

Detention of aliens and their placement in the police detention facilities

The detention of aliens refers to a procedure carried out on the basis of the Finnish Aliens Act. In 2011, 13% of the aliens detained based on the Aliens Act in Finland were asylum applicants. The detention procedure only applied to 4% of those who applied for asylum in Finland.

Detention is used only as a last resort and principally in relation to removal from the country. At that point, alternative interim measures are usually ineffective. The decision to detain an alien is made on a case-by-case basis, based on an overall consideration of circumstances.

Efforts are made to keep the detention period as brief as possible. Detention is mostly used in order to secure a person's removal from the country. Work has been done to enhance collaboration between various parties in the process. Removal procedures are centralised to one Police District (Helsinki).

There is one detention unit in Finland, with a capacity of 40 detainees. In practice the unit is often full, which means that some aliens detained based on the Aliens Act have to be placed in police detention facilities. According to Section 123 of the Aliens Act, a detained alien shall, as soon as possible, be placed in a detention unit referred to in the Act on the Treatment of Aliens Placed in Detention and on Detention Units (116/2002). The same section defines when a detained alien may, exceptionally, be placed in police custody.

The National Police Board has issued instructions to the police on the treatment of persons detained by the police (2020/2012/4941, in force as of 1 January 2013). The treatment of such detainees must abide by the Act on the Treatment of Persons in Police Detention (841/2006), and by the Government Decree (645/2008) and Decree of the Ministry of the Interior (646/2008) on the same matter.

The provisions of the Act on the Treatment of Persons in Police Detention (841/2006) apply to aliens placed in police detention facilities, taking account of the grounds for detaining the person. However, in the case of aliens detained based on Section 121 of the Aliens Act, who are temporarily kept in police custody, the provisions of the Act on the Treatment of Aliens Placed in Detention and on Detention Units (116/2002) primarily apply. The aim of the latter Act is to secure the proper rights and treatment of aliens.

Apprehension, arrest and detention and the right to retain counsel

Apprehension

A police officer may apprehend the suspect of an offence where a warrant for his or her arrest or detention has been issued.

Where the prerequisites for arrest are fulfilled, a police officer may apprehend the suspect of an offence even without an arrest warrant, should the carrying out of the arrest otherwise be endangered. The police officer must promptly notify an official with the power of arrest of the

apprehension. The official shall decide within twenty-four hours of the apprehension whether the apprehended person is to be released or arrested. The apprehended person shall promptly be notified of the reasons for the apprehension.

Powers of a police officer to apprehend

Where the prerequisites for arrest are fulfilled, a police officer may apprehend the suspect of an offence even without an arrest warrant, should the carrying out of the arrest otherwise be endangered. The police officer shall promptly notify an official with the power of arrest of the apprehension. The official shall decide within twenty-four hours of the apprehension whether the apprehended person is to be released or arrested.

Arrest

Arrests shall be decided on by an official with the right to make arrests.

The probable suspect of an offence may be arrested:

- 1) where a less severe penalty than imprisonment for two years has not been provided for the offence;
- 2) where a less severe penalty than imprisonment for two years has been provided for the offence, but the severest penalty exceeds imprisonment for one year and, having regard to the conditions of the suspect or to other circumstances, it is probable that:
 - a) the suspect will abscond or otherwise avoid pre-trial investigation, trial or enforcement of punishment;
 - b) the suspect will disturb criminal investigations by destroying, defacing, altering or concealing evidence or by influencing a witness, a complainant, an expert or an accomplice; or
 - c) the suspect will continue his or her criminal activity;
- 3) where the identity of the suspect is not known and the suspect refuses to divulge his or her name or address, or gives evidently false information; or
- 4) where the suspect does not have a permanent residence in Finland and it is probable that the suspect will avoid pre-trial investigation, trial or enforcement of punishment by leaving the country.

When there is reason to suspect a person of an offence, the person may be arrested even though the probability requirement for the suspicion required for arrest under paragraph 1 of Chapter 1, Section 3 of the Coercive Measures Act is not met, if the other prerequisites for arrest provided in that paragraph are fulfilled and the taking of the suspect into custody is of utmost importance with regard to the additional incriminating evidence likely to be obtained through investigations in progress.

Coercive Measures Act, effective as of 1 January 2014: Official with the power of arrest

An official with the power of arrest shall decide on arrest. The following officials shall have the power of arrest:

1) the National Police Commissioner or Deputy National Police Commissioner; a Chief Superintendent or Superintendent of the National Police Board; a Police Chief or Deputy Police Chief; the Chief or Deputy Chief of the National Bureau of Investigation; the Chief of the Security Intelligence Service; a Deputy Chief, Head of Department, Superintendent or Chief Inspector appointed for the pre-trial investigation; the Chief or Deputy Chief or a Superintendent of the National Traffic Police; a Detective Chief Superintendent, Detective Superintendent, Detective Chief Inspector, Chief Inspector, Detective Inspector or Inspector of the police;

2) The Head of the Enforcement Department of Finnish Customs and the heads of the units in charge of Customs law enforcement; the Chief or Head of Enforcement of a Customs District; a Senior Customs Inspector appointed by the Chief of the Enforcement Department of the National Board of Customs, by the head of the unit in charge or by the Chief of the Customs District as the head of investigations;

3) the Chief or Deputy Chief of the Finnish Border Guard; the Head of the Border and Coast Guard Division of the Border Guard Headquarters; the Head, Deputy Head, Chief Inspector, Chief Superintendent or Superintendent of the Legal Division of the Border Guard Headquarters; a Commander or Deputy Commander of the Border Guard and Coast Guard; the Head of the Border Office or Maritime Office; the Chief or Deputy Chief of the Helsinki Border Control Department of the Gulf of Finland Coast Guard District; or a Border Guard with the minimum rank of Lieutenant, who has received the training required by the Border Guard for an officer in charge of an investigation, and who has been appointed as the officer in charge of the investigation by the Border Guard or by the Head of an administrative division of the Border Guard;

4) a public prosecutor.

The Defence Forces personnel with the power of arrest are separately specified by law.

Release of an arrested person

An arrested person shall be released immediately when the prerequisites for arrest are no longer fulfilled. Unless a request for detention is submitted to the court, an arrested person must be released at the end of the period specified by law for the submission of a detention request.

An official with the power of arrest shall decide on the release of an arrested person. However, if a detention request has been submitted to the court, the decision shall be made by the court.

Detention

Detention shall be decided upon by the court of first instance which has jurisdiction in the case. During a pre-trial investigation, a request for detention may be made by an official with the power of arrest. The prosecutor must be informed of the request prior to the request for detention being made, at which point the prosecutor may decide whether to make the request for detention. Once the pre-trial investigation has been completed and the case has been transferred to the prosecutor, the decision on whether to make a request for detention shall be made by the prosecutor. A court may not order the detention of the defendant on its own initiative.

The probable suspect of an offence may be arrested based on the conditions listed in paragraph 1 of Section 3 of the Coercive Measures Act. Where there is reason to suspect a person of an offence, the

person may be arrested even though the probability requirement for the suspicion is not met, if the other prerequisites for arrest provided in that paragraph are fulfilled and the taking of the suspect into custody is of utmost importance with regard to the additional incriminating evidence likely to be obtained through investigations in progress.

A request that a person under arrest be detained must be submitted to the court promptly and in any case before noon of the third day from the day of apprehension.

The request for detention shall be promptly taken up for a hearing by the court. A request pertaining to an arrested person must be heard no later than on the fourth day from the day of apprehension.

Review of detention

If a person suspected of an offence has been detained, the court handling the charges must review the detainee's detention upon request from the detainee, either immediately or no later than on the fourth day of receiving the request for review. Prior to prosecution, the detention may also be reviewed at the district court under whose jurisdiction the place of detention falls. A detention case does not have to be reviewed less than two weeks after the previous review of the case.

However, if new evidence has come to light after the previous review which gives cause for a new review, the court must review the detention earlier. An official with the power of arrest must immediately inform the court and the detainee of any essential change in circumstances which may give cause for a review of the detention.

Release of a detained person

The court must order that a detained person be released with immediate effect if, based on a review of the detention or on new evidence obtained as part of the verdict or trial, the prerequisites for his or her detention are no longer fulfilled.

On the request of an official with the power of arrest, made in conjunction with a review of the detention or the trial, the court must order that a detained person be released if the prerequisites for his or her detention are no longer fulfilled.

The detained person shall also be released if no charges have been brought on the date scheduled for their hearing, and no official extension to this date has been granted. The detained person and his or her counsel do not have to be summoned to the hearing of the issue.

An official with the power of arrest must order that a detained person be released with immediate effect if the prerequisites for his or her detention are no longer fulfilled. Prior to this order, the official must inform the prosecutor, who may take it upon him or herself to decide on the release.

Duration of apprehension when there are several grounds for apprehension

The number of grounds for apprehension has no bearing on the permitted length of apprehension. A person may be apprehended for a maximum of 24 hours and arrested at most until noon of the third day from the day of apprehension. The request for detention must be taken up for a hearing by the court no later than on the fourth day from the day of apprehension.

Right to retain counsel

A person suspected of an offence has the right to retain a counsel during the pre-trial investigation. This applies equally to circumstances of detention in police custody.

Prior to questioning, the suspect must be informed of the right to retain counsel during the pre-trial investigation and of the grounds for appointing a defence attorney. A concise pre-trial investigation may be carried out without observance of the provisions of Section 29, paragraph 2 of the Criminal Investigations Act.

A suspect who has been apprehended, arrested or detained must immediately be informed of his or her right to retain counsel.

New Criminal Investigations Act, Chapter 4, Section 10 (effective as of 1 January 2014): The concerned party has the right to the presence of a legal counsel of his or her choice during pre-trial investigations. Unless the case is undergoing a concise pre-trial procedure, the concerned party must be informed of this right in writing prior to questioning. Persons suspected of an offence must immediately be informed of this right in writing, as soon they lose their freedom due to apprehension, arrest or detention.