with European Union law. Second, amendments that were made to the Aliens Act were based on allegations and predictions that relied on relieving the state's economic burden, or referred to possible or alleged restraints for the state economy.

European Union member states are expected to act consistently and coherently. However, despite incoherent operations in European

countries, Finland has started to refer to harmonizing its policies with other European Union member states, even though the situation of the Union's immigration policy is clearly incoherent. European Union immigration directives set a certain minimum standard, but those countries that have more favorable conditions in force through legislation are not obliged to harmonize their legislation with the minimum standards set by the directive. Based on the observations, government proposals often stated the fact that Finnish national legislation mainly fulfilled the set requirements of the European Union directives, when the fulfillment procedure of the European Union migration directives was seen as ongoing. However, recent amendments made to the Aliens Act show a stricter interpretation and reading of the European Union directives, in the sense that even Finland, as a state that argues that it has achieved the acquired level of protection, has begun to lower the requirements of its alleged and originally more favorable legislation and better standards when it comes to basic human rights protection, by legalizing conditions that the European Union directives accept as only the minimum degree of protection to be afforded. This trend does not necessarily constitute a breach for one's basic human rights, but it definitely lowers basic human rights protection for a migrant, and is therefore likely to cause irregular mobility and residence.

Another political trend in Finland concerned the national preparation for an alleged increase in the number of migrants and asylum seekers. The observations showed that there is no existing tolerance for a possible increase in migrant mobility in its many forms. The more apparent aim of the Finnish government seemed to aim at cutting migration to Finland as a whole. It appeared that incentives were readily turned into deterrents that aimed to keep the feared masses, influxes, and flows of migrants away. Thus, a political and emotions-based fear seemed to have replaced the previous better compliance with international human rights obligations (cf. Wang 2012, 744; Kirk et al. 2012, 94). The allegations and predictions of an increased number of migrants seems to have caused a situation where the most vulnerable migrants are in fact victims of the amendments. The central effects of the amendments targeted (although not necessarily clearly stated) persons from third countries: families and vulnerable individuals such as women, children, and other disadvantaged individuals who may not be positioned to take active measures for themselves.

Family reunification has been estimated to form significant grounds to apply for residence rights in Finland (Government proposal 43/2016, 10). The number of children and minors has been predicted to increase in the coming years, and thus minors have been especially targeted with multiple amendments, both positive and negative, such as tracing the parents of unaccompanied minor asylum seekers (Government proposal 31/2006) and carrying out medical age assessments (Government proposal 240/2009). Accordingly, the Aliens Act has been tightened based

on alleged harmful side-effects of migration such as false marriages or parents sending their children alone to Finland; these children are then envisaged as trying to reunite with their families on Finnish territory (Administration Committee 3/2006, 2–3). At the same time, however, such harmful phenomena and their growth have not been seen as a significant issue for Finland in general (Government proposal 77/2009, 10).

Those who were favored in the legislative amendments were mainly skilled migrants from third countries and the European Union, whose aim would be to come to work in Finland (e.g., researchers or experts). These migrants were not believed to generate costs for the state economy. To a small degree, attracting skilled migrants was seen as desirable by European countries (Government proposal 37/2011, 29; Employment and Equality Committee 3/2011, 2). The status of foreign students was improved in the amendments, but such students still have certain requirements that must be met in order for them to achieve a regular right to reside and study in Finland, such as holding insurance to cover costs generated from health care services (Government proposal 277/2006).

