

Age assessment for children in migration

A human rights-based approach



A guide for policy makers

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policy makers**

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with the Children's Rights Division.

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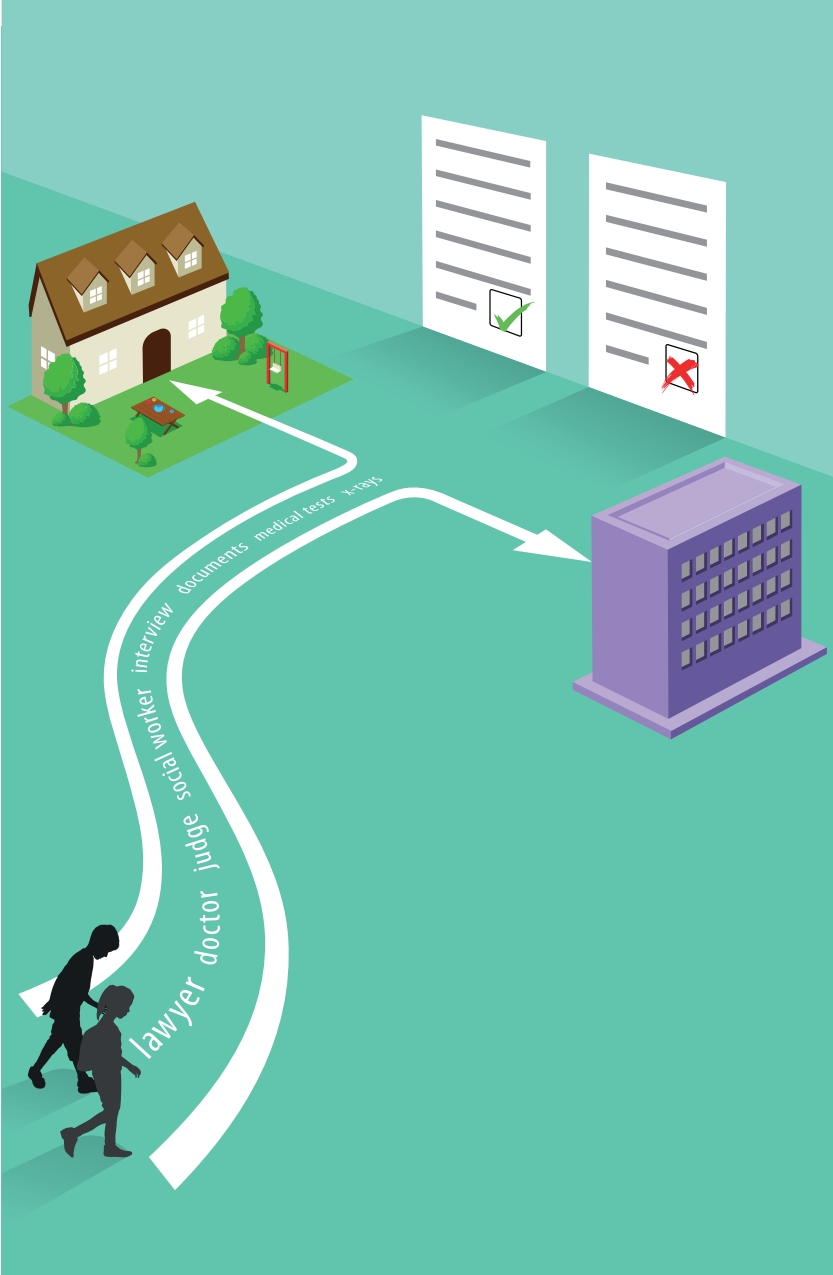
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Introduction

In recent years, thousands of children have undertaken a perilous journey to come to Europe and seek international protection. Some travelled with their parents, others with caregivers, with other adults or alone. Throughout their journey, children may fall into or move between different categories such as accompanied, unaccompanied, separated, internally displaced, asylum-seeking, trafficked or smuggled.

These children have to cope with the hardships endured on their journey and the challenges of adapting to an often radically new culture and environment. They also have to navigate particularly intricate procedures that aim to ascertain their status as children, as well as their rights. Many of these children do not have identity documents that attest to their status as a child and face registration and treatment as adults based on unreliable age assessments.

As States Parties to the United Nations Convention on the Rights of the Child and the European Convention on Human Rights, all Council of Europe member States have a legal obligation to protect and safeguard the rights of all children, everywhere and at all times. The 2030 Agenda for Sustainable Development calls on all member states to “ensure safe, orderly, and regular migration with full respect for human rights and for the humane treatment of migrants, regardless of their migration status, and of refugees and internally displaced persons”.

Protecting children in migration is a shared responsibility. Policy makers play a decisive role in ensuring that a comprehensive, child-sensitive and child-responsive rights-based approach to migration is ensured, in line with obligations under international and European human rights law.

In doing so, it is of utmost importance that policy makers recognize explicitly the rights of these children, not as migrants, nor as refugees, but as children first.

If you work in a public authority, this guide is for you. It invites you to make an important step in a journey towards protecting the human rights of children in migration, especially in the context of age assessment procedures.

What's in this guide?

- information relevant for a broad range of public authorities with respect to age assessment procedures,
- real-life experiences of children in migration having undergone age assessment and case studies that show how human rights work in practice in the context of age assessment,
- details on where to find further information and useful guidance.

This guide is intended to help you to:

- understand the implications of a child's rights centred approach in the context of migration,
- develop your ability to identify and deal with children's rights issues in the context of age assessment procedures.

1 Children's rights and migration: the importance of being treated as a child

An effective, reliable and human rights-based mechanism for estimating the age of a person is a critical step to secure that children can benefit of the specific measures designed to protect their rights.

When they are incorrectly identified as adults, children are trapped in a status which creates a serious risk of rightlessness increasing their vulnerability and affecting their ability to access welfare services and support, education, funding for legal representation, and family reunification. Age determination also has an effect on how their asylum claim will be processed and on the asylum decision itself: it may be the difference between being offered safety or being returned to their country of origin.

"I came to a shelter. I was there for 8 months until I found a caregiver who looked at my documents. I lost one year, no school, no German course, no education"

A child in Germany

Age assessments are frequently the first experience children have of the country they are expecting protection from. These procedures can be intimidating and complex for children to understand and navigate.

*"No one told me about my rights as a child. I do not know any children's rights. I do not know what age assessment is. I do not know if I'll have to go through this."*¹

A child in Portugal

1. All quotes, unless otherwise stated, are taken from the Council of Europe document: 'We are children, hear us out! Children speak about age assessment: Report on consultations with unaccompanied children on the topic of age assessment.'

The grounds, timing and methods for conducting age assessments differ across member States. The usual grounds are:

- when there are doubts a person claims to be a child,
- when the claimed age is not supported by documents,
- when there are doubts a person claims to be an adult,
- when age must be determined to ascertain criminal responsibility.

Heightened risks and vulnerabilities



When misidentified, children are at higher risk of:

- being detained with adults,
- being subjected to violence, notably sexual exploitation and abuse,
- becoming a victim of trafficking or forced labour,
- being involved in criminal activities for survival reasons,
- planning to abscond.

To enjoy their rights, it is important for children to be identified and treated as such. However, children's rights may also be violated during age assessment procedures, exposing them to harm and further trauma due to:

- a lack of adequate safeguards,
- undue detention during procedures,
- a lack of information about the process,
- the absence of a guardian or representative, and
- the use of invasive or inappropriate medical examinations.

When conducting an age assessment procedure, State authorities must abide by a range of key legal principles in order to:

- protect the best interests of each child who may be subject to one of these procedures and,
- guarantee that children enjoy all the protection measures they are entitled to.

The fundamental principle underlying all other principles is **respect for the dignity of each child as a human being and rights holder.**

Key safeguards

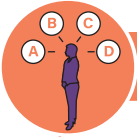
Refugee and migrant children are already one of the most vulnerable and exposed populations in Europe. Being unable to prove their age can exacerbate this vulnerability.

If the age of someone is unknown, authorities may need to conduct an assessment to determine whether the person is a child or an adult. Delays in this process or a lack of access to procedures leave children without the support that should be provided to them to safeguard their rights and their development.

Age assessment should not be conducted to estimate the age of someone who is without documentation but is clearly a child. There must be a substantiated doubt as to whether the person is a child or an adult.

It is important that the person's safety and protection needs are met before initiating age assessment. Children should therefore never be detained while age assessment results are pending. Particular care and special protection must be provided to children displaying signs that they may have been victims of violence, sexual exploitation and abuse, or trafficking in human beings.

Age assessment must not take place without the informed consent of the person and a refusal to undergo age assessment should not give rise to any adverse interference with the person's asylum immigration or other application.



Keep in mind

- An age assessment should only be conducted if it is in the best interests of the child.
- States should uphold the principle of non-discrimination in referral to age assessment and during procedures.
- Inform the person that they should have the same access to rights and should be treated as a child throughout the procedure (presumption of minority).
- States should ensure effective monitoring and complaint mechanisms are in place.
- The child has the right to be heard, to express their views and have their views taken into account at all stages of the procedure.
- States should inform the child about the age assessment procedures and the reasons for it, including information about the child's rights during the procedure.
- Inform the child that they should be protected from humiliation; the procedure should not violate their dignity.
- Age assessment should not take place without a child's informed consent. During the age assessment the child needs information about their rights, their right to consent or refuse to consent and the consequences.
- A guardian or representative should be appointed.
- After a decision has been made, inform the child about the consequences of the decision, any available appeals or reviews.
- Empower the child to act if their rights are violated and inform them of the effective remedies available and how to access them.

