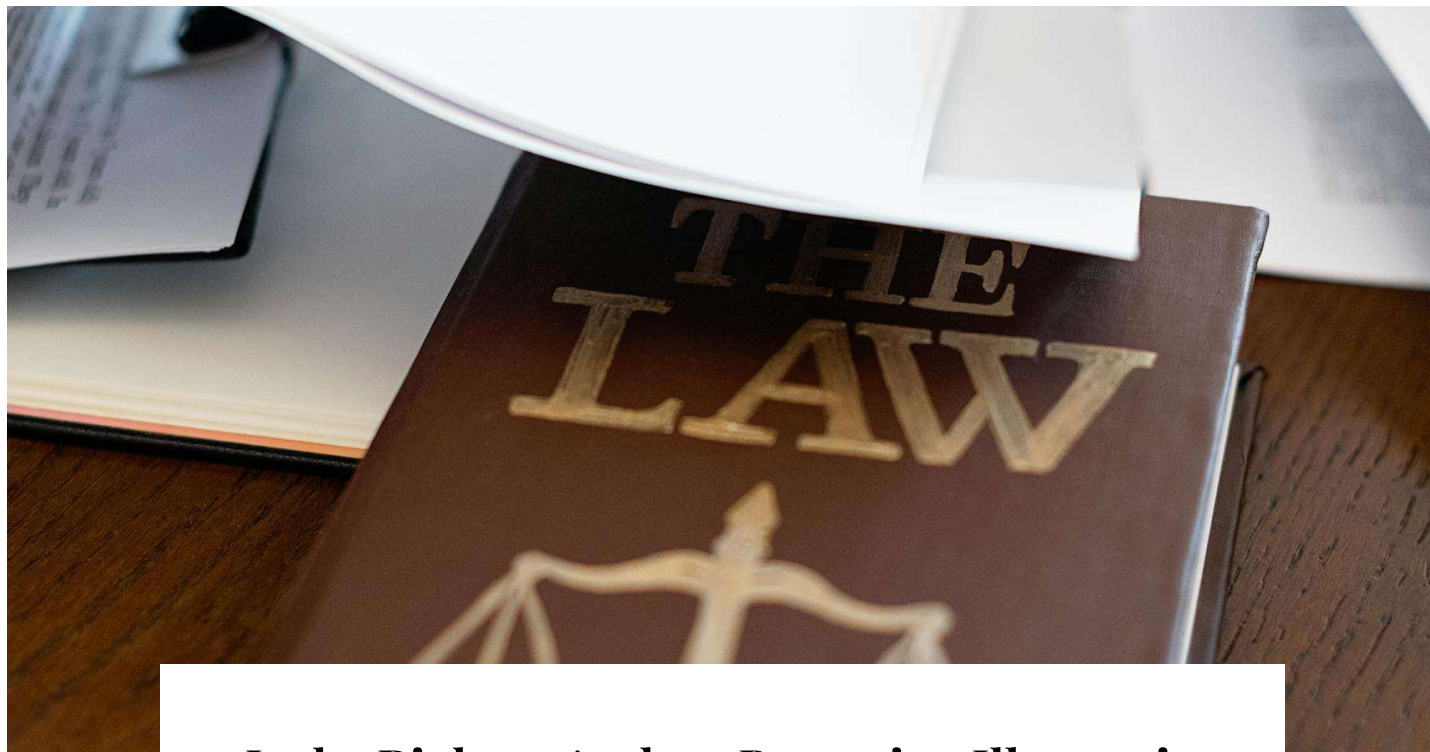




Is the Right to Asylum Becoming Illusory in Finland? Crisis Governance at the EU's Finnish External (Eastern) Border

24.3.2026

Article 18 of the EU Charter of Fundamental Rights guarantees the right to asylum, yet recent crises at Finland's eastern border reveal how fragile that guarantee is in practice. Focusing exclusively on Finland, this contribution argues that structural deficiencies in the EU Asylum *Acquis*, combined with the COVID-19 pandemic governance, the instrumentalisation of migration, and Russia's full-scale invasion of Ukraine, have rendered access to asylum increasingly contingent and securitised. The result is a legal configuration in which a formally entrenched fundamental right risks becoming practically ineffective.

