

EMN Finland national conference and webinar

Children in migration –

Assessing the best interests of the child in migration processes

The conference organised by the European Migration Network's Finnish National Contact Point focused on children's position in migration and discussed how the assessment of the best interests of the child could be developed. The aim of the conference was to promote dialogue between different parties. A wide range of speakers were invited to the event, including representatives of authorities and organisations, both Finnish and international researchers as well as young immigrants. The event was organised at Clarion Hotel Helsinki on 10 November 2023. There were approximately 90 attendees at the conference venue and the conference webinar was followed by approximately 170 people.

Head of EMN Finland **Rafael Bärlund** welcomed the guests to the conference and introduced the theme of the day. Bärlund said that last year, a large proportion of the persons applying for a residence permit in Finland and having to flee their country of origin were children. According to the cornerstone of children's rights, the UN Convention on the Rights of the Child, the child's best interests are the primary consideration in decisions concerning children. However, in practice, the determination of the child's best interests is challenging because weighing is needed between different factors. To wrap up, Bärlund referred to the dialogue-based nature of the conference, leading the audience to the opening of the conference by the Permanent Secretary of the Ministry of the Interior and the Director General of the Finnish Immigration Service.

Kirsi Pimiä and Ilkka Haahtela: *The dialogue and cooperation between the Ministry of the Interior and the Finnish Immigration Service is valuable in decision-making related to the best interests of the child*

The conference was opened jointly by **the Permanent Secretary of the Ministry of the Interior Kirsi Pimiä and the Director General of the Finnish Immigration Service Ilkka Haahtela**. Referring to Bärlund's welcoming remarks, Pimiä said that approximately 40 per cent of beneficiaries of temporary protection in Finland are children, which made the theme of the conference acutely topical. Pimiä described some future amendments to legislation. For instance, the Ministry of the Interior is launching several legislative projects related to migration. These legislative projects have, without exception, elements associated with children and the best interests of the child. Pimiä pointed out that the child's best interests are both a subjective right and a guideline directing the weighing of different factors in decision-making. There are no precise answers or interpretation guidelines in questions related to the child's best interests as different factors are weighed from the points of view of different fundamental and human rights. One example of a legislative drafter's tools in child-related topics is *Lapsivaikutusten arvioinnin käsikirja lainvalmistelijoille* (Handbook on child impact assessment for legislative drafters), created as part of the implementation of the National Child Strategy.

After Pimiä's opening remarks, Haahtela spoke about the consideration of the best interests of the child from the Finnish Immigration Service's point of view. Haahtela emphasised that dialogue and cooperation between different parties help creating a common understanding of what the best interests of the child are. Like Pimiä, Haahtela pointed out that decisions concerning the child's best interests involve the weighing of many different factors, which leads to that exact guidelines cannot be created in the Finnish Immigration Service. At the moment, the Finnish Immigration Service is developing a set of guidelines related to processing cases involving children and making related decisions to support the work of those who apply legislation. Pimiä and Haahtela discussed how the Ministry of the Interior and the Finnish Immigration Service can support each other better in questions related to the best interests of the child. Dialogue, especially in connection with legislative projects, was highlighted as a key aspect in this.

Researchers' views on the development of the assessment of the best interests of the child in migration processes

Keynote, Professor Helen Stalford, University of Liverpool:

Bettering Best Interests in Migration Processes Affecting Children

The keynote speaker of the conference was **Professor Helen Stalford**, Head of Law Department at the University of Liverpool, who is a leading expert on children's rights and has worked with the topic for 25 years.

In her keynote, Stalford contemplated ways, in which the principle of the child's best interests can be bettered from the perspective of both legislation and practice. She emphasised the significance of an interdisciplinary and intersectoral approach in handling and developing topics related to children's rights.

Stalford discussed the best interests of the child from a legal perspective. The most significant convention related to children's rights is the UN Convention on the Rights of the Child (1989), especially its Article 3. The best interests of the child is a tripartite concept, which the UN Committee on the Rights of the Child defines as a substantive right, a fundamental interpretative legal principle and a rule of procedure. Consequently, the child's best interests are the primary principle and when law is interpreted, one should always choose the interpretation that serves the best interests of the child best. In addition, when making decisions concerning a child, both positive and negative effects of the decision should always be assessed and grounds must be provided regarding how the best interests of the child were assessed in the decision.

