

Human rights principles and guidelines on age assessment in the context of migration



Recommendation CM/Rec(2022)22
of the Committee of Ministers
and Explanatory Memorandum

Building a Europe
for and with children



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Human rights principles and guidelines on age assessment in the context of migration

Recommendation CM/Rec(2022)22
of the Committee of Ministers
and Explanatory Memorandum

French edition:
*Les principes des droits de l'homme et lignes
directrices en matière d'évaluation de l'âge
dans le contexte de la migration*
Recommandation CM/Rec(2022)22
et exposé des motifs

No license is required to reproduce the content of legal instruments of the Council of Europe such as Conventions, Recommendations or Resolutions, either partly or entirely, in French or English. The source text must always be acknowledged as follows "© Council of Europe, year of the publication". All other requests concerning this publication should be addressed to the Directorate of Communications, Council of Europe (F-67075 Strasbourg Cedex or publishing@coe.int).

All other correspondence concerning this document should be addressed to Directorate General of Democracy and Human Dignity (children@coe.int).

Cover design and layout: Documents and Publications Production Department (SPDP), Council of Europe

Photo: © Shutterstock

© Council of Europe, April 2023

Contents

RECOMMENDATION CM/REC(2022)22	5
APPENDIX TO RECOMMENDATION CM/REC(2022)22	9
Purpose and scope	9
Definitions	10
Guidelines on age assessment in the context of migration	11
EXPLANATORY MEMORANDUM	25
Introduction	25
Preamble	29
Purpose and Scope	30
Definitions	32
Human Rights Principles and Guidelines on age assessment in the context of migration	34

Recommendation CM/Rec(2022)22

of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration

*(Adopted by the Committee of Ministers on 14 December 2022
at the 1452nd meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve greater unity between its members, *inter alia*, by promoting common standards and co-operation in the field of human rights;

Reaffirming that the principles of the equal dignity of all human beings and the full and equal enjoyment of human rights and fundamental freedoms apply to any child within a State's jurisdiction, regardless of their nationality, migration status, residence status or any other status;

Having regard to States' obligations and commitments towards children as undertaken in international legal instruments, notably the United Nations Convention Relating to the Status of Refugees (1951) and its protocol (1967), the Hague Convention concerning the powers of authorities and the law applicable in respect of the protection of infants (1961), the United Nations Convention on the Rights of the Child (1989) and its optional protocols, the Recommendation Concerning the Application to Refugee Children and other Internationally Displaced Children of the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (1994), the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in respect of Parental Responsibility and Measures for the

Protection of Children (1996), the United Nations Convention on the Rights of Persons with Disabilities (2006), and the provisions under international humanitarian law instruments and instruments covering refugee and stateless persons;

Considering the necessity of ensuring the effective implementation of existing European standards protecting and promoting children's rights in general, as well as those covering aspects specific to children in migration, in particular the European Convention on Human Rights (ETS No. 5) and the protocols thereto, the European Social Charter (ETS No. 35 and its revised version, ETS No. 163), the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and its amending protocol (CETS No. 223), the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS No. 126), the Convention on Human Rights and Biomedicine (ETS No. 164), the Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197), the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201) and the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210);

Taking into account the relevant general comments and decisions on individual communications of the United Nations Committee on the Rights of the Child, as well as other relevant decisions and recommendations of international monitoring bodies and committees;

Taking into account the relevant case law of the European Court of Human Rights and the relevant recommendations, guidelines, resolutions and declarations of the Committee of Ministers and of the Parliamentary Assembly of the Council of Europe in this field, as well as relevant decisions and recommendations of Council of Europe monitoring bodies and committees;

Referring to the Council of Europe programme "Building a Europe for and with Children", the Council of Europe Strategy for the Rights of the Child (2022-2027) and the Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025);

Recognising that States should respect, protect and fulfil the rights of the child and that children in migration should be treated first and foremost as children;

Deeply concerned that children in migration are in particularly vulnerable situations, irrespective of whether they are accompanied, unaccompanied

or separated from their parents, and are thus at increased risk of violation of their fundamental rights and freedoms;

Bearing in mind the different circumstances in which the necessity to conduct an age assessment could arise;

Acknowledging that the current limitations of scientific methods and capabilities enable States only to estimate the age range of a person and that legislation on and practices of age assessment vary, including within the territory of the same State, thereby creating legal uncertainty and a risk of discrimination;

Recalling the right of the child to have their best interests given primary consideration in all matters concerning them and that any legitimate interest of the State to determine the age of a child must respect the rights of that child;

Considering that guidelines based on the fundamental principles in the field of human rights should inspire the practices of member States and contribute to the further development of legislation, policies and practices in member States that uphold the rights of the child in the context of age assessment;

Recommends that the governments of member States take or reinforce, in their legislation or practice, all measures they consider necessary with a view to the implementation of the following principles and guidelines:

1. In relation to age assessment in the context of migration, the fundamental principle underlying all others is respect for the dignity of each child as a human being and rights holder. The laws, procedures and practices relating to age assessment should be based on respect for human rights and fundamental freedoms;
2. States should ensure that a person who undergoes an age assessment is presumed to be a child unless and until determined otherwise through an age assessment procedure;
3. States should have in place a clearly established process for age assessment which uses a multidisciplinary approach, grounded in evidence-based knowledge, methods and practice, and which is child-centred;
4. A medical examination for age assessment purposes should only be undertaken when reasonable doubts remain about the person's estimated age once the other measures of the multidisciplinary approach have been exhausted, with the person's informed consent and with due respect for the principles of proportionality and the best interests of the child;

5. A clear framework should be in place which sets out the referral to age assessment, the implementation process and procedures and the decision-making process, complemented, where necessary, by additional instructions and guidance;
6. Age assessment should be carried out by designated professionals, in accordance with relevant professional obligations and standards, and appropriate professional training should be provided for all those responsible for age assessment and related procedures;
7. The age assessment decision resulting from the multidisciplinary procedure should be notified to the person in a child-friendly manner and, where appropriate, to the parent, guardian or legal representative, and include details of the legal and evidence-based factual reasons for the decision, and information on effective remedies available. The decision should be open for review or appeal before an independent authority;
8. The child's right to private and family life should be guaranteed in the context of the processing of personal data for the purpose of age assessment;
9. States are encouraged to promote research, exchange of good practice and co-operation for the purpose of ensuring human rights-compliant age assessment procedures;

Invites the governments of member States to translate and disseminate the text of this recommendation, the appendix and the explanatory report as widely as possible among all their competent authorities and officials and among professionals, including non-governmental actors;

Recommends making use of existing mechanisms or, where appropriate, establishing new ones, both nationally and at European level, to promote, review and share progress on the implementation of these guidelines, with the involvement of relevant stakeholders.

Appendix to Recommendation CM/Rec(2022)22

Human rights principles and guidelines on age assessment in the context of migration

Purpose and scope

1. These principles and guidelines are intended to support States in ensuring that any age assessment of a person within their jurisdiction respects that person's human rights and dignity, and the right to protection from all forms of violence or exploitation, in line with international and European standards.
2. Taking into account the relevant international and European legal instruments, as well as guidance and experience in this area, these human rights principles and guidelines seek to:
 - a. provide guidance on the development and implementation of human rights-based age assessment that respects and safeguards the rights of the child;
 - b. encourage States to facilitate and promote the exchange of human rights-based, child-centred age assessment practices, as well as to consider implementing mechanisms to enable relevant authorities to take into consideration decisions concerning age assessment made in other member States in order to provide greater protection of the welfare of children.
3. The human rights principles and guidelines should apply to any age assessment in the context of immigration and asylum procedures. These principles and guidelines may also be of assistance to authorities when undertaking age assessment in other situations.

Definitions

4. For the purposes of this recommendation:
 - a. “child” means any person under the age of 18 years;
 - b. “unaccompanied child” refers to a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so;
 - c. “separated child” refers to a child who has been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. This may, therefore, include children accompanied by other adult family members;
 - d. “age assessment” refers to any process carried out by a competent authority to estimate a person’s age;
 - e. “guardian” refers to a person who is appointed or designated to support, assist and, where provided by law, represent unaccompanied or separated children in processes concerning them. Where an institution or organisation is appointed or designated as a guardian to support, assist and exercise the legal capacity for a child, it should designate a natural person to carry out the duties of guardian as set out in these guidelines. The guardian acts independently to ensure that the child’s rights, best interests and well-being are guaranteed. The guardian acts as a link between the child and all other stakeholders with responsibilities towards them. This operational definition takes into account that the term used, as well as the function and manner of appointment of a guardian, vary from jurisdiction to jurisdiction;
 - f. “identity document” means any document that is issued by a competent authority according to national law, or international law where appropriate, in order to confirm the identity of the document holder;
 - g. “medical examination” refers to an examination conducted by a qualified medical practitioner based on established scientific methods and protocols;

- h. “child-friendly information” is information that is “adapted to a child’s age, maturity, language, gender and culture”.¹ This will require the information provider to adjust the information and complexity of their communication according to each individual child’s situation and specific needs up to the age of 18.

Guidelines on age assessment in the context of migration

Principle 1 – Respect for human rights and fundamental freedoms and principles

In relation to age assessment in the context of migration, the fundamental principle underlying all others is respect for the dignity of each child as a human being and rights holder. The laws, procedures and practices relating to age assessment should be based on respect for human rights and fundamental freedoms.

Human dignity and the right to freedom from torture or inhuman or degrading treatment

1. States should ensure that age assessment is carried out in conditions which are compatible with respect for human dignity and safety. The manner and methods of carrying out age assessment should not subject any person to torture or inhuman or degrading treatment, or affect their health or their physical or psychological integrity.
2. Any method involving nudity or the examination, observation or measurement of the genitalia or intimate parts should be prohibited during the process of age assessment.

Legality

3. Age assessment should be conducted in accordance with the law.

Best interests of the child

4. States should require the competent authorities responsible for age assessment to ensure that the best interests of the child are a primary consideration in all actions concerning the child.

1. See *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice* (adopted on 17 November 2010, Chapter IV.A. 1(1 and2)), Council of Europe Publishing, 2011, and Council of Europe, “How to convey child-friendly information to children in migration – A handbook for frontline professionals”, Strasbourg, 2018.

Proportionality and necessity

5. In accordance with the principle of proportionality, the use of age assessment should be limited to situations where it is necessary to ensure the appropriate treatment of the child; when conducted, it should be carried out with the minimum interference to achieve this aim.
6. Age assessment should not take place as a matter of routine but only following a referral by a competent authority, when there are reasonable doubts about the age of a person and the assessment of their age is necessary to determine the person's rights and the applicable procedures.
7. States should obtain the informed consent of the person before proceeding with an age assessment. Where, according to law, a person does not have the capacity to consent to the age assessment, the age assessment may only proceed with the authorisation of their parent, guardian or representative.
8. A person should have the right to refuse to participate in an age assessment.²

Provision of a guardian

9. When there is uncertainty as to whether a person is a child, and even after the national age assessment procedures have been conducted, States should ensure that, if they do not have a parent or carer, a guardian is provided, or that a guarantee of respect for their rights is upheld by a competent authority.

Protection, assistance and safety measures

10. Age assessment should not take place until the person's safety and immediate protection needs have been met. Appropriate protection measures may include provision of:
 - a. counselling and information, in child-friendly language, in particular as regards a person's rights and the services available to them, including the right of access to legal advice and assistance when participating in an age assessment procedure;
 - b. legal representation/guardianship;
 - c. material assistance;
 - d. medical treatment;
 - e. translation and interpretation services, where appropriate.

2. In line with paragraph 55 of the Explanatory Memorandum.

11. Additional care and assistance should be provided to persons with additional vulnerabilities, including presumed victims of trafficking in human beings and victims of violence, before proceeding with the age assessment and during the age assessment procedure.

12. States should ensure that information is provided in a child-friendly manner about the person's rights, the reasons for the referral to age assessment, the procedure, the roles of the various professionals and authorities involved, the likely duration of the procedure, the possible outcomes and consequences of the decision, the remedies available to challenge the decision and how to exercise their rights. Such information should be provided individually and, where appropriate, in collective settings, on a regular basis to ensure that all children receive consistent information in an accessible manner. The guardian should also receive information about any referral for age assessment and be kept informed throughout the procedure.

13. States should ensure that a person is protected from all forms of violence and exploitation, in particular sexual exploitation and abuse, throughout the age assessment procedure. Any suspicion or allegation of any form of violence or exploitation should be promptly investigated by a separate independent authority.

14. States should ensure the safety and best interests of children whose age is not disputed when accommodating persons undergoing age assessment and, where necessary and appropriate, accommodate the latter separately from children.

15. Accommodation placement should take into account a child's immediate safety and well-being. The person undergoing age assessment should have access to accommodation which is adapted to their specific needs, taking into account their presumed minority, their sex, their cultural background and any particular vulnerabilities, such as when they have been a victim of violence, are a victim of trafficking in human beings or other form of exploitation and abuse, or have any form of disability, whether physical or mental. The person undergoing age assessment should be accommodated separately from adults who are unrelated to them.

16. Information should be provided to the person undergoing age assessment and their guardian regarding any change of accommodation; the views of the person on such changes should be taken into account where possible and given due weight in accordance with the child's evolving capacities and maturity.

17. When considering making contact with the authorities of the country of origin or former residence of a person involved in an age assessment procedure, the competent authorities should act in accordance with their obligations under international law to ensure the safety of the person or their family and should take into account possible consular delays. Where a person may be in need of international protection, no contact should be made with the authorities of the country of origin unless and until the person's application for international protection has been individually assessed by the asylum authorities.