#### *Turning Points during the Observation Period*

Until 2010, amendments made to the Aliens Act through government proposals were not believed to have significant impacts on the state economy (e.g., Government proposal 205/2006, 22; 167/2007, 23; 166/2007, 46; 86/2008, 49), and it was not believed that amendments made to the Aliens Act would result in increased residence applications for Finland. Up until 2010, the development of the Aliens Act was quite balanced compared to the changes which were seen in following years. At the time, the need for a migrant workforce was recognized in Finland (Government proposal 90/2007, 8). However, compared to the public debate on migration, political attitudes and legal capacities toward recruiting and attracting more migrants from different working groups (not only experts) for the Finnish labor market were seen to be more considerate and modest when it came to safeguarding the workforce in the context of an aging Finnish nation (Government proposal 78/2005, 4; Administration Committee 3/2006, 3). Thus, the idea of Finland creating attractive conditions for residence rights has persisted since the beginning of the observation period, although this has developed gradually (Employment and Equality Committee 10/2005).

When looking at the language of the government proposals and their political tone, there are two clear turning points to be seen during the observation period. The first turn concerned the assessment of the impacts of the proposed amendment to the state economy. Between 2009 and 2010, government proposal language began to refer to possible beneficial economic effects to the state economy if more restrictive amendments were implemented in the Aliens Act (Government proposal 240/2009, 28). Simultaneously, the possible future increase in the numbers of migrants from third countries was more firmly acknowledged (Government proposal 295/2014, 12–13).

At the turn of 2009–10, the government proposals turned toward cutting down the incentives for migration to Finland, with regard to restricting a migrant’s work and family reunification rights, for instance by adding legislation concerning a minor’s medical age assessment. This turn can partly be explained by Finland closely following the example of neighboring countries, such as Sweden, which was facing a remarkable increase in the numbers of family reunification applications around this time (Government proposal 240/2009, 4, 20; Administration Committee 5/2010, 7). The second turn occurred more recently, between 2014 and 2016, and has continued until the present time. During this period, economic perspectives were still being used, but rather as an additional consideration alongside novel arguments that referred to the attractiveness or favorability of the Finnish legislative framework, or the management of migration (Administration Committee 3/2016, 6; Government proposal 43/2016, 1). In these arguments, the more migrants Finland received, or was alleged to receive, the more value was given to a principle of managed migration.

In the beginning of the study period, it was better recognized that the arrival of migrants and asylum seekers depends on a number of factors (Government proposal 86/2008, 49) and not just the favorability of a country’s legislation. The observations showed a transition toward looking at the national legislation as being more favorable to migrants, and this mostly occurred between 2014 and 2016. The Finnish government has regarded it as important to ensure that Finnish legislation is no more attractive than in other European states, and that Finland’s attractiveness must be acknowledged so that Finland would not face any larger number of asylum seekers compared to other countries (Government proposal 2/2016, 3). For example, the Finnish government believed that a proper voluntary returns system in Finland would signal that there is no automatic link between irregular residence and a possible future right of residence (Government proposal 170/2014, 32).

The favorability of this legislation seems to have been taken for granted, but it is unclear whether the Aliens Act was truly so favorable before the amendments were made. The Aliens Act is hard to follow because of its scattered and disordered nature, especially as many amendments have been made to it. The numbers of people migrating to Finland<sup>1</sup> in the twenty-first century, or even prior to that, indicate that favorable legislation and the attractiveness of Finland as a target country for asylum seekers and large numbers of migrants are generally hard to see as powerful arguments, and they feel somewhat exaggerated. Additionally, the attractiveness argument has been regarded as very problematic from a perspective of basic human rights (Constitutional Law Committee 27/2016, 2).

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<sup>1</sup> In all, a few tens of thousands yearly. Precise statistics on the numbers migrating to Finland may be found on the webpage of the Finnish Immigration Service: [www.migri.fi](http://www.migri.fi).



The comprehensive assessment of the effects of the latest amendments remains incomplete. Beside the high number of newcomers to Finland in 2015 and the alleged fact that this high number of migrants creates an unreasonable burden for the state economy, the urge for the latest amendments was based on the Government action plan on asylum policy in December 2015, and it echoed the fact that other states would also restrict and limit the space for regular mobility and residence. These latest amendments are best pictured as being hasty, immature, and incomprehensive. What is especially striking is that the more restrictive amendments made to the Aliens Act had shorter preparation time than usual: for instance, the circulation period for expert statements and comments was more brief than usual. Additionally, some of the amendments adopted in 2015 and 2016 were also especially worrying as they were instantly applicable without having to undergo a period of transition (Government proposal 2/2016).

