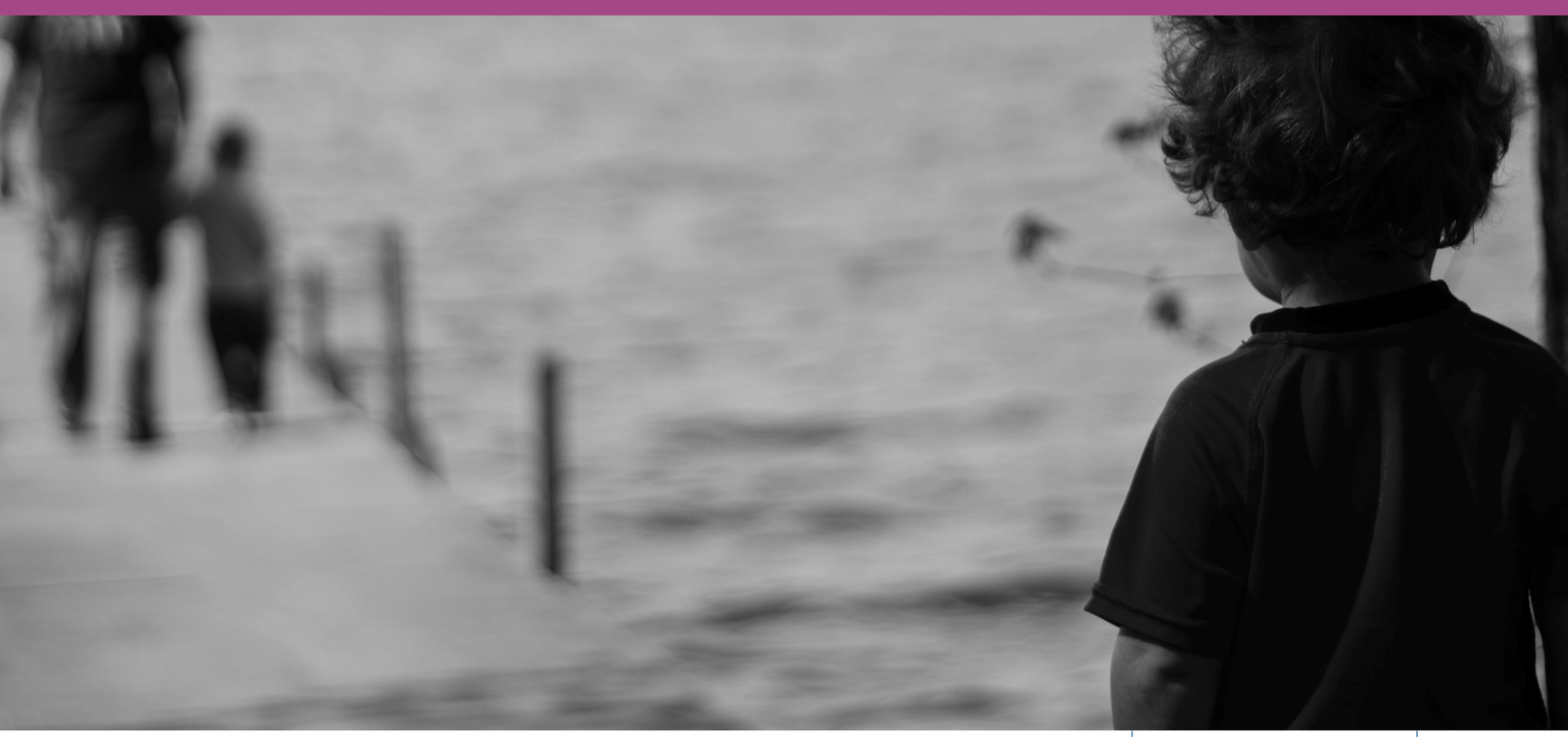
ASSESSING THE AGE OF CHILDREN AT RISK OF TRAFFICKING IN HUMAN BEINGS IN BOSNIA AND HERZEGOVINA



Amela Efendić
Daja Wenke

March 2022

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ACRONYMS

BDBiH	Brčko District of Bosnia and Herzegovina
CPI	Child Protection Index
CRC	United Nations Convention on the Rights of the Child
EU	European Union
FBiH	Federation of Bosnia and Herzegovina
GDP	Gross Domestic Product
GDPR	EU General Data Protection Regulation 2016/679
GRETA	Group of Experts on Action against Trafficking in Human Beings
HDI	Human Development Index
ICMPD	International Centre for Migration Policy Development
IOM	International Organization for Migration
IFS-EMMAUS	International Forum of Solidarity-EMMAUS
MICS	Multi Indicator Cluster Survey
NGO	Non-governmental organisation
OSCE	Organisation for Security and Cooperation in Europe
RS	Republika Srpska
SFA	Service for Foreigners Affairs
UN	United Nations
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