Healthcare, education and welfare

18. The person undergoing age assessment should have access, without discrimination, to education, healthcare and welfare support throughout the age assessment procedure.

Interpretation

19. The person undergoing an age assessment should be assisted by a qualified and impartial interpreter throughout the procedure, when it is carried out in a language other than their native language. The interpretation provided should be culturally sensitive and of a quality sufficient to ensure efficient and effective communication and to safeguard the fairness of the procedure.

Access to independent and free legal advice and representation

20. States should ensure that the person has access to independent and free legal advice and representation from a qualified professional during the age assessment procedure, including advice as to whether they should exercise their right to refuse to participate in the assessment, the consequences of such a refusal and how to proceed with regard to any related procedures such as asylum, immigration and family reunification applications as well as any possible appeal.

Right to liberty and protection from the use of coercion, force or restraint

21. A child has a fundamental right to liberty; as a consequence, they should not be deprived of their liberty for age assessment purposes. The purpose of age assessment cannot justify the use of coercion, force or restraint, or deprivation of liberty, since a person cannot be expected to give free and informed consent when they are in a vulnerable position in relation to the authorities exercising control.

Principle 2 – Presumption of minority

States should ensure that a person who undergoes an age assessment is presumed to be a child unless and until determined otherwise through an age assessment procedure.

22. In application of the presumption of minority, States should treat a person as a child and uphold their rights from the moment of referral and throughout the procedure of age assessment, and ensure that the person is referred to and has effective access to appropriate child-protection services without discrimination or delay.

23. Where there are doubts about the age of a person claiming to be an adult, such as in the absence of an identifying document considered to be valid, and there are reasons to believe that the person may be a child, the protection and assistance measures provided to children should apply.

Benefit of the doubt

24. If reasonable doubts remain after completion of the age assessment procedure, the person should be considered to be a child.

25. The margin of error applicable to each element of the age assessment procedure should be recorded and each element given due weight according to the scientific validity of the results. The margin of error should be applied in favour of the child.

Principle 3 – Age assessment involving an evidence-based multidisciplinary approach

Multidisciplinary approach

States should have in place a clearly established process for age assessment, which uses a multidisciplinary approach grounded in evidence-based knowledge, methods and practice and which is child-centred.

26. States should consider carrying out age assessment through a multidisciplinary approach, whereby a range of professionals co-operate to make an estimation of a person's age, giving due consideration to physical, psychological, developmental, environmental and socio-cultural factors, and which is grounded in evidence-based knowledge, methods and practice.

27. This approach should include:
- a. an examination of the documentation available to the competent authorities or provided by the person undergoing age assessment;
 - b. without prejudice to the above, an interview by qualified professionals with the person undergoing age assessment, giving due consideration to physical, psychological, developmental, environmental and socio-cultural factors.
28. Identity documents, where available, should be systematically checked and considered to be determinative of age, unless considered invalid in line with procedures set out in law for verification of a person's identity documents.
29. The age assessment procedure should be transparent, thorough and scientifically reliable; the authorities should reach a decision based on the evidence and information provided by the person undergoing age assessment and, where necessary, on the interview and other available documentary evidence and information.
30. The person should be given the opportunity to clarify any inconsistencies arising during the interview and reasonable time to provide evidence of identity which is not in their possession.
31. The professionals responsible for each part of the age assessment should act promptly, impartially and independently.
32. National authorities should co-operate and co-ordinate in planning, undertaking and completing the assessment, in accordance with standards for information sharing and data protection.

Child-friendly procedures and safeguards

33. Interviews for age assessment should take place in a child-friendly setting, and under the most suitable conditions, in accordance with the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.
34. The rights to be heard and to participate should be guaranteed from the moment of referral and throughout the age assessment, including during any procedure to challenge the age assessment decision. The views of the person undergoing age assessment should be given due weight in accordance with their evolving capacities and maturity.

35. The person undergoing an age assessment should be able to be accompanied throughout the procedure by a person of trust of their choice, unless this would be contrary to the best interests of the child. The legal representative or guardian should be present to support the person throughout the procedure of age assessment.

Principle 4 – Principles applicable to medical examinations in the context of age assessment

A medical examination for age assessment purposes should only be undertaken when reasonable doubts remain about the person's estimated age once the other measures of the multidisciplinary approach have been exhausted, with the person's informed consent and with due respect for the principles of proportionality and the best interests of the child.

36. A medical examination for age assessment purposes should only take place:

- if it complies with the principle of the best interests of the child, following a best interest assessment;
- with the informed consent of the person to undergo age assessment or, where a child does not have the capacity to consent, with the authorisation of their parent, guardian or legal representative; and
- where reasonable doubts remain about the estimated age of the person once all other elements of the multidisciplinary approach have been exhausted.

Principle of proportionality

37. The competent authorities should act proportionately and use the least invasive methods available, considering that children should not be exposed to unnecessary radiation or to any medical method which entails risks or detrimental effects for their physical and mental health.

38. States should ensure the adoption of evidence-based methods and practices and exclude inaccurate medical methods.

Best interests of the child in relation to medical examinations

39. The best interests of the child should be a primary consideration in all decisions concerning the use of medical examination for age assessment.

40. States should take measures to ensure that qualified professionals assess the best interests of the child and, in particular, whether the person has vulnerabilities that would make medical age assessment or the use of a specific method inappropriate for that person.

41. The best interests assessment should take into account the physical and mental well-being of the person, as well as any specific vulnerabilities. Particular attention should be given, among other things, to children suffering from post-traumatic stress disorder, pregnant girls and victims of trafficking in human beings or violence, including sexual exploitation and sexual abuse. Professionals should have specific skills and training to conduct the assessment.

42. Where it is deemed to be appropriate and possible, the person should be able to choose the sex of the professional conducting the medical examination, and of the interpreter.

43. In accordance with the principle of the best interests of the child, when interpreting the results of a medical examination for age assessment purposes, States should apply any margin of error in favour of the person undergoing age assessment.

Informed consent for a medical examination

44. The person undergoing age assessment should be informed by a professional in a child-friendly manner about the method to be used, the duration of the examination, the possible consequences and about their right to refuse the examination or to withdraw consent.

45. The medical practitioner should ensure that valid informed consent to the medical examination has been obtained from the person before proceeding with an examination. Where a child does not have the capacity to consent, the examination may only proceed with the authorisation of their parent, guardian or legal representative.

46. The informed consent should be given expressly and be documented; such consent may be freely withdrawn at any time.

47. When the person's situation requires it, and in particular in cases of disability, an interpreter or specialised carer should be present to help inform the person and convey their concerns, consent or withdrawal thereof.

Principle 5 – Legal and policy framework

A clear framework should be in place which sets out the referral to age assessment, the implementation process and procedures and the decision-making process, complemented, where necessary, by additional instructions and guidance.

48. The framework should include, *inter alia*, the following elements:
- a. requirements for authorities to ensure that the best interests of the child should be a primary consideration in all actions undertaken in this context, emphasising the need to take into consideration the individual situation of the person, including any specific needs and vulnerabilities;
 - b. referral to age assessment should only take place following a reasoned decision statement by a competent authority that explains any reasonable doubts about the individual's age;
 - c. the age assessment procedure should result in a separate decision based on a written report documenting the age assessment;
 - d. effective complaint mechanisms and access to effective remedies available, including access to a review or an administrative or judicial appeal before a separate independent authority.
49. The framework should provide guidance to the authorities and professionals responsible for age assessment on how to apply the principle of the best interests of the child at the various stages in the age assessment process and the modalities for seeking and obtaining valid informed consent.
50. The age assessment framework should provide for appropriate safeguards to take into account the specific needs and vulnerabilities of persons undergoing age assessment.
51. Age assessment frameworks should set time limits for referral to age assessment, the duration of the procedure and the decision-making process, and the time limit within which to lodge a complaint or an application for an independent review or appeal, as appropriate.
52. The age assessment framework should identify the authorities and professionals responsible for referral to age assessment, for carrying out the age assessment and for making age assessment decisions, as well as the bodies responsible for their oversight, and their respective roles and responsibilities in this context.

53. Consideration should be given to the establishment of mechanisms for the resolution of any conflict between persons or bodies authorised to consent or refuse consent to a medical examination in relation to persons who are incapable of giving consent.

54. States should ensure that the age assessment decision is recognised by all relevant national authorities in order to avoid multiple age assessments or conflicting decisions at national level. Subsequent age assessment procedures may only be exceptionally undertaken if new significant documentation comes to light. New assessments in such cases should exclude any further medical examination of the person.

55. The framework should set out accessible, independent and effective complaint mechanisms.

56. The framework should lay down specific rules and regulations for the selection, monitoring and accountability of any private actors entrusted with implementing age assessment.

Principle 6 – Professional standards and training

Age assessment should be carried out by designated professionals, in accordance with relevant professional obligations and standards, and appropriate professional training should be provided for all those responsible for age assessment and related procedures.

Professional standards and confidentiality

57. States should ensure that rules of conduct are in place for professionals involved in age assessment, aimed at preventing the misuse of information collected in the course of age assessment and covering, in particular, the duty to observe confidentiality.

58. Professional standards should provide for the impartiality and accountability of competent authorities and professionals involved in age assessment and cover principles of medical ethics.

59. States should ensure that all professionals working in contact with children for the purposes of age assessment are subject to regular vetting.

60. Medical examinations should be carried out by qualified, registered medical practitioners in compliance with national medical ethical standards.

Training

61. States should ensure that all professionals working with children and taking part in age assessment receive interdisciplinary initial and continuous training, including on children's rights, promising practices and operational models.
62. Professionals involved in age assessment should receive appropriate training on safeguarding children and vulnerable adults, including how to identify victims of violence, trafficking in human beings and other forms of exploitation, on related reporting mechanisms and on protecting the dignity, human rights and fundamental freedoms of persons.
63. States should consider promoting practical measures to foster high-quality judicial decisions on age assessment, notably through legal education and training of judges and other legal professionals.

Principle 7 – Outcome of the age assessment, reasoned decision and available remedies

The age assessment decision resulting from the multidisciplinary procedure should be notified to the person in a child-friendly manner and, where appropriate, to the parent, guardian or legal representative, and include details of the legal and evidence-based factual reasons for the decision and information on effective remedies available. The decision should be open for review or appeal before an independent authority.

Expert or professional evidence

64. A written report should include a clear statement on the reliability of the age assessment to allow the decision-making body to consider any doubts, in such a way that would lead to the more favourable legal outcome for the person undergoing age assessment.

Duty to give reasons

65. The age assessment decision should be given in writing and include details of the reasons for the referral and for the decision, the methods used, the specific margin of error applicable to the method used, the application of the "benefit of the doubt" principle and the scientific reliability of any medical examination used.

Decision on minority

66. If the decision confirms the minority of the child, States should ensure the continuity of the rights of the child, including access to appropriate accommodation, healthcare, child protection services, and education.
67. The child should continue to be supported by a guardian. If the appointment of a guardian was made on a temporary basis for the duration of the age assessment, a guardian should be appointed without delay.

Decision on majority

68. A person who is assessed to be over the age of 18 should be referred to appropriate adult services. Where they have been identified as being in a particular situation of vulnerability, they should be referred to services for the protection of vulnerable adults.

Notification

69. The person assessed should be notified as soon as possible, in a child-friendly manner, of the legal and evidence-based factual reasons for the age assessment decision and of the effective remedies available. All supporting documentation should be made available promptly to the person concerned and their parent, guardian or legal representative.

Effective remedies

70. The age assessment decision may be submitted for review or administrative or judicial appeal before a separate independent authority. Such mechanisms should not impose any financial burden on the person concerned or their parent, guardian or legal representative.
71. The age assessment decision should outline the remedies available to challenge the decision, any time limits applicable and how to access those remedies.
72. 7 States should take all appropriate measures to establish accessible and effective mechanisms which ensure that a child receives prompt and adequate reparation for any harm suffered as a result of age assessment.

Principle 8 – Privacy and personal data

The child's right to private and family life should be guaranteed in the context of the processing of personal data for the purpose of age assessment.

73. States should take measures to ensure that in the context of an age assessment procedure, a child's personal data is processed in accordance with the law, for specific purposes and with the free, explicit, informed consent of the child. Where, according to law, a child does not have the capacity to consent to the sharing of personal data, the authorisation of their guardian or other person or body provided for by law should be given in accordance with appropriate safeguards and due respect for the data minimisation principle.

74. National law should afford adequate guarantees against the risk of unlawful access to, misuse of and abuse of data processed, in particular special categories of data that may present higher risks to the interests, rights and fundamental freedoms of the data subject.

75. The child should be informed in a child-friendly manner about the data that will be held on record, about available mechanisms through which they can access their records and the procedures available to apply for rectification of data held on record by the competent authorities.

76. States should not share any personal data of an asylum seeker or refugee with their country of origin.

Principle 9 – Research and co-operation for the purpose of age assessment

States are encouraged to promote research, exchange of good practice and co-operation for the purpose of ensuring human rights-compliant age assessment procedures.

77. States should seek opportunities, whenever possible, to co-operate for the purpose of age assessment and consider developing mechanisms that would enable relevant authorities to take into consideration decisions concerning age assessment taken by other member States in order to provide greater protection of children.