Stalford said that the child's best interests as a principle has succeeded in making children's voices heard better in a world run by adults as well as helped prioritising the best interests of the child in situations where there are several competing interests. Furthermore, she pointed out that the prioritisation of the child's best interests is not only in the interests of the child but in the interests of society as a whole. The adaptability of the child's best interests to different contexts can be considered, on one hand, a strength and, on the other hand, a weakness: it is possible that the child's best interests can be nominally used to pursue adultist agendas.

Stalford described ways, in which the principle of the best interests of the child can be bettered. As one important pathway to improving and understanding the best interest principle, Stalford mentioned

applying a child-centred approach in decision-making and taking children's views into account in decisions concerning them. Children's views should not be taken into account only formally but by actively involving and hearing children. As an example Stalford mentioned the [*Lives on hold, our stories told!* \(LOHST\)](#) research project, in which she worked with young asylum seekers.

Stalford also emphasised that children have the right to receive information in decisions concerning themselves and this information should be produced in a manner that ensures children understand it. In addition, Stalford contemplated how the principle of the child's best interests takes into account children who are reaching adulthood. This is a crucial question as the majority of unaccompanied asylum-seeking children are aged 16–17.

As a third pathway, Stalford proposed the adoption of a trauma-informed approach in child-related decision-making. A trauma-informed approach helps increasing understanding about how trauma affects people's lives and how we can develop practices that take these experiences into account better. Stalford described how Western migration processes can cause new trauma in children and how these processes should be developed into a more child-friendly direction. At the end of her keynote, Stalford encouraged the audience to think about ways to create a trauma-informed framework for research, practices and politics that concern vulnerable children and young people.

Comment: Dr. Sanna Mustasaari, LL.D., University of Eastern Finland

The keynote comment was given by the **Dr. Sanna Mustasaari, LL.D.**, who works as Senior Researcher at the Center of Law and Welfare at the University of Eastern Finland. Sanna Mustasaari commented on Stalford's keynote from the perspective of Finnish researchers.

Mustasaari pointed out how the approach to the best interests of the child often differs in child protection and immigration contexts. For instance, in child protection cases, living with parents is usually interpreted to be in the best interests of the child whereas for immigrant children, family unity is often considered secondary. Mustasaari emphasised how important it is to develop the best interest principle as it is used in decisions that have a major significance for children's and young people's lives. She added that the understanding of vulnerability should also be developed because in Finland, for instance, vulnerability is a factor that guides decision-making.

Mustasaari referred to the ways to develop the child's best interests in migration processes, mentioned by Stalford, and pointed out that they are important also in the Finnish context although the scale of migration into Finland is much smaller than in the United Kingdom. According to Mustasaari, in her keynote, Stalford did not only discuss ways to develop the child's best interests in migration processes, but also offered insights into how the child's best interests can build resilience in harsh environments, such as migration processes. Mustasaari highlighted children's right to receive and produce information and, consequently, to better understand decision-making concerning themselves and pointed out how the conference also actively looks into this important topic.

Mustasaari agreed with Stalford on the artificiality of the transition from childhood to adulthood and how current integration support practices have room for improvement. As in the United Kingdom, the majority of unaccompanied asylum-seeking children in Finland are aged 16–17. For these young people, family reunification becomes considerably more difficult when they turn 18. Mustasaari added that the right to family reunification is of fundamental importance for unaccompanied minors and the process in Finland should be developed. Mustasaari agreed with Stalford on the importance of a trauma-informed approach in migration processes and how Finland could also benefit from it.

The best interests of the child in the European Union context

Preliminary findings of the EMN report: *Children in Migration 2021–2022*, Claire Rimmer, ICF

Senior Analyst **Claire Rimmer** presented the key findings of the forthcoming EMN report *Children in Migration 2021–2022*. Rimmer works at ICF, a service provider for the European Migration Network.

According to the report, there have been increasing numbers of unaccompanied minors arriving in the EU Member States. In many EU countries, apart from Finland, there are many minors who are registered in child protection systems instead of the asylum system. As mentioned at the beginning of the conference, last year, a major part of the applicants for temporary protection were children. Approximately 1.5 million children receiving temporary protection were registered in the EU, including nearly 9,000 unaccompanied minors.

The *Children in Migration* report highlights areas, in which progress has taken place with regard to the child's best interests. These include, for instance, the accommodation of children who receive international protection, and guardianship practices. In addition, developments include new tools for the guardians of unaccompanied minors and people working with minors, for instance.

Comment: Dr. Anna Schmidt, European Commission, Directorate-General for Migration and Home Affairs

The comment was given **Dr. Anna Schmidt** who works as Policy Officer in the Asylum Unit of the European Commission's Directorate-General for Migration and Home Affairs. In her comment, she described in more detail how the principle of the best interests of the child can be seen in the European Union context. Schmidt emphasised that the best interests of the child are a central element of EU law and asylum regulations. However, not all Member States have similar formal process in place regarding the child's best interests despite the fact that the best interests of the child is one of the fundamental principles of EU law. The European Commission is working to harmonise this, in cooperation with the European Migration Network, for instance.

Schmidt pointed out how important the EMN's *Children in Migration* reports are for the Commission's work and emphasised development related to the best interests of the child that has taken place in the EU. As Rimmer before her, Schmidt also described progress made in guardianship practices. Schmidt mentioned the European Guardianship Network (EGN) as one means to promote the exchange of information and help in the resolution of challenges. In addition, Schmidt talked about other developments related to the child's best interests and rights. Schmidt described how the EU's strategy on the rights of the child and the EU child guarantee, for instance, seek to safeguard the rights of all children, especially vulnerable children, and secure children's access to basic services regardless of their migration status. Schmidt also mentioned the additional funding awarded for the reception system development in different countries.

Schmidt emphasised how the reform of the EU's immigration and asylum policies has paid increasing attention to the determination of the child's best interests and tried to make the assessment of the best interests of the child more operational at the practical level. Other aims of the reform have been to develop family tracing and family reunification and to shorten the time limits to deal with children in order to reduce the times of limbo.

The best interests of the child in Finnish migration processes

Legislative drafter's and practitioner's dialogue: Ministry of the Interior and Finnish Immigration Service

The dialogue between the representatives of the Ministry of the Interior and the Finnish Immigration Service focused on the assessment of the child's best interests in the immigration context in Finland. The representatives of the Ministry of the Interior were Chief Specialists **Tuuli Tuunanen** and **Sanna Montin** and the Finnish Immigration Service was represented by Senior Advisers **Jasmin Dost** and **Miira Mikonsaari** and Senior Specialist **Lydia Laine**. The dialogue was moderated by the Finnish Immigration Service's Head of Legal Development **Sini Lahdenperä**.

The dialogue emphasised that the best interests of the child are a subjective right and a principle guiding operations. The dialogue drilled into legislation that guides the assessment of the best interests of the child, such as the Aliens Act and the Child Welfare Act, as well as the framework that these acts set for the practitioner's work. Pursuant to section 6 of the Aliens Act, in decisions taken under the Aliens Act that concern minors, special attention shall be paid to the best interests of the child and to circumstances related to the child's development and health. Consequently, section 6 serves as the starting point for all decisions taken under the Aliens Act that concern the best interests of the child. Section 4 of the Child Welfare Act contains elements of the best interests that are used in decision-related consideration pursuant to the Aliens Act. International conventions and law also have a strong guiding impact on the Finnish legislation.

The dialogue included discussion on the extent of the Aliens Act and how much discretion it leaves for the practitioner. The assessment of the best interests of the child is always case-specific and requires the weighing of many different factors. Securing the safety of the child is the most significant starting point in decision-making. After that, other, not so easily prioritised factors are considered. Both a legislative drafter's and a practitioner's work involves a lot of weighing of different interests and requires prioritisation and decisions that would realise the child's best interests as well as possible. In practice, the best interests of the child can be seen in the work carried out by the Finnish Immigration Service, for instance, in that child-related matters are always processed as a matter of urgency and, if possible and desirable from the point of view of the child's best interests, efforts are made to process the matters of different family members jointly.

The representatives of the Ministry of the Interior and the Finnish Immigration Service discussed how the assessment of the best interests of the child could be developed and whether it is possible or even useful to tighten the requirements set out in section 6 of the Aliens Act or create exact criteria for the elements of the child's best interests, for instance. In the end, the dialogue participants agreed that it is not appropriate to create exact criteria to restrict the interpretation of the child's best interests as cases and circumstances vary a great deal and always require individual-specific consideration.

