



# REPRESENTATION IN THE ASYLUM PROCESS

## Guide for representatives of minor asylum seekers



MAAHANMUUTTOVIRASTO  
MIGRATIONSVERKET  
FINNISH IMMIGRATION SERVICE



ERF



REFUGEE ADVICE CENTRE



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## UNACCOMPANIED MINOR ASYLUM SEEKERS

In 2008, Finland received 706 asylum applications from unaccompanied minors. In 2009, the figure was 544. These children, who arrive in Finland without their parents or a guardian, are in a particularly vulnerable position.

A child seeking international protection is not only an asylum seeker, but first and foremost a child who has lost his or her parents or guardian or has been separated from them . These children have made a long and often a dangerous journey to seek refuge. A minor asylum seeker may not have had any say in his or her own life in a long time. When an unaccompanied child is seeking asylum, it is important to bear in mind that even in the asylum process he or she must be treated first and foremost as a child and that special protection is needed because of the asylum seeker's young age.

The majority of these children come from countries at war or affected by armed conflict, or countries with a poor human rights record . The child may be running away not only from a war, but from other conflicts and dangers caused by the war. The child and the family may be suffering from persecution . Some children are running away from threats by their immediate or extended family, such as forced marriage, so-called honour-based violence, or mutilation. Sometimes, parents or other guardians may send their children away in order to secure a better life for them.

Whatever the reason behind the child leaving home country, unaccompanied minor asylum seekers have rarely had any influence in their distressed and vulnerable position.

## ASYLUM PROCESS DEVELOPMENT PROJECT (AN ERF PROJECT) 2009

The asylum process development project is a continuation of the asylum interview development project launched in 2008. The first year of the project involved an extensive review of the current state of the Finnish Immigration Service's asylum interview process and drawing up recommendations for its development.

In 2009, the project focused on responding to key areas of development which were detected during the review stage, namely the provision of information to asylum seekers and the training of the different participants of the interview and investigation process. Representatives of unaccompanied minor asylum seekers and other assisting parties voiced the need for guidelines for the representatives taking part in asylum investigations.

A group of experts representing different fields was set up to comment and make proposals on the content of the training material.

The project is implemented in cooperation with the Refugee Advice Centre and the Finnish Immigration Office. The project manager was Minna Siitonen from the Refugee Advice Centre. The project is partly funded by the European Refugee Fund (ERF).

## MINOR ASYLUM SEEKERS – SPECIAL CONSIDERATIONS

All unaccompanied minor asylum seekers entering Finland are normally assigned a representative. This person is the only lawful representative who can exercise the right of a guardian and as such has an important duty to ensure that the child's best interest is advanced as well as possible. An essential part of the representative's duties involves communicating with authorities, the counsel and other parties involved in the asylum process.

The advancement of the child's best interest means that he or she is always viewed and treated as an individual, taking into account his or her national, linguistic, religious and cultural background and, as much as possible, his or her individual needs, wishes and views. The representative must remember that throughout the asylum process, the child has the right to be heard in the matters concerning him or her, whenever possible, and taking into account the child's age and the level of development. The child has the right to discuss the matters confidentially, and he or she has the right to receive information about his or her rights and available services. The child also has the right to receive information about the asylum process, the tracing of his or her family, the situation in the home country or the country of habitual residence, and family reunification.

The representative should aim to ensure that the cooperation between different parties is as smooth as possible and, at the same time, take into account that he or she has been appointed to look after the child asylum seeker's interests during the process in the same way as a guardian would.

This guide is intended to offer basic information about the asylum process and the representative's duties, especially for those who are new to it.

# ASYLUM PROCESS

## Overview

Every person, whether child or adult, has the right to seek asylum outside his or her native country or country of habitual residence. The right to seek asylum is a human right found in the UN's Universal Declaration of Human Rights, the UN's Refugee Convention and the Finnish Aliens Act.

Applications for international protection by minors are handled according to the same process as those by adult asylum seekers. However, according to Section 6 of the Aliens Act, the applications of minors must take priority in processing, and when making a decision, the child's interests and issues concerning his or her development or health must be given special consideration. If the child is 12 years or older, he or she must be heard before the decision, unless it is deemed manifestly unnecessary. The child's views should be taken into account according to his or her age and development. A younger child may also be heard if he or she is mature enough for his or her views to be taken into consideration.

In the case of a minor, the onus of determining the grounds for international protection is proportional to his or her age and, in principle, cannot be as extensive as in the case of an adult asylum seeker.

Although decisions concerning minors are usually fast-tracked, process times may nevertheless be rather long. In 2008, the average processing time for minors' asylum applications was 115 days; in 2009, it increased to 192 days. The waiting period is stressful for any asylum seeker, but it can be much worse for children because of separation from parents or guardians the child's potentially traumatic experiences in the home country and during the journey, and their uncertainty about their future. The representative and other involved adults should constantly promote a safe and confidential environment, even in cases where it is unlikely that the child will be granted residence in Finland.

Each asylum application is investigated on its own merits. In investigating the need for international protection and deciding whether protection will be offered, the authorities are bound by the Finnish Aliens Act and all EC regulations, international conventions and resolutions to which Finland is a party.

In Finland, asylum applications can be submitted in person to the police or to border control authorities. Asylum cannot be sought from another country.