A Fundamental Right Under Pressure

The right to asylum occupies a constitutional position in EU law. Article 18 of the EU Charter of Fundamental Rights (EU Charter) enshrines it as a guarantee to be exercised in accordance with the 1951 Refugee Convention and the EU Treaties (TEU and TFEU). Unlike Article 14 of the Universal Declaration of Human Rights, which distinguishes between the right to seek and to enjoy asylum, Article 18 does not fragment the concept. Textually and systematically, it encompasses both access to procedures and protection against *refoulement* (Farzamfar 2023). The principle of *non-refoulement* is a customary norm of international law and is set out in Article 33(1) of the 1951 Refugee Convention, according to which no state shall expel or return a refugee in any manner whatsoever to territories where their life or freedom would be threatened. In practice, however, the right to asylum depends on effective access to asylum application procedures. Without the possibility to lodge an application and obtain an individual assessment, Article 18 risks becoming declaratory rather than operational.

Since 2020, Finland's eastern border has become a focal point for testing the resilience of this right. Three developments have progressively reshaped the legal landscape: the COVID-19 pandemic, the discourse of 'instrumentalised migration' linked to geopolitical tensions with Russia, and the broader security context following Russia's full-scale invasion of Ukraine. Each crisis has prompted exceptional measures that have

affected access to asylum. The core question is whether EU constitutional constraints meaningfully limit such measures, or whether the structure of the Common European Asylum System (CEAS) itself facilitates the erosion of access under pressure.

Structural Faults in the EU Asylum Framework and Their Relevance for Finland

I. The Dublin Logic and Incentives to Prevent Arrival

The Dublin III Regulation (Regulation (EU) No 604/2013) allocates responsibility for examining an asylum application primarily to the Member State of first entry into the EU. While Finland has not historically faced the same level of arrivals as southern Member States, the Dublin logic still shapes its incentives to prevent arrivals, as the presence of an arriving person triggers State responsibility. The fewer arrivals registered, the fewer applications Finland must process. As Nascimbene and Fratzke argue, this geographical containment model indirectly encourages border management strategies that limit access. In crisis contexts, this logic can translate into border closures or procedural centralisation, narrowing practical avenues for lodging claims. Thus, even in Finland, the Dublin architecture operates as a structural backdrop against which restrictive measures become rationalised.

II. Reception Standards and Material Preconditions of Accessing Asylum

The Reception Conditions Directive (Directive 2013/33/EU) translates the abstract right to asylum into minimum standards for housing, healthcare, and subsistence. In Finland, reception conditions are generally considered robust. However, reception standards are only meaningful if applicants can access the asylum procedures in the first place. Where restrictive border-control and border-management measures prevent the registration of asylum applications, the substantive rights guaranteed under the Reception Conditions Directive risk becoming secondary to territorial exclusion. The practical sequence of first entry, then registration, and then reception means that border governance remains the critical chokepoint of rights realisation. In other words, although there is no inherent contradiction between Article 18 of the EU Charter on the right to asylum and border control and governance, poorly implemented border policies may breach Article 18, making compliance with legal safeguards the decisive factor.

III. Procedural Guarantees and the Elasticity of Border Control

The Asylum Procedures Directive (Directive 2013/32/EU) requires effective access to asylum procedures, personal interviews, interpretation, legal assistance, and an effective remedy. It also allows for border procedures and accelerated examination. This dual structure – rights combined with procedural flexibility – creates an interpretive space. In Finland, amendments to the Border Guard Act in 2022 and the subsequent legislation have enabled the centralisation of asylum applications and the temporary closure of border crossing points. While framed as security measures rather than formal derogations from EU asylum law, their practical effect has been to limit where and how applications can be lodged. EU law contains no general asylum derogation clause comparable to Article 15 of the European Convention on Human Rights (ECHR). Yet, as Farzamfar and Palander have argued, the interaction between flexible procedural rules and national emergency legislation demonstrates how crisis narratives can approximate a *de facto* suspension of access without an explicit derogation mechanism.

