**REDIAL PROJECT**

**National Synthesis Report – Finland**

**(Draft)**

# TEMPLATE FOR THE NATIONAL REPORTS ON THE THIRD PACKAGE OF THE RETURN DIRECTIVE – Articles 15 to 18 RD

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*Please consider that the questions below do not represent an exhaustive list of issues raised by these provisions but mainly offer a starting point for research and greatly facilitate our subsequent comparative analysis. The jurisprudence to be considered should be primarily the one submitted by the national judge collaborating in the REDIAL Project. Any other jurisprudence which does not touch precisely on these issues might be included in your report, as long as it is relevant for the interpretation/implementation of Articles 15-18 of Chapter IV of the Return Directive. (See in this regard the REDIAL Annotated Return Directive covering both the ECtHR and CJEU relevant case law)*

*When applicable, please also refer to any relevant administrative practice or on-going legislative changes at national level relating to pre-removal detention.*

## 1. Article 15 RD: detention

### a. Competent authorities ordering and reviewing pre-removal detention

Q1. In your Member State, are judicial authorities involved at the initial stage of the detention measure? (*E.g. by endorsing a detention order or ordering pre-removal detention upon request of the administration)*

**YES**

*If yes: please elaborate further on:*

- The type of jurisdiction concerned (civil, administrative, criminal, else?)

  District Court, which is a general court dealing with civil and criminal matters, hears matters concerning detention of immigrants under the Aliens Act (ulkomaalaislaki 301/2004). The District Court shall hear the matter without delay and no later than within four days from the date when the Police or the Border Guard placed the individual in detention. The case is re-heard *ex officio* within 14 days.

- The scope/extent of its competence (*e.g.* hearing immigration/detention cases only or not)

  District Court is a general court with the competence to hear civil and criminal cases as well as cases involving detention of immigrants.

Q2. Which authority is competent for controlling the lawfulness of a pre-removal detention measure?

District Court is competent for controlling the lawfulness of a pre-removal detention measure. The initial decision to hold a person in detention is taken by the Police or the Border Guard. This decision is referred to the District Court *ex officio* without delay and no later than within four days from the date when the person was placed in detention.

*Is it the same authority regardless of the length of the detention and/or the issuance of an explicit renewal order? Or does the judicial authority concerned control the lawfulness of detention only when a detention order is renewed?*

**YES**, it is the same authority. The District Court hears the decision on detention taken by the Police or the Border Guard *ex officio* without delay and no later than within four days from the date when the person was placed in detention. The matter is re-heard by the District Court *ex officio* within 14 days of the previous hearing.

Q3. Is the judicial review performed in accordance with Article 15 (3) RD automatic or upon applicant's request?

According to the Aliens Act (ulkomaalaislaki 301/2004), judicial review is automatic. The District Court shall hear the matter concerning the detention of an immigrant under the Aliens Act without delay and no later than within four days from the date when the person was placed in detention by a decision taken by the Police or the Border Guard. The case is re-heard by the District Court *ex officio* within 14 days of the previous hearing.

It should be noted that the Parliament is currently processing a Government Bill (Hallituksen esitys HE 32/2016) which would amend the current system so that after the first hearing by the District Court, which would happen automatically, the matter would be re-heard only upon request by the detained individual. According to the Bill, the District Court would have to hear the matter without delay and no later than within four days from the date when the request concerning the hearing was made by the detainee. However, the re-hearing would not have to be organized before 14 days have passed from the previous hearing.

Q4. Does your national legislation provide for <u>one or two levels</u> of jurisdiction and under which modalities? (*E.g. a first review by an administrative authority followed by an administrative court and/or a civil or criminal court?)*

The initial decision to hold a person in detention is taken by the Police or the Border Guard. This decision is heard by the District Court *ex officio* without delay and no later than within four days from the date when the person was placed in detention. The case is re-heard *ex officio* by the District Court within 14 days of the first hearing and thereafter once in every 14 days. The decision on detention taken by the District Court is not subject to appeal.

The Parliament is currently processing a Government Bill (Hallituksen esitys HE 32/2016) which would amend the system so that after the first hearing by the District Court, which would happen automatically, the matter would be re-heard only upon request by the detained individual and not automatically.

Q5. In first instance, do national courts in your Member State *fully* control the legal and factual elements of the case when reviewing the lawfulness of a pre-removal detention measure? Or is the control limited to manifest error of assessment made by the ordering authority? (*E.g.* Mahdi, C-146/14)

The District Court exercises full control of the legal and factual elements of the detention measure. In practice the reasoning in detention decisions taken by District Courts tend to be very brief and hence it is difficult to see how thoroughly the legal and factual elements are in fact assessed. In the vast majority of cases the Court endorses the decision on detention taken by the Police or the Border Guard and only in minority of cases reaches a different outcome. (Aleksi Seilonen and Magdalena Kmak, *Administrative Detention of Migrants in the District Court of Helsinki. Law and the Other in Post-Multicultural Europe*, University of Helsinki, 2015)

Q6. Does the judge control *ex officio* all/some elements of lawfulness of the detention irrespective of the arguments of the parties?

**YES.** The judge controls *ex officio* all elements of lawfulness of the detention. In practice the reasoning in detention decisions tend to be very brief and hence it is difficult to see how thoroughly the lawfulness is in fact assessed.

Q7. Please elaborate on any differences in the control of lawfulness of detention between the first and the second levels of jurisdiction.

The detention decision is not subject to appeal. The District Court hear the matter concerning detention without delay and no later than within four days from the date when the person was placed in detention. Thereafter the case is re-heard by the District Court *ex officio* in every 14 days. There are no differences in the control of lawfulness of detention between the initial hearing and the re-hearings.

The Parliament is currently processing a Government Bill (Hallituksen esitys HE 32/2016) which would amend the system so that after the first hearing by the District Court, which would happen automatically, the matter would be re-heard only upon request by the detained individual. According to the Bill, the District Court would have to hear the matter without delay and no later than four days from the date when the request was made by the detainee. The re-hearing would not however have to be organized before 14 days have passed from the previous hearing. The amendment would not change the scope of the review.

**b. Judicial Interactions with European and national Courts**

Q1. Did national courts in your country request for (a) preliminary reference(s) from the CJEU in relation to detention in the context of the return procedures?

**NO**

*If yes:*

- Please elaborate further on the factual/legal context leading to this decision and indicate whether it was preceded by internal jurisprudential debates;

- Please elaborate further on the **follow-up** of the CJEU preliminary ruling at national level (interpretation by the requesting national court, impact on the constant jurisprudence developed in your country; also elaborate on whether there was an impact on the national legislation, or following the preliminary ruling; please refer to other effects of the preliminary rulings)

Q2. Did national courts specifically refer to CJEU rulings (or to the provisions of the Return Directive as interpreted by the Court) in their judgments on administrative detention?

**NO, no such references were found.**

***If yes:*** which cases and which legal effect did they attribute to them? (*e.g.* do national courts refer to CJEU preliminary rulings when assessing the legality or proportionality of detention, or remedies to unlawful detention?)

Q3. Did national courts refer to the ECHR or the EU Charter in relation to pre-removal detention?

**NO, no such references were found.**

***If yes:*** in which cases and for what purpose? (*E.g.* the right to liberty and security, the right to be heard etc.)

Q4. Have national courts ever disregarded/departed from national legislation and or administrative practice on the basis the Return directive or/and the CJEU jurisprudence in order to ensure compliance with Article 15 RD?

**NO, no such cases were found.**

***If yes:*** please elaborate further on this issue

Q5. Did national courts refer to foreign domestic judgments (European or not) that have dealt with similar issues regarding detention?

**NO, no such cases were found.**

***If yes:*** please elaborate further on this issue

**c. National case-law: major trends**

Q1. Is detention under the Return Directive considered to be a measure impeding – depriving – of freedom of movement and/or the right to liberty?

Have the Highest Courts from your Member State already opined on this issue?

**Detention under the Directive is considered to be a measure impeding the right to liberty. There are, however, no rulings by the highest courts explicitly confirming this: It should be noted that decisions concerning detention are not subject to appeal and therefore the highest courts do not deal with these issues**.

Q2. Do national courts controlling the lawfulness of the **detention** in your Member State also control the lawfulness of the very **return** decision? *E.g.* Have there been decisions striking down detention measures due to the unlawfulness of the return decision?

**NO, the lawfulness of the detention is controlled by the general courts (District Court), while the lawfulness of the return decisions is controlled by administrative courts.**

Q3. Do national courts reviewing the lawfulness of the detention order also assess whether a **reasonable prospect of removal** exist? (*E.g.* even from the outset when controlling the initial detention order, see *Kadzoev* para. 63-68)

**NO**

***If yes:*** what legal or other considerations are interpreted by the courts as making the removal unlikely*?*

- *lack of due diligence;*
- *lack of resources (human and material);*
- *lack of transport capacities;*
- *conduct of the Member State of potential return (e.g. an embassy in a given MS refuses generally the cooperation in cases of forced return and accepts only voluntary returns or it does not confirm the nationality of the person concerned (Cf. ECtHR, Tabesh), lack of cooperation of third-countries' embassies;*
- *conduct of the TCN concerned, especially if the latter refuses the cooperation which is indispensable for the issuance of relevant documentation by the Member State of return (cf. ECtHR, Mikolenko);*
- *non-refoulement in a broad sense; best interest of the child; family life; the state of health of the third Member State national concerned and individual considerations in accordance with Article 5 RD;*
- *the lack of a readmission agreement or no immediate prospect of its conclusion*
- *Else?*

Q3B. When considering the factors above, do the courts:

- Limit their assessment to an abstract or theoretical possibility of removal?

- Require clear information on its timetabling or probability to be corroborated with relevant statistics and/or previous experience in handling similar cases?

Q4. How do national courts controlling the lawfulness of pre-removal detention in your country assess the notion of **'avoiding or hampering the preparation of return or the removal process'?**

A recent study on administrative detention established that the 'avoiding and hampering' –ground has become clearly the most common ground for detention of immigrants under the Aliens Act. The threshold for applying this ground seems to be very low. In fact, it seems that the removal decision as such is in many cases regarded by the Courts as a ground for indicating that there is a risk of avoiding or hampering the preparation of return or the removal process and, hence, it is taken to constitute a sufficient ground for the detention. (Aleksi Seilonen and Magdalena Kmak, *Administrative Detention of Migrants in the District Court of Helsinki. Law and the Other in Post-Multicultural Europe*, University of Helsinki, 2015)

Q5. How do national courts controlling the lawfulness of pre-removal detention in your country assess the notion **'risk of absconding'?**

A recent study on administrative detention established that threshold for finding that there is a risk of absconding is very low. It seems that the removal decision as such is in many cases regarded by the courts as a ground for indicating that there is a risk of absconding and, hence, it is taken to constitute a ground for the detention. Further, issues, such as previous history of absconding, lack of

substantial connections to Finland, applying asylum only after being apprehended, and unwillingness to return, may be taken as grounds indicating a risk of absconding. (Aleksi Seilonen and Magdalena Kmak, *Administrative Detention of Migrants in the District Court of Helsinki. Law and the Other in Post-Multicultural Europe*, University of Helsinki, 2015)

Q6. Does your Member State's legislation define objective criteria based on which the existence of a risk of absconding can be assumed?

**YES**

***If yes:***

- Which ones?

Pursuant to section 121 a § of the Aliens Act 301/2004 as amended by the act 30.12.2013/1214 there may be a risk of absconding, if the alternatives of detention as defined in sections 118-120 of the Aliens Act have proven to be insufficient, or if the person concerned has changed the place of living without informing the authorities on this. According to the Act, when assessing the risk of absconding, the authorities are under obligation to assess as a whole the personal circumstances of the concerned individual.

- Even if provided by law, how individual situation and circumstances are taken into consideration by the judge when establishing whether there is a risk of absconding?

As factors to be taken into account when assessing the individual situation and the circumstances of the detainee are regarded *e.g.* his/her age, medical condition, vulnerability, stable accommodation, employment in Finland, and family and other such connections to a person residing in Finland. The decisions by the Courts tend to be rather brief and it is therefore difficult to analyse to what extent such individual circumstances, although brought up in the hearing, actually have a bearing on the outcome of the case. (Aleksi Seilonen and Magdalena Kmak, *Administrative Detention of Migrants in the District Court of Helsinki. Law and the Other in Post-Multicultural Europe*, University of Helsinki, 2015)

- Do statistics or previous experience with the same group of people speak clearly in favour of detention, without the need of an individual assessment being performed?

No, the detention decisions focus on the circumstances and the risk of absconding of the person in question and not *e.g.* on statistics concerning the group to which she/he belongs.

***If not:***

- Can the criterion of a risk of absconding still be invoked as a ground of detention? How do the courts interpret this notion?

The reasoning in the decisions always concerns the circumstances and the risk of absconding of the particular person concerned. If the alternatives for detention have proven to be insufficient in the case at hand or if the person concerned has not let the authorities to know his/her address, there may be regarded to be a risk of absconding. In practice, the Courts seem often to accept the mere existence of the removal proceedings as a ground indicating the risk of absconding, No further proof of such a risk or no systematic assessment of the sufficiency of the alternatives for detention are required. (Aleksi Seilonen and Magdalena Kmak, *Administrative Detention of Migrants in the District Court of Helsinki. Law and the Other in Post-Multicultural Europe*, University of Helsinki, 2015)

- To what extent are individual situation and individual circumstances taken into consideration by the judge when establishing whether there is a risk of absconding?

Although the Aliens Act obliges the authorities to assess the individual circumstances of the applicant, in practice the mere existence of the removal proceeding seems often to be decisive

when assessing the risk of absconding. It is often difficult to see how much weight the individual circumstances of the applicant are actually given. (Aleksi Seilonen and Magdalena Kmak, *Administrative Detention of Migrants in the District Court of Helsinki. Law and the Other in Post-Multicultural Europe*, University of Helsinki, 2015)

- Are there on-going legislative initiatives for the amendment of the law on this issue?

No information was found on any such initiatives.

Q7. Apart from these two grounds, does either your Member State's legislation, administrative practice or the relevant case law allow any other ground of detention?

YES, pursuant to section 121 of the Aliens Act 301/2004 as amended by the Act 26.6.2015/813, pre-removal detention is possible if the alien is found guilty or suspected of a crime and his/her detention is deemed necessary in order to take or enforce the decision on his/her deportation. In addition to this, detention is also possible if the alien has, while being detained for the purpose of removal, filed a new application for asylum with the sole purpose of hampering his/her deportation.

Q8. Does your Member State's legislation (and/or practice) provide for alternatives to detention?

**YES**

***If yes:*** *what are the alternatives provided by national law? Does the administration consider additional alternatives?*

The Aliens Act 301/2004 as amended by the Act 26.6.2015/813 contains provisions on the following alternatives to detention:

- obligation to register regularly at the Police or the Border Guard or the Reception Centre (118 §)
- obligation to hand passport and travel documents to the Police or the Border Guard (119 §)
- obligation to give to the Police or the Border Guard an address where the alien can be contacted (119 §)
- obligation to give a collateral (120 §).

No additional alternatives are considered by the administration.

Q9. Are decision-making authorities obliged to consider **alternatives measures** before resorting to detention?

**YES**

***If yes:*** *please elaborate on whether they have to assess every available alternative to detention to justify their effectiveness or the lack thereof in a given case.*

Pursuant to section 121 of the Aliens Act 301/2004 as amended by the Act 26.6.2015/813, an alien may be detained only if the alternatives for detention as defined in sections 118-120 of the Aliens Act are insufficient and the other preconditions for detention (*e.g.* risk of absconding) are met in the individual case. Hence, when applying this provision, the authorities have to assess the sufficiency of every available alternative to detention.

However, a recent study shows that the decisions by the Courts tend to be rather brief and therefore it is difficult to assess how the sufficiency of the alternatives to detention is assessed in individual cases. (Aleksi Seilonen and Magdalena Kmak, *Administrative Detention of Migrants in the District Court of Helsinki. Law and the Other in Post-Multicultural Europe*, University of Helsinki, 2015)

Q10. How do national courts control whether the administrative authorities lawfully considered alternative measures before ordering detention measures? Is the review limited to manifest error of appreciation? Can they perform a wider control, including substituting their own discretion to that of decision-making authority based on the necessity of respecting the principle of proportionality? (ECJ, *Arslan, El Dridi*)

The District Courts have the competence to perform wider control, including substituting their own discretion to that of decision-making authority. However, in the majority of cases, the courts rather automatically accept the decisions by the Police or the Border Guard and only rarely decide differently. (Aleksi Seilonen and Magdalena Kmak, *Administrative Detention of Migrants in the District Court of Helsinki. Law and the Other in Post-Multicultural Europe*, University of Helsinki, 2015)

Q11. How is the requirement **'as short as possible'** interpreted by national courts in your Member State? Are time-periods fixed by national law or is the length of detention (necessary for removing the TCN) determined in each particular case?

Pursuant to section 127 of the Aliens Act 301/2004 as amended by the act 4.3.2011/195, the authorities handling the matter shall order a detained alien to be released immediately once the requirements for detention cease to exist. The maximum duration of detention is six months. In exceptional cases, where the detained individual does not co-operate with the authorities in order to enforce the deportation decision or where a third state does not issue the needed travel documents, and the deportation is delayed for these reasons, the detention may last for longer than six months, but even in such cases no longer than 12 months.

What is the duration of initial detention in your Member State? When does it start according to your national legislation? (*E.g*. date of the apprehension, date of the order, date of the actual placement in detention etc.)

The maximum duration of detention is six months and in exceptional cases 12 months, and it is counted from the date of the actual placement in detention.

Q12. How do national courts control the **'due diligence'** of the competent authorities when carrying out the removal process? Do they perform a full or a limited control to manifest error of assessment?

In principle, the courts perform full control. Since the decisions by the Police and the Border Guard and those by the District Courts are normally very brief, it is difficult to see how this element is in practice assessed.

*Please provide some concrete examples in which the Judge annulled or quashed a prior decision based on a lack of due diligence from the competent authorities.*

No such cases were found.

Q13. Does the period when asylum proceedings are pending have any impact on calculating the length of detention? (See *Kadzoev* or *Arslan*)

**NO**

Q14. In which circumstances may competent authorities decide to extend the initial period of detention (i.e. beyond 6 months according to RD)? Do they proceed with a new assessment of the grounds justifying detention (*e.g.* a continuing risk of absconding of the detainee)

The detention may last up to 12 months, if the detained individual does not co-operate with the authorities in order to enforce the deportation decision, or if a third state does not issue the needed travel documents, and the deportation is delayed for either of these reasons.

Q15. In your Member State, when Judges declare the detention unlawful, does it lead to immediate release of the applicant? Is release from detention the only remedy provided by the law for unlawful detention?

**YES**

*Please elaborate further on possible differences whether 'unlawfulness' results from procedural flaws or substantial grounds. Please also indicate what are the most often cited grounds for deciding the unlawfulness of detention decision, and for striking down detention measures.*

**No information on this was obtained.**

Q16. After being released, can the detainee be re-detained and under which circumstances?

**YES**, the law does not prevent re-detention provided that the preconditions for detention are met.

Q17. Please provide a short description of the system of legal aid for pre-removal detainees in your Member State.

Legal aid under the regular scheme as provided for in the Act on Legal Aid (oikeusapulaki 257/2002) is available for detention hearings. However, in practice the hearings may come in such a short notice that the detainee does not have time to arrange a lawyer. Furthermore, in some areas of the country it may be difficult to find a lawyer who would have sufficient expertise in immigration issues.

## 2. Article 16 RD: conditions of detention

### a. National jurisprudence : major trends

Q1. Does your national legislation provide for the use of specific detention facilities? (as foreseen as a general rule by the Return Directive – ECJ, *Bero, Bouzalmate*) Who are the persons detained in such facilities?

