

An Interpretative Phenomenological Analysis of Residence Permit Appeals at the Administrative Courts of Finland: Acquiescence Bias by Legalised Judicial Injustices in Finland

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Abstract

Arctic law and politics are heavily focused on citizens and their welfare. In recent times, migration has led to an increase in immigrants to the Arctic region, expanding discussions on diversity, equality, and inclusion. This article analyses immigrant experiences of the wheels of justice when appealing extended-residence decisions in Finland. There has been research on residence applications but there is no previous research on appealing residence decisions in Finland. Using interpretative phenomenological analysis (IPA), the article analyses four Africans' experiences of (in)justice during residence permit decision appeals lodged through the administrative courts in Finland 2011–2020. The article uses the Renault concept to argue and underscore the experiences of injustice and to underscore the gathered, analysed emerging themes and the patterns observed in the handling of the residence permit appeal cases from a legal and political perspective. The information was gathered through in-depth interviews using open-ended, structured questions, and the analysis of personal text and information was collated using MAXQDA software. The article highlights the incidences of human rights violations, injustice, mental health and well-being issues, inadequate information and distrust of the administrative justice system, and the risk that this poses to Arctic law and politics as right-wing politics are on the rise.

Keywords: *administrative court, appeal, Renault concept of experiences of injustice, phenomenology, residence permit*

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1. Introduction

A residence permit (RP) decision appeal is a legal reprieve that gives immigrants a chance to appeal perceived unjust migration decisions made by the migration authority institution in Finland – Migri. The Journal of Criminology and Sociology defines justice as a concept and ethics anchored on law that is applied fairly, equally and balanced for everyone.¹ Justice therefore encompasses the moral obligation to act on the basis of fair adjudication between competing allegations. Some key elements that emerge during justice discourse include fairness, equality, moral righteousness and the rule of law.² Justice is therefore anchored in the ethnocentric culture of the contexts in which the law is applied. Hurlbert and Mulvale, however, recognise that the majority perspective and viewpoint is not equal to justice. This article analyses institutionalised, systemic barriers and deconstructs them to illuminate how they obstruct justice for immigrants.

RP decision appeals for new, continuous, or permanent residence applications are to be handled by the administrative courts of justice and the Supreme Court in Finland. Among other issues, the administrative courts deal with decisions on migration matters such as international protection and residence permits.³ An appeal gives reprieve to a complainant for RP decisions before they become final, usually within 30 days or as set out by the policy governing the migration issue that has been appealed. Appealing a migration decision through the administrative courts usually comes with some personal cost to the individual submitting the appeal and as such, the individual is expected to bear personal costs such as transportation to their lawyer's office, internet fees, and other costs.

This article contains interviews with ethnic minorities that lodged appeal cases with the administrative courts, and analyses and evaluates their lived experiences and perceptions through the experience. The cases are analysed using interpretative phenomenological analysis (IPA) to explore the essence of their experiences and seeks to understand the meaning that the four ethnic minorities attribute to their experiences with the wheels of (in)justice and in the wake of rising right-wing politics.

The article builds on several publications that have indicated that immigrants in Finland, especially the TCNs are on the receiving end of social injustice in several

1 Sociology and Criminology. 2023. *Sociology and Criminology*. Dec 01. <https://www.longdom.org/peer-reviewed-journals/justicescholarly-peerreview-journal-51506.html#:~:text=Justice%20is%20a%20concept%20on,distributive%2C%20legal%2C%20and%20social>.

2 Hurlbert, Margot A., and James P. Mulvale. 2018. *Defining Justice*. CA: Fernwood Publishing.

3 Oikeus. 2023. *Tuomioistuimet*. Dec 01. <https://oikeus.fi/tuomioistuimet/en/index/tuomioistuinelaitos/tuomioistuimet/hallintotuomioistuimet/hallinto-oikeudet/whatmattersaredealt-withbytheadministrativecourt.html>.

sectors including the labour market,⁴ healthcare,⁵ authorities,⁶ education,⁷ politics,⁸ and many other areas that scholars endeavour to understand.⁹ This article uses the phenomenon of acquiescence bias to highlight possible injustices by administrative courts through structural and systemic enablers. The article affects Arctic law and politics in the wake of increasing migration and rising right-wing governments. This type of injustice is seldom reported in public spaces due to law enforcement acquiescence. Victims often experience shame and guilt, which are typically associated with negative decisions from migration authorities. In addition, there is a fear of the unknown in how the rule of law is applied, especially considering Finland is perceived to be polarised and biased against racialised immigrants. In rare cases, immigrants report their predicament to the media to subject the cases to the court of public opinion where injustice, such as deportation orders, is perceived as extreme.¹⁰ The secrecy with which the migration decision appeal cases are handled complemented by the secrecy of the entire migration process makes it difficult for immigrants to prepare adequately and know what to expect during and after an appeal. When perceived as unfair or biased, the outcome of the judicial process increases the risk of having disenfranchised migrants in the Arctic, thereby threatening security, law, climate action, and politics in the region.