Since 2015, Bosnia and Herzegovina has experienced a significant arrival and transit of mixed migration flows of persons fleeing war and conflict, terror, poverty and deprivation in the Middle East. The majority of migrants and refugees enter the country from Serbia and Montenegro, although many border crossings remain undocumented. Since 2018, state institutions have registered over 74,300 migrants arriving in the country, about 29,300 of them during 2019 and 16,190 during 2020, and according to the International Organization for Migration (IOM), over 11,100 migrants during the first three quarters of 2021. As per records of international organisations, by the end of 2019, about 8,600 migrants and refugees were staying in reception facilities in Bosnia and Herzegovina, including almost 1,000 children, of whom 30 percent were estimated to be unaccompanied or separated. The country itself has a population of about 3.5 million.

In response to the high number of migrants and refugees arriving, temporary reception centres have been established in different parts of the country. Many migrants and refugees are however not registered and are staying in private accommodation and informal camps across the country.

Migrants and refugees arriving in Bosnia and Herzegovina are considered to be at risk of exploitation and trafficking, particularly children who are not correctly identified and assisted. As many of the migrants and refugees do not carry identity documents, the age of the young persons among them remains often unclear. Due to the limited access to age assessment procedures, migrant and refugee children risk being treated as adults. When not correctly identified as children, they are not referred to the services they would be entitled to by law, and are at risk of violence, exploitation and trafficking, including when accommodated together with unrelated adults. Thus far, however, there have been no official identifications of child victims of trafficking, or presumed victims, within this group.

Strengthening the age assessment procedure could contribute significantly to the correct identification of children within these mixed migration flows. The procedure offers also important opportunities for identifying experiences of violence, exploitation and trafficking of these children, as well as specific risks. In the current situation, the age assessment procedure is of a strategic cross-cutting concern as it is equally relevant and important for child protection, migration management and anti-trafficking strategies.

Age assessment is understood as a formal procedure by which authorities seek to establish the age, or range of age, of an individual or determine whether the person is an adult or a child. Age assessment is considered necessary as statutory age limits regulate the entitlements, rights and duties of individuals in different phases of their childhood and youth.[1]

There are no international or European treaties that regulate the age assessment procedure. International and European law provides however for legal standards, procedural safeguards and principles that are applicable for the context of age assessment. As age assessment procedures are typically implemented in the context of migration, the international and European standards

[1] United Nations Children's Fund, Age Assessment: A technical note, 2013, pp. 7-8.

that guide age assessment procedures relate to the rights of the child, including in the context of migration, child protection and the prevention of all forms of violence against children, as well as exploitation and trafficking.

Age assessment procedures need to uphold human rights principles such as the presumption of minor age, which means that a person whose age is unknown is given the benefit of the doubt and presumed to be a child as long as there are reasons to assume that the person is a child. In light of this principle, age assessment has to respect the rights of the child at all times and be carried out in accordance with the principle of the best interests of the child.

This study aimed to assess the relevance of age assessment in Bosnia and Herzegovina, to map and review the applicable law and policy frameworks and institutional mandates, as well as the current practice. It explored opportunities for strengthening or developing an age assessment procedure that is meaningful and feasible for the context of Bosnia and Herzegovina and conducted in accordance with international and European standards.

The study found that age assessment procedures have thus far not been regulated by law or policy in Bosnia and Herzegovina. In consequence, the approach to children whose age is uncertain in Bosnia and Herzegovina is today highly fragmented. This fragmented approach creates uncertainty for professionals working with and for children at risk of exploitation and trafficking and child victims. It creates also risks for the safety, wellbeing and development of children. There is a need to integrate and consolidate the existing elements of age assessment into a formal and well-regulated age assessment procedure. At the core of this development process should be considerations for ensuring that the procedure as such promotes the best interests of the child irrespectively of the child's social or national origin, background and migration story, while reducing risks for children.

The study identified a nascent promising practice in Canton Sarajevo, based on a multi-professional collaborative social interview of the child whose age is in doubt. This example of practice could become a basis for a model to be further defined and, possibly, replicated in other locations to ensure children whose age is in doubt are assessed and recognised as children in accordance with international and European standards.