Explanatory Memorandum

of the Recommendation on Human Rights Principles and Guidelines on age assessment in the context of migration

Introduction

1. In Council of Europe member States, age assessment concerns primarily children and young people in the context of migration. Age assessment does not seek to assess the person's psychological maturity or evolving capacities, nor does it provide an accurate statement on a person's age. It aims at making an informed estimation of the age range of a person through a procedure established and regulated by law and taking into account a combination of indicators.
2. Age assessment is generally initiated when a young person does not carry identity documents, or where the authenticity of identity documents is questioned, where a person wishes to challenge the age that has been previously registered or where that age is questioned by the authorities in the country of arrival.
3. Age assessments are conducted through a range of methods, including an interview with the person undergoing age assessment, the gathering and review of documentary evidence as well as physical and medical examinations. The different methods are applied individually or in combination, including through multi-disciplinary assessments. In the context of medical examinations carried out for the purpose of age assessment, some methods raise concerns as they interfere with the physical integrity of the person undergoing age assessment and some have been criticised for the absence of an empirical basis and reliability and the associated high risk of producing arbitrary results.

4. States have a legitimate interest in establishing the identity of persons seeking entry, and age is an important marker of identity. It is also in the best interests of the child to be officially recognised as being under 18 years of age. Age assessments may however serve vested interests, including in considering and treating adolescents as adults, as children in migration require additional safeguards and support.

5. The outcomes of age assessment may have far-reaching consequences for the person concerned. Asserting that a person is under 18 years old is imperative as certain safeguards and entitlements in migration and asylum procedures apply to children, while some apply specifically to unaccompanied 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 enjoy also stronger protection from expulsion or deportation and from administrative or immigration detention.

6. Unaccompanied children have the right to a formal best interests determination procedure, which aims at identifying and implementing a durable solution. Being recognised as a child can facilitate access to education and help to protect children from child labour, child marriage, conscription into military service, and from all forms of violence and exploitation, including in the context of trafficking in human beings.¹ Specific safeguards exist to protect child victims of crime, and young age is associated with special procedures and safeguards in the juvenile justice system. Where children are involved in administrative and judicial proceedings, procedural safeguards have to be child-sensitive. Considering the issues at stake, weak, inadequate or faulty assessments put children at risk. Where children are not officially recognised as being underage, they lose these entitlements and, in consequence, have an increased risk of neglect, violence and exploitation with an associated detrimental impact on their health, wellbeing and development.

7. Age assessment standards and practices vary between member States and, in some cases, between regions or territories of a single member State.

1. The Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197, 2005), Article 4.c, provides for a distinct definition of child trafficking in accordance with the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Human Beings, especially Women and Children (2000), Article 4.c. Children under 18 years of age who have been recruited, transported, transferred, harboured or received for the purpose of exploitation are recognised as victims of trafficking in human beings, even where the use of illicit means, in accordance with the definition, cannot be proved.

In light of these differences and considering the dynamic movement of children in migration to and within the region, the present Recommendation on Human Rights Principles and Guidelines on age assessment in the context of migration (“the Recommendation”) aims at facilitating and promoting the dialogue and collaboration of state authorities within and between member States. Member States have a shared interest in ensuring that age assessment procedures are legal, safe and ethical, apply scientific methods that are up-to-date and produce reliable results. Their progressive collaboration towards this goal may contribute to preventing repeated assessments within and across member States, reducing thereby the risks for the person undergoing age assessment, as well as the correlated costs for state authorities. A shared set of human rights principles and guidelines on age assessment in migration is further expected to promote comparable standards and prevent thereby differential treatment of children and any risks of discrimination.

8. This Recommendation builds on international and European standards. The human rights and the best interests of the child are the guiding principles. The European Convention on Human Rights, with the case law of the European Court of Human Rights, and the UN Convention on the Rights of the Child provide for the human rights framework applicable to all children, including children in migration. This Recommendation gives guidance on how the international and Council of Europe human rights framework applies to age assessment in the context of migration and the considerations for law, policy and implementation that derive from this framework. The Recommendation, appendix and explanatory memorandum contain principles to guide policy making and law reform concerning age assessment.

9. The development of this Recommendation was initiated in 2016 by the Ad hoc Committee for the Rights of the Child (CAHENF) through its Drafting Group of Experts on Children’s Rights and Safeguards in the context of Migration (CAHENF-Safeguards). It responded to the activities envisaged under the Council of Europe Strategy for the Rights of the Child (2016-2021), the Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe (2017-2019) and the Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025).

10. After the mandate of the CAHENF expired in 2019, the drafting process was continued and finalised by the Steering Committee for the Rights of the Child (CDENF) in 2022. The CDENF was established in 2020 as the body responsible for the standard setting activities in the field of the rights of the child.

11. The drafting process was informed by a survey on age assessment procedures in Council of Europe member States and a correlated research report, which mapped relevant laws, policies and practice.² The development process involved further a consultation of stakeholders with specific and high-standing expertise in different aspects of age assessment procedures, including medical and legal specialists.

12. During 2018 and 2019, the Council of Europe Children's Rights Division collaborated with member States to carry out consultations with children in the framework of the Council of Europe Parliamentary Assembly's Campaign to End Immigration Detention of Children. The consultations involved children in Cyprus, Germany, Greece and Portugal. The children were consulted on the basis of their experience with age assessment procedures and shared their views and recommendations on the meaning of age assessment for them and how to make the procedure more compliant with the Rights of the Child. The report, which resulted from this consultative process, containing the views and recommendations of children informed the drafting of this Recommendation.³

13. The consultations with children helped to affirm the principles addressed by the Recommendation and to identify areas that would benefit from further clarification, or which had been insufficiently addressed. The observations and recommendations shared by the children related primarily to questions of information, participation, the timeliness and consistency of procedures, and dignity. The children expressed concern about not being trusted and that their statements and documents were not seriously taken into consideration. They would have appreciated if the documents in their possession had been checked in a timely manner. They emphasised that it was important for them to receive information and to be heard and have their views taken into account. The children underlined the importance of quality interpretation, ensuring that all information is translated to and from the child, also where the child has special needs, for instance because of hearing impairments. Information should be provided individually and collectively to children, as children tend to inform each other, especially where they are accommodated together. They would like to better understand the procedure and the roles of different

2. Council of Europe, *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, 2017.

3. Council of Europe, *We are Children, Hear us out! Children speak out about age assessment, Report on consultations with unaccompanied children on the topic of age assessment*, 2019.

officials and professionals whom they meet in the context of age assessment. As children share their experiences with other children, they were concerned about inconsistencies in their treatment and with regard to age assessment decisions. The children expressed how important it was for them to be informed in due time about the different steps of the age assessment procedure, as well as the possibility to refuse a specific method and the consequences of their refusal. They recommended preventing repeated interviews of children in the context of age assessment and other procedures that the child is involved in, as it was a burden for them having to tell their stories again and again. The children found it essential that boys and girls can choose whether they would be examined by a male or female professional. Children reported that, on occasions, the treatment they experienced had been hurting their sense of dignity, such as examinations or searches involving nudity and the use of physical restraint measures such as handcuffs. They suffered harsh comments from consular staff of their countries of origin and noted that their requests to consular offices were sometimes treated with delay.

Preamble

14. The preamble refers to international and Council of Europe standards, which are particularly relevant to age assessment in the context of migration. In addition to legally binding standards, the Recommendation builds on

- recommendations, guidelines, resolutions and declarations of the Committee of Ministers and the Parliamentary Assembly of the Council of Europe in this field;⁴ as well as

4. They include notably: Council of Europe Committee of Ministers, Recommendation [CM/Rec\(2019\)11](#) of the Committee of Ministers on Effective Guardianship for unaccompanied and separated children in the context of Migration, 2019. Council of Europe Parliamentary Assembly Resolution 2020(2014) on the alternatives to immigration detention of children. Resolution 2136(2016) on harmonising the protection of unaccompanied minors in Europe, Resolution 2195(2017) on child-friendly age assessment for unaccompanied migrant children. Council of Europe Committee of Ministers Recommendations Recommendation [Rec\(2003\)5](#) on measures of detention of asylum seekers. Recommendation [Rec\(2005\)5](#) on the rights of children living in residential institutions. Recommendation [CM/Rec\(2011\)12](#) on children's rights and social services friendly to children and families. Recommendation [CM/Rec\(2012\)2](#) on the participation of children and young people under the age of 18. Recommendation [CM/Rec\(2019\)4](#) of the Committee of Ministers to member states on supporting young refugees in transition to adulthood. Committee of Ministers Guidelines on child-friendly justice (2010) and on child-friendly health care (2011).

- general comments and decisions on individual communications of the United Nations Committee on the Rights of the Child, as well as other relevant decisions and recommendations of international monitoring bodies and committees.⁵

The overview of international and Council of Europe standards provided in the preamble is not exhaustive.

15. The Recommendation is a non-binding legal instrument. The frequent use in this instrument of the conditional “should” must not be understood as reducing the legal effect of relevant principles taken from binding legal instruments, whether a Council of Europe or other international instrument. When implementing this Recommendation, member States are free to apply higher standards or more favourable measures for the protection of children undergoing age assessment.

16. Member States are invited to translate the text of this Recommendation, appendix and explanatory memorandum and disseminate it as widely as possible among all relevant actors. These practical measures facilitate the implementation of the Recommendation, as many principles and guidance outlined therein could be directly applied by state officials and professionals carrying out age assessment. Relevant actors include state authorities at the national, regional and local levels, judges, prosecutors, police, border guards and other law enforcement authorities, child protection professionals, social workers, asylum and immigration officials, lawyers, guardians, health care professionals, staff of reception centres, welfare institutions and other accommodation facilities, other relevant state officials and professionals, as well as civil society and non-governmental organisations.

5. They include, among others: Committee on the Rights of the Child, General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005. Committee on the Rights of the Child, General Comment No. 12 (2009) on the right of the child to be heard, CRC/C/GC/12, 1 July 2009. United Nations Committee on the Rights of the Child, General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, 29 May 2013. UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), 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.

Purpose and Scope

17. The Recommendation aims to support States in ensuring that any age assessment of an individual within their jurisdiction is implemented in accordance with international and European standards. The European Convention on Human Rights (ECHR) obliges Contracting Parties to secure the rights of “everyone within their jurisdiction”⁶; this includes persons under the age of 18.

18. The European Court of Human Rights underlines that States are responsible under the Convention for measures, which they adopt pursuant to international legal obligations, including where such obligations stem from their membership in an international organisation to which they have transferred part of their sovereignty. A measure adopted pursuant to such obligations must be deemed justified provided that the organisation in question affords fundamental rights protection at least equivalent to that provided by the Convention. Such justification lapses where an act does not fall within the State’s international legal obligations or where the protection of the rights in question is manifestly deficient.⁷

19. The UN Convention on the Rights of the Child obliges States parties to respect and ensure the rights set forth in the Convention to each child within their jurisdiction.⁸ The UN Committee on the Rights of the Child notes that the State’s obligations “cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from a State’s territory or by defining particular zones or areas as not, or only partly, under the jurisdiction of the State. Moreover, State obligations under the Convention apply within the borders of a State, including with respect to those children who come under the State’s jurisdiction while attempting to enter the country’s territory.”⁹

20. In accordance with these standards, the present Recommendation applies to age assessment of children in the context of migration, irrespective of whether the child is present on the State’s territory, is seeking entry at the

6. Article 1, Convention for the Protection of Human Rights and Fundamental Freedoms, ETS No.005.

7. *Bosphorus Hava Yollari Turizm Ve Ticaret Anonim Sirketi v Ireland*, (No. 45036/98) ECHR [GC], 30 June 2005, European Court of Human Rights, *Guide on Article 1 of the European Convention on Human Rights, Obligation to respect human rights – Concepts of “jurisdiction” and imputability*, Updated on 31 August 2021, p. 34.

8. Article 2, United Nations Convention on the Rights of the Child, 1989.

9. UN Committee on the Rights of the Child, General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, par. 12.

border, or is accommodated in transit zones at entry points upon the border, at airports or seaports, or in any other area that falls within the jurisdiction of a member State.

21. Age assessments are conducted in a range of contexts and for different purposes. This Recommendation focuses on age assessments conducted in the context of migration. Typically, age assessment is conducted where a person claims to be a child and the competent authorities have reasonable doubts about the person's age and suspect that the person may be an adult. In these cases, age assessment will help to establish whether the person is a child.

22. In some cases, a person who appears to be underage may claim to be an adult. Children might claim to be an adult in a variety of situations, for example, when instructed or coerced to do so, in situations of exploitation and trafficking, when trying to access the labour market or when avoiding the child protection system and attempting a faster transit and onwards journey to another country.

Definitions

23. The definition of a '*child*' is formulated in accordance with Article 1 of the United Nations Convention on the Rights of the Child.¹⁰

24. '*Unaccompanied child*' refers to a child who has been separated from both parents and other relatives and is not being cared for by an adult who, by law or custom, is responsible for doing so.¹¹

25. '*Separated child*' refers to a child who has been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.¹²

10. As interpreted in: UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *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, par. 3. *Koniarska v. United Kingdom*, (No.33670/96), ECHR (dec.) 12 October 2000.

11. UN Committee on the Rights of the Child, General Comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, par. 7.

12. *Ibidem*.

26. There is no universal definition of *'age assessment'*. The definition retained in the Recommendation is very wide and encompasses procedures carried out by whatever means by the competent public authorities.

27. *'Guardian'* is defined in accordance with the Recommendation of the Committee of Ministers of the Council of Europe on effective guardianship for unaccompanied and separated children in the context of migration, adopted in 2019, taking into account that the term used, as well as the function and manner of appointment of a guardian, vary from jurisdiction to jurisdiction.¹³

28. *'Identity document'* includes different forms of documentation, registration or certification issued by a competent state authority, such as an identity card or digital identity credentials, or a birth certificate. Identity documents constitute evidence of core identifiers or attributes of the person, such as name, date and place of birth. They are recognised by the State for the purpose of establishing and verifying the unique identity of a person, for regulatory and other purposes. The criteria of identity documents may vary between countries and may evolve over time in view of new technologies. Identity documents are typically provided by or on behalf of the competent authorities of a national state. In the case of refugees, proof of identity may be provided by an internationally recognised organisation with such a mandate.¹⁴

29. The term *'medical examination'* in the Recommendation refers to any form of examination usually performed by a medical practitioner; this includes physical examination whether by inspection of the physical characteristics of the person, x-ray, or other means.