Crisis Governance in Finland

I. Pandemic Exceptionalism and the Expansion of Executive Power

During the COVID-19 pandemic, Finland declared a state of emergency and activated the Emergency Powers Act. Border traffic was restricted, and amendments to the Border Guard Act broadened the government's authority to close external border crossing points (Farzamfar, Salminen and Tuominen 2024). Public health protection constitutes a legitimate objective under both Finnish and EU law. However, the proportionality test requires that limitations on fundamental rights be necessary, legitimate, and temporary. The pandemic normalised far-reaching executive discretion over cross-border movement, including access to asylum. Although pandemic-specific restrictions were lifted, the legal infrastructure enabling extensive border controls remained in place. The experience of governing through emergency

appears to have recalibrated the balance between mobility rights, such as the right to seek asylum, and security considerations (Salminen and Farzamfar 2024).

II. Instrumentalised Migration and the 2024 Border Security Act

In 2023, Finland reported a sharp increase in the number of third-country nationals arriving at its eastern border with Russia. The government characterised this as ‘instrumentalised migration,’ describing it as a form of hybrid influence activity threatening national security and public order. In response, Finland adopted the Act on Temporary Measures to Combat Instrumentalised Immigration (commonly referred to as the Border Security Act), which entered into force in July 2024. The validity of the Border Security Act has been extended until 31 December 2026. The Act permits the near-total closure of eastern border crossings and restricts the reception of asylum applications, with limited exceptions for particularly vulnerable persons.

From a constitutional viewpoint, the key issue is whether the Border Security Act aligns with Article 18 of the EU Charter and the principle of *non-refoulement*. The legislation is presented as a temporary measure and is subject to annual renewal. The annual renewal, over time, however, blurs the line between exception and rule. If renewal becomes standard practice, the temporary nature loses its protective function. Additionally, leaving the identification of vulnerable persons to border authorities raises rule-of-law concerns. International refugee law is based on individualised assessment. A regime that presumes applications are inadmissible, allowing only narrow humanitarian exceptions, reverses that fundamental presumption.

III. War in Ukraine and Differential Protection

Russia’s full-scale invasion of Ukraine in February 2022 triggered the activation of the Temporary Protection Directive (Council Directive 2001/55/EC) across the EU, including in Finland. Ukrainian nationals received rapid access to residence, social rights, and labour markets. This response demonstrates that coordinated and rights-compliant protection mechanisms are feasible when political consensus exists. However, the inclusivity extended to Ukrainians did not alter Finland’s restrictive stance towards other third-country nationals arriving via the eastern border.

Border Closure and the Risk of *De Facto Refoulement*

Finland has not institutionalised pushbacks in the same explicit manner as observed elsewhere in Europe. Nonetheless, the comprehensive closure of border crossing points and the suspension of asylum procedures may produce functional equivalents. If individuals are unable to lodge applications at official crossing points and are prevented from entering the territory irregularly, they may be left in legal limbo. The prohibition of *refoulement* under Article 19 of the EU Charter and the 1951 Refugee Convention requires that individuals have a genuine opportunity to present protection claims. A system in which asylum is theoretically guaranteed but practically inaccessible raises the spectre of indirect *refoulement*. The right is not formally abolished; rather, the procedural gateway is narrowed to the point of near impracticability.

Temporality, Constitutional Hierarchy, and the Normalisation of Exception

A central justificatory device in Finland’s legislative response has been temporality. The Border Security Act is presented as an extraordinary measure, renewable annually if necessary. From a constitutional theory perspective, temporality is meant to function as a safeguard against the entrenchment of emergency powers. However, repeated renewal risks normalising the exceptional. What begins as crisis management may crystallise into a structural mode of border governance. This dynamic threatens the normative hierarchy established by the EU Charter. Fundamental rights should delimit executive action, not be recalibrated by it. If the exercise of Article 18 of the EU Charter becomes conditional on executive security assessments, its constitutional status is diluted.