The study identified statutory age limits established by the legislation at all levels in Bosnia and Herzegovina. These statutory age limits are one of the reasons why age matters for children, service providers and state officials, as age is often the main determining factor deciding about the entitlements of the child in relation to service provision, procedural guarantees and questions concerning status. Certainty about the age of a young person is an important element in state and civil society efforts to prevent and respond to all forms of violence and exploitation of children, including in the context of trafficking.

The findings reveal a comparatively strong law and policy framework in responding to children who are officially identified as (presumed) victims of trafficking, irrespective of whether the child is a citizen of Bosnia and Herzegovina or a non-national. The legal framework is sufficiently strong to offer legal protection for children from exploitation and trafficking, including in situations where the age of the child remains unclear.

In addition, the study identified specific consideration for general child rights principles, as afforded under the UN Convention on the Rights of the Child (CRC) and reiterated in Council of Europe standards and EU law, such as the right of the child to be heard and to have their views taken into consideration (CRC Article 12), the best interest of the child as a primary consideration (CRC Article 3), the right to non-discrimination (CRC Article 2), and the right to development (CRC Article 6). These principles are equally relevant and important for age assessment procedures and responses to child exploitation and trafficking. The development of a formalised procedure for age assessment can build on the identified laws and policies.

Thus far, the principle of the presumption of minor age has been formally recognised only with regard to non-national child victims of trafficking in the relevant Rulebook. Other groups of children do not enjoy the same safeguards in national law and policy. For migrant and refugee children, the Law on Aliens provides that they be treated in accordance with their self-identification. In consequence, where a child declares to be an adult, the child should be treated as an adult. The limited application of the principle of presumption of minor age to non-national child victims of trafficking creates differential standards based on status and could therefore be considered as discriminatory, as long as it is not matched by a comparable provision targeting migrant and refugee children – and children more generally.

Although the presumption of minor age is a fundamental principle for safeguarding children whose age is unknown, the principle is only meaningful if integrated into an age assessment procedure. Where the procedure remains undefined or is missing, there is a risk that adults are wrongly considered and treated as children and placed together with unrelated children in the same accommodation facilities, shelters or reception centres. The development of an age assessment procedure aims to prevent this.

For age assessment to be compliant with human rights and the rights of the child, the procedure, as well as the consequences that derive from it, have to be in accordance with international and European standards and, in particular, the principle of the best interests of the child. The development of an age assessment procedure in Bosnia and Herzegovina has to be addressed, therefore, in light of broader considerations for the rights and wellbeing of children and their protection against all forms of violence and exploitation, including in the context of trafficking.

The study noted that there are clearly challenges in ensuring that legal standards are translated into action in practice. The study identified existing measures and initiatives in relation to these general principles, which constitute opportunities that future efforts for the development of an age assessment procedure could build on.

Migrant and refugee children are generally considered to have a high risk of exploitation and trafficking combined with a reduced level of resilience due to their migration situation, which is often connected to a limited access to support services. In the mixed migration flows arriving in and transiting through Bosnia and Herzegovina, many adults and children are eager to proceed their journey to reach the European Union. They may not have a particular interest in being identified and assisted by the state authorities in Bosnia and Herzegovina. Their undocumented migration status and the closely monitored borders of the European Union may increase their risks

of exploitation and trafficking, particularly when accepting the services of smugglers to facilitate undocumented border crossing into an EU member State.

It has been reported that children and adults who transit Bosnia and Herzegovina arrive subsequently in EU member States where they apply for a residence permit or international protection. Some are refused entry to EU member States and are pushed back, which is not in compliance with international and European standards. The correct identification has therefore a national and transnational significance that may continue to concern state authorities of Bosnia and Herzegovina once these persons have left the country.

The mixed migration flows are arriving in a situation where the country's population is struggling with numerous social and economic challenges and a weak social welfare system. A significant proportion of the population is living in precarious conditions. About 50% of the population is considered to be at risk of poverty[2], 15% of the citizens cannot afford basic services, and children are disproportionately affected. According to UNICEF's Multiple Indicator Cluster Survey, 170,000 children in the country were living in poverty in 2011-2012.[3]

The state administration of Bosnia and Herzegovina is organised as a federal system where each entity has its own constitution, president, government, parliament and judiciary. This strongly decentralised structure is characterised by a highly complex legal system with four criminal and civil codes and correlated procedural codes, and an even more complex structure of administrative laws. This leads to a significant degree of fragmentation of competences and high administrative costs, which affect the efficiency of the state administration across all sectors, including with regard to child protection and social welfare, the reception of migrants and asylum-seekers, the prevention of human trafficking and assistance for victims of violence and exploitation.