Generally, amendments that restricted possibilities for regular mobility and residence were disguised in the form of acceptable societal goals. Acceptable societal goals are generally acknowledged and may be, for instance, aimed at relieving economic restraints for the state economy, the better management of migration, the encouragement of employment (Government proposal 43/2016, 18), or, for example, a reduction in the time allowed for the appeals process (Government proposal 32/2016, 14–15). An acceptable goal might be expressed in a way that the assessment of one's basic human rights is in fact neglected. Yet, even for restrictive legislative amendments, legal principles such as reasonability and proportionality must be regarded, especially when the target of the amendment is a human being.

Not all of the amendments were necessarily and purposely affecting the migrant's basic human rights in a more restrictive manner. There were some ostensibly positive amendments adopted, such as broadening the rights to appeal in visa matters (Government proposal 54/2015) or limiting the time spent in a detention center and regarding a migrant's detention as a last resort (Government proposal 172/2014). Glimmers of hope appeared, for instance, between 2009 and 2010 when there was a political will to add a precondition for the time lived and spent in Finland for those willing to reunite with their families; however, the proposed amendment did not pass as it was seen as creating circumstances of diversely unequal treatment (Government proposal 240/2009, 31).

### *Irregular Presence is Not Acknowledged*

The reading of Finnish government proposals shows that attitudes toward irregularly resident migrants were cautiously optimistic but lacked a deeper understanding of their situation. The presence of irregular migrants was and still is refused proper acknowledgement. The observations showed that it was not regarded as either realizable or bearable for a migrant to decide to reside irregularly in Finland (Government proposal 170/2014,

32, 35). Yet, if a migrant chose the option of irregular residence, it always would entail risks for potential side effects to occur (Government proposal 170/2014, 33).

Discussions concerning the effects of irregular migration and irregular presence on a state territory did not really change during the observation period. Irregular migration was still seen as voluntary and dependent on the person's own choice, whereas victims of trafficking were more easily labeled as victims of compulsion or threat (Government proposal 34/2004, 9; 73). Irregular entry, mobility, and presence were still closely associated with organized crime (Government proposal 6/2005, 31; 243/2006; 133/2016, 23), and preventing irregular entry was believed to achieve savings for society (Government proposal 6/2005, 65). The observations showed that irregular migration has remained a generalized phenomenon that must be managed and prevented. The effects of the amendments for basic human rights and their possible impacts on those of vulnerable and victimized status remained unassessed. Irregularly resident migrants were, and still are, often rejected. Still, the Constitutional Law Committee reiterated that irregularly resident migrants do not fall outside the basic human rights protection of a state, and this should be remembered during the preparation of the legislation, and also in its application (Constitutional Law Committee 9/2012, 4). In the same vein, it must still be acknowledged that a residence permit may be issued even for irregularly resident migrants under certain conditions close to those of victimized or cooperating migrants, such as for victims of trafficking or migrants who are in a witness protection program (Government proposal 65/2014, 44). The possible and likely generation of irregular mobility and presence is, however, still not fully comprehended in the observed government proposals.

Irregularly resident migrants were given limited attention in the proposals, but the notions of irregular migrants were superficial. For instance, a couple of years ago, the Finnish government estimated that this sort of middle ground between regular and irregular residence is problematic for both society and the individual (Government proposal 166/2007, 34). In the same vein, the government assessed that there would be no potential for growth in irregular mobility or presence (Government proposal 77/2009, 9), as had been feared in other European countries in light of the European Court of Justice's confirmation of its ruling for irregularly resident family members (Case of Metock and others C-127/08). At that time, however, it was even positively assessed in Finland that a European Union citizen's rights to move could not be limited merely based on the grounds that it might add to irregular mobility and presence (Administration Committee 4/2010, 2).