30. *'Child-friendly information'* is defined in accordance with the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted in 2010, and the Council of Europe Handbook on how to convey child-friendly information to children in migration: When informing children undergoing age assessment, the responsible officials and professionals should adapt their language to the child's "age, maturity, language, gender

13. Council of Europe, *Effective guardianship for unaccompanied and separated children in the context of migration*, Recommendation CM/Rec(2019)11 of the Committee of Ministers, 2019, II Definitions.

14. See for instance the 1951 Convention on the Status of Refugees, Articles 25 and 27, and the 1950 Statute of the United Nations High Commissioner for Refugees.

and culture”.¹⁵ This requires the information provider to adjust the information and complexity of their communication according to each individual child’s situation, right up to the age of 18, and giving due consideration to the needs of the child, including specific needs related to any communication impairments or to disabilities.

Human Rights Principles and Guidelines on age assessment in the context of migration

Principle 1 - Respect for human rights and fundamental freedoms and principles

In relation to age assessment in the context of migration, the fundamental principle underlying all others is respect for the dignity of each child as a human being and rights holder. The laws, procedures and practices relating to age assessment should be based on respect for human rights and fundamental freedoms.

31. Age assessment should take place in full respect for the dignity and the human rights and fundamental freedoms of the person.

Human dignity and right to freedom from torture, or inhuman or degrading treatment

32. Every child has the right to dignity and to a life free from violence. As a rights holder, the child is protected by the absolute prohibition of torture, inhuman and degrading treatment afforded under the ECHR and the UN Convention on the Rights of the Child.¹⁶ The European Court of Human Rights has reminded States on a number of occasions that in order to constitute a violation of Article 3 ECHR the treatment must reach a level of severity. The assessment of this minimum level is relative and depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.¹⁷

15. Council of Europe (2018), *How to convey child-friendly information to children in migration, A handbook for frontline professionals*, Building a Europe for and with children, pp. 11, 16. **Council of Europe, Guidelines on child-friendly justice, 2010, IV.A.1.**
16. Article 3, European Convention on Human Rights, 1950. Article 37, United Nations Convention on the Rights of the Child, 1989.
17. *V.K. v Russia*, (n°68059/13), ECHR, 7 March 2017, §168. *Labita v. Italy* [GC], no. 26772/95, §120, ECHR 2000-IV. *Ireland v. United Kingdom*, 18 January 1978, Series A, No. 25, §162.

33. In *Bouyid v. Belgium*, the Court reminds States that any recourse to physical force, which has not been made strictly necessary by the conduct of the individual concerned, diminishes human dignity and is, in principle, an infringement of Article 3 ECHR. The Court emphasises that law-enforcement officers who are in contact with children must exercise their duties taking due account of the vulnerability inherent in the young age of a child. Behaviour, which may be acceptable with adults, may be incompatible with the requirements of Article 3 ECHR if the person concerned is a child.¹⁸

34. The Court recognised unaccompanied children as highly vulnerable members of society and noted that the vulnerability of an unaccompanied child was the decisive factor, which takes precedence over considerations relating to the child's unregulated immigration status. As part of their positive obligations under Article 3 ECHR, States owe to highly vulnerable members of society a duty to take adequate measures to provide care and protection.¹⁹

35. The Court has ascertained the State's duty to protect a child from ill-treatment at the hands of an individual official, because the State bears direct responsibility for the actions of bodies under State regulation and supervision that are carrying out public services of general interest, but also due to a failure to promptly investigate the violation of the child's Convention rights.²⁰

36. The Court has on many occasions recalled that treatment may be degrading because it arouses feelings of fear, anguish or inferiority capable of humiliating and debasing the victim.²¹ *Yazgul Yilmaz v. Turkey* concerns a child who was made to undergo a gynaecological examination whilst under arrest. In finding that there had been a violation of Article 3 ECHR, the Court recalled that in view of the young age and the fact that she was an unaccompanied child, submitting her to such an examination must have caused feelings of extreme anxiety.²² The Court recognised that gynaecological examinations may constitute a supplementary traumatism for a child where they are not undertaken for medical necessity. The Court emphasised that the gynaecological examination took no account of the interests of the female prisoner nor referred to any medical necessity. The Court considered that due to the vulnerability

18. *Bouyid v Belgium*, (n°23380/09) ECHR [GC], 28 September 2015, §§100-110.

19. *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (n° 13178/03), 12 January 2007, §55. *Rahimi v. Greece* (n° 8687/08) ECHR, 5 April 2011, §

20. *E and others v UK* (no. 33218/96) ECHR, 26 November 2002, *V.K. v Russia* (no. 68059/13) ECHR, 7 March 2017.

21. *V.K v Russia*, (n°68059/13); ECHR, 7 March 2017, §168.

22. *Yazgul Yilmaz v Turkey*, (n° 36369/06) ECHR, 1 May 2011§53.

of unaccompanied children, it would not be reasonable to expect a child to refuse a gynaecological examination imposed by the authorities even where their consent is sought.²³

37. Any age assessment that would expose the child to feelings of humiliation and anxiety may therefore constitute degrading treatment in violation of Article 3 ECHR. For these reasons, States should prohibit age assessment methods that involve inhuman or degrading treatment. Age assessment should be carried out in conditions, which are compatible with the respect for human dignity and safety, and should be accompanied by relevant safeguards.

38. Any method involving nudity, or the examination, observation or measurement of the genitalia or intimate parts should be prohibited during the process of age assessment.

Legality

39. Age assessment should be conducted in accordance with the law, to protect the person from arbitrary assessments and decisions about his or her age. Age assessment is conducted in accordance with the law, when each step of the procedure and the different measures taken to assess the age of a child are compliant with the relevant domestic law. Whereas some member States have enacted a specific law on age assessment, such procedure can also be regulated by a more general set of laws and regulations, such as civil codes and civil procedural codes, administrative laws, immigration or asylum law, as well as specific laws regulating child protection, medical services, guardianship and other relevant matters.

Best interests of the child

40. It is a substantive right of the child to have their best interests taken as a primary consideration in all decisions concerning them. As a rule of procedure, the best interests of the child have to be assessed and determined whenever a decision is to be made that will affect a child. The decision-making process should include an evaluation of the possible impact of the decision on the child and show explicitly how the best interests of the child have been taken into account. The best interests of the child is also an interpretative legal

23. *Ibid*, §§45-47.

principle whereby, if more than one interpretation of a rule of law is available, the interpretation that is in the best interests of the child should be applied.²⁴

41. In the context of age assessment procedures, the best interests of the child should be determined with regard to

- the selection of age assessment methods that are most suitable to the individual child,
- the identification of factors that may influence the child's safety and protection in the context of age assessment,
- the provision of follow-up measures and services required to respond to the child's immediate and specific needs, in accordance with humanitarian and human rights obligations, and with the aim of enabling the child to participate and collaborate in the age assessment procedure.

42. There may be concerns for the child's immediate security or safety where the child is a victim of or at risk of any kind of violence.²⁵

43. The child may have immediate or specific needs on the grounds of being unaccompanied, belonging to a minority group, being affected by disabilities or chronic diseases, or having a particularly low level of education and literacy.

Proportionality and necessity

44. Age assessment can be seen as an interference with the child's right to private life and may, under certain circumstances, amount to an infringement against the child's physical integrity, for instance in the case of certain physical or medical examinations. Where implemented in an arbitrary or discriminatory manner, age assessment may amount to discriminatory or degrading treatment.

45. To avoid a violation of the rights afforded under the ECHR, age assessment must only take place when it is necessary, that is when there are reasonable doubts about the age of an individual and when their age is material to the procedures in hand.

24. United Nations Committee on the Rights of the Child, General Comment No. 14, (2013), par. 6. United Nations High Commissioner for Refugees, *UNHCR Guidelines on Determining the Best Interests of the Child*, 2008. United Nations High Commissioner for Refugees, United Nations Children's Fund, *Safe and Sound, What state can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, 2014. Council of the Baltic Sea States, *Guidelines Promoting the Human Rights and Best Interests of the Child in Transnational Child Protection Cases*, 2015.

25. Committee on the Rights of the Child, General Comment No. 13 (2011), The right of the child to freedom from all forms of violence, CRC/GC/13, 18 April 2011, para. 4.

46. In order to conform with the principle of necessity, the referral of an individual to age assessment should be reasoned and well-founded. The authority or person responsible for referral should be able to motivate the referral decision and demonstrate the grounds of their doubts or provide reasoning on how the age of the person is material to the procedures in hand.

47. Reasonable doubts may arise when there is a body of evidence or a "*faisceau d'indices*" casting doubt on the individual's stated age. The following situations may indicate that doubts about an individual's age are reasonable: a) the person is not in a position to state his or her own age; b) the person's appearance and demeanour do not appear to correspond with their stated age and do not allow a clear conclusion whether the person is under or above 18 years old; c) there are obvious inconsistencies between the age declared by the person and the age stated in the person's documents; d) the individual is not in possession of any identity documents or the documents are considered unreliable; or e) the individual has been registered in a transit state under a different year of birth than they currently claim.

48. Clarity about an individual's age may be decisive to ensure the appropriate treatment of children, including in relation to the type of accommodation, the referral to services for care and protection, the appointment of a guardian and the provision of child-friendly information. Where the person seeks international protection, age is decisive to determine if the person may assert child-specific forms of persecution. Where international protection is granted, it is important in regard to an application for family reunification that the child is recognised as being underage, as the conditions are more lenient. Age is further decisive for matters of law enforcement, where applicable, for instance when the person is a victim of exploitation, human trafficking, sexual violence or other crime, where special procedures and safeguards apply for child victims, or with regard to special protection measures in the juvenile justice context.

49. Age assessment has to be proportionate to the legitimate aim pursued. The principle of proportionality requires methods chosen for age assessment to be reliable while reducing the interference with the person's physical integrity to a minimum. Non-medical methods, such as the age assessment interview, the gathering and review of documents, should be exhausted before resorting to medical methods and methods that interfere with the physical integrity, such as methods that employ x-ray or other radiation or ionisation. Methods that are not in accordance with state-of-the-art scientific knowledge and methods that are incompatible with respect for the child's dignity should be excluded. (See para. 3, 37, 38 above and Principle 4 of the Recommendation.)

50. The principle of proportionality and necessity requires States to assess the best interests of the child before referral to age assessment, paying attention to identifying children in situations of particular vulnerability, such as child victims of violence, exploitation and trafficking in human beings.²⁶ (See in particular para. 113-115 below, also para. 35 above, and para. 95.d, 99, 101, 114, 127, 140, 144, 147, below.)

51. The principle of proportionality and necessity should preclude the repeated referral of a person to an age assessment procedure, including the repetition of interviews of the person, for instance in the case of a person's transfer or relocation within or between member States, unless the repetition of the assessment is considered to be in the best interests of the child. (See para. 63, 127 and 171 below.)

Informed consent

52. It is necessary for the person to give free and informed consent to participate in the age assessment procedure. In order for consent to be given freely and in an informed manner, the person needs to understand that they can refuse to consent, as well as the consequences of such a refusal (see Principle 8 of the Recommendation).

53. Where a person does not have the legal capacity to consent to participation in a procedure, the parent(s), guardian, representative or other authority or person provided for by law is required to consent on the person's behalf. In this instance, the person's views should still be heard and given due weight in accordance with Article 12 UNCRC.

54. The first step towards obtaining the person's informed consent is to inform him or her of the reasons, methods and consequences of the age assessment procedure, as well as the consequences of withholding their consent. When making a decision on whether to consent to the age assessment procedure, the person should receive legal advice to ensure that they understand the consequences of their decision (with respect to legal advice, compare para. 71-73 below). The person should benefit from a reflection period to digest the information and legal advice received.

55. Where the person refuses to give consent, the competent authorities should seek to understand the reasons for the refusal and consider whether further information and advice or counselling is required. The authorities should

26. Article 3 UN Convention on the Rights of the Child (1989). Article 10 Council of Europe Convention on Action against Trafficking in Human Beings (CETS No. 197).

also inform the person of the possible consequences of refusal. The person should never be coerced or pressured into giving consent. Where the person consents to some but not all elements of the age assessment, the authorities should consider proceeding on the basis of the elements to which the person consents. If a person refuses to participate in an age assessment procedure, the competent authorities can nonetheless assess the person's age without his or her active participation in the procedure or specific parts thereof, for instance by examining relevant documentation.

56. With respect to consent to medical examinations, compare Principle 4 of the Recommendation.

Provision of a guardian

57. To enable the full participation of the person undergoing an age assessment to the process, the presumed limited legal capacity of the person should be complemented by the person's parent(s), carer(s) or a guardian. The competent authorities should ascertain whether the person undergoing age assessment is accompanied by a parent or carer who by law or custom is responsible for them. In the absence or unavailability of such a person, the competent authorities should appoint a guardian to support and assist the person throughout the age assessment procedure.