The COVID-19 pandemic has created new challenges for the population. Persons who are living in precarious conditions and those who are exploited and trafficked or at risk, including children and young people, marginalised groups, as well as migrant and refugees are disproportionately affected by the limitations and risks associated with the pandemic and the control measures. The crisis has also increased the strain on the public administration.

This study was developed primarily as desk research, with supplementary information gathered through key informant interviews. The desk research built on an analysis of international and European standards concerning age assessment, the prevention and response to children who are victims of exploitation and trafficking or at risk, and the rights of the child more broadly. The analysis was complemented by a review of the law and policy frameworks in Bosnia and Herzegovina, institutional mandates and referral mechanisms for children in Bosnia and

[2] European Commission, Bosnia and Herzegovina 2020 Progress Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions; https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf;

[3] UNICEF Multi-Indicator Cluster Survey, https://mics-surveys-prod.s3.amazonaws.com/MICS4/Europe%20and%20Central%20Asia/Bosnia%20and%20Herzegovina/2011-2012/Final/Bosnia%20and%20Herzegovina%202011-12%20MICS_English.pdf. UNICEF defines child poverty as "children being deprived of the material, spiritual and emotional resources needed to survive, develop and thrive. This leaves them unable to enjoy their rights, achieve their full potential or participate as full and equal members of society." Unicef, Children Living in Poverty: Overview of Definitions, Measurements and Policy (2006), https://www.unicef.org/socialpolicy/files/Children_Living_In_Poverty.pdf.

Herzegovina, and a focused literature review. Key informants consulted and informed the study significantly. They included experts from state agencies and civil society, including service providers. In total, 15 key informants were consulted in the period between November 2020 and January 2021.

The study was carried out in the context of the joint programme of the European Union and the Council of Europe "Horizontal Facility for the Western Balkans and Turkey 2019-2022". In light of this context, the overall aim of the study is to contribute to promote the progressive implementation of relevant Council of Europe standards and recommendations, in particular the Council of Europe Convention on Action against Trafficking in Human Beings and the recommendations issued by the Convention's monitoring body GRETA, as well as the EU acquis promoting the rights of child victims of crime, and recommendations issued by the Committee on the Rights of the Child.

Based on the review of law, policy and practice, the study set out to develop proposals for action to strengthen the age assessment procedure in Bosnia and Herzegovina, with a view to proposing solutions for a more harmonised practice following common standards, and integrating the procedure into broader efforts to respond to child victims of violence, exploitation and trafficking and children at risk in the country.

PROPOSALS FOR ACTION

LEGISLATIVE AUTHORITIES

- **Reform the Law on Aliens** to reflect the principle of the presumption of minor age in relation to migrant and refugee children whose age is in doubt;
- Develop a **legal or policy framework to regulate the age assessment procedure** in accordance with international and European standards, the rights of the child and the principle of the best interests of the child.

ACTORS INVOLVED IN POLICYMAKING AND PROGRAMMING

- Development of a model procedure for age assessment of children in migration:

Strengthen the social interview method for age assessment developed in Canton Sarajevo by integrating it into an **age assessment procedure, regulated by law or policy,** and a **protocol for interagency and multi-disciplinary cooperation**. A formally regulated age assessment procedure would assign clear institutional responsibilities, promote accountability and ensure safeguards for children. It should also aim at connecting the age assessment procedure with existing referral mechanisms for children to ensure effective and appropriate follow-up in cases where violence, exploitation or trafficking is identified or suspected.

Legislate for and strengthen procedural safeguards, which are sensitive to the rights and needs of children, in accordance with international and European standards guiding age assessment procedures for children in the context of migration.

Promote **consensus on and dissemination and implementation of a national model procedure for age assessment, based on the social interview method**, accompanied by training, including joint interagency and multi-disciplinary training, a package of working methods and tools to be used in the procedure, as well as a handbook providing practical step-by-step guidance for practitioners. The procedure should build on and integrate, as far as possible, existing standards and tools used in the country, such as tools for child-sensitive interviewing and best interests determination. Guidance material should be published in the national languages.

- Information for children:

Strengthen the **awareness and information of migrant and refugee children** regarding access to counselling and reporting mechanism for children, including anonymous reporting, in cases where their rights have been infringed in the course of an age assessment procedure or in other contexts.