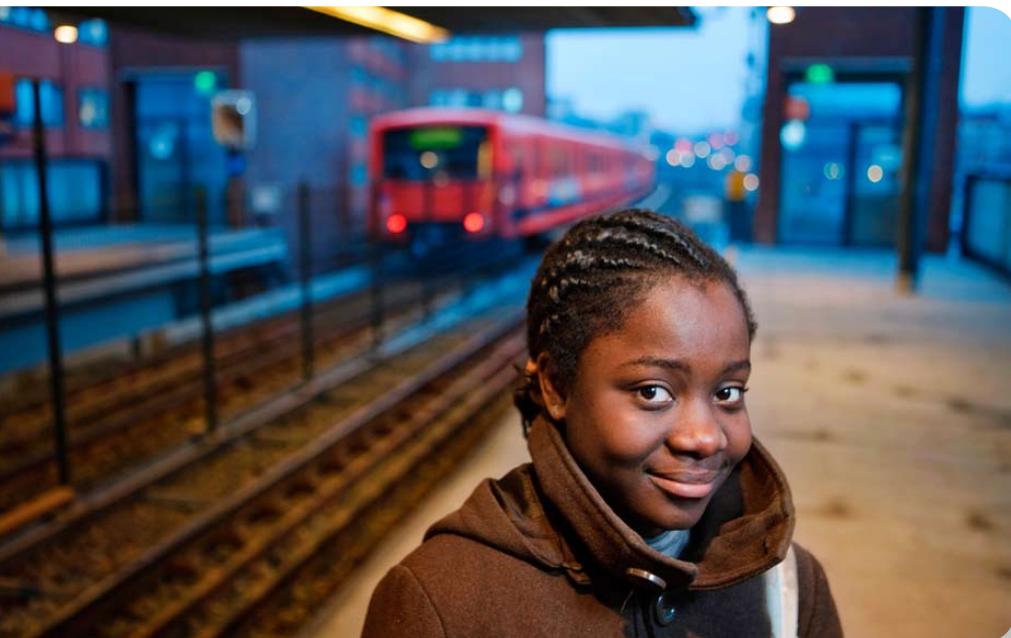
After the asylum claim has been submitted, the authorities will begin the asylum investigation. First, the police or the border control official carries out an investigation to determine the applicant's identity, travel route to Finland and method of entry.

The police or border control official will also determine whether the child has sought asylum in another EU member state or Norway, Iceland or Switzerland. They will also attempt to find out whether the child has a family member in any of these countries. Asylum applications by minors are primarily handled by the state where a family member of the child legally resides or, if the child does not have a family member in any of the signatory states, the application is handled by the state in which he or she first claimed asylum; in other words, illegal residence in another European country does not provide grounds for returning the child to that country.

If the asylum application is handled in Finland, the actual asylum interview is carried out by the Finnish Immigration Service or, in special cases, by the police. The purpose of the interview is to establish the reason for the child's departure from his or her homeland and any other grounds for granting the child residence in Finland. The Finnish Immigration Service decides whether the asylum application is approved on the basis of the child's account, documented evidence, and the information about the human rights and security situation in the child's home country. If the Finnish Immigration Service approves the application, the child is granted residence in Finland on the basis of refugee status, subsidiary need for protection or on other grounds. If the Finnish Immigration Service deems that there are no grounds to grant asylum, it rejects the application and usually at the same time decides whether the asylum seeker will be deported or refused entry, unless there are apparent grounds for not removing the asylum seeker. The Finnish Immigration Service submits the decision to the police authority of the asylum seeker's domicile; the police authority then notifies the asylum seeker of the decision. The asylum seeker has the right to appeal the decision to the Helsinki Administrative Court. Written instructions on how to appeal are attached to the decision. The Helsinki Administrative Court's decision can be appealed to the Supreme Administrative Court provided that the SAC grants leave to appeal. After all domestic forms of appeal have been exhausted, the matter can be appealed to the European Court of Human Rights.

The District Court assigns a representative to each unaccompanied minor seeking asylum in Finland. The representative has the duty to ensure that the child's interests are represented during the asylum process.

The asylum seeker has a legal right to an interpreter of his or her mother tongue or another language he or she understands. The asylum seeker also has the right to receive legal aid in his or her matter.



The representative of an unaccompanied minor asylum seeker must ensure that the child has access to an interpreter and a legal counsel in the process.

### **Asylum application**

The asylum application must be made in person, either to a border control official or a police authority. The application must be made either upon entry into the country or as soon as possible thereafter. In some cases, it is possible to submit the application at a later time; for example, if the situation in the applicant's home country changes during his or her residence in Finland.

The authority who receives the application provides an asylum application form for the asylum seeker to complete. The authority calls an interpreter present or organises telephone interpreting. The child is informed that he or she should fill in the form in his or her mother tongue, stating the main reasons that he or she is seeking asylum and sign the form. If the child cannot read or write, the official fills in the application on the child's behalf via the interpreter.

The official records the asylum seeker's personal details and nationality and obtains personal identification, i.e. a photograph and fingerprints, which are then stored in the Foreign Nationals' Identification Database and, for asylum seekers who are at least 14 years of age, in the Eurodac database. In addition, for asylum seekers who are at least 14 years of age, a Eurodac fingerprint comparison is carried out

to establish whether the asylum seeker has resided and/or applied for asylum in other European countries. The official can inspect the asylum seeker's luggage for identification documentation or travel documentation in order to establish his or her travel route.

Unaccompanied minor asylum seekers are requested to complete the Finnish Immigration Service's personal information form for the purpose of attempting to trace the child's guardians at a later time. If the child cannot read or write, he or she is given assistance in completing the form.

Minor asylum seekers are informed about the asylum process and their rights and obligations during the process. After the initial investigation, the child is arranged a place in a group home and transported there. The authority may detain the asylum seeker if after taking account of his or her personal and other circumstances, there are reasonable grounds to believe that he or she will prevent or considerably hinder the issue of a decision concerning him or her or the enforcement of a decision on removing him or her from the country by hiding or in some other way; holding him or her in detention is necessary for establishing his or her identity; taking account of his or her personal and other circumstances, there are reasonable grounds to believe that he or she will commit an offence in Finland (Aliens Act, Section 121). If the asylum seeker is under 18, the social authority's representative must be heard before detention.

Unaccompanied minor asylum seekers may be detained in the Metsälä detention unit on the above grounds; however, they must not be held in police detention, temporarily or otherwise.

### **Appointment of a representative**

When the minor asylum seeker has been accommodated in a group home, the home's director or social worker submits an application to the District Court for the appointment of a representative.

The reception centre contacts the representative and proposes that he or she represent the child. The representative meets the child in the group home, and the child and the representative both sign a consent to representation. During the same meeting, the representative tells the child about the representative's duties. It is important that the child understands that the representative has the duty to represent the child's interests and that the representative is involved in all stages of the asylum process. At this point, the representative should tell the child that his or her duties do not include the daily care and upbringing of the child. This meeting is introductory only, and the representative will not ask the child details about his or her background at this stage.