Irregular migration to Finland was estimated to be of small significance: the estimated numbers of irregular migrants in Finland were only 3,000–4,000. However, many of these were claimed as having applied for international protection, which actually makes their residence regular

for the time that their applications are being processed (Government proposal 3/2012, 3). This indicates that it is especially challenging to estimate the numbers of irregularly resident migrants. The estimated low number of possible irregular residents in Finland may partly be the result of a previously more flexible family reunification process (before the introduction of biometric identifiers), the issued temporary residence permits (before the voluntary returns system and emphasis on the migrant's own contribution), or protection afforded based on humanitarian reasons (before the category of humanitarian protection was abolished).

*The Effect of Amendments on Regular Mobility and Residence*

The current version of the Aliens Act maintains a legislative structure wherein irregular mobility and residence have the potential for growth. During the observation period, there were certain amendments that centrally affected a migrant's right to regular mobility and residence. For some of the amendments, the Finnish government is not solely responsible as it implements the requirements of European Union law. For other amendments, however, Finland can be seen to have taken more sovereign steps. The most central of these amendments are presented below.

Various precautionary measures were implemented during the observation period. These also coincide with measures that have been legalized quite recently, and that would effectively expose irregularly resident migrants. These include measures such as organized surveillance by the police based on the right to reside in Finland (Government proposal 169/2014), where a special goal was to tackle irregular residence on Finnish territory (Government proposal 169/2014, 22). Another measure links to the privatization of responsibility to control and report irregular migrants. Thus, responsibility is moved from state authorities to industrial safety authorities, occupational health and safety authorities (Government proposal 94/2005), or to employers (Government proposal 3/2012), who need to ensure that a migrant has permission to work (and reside) in Finland (Government proposal 94/2005, 17). The responsibility to control and report irregular travelers also falls on vehicle drivers and carriers. In 2013, the duties of vehicle drivers and carriers to control and report were widened, and these duties obliged them to ensure that people not entitled to enter the country would not enter without permission of the border control authorities (Government proposal 220/2013). However, legalizing measures like these may ultimately push irregularly moving or resident migrants even deeper underground and drive them into an even more vulnerable position. Moreover, irregularly resident migrants are in an especially difficult human rights situation, and they are mainly deported back to their countries of origin when they are exposed (Employment and Equality Committee 9/2012, 2).

In the proposals, migrant contributions, actions, and duties began to receive emphasis and value in connection to regular mobility and residence. Amendments emphasizing a migrant's own contribution were

implemented through medical age assessments for minors, the requirement for a child to be a minor when the residence permit application is evaluated, a voluntary returns system, and an income requirement for families. For instance, the medical age assessments of minors are linked to providing the authorities with correct information. Accordingly, a recently implemented amendment covering the requirement for an alien to reside in a reception facility is a precautionary measure aimed against such aliens whose entry or requirements of stay need to be clarified or when the authorities wish to ensure the expulsion of rejected asylum seekers (Government proposal 133/2016). On the one hand, the government's aim needs to be respected—that is to keep possible irregularly residing aliens known to the authorities. On the other hand, aliens targeted with the requirement to stay in a reception facility are even more likely to be pushed underground as they may fear the possible expulsion.

Issuing a residence permit based on family ties to an unmarried minor child requires that the child be a minor on the date when the child's residence permit application is decided. This requirement thus calls for rapid actions from both the applicants and the immigration authorities (Supreme Administrative Court, KHO:2016:79). However, not every migrant has the capability of challenging the decisions of the immigration authorities in court, and thus the migrant's contribution is only rarely assessed at a court level and discretion is mainly left to the immigration authorities.