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- 4 Heikkilä, Elli. 2022. "Some aspects of constraints in the labour market for immigrants." *Siirtolaisuus / Institute of Migration* 42–45; Jasinskaja-Lahti, Inga, Karmela Liebkind, and Riku Perhoniemi. 2007. "Perceived ethnic discrimination at work and well-being of immigrants in Finland: The moderating role of employment status and work-specific group-level control beliefs." *International Journal of Intercultural Relations* 223–242; Ahmed, Akhlaq. 2019. "When the Name Matters: An Experimental Investigation of Ethnic Discrimination in the Finnish Labor Market." *Sociological Inquiry* 468–496.
 - 5 Castaneda, Anu E., Shadia Rask, Päivikki Koponen, Jaana Suvisaari, Seppo Koskinen, Tommi Härkänen, Simo Mannila, Kari Laitinen, Pirjo Jukarainen, and Inga Jasinskaja-Lahti. 2015. "The Association between Discrimination and Psychological and Social Well-being: A Population-based Study of Russian, Somali and Kurdish Migrants in Finland." *Psychology and Developing Societies* 270–292.
 - 6 Inga, Jasinskaja-Lahti, Liebkind Karmela, and Perhoniemi Riku. 2006. "Perceived discrimination and well-being: a victim study of different immigrant groups." *Journal of Community and Applied Social Psychology* 490–498.
 - 7 Ojwang, Frank. 2021. "Social injustice in learning of the second language among immigrant children in Finland: conventional narratives and perceptions." *EUREKA: Social and Humanities* 82–100.
 - 8 Similä, Jukka, and Henri Wallen. 2023. "Justice, Mining, and Legal Reforms in the Finnish Arctic." *Arctic Review on Law and Politics* 228–250.
 - 9 Yeasmin, Nafisa, Waliul Hasanat, and Frank Ojwang. 2021. "Understanding Social Justice Towards Immigrants: Finnish Perspective." *Culture Crossroads* 243–264.
 - 10 Yle News. 2017. *News*. Apr 21. <https://yle.fi/a/3-9576012>. —. 2022. "Finland wants to deport Wolt courier for "earning too much"." *Yle News – Domestic news*, May 07: <https://yle.fi/a/3-12435902#>.

The perception that injustice is perpetrated by the administrative courts in Finland is a matter of grave concern as Nordic countries attract more talents up north, and as the need for Arctic law and politics to increasingly integrate migration in the Arctic ecosystem. The courts in Finland have transformed and attained more independence which should empower the courts to dispense justice more including on human rights and other issues of law.¹¹ There is knowledge gap in the perception held by immigrants on how justice can be achieved equally through the administrative courts. All these solidify the need for a responsive Arctic law and politics, especially as more immigrants continue to migrate to Finland and other Nordic countries.

This article seeks to illuminate the perceptions from experiences of (in)justice that the minority-group immigrants sampled in this article experience while appealing their RP application decision. The article uses the Renault concept of experiences of injustice, and further delves into the human rights violations and experiences of inequality in the justice system, as well as how this poses risks to Arctic society. This study is increasingly necessary as more and more immigrants in Finland are highly skilled and know their rights and are increasingly questioning decisions that are inconsistent with the policies and laws in Finland, other Nordic regions, and the European Convention. Occasionally, there are cases that make it to mainstream media and attract the attention of the public to how migration decisions are handled.

The research objective of this article is to initiate policy conversations on how appeal cases concerning immigrants are handled, to raise awareness of how administrative courts infringe on human rights and how this is interconnected with Arctic law and politics. This article further evaluates how institutional actions taken by the administrative courts in the judicial process further increase (in)justice. The article reviews the government of Finland's commitment to fundamental human rights in Finland and uses the Renault concept of experiences of injustice to illuminate the justice process in the migration decision appeal.

The research questions are:

1. Is the Finnish administrative court process – as experienced by the four immigrants while appealing residence decisions – consistent with the fundamental human rights commitment made by the government of Finland?
2. How does the experience of minorities of the justice system affect the future of Arctic law and politics?

This article analyses existing literature about the justice system as experienced by Finnish society, which is then narrowed down to the experiences of minorities. Two surveys about public confidence in the court system have been published in Finland.

11 Ojanen, Tuomas. 2009. "From Constitutional Periphery toward the Center – Transformations of Judicial Review in Finland." *Nordic Journal of Human Rights* 194–207.

One survey was done by the *Faculty of Law* at the University of Turku, the other by the National Research Institute of Legal Policy subordinate to the Ministry of Justice (Ministry of Justice 2008). The methodological approach and theoretical framework follow and build a case that culminates in the discussions and conclusion. The conclusion is supported by the acquiescence bias phenomena to improve the knowledge gap on how incidents of (in)justice can influence Arctic law and politics.

2. Literature Review

This article uses sociology lenses to analyse how the administrative courts of Finland achieve justice in residence decision appeals for immigrants. The paper analyses the wheels of the justice system for long- and short-term residence application decisions using the Renault concept of experiences of injustice. According to Renault, the description of the relationship between recognition understood as a fundamental right of individuals, and threat recognised by institutions, is key.¹²

The article draws on the experiences of other jurisdictions in handling migration decision appeal cases and from the trends and patterns that emerge. In the United States (US), the lack of clarity and precedence has been observed in discretionary rulings issued by judges. Some judges were noted to be three times more likely to issue deportation orders. The Board of Immigration Appeals failed to promote uniformity in handling migration appeals.¹³ It was also reported that when the quality of lawyering is inadequate, courts and judges become frustrated and find difficulty in implementing their adjudicating role. This was noted in many cases where immigrants were served negative decisions that they then appealed.¹⁴ The question of who polices immigration has been raised in the US.¹⁵

In Australia, the Migration Review Tribunal (MRT) handles appeals made by the migration authorities. The MRT hears and determines whether the migration authority made a fair decision in the case that the immigrant or their representative is appealing. The goal of the MRT is to provide a mechanism of review that is fair, just, economical, informal and quick. The MRT recognises migration authority discretion in the decision-making process and reviews the case on the basis of evidence presented before it, just as it would have been reviewed by the migration officer.¹⁶

12 Renault, Emmanuel. 2011. "The theory of recognition and critique of institutions." In *Critical Essays*, by Axel Honneth, 207–231. Amsterdam: Brill.

13 Hausman, David. 2016. "The Failure of Immigration Appeals." *University of Pennsylvania Law Review* 1177–1238.

14 Katzmann, Robert A. 2014. "When Legal Representation is Deficient: The Challenge of Immigration Cases for the Courts." *The Invention of Courts* 37–50.

15 Armenta, Amada. 2017. *Who Polices Immigration?* California: University of California.

16 O'Brien, Dennis. 2013. "REVIEW ON THE MERITS OF MIGRATION AND REFUGEE DECISIONS." *University of Queensland Law* 123–137.