The representative should take into account that the child may be traumatised or have trust issues with adults. It may be difficult to estab-

lish rapport with such a child, and the representative needs to be patient. The representative must genuinely have time for the child's case, which may take a long time. For example, organising asylum interviews and hearings requires coordinating different people's schedules. Here, too, the child's interests take priority; a long and delayed process is not in the best interest of a child.

Once the representative has accepted the assignment, the reception centre submits the application to the District Court. The District Court submits its decision on the appointment of the representative to the group home, the representative and the Finnish Immigration Service.

It is very important that representatives, especially those who are new to the position, familiarise themselves with the asylum process in advance.

### **Before the interview**

The group home social worker conducts an initial interview with the child; the representative should also take part in this. In this meeting, the representative can gather information about the child's background and experiences, and the child won't necessarily have to repeat the information when meeting the legal counsel and other bodies, as the representative will be able to relay the information discussed in the initial interview. During this meeting, or in another meeting arranged separately, the representative can tell the child about the asylum process and the child's rights regarding legal assistance. According to the Asylum Guidelines, the reception centre must inform the asylum seeker about bodies offering legal assistance. In the case of an unaccompanied minor asylum seeker, the representative can inform the child about this matter and agree with the child on a meeting with a legal counsel. The representative must be present in the meeting with the legal counsel; this includes telephone consultations. The representative takes part in telephone meetings with the child in the reception centre.

The representative's role in the interview and hearing preparations is specifically to create a confidential atmosphere. The representative must explain to the child that it is crucial for the child's best interest that he or she can and will give truthful information about his or her background and experiences. The child may have had poor experiences with authorities in his or her home country or during the journey, which may make him or her fearful of the interview. It is important that the representative helps the child trust the Finnish authorities who are dealing with the case. The representative does not need to intervene in the case of inconsistencies in the child's account or generally assess which parts of the account are material in terms of

the grounds for residence. The legal counsel will assess which are the most relevant points and he or she may request further information regarding them.

The representative must inform the interviewer in advance of any issues related to the child's health which may affect the interview process. Similarly, if the gender of the interpreter or interviewer may have an effect on the child's ability to discuss the case, the representative must inform the authorities. The representative agrees on a schedule that best represents the child's interest. It is better to delay the interview - for example, if a female interpreter is not available - than to proceed regardless of the fact that the child may be too scared or ashamed to discuss the experiences. The child has the right to discuss matters in his or her mother tongue or another language in which he or she is fluent. Therefore the representative must ensure that the interpreter speaks the same language and dialect as the child. The representative should work with the reception centre and other parties to ensure that the child can use the same interpreter whenever possible. Using the same, professional interpreter promotes trust and the child won't have to discuss the matter via a different interpreter each time.

The child will feel more comfortable about the interview if the representative explains in advance what the interview entails. The representative should tell the child who will be present in the interview and what their duties are. In particular, it should be emphasised that all those present are bound to confidentiality and that the child can openly discuss his or her case. It is very important that the child understands the significance of the interview beforehand and that giving false information can be detrimental to his or her case. The child should be told before the interview that giving false information regarding his/her identity to an authority is a criminal offence. However, it can be emphasized that if the child has given false information to the authorities when applying for asylum, the matter can be rectified in the interview or by a written statement submitted to the authority.

The investigating authority and the representative agree on the hearing schedule, and the invitation to the hearing by the police or the border control authority is sent to the group home. The representative aims to organise a meeting between the child and the legal counsel before the hearing. In this meeting, they can discuss whether the legal counsel should be present in the hearing, again, taking account of the child's views. In practice, it may be difficult to organise the legal counsel's presence on short notice, and the meeting with the counsel should be organised as soon as possible after the representative has been appointed. The counsel may not get information about the time of the interview/hearing, and he or she can only offer assistance if requested by the representative.

## **Determination of identity, travel route and method of entry**

The police or the border control authority determines the asylum seeker's identity, travel route and entry into Finland in the hearing. The representative has the right to speak and request to be heard during the hearing. In order to ensure a smooth process, it should be agreed with the interviewer in advance at which stage the representative can request to speak. The representative ensures that the meeting is as comfortable for the child as possible, for example, by making sure that the child is not hungry or thirsty and that he or she visits the restroom before the hearing. The representative may request breaks during the hearing, and should do so if the interviewer doesn't propose any. Sufficient breaks are important not only for the child's well-being but also to ensure a high-quality performance by the interpreter.

Police interviews are regulated by provisions on police investigations laid out in the Police Act; investigations by the Border Guard to determine the identity, travel route and method of entry are carried out according to the applicable provisions on pre-trial investigations and police investigations.

The Decree on Criminal Investigations and Coercive Measures (*Asetus esitutkinnasta ja pakkokeinoista*) has separate provisions for the treatment of children in police investigations. According to the decree, children in police investigations must be treated according to their age and the level of development. If possible, investigation procedures involving children should be assigned to police officials who have specific experience or knowledge about such duties. Most larger police authorities have police officials who specialise in interviewing minor asylum seekers. The Border Control of the Helsinki-Vantaa Airport also has an investigator who specialises in interviewing minors.

The police or the Finnish Border Guard may hear the child's guardian or relative who lives or resides in Finland if this is necessary and the person agrees to be heard. Younger children can be interviewed in the group home. Very young children are not interviewed at all.

At the beginning of the hearing, the child is told his or her rights and obligations during the hearing. The police or the border guard official draws up an interview record using template U3A. The child's name, date of birth, nationality and date of entry into Finland are recorded on the first page. For identity verification purposes, the authorities need the child's family name(s) and given name(s), including former names; gender, date and place of birth, marital status, ethnic origin, nationality, citizenship, religion, vocation, address in the home country and in Finland, education, language proficiency, job history, social background and details of military service. The personal details and places of domicile of the child's family and household members are also recorded, as are details about deceased and/or missing family members. In the inter-

view of an unaccompanied minor asylum seeker, it is important to find out details about the child's previous household members and their current place of residence, and the child's living arrangements in the home country or country of permanent residence. It is worth noting that the guardian isn't necessarily the biological parent. Details of other people who have been involved in the child's life should also be recorded.

