



## AGE ASSESSMENT:

Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration

Council of Europe  
Children's Rights  
Division

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French edition:  
Détermination de l'âge : Politiques, procédures  
et pratiques des états membres du Conseil  
de l'Europe respectueuses des droits de  
l'enfant dans le contexte de la migration.

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This document has been produced with the  
financial support provided by Switzerland to  
the Parliamentary Assembly's Campaign to End  
Immigration Detention of Children, supporting  
also the work of the Council of Europe's Ad hoc  
Committee for the Rights of the Child (CAHENF).

Cover and layout: Council of Europe

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# Age assessment: Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration

Report prepared by Daja Wenke,  
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This report contributes to the work of the Ad hoc Committee  
for the Rights of the Child (CAHENF) through its Drafting Group of Experts  
on Children' Rights and Safeguards in the context of Migration (CAHENF-Safeguards)

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## I. Executive Summary

1. The present report provides an overview of human rights principles, standards and safeguards relevant for age assessment procedures. It takes stock of current age assessment policies, procedures and practices concerning children in the context of migration in Council of Europe member states. The report, prepared by an independent expert, is based on a survey conducted in 37 Council of Europe member states in spring 2017, as well as on secondary sources analysis.

2. Age assessments are formal procedures by which authorities seek to establish the chronological age, or range of age, of an individual or determine whether the person is an adult or a child.<sup>1</sup> Age assessments are considered necessary as statutory age limits regulate the entitlements, rights and duties of individuals in different phases of their childhood and youth.<sup>2</sup>

### Main considerations

3. Children enjoy the rights afforded under the UN Convention on the Rights of the Child throughout the age assessment procedure in application of the principle of the presumption of minor age. In line with Article 1 of the UN Convention on the Rights of the Child, a child is understood to be any person under 18 years of age.

4. An age assessment should only be conducted if it is in the best interests of the child.

5. The age assessment procedure has to safeguard the child's right to development.

6. States should uphold the principle of non-discrimination in referral to age assessment and during procedures. They have also an obligation to ensure that effective monitoring and complaints mechanisms are in place.

7. The child has the right to be heard, to express their views and to have their views taken into account at all stages of the procedure. Age assessment should not take place without the child's and their guardian's informed consent. States should inform the child of the reasons for the age assessment and avoid repetitive or multiple assessments.

8. If a child refuses to participate in an age assessment, the competent authority for age assessment should seek to understand the reasons for their refusal. The refusal must not entail an automatic adverse decision concerning the child's age or immigration status.

9. Children undergoing age assessment have a right to be informed of their rights during the procedure, the purpose, steps and duration of the procedure, and to be assisted by a legal representative and/or guardian. Age assessment procedures need to respect the right to privacy and data protection.

10. Age assessment methods should be child-sensitive and adapted to gender and cultural sensitivities. Age assessment interviews should uphold the dignity of the child. Physical and medical examinations should be measures of last resort. Other holistic

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<sup>1</sup> European Asylum Support Office, *Age Assessment Practice in Europe*, 2014, p. 57.

<sup>2</sup> See: United Nations Children's Fund, *Age Assessment: A technical note*, 2013, pp. 7-8.

methods should be preferred such as gathering and using documentary evidence and conducting an age assessment interview with the person concerned. Where there is a margin of error of age assessment results, this should be applied in favour of the person whose age is being assessed.

11. The professionals conducting the assessment and making age assessment decisions should be independent and impartial. They should receive appropriate training.

12. Age assessment procedures should be carried out in a timely manner. If the age assessment concludes that the person is a child, they should benefit from timely follow-up, which may include referral to appropriate accommodation and child protection services.

13. Children have the right to an effective remedy. They should be informed in a child-friendly manner of the complaints mechanism and appeals procedure.

### **Main findings**

14. The review of age assessment policies, procedures and practice in Council of Europe member states reveals a highly fragmented situation. The rights and procedural safeguards afforded under international and European standards are at present not upheld consistently across member states.

15. In Europe, age assessments are carried out primarily with children and young people who arrive as migrants or asylum seekers. They are generally initiated when a young person does not carry identity documents, due to the significant number of children and young people arriving from third countries who were never registered at birth, the challenges are acute.<sup>3</sup> Age assessments are also conducted where the authenticity of identity documents is questioned, where a person wishes to challenge the age that has been registered in a transit country or where that age is questioned by the authorities in the country of arrival.

16. Age assessments are often conducted with unaccompanied and separated children and young adults travelling alone. They may be considered relevant even when children or young people travel accompanied by parents and family members or in the context of family reunification.

17. Age assessments are conducted using a range of different methods, including an interview with the child, attempts to gather documentary evidence as well as medical and physical examinations such as dental observations, radiological tests, anthropometric assessments and sexual maturity assessments. Other methods involve practical observation, such as observing the child's demeanour in an interview, psychological and sociological reviews. The different methods are applied individually or in combination, including through multi-disciplinary assessments.

18. Age assessment methods have been criticised for their lack of scientific and empirical basis and reliability and the associated high risk of producing arbitrary results. A number of methods employed by States have been found to be invasive and may cause

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<sup>3</sup> United Nations Children's Fund, *Progress for Children: Achieving the MDGs with equity*, No. 9, 2010, accessed from [https://www.unicef.org/publications/files/Progress\\_for\\_Children-No.9\\_EN\\_081710.pdf](https://www.unicef.org/publications/files/Progress_for_Children-No.9_EN_081710.pdf) on 5 March 2017, pp. 44-45. United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 5.

physical or mental harm to the person undergoing assessment, and thus may raise a number of medical ethics concerns.<sup>4</sup>

19. Age assessments may serve interests other than those of the individual whose age is under question. States may have a vested interest in considering young persons as adults because the safeguards put in place to protect children are more onerous for States. In addition, limiting the number of persons referred to reception centres and services for children may have the secondary consequence of reducing the administrative and financial burden on the immigration and asylum services and child protection systems.

20. In several countries, younger children are referred to higher standards of care, accommodation and support than adolescents and special support for children ceases altogether upon turning 18 years old. In some countries, adolescents are granted temporary residence permits to regularise their status but lose all support when turning 18 years of age and often face expulsion at this point.

21. States could be concerned that young adults claim to be children in order to benefit from the special services and safeguards provided to children. Referring adults who are falsely assessed as children to childcare facilities or reception centres for children could place the children in these centres at risk.<sup>5</sup>

22. The outcomes of age assessment have far-reaching consequences. Procedures that deny children the official recognition of their young age are likely to have a detrimental impact on the child's safety, well-being and development. In practice, there remain significant gaps and challenges as regards age assessment procedures and the way they are currently carried out in member states.

23. Asserting that a person is under 18 years old is important as certain safeguards and entitlements in migration and asylum procedures apply to children, while some apply specifically to unaccompanied and separated children. These include rights to child-friendly accommodation and care, the support of a guardian, the right to seek international protection based on child-specific grounds of asylum, and the right to family reunification. Children may also be protected from expulsion or deportation and from administrative or immigration detention.<sup>6</sup>

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<sup>4</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, pp. 6-7, 16-18.

<sup>5</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 6.

<sup>6</sup> *Right to child-friendly accommodation and care*: UN Convention on the Rights of the Child, Articles, 2, 3, 20 and 22, see also section on Care and protection prior to and during age assessment. *Right to the support from a guardian*: UN Convention on the Rights of the Child Articles 14.2, 18. Committee on the Rights of the Child, General Comment No. 6 (2005), par. 21 and Section Vb. See also section on Assistance by a legal representative and a guardian *Protection from expulsion or deportation*: Children have a right to a best interest determination that aims to identify an implement a durable solution. If the best interests determination concludes that the durable solution for the child can best be implemented in the country of origin, the child will be returned. In this case, return requires due preparation and follow-up support. The Committee on the Rights of the Child noted that the return of an unaccompanied child needs to be safe, child-appropriate and gender-sensitive. See: UN Convention on the Rights of the Child, Article 3. Committee on the Rights of the Child, General Comment No. 6 (2005), par. 87. See also: Council of Europe Convention on Action Against Trafficking in Human Beings, Article 16. *Protection from administrative or immigration detention*: The UN Convention on the Rights of the Child provides that no child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time (Article 37(b)). The Committee on the Rights of the Child noted that "unaccompanied or separated children should not, as a general rule, be detained. Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof". Committee on the Rights of the Child, General Comment No. 6 (2005), par. 61. Council of Europe, Committee of Ministers, Recommendation Rec(2003) 5 of the Committee of Ministers to Member

24. Children have the right to a formal best interests determination procedure with the aim of identifying and implementing a durable solution for the individual child.<sup>7</sup>

25. Establishing a chronological age can ensure the child has access to education and compulsory schooling. It can also protect children from child labour, child marriage, conscription into military service, from all forms of violence and exploitation, including in the context of trafficking. Specific safeguards exist to protect child victims of crime, and young age is associated with special procedures and safeguards in the juvenile justice system.

26. Weak, inadequate or faulty assessments put children at risk. Children who are falsely assessed as adults may experience violations of their human rights, are at risk of being detained in unsuitable detention facilities and consequently exposed to greater risks of abuse and violence.<sup>8</sup> They may further lose out on essential support and assistance to guarantee their safety, health, well-being and development.<sup>9</sup>

## Recommendations

27. In light of the international and European standards associated with age assessment procedures, States should ensure that procedures are child-sensitive, rights-based and carried out with due diligence.<sup>10</sup>

28. The development of standards and safeguards for age assessment procedures that are human rights-based requires measures to ensure that age assessment procedures are institutionally and structurally integrated into social welfare and child protection systems that ensure continuity between the human rights of children, adolescents and young adults.

29. As an overall objective, age assessment procedures should promote the best interests of the child and contribute to enabling continuity of care and support for the young person's development and his or her transition into adulthood and independent life. This applies regardless of whether the person remains in a country of arrival, is transferred or resettled or returned to his or her country of origin.<sup>11</sup>

30. In light of these reflections and considerations, age assessment procedures will be rights based if the procedure and outcomes safeguard the human rights of the person irrespective of rigid age limits. Persons identified as children should be referred to appropriate care and protection and benefit from a best interests determination procedure

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States on Measures of Detention of Asylum Seekers, 16 April 2003, para. 23. *The right to seek international protection based on child-specific grounds of asylum*: UNHCR Guidelines on Child Asylum Claims, 2009. *The right to family reunification*: UN Convention on the Rights of the Child Articles 3 and 9. Committee on the Rights of the Child, General Comment No. 6 (2005), par. 81-83.

<sup>7</sup> Committee on the Rights of the Child, General Comment No. 6 (2005), Chapter VII. See also: Council of the Baltic Sea States, *Guidelines Promoting the Human Rights and the Best Interests of the Child in Transnational Child Protection Cases*, 2015.

<sup>8</sup> Council of Europe, Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse, *Special report: Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse*, 13 March 2017; Council of Europe, Group of Experts on Action against Trafficking in Human Beings, *6th General Report on GRETA's Activities*, March 2017, p.52.

<sup>9</sup> Council of Europe, Group of Experts on Action against Trafficking in Human Beings, *6th General Report on GRETA's Activities*, March 2017, p.52.

<sup>10</sup> Committee on the Rights of the Child, General Comment No. 6 (2005), par. 31. United Nations Children's Fund, *Age Assessment Practices: A literature review and annotated bibliography*, 2011, p. 10.

<sup>11</sup> Council of the Baltic Sea States, *Guidelines Promoting the Human Rights and the Best Interests of the Child in Transnational Child Protection Cases*, 2015, p. 47.



for the identification and implementation of a durable solution. Persons who are assessed to be young adults should benefit from support and after-care services according to their individual needs and specific vulnerabilities.

31. The sources consulted for this review did not provide any information on practical matters related to age assessment procedures, for instance how the child is escorted to and from the age assessment and where the assessment takes place. In addition, the views of children who have undergone age assessment are largely absent from the literature in this field.<sup>12</sup> More research and consultation with children should be undertaken to understand their experiences of age assessment procedures and to hear their recommendations.

## II. Introduction

### Background

32. In Europe, there is currently no common approach to age assessment procedures and the practice differs between and within States.<sup>13</sup> The use of age assessments and reliance on their results has been criticised due to the absence of standardised procedures and protocols that are child-sensitive, and due to insufficiently regulated and monitored practice. Advocates have called for age assessment protocols and procedures that respect the rights, physical integrity and dignity of the individual and uphold procedural safeguards at all times.<sup>14</sup>

33. Many States attach high priority to chronological age, which constitutes a significant limitation in age assessment procedures. A human rights-based approach would require more individualised assessments sensitive to the evolving capacities and vulnerabilities of adolescents and young people.

34. Recommendations for age assessment procedures have therefore not only focused on quality standards and safeguards of the procedure itself, but also on the relevance attached to age assessment results. It has been recommended that in addition to chronological age, the maturity and evolving capacities of a young person need to be assessed in order to gain a holistic understanding of the person's vulnerabilities, coping skills, support network and decision-making competences.<sup>15</sup>

### Methodology

35. The report was developed on the basis of a literature review with regard to age assessment policies, procedures and practice in the broad European region and a review of relevant international and European standards. It is rooted in the UN Convention on the Rights of the Child, international and European law as well as guidance and recommendations that have been issued by the United Nations, UN specialised Agencies

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<sup>12</sup> Citations from children are included in: European Union Agency for Fundamental Rights, *Separated, Asylum-Seeking Children in European Union Member States – Comparative Report*, 2010, pp. 53-55.

<sup>13</sup> European Asylum Support Office, *Age Assessment Practice in Europe*, 2014, p. 9.