Since return agreements between Finland and certain third countries have not been successful (Government proposal 208/2010, 5), Finland has implemented a system of voluntary returns (Government proposal 170/2014), which the Returns Directive (2008/115/EC) allows, based ultimately on the ruling of a national Supreme Administrative Court (Supreme Administrative Court, KHO:2013:78). Previously, the return decision was made independent of the migrant's own contribution, and, as such, a migrant would get a temporary residence permit more easily. Voluntary returns were regarded as being the fastest and cheapest way to remove irregularly resident migrants from Finnish territory (Government proposal 208/2010, 19).

Actually, the voluntary returns system adopted in 2015 leaves the migrant with limited options that comprise either irregular residence or return. This was found to be questionable when assessed as “voluntary” (Constitutional Law Committee 47/2014, 2). The Constitutional Law Committee pointed out that by implementing the voluntary returns system, a group of irregularly resident migrants would therefore be generated (Constitutional Law Committee 47/2014, 2; Employment and Equality Committee 11/2014, 2). However, counter arguments based on the unprofitable implications of irregular stay overruled in the final assessments. The Aliens Act also allows immigration authorities to apply a provision when migrants have an opportunity to receive internal protection in their country of origin, which together with the voluntary returns

system well depicts the subsidiary nature of providing international protection (Government proposal 166/2007, 56).

Since the summer of 2016, the economic responsibility has been shifted to families themselves, and a family's legal right to reside in Finland was made dependent on the income level of the family (Government proposal 43/2016, 18, 26). The more general principles for family reunification in Finland were (and currently are) that the right to family reunification is valid only for those who are legally resident (Government proposal 198/2005, 7), and only for those whose family life is real (Government proposal 240/2009, 27). Thus, irregularly resident migrants do not have a right to family reunification in Finland (Government proposal 43/2016, 4).

The recently implemented income requirement concerning families puts migrant women and children in an especially unequal position. Migrant women often have worse employment opportunities than migrant men (Government proposal 43/2016, 26), and even a child's interests do not in general mean that regular residence is guaranteed for a family (Supreme Administrative Court, KHO:2014:50). Children and minors who are not exempt from this requirement cannot realistically reunite with their families as they often have no realistic means of support. Applying the income requirement may therefore pose an obstacle for migrant family reunification, and thus generate irregular mobility and presence. The application of an income requirement might increase the number of overall residence applications, but as the process is time-consuming, it may also increase the number of irregularly resident migrants who are present on Finnish territory.

The possibility for a potential migrant to apply for regular residence from abroad has been limited through the number of existing Finnish embassies, and also because of a migrant's duty to provide biometric identifiers. Although some ostensibly positive amendments were made, such as allowing tasks of the Finnish embassy to be taken up by other Schengen embassies and external service providers, yet the negative reality behind the amendment was that the number of Finnish embassies in foreign countries was (and is) facing serious pressure to be reduced (Government proposal 295/2014, 8–9). Thus, a migrant's potential to apply for regular residence from abroad has decreased, and it is still likely to decrease in the future.

Serious safety threats such as terrorism have prompted a push for the introduction of biometric passports and a shorter validity for travel documents, which are also means believed to help prevent irregular entry (Government proposal 25/2005, 9; 40). The implementation of the Council regulation (EC N:o 380/2008) to prevent identity abuse meant that in the context of family reunification, family members now needed to initiate their residence applications and register their fingerprints personally, and no longer by their sponsor who lives in Finland (Government proposal 104/2010, 25). For the sake of society's security, it has been considered important that the identity of an applicant be verified as well as possible (Government proposal 104/2010, 20), for example, using databases such

as EURODAC—the European fingerprint database. However, this may mean migrants resorting to irregular mobility or residence for compelling technical, practical, or economic reasons. In the same vein, it must be noted that criminalizing phenomena that are judged harmful either for the state or for the individual (e.g., prostitution) (Government proposal 34/2004) and also associations with terrorism might push vulnerable people even deeper into an unregulated position.