For the best interest of a minor asylum seeker, the Finnish Immigration Service should aim to trace his or her parent(s) or another person who has been responsible for the child without delay. Because of this tracing requirement, it is even more important at this point for the police or border guard authority to have collected details about the child's identity, previous living arrangements and family relations.

If the representative is aware that the child has a relative in Finland, the representative must ensure that the information is recorded in the interview record. The relative's personal details and place of residence are particularly important if the child has arrived in Finland after seeking asylum in another European country.

Many asylum seekers do not carry any form of identification, such as identity papers, a birth certificate, passport, etc.

For minor asylum seekers, additional questions are often required, about times and places in particular. Often questions need to be reformulated so that the child understands what he or she is being asked. The child is requested to provide details about his or her travel route and form of travel from the country of origin to Finland. The official records each part of the journey in the interview record along with the forms of transport and details of people smugglers, if any. The majority of children are sent from their home country to Europe with the assistance of people smugglers. It is very likely that the people smugglers and the family have told the child to not reveal any details about the people smuggler to the authorities. The representative should try to help the child understand that he or she can give truthful information without causing problems to his or her family members.

Normally, the police or the border control official will not question asylum seekers about the reasons for their departure. In other words, the grounds for asylum are addressed in broad terms only, and it is the Finnish Immigration Service's duty to determine the reasons why the child has left his or her home country or country of permanent residence. Nevertheless, the child is asked about his or her views in terms of possible refusal or prohibition of entry. The child may find this question confusing and frightening, and he or she should be informed that it is the official's duty to ask these questions to from all people seeking international protection.

All questions presented to the child and his or her replies are recorded in the interview protocol record. At the end of the hearing, the interpreter reads the protocol record aloud in the asylum seeker's

mother tongue. The representative ensures that the recorded information is accurate and that the child's answers are recorded in full. If the legal counsel is not present, the representative can make notes to record the outline of the interview. The representative has the right to request to speak and request corrections in the record. If the official refuses to make such corrections, the representative must demand that such refusal be recorded in the record. If the interviewer and the representative disagree on a correction or the hearing process in general, the disagreement must be solved without the child being present. In these situations, the representative can request a break; the matter can then be discussed while the child is in another room. The interviewer's duty is to work out any inconsistencies in the child's account, complying with the provisions of the Criminal Investigations Act and taking into account the child's level of development. The examination of inconsistencies is essential in order to reach the right decision in the case. For example, if the representative and the interviewer cannot agree on a particular entry on record, the representative should inform the child's legal counsel about it.

It is important to bear in mind at all times that it is in the child's best interest to maintain a positive atmosphere throughout the interview.

After the record has been checked, the child signs each page. If the child is under the age of 15, the representative also signs each page.



The interview date and time and duration are noted on the last page, which is then signed by the asylum seeker, the representative, the interviewer, the interpreter and the counsel, if present.

If no counsel is present, the representative must ensure that the examination record and any supporting documents are submitted to the counsel as soon as possible.

### **Forensic age estimation**

Sometimes, the age of an unaccompanied minor asylum seeker is not known. Few asylum seekers carry any reliable proof of their age. A child or young person may come from a country where it is impossible to obtain identity documents; the reason may also be persecution against the child or the family by authorities. Many children, especially very young ones, do not even know their age. People smugglers, guardians or other people who have helped the child out of the country may have advised the child to pretend that he or she is younger or older. If the police or the border control authority have doubts about the age given by the child, it may request a forensic estimation of the child's age. In Finland, this involves dental and wrist examinations. The examination requires consent from the representative and, if the child is over 15, from the child him/herself. A forensic estimation of age is an expert estimate of the person's calendar age; the final decision is made by the authority. If the forensic estimate differs from the age declared by the asylum seeker, he or she and the representative have the right to give a statement on the matter. In the future, age estimation will be governed by law. Representatives should familiarise themselves with the bill or consult a legal counsel, the police or the Finnish Immigration Service.

### **Before the asylum interview**

After the police or the border control official has conducted an interview concerning the asylum seeker's identity, travel route and method of entry, the application is transferred to the Finnish Immigration Service.

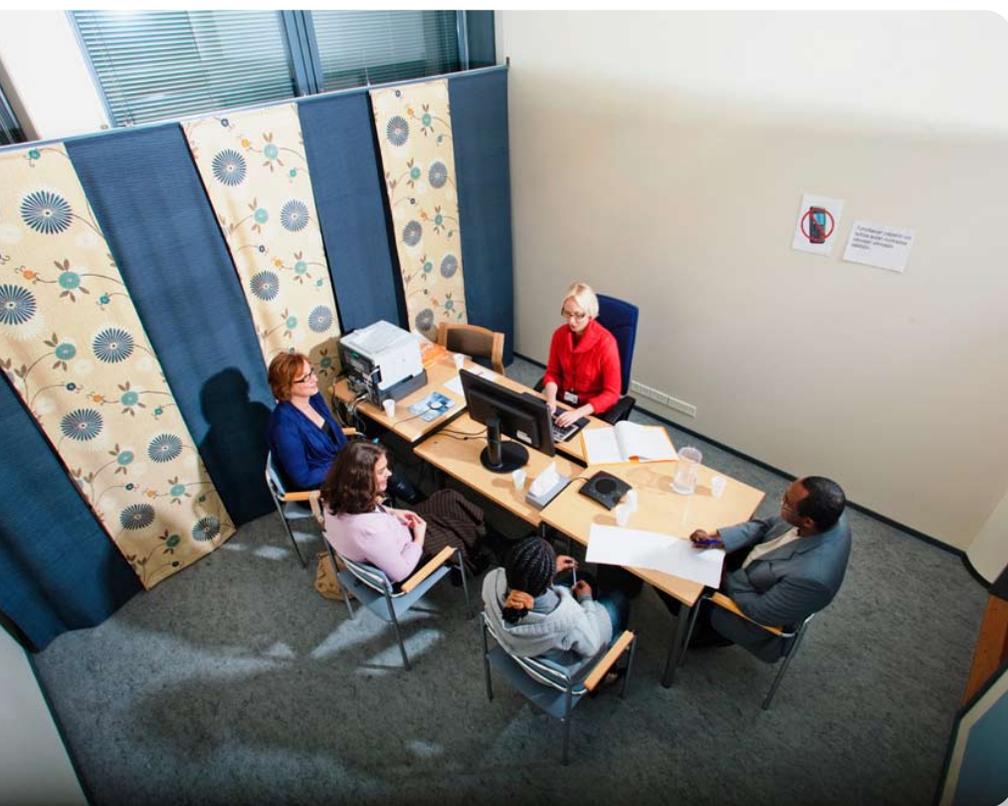
If the child hasn't met with a legal counsel, the meeting should be arranged before the asylum interview.

The Finnish Immigration Service interview coordinator proposes a preliminary schedule for the interview. The representative should inform the coordinator in advance if a legal counsel or a social worker will be present in the child's interview. Organising the interview involves coordinating several people's schedules, and it is important that the coordinator receive details of all participants well in advance. Participation by other people (e.g. relative, tutor, school assistant) must be discussed in advance with the senior inspector responsible for the interview.

It is advisable to carefully consider the number of people present in the interview in terms of the child's best interest. The child may find the presence of too many adults stressful. On the other hand, a familiar person such as a relative or the group home director can have a very important effect on how safe the child feels and how openly he or she can discuss difficult matters.

The representative can make a request concerning the interview interpreter to the interview coordinator.

Unaccompanied minor asylum seekers are interviewed in the Oulu, Imatra, Saimaa (Lappeenranta) and Helsinki sections of the Finnish Immigration Service. The representative must work out transport and the location of the office in advance, so that the interview can begin on schedule. The representative should have the interview coordinator's



phone number with him or another phone number of the Finnish Immigration Service which she can call if necessary.

The representative should ensure that the child gets the necessary supplies from the group home before leaving for the interview, e.g. a packed lunch or money for food, painkillers (for headaches etc.), taxi vouchers, etc.

## Asylum interview by the Finnish Immigration Service

The Finnish Immigration Service's task is to determine the reasons for the child's departure from his or her native country or country of permanent residence and the reasons why he or she cannot return to that country. The asylum interview often involves acquiring additional information about the child's identity, family relations and living conditions. The asylum interview is the single most important part of the asylum process. Other grounds for residence, such as family ties, employment or study, are also assessed as part of the interview.

In 2001, the Finnish Immigration Service and Save the Children Finland compiled guidelines for interviewing unaccompanied minor asylum seekers. Interviews are carried out by a senior inspector who specialises in interviewing unaccompanied minor asylum seekers.

Before the interview begins, the inspector explains to the child the reason for the interview and its purpose and necessity. The child is told about the interview process and the roles of different participants. The interpreter's duties and the participants' obligation to confidentiality are also explained. The representative and legal counsel (if present) agree with the interviewer at which stage of the interview they can ask additional questions. The group home social worker may also take part in the interview and provide his or her statement regarding the child's best interest. If the social worker cannot be present in the interview, he or she must submit the statement in writing to the Finnish Immigration Service. If the social worker's statement hasn't been submitted to the Finnish Immigration Service before the interview, the representative can provide the statement at the time of the interview.

The representative may request that the inspector show him or her the documentation regarding the child. In order to avoid interrupting the interview, the representative should not examine the documents during the actual interview; he or she can do so, for example, during a break.

The notices of the interview protocol cover page are read to the child, and he or she is informed of his or her rights and obligations during the interview.

At the beginning of the interview, the representative should ensure that details about the interview circumstances and the child's general state are entered in the interview record; for example, if the child has had to wake up very early to travel to the interview, whether he or she has managed to sleep the night before or if he or she has been especially nervous about the interview. Tiredness or feeling unwell may affect the child's ability to answer questions or focus when checking the content of the interview protocol at the end of the interview. The decision on the asylum application may be made by a person other than the interviewer; likewise, during a possible appeal process, the contents

of the record protocol are assessed by other people. For that reason, it is important that the general conditions and interview circumstances are described in the interview protocol.

The Finnish Immigration Service uses templates specifically drawn up for interviews of minors. There are different templates for interviewing children over and under the age of fifteen. Depending on the child's development and experiences which have led to the asylum claim, the over-15 form can be used for unaccompanied 12–14-year-olds. The asylum interview may last all day, and sometimes all of the matters cannot be discussed in one day, in which case the interview has to continue on another day. As the interview is a very significant event in terms of the rest of the child's life, it is important that all relevant matters are examined thoroughly. The representative must make sure that there are enough breaks in order to ensure that the child is alert and well so that he or she can give the interviewer as much information as possible. The child may not feel confident enough to request breaks, or he or she may want to carry on in order to end the interview as quickly as possible. For example, if the child is clearly trying to rush the interview, the representative can propose a break and ask the child if he or she is hungry, thirsty or not feeling well. Sometimes the child may not have the energy to discuss his or her experiences or he or she may become so overwhelmed with emotion that the interview has to be postponed to another day.