Develop child-friendly information material in different languages, print and digital media, videos or social media, including material developed with children, and building on information material for children already available, such as the video animation developed by the Council of Europe and the European Asylum Support Office.[4]

[4] Council of Europe, Age assessment for children in migration: Animation launched in 6 new languages and child-friendly leaflet, 18 June 2021.

- Data collection, research and monitoring:

Revisit the mechanisms for data collection and the preparation of national statistics on migrant and refugee children, asylum-seeking children, child victims of trafficking and presumed victims to ensure appropriate disaggregation of data. This might include the revision of forms used to register and report the age of the identified migrant, asylum-seeking and refugee children, with 18 years of age as an indicator in data disaggregation concerning adults and children and the possibility to register reasonable doubts about the person's age as an indication for referral to age assessment. The development of an age assessment procedure should include considerations for how to register and report the assessed age in national data records and statistics.

Activate the **monitoring of the age assessment procedure** and each of its steps in the country, at all levels, through research and other appropriate means and by consulting with children and young adults who have undergone age assessment, as well as the officials and professionals involved. Monitoring by human rights structures, where applicable, should contribute to strengthening the accountability of state and civil society actors at all levels.

- Strengthening national services for childcare, welfare and protection:

Continue promoting more effective measures to ensure all children born in Bosnia and Herzegovina are registered at birth. Under the UN Convention on the Rights of the Child, the **right to birth registration** applies without discrimination to citizens of Bosnia and Herzegovina and to children born to migrants and refugees who are residing now in Bosnia and Herzegovina.

Continue strengthening measures to ensure **equality of care and the right to development for all children** living in Bosnia and Herzegovina as citizens, migrants, asylum-seekers or refugees irrespectively of their immigration status or status as a victim of violence, exploitation or trafficking.

Strengthen aftercare for young care leavers and support for their transition to adulthood and independent live to ease any disruptions upon turning 18 for children without parental care, irrespective of the child's immigration status or status as victim of violence, exploitation or trafficking.

- International collaboration:

Engage national, regional and international actors in the Southeast European region to ***promote* the model procedure more widely throughout the region**.

In the medium and longer term, promoting **comparable age assessment standards and procedures throughout the region** might hold benefits for children and States. Where age assessment decisions are made in accordance with international and European standards and the best interests of the child, where they are valid, ethical and reliable, the age assessment decisions could be recognised by the state authorities in different countries of the region and beyond, including by European Union and Council of Europe member States.

INTERNATIONAL ACTORS

Offer and provide **technical assistance, financial and organisational support to the national process for the development of a model procedure for age assessment** of children in migration and children at risk of exploitation and trafficking, as well as implementing guidelines targeting competent authorities and other relevant public and civil society actors at the state, entity and local levels.

Support national stakeholders in developing and rolling out an interagency and multi-disciplinary training strategy on the model procedure for age assessment elaborated at the national level, including all relevant specific thematic considerations and tools required, such as child-sensitive interviewing tools, the writing of age assessment decisions, development of child-sensitive procedural safeguards and registration of personal data in respect of data protection rules.

Facilitate the exchange of experience, lessons learned and evidence regarding the use of age assessment interviews in different European countries, for instance through an international conference or consultation, with the aim to identify key lessons learned that could inform the development and dissemination process in Bosnia and Herzegovina, the South-East European region, and the member States of the European Union and the Council of Europe more broadly.

Afghanistan refugees in Velika Kladuša, Bosnia and Herzegovina Photo by: Anadolu Agency

INTRODUCTION

For several years, Bosnia and Herzegovina has received a high number of migrants and refugees, including unaccompanied children. Among the mixed migration flows, many adults and children are considered to be at risk of exploitation and trafficking, in particular children who are not correctly identified and assisted as such because they do not carry identity documents and their age remains often unclear. Due to the limited access to age assessment procedures, migrant and refugee children risk being accommodated together with unrelated adults. When not correctly identified as children, they might not be referred to the services they would be entitled to by law, and are at risk of violence, exploitation and trafficking. Thus far, however, there have been no official identifications of child victims of trafficking, or presumed victims, within this group.

Strengthening the age assessment procedure could contribute significantly to the correct identification of children within the mixed migration flows. It offers important opportunities for identifying experiences of violence, exploitation and trafficking of these children, as well as specific risks. In the current situation, the age assessment procedure is of a strategic cross-cutting concern as it is equally relevant and important for child protection, migration management and anti-trafficking strategies.