58. The person undergoing age assessment should be informed about the age assessment procedure in the presence of the parent(s), carer(s) or guardian. Providing information to the parent(s), carer(s) or guardian should not be an alternative to communicating child-friendly information to the person undergoing age assessment.²⁷

59. Parents or carers of persons undergoing age assessment may have a vested interest in the outcome of an age assessment procedure, for instance to declare an adult son or daughter as underage in order to benefit from child welfare benefits or child-specific grounds for asylum, or declaring an underage son or daughter as an adult to facilitate marriage or access to work. Furthermore, there may be instances where a person is exploited by a parent or carer, for instance where the person is a victim of human trafficking with the involvement of family members or organised criminal networks. Where there are concerns about the veracity of the family relationship between the parent or carer and the person undergoing age assessment or where the person

27. See Council of Europe, *How to convey child-friendly information to children in migration, A handbook for frontline professionals*, 2018,

is identified as a victim of human trafficking or where there is a presumed conflict of interests between the person undergoing age assessment and the parent(s) or carer(s), the State should take the necessary steps to establish the person's identity and provide for representation of the person by a guardian, organisation or authority which shall act in their best interests.²⁸

Protection, assistance and safety measures

60. States are under a general obligation to protect children from all forms of violence and to provide children who are temporarily or permanently deprived of their family environment with special care and protection.²⁹ These obligations apply to children in migration during the age assessment procedure. As stipulated in Article 20.1 UNCRC, a child temporarily or permanently deprived of his or her family environment, shall be entitled to special protection and assistance provided by the State. The European Court of Human Rights found that a failure to provide adequate care, including accommodation, to an unaccompanied child, was a violation of Article 3 ECHR.³⁰ Counselling and information, in a child-friendly language, regarding their rights and the services available to them is an essential safeguarding element in this context.

61. The UN Convention on the Rights of the Child protects children from all forms of sexual violence and exploitation (Article 34). State parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse are under positive obligations to take preventive measures to protect children from sexual violence and exploitation in addition to obligations to investigate and prosecute perpetrators.³¹ The Lanzarote Committee urges States parties to reinforce cooperation including when the abuse or exploitation occurred prior to the child's arrival in the country.³² Any uncertainty as to the age of a child, who is a victim of sexual violence or exploitation, or other criminal offences, shall not prevent the initiation of a criminal investigation.

28. See requirements under Council of Europe Convention on Action Against Trafficking in Human Beings (CETS No. 197) and Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).

29. Articles 19 and 20, UN Convention on the Rights of the Child 1989.

30. Rahimi, *cited above*.

31. Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).

32. Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Special Report on Protecting Children affected by the Refugee Crisis from Sexual Exploitation and Sexual Abuse, 3 mars 2017, recommendations 33 and 12 respectively.

All the safeguards applicable to child victims of crime shall apply pending the outcome of the age assessment.³³

62. The Lanzarote Committee has identified that the provision of safe reception facilities, including age-appropriate placements, can prevent sexual violence and exploitation. To minimise risks of sexual violence, the Lanzarote Committee recommends States parties to apply the following prioritisation, when choosing the most appropriate type of accommodation and care for unaccompanied children in migration: (i) family reunification, (ii) foster care, supervised independent accommodation for older children or other forms of non-institutional care; (iii) institution placement in small-scale units.³⁴

63. The accommodation and placement of a child undergoing age assessment should ensure the child's immediate safety and well-being and give due account to the specific needs of the child. To determine the appropriate type of accommodation, a case assessment and best interests determination should be conducted, taking the views of the child into consideration, including with regard to the right of the child to preserve family ties and maintain contact where the child has family members or relatives in the country. Where the accommodation of a child is changed while the age assessment is ongoing, or the child is transferred to another city or region of the country, these measures should not lead to undue delay of the age assessment procedure, repeated interviews or examinations. The child has a right to be informed, in a child-friendly language, in due time about any changes in the accommodation, and this information should be provided also to the child's parent or guardian.

64. For the prevention of all forms of violence, including sexual violence and exploitation, children should not be accommodated together with unrelated adults. Persons undergoing age assessments should therefore be placed in separate units or sections of accommodation centres.

65. States should establish effective, and child-friendly complaint mechanisms to report cases of violence, including sexual violence or exploitation, which are committed or identified during the age assessment procedure to an independent authority which should be separate from the authority carrying out the age assessment. (See para. 128 below.)

33. Articles 34(2) and 35(3), Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201).

34. Committee of the Parties to the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, Special Report on Protecting Children affected by the Refugee Crisis from Sexual Exploitation and Sexual Abuse, 3 March 2017, recommendations 23 and 24.

Healthcare, education and welfare

66. In accordance with the presumption of minority, children should have access to social rights, including access to education,³⁵ healthcare and leisure time during the age assessment procedure on the same conditions as other children in migration and without discrimination, in accordance with Principle 1, para. 18 of this Recommendation.

Interpretation

67. As age assessments tend to take place soon after the person's arrival in the State, language barriers in the communication with the person are to be expected. Where it is carried out in a language other than their native language, the communication with the person should be facilitated by a qualified and impartial interpreter. Such assistance shall enable the person to fully understand the information and to ask questions.

68. Interpretation service should be available at all steps of age assessment, including in the referral to age assessment, when seeking the person's informed consent for the assessment or for a specific method, during the age assessment interview and any other assessment methods, for the notification of the results, and when conveying information to the person on the steps of the procedure, including access to legal remedies. The person undergoing age assessment should be informed that they can choose whether the interpreter should be male or female.

69. Interpretation should be provided by qualified professionals who are specifically trained for working with children in the context of migration. The competent authorities and service providers working with persons who are undergoing age assessment should be trained in working with interpreters.

70. To ensure that interpretation is provided in a culturally sensitive manner, some member States avail themselves of cultural mediation services. Cultural mediators help other professionals to understand both the verbal and non-verbal communication of the person and communicate information to the person in a culturally sensitive way.³⁶

35. Article 2, Protocol 1 European Convention on Human Rights (ETS No. 5).

36. Council of Europe, *How to convey child-friendly information to children in migration, A handbook for frontline professionals*, 2018, pp. 41, 43.

Access to independent and free legal advice and representation

71. Persons undergoing age assessment should have access to independent and free legal advice and representation. Free legal advice and representation should be available to them under the conditions provided by national law. The person providing legal advice and representation should be qualified and prepared to provide child-friendly information, legal advice and representation in the best interests of the child. As arrangements for representation and guardianship differ between member States, this does not mean that States have to appoint a lawyer in every case. Depending on the circumstances, the person providing legal advice could also be another professional who has the appropriate legal knowledge in this specific field. In some countries and contexts, legal guardians or guardians *ad litem* are appointed or designated to provide legal advice and represent children in the context of administrative or judicial proceedings.

72. Professionals offering legal advice and representation to persons undergoing age assessment should be independent from the State authorities and service providers involved in the procedure. Legal representatives should enjoy access to the person and their file at all stages of the age assessment procedure.

73. Legal advice and representation may be required at different stages of the procedure: at the moment of the referral to age assessment, when the person is asked to give informed consent to participate in the procedure or to specific assessment methods; to help the person understand the implications and consequences of the procedure, and of giving or withholding informed consent; and regarding access to legal remedies and the relevance of the age assessment procedure for other procedures such as the asylum application.

Right to liberty and protection from use of coercion, force or restraint

74. Every person has the right to liberty.³⁷ Any deprivation of liberty will be arbitrary unless it falls within one of the exhaustive grounds listed in Article 5.1 ECHR. Any deprivation of liberty of a child must comply with stringent safeguards, including taking the best interests of the child as a primary consideration, and be a measure of last resort.³⁸

37. Article 5 (1) European Convention on Human Rights (ETS No. 5).

38. *Rahimi v. Greece* (n° 8687/08) ECHR, 5 April 2011, § 109, and *Popov v. France* (n° 39472/07 and 39474/07) ECHR, 19 January 2012, § 119.

75. The use of coercion, force or restraint, or deprivation of liberty cannot be justified for age assessment purposes. Detaining unaccompanied children in disregard of their status as children for the duration of age assessment or pending age assessment results, cannot be justified by the purposes set out in Article 5.1 ECHR. In finding that the detention of unaccompanied children was in violation of Article 5.1(f), the European Court of Human Rights had regard to the fact that the applicants had been detained having erroneously been registered as adults and then kept in detention although the record of their age had been rectified successfully.³⁹

76. There is growing international consensus that children should not be detained for reasons related to their or their parents' migration status or because they are unaccompanied or separated. The UN Committee on the Rights of the Child ascertains that immigration detention is never in the best interests of the child and that child protection and welfare actors should take primary responsibility for children in the context of international migration.⁴⁰

77. The use of coercive measures may constitute degrading treatment if applied to a child during age assessment or in the context of transfer to age assessment. The use of force or handcuffs cannot be justified solely on the grounds that the person is undergoing an age assessment. The European Court of Human Rights found that leaving a child to remain handcuffed wearing just his underwear for two hours constituted degrading treatment.⁴¹

Principle 2 - Presumption of minority

States should ensure that a person who undergoes an age assessment is presumed to be a child unless and until determined otherwise through an age assessment procedure.

78. The presumption of minority applies to all individuals from the moment reasonable doubts arise whether or not they are underage. It has a preventive function, due to the likelihood that some of the persons referred to age

39. *Mohamad v Greece* (n° 70586/11) ECHR[GC], 11 December 2014, §§ 81-86.

40. UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *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, §§5-13.

41. *Zherdev v Ukraine*, (n°34015/07) ECHR, 27 April 2017, §94.

assessment will be underage. It is necessary, therefore, to uphold the rights of the child for all individuals undergoing age assessment throughout the procedure, until and unless a decision is reached that the individual is an adult, to avoid any inadvertent violation by the State of the rights of the child whose age is in dispute. This implies, notably, that States should treat the person undergoing age assessment as a child and ensure that the person is referred to and has effective access to appropriate child protection services without discrimination or delay.

79. The Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse and the Convention on Action against Trafficking in Human Beings provide for the presumption of minority where the age of a victim is uncertain and there are reasons to believe that the victim is a child.⁴²

Benefit of the doubt

80. If reasonable doubts remain after completion of the age assessment whether the individual is a child or an adult, the person should be given the benefit of the doubt and should be considered a child and treated as such.

81. Reasonable doubts remain where, even after resorting to medical examinations once having exhausted all other measures of the multidisciplinary approach, the minimum age identified by the age assessment is below and the maximum age above 18 years old. In such cases, the individual should be afforded the benefit of the doubt and should be assumed to be a child. An age assessment decision based on a medical examination has to take the scientific margin of error of the specific method into account. The decision should assign the youngest possible age within the age range ascertained by the method as the age of the person.

42. Articles 11(2) and 35(3), Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 2007 (CETS No. 201). Article 10(3), Convention on Action against Trafficking in Human Beings, 2005 (CETS No. 197).

Principle 3 - Age assessment involving an evidence-based multi-disciplinary approach

States should have in place a clearly established process for age assessment which uses a multi-disciplinary approach, grounded in evidence-based knowledge, methods and practice, and which is child-centred.

Multi-disciplinary approach

82. Age assessment aims to make an informed estimation of a person's age taking into account a combination of indicators related to physical, psychological, developmental, environmental and socio-cultural factors. A collaborative multi-disciplinary approach is instrumental for assessing these indicators.⁴³ Officials and professionals from different areas of specialisation should be involved in the age assessment procedure and contribute with their expertise.

83. Age assessment should be carried out as a multi-step process to gather evidence and information relevant for the assessment. In accordance with the principle of proportionality and necessity, the age assessment should start with the methods that involve the least level of interference with the physical integrity of the person. To avoid an arbitrary referral to age assessment and selection of methods, the age assessment procedure should be clearly established and regulated.

84. As a first step, the identity documents of the person should be checked. Where identity documents are not available, other documentary evidence should be reviewed to consider the weight that can be given to school records, an expired passport, a parent's identity document, which includes an entry of the person, or other documents that may provide evidence of the person's date of birth. Considering consular delays, it may be necessary to give the person time to obtain additional documentary evidence from their country of origin if it is in the child's best interests to seek to obtain such evidence. In

43. United Nations Committee on the Rights of the Child, General Comment No. 14, (2013), par. 6. United Nations High Commissioner for Refugees, *UNHCR Guidelines on Determining the Best Interests of the Child*, 2008. United Nations High Commissioner for Refugees, United Nations Children's Fund, *Safe and Sound, What state can do to ensure respect for the best interests of unaccompanied and separated children in Europe*, 2014. Council of the Baltic Sea States, *Guidelines Promoting the Human Rights and Best Interests of the Child in Transnational Child Protection Cases*, 2015.

the case of asylum-seeking children, the authorities of the child's country of origin must not be contacted.⁴⁴ (See para. 162 below.)

85. Where documentary evidence is produced, there is a risk that identity documents or other documentary evidence are falsified or that a person makes fraudulent use of another person's identity, of stolen or counterfeit documents. Information or data are considered reliable when they are genuine and the information they contain is accurate, when they were created or generated by an entity under the appropriate legal and governance framework of the issuing State, and when they were not subject to changes under the influence of any other person. Documents should be considered determinative of age, unless considered invalid in line with procedures set out in law for verification of a person's identity documents. Documents issued or authenticated by the relevant State authority or embassy should be accepted as genuine.⁴⁵

86. Where reasonable doubts remain following the examination of the documentary evidence, an age assessment interview should be conducted to assess the chronology of events and experiences in the person's life, such as years at school, the educational level reached, age difference to younger and older siblings, rites of passage, or memories of recurring or landmark events. These elements should be considered in the person's socio-cultural context to ascertain the likelihood that the person is the age he or she declared. To ensure a well-balanced consideration of different elements in the child's story, the interview should be conducted by qualified professionals prepared to assess physical, psychological, developmental, environmental and cultural factors. In accordance with the definition of age assessment, the consideration of multiple factors should inform the estimation of the person's age.