<sup>14</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, pp. 7-8. European Asylum Support Office, *Age Assessment Practice in Europe*, 2014, p. 9.

<sup>15</sup> UNHCR Guidelines on Child Asylum Claims, 2009, par. 7 and 75. Lansdown, Gerison, *The Evolving Capacities of the Child*, Innocenti Insight, United Nations Children's Fund Innocenti Research Centre, Save the Children Sweden, 2005, p. 49. United Nations Children's Fund, *Age Assessment Practices: A literature review and annotated bibliography*, 2011, pp. 7, 9. Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 6.

and Treaty Bodies. Important guidance on age assessment procedures derives from the General Comments of the Committee on the Rights of the Child, guidelines by the United Nations High Commissioner for Refugees as well as recommendations and resolutions issued by the Parliamentary Assembly of the Council of Europe. In addition, European Union law has guided the development of safeguards and standards for children in age assessment procedures and the guidance issued by the European Asylum Support Office was a key point of reference for this report.

36. In addition to the literature review, the report draws upon the responses of Council of Europe member states to a survey on age assessment procedures, policies and practice. The survey responses have provided the paper with national data, examples of promising practice and innovative solutions. None of these examples have been reviewed or evaluated. They are therefore presented as indications of practice that invite further review and reflection to inform the development of quality services for children on a broader scale. The national examples were selected on the basis of several criteria; they needed to be sufficiently detailed and conclusive as practices respectful of children's rights, backed up by evidence or relevant references in national laws, policies and procedures.

37. In the period between March and May 2017, 37 Council of Europe member states responded to the survey.<sup>16</sup>

38. In their survey responses, some countries commented on the challenges they noted with regard to age assessment procedures. An important issue highlighted in this context by Bulgaria relates to the challenge of ensuring multi-disciplinary and interagency co-operation in the age assessment procedure and providing for appropriate legal regulations and mechanisms to facilitate the co-operation. The combination of different areas of expertise is however considered central to effective age assessment procedures that are sensitive to the child, his or her social and cultural origin and level of development. Another challenge relates to ensuring that unaccompanied children are assisted and supported by qualified legal representatives who are essential to support the child in giving his or her informed consent to the procedure.

39. Croatia noted that many unaccompanied asylum seeking children whose age is unclear are referred to age assessment procedure but leave the country again before the procedure is finalised. Conducting the procedures can therefore imply a certain strain on the resources of the state, especially when high numbers of persons are transiting the country.

40. Cyprus noted a need for more training on assessing and determining the best interests of children, including with regard to the age assessment procedure.

41. Norway noted the challenges related to the high caseloads of asylum seeking children registered in certain years, which cause a strain on the children and the institutions concerned. The age assessment procedure is integrated into the asylum procedure and the decision can be taken late in the procedure in some cases. In periods with high caseloads, there can be delays in referring children to the appropriate

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<sup>16</sup> Andorra, Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Republic of Moldova, Monaco, the Netherlands, Norway, Poland, Russian Federation, Serbia, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey and Ukraine.

accommodation and to schools, according to the outcome of the age assessment procedure.

### Scope of the report

42. A draft of this report was presented and discussed at the second meeting of the CAHENF in Strasbourg on 29 March 2017. The discussion as well as comments received from CAHENF members informed the finalisation of the paper.

43. This report provides an overview of general human rights principles in Section A. They are rooted in the UN Convention on the Rights of the Child and other international and European law. The general human rights principles constitute rights and entitlements of the children undergoing age assessments. They also entail legal obligations of States and public authorities involved in age assessment procedures and should therefore guide policymaking and practice in this area.

44. Section B provides an overview of the main considerations in making referral decisions to age assessment.

45. Section C discusses different age assessment methods and relevant safeguards to ensure they are ethical and safe and uphold the dignity and physical integrity of the child at all times.

46. Section D presents an overview of the main procedural safeguards that need to be in place in age assessment procedures. The report concludes with a discussion of key implementation measures and safeguards to be considered in policymaking and legal reform in this area as well as case law from national courts and the European Court of Human Rights.

## III. Standards and safeguards for age assessment procedures

### A. General principles and human rights guiding age assessment

#### Presumption of minor age

47. If there are reasons to assume that a person whose age is unknown is a child, or if a person claims to be a child, the person shall be given the benefit of the doubt and presumed to be a child.<sup>17</sup> Until there is evidence to confirm that the person is an adult, the general principle of presumption of minor age implies that the person is considered a child. He or she shall have access to all fundamental rights and safeguards that children under 18 years of age are entitled to in line with the UN Convention on the Rights of the Child and other relevant International and European standards.<sup>18</sup>

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<sup>17</sup> Committee on the Rights of the Child, General Comment No. 6 (2005), par. 31(A). 2013 EU Asylum Procedure Directive 2013/32/EU (recast), Article 25(5). 2011 EU Anti-trafficking Directive, Article 13.2. Council of Europe Convention on Action against Trafficking in Human Beings Article 10.3. UNHCR Guidelines on Child Asylum Claims, 2009, par. 75. United Nations High Commissioner for Refugees, Conclusion on Children at Risk No. 107 (LVIII), 2007, 5 October 2007, par. g(ix). UNHCR, Guidelines on Unaccompanied Children Seeking Asylum, 1997, par. 5.11 and 6. Council of Europe Parliamentary Assembly, Unaccompanied Children in Europe: Issues of arrival, stay and return, Resolution 1810(2011), 15 April 2011, par. 5.10. SCEP Statement of Good Practice, 2009, par. D.5.1. and D.5.3. See also: 2011 EU Qualifications Directive, Article 4.5.

<sup>18</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 12. Médecins du Monde, *Age Assessment for Unaccompanied Minors, When European countries deny children their childhood*, 2015, pp. 10, 15. UNHCR, Guidelines on Protection and Care, p. 103.

48. Upholding the presumption of minor age and the benefit of doubt requires from States that relevant laws or regulations explicitly exempt individuals from the burden of proof in age assessment procedures. An individual, whose age is debated, cannot be expected to pay for medical examinations to prove his or her age. Persons who have never been registered at birth cannot be held responsible in age assessment procedures for failing to provide birth certificates. In cases of persons seeking international protection, the person cannot contact the authorities of his or her country of origin as this may put the asylum seeker at risk.<sup>19</sup>

#### **Examples of practice**

49. The presumption of minor age prior to and during age assessment procedures is upheld in 26 member states of the Council of Europe and 23 member states note that the individual is treated as a child in case of doubt (out of 37 survey responses as of the end of May 2017). Although the principle of presumption of minor age should automatically result in an appropriate treatment as a child as long as there are doubts about the person's age, the survey responses reveal inconsistencies in these two areas.

#### **Care and protection prior to and during age assessment**

50. Persons whose age is unknown and who are presumed to be children should be referred to appropriate accommodation, care and protection.<sup>20</sup> As long as the age of the person remains unknown and there are reasonable grounds to assume that the person is a child, the person should have access to rights and entitlements as afforded under the UN Convention on the Rights of the Child.

51. Facilities for the accommodation of children have to be specifically adapted for the care of children, and provide child-friendly services, care and protection.<sup>21</sup> In the case of doubt about a person's age, the risks for a child placed wrongfully in a reception or detention centre with unrelated adults are considered higher than the risks resulting from a young adult placed in children's accommodation.<sup>22</sup> In order to avoid the placement of persons whose age is disputed in childcare facilities, special units or departments should be dedicated to accommodate this group of persons until their age has been assessed.<sup>23</sup>

#### **Age assessment procedures give primary consideration to the best interests of the child**

52. Age assessment procedures should generally be initiated with the objective to safeguard the human rights of the child, to protect the child from any form of violence or exploitation, and to promote the best interests of the child. Age assessment procedures should not be initiated in a routine or arbitrary manner but only when the assessment is

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<sup>19</sup> See for instance: European Council of Refugees and Exiles, *Detriment of the Doubt: Age Assessment of Unaccompanied Asylum-Seeking Children*, Asylum Information Database, AIDA Legal Briefing No. 52015, p. 1.

<sup>20</sup> UN Convention on the Rights of the Child, Articles, 2, 3, 19, 20 and 22. 2013 EU Reception Conditions Directive, Articles 11, 23 and 24.

<sup>21</sup> See, for example: European Court of Human Rights, *A.B. and Others v. France* (No. 11593/12), 12 July 2016, §110. Council of Europe, Committee of Ministers, Recommendation Rec(2003) 5 of the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers, 16 April 2003, para. 23. UN Convention on the Rights of the Child, Articles 3, 19 and 20.

<sup>22</sup> See, for example, Council of Europe, Lanzarote Committee, *Special Report: Protecting Children Affected by the Refugee Crisis from Sexual Exploitation and Sexual Abuse*, March 2017, p. 34.

<sup>23</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 13.

considered to be in the best interests of the child.<sup>24</sup> Migration management interests should not determine the need for an age assessment.

53. The UN Convention on the Rights of the Child provides that the best interests of the child shall be the primary consideration in all actions concerning children (Article 3). The best interests principle shall guide age assessment procedures even in cases when there is no evidence to confirm that the person is a child. This reasoning derives from the general presumption of minor age in cases where the age of a person is uncertain but there are reasonable grounds to assume the person is a child. Unless the person is clearly assessed as an adult, he or she shall be treated as a child with all the relevant safeguards that children are entitled to, including primary consideration to the best interests of the child.

54. It is in the best interests of the child to be officially recognised as a child and an age assessment can resolve serious doubts about the age of the individual. Serious doubts exist when: a) the person's physical appearance and the mental impression of the person do not allow any clear conclusions whether the person is under or above 18 years old; b) the individual is not in possession of any identity documents or the documents are considered unreliable or when there are obvious inconsistencies between the age declared by the person and the age stated by the document; and c) the person is not in a position to state his or her own age.<sup>25</sup>

55. Whenever there are serious doubts about the age declared by the individual, the competent authority should inform the person of these doubts and explain the underlying reasons that motivate these doubts.<sup>26</sup>

56. General doubts about the rule of law in the person's country of origin or any unsubstantiated suspicion that identity documents of nationals of a specific state are forged cannot be held against the individual concerned. Preconceptions about childhood and child development based on typical European standards do not qualify as serious doubts that would justify an age assessment.<sup>27</sup>

57. Before referring a child to age assessment, differences of calendars that might be in use in the child's country or community of origin have to be taken into account when interpreting the age declared by the child.<sup>28</sup>

58. The age of a person is the key determinant for identifying the person as a child as the UN Convention on the Rights of the Child defines childhood by means of age (Article 1). Age is not only a marker of childhood but also an important element of a child's identity.<sup>29</sup>

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<sup>24</sup> UN Convention on the Rights of the Child, Article 3. EU Charter, Article 24.2. 2013 EU Asylum Procedures Directive (recast), Article 25.6. 2011 EU Qualifications Directive (recast), Article 20.5. EU 2013 Reception Conditions Directive (recast), Article 23.1-2.

<sup>25</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 13. See also: Council of Europe Parliamentary Assembly, *Unaccompanied Children in Europe: Issues of arrival, stay and return*, Resolution 1810(2011), 15 April 2011, par. 5.10.

<sup>26</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 13.

<sup>27</sup> UN Convention on the Rights of the Child, Article 2. Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 8.

<sup>28</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 19.

<sup>29</sup> European Union Agency for Fundamental Rights, *Separated, Asylum-Seeking Children in European Union Member States – Comparative Report*, 2010,

59. The UN Convention on the Rights of the Child affords children the right to an identity. Under Article 8, States undertake to respect the right of the child to preserve his or her identity. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily the child's identity. Age assessment procedures can constitute a measure to (re-)establish the child's identity in light of Article 8, if they are conducted in a manner that gives primary consideration to the best interests of the child.

60. Conducting age assessment procedures in order to promote the best interests of the child requires that the results of the assessment are officially recognised by all State agencies, authorities and private service providers.<sup>30</sup>

#### Examples of practice

61. In 21 Council of Europe member states, the outcomes of the age assessment procedure are recognised by all relevant actors that are in contact with the child or otherwise involved in the case (out of 37 survey responses as of the end of May 2017).

62. The Committee on the Rights of the Child interprets the best interests of the child, as afforded under Article 3 of the UN Convention on the Rights of the Child, as a *substantive right* that is directly applicable and can be invoked before a court of law. The best interests of the child is also a *fundamental, interpretative principle* as it guides the interpretation of national laws, policies and procedures in the way that best serves the interests of a child. As a *rule of procedure*, the best interests principle provides that in all decision-making processes that affect children, the possible impact of the decision on children needs to be evaluated.<sup>31</sup>

63. For age assessment procedures, the general principle of the best interests of the child has a two-fold relevance: a) Prior to ordering age assessment, the competent authorities shall assess if referring the child to the procedure is in the best interests of the child; b) the age assessment procedure itself needs to be conducted in a way that is in line with the best interests of the child.

#### Examples of practice

64. In Ireland, the International Protection Act regulates the age assessment procedure and the related examinations of unaccompanied children. Section 24(6) affords that the best interests of the child shall be a primary consideration in the application of the section.

65. The statutory guidance for age assessment procedures in the UK provides that age assessments should only be carried out when there is significant reason to doubt that the individual is a child. Age assessments should not be conducted as a routine measure in the assessment of unaccompanied or trafficked children by local authorities.

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<sup>30</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 22.

<sup>31</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 6.

<sup>32</sup> United Kingdom: Department for Education, *Care of Unaccompanied and Trafficked Children*, July 2014, par. 22, accessed from

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/330787/Care\\_of\\_unaccompanied\\_and\\_trafficked\\_children.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/330787/Care_of_unaccompanied_and_trafficked_children.pdf). Cited in: House of Lords, European Union Committee, *Children in Crisis: Unaccompanied migrant children in the EU*, 2<sup>nd</sup> Report of Session 2016-17, HL Paper 34, 26 July 2016, p. 17.

66. Age assessment procedures may be frightening and unsettling for children. In some cases, the procedures may interfere with a child's physical integrity and dignity, and undergoing age assessment procedures could in some cases be (re-)traumatising. Where this is the case, the child may not be able to participate adequately in the age assessment, which could undermine the validity and reliability of the assessment results. Age assessment procedures should therefore be initiated only if a best interests assessment concludes that age assessment is required in order to promote the best interests of the child.<sup>33</sup>

67. Children have a right to be heard and to have their views taken into account when their best interests are being assessed.<sup>34</sup> The best interests assessment has to be documented in a transparent way, explaining how different rights, interests and factors have been balanced and how the views of the child have been taken into account.

68. The best interests assessment should assess the necessity of the age assessment, ascertain that the least invasive methods are used, that results will be reliable and that the procedure upholds the child's dignity at all times. The best interests assessment needs to assess the individual risks and resiliency of the child in order to understand the child's vulnerabilities and specific needs and how these might impact, or be impacted by, the age assessment procedure. This is a precondition for ensuring that the age assessment procedure does not cause any harm to the health and well-being of the child. The best interests assessment should also establish that the professionals who undertake the age assessment are qualified and impartial and that procedural safeguards are in place and accessible for the child. It is also in the best interests of the child that the age assessment takes place in a child-friendly environment.<sup>35</sup>

69. A best interests assessment must be conducted prior to the age assessment. This is required in order to determine the preparatory steps necessary to ensure that the procedure can be conducted in a way that gives primary consideration to the best interests of the child. Preparations in this context include informing the child in a language that the child understands, including with the help of interpreters or cultural mediators, hearing the views of the child and taking them into account for the details of the age assessment procedure such as the methods chosen or the gender of a practitioner conducting physical examinations.<sup>36</sup>

70. Age assessment can be in the best interests of a person who claims to be an adult but where there are reasonable doubts to believe the person is a child. The latter case could concern children who claim to be over 18 years old in order to proceed more easily to their final destination country, in order to access employment, or because they have been instructed, incentivised or coerced by third parties to do so, for instance in the context of smuggling, human trafficking and exploitation.<sup>37</sup>

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<sup>33</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 12.

<sup>34</sup> UN Convention on the Rights of the Child, Articles 3 and 12.

<sup>35</sup> European Asylum Support Office, *Age Assessment Practice in Europe*, 2014, p. 16. Mougne, Christine and Amanda Gray, *A New Approach to Age Assessment of Unaccompanied and Separated Children: Current practices and challenges in the UK*, 2010, p. 5.

<sup>36</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 12.

<sup>37</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, pp. 7-8.

## The right to non-discrimination

71. Age assessment policies, procedures and practices need to respect the general principle of non-discrimination, in line with Article 2 of the UN Convention on the Rights of the Child and other relevant international and European standards. Safeguarding the right to non-discrimination in age assessment procedures requires a standardised procedure for age assessment that prevents differential treatment, different standards or discrimination against individuals or specific groups. While a standardised procedure should be applied in a uniform way with all persons whose age is debated, it needs to be designed in a way that gives due consideration to the best interests and specific needs of the individual child.

72. When referring a person to age assessment and during the procedure, there must not be any distinction based on the person's gender, language, religion, national or social origin, culture, colour, disability, sexual orientation, accompanied or unaccompanied arrival, or immigration status. Subjective preconceptions about the validity of identity papers or the credibility of persons from a specific national or social origin must not influence procedures, methods or decisions regarding age assessment. In addition to prohibiting discrimination in age assessment procedures by law, states need to ensure that proactive measures are taken to prevent discrimination in practice including by providing clear standardised procedures, training of staff, information for the persons whose ages are to be assessed as well as effective monitoring and complaints mechanisms.<sup>38</sup>

## The right to be heard

73. Under Article 12 of the UN Convention on the Rights of the Child, a child has the right to have his or her views heard and taken into account in all matters concerning them, including in judicial and administrative proceedings. The Convention provides for several other rights that are critical to enable children to form an opinion and communicate their views. They include the right to freedom of expression and to seek, receive and impart information (Article 13), the freedom of thought, conscience and religion (Article 14) and the freedom of association (Article 15). The Convention recognises that children develop skills, competences and capacities at different ages and that children need different degrees of support to exercise their right to participation in a meaningful way and in light of their evolving capacities (Article 5). States are obliged to give due weight to the views of children in accordance with the child's age and maturity (Article 12). Together, these rights establish an understanding of children as active participants in decision-making processes affecting them, in line with their capacities and competences with regard to the matters at stake.<sup>39</sup>

74. For age assessment procedures, the right to be heard entails that children are considered competent to participate in the procedures in light of their evolving capacities and their specific needs and vulnerabilities. In order for children to participate in age assessment procedures in a meaningful way, they need the appropriate conditions, environment and support to enable their participation. Children have the right to be heard and to have their views taken into account in all phases of the age assessment procedure. Their participation can only be meaningful if the age assessment procedure takes place

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<sup>38</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, pp. 13-14.

<sup>39</sup> Lansdown, Gerison, *The Evolving Capacities of the Child*, Innocenti Insight, United Nations Children's Fund Innocenti Research Centre, Save the Children Sweden, 2005, pp. 22-23. United Nations Children's Fund, *Age Assessment Practices: A literature review and annotated bibliography*, 2011, p. 10.



with the informed consent of the child and when the child is supported in making his or her views heard, for instance by a qualified interpreter, a legal representative and a guardian, if applicable.

### Examples of practice

75. In Italy, the 2017 national Law on protection measures for unaccompanied minors affords the child the right to participate in all judicial and administrative proceedings that he or she is involved in. The child has the right to be heard and, to this end, the presence of a cultural mediator shall be ensured. Children have a right to emotional and psychological assistance in all proceedings that they are involved in. The child can be assisted by individuals of his or her choice and by relevant groups, foundations, associations and NGOs that provide assistance to unaccompanied children. The child's prior consent to the procedure is needed, and the authorization of the proceeding judicial or administrative authority is requested.<sup>40</sup>

76. In Ireland, the age assessment is conducted on the basis of a social work assessment according to the standards developed by the Child and Family Agency ('Tusla'). As all social work assessments, the age assessment procedure generally foresees the child's active participation and a child-centred approach. The child is fully informed of the age assessment process and outcomes.

### The right to development

77. Age assessment procedures are often conducted for adolescents and young adults with a view to determining whether the person is under 18 years old. The individuals concerned are at different phases of their personal development and transition from childhood into adulthood. In this period of life, the treatment of the young person and the safeguards and support available to them can have a decisive impact on the young person's development.

78. The right to development is a fundamental principle of the UN Convention on the Rights of the Child (Article 6). Children have a right to develop their evolving capacities, their skills, talents and potentials. States are held to support and safeguard children in their individual development and to provide support to parents, guardians and caretakers to this end (Articles 5, 7, 9, 18, 20). The right to development relates closely to the right to health, social security and an adequate standard of living and the right to education (Articles 24, 26-29). Children who seek international protection have a right to special support under Article 22; those whose parents or family members cannot be found shall be accorded the same protection as other children who are permanently or temporarily deprived of parental care. For children placed in alternative care, international standards afford that the right to support to their personal development does not stop upon turning 18. Young adults continue to enjoy rights with regard to after-care and the support for their development to an independent life.<sup>41</sup>

79. UNHCR recognises in its Guidelines on Child Asylum Claims that "*being young and vulnerable may make a person especially susceptible to persecution. Thus, there may be exceptional cases for which these guidelines are relevant even if the applicant is 18*

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<sup>40</sup> Italy: Law No. 47 of 7 April 2017 on protection measures for unaccompanied minors (Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati), Official Gazette GU No. 93 of 21 April 2017, Article 15.

<sup>41</sup> UN Guidelines on Alternative Care, 2010, par. 131-136.

years of age or slightly older. This may be particularly the case where persecution has hindered the applicant's development and his/her psychological maturity remains comparable to that of a child."<sup>42</sup>

80. The impact of protracted exposure to war and armed conflict, high levels of generalised violence, sexual violence and exploitation, humanitarian crises and emergencies or poverty can also hinder the development of children and young people. Many children and young people are exposed to high levels of violence and exploitation during the journey.<sup>43</sup> Upon arrival, these experiences might determine their need for support much more than their chronological age.

81. Against this background, age assessment procedures need to be designed in a way not to disrupt the continuity of the development of adolescents and young adults in this transition period. Age assessment procedures can only be considered rights-based and meaningful when they ensure that the procedure itself and the possible outcomes safeguard the human rights of the person concerned. The procedure should therefore be integrated institutionally and structurally into the systems for childcare and protection, youth development and after-care as well as social welfare. Institutionally, age assessment procedures need to give due consideration to the coherence and continuity between the human rights of children and young adults, the regulations of the immigration and asylum regime, as well as special rights afforded to specific groups such as women, persons with disabilities, and persons who are victims of crime, inhuman or degrading treatment or torture.

#### **Legislation in support of a transition period for young migrants**

82. The Parliamentary Assembly of the Council of Europe proposes in its Resolution 'Migrant Children: What rights at 18?' (2014) to establish a transition category for young migrants aged between 18 and 25 years old. A transition category would enable young adults to access healthcare services, social welfare, education and housing assistance. It could contribute to supporting adolescents and young adults in their development and reduce the level of impact of turning 18 or being assessed as an adult.<sup>44</sup>

#### **The right to privacy and data protection**

83. Children whose age is disputed have a right to respect for privacy and data protection and the right to be protected from arbitrary interference with their privacy in line with International and European data protection laws and regulations.<sup>45</sup> If an age assessment is carried out, the child has a right to be informed about the personal data and information that is being shared between authorities or requested from authorities or other sources, within a country or across borders.

<sup>42</sup> UNHCR, Guidelines on Child Asylum Claims, par. 7. See also: United Nations Children's Fund, *Age Assessment Practices: A literature review and annotated bibliography*, 2011, p. 9.

<sup>43</sup> UNICEF, *A Deadly Journey for Children: The Central Mediterranean Migration Route*, February 2017.

<sup>44</sup> Council of Europe Parliamentary Assembly, *Migrant Children: What rights at 18?*, Resolution 1996 (2014), 23 May 2014.

<sup>45</sup> UN Convention on the Rights of the Child Article 16, Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, ETS No. 108, 28 January 1981. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. EC Asylum Procedures Directive (recast), 2013/32/EU, Recital 52 and Article 48. United Nations High Commissioner for Human Rights, General Comment No. 16, Article 17, The right to respect of privacy, family, home and correspondence, and protection of honour and reputation, HRI/GEN/1/Rev.9 (Vol. I), 8 April 1988.

84. Professionals and officials involved in age assessment procedures need to be trained and qualified to understand the relevant data protection regulations and to respect them in practice.

## B. Referral to age assessment

### Clear institutional competence and impartiality for referrals to age assessment

85. The institutional competence for referring an individual to age assessment should be clearly regulated by law or policy. The institution should be impartial in the sense that it is guided by the best interests of the child when assessing the need for age assessment and deciding whether to submit a referral for age assessment. The institution has to be competent to refer a person to age assessment on the basis of a best interests assessment.

### Informed consent prior to the referral to age assessment

86. A child shall be referred to age assessment only after the child and his or her guardian have given informed consent to participate in the procedure.<sup>46</sup> The right of the child to be heard and to have his or her views taken into account in judicial and administrative proceedings concerning the child is a general principle under the UN Convention on the Rights of the Child (Article 12).<sup>47</sup>

87. In order to give informed consent and to participate in the age assessment procedure, the child needs to be enabled to seek and receive information on the procedure itself and its possible consequences. Information should be provided in a language and a manner that the child understands with a view to enabling the child to form an opinion and to express his or her views on the age assessment procedure. The information must be accurate and reliable. Information must be provided on the process and methods of age assessment, including any health impact or risks and measures taken to reduce the risks as far as possible. Children need to be informed who will undertake the assessment and where, who will accompany them to the assessment and support them during the assessment, how long the assessment will take, when they will be informed about the outcome, and who else will be informed. Information must also be provided on the possible outcomes of the assessment and the respective consequences. The child has to be informed about his or her right to refuse participation in the age assessment procedure and the implications of refusal. The child shall also be informed about procedural safeguards in the age assessment procedure, including the right to legal representation and the right to appeal.<sup>48</sup>

88. Children need to be given the possibility to reflect upon the information they receive, to consult with a family member, parent or guardian, with a caregiver or other trusted person and with the legal representative assisting the child in the age assessment procedure. The child needs to be given time to ask questions about the procedure and any matters related to it and to receive responses in a language that he or she understands. The child must be given the opportunity to express his or her views,

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<sup>46</sup> UN Convention on the Rights of the Child, Article 12. 2013 EU Asylum Procedures Directive (recast), Articles 19 and 25.5. Council of Europe Parliamentary Assembly, Unaccompanied Children in Europe: Issues of arrival, stay and return, Resolution 1810(2011), 15 April 2011, par. 5.10.

<sup>47</sup> See also the section on The right to be heard.

<sup>48</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, pp. 12-13, 16. Médecins du Monde, *Age Assessment for Unaccompanied Minors, When European countries deny children their childhood*, 2015, p. 10.

including any questions for clarification, doubts or concerns and to receive further information and counselling on these matters if and as required.<sup>49</sup>

89. The process of seeking the informed consent of the child must give due consideration to communication that is sensitive to the child's age, gender and level of development, the evolving capacities of the child and any impairments or disabilities, as well as cultural and linguistic factors.<sup>50</sup>

90. A child's capacity to give informed consent should be assessed. Factors such as whether the child has been a victim of violence or has been traumatised should be given due weight. The child should be given the time, conditions and possibility to recover before any steps are taken to seek their informed consent to age assessment. Informed consent can only be given and considered legitimate when the child has in no way been coerced, intimidated or threatened into giving his or her consent to the age assessment.<sup>51</sup>

91. The informed consent given by the child and his or her guardian or parent or legal representative should be documented in a transparent way, providing evidence of how the child and the legal representative have been informed and how the competent professional or official has ascertained that the child has understood the information.<sup>52</sup>

#### **Examples of practice**

92. The informed consent of the child and his/her guardian or legal representative is sought in 26 member states of the Council of Europe (out of 37 survey responses as of the end of May 2017).

#### **Motivation, documentation and transparency of the referral decision**

93. Children whose age is challenged have a right to be informed about the reasons why their age is being questioned and why they are referred to an age assessment procedure.<sup>53</sup>

94. Officials and professionals who are competent to decide about the referral of a child to age assessment should be required to clearly and formally justify the decision in each case. The motivations of the decision shall be recorded in writing and provide the reasons why the competent authority holds serious doubts about the age of a child, why referral to age assessment is considered necessary and how it has been assessed to be in the best interests of the child concerned.<sup>54</sup>

95. Documentation should include details of all the steps taken in order to assess the best interests of the child with regard to age assessment. The documentation shall include information about the child's own statement of his or her age as well as other sources of information pursued in order to verify the child's declared age. The documentation should make a statement about the weight that has been attached to each source of information

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<sup>49</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, pp. 12-13, 16.

<sup>50</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, pp. 12-13, 16.

<sup>51</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 19.

<sup>52</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 12.

<sup>53</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 13.

<sup>54</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 8.

and how different interests and possible risks have been balanced in the decision-making process.

96. Standardised modules should be available from the competent authority to document the decision making process and the motivation for referring a child to age assessment. The documentation should be accessible for the child and his or her guardian or parent or legal representative.

#### **Examples of practice**

97. The decision to refer a person to age assessment is motivated in 12 member states of the Council of Europe (out of 37 survey responses as of the end of May 2017).

#### **Preventing repeated or multiple age assessments**

98. Persons who claim to be a child and whose age is challenged should be protected from undergoing repeated or multiple age assessments unless referral to a repeated age assessment is considered to be in the best interests of the child.<sup>55</sup>

99. Repeated age assessments might be carried out in cases where the individual moves or is transferred within a country or between countries, when previous age assessment results are not communicated or not recognised by the authorities in the new place or country of arrival. Repeated age assessments might be requested also to challenge the results of a previous assessment.

100. Repeated age assessment might be in the best interests of the individual if previous age assessment results are considered manifestly unfounded and if the results and methods used were unreliable, unsafe or otherwise inappropriate.

101. Repeated age assessment procedures might expose the child to new intrusive and potentially harmful examinations non respectful of a child's dignity. They might increase the risk of (re-)traumatisation and make the child feel intimidated.

#### **The right to refuse participation in an age assessment procedure**

102. Age assessment procedures must not be forced. Individuals whose age is being disputed should be given the possibility to withhold consent to participate in age assessment. The right to refuse derives directly from the principle of informed consent to the procedure. The refusal should be motivated, with the support of a legal representative, on the basis of concerns that the age assessment and/or the methods used for the assessment will have a detrimental effect on the physical or mental health and wellbeing of the child or are otherwise in conflict with the best interests of the child. The refusal to participate in an age assessment procedure must not entail any automatic decisions concerning the age or immigration status of the child or his/her application for international

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<sup>55</sup> In the context of child-sensitive justice, the prevention of repeated interviews of children who are victims of violence is a core element of international and European law, guidance and recommendations. See: O'Donnell, Rebecca, *PROMISE Compendium of Law and Guidance, European and international instruments concerning child victims and witnesses of violence*, PROMISE Publication Series, 2017, accessed from: <http://www.childrenatrisk.eu/promise/wp-content/uploads/2015/11/PROMISE-Compendium-of-Law-and-Guidance.pdf>, pp. 7-8.

See for instance the good practice example of the Barnahus ("Children's House") in Iceland: Barnaverndarstofa (Government Agency for Child Protection), *Barnahus as Implemented in Iceland*, Council of the Baltic Sea States and Council of Europe Conference, Tallinn 19-20 February 2015, Presentation by Bragi Guðbrandsson, Director General, 2015, accessed from: <https://rm.coe.int/1680700233>.

protection. Upon refusal, the child should not have to fear direct or indirect negative consequences resulting from the refusal. The presumption of minor age should be upheld.

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103. Upon refusal to participate in age assessment, the competent authority should review the best interests assessment that has been carried out prior to the decision to refer the child to age assessment. The review should involve a consultation with the child and his or her legal representative in order to hear and take into account any concerns about the harmful impact of age assessment methods or procedures and the best interests of the child. In light of these concerns, the competent authority and the child might clarify any uncertainties, misunderstandings or open questions that have previously not been addressed appropriately. The competent authority might revisit its previous decision or propose different assessment methods to prevent any harmful impact on the physical or mental health of the child.

#### Examples of practice

104. The individual has a right to refuse participation in an age assessment procedure in 26 member states of the Council of Europe (out of 37 survey responses as of the end of May 2017). If they refuse, the person is considered an adult in 10 countries and has to apply for asylum as an adult. In one country, the asylum application of the person is withdrawn upon refusal.

105. In **Italy**, the child is free to refuse undergoing medical examinations for the purpose of age assessment. If a child objects against a specific method, the assessment should be carried out without the use of this method. In cases where the responsible practitioners consider that the specific method to which the child has objected is however essential and sufficient to assess the child's age, they should inform the Guardianship Judge. The Judge will consider the objections raised by the child and the reasons given by the medical practitioners and may authorise the medical staff to proceed with the examinations that are deemed essential and sufficient.<sup>57</sup>

106. In **Sweden**, the participation in age assessment procedure cannot as such be refused. As age is considered an important part of a person's identity, it is generally not possible for the person to avoid an assessment of his or her identity and age in the process of an application for asylum or a residence permit. The participation in medical examinations for the purpose of age assessment are however always voluntary.

## C. Age assessment methods

### Age assessment methods uphold the dignity and physical integrity of the child

107. Age assessment procedures must at all times uphold the person's dignity and use the least invasive and least intrusive methods.<sup>58</sup> The age assessment should take place in a friendly and safe atmosphere.<sup>59</sup> Interviews and physical examinations must be

<sup>56</sup> 2013 EU Asylum Procedures Directive (recast), Article 25.5(c). United Nations Children's Fund, *Age Assessment: A technical note*, 2013, pp. 12-13. Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 14.

<sup>57</sup> Italy: Legislative Decree 25/2008, Article 19(3). Regulation on age assessment of unaccompanied minors victims of trafficking, Article 4.

<sup>58</sup> See, for example, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, Article 25(5).

<sup>59</sup> Committee on the Rights of the Child, General Comment No. 6 (2005), par. 20.

conducted in premises that guarantee privacy. Physical examinations must not involve nudity or examinations of genital and breast development.<sup>60</sup>

### Child-sensitive age assessment interviews

108. Age assessment interviews aim to elicit from the child an account of his or her story and background and to encourage the child to share his or her recollection of events that could give a hint on the child's age. Interviews provide also an opportunity to assess the mental and cognitive development of the child, the child's physical appearance and demeanour. In addition, the emotional development and capacity for abstract thought is assessed.<sup>61</sup>

109. In an interview, the child can be asked to tell his or her story in an open narrative in order to obtain the child's recollection of special events or cyclical events. Understanding the family composition, especially with regard to younger and older siblings, can also provide helpful indications. Information about the education level of the child and his/her brothers and sisters can provide hints about the age. Anthropological knowledge about traditional age classes and initiation rites can be helpful for the assessment.<sup>62</sup>

110. Any interviews with the child in the context of age assessment procedures need to be conducted by qualified professionals in a child-friendly environment. Interview questions need to be open-ended and solicit the child's free narrative while avoiding any leading questions or other ways to exert influence on the child's narrative.<sup>63</sup>

#### Examples of practice

111. Age assessment interviews are conducted in 22 member states of the Council of Europe (out of 37 survey responses as of the end of May 2017).

112. In **Cyprus**, an age assessment interview is carried out before referring the child to any medical examinations for the purpose of age assessment. In the interview, the child has the opportunity to state his/her age and all information relevant for age assessment and to provide documents or to offer explanations as to the lack of documents. The age assessment interview is conducted by a trained officer in accordance with the EASO module and guidance on interviewing children. During the interview, the officer seeks to assess the maturity of the person, in order to gather additional hints on the person's age.

113. In **Denmark**, the Danish Immigration Service conduct interviews with persons whose age is unclear. The interview is conducted on the assumption that the person is a child. The questions and interview techniques are adapted to the presumed age, maturity, nationality and background of the child and care is taken to ensure that the child understands the questions. The age assessment interview is conducted before the child is referred to any further examinations. During the interview, the Danish Immigration Service officer asks questions regarding the child's age, date of birth and

<sup>60</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 15. In response to the Council of Europe survey, the following States stated that sexual maturity observations were among the methods used for age assessment procedures: Azerbaijan, Denmark, Hungary, Italy, Luxembourg, the Russian Federation and Ukraine.

<sup>61</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 18.

<sup>62</sup> United Nations Children's Fund, *Age Assessment Practices: A literature review and annotated bibliography*, 2011, p. 7. United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 13. Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 8.

<sup>63</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 19.

any other relevant information. In addition, the Danish Immigration Service collects documentary evidence regarding the child's age.

114. In **France**, a multi-disciplinary interview is conducted with a person whose age is unclear and who cannot provide any identity documents. The interview aims to assess the age and the situation of the person concerned. It is carried out by the local authority in the administrative *département* the child is based in, or by delegated associate services.<sup>64</sup> If a doubt about the person's age remains after the interview, the individual can be referred to medical examinations, with the consent of the person.<sup>65</sup>

115. In **Malta**, the age assessment procedure is structured into three phases: an initial assessment with a focus on the physical appearance and demeanour of the child (Phase 1), a full age assessment of the chronological age (Phase 2) and the decision (Phase 3). The age assessment procedure has recently been reformed in light of the EASO manual and guidance. The reform aimed to ensure that the procedure is conducted as a psycho-social assessment with a holistic approach, greater integration of the benefit of the doubt in decision making and to reduce the number of cases referred for a bone density analysis. The assessment and the decision fall under the responsibility of an Age Assessment Panel, which is composed of three social workers with special training on age assessments according to the EASO manual and guidance.

116. In Phase 1, the person is interviewed about his or her story in order to gather information about the family composition, the personal history of education and employment, the journey, the health situation, the socio-cultural history in the home community as well as hobbies and childhood experiences. In addition, they seek to understand the family composition, which can help to identify the presumable age of the person. Therefore, the social workers seek to gather as detailed information on the family members as possible, including information on the names and ages of parents, siblings and extended family members. The social workers are trained to keep in mind that activities and hobbies during spare time can give an idea of the age appropriate interests and activities, information gathered needs to be considered in a culturally sensitive way as in some cultures, it could be normal for a young teenager to be working and contributing to the family income, some children might have experienced armed conflicts, including as child soldiers, have been exposed to sexual violence and exploitation and may have experienced traumatic situations.

117. If doubt remains about the age, and the Age Assessment Panel is unable to reach a conclusion, the panel recommends that the person undergoes a skeletal assessment of the hand. An X-ray of the wrist bone is then taken to determine bone or skeletal age. This method does however not take into account social, nutritional, environmental, psychological or cultural differences, which directly influence a child's development and growth, and the results typically have a margin of error of approximately 18 months.

118. Following the interview carried out by the Age Assessment Panel, and the medical assessment, if applicable, the panel prepares a document with their conclusions and motivations. The document is presented to the Chairperson of the Age Assessment Panel who examines the recommendations and reasoned analysis of the

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<sup>64</sup> Decree n. 2016-840 relating to reception and minority assessment conditions of minors temporarily or definitely deprived from the protection of their family, 24 June 2016.

<sup>65</sup> France: Code of Social Action and Families, Article L221-2-2, R 221-11 and following. Civil Code modified by the law of 14 March 2016, Article 388. Code of Civil Procedure, Article 232.



team and takes a decision on the age of the person.

### Gathering documentary evidence of age

119. If the child is not in a position to give any hints, information or documentary evidence of his or her age, the competent authorities should seek to check other sources of information, such as school records, if available. The child has a right to be informed about the types of documents and evidence that are being collected for the purpose of age assessment. The child needs to give his or her informed consent, with the support of his or her guardian or parent and legal representative, to gathering such documents and evidence. The measures taken to gather and share any documentary evidence need to respect the child's right to privacy and data protection. If the child is seeking international protection, the Authorities in the child's country of origin must not be contacted, as this may put the child at risk of harm.<sup>66</sup>

### Examples of practice

120. The review of documents in age assessment procedures is one of the most common methods, although it is not practiced in all member states of the Council of Europe. 31 countries review documents as one of the methods of age assessments; however, only 8 countries make an effort to gather additional documentary evidence before referring an individual to age assessment (out of 37 survey responses as of the end of May 2017).

### Multi-disciplinary and holistic approach

121. In order to be comprehensive and conclusive, age assessments need to adopt a holistic approach that involves different disciplines and methods. The assessment should be based on a consideration of physical, psychological, developmental, environmental and socio-cultural factors. In order to balance these different factors, professionals from different disciplines need to participate or be consulted in the assessment.<sup>67</sup> Professionals with expertise in child development should have a central role in age assessments. They include paediatricians, child psychologists and paediatricians.<sup>68</sup> Multi-disciplinary approaches should further include expertise on social and cultural differences in childhood and child development in order to conduct a social assessment of the child and to assign weight to the child's origin and personal story.<sup>69</sup>

122. Multi-disciplinary and holistic assessment procedures should be defined, regulated and mandatory under relevant national laws, policies and regulations.<sup>70</sup> Multi-disciplinary

<sup>66</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 13. Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 8. See also: Committee on the Rights of the Child, General Comment No. 14 (2013), par. 92.

<sup>67</sup> Council of Europe Parliamentary Assembly, Unaccompanied Children in Europe: Issues of arrival, stay and return, Resolution 1810(2011), 15 April 2011, par. 5.10. United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 16. Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 9.

<sup>68</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 10.

<sup>69</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 16. Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 9. United Nations Children's Fund, *Age Assessment Practices: A literature review and annotated bibliography*, 2011, pp. 41-42.

<sup>70</sup> The absence of clear definitions and procedures for multi-disciplinary cooperation and a holistic approach in age assessment has been reported as an obstacle to achieve a holistic procedure in practice. See: United Nations Children's Fund, *Age Assessment Practices: A literature review and annotated bibliography*, 2011, p. 37.

co-operation is likely to be more effective when regulated by a written agreement, standard operating procedures and clear protocols for co-operation.

### Examples of practice

123. The use of multi-disciplinary and holistic approaches in age assessment procedures is still a rather rare practice in the broad European region. 19 member states of the Council of Europe apply multi-disciplinary approaches in age assessment procedures; in six of these countries, the multi-disciplinary approach remains however limited to the combination of different medical disciplines (out of 37 survey responses as of the end of May 2017).

124. In **Ukraine**, a local commission consisting of officials from local authorities units on Health Care, Education, Social Welfare, Services for children, social pedagogues and psychologists is responsible to assess and make a final decision on the age of a child. The age assessment procedure is defined as an "integrated multi-sectoral procedure" that consists of three phases. The decision of the Commission is taken by the majority of votes. In case of equality of votes the vote of the chairman of the Commission is crucial.<sup>71</sup>

125. In **Iceland**, the Directorate of Immigration and the Government Agency for Child Protection are developing guidelines for the cooperation between the different agencies and services involved in handling the cases of unaccompanied children. These guidelines will address, among other issues, age assessment procedures. The age assessment is initiated by a dental X-ray examination, which is conducted in all cases. If this examination concludes that the individual is a child, the child is referred to an interview by a trained professional in the Children's House in order to gather more detailed information about the child's experiences and background, his or her age and maturity, and the need for support.<sup>72</sup>

126. In **Norway**, the age assessment procedure is based on the information provided by the person in his or her asylum application. This includes the individual's own statement about his or her age, any identity documents or information about the person from transit countries, the verification of the person's identity with the authorities in his or her country of origin, information about their age gathered from other persons or sources, as for instance the guardian or lawyer, social workers or health care professionals, or immigration officials who first registered the individual. If doubts remain after a review of these documents and sources of information, they are referred to medical age assessments and examinations. When all information and results of examinations have been gathered, they shall be weighed against each other. The Norwegian Directorate of Immigration is currently revising the policy guidelines regulating this procedure. The aim is to introduce specific guidance on how age assessments should be conducted and how the available information and evidence should be balanced and assigned weight in the final decision making process on the person's age.<sup>73</sup>

<sup>71</sup> Ukraine: Order No. 903/1464/711 of 23 October 2013.

<sup>72</sup> Iceland: Article 26 of the Act of Foreigners.

<sup>73</sup> Norway: Policy Guidelines, issued by the Norwegian Directorate of Immigration (PN 2012-011 – under revision), available from: <https://udiregelverk.no/no/rettskilder/udi-praksisnotater/pn-2012-011/>.

## Physical and medical examinations as a measure of last resort

127. Medical and physical age assessment methods can be justified as a measure of last resort in cases where a) there are serious doubts about the age of the person; b) when it is assessed to be in the best interests of the child to have his or her age assessed; and c) when other sources of information and means to identify and verify the person's age have been exhausted.<sup>74</sup>

128. Other means for verifying and assessing the child's age prior to ordering a physical or medical assessment include an interview with the child and the review of any identity or other documentary evidence (see above).

129. There is a broad consensus that physical and medical age assessment methods are not backed up by empirically sound medical science and that they cannot be assumed to result in a reliable determination of chronological age. Experts agree that physical and medical age assessment methods enable, at best, an educated guess. In addition to the scientific weaknesses and inaccuracy of age assessment methods, several methods have been evidenced to have a harmful impact on the physical and mental health and wellbeing of the person undergoing age assessment. Against this background, the use of invasive medical exams should be reduced to a minimum and has to remain a measure of last resort.<sup>75</sup>

130. Examination of genital maturity must be excluded from age assessment methods not only due to the proven inaccuracy but also due to the infringement against the privacy and physical integrity of the person concerned and as this may amount to inhuman and degrading treatment.<sup>76</sup>

131. The risks associated with medical examinations and the low degree of accuracy or added value of the outcomes do not support the use of these methods as ethically appropriate. The use of potentially harmful ionizing radiation for the purpose of age assessment, which exposes the person to radiation for non-medical purposes and holds no therapeutic benefit, is considered to be in conflict with medical ethics and potentially unlawful.<sup>77</sup> The refusal of the person to undergo age assessment based on an X-ray

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<sup>74</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 13. Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 8.

<sup>75</sup> 2013 EU Asylum Procedures Directive (recast), Articles 19 and 25.5 Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 8. See also: "Euratom" Directive Standards for protection against the dangers arising from exposure to ionising radiation 2013/59. United Nations Children's Fund, *Age Assessment Practices: A literature review and annotated bibliography*, 2011, p.13.

<sup>76</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, pp. 9, 17. Médecins du Monde, *Age Assessment for Unaccompanied Minors, When European countries deny children their childhood*, 2015, p. 8. The European Asylum Support Office noted that assessing age has a wide margin of error and assessments on the basis of physical traits are the least precise. It also notes that the Royal College of Paediatrics and Child Health concludes that 'overall, it is not possible to actually predict the age of an individual from any anthropometric measure, and this should not be attempted' (King's Fund and the College of Paediatrics and Child Health, 1999:40). Cited in: European Asylum Support Office, *Age Assessment Practice in Europe*, 2014, p. 33. See also: European Union Agency for Fundamental Rights, *Separated, Asylum-Seeking Children in European Union Member States – Comparative Report*, 2010, p. 53.

<sup>77</sup> Aynsley-Green, A. et al., *Medical, Statistical, Ethical and Human Rights Considerations in the Assessment of Age in Children and Young People Subject to Immigration Control*, British Medical Bulletin, June 2012. Vol 102 issue 1 Cited in: European Council of Refugees and Exiles, *Detriment of the Doubt: Age Assessment of Unaccompanied Asylum-Seeking Children*, Asylum Information Database, AIDA Legal Briefing No. 52015, p. 5. United Nations Children's Fund, *Age Assessment: A technical note*, 2013, pp. 12-13. Médecins du Monde, *Age Assessment for Unaccompanied Minors, When European countries deny children their childhood*, 2015, p. 3.

examination should therefore be respected without imposing any penalties or negative consequences.<sup>78</sup>

### Examples of practice

132. Medical examinations in age assessment procedures are common methods in use in Council of Europe member states and most countries combine different types of medical examinations. 24 countries use carpal X-ray, 19 countries use dental examinations and dental X-ray, 15 countries use physical development examinations, 9 countries use collar X-ray and 7 countries use sexual maturity assessments for the purpose of age assessments<sup>79</sup> (out of 37 survey responses as of the end of May 2017).

### Safety, ethics and prevention of abuse during physical examinations

133. If age assessment methods involve physical examinations, the examinations must be carried out safely and ethically and ensure the prevention of abuse, in line with the standards afforded under the UN Convention on the Rights of the Child, in particular Articles 3 and 19. It is therefore recommended that the responsible practitioner conduct the examination in the presence of a second practitioner to ensure that ethical standards, safeguards and impartiality are maintained. The child's guardian or parent or another appropriate adult should also be present to chaperone the child.<sup>80</sup>

134. If the practitioner has any doubts with regard to the child's informed consent and understanding of the procedure, or notices any risks to the child from the examination, such as distress and risk of re-traumatisation, the practitioner should stop the examination.<sup>81</sup>

### Methods are sensitive to gender, culture, and vulnerabilities

135. Age assessment methods must at all times be sensitive to the gender and culture as well as any specific vulnerabilities of the child. Children should be asked if they have preferences with regard to the gender of the person conducting the assessment, irrespective of the methods chosen, and their preferences should be respected. Wherever possible, gender preferences should be respected also with regard to the selection of the legal representative as well as the guardian or interpreter, as applicable. If physical examinations are part of the age assessment, respecting the child's preferences with regard to the gender of the practitioner and any other person present during the examination is imperative.<sup>82</sup>

136. Assessments should preferably be undertaken by professionals with relevant cultural competence who are familiar with the national, social and cultural background of the individual. Social and cultural preconceptions about childhood and child development must not influence the assessment.<sup>83</sup>

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<sup>78</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, pp. 12-13. Médecins du Monde, *Age Assessment for Unaccompanied Minors, When European countries deny children their childhood*, 2015, p. 3.

<sup>79</sup> In response to the Council of Europe survey, the following States stated that sexual maturity observations were used as part of the age assessment methods: Azerbaijan, Denmark, Hungary, Italy, Luxembourg, the Russian Federation and Ukraine.

<sup>80</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 15.

<sup>81</sup> See discussion in: United Nations Children's Fund, *Age Assessment Practices: A literature review and annotated bibliography*, 2011, p. 28.

<sup>82</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 15.

<sup>83</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 15.

137. The child's family background and origin can have a notable impact on the child's level of development, physical appearance and behaviour. Physical development depends, for instance, on the child's diet, living and environmental conditions in the home, access to health care, physical activities, or involvement in child labour and household chores. Communication skills, the level of knowledge and cognitive skills depend on the child's possibilities for learning, schooling and education and other opportunities for the child to develop his or her evolving capacities. Exposure to violence and exploitation can have a harmful impact on all aspects of the child's development and evolving capacities. Children who have been exposed to sexual exploitation might demonstrate a sexualised behaviour that is uncommon for peers who have grown up in a protected environment. Cultural and gender norms and social constructs of childhood might have an influence on the child's interaction with adults. Children might undergo initiation rites at an early age and start taking on responsibilities for contributing to the family income and subsistence. Children might be married and have children of themselves at a young age. Children who have witnessed violence or who have been forced to commit violence, for instance in the context of armed groups or forces, might have been coerced and trained to display a high level of violence or aggression when interacting with others.<sup>84</sup> Age assessments need to be sensitive to the previous experiences and any vulnerabilities of the child and take them into account when interpreting the results.

#### Examples of practice

138. In **Italy**, the national Law No. 47 of 21 April 2017 on protection measures for unaccompanied minors provides that the age assessment shall be conducted by the public security authorities with the participation of cultural mediators and in the presence of the child's guardian or temporary guardian. The age assessment procedure is initiated only after it has been ensured that the child has received immediate humanitarian assistance.<sup>85</sup>

#### Applying the margin of error in favour of the person

139. In light of the scientific inaccuracy and unreliability of age assessment methods, age assessment results have to be presented with a margin of error. The age assessment documentation should include a clear statement on the methods used and the margin of error of each specific method. In light of the principles of presumption of minor age and the best interests of the child, the margin of error should always be applied in favour of the person who has undergone age assessment. The person should be treated as a child until any further evidence is provided to substantiate the age of the person.<sup>86</sup>

140. Where the margin of error is not applied, the child will remain excluded from specific care, protection and support that he or she is entitled to under relevant national laws and international standards. The failure to provide adequate protection and support can place children at risk of violence and exploitation, can undermine their personal development and social integration and prevent them from participating effectively in the asylum procedure.<sup>87</sup>

<sup>84</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 16.

<sup>85</sup> Italy: Law No. 47 of 7 April 2017 on protection measures for unaccompanied minors (Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati), Official Gazette GU No. 93 of 21 April 2017, Article 19bis(3).

<sup>86</sup> Council of Europe Parliamentary Assembly, Unaccompanied Children in Europe: Issues of arrival, stay and return, Resolution 1810(2011), 15 April 2011, par. 5.10. United Nations Children's Fund, *Age Assessment: A technical note*, 2013, pp. 15-16.

<sup>87</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, pp. 15-16.

### Examples of practice

141. The margin of error is not yet applied consistently in Council of Europe member states. 20 countries stated that margins of error were taken into account in determining the likely age of an individual (out of 37 survey responses as of the end of May 2017).

142. In **Luxembourg**, if the radiologist conducting the first carpal X-ray examination in an age assessment procedure concludes that the person could be a child, the individual shall be presumed to be a child and no additional X-ray examinations are to be made to seek further clarifications.

143. In **Poland**, the age of the individual is defined by the lower age within the margin of error determined by a carpal X-ray examination. In the case where a person's age was estimated to be over 18 years and the margin of error indicates that a person may be under 18 years old, the person shall therefore be treated as a child.

## D. Procedural safeguards in age assessments procedures

### Age assessment decision

144. Age assessment decisions may result in a legal challenge, and it is therefore in the best interests of the child and the decision makers to have a clear record of how a decision on an individual's age was made.

145. If the age assessment concludes that the probable age of the child falls within a range that includes minor age, the individual should be officially recognised as a child. If the child has declared his or her date of birth prior to the age assessment and that date falls within the range affirmed by the age assessment, it should be recorded and recognised as the child's official date of birth. If the child has not been able to state his or her date of birth, the lowest age in the margin determined by the assessment should be recorded as the child's age.<sup>88</sup>

146. The age assessment decision needs to be documented in writing with clear and transparent legal reasoning.<sup>89</sup> The documentation shall include information about the methods used, their scientific reliability and margin of error.

147. The age assessment decision together with all supporting documentation should be made available to the child and his or her legal representative and parent or guardian.<sup>90</sup> The documentation needs to be made available promptly when the decision has been taken.

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<sup>88</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, pp. 10-11.

<sup>89</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 97.

<sup>90</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, pp. 13-14.

### Examples of practice

148. Age assessments are often integrated into asylum procedures and do not necessarily result in a distinct formal decision. This is the case in 12 member states of the Council of Europe. In 10 countries, the age assessment results in a formal decision (out of 37 survey responses as of the end of May 2017).

149. In **Ireland**, the Department of Justice and Equality is the competent authority for age assessment decisions. The Child and Family Agency (Tusla) provides an opinion that is formed by the child protection services based on a professional assessment. The Department of Justice and Equality take the opinion into account in the examination of the asylum application. A formal decision on minority or majority status is made based on the Tusla professional assessment.

### Right to be heard

150. The child has the right to express his or her views and to have them taken into account in all phases of the age assessment procedure. In order to safeguard this right in practice, states have to ensure that the child has access to assistance by a legal representative as well as a qualified interpreter and cultural mediator, as applicable. Unaccompanied and separated children have a right to be assisted by a guardian.<sup>91</sup>

### Examples of practice

151. In **Norway**, the results of the medical age assessment are presented to the child during the asylum interview. The asylum interview is arranged in a way that takes account of the applicant's age and maturity. The applicant and his or her guardian have an opportunity to comment on the age assessment decision during the interview. They are also given an opportunity to comment on the age of the applicant.

### Right to information

152. At all times during the age assessment procedure, the child has a right to seek, receive and impart information. Information has to be provided in a language that the child understands.<sup>92</sup> Information and advice should be gender and culture sensitive and should be provided to the child in a manner that is adapted to their age and maturity.<sup>93</sup>

### Examples of practice

153. In **Belgium**, a leaflet has been produced that explains in simple and easily accessible language the age assessment procedure and why it is considered necessary. The leaflet is available in different languages and handed out to the person undergoing age assessment. The leaflet supplements the information provided to the person orally. It presents information about the doubts that have been raised with

<sup>91</sup> UN Convention on the Rights of the Child, Article 12. International Covenant on Civil and Political Rights, Article 14. Committee on the Rights of the Child, General Comment No. 6 (2005), par. 25. Committee on the Rights of the Child, General Comment No. 12 (2009). Committee on the Rights of the Child, General Comment No. 14 (2013), par. 90. See also the section on The right to be heard.

<sup>92</sup> UN Convention on the Rights of the Child, Article 17. International Covenant on Civil and Political Rights, Article 19. Committee on the Rights of the Child, General Comment No. 6 (2005), par. 25. Committee on the Rights of the Child, General Comment No. 12 (2009). Committee on the Rights of the Child, General Comment No. 14 (2013), par. 90. See also the section on The right to be heard.

<sup>93</sup> Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice, 2010, Guideline IV. A. 2.

regard to the individual's age, what will happen and what the medical age assessment examination means, and the consequences of age assessment. It explains also what kind of documentation could be considered as proof of age.

154. In **Italy**, the national Law No. 47 of 21 April 2017 on protection measures for unaccompanied minors provides that the person who is presumed to be a child and undergoing age assessment is informed that his or her age is to be assessed through social and medical evaluation. The presumed child is informed about the type of evaluation that he or she shall undergo, about the possible outcomes and consequences and about the possibility to refuse undergoing such exams. The child is informed in a language that he or she understands and, where necessary, with the aid of a cultural mediator and with due regard to his or her degree of maturity and literacy. The information is also given to the child's guardian.<sup>94</sup>

### Assistance by a legal representative and a guardian

155. A legal representative should be appointed to assist the child with all legal and procedural matters related to the age assessment procedure. Legal representation constitutes a procedural safeguard in all judicial and administrative proceedings, including in age assessment procedures. The legal representative supports the child to seek and receive information in a language that the child understands, ensures that the child's views are heard and taken into account and that the procedure respects the rights of the child at all times.<sup>95</sup>

156. In cases of unaccompanied or separated children, or children whose parents are not in a position to exercise the guardianship of their child, the child has a right to have a guardian appointed. If a guardian cannot be appointed promptly, a temporary guardian should fulfil the guardian's mandate pending the appointment of the guardian. The guardian shall be mandated to promote the best interests of the child and to complement the limited legal capacity of the child in all matters concerning the child. The guardian's support is therefore essential before and during age assessment and as long as the confirmation of minor age is pending. Guardianship services should be provided in line with quality standards for guardianship as afforded under international and European standards. While the guardian is not mandated to act as a lawyer or legal representative of the child, he or she needs to be qualified and prepared to act as an advocate for the individual child and to promote the rights and interests of the child in contact with all relevant authorities, services and professionals, including with regard to the age assessment procedure.<sup>96</sup>

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<sup>94</sup> Italy: Law No. 47 of 7 April 2017 on protection measures for unaccompanied minors (Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati), Official Gazette GU No. 93 of 21 April 2017, Article 5, paragraph 5.

<sup>95</sup> United Nations Convention on the Rights of the Child Articles 12.2, 37.d, 40. International Covenant on Civil, Cultural and Political Rights Articles 13, 14.2 b. 2013 EU Asylum Reception Conditions Directive (recast), Articles 2(j), 9, 24, 26. 2013 EU Asylum Procedures Directive (recast), Recital 23, Articles 2(n), 7, 20-23, 25. 2011 EU Qualifications Directive (recast), Articles 31.1, 31.2 and 31.6. 2011 EU Anti-trafficking Directive Recital 19, 23 and 24, Articles 12.2, 14.2, 15, 16.3. EU Anti-Trafficking Directive Recital 19, 23 and 24, Articles 12.2, 14.2, 15, 16. Committee on the Rights of the Child, General Comment No. 14 (2013), par. 90, 96. Committee on the Rights of the Child General Comment No. 6 (2005), par. 25, 33-38, 63, 69, 72, 89, 95, 99. Médecins du Monde, *Age Assessment for Unaccompanied Minors, When European countries deny children their childhood*, 2015, p. 11. United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 14.

<sup>96</sup> United Nations Convention on the Rights of the Child Articles 14.2, 18. Council of Europe Convention on Action Against Trafficking in Human Beings, Article 10.4. 2011 EU Anti-trafficking Directive Recital 19, 23 and 24, Articles 12.2, 14.2, 15, 16.3. 2011 EU Qualifications Directive (recast), Articles 31.1, 31.2 and 31.6. Committee on the Rights of the Child General Comment No. 6 (2005), par. 21, 24, 25, 33-38, 55, 63, 69, 72, 89, 95, 99. United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 14. Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, pp. 12-13.



157. A child cannot be referred to age assessment procedures before a legal representative and a guardian have been appointed and are in effective contact with the child. The child has a right to be informed about the right to legal representation and guardianship and their respective appointment in a language that he or she understands. The appointment of a legal representative and guardian shall be ensured without undue delay.

158. Legal representatives and guardians should be impartial in the sense that they are officially mandated to promote the best interests of the child whom they assist and to represent the child's views. They need to be independent from the authority that orders or conducts age assessments or from any other authority with a vested interest in the outcome of the procedure. Legal representatives and guardians should monitor the age assessment procedure with a view to ensuring that it is undertaken in a safe manner and in a way that respects the rights, dignity and integrity of the child. The legal representative and guardian should be present at all times during the age assessment procedure.<sup>97</sup>

### Examples of practice

159. A legal representative or guardian is appointed to assist the child in the age assessment procedure in 26 member states of the Council of Europe (out of 37 survey responses as of the end of May 2017).

160. In **Greece**, the national law provides that a guardian for the child is appointed who shall undertake all necessary action in order to promote the rights and the best interests of the child throughout the age assessment procedure.<sup>98</sup>

### Qualified professionals and impartiality

161. Age assessments should be carried out by professionals who are specifically trained and qualified for this purpose. They require necessary knowledge and expertise in their specific field and in working and communicating with children in order to carry out the assessment in a skilled and sensitive manner.<sup>99</sup> Professionals who undertake age assessments should be familiar with the national, social and cultural background of the person whose age they assess and they should be competent to consider the impact of different lifestyles and environmental conditions on a child's physical, emotional and psychological development.<sup>100</sup>

162. The professionals undertaking age assessment procedures need to be institutionally and professionally independent from the immigration authorities, authorities that provide services to children or any other authority that holds a vested interest in the outcomes of age assessment procedures.<sup>101</sup>

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<sup>97</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 14. Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, pp. 12-13.

<sup>98</sup> Greece: Article 45(4)(a) Law 4375/2016.

<sup>99</sup> UN Convention on the Rights of the Child, Articles 3, 20 and 25. 2013 EU Asylum Reception Conditions Directive (recast), Article 24.4. 2013 EU Asylum Procedures Directive (recast), Articles 25.5. 2011 EU Qualifications Directive (recast), Article 31. Committee on the Rights of the Child, General Comment No. 6 (2005), par. 95-97. Committee on the Rights of the Child, General Comment No. 14 (2013), par. 94. Médecins du Monde, *Age Assessment for Unaccompanied Minors, When European countries deny children their childhood*, 2015, p. 11. United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 17. Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 10.

<sup>100</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 15.

<sup>101</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 17.

163. Professionals whose role is in actual or potential conflict with the person under assessment and his or her rights and interests must not be involved in carrying out age assessments, interpreting the results or making age assessment decisions.<sup>102</sup>

164. Professionals involved in age assessments should receive periodic training, including multi-disciplinary training, on conducting age assessments in line with up-to-date knowledge and evidence. Training should also be provided in child-sensitive interviewing, the communication with children from different national and cultural backgrounds and with traumatised children, and working with interpreters or cultural mediators while communicating with children.<sup>103</sup>

#### Examples of practice:

165. In **Malta**, age assessment procedures are carried out by social workers. The social workers attend various training modules organised by EASO. They also undergo training organised by the Agency for the Welfare of Asylum Seekers of Malta and other national/international courses.

166. In **France**, training courses are organized by the National School for the Judicial Protection of Youth and the National Centre for the Territorial Public Service. The training is targeted at social workers or officers of the departments in charge of age assessment and the staff of the associations to which the departments have delegated the age assessment task. The training provides knowledge on the migration path and trauma of unaccompanied children, the special situations, vulnerabilities and protection needs of this group. The training shall prepare the social workers to contribute to the age assessment, in particular by focusing on the social assessment of the persons. The training informs also about the relevant national law and prepares the staff to prevent psycho-social risks related to their role in age assessment procedures of unaccompanied children. At the national level, the training courses shall facilitate the harmonisation of professional capacities, skills and practices throughout the country.<sup>104</sup>

167. In **Sweden**, the relevant staff, decision making officers and case officers involved in age assessments at the Swedish Migration Board are regularly trained in all the different aspects of the age assessment procedures, including interviewing techniques and evidentiary assessment. Asylum applications by unaccompanied children are assessed by staff with special competence. The Swedish Migration Agency offers special training programmes that include training on interviewing children as well as knowledge about child development. Cultural and gender aspects are an integral part of the training of the Agency's staff.

#### Timeliness of the age assessment procedure

168. Age assessments shall be carried out in a timely manner with due consideration to the role of the procedure as a precondition to inform other procedures, proceedings or decision-making processes. Undue delay shall be prevented and any delay shall be presumed to be prejudicial to the child.<sup>105</sup> The time required for age assessment must not,

<sup>102</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 10.

<sup>103</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 10.

<sup>104</sup> France: Training is provided for under Article R 221-11 and Article 4 of the Decree of 19 November 2016.

<sup>105</sup> Committee on the Rights of the Child, General Comment No. 14 (2013), par. 93. Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, pp. 14-15.

for instance, prevent the individual from applying for international protection as a child and to assert child-specific grounds of asylum.

169. The timing and duration of age assessment procedures should be determined with primary consideration to the best interests of the child. The child shall be informed about the timing and duration of all steps in the procedure.

170. The timing of the age assessment procedure needs to give due account to any vulnerabilities, emergency or protection needs that the child may have. In particular, there is a need to allow the child to gain trust and confidence necessary for the child to recollect and share information requested for the purpose of age assessment. Age assessment should therefore not be initiated at the first point of entry or upon the first contact after arrival but after the child has been referred to accommodation, childcare and protection services.<sup>106</sup>

171. The need to put in place procedural safeguards such as the appointment of a (temporary) guardian and/or a legal representative, shall not cause undue delay of the procedure.

172. In cases where the child wishes to appeal against the outcomes of the age assessment, the appeal procedure should be accessible and concluded in a timely manner, preventing further undue delay.