Presumption of minority

When the age of a child is contested, what rights are applicable to them? Are they to be treated as a child, or as an adult while doubts about their status as a child are being resolved?

The United Nations Committee on the Rights of the Child has provided authoritative guidance to this question:

'Anyone claiming to be a child should be treated as such.'

UN Committee on the Rights of the Child,
Joint General Comment 3/22, Para 32(h).

This **presumption of minority** has to underpin age assessment procedures if children are not to be denied their rights. States should treat the person as a child and ensure that the person has access to appropriate child protection services, education, housing, and support.

The protection and assistance measures provided to children should also apply when there are doubts about the age of a person claiming to be an adult.



Consider

- There are occasions where children, either voluntarily or under the influence or threat of adults declare themselves to be adults. For example, a child victim of trafficking in human beings may be instructed by the traffickers to declare that they are adults.
- Awareness of this can help in the identification of victims or potential victims of trafficking in human beings, and such declarations of majority by children should not give rise to a lower level of protection.

The failure of authorities to routinely apply the presumption of minority principle has left children who have arrived in a new country, believing that they will find safety and be looked after, exposed afresh to human rights violations.

States must minimise this risk by guaranteeing the respect of their rights and safeguards to those subjected to age assessment procedures.



Consider

Does legislation and guidance in your country provide for the presumption of minority?

The Slovak Act on the Residence of Foreigners assessed by GRETA in 2016 provided that persons who refuse to undergo a medical examination necessary for age assessment are considered to be adults and those who agree to undergo the examination are considered to be adults until the results of the examination prove the contrary. GRETA urged the Slovak authorities to review their legislation concerning the presumption of age.

GRETA Report on the Slovak Republic, paragraphs 116 and 119

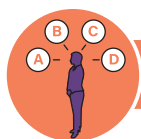
Article 11 (2) of the Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse provides that when the age of a victim of sexual exploitation and sexual abuse is uncertain and there are reasons to believe he/she is a child, the protection and assistance measures provided for children shall be accorded to him or her pending verification of his or her age. The Lanzarote Committee urged Hungary to take the necessary legislative or other measures to ensure that the benefit of the doubt is adequately applied to individuals pending verification of their age.

Lanzarote Committee, Special report – Protecting children affected by the Refugee crisis from sexual exploitation and abuse, 2017

Treating a person as a child means that he or she should have access to welfare services and support, health care, funding for legal representation, education, and appropriate accommodation.

2 Age assessment procedures and children's rights

Age assessment is a sensitive and complex task. This section outlines common challenges that public authorities face when undertaking this process, and incorporates findings of Council of Europe monitoring bodies and examples of State practice to illustrate issues and solutions.



Keep in mind

- There is no single age assessment method whereby an exact conclusion can be reached on age.
- The best interest of the child principle must be integrated into the age assessment policy and implemented during age assessment procedures.
- The benefit of the doubt principle must be applied through age assessment procedures which must treat the person as a child at all times.
- The child must be informed about age assessment procedures and their rights during them.
- Children must be provided with guardians and/or representation during the age assessment procedure.

Prevailing challenges for public authorities

Both when considering to proceed with an age assessment, and when selecting which methods to use in this procedure, the best interests of the child must be a primary consideration. The child's best interest principle applies from the moment it is considered that an individual may be under 18 years of age.

States must demonstrate how the procedures have examined and assessed the best interests of the child, and the weight that has been ascribed to these best interests in the decision. Age assessment should only be conducted if it is in the best interests of the child, as opposed to being conducted for ulterior reasons, such as for migration management purposes.



Consider

- Are practitioners given guidance on assessing whether it is necessary to undertake an age assessment and when is it in the best interests of the child?
- Are there circumstances in which one would not ordinarily undertake an age assessment and are those clearly mentioned in domestic age assessment procedures or guidance?

The Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) noted persisting concerns among civil society in the United Kingdom that the cost implications of assessing a young person to be a minor, may influence the age assessment decision-making process.

An incorrect age assessment results in child victims not having access to education, being housed in shared accommodation with adults, or being placed in an adult prison or immigration detention.

GRETA urged the UK authorities to ensure full compliance with article 10(3)) of the Convention concerning age assessment and the provision of special protection measures.

GRETA Report on the United Kingdom (2016), paragraphs 207-210.

In considering which method of age assessment to use, the best interests of the child principle means that authorities should consider the appropriateness of procedures. In considering this, they should look at the well-being of the child, including the specific circumstances and vulnerabilities of the child, and prioritise non-medical methods of age assessment.

There is currently no procedure that can estimate age with determinative accuracy, and all methods have a wide margin of error. It is therefore unacceptable to rely solely on the results of medical examinations when determining a child's age. The margins of error must be applied to the benefit of the individual.

While many States allow for the possibility of using medical tests when assessing the age of an individual, these medical examinations must only be performed when non-medical procedures provide inconclusive results.

Non-medical procedures involve an evaluation of existing documentation, a visual assessment based on physical appearance, and interviews that provide a narrative about an individual's life and circumstances.

Interviews must use suitably qualified and experienced staff, trained in the use of child-friendly interview techniques.

Some member states use psychosocial evaluations to assess mental maturity. It conducts a cognitive and behavioural appraisal, and psychological evaluation to assess the age of the applicant.

Medical procedures must:

- fully respect the individual's dignity,
- be the least invasive procedure possible,
- respect cultural sensitivity,
- provide children with the possibility to have a person of the same gender examine them.

Some States employ medical methods involving radiation, potentially exposing children to harmful effects. Some children report finding certain examinations stressful and traumatising. Such examinations must only be used as a measure of last resort, and coupled with efforts to minimise exposure to radiation.

It is never appropriate to use 'sexual maturity exams' in age assessment procedures. These are not only highly intrusive; they subject a population who are disproportionately exposed to sexual abuse to a procedure which may be degrading and potentially traumatising.

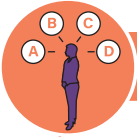
"They did it in uncomfortable situations: imagine being told you are having this examination and in hospital they ask you to undress and stay naked, touching your privates, demeaning and humiliating you or treating you as non-human."

A child in Portugal

An overarching principle and safeguard throughout age assessment procedures is the **benefit of the doubt**. This applies at all stages: from assessing the documentary evidence provided by an individual, their statements, and to their medical results where relevant. This principle, properly applied, should lead authorities to interpret inconclusive results in the individual's favour.

As a result of visits to the pre-removal centres at Moria and Pyli, in Greece, the delegation met a number of foreign nationals who claimed to be unaccompanied children but were registered as adults and detained. The CPT noted that there is still no reliable system of age assessment in place for persons held by the police. A number of minors also appeared to have problems in proving their age, as the prosecutorial and judicial authorities would only accept original and/or officially translated documents. The CPT recommended that the Greek authorities take steps to ensure that all detained persons who claim to be juveniles have access to a proper age assessment procedure and be treated as such until proven otherwise, unless their claim is manifestly unfounded. Further, practical solutions should be found to assist them in proving their age and reduce bureaucratic obstacles.

**Committee for the Prevention of Torture,
Report on Greece, paragraph 129, CPT/Inf (2019) 4.**



Keep in mind

- Authorities should only conduct age assessment where there are substantiated doubts about the age of a person.
- Procedures should never be conducted as a matter of routine practice.
- A procedure should not be triggered merely as a result of the physical appearance of a person.
- It is always necessary to obtain informed consent before age assessment is initiated.
- Medical procedures should only be used as a matter of last resort.
- Medical procedures must be performed with full respect for the individual's dignity and must be the least invasive procedure.
- 'Sexual maturity' examinations should never be used.
- Where results of an age assessment are inconclusive, the person should be considered a child.

The CPT has misgivings about the manner in which such assessments were performed by military doctors who had no formal training for this task. One doctor met by the delegation explained that he would ask the persons concerned how old they were, consider their height, weight and secondary sexual characteristics, look at their wisdom teeth and then complete a standardised form.

It is generally accepted that it can be difficult to estimate a person's age. However, in the CPT's view, it is unreasonable to expect military doctors of varying disciplines to assess the age solely on the criteria mentioned above. Age assessments should be multidisciplinary and involve social work and psychological staff as well as a paediatrician. The use of x-ray for age assessment can be a possible supplementary tool, but should not replace the multidisciplinary approach.

Committee for the Prevention of Torture, Report on Hungary, paragraph 61, CPT/Inf (2018) 42.

3 Children's right to participate

The right of a child to express their views freely and the right to have his or her views taken into account is a fundamental right.

"I know I have rights but I don't know them"

A child in Portugal

Children's right to participate includes access to child friendly information, procedures, advice and legal representation. It also includes access to spaces and opportunities to influence the design, implementation and evaluation of policies affecting them.

The Council of Europe is committed to both promote and implement child participation. This section includes the recommendations from children that have advised us in our work in the field of migration.

Right to information

Council of Europe's work in member States has identified that children are usually not adequately provided with information either about their rights, or about age assessment procedures. To be compliant with a State's obligations under the Convention on the Rights of the Child, States **must** provide the child information about relevant procedures and consequences before, during, and after age assessment procedures so that they may express an informed opinion that will be given due weight according to their maturity and understanding.

In Belgium and Portugal, a leaflet has been produced that explains the age assessment procedure in simple and easily accessible language. The leaflet is available in different languages and handed out to the person undergoing age assessment, to supplement the information provided to the person orally.



Consider

- Are there any issues which may impact on a young person's ability to participate fully in an age assessment and which need to be taken into account?
- The provision of information is particularly important in the context of medical age assessment procedures: without a clear understanding of the medical and legal consequences of a medical examination, a child cannot give informed consent.
- States must provide for the possibility that a child may exercise their right to refuse to undergo procedures, and explain the implications this may have on their age assessment.

Right to support, advice and legal representation

To fulfill the obligation to provide information and respect the child's right to be heard, States must appoint guardians or legal representatives who will be able to discuss age assessment with the child. From the time that there is a doubt about a person's age and unless and until determined that this person is not a child, States should ensure the appointment of a guardian.

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.

Article 45 of Law 4375/2016



The role of the guardian involves:

- Ensuring the child understands what is happening, and what their rights are through the process, including the right to seek legal advice at any point.
- Intervening to ask for breaks if the child needs them, perhaps to consult with legal advisors, with the appropriate adult or if the young person is upset or appears tired or unwell.
- Intervening if the people conducting the age assessment are not acting properly and fairly.
- Ensuring that the young person has an opportunity to respond to any information or opinions that may be incompatible with their own account.

Children should also be provided with access to legal advice and legal representation concerning the age assessment procedure and the possible consequences of refusing to undergo age assessment.



Checklist

- ✓ Is age-appropriate information about age assessment procedures provided in a language that the child can understand?
- ✓ Is information on the implications of age assessment procedures and on the right of refusal provided in a child-sensitive manner that the child can understand?
- ✓ Is interpretation provided throughout the process?
- ✓ Are the applicant's views gathered and taken into consideration according to their age and maturity?
- ✓ Are officials and experts experienced in working with children and appropriately trained?
- ✓ Are staff trained on how to impart information to children about their rights?
- ✓ Is there a system in place to enable young persons undergoing age assessment to access legal representation during age assessment procedures?
- ✓ Have steps been taken to ensure a person undergoing any kind of age assessment is guaranteed an independent and impartial process?

Committee on the Rights of the Child, Communication 11/2017: N.B.F. v Spain

On 27 September 2018, the UN Committee on the Rights of the Child (CRC) adopted a decision on an individual communication concerning the age assessment procedure of an unaccompanied minor in Spain.

The CRC considered that States parties should appoint a qualified legal representative, with the necessary linguistic skills, for all young persons claiming to be minors, as soon as possible on arrival and free of charge. The Committee was of the view that the provision of a representative for such persons during the age-determination process is equivalent to giving them the benefit of the doubt and is an essential guarantee of respect for their best interests and their right to be heard.

Failure to do so implies a violation of Articles 3 and 12 of the UNCRC, as the age-determination process is the starting point for the application of the Convention. The absence of timely representation can result in a substantial injustice.

Children's Recommendations



Children's recommendations during Council of Europe consultation on age assessment

1. Professionals must be educated
2. Children and youth must be informed
3. Children should be listened to

The recommendations provided by children consulted during Council of Europe research on age assessment make clear that professionals working with children need to be trained to use adapted information in a child-friendly way when working with children in migration.

Children report authorities behaving towards them with 'mistrust' and a 'lack of respect'. An adversarial approach taken by authorities that sometimes have a systemic culture of disbelief about the stated age of a child can add to a child's feeling of helplessness, and erodes their trust with authorities.



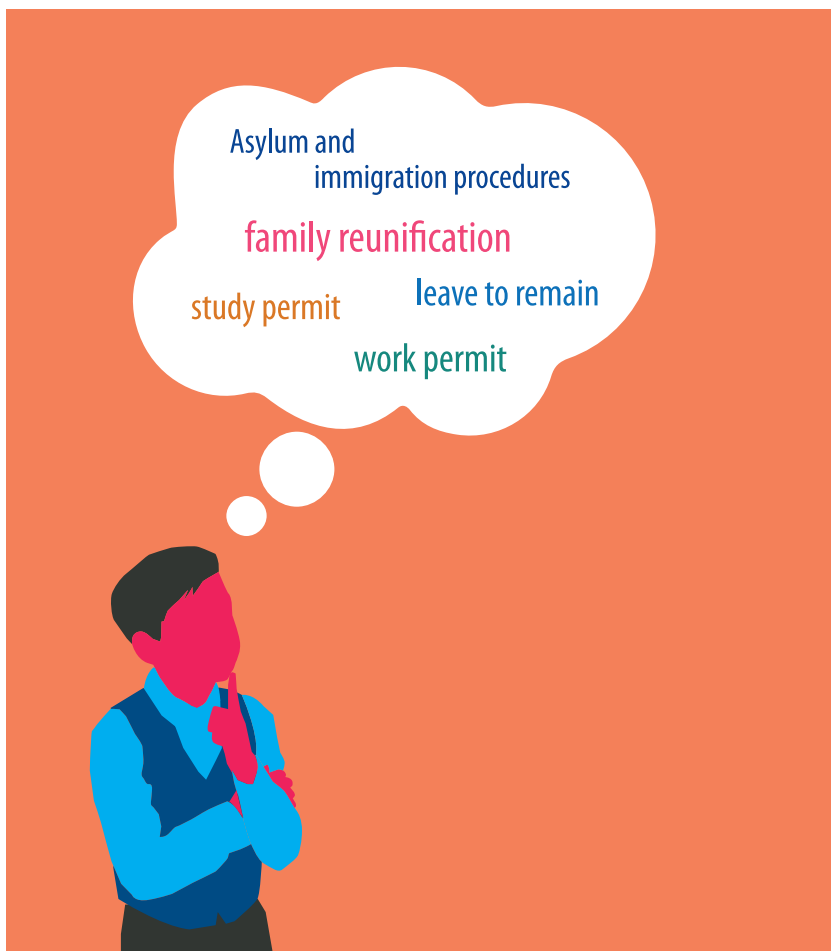
Golden rules






- States should ensure professionals involved in age assessment procedures individually consider each case to assess age.
- Decisions to subject a person to assessment must not be based on factors such as nationality, ethnicity, or gender.
- People conducting age assessment procedures must be alert to any unconscious bias they may have. Our own experiences of family society and culture shape our views and inform our judgement of what a 'child' looks like.

"I would like if there was a way to stop this, this would be very much important because today all young minors who participate in the procedure are completely depressed faced with this. We count on your understanding to find a better solution."

A child in Portugal

4 Conveying child-friendly information on age assessment to children in migration



Before	During
 <p>Tell the child why age assessment takes place: explain what ‘minority’ means and the rights associated with the status of being a child.</p> <p>Questions children may have:</p> <ul style="list-style-type: none"> • how long does it take? • in which setting will it take place? • which professionals will implement it (language barriers and use of interpreters)? • is it possible to be accompanied by a trusted adult? 	
 <ul style="list-style-type: none"> • Communicating: take into account the child’s way of calculating their age (if they use a different calendar or if they calculate their age from the beginning of the year). Talk to the child about how they measure time. • Inform the child of their legal status during the age assessment procedure, including their entitlements during the procedure (accommodation, education and health care). • Inform the child about their rights and entitlements regarding refusing to participate and the consequences of this, including in the context of medical examinations. • Help the child understand if exercising their right to refusal will mean they will automatically be classed as an adult, blocked from proceeding with their asylum claim or other administrative and judicial consequences. 	
 <p>Informed consent:</p> <ul style="list-style-type: none"> • provide advice to the child: can they say “I don’t remember”? Is this better than making up a date? Remind them that it is necessary to be precise; • help the child understand that it is important to be coherent. 	
 <p>Prepare the child for the age assessment according to the method:</p> <ul style="list-style-type: none"> • if it is an interview: inform them about the questions they might be asked during the interview; • if it is a medical examination: inform them about the method, aims and informed consent (with a sexual maturity examination, explain their right to refuse and recall their right to dignity); • if it is by documentary evidence: inform them of the risks of false documents and official methods to obtain official documents; • if it includes fingerprint checks inform them of the use and storage of their data. <p>Prepare the child to reassure them so they know what to expect, how it will work, what the professional is not allowed to do and what the child can refuse.</p>	
 <p>The child is not powerless: they have the right to make a complaint if they suffer unprofessional conduct – if they felt their treatment during the age assessment was inappropriate. Advise the child to talk to their guardian, to the ombudsperson for children, their lawyer and/or an NGO.</p>	

After

Don't blame! Reassure the child it is not their fault. Be culturally sensitive: children might be afraid to say something negative about an adult's behaviour.



Inform the child about the effective remedies available if they do not agree with the outcome of the age assessment. Explain the consequences of the outcomes (vulnerabilities: statelessness).

Pay particular attention to vulnerabilities, e.g. for victims of sexual violence (retriggering experiences of violation of consent), pregnant girls, children suffering from PTSD.