87. If doubts continue to persist after these assessments, and recourse to medical examination is considered, the relevant methods should be determined with due regard to the best interests of the child. Scientific medical methods aim to assess the person's physical maturity and, on that basis, inform the

44. UN High Commissioner for Refugees (UNHCR), *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, §50 (m).

45. UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), *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, par. 4.

estimation of an age range. The conditions and considerations applicable in the case of medical examination are addressed under Principle 4.

88. To implement such a collaborative and multi-step approach, officials and professionals are required to cooperate and coordinate when gathering and reviewing evidence and making decisions. They should act promptly and in an impartial way, and their status should allow for independence from state authorities or service providers, such as migration authorities, actors providing accommodation and care, or other relevant institutions, organisations or services, and prevent any potential or actual conflicts of interests. The cooperation should take place in due respect of data protection standards, including with regard to biometric data. (See para 133 below and Principle 8.)

Child-friendly procedures and safeguards

89. The UN Convention on the Rights of the Child affords the right of the child to be heard in all matters concerning them, including in administrative and judicial proceedings, and that their views are given due weight in accordance with their age and maturity.⁴⁶ The child has a right to seek, receive and impart information in a language that he or she understands.⁴⁷ The competent authorities should guarantee the right of the child to be heard in all phases of the procedure, from the moment of referral through to the final decision making, including during any procedure to challenge the age assessment decision.

90. Enabling the meaningful participation of the child during the age assessment procedure requires several key considerations to be made: a) the child has a right to receive child-friendly information about the age assessment procedure; b) an unaccompanied child has the right to be supported by a guardian and to be accompanied by a person of trust, unless this would be contrary to the best interests of the child; c) the child's informed consent to the processing of his or her personal data and to the specific age assessment method should be obtained; d) a child who does not understand the language of the host country is entitled to interpretation services; and e) the child has

46. Article 12, UN Convention on the Rights of the Child, 1989.

47. Article 13, UN Convention on the Rights of the Child, 1989. Committee on the Rights of the Child, General Comment No. 12 (2009) on the right of the child to be heard, **CRC/C/GC/12, 1 July 2009**, par. 25.

a right to access effective mechanisms of review or appeal to challenge the outcome of an age assessment.⁴⁸

91. Informing a child in a “child-friendly” way means providing information that is “adapted to a child’s age, maturity, language, gender and culture” (See para. 30 above). The communication of child-friendly information in spoken language may be complemented by child-friendly printed or digital material, including easily accessible symbols, graphs or videos. It is important to dispel any doubts about the aim and purpose of the age assessment, the different steps in the procedure, and how the data gathered during the age assessment will be used.⁴⁹

92. The Council of Europe Handbook on child-friendly information for children in migration identifies basic rules for officials and professionals providing information to children in migration: They are required to adapt information to the situation of the child; empower children by providing information that gives them strength and resilience; ensure children understand which information is confidential and what has to be shared with other authorities due to mandatory reporting obligations; use non-judgmental vocabulary; use open-ended questions; do no harm; and give the child all necessary information even if the information might only be useful at a later stage.⁵⁰

93. The child should be able to be accompanied in all steps of the age assessment procedure by a person of trust of their choice, unless this would be contrary to the best interests of the child. The person of trust should be independent from the age assessment authority and should have no vested interest in the outcome of the procedure. A person of trust supports the child in addition to the guardian and representative who should also be present to support the person throughout the procedure of age assessment.

94. The Council of Europe Guidelines on child-friendly justice provide for the following fundamental principles:

-
48. UN Convention on the Rights of the Child, Article 12. Council of Europe Committee of Ministers Guidelines on Child-friendly Justice (2010). Recommendation [CM/Rec\(2012\)2](#) of the Committee of Ministers to member states on the participation of children and young people under the age of 18, par. 2. Committee on the Rights of the Child, General Comment No. 12 (2009) on the right of the child to be heard, CRC/C/GC/12, 1 July 2009.
 49. Council of Europe, *How to convey child-friendly information to children in migration, A handbook for frontline professionals*, 2018.
 50. Council of Europe, *How to Convey Child-friendly Information to Children in Migration, A handbook for frontline professionals*, Building a Europe With and For Children, 2018, p. 12, 16.

- a. The *participation of children* as full bearers of rights, including the right to information and the right to be heard and to have their views taken into account;
- b. The *best interests of the child* as a primary consideration, and in assessing the best interests of the child, the views of the child should be heard and given due weight and States should make concerted efforts to establish multi-disciplinary approaches for best interests assessments;
- c. *Dignity*, children should be treated with care, sensitivity, fairness and respect throughout any procedure, with special attention for their personal situation, well-being and specific needs and with full respect for their physical and psychological integrity, and regardless of their legal status and capacity in the procedure;
- d. *Protection from discrimination* on any grounds, recognising that specific protection and assistance may need to be granted to more vulnerable children, such as unaccompanied children, migrant, refugee and asylum-seeking children; and
- e. The *rule of law* principle should apply fully to children as it does to adults.⁵¹

95. The general elements of child-friendly-justice include the provision of information and advice; the protection of private and family life, safety and special preventive measures; training of professionals, a multi-disciplinary approach, and the recourse to deprivation of liberty as a measure of last resort and for the shortest appropriate period of time.⁵²

96. In accordance with the principle of the presumption of minority, administrative and judicial proceedings involving persons whose age is disputed should follow a general procedural presumption that the person is considered and treated as a child throughout all stages of the proceedings, including in the preliminary, interim and appeal stages. This requires considerations for the court or other settings to be child-friendly and the prevention of undue delay. Member States should consider developing guidance on how to obtain accurate and reliable statements with a high probative value from children

51. Council of Europe Committee of Ministers, Guidelines on Child-friendly Justice (2010), pp. 17-19.

52. Council of Europe Committee of Ministers, Guidelines on Child-friendly Justice (2010), pp. 20-24.

who testify in administrative and judicial proceedings as witnesses or victims, as suspects or accused persons, including guidance on the examination or cross-examination of age disputed witnesses.

97. The Council of Europe Guidelines on child-friendly justice provide guidance on collecting evidence from children and recognise this is a challenging task. Where evidence is collected from children, this should as far as possible be carried out by trained professionals. The number of interviews conducted with a child should be as limited as possible. Where nonetheless more than one interview with the child is required, the same person should preferably carry out the interview, for reasons of consistency and trust. Evidence from children should be gathered in a child-friendly environment, having regard to the child's age, maturity and level of understanding and any communication difficulties the child may have. Where children are heard in court, special arrangements should be made to reduce risks of intimidation and secondary victimisation, especially where the child is a victim of violence or exploitation.⁵³

98. Children who are deprived of their liberty are considered to be in a vulnerable situation.⁵⁴ Children who are held in segregation or detained while undergoing age assessment may suffer a deterioration of their health and wellbeing. Doctors and other professionals carrying out the age assessment should be mindful of the potential impact this may have on the child's collaboration in the procedure.⁵⁵ To prevent feelings of intimidation, therefore, special consideration should be given to the fundamental principles and elements of child-friendly justice when collecting evidence from children who are detained while undergoing age assessment.

99. The Council of Europe Guidelines on child-friendly justice provide examples of how member States should give priority to the best interests of the child in the application of legislation regarding the gathering of evidence from children and adapt it to avoid additional trauma for children, while upholding principles of rule of law and due process. The Guidelines underline also that

53. Council of Europe Committee of Ministers, *Guidelines on Child-friendly Justice* (2010), Guidelines 64, 66, 67, pp. 87-90.

54. See: Council of Europe Committee of Ministers, *Guidelines on Child-friendly Justice* (2010), Guideline 21.

55. Campbell, Ruth, *Locked up, locked out: health and human rights in immigration detention*, British Medical Association, 2017, pp. 32, 64.

these adaptations do not diminish the probative value of the evidence given by the child.⁵⁶

100. The European Court of Human Rights has repeatedly referred to the Council of Europe Guidelines on child-friendly justice, among other policy instruments, when examining States' compliance with procedural obligations under Article 3 ECHR. In *X and Others v. Bulgaria*, the Court underlined that procedural obligations have to be interpreted in the light of international instruments, such as the UN Convention on the Rights of the Child and the Council of Europe Convention on the Protection of Children Against Sexual Exploitation and Sexual Abuse. The Court established that interviews aiming to gather evidence from children have to be adapted to the age and maturity of the child and be video-recorded. The Court has repeatedly noted that States have a heightened duty of protection towards children who are deprived of parental care and have been placed in the care of a public institution, which is responsible for ensuring their safety and well-being, and who are therefore in a particularly vulnerable situation.⁵⁷

101. In light of the principles of rule of law, the presumption of innocence and the right to a fair trial should be guaranteed for children.⁵⁸ The burden of proof in age assessment procedures therefore should not rest on the child.

102. Training in procedural matters and how to collect evidence from children is essential for officials and professionals involved in age assessment procedures, specifically when conducting age assessment interviews. The Council of Europe Guidelines on child-friendly justice recommend the use of interview protocols that take into account different stages of the child's development. They guide the interviewer in avoiding leading questions and enhance thereby the validity and probative value of children's evidence.⁵⁹

103. Research has evidenced that children are generally able to remember events and emotions they experienced and that, starting from a young age, they are able to give accurate and reliable accounts of their experiences. The capability of children to provide accurate information and disclose what they

56. Council of Europe Committee of Ministers, Guidelines on Child-friendly Justice (2010), Guideline 70, pp. 87-90.

57. *O'Keeffe v. Ireland* [GC], no. 35810/09; *Nencheva and Others v. Bulgaria*, no. 48609/06; *X and Others v. Bulgaria*, no. 22457/16.

58. Council of Europe Committee of Ministers, Guidelines on Child-friendly Justice (2010), III. Fundamental Principles, E. Rule of law, p. 19.

59. Council of Europe Committee of Ministers, Guidelines on Child-friendly Justice (2010), Guideline 71.

remember depends on several factors. The location and environment where the interview or hearing takes place are fundamental. A child-friendly place with as little distractions as possible offers the most conducive conditions for interviewing or hearing children in the context of administrative or judicial proceedings. Support services should be available for the child before, during and after the hearing, in accordance with the child's needs and best interests. The most important factor influencing the accuracy and reliability of a child's statement is the interviewer's ability to elicit information and the child's willingness and ability to disclose it. Research in this field has identified some fundamental principles and rules that professionals have to observe to positively influence the child's willingness and ability to express their views and what they remember. These principles and rules form the basis of evidence-based interviewing protocols, which guide the interviewer step-by-step through the interview and help creating supportive conditions for the child to speak out and to make an accurate and reliable statement with a high-probative value.⁶⁰

Principle 4 - Principles applicable to medical examination in the context of age assessment

A medical examination for age assessment purposes should only be undertaken when reasonable doubts remain about the person's estimated age once the other measures of the multidisciplinary approach have been exhausted, with the person's informed consent and with due respect for the principles of proportionality and the best interests of the child.

104. In the context of age assessment, medical examinations typically include examinations of the person's physical development by a paediatric, an inspection of the dental development, or imaging examinations such as x-ray or MRI scans, to assess the development of the carpal or collar bone, the knee joint, or teeth.

105. In light of the interference of some medical methods with the physical integrity of the person undergoing age assessment, recourse to medical examinations should be considered only when reasonable doubts remain about the person's estimated age once the other measures of the multidisciplinary

60. Lamb, Michael E., Orbach, Y., Hershkowitz, I., Esplin, P.W., Horowitz, D., Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol, <https://www.ncbi.nlm.nih.gov/entrez/eutils/elink.fcgi?dbfrom=pubmed&retmode=ref&cmd=prlinks&id=18023872>.

approach have been exhausted, and in respect of the principles of proportionality and the best interests of the child and with the informed consent of the person.

Principle of proportionality

106. If recourse to medical examination is considered for the purpose of age assessment after other methods have been exhausted and there continue to be reasonable doubts about the individual's age, the competent authorities should act according to the principle of proportionality. To be proportional, the interference of a medical examination with the physical integrity of the person should be reduced to a minimum, and the least invasive methods available should be used. Examinations are considered to interfere with the person's physical integrity when using non-medical imaging, exposing the person thereby to radiation or other health risks, or interfering with the integrity of a person in another manner. Non-medical imaging refers to examinations that are not medically indicated.

107. Any method involving nudity, or the examination, observation or measurement of the genitalia or intimate parts should be prohibited during the process of age assessment (See Principle 1, Human dignity and right to freedom from torture or inhuman or degrading treatment).

108. Medical methods should be admitted for age assessment purposes only if evidence has proven the accuracy of the method. A medical method is considered accurate when evidence generated by empirical studies has demonstrated its validity and the reliability of the results generated by it, for the specific purpose and scope of its application.

109. Where research shows that the accuracy of a method is biased or where the evidence of the method's accuracy is limited to a specific population group or context, the method cannot be considered accurate for universal application. The limitations have to be stated and taken into consideration when interpreting results and States should exclude inaccurate medical methods from age assessment procedures.

110. Medical methods that have been proven to be inaccurate as they lack a scientific evidence-base should be excluded effectively from age assessment procedures. This may be the case, where more recent evidence demonstrates that medical methods used for age assessment purposes are no longer considered accurate, have been proven to be outdated or too limited in scope. As research continues to generate an evolving body of evidence in this field,

the accuracy of medical methods used for age assessment purposes should be revisited periodically in light of state-of-the-art research.