#### **Examples of practice**

173. In **Malta**, the age assessment procedure is structured into three phases, which are each clearly defined and have to respect specific time frames. The procedure is limited to an overall duration of 10 days. The assessment and the decision fall under the responsibility of an age assessment panel, which is composed of three social workers with special training on age assessments according to the EASO manual and guidance. By the 10<sup>th</sup> working day from the day of referral, the Chairperson must present a decision.

174. In **Greece**, the age assessment procedure is initiated upon the arrival of the person at the border or interception on the Greek territory. According to the law, the procedure needs to be completed within a maximum of 25 days.<sup>107</sup>

#### **Timely follow-up to age assessment**

175. Whenever age assessment confirms that the individual is a child, and when the person was previously not accommodated in childcare facilities or other accommodation centres for children, the referral to such accommodation, services and treatment for children has to be ensured promptly.<sup>108</sup> If the person has previously been precluded from enjoying any services that boys and girls under 18 years of age are entitled to, access to these services shall be granted promptly and without further delay.

<sup>106</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, pp. 14-15.

<sup>107</sup> Greece: Law No. 4375 of 2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC.

<sup>108</sup> United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 21.

## Complaints mechanism

176. Persons undergoing age assessment procedure should have access to a child-sensitive reporting and complaints mechanism. They should be informed in a language that they understand how to access these mechanisms in order to report infringements against their rights during the age assessment procedure. Such mechanisms have to ensure effective follow-up to any reports and complaints received, including specific and effective support in cases where the rights of the person undergoing age assessment or any procedural safeguards are being infringed upon.<sup>109</sup>

## The right to appeal against age assessment decisions and to have them reviewed and revised

177. Age assessment procedures should provide the possibility for the individual whose age is under assessment to request that the outcome of the assessment be reviewed or revised. A review or revision of the decision could be in the best interests of the child when the child can present information or documentation that has become newly available or rectify any information falsely reflected in the supporting documentation of the decision.

178. If the individual who has undergone age assessment is subsequently able to provide documentary evidence of age, or if the competent authority receives such documentary evidence after the assessment has been completed, such evidence should be reviewed and taken into account promptly. If such evidence specifies a date of birth within the margin of age determined or if it overrides the results of the previous age assessment, the recorded age of the person shall be adjusted accordingly.<sup>110</sup>

179. Decisions taken on the basis of age assessments and the assessment procedure itself should be subject to administrative or judicial appeal.<sup>111</sup> Appeal procedures have to be child-sensitive and accessible for the child and his or her legal representative. Information on the possibility to appeal needs to be provided in a language that the child understands.<sup>112</sup>

180. In order to use mechanisms to have the decision reviewed or revised, or to appeal the decision, the child needs to have access to legal remedies, including legal assistance and representation by a qualified lawyer free of charge as well as interpretation wherever required. Appeal procedures need to be timely and child-sensitive.

### Examples of practice

181. The right to appeal applies either directly to the age assessment decision or to the asylum application, where age assessment procedures are an integral part of the procedure for seeking international protection. In 15 member states of the Council of Europe, the individual has a right to appeal the age assessment decision or to have it

<sup>109</sup> UN Convention on the Rights of the Child, Article 12. United Nations Committee on the Rights of the Child, General Comment No. 2 (2002). United Nations General Assembly, National Institutions for the Promotion and Protection of Human Rights, A/RES/48/134, 1993.

<sup>110</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, pp. 10-11.

<sup>111</sup> EU Charter, Article 47. European Convention on Human Rights, Article 13. International Covenant on Civil and Political Rights, Articles 2, 13, 14(5). Council of Europe Parliamentary Assembly, Unaccompanied Children in Europe: Issues of arrival, stay and return, Resolution 1810(2011), 15 April 2011, par. 5.10. United Nations Children's Fund, *Age Assessment: A technical note*, 2013, p. 17. Médecins du Monde, *Age Assessment for Unaccompanied Minors, When European countries deny children their childhood*, 2015, p. 11.

<sup>112</sup> EU 2013 Asylum Procedures Directive Articles 19 and 25.4.

reviewed. In 13 countries, the person has access to legal remedies when seeking to appeal an age assessment decision or having it reviewed (out of 37 survey responses as of the end of May 2017).

### Right to consular assistance

182. While abroad, children have a right to receive help and assistance from the embassies or consular offices representing their countries of origin in the country where they are currently staying. Consular offices can support the child in obtaining access to identity documents and other relevant official documents that are requested for the purpose of age assessment.<sup>113</sup> Contact with consular offices and embassies is only appropriate in cases of migrant children.

183. If a child is applying for international protection, the authorities of their country of origin should never be contacted. This extends to contact by the child, their guardian, legal representative or by the authorities conducting the age assessment. All contact with the embassy or consular offices of the asylum seeking child's country of origin should be avoided as this may endanger the child and would not be in their best interest.

## IV. Laws and policies relevant for age assessment procedures

### Standardised procedures and protocols to guide age assessments

184. Age assessment procedures should be clearly defined and regulated by law and/or specific policies or protocols.

185. The regulations should clarify each step of the procedure, including considerations made when referring persons to age assessment, the selection of methods, the use of up-to-date methods ensuring the highest standards of safety and scientific reliability, the documentation of the process, the decision-making process and procedural safeguards.

186. Standardised protocols should be in place to guide professionals and officials in carrying out age assessment procedures.<sup>114</sup> They should be in full conformity with relevant international and European standards and reflect up-to-date knowledge and evidence concerning age assessment methods and procedures. They should also regulate the terms and conditions for multi-disciplinary and interagency cooperation in age assessment procedures.

### Examples of practice

187. National laws regulate age assessment procedures in 31 of the respondent member states of the Council of Europe. In addition, 22 countries have statutory procedures, protocols or guidelines in place or are in the process of developing them (out of 37 survey responses as of the end of May 2017).

188. In **Cyprus**, health professionals have been trained in age assessment methods in the framework of the EASO Special Support Plan to Cyprus. In this context, the Asylum Service of the Ministry of Interior, in cooperation with the Ministry of Health and

<sup>113</sup> United Nations Vienna Convention on Consular Relations.

<sup>114</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, p. 9.

the Social Welfare Services of the Ministry of Labour, Welfare and Social Insurance, have drafted guidelines that describe the procedure to be followed in the asylum and medical procedures.

189. In **Lithuania**, the Order of Ministers of the Social Security and Labour, Interior and Health Care of June 2016 establishes procedures to be followed in cases of unaccompanied children. The Order provides guidance on age assessment, as well as accommodation and other matters concerning unaccompanied children. The provisions are binding for social services, law enforcement and health care institutions.<sup>115</sup>

190. The **Norwegian** Directorate of Immigration is currently revising policy guidelines on unaccompanied children and age assessment procedures. The revised guidelines shall provide more specific guidance on how age assessments have to be carried out and how the gathered information and evidence shall be balanced and assigned weight in the final decision making process on the person's age.<sup>116</sup>

### Impact assessment and evaluation of national laws and policies regulating age assessment procedures

191. National laws, policies, regulations, budget allocation and other policy decisions concerning age assessment procedures need to be subject to child rights impact assessments and impact evaluations. Impact assessments and evaluations need to ascertain that national policy reforms and administrative decisions are in compliance with the human rights of the child as afforded under the UN Convention on the Rights of the Child and relevant national law. The findings and outcomes of impact assessments and evaluations should inform the ongoing process of law and policy reform.

### Monitoring and oversight

192. Procedures need to be in place to ensure that age assessment policies, procedures and practice are subject to effective monitoring and oversight. Monitoring should be conducted by state institutions as well as independently, for instance by Ombuds Offices for Children and other human rights structures. Monitoring activities should routinely hear and take into account the views of persons undergoing age assessment, their legal representatives and guardians, as well as professionals and officials involved in age assessment procedures.

193. The findings and outcomes of monitoring should be presented and debated in public. There should be clearly regulated mechanisms in place to ensure that the findings and recommendations resulting from monitoring inform the continued reform process of law, policy and practice in the area of age assessment procedures. National Parliaments should exercise their oversight function, including by hearing periodic presentations of monitoring findings and recommendations and promoting their application through relevant law reform.

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<sup>115</sup> Lithuania: Order of Ministers of the Social Security and Labour, Interior and Health Care adopted on 9 June 2016 (No. A1-284/1V-425/V-739).

<sup>116</sup> Norway: Policy Guidelines, issued by the Norwegian Directorate of Immigration (PN 2012-011 – under revision), available from: <https://udiregelverk.no/no/rettskilder/udi-praksisnotater/pn-2012-011/>

## Mutual recognition of age assessment results

194. National child protection systems and transnational co-operation in child protection cases should aim to enable the mutual recognition of age assessment results within countries and across borders. Mutual recognition of assessment results prevents the child from having to undergo repeated or multiple age assessments. It reduces also the burden on the authorities responsible for age assessments and enables them to save time, human and financial resources in assessing the person's identity and case.

195. In order to achieve this objective, states need to ensure that age assessments are rights-based, child-sensitive and informed by knowledge and evidence. Age assessments should be conducted according to common standardised procedures, apply comparable methods and procedural safeguards. The harmonisation of age assessment procedures may also be required for the national regions of federal states and autonomous territories of states.

196. A transnational framework that allows for the mutual recognition of age assessment results needs to provide for the possibility and appropriate support for an individual to appeal against age assessment decisions from another country, region or territory, or to request that previous age assessment results are reviewed or revised in the new place or country of arrival. As long as the results of the review or appeal are pending, the individual should be presumed to be a child and treated accordingly.<sup>117</sup>

## Case law

197. Cases concerning age assessment procedures have increasingly been brought to the attention of the judiciary and there is a growing body of case law from national courts of Council of Europe member states and the European Court of Human Rights. In addition to jurisprudence concerning age assessment procedures specifically, other cases are relevant for certain aspects of age assessment procedures, such as the matter of informed consent to an invasive medical examination, on which the European Court of Human Rights issued a sentence in a case against Turkey in 2011.<sup>118</sup> In February 2011, the European Court of Human Rights ruled that **Turkey** had violated the right of a 16-year old girl to be protected against degrading treatment. In 2002, the girl had been taken into police custody on the suspicion of participating in an illegal organisation. Whilst in police custody, the girl reported to have been sexually assaulted in custody. In response to these allegations, a medical and gynaecological examination was requested by the police in order to establish whether there was evidence of sexual assault. The examination was carried out without the consent of the girl. The charges against the girl were dropped and she was released. The girl suffered from post-traumatic stress and depression, as a result of the medical and gynaecological examination while in custody. Her complaints filed in 2004 were however dismissed.

198. The European Court of Human Rights ruled that the treatment of the girl amounted to a violation of Article 3 of the European Convention on Human Rights (protection against degrading treatment). The authorities had failed to obtain the consent of the girl or her legal representative for the gynaecological examination. Considering her vulnerable position in police custody, the girl could not have been expected to object to such an

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<sup>117</sup> Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, 2012, pp. 11, 14. Médecins du Monde, *Age Assessment for Unaccompanied Minors, When European countries deny children their childhood*, 2015, p. 12.

<sup>118</sup> *Yazgüel Yilmaz v. Turkey*, App No. 36369/06 (1 February 2011), <http://hudoc.echr.coe.int/eng/?i=002-598>.

examination. There had not been any law at the time to protect detainees against arbitrary examinations. A gynaecological examination could however be traumatising, especially for a child, who had to be afforded additional guarantees and safeguards, such as giving her informed consent, being accompanied by her legal representative and choosing whether the examination should be conducted by a male or female practitioner. The authorities that decided to subject the girl to a gynaecological examination, must have been aware of the psychological consequences of the examination on the girl and were responsible to ensure that these safeguards and guarantees were duly respected.<sup>119</sup>

199. Although this case is not directly related to age assessment procedures, it is relevant as the Court underlines the importance of obtaining the informed consent of the child and his or her legal representative prior to referring the child to any medical examination. The risk that invasive medical examinations could have a harmful impact on the psycho-social wellbeing and health of the child and lead to (re-)traumatisation is clearly acknowledged. The Court emphasises also that children in the hands of state authorities cannot be expected to object to medical examinations if they are in a vulnerable position and receive no adequate support in line with their rights and needs as children.

200. In 2016, the European Court of Human Rights ruled in a case filed by two former unaccompanied asylum seeking children against **Malta** that Article 3 (protection against degrading treatment) and Article 5 (§1 on the right to liberty and security and §4 on the right to have the lawfulness of detention decided speedily by a court) had been violated. The two boys were nationals of Somalia and had arrived in Malta in 2012 at the ages of 16 and 17 years old. Both had been detained for approximately 8 months while their asylum procedures and age assessments were pending. After the age assessments confirmed in both cases that the boys were under 18 years of age, they were released from the detention centre and referred to children's accommodation. The age assessment was conducted within a few weeks after the boy's arrival in one case, and some five months after arrival in the other. In both cases, the boys were told informally, while still being held in detention, that the age assessments had confirmed their being underage. Yet, their release from the detention centre was delayed for six further months in one case and two and a half months in the other.

201. Both boys complained subsequently about the conditions in the immigration detention centre, where they had to stay for approximately eight months in overcrowded facilities, with a lack of light and ventilation, a tense and aggressive atmosphere. Activities or services for children were not offered. Despite their minor age and their vulnerable status as asylum seekers, there were no support services for the boys and no information while staying in these detention centres, which rendered the situation even more difficult for them and exacerbated their fears. They alleged that their detention had been arbitrary and unlawful as it was a blanket treatment of all irregular migrants arriving in Malta without any distinction and they had been detained despite their claim to be under age. There was also no legal remedy for the boys to challenge their detention.<sup>120</sup>

202. In 2017, the European Court of Human Rights heard a similar case against **Italy**. On 14 February 2017, the Court handed down an interim ruling concerning two unaccompanied children who had been placed in a reception centre for adults in Italy. The

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<sup>119</sup> European Court of Human Rights, Yazgöl Yılmaz v. Turkey, App No. 36369/06, 1 February 2011, accessed from <http://hudoc.echr.coe.int/eng?i=002-598> on 21 April 2017.

<sup>120</sup> European Court of Human Rights, Abdullahi Elmi and Aweys Abubakar v. Malta, App nos. 25794/13 and 28151/13, 22 November 2016, accessed from <http://hudoc.echr.coe.int/eng?i=003-5554489-6999774> on 21 April 2017.



Court ruled that the Government of Italy had to transfer the children to accommodation facilities for children as the conditions in the reception centres for adults were considered inhuman and degrading, due to the severe overcrowding, insufficient sanitary services and a lack of heating during a harsh winter. The two children had not benefited from any of the special support and protection measures that unaccompanied children are entitled to under national law, including the prompt appointment of a guardian. In response to the communication received from the Court, the Government of Italy held that the two persons in questions were adults.

203. The two children presented a medical opinion that clearly attested their minor age based on a bone density examination. They claimed that the age assessment procedure carried out previously by the Italian authorities was not conducted in accordance with the national laws and regulations. Although the standards for age assessment procedures they referred to had been developed specifically for child victims of trafficking, they claimed that these standards were equally relevant for unaccompanied asylum seeking children who are not victims of trafficking. This position is supported by the National Authority for Childhood and Adolescents, the Italian Association of Juvenile Judges and other agencies and organisations. The age assessment procedures that the children had to undergo were based only on a single method, the carpal X-ray, they did not apply the margin of error and failed to apply a multi-disciplinary approach, in particular a paediatric examination and a psychological assessment were missing. In addition, the assessment results were not communicated to the children. During the age assessment procedure and while the results were pending, the children did not benefit from the benefit of doubt and presumption of minor age and were instead treated as adults. The European Court of Human Rights shared the view about these shortcomings of the age assessment procedures. It ruled that the Government of Italy had to ensure that the children were treated as children and referred to appropriate accommodation centres for children. The review of their cases had to be treated with priority.<sup>121</sup>

204. Also at the national level, age assessment procedures have been examined by courts of law at different levels in 7 member states of the Council of Europe (out of 37 survey responses as of the end of May 2017).

205. In **Denmark**, the Danish Supreme Court ruled in 2009 that, for cases where documentary evidence of the person's age is not available, the immigration authorities have to attach substantial importance to the age assessments made by the Department of Forensic Medicine. The ruling concerned the case of an unaccompanied child whose application for a permit of stay for purposes of family reunification had been refused. The Danish Immigration Service had considered it likely that the applicant was above 18 years at the time of the application. The Danish Ministry of Refugee, Immigration and Integration Affairs supported this decision. The applicant appealed against the Ministry's decision to the Supreme Court, which ruled that the person should be registered as a child at the time of the application for a permission to stay in Denmark. The Supreme Court's ruling was based on the following reasoning: the parents had given accurate information about the date of birth of the child already one year before the child applied for a permit of stay in Denmark. The date of birth stated by the parents was in accordance with the date registered on a national document from the Ministry of Interior of the country of origin and

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<sup>121</sup> See: Associazione per gli Studi Giuridici sull'Immigrazione [Association for Juridical Studies on Immigration], *La Corte europea per i diritti dell'uomo ordina al Governo di trasferire i minori da Cona* [The European Court of Human Rights orders the Government to transfer the minors from Cona], 24 February 2017, accessed from <http://www.asgi.it/famiglia-minori/cedu-governo-minori-stranieri/> on 21 April 2017. See also [https://www.asgi.it/wp-content/uploads/2017/02/CEDU\\_art.-39\\_Cona\\_14.2.17\\_erased.pdf](https://www.asgi.it/wp-content/uploads/2017/02/CEDU_art.-39_Cona_14.2.17_erased.pdf) accessed on 21 April 2017.

was also confirmed by three witnesses. The Supreme Court stated also that the age assessment made by the Department of Forensic Medicine was based on objective findings and had to be given substantive weight in the absence of other documentary evidence of a person's age.<sup>122</sup>

206. In **France**, existing documentary evidence was not consistently taken into consideration prior to referring a child to age assessment, including medical examinations. In two cases tried by the Court of Appeal in 2009, citizens from Ghana and Guinea had claimed to be under 18 years old and provided birth certificates from their countries of origin as evidence. In each case, this was considered sufficient evidence by the Court, which ruled that the person was a child. Despite this documentation being available, each child had been referred to medical examinations for the purpose of age assessment. The medical methods did however not lead to conclusive results or were contradictory. In both cases, the Court of Appeal's ruling noted that the referral to medical age assessment procedures could have been avoided and that the individuals concerned had to go through appeals procedures in order to claim their rights to be recognised as children.<sup>123</sup> In **France**, the Court of Appeal of Amiens underlined in three judgements in 2016 that the age of a person cannot be determined only on the grounds of a medical examination. It ruled that the information provided by the person's identity documents prevails if these are recognized as valid. If there remains a doubt about the age of a person, the benefit of the doubt shall be granted and the person shall be considered a child. The Court of Appeal of Dijon ruled in 2014 that in a case, where two medical assessments came to contradictory results concerning the age of a person, the one, which appears to be the most favourable for the person concerned shall prevail. The Court of Appeal of Douai had issued numerous judgments by 2013 that noted the unreliability of medical examinations of bones for the purpose of age assessment. In response to the Court's position, the Public Prosecutor's Office decided to discontinue the use of this method in age assessments.<sup>124</sup>

207. In **Ireland**, the Refugee Applications Commissioner interviewed an asylum seeker in order to assess his age in the course of the asylum procedure and concluded that the person was an adult. His asylum application was rejected. When the applicant appealed, the High Court overruled the age assessment decision on the basis that minimum procedural requirements had not been met. The Court noted in particular that the age assessment procedure had failed to inform the applicant about the purpose of the interview in simple terms; it had also not informed the applicant in simple terms about the reasons or grounds why his stated age was considered to be false and why there were reservations against the applicant's identity documents, and had given him no opportunity to respond to these matters. In addition, the Court remarked also that the applicant had not been informed clearly and promptly about the age assessment decision and its reasoning and that the possibility and procedure for reassessment had not been communicated orally and in writing. Subsequently, the Court's observations concerning

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<sup>122</sup> Denmark: Supreme Court Judgment N°83/2009 of 27 August 2009.

<sup>123</sup> Administrative Court of Appeals of Douai, decision regarding Prefect of Saine-Maritime vs. Mr Raphael X. Of 8 January 2009 (2nd instance administrative court), accessed from: <http://www.legifrance.gouv.fr/affichJuriAdmin.do?oldAction=rechJuriAdmin&idTexte=CETATEXT00002025928&fastRegId=2043237033&fastPos=4431>. Court of Appeal of Lyon, Special Chamber for Minors, decision regarding President of the *Conseil General* vs. B.X., 26 April 2004 (2nd instance tribunal), accessed from: [http://www.gjsti.org/IMG/pdf/jur\\_ca\\_lyon\\_2004-04-26.pdf](http://www.gjsti.org/IMG/pdf/jur_ca_lyon_2004-04-26.pdf). Cited in: United Nations Children's Fund, *Age Assessment Practices: A literature review and annotated bibliography*, 2011, pp. 30-31.

<sup>124</sup> France: Court of Appeal of Amiens, 28 January 2016 (No. 1505366), 25 February 2016 (No. 15030331), 12 July 2016 (No. 1601743). Court of Appeal of Dijon, 12 December 2014 (No. 1505527). Court of Appeal of Douai, Chamber of Individual Liberties, 10 July 2013 (No. RG 13/004X9).

these procedural shortcomings and failures were translated into positive recommendations and standards for age assessment procedures.<sup>125</sup>

208. In **Italy**, the Supreme Court ruled in 2014 that the radiological assessment of the wrist was able to provide results with a high degree of certainty with regard to the developmental process and the age of a person.<sup>126</sup> Even when the results are considered to be highly reliable, the Italian jurisprudence continues to uphold the principle of the benefit of the doubt. In 2016, for instance, the Juvenile Court of Venice ruled that in cases where the radiological examination leaves doubts about the age of the person, the presumption of minor age must nonetheless prevail.<sup>127</sup>

209. In **Spain**, the Supreme Court jurisprudence prohibits Spanish authorities from implementing age assessment examinations when migrant or asylum seekers claiming to be children provided documentary evidence confirming they were under 18 years old.<sup>128</sup>

210. The **Swedish** Migration Court of Appeal decided in 2014 that the age assessment decision should be combined with the asylum decision. The court held that in situations where the applicant cannot support his or her claim to be underage through documents, written evidence or oral statements, the applicant can be offered the possibility to undergo a medical age assessment as an additional means to assert his or her statement of minor age. The Migration Board is obliged to inform the individual about the possibility of an age assessment while it is not obliged to offer a medical age assessment in such cases. The Court stated also that medical age assessments are only one of several available means for the applicant to discharge the burden of proof in relation to age.<sup>129</sup>

211. In **Switzerland**, the Asylum Appeals Commission ruled in 2004 that it was legitimate for the Court to issue a preliminary ruling on the age of an asylum seeker who claims to be a child and whose age is in doubt. The preliminary ruling can be issued prior to the asylum hearing and before a person of trust has been appointed for the person who claims to be a child. An age assessment shall be carried out on the basis of the available evidence. The age assessment procedure gathers comprehensive evidence and weighs the available evidence for and against the person's presumed minor age. The burden of proof of the minor age rests with the applicant who has to produce supporting evidence for the presumption of minor age, in line with the Asylum Act (Section 7). The applicant must be heard on all the aspects concerning his or her age and the reasons why the person does not hold any identity papers. The applicant shall then be informed about the reasons why he or she is not presumed to be a child by the authorities. In this hearing, the person has however no right to legal representation.<sup>130</sup>

212. In the **UK**, the Court of Appeal affirmed a High Court judgement concerning age assessments of asylum seekers.<sup>131</sup> The courts ruled against the Home Office as it declared that immigration officials cannot simply disbelieve the stated age of an asylum

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<sup>125</sup> Ireland: A.M. vs. Refugee Applications Commissioner of Ireland, High Court, [2005] IEHC 317, 6 October 2005, ("the Moke Judgement").

<sup>126</sup> Italy: Supreme Court (Cass. pen. sez. III), 25.3.2014, No. 38280, with reference to Supreme Court (Cass. pen. sez. VI), 10.3.2003, No. 18336, see <https://www.personaedanno.it/attachments/article/46280/Corte%20di%20Cassazione%201.pdf>.

<sup>127</sup> Italy: Juvenile Court of Venice, Decision of 2 December 2016, deposited on 23 December 2016.

<sup>128</sup> Spanish Supreme Court, Civil Division, Cases n° 280/2013 and 1381/2013, 18 July 2014

<sup>129</sup> Sweden: Migration Court of Appeal, MIG 2014:1, 11 February 2014.

<sup>130</sup> Switzerland: Jurisprudence of the former Asylum Appeals Board JICRA 2004/30 and JICRA 2005/16.

<sup>131</sup> England and Wales Court of Appeal (Civil Division) Decisions, [2017] EWCA Civ 138, Case No: C4/2016/2787, Royal Courts of Justice, London, 9 March 2017, accessed from <http://www.bailii.org/ew/cases/EWCA/Civ/2017/138.html> on 21 April 2017. See also Child Rights Information Network, CRINmail 67, Children in Court, accessed from <http://us12.campaign-archive2.com/?u=76b57aa44a860d071c2e9bf2f&id=42ea247dc8&e=5357da26f4> on 21 April 2017.

seekers. Regarding persons whose age is under doubt as adults and detaining them for immigration related reasons as a standard measure could amount to illegal detention. The ruling concerned the case of an unaccompanied asylum seeking child from Sudan. The child had been referred to immigration detention as the immigration officer in charge stated that they had reasonable grounds to assume that the individual was over 18 years old. The Court found that an age assessment could not be based on the belief of an immigration officer or solely on the physical appearance of the person. The Court of Appeal stated that the age of a person was an objective fact that had to be assessed in an age assessment procedure.

213. In this case, the boy was under an age assessment procedure before being referred to detention. The age assessment was carried out by the social services in the city where he was staying. The assessment resulted in a decision that considered the boy a child under 18 years of age and the decision was issued just after the boy had been referred to immigration detention. Despite the outcome of this procedure, the boy was not released from detention, because the visual assessment made by the immigration official was given more weight than the results of the age assessment procedure carried out by the local social services.

214. Another case from the **UK** affirms the grave consequences that false assessments of children as adults can have on the individuals concerned. A girl from Cameroon filed an application for asylum in the UK and was assessed to be 23 years old although she stated that she was 15 years old. The social workers who were entrusted with the age assessment found inconsistencies in the girl's story. They decided that this undermined her credibility, but failed to give the girl an opportunity to clarify the apparent inconsistencies. Being considered an adult, the girl was denied protection and support services that children are entitled to. Due to the lack of support and assistance, she became a victim of sexual violence.<sup>132</sup>

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<sup>132</sup> Mougne, Christine and Amanda Gray, *A New Approach to Age Assessment of Unaccompanied and Separated Children: Current practices and challenges in the UK*, 2010, p. 1.

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