**YES**. The Act on the Treatment of Detained Aliens and the Detention Units (Laki säilöön otettujen ulkomaalaisten kohtelusta ja säilöönottoyksiköistä 116/2002) concerns the detention facilities and the treatment of aliens held in them. Only persons detained under the Aliens Act 301/2004 shall be detained in the detention facilities and according to the main rule, persons detained under the Aliens Act have to be detained in facilities meant for it. Only in exceptional cases, such as when the detention facilities are temporarily full, persons detained under the Aliens Act can be held in police detention facilities instead of detention facilities for immigrants. The Aliens Act permits the detention as a measure of last resort for the purpose of investigating the grounds for an alien's entry or residence or for the purpose of deportation (Aliens Act 301/2004 as amended by the Act 813/2015 117 a §).

There are two detention facilities in Finland, one in Helsinki and one in Joutseno in Eastern Finland. In these two facilities, there are places for 70 individuals.

Q2. In case irregular third-countries nationals are detained in prisons, are they separated from ordinary prisoners as required by the RD? In all circumstances? (ECJ, *Pham*)

NO If person detained under the Aliens Act are held in police detention facilities (and not in detention facilities for immigrants) they are held in the same premises but in different cells than the persons detained on other grounds.

Q3. Which material conditions and particular safeguards are ensured during the detention period? (*e.g.* vulnerable people, hygiene and health care, clothing, external contacts with family members, visits from legal representatives, access to information, education, activities etc. – *Suso Musa v. Malta*, Appl. 42337/12, 23 July 2013; *Ahmed v. Malta*, Appl. 55352/12, 23 July 2013; *Popov v. France*, Appl. 39472/07 39474/07, 19 January 2012)

In the detention facilities, the detainees stay in double rooms whose doors they can lock with an electronic lock which they and the members of staff can open. There are no cells in the detention centres. The detainees can move freely in the premises of the centre and they have normally unlimited access to the yard, which is fenced. Detainees have unlimited access to sanitary facilities, which are normally shared. Health care is offered either by a nurse or doctor in the centre or through visits to a doctor's clinic. Legal representatives and NGO's have access to the detention facilities. The detainees can use their mobile phone provided that there is no camera in it, and they have access to internet and public phone. Families can visit the centre for several hours per day. Vulnerabilities are taken into account as far as possible and there are *e.g.* separate rooms for women and men.

Issues concerning correct implementation of Article 16 RD and respect of human rights have not come up.

Q4. Can exceptional circumstances justify the use of extraordinary places and conditions of detention for irregular migrants? (See *e.g.* a refugee crisis, state of emergency etc. ECtHR, *Khlaifia v. Italy*, 16483/12)

Immigrants detained under the Aliens Act (301/2004) may be held in police detention facilities temporarily if there are no places in the detention unit or if the geographic distance to the unit is very long. The Act on the Treatment of Detained Aliens and the Detention Units (Laki säilöön otettujen ulkomaalaisten kohtelusta ja säilöönottoyksiköistä 116/2002) is applied to persons held in police detention facilities.

There are no legal rules on the possibility to apply extraordinary conditions of detention.

Q5. Do national courts assess of their own motion the lawfulness of the detention conditions or only following an individual application?

The lawfulness of the detention conditions is controlled by the Parliamentary Ombudsman. The Parliamentary Ombudsman exercises control both of her own motion and following an individual application.

Q6. In your Member State, have there been judgments striking down detention measures based on conditions of detention?

No information of such cases was found.

## b. Judicial Interactions with European and national Courts

Q1. Did national courts in your country request for (a) preliminary reference(s) from the CJEU in relation to the place and conditions of detention in the context of return?

**NO**

***If yes:***

- Please elaborate further on the factual/legal context leading to this decision and indicate whether it was preceded by internal jurisprudential debates;

- Please elaborate further on the **follow-up** of the CJEU preliminary ruling at national level (interpretation by the requesting national court, impact on the constant jurisprudence developed in your country etc.)