Australia has been recognised as a modern migration state in a background paper to World Development Report 2023.¹⁷

The United Kingdom (UK) has raised concerns over threats that can undermine the fair and effective process and procedure that is a requirement if individual rights contained in the legislative instruments are to have practical effect and ensure justice, equality and rule of law.¹⁸ The Law Society of Scotland reckons that presenting a case at a migration tribunal is different from appearing in other courts, as it limits the decision to evidence presented by the appealing individual and the migration decision-maker's justification.¹⁹ The UK relies heavily on tribunals for asylum seekers on the justification that the migration decision is thorough and fair from the onset. The UK also deals with cases of withdrawing citizenship, which are heard by the Special Immigrations Appeals Commission (SIAC). It was noted that the UK was increasingly losing migration appeal cases in court.²⁰ It was noted that migration laws were tightened to restrict appeals to one judicial process in the UK thus violating the fundamental principles to uphold the rule of law and to a fair hearing.²¹

Sweden applies migration decisions based on Article 47 of the European Union Charter and in compliance with Swedish migration laws. The Swedish Migration Agency allows individuals to appeal immigration decisions that they do not agree with. There are some decisions that cannot be appealed according to the Swedish migration laws.²² The income effect of the 2008 Swedish labour migration reform achieved the increased labour migration as intended. This underpins the role of migration policy in addressing the migration structural and systemic everyday barriers.²³

Finland is keen to attract and retain talent which means more immigrants. To that end, Finland markets itself aggressively and prides in the accolades such as being the happiest country in the world since 2018, where the income, health, freedom, having someone to depend on, and absence of corruption all play a key role in determining

17 Crock, Mary, and Chris Parsons. 2023. *Australia as a modern migration state: Past and present*. Sydney: University of Sydney.

18 Craig, Sarah, and Maria Fletcher. 2012. "The Supervision of Immigration and Asylum Appeals in the UK – Taking Stock." *International Journal of Refugee Law* 60–84.

19 Law Society of Scotland. 2022. *Law Society of Scotland*. Oct 17. <https://www.lawscot.org.uk/research-and-policy/>.

20 Williams, Matthew. 2017. "Legislative language and judicial politics: The effects of changing parliamentary language on UK immigration disputes." *The British Journal of Politics and International Relations* 592–608.

21 Thomas, Robert. 2005. "Evaluating tribunal adjudication: administrative justice and asylum appeals." *Legal Studies* 462–498.

22 Migrationsverket. 2023. *Migrationsverket*. Dec 02. <https://www.migrationsverket.se/English/Private-individuals/Working-in-Sweden/If-you-want-to-appeal.html>.

23 Annika, Elwert, Emilsson Henrik, and Irastorza Nahikari. 2023. "From state-controlled to free." *Migration Studies* 1–25.

happiness level in the country.²⁴ Finland also ranks third best in justice and rule of law.²⁵ Finland's migration laws open up the justice discourse with focus on social justice implementation especially as experienced by the ethnic and racialised minorities such as third country nationals (TCNs) and other disadvantaged groups. Scholars are embroiled in social justice discourse in different sectors of Finnish society, including education, economy, law, politics, health and integration. The struggle for identities in Finland is an outcome of such perceptions of sectoral social injustice.

Finland's appeal cases for RP application decisions and guidelines for the appeal processes are provided in migration laws and policies.²⁶ There is an increase in studies that analyse the appeals and perceptions of the review processes for algorithmic decisions.²⁷ Throughout the world, it has been noted that in recent times, there is an interest in sensible migration policies and attracting skilled migrants. Indeed, migration has transcended disciplinary boundaries owing to socio-political articulation and general interest by citizens and other stakeholders.²⁸

In Finland, there is still a gap in the study of migration decision appeals and how they are experienced by different individuals. Finland relies on a limited number of reports for surveys conducted in Finland, but heavily relies on research conducted by its neighbouring Nordic countries for its migration decision appeals. Aside from two reports on the status of justice and the perception of judicial processes targeting Finnish citizens, the only research related to migration decision appeals and the justice process in migration are found in undocumented, asylum, and refugee research. This research has a limited scope and does not equitably demonstrate the judicial institution and dispensation of justice in accordance with national policies. As such, this may be the first article that highlights the opinions and experiences of immigrants when they submit a migration decision appeal in Finland.

3. Methodology

This article uses interpretative phenomenological analysis (IPA) to critically analyse the experiences, opinions, and perceptions of the four individuals that have appealed the RP decisions issued by Migri. This research method is the best for capturing key information for sensitive and usually confidential processes that are handled with

24 Helliwell, John F., Richard Layard, Jeffrey D. Sachs, Jan-Emmanuel De Neve, Lara B. Akinin, and Shun Wang. 2023. *World Happiness Report 2023*. Paris: Sustainable Development Solutions Network.

25 Bertelsmann Stiftung. 2017. *Bertelsmann Foundation – Annual Report 2017*. Gütersloh: Bertelsmann Stiftung.

26 Finnish Immigration Service. 2023. *Permits and Citizenship*. Dec 01. <https://migri.fi/en/appealing-a-decision>.

27 Lyons, Henrietta, Senuri Wijenayake, Tim Miller, and Eduardo Velosso. 2022. "What's the Appeal? Perceptions of Review Processes for Algorithmic Decisions." *Conference on Human Factors in Computing Systems*. ACM. 1–15.

28 Anderson, Bridget. 2013. *Us and Them: The dangerous politics of immigration control*. Oxford: Oxford University Press.

discretion and secrecy by migration authorities.²⁹ The researcher used the snowballing method and social media appeals through migrant groups in Finland to reach minority immigrants that had appealed RP decisions in Finland. The selection of the minorities was driven by the fact that they were the most visibly discriminated groups in Finland, especially in accessing the labour market³⁰ and in general.³¹ The interested participants had a period of six months to voluntarily participate in the self-administered, anonymous questionnaire that had structured, open-ended questions. The participants had the option of a self-administered interview or being interviewed in person if they wished, in which case, they were free to leave their contact information to the researcher. Out of four participants, two agreed to an in-person interview while the other two opted for the anonymous self-administered option. The survey instrument was developed on Google Forms to make it easily accessible. The data entered was saved in the researcher's cloud, where it was solely accessible to the researcher via password. The survey included consent statements and provided details on how the data was going to be used in the research. The participants were required to give virtual consent by marking a checkbox to show that they had read and understood the consent clause.