5 Guidance and further information

The Council of Europe is working to ensure the better protection of migrant and refugee children. Ensuring access to rights and child-friendly procedures is a key element of this. You may find more information about this in the following places:

Council of Europe

How to convey child friendly information to children in migration:
a Handbook for frontline professionals

<https://rm.coe.int/how-to-convey-child-friendly-information-to-children-in-migration-a-ha/1680902f91>

We are children, here us out! Children speak out about age assessment:
Report on consultations with unaccompanied children on the topic
of age assessment

<https://rm.coe.int/we-are-children-hear-us-out-children-speak-out-about-age-assessment-re/16809486f3>

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

<https://rm.coe.int/age-assessment-council-of-europe-member-states-policies-procedures-and/168074b723>

Child friendly assessment for unaccompanied migrant children, Resolution
2195 (2017) of the Parliamentary Assembly of the Council of Europe

<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=24273&lang=en>

Council of Europe Convention on Action against Trafficking in Human Beings, CETS No. 197, 2005

<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/197>

Article 10 (3): When the age of the victim is uncertain and there are reasons to believe that the victim is a child, he or she shall be presumed to be a child and shall be accorded special protection measures pending verification of his/her age.

Explanatory Report to the Council of Europe Convention on Action against Trafficking in Human Beings, 16.V.2005

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3812>

Paragraph 136, regarding Article 10 (3) (see above): The point of paragraph 3 is that, while children need special protection measures, it is sometimes difficult to determine whether someone is over or under 18. Paragraph 3 consequently requires Parties to presume that a victim is a child if there are reasons for believing that to be so and if there is uncertainty about their age. Until their age is verified, they must be given special protection measures, in accordance with their rights as defined, in particular, in the United Nations Convention on the Rights of the Child.

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS No.201, 2007

<https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/201>

Article 11 – Principle 2. Each Party shall take the necessary legislative or other measures to ensure that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance measures provided for children shall be accorded to him or her pending verification of his or her age.

Explanatory report to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS No.201, 2007

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016800d3832>

88. The point of paragraph 2 is that, while children need special protection measures, it is sometimes difficult to determine whether someone is over or under 18. Paragraph 2 consequently requires Parties to presume that a victim is a child if there are reasons for believing that to be so and if there is uncertainty about their age. Until their age is verified, they must be given the special protection measures for children.

Parliamentary Assembly of the Council of Europe, Resolution 2195 (2017), 'Child-friendly age assessment for unaccompanied migrant children', 24 November 2017 and report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Ms Doris Fiala), Doc. 14434.

Available at: <http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-EN.asp?fileid=24273&lang=en>

[...] The many methods of age assessment used in Europe reflect the lack of a harmonised approach and agreed method. The Assembly believes that the development of a child-sensitive, holistic model of age assessment would enable European States to meet the needs of unaccompanied and separated children. It therefore calls on member States to:

- 6.1. conduct case-by-case, reliable age assessment of unaccompanied migrant children only in cases of serious doubt about the child's age and as a last resort, in the best interests of the child;*
- 6.2. provide unaccompanied migrant children with reliable information about age-assessment procedures in a language that they understand, so that they can fully understand the different stages of the process they are undergoing and its consequences;*
- 6.3. appoint a guardian to support each unaccompanied migrant child individually during the age- assessment procedure;*
- 6.4. ensure that an unaccompanied migrant child or his or her representative can challenge the age- assessment decision through appropriate administrative or judicial appeal channels;*
- 6.5. use only as a last resort x-ray examinations in the form of dental or wrist x-rays and all other invasive medical procedures for the purpose of determining the age of unaccompanied or separated migrant children;*

- 6.6. ensure that all medical examinations are sensitive to the child's gender, culture and vulnerabilities and that the interpretation of results takes into account the child's national and social origin as well as previous experiences;
- 6.7. prohibit, in all situations, the use of physical sexual maturity examinations for the purpose of determining the age of unaccompanied and separated migrant children;
- 6.8. prohibit the detention of unaccompanied and separated children who are awaiting or undergoing age assessment, and prohibit the detention of unaccompanied and separated children who are awaiting or undergoing age assessment, and applying always the margin of error in favour of the person to the effect that the lowest age in the margin determined by the assessment should be recorded as the person's age;
- 6.9. identify and provide alternative accommodation options for children awaiting or undergoing age assessment, with a view to avoiding the detention of children during disputes about age, including by temporary placement in centres for children where appropriate safeguards should be in place to protect them and other children in the centres;
- 6.10. support and promote the development of a single, holistic model of age assessment in Europe, based on the presumption of minor age;
- 6.11. whenever possible, ensure that the procedure of age assessment is carried out by professionals acquainted with the children's ethnic, cultural and developmental characteristics.

Council of Europe's Commissioner for Human Rights, Methods for assessing the age of migrant children must be improved, 9 August 2011

<http://www.coe.int/en/web/commissioner/-/methods-for-assessing-the-age-of-migrant-children-must-be-improv-1?inheritRedirect=true>

Council of Europe's Commissioner for Human Rights, Realising the right to family reunification of refugees in Europe – Issue paper February 2017

<https://rm.coe.int/prems-052917-gbr-1700-realising-refugees-160x240-web/1680724ba0> (pp. 8 and 35-36)

Paragraph 8 and ff.: Establish clear limits on age assessment processes

8. Carry out age assessments only if there are reasonable doubts about a person being a minor. If doubts remain that the person may be underage, he or she should be granted the benefit of the doubt. Assessment decisions should be subject to administrative or judicial appeal.

9. Age assessments based on medical evidence alone have proven to be ethically dubious and inadequate for determining a person's actual age. Age assessments should rather involve a multidisciplinary evaluation by an independent authority over a period of time and not be based exclusively on medical assessment.

10. Where there is a medical component to a multidisciplinary age assessment, examinations should only be carried out with the consent of the child or his or her guardian. Examinations should not be intrusive and should comply with medical and other pertinent ethical standards. The margin of error of medical and other examinations should be clearly indicated and taken into account.

European Union

European Asylum Support Office, Practical Guide on age assessment, Second edition, 2018

<https://www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assesment-v3-2018.pdf>

European Asylum Support Office, Practical tools

Video on age assessment

<https://www.easo.europa.eu/practical-tools>

Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, 16 November 2017, CMW/C/GC/3-CRC/C/GC/22 <https://www.refworld.org/docid/5a1293a24.html>

Paragraph 32 (h): Ensure that children are identified promptly in border controls and other migration-control procedures within the State's jurisdiction, and that anyone claiming to be a child is treated as such, promptly referred to child protection authorities and other relevant services, and appointed a guardian, if unaccompanied or separated.

Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23 <http://www.refworld.org/docid/5a12942a2b.html>

Paragraph 4: To make an informed estimate of age, States should undertake a comprehensive assessment of the child's physical and psychological development, conducted by specialist paediatricians or other professionals who are skilled in combining different aspects of development. Such assessments should be carried out in a prompt, child-friendly, gender-sensitive and culturally appropriate manner, including interviews of children and, as appropriate, accompanying adults, in a language the child understands. Documents that are available should be considered genuine unless there is proof to the contrary, and statements by children and their parents or relatives must be considered. The benefit of the doubt should be given to the individual being assessed. States should refrain from using medical methods based on, inter alia, bone and dental exam analysis, which may be inaccurate, with wide margins of error, and can also be traumatic and lead to unnecessary legal processes. States should ensure that their determinations can be reviewed or appealed to a suitable independent body.

Committee on the Rights of the Child, General Comment No.6, Treatment of unaccompanied and separated children outside their country of origin, 2005

<http://www2.ohchr.org/english/bodies/crc/docs/GC6.pdf>

Paragraph 31 (i): Age assessment should be safe, child and gender sensitive and the individual should be given the benefit of the doubt. This necessary initial assessment process, in particular, entails the following:

A. Prioritized identification of a child as separated or unaccompanied immediately upon arrival at ports of entry or as soon as their presence in the country becomes known to the authorities (art. 8). Such identification measures include age assessment and should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, s/he should be treated as such.

UNHCR, Guidelines on International Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009

<http://www.refworld.org/docid/4b2f4f6d2.html>

Paragraph 75: Age assessments are conducted in cases when a child's age is in doubt and need to be part of a comprehensive assessment that takes into account both the physical appearance and the psychological maturity of the individual. It is important that such assessments are conducted in a safe, child- and gender-sensitive manner with due respect for human dignity. The margin of appreciation inherent to all age-assessment methods needs to be applied in such a manner that, in case of uncertainty, the individual will be considered a child. As age is not calculated in the same way universally or given the same degree of importance, caution needs to be exercised in making adverse inferences of credibility where cultural or country standards appear to lower or raise a child's age. Children need to be given clear information about the purpose and process of the age-assessment procedure in a language they understand. Before an age assessment procedure is carried out, it is important that a qualified independent guardian is appointed to advise the child.

Age assessment is a complex process with possible far-reaching consequences for children in migration undergoing age assessment.

This publication has been designed to help officials in public authorities and human rights institutions representatives understand how to ensure that age assessment procedures are conducted in line with obligations under international and European human rights law and are respectful of the rights of the child. It also aims to guide public officials to consider triggering changes when devising policies and legislation with respect to age assessment procedures.

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