Best interests of the child in relation to medical examinations

111. A best interests assessment should be conducted prior to any decision to refer a person to a medical examination for the purpose of age assessment. The best interests assessment aims to ascertain the proportionality of the chosen method. To this end, the impact of the method on the individual undergoing age assessment should be assessed, taking into account the individual's situation, specific needs and vulnerabilities. The assessment should consider if the individual who is referred to a medical examination has any preferences with regard to the sex of the practitioner conducting the examination. When it is assessed appropriate and possible, the person should be able to choose the sex of the professional conducting the medical examination.

112. The officials or professionals conducting the best interests assessment should be qualified and trained in undertaking best interests assessments, providing child-friendly information and communicating with children, including children in migration and children in situations of particular vulnerability. The best interests assessment should involve a review of existing documents and a hearing of the person whose age is assessed. The officials or professionals conducting the best interests assessment should be skilled and trained to identify specific vulnerabilities. Particular attention should be given, among others, to children showing signs of traumatisation, children who are victims of violence or exploitation, including sexual violence or exploitation and human trafficking and to children with special needs.

113. A best interests assessment should be conducted using a multi-disciplinary approach to ensure the person's sex and developmental, physical, psychological, psychiatric, environmental, socio-cultural and other factors are taken into consideration and inform the assessment. This approach should be grounded in evidence-based knowledge, methods and practice and be child-centred.

114. Children who are victims of violence or exploitation or suffer from post-traumatic stress disorder, may have a disproportionately high risk of distress or re-traumatisation as a result of medical examinations. In the case of girls, when a medical examination involving radiation or other non-medical imaging is considered, pregnancy has to be excluded.

115. The principle of the best interests of the child requires that the method's specific margin of error is taken into consideration when interpreting the

results of a medical examination for age assessment. In line with Principle 2, paragraph 24 of this Recommendation, States should ensure that the person undergoing age assessment is recognised and treated as a child when the lowest age within the method's margin of error falls under 18 years of age.

Informed consent for a medical examination

116. Prior to referring an individual to a medical examination for the purpose of age assessment, the individual should be informed about the type of examination to be conducted, who will conduct it, where and when it will take place, its duration and how the individual will get to and from the place where the medical examination will be conducted. The individual should further be informed about the purpose of the medical examination and how it aims to complement the findings from other age assessment methods conducted thus far. Information should be provided on any potential risks associated with the method to be used, as well as any other specific details about the method to ensure the individual has understood how the examination will be conducted. The individual should further be informed about the procedure for seeking his or her informed consent to the examination, who is entitled to give consent, the consequences of refusal and how to withdraw consent subsequently or complain against the procedure.

117. Information should be provided in a child-friendly manner, as defined in definition 4. h) of the appendix to the Recommendation, and with the assistance of an interpreter, where required. The professional providing the information should ascertain that the person has understood. Professionals could do so by asking the person to explain the information in their own words and responding to any questions that the person may have. Where the situation requires it, and in particular in situations of disability, the child should be assisted by an interpreter or special carer who is qualified to assist the child in understanding the information and making a decision on informed consent, in accordance with the specific needs of the child.

118. Where, according to the law, the child undergoing age assessment does not have the legal capacity to consent to a medical examination for the purpose of age assessment, the informed consent will be sought from the child's parent(s), carer(s) or guardian or representative, or another competent person or body provided for by law. In some member States, children generally have the right to give informed consent to medical treatment as of a specific age, for instance as of 14 or 16 years old; in other States, the right to consent applies as of the age of 18, and yet in others, the child's capacity of discernment has to be

assessed in each case.⁶¹ With regard to medical examinations for the purpose of age assessment, member States take different approaches to obtaining informed consent. In some States, where children have the right to consent, the child's consent is sufficient. Where the child lacks legal capacity to consent, national practice differs; in some States, the informed consent is sought only from the child's parent, guardian or representative, others seek informed consent from either the child or their representative, and yet others from both, the child and the representative.⁶² Where a child does not have the legal capacity to consent, including in cases where there is a conflict of interests between the child undergoing age assessment, the parent(s), carer(s) or guardian, the views of the child should be heard and taken into consideration in accordance with Article 12 UNCRC. The child should be given the opportunity to express the reasons for objecting the decision of the parent, guardian or representative. The decision about the medical examination should be deferred until the child has had the opportunity to access the relevant complaint mechanism, if he or she wishes to do so, concerning the consent provided by the parent, or legal guardian or representative, and until a decision of the complaint mechanism has settled the conflict of interests.

119. A guardian should also be appointed or designated, in accordance with provisions under national law and regulations, where a doctor undertaking the medical examination or other professionals involved in age assessment have grounds to believe that the person is lacking decision-making capacity for other than age-related reasons. Where this is the case, procedures for assessing the capacity of the person should be followed to establish if the person has the capacity to make the decision on giving or withholding informed consent at that specific moment of time, and to provide all practicable support to maximise the person's decision-making capacity.⁶³

120. Prior to the medical examination, the written informed consent should be provided to the medical practitioner conducting the examination for age assessment purposes. Medical practitioners should be authorised to conduct examinations for age assessment purposes only where valid consent is provided in writing, and should have clear instructions on how to proceed when the

61. European Union Agency for Fundamental Rights (2018), [Consenting to medical treatment without parental consent](#).
62. European Union Agency for Fundamental Rights (2018), [Consent to medical tests for age assessment](#).
63. Campbell, Ruth, *Locked up, locked out: health and human rights in immigration detention*, British Medical Association, 2017, pp. 53-54.

individual undergoing age assessment is withdrawing consent at the moment of the examination.

Principle 5 - Legal and policy frameworks

A clear framework should be in place which sets out the referral to age assessment, the implementation process and procedures and the decision-making process, complemented, where necessary, by additional instructions and guidance.

121. The law and policy framework regulating age assessment procedures in member States should provide for the relevant measures and requirements to ensure age assessment procedures take place in a regulated manner in accordance with national standards, the rule of law and procedural safeguards. The law and policy framework should be complemented by practical guidance to provide clarity on quality standards and their application in the work routines of officials and professionals involved in age assessment procedures.

122. The law and policy framework should ensure that human rights principles and safeguards are observed in the age assessment procedure, such as the principle of the best interests of the child, the right of the child to be heard and to have their views taken into account, the right to non-discrimination and the right of the child to development. As in all other administrative and judicial proceedings or other formal procedures and interventions, children should be protected from harm, including intimidation, reprisals and secondary victimisation in the context of age assessment procedures.⁶⁴

123. The law and policy framework should provide for a clear and transparent regulation of each step of the age assessment procedure. In particular, it should provide for documentation and reasoning of each decision, such as the referral decision, decisions on the best interests of the child, and the final age assessment decision.

124. Member States issue different types of decisions on the outcomes of age assessment procedures, such as administrative or judicial decisions or, in some contexts, decisions are issued by specific state officials or professionals entrusted with carrying out an age assessment. In some member States, the age assessment procedure is integrated into the asylum procedure, and decisions on the outcome of an age assessment procedure are therefore issued

64. See: Council of Europe, *Guidelines on Child-friendly Justice*, 2010, par. 11.

and notified together with the decision on asylum. Irrespective of national practice, decisions on the outcome of an age assessment procedure should be issued as separate decisions in writing, with clear and transparent reasoning, they should be notified promptly to the person concerned and inform about available remedies and how to access them.

125. National frameworks should provide practical guidance for personnel involved in age assessment on how to communicate with children in migration and how to conduct formal interviews with children, including with children in situations of particular vulnerability, how to provide child-friendly information, how to assess and determine the best interests of a child, including an assessment of the child's risks and sources of protection. Adapting the communication style to the needs of the child and conducting child-sensitive interviews, including as part of the best interests assessments, is essential to elicit from the child information about any experiences of violence or exploitation, or other traumatic events, which may determine specific needs of the child to be considered during the age assessment procedure.

126. The law and policy framework should provide for age assessment decisions that are recognised by all relevant authorities within the member State, such as authorities for child protection and social welfare, immigration and asylum, law enforcement and the judiciary. This enables consistency in the subsequent referral, treatment and casework concerning the person whose age has been assessed. It helps to prevent repeated assessments where the person is transferred between cities or regions within a member State. Subsequent age assessment procedures may only be exceptionally undertaken if new significant documentation comes to light. New assessments in such cases should exclude any further medical examination of the person.

127. Member States should provide for a timely age assessment procedure and regulate the length of the procedure and each of its steps, including with regard to time-limits of appeal procedures. An excessive length, from the moment the age of the person is disputed until a final decision has been reached, can have lasting detrimental impacts on the wellbeing and development of the person undergoing age assessment, including in situations where other procedures, such as an asylum procedure, depend on the outcomes of the age assessment. The European Court of Human Rights found on different occasions that an effective remedy has to prevent the alleged violation or its continuation in a timely manner and the speediness of a remedy can be challenged. It noted further that, where age assessment takes an unreasonable length of time, the individual concerned may reach the age of majority pending the official

decision.⁶⁵ The framework should provide for the possibility to grant extensions, where this is determined to be in the best interests of the child, for instance, if consular delays prevent the child from submitting necessary documentation by a specified deadline.

128. The legal framework should guarantee access to independent and effective complaint mechanisms, as well as administrative and judicial remedies and appeal procedures. Legal representation should be available free of charge to access remedies without any obstacles. Member States should regulate the complaint procedure in cases of misconduct or inappropriate behaviour of state officials and professionals involved in the age assessment procedure, as well as in cases of conflicting interests between the person undergoing age assessment and the person or body responsible for complementing the limited legal capacity of the child, for instance in conflicts concerning the giving or withholding of consent to specific steps or methods of the age assessment. Persons undergoing age assessment should be informed, in a child-friendly language, about the available complaint mechanisms and how to access them. Such information should be provided also to the child's parent(s), carer(s) or guardian. Personnel involved in age assessment procedures should be informed, trained and competent to use reporting and complaint mechanisms wherever applicable.

129. The law and policy framework should identify all actors involved in the age assessment procedure, including state and non-state actors, and define their specific roles and responsibilities. The framework should further provide for binding rules and regulations concerning professional standards and confidentiality, training, recruitment and vetting of all personnel involved in age assessment procedures, whether employed by public or private bodies, as well as monitoring of their conduct, in accordance with applicable law, international and European standards. Monitoring should be conducted within the public administration, by the competent authorities, by individual monitoring bodies, such as Ombudsoffices for Children and other human rights structures, and through Parliamentary oversight.

65. Abdullahi Elmi and Aweys Abubakar v. Malta, App Nos. 25794/13 and 28151/13, Judgment of 22 November 2016.

Principle 6 - Professional standards and training

Age assessment should be carried out by designated professionals, in accordance with relevant professional obligations and standards, and appropriate professional training should be provided for all those responsible for intervening in age assessment and related procedures.

130. Age assessment procedures should be carried out by competent officials and professionals who are trained and qualified for this sensitive task and who can be held accountable for their actions and performance.

Professional standards and confidentiality

131. In exercising their mandates, officials and professionals involved in age assessments are bound by national legislation regulating their professions, as well as rules of conduct or codes of ethics. States should ensure that these rules of conduct or codes of ethics refer to special safeguards concerning the treatment of children and the interaction with them. Special safeguards include child protection standards, procedures for respecting child rights principles in the work practice such as the right of the child to be heard and making the best interests of the child a primary consideration, rules concerning confidentiality and reporting, data protection regulations and guidance for the collaboration with other professionals or officials involved in a case. Where such rules exist, States should review them specifically with a view to ensuring the rights of children in migration are duly reflected, in accordance with international, European and national law. Where they do not yet exist, States should ensure that they are developed, adopted and disseminated, including specifically for the context of age assessment.

132. Officials and professionals involved in the age assessment procedure should be familiar with regulations on data protection, confidentiality and secrecy and feel confident in applying them correctly, including in relation to preventing inappropriate access to manual and electronic records. They should inform the person undergoing age assessment how their data will be stored, used and shared. Medical professionals in particular should inform the persons they are assisting that their health-related information will be recorded confidentially and that they have a right to request a copy of their records. Where professionals are required under national law and regulations to report specific information to the competent authorities, for instance where there is a public interest related to infectious diseases or risks to the health and safety

of a child, they should inform the person about these regulations and follow the applicable procedure for the disclosure of confidential information.⁶⁶

133. All personnel working with children in migration for the purpose of age assessment should be subject to regular vetting, in accordance with national law, to ensure their suitability to work with children. Where vetting results identify a person not to be suitable to work with children, that person should be excluded from the age assessment procedure with immediate effect and replaced by another, qualified professional with positive vetting results.

134. Public authorities, private bodies and individual professionals involved in age assessment should be required by law or other regulation to conduct the age assessment procedure in an impartial way. To this end, the law or regulation should ensure their unrestricted freedom to decide cases impartially. Impartiality requires that the individual official or professional, the private body or public authority involved in age assessment is guided in measures and decisions solely by professional standards and the applicable law and able to act without any restriction, improper influence, pressure, threat or interference, direct or indirect, from any authority. In accordance with national law and international and European standards, the best interests of the child shall be a primary consideration in all decisions concerning the child. A decision in age assessment should not be influenced by the wishes of a party to the procedure or anyone otherwise interested in the outcome of the procedure, or by other interests, such as costs or quotas related to immigration, accommodation or specific services. Impartiality is essential to guarantee the equality of individuals before the law.

135. The accountability of officials and professionals involved in age assessment should be ensured by clearly defined mandates, work procedures and codes of ethics. Officials and professionals should have access to sufficient resources and benefit from individual and/or group supervision to enhance their competence and support.⁶⁷

136. The competent authority for age assessment is responsible for ensuring accountability of all actors involved in the age assessment procedure, in a preventive and remediating manner. Where individual officials or professionals, private bodies or public authorities fail to comply with official or professional

66. Campbell, Ruth, *Locked up, locked out: health and human rights in immigration detention*, British Medical Association, 2017, pp.49-51.