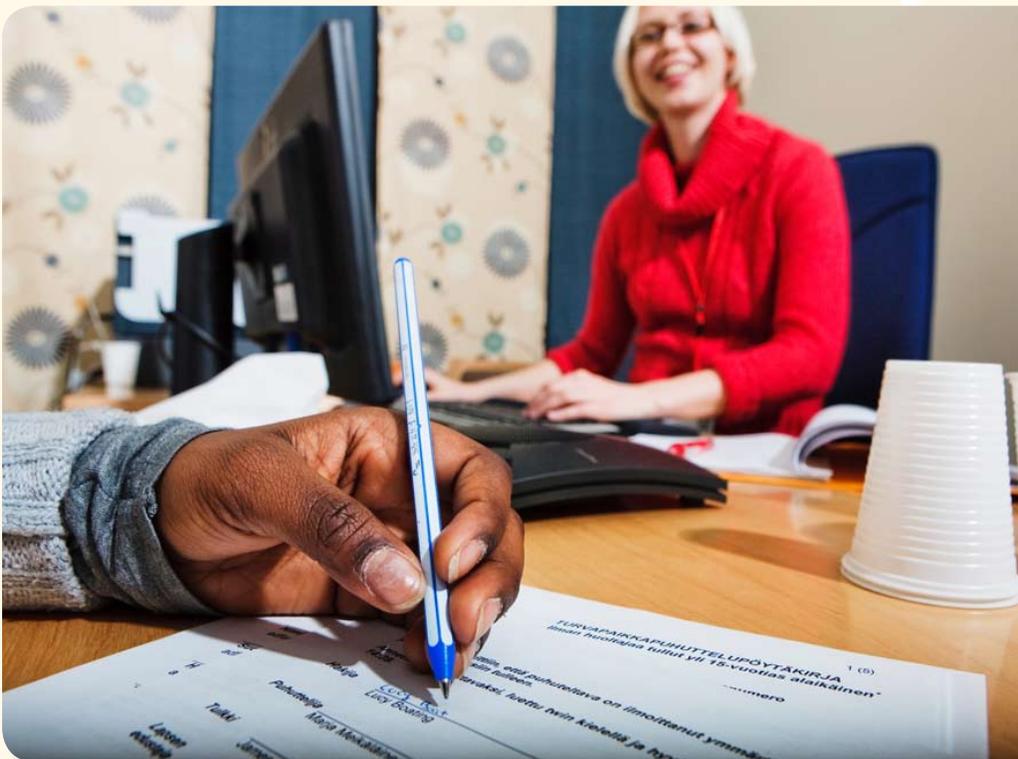
The representative can explain to the child beforehand that it is fine to show feelings during the interview; for example, that it is okay to cry. Breaks can be held in these situations. The main thing is that the things which have happened to the child and his or her family are told and noted with sufficient detail.

A sufficient number of breaks is also vital for a successful and thorough interview. If the representative or the child wishes to use the interpreter during the break, this must be agreed on with the interpreter and the interviewer. When the interpreter is used during the break, the matter requiring interpretation can be discussed first, and the actual break can be held afterwards. It is very important that the interpreter does not have to interpret during his or her break.

The Finnish Immigration Service asks the representative's and the child's views on tracing the child's family members. If the representative is aware of any facts which indicate that tracing the family members would not be in the child's best interest, the representative must inform the interviewer. In any case, the Finnish Immigration Service has the right to start the tracing process; however, it is not necessarily carried out. The representative may present a request with the Finnish Red Cross to start a search process to find family members, if the child so desires. The search process may take a very long time and it is advisable to start it early if the child expresses the wish to do so. The representative should explain to the child that the search process doesn't always yield results.

If the Red Cross search process has been initiated before the interview, it is advisable that the representative inform the Finnish Immigration Service. If the child has managed to contact a missing guardian through other channels, informing the Finnish Immigration Service is again advisable.

At the end of the interview, the protocol is inspected and the child and the representative can make corrections and clarifications. If anything in the record is unclear, the matter must be resolved before the protocol is signed. The interviewer provides an estimate for the decision schedule, and this is recorded in the interview protocol. The asylum seeker signs each page, and the last page is signed by the representative, the interviewer, the interpreter and the legal counsel (if present). If the child is under 15, both the representative and the child sign each page. The representative is given a copy of the interview protocol.



In addition to the child, the Finnish Immigration Service may hear his or her relative or a friend living in Finland, if the person agrees to this and if this is deemed to be in the child's best interest. The child's representative is asked whether the representative consents to the relative or friend being heard. The relative or friend may have information about the child's family or living conditions which the child is not aware of or unable to discuss. Hearing this person may also yield information about the whereabouts of the child's family, which can be helpful in the decision about the tracing process.

## **Before the decision**

After the Finnish Immigration Service's asylum interview, the representative should contact the legal counsel if the counsel was not present in the interview. A copy of the interview protocol must be submitted to the legal counsel as soon as possible after the interview. The counsel examines the protocol and assesses whether additional statements should be submitted to the Finnish Immigration Service. Additional statements can be submitted up until the decision. These may be necessary if additional information is required, e.g. identity documentation from the child's home country, medical certificates, or proof of persecution against the child or his or her guardian. The representative may him/herself submit additional details about the child's case to the Finnish Immigration Service or any new information whose disclosure the representative believes to be in the child's best interest. Additional statements should be submitted via the legal counsel, if the child has one.

## **Notification of decision**

After the Finnish Immigration Service has made its decision on the asylum application, the decision is submitted to the police authority of the child's domicile for further notification. The police calls the child and the representative to hear the decision and provides an interpreter. Unless the asylum seeker has reached the legal age, the representative must always be present when the decision is given. The representative cannot authorise another person to be present on his or her behalf.

Written appeal instructions are enclosed with the Finnish Immigration Service's decision. If an appeal is intended, the representative must arrange to meet an attorney. It is advisable to send the decision to the attorney for review before the meeting. The attorney can assess whether there are grounds for appeal. The appeal must be submitted to Helsinki Administrative Court within 30 days of receiving notice of the decision. The 30-day period is counted from the date of giving notice, not from the date of decision. The child has the right to remain in Finland while waiting for the Helsinki Administrative Court's decision.

However, if the decision is processed by accelerated procedure or it pertains to refusal of entry and return to another country which has adopted the Dublin Regulation, the enforcement of the decision can be fairly imminent. In this case, an application for the suspension of the decision must be submitted to the Helsinki Administrative Court in conjunction with the appeal. If the court orders the enforcement to be suspended, the child can remain in Finland until the court has reconsidered the matter or given its final ruling. If the representative

is not sure whether the decision is for immediate enforcement, he or she should verify the matter with the police or the legal counsel.

The decision is served to the asylum seeker and the representative only; it is not sent to the legal counsel. It is the representative's duty to contact the counsel and inform him or her of the decision. If an appeal is intended, the representative must arrange a meeting with the counsel well in advance so that the counsel has time to meet the child and the representative and to submit the appeal by the deadline.