During the observation period, the workload of Finnish immigration authorities was relieved by implementing amendments related to the timely processing of residence applications, abolishing the category for international protection, and restricting the entitlement to legal aid and the time to appeal for asylum seekers. Additionally, a recent amendment aims ultimately at removing asylum seekers who have been issued a negative residence decision, and ensuring that these individuals would no longer be covered under reception services (Government proposal 133/2016). It is clear that such amendments are likely to have consequences that result in irregular mobility or presence.

The expedited processing of residence applications—the prompt dismissal of applications, procedures regarding safe countries of asylum or origin, and rapid decisions (Government proposal 218/2014)—was implemented in order to prevent malpractice and to guarantee a procedure of reasonable duration. Yet, these amendments may also add to the workload of the administrative courts (Government proposal 218/2014, 35–36).

Humanitarian protection was afforded between 2009 and 2016, and it allowed a migrant to gain a residence permit when the originating country's general situation was judged to place people at risk or to infringe their human rights (Government proposal 166/2007, 55). Indeed, the humanitarian protection previously afforded by the Finnish state for regular residence was not based on any absolute national or international obligations (Constitutional Law Committee 6/2016, 3). Thus, when humanitarian protection was included in the Aliens Act in 2009, the goal was still to maintain the requirements for protection at the former level and not to broaden the grounds for protection (Administration Committee 26/2008, 4). However, the amendment abolishing the category for humanitarian protection was approved, and it actually placed limits on the possibilities for regular residence.

Reducing the times to appeal a decision is likely to put vulnerable individuals, such as minors and children, at risk (Legal Affairs Committee 7/2016, objection 3, 34). Maintaining former levels of legal aid that exceeded the minimum standard set in the Procedures Directive (2013/32/EU) was, according to the government, no longer possible in the changed situation since 2015 (Government proposal 32/2016, 11). The government proposal was placed under heavy critique especially with regard to the applicant's legal protection, as applicants must now make an appeal in a shorter time when they are simultaneously coping with language learning and finding a competent source of legal aid (Legal Affairs Committee 7/2016, objection

1, 22). Thus, migrants' capabilities or practical situation may foreseeably weaken the success of their appeal and future residence rights.

### **Conclusion**

The current Aliens Act is sometimes unable to reach different groups of migrants, such as the victims of trafficking (Non-Discrimination Ombudsman 2016, 19) and irregular migrants. The Employment and Equality Committee has observed that in Finland forms of trafficking beyond sexual and work-based exploitation remain unidentified (Employment and Equality Committee 16/2014, 3). Relatedly, recognition and approval of different groups of migrants clearly affect the political process behind the amendments made to the Aliens Act.

This article has observed whether the gradual amendments that have been made to the national Aliens Act are likely to generate irregular mobility and presence or not. It is difficult to identify when irregular residence truly starts to increase in Finland or, in fact, anywhere else. The generation of irregular mobility and residence statistics in the forms of tables and numbers is impossible to achieve. Therefore, it is important to examine the constructed legal framework and establish what kinds of conditions it allows and enables.

Based on the observations from 2004 to 2016, there are clear signs that irregular mobility and presence have a potential for growth in Finland within the legislative framework of the Aliens Act. The restrictive amendments have not necessarily been many in number, but their outcome is now a scattered Aliens Act which is hard to interpret, and the possibilities of regular mobility and residence seem to have been neglected. It is, therefore, important that the effects of recent legislative amendments should be considered holistically (Constitutional Law Committee 27/2016, 6) and that basic human rights should be given better assessment in the future.

Having a clear, transparent, and predictable Aliens Act links to principles of good governance and legal protection which, after all, are central to the purposes of the Act. However, constant amendments render the transparency and predictability of the Act as questionable. Making regular mobility and residence harder to achieve ultimately pushes migrants into unpredictable or even dangerous and inhumane routes. Until today, the starting point for government proposals has been the internationally accepted principle that migrants have no general right to settle and reside in another country (Government proposal 309/1993, 52; 2/2016). The validity and importance of international treaties may be occasionally acknowledged (Government proposal 32/2016, 3), yet any references which are made to them remain minimal and their effect goes unassessed. The ongoing reality is that although certain amendments to the Aliens Act have limited the possibilities for regular mobility and residence, they are not principally in obvious conflict with international treaties and conventions, such as the European Convention on Human Rights (1950).