Age assessment is understood as a formal procedure by which authorities seek to establish the age, or range of age, of an individual and to determine whether the person is an adult or a child. Age assessment is considered necessary as statutory age limits regulate the entitlements, rights and duties of individuals in different phases of their childhood and youth.[5]

There are no international or European treaties that regulate the age assessment procedure. International and European law provides however for legal standards, procedural safeguards and principles that are applicable for the context of age assessment. The Council of Europe Steering Committee for the Rights of the Child is developing soft law standards on human rights compliant age assessment procedures aimed at policy makers and professionals.[6] This study is informed by existing guidance on age assessment issued by the Council of Europe.[7]

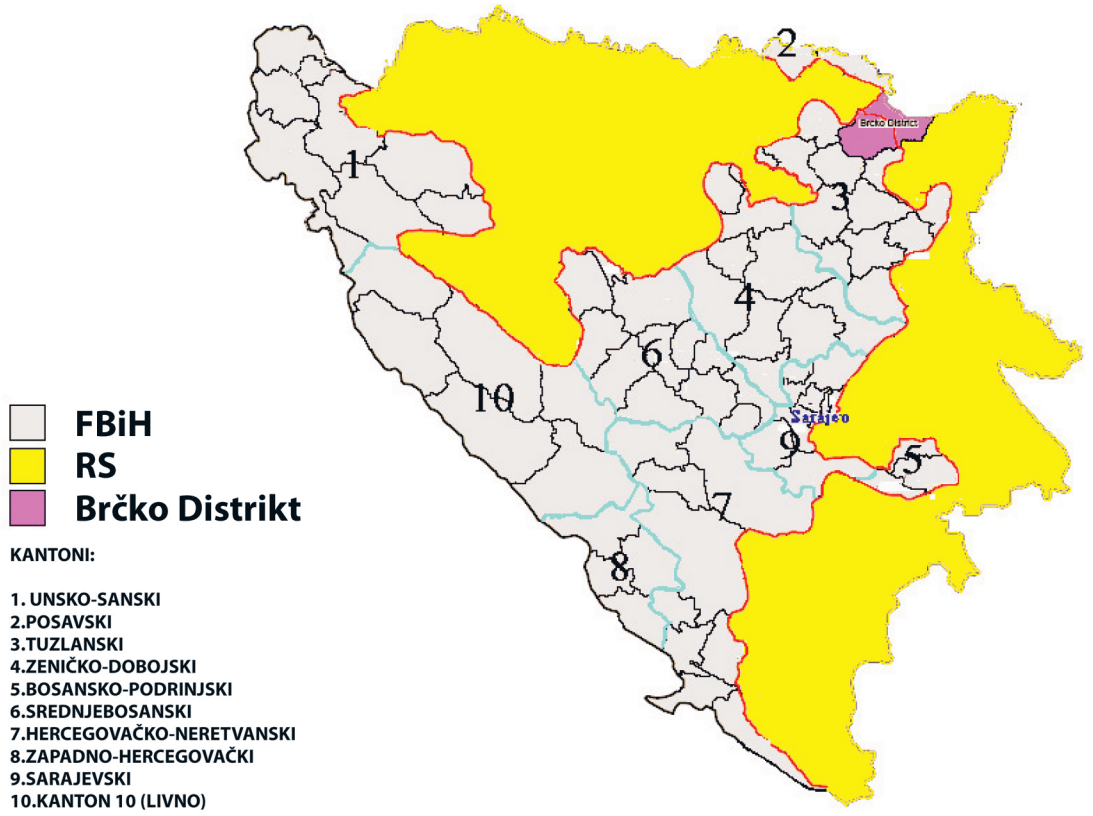
This study explores the national regulatory frameworks for age assessment of children in the context of migration who are at risk of exploitation and trafficking. It set out to assess the current age assessment practice and to compare it against international and European standards. On this basis, the aim is to propose key steps and principles guiding a model procedure for age assessment of children in migration, which could inform the continued work in this field in Bosnia and Herzegovina.

[5] United Nations Children's Fund, Age Assessment: A technical note, 2013, pp. 7-8.
[6] Council of Europe, Children and migration, accessed on 21 September 2021.
[7] Council of Europe, Age assessment for children in migration, A human rights-based approach, A guide for policy makers, Building a Europe for and with children, 2019. 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. Council of Europe, Council of Europe Member States' Age Assessment Policies, Procedures and Practices Respectful of Children's Rights, Council of Europe, Ad hoc Committee for the Rights of the Child (CAHENF), Drafting Group of Experts on Children's Rights and Safeguards in the context of Migration (CAHENF-Safeguards), 2017.