Q2. Did national courts specifically refer to CJEU rulings (or to the provisions of the Return Directive as interpreted by the Court) in their judgments on Article 16 RD?

**NO**

***If yes:*** which cases and which legal effect did they attribute to them?

Q3. Did national courts refer to the ECHR or the EU Charter in relation to the conditions of detention?

**NO**

***If yes:*** in which cases and for what purpose? (*E.g.* the right to liberty and security, the right of the child, right to family life etc.)

Q4. Have national courts ever disregarded/departed from national legislation and or administrative practice on the basis the Return directive or/and the CJEU jurisprudence in order to ensure compliance with Article 16 RD?

**NO**

***If yes:*** please elaborate further on this issue

Q5. Did national courts refer to foreign domestic judgments (European or not) that have dealt with similar issues?

**NO**

***If yes:*** please elaborate further on this issue

### 3. Article 17: detention of (unaccompanied) minors and families

Q1. Is there national jurisprudence on the implementation of Article 17 of the Return Directive?

**NO**, such jurisprudence was not found.

Q2. Do national courts refer to the ECHR (Article 8); the EU Charter (Articles 7 and 24); Article 3 of the UN Convention on the Rights of Children in relation to the conditions of detention for families and minors?

**NO**

***If yes:*** in which cases and for what purpose? (*E.g.* the right to liberty and security, the right of the child, right to family life etc.)

Q3. How is **'the best interest of the child'** interpreted by national courts in the context of detention of minors and families? Is it considered by the courts as a primary consideration?

Under 6 § of the Aliens Act (301/2004) the authorities are obliged to assess the best interest of the child when taking decisions concerning children. Furthermore, when taking decisions concerning detention of minors, the child welfare authorities have to be offered a possibility to be heard. In practice, the decisions by the Courts concerning detention are often very brief and it is therefore impossible to say how the best interest principle is interpreted and applied in practice.

*In this regard, please mention whether Article 24 of the EU Charter is cited by national courts and if a direct legal effect is recognised to this Article?*

No cases were found where Article 24 of the EU Charter would have been applied.

Q4. Have national courts ever disregarded/departed from national legislation and or administrative practice on the basis the Return directive or/and the CJEU jurisprudence in order to ensure compliance with Article 17 RD?

**NO**

**If yes:** please elaborate further on this issue

Q5. Did national courts refer to foreign domestic judgments (European or not) that have dealt with similar issues?

**NO**

***If yes:*** *please elaborate further on this issue*

Q6. Do the courts (or any other competent authority) supervise and control places and detention for family and children more specifically than for other TCNs detained for the same purpose?

**NO**

If so, please provide some concrete examples from the case law collected

## 4. Article 18: Emergency situations

Q1. Has the national legislation implementing Article 18 RD – or Article 18 as such – been activated in your Member State?

**NO**

***If yes:*** what was the derogation from the requirement of speediness? How has *'unforeseen heavy burden on Member States' administrative or judicial staff'* been interpreted by the judiciary?

## General remarks and transversal issues

Q1. Have national courts ever addressed/clarified the scope of application of pre-removal detention – in comparison with initial police custody, imprisonment under criminal law, detention in the context of asylum procedures etc.?

**NO**

Q2. Had the implementation of the Return Directive brought any changes in adjudicating the issues relating to lawfulness of immigration detention, alternatives to detention, access to national courts, effective legal/judicial remedies and legal aid etc.?

**NO**

Q3. Has the Return Directive and/or European jurisprudence impacted on the division of competences between the administration and national judiciaries? What about the relation between the different levels of the judiciaries?

**NO**

Q4. According to you, what are the remaining major issues in the judicial implementation of the Return Directive when it comes to detention? Consider, for instance, the effective return procedures; protection of human rights of TCNs subject to the Return Directive etc.

- The handling of the detention decisions by the District Courts seems to be rather inefficient means for protecting the rights of the detainees, as the Courts only rarely disagree with the Police or the Border Guard, which has decided on the detention initially.

- The decisions by the Courts are very brief and hence it is difficult to see how issues such as the proportionality, sufficiency of alternatives for detention, and best interest of the child are in practice assessed.