Finland has been acknowledged as a country that respects and dignifies basic human rights, and is a party to the most central international human rights treaties, conventions, and obligations. Finland also continues to abide by the duties created in them. However, it is noteworthy that international legal instruments do tolerate certain distinctions to be made between a state's own citizens and non-citizens such as migrants. The Finnish judicial system maintained in the current Aliens Act is not in breach with international human rights standards and obligations. It has merely moved closer to meeting only the minimum standards of protection afforded in these legislative instruments. From a human rights perspective, the Finnish Aliens Act is still satisfactory, although the direction in which the amendments are heading gives cause for concern. The Aliens Act comes under pressure for constant and holistic renewal because of its scattered and complex nature, and a need for simplified and clarified provisions has existed since 2011 (Employment and Equality Committee 3/2011, 3; Administration Committee 42/2014, 2).

A central question relates to whether irregular mobility or presence may be managed through legislation. The actual goal of the Finnish government is more evidently to reduce the number of migrants to Finland, especially those from third countries. For this purpose, the legislation has been developed as a tool to transmit ideas and associations. As a result, poor, disadvantaged, and vulnerable people are practically unwelcome, as migrants belonging to these groups are usually seen as either expensive for the state economy or as having no capabilities to fight for their rights. At present, the Finnish Aliens Act does not provide sufficient protection for those who belong to vulnerable groups such as women, children, and minors, and who are likely to be the subjects of irregular mobility and residence. Finnish legislative framework should be capable of providing adequate protection to the many forms of migration, including irregular migrants. Therefore, the incapability to embrace the heterogeneity of migrants may be a factor that could lead to violations of international human rights law.

Political power and will may prompt both positive and negative human rights initiatives. Based on the observations of this study, it appears to be the political will that needs to change in order to improve legal opportunities for regular mobility and residence. Unfortunately, there are no clear signs that this is in fact present, as it was striking that basic human rights, not to mention matters of equality were only given limited consideration in the assessments that featured in the government proposals made during the observation period. Notable was that the government's publicly expressed policy goals were not directly linked to upholding basic human rights. In the Finnish context, the amendments have been pursued in a manner that ensures that Finland does not break its international human rights obligations, but at the same time it undeniably lowers the protection for the basic human rights of a migrant to close to the minimum standard afforded by, for instance, the European Convention on



Human Rights and thus restricts regular mobility and residence. Indeed, the European Court of Human Rights case law leaves considerable space in which states may act, especially in relation to difficult and burning topics such as migration. This is why the European Court of Human Rights often resorts to assessing the minimum standard protection that must be afforded. Finland uses these guidelines sparingly as arguments to bolster its own government proposals, while at the same time lowering its basic human rights protection toward obligatory minimum standards and limiting the potential for regular migrant mobility and residence.

A positive observation is that there is now more discussion concerning irregular mobility and residence in Finland than there was a few years previously. There was even a government proposal that would have secured better health care services for irregularly resident migrants; however, this lapsed in spring 2015 (Government proposal 343/2014), a lapse best described as a lack of political will. The biggest problem therefore seems to manifest in the lack of political power and will to properly acknowledge irregular mobility and residence, and that certain amendments made to the Aliens Act have in fact structured a framework that is likely to create such conditions. The next steps of the Finnish government will most likely concentrate on screening the Aliens Act for favorable or attractive conditions that it feels should be eliminated. Given that the preliminary hypothesis presented in this article was confirmed via directly linked observations, it is foreseeable that the space for regular mobility and residence in Finland will only shrink during coming years. Therefore, it is even more important to pursue a holistic assessment of future government proposals, including an assessment of the basic human rights they affect, and to even consider a holistic renewal of the national Aliens Act in light of these circumstances.

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