Whereas this study is based on the rights of the child and other international and European standards as a reference framework, it aspired to be guided by the national context when proposing further action. This required consideration for the specific organisation of the state of Bosnia and Herzegovina and its decentralised federal system, the specific socio-economic situation of the population, as well as the influence of the recent pandemic.

The federal system of Bosnia and Herzegovina

As a decentralised federal system, the state of Bosnia and Herzegovina is composed of the Federation of Bosnia and Herzegovina (FBiH), Republika Srpska (RS), as well as Brčko District of Bosnia and Herzegovina (BDBiH), a single administrative unit of self-government under the sovereignty of Bosnia and Herzegovina. Each entity has its own constitution, president, government, parliament and judiciary.



Map of Bosnia and Herzegovina's federal system (image source: www.parco.gov.ba)

The Federation of Bosnia and Herzegovina consists of ten Cantons, federal units with their own constitutions, governments and judicial powers. The Cantons operate under the laws of the Federation of Bosnia and Herzegovina and cantonal laws, and have a sub-structure of municipalities and cities that constitute local self-government units with executive and legislative powers. Republika Srpska comprises one level of local self-government with 57 municipalities. Brčko District falls within state legislation, whereby its fields of competence are equal to those of the two entities, including executive, legal and judiciary authorities.

The state administration of Bosnia and Herzegovina has 14 layers of governance and legal systems, 13 constitutions, over 332 administrative units and over 150 ministries, including the ministries of each canton within the Federation of Bosnia and Herzegovina. The country has a complex legal system with four criminal and civil codes (state, entities and Brčko District) and correlated procedural codes, and an even more complex structure of administrative laws. This strongly decentralised structure is connected with very high administrative costs.[8] It leads to a significant degree of fragmentation of administrative and legislative competences, which affects the efficiency of the state administration across all sectors, including with regard to the implementation of laws and policies for child protection, the reception of migrants and refugees and the prevention of human trafficking.

The state structure reflects the composition of the population of Bosniacs (50%), Serbs (31%), Croats (15%), others (3%) and non-declared (1%). There are three official languages (Bosnian, Serbian and Croatian) and two alphabets (Latin and Cyrillic).[9]

The multi-level governance system of Bosnia and Herzegovina and the diversity of state structures in the entities have to be born in mind for the development of a model procedure on age assessment. A model procedure could only be meaningful for replication throughout the country if it leaves sufficient margin for adaptation to diverse institutional mandates, competences and legal frameworks at entity and local levels.

The socio-economic situation of the country

Bosnia and Herzegovina is classified as a middle-income country. Approximately 50% of the population is considered to be at risk of poverty[10] and 15% of the citizens cannot afford basic services, such as food, clean water, fuel or healthcare. Children are disproportionately affected by poverty. According to UNICEF's Multiple Indicator Cluster Survey (MICS) 2011-2012, 170,000 children in Bosnia and Herzegovina are living in poverty.[11]

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[8] Administrative costs have been estimated at 50 percent of gross domestic product (GDP), CIA World Factbook (2020); https://www.cia.gov/the-world-factbook/countries/bosnia-and-herzegovina/;

[9] Ministry of Human Rights and Refugees of Bosnia and Herzegovina, Revised Common Core Document, Part of Reports of State Parties, 2010; http://www.mhrr.gov.ba/PDF/LjudskaPrava/common%20core%20document%20BH-rev-ENGLISH.pdf;

[10] European Commission, Bosnia and Herzegovina 2020 Progress Report Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions; https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/bosnia_and_herzegovina_report_2020.pdf;

[11] UNICEF Multi-Indicator Cluster Survey, https://mics-surveys-prod.s3.amazonaws.com/MICS4/Europe%20and%20Central%20Asia/Bosnia%20and%20Herzegovina/2011-2012/Final/Bosnia%20and%20Herzegovina%202011-12%20MICS_English.pdf.
UNICEF defines child poverty as “children being deprived of the material, spiritual and emotional resources needed to survive, develop and thrive. This leaves them unable to enjoy their rights, achieve their full potential or participate as full and equal members of society”. UNICEF, Children Living in Poverty: Overview of Definitions, Measurements and Policy (2006), https://www.unicef.org/socialpolicy/files/Children_Living_In_Poverty.pdf.