67. Council of Europe, Council of Europe Recommendation on Children's Rights and Social Services Friendly to Children and Families, [CM/Rec\(2011\)12](#), 2011, F.5.

standards and confidentiality in the age assessment procedure, the competent authority is responsible for taking remediating measures.

Training

137. All officials and professionals involved in age assessment procedures should receive adequate professional training as well as ongoing training on the rights of the child, the special needs of children in migration and the different procedures concerning them.

138. Officials and professionals having direct contact with children should also be trained in communicating with children in migration and conducting formal interviews with children, including with children in situations of particular vulnerability, using child-friendly language, working with interpreters and adapting language and information to the needs of the individual. Special training should prepare officials and professionals involved in age assessment procedures on how to protect the dignity, human rights and fundamental freedoms of persons undergoing age assessment.

139. Officials and professionals who are gathering evidence in the context of age assessment, including directly from children, should be trained in interpreting, analysing and giving weight to the information gathered in age assessment and understand the way that a person's background, migration story and experiences may impact the behaviour and communication of the person during the age assessment procedure.

140. Judges and other judicial staff should be trained in conducting child-sensitive proceedings, assessing the evidence provided by the person, understanding the opinions and expertise provided by different professionals and the underlying methods and scientific value.

141. Training should be delivered not only in the specific professional fields but also in a multi-disciplinary manner, involving professional groups working with children in migration, and with age assessment specifically, for instance law enforcement officers, social workers, child protection professionals, medical doctors, psychologists and other health care professionals, interpreters, lawyers, judges, guardians and other experts.

142. Professionals should be trained in the identification of children who have experienced violence or exploitation, their special protection needs, available services for children and vulnerable adults in migration, and how to use relevant mechanisms for reporting these cases and referring the individuals concerned to appropriate support and assistance services.

143. The personnel's qualification and preparedness for conducting age assessments, as well as the effectiveness of initial and continuous training and of vetting procedures should be subject to monitoring and evaluation, including by independent bodies such as Ombudsoffices for Children and other independent human rights structures. The findings from monitoring and evaluation should be used to inform continued measures to guarantee professional standards and confidentiality are upheld at all times.

144. Where a public authority delegates elements of the task of conducting age assessments to private actors, the public authority is responsible for ensuring professional standards and confidentiality are upheld and monitored effectively at all times.

Medical professionals

145. Where age assessment involves a medical examination, the medical practitioner conducting the examination should be a qualified and registered professional who has undergone specialised training to conduct age assessment of children in migration, taking into consideration the specific situation and needs and any particular vulnerabilities of the individual whose age is assessed. Such training should prepare the practitioner for applying state-of-the-art methods, which are scientific and evidence-based, and interpret the results with due consideration to the method's specific margin of error.

146. In accordance with national law and professional codes in force in member States, medical ethics should be fully respected in medical examinations conducted for age assessment purposes. This may require medical practitioners to protect the physical and mental health of the person undergoing age assessment, relief suffering and respect the person's life and dignity without discrimination.

147. Doctors and other medical and health care professionals who are providing health care services in immigration detention centres, reception centres or other types of accommodation facilities for adults have an important role in identifying in this context individuals who are or appear to be under 18 years of age. Where medical professionals are concerned that a person may be a child while being detained or placed in a reception centre together with unrelated adults, they are responsible for following the applicable procedures for reporting and referral.⁶⁸

68. Campbell, Ruth, *Locked up, locked out: health and human rights in immigration detention*, British Medical Association, 2017, pp. 32, 64.

Principle 7 - Outcome of the age assessment, reasoned decision and remedies available

The age assessment decision resulting from the multidisciplinary procedure should be notified to the person in a child-friendly manner and, where appropriate, to the parent, guardian or legal representative, and include details of the legal and evidence-based factual reasons for the decision and on effective remedies available. The decision should be subject to review or appeal before an independent authority.

Expert or professional evidence

148. Considering the multi-step process of age assessment, the decision should be taken on the basis of written reports of each of the methods applied. The different professionals involved in the age assessment should prepare written opinions on the age range and development of the person undergoing the assessment. They may include paediatric doctors, dental experts, psychologists and psychiatrists with experience in age assessment, independent social work experts, and others. Their written opinions should provide clear statements on the age assessment method pursued, the reliability of the method, its margin of error and the findings, to allow the decision-making body to consider the expertise of a range of specialists.

Duty to give reasons

149. The written age assessment decision should include all relevant supporting documentation, such as the motivation for the referral to age assessment, the specific steps of the procedure and methods applied, the documentary evidence gathered and how they have been assessed, the scientific reliability and margin of error of each medical examination, and the outcomes of each method applied for the purpose of age assessment. The written decision should provide reasoning on how these different elements have been assigned weight in the final decision-making process and how the benefit of doubt was applied. As a matter of principle, the burden of proof should remain on the State and cannot be placed on the person undergoing age assessment.

Decision on minority

150. Where the age assessment decision confirms that the person is a child, the child should continue to benefit from all relevant services for children in migration, in accordance with his or her best interests and specific needs. Where the person has been accommodated for the duration of the procedure

in specific accommodation for persons undergoing age assessment, referral to child-specific accommodation should be ensured promptly. Where temporary services were provided for the duration of the age assessment procedure, such as temporary guardianship, health care, child protection or education services, the child should be referred promptly to the general services provided for children in migration.

Decision on majority

151. Where the age assessment decision concludes that the person is an adult, the person should be referred to appropriate accommodation and services for adults, taking into account any situation of vulnerability, including those identified in the course of the procedure. Continuity of service provision for persons assessed to be over 18 years old is essential, also with a view to preventing homelessness.

Notification

152. When the age assessment decision is taken, the individual whose age has been assessed should be informed as soon as possible about the outcome of the assessment and the underlying reasoning. The information should be provided in a language the person understands, in spoken language, with the assistance of an interpreter where applicable, and in writing. The information about the decision should be notified to the child or adult in an appropriate manner. In case the decision confirms the person is a child, information has to be child-friendly and provided also to the child's parent(s), carer(s) or guardian and/or legal representative.

153. The age assessment decision should be issued as a separate decision to enable the person undergoing age assessment to challenge the outcome of the procedure separately, independently of other procedures such as the procedure for seeking international protection. Age assessment decisions may be issued by administrative or judicial bodies.

Effective remedies

154. The person who has undergone age assessment should have the possibility to challenge the conduct and outcome of the procedure, in accordance with Article 13 ECHR.⁶⁹ The recourse to remedies should be regulated by law and should be freely accessible. Any obstacles to access to court, such as the

69. See: *Mahmundi and others v. Greece* (n° 14902/10) ECtHR, 24 October 2012, § 56. *Rahimi v. Greece* (n° 8687/08) ECHR, 5 April 2011, § 79.

costs of the proceedings or lack of legal advice and representation, should be removed.⁷⁰

155. The communication of the decision should be supplemented with child-friendly information explaining possibilities to challenge the decision, the remedies available and how to access them, including specific time limits and any legal aid or assistance available.

156. The possibility to challenge the outcome of the age assessment decision should be provided through non-judicial mechanisms, such as independent complaints mechanisms, as well as access to judicial review, mediation, and administrative or judicial appeal before a separate independent authority.⁷¹

157. The appeal or review procedure should be conducted in a timely manner. In particular, cases in which children are involved need to be dealt with expeditiously and States are encouraged to consider putting in place a system for prioritising these cases.⁷² Any appeal or review relating to the decision on the outcome of the age assessment procedure should have a suspensive effect on the execution of that decision, as well as on any consequential decisions, and ensure that the principle of presumption of minority is upheld, for instance with regard to decisions on transfer or return of the person.

158. Where a person has suffered harm as a result of the age assessment procedure, the person's right to reparation should be clearly established. Harm might be caused, for instance, by a faulty procedure, infringements against the human rights of the person undergoing age assessment or the misconduct of an official or professional involved in the procedure. Appropriate and effective mechanisms should be in place to ensure prompt compensation, which is adequate to the harm suffered.

Principle 8 - Privacy and personal data

The child's right to private and family life should be guaranteed in the context of the processing of personal data for the purpose of age assessment.

159. The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data obliges States parties to

70. Council of Europe, *Guidelines on Child-friendly Justice*, 2010, par. 34, 35.

71. Council of Europe, *Guidelines on Child-friendly Justice*, 2010, par. 77.

72. Council of Europe, *Guidelines on Child-friendly Justice*, Explanatory Memorandum, 2010, par. 118. Article 41 of the Rules of the European Court of Human Rights.

provide for basic principles for data protection and appropriate safeguards regulated by law. These include the requirement by law to obtain the data subject's consent to the gathering and processing of personal data, a law defining the intended purpose and means of the processing of the data and indicating cases where the processing of data would be permitted, professional secrecy obligations for those handling data, risk analysis, as well as appropriate security measures.⁷³

160. In accordance with the data minimisation principle, the processing of personal data should be adequate, relevant and not excessive in relation to the purposes for which they are processed.⁷⁴

161. The 2001 Additional Protocol to the Convention lays down rules for data transfer to non-Parties.⁷⁵ It provides that data may only be transferred if the recipient State or international organisation is able to ensure an adequate level of protection (Article 2). This may be relevant for age assessment of children in the context of migration where the competent authorities are considering requesting data or documents from the child's country of origin, a transit country or an international organisation, which are non-Parties to the Convention and its Protocol. If the person whose age in doubt has applied, or is considering to apply, for international protection, or has been granted international protection, the authorities of the person's country of origin or previous residence must not be contacted for age assessment purposes, in order to guarantee the person's safety and confidentiality.⁷⁶

162. Additional safeguards must be provided for by law before a State may proceed with the automatic processing of special categories of data, including data revealing information about a child's national or social origin or personal

73. Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), 1981.

74. Council of Europe Convention for the protection of individuals with regard to the processing of personal data, Convention 108+, Article 5.c.

75. Additional Protocol to the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, regarding supervisory authorities and transborder data flows (ETS 108) 2001.

76. UN High Commissioner for Refugees (UNHCR), *Global Consultations on International Protection/Third Track: Asylum Processes (Fair and Efficient Asylum Procedures)*, 31 May 2001, EC/GC/01/12, §50 (m). 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. Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, 29 May 2013, par. 92.

data concerning the child's health. Sufficient safeguards should be in place to protect the child from any form of discrimination in this context.⁷⁷

163. The child should be informed in a child-friendly manner about the data that will be held on record, about available mechanisms through which they can access their records, and the procedures available to apply for rectification of data held on record by the competent authorities. This information should be made promptly available to the child and updated during the age assessment procedure, if an as applicable, by all relevant actors involved in the procedure. The information should also be provided to the child's parent(s), guardian and legal representative, and the child should have the support of the guardian and/or representative to access these data.

164. As the person's personal data are collected and processed as part of the age assessment, the requirement to obtain the informed consent of the person concerns all forms of age assessments. Failure to comply with relevant national and European standards and safeguards for data processing may mean that the data processing amounts to a disproportionate interference with the person's right to private life in violation of Article 8 ECHR.⁷⁸

Principle 9 - Research and co-operation for the purpose of age assessment

States are encouraged to promote research, exchange of good practice and co-operation for the purpose of ensuring human rights compliant age assessment procedures.

165. Age assessments are complex and sensitive procedures with high stakes for the children whose age is in doubt. Despite an intense European debate on age assessment policies, procedures and practice, there is a dearth of research on this matter. Little evidence is available on the impact the procedure has on children, as well as their views and recommendations with regard to age assessment. Monitoring of age assessment practice, research supporting the development of quality standards, evaluated good practice and evidence-informed solutions to persisting challenges are rare. Only few States have

77. Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108), 1981, Article 6; Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data, Consolidated Text, [CM/Inf\(2018\)15-final](#), 18 May 2018; Recommendation [CM/Rec\(2019\)2](#) (2019) on the protection of health-related data.

78. *S and Marper v United Kingdom* (n° 30562/04 and 30566/04) ECHR, 4 December 2008.

systems in place to collect data on age assessment procedures. In consequence, the evidence-base to inform and guide policy making in this area is weak.

166. To redress this gap, States are encouraged to develop and support research in this field. Multi-country studies tend to benefit the national and regional debates as they provide comparative analysis and a richer set of experience and evidence. Bi- and multi-lateral cooperation is therefore encouraged to strengthen the evidence and knowledge base on age assessment procedures.

167. Fostering collaboration across disciplines and States is instrumental to develop an evidence and knowledge base on age assessment, including evaluated quality standards, which will benefit children, personnel and States. Persons undergoing age assessment benefit from procedures that are ethical, reliable and safe, child-friendly and promote the human rights and the best interests of the child. Such procedures are expected to facilitate the meaningful participation of the person whose age is in doubt. For officials and professionals conducting age assessments, quality standards and procedures, in accordance with state-of-the-art research, provide legal certainty and confidence when conducting age assessments. For States, robust and transparent procedures can be expected to be more cost-efficient as they will more likely provide reliable and safe outcomes.

168. States are invited to strengthen the bi- and multilateral cooperation towards the goal of achieving a common set of quality standards and procedures in age assessment, which enhance the trust in age assessments conducted by another State and their recognition across borders, avoiding repeated or multiple age assessments of a person.

169. Bi- and multi-lateral communication and cooperation is essential in cases of transfer or relocation of a child. If a child is to be transferred to another member State, for instance, the age assessment decision should be communicated to the destination State in advance of the transfer to avoid, as far as possible, repetition of the age assessment.

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE