

Annika Parsons

The best interests of the
child in asylum and refugee
procedures in Finland

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THE BEST INTERESTS OF THE CHILD
IN ASYLUM AND REFUGEE PROCEDURES IN FINLAND

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Foreword

As I am writing this, the UN Convention on the Rights of the Child has just seen its 20th anniversary. While celebrating this anniversary, Finland reiterated its commitment to the Convention on the Rights of the Child, and in particular to the principle of the child's best interests that is central to it.

How can the principle of the child's best interests be applied to children seeking asylum in Finland? Do the basic rights of the child also cover their situation?

The Government Programme of Prime Minister Matti Vanhanen's second Cabinet sets as its goal to prepare a report on how the interests of children are recognised in the decision-making process concerning minor asylum seekers and refugees and in their reception. This report was drawn up by the Office of the Ombudsman for Minorities with funding from the Ministry of the Interior.

The results show that this report was badly needed. The report indicates that the principle of the child's best interests is not adequately recognised in decision-making concerning minor asylum seekers.

The first step should be to perceive minor asylum seekers as children – children who are in a special and vulnerable position, but children nevertheless. The report indicates that when we talk about unaccompanied minor asylum seekers, the operative word is 'asylum seeker', possibly overshadowing efforts to identify the special needs of the child. Pursuant to the UN Convention on the Rights of the Child, however, each and every person under 18 years of age should be treated as a child. Whenever necessary, they should also have access to support measures under the Child Welfare Act.

In the report, unaccompanied minor asylum seekers themselves were given a voice. It turned out that the young people's understanding of the procedures and processes concerning them was rather vague. From their perspective, the procedure involves many actors, a great number of processes and numerous relocations. Their ideas of their own rights and the tasks of each person and authority were rather disorganised. When taking steps to improve procedures, these should be looked at from the point of view of children and young people – to ensure that they can feel sufficiently safe in Finland. The interviews reflect the insecurity experienced by unaccompanied children and young people.

The issue of determining the age of minor asylum seekers is highly topical. A proposal concerning this issue is included in the Government proposal for amending the Aliens Act that is currently being debated. The Ombudsman for Minorities agrees with the necessity to legislate on age determination. In other respects, this issue is anything but simple. The author of this report analysed all age determination statements produced within a period of over a year. They

clearly show the limitations of age determination methods based on such as dental development – these are estimates, not exact results. The Ombudsman for Minorities feels that the child's development should be assessed in a more comprehensive manner.

The report's results indicate that one essential dilemma in terms of children's rights is associated with the Dublin Regulation, under which a minor asylum seeker who has sought asylum in another EU country before arriving in Finland can be returned to that country. On the other hand, pursuant to the UN Convention on the Rights of the Child and also the Aliens Act, decision-making concerning a child should be guided by the principle of the child's best interests. In other words, before a minor is returned, his or her situation should be assessed from the perspective of the child's best interest. This should particularly apply to cases where the child would be returned to a country of high risk due to overloading of procedures, or which, based on such as interviews with the child, involve particular risk factors. If the investigation is not performed from this perspective, we cannot exclude the possibility of children thus returned falling prey to human trafficking or associated phenomena.

The report also focuses attention on such as developing a representative system, assistance, detention and family reunification. Particular attention should be paid on those in the most vulnerable position: children who have been victims of torture urgently need expert help.

The rights of the child are integrated in the Finnish legal system. However, scope for improvement still remains in the way there are applied to minor asylum seekers and refugees. The best interests of the child as such is rather a generic concept, which derives its sense from meticulously assessing what is in the best interests of the child in each situation when making decisions. In terms of developing the procedures, systematic and long-term consideration of the perspective of the child's best interests will be needed – also in circumstances of an economic downturn.

I would like to extend my thanks to the Ministry of the Interior for funding this report, all interviewees and partners for their contributions to it, and very particularly to its author, Senior Officer Annika Parsons, for her enthusiastic and uncompromising approach to preparing it. It is my hope that its results and recommendations will lay a foundation for further efforts to safeguard the rights of vulnerable minor asylum seekers.

Helsinki, 12 December 2009

Johanna Suurpää

Ombudsman for Minorities

ABSTRACT

This report on the realisation of the child's best interests in decisions concerning children seeking asylum and refugee children was compiled by the office of the Ombudsman for Minorities. The main emphasis of the report is on the status and treatment of unaccompanied minors seeking asylum in Finland; the treatment of accompanied children seeking asylum is dealt with in as far as it differs from the treatment of unaccompanied children. The parties heard in drafting the report were the authorities involved in the asylum procedure and reception of minors, the representatives of organisations dealing with issues relating to the child's best interests and underage asylum seekers themselves. The interviews were used to establish how the asylum procedure is implemented in practice.

International conventions and regulations, the most important of which being the United Nations Convention on the Rights of the Child, place Finland under an obligation to give primary consideration to the best interests of the child in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies. Moreover, Finland has undertaken a commitment to treat children seeking asylum in the first place as children, to secure their right to life, the conditions for survival and development, protection and care, their own identity and equal, non-discriminatory treatment. Finland is further committed to prevent the kidnapping, sale and trafficking of children and all forms of abuse and exploitation of children, and to protect victims of human trafficking.

In practice the best interests of the child are not always evaluated sufficiently in the asylum procedure, or they are not the primary evaluation criteria. In an unfortunately large number of cases, economic factors weigh more heavily than the child's interests, and decisions are made on the basis of economic motives. A strong climate of suspicion prevails in society, in which children are stigmatised and their stories questioned for the simple reason that they are asylum seekers. In the asylum procedure, children are treated primarily as asylum seekers and only in the second place as children. Children may be refused the right to their identity or the possibility of family reunification without assessment of the child's best interests.

In an asylum procedure where the application is not materially handled in Finland, children are returned to other EU Member States without sufficient evaluation of the child's best interests or of their position as or risk of becoming a victim of human trafficking. Among these cases there are,

however, extremely vulnerable children, regarding whom it is suspected that they may have been victimised in another Member State, for example, due to shortcomings in reception centre conditions in the state in question, or they may for the same reason be at a very grave risk of becoming victims if returned to that state.

With increasing frequency the age given by the child is questioned, and on the other hand, the required consent to age determination tests is not in practice based on voluntary agreement, but on compulsion experienced by the child. In public debate, unaccompanied children seeking asylum have been stigmatised: it is claimed that they are abusing the asylum procedure and are actually reached 18 years of age. In fact, however, the majority of the applicants are under 18 years of age.

The asylum procedure for minors is an extremely complex and long drawn out process, during which the adults around the child are constantly changing. The child's treatment and the actions of authorities vary very much depending on where in Finland the child lives. After receiving a residence permit, fewer and fewer children have the possibility of family reunification. There is no after-care for young people after they have reached 18 years of age, and they are no longer within the scope of reception.

More attention should be paid in Finland to evaluating the child's best interests in decisions concerning minors seeking asylum and refugee children. In the current practice the child's interests are not always given sufficient consideration. Although the child's best interests are presupposed to be the primary consideration in decisions concerning the child, this is not always the case in practice.

I INTRODUCTION

1. Subject and structure of the report

The Government Programme of Prime Minister Matti Vanhanen's Second Cabinet contains a proposal on a report on the recognition of the child's best interests in decisions on minor asylum seekers and refugees. According to the Government Programme, the report should pay special attention to the status and treatment of unaccompanied minors seeking asylum in Finland. Appropriations earmarked for implementing the immigration policy programme were allocated for the drafting of the report. The report was drawn up by the Office of the Ombudsman for Minorities in the period 1 May–30 Nov 2009.

The duties of the Ombudsman for Minorities include the prevention of ethnic discrimination, the promotion of good ethnic relations, securing the status and rights of ethnic minorities and aliens in Finland, supervision of the principle of non-discrimination on ethnic grounds and reporting on human trafficking issues. In addition, the Ombudsman's duties include conducting independent surveys relating to ethnic discrimination, reporting on the implementation of equality, proposing initiatives on any discrimination observed and for remedying the fault, and exercising the right provided in the Aliens Act to be heard in matters relating to asylum seekers or in matters regarding the deportation of an alien.¹ The examination of the best interests of the child in question has been carried by the Office of the Ombudsman for Minorities, which is justified on grounds of the Ombudsman's independent and impartial status.

This report reviews the recognition of the best interests of the child in decisions concerning minor asylum seekers and refugees as written into the Government Programme, giving special attention to the status and treatment of unaccompanied minors seeking asylum in Finland. In the report decisions concerning minors refer to all decisions made by authorities concerning children during the asylum procedure, not only to the asylum decision, which is only one decision among many. The issue examined is thus the whole process of submitting an asylum application, from the placing of minors, the choice of representative and the actions of the representatives and assisting persons and the receiving and offering of support measures, to questioning by police, briefing by the Immigration Service and receipt of

¹ Act on the Ombudsman for Minorities and the Discrimination Board 13.7.2001/660, sections 1 and 2; Aliens Act 30.4.2004/301, section 209.

the decision on granting asylum. In addition, the report will deal with how the child's best interests are realised after receiving the decision on asylum, for example, if the child is taken into custody, in the case of reunification of a minor asylum seeker's family and in after-care. The report will also take up the situation of unaccompanied minors seeking asylum in the Dublin procedure and the return of minors in these cases to another state party where the child has been registered or applied for asylum before arrival in Finland. In this context, the risk of becoming a victim of human trafficking and identification of victims is also to be examined. The process of appeal against an asylum decision has been excluded from the scope of this report.

The survey will focus on the asylum procedure for children seeking asylum in Finland, from the perspective of how well the child's best interests are taken into account in the prevailing practice as laid down in international conventions and legislation. The child's best interests are also examined as to whether the national legislation currently in force and/or asylum practice involves risks regarding legal protection and how the asylum procedure should be improved in order to ensure that the child's best interests are safeguarded in the best possible way. The situation of minor asylum seekers accompanied by parents or other guardians is dealt with in the report from the same perspectives, but the scope is slightly narrower than for unaccompanied minors.

The report is divided into six chapters. After the Introduction, Chapter II of the report examines the rights of the child and the concept of the "the child's best interests" in the light of international conventions and international regulations. Chapter III reviews Finnish national legislation in as far as it applies to the rights of the child and the child's best interests. Both international and national regulations are reviewed only in as far as they help to define the child's best interests and the rights of the child. The report will thus not focus on the actual status of refugees or on refugee-related legislation. Chapter IV of the report reviews the asylum procedure for unaccompanied minors arriving in Finland to seek asylum. The asylum procedure is explained step by step, in order to help the reader to form a clear picture of the complex process and the intricate web of different actors involved, and to understand the current practice in the asylum procedure for minor asylum seekers. Opening up the procedure into different stages will also help the readers to find points of interest to themselves in the report. Chapter V reviews the asylum procedure for minor asylum seekers arriving in Finland accompanied by a parent or guardian only to the extent that the process differs from that for children who have arrived unaccompanied. Chapter VI deals with the child's best interests and their realisation in the current

asylum procedure. This chapter draws attention to the challenges faced in the present situation and presents comments and recommendations, both in principle and in more detail.

2. Material of the report

The parties heard in drafting the report are the actors involved in the asylum procedure and the reception of minors, the representatives of authorities and organisations dealing with issues relating to the best interests of the child and underage asylum seekers themselves. By hearing different parties, a picture has been formed of how the asylum procedure for minor asylum seekers, especially those who have arrived unaccompanied, is realised in practice at the present time and how those involved with the applicants see the realisation of the child's best interests in the asylum procedure. Unaccompanied minors seeking asylum in Finland have also been heard in order to ensure that the experiences and views of the children themselves are taken into account.

The following parties were consulted in drafting the report:

- Finnish Immigration Service, employees of Helsinki 2 Section, Susanne Tengman, Head of Section, Ritva Laakso-Liukkonen, Senior Adviser, Monica Harju, Senior Adviser, Aila Vanhanen, Departmental Secretary, Ulla Harmonen, Senior Adviser, Johanna Väänänen, Senior Adviser, Paula Selin and the employees of the Dublin Section: Kukka Krüger, Head of Section and Marja Nevala, Head of Section,
- Helsinki Police Department, Malmi Police District, Senior Constable Nina Gestrin and Senior Constable Nina Torkko,
- Finnish Border Guard, Headquarters, Major Ilkka Herranen,
- Finnish Border Guard, Gulf of Finland Coast Guard District, Helsinki-Vantaa Border Control Unit, Lieutenant, Janne Ryönäkoski, Investigation Leader
- Lasten perusoikeudet – Children's Fundamental Rights ry, Helena Molander, Ph.D (Social Sciences)
- Pakolaisneuvonta ry – Refugee Advice Centre, Eva Lindberg, Executive Director, Marjaana Laine, Senior Lawyer, and Kirsi Hytinantti, Senior Lawyer
- Espoo Reception Centre, Group Home Siltatalo, Mari Pyy, manager, Riitta Moghaddam social worker and Hanna Londo, social worker
- Oulu Reception centre, Group Home, Katja Kolehmainen, manager Jaana Karhu, counsellor Jussi Mäkäraäinen, representative; also Markku

- Korhonen of the Finnish Border Guard, Jussi Sovas of the National Bureau of Investigation, Harri Nevala, attorney
- Central Union for Child Welfare in Finland, Taina Martiskainen, Planning Officer
 - Maria Kaisa Aula, Ombudsman for Children in Finland
 - Jukka Kursula, representative
 - Tellervo Kuusela, representative
 - Vuokko Tiainen, representative
 - Suomen Somaliliitto ry - Somali League in Finland ry, Said Aden, Chairperson, Saed Guled, Information Officer
 - Yhteiset lapsemme – All our Children ry, Unaccompanied Minors project, Henna Mustonen, Project Manager, and Salli Alanko, Psycho-social advisor
 - Ministry of the Interior, Migration Department, International Protection, Sirkku Päivärinne, Director of International Protection Unit, Salla Konsti, Senior Officer, Pia Salmela, Planning Officer, Leena-Maija Qvist, Senior Officer, Veikko Pyykkönen, Senior Office- Ministry of Social Affairs and Health, Lotta Silvennoinen, Senior Officer, Legal Affairs
 - National Institute for Health and Welfare, Hanna Heinonen, Project Manager
 - University of Helsinki, Department of Forensic Medicine, Professor Helena Ranta.

Nine unaccompanied minors seeking asylum in Finland were interviewed for the report. The interviewees were 14-17 year old unaccompanied asylum seekers, 4 of whom were girls and 5 boys. Seven of the interviewees were from Somalia and 2 from Afghanistan. In all nine cases the asylum procedure was still in progress. The young people had lived in Finland for 2-10 months and all were living in group homes. Since the report concerns the treatment of minor asylum seekers and refugees in Finland, the interviews concentrated only on how the young people experienced the asylum procedure, how well they understood the process and to what extent they felt their views had been heard during the process, and whether they had received sufficient help in the asylum process. The interviewees were not asked anything about their home countries or the grounds for their asylum applications, or about their journey to Finland, to avoid taking the children too deeply into traumatic experiences. Consent was requested for the interviews from the young people themselves and from the representatives appointed for them. The reception centre personnel assisted in organising the interviews.

The group of young people interviewed for the report was quite small, all of them lived in group homes and their asylum procedure was incomplete. For this reason the study “Ikävä äitiä... Ilman huoltajaa tulleet pakolaislapset Suomessa” (Missing mother – unaccompanied refugee children in Finland) by Reetta Helander and Anna Mikkonen was also used to bringing out the children’s own experiences and views. For the above study, a total of 31 young people aged 11-25 from Somalia, Afghanistan, Ukraine, the Democratic Republic of Congo, Angola and Ethiopia were interviewed. Most of the interviewees were 16-19 year old. Of the young people interviewed by Helander and Mikkonen, 11 were girls and 20 boys. The interviewees had lived in Finland from periods of less than half a year up to ten years, but most of them had been in Finland for 1-4 years.²

The asylum applications and related documents of unaccompanied minor asylum seekers were reviewed for the report (including decisions, if a decision had been made), for the period 1 Jan–30 Jun 2009, in so far as they concerned the Dublin procedure, i.e. the applicant had crossed a Member State’s border without permission or had been registered as an asylum seeker in another EU Member State, or in Norway or Iceland, before arriving in Finland. The asylum decisions made by the Finnish Immigration Service during the period 1 Jun–30 Sep 2009, in which the applicant was a minor who had arrived in Finland unaccompanied or accompanied by a guardian, were also reviewed. The copies of the decisions in question, which the Immigration Service automatically sends to the Office of the Ombudsman for Minorities, also include Dublin procedure decisions and decisions where the applicant’s age has been evaluated by forensic examination. For the report, the author also participated in the asylum briefing of an unaccompanied minor asylum seeker held by the Finnish Immigration Service in Helsinki and a telebriefing held with the applicant, counsel and representative in Oulu and the Immigration Service employee conducting the briefing as well as the interpreter in Helsinki.

Age determination statements issued by the Helsinki University Department of Forensic Medicine in 2008 and 2009 were also reviewed for the report. In 2009 a total of 8 age determination statements were issued in 2009; in the period 1 Jan 2009–28 Sep 2009, the number totalled 92.

The sample cases or the problematic situations presented in the report are based both on the material used for the study and on individual cases that have come to the notice of the Ombudsman for Minorities in the form

2 Helander, Mikkonen: *Ikävä äitiä... Ilman huoltajaa tulleet pakolaislapset Suomessa* (Missing mother – unaccompanied refugee children in Finland), pp. 45-46.

of client information or otherwise. One of the diagrams is from Yhteiset lapsemme ry (All Our Children ry) and the others by Attikos Sironen who works in the Office of the Ombudsman for Minorities.

3. Relevance of the report

The number of minor asylum seekers arriving unaccompanied in Finland multiplied dramatically in 2008. From 2002 on the number varied between 70-220 asylum seekers annually, but in 2008, 706 minor asylum seekers arrived unaccompanied. By the end of October 2009, 485 unaccompanied minors have arrived to seek asylum in Finland. Even though the number of applicants in 2009 remains lower than in 2008, it will still be several times more than in the previous years. Most of the unaccompanied minors seeking asylum during the past few years have come from Somalia, Iraq and Afghanistan.³

Unaccompanied minor asylum seekers:

Year	Number of applicants	Year	Number of applicants
2002	70	2006	108
2003	110	2007	98
2004	140	2008	706
2005	220	31 Oct 2009	485

³ Source: Finnish Immigration Service has kept statistics on unaccompanied minor asylum seekers since 2006 and in the years 2002-2005 the Service's Helsinki 2 Section has kept its own statistics of unaccompanied minor asylum seekers.

II RIGHTS OF THE CHILD AND THE CHILD'S BEST INTERESTS IN INTERNATIONAL CONVENTIONS, STATUTES, GUIDELINES AND RECOMMENDATIONS

1. The rights of the child and the child's best interests in international conventions

The United Nations Convention on the Rights of the Child

Finland has ratified and enforced the UN Convention on the Rights of the Child on a statutory level. According to paragraph 1 of Article 3 of the Convention: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration." According to paragraph 2 of Article 3, "States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures." Paragraph 3 of Article 3 states that "States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision."

Article 2 of the Convention on the Rights of the Child prohibits discrimination of any kind, Article 6 provides on the child's right to life and the conditions for survival and development, Article 8 provides on the child's right to preserve his or her identity, including nationality, name and family relations without unlawful interference, and Article 12 obliges the States Parties to respect the right of the child to express his or her views freely in all matters affecting the child, in accordance with the age and maturity of the child. Article 9 of the Convention stipulates that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. According to Article 10 of the Convention, applications for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner.

Article 22 of the Convention guarantees the right of a child who is seeking refugee status, whether unaccompanied or accompanied by his or her parents or by any other person, to receive appropriate protection and humanitarian assistance. The Article further defines the obligation of States Parties to cooperate in tracing the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. Article 28 defines the right of every child to education.

Articles 35 and 36 of the Convention on the Rights of the Child oblige the States Parties to prevent the abduction of, the sale of or traffic in children for any purpose or in any form and to protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare. Article 38 provides on the right of the child to protection in armed conflicts and on their recruitment into armed forces. Article 39 obliges States Parties to take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

The Committee on the Rights of the Child (CRC) has stressed the principle that the child's best interests are the primary consideration in all decision-making concerning the child. Along with Articles 2, 6 and 12, the principle of the child's best interests is one of the core principles of the Convention on the Rights of the Child. The CRC has created its own guidelines for interpreting the principles of the Convention in several general comments.⁴

The wording of Article 3 of the Convention refers to the broad application of the Article in all matters relating to the child, in the actions of both public and private actors, including actions that affect children as a group. According to the CRC, Article 3 paragraph 1 is the basis on which States Parties are to undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the Convention, as provided in Article 4 of the Convention. The rights of the child should be inherent in all national actions that concern children, including actions by the Parliament and Government. This includes budgeting and the allocation of other financial resources.⁵ According to the CRC, the principle of the child's best interests requires pro-active measures by the Government, Parliament and legislature. The legislative bodies, administrative

4 Implementation handbook for the convention on the rights of the child, Unicef (2007), p. 35.

5 Implementation handbook for the convention on the rights of the child, Unicef (2007), p. 36.

authorities and courts are to apply the principle of the child's best interests systematically by assessing how a decision or action of the actor in question affects the child's rights and best interests. The decision or action may, for example, be a bill, legislation or a policy in force, a decision of a court or administrative authority or even a decision or action that does not concern children directly, but nevertheless affects child as a group indirectly.⁶ Assessment of the impacts of decisions and actions on children and their rights should be carried on continuously in all activities.

Regarding the implementation of children's rights, the CRC states, for example, that the principle of the child's best interests requires pro-active measures to protect the rights of the child and to promote the survival, development and welfare of the child. As regards decisions on the care, health and education of the individual child, the child's best interests should be considered. The child's best interests should also be considered in deciding on general outlines of policy, laws, and administrative and judicial decisions concerning groups and affecting young children.⁷

The group that drew up the Convention on the Rights of the Child did not define in any detail the concept of the child's best interests, nor has the CRC so far given any general comments on the concept. However, in its first 10 comments during the years 2001-2007 the CRC referred to the principle of the child's best interests, and in some cases has even given a detailed account on the meaning of the child's best interests in individual cases and/or in the case of groups of children. The CRC stresses that the Convention on the Rights of the Child should be dealt with as an entity.⁸ The child's best interest comprises the assessment of both short-term and long-term impacts of an action, and the assessment should be carried out in the spirit of the Convention. The child's best interest concerns the individual child as an individual with feelings and views, and the child is also seen as an individual having social and political rights and needing special protection. States may not refuse to grant the rights guaranteed to the child by the Convention on the Rights of the Child on grounds of their own interpretation of what is in the child's best interests.

The Universal Declaration of Human Rights

The Universal Declaration of Human Rights adopted by the United Nations General Assembly applies equally to children. According to the Declara-

6 CRC/GC/2003/5, para.12.

7 CRC/GC/2005/7, Rev 1, para.13.

8 Implementation handbook for the convention on the rights of the child, Unicef (2007), p. 37.

tion, all human beings are free and equal in dignity and rights (Art. 1), equal and free from discrimination of any kind (Art. 2), everyone has the right to life, liberty and security of person (Art. 3), all are equal before the law and are entitled without any discrimination to equal protection of the law (Art. 7), everyone has the right to freedom from arbitrary interference in privacy, family and home (Art. 12), everyone has the right to seek and to enjoy in other countries asylum from persecution (Art. 14), everyone has the right to a nationality (Art. 15) and the right to freedom of thought, conscience and religion (Art. 18). In addition to the above, Article 25, paragraph 2, of the Declaration states that mothers and children are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. Article 26 of the Declaration defines the right to education.

The International Covenant on Civil and Political Rights

The United Nations International Covenant of Civil and Political Rights, which has been ratified by Finland, defines the rights of the child in Article 24 as follows:

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

The International Covenant on Economic, Social and Cultural Rights

Finland has ratified the UN International Covenant on Economic, Social and Cultural Rights. Article 10 (3) of the Covenant states that “Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.”

2. The rights of the child and the child's best interests on the European level

Finland has undertaken to observe, in addition to the Convention on the Rights of the Child, the Council of Europe's Convention on the Protection of Human Rights and Fundamental Freedoms, The European Social Charter and the EU's revised Charter of Fundamental Rights. These Conventions and Charters also concern the rights of the child.

The European Convention on Human Rights

The members of the Council of Europe have undertaken to observe the UN Universal Declaration of Human Rights by signing the European Convention on Human Rights. The Convention's purpose is to secure the universal and effective recognition and observance of the rights declared in the Universal Declaration of Human Rights and to uphold and promote human rights and fundamental freedoms. The Convention guarantees expressly for all, among other things, the right to life (Art. 1), the right to liberty and security (Art. 5), the right to respect for private and family life (Art. 8) and freedom of thought, conscience and religion (Art. 9). The European Convention on Human Rights further prohibits torture or inhuman or degrading treatment or punishment (Art. 3), slavery and forced labour (Art. 4) and discrimination (Art. 14).

The European Social Charter

The revised version of European Social Charter prescribes, among other things, on the rights to protection of health (Art. 11), social security (Art. 12), social and medical assistance (Art. 13) and the right to benefit from social welfare services (Art. 14). Children are dealt with in particular in Article 17 of the Charter, which defines the right of children and young people to social, legal and economic protection. According to the Article in question, the Parties undertake, with a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

1. a) to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;
b) to protect children and young persons against negligence, violence or exploitation;
c) to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;
2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools.

The Charter of Fundamental Rights of the European Union

The EU Charter of the Fundamental Right defines various rights, freedoms and principles that also apply to children. The inviolability of human dignity, right to life and right to integrity of the person defined in the Charter, the prohibition of torture and inhuman or degrading treatment or punishment and the prohibition of slavery and forced labour also apply to all children. The fundamental freedoms applying to children best defined in the Charter are the right to liberty and security, respect for private and family life, protection of personal data, the right to freedom of thought, conscience and religion, freedom of expression and information and the right to education and asylum and protection in the event of removal, expulsion or extradition. As regards equality before the law, the prohibition of discrimination as defined in the EU Charter of Fundamental Rights also applies to children. Article 24 of the EU Charter contains a separate definition of the rights of the child as follows:

1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity;
2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration;
3. Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests.

The EU Charter on Fundamental Human Rights also provides on prohibition of the use of child labour and the protection of young people at work, on social security and social assistance and on health care, all of which apply to children.

Council Directive 2003/9/EC

The European Council Directive 2003/9/EC laid down minimum standards for the reception of asylum seekers in Member States. In the Directive minors and unaccompanied minors are defined separately as persons with special needs. The Directive requires that the child's best interests be the primary consideration when implementing the provisions therein. Minors must be provided with access to rehabilitation and mental health care as well as qualified counselling when they have been victims, for example, of abuse or rape or have suffered from armed conflicts. The Directive requires that a representative be appointed for unaccompanied minors and that they be placed with adult relatives, a foster family, in reception centres with special provision for minors or in other accommodation suitable for minors. According to the Directive, unaccompanied 16-year-old or older asylum seekers may be placed in reception centres intended for adults. In addition, siblings should as far as possible be kept together, and changes of residence of unaccompanied minors should be kept to a minimum

Council of Europe Convention on Human Trafficking

Finland's ratification of the Council of Europe Convention on Action against Trafficking in Human Beings is still in progress, but the Convention will be ratified in the near future. This Convention defines the basis of action against human trafficking, among other things, protection of the human rights of victims of human trafficking, and the Parties to the Convention are obliged to take due account of the position of children in all actions against human trafficking⁹. The Convention on Human Trafficking includes a provision on the identification of victims of human trafficking in Article 10. According to the Article in question, the identification of victims is a prerequisite for other action against human trafficking and for implementing the rights of the victims¹⁰.

9 Venla Roth; Paritusta vai ihmiskauppaa (Procuration or human trafficking), p.420.

10 Venla Roth; Paritusta vai ihmiskauppaa (Procuration or human trafficking), s.420-421.

3. Guidelines and recommendations relating to the rights of the child and the child's best interest

In 2005, the Committee on the Rights of the Child (CRC) issued a general comment (CRC/GC/2005/6) "Treatment of unaccompanied and separated children outside their country of origin", which, among other things, gave an interpretation of the child's best interests when the actions of States Parties affect unaccompanied minors. The CRC stresses that the States Parties should respect the best interests of the child in their territory when providing assistance for unaccompanied minors and looking after their affairs at every stage of the process. According to the CRC "a best interests determination must be documented in preparation of any decision fundamentally impacting on the unaccompanied or separated child's life. A determination of what is in the best interests of the child requires a clear and comprehensive assessment of the child's identity, including her or his nationality, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs. Consequently, allowing the child access to the territory is a prerequisite to this initial assessment process. The assessment process should be carried out in a friendly and safe atmosphere by qualified professionals, preferably of the same sex as the child, who are trained on age and gender sensitive related interviewing techniques. Subsequent steps such as the appointment of a competent guardian as expeditiously as possible serves as a key procedural safeguard to ensure respect for the best interests of an unaccompanied or separated child."

In addition the CRC states that respect for best interests also requires that where competent authorities have placed an unaccompanied or separated child 'for the purposes of care, protection or treatment of his or her physical or mental health', the State recognizes the right of that child to a 'periodic review' of their treatment and 'all other circumstances relevant to his or her placement'." (Article 25 of the Convention).

The CRC has in its comment also interpreted the provision on non-discrimination in Article 2 of the Convention on the Rights of the Child. According to the CRC's interpretation, "the principle of non-discrimination applies in respect of all dealings unaccompanied and separated children. In particular it prohibits discrimination based on the child's status as being unaccompanied or separated, refugee, asylum-seeker or migrant. This principle may call for differentiation on the basis of different protection needs, such as those arising from age and/or gender. Measures should also be taken to address possible misperceptions and stigmatization of unaccompanied or

separated children within the society. Policing or other measures concerning unaccompanied or separated children relating to public order are only permissible where such measures are based on the law; entail individual rather than collective assessment; comply with the principle of proportionality; and represent the least intrusive option. In order not to violate the prohibition on non-discrimination, such measures can, therefore, never be applied on a group or collective basis.”¹¹

The CRC has further in its comment interpreted Article 12 of the Convention on the Rights of the Child, according to which the child has the right to express his or her views freely. The unaccompanied or separated child's views and wishes should be taken into account, and “to allow for a well-informed expression of such views and wishes, it is imperative that such children are provided with all the relevant information concerning, for example, their entitlements, services available including means of communication, the asylum process, family tracing and the situation in their country of origin.” The information should be provided in a manner that is appropriate to the maturity and level of understanding of each child. In guardianship, care and accommodation arrangements, and legal representation, children's views should also be taken into account.¹²

The European Union Agency for Fundamental Rights (FRA) has developed indicators for protection, respect and promotion of the rights of the child. These indicators have been formulated directly from the main principles of the Convention on the Rights of the Child, on which the CRC has commented. The indicators thus comprise the four general principles of the Convention i.e. participation, non-discrimination, the child's best interests and the right to life and the conditions for survival and development. The indicators consist of structural indicators, process indicators and final outcome.

Structural indicators reflect the existence of legal instruments, as well as basic institutional and budgetary mechanisms necessary for facilitating the realisation of the particular children's rights.

Process indicators reflect the efforts made at national and local or regional level to implement the structural provisions. This includes national strategies, policy measures, action programmes, training initiatives, campaigns and other activities aimed at realising particular children's rights.

Outcome indicators that reflect individual and collective attainments in reference to the status of realisation of children's rights in a given context,

¹¹ CRC/GC/2005/6, p.8.

¹² CRC/GC/2005/6, p.10.

as well as the extent to which children have benefited from interventions and programmes of action.¹³

In 1997 The Office of the United Nations High Commissioner for Refugees, UNHCR, issued “Guidelines on Policies and Procedures in Dealing with Unaccompanied Children seeking Asylum”. In these guidelines the UNHCR states as a general principle that the basic guiding principle in any child care and protection action is the principle of the “best interests of the child”. Among other things the guidelines prohibit the keeping of children seeking asylum in detention and deal with the child’s right to health care, education, a fair and prompt decision. Also dealt with are the child’s placement in society and the community, family reunification and the child’s long-term treatment and care.

According to The UN High Commissioner for Human Rights, action against human trafficking that is based on human rights implies, for example, that States Parties do not allow bilateral, regional or international cooperation agreements or other legislation on human trafficking to influence the rights and obligations placed on states by adherence to human and international refugee or humanitarian law.¹⁴ The UN High Commissioner for Human Rights is of the view that features of human trafficking are sometimes clearly evident, but in some cases active investigation is needed to reveal it. States Parties are under an obligation to ensure that practices of the authorities involved enable identification of human trafficking – and that it also happens in reality.¹⁵

4. Summary

Both the rights of the child and the principle of the child’s best interests are clearly anchored in international obligations binding on Finland. Finland is committed to guarantee children the protection and care necessary for their welfare as well as numerous different rights, for example, the right to life and the conditions for survival and development, the right to appropriate protection or humanitarian aid when applying for refugee status, the right to non-discrimination, education, privacy, an identity, a family and security. Finland is also committed to prevent all exploitation of children, slavery, torture and discrimination against children. Further, Finland has

¹³ European Union Agency for Fundamental Rights (FRA). Developing indicators for the protection, respect and promotion of the rights of the child in the European Union. Summary report - FRA- March 2009.

¹⁴ OHCHR 2002, 7.

¹⁵ OHCHR 2002, 8.

undertaken to take action against human trafficking and to take measures to identify victims of human trafficking, also among asylum seekers. All these rights of the child apply to all children in Finland and are not tied to residence permit or nationality.

The principle of the child's best interests requires pro-active measures for protecting the rights of the child. In all decision-making concerning individual children, the impact of the decision on the life of the child in question must be assessed. Assessment of the child's best interests should be included in all national decision-making that concerns children. A State Party cannot, by its own interpretation of the child's best interests, refuse any child the rights guaranteed by the Convention on the Rights of the Child or by any other international convention binding on Finland.

III THE RIGHTS OF THE CHILD AND THE CHILD'S BEST INTERESTS IN FINNISH NATIONAL POLICY AND LEGISLATION

1. The Government's Migration Policy Programme

The overall purpose of the Government's Migration Policy Programme 19.10.2006 is to define migration policy values, with the aim of respecting human and fundamental rights, to reinforce a culture of good governance and to combat migration-related threats. The objectives of the programme are promoted through the following measures: the legal safety of persons seeking international protection in the spirit of the Refugee Convention shall be strengthened whilst the efficient processing of applications for asylum and a safe, dignified return shall be ensured, reception facilities able to maintain the capacity of asylum-seekers to be active shall be ensured, the opportunities for all immigrants to be treated as public administration customers in accordance with good governance, especially the possibility to have their applications processed flexibly and without undue delay, shall be strengthened.¹⁶ According to the Migration Policy Programme the values of migration policy includes the rule of law, furthering the implementation of human and fundamental rights, combating racism and discrimination, promoting real equality and the best interests of the child, the principle of good governance and other legal principles in administration, such as transparency.¹⁷

As policy guidelines and measures, the Migration Policy Programme mentions an effective asylum procedure as a key part of refugee protection and that the asylum procedure must retain adequate guarantees to ensure legal protection and expert aid must be secured for asylum seekers.¹⁸ As regards minor asylum-seekers, the programme mentions separately as a policy guideline that the child's best interests shall be taken into account as a cross-cutting principle in asylum and refugee policy. As measures the following are listed:

The function of issues relating to a child's position and interests and the application of the Aliens Act shall be monitored in cooperation with different authorities (Ministry of the Interior, Ministry of Labour, Ministry of Social Affairs and Health, Ministry of Education).

16 Government Migration Policy Programme 19.10.2006, p. 2.

17 Government Migration Policy Programme 19.10.2006, p. 3.

18 Government Migration Policy Programme 19.10.2006, pp. 29-30.

The expertise of child protection work shall be secured in establishing a child's best interests and improving the expertise of different professional groups in issues related to assessing a child's best interests. A study shall be made of the possibility to monitor the return of a child. Joint instructions shall be drafted with different administrative sectors to ensure the dignified and safe return to his or her parents of an under-aged child that arrives unaccompanied. Cooperation and the sharing of information between the authorities and reception centres for asylum seekers shall be developed in order to safeguard the best interests of minors.¹⁹

The policy guidelines presuppose improvement of the reception facilities for asylum seekers so that they take into account the special needs of different groups. As measures to achieve this end, the guidelines propose confirming common principles to be observed by reception units in promoting return, developing advisory, rehabilitation and mental health services to meet the needs of traumatised asylum-seekers and especially children and young persons in need of special support. The guidelines also propose that the Act on the Integration of Immigrants and the Reception of Asylum Seekers be amended so as to secure the after-care of unaccompanied child asylum-seekers. Further measures include identifying possible measures required within the jurisdiction of the Ministry of Education in order to implement the Council Directive on Minimum Reception of Asylum Seekers in EU Member Countries. The Basic Education Act shall be amended to give the children of asylum seekers the right to basic education in all municipalities.²⁰

2. The rights of the child and the child's best interests in international legislation

The Constitution of Finland

The Constitution of Finland (11.6.1999/731) defines the basic rights and liberties in Chapter 2. The basic rights applying to children are equality (section 6), the right to life, personal liberty and integrity (section 7), freedom of movement (section 9), the right to privacy (section 10), freedom of religion and conscience (section 11), freedom of expression and right of access to information (section 12), protection of property (section 15), educational rights (section 16), the right to one's language and culture (section 17), the

19 Government Migration Policy Programme 19.10.2006, p. 31-32.

20 Government Migration Policy Programme 19.10.2006, p. 34-35.

right to social security (section 19) and the right to protection under the law (section 21). There is a special mention of children in Chapter 2, section 6 (2) of the Constitution, where it is provided that: “Children shall be treated equally and as individuals and they shall be allowed to influence matters pertaining to themselves to a degree corresponding to their level of development.”

Administrative Procedure Act

The Administrative Procedure Act (6.6.2003/434) prescribes on the fundamental principles of good administration, the general requirements regarding the filing and consideration of an administrative matter by an authority, and also on decision-making on administrative matters, which also apply to children. The Administrative Procedure Act, section 14, contains provisions on the right of a legally incompetent person to be heard. According to the section in question: “The right of a legally incompetent person to be heard shall be exercised by his/her guardian, custodian or other legal representative. However, a legally incompetent person shall alone exercise his/her right to be heard in a matter pertaining to income or assets in his/her possession... A minor who has attained the age of fifteen years and his/her custodian or other legal representative have a parallel and separate right to be heard in a matter pertaining to the person of the minor or his/her personal rights or interests.” Section 35 of the Constitution further provides that: “When a guardian, custodian or other legal representative exercises the right to be heard, also the client shall be heard, and when a client exercises the right to be heard, also the guardian, custodian or legal representative shall be heard, if such hearing is necessary in view of the interests of the client or for the clarification of the matter.”

Aliens Act

According to the Aliens Act (30.4.2004/301), section 5, the application of the Act may not restrict aliens’ rights more than is necessary, and this also applies to children. Section 6 of the Act provides on the application of the Act to minors. According to the section, in any decisions concerning children under eighteen years of age, “special attention shall be paid to the best interest of the child and to circumstances related to the child’s development and health. Before a decision is made concerning a child who is at least twelve years old, the child shall be heard unless such hearing is manifestly unnecessary. The child’s views shall be taken into account in accordance

with the child's age and level of development. A younger child may also be heard if the child is sufficiently mature to have his or her views taken into account. Matters concerning minors shall be processed with urgency."

The Aliens Act does not define what constitutes the child's best interest, and it cannot be defined exhaustively. Also the Government Proposal to Parliament for an Aliens Act and certain other acts relating to it (HE 28 - 2003 vp) states that it is the duty of authorities to supervise the protection of the child's best interests. The Government Proposal refers to section 6 (3) of the Constitution and to the fact that the principle of the child's best interests is written into the Child Rights Convention and all the key national laws concerning the child. The Government Proposal stresses that there is no one single common definition of what the concept of the child's best interests means, but that the child's best interests should be considered as a whole taking into account the child's individual needs, wishes and opinions. The person making a decision must clarify what is in the best interests of the child in question.

Child Welfare Act

The purpose of the Child Welfare Act (13.4.2007/417) is to protect children's rights to a safe growth environment, to balanced and well-rounded development and to special protection

The local authorities are responsible for all child protection and for all children falling within the scope of child welfare living in the municipalities, i.e. also unaccompanied minors seeking asylum. The main principle of child welfare is to promote the favourable development and well-being of the child. In the first place, child welfare should prevent problems from arising and only in the second place intervene in the life of the child and his or her family. Any necessary support measures should first and foremost be provided as support for open care, and such measures as taking the child into custody and restrictive measures for placing the child in substitute care, e.g. in an institution, such as various restrictions, examinations and inspections, restraining measures etc. are extreme measures that encroach on personal freedom and they may not be used lightly, or as first resort measures.

According to the Child Welfare Act, when assessing the need for and implementing child welfare, the child's best interests must be considered. When assessing the interests of the child, consideration must be given to

the extent to which the alternative measures and solutions safeguard the following for the child:

balanced development and wellbeing, and close and continuing human relationships;

1. the opportunity to be given understanding and affection, as well as supervision and care that accord with the child's age and level of development;
2. an education consistent with the child's abilities and wishes;
3. a safe environment in which to grow up, and physical and emotional freedom;
4. a sense of responsibility in becoming independent and growing up;
5. the opportunity to become involved in matters affecting the child and to influence them; and
6. the need to take account of the child's linguistic, cultural and religious background.

Act on the Integration of Immigrants and the Reception of Asylum Seekers

The objective of the Act on the Integration of Immigrants and the Reception of Asylum Seekers (9.4.1999/493) (hereinafter the Integration Act) is to promote the integration, equality and freedom of choice of immigrants through measures which help them to acquire the essential knowledge and skills they need to function in society, and to ensure support and care for asylum seekers and beneficiaries of temporary protection in the context of a mass influx by arranging for their reception. The further purpose of this Act is to assist victims of trafficking in human beings. According to section 5, the Act does not preclude access to supportive measures, services or cash benefits laid down elsewhere in legislation, unless otherwise provided in Chapter 3. Chapter 3 prescribes mainly on measures to support and assist integration.

Chapter 4 of the Integration Act deals with the reception of asylum seekers and persons in need of temporary protection, which is arranged by the reception centre. Reception covers accommodation, social assistance, essential social and health care services, interpretation services and fulfilment of all other basic needs. The best interests of children are to be taken into account in reception. Work and study activities may also be arranged. Studies may include Finnish or Swedish language teaching and basic information about Finnish society, the legal system and the rights and obligations of aliens staying and residing in Finland. Meeting basic needs also includes pro-

viding the information needed to apply for asylum and to enable coping in everyday life. At reception the child's interests must be taken into account and children in special need of support are to be provided with counselling, rehabilitation and mental health services. As regards accommodation, the Act stipulates that family members must be able to live together. Special needs resulting from age, vulnerability and physical and mental condition must be taken into account in organising accommodation and in arranging reception in general. Asylum seekers also have the same right to health care services as any person residing in a municipality in Finland.

The Integration Act further prescribes that a group home may be set up for unaccompanied minor asylum seekers and minors granted temporary protection status. According to the Act a representative may be appointed for a child who is in Finland without a guardian or legal representative, and a representative is always appointed for a minor who is a victim of human trafficking. The representative exercises a guardian's right to be heard in matters relating to the child's person and assets, decides on the child's living arrangements and manages the child's assets. In the exercise of his or her duties, the representative shall protect the child's interests, taking the child's ethnic, linguistic, religious and educational background into account. When making decisions, the representative shall take the child's opinions and wishes into account as far as possible considering the child's age and developmental level. It is not the representative's duty to manage the immediate daily care or upbringing of the child or otherwise look after the child. Any legally competent, suitable and consenting person who is able to perform the required duties correctly while taking the child's interests into account may be appointed as a representative. The duties of a representative expire when the child represented comes of age, the child represented moves permanently away from Finland, or a guardian or other legal representative is appointed in Finland for the child represented. Representatives may be released from their duties at their own request or due to other reasons.

3. Legislation projects in progress

In accordance with a Government legislative proposal, on 2 June 2009, the Ministry of the Interior implemented and handed over to Minister Astrid Thors, the Minister responsible for Migration and European Affairs, a report on Finland's asylum policy. The report "Perspectives on asylum policy: development proposals and Nordic comparisons" recommends several measures for tightening Finland's asylum procedures. In addition to

proposals for making the asylum process more efficient, the report makes recommendations for evaluating social assistance given to asylum seekers and for harmonising practices in the use of age determination examinations and language analyses. As regards revising family reunification policy, the report's recommendations include a more detailed examination of the foster child's status, how long he or she has lived together with the family, restrictions on aliens acting as sponsors in situations where they have given false information in their own applications for residence permits, setting a requirement for means of support for those obtaining a permit on the basis of family ties, where the family of a person enjoying international protection status has only been established after arrival in Finland, and setting a one year's residence requirement for beneficiaries of international protection acting as sponsors. After receiving the report, the Ministry of the Interior has launched several legislative projects relating to the recommended changes.

On the basis of the report, the Ministry of the Interior promptly drafted a Government legislative proposal to Parliament aimed at amending the Aliens Act, which went through a rapid consultation process in August 2009. The proposal recommended amendments to the Aliens Act regarding forensic age determination, family reunification and the right of an alien seeking international protection status to work, in order to eliminate so-called pull factors that might attract persons submitting unfounded asylum applications in Finland. The Bill proposed that a forensic examination should be made to ascertain the age of the applicant. The request for age determination could be made to the University of Helsinki Department of Forensic Medicine, by the Police, the Finnish Border Guard or the Finnish Immigration Service. According to the Bill the applicant would not be given the opportunity to request age determination, although the Ombudsman for Minorities and several other actors referred in their statements to the fact that the applicant's protection under the law requires that the applicant have the right to demand age determination. It was further proposed as an amendment that a residence permit applied for on the basis of family ties may be refused if the sponsor is suspected of having been granted the residence permit by evading the regulations on immigration or residence in the country giving false information on their identity or family relations. The proposal also recommended that an application for a residence permit on the basis of family ties for the family member of someone who has obtained a residence permit on the basis of subsidiary, humanitarian or temporary protection status would require that the sponsor has had a residence permit to live in Finland for at least one year. However, this requirement on residence was abandoned. The proposal does, however, require tightening

of the conditions for family reunification. The Government legislative proposal presupposes that if a minor acts as a sponsor, the sponsor must still be underage at the time when the decision on the residence permit for family members is made. The Government legislative proposal was brought before Parliament in November 2009.

The Integration Act is at present in the process of a complete reform.

4. Summary

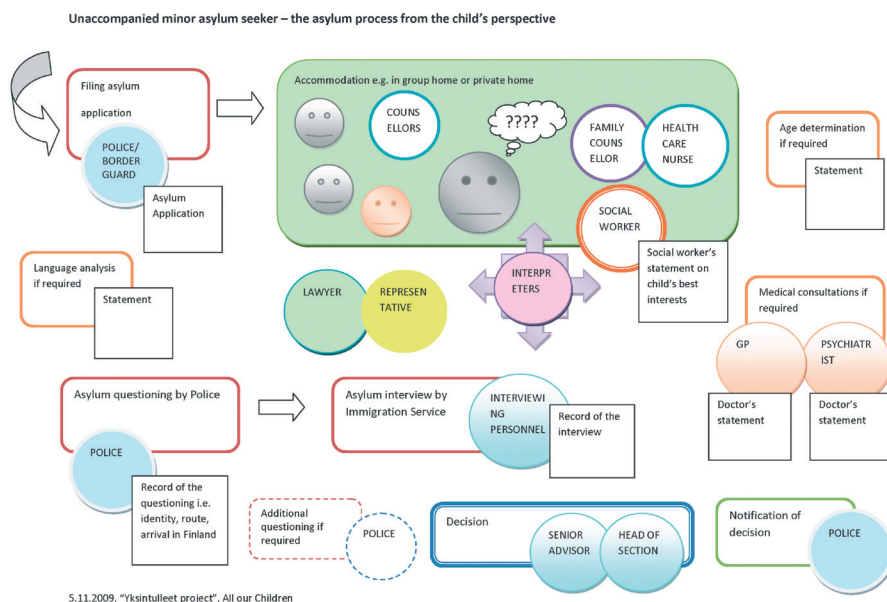
One value of Finland's Migration Policy Programme is the child's best interests, and as a policy guideline, that the principle of the child's best interests be taken into account as a cross-cutting principle in asylum and refugee policy. As a special measure the programme includes the development of rehabilitation and mental health services to meet the needs of traumatised asylum-seekers and especially children and young persons in need of special support, safeguarding the after-care of unaccompanied child asylum-seekers and examining the legal basis for providing basic education for immigrants with the aim of clarifying immigrants' rights. In practice none of these measures have yet been implemented.

National legislation safeguards several rights of the child, including equality, the right to life and personal liberty and integrity, and protection of privacy. In decisions made under the Aliens Act, special consideration must be given to the child's best interests. The principle of the child's best interests has been addressed in the Child Welfare Act, which gives references for assessing the child's best interests in all national decision-making concerning the child. Finnish legislation is less comprehensive than international obligations as regards assessing children's rights and the best interests of the child.

In actions of Finnish authorities, such as passing legislation and making budget decisions that affect the child, the impacts of the decisions on the child are not in general assessed. The amendment to the Aliens Act now under way is an example of how legislation is amended or enacted on the basis of political and economic interests, without assessing the impact of the decision on children.

IV ASYLUM PROCEDURE FOR UNACCOMPANIED MINORS SEEKING ASYLUM IN FINLAND

Minors arrive in Finland to seek asylum together with their parents or other family members, but during the past two years, the number of minor asylum seekers who have been separated from their parents or families has multiplied dramatically. An unaccompanied minor arriving in Finland to seek asylum goes through the asylum procedure in exactly the same way as a child accompanied by a guardian. There are, however, certain differences in the procedure, due to the fact the child has no guardian in Finland. Below is a diagram showing the asylum procedure for a minor arriving unaccompanied in Finland from the child's point of view.



In Chapter IV it is intended to describe how the asylum process proceeds in practical terms and what the current practice is. The asylum procedure is divided into separate stages, so as to clarify the complex system, which involves numerous different actors, and to allow the reader to form a clear picture of the practices at every stage of the process. Dividing the practical situation into stages helps to explain how the legislation is applied and how the child's best interest is assessed at each stage of the process. The cases presented in the report are based on the material used in drafting the report, contacts received by the Office of the Ombudsman for Minorities and the stories of unaccompanied minors who have arrived in Finland to seek asylum. This chapter draws attention to the challenges arising at different

stages of the process, and the more detailed comments and recommendations are presented in Chapter VI.

1. Submitting the application

Under the Aliens Act the application for international protection should be lodged by the applicant with the Police or the border control authority. The Finnish Immigration Service has also drawn up guidelines for asylum application (Dnro 109/032/2008), which give instructions on the handling of applications for international protection status and also the reception of asylum applications. In practice, applications are submitted in Finland to the local police in the interior of the country. The Finnish Border Guard no longer carries out checks at ports. At airports border checks are only carried out on passengers coming from outside the Schengen area. At border stations between Finland and Russia checks are carried out routinely. In 2008 only 4 applications for international protection regarding unaccompanied minors were submitted at airports²¹, the remaining 702 being filed with local police around Finland. About half of all the asylum applications regarding unaccompanied minors are filed with the Helsinki Police Department.

16 year old girl:

The girl said she had seen a police officer for the first time in her life when she filed her asylum application with the police in Finland.

The Police or a representative of the Finnish Border Guard, i.e. the authority receiving the asylum application, asks the asylum seeker to fill in the Immigration Service's asylum application. The authority registers the applicant's personal details and identification marks and takes fingerprints when receiving the asylum application. If the applicant has travel or other documents, the personal details are checked against the documents. In general, minors seeking asylum do not have travel documents as they are usually required by the parties arranging their travel to Finland to destroy all documents before seeking asylum. In this case the child's personal details are entered as given by the child. The personal data collected include the applicant's name, age, country of birth, nationality, ethnic group, religion, language and family background and family members. At the registration stage the applicant's fingerprints are taken, also of minors, and they are compared with the Eurodac fingerprint register. The fingerprints of asy-

²¹ Janne Ryönänkoski, Finnish Border Guard, Gulf of Finland Coast Guard District, Helsinki-Vantaa Border Control Unit.

lum seekers at least 14 years old registered in the EU Member States are recorded in the Eurodac fingerprint register²². In Finland fingerprints are also taken from under 14-year-olds. If the applicant has applied for asylum earlier in another Member State, his or her fingerprints will normally be found in the Eurodac register. This so-called “Dublin hit” is marked in the applicant’s registration data, and the handling of the application is transferred to the Dublin procedure.

14 year old girl:

The girl said she had been afraid when going to the police station.

The police officer had noticed this and told her she had no need to be afraid.

After submission of the asylum application, the Police or Border Guard sends the application for translation and gives the applicant information on the asylum procedure and on the applicant’s rights and obligations. If the person’s fingerprints are found in the Eurodac register the applicant’s hand written asylum application is not sent for translation. It is considered that all the necessary information will be found in the form used and filled in by the Police or the Border Guard. If the application is taken for material handling in Finland, the hand written asylum application is sent for translation. For unaccompanied minors arriving to seek asylum a representative is appointed only after the application has been submitted.

The authority, i.e. the Police or the Border Guard, are obliged to see to the provision of interpretation and an interpreter if the asylum seeker does not speak Finnish or Swedish, or due to disability or illness, cannot make him- or herself understood. As a rule the Police arrange for an interpreter at the stage when the minor submits the application. In practice, however, the Police has not always requested or been able to obtain an interpreter, and the form may have been filled in with the help of the police officer’s and the applicant’s often inadequate knowledge of English.

The Ministry of the Interior’s Migration Department is at the moment conducting a survey on the centralisation of administration. The purpose is most probably to make the asylum procedure more efficient and improve the legal protection of applicants so that in future it would be possible to submit asylum applications to any police department, but the actual questioning of the applicant would only be conducted at certain police departments which have special expertise on asylum investigations. The change

²² Proposal for a Council Regulation concerning the Establishment of Eurodac, Article 4 paragraph 1.

in this practice would not presuppose an amendment to the law, and it will probably be enacted by a Ministry of the Interior Decree in the near future.

14 year old girl:

The trafficker had told the girl she would be going to the UK, as she spoke a little English, but she was taken to Finland.

17 year old boy:

The boy had heard during the journey that the asylum application should be filed at a police department.

2. Reception

The Ministry of the Interior plans and coordinates the reception of unaccompanied minor asylum seekers together with the Employment and Economic Development Centres (TE Centres). The Ministry is responsible for developing, planning, controlling and monitoring the reception of asylum seekers, while the TE centres control and monitor reception activities in their own regions. There are provisions on reception in the Act on the Integration of Immigrants and the Reception of Asylum Seekers (493/1999). The system is changing at the beginning of 2010, when control of reception will be transferred to the Finnish Immigration Service.

The reception of unaccompanied minors seeking asylum in Finland is part of the normal reception of asylum seekers, which is arranged by a reception centre. There are reception centres in different localities around Finland; they are maintained by the State, by the Finnish Red Cross and by municipalities. In November 2009, 752 places were reserved in reception centres for unaccompanied minor asylum seekers; 122 of the places were vacant. The reception centres have a manager, a social worker, a public health nurse, counsellors and other staff.

There are group homes operating with the reception centres where unaccompanied minors are accommodated. "Dublin hit" minors and minor asylum seekers who have been granted temporary residence permits under section 51 of the Aliens' Act are also housed in the group homes. The units established for unaccompanied minor asylum seekers who have been granted residence permits are called family group homes. In some reception centres the group and family group homes have been merged and operate as a single unit. A child does not have to move from his unit on receiving

a residence permit in Finland but can continue living in the same place as a resident of the municipality. Group and family group homes are intended for children of school age and younger. The combined units will, however, be abolished during 2010 when responsibility for controlling reception of asylum seekers passes to the Finnish Immigration Service.

Young people of 16-17 years who have received a residence permit or are waiting for a decision on a residence permit are placed in supported housing units. There are at present 422 places in supported housing units for young people, and the units are generally located near group and family group homes. During the two or three years there have been experiments with the "Folk High School" model, where the young person studies and lives at a folk high school in Finland. The trial period ends at the end of 2009.

Basic services are arranged for asylum seekers for the time of processing the asylum application in the reception centre where he or she is registered. The main services are accommodation, social assistance and essential social welfare and health services. If necessary, legal aid and interpreter services are provided in connection with processing the application. The centres also arrange work and study activities, and children of compulsory schooling age are placed in the municipality's primary or lower secondary schools. Efforts are made to support the children in hobbies and recreational activities and in their own culture. At the same time they are given support in maintaining contact with their parents, if the child has contact with them. By offering these services it is intended to support the capacity of asylum seekers to function in society and to prevent exclusion during the application procedure.

The content and organisation of reception services for minors (0-15 year olds) is partly comparable to the functioning of child welfare institutions. The Decree on the Integration of Immigrants and the Reception of Asylum Seekers (511/1999) contains a reference to the Child Welfare Decree, which among other things prescribes on the size of groups and on the qualifications and number of staff.²³ The staff of a reception centre does not, however, have the same powers to act as the staff of child welfare institutions.

²³ Reception of minors (20.5.2009): Ministry of the Interior/Migration Department/International Protection Unit, s. 2.

2.1. Reception in group homes and supported housing units

Underage asylum seekers are always placed at first in group homes established specifically for them in connection with reception centres. The group homes are located in different parts of Finland, and their task is to provide the children's accommodation, upbringing, education and care, while also taking into account the possibility that the decision on asylum may be negative.

In practice the Police or the border control authority with which the minor has filed the application for asylum contacts the Espoo group home, which acts as a transit centre. The transit centre's purpose has been to provide short-term, first stage (2-8 weeks), accommodation for unaccompanied minors in the transit centre itself, where the child remains until he or she has been questioned by the Police and interviewed by the Finnish Immigration Service. The time spent at the transit centre is intended to be short, after which the child could be placed for a longer period in another group home while awaiting the decision on asylum. Due to the increasing number of applicants, another transit centre unit has been established in Oulu.

In practice the Espoo transit centre has been so full due to the rapid increase in the number of applicants that children have also been placed directly in other group homes. On the other hand, the children placed in the transit centre may stay there for several months while waiting their questioning by the Police and/or interview with the Finnish Immigration Service. Most of the children are transferred to another group home immediately after the Police questioning. At the current rate of applications, the waiting period for the interview with the Immigration Service has been more than six months. The minors, especially younger children, may become attached to the community in the group home, both to those employed and to those living there. Many children begin school and form friendships. The child gets to know his or her own social worker, representative and possibly a counsel.

After the interview with the Immigration Service, and in some cases already after the Police questioning, the child is moved to another reception centre which has a vacancy. At worst the transfer is made directly after the interview, and the child has no time to say goodbye to the representative or to talk about their experience of the interview with any familiar adult. The child's schooling may be interrupted by the move, and he or she may not be able to start at a new school for several months. There is not even a possibility to attend school at all reception centres. The child may be moved from one accommodation place to another several times during the asylum

process. He or she will thus have to make new relationships and learn to trust new people all over again in the new reception place, and also may have to retell the same traumatic experiences to new people all over again. If the child is placed very far away from the previous place, this causes problems regarding contact between the representative and the child and the representative's duties. It is possible to change the representative due to long distances, and this also happens to a certain extent.

Many children suffer from special psychological and psychosomatic disturbances. Children may have witnessed war and experienced or witnessed violence against themselves or their family members. Children may have become separated from their families during their flight, they may have experienced abuse and violence during the journey and may even have become victims of human trafficking. Long waiting periods for an asylum decision try the patience of these children and young people and cause more depression and restlessness. The children's anxiety is sometimes expressed in the form of violence or other kinds of disruptive behaviour, and the need for mental health services increases. New children are constantly arriving at group homes bringing new traumatic experiences. This places a strain on those already living there, who have possibly made some progress towards building a new life. The children constantly relive the same traumas and encounter badly traumatised peers. This may slow down the process of their own recovery and endanger their well-being.

The great increase in the number of unaccompanied minors has resulted in a lack of resources in the reception centres, to the extent that there is not sufficient time left to devote to the children's upbringing and care. The number of children placed in accommodation may exceed the recommended group size, and especially in supported housing, the numbers have sometimes multiplied many times over. As group sizes grow, it is felt in the units that the resources of staff are spent mainly on arranging the children's placements, and there is insufficient time for looking after the child's well-being and assessing their best interests. In practice, 16-17 year old unaccompanied minors have sometimes been transferred from a group home to adult reception facilities. The reason may have been lack of space in the group home, or the minor's disruptive behaviour.

In connection with or in the vicinity of some group homes and family group homes, there are supported housing units, where 16-17 year olds can be placed. In these units, which basically provide housing services, group size and staff numbers and qualifications may differ, and in practice as a rule do also differ from those in group homes. These young people of 16-17

years are paid social assistance in full and they buy their own food and necessities. Supported housing is intended to teach young people to live independently so that they can cope when they move away from the supported housing unit. Generally there should always be at least one adult present in a supporting unit. In practice, however, 16-17 year olds may be housed together and a counsellor visits them just during the daytime. Although there should be a counsellor present at night time, it has not been possible to arrange this everywhere. In the worst case, the youngsters are left by themselves to learn how to cope in a foreign culture, and the strategies they learn from each other are not always constructive in the long run. Finnish minors are never under any circumstances left to cope alone without the supervision of an adult.

16 year old boy:

The boy came to Turku by ship. He submitted an asylum application to the Police in Turku about ten months before the interview. The boy was first accommodated in Turku for about 2 months. From Turku he was moved to another location and then again to a different location. The Police fetched the boy from the reception centre and held him for a few hours in a police detention facility, from which he was moved to what the boy described as a “prison-like place”. This was a detention unit where the boy was held for about 2 weeks and from where he was transferred once again to a new group home. At the time of the interview, the boy had lived in the new reception centre for 5 months and did not know at what stage his asylum process was.

2.2. Private accommodation

Generally, unaccompanied minors seeking asylum in Finland are accommodated in group homes and family group homes connected with reception centres. After registration in a group home, the minor may also be placed in private accommodation. In private accommodation only some of the services meant for asylum seekers can be offered, i.e. basically counselling, social assistance for housing and health care.

In private accommodation, the family looks after and cares for the child just as it does for its own children. Often the relatives of a child suggest that the child would move in with the family and make a request to the social worker of the group home. During initial investigations a child is placed in a group home. He or she remains registered in the group home even when

in private accommodation, until the child is granted a residence permit. During the initial investigations, the social worker and family counsellor of the group home visit the family about 5-6 times. During these meetings the main aspects of private accommodation are reviewed, including basic details on the family members, how the family has maintained contact with the child to be placed in the family, the family's life cycle, its resources, social support network, need for support and culture of upbringing. Afterwards a summary is made of the meetings. If it is possible considering the child's age and stage of development, the child's opinion and wishes are heard. The child may be transferred to private accommodation with a family of relatives or friends after the initial investigation, if the group home's social worker, the social welfare authorities of the family's municipality of residence and the child's representative are in favour of the placement.

During the period of private accommodation the group home's social worker and the child's representative visit the home and check how well the family and the child know each other and how the family is able to support and care for the child. The foster family must be willing to look after the child for many years. This is a demanding task, considering the traumas and difficult experiences the child may have had. In some situations the child only begins to show symptoms of the atrocities he or she has experienced when in a safe environment, that is after being placed in a family. In some situations the family may itself be in a position where the family's own traumas are still near the surface and it is still dealing with them when it takes in the child. Adolescence and adapting to a new family are not always without problems, and in some cases, the foster family has neglected the child's care. As a general rule, however, private accommodation is the best possible solution for a small child. Living in a family is more favourable and supportive for the development and growth of a small child than a placement in an institution. It is also easier to support the child's own language, culture and religion in a private home where the rest of the family belong to the same national group. Private accommodation is most common in the Helsinki area, where by July 2009, altogether 40 children had been placed in private accommodation.

When a child is granted a residence permit, a place is sought in the municipality where he or she lives. When the municipality's decision has been received, the child is transferred for social and welfare services to the immigrant services unit of the municipality where the child has been placed. The representative continues with his or her task when the child has been granted a residence permit, but the social worker and family counsellor of the group home no longer work with the child or the family after that.

The current representative system and legislation regarding minor asylum seekers make it possible for a representative alone to prevent the placing of a child in a family. Even though all the other parties involved in the child's affairs recommend the child's placement in a private home, there are in practice situations where the representative has prohibited this.

The address of a child who is applying for asylum and receiving temporary protection but is not accommodated in a reception centre or group home, and the details of the persons with whom the child is living, are notified to a multi-member body appointed by the locality where the child is staying. The notification is made by the reception centre. If the child has no guardian, a report must be appended to the above-mentioned notification on whether the private home offers suitable conditions for the care and upbringing of the child and whether the family or person taking the child to live with them is capable of looking after the child's care and upbringing.

2.3. Folk High Schools

In December 2008 the Ministry of the Interior set up a pilot project concentrating on education in folk high schools for unaccompanied minors living in group homes, whose asylum process was still in progress or who had been granted a residence permit. This project was set for the period 1.12.2008–30.6. 2009. The objective of the project was to investigate the possibilities of folk high schools to participate in the reception of these young people, and its task was to try out a new reception model for under-age asylum seekers of 16 years and over. The purpose was to arrange a year-long general education course for the youngsters, which would start during the asylum process. It was a continuation of the process of developing curricula and teaching materials begun in connection with the Nutukka project (young asylum seekers in the folk high school) implemented with the support of the European Refugee Fund. A key element of the teaching development was to reinforce the asylum seekers' life management skills, and for those who had already been granted residence permits, to develop methods for promoting the young people's social inclusion, to help them find an orientation and motivation for study and training for a profession. By encouraging youngsters to study and plan their future it is also possible to prevent exclusion.²⁴ The participation of folk high schools in reception is coming to an end at the beginning of 2010, with the exception of Lieksa, which still has a contract in force.

²⁴ Ministry of the Interior, Pilot project on the education in folk high schools of unaccompanied minor asylum seekers living in group homes, whose asylum process is incomplete and those who have been granted a residence permit, Decision SMDnro 2008/1037.

The Nutukka project coordinated during the years 2006-2008 by Settlementiliitto (central organisation of associations carrying out settlement work), which preceded the Ministry of the Interior's project, did not involve actual reception activities. The aim of the project was to support young asylum seekers and refugees who had arrived alone to Finland in becoming independent adults and to develop models for this work. This led to the development of a model for education and cooperation between the folk high schools and the reception centres. The teaching was organised either as day attendance at the folk high school or as teaching for students boarding at the folk high school.²⁵ The purpose of the teaching was to support the young asylum seekers' individual development towards and equal participation in the economic, political and social life of Finnish society while retaining their own language and culture, to support the students' personal growth and development, to help them acquire skills for coping in various life situations, to promote the young asylum seekers' adaptation to Finnish society, to improve their general ability for further studies and general knowledge, to improve their opportunities for further study and their knowledge of working life.²⁶ The studies included Finnish language, everyday life skills, expression, IT and an introduction to Finnish society and culture. The aim was that the young person would be able to manage in Finnish, also outside the classroom, in various communicative situations, and that he or she would learn to function in the Finnish cultural environment.²⁷

2.4. Mental health and child welfare services

In the reception of asylum seekers essential social welfare and health services are arranged and other necessary basic needs are secured. Children with special needs must be provided with appropriate counselling and rehabilitation and appropriate mental health services. The children are entitled to health services, which are provided by the health care nurse of the reception centre and the party providing health services from which the reception centre purchases health services. The doctor in charge of treating the child decides on the treatment. For children, health care services are provided on a more extensive basis than the essential health services provided for adult asylum seekers. For children who have been granted a residence permit health services are provided by the municipality.

25 www.settlementiliitto.fi

26 www.nutukka.fi, Teaching materials package for teachers of young asylum seekers.

27 www.turunkristillinenopisto.fi.

In practice, most unaccompanied minor asylum seekers have experienced violence or armed conflicts, they have witnessed violence against their family members and violent death either in their home country or on the journey to Finland. Many have experienced serious trauma, most have physical and mental symptoms on some level, some of an extremely serious nature. A problem is that there are no mental health or therapy services specialising in children's traumatic experiences and mental health problems in Finland. There is a rehabilitation centre (KITU) which has specialised in helping victims of torture. KITU does not however treat children and there is no similar service available for children. Children who have experienced torture, abuse and other atrocities in their home country or in transit are on the same waiting lists for otherwise under-resourced municipal mental health services as Finnish children, even though children who have arrived alone in the country seeking asylum are in need of special services. In practice, children are accepted as clients of mental health services in urgent situations such as psychoses etc. It is difficult to obtain long-term therapy for a traumatised child.

The Child Welfare Act applies to all children in Finland, i.e. also to unaccompanied minor asylum seekers, both at the stage when they are applying for asylum in Finland and afterwards, when a decision has been made on the application. The municipalities must provide child welfare services for minor asylum seekers in their area if needed. In practice the activities of municipalities vary depending on the location. Some municipalities do not as a rule include minor asylum seekers in the scope of child welfare services, and do not, for example, accept the notification on minor asylum seekers prescribed in the Child Welfare Act. As grounds for this action the municipalities in question have appealed to the fact that the child will in any case be transferred from the transit centre to another municipality, or that the child does not have a residence permit and thus does not have a municipality of residence in Finland. On the other hand, another municipality may include minor asylum seekers in the scope of child welfare measures if necessary. This disparity in the practices of municipalities has also led to situation where in some localities the employees of reception centres do not notify the child welfare authorities as laid down in the Child Welfare Act, while in others such notifications are made. Although the child might if necessary be given access to child welfare measures, even the Child Welfare Act does not guarantee that minor asylum seekers will receive any after-care when the child reaches 18 years of age. For after-care or its absence, see more in paragraph 9.2.

2.5. Social assistance

Asylum seekers and those granted temporary protection status as well as victims of human trafficking may be granted social assistance under the Act on Social Assistance, unless otherwise provided by the Integration Act. Social assistance is granted on application by the reception centre. When granting basic social assistance the costs to be covered by the basic part and other basic expenses are taken into account. The expenses to be covered by the basic part of the assistance include food, clothing, minor health care expenses and costs arising from personal and domestic hygiene, use of local public transport, newspaper subscriptions, television licence, use of telephone and recreational activities and similar other expenses relating to the day-to-day life of the person or family. Unaccompanied minors seeking asylum in Finland are paid social assistance, but expenses are not considered to entitle the minor to social assistance in as far as they are reimbursed or an equivalent benefit is received on other grounds. On this basis the social assistance paid to a minor asylum seeker is reduced by 15% to correspond to the services received in an accommodation unit. In units where small children are cared for, full board is provided and therefore 49% is deducted from the basic social assistance paid to the child. In the case of young people who buy their own food, the percentage covering food is not deducted. The price of food at cost is deducted from the social assistance paid to young persons if they receive some of their meals in an accommodation unit. The basic amount of social assistance paid to a person living alone or a single parent is EUR 361,86 and for an unaccompanied minor asylum seeker, the social assistance varies as described above, depending on the accommodation and meals received.

In current discussion very strong opinions are expressed on how the high level of social assistance attracts asylum seekers to Finland. The Ministry of the Interior is at present investigating various factors that increase Finland's attractiveness as a destination of asylum seekers and how these "pull factors" could be reduced. The Ministry also assesses the granting of social assistance on the basis of these factors and whether the amount of social assistance in the form of money could be reduced by increasing the amount granted in kind.

The social assistance granted at present guarantees a minimum income, which is proportioned to the price level in Finland. At the current price level and with the current social assistance the purchase of basic commodities is extremely challenging, especially if young people are responsible for paying all the costs themselves. In some cases family members living

abroad have demanded that the child or young person living in Finland should send money to the family, even though the social assistance barely covers a young person's nutritional and basic needs. Young people have the right to decide how to spend their money. However, in some cases a youngster's excessive saving on food, in order to send money to family members, has made it necessary to intervene in order to ensure that his or her nutritional needs are met.

2.6. Basic education

Under the Basic Education Act (21.8.1998/628) education is compulsory for all children residing permanently in Finland. Compulsory education begins in the year that the child reaches the age of seven and ends when the basic education syllabus has been completed or ten years have elapsed since the beginning of compulsory education. The local authority has an obligation to arrange basic education for children of compulsory school age residing in its area and pre-primary education during the year preceding compulsory schooling. The local authority may arrange instruction preparing immigrants for basic education and voluntary additional education after completing basic education. The focus of preparatory education is on the Finnish language, but the children should also be taught their own mother tongue in school. The local authority decides on the arrangement of compulsory education for others than those of compulsory school age. In practice the reception centre has the responsibility of assisting the child participating in pre-primary and basic education.

A minor asylum seeker, who does not yet have a residence permit of a permanent nature is not a permanent resident in Finland and for this reason the child is not subject to compulsory education under the Basic Education Act. The local authority is thus not obliged under the Act to provide basic education for asylum seekers who have not been granted a residence permit. Neither does the local authority have an obligation to arrange instruction preparatory to basic education or teaching in a child's own mother tongue for those attending preparatory instruction. The obligation to compulsory education comes to an end at the age of 17, and the local authority is not obliged to arrange basic education for asylum seekers of 17 and over.

When a child moves from one reception centre to another, schooling may be interrupted for long periods, especially if the transfer takes place during the school year. Practices and opportunities vary greatly depending on the location of the reception centre. In some cases it is not possible to arrange

a place in school while the school year is still in progress, as the classes are already full. Not all municipalities offer preparatory instruction prior to basic education, and teaching in the child's mother tongue may depend on being able to find a teacher or on the municipality's willingness to arrange the teaching.

In 2005 the education and culture service of a municipality refused to accept underage children living in a reception centre for basic education on the grounds that, given their educational background, all the children would have passed the age of compulsory schooling by the time they had completed the basic education syllabus. In the case of three children the State Provincial Office was requested to investigate the matter. The Office accepted all three complaints and returned the matter to the municipality for a new decision. In connection with these cases the Ombudsman for Minorities asked the European Commission to take action, on the grounds that Finland had failed to fulfil its obligations regarding the schooling and education of asylum seekers who are minors as provided in the Council Directive laying down minimum standards for the reception of asylum seekers (2003/9/EC). The Ombudsman's opinion was that, in Finland, the child's right to basic education depends on permanent residence. Children of asylum seekers and children with temporary residence status (B status) are not subject to compulsory education, and local authorities have no obligation to provide basic education for these children. Nevertheless, under the Constitution of Finland and the Council Directive (2003/9/EC), children have the right to free basic education. In addition the Ombudsman for Minorities drew attention to the fact that, under the above-mentioned Directive, Member States may not withdraw secondary education for the sole reason that the minor has reached the age of majority. The Ombudsman considered that Finnish legislation should be amended by placing local authorities under an obligation to arrange basic education for a person who has reached the age of majority, if that person has begun their basic schooling in Finland while still a minor. Thus 17 year olds should also be entitled to participate in instruction preparing for basic education and in basic education.

3. Representative

The Integration Act provides on the representation of children arriving in Finland without a guardian, the appointment of the representative and his or her release from the duties of representative. A representative may be appointed for a refugee child, a child granted temporary protection status, a child applying for a residence permit or asylum, or a child who is a victim

of trafficking, if the child is in Finland without a guardian or other legal representative. An unaccompanied minor who is a victim of trafficking must always be appointed a representative immediately. The representative exercises a guardian's right to be heard in matters pertaining to the child's person and assets, decides on the child's living arrangements and manages the child's assets as provided elsewhere in Finnish legislation. In the exercise of his or her duties, the representative is to protect the child's interests, taking the child's ethnic, linguistic, religious and educational background into account. When making decisions on matters concerning the child, the representative is also to take the child's opinions and wishes into account.

In practice, the reception centre where the child lives contacts a person considered suitable for the task and requests the person to act as the child's representative. There are no special qualifications laid down for the representative, but in practice the representatives chosen have had experience in social welfare work and child welfare as well as a knowledge of matters relating to immigrants. The reception centre then files an application at the District Court in the locality where the child is registered, and the District Court confirms the appointment.

With the rapid increase in the number of unaccompanied minors arriving to seek asylum in Finland, the shortage of new representatives has in practice led to a situation where some of the persons appointed as representatives have had no contact with social welfare or child welfare work and do not necessarily even have an understanding of the asylum process. As appointment as a representative is not an employment relationship, there is no obligation to investigate the possible criminal background of a person proposed as a representative, even though this is otherwise required for persons working with children. The representative's independent status is also to a certain extent compromised by the fact that the representative is proposed by the reception centre, which in practice looks after the child's reception. If the representative's understanding of the child's best interests as regards reception differ from those of the reception centre staff, the situation may at worst lead to a conflict between the representative and the reception centre. In 2009 at least one representative was released from their duties by a decision of the District Court on application by the reception centre.

The Integration Act provides on the representative's duties, and in July 2009 the Ministry of the Interior issued guidelines for representatives (SMDnro/2009/2369) regarding their duties and remuneration and the reimbursement of costs. The representative's duties are defined on a fairly gen-

eral level, and with new representatives, increasing confusion and conflicts have arisen as to what the duties of the representative comprise. The representative's duty is, however, to exercise the guardian's right to be heard in matters concerning the child and thus to protect the child's best interests. The representative should be present at the interview with the Police and the asylum briefing with the Immigration Service. The representative's opinion must be heard in matters relating to the child's accommodation, child welfare, placement in a municipality and education. It is thus not the representative's duty to manage the immediate daily care or upbringing of the child; this is the responsibility of the reception centre or the family with which child lives in a private home. In practice voluntary training for representatives has been organised once or twice a year, for example in cooperation between the Ministry of Labour (at the time when asylum and reception matters were under the Ministry of Labour), the Ministry of the Interior, the Central Union for Child Welfare in Finland and the Finnish Immigration Service. However, training for representatives has not been obligatory, and a representative may undertake duties immediately on appointment by a decision of the District Court.

The representative's duties are defined on a very general level. In practice, representatives act in very different ways, which in turn causes children confusion. A representative may spend a certain amount of time getting to know the child, but the representative's duties do not imply being a friend or acting as a support person. The representative must, however, get to know the child and establish a relationship of trust with him or her. This is particularly important for the representative's work, because, for example, it enables him or her to supervise the child's best interests in the asylum process ensuring that all the necessary information about the child is disclosed during the process. If the representative and the child do not have a common language, the representative must order an interpreter for the visits with the help of the reception centre, and this in turn slows down the process of getting to know the child.

There is no actual supervision of the activities of representatives. A register of representatives is kept by the TE Centre of Uusimaa, but the register is not up-to-date. It contains details of all persons who have acted as representatives at one time or another, even if they are no longer acting in the capacity of representatives, and the contact details of representatives in the register are not updated. Representatives are paid an hourly remuneration for their work. With the increasing number of asylum applicants, the hourly payment system is expensive to maintain, and differences of opinion have arisen on the fees paid to representatives. A representative may have

an unlimited number of charges, some of whom may live a considerable distance away.

Various actors are involved in developing guidance and training for representatives. Central Union for Child Welfare in Finland is compiling a file of guidelines for representatives together with the Ministry of the Interior. In addition, in 2009 the Refugee Advice Centre and the Finnish Immigration Service continued a project funded by the European Refugee Fund for developing the asylum procedure, one aim of which is to produce instructions for the role, rights and obligations of representatives in the asylum investigation.

16 year old boy:

The boy said he had been in Finland for 4 months. He had a representative, whom he had met 3 times. The boy said that at the first meeting the representative had explained what his duties, were, but he did not remember what they were or why he had a representative.

4. Counsel

Under the Aliens Act an administrative matter, which also covers asylum application, must be filed in person. In filing and handling an administrative matter, the person concerned may use the services of a counsel. An alien may also use an attorney in the filing and handling of an administrative matter, when it is not necessary to hear him or her in person or if his or her appearance in person is not necessary for investigating the matter or establishing his or her identity. During the filing and handling of the application for asylum the applicant is advised and counselled by a lawyer and this stage is called the initial-phase counselling. As the reception centre is responsible for the asylum seeker's services, the reception centre checks the cost of the legal expenses for the initial-phase counselling, but the actual costs of the lawyer's services are defrayed by the Ministry of the Interior.

The initial-phase counselling ends when the applicant has received a decision on asylum. In the filing and handling of an appeal relating to an asylum decision the person concerned may still use a counsel or an attorney. Separate provisions are issued on the competence of counsels or attorneys and on their obligations to secrecy. In a matter relating to an appeal, the payment of the expenses for a counsel is prescribed in the Legal Aid Act (257/2002), which gives provisions on the rights of an alien to legal

aid. However, when an administrative matter relating to asylum is being handled, the counsel assigned to an alien may also be a person with legal training other than a public legal aid attorney. The court may grant a minor asylum seeker legal aid without requiring a statement of the applicant's financial position. The counsel's fee is paid out of State funds as provided in the Legal Aid Act.

An asylum seeker who is a minor thus has the right to use the services of a counsel and an attorney in the filing and handling of an asylum application and in an appeal concerning the application. In practice a minor is not usually aware of these rights, or able to demand them, and it is the representative carrying out the duties of the child's guardian who considers the need for and procures the services of a counsel or attorney. The representative's role does not, however, involve acting as a legal counsel for the child, and often representatives do not have the qualifications to do so. The representative does not, however, have the obligation to procure a counsel or attorney for the child, only to consider the need for legal aid. In practice there have been individual cases where the representative has not been aware of the child's right to and need for legal aid.

17 year old boy:

At the time of the interview, the boy had been in Finland for 1½ months. He had a representative, but not a lawyer. The representative had told him he would arrange a meeting with a lawyer.

5. Police interview

In the case of an alien seeking a residence permit on grounds of international protection, the person's identity, travel route and entry into the country are investigated by the Police or the Border Guard. When interviewing an applicant who is a minor, the representative and if necessary a counsel must be present, as well as an interpreter. Sometimes the child's social worker is also present. When establishing the applicant's identity, personal data on the applicant's family members and other relatives are collected. The minor's own personal details have already been registered when submitting the application either with the Police or with the Border Guard, and in the course of the interview, the personal data given by the applicant are checked.

In reality interview practices vary depending on the police department. In some places such as Helsinki, many interviews are conducted, and experience and expertise are concentrated in these police departments. In some small police departments interviews are only conducted occasionally and the police officers concerned do not necessarily have much experience of asylum procedures. Whether the police officer who conducts the interview is in uniform or not also varies depending on where the interview is conducted.

If the applicant's fingerprints have been found in the Eurodac register, the applicant has applied for asylum in another EU country before arriving in Finland and thus has crossed a Member State's border illegally. This is called a "Dublin hit" and the Police as a rule question the applicant about the travel route only as far as it concerns the journey to Finland from the other EU Member State. Also in the case of Dublin hit children there are great difference in the hearing of the child, depending where the interview takes place. In some places the child is heard very thoroughly even in Dublin hit cases, while in others, considerably less time may be spent when a Dublin hit is concerned. For example, in the Helsinki metropolitan area several hours may be taken to interview a Dublin hit child, whereas in another region as many as 8 children may be interviewed in a day.

At the end of the police interview, the minutes of the interview are interpreted to the applicant and the applicant signs the minutes. The investigation of an alien's entry into the country, travel route and identity is a police investigation, and the rules regarding police investigations are applied, for example, in that the person is assumed to be telling the truth. For this reason it is particularly important that the minutes are interpreted in full to the applicant at the end of the interview. In individual cases it has been known to happen that the minutes have not been interpreted to the applicant in full, and an inexperienced representative has not been sufficiently well informed to demand this.

As a result of the increasing numbers of unaccompanied minor asylum seekers arriving in the Finland, applicants have had to wait longer before being interviewed, often several months. The arrangement of an interview can also be held up due to time pressure of the representative and in some cases the difficulty of obtaining an interpreter may cause delays. If a counsel or social worker is to be present at the interview, reconciling several people's timetables is sometimes a challenge, and this may lead to delay in the arrangement of the interview.

*16 year old boy:
The police interview had been very nice: the police officer had asked about the boy's life in his home country and what his travel route had been. The interview had taken about two hours, he guessed.*

6. Age determination

Under the Convention on the Rights of the Child and Finnish national legislation, anyone under the age of 18 is a child. Whether or not an applicant is considered a minor or an adult is crucial in determining whether the child's best interests should be assessed in decisions on the applicant under the Convention. The age of an applicant also determines, for example, whether he or she should be assigned a representative, how accommodation is to be arranged, what sort of support measures are available in terms of schooling and health care, how the application is to be assessed and whether the applicant can apply later on for his or her family members to come to Finland.

At present there is no national legislation on age determination. Article 17(5) of the Asylum Procedures Directive allows the medical examination of unaccompanied minor asylum seekers to determine their age. Unaccompanied minors arriving to seek asylum do not normally have a passport or any other identity document that would reliably confirm their identity. Some child asylum seekers do not know their actual age. Some applicants are afraid to state their correct age for one reason or another. It is up to the police to decide whether or not they believe applicants when they state their age. If they do not believe a minor when he or she states his/her age, the consent of the applicant and his/her representative is asked to conduct an age determination examination. Children do not generally understand how significant age determination actually is for their asylum application and their rights. They think that they have to undergo age determination to be at all credible, and they do not understand that they in fact have the right to refuse. Although children are usually told that they have the right to refuse to undergo an age determination test, they nevertheless feel that they have to agree. In 2008 one applicant refused to be assessed in this way, after which the person was dealt with as someone who had attained the age of majority. In 2009 no one has refused to undergo an age determination so far as is known. In individual cases the police have themselves made a rough estimation of an applicant's age simply by a visual assessment and then dealt with them as adults accordingly, even though the applicants have stated that they were minors.

16 year old girl:

The girl said she would agree to the age determination test requested by the police because she felt that she would not be credible otherwise. She had no ID on her that confirmed her age. She said she knew that she would have had the right to refuse to undergo an age determination. At the end of the interview, however, the girl wanted to know what would happen if someone did not consent to the assessment and it soon became evident that the girl felt strongly that she did not have any other choice but to agree to the age determination test. She did not know what she should do if they decided she was younger or older than she actually was. She knew her age and felt it was important to keep her identity as far as her date of birth was concerned.

In Finland an age determination is carried out by means of an x-ray and a clinical examination mainly of the teeth and skeleton. The procedure is as follows. The Department of Forensic Medicine at the University of Helsinki asks a forensic dentist in the applicant's place of domicile or the nearest health care district to interview the applicant and take x-rays of the teeth and bones in the hand. The forensic dentist makes his/her own evaluation of the applicant's age. This plus the results of the examination are sent to the Department of Forensic Medicine at the University of Helsinki, where another forensic dentist estimates the applicant's age separately by going over the results of the examination, though without seeing the first dentist's opinion. The two separate opinions are compared and one joint age determination statement is issued. The University of Helsinki's Department of Forensic Medicine is the only institution in Finland that has the right to carry out procedures requiring the use of radiation technology where the case is not one of medical treatment. Nevertheless, individual age determination tests have actually been conducted by bodies other than the Department of Forensic Medicine at Helsinki University.

In Finland forensic age examinations were only conducted on asylum seekers occasionally prior to 2009. In 2008 only six were carried out by the University of Helsinki's Department of Forensic Medicine. In two other cases the applicant did not turn up for the test or was unwilling to take part. In three cases out of the six age determination tests that were carried out, the applicant's age was assessed to be at least 18, and in three there was no discrepancy between the age the applicant had given and the results of the examination. (In one of these latter cases the applicant had given his/her age as 22 and in the two other cases the applicants had said they were minors.) Between January and September 2009 a total of 92 age determi-

nation statements were issued. Of these, 37 were cases where there was no discrepancy between the results of the examination and the fact that the applicants had said they were under 18. In 55 cases the age of the applicants was assessed to be at least 18.

The age determination tests employed in Finland are a very accurate way to assess dental and skeletal maturity. However, measuring dental and skeletal maturity is not a foolproof method to determine a person's exact year or date of birth. An age determination test gives an estimate of the applicant's age based on the maturity of the teeth and bones compared to a certain control group. The age determination statement is written in such a way that it is biased in favour of the applicant: where there is an age determination margin of several years, the applicant's age is estimated to be at least what the applicant could be according to the youngest age evaluation.

Although an age determination is an estimate of the person's age, the medical opinion that is issued is normally treated by the other authorities as complete proof of the applicant's age. There are no official channels through which an asylum seeker may appeal against an age determination test or its interpretation. In the absence of legislation and proper guidelines, practices regarding how an applicant's date of birth is recorded following age determination also vary from one police department to another. In some cases the police record the date of birth the applicant has given as the actual date of birth and the year of birth estimated in the age determination as the year of birth. Or, alternatively, the applicant's date of birth is recorded as 1 January or 1 July and the year of birth is recorded as that estimated in the age determination test. In some police departments a child's age is recorded as the date of the age determination statement, with the year of birth given in the statement. In this way police officers have been able to amend the month of birth making the child several months or even almost a year older than the child has claimed and/or actually is. The age and date of birth recorded for a child depends completely on the police department handling the applicant's case and the officer handling the case.

The Parliamentary Ombudsman has responded to a request for an opinion from the Ministry of the Interior regarding the performance of age determination examinations. According to the statement of the Parliamentary Ombudsman of 5 May 2009 (Dnro 1209/5/09), the rules on jurisdiction relating to the age determination of an asylum seeker are unclear. Because age determination tests are voluntary procedures and are based on consent, that consent must always be genuine and specific. The Parliamentary Ombudsman recommends that there should be legislation on age determination,

particularly as it is hard to ascertain, where it concerns younger candidates, whether they were able to judge the significance of giving their consent for an age determination examination. The legislation should cover powers and jurisdiction with regard to age determination tests, their performance, and protection under the law, such as the right to appeal or refuse to take the test. In the statement the Ombudsman also focuses attention on the fact that under section 7 of the Constitution of Finland, the personal integrity of an individual shall not be violated without grounds prescribed by an Act.

16 year old boy:

The boy did not know the significance of his age in the asylum procedure or for his rights in Finland.

The Ministry of the Interior has submitted a Government Proposal to Parliament for the amendment of the Aliens Act by adding two new sections to it laying down provisions on the performance of a forensic examination to establish a person's age. According to the proposal, the determination of a person's age would require the written consent of an applicant for a residence permit on grounds of international protection or for some other reason, and, in the case of a minor, the written consent of the applicant's guardian or other representative in addition. Furthermore, refusal to undergo an examination could be taken into consideration when the applicant's pending case was being decided. Refusal to undergo an examination would particularly affect any judgment of the credibility of the applicant's identity. But aliens applying for international protection should also be informed that refusal to be examined would not on its own be grounds for rejecting their application. The proposal also states that the Police, the Border Guard or Immigration Service may request an examination to determine age, though not the applicants themselves. The Act would not allow appeal regarding age determination. The amendment to the Act is due to enter into force in 2010.

16 year old boy:

The Police had asked the boy and his representative for their consent to an age determination test. The representative was opposed to the test and stated that the boy's age was what the boy had said it was. According to the boy, the Police said that if the applicant and his representative did not sign the consent form, the application would be sent to the Immigration Service for a decision and the Police would tell them that they suspected that the applicant had attained majority and that the decision would be made on this basis. The boy and his representative agreed to the age determination test because they thought there was no other alternative. At the time of the interview there was still no news of the results of the age determination test. The boy in this case was unaware that his age could have an effect on such matters as his right to attend school or how his application for asylum would be handled.

7. Processing applications for asylum

In Finland applications for asylum are examined and handled by the Finnish Immigration Service. The Immigration Service may ask the Police to interview asylum seekers if the number of applications has risen dramatically or for a special reason at any other time. The Security Police may also hold interviews in addition to the Immigration Service if Finnish national security or international relations require it. During the interview there is a special focus on the need to enquire how the applicant would view possible removal from the country to a safe country of asylum or the country of origin or to prohibition of entry. It should be established whether the applicant has any other reasons for obtaining right of residence apart from a need for international protection. In practice the Police or the Security Police have not conducted interviews with minors seeking asylum: they have been carried out by the Immigration Service. The centre for handling applications from asylum seekers who have arrived as unaccompanied minors is the Helsinki 2 Section, and Dublin cases are dealt with by the Dublin Section.

17 year old boy:

The boy's fingerprints were found in Italy and he was to be sent back there. The boy had been in a detention unit for eight days. He was released, however, and given accommodation in a group home. The boy thought that his case was being dealt with by the European Court of Justice. But he did not know if the decision on returning him had been appealed or what would happen regarding his application for asylum or the decision on it.

7.1. Dismissal of applications for asylum

Under the Aliens Act, an application for international protection may be dismissed without examination in substance if the applicant has arrived from a safe country of asylum, or the applicant may be sent to another state which, under the Council Regulation on determining the Member State responsible for examining an asylum application, is responsible for processing the asylum application. Council Regulation (EC) No 343/2003 determines the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national. Under the Regulation, only one Member State can process the application. Each Member State may examine an application for asylum even if such examination is not its responsibility under the criteria laid down in the Regulation. In such an event, that Member State must inform the Member State previously responsible of its decision to examine the application. The State responsible for processing the application is determined on the basis of the situation obtaining when the asylum seeker first lodged his or her application with a Member State or irregularly crossed the border into a Member State for the first time. For example, the examination of an application for asylum by an unaccompanied minor is primarily the responsibility of the Member State where a member of his or her family legally resides, provided that this is in the child's best interests. In the absence of a family member, the Member State responsible for examining the application is that where the minor has lodged his or her application for asylum or whose border he or she first crossed. Where the asylum seeker is in possession of a residence document or visa for another Member State, it is that Member State that has the responsibility for processing the asylum application. Chapter IV of the Regulation describes a humanitarian clause, which states that any Member State, even where it is not responsible for examining an application, may bring together family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations. This Member State, at the request of the

other Member State involved, examines the application for asylum of the person concerned, if the persons give their consent. If a minor who arrives unaccompanied has a relative in another Member State, the minor must, if possible, be united with his or her relative. Where the Member State thus approached accedes to the request, responsibility for examining the application is transferred to it.

Most unaccompanied minors come from Somalia, Iraq and Afghanistan at present. For this reason the dismissal without examination in substance of applications for asylum by minors mainly relates to cases where the child's family member is a refugee in another EU country, in Norway or in Iceland, the child has a visa or residence permit for one of these, the child has arrived in Finland illegally via one of these countries, or the child has applied for asylum in another Member State, in Norway or in Iceland before arriving in Finland. Judging by the applications received in 2009, it would seem that in practice there are indeed cases that were dismissed without examination in substance in which a child of at least 14 years of age applied for asylum or was in possession of a visa or residence permit in another Member State and his or her fingerprints were on the Eurodac register. Finland will return such children to the country where they have a family member, or for which they have a visa or residence permit, or where the child has first applied for asylum. Under the Directive, the country in question is obliged to examine the application for asylum in substance. The Immigration Service first makes an enquiry to the state with responsibility and arrangements for return are agreed upon. This done, the Immigration Service makes a decision to dismiss the application for asylum and return the child on the basis of the Regulation on determining the Member State responsible for examining an asylum application, following which it sends the child back to the state with responsibility for processing the application.

The Immigration Service has an internal policy whereby an asylum seeker registered as a minor for the first time in Greece and also registered as a minor in Finland is regarded as an individual in a vulnerable position and whose application will be examined in substance in Finland. The Immigration Service's policy here is rooted in the notion that unaccompanied minors seeking asylum cannot be sent back to Greece under the Regulation on determining the Member State responsible for examining an asylum application, as the reception conditions in Greece are poor and the child's welfare cannot be guaranteed. It is the Immigration Service's internal policy that, in similar cases where a minor has applied for asylum or been registered in connection with illegal entry first in Malta and then in Finland, the application for asylum of a minor arriving unaccompanied is as a rule

examined in substance in Finland. If, however, the minor has a residence permit issued by Malta, he or she is returned there by virtue of the same Regulation. Nevertheless, in some cases the Immigration Service will return minors who have almost attained majority to Malta under the Regulation, even if the applicant has no residence permit issued by that country.

If a minor applicant had been recorded as having attained majority in another Member State in which he or she had applied for asylum before arriving in Finland, he or she has been deemed to be an adult in Finland, even if the child claimed to be a minor. Such children have no legal remedies at their disposal to prove their age or to correct any error made by the authority in the other country. In such cases, the Immigration Service will categorically confirm its interpretation of the other Member State's entry in the records as being accurate, and applicants have no right to demand or have an age determination test conducted or otherwise to dispute the age recorded for them. Many applicants say that their age was recorded wrongly because there was no interpreter there, or the authorities had recorded their age in the application totally arbitrarily, or the applicant him/herself had given the wrong age because of instructions or pressure from smugglers or other such individuals.

7.2. Processing applications for asylum and asylum briefings

If the criteria under the Regulation on determining the Member State responsible for examining an asylum application are not met, or if the responsibility in the case cannot be determined, the Member State that first received the application is responsible. In Finland an asylum application is examined and processed by the Immigration Service. The Immigration Service interviews all minors who have arrived unaccompanied seeking asylum and takes into account the child's age while doing so. Where it concerns very young children this may involve a very brief meeting, while for those over 15 the interview is fairly comprehensive. The Immigration Service has its own internal guidelines for interviewing minor asylum seekers and the under-15s and the over-15s have separate interview forms to be filled out. The guidelines for interviewing minors focus attention on how to talk to children, how to get through to them and how to create an atmosphere of trust. Interviewers also try to find out if a child has been a victim of violence or if there is any other evidence to suggest human trafficking or a danger of victimisation.

Applicants must also have their representatives and an interpreter present at the interviews. An assistant may take part in the interview if the representative thinks this is necessary. In practice an assistant is often present, but there are also cases where the representative has not even understood the assistant's role or that the applicant has a right to an assistant. The Immigration Service normally arranges for the interviews to be held in Helsinki. When long distances have been involved, the Service has also conducted teleinterviews via a video link, with the interviewer and, generally, the interpreter in Helsinki, and the applicant, his or her representative and the counsel at the other end. These teleinterviews, however, have mainly been discontinued because the reception centre at Oulu has begun to conduct briefings there.

At the start of the interview, a child will not always understand why he or she is once again being questioned by yet another authority or why he or she has to repeat the same things so many times over. Children are normally very tired after a night during which they have probably slept badly and possibly after a long journey. Interviews also make them nervous. Interviews of minors at the Immigration Service are conducted by officials who have been properly trained and who have received guidance on how to interview children. They are seen as specialists. The problems with teleinterviews, however, are how to get through to the child being interviewed, how to express empathy or sympathy and how to interpret what the child is saying via the video image. Interviews last from a few hours to anything up to a whole day. Sometimes breaks are taken and, if the interview is a lengthy one, there will be a meal break too. Breaks can also be taken whenever the child wants one. The Immigration Service makes a record of the interview. To round off the session the interpreter reads back the record of the interview to the applicant in his or her language and any necessary corrections are made to them. Finally, applicants must sign all pages of the record as a sign of their approval. The interview is also recorded on tape, so that the proceedings may be checked or examined in order to clear up any points during an appeal, for example.

In 2008 the Immigration Service and the Refugee Advice Centre collaborated on making some recommendations to improve interviewing. In the recommendations it was proposed that interviews with minors should not involve the children travelling unreasonable distances and that remote interpreting should not be used with them. The recommendations state that interviews with minors should make use of interpreters who are used to working with minors and that the interpreter should be informed in advance that the subject is a minor. In 2009 the Immigration Service and the

Refugee Advice Centre have continued to work together and have developed guidelines for interpreters, representatives, etc. These guidelines and recommendations are to be published at the start of 2010.

After an interview, the Immigration Service, where possible and if necessary, must, without delay, try to trace the minor's parents or anyone else who has been genuinely responsible for looking after him or her. This is done in the interests of unaccompanied minors seeking asylum, in order to discover the whereabouts of a child's parents and/or genuine guardians, and to create a link between the child and the parent or guardian. The tracing procedure also makes it easier for the Immigration Service to make decisions with regard to establishing the facts and provides useful information for any future family reunification. The results of the tracing procedure are forwarded to the representative and the final report is also sent to a social worker. The procedure does not prevent the granting the child asylum or a residence permit based on the need for protection and it must not be allowed to jeopardise the safety of the applicant or his or her relatives. The applicant's consent and that of the representative are always required before the procedure can start.

The Immigration Service has concluded a cooperation agreement on tracing relatives and others with the International Social Service. In actual practice there is not one single case where the tracing procedure was brought to a successful conclusion. This is because, for example in Somalia, the current situation makes it impossible, and even in those countries where the information is available, the procedure fails because of time restrictions. The asylum process has been set targets for the time required for handling applications and making a decision on them, and the tracing procedure cannot be undertaken in the time allowed. Children can, and indeed often do, continue the search for their relatives themselves by going through the International Red Cross. Some make contact with their families via the Internet.

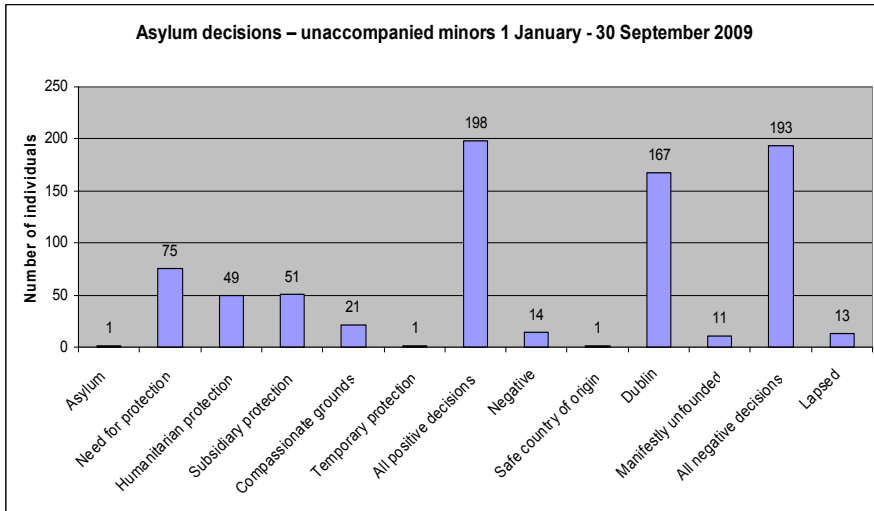
In practice, the increase in the number of applicants has resulted in a situation where they now have to wait for an asylum interview from a few months up to as much as a year from the time they lodged an application with the Immigration Service. Reaching the briefing stage is slowed down by, for example, by delays with police interviews, the pressure of work the representatives are under and the availability of interpreters. If a counsel or social worker is involved, it is sometimes a challenge to coordinate the timetables of several people and this can delay the arrangements for the interviews. It is also more time-consuming to deal with and examine asylum applications from children than it is in the case of adults.

According to the Immigration Service, it has had to delay taking decisions recently because a statement by a social worker on the child's situation needs to be attached to the application. Because there is a shortage of social workers, or because they are busy due to the increasing number of applicants, the Immigration Service sometimes has to wait weeks or even months for the statement. On the other hand, views have been expressed concerning the fact that in some cases the representatives have insisted on seeing and approving the social worker's statement before sending it to the Immigration Service. The representative has the right to receive a copy of the social worker's statement but no right to check it through or question the social worker's judgment. Of course, the representative can correct any mistakes by highlighting spelling and factual errors. There have also been cases where the social worker had provided confidential information on the child, e.g. details of the child's state of health, without the child's representative having given his or her consent for other authorities to receive such information.

8. Asylum decision and notice of decision

The increase in the number of unaccompanied minor applicants seeking asylum has also resulted in delays in decision-making, and at present the waiting time for a decision is several months after the interview. The overall time for processing asylum decisions, which includes the work of all the authorities handling them, has been 235 days in 2009 for applications decided in the normal procedure and 155 days for the accelerated procedure (which includes the Dublin cases and manifestly unfounded applications for asylum).²⁸ More than 90% of decisions on asylum for children are generally positive every year. Actually, the grounds for issuing a residence permit were generally the need for protection or humanitarian grounds prior to 1 June 2009, and since then the grounds have been humanitarian or subsidiary protection, with only a few children a year being granted asylum in Finland.

²⁸ www.migri.fi: average processing times for asylum decisions for unaccompanied minor asylum seekers 1 January – 30 September 2009.



Source: Immigration Service

Note: Residence permits on the grounds of humanitarian or subsidiary protection have been granted since 1 June 2009. Until 31 May 2009 they were granted on grounds of a need for protection.

It is felt to be a difficult task to assess the best interests of a child in any decision as there is no single agency that could judge an individual child's best interests. Private psychologists will not give such statements and children do not have any service such as KITU (the Centre for Torture Survivors in Finland) available to them. At present the child's own social worker assesses the child's situation and best interests. It is the social worker who has the most knowledge about the child's situation and what would be the best solution for him or her. Statements by social workers, however, vary greatly and not all social workers are aware of how the child's best interests should be explained or assessed in such a way that the person taking the decision can judge the child's situation, taking account of these interests. The organisation All Our Children, however, is presently engaged in a project to improve the way a child's best interests are taken into account in the asylum process. The purpose of the project is to provide training on how to address a child in an interview, to develop various models facilitating assessment of the child's best interests, and, in conclusion of the project, to produce a publication and a leaflet specifically for minor asylum seekers, describing the asylum process and how it proceeds. The project also focuses on training and guidance for social workers to help them produce standardised, good quality assessments and statements on the best interests of an individual child.

Asylum decisions on minor applicants who have arrived unaccompanied during the period 1 January – 30 September 2009 either reflect the difficulty of assessing a child's best interests or a complete lack of any such assessment. In the Dublin procedure the Immigration Service generally dismisses an application for asylum without examination in substance and returns the child under the Regulation determining responsibility to the other Member State in which the child first submitted an application for asylum. Whilst this decision is being drafted, the child's best interests are not normally assessed. The decision simply refers to the fact that the "The Immigration Service, in making its decision to return the applicant, has taken account of all the relevant factors and circumstances affecting the case in their entirety". Or it will state that differences in reception conditions do not constitute grounds for an application to be taken up for examination in substance, and the child's best interests are referred to in the decisions only casually and even then mainly only as follows: "The Immigration Service, in making its decision to return the applicant, has taken account of all the relevant factors and circumstances affecting the case in their entirety, such as the length and purpose of stay of the applicant, the applicant's ties to Finland and the best interests of the child". At best the child's best interests are only assessed in individual cases, such as when, for example, it is considered to be in the child's best interests that the applicants grow up in familiar surroundings where they had already lived for two years before coming to Finland. In situations where a minor claims to have been a victim of a crime or exploitation in an earlier EU country, the Immigration Service has been of the view that the applicant needs to contact the authorities in the country concerned and that this is not grounds for the examination in substance of an application in Finland. As a general rule, physical or psychological symptoms, homelessness or lack of income are not grounds for the examination in substance of an application in Finland, as the Immigration Service considers that a child can obtain the relevant services in the EU country responsible for processing the application. A number of applications concerned, for example, children who had been living on the street or been victims of abuse, or they had physical or psychological problems, and they were returned to the other EU Member State. There are no follow-up systems in place in Finland to monitor children and their situation when they are returned to another country.

Most minor asylum seekers arriving unaccompanied and involved in the normal asylum procedure receive a residence permit for Finland. A statement on the child's best interests by his or her social worker is requested and attached to applications from an unaccompanied child, and this is of major importance when assessing the child's best interests. The data used

in this report contained not one instance of an unaccompanied minor receiving a negative decision on asylum and residence permit in the normal asylum procedure.

Because a child can be turned back under the Dublin procedure immediately after the decision to return him or her to the country responsible for processing the application, the applicant does not always have time to appeal the decision. On the other hand, children have been returned to another Member State, even though an appeal has been lodged, and the appeal has often not been considered in more detail or it has been withdrawn because the child has been returned.

It is furthermore evident from the asylum applications processed in the period 1 January – 31 June 2009 that the Immigration Service does not generally assess or identify victims of human trafficking among unaccompanied minor applicants, especially if a child has applied for asylum in another EU Member State before their arrival in Finland. Among the asylum applications in 2009 there were several unaccompanied minor applicants who had been victims of violence, had been living on the streets without access to any reception facilities, and without social security or food, or had been threatened or coerced by criminals in the country in which they had applied for asylum for the first time. Among the applications there was also a minor who had been subject to attempted coercion into military service in his own country. Even so, these children were returned, or the intention was to return them, to the country with responsibility for their asylum application under the Regulation on determining the Member State responsible for examining an asylum application without any examination in substance of their application or consideration of the possibility of granting a residence permit on the grounds that the applicant was a victim of human trafficking, or an assessment of the risk of victimisation. If it appears likely that the applicant may have been a victim of human trafficking, the Immigration Service will examine the asylum application in Finland in substance, especially if it is believed there are weighty reasons for examining an application for a residence permit in Finland on account of an investigation into the crime of human trafficking. If the suspected perpetrator is not in Finland or in a ‘Dublin’ country with reception facilities, a ‘Dublin’ decision can also be taken in respect of the applicant, who is then returned to the Member State with responsibility. It is the Immigration Service’s view that an applicant can have access to the support services for victims of human trafficking in the recipient country, should he or she so desire.

The decision on asylum by the Immigration Service is sent to the local police, who make the decision known to the applicant. Because of the rise in the number of applicants and the inadequate resources that local police forces have at their disposal, notification times have become longer. In some police departments the applicant has reached the age of 18 after the decision has been made, while the decision has remained with the Police. This may lead to a situation where the young person cannot apply for his or her parents to come to Finland for purposes of family reunification, even if the other requirements for family reunification are met.

9. Situation after a decision is taken

9.1. Placement after a residence permit is obtained

Minors who have obtained a residence permit, mainly of school age or younger, are placed in ‘family group homes’ run by the local authorities. Some of the group homes and family group homes operate as combined units, where the children can continue to live after having received a residence permit. When placing a child in a municipality the factors taken into account include the minor’s possibilities to contact his or her relatives in Finland and members of the same ethnic group, as well as study opportunities available locally and, where necessary, the availability of health care services. In a family group home the objective of a child’s education, upbringing and care is his or her integration into Finnish society while preserving and maintaining his or her own culture.

The form of accommodation that is offered young people, mainly of the age of 16 to 17, is supported housing. If necessary, the representative assists the young person, but when the child reaches the age of 18 the work of the representative comes to an end. Then the young person remains completely alone without any support network or assistance. Some young people withdraw from the society around them and suffer from loneliness, and at worst this can result in social exclusion. If the young person is not admitted to language classes sufficiently quickly to learn Finnish or Swedish, the risk of exclusion grows and the integration process slows down.

If a child has been living with a family while the asylum procedure has been going on and if the child receives a positive decision on the application or a residence permit, he or she can continue to live with the family. This only happens, however, if it is in the child’s best interests. Children start or

continue going to school after they obtain a residence permit. When a residence permit is received, the child is no longer registered with the reception centre and is then eligible for the services provided by the local authority in the locality where he or she resides.

In November 2009, of the 752 children in the reception centre system, 162 had already been issued a residence permit allowing them to stay in the country permanently. Of these 162, 147 resided in centres (group homes, family group homes, supported housing and 'folk high schools'), and two were in private accommodation. Around 20 children lived in group homes awaiting placement in a municipality.

As the years have gone by it has become harder to place children in municipalities, and many local authorities that used to accept refugees have refused to take them. The housing situation in some local authorities might be unsatisfactory, and scarcer resources for social and health services have also meant that it takes longer to place people or has made it impossible. The scarcity of resources is reflected in the heavy workload of employees, among other things. Those representing the local authorities have voiced their concern over the adequacy of funding from central government. The small number of available places in the municipalities is slowing down the transfer of asylum seekers who have obtained residence permits from the reception centres to municipalities. It is inappropriate to continue living at a reception centre after a residence permit has been granted, as it should be possible to start integration measures as soon as possible. Placement in municipalities and the inappropriate use of reception centres as temporary sites for housing people who have received a residence permit are part of the debate on resources.

The Government has decided to increase the compensation it pays to the local authorities for taking refugees. The intention is to make them more willing to accept refugees. The money paid, however, is only 10% of the level in 1993, so the increase will not necessarily be enough. The Ministry of the Interior is also starting a project with European Refugee Fund (ERF) funding to help place quota refugees belonging to vulnerable groups in municipalities and help local authorities to produce the special services that the people concerned need. Finland has obtained EUR 1,592,000 from the ERF for the period 2009-2011 for the placement of vulnerable quota refugees. Vulnerable groups also include children and women who have been victims of mental, physical or sexual violence or exploitation, as well as those who have serious health care needs. With the funding now obtained it is possible to facilitate the placement of these groups in municipalities by developing

and organising health, mental health and rehabilitation services for them. The project is to establish and test new services and service packages. There will be a special focus on the training of local authority personnel and on developing, for example, care and therapy methods. The project also extends to allowing direct financial support to be made available for the organisation of special needs services in a municipality. The project aims in particular to speed up and facilitate the placement of refugees who are 'emergency cases', or are otherwise in a difficult position, in municipalities. The project is working closely with the TE Centres to make more places available in municipalities. It starts in the autumn and will run until the end of 2011. If necessary, the project can be extended until the end of 2013. The Ministry of the Interior is implementing the project in partnership with the TE Centres and the local authorities accepting quota refugees belonging to vulnerable groups. The project will also make use of the expertise available in organisations.²⁹

In the recent debate the Minister of Migration, Astrid Thors, put forward the idea that local authorities could be obliged to receive refugees.

9.2. After-care

A child who has obtained a residence permit and who is 18 years old does not have access to the services under the reception system, once he or she has reached the age of majority. A young adult is not entitled to receive child welfare support services either. Because unaccompanied minor asylum seekers are not placed in a municipality under the Child Welfare Act, they are not entitled to after-care as referred to in that Act, as are young Finnish people gaining independence in substitute care, who receive after-care services up to the age of 21.

In practice most unaccompanied minor asylum seekers are between the ages of 15 and 17. They tend to live in Finland only a few years before reaching majority. Many are traumatised by circumstances in their home country and their journey and they often have little Finnish and are poorly educated – some are even illiterate. They are not ready to operate independently in society as they are not yet aware of what is involved. Somali, Iraqi and Afghan culture, which is the culture of most unaccompanied minor asylum seekers at present, is very much based on the community, whereas in Finland people are encouraged to live a very independent and individualistic life. Young people who have been brought up in a tightly-knit community are not necessarily able to cope alone in Finland. Nevertheless,

²⁹Min. Interior: external communication 17.8.2009.

young people are placed in an alien culture, where they cannot speak the language and have to manage on their own in an unfamiliar social environment. The work of the child's representative comes to an end when the child reaches the age of majority. Young 18-year-olds are not entitled to receive measures designed to integrate them into Finnish society, they may have to wait a long time before being accepted onto a Finnish or Swedish language course, and, in the worst-case scenario, isolation from the community results in social exclusion.

10. Family reunification

Under section 37 of the Aliens Act, the spouse of a person residing in Finland, and unmarried children under 18 years of age, over whom the person residing in Finland or his or her spouse has guardianship, are considered family members. If the person residing in Finland is a minor, his or her guardian is considered a family member. Section 38 of the Act describes the requirement for a child to be a minor. Government Proposal HE 28/2003 states the content of this section, which is that issuing a residence permit to an unmarried child on the basis of family ties requires that the child is minor on the date when the application is filed. At the same time this is conditional on the requirements for granting the residence permit being met on that date. This means that the sponsor should have a residence permit for Finland. If, for example, an alien applying for asylum in Finland applies during the asylum procedure for a residence permit for his or her underage child who is in a foreign country on the basis of family ties, the child must be a minor on the day the parent's application for asylum is decided. Before this date it is not possible to issue a residence permit on the basis of family ties. On the basis of this Government Proposal a consistent approach has been derived for dealing with the issue of unaccompanied minor asylum seekers applying for their guardian to be allowed to come to Finland on the grounds of family reunification: the child must first have obtained a residence permit for Finland, and once that has been received, he or she must still be a minor when submitting an application for a residence permit for a parent on the grounds of family ties.

In practice, the current policy under the Aliens Act has, due to the longer processing times, resulted in a situation where fewer and fewer unaccompanied children arriving in Finland have their family come to Finland under the reunification model. Owing to the current processing times, most young 16-17 year old asylum seekers reach the age of 18 before they receive a decision on their application for residence. What also happens is that the deci-

sion on a child's application for a residence permit is made when the child is still a minor, but if the notice of the decision is delayed, the child may reach the age of 18 and so is no longer able to apply for his or her parents or siblings to come to Finland.

If the amendment to the Aliens Act now pending and relating to the requirement concerning the sponsor's minority when decisions on residence are being made for his or her family members enters into force, family reunification will become even more difficult. In practice this will mean that longer delays on the part of the authorities and in the processing of applications will make it increasingly more difficult for a minor to bring his or her parents to Finland. This will also allow situations where, by prolonging the processing of an application, it is possible to have applications for family reunification rejected.

11. Detention

If a child receives a negative decision on asylum or residence permit or, in Dublin cases, the application is not examined in substance in Finland and a decision has been made to return the child, or the child's actions make it impossible or very difficult to make a decision, he or she may be placed in detention. A representative of the social welfare authority must be consulted before a minor is placed in detention. A detention unit can be set up at a reception centre run by either the state or a local authority.

The following persons can take a decision on placing a child in detention: an officer from the local police department, the Central Criminal Police, the Security Police or the Traffic Police, an official with powers of arrest in the Border Guard or a border guard of at least the rank of major, the head of a Border Guard or Coast Guard District or the head of the Helsinki Border Control Section. The person placed in detention or his or her representative must be told the reason for the action. The relevant official, as referred to above, can decide whether to place an alien taken into detention in a police detention facility (exceptionally), if the detention units are temporally full or the alien is placed in detention a long way from the nearest unit, in which case the maximum time allowed for the individual to remain in police detention facility is four days. Or, again exceptionally, the individual may alternatively be placed in a Border Guard detention facility, but for no longer than 48 hours. A person under the age of 18 may only be placed in a police or Border Guard detention facility if his or her guardian or other adult family member has also been placed in the same facility.

The official who has decided on detention or, exceptionally, on placing an individual in a detention facility, must, no later than the day following the action, inform the local district court of the matter or, in urgent cases, any other district court. This can be done by telephone or electronically. A notification made by telephone must be followed up immediately in writing. The district court must deal with the case without delay, whether it be normal detention or exceptional placement in a detention facility, and no later than four days after the action is taken. A detention decision by an authority and a district court may not be appealed. A person placed in detention may appeal against the decision of the district court.

In practice, it may happen that a social worker is advised that a child has been placed in detention but he or she is unable to take a stand on the matter before a decision has been made on detention. The social worker may be informed of the action by telephone, but his or her name is not necessarily recorded anywhere, and so no one can later check with whom the child's placement in detention was discussed. This makes for errors and abuse and may result in the social worker's opinion being ignored, without any genuine assessment of the child's best interests regarding detention being made.

Under the Convention on the Rights of the Child, decisions on the detention of children must include an assessment of their best interests. However, children are placed in detention units and police detention facilities housing convicted criminals and individuals who are to be deported from the country and who are, as a general rule, adults. In a detention unit the child cannot attend school or take outside exercise. Unaccompanied minors who have arrived in the country are also held in police detention facilities if the police have judged the child to be an adult simply on the basis of a visual assessment. In practice, the general experience is that the handling of detention cases by the district courts has been resolved with reference to the application.

A 16 year old boy:

The boy had been placed in a police detention facility for a few hours because his fingerprints had been discovered in another country and the police told the boy that he would be returned to the country where he had come from. The police had told the boy that he could not be held in a police detention facility as he was under age. The boy was transferred to a detention unit, where he spent two weeks. According to the boy, the place 'felt like a prison', because he was not allowed to go out of it. The boy's representative was present when he was taken to the detention unit, but the boy did not know if a social worker had been asked for a statement on his detention.

12. Summary of the children's' interviews

Most minor asylum seekers arriving in Finland come from poor countries that have been at war for several years. They come from large families, their family members have died or disappeared. Some time they have had to separate from their families either before fleeing their country or whilst doing so. Some have been on the way to a destination other than Finland, some are specifically bound for Finland and some have not known where they were going.³⁰

The journey the unaccompanied children make is usually arranged by a smuggler, who leaves the child somewhere at random in Europe and guides and advises him or her on how to submit an asylum application. Some of the children have never seen a police officer before and they are frequently afraid of dealing with them. After arriving in Finland, young people have lived in group homes or supported housing, and some have been moved several times from place to place before being heard by the Immigration Service.

Many have no documents that could prove their identity or age. Most are referred by the Police for a medical age determination test. The children and their representatives are asked to give their consent to this, and all the children have agreed to an age determination test this year (2009). However, they do not actually understand the significance of the assessment and believe that they have no option but to consent to one. Neither do they have any notion of what their age might affect (e.g. schooling and accommodation.)

³⁰ Helander, Mikkonen, Ikävä äitiä... Ilman huoltajaa tulleet pakolaislapset Suomessa, s.121. (Missing Mum: Unaccompanied Minors arriving in Finland, p.121)

The children and young people reside in group homes, in supported housing, with private families and in family group homes. Some are happy in institutions and others in families. Those who stay in institutions make more Finnish friends and contacts, but those who stay with families receive more family support and it is easier for them to maintain their own culture, language and religious beliefs.³¹

Almost all the young people thought that the representative was of help to them. They had different kinds of relationship with their representatives: for some the representative was someone close, for others someone distant and official. All the children interviewed for the report had a representative. The young people discuss important matters with such people as the counsellors in group homes, their representative and their friends.

The long processing times for asylum applications and family reunification measures cause the children uncertainty and concern. They all miss their family, and especially their mother. Virtually all of them want to bring their family to Finland. They say “that would be the happiest day of my life”, and a negative decision on family reunification causes sorrow and distress.³²

The young people went to school if it was possible, but not all the accommodation units provided this possibility. Nearly all had future plans for study and education/training. They wanted to learn Finnish, train as engineers, doctors and lawyers, for example, and one day get a job that was relevant to their education.

31 Helander, Mikkonen, Ikävä äitiä... Ilman huoltajaa tulleet pakolaislapset Suomessa, s.123-126. (Missing Mum: Unaccompanied Minors arriving in Finland, pp. 123-126)

32 Helander, Mikkonen, Ikävä äitiä... Ilman huoltajaa tulleet pakolaislapset Suomessa, s.121-122. (Missing Mum: Unaccompanied Minors arriving in Finland, pp.121-122)

V THE PROCESS FOR ACCOMPANIED MINOR ASYLUM SEEKERS ARRIVING IN FINLAND

1. Asylum application and procedure

The asylum procedure in Finland for applicants arriving in the country with a guardian is more or less the same as the process already described for unaccompanied minor asylum seekers. There is a slight difference in that the family members are accommodated together and the Immigration Service interviews the spouses and children who have reached the age of 15 separately concerning their grounds for asylum and any other reasons for arriving in Finland. If a child obtains a residence permit with his or her family, a place is sought in a local municipality and they move there together accordingly. An accompanied minor asylum seeker arriving in Finland is not appointed a representative. Under the Child Welfare Act the child is appointed a trustee instead of a guardian if there is good cause to assume that the guardian is unable to supervise the child's interests in the case without prejudice. The social worker responsible for the child's affairs may assist the child as regards his or her right to be heard and may attend the briefing in any case if the interests of the guardian are at odds or if there are problems with the child's care.

2. Reception

Reception centres are responsible for accepting asylum seekers and those with temporary protection status. Family members are accommodated together. Asylum seekers and those receiving temporary protection may be transferred to another reception centre if there are grounds which make it necessary for the applicant, the work of the reception centre or for handling the application for asylum. The reception centre organises the reception services, but as is just as with children who have arrived unaccompanied, those who are accompanied by guardians have the same problem with access to health services. There are no mental health or therapy services to help children to overcome their traumatised state and ensure their recovery (see section 2.3). The situation regarding schooling is the same as that for children arriving unaccompanied (see section 2.5).

3. Police hearing and Immigration Service's asylum investigation

Where several family members are applying for asylum at the same time, the spouses are questioned and interviewed separately. Minor applicants are also heard. The Immigration Service questions minors of 15 years of age and over in a separate asylum interview. With the under-15s, the Immigration Service asks them in connection with the asylum interview of one or other of the guardians, with both or one of them present, if they have anything they wish to bring up. An asylum interview can be arranged for someone under the age of 15 taking account of the child's age and level of maturity. The hearing of a minor can be omitted as unnecessary if the child's guardian has been questioned thoroughly and the child cannot or does not wish to be heard.³³ A social worker cannot be asked for a statement in the case of children who arrive accompanied by guardians unless there is a conflict between the best interests of the child and those of the parent.

4. Decision

The Immigration Service processes applications for family members together and takes decisions on them simultaneously. The asylum application may also be handled as an accelerated procedure, which is dealt with in more detail in the report for the Government produced by the Ombudsman for Minorities entitled "Vähemmistövaltuutetun selvitys nopeutetun turvapaikkamenettelyn oikeusturvatakeista - Nopeus, tehokkuus vai oikeudenmukaisuus?" (Report by the Ombudsman for Minorities on Guarantees of Legal Protection during the Accelerated Asylum Procedure – Speed, Efficiency or Justice?). An accelerated asylum procedure may be applied to a minor on arrival in the country with his or her parents or guardians, as for example happened with Roma children from Slovakia. However, the accelerated procedure is not normally applied to children seeking asylum who arrive alone.

The data for the report included some decisions on accompanied minor asylum seekers arriving in Finland for the period 1 June – 30 September 2009. It is apparent from these decisions that whether asylum and international protection are warranted is being assessed for the parents, but the best interests of the children are not being assessed at all. On the whole these decisions do not even make mention of the interests of the children, let alone make an assessment of them, and in individual cases the decision only states that the best interests of the child were taken into account when

³³ Immigration Service's Guidelines on Asylum, ref. 109/032/2008, p. 33-35.

the decision was made. How the matter was judged or taken into consideration is not explained. A statement by a social worker is not requested in order to assess the best interests of these children unless the interests of the child and those of the parents are conflicting. Nevertheless, a report has generally been requested on the family's means of livelihood and reliance on social assistance (subsistence allowance) for the purpose of the application. Economic factors would appear to take priority when assessing applications, especially where EU nationals, and the child's best interests are not generally considered.

5. Detention

If a child and his or her guardian receive a negative decision on asylum or residence and it is decided to return them, or their actions make it impossible or very difficult to make a decision, they may be placed in detention. A representative of the social welfare authority must be consulted before a person under the age of 18 is placed in detention. See section IV (11), which describes detention in general in more detail.

In practice, if family members are placed in detention a social worker is notified that a child has been placed in detention, which means that he or she cannot take a stand on the matter before the decision on detention has been made. See section IV(11).

Again, in practice, there have been cases where very young children have been held in a detention unit with their family members for several months without the child being able to attend school, take exercise outdoors, be in the company of children of his or her own age, and, in the worst cases, the children have withdrawn to their room with their family members as they have been frightened by other residents of the unit.

A mother and her two underage children were placed in detention in March and their asylum briefing was held in April. The family received a negative decision and it was decided to return them. However, it proved impossible to remove them from the country, and they were released in July. The mother, her 15 year old and two year old children were held for a total of four months in the detention unit. During this time the children were not able to attend school or even engage in any outdoor activity.

6. Placement in a municipality and integration

If a child is granted a residence permit along with his or her family members, a placement in a municipality is sought for them. This done, the family is placed in rented accommodation and the local authority is responsible for the services they receive. One problem at the moment – and this is also a problem with unaccompanied minors – is that there are not enough places in municipalities, which do not have sufficient accommodation to offer asylum seekers with residence permits. As was mentioned earlier on, it has become harder for local authorities to accept asylum seekers for financial reasons. Accordingly, the compensation they receive is being increased, the aim being to make them more willing to accept asylum seekers with residence permits. The Minister of Migration, Astrid Thors, has furthermore initiated a debate on whether local authorities should be obliged to receive refugees.

Once a child has obtained a residence permit, he or she becomes subject to compulsory education and starts or continues to attend school until the compulsory education is completed or until he or she is 17 years of age.

VI THE BEST INTERESTS OF THE CHILD IN THE ASYLUM PROCESS

1. The best interests of the child

Finnish government has ratified international treaties which together with Finnish legislation oblige Finland to guarantee certain rights, protection and care for children. When an asylum seeking child can enjoy his or her rights the best interests of the child can be considered to be fully satisfied. Article 3 of the Convention on the Rights of the Child states: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Furthermore, the Aliens Act states as follows: “In any decisions issued under this Act that relate to a child under eighteen years of age, special attention shall be paid to the best interest of the child...”. The best interests of a child and their implementation should be the main grounds for assessment in any decision-making relating to the asylum process that affects the child. The best interests of the child should be taken into consideration and assessed when drafting legislation and in individual decisions on the child taken by the authorities. When assessing the best interests of children a decision maker should consider how the decision will affect the rights of the child concerned

The Child Welfare Act, which is applicable to all children living and staying in Finland, should be taken into account when assessing the best interests of an asylum seeking child. Section 4 of the Act sets forth the principles of child welfare as follows: “Child welfare must promote the favourable development and wellbeing of the child. Child welfare must provide support in child upbringing and care for parents, custodians and other persons responsible for child care and upbringing. Child welfare must be aimed at preventing child and family problems and intervening sufficiently early if problems are found. When assessing the need for child welfare and in the provision of child welfare, it is first and foremost the interests of the child that must be taken into account.”

Furthermore, under the Child Welfare Act “When assessing the interests of the child, consideration must be given to the extent to which the alternative measures and solutions safeguard the following for the child:

- 1) balanced development and wellbeing, and close and continuing human relationships;
- 2) the opportunity to be given understanding and affection, as well

as supervision and care that accord with the child's age and level of development;

- 3) an education consistent with the child's abilities and wishes;
- 4) a safe environment in which to grow up, and physical and emotional freedom (integrity);
- 5) a sense of responsibility in becoming independent and growing up;
- 6) the opportunity to become involved in matters affecting the child and to influence them; and
- 7) the need to take account of the child's linguistic, cultural and religious background."

"In child welfare, action must be taken with as much sensitivity as possible, and assistance in open care must be given precedence, unless the interests of the child demand otherwise. If substitute care is needed in view of the interests of the child, this must be arranged without delay. When providing substitute care, the aim of reuniting the family must be taken into account in a manner that accords with the child's interests."

As a concept, the best interests of the child does not in itself say anything, and it cannot be defined exhaustively: its content depends on the child's age, level of development, and his or her life situation³⁴. In establishing the best interests of the child, attention must be paid to the child's own views and ideas. There is also a need to ensure that the child is sufficiently aware of the various alternative measures available. Otherwise the best interests of the child will not be discovered.³⁵ In the asylum process too, then, it needs to be ensured that the child is aware of his or her options and sufficient attention must be paid to his or her views and ideas.

As in child welfare, in the various situations where decisions are made during the asylum process, the assessment of a child's best interests is a question of a prediction of how the alternative solutions at the disposal of the authorities will in fact contribute to the implementation of the child's best interests now and in the future.³⁶ The child's best interests can also be assessed by predicting what at least would not be in his or her interests. This involves differentiating between those factors that would jeopardise the child's wellbeing and those that would protect the child or promote his or her welfare. Negative factors as far as the child is concerned might include an absence of proper care, mental and physical abuse, failure to provide education or poverty and social exclusion. Positive factors might

34 Tapio Rätty, Uusi lastensuojelulaki, s. 24 (The new Child Welfare Act, p.24).

35 Tapio Rätty, Uusi lastensuojelulaki, s. 25 (The new Child Welfare Act, p.25).

36 Tapio Rätty, Uusi lastensuojelulaki, s. 26 (The new Child Welfare Act, p.26).

include close and warm human relationships, good standards of care, the right to physical integrity, and the right of self-determination as regards physical and mental inviolability. When issuing decisions on a child, authorities must weigh up the factors that affect their best interests, and it is the responsibility of decision-makers to decide which factors are crucial and which carry the most weight.³⁷ However, the decision-makers must take into account the child's age and maturity level, which influence the child's best interests. It is especially important to take into account the fact that any information on the children and their experience during the asylum process for unaccompanied minors arriving in the country is obtained only from the children themselves, and, for this reason, it is essential for them to be heard throughout the process.

2. General comments and recommendations

2.1. General

Developments in legislation on asylum and foreigners have been informed by a desire to restrict applicant numbers and control immigration, and the best interests of children have not been assessed separately in any legislative reforms. Finland should place more emphasis on its obligation under the Convention on the Rights of the Child, in that, in all its legislative work on children, their best interests are made a priority, and an assessment of the child's best interests should be included when legislation is being drafted. At present in Finland children in asylum policy and asylum decisions are primarily treated as asylum seekers in the same way as adults, and the fact that they are children is only of secondary importance. Nevertheless, children need special protection and attention, and their best interests should always be made a priority. Unaccompanied minor asylum seekers arriving in the country are more vulnerable than those who are accompanied by parents or guardians, and they need special protection and attention for this reason alone.

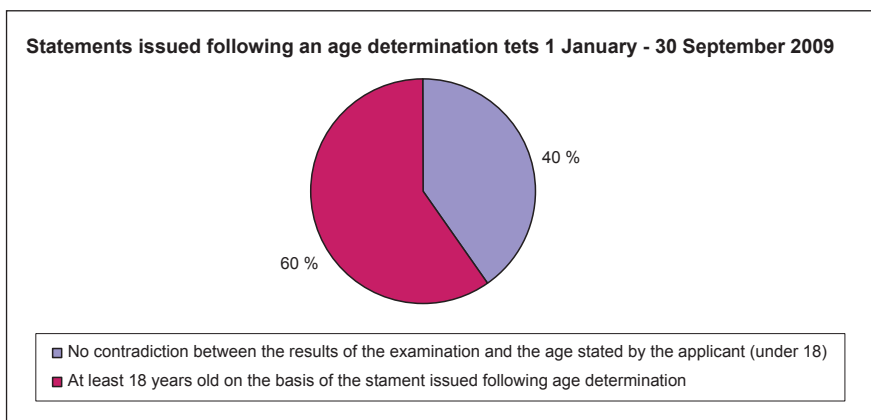
In 2008 the number of minor asylum seekers increased dramatically. This has served to increase the atmosphere of scepticism prevailing in Finland in political debate, legislation and practical work. The grounds for granting asylum to unaccompanied minor asylum seekers arriving in the country are regarded with increasing suspicion and their age and accounts of their experiences are being questioned more and more. If the case is unclear,

³⁷ Tapio Rätty, Uusi lastensuojelulaki, s. 27 (The new Child Welfare Act, p.27).

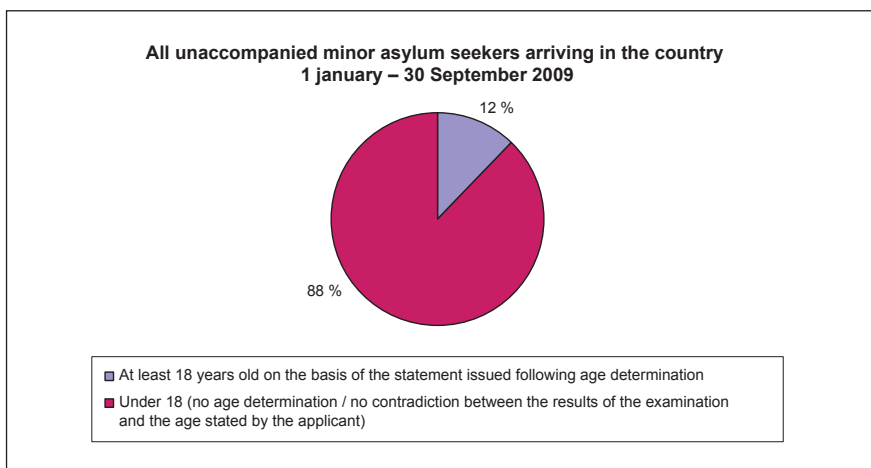
children are often not believed and their account of what has happened is called into question if they have no documents with them. The political and official debate has largely focused on how many of these minor applicants are actually adults and therefore abusing the asylum process. The increase in the number of applicants and the current economic problems have further contributed to the increased scepticism with regard to these children.

2.2. Age determination as an indication of increased scepticism

The spread of a culture of suspicion and the scepticism with children's accounts are regarded is reflected, for example, in the considerable increase in the number of age determination tests carried out, the result of disputes regarding the age notified by a child. The number of unaccompanied minor asylum seekers arriving in the country increased approximately sevenfold from 2007 to 2008. This year, 2009, will probably see fewer applicants than last year, but around five times more than in 2007. Nevertheless, the number of age determination tests has gone up from the eight requested in 2008 to the 92 conducted by the end of September 2009. The increase is therefore more than tenfold. This is, however, no indication of increased abuse of the system, where adults pretend to be children, even though this is sometimes the impression given in the media. By the end of September 2009, the Department of Forensic Medicine at the University of Helsinki had issued 92 statements on age determination tests. Of these, 37 stated that there was no contradiction between the age the applicant had given as being under 18 and the results of the examination. In other words, 40% of the age determination tests showed that the results were consistent with the fact that the applicant was indeed a minor, as claimed. Of the 92 opinions issued, 55 stated that the applicant was probably at least 18 years old. In other words, in 60% of the statements the applicants were judged to have attained majority, although they had claimed to be minors. It has to be realised, however, that the applicants who were sent for age determination testing were those the Police believed to have attained majority. Going by the opinions issued following age determination, it is obviously difficult to assess a person's age merely by looking at them, and as many as 40% of those the Police had thought were adults turned out to be minors according to the statements issued after the age determination tests.



By the end of September 2009, 448 applications for asylum in Finland had been submitted by unaccompanied minors. If the opinions following age determination tests are compared to the number of applicants, by that point in time only 12% had been found to have reached the age of majority. Most – 88% – were therefore minors in 2009. So it is probably true to say that the public debate and comments with regard to applicants are actually adults are an indication that the actors concerned have strong attitudes towards the children and that there is a very obvious culture of scepticism. The arguments expressed have furthermore been ill-founded, in the light of these statistics. At this point it is necessary to realise that the applications for asylum from unaccompanied minors arriving in the country also include those which are handled under the Dublin procedure. In this procedure some applications are transferred to Finland for examination in substance, but most applicants are returned to another Member State, and the age of the children concerned is not determined in Finland. Some of the Dublin cases, however, unquestionably concern minors. If the Dublin cases are excluded from the total number of applications for asylum submitted by unaccompanied minors, the proportion of those assessed as adults rises slightly. The Immigration Service cannot provide information on how many of these 448 cases were transferred to Dublin process. In the period 1 January – 30 September 2009, 52 Dublin decisions were taken in respect of unaccompanied minor asylum seekers. By the end of November 2009, 180 Dublin decisions were taken. Excluding the Dublin cases, (448-50) 396 - roughly 14 %- or (448-180) 268 – roughly 21% – of applicants were adults on the basis of the age determination statements and 79-86 % minors. The Immigration Service does not have information on how many of Dublin cases were considered as adults for one reason or another.



The age determination debate has also raised the issue that it is not in the best interests of minors if they are accommodated in the same reception facilities as adults, because of the risk to their safety. Obviously, adults should not be placed in the same centres as children, who are especially vulnerable. However, there is no discussion of the fact that it cannot be in a child’s best interests if he or she is placed among adults owing to a mistaken age determination. There is a greater risk as regards legal protection and security if a minor is placed among adults. In children’s accommodation facilities children are afforded more support and supervision to ensure that they are as safe and secure as possible. If an adult is placed in children’s accommodation, the security risk is, for the same reason, less than when a child is placed in accommodation intended for adults, where the same level of support and supervision is not available. The debate and risk associated with placing adults in children’s reception centres highlights the probability that financial interests are being protected and the notion that there might be an attempt to circumvent the immigration rules. The debate is not in fact about safeguarding the best interests of children.

2.3. Incrimination

The scepticism that is gathering force with regard to children’s accounts of what has happened to them and the incrimination of children are also reflected in the use of the term ‘anchor child’, which has become an established term in policy and the public debate as well as in the media. It is being used to describe and identify all unaccompanied minor asylum seekers. It is questionable usage as it tends to label the children in a certain way and

give the impression that the child has only applied for asylum in order to bring his or her family to Finland, or his or her parents have sent the child to Europe so that the whole family will be able to live there later on. All unaccompanied children are being branded by the debate, and their grounds for asylum are deemed suspect. In fact, minor asylum seekers are arriving in the country at present from countries where there have been long-lasting armed conflicts or which have been at war or where conditions have been unstable and dangerous for a long period. The children are simply escaping from these conditions. They do not normally make the decision to leave themselves, let alone choose their destination. They are usually sent by their parent or some other family member, and the destination is often arbitrary, depending on where the smuggler eventually leaves the child. Not all of the children's parents want to leave their country either, and in some cases decline the offer of being reunited with their offspring in Finland. The use of the term 'anchor child' only serves to distort attitudes in society to all unaccompanied minor asylum seekers even more, and the children become stigmatised. This may be regarded as discrimination contrary to the Convention on the Rights of the Child, according to an interpretation by the Committee on the Rights of the Child (CRC). Society has to preserve the principle of freedom of speech, and immigration matters must also be discussed critically, but freedom of speech and criticism of immigration do not give entitlement to discrimination, slander or the use of terms that disparage and stigmatise children. The debate should be about why parents are sending their underage children off on a dangerous journey alone to apply for asylum, how this might be prevented in the countries of origin and how these children should be protected.

The public and the political debate partly incriminate the child, and this relates in particular to young boys. Underage boys are assumed to be able to cope independently, simply because they are boys and almost adults. From time to time the authorities make the comment about boys that 16-17 year old "young men" should no longer be treated as children. In Finnish law, however, anyone under the age of 18 is a minor. The legal limit for reaching the age of majority cannot be determined arbitrarily or reduced for certain groups, such as asylum seekers, or for one sex and not the other. Otherwise, this could be tantamount to discrimination and a violation of fundamental rights.

2.4. Conclusion

In all decisions made with regard to children applying for asylum, the children concerned should primarily be treated as children, and their best interests should be made a priority. An assessment of those interests should also be written into all draft and final decisions. In public debate attention should be drawn to the kind of terminology used regarding minor asylum seekers and avoiding the use of terms that label and stigmatise children. The debate should be open and honest and it should concentrate on solving problems and the protection of children from any kind of exploitation and abuse. Information on minor asylum seekers and the public debate must be consistent with the truth, and a child's age should not be called into question simply because he or she is applying for asylum.

3. Detailed comments and recommendations

This section brings together the main comments to be made as regards consideration of the best interests of the child in the asylum process. The section mainly surveys the phases of the process that call for special comment and improvement. At the same time, some recommendations of a general nature are made, and in some cases there are detailed suggestions and proposals for change.

3.1. General

International commitments, the main one of which is the United Nations Convention on the Rights of the Child, are bodies of legislation that are binding on Finland, and they also apply directly to unaccompanied and accompanied minor asylum seekers. Under these international agreements, minor asylum seekers have the right to life, survival and the conditions for development, to protection and care, and to their own identity. In addition, Finland is committed to making the best interests of children a priority in the decisions it issues on all children and to preventing the abduction and sale of, and trade in, children and all forms of child exploitation, and to promoting their mental and physical recovery when they have been victims of abuse, in surroundings that promote their health and foster their self-respect and human dignity. Furthermore, children need to be consulted as appropriate considering their age and maturity in all decisions taken on them.

All the above rights of children and obligations on the part of the state can only be realised if minor asylum seekers are heard and consulted during the asylum process relating to them. The children also need to be given adequate information on the options available to them in order to establish what their best interests are. In asylum processes in which the applicants are unaccompanied minors, the information on the children themselves and their situation and experiences can only be obtained from the children themselves and no one else. They do not have their parents with them to confirm their story or guide them in the choices they make. The asylum process needs to focus in particular on how an underage child is able to convey the facts that would make him or her eligible for asylum or residence for other reasons. The child's story should be listened to carefully and should be taken seriously whenever a decision is being taken. There is a need to give proper attention to the environment in which the child is heard and interviewed, and those conducting the interview should, for example, avoid wearing a police or border guard uniform at the time.

In the practical work involved, it needs to be remembered that if the situation is unclear, the matter should always be resolved in favour of the child, in accordance with the principles of good governance and legislation on aliens and in the best interests of the child. An assessment of the child's best interests must also be included in all draft and final decisions on the child in accordance with international obligations, both when drafting legislation and when issuing decisions on individual children.

3.2. Reception

The increase in applications for asylum submitted by unaccompanied minors arriving in the country has presented additional challenges for reception facilities. For example, the transit unit has not been able to operate completely as intended. It is continually full and the staff have not had enough time to properly consider the best interests of the children whilst arranging their accommodation. More children have had to be accommodated in some group and family group homes and supported housing than there have been places for them. Group sizes, especially in supported housing, have grown exponentially, which has meant that the staff have had less time to see to the best interests of the children. The applicants may also be transferred from one place to another several times before a decision is given and a more permanent place to live is arranged. There is legislation in Finland on reception and group homes, but there are no strictly enforced regulations on group family homes or supported housing. Family accom-

modation is quite scarce and the folk high school system is being discontinued at the start of 2010, except in the case of one establishment. After a residence permit is issued, there are still problems finding the child a place in a municipality, and many children end up living for quite a long time at the reception centre, even though they have been granted residence.

The reception system for unaccompanied minor asylum seekers needs developing and planning overall from the perspective of the best interests of the children, separately from the reception of adults. Reception and planning should primarily be guided by the best interests of the child, despite the economic downturn. Most of the group homes and family group homes are located at reception centres or very close to them at the moment. Placing children long-term or indefinitely in reception centres meant for adults is not the best option for the child's growth and development and is not in his or her best interests. Children should also be guaranteed conditions that are as stable as possible as quickly as possible after they have arrived in the country. Moving about constantly during the asylum process does nothing to promote the child's recovery or integration. One option to be looked at is whether the responsibility for reception for minors should be transferred in its entirety to the local authorities, so that the child would not have to be moved after the transit stage, as the comprehensive evaluation of the child's best interests and the support he or she needs and the provision of services would then be the sole responsibility of one actor. The possibility of making the folk high school model a permanent reception option should also be investigated. This would allow a young person to learn the Finnish language and Finnish customs, how Finnish society works, and how to cope independently, which would make it easier for him or her to enrol for further education courses and find a job. It would also reduce the risk of social exclusion.

The law needs to be brought up-to-date in the area of schooling so that the local authorities would be responsible for arranging basic education and instruction that prepares the child for basic education, also for children applying for asylum and 17 year olds who have started basic education in Finland. An early start to schooling and the possibility for young people to have basic education will help asylum seekers to integrate and will prevent social exclusion among the young people. Furthermore, under Article 28 of the Convention on the Rights of the Child and Article 17 of the European Social Charter, Finland has a duty to arrange free basic education for all children in the country.

Finland's generous social assistance is thought to make it an attractive destination for asylum seekers. For this reason, it has been proposed that food should be a component of the allowance with less cash being offered. However, this could lead to a situation where young people will not learn how to spend money appropriately or understand the cost of food if they no longer have to buy it. Supplying them with ready-made meals would also make them passive (at the moment they make their own meals themselves). For their future and ability to integrate, young people who are finding their own way in life would find it useful to learn to attend to their own meals, including buying the food and cooking it. This would also make it possible for them to preserve their own food culture and eating habits. Buying meals from private firms is also far more expensive than the cost price of food possibly deducted from social assistance. Buying ready-made meals for young people and deducting it at cost price from social assistance is considerably more expensive than the current amount of social assistance. The current allowance is very small in relation to the cost of living in Finland, and it should not be reduced even further.

A good number of unaccompanied minor asylum seekers have been traumatised in their homeland or on the journey to Finland, and they need special mental health services. Moreover, Finland is obliged, under Council Directive 2003/9/EC, for example, to provide rehabilitation and mental health services if children have been the victims of exploitation, rape or military conflict. Finland needs to evolve a service similar to that provided by The Centre for Torture Survivors in Finland to serve the needs of traumatised minor asylum seekers.

Minor asylum seekers are not treated equally compared with Finnish children placed in care under the Child Welfare Act. Their access to child welfare services varies according to where they live, and they have no entitlement to after-care. When a child has reached the age of 18 he or she drops out of the integration and support programme. The absence of legislation and obligation to provide after-care can lead to social exclusion. This is already being witnessed in Finland and could in future lead to radicalisation, which the state should prevent at any cost. Children seeking asylum must be treated equally with Finnish children, which means that they should be assured of equal access to child welfare services and after-care if necessary. The organisation of after-care is cheaper than meeting the costs of exclusion among young people.

3.3. Age determination

Under the United Nations Convention on the Rights of the Child, each child has the right to his or her identity, including date of birth and age. The Aliens Act is to be amended to include a provision on age determination. The pending draft amendment to the Act was made hurriedly with no adequate assessment of the best interests of the child. Before the law is amended there should first be an investigation into whether it is in the best interests of the child and generally appropriate to conduct medical tests that use ionising radiation merely for administrative purposes. The best way to carry out age determination tests and their various effects on the child's wellbeing should also be looked into before the Act is amended. Information has been obtained on children's experiences when the age they have stated is questioned, for example, in the United Kingdom.³⁸ The children reacted strongly to the disputing of their age, and it might have had serious effects on their health. They were upset when they were not believed and thought to be liars. Having their identity questioned in this way made it harder for them to adapt to the foreign culture and society.

In Finland age determination examinations are only conducted on the basis of medical tests. This is the case now and will be under the proposed legislation. The tests involve an examination of the bones of the hands and the teeth. Tests of this kind have been criticised in certain countries, including the UK³⁹, Sweden and the United States⁴⁰. The criticism with them is that the skeletal development of boys at present ends at the age of 16-17, while for girls the age is 15-16. Furthermore, skeletal examinations are not viable for adolescents, as the method ceases to have any value when the person concerned is 17. Besides, the tests have never resulted in certainty with regard to anyone's chronological age but only provide an estimate of the stage that skeletal development has reached. Furthermore, the reference data only consist of measurements of skeletal development in middle-class Americans in the 1930s. According to the studies, both the skeleton and the teeth can develop in groups from different continents in differing ways.⁴¹ There is no reference data for third world countries and the ethnic groups from which the refugee children presently come. The authorities that deal

38 Crawley: When is a child not a child? Asylum, age disputes and the process of age assessment.

39 Royal College of Paediatrics and Child Health: The Health of Refugee Children - Guidelines for Paediatricians (1999) ; http://www.rcpch.ac.uk/doc.aspx?id_Resource=1758

40 Letter from American leaders in dentistry, medicine, and psychology expressing concern over irresponsible age determination practices affecting the lives of young immigrants, including asylum seekers, to department of homeland security (DHS), 2.6.2004; <http://physiciansforhumanrights.org/library/documents/letters/prominent-dentists-and.pdf>

41 Finnish Refugee Advice Centre: Alaikäisten turvapaikanhakijoiden iänmäärittämisestä (Age Determination of Minor Asylum Seekers), 25.6.2009.

with asylum matters nevertheless view medical examinations as complete proof of a person's age, and the individual concerned cannot in practice prove otherwise.

If age determination tests are to be conducted in future, they should cover a broader range of criteria and not simply rely on one test result. They should be carried out on the basis of a broad general evaluation, with the involvement of several experts in collaboration with those working with the child. They should take into account not only the medical assessments but also social, emotional and psychological indicators. Anyone assessed as an adult based on this multiprofessional approach would be allowed to respond to the findings on the basis of which he or she is considered to have reached the age of majority.

Only those who are obviously of a different age than they claim to be should be sent for an age determination examination. Age determination tests should not be relied on simply to be on the safe side in borderline cases where the person may or may not be the age they claim to be. The age a child or young person gives should normally be believed, unless there are obvious and strong arguments for believing that he or she is much older. This is justified from the perspective of the best interests of the child, because a medical examination alone cannot give an absolute guarantee of the child's age.

If it is still felt that an age determination examination is needed, it should be carried out as early as possible during the asylum process, for reasons relating to applicants' accommodation and their rights, etc. Thus, it is not recommended that a request for an age determination examination could be filed at as late a stage as the asylum interview with the Immigration Service. A disagreement over the age the applicant given at the interview stage could increase the risk that the party making the decision starts to doubt the rest of the applicant's story. When a decision is being issued, special attention needs to be paid to this in any case, and there needs to be an awareness of the fact that the applicant might give the wrong age, but this does not mean that he or she might be misrepresenting other facts regarding the grounds for the asylum application.

The amendment to the Aliens Act on the subject of age determination should add a clause stating that the applicant has a right to demand such a test. At present there is a serious problem with regard to legal protection in Dublin cases, for example, because the child has no right to his or her identity or any possibility to demand an age determination test. According

to children's accounts, their age in Greece, Italy and Malta, for example, is recorded arbitrarily and based on a date of birth decided by the officials, where there has been no interpreter present or the applicant has not even been asked his or her date of birth. Despite this, however, in Finland an applicant's age is held to be that recorded in another Member State and the child has no legal protection as regards preserving his or her identity. Given that it is difficult to judge a person's age simply by a visual appraisal, there is an even greater case for the child having the right to demand and receive an age determination test to ensure his or her protection under the law.

The proposed amendment to the Aliens Act regarding age determination proposes that the applicant's consent to the test requires a formal written informed and freely given consent statement. Where it concerns a minor, the consent of his or her guardian or representative is also required. The Parliamentary Ombudsman in his statement has emphasised the importance of the voluntary nature of the consent. Although in practice at present children and their representatives are asked for their consent to an age determination test, it is clear that the children do not feel they have any other choice but to agree, and that in fact they do not appreciate the significance of their consent or of the test as far as their application for asylum and their rights in Finland are concerned. This is confirmed by the fact that no underage asylum seeker in 2009 has refused the test. The planned addition to the Aliens Act regarding the voluntary nature of the applicant's consent is dubious because, under the proposed amendment, refusal to take the examination could be taken into consideration when deciding on the application, even though refusal in itself cannot alone be a basis for turning down an application for international protection. In practice, the amendment to the Act such as it is means that applicants will be pressurised into consenting to an age determination test, and refusal will result in doubts being cast on the rest of the applicant's story, at the very least. Refusing the age determination test, however, must not be allowed to affect the evaluation of the applicant's need for protection.

Following an age assessment, the applicant's details regarding date of birth are updated. How the date of birth will be recorded is not mentioned in the Government Proposal to amend the Aliens Act. At the moment this varies, and an authority may change the applicant's age so that it is several months or almost as much as a year later than it actually is. If a child's year of birth is altered on the basis of the age determination, the day and month of birth notified by the child should remain as before. The child should also be entitled to appeal when his or her personal details are altered by an authority.

3.4. Representation and legal aid

Under current legislation a child “may be” assigned a representative. Assigning a representative to an unaccompanied minor asylum seeker should be made compulsory under the law, to avoid the situation where a child remains without a representative.

The role of representatives should be clarified, by increasing and centralising the training and guidance provided. The training should be compulsory to some extent, at least for new representatives. It should also extend to knowing how to recognise victims of human trafficking. Representatives need to know how to be proactive in expressing suspicions that the children they represent have been, are being or may possibly be victimised in some way and they should be able to articulate their suspicions in such a way that the authorities appreciate that the case in question may indeed be one of human trafficking. Representatives should also be aware of the system for helping victims of human trafficking and whom to contact for help if it is required. They should have an opportunity to get to know the child, his or her background, situation, etc. Setting a precise number of hours for getting to know the child is not appropriate or in the child’s best interests.

Representatives should have their criminal records examined and this should be enforced by law. Unaccompanied minors arriving in the country seeking asylum are especially vulnerable because of their age, experience, lack of language skills and general lack of knowledge, and the authorities must ensure that only suitable people apply to become representatives.

The whole matter of representation should also be examined as to whether there would be more grounds for making the work official, like the work of a public guardian, and whether this would be a more viable option. Officials are liable for their actions, so they would be independent of other actors, and this is an argument in favour of official representation.

A child has a right to a legal counsel during the asylum process. In practice this generally works well, and there have been hardly any problems relating to legal protection, as most of the decisions on residence permits for unaccompanied children arriving in the country which are dealt with by the normal asylum process are positive. Unaccompanied minor asylum seekers should always be assigned a legal counsel, even in Dublin cases. Because no one is under an obligation to organise legal aid for the children, the situation may arise where the child does not have a lawyer, which may constitute a risk to the child’s protection under the law. Assigning a legal counsel for an unaccompanied minor asylum seeker should be enforced by law.

3.5. The Dublin procedure

On the basis of applications for asylum submitted by unaccompanied minors examined during the period 1 January–30 September 2009, it would appear that in the Dublin procedure the best interests of the child or the child's general situation is not assessed when the decisions are made. The decision only makes casual reference to the best interests of the child and then the wording is mainly as follows: "The Immigration Service, in making its decision to refuse entry, has taken account of all the relevant factors and circumstances affecting the case in their entirety, such as the length and purpose of stay of the applicant, the applicant's ties to Finland and the best interests of the child." If both a parent and his or her underage child are involved in a Dublin procedure, the best interests of the child are not normally assessed separately. In situations where a minor claims to have been a victim of a crime or exploitation in an earlier EU country, the Immigration Service has been of the view that the applicant needs to contact the authorities in the country concerned and that this does not constitute grounds for the examination in substance of an application in Finland. As a general rule, physical or psychological symptoms, or homelessness or lack of income are not regarded as grounds for the examination in substance of an application in Finland, as the Immigration Service considers that a child can obtain the relevant services in the EU country responsible for processing the application. A number of applications concerned, for example, children who had been living on the street or been the victims of abuse, or who had physical or psychological problems, and they were returned to another EU Member State.

Council Regulation (EC) No 343/2003 is presently interpreted in Finland in such a way that Finland can accept Dublin cases for consideration only in humanitarian cases as defined in the Regulation. Although the Regulation determines the Member State that is responsible for examining an asylum application lodged in one of the Member States by a third-country national, it also states that "each Member State may examine an application for asylum, even if such examination is not its responsibility under the criteria laid down in this Regulation." In such a case the fact that an application has been accepted for examination must be notified to the Member State that formerly had the responsibility for this. In other words, the Council Regulation does not lay down conditions on when a Member State may, if it so desires, voluntarily examine an application, but allows a Member State to accept any application for consideration if it so desires, even though, under the Regulation, responsibility for handling the application is that of the other Member State. The Regulation's purpose here is to ensure that one Member State examines the asylum application.

Under the Convention on the Rights of the Child in any decision relating to a minor, priority must be given to the best interests of the child. This means that when the Immigration Service takes a decision to dismiss the examination in substance of an application submitted by a minor asylum seeker and to refuse the child entry under the Regulation referred to above and return him or her to the Member State with responsibility for the application decision, the Immigration Service should consider how its decision impacts on the best interests of the child. The assessment it makes in this regard should also be recorded in its draft and final decisions, with grounds. The decision should record what has been considered to be in the best interests of the child in the case in question, and what was not. The difficulty with deciding exactly what the best interests of the child are is no excuse for failing to consider them in decisions on the child in question or for failing to record the consideration of the matter. Council Regulation (EC) No 343/2003 does not entitle the Immigration Service to ignore the best interests of the child in the Dublin procedure either. Neither is the Regulation contrary to the Convention on the Rights of the Child, and an assessment of the best interests of the child will not automatically result in an examination in substance of the child's application in Finland.

Section 4(a) of the Child Welfare Act serves as a good reference when considering the best interests of the child in asylum cases. An assessment can be made of such matters as the conditions in which the child would live in Finland and the conditions to which he or she would be subject in the other state if refused entry to Finland. The assessment might also consider what would not be in the child's best interests. Sending the child to a Member State where he or she would have to live on the street, has been or is in danger of becoming a victim of violence and exploitation, will not have access to accommodation or the opportunity to attend school – none of these circumstances are in the child's best interests and all violate the child's right to freedom, opportunities for development, safety and security, social welfare and medical assistance, all of which are safeguarded by several international agreements. In such cases the child's application can be examined in substance in Finland on grounds of his or her best interests, and this should be notified to the country with responsibility for the application. The child's best interests should always be assessed in Dublin cases if return is considered, even if the child has arrived in Finland accompanied by his or her parents or other guardian.

The organisation All Our Children and the Finnish Immigration Service are presently developing a way to assess the best interests of the child. One component in the "Yksin Tulleet" project on unaccompanied minors coor-

minated by All Our Children is to provide training for social workers. The social worker gives a statement on the child's best interests to the Immigration Service before an asylum decision is taken. The purpose of the training is to provide social workers with the sort of information that will enable them to explain the child's best interests as satisfactorily as possible and to make their opinions and statements more consistent as regards content. In addition, a separate group of specialists provide support for those making the decisions. This project is an excellent way to support and strengthen existing structures without adding too many actors to the process. A social worker working with a child is presumably also the person who best knows his or her own needs and those of the child.

Assessing the child's best interests and supporting and developing the assessment should be incorporated as a permanent component in the asylum process for minors. It should also be examined whether the child welfare authorities might have a supportive role to play in determining the child's best interests, especially in the Dublin procedure, where the child might be returned very quickly.

Finland should also evolve a follow-up system to allow children and their situations to be monitored when they are returned to another country. At the moment their situation is not followed up in any way at all after children have been deported.

3.6. The normal asylum procedure

Most minor asylum seekers arriving unaccompanied receive a residence permit for Finland. A statement on the child's best interests by his or her social worker is requested and attached to applications from an unaccompanied child, and this is of major importance when assessing the child's best interests. In the case of positive decisions on residence, it is not so important to record an assessment of the child's best interests for the draft decision as in those cases where the child is not granted a residence permit for Finland, although the assessment should nevertheless be recorded in the decision. The data used in this report contained not one instance of an unaccompanied minor receiving a negative decision on asylum and residence, if the Dublin procedure is excluded.

The data for the report included some decisions on minor asylum seekers arriving in Finland accompanied by guardians. It is apparent from these that asylum and international protection are being assessed for the parents,

but the best interests of children are not being assessed. Even if the underage asylum seeker case is examined in conjunction with that of his or her parents, the draft and final asylum decision should show how the child's best interests were assessed. On the whole, these decisions do not even mention the interests of the children, let alone contain an assessment of them, and in individual cases the decision only states that the best interests of the child were taken into account when the decision was made, but how the matter was judged or taken into consideration is not disclosed. It is furthermore apparent from these cases that a report is generally requested on the applicants' means of livelihood and their reliance on social assistance for the purpose of the application. Economic factors would appear to take priority in assessing applications, especially where it concerns EU nationals, but the child's best interests are not generally considered. Nevertheless, the child's best interests should always take priority over consideration of economic factors.

With decisions on asylum and residence where they relate to an underage child, under the Convention on the Rights of the Child, the Immigration Service should also take the child's best interests into account in a situation in which the child's case is examined in conjunction with his or her parent's application. This assessment should also be recorded in the Immigration Service's draft and final decision, with grounds.

This report does not examine separately on what grounds unaccompanied minor asylum seekers have been granted a residence permit. Only a few unaccompanied minors are granted official asylum every year in Finland. A separate study is needed on how underage children are treated under the Geneva Refugee Convention and on what grounds a child is accepted as a refugee in Finland.

3.7. Identifying victims of human trafficking and those facing a threat of being victimised

Finland is committed, under the Convention on the Rights of the Child, to prevent the abduction of, and commercial trade in, children and all forms of child exploitation, and to protect children and young people from economic and social exploitation under the European Social Charter and the International Covenant on Economic, Social and Cultural Rights. In addition, Finland has undertaken to protect children from forced labour and slavery under the European Convention on Human Rights. The Council of Europe Convention on Trafficking in Human Beings is to be ratified by Finland in

the near future. Finland is committed to work against human trafficking and identify victims of human trafficking – also among asylum seekers.

The National Plan of Action against Trafficking in Human Beings Finland focuses special attention on the identification of victims of human trafficking. The Plan of Action ⁴² states that persons refused entry, being removed from the country and being returned to another EU country under the Regulation on the state responsible for examining an asylum application might include victims of human trafficking, who may at the time also be in danger of becoming victims of actual exploitation. Ensuring that these people – especially if they are minors – are kept informed and are protected is felt to be very important. The Plan of Action also undertakes to focus attention on the identification of victims of human trafficking in the Dublin procedure and states that, as a general rule, the return of suspected victims should not go ahead unless assistance in the other Member State has been arranged and its effectiveness has been examined in each case.

Furthermore, UN recommendations state that an approach to human trafficking that is structured around the notion of human rights means, among other things, that countries should not only provide health services but also protect victims from being victimised again. Protection and assistance should not depend on how willing or able a victim of human trafficking is to assist the authorities in legal processes.⁴³

From the asylum applications processed in 2009, it would seem that the Immigration Service does not adequately judge whether accompanied or unaccompanied minors arriving in the country have been victims of human trafficking or are in danger of being victimised. Among the unaccompanied asylum applicants were children who had been the victims of violence or sexual exploitation, had nowhere to live and nothing to eat, had to beg, were being or had been threatened by the mafia, or an attempt had been made to force them into military service. Some of the children had been victimised as a result of the conditions at the reception centre. However, the asylum applications of these children, being Dublin cases, had been or were to be dismissed without examination in substance in Finland, and the children were returned or were to be returned to another Member State on the basis of the relevant Regulation, a country where some of them had been abused. The risk that children travelling alone will be victimised or victimised again in connection with their return has not been assessed ei-

42 Ihmiskaupan vastainen tarkennettu toimintasuunnitelma (National Plan of Action against Trafficking in Humans Finland) 2008, 7

43 OHCHR 2002, 4.

ther. The Immigration Service's view on assessing suspicion of victimisation or the risk of becoming a victim of human trafficking is that a minor's asylum application is only examined in substance if there are clear signs of human trafficking, the children themselves claim they have been victimised or refer to their rights, or there are arguments for examining the application in Finland because a criminal investigation into human trafficking is taking place. It is also the opinion of the Immigration Service that the victims of human trafficking can turn to a system for assisting such victims that also exists in the other EU Member State.

With unaccompanied minor asylum seekers it is often especially challenging to identify victims of what might be human trafficking or other forms of exploitation. Frequently, the victims themselves do not realise they are the victim of human trafficking, and children in particular do not know how to refer to the fact that they have been victimised or to their rights. It is also a well-known fact that it takes a long time before a trusting relationship can be established with children, one in which they are not afraid to say everything they feel. It is easy for the exploiter to threaten or scare the child, and this is also a very common occurrence in the exploitation of children.

If there are any signs at all of human trafficking or the risk of becoming a victim of human trafficking in an asylum case involving a child, the child's application must be examined in substance in Finland. An examination in substance is necessary in such cases because the assessment relating to human trafficking or its risk cannot be made in isolation from a proper examination of the asylum case. However, children cannot be expected to know how to refer to the fact that he or she has been victimised or how to demand his or her rights. Neither can they be expected to acknowledge their obligation to cooperate pursuant to section 52(a) of the Child Welfare Act: an especially vulnerable child can be granted a residence permit under section 52(a)(2), irrespective of the obligation to cooperate. This is also mentioned in the Government Proposal. A minor, who has no legal capacity, cannot decide to cooperate independently: for this the consent of the minor's representative is also needed. The fact that other EU Member States have a system in place to assist the victims of human trafficking does not release Finland from its duty to aid such victims.

As regards an asylum case and victimisation or the risk of victimisation the children themselves are the only source of information. That is why great importance must be attached to the unaccompanied minor's story in any assessment and decision with respect to the child's best interests and the examination in substance of the asylum application. The child's account

must not be ignored simply because another EU Member State says that its reception facilities are adequate. The assessment must take account of both the fact that there has been a case of human trafficking and the risk that there might be one. Indications that the child has been victimised may, for example, include violence inflicted on the child, threats from criminals, enforced labour, sexual or other forms of exploitation or violence, or enforced recruitment into an army. The child might also have been victimised as a result of conditions at the reception centre, when, for example, he or she has not been given proper accommodation. When the risk of being victimised is being assessed, indicators could be the child's especially vulnerable position as a minor, as a person travelling alone, without anywhere to live, the possibility for access to reception facilities, etc. In practice, on the basis of the information available at the moment, unaccompanied minor asylum seekers should not be returned to Italy, Greece or Malta under the Regulation on determining the state responsible for examining an asylum application. In these countries children have been victimised specifically due to unsatisfactory reception conditions. Information on the poor reception facilities and unsatisfactory treatment of children in Italy is, for example, available in the Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to Italy on 13–15 January 2009. Amnesty International has also reported on the poor reception facilities in Malta in Amnesty International Report 2008 – Malta. Minors are not generally returned to Greece at present, but exceptions have been made to this policy when the applicant has almost attained majority. However, those under the age of 18 are minors under Finnish law, and this should be borne in mind when decisions are made on underage asylum seekers.

There is no information on how many minor applicants arriving in Finland have been victims of human trafficking. However, every year unaccompanied minor asylum seekers who have come to Finland go missing. In 2009 by 24 June, a total of 47 minor asylum seekers were missing, of whom 36 were unaccompanied. Of all those going missing, 6 were in the 0–7 age bracket, 6 were between 8 and 12 years old, and 35 were between 16 and 18. In the period 2003–2009 between 7 and 22 unaccompanied minors went missing every year in Finland.⁴⁴ There are good arguments for thinking that unaccompanied minors arriving in the country are especially likely to have been victims or at risk of human trafficking. Some of those who have disappeared may be individuals who have almost attained, or have attained, majority, and, expecting to receive a negative decision on residence, they leave the country themselves. Very young children, however, are not capable of travelling from one country to another, and, in the case of those

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young people who are almost adults, there is a risk of becoming a victim of sexual exploitation or being forced into prostitution. Finland has its own system for helping underage victims of human trafficking, though in practice it is very difficult to gain access to it.

3.8. Detention

Detention decisions, as with asylum decision, need to be based on an assessment of how a decision on detention would affect the child's best interests and what constitutes and what does not constitute those interests. The assessment must also be recorded in the draft decision. Detention lasting several months, with children unable to attend school, go outside or even leave their room when they are frightened of mixing with adults in the same detention unit, cannot be in their best interests. If decisions are taken to detain children, there should be a written assessment from the child's social worker on his or her best interests. An assessment of the child's best interests should also be made and recorded in any decision on the detention of a child during a court hearing.

If minor asylum applicants are not believed when they state their age, they should not be placed in a detention unit or police custody before an age determination examination has been conducted, and the applicants have been judged to be adults as a result. The detention of a minor should be for as short a period as possible and an unaccompanied minor should never be placed in a police detention centre.

3.9. Family reunification

Under the Convention on the Rights of the Child, a child may not be separated from his or her parents against his or her will, except when competent authorities determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. In addition, the European Convention on Human Rights, the Universal Declaration of Human Rights, and the EU Charter of Fundamental Rights all guarantee the right of children to respect for family life.

It is generally in the child's best interests to live with his or her parents and family. However, adherence to the provisions of the Aliens Act often results in a situation these days where many minors reach the age of 18 during the process and so cannot even apply to bring their parents to Finland. As the

time taken examining applications gets longer, more and more underage children are separated from their families once and for all. At present the possibility of family reunification is not assessed with reference to international obligations or the child's best interests, but purely on the basis of the Aliens Act, using the same criteria as for family reunification where it concerns adults.

Article 10 of the Convention on the Rights of the Child states that applications regarding family reunification should be dealt with in a positive, humane and expeditious manner. At the moment the asylum and family reunification processes can take from two to four years. It is not in the child's best interests to be separated from his or her family for unreasonably long periods of time. It is a well-known fact that the longer a child has been separated from his or her family, the harder it is for that child to go back to being a family member. Children often become independent in the intervening period and adjust to Finnish society whilst living in the country without their parents, and this can result in clashes with parents who have just arrived in the country. The child may also have to take on the role of interpreter and assistant helping his or her parents to cope in Finnish society with no Finnish language skills. In such situations the child assumes the role of an adult looking after his or her own parents. This is neither in the best interests of the child nor of society.

The draft amendment to the Aliens Act requiring that a child acting as a sponsor in Finland must still be a minor when decisions are made on the residence permits of his or her family members, does not taken into account an assessment of the child's best interests and how the change would affect the child's right to be with his or her family. In the present situation, family reunification can take several years. In practice, the proposed amendment to the law would lead to a situation where most underage children arriving in the country could not apply to bring their families to Finland and they would be completely separated from them. It could also result in a situation where the child's reunification with his or her family could and would be hindered in many cases by the slow progress of the work by authorities. From the point of view of good governance, equality and general principles of law, the proposed amendment to the law is questionable. In no other administrative process would the pace at which the authorities work, independent of the applicant, place restrictions on the examination and success of the application.

The idea behind the amendment to the law is that there should be fewer cases where a child is sent off on a dangerous journey in the hope of family

reunification. Situations where a child is being used by the parents to circumvent the immigration regulations in the hope of a better life are not in the child's best interests. Sending underage children with smugglers to an arbitrary destination in Europe is irresponsible in the case of parents whose only motive is that they themselves might get to Europe with the help of the child. The aim should be to prevent such exploitation of children. But the amendment to the law now proposed will not in practice prevent parents from sending their children to Finland or elsewhere for questionable motives and will not necessarily have an impact on the numbers of minor applicants arriving in Finland.

The legislative proposal that the sponsor in Finland must be a minor when decisions are made on permits for his or her family members should be abandoned. The amendment would not be in the best interests of children who have fled their countries because of war, unstable situations in their country or for other reasons, or whose parents have sent them with sincere intentions to a place where they are safe from military conflict or other dangers. The tightening of the Aliens Act, would, however, affect all minor asylum seekers, which is problematic in terms of the concept of equality, at the very least. It would be more in accordance with good governance, the general principles of law, equality and international obligations to ensure that underage applicants can be reunited with their families speedily and that each case of family reunification is considered individually, and, if necessary, rejected in the case of parents who have exploited their child.

4. Conclusion

The Children's Commissioner for England, Professor Sir Al Aynsley-Green, has stated that "A nation deserves to be judged to be civilised on the way it manages and protects its most vulnerable children and young people". Unaccompanied minor asylum seekers are one of the most vulnerable groups in Finnish society, too. Finland needs to focus more attention on implementing and safeguarding the best interests and rights of underage asylum seekers arriving in the country unaccompanied.

To safeguard the best interests of minor asylum seekers the following measures are proposed:

- In all policy, legislative and practical decisions on minor asylum seekers an assessment should be made of the child's best interests. The assessment should be recorded in the draft and final decision.

- A minor asylum seeker should be treated primarily as a child.
- Special attention should be paid to giving the child a proper hearing during the asylum process.
- The reception of minor asylum applicants should be assessed and developed overall from the perspective of the children's best interests. They should have permanent accommodation arranged for them as soon as possible after arrival in the country.
- The age determination system should be re-evaluated in its entirety before the law is amended. It should consist of a number of stages and be broader in scope. Several experts and a person working with the child should be involved. The age determination should not be based on one single test or method. Consent to the age determination process should be voluntary both in theory and in practice. There should be a consistent approach to altering a child's age and date of birth following an age determination test. There should only be disagreement over age if applicants are obviously not the age they claim to be. Consent to the age determination test should be truly voluntary and refusal must not affect the assessment of the applicant's need for protection.
- The system of representation should be re-evaluated in its entirety. The child should be guaranteed both a representative and a legal counsel under the law, and the representative and counsel should be assigned as early as possible following entry into the country. There should be more training for representatives and their backgrounds should be investigated for criminal acts.
- In all asylum decisions on children there should be an assessment of the child's best interests and this should be recorded in the draft and final decision. With children who arrive accompanied, their best interests should be assessed in the draft decision even if their cases are being processed together with those of their parents.
- The child's best interests need to be assessed in the Dublin procedure and that assessment should also be recorded in the draft and final decision. A child's application for asylum should be examined in substance in Finland if return is not in the child's best interests. Minor asylum seekers should not be returned to Greece, Italy or Malta, given the current conditions in these countries and on the basis of the information presently available. The age that children give should in general be believed in the Dublin procedure, unless the applicants are obviously not the age they claim to be.
- Whether or not the child has been a victim of human trafficking or is at risk of becoming a victim should be assessed in the case of each unaccompanied minor asylum seeker arriving in the country. This is especially important in the Dublin procedure so that the child is not re-

turned to a place where he or she has already been a victim or is at risk of becoming one.

- A decision on detention should include an assessment of the child's best interests and that assessment should be recorded in the draft and final decision. A child's detention must be of as short duration as possible. An unaccompanied minor must never be placed in a police detention centre.
- The process of family reunification in respect of minor asylum seekers should be speeded up, and the possible exploitation of the child by the parents should be considered on an individual basis. The amendment to the Aliens Act, whereby a sponsor in Finland must be a minor at the stage when the decision on family reunification is made, must be withdrawn.
- Mental health and therapy services need to be developed for minor asylum seekers.
- Minor asylum seekers and young people who have started basic education in Finland must be guaranteed the right to complete their education.
- 18-year-old unaccompanied asylum seekers who have arrived in Finland when they were minors must be guaranteed access, where necessary, to child welfare services, irrespective of where they live, and after-care or other equivalent service must be arranged for them until they reach the age of 21.
- A development project to standardise the varying practices of local authorities should be established in the near future.
- A follow-up report should be compiled on how and on what grounds unaccompanied minor asylum seekers are accepted as refugees.

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**Ombudsman for Minorities,
National Rapporteur on Trafficking
in Human Beings**

P.O. Box 26

FI-00023 GOVERNMENT

Tel: 071 878 0171

Internet: www.ofm.fi