The gathered data was analysed using the deductive thematic analysis method, and themes were drawn from fundamental rights as defined by the government of Finland and the Renault concept of experiences of injustice. This method was used to ensure that we retain the anonymity of participants as their cases were very specific and distinct from each other such that a participant's identity risked being revealed by some aspect of their experience being shared.

3.1 Study Design

This study uses an IPA research design as the goal of the research is to illuminate the meaning of the lived experiences and how they are perceived by the participants. This method helps in understanding the perspectives, emotions and behaviours that the migration decision appeal prompts in participants. The data is analysed qualitatively using the inductive thematic analysis method to identify commonalities and differences. The use of the open-ended questions ensures that the researcher gathers rich data for analysis and conclusion in this research. The richness of the subjective qualitative data gathered from the cases is the strength of this research.

The researcher takes into consideration the limitation that the sample size has on drawing conclusions as the data may not be generalisable for the entire population, but the researcher's argument pertains to law enforcement acquiescence of

29 Walters, William. 2020. "Secrecy and Migration." *Parse Journal* 1–13.

30 Ndomo, Quivine, and Lillie Nathan. 2023. "Resistance Is Useless! (And So Are Resilience and Reworking)." In *Immigrant and Asylum Seekers Labour Market Integration upon Arrival: NowHereLand*, by IMISCOE, 161–184. Springer.

31 Statistics Finland. 2023. *UTH Survey*. Dec 02. https://www2.stat.fi/tup/maahanmuutto/uth-tutkimus/yhteenveto_en.html.

the administrative courts. This article interviews four participants that appealed RP decisions using self-administered questionnaires with open-ended questions.

The researcher’s positionality is that of a third country national who and has appealed RP decisions in the past. The researcher may relate with some of the opinions, perspectives and perceptions expressed by the participants. Though the researcher may appear biased in some cases, the researcher has made a deliberate and conscious decision to be objective and constructive in the article, with effort made to avoid all forms of bias in writing the article.

3.2 Appeal Cases and Outcomes

The four cases under review were appealed on the basis of the refugee, work and family statuses that were used in the application. All four applications had negative outcomes. Three of the four applications were presented to the court of appeal with the purpose of repealing the decisions due to new development in the lives of the appealing immigrants that they believed could alter the administrative court’s decision. The diagram below outlines the decision journey of the appeal process from the perspective of the appealing participants as well as two of the most memorable events and their timing.

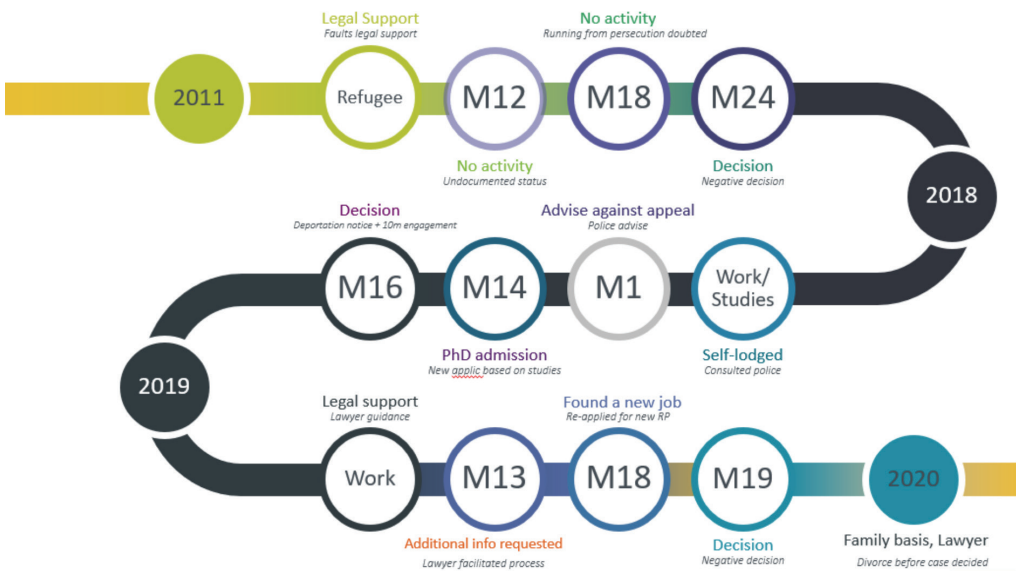


Figure 1. The migration decision appeal journeys

Summarised below are the appeal processes as experienced by the immigrants contrasted with national policies.

3.2.1 Duration of Serving Justice

The first and oldest case occurred in 2011. Participant PN004 made an appeal on the basis of a refugee status. The appeal was lodged with the assistance of a lawyer.

After 12 months without a valid residence permit, PN004 was frustrated by the inability to travel out of Finland or to invite family to visit, leading to stress and anxiety. The appeal requested evidence of persecution after 18 months and a negative decision was made after 24 months. The participant wrote the following on their perception of why the decision took a long time:

Long time because they didn't have enough reasons to reject my application, so they used delay tactics to force me to engage in other activities, and as such, they would not grant me humanitarian protection.

The second case was lodged by PN002 in 2018 – at first on the basis of work and without a lawyer. A negative decision arrived after 16 months with deportation orders. This was after the applicant had been admitted to doctoral studies after 14 months, and thus, submitted a new application to the authority for a new residence permit on the basis of studies. The appeal went to the Supreme Court for review and determination and continued for another 10 months. This caused increased stress and anxiety in the participant, who was eventually given a positive decision and a new residence permit for six months after the duration of the appeal. According to the participant, the decision took a long time due to the ineptitude and inability of the (migration authority) staff to take initiative.