## **Affirmative decision**

When the Finnish Immigration Service grants the child asylum or residence on other grounds, the representative goes over the decision with the child. Affirmative decisions may also be appealed to the Helsinki Administrative Court. In any case, the representative must organise the measures related to arranging the child's residence. In order to receive a Finnish ID number, the child must register at the register office and the representative must sign the application for domicile. For representees who are at least 17 years old, the Employment and Economic Development Centre draws up an integration plan which is signed by the representative. If the child does not have and cannot obtain a valid passport from his or her home country, the representative and the child apply for an alien's passport at the police station. All children who are granted asylum receive a refugee's travel document. The residence permit is recorded on the passport or the travel document. The child may apply for a Finnish identity card if his or her identity has been verified. In addition, the representative ensures that the child has access to social security; in other words, contact with Kela is also required.

A child who has been granted continuous residence (an "A" Permit; asylum, residence on the grounds of subsidiary protection, humanitarian protection or on personal grounds) can apply for Finnish residence for his or her family members on the grounds of family ties. The representative completes the forms with the child, signs and submits them to the district police. The Finnish embassy of the country in question hears the family members. DNA tests can be done on the child and the family members seeking residence to verify kinship.

If the child has been granted residence on personal grounds, the family reunification application is subject to a fee. The representative can consult the social worker whether discretionary income support is available for the application fees.

Application for reunification should be made as soon as the child has received the residence permit and an ID number. If the child turns 18 before the decision is given, family reunification is no longer possible. The reunification process may take a long time, and it is advisable to prepare the child for a potentially long wait.

## **Appeals before Helsinki Administrative Court and the Supreme Administrative Court**

The asylum seeker can appeal the Finnish Immigration Service's decision to the Helsinki Administrative Court. The asylum seeker may appeal him/herself or, as is normal practice, via an attorney. The Helsinki Administrative Court reviews the decision and issues its ruling. If necessary, the administrative court may hold an oral hearing of the parties, witnesses and experts. An oral hearing is part of the matter's handling and preparation, and the process may continue after the hearing. The decision is made during a court session at a later date.

Oral hearings are very rare in cases involving unaccompanied minor asylum seekers.

If the administrative court issues a negative ruling, the decision can be further appealed to the Supreme Administrative Court. If the Supreme Administrative Court grants leave to appeal, it may hold an oral hearing similar to that of Helsinki Administrative Court by the same procedure.

## **Refusal of entry**

An unaccompanied child can be refused entry only if it has been verified that he or she will be appropriately received in the country of origin. This is to ensure the continuity of protection and care for the child's welfare. In practice, this means that the child must have a guardian in the home country, or at the very least a children's home or another institution which can look after the child. If the Finnish Immigration Service does not grant residence and the decision is not overturned by the Helsinki Administrative Court, the child is returned to his or her home country, country of permanent residence, or the country responsible for the asylum claim. It is in the child's best interest to explain and discuss the matter with him or her in order to mentally prepare the child.

## **The Dublin procedure**

The Dublin procedure refers to the procedure whereby only one EU member state or Norway, Iceland or Switzerland can be responsible for examining the asylum claim.

For asylum claims by minors, the premise is that the application be examined by one state which is determined on the basis of the Dublin Regulation. If it appears that the child has sought asylum in another EU member state or Norway, Iceland or Switzerland or he or she has a family member who legally resides in one of these countries, the Finnish Immigration Service will not in most cases examine the application in Finland. The Dublin procedure is not applied to asylum claims by children under 14; these applications will be examined by Finland.

The age limit is based on the fact that children under the age of 14 are not fingerprinted for the Eurodac system.

The asylum application of an unaccompanied minor is the responsibility of the country where a relative of the child legally resides, if this is in the child's best interest. If the child has no relatives in any of the signatory countries, the asylum claim is the responsibility of the state in which the child first sought international protection. According to the Aliens Act, family members include the spouse of a person living in Finland and an unmarried minor who is under 18 and whose guardian is a person residing in Finland or the spouse of such a person. If the person residing in Finland is a minor, the family member is his or her guardian. A family member can also be a same-gender partner, if the partnership has been registered with a national authority.

If the child has relatives in another state which has adopted the Dublin Agreement, the child must be united with the relatives unless it is against his or her best interest.

In addition, any state which has adopted the Dublin Agreement may agree to examine the asylum application even if it is not the responsible state.

In summary, in cases involving unaccompanied minor asylum seekers, the key issues are whether the child has a family member in another member state and in which country he or she has first claimed asylum. In the latter matter, the procedure is completely different from that of adult asylum seekers. For adult asylum seekers, the state responsible under the Dublin Regulation is determined on the basis of Articles 7-14. Therefore, another state may be responsible for processing the asylum claim, for example, if a family member of the asylum seeker resides in another Dublin Regulation state as a refugee or asylum seeker. The following questions are important when determining the responsible state: in which Dublin Regulation state the person first claimed asylum, whether one of these states has granted him or her a visa or residence permit, and whether he or she has entered Finland via one of these countries or has been found residing illegally in one of these countries.

In some cases, during the asylum investigation it becomes apparent that a person who is registered as an unaccompanied minor in Finland has been registered in another Dublin Regulation state as an adult, either when claiming asylum or in another context, which assigns the responsibility to another state. If the person who claims asylum in Finland as a minor has not presented any official proof of identity to the Finnish authorities, the asylum seeker is generally considered an adult asylum seeker on the basis of the date of birth declared by the asylum seeker in the first state or registered there. In most cases, the asylum seeker is considered to be an adult if this is indicated by the forensic age estimate.

In this case, the authority's decision will address the conflicting age information given by the asylum seeker. Nevertheless, whether the asylum seeker is considered an adult or a minor in the Dublin process is based on the consideration of all facts during decision-making. Facts to be considered include age information given by the asylum seeker in other member states, especially in the first one; other states' decisions concerning the responsible state, documentation concerning the asylum seeker's age, the results of forensic age examination, etc.

## **Victims of trafficking on human beings**

Some unaccompanied minors arriving in Finland can be child victims of human trafficking. The child may have been forced to beg or to work as a domestic servant or may have been subjected to sexual abuse in exchange for accommodation or food. Some children are recruited as soldiers or drug mules. The children may have been victimised in the home country, but they may also have been victimised during the journey. When determining whether the child is a victim of human trafficking, the key issue is whether the victim has been repressed by the trafficker and whether another person has benefited financially. The victim may find it very difficult to discuss his or her experiences because he or she feels ashamed. If the representative finds any indication of human trafficking, the matter should be discussed with the police, a social worker and an attorney.

## **Detention of a minor**

The police or the Border Guard may decide to detain an unaccompanied minor asylum seeker on the basis of the Aliens Act. The police authority or the border guard authority proposing the detention first contacts the social services and requests the social authority's opinion, which is then recorded in the detention decision. If the child is detained at the time of entry into Finland or in conjunction with the asylum claim, the district court must assign the child a representative in the first instance. Often the appointment is made in conjunction with the detention hearing. If detention is carried out in conjunction with deportation procedure, the deciding authority contacts the representative.

The representative should liaise with social services and others to establish whether the child can be placed in the "closed unit" of the child protection institution instead of the detention unit.

A detention hearing is held in the District Court within four days of making the decision to detain. If detention continues, the matter is heard in court every two weeks. The representative must be present in the court hearing and he or she has the right to present his or her view on the detention.

The detention unit is a closed unit which operates in conjunction with the Metsälä reception centre in Helsinki. The detention unit is not a prison, and the staff consists of coordinators, who have usually trained as social workers. The child has the right to receive visitors while in detention.

### **Confidentiality**

The representative's obligation to confidentiality is regulated by the Guardianship Services Act. According to Section 92, the representative must not disclose matters which he or she has learned in the performance of his or her duties, if the matter is to be kept secret in order to protect the privacy of an individual.

The representative may, at his or her discretion, provide confidential information to relevant authorities, e.g. about the child's health. The representative must first discuss the matter with the child.

When dealing with the Finnish Immigration Service via email, the representative should use the child's customer number instead of his or her name for data security reasons, to avoid sending the child's personal details in unencrypted form.

### **Access to information**

The documents concerning the child's international protection can be accessed by the concerned parties only. In addition, the representative has the right to access confidential documents concerning the child, with the exception of documents which even the party concerned cannot access. In practice, this only includes the reports of the Finnish Security Police, and only to the extent that they are considered national security secrets.

### **Change of legal counsel**

The cooperation between the representative, the child and the legal counsel must be based on trust. If cooperation with the counsel is not working and the representative is not satisfied with the counsel's service, the matter should be discussed with the reception centre. The representative has the right to change counsel, but the matter should be first agreed with the reception centre, if possible. If the counsel is changed, the previous counsel should naturally be informed. The counsel submits the child's file to the representative or, by the representative's request and power of attorney, to the new counsel.

### **Cessation of representation**

The representation automatically ceases when the child becomes of legal age. The representative gives all documentation concerning the

child to him or her. However, if the child is determined to be a legal adult based on a forensic age estimation examination, the representation duty does not automatically cease until the representative has been relieved of the duty by the District Court.

The representative may, for a weighty reason, request to be relieved of the representation duty, for example, for health reasons or if the child or the representative moves to another locality and the travel distance becomes unreasonable.

Representation ceases by separate application when the child's parents enter the country, unless it is against the child's best interest.

# RESIDENCE PERMITS

## Asylum

Asylum can be granted if the asylum seeker resides outside his or her native country or country of permanent residence for the reason that he or she has reasonable grounds to fear persecution in that country due to his or her ethnic origin, religion, nationality, belonging to a particular social group, or political views. In other words, asylum means that the asylum seeker is in danger in that country specifically on personal grounds. Another prerequisite is that, owing to that fear, he or she cannot seek protection from the state in question. Those who are granted asylum have refugee status in Finland.

## Residence permit on the grounds of subsidiary protection

If the prerequisites for asylum are not fulfilled, the asylum seeker may be granted residence on the basis of subsidiary protection. This may be granted if the asylum seeker is faced with the death penalty, execution, torture or other inhuman or degrading treatment or punishment in his or her home country. Subsidiary protection can be granted if the home country or country of permanent residence has an ongoing armed conflict which may cause severe and personal danger. Armed conflicts may be due to an international conflict or internal violence.

## Residence permit on the grounds of humanitarian protection

Even if the prerequisites for asylum or subsidiary protection are not fulfilled, a person seeking international protection, i.e. an asylum seeker, can be granted a residence permit on the basis of humanitarian protection. A residence permit is granted if the asylum seeker cannot return to his or her home country or country of permanent residence due to an environmental disaster or poor security due to an armed conflict or a poor human rights record in that country.

## OTHER GROUNDS FOR RESIDENCE PERMITS

### Residence permit on compassionate grounds

A residence permit may be granted if its denial would be manifestly unreasonable due to the asylum seeker's health, ties in Finland or other personal grounds. Particular considerations are the conditions the asylum seeker would face in the home country, or his or her vulnerable status.

## **Issuing a residence for a victim of trafficking on human beings**

In Finland, victims of human trafficking are primarily granted temporary residence. A prerequisite is that his or her residence in Finland is justified for on account of the pre-trial investigation or a court proceedings concerning trafficking in human beings, that he or she cooperates with the authorities so that those suspected of trafficking in human beings can be caught and that he or she no longer has any ties with those suspected of trafficking in human beings. If a victim is in a particularly vulnerable position, he or she may be granted continuous residence regardless of whether he or she cooperates with authorities.

## **Temporary residence granted in cases where aliens cannot be removed from the country (B Permit)**

Temporary residence can be granted if, for a temporary health-related reason, the asylum seeker cannot be returned to his or her home country or if deportation is prevented for practical reasons, e.g. because of the lack of transport links. A person who is granted temporary residence due to hindered deportation is not entitled to family reunification.

## TYPES OF RESIDENCE PERMITS

A continuous residence permit is coded with the letter A. Permits which are granted on the basis of refugee status or subsidiary protection are initially granted for four years. After four years of residence in the country, the permit is changed to a permanent one (P), if the grounds for the permit still exists.

Continuous residence permits which are granted on the basis of reasons other than refugee status or subsidiary status are initially granted for one year and then, if the grounds for extension exist, the permit is extended, normally for three years. After four years of continuous residence with residence permit, the permit becomes permanent.

Temporary residence permits are granted for max. one year at a time. After two years of continuous residence, a continuous residence permit is granted if the grounds for granting the previous temporary permit remain.