The dialogue group also discussed the hearing of children in the asylum process and challenges related to it. For the child's best interests, hearing the child as part of the decision-making process is an important information collection method in the Finnish Immigration Service. According to Finnish law, each child who is 12 or older should be heard in decisions concerning themselves. The representatives of the Finnish Immigration Service described challenges related to hearing children, resulting from the child's dependent relationship with their guardian, for instance. When hearing a child, it is important to take into account the child's situation and potential earlier traumatic experiences. The representatives of the Finnish Immigration Service emphasised the significance of expertise and training in the

practitioner's work. The efforts made by the Finnish Immigration Service to support this include training sessions, guidelines and the appointment of experts on issues related to minors, for instance.

New Start in the Unknown – Young People's Experiences of Moving to Finland: Kadhum Al-Ghaithawi and Joonatan Nsukami

24-year-old **Kadhum Al-Ghaithawi**, who came to Finland as an unaccompanied minor, talked about his experiences of moving into Finland alone and adapting to a new home country. Al-Ghaithawi shared the stage with Community Instructor **Joonatan Nsukami**, who works at the Deaconess Foundation's Olohuone. Olohuone is a low-threshold meeting place for young people who have come to Finland as unaccompanied minors and are about to start independent living.

Al-Ghaithawi described the challenges he encountered when arriving in Finland. Al-Ghaithawi's journey to Finland took 15 days and, when arriving in Finland, he found it difficult to know where to go and whom to contact. At first, he felt lonely in Finland. His support family and the Deaconess Foundation's Olohuone have become an important support network and community for him in Finland. In the support family, Al-Ghaithawi learnt to speak Finnish and in Olohuone, he met many young people who were in the same situation as he was and received peer support from them. Al-Ghaithawi emphasised how significant a community is in the life of a young person who has moved into the country alone and how important it is to develop services that support and promote young people's opportunities in the new home country. Finally, he encouraged the audience to continue their important work with immigrant children and young people as that work and related decisions have a major significance for young people's lives.

Nsukami and Al-Ghaithawi discussed the importance of a community and a support network, especially among young immigrants. Nsukami and Al-Ghaithawi described how significant a community, in Al-Ghaithawi's case, the support family and Olohuone, is in alleviating loneliness and creating a sense of security in the new home country. Nsukami talked about his story and about how important it is for him to build communities because he himself was a young person who grew up in a children's home and understood the significance of a community when he started independent living. Nsukami and Al-Ghaithawi emphasised how significant Olohuone and the Olohuone community have been – and still are – in their lives.

Panel discussion: Children in migration processes: Developing the assessment of the best interests of the child

The panel discussion concentrated on questions related to the development of the assessment of the best interests of the child. The panelists were **Dr. Sanna Mustasaari**, LL.D., from the University of Eastern Finland, Director of Legislative Affairs **Riitta Koponen** from the Ministry of the Interior, Senior Specialist **Taina Martiskainen** from the Central Union for Child Welfare, and Public Legal Aid Attorney **Suvi Mäntymäki**. The panel discussion was moderated by the Chair of the Mannerheim League for Child Welfare, Professor **Mirjam Kalland**.

The panelists discussed many different ways to develop the assessment of the child's best interests in Finland's migration processes and legislation. The panelists contemplated how the means to improve the child's best interests, mentioned by Stalford, can be seen in Finland and how their use could be increased.

The panelists talked about the trauma-informed approach in Finland and agreed that there is room for improvement in understanding children's trauma and taking that into account in migration processes as well as generally in training people who work with children. Referring to Stalford's keynote, the panel pointed out how a long migration process in itself may traumatise children. Attempts have been and are being made to shorten the processing times in order to ensure that the best interests of the child would be realised better in migration processes. The panel talked about interviewing practices and how interviewing could be made more child-friendly by using certain kind of language and making changes to interviewing facilities, for instance.

There was lively discussion about integration support and the circumstances of young people reaching adulthood. For instance, the operations of the Deaconess Foundation's Olohuone were described as a well-functioning form of integration support. The panelists contemplated challenges related to integration support and compared them to after-care in child welfare. Age assessment and related challenges were also discussed.

At the end of the discussion, the panelists emphasised some key issues related to the development of the best interests of the child, such as stakeholder cooperation, multidimensionality and the importance of criticism in developing the assessment of the child's best interests. Other aspects mentioned were the role of courts of law in questions related to the best interests of the child and how not only the operations of the Finnish Immigration Service but also those of courts law should be assessed in cases concerning children. The training and competence of civil servants were also highlighted as an important factor in how the child's best interests could be better taken into account in migration processes.