The third case lodged in 2019 by participant PN001 on the basis of work and with the help of a lawyer took 19 months and received a negative decision. After 18 months, PN001 found a new job and applied for a new residence permit and was issued a 4-year permit on the basis of work. Shortly after, the negative decision on the appeal was received. According to PN001, the lawyer had informed in advance that the process takes a very long time, and PN001 was not expecting feedback anytime soon.

The fourth case was lodged in 2020 by participant PN003 on the basis of family with the help of a lawyer and received a negative decision after 23 months. The participant cited the frustration and stress that the period caused on their marriage, which ended in divorce before the court decision was made. The participant continued to stay in Finland after the marriage was dissolved but with panic attacks, stress and anxiety. PN003 described the experience as traumatic and did not have a reason for or opinion on why the appeal took as long as it did. The length of judicial proceedings has been flagged as an issue of injustice in Finland.³²

3.2.2 Cost of Appealing Decisions

There is no cost to appeal a RP decision when lodged by oneself. Lawyers charge different hourly rates, but the State can provide a lawyer to individuals who wish

32 FRA. 2011. *Access to justice in Europe: an overview of challenges and opportunities*. Thematic study report, Brussels: European Union Agency for Fundamental Rights.

to appeal if their income is low. All the participants – PN001, PN002, PN003 and PN004 – had low incomes at the time of the appeal and were thus eligible for legal support, provided they knew about this right. PN004 found out about the possibility of getting legal support by chance, as the participant had a lawyer friend. Participants PN001, PN002 and PN003 spent €200, €350, and €200 respectively for a single session, as they could not afford multiple sessions. The estimated lawyer’s fee is €150 per hour.³³ The cost of treating anxiety, stress and other situations that are not included in this fee, but have a direct correlation with the appeal, was great on the mental health and well-being of the participants, and in some cases, caused irreparable damage and was very costly in the long run (e.g. panic attacks). Considering that many migrants are not the highest earners in the economy, the effect of an appeal is very costly to their economic situation and health in the short and long term.

3.2.3 Model of Appeal – Self-Lodged Appeal or Lawyer-Lodged Appeal

Migration decision appeals can be lodged by individuals themselves or through a lawyer. A lawyer can be private or state-sponsored for appeals made by individuals with a low income. Two participants used private lawyers as they were not aware that they were entitled to a state-sponsored lawyer. Both had low incomes at the time of the appeal and the basis of all the decisions related to their income level or another aspect linked to their income. As mentioned, only PN004 used a public lawyer, and that was because the lawyer happened to be a friend. In the absence of this friendship, PN004 would have also used a private lawyer or proceed without a lawyer.

3.2.4 Structural, Systemic Barriers to Appeal

In Finland, an appeal to the administrative courts does not give the complainant an opportunity to go before the judge to argue their case. All decisions are made based on the submitted supporting documents, with the initial decision as the basis for review. Migrants are not familiar with the way courts operate. The appeal process is a clear gamble to buy time and hope for justice. This forms a legal, systemic barrier for participants, even with the help of a lawyer, as they feel that in-person defence can make it easier to address any gaps in the supporting documents submitted. In addition, when a residence permit expires, it interrupts the residence permit, which affects future applications for permanent residence and citizenship, forming a structural barrier for participants. The appeal process also results in an undocumented or paperless status, which affects the ability of an immigrant to harness opportunities that require residence status. Additionally, without a valid residence permit, it is not possible to travel outside Finland. For example, this can affect one’s rights to move freely and visit family outside Finland. Furthermore, one cannot invite family

33 Pakolaisneuvonta. 2023. *Other Residence Permits*. Dec 03. <https://www.pakolaisneuvonta.fi/en/>.

without a valid residence permit. Visits are regarded as a particularly symbolic and practical action in the maintenance of transnational kin relationships and help to re-affirm a sense of belonging.³⁴ Denial of family visits affects individuals' mental health and well-being.

3.3 Theoretical Argument

This article uses the Renault concept of experiences of injustice to understand the four participants' social positions and the experiences' influence on their stay in Finland. Renault identifies three categories of experiences of injustice: 1) a feeling that the principles of justice have been violated; 2) a feeling that the principles are too restrictive or exclusive since they do not extend to all relevant subjects; or 3) a feeling that the principles are false because they are consistent with grave injustices, some of which cannot legitimately be expressed as injustices within the established normative framework.

3.3.1 *Violation of the Principles of Justice*

The participants all felt that the principle of justice was violated as their cases were being reviewed due to extended delay by the courts. All four participants felt that the decision was unfair. Additionally, two out of the four participants who appealed their RP decision felt that the quality of the judgement was poor, as they had to contest the administrative court decision with the Supreme Court due to the development in their basis for reapplying for a new residence permit. PN002 and PN004 received negative decisions that they contested with the Supreme Court, and PN004 spent an additional 10 months convincing the administrative court that they had good justification to receive a residence permit. The two participants were eventually given positive decisions upon appealing the decisions with the Supreme Court. It should be noted that migrants consider their RP applications confidential and private matters; only violently psychologically aggrieved individuals share their story, and usually when they reach a dead end. Individuals such as immigrants that face discrimination, harassment and barriers in accessing services are more likely to be vulnerable to various forms of injustice including violence, exploitation and abuse.³⁵

PN004 said the following about the process.

I could not travel without travel documents. I could not work. Social activities were limited since some of the activities needed proof of ID to participate.

34 Mason, Jennifer. 2004. "Managing Kinship over Long Distances. The Significance of 'The Visit'." *Social Policy and Society* 421–429.

35 IOM. 2005. *The determinants of migrant vulnerability*. Geneva: IOM.

PN001 said the following about the process.

I was getting Kela (social services) supported rehabilitative psychotherapy at the time and that was automatically cancelled, which affected my mental health severely.

PN002 said the following about the process.

I could not leave Finland for three years. I could not work, I fell into a deep depression. It was a harrowing experience which resulted in my passport expiring and I had to apply for an alien passport which I then could not use because of the corona pandemic.

The sentiments of the three participants underscore the perception of the process of all the participants. The influence of culture, gender, and the possibility of protection in the country of origin also impacted PN004, as the appeal felt that there was no threat of persecution to PN004. Wikström (2014) found that the verdicts for asylum seekers or refugees who appealed migration decisions in Sweden depended on the applicants' narratives. However, the scope of influence by the applicants' narrative is limited, and resistance was found to be silenced in favour of authorities' predominant views about culture and the status of protection in the country of origin.

3.3.2 Perception of Unequal Exclusion and Restriction

The participants expressed sentiments that showed that they felt unequally facilitated, and they noted a sense of restriction and exclusion. PN002 sought guidance from the police before appealing the decision and was advised to accept the decision and not appeal as it was of no use. On this issue, PN002 stated:

The police always give the wrong advice. They advised me not to appeal the decision. Also, Migri needs more staff that can think outside the box and for themselves – not just check boxes like robots.

According to PN002, the police were applying restriction principles and discouraging PN002 from submitting an appeal and accessing justice. PN002 also felt that the officials could have made the right decision the first time, as the initial decision at the administrative court created an impression of exclusion and restriction according to PN002.

PN004 felt that the state-provided lawyer was not resourceful. The PN004 felt that it would have been better to acquire a private lawyer. PN004 alluded to an institutional level of exclusion and restriction when justice is sought with the help of state-recommended lawyers. This also demonstrates that PN004 felt that the lawyer was not within PN004's control as the lawyer was state-funded and potentially served the interest of the state.

3.3.3 Legalised Injustices in Hearing Migration Decision Appeals

All four participants felt that the injustices meted against them were "legal" in the context in which they were applied. The unfair decisions were backed by some legal

policy. Participant PN002 expressed that with a little more independent thinking on the part of the reviewers of RP applications, a lot could be resolved to avert the injustices that are caused by the poor quality of review and decisions. Participant PN002 implied that once the injustice is committed by the migration officials, there is no way of reversing it, save for the gruesome appeal process that violates the fundamental human rights that the Ministry of Justice outlines on its website. The policy on the visa application process was discretionarily applied, and no embassy official was subject to repercussions for any unjust or poor decision made in full disregard for the applications that met the threshold for visa issuance. Appealing visa applications also takes 30 weeks at the administrative courts versus normal visa applications that take 15 days. This law enforcement acquiescence discourages appeal as it is easier to submit a new visa application. Participant PN003 felt that the decision to deny her spouse a visa on the basis of low income was, in a way, a legalised way of giving the spouse a negative decision. PN003 explained that the low income was due to a 2-month illness as she did not work during the period, but otherwise, the couple had sufficient income. The absence of repercussions for poor decisions that came at a cost, affected the participants' mental health and well-being, and violated their fundamental human rights as outlined by the government³⁶ is a subtle way of ensuring that robotic decisions are made, according to the participants.

3.4 Correlation with Arctic Law and Politics

This article is important in the wake of sweeping anti-migration laws in the global north including the Nordic countries, and amidst the calls for more talent to come to the Nordic countries including Finland. The Arctic law and politics is shaped by regional politics prompted by the emergence of anti-migration governments in the recent times. There is a perception that white supremacy fuels the anti-migration stance of these new governments.³⁷ Talent attraction is required to boost the existing talent that is already in Finland. However, the Arctic politics in its entirety from marine politics, social and human politics, atmosphere and cryosphere politics, and terrestrial politics that make up the arctic political ecosystem do not voice the space occupied by migration in the arctic law, security, protection and politics. As the population of immigrants rises, so does the need for Arctic law and politics to integrate an Arctic world that includes new residents in the Arctic and its ecosystem to holistically protect and preserve the Arctic. This can be achieved by ensuring that Arctic laws and justice systems encompass the needs and dynamics that emerge with new migrants in the Arctic region. The politics of the Arctic is cognisant of the growing

36 Ministry of Justice. 2008. *Department of Judicial Administration*. 12 31. Accessed Dec 30, 2023. <https://rm.coe.int/ministry-of-justice-department-of-judicial-administration-the-finnish-/168078f3d2>.

37 ACLU. 2023. *American Civil Liberties Union*. Nov 02. Accessed Jan 29, 2024. <https://www.aclu.org/news/immigrants-rights/white-supremacy-is-fueling-extreme-anti-immigrant-policy-in-texas>.

number of immigrants in the region and their increasing participation in politics. Sooner or later, researchers and policy makers in the Arctic will be drawn from a pool of multicultural experts. Arctic law and politics need to consciously integrate and include migrants in its discourse by taking a holistic approach that includes justice and fidelity to the rule of law. Discrimination and the perception of unequal treatment increases the risk of insecurity, vulnerability to radical and extremist groups, and a feeling of oppression by Finland.

4. Findings and Discussion

Not enough research has been done in Finland on appeals of migration decisions and how appeals affect immigrants holistically. This article draws on the experiences of four participants that engaged with Finnish authorities to appeal RP decisions that they did not agree with. The experiences of PN001-PN004 with the administrative court show similar patterns and outcomes. Finland's governmental provisions on the fundamental human rights and non-discrimination act were not honoured, which raised the issues of injustice and inequality felt by immigrants appealing RP decisions. The handling of RP decision cases by the administrative courts erodes the confidence of immigrants in the justice system in Finland. The four participants did not feel confident during the justice determination process as they did not understand how the justice system works.

Appealing migration decisions is viewed with shame, and thus, participants are hard to find, even with their anonymity being guaranteed.³⁸ The individuals that participated had traumatic experiences with the administrative court's justice process, from severe psychological impacts to poor mental health due to the unpredictable duration for the appeal cases, which ranged between 19 and 26 months. When asked whether they were willing to give further details, participant PN002 said, "No, thank you. The trauma is still fresh." These individuals also felt beaten by the system and helpless during the process of administering justice. By implied action, the appeal only serves the function of buying time for participants to find another basis for applying for a new residence permit.

4.1 Injustice through a Legalised Process – Justice Delayed is Justice Denied

The common pattern in these cases is that the hearing and determination of the cases exceeded the timelines outlined in the policy documents. They also exceeded the average hearing timelines for administrative courts in Finland in general. Participant PN003 indicated that the timeline set needed to be honoured by the administrative courts. In 2021, the average duration of cases presented before the Helsinki

38 Karp, David R. 2000. "The New Debate About Shame in Criminal Justice: An Interactionist Account." *The Justice System Journal* 301–322.

Administrative Court – where all the appeals were lodged – was 5–12 months³⁹ and 6–12 months.⁴⁰ None of the four participants received a decision within 12 months.

Yle News (2017) noted that there was a growing trend of flawed decisions for protection rulings. The Supreme Court resolved the rulings of 780 cases from the administrative courts, which is about 87% of all cases.⁴¹ Participant PN004 appealed a decision with the Supreme Court after 23 months of waiting for the administrative court's decision, when PN004 received deportation orders. The appeal at the Supreme Court led to an additional 10 months of processing before receiving a positive decision. Participant PN003's appeal took longer than 12 months, and by the time of determination, the anxiety and stress that had grown in the marriage resulted in divorce. PN003 believed that distance and pressure from family led to tension and divorce.

There is no official act or policy accessed by the researcher on the timelines of processing and determining the decisions for appealed cases at the administrative courts or Supreme Courts. However, the average hearing time in 2021 – as indicated in correspondence by the Oikeus (administrative court) – was 8.5 weeks for immigration appeal-related cases. Average timelines have been noted by different sources as being between 5 and 12 months, and ACA-Europe in its administrative justice report implied that ACA-Europe has knowledge of delayed justice in Finland's administrative courts in Clause 54.⁴²

The overly traumatic experiences associated with the decision process are potentially one reason that the participants agreed to participate in the survey. These individuals wished to share their frustrations and opinions about the frustrating and dehumanising experience of being in the hands of the administrative justice system, specifically related to migration decision appeal cases.

4.2 Mental Health and Well-Being

All four participants' mental health was gravely affected by the appeal process. Participant PN004 cited trauma and did not want to discuss the topic further. PN003 experienced divorce due to existing issues, but a faster or positive decision may have helped salvage the marriage. PN001 lost psychosocial support from social services – Kela – due to the negative decision, and the 19 months of appeal processing, combined with 10 months of a Supreme Court appeal affected their mental

39 Röedl and Partner. 2021. *Insights*. May 04. <https://roedl.com/insights/litigation-arbitration/finland-jurisdiction-system-structure-costs-duration-protection>.

40 Fintegra. 2023. *Immigration*. Dec 01. https://fintegra.fi/en/appeal_against_residence_permit_refusals_in_finland/.

41 Yle News. 2017. *News*. Apr 21. <https://yle.fi/a/3-9576012>.

42 ACA-Europe. 2023. *ACA-Europe Administrative Justice for Europe report*. Dec 01. https://www.aca-europe.eu/en/eurtour/i/countries/finland/finland_en.pdf.

health and well-being gravely. PN002 cited lost employment opportunities in cases where valid residence was a requirement. In all four cases, participants' mental health and well-being deteriorated, and the experience was described as traumatising. This experience is a subtle torture that sends the message to *resist and desist* from appealing authority decisions in Finland.

The appeal of migration decisions needs to be handled with humane processes, and safeguards for mental health and well-being need to be integrated into the justice system for migration appeals. The human dignity and ethical standards for complainants should not drain individuals to the point of trauma. Additionally, social welfare benefits for essential services – such as psychosocial counselling and health-care services – should not be terminated, just as it would not be terminated for a Finnish citizen with an appeal in court.

4.3 Human Rights Violation

Human rights are inherent to all human beings regardless of one's race, sex, nationality, ethnicity, language, religion, or any other status. Human rights include the right to life and liberty, freedom from slavery and torture, freedom of opinion and expression, the right to work and education, and many more.

This article bases the definition of human rights on Alan S. Gutterman's, which states that human rights are the activities, conditions and freedoms that all human beings are entitled to enjoy by virtue of their humanity and regardless of their status. This definition is drawn from the International Bill of Human Rights, which highlights political 'freedoms,' equality and socio-economic rights, and collective rights to a healthy environment, self-determination, and development. The Council of Europe considers human rights to be the armour that protects every individual. The Council of Europe builds the argument from a historical perspective, drawing from the 1948 Universal Declaration of Human Rights.⁴³ Finland lifts the principle of non-discrimination as being the cornerstone of all human rights.⁴⁴

The four RP decision appeals demonstrate human rights violations and go against the fundamental human rights articulated by Finland's Ministry of Justice. PN001 had the Kela services that were supporting the rehabilitative psychotherapy they were undergoing terminated due to a negative migration decision. Finnish citizens with civil cases would not have their rehabilitative psychotherapy terminated when having a case ongoing with the administrative court or Supreme Court. This shows unequal treatment and contravenes the human rights principles. PN002 and PN004 were not able to travel during the appeal processing, thus denying both the right to

43 Council of Europe. 2023. *Compass*. Dec 12. <https://www.coe.int/en/web/compass/what-are-human-rights->.

44 Ministry of Foreign Affairs. 2023. *Finland's international human rights*. Dec 10. <https://um.fi/finland-s-international-human-rights-policy>.

free movement. Additionally, PN002 and PN004 could not invite any of their family members to visit due to the lack of a valid residence permit, further denying them the freedom of association. These are challenges that a Finnish national with an ongoing case with the administrative court will not experience; thus, the application of the decision is discriminatory and unequal. PN004 added that they missed some employment opportunities and social events as a valid residence permit was a key requirement for onward processing.

Similar legalised human rights violations are noted due to language barriers which were present throughout the process for the visit-visa appeal cases. This contravenes the linguistic rights mentioned by Finland's Ministry of Justice.

4.4 Migri's Mistrust of Immigrants

The four participants felt that the Migri officers handling their applications and appeal did not trust their situations or claims. PN001 received a negative decision due to the computational method of income. Despite PN001 having sufficient income, they were categorised, in part, under entrepreneurship, which denied PN001 a positive decision. PN002 was issued with deportation orders on allegations of fraudulence in their application. The Supreme Court did not agree with the decision of Migri and the administrative courts. PN003's sickness, which affected their income, was not considered in the RP application for the spouse. The health records justifying their case were not admitted. PN004 was running from prosecution, which Migri and administrative courts did not believe. The participants felt that their cases were—in these instances—handled with mistrust and profiling.

4.5 Lack of Information for Immigrants

Participant PN002 submitted an appeal without a lawyer. PN002 did not understand the repercussions and connections between submitting a new application on the basis of studies after securing a doctoral placement. As a result, PN002 received deportation orders issued with allegations of fraudulent information as the initial appeal application was submitted on the basis of work. This led to an additional 10 months at the Supreme Court, as the participant defended the position and clarified missing details. This shows how PN002's lack of information is costly and has negative outcomes. Participant PN003 received a negative decision for the application to bring their spouse to Finland due to lack of information on how the income gaps could affect their spouse's application for a residence permit. Lack of information and good advice from lawyers demonstrates that valuable information is held in confidence, and application of the policy is likely misunderstood.

Despite using a lawyer, PN004 did not persuade the administrative court regarding their situation of persecution in their country of origin. PN004 would have given better and more comprehensive information for administrative review if they had access to more information. PN004 was recommended the use of a lawyer either

way, as the experience and legal requirements needed a lawyer to understand what is needed, and to relay the information requested persuasively.

The administrative courts and Supreme Court do not give audience to the appealing parties; instead, the appealing individuals, or their lawyers, are expected to ensure that all supporting documents required during the administrative review process are attached when submitting the appeal. In this case study, lack of information and the related details makes it difficult to challenge the appeals without the help of a lawyer. When PN002 appealed the RP decision, they were given deportation orders after 16 months. PN002 acquired a lawyer for the Supreme Court appeal, and after 10 months, the decision was reversed, and a new residence permit was issued to PN002.

5. Conclusion

The administrative courts deal with among other issues, decisions on migration matters, such as international protection and residence permits. Finland's ministry of the Interior has set a 3% target for returned decisions due to errors in the interpretation of the law and procedural faults. Setting a target for administering justice for asylum seekers is a major institutional barrier to achieving justice by asylum seekers in the event that they numbers exceed 3%.⁴⁵ The 3% target limits the number of cases that can access justice as the threshold is set arbitrarily. The administrative court process for RP appeal is not consistent with the fundamental human rights commitment by the government of Finland in practice.

The paradox of the judicial process when an appeal is lodged in the administrative court is that it contravenes the Non-discrimination Act and the fundamental and human rights. Under the Finland Constitution, everyone is equal before the law, and no one shall, without an acceptable reason, be treated differently from other persons on the grounds of sex, age, origin, language, religion, conviction, opinion, health, disability or other reason that concerns their person.⁴⁶ This is however easier said than done as the Finnish society rides on discriminating colonial structures and laws to drive its justice system for migrants.

In 2008, Sweden changed labour migration laws to increase labour migration and enable more migrants to come to Sweden including from outside the EU.⁴⁷ This reveals the structural, institutional, and systemic role played by the migration

45 STT Viestintäpalvelut Oy. 2021. *Tiedotet*. May 11. <https://www.sttinfo.fi/tiedote/69909022/the-standard-of-decisions-on-asylum-applications-has-improved?publisherId=69817837>.

46 Ministry of Justice. 2008. *Department of Judicial Administration*. 12 31. Accessed Dec 30, 2023. <https://rm.coe.int/ministry-of-justice-department-of-judicial-administration-the-finnish-/168078f3d2>.

47 Elwert, Annika, Henrik Emilsson, and Nahikari Irastorza. 2023. "From state-controlled to free migration: The income effects of the 2008 Swedish labour-migration reform." *Migration Studies* 1–25.

policy in the migration decision-making process and migration decision appeals. Furthermore, this demonstrates how policy and colonial laws are implemented historically, which often serve the interest of maintaining the status quo. This is done with little to no regard of the need for Arctic law and politics to embrace changing demographics. The handling of migration appeals is controlled by legal structures and the law, thus legalising any injustice and human rights violation propagated by the administrative courts and the Supreme Court. All four participants felt that the system was unjust in the way the entire process was implemented. The experiences of the four participants reflect what every appealing individual is likely to face as it is hinged on policy and the law. The process-level experiences of the four participants are generalisable, as they are not isolated to them individually, but are an outcome of how the administrative court process for RP appeal is handled for all immigrants.

The Finnish policy legalises injustice by engaging with institutionalised, structural and systemic barriers to justice when immigrants seek justice in Finland, as experienced in the administrative courts. The involvement of regional agencies underscores the significance of achieving justice through the judicial processes for a safer and stable region and regional politics. The study method enabled the article to gain a detailed account of migrants' experiences of Finland's judicial process, and the theoretical argument shed light on the paradox of justice when addressing compliance to the rule of law and regional or national politics.

More research needs to be conducted on appeals of visa decisions to dig deeper into the experiences of (in)justice by short-term visitors in Finland and other Nordic countries. The handling of a short-term visa decision appeal can shed more light on the courts' handling and treatment of migration-related judicial appeals in Finland. This will help illuminate the legal gaps and efficacy of the judicial process in Finland.

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