Reclaiming the Substance of Article 18 of the EU Charter in the Finnish Context

The Finnish case underscores a broader structural dilemma: EU asylum law views access to protection as territorially based and procedurally managed, yet it does not guarantee safe routes for entry (Farzamfar 2023). Three reform pathways are worth considering. First, by adjusting the distribution of responsibilities

through meaningful reform of the Dublin system, incentives to prevent entry would decrease, easing pressure on external borders, including Finland's eastern frontier. Second, by clarifying *non-refoulement* in emergencies, EU legislation could explicitly state that emergency border measures cannot halt individual assessment obligations. Third, expanding legal routes such as humanitarian visas or protected entry procedures would disconnect asylum access from irregular crossings and help reduce the securitisation of border governance. Without these reforms, crisis narratives – such as public health concerns, hybrid threats, or war – will continue to trigger more restrictive interpretations.

A Final Word: From Formal Guarantee to Practical Reality

Finland's eastern border has become a laboratory of securitised asylum governance. Pandemic emergency powers, hybrid threat discourse, and geopolitical confrontation have interacted with structural features of EU asylum law to narrow practical access to protection. Article 18 of the EU Charter remains textually intact. Yet a fundamental right that cannot be effectively exercised at the EU's external borders risks losing its constitutional substance. The challenge is not whether Finland may protect national security or public health; it is rather whether such protection can be reconciled with the non-derogable core of the right to seek asylum. If Article 18 is to retain normative force, its operationalisation must be insulated from the politics of deterrence. Otherwise, Finland's eastern border will stand as a reminder that constitutional guarantees can endure on paper while fading at the threshold.

References

Farzamfar, Mehrnoosh. 2023. "The Right to Asylum under Securitised EU Law: A Real or an Illusory Right?" *Retfærd (Nordic Journal of Law & Justice)* 1/2023 (175): 11–23.

Farzamfar, Mehrnoosh, Janne Salminen, and Janna Tuominen. 2024. "Governmental Policies to Fight Pandemics: Defining the Boundaries of Legitimate Limitations on Fundamental Freedoms – National Report on Finland." In *Governmental Policies to Fight Pandemic*, by Arianna Vendaschi, 180–203. Leiden, the Netherlands: Brill Martinus Nijhoff Publishers.

Salminen, Janne, and Mehrnoosh Farzamfar. 2024. "Legislative Oversight in Finland during the States of Emergency of the COVID-19 Pandemic." In *COVID-19 and the Constitution: A Special Collection of Essays in Honour of the Thirtieth Anniversary of the Constitution of the Republic of Slovenia*, by Saša Zagorc and Samo Bardutzky, 457–476. Ljubljana, Slovenia: University of Ljubljana.

About the Author



Mehrnoosh Farzamfar (LL.D., LL.M., M.Soc.Sc) is a postdoctoral researcher in law at the Faculty of Law, University of Turku. In her ongoing research, she investigates the instrumentalisation of migration in EU law, analysing how security-driven narratives and crisis governance at the EU's external borders reshape asylum law, fundamental rights protection, and the rule of law. Alongside her research, she teaches migration law, supervises academic theses at several Finnish universities, and has published extensively on asylum, fundamental rights protection, and the intersection of migration and security in Europe.

Heading image by Mikhail Nilov on Pexels: <https://www.pexels.com/photo/a-law-book-on-a-wooden-desk-beside-papers-8731036/>

#Article 18 EU Charter

#crisis governance

#EU asylum law

#Finland's external (eastern) border of the EU

#instrumentalised migration

Similar Posts





19.05.2026 Ertuğrul Kaan Yıldırım

Beyond Räsänen: Hate Speech, Religious Liberty, and the Transnationalization of Conservative Legal Argument

The Päivi Räsänen case is likely to become a landmark in Finnish and European hate-speech jurisprudence. This case also serves as a remarkable example of the legal politics surrounding worldwide populist movements, illustrating not only a clash between hate speech...



12.05.2026 Hanna Hämäläinen

Law-making as a Component of the Rule of Law

The state of the rule of law has raised concerns in recent years, including in Finland. The debate has shifted from the challenges faced by countries such as Poland and Hungary, and the European Union's rule-of-law mechanisms, to our own...

Insights

Contact

insights@utu.fi

[Accessibility Statement](#)

[Privacy Notice](#)

ISSN 2984-5246