Bosnia and Herzegovina spends 4.6% of its Gross Domestic Product (GDP) on social assistance benefits, which is largely comparable to the average spending in many other European countries. The social benefits and services for children and families are however often insufficient, unequal and do not meet the basic needs of children. The number of school dropouts is very high in Bosnia and Herzegovina. According to the government's Platform for the Development of Preschool Education for the period 2017 to 2022, only 14% of the children aged up to six years old are enrolled in preschool education, whereas children under 3 years of age make up for 9.5% of the total number of children enrolled at a pre-school age.[12]

Bosnia and Herzegovina's HDI value for 2018 was 0.769, by which the country is ranking 75th out of 189 countries and territories.[13] The country's low human development index and high unemployment rate are motivating citizens, especially young people, to seek better-paid jobs abroad, even under precarious conditions and fraudulent work contracts.

A weak welfare system is creating challenges for the implementation of the rights of the child in Bosnia and Herzegovina. This particularly affects children and families struggling with social and economic marginalisation, children without appropriate care, particularly those living in poor single-parent households, children from dysfunctional families, victims of violence, exploitation and neglect, and children with behavioural problems, as well as migrant and refugee children. Those children are facing particular challenges in accessing education, social welfare and other relevant services Children with disabilities and Roma children have a high risk of trafficking and exploitation, including in child labour.[14]

The Roma population lives in conditions of extreme poverty and social marginalisation. Many children have never been registered in birth records, do not have identity documents and are therefore deprived of social welfare and healthcare. The 2012 MICS[15] reports that only 2% of Roma children aged 3 to 5 years old are enrolled in organised early childhood education programmes.

Where the age of a Roma child is in doubt, the local officials and service providers would count on the knowledge of the community to assess the child's age, without resorting to a formal age assessment procedure. This study did not identify any research that has assessed the quality of this unregulated practice and its impact on the rights of Roma children. More research would be required to understand if and how Roma children who have not been registered at birth might benefit from a formal age assessment procedure.

The weak socio-economic situation in the country poses financial limitations to the development of an age assessment procedure, particularly in view of the high numbers of young migrants and refugees arriving in the country. In particular, the state systems and services will struggle significantly to respond effectively to migrant and refugee children with disabilities and Roma children who migrate within the region.

[12] Official Gazette of Bosnia and Herzegovina No. 2/18; Platforma za razvoj predškolskog odgoja i obrazovanja u Bosni i Hercegovini za razdoblje 2017-2022, https://propisi.ks.gov.ba/content/platforma-za-razvoj-pred%C5%A1kolskog-odgoja-i-obrazovanja-u-bosni-i-hercegovini-za-razdoblje

[13] Bosnia and Herzegovina – Human Development Index (HDI), https://countryeconomy.com/hdi/bosnia-herzegovina;

[14] US Department of Labour, Child Labour and Forced Labour Reports, Bosnia and Herzegovina; https://www.dol.gov/agencies/ilab/resources/reports/child-labor/bosnia-and-herzegovina;

[15] https://datacatalog.worldbank.org/dataset/bosnia-and-herzegovina-multiple-indicator-cluster-survey-2011;

Any model procedure should operate in a cost-effective way and reduce the financial burden on the state administration and service providers as far as possible. Measures to promote the rights and best interests of migrant and refugee children shall be taken with a view to continued efforts to achieve equality of care and equal opportunities for all children in the country. Experience shows that integrated child protection systems[16] with a single referral mechanism that works for all children at risk, may be best place to respond to children with diverse backgrounds in situations where public and private resources are limited.

The impact of the COVID-19 pandemic on risks of exploitation and trafficking

The COVID-19 pandemic has created new difficulties for adults and children who are exploited or at risk. Measures adopted to control the pandemic included quarantine and curfews, restrictions on movement and travel, closure of schools, home schooling and distance learning. In consequence, many children spent more time online for educational purposes, social contacts and entertainment, which is considered to be connected to an increased risk of potentially harmful content or contacts in the digital environment. The pandemics resulted also in a limited access to community support services, health services, sports and leisure time activities, as well as reduced social contacts. These limitations have had an impact on the mental health of many citizens of Bosnia and Herzegovina, including children.[17] The NGO "Nova generacija", which is operating the SOS line for domestic violence "Plavi telefon" (Blue Phone) noted an increase in reports during the pandemic.[18]

UNODC recognised that the identification of victims of human trafficking and their referral to social protection schemes may become more challenging during the pandemic.[19] Interpol reports that the restrictions imposed by European governments in an effort to control the pandemic and the ensuing global economic consequences will likely increase the number of at-risk children and the likelihood of them being exploited and trafficked, including through or on the internet.[20]

In Bosnia and Herzegovina, the COVID-19 pandemic has affected the work of law enforcement and their operational capacity in relation to the identification and investigation of cases or suspicions of exploitation and trafficking of children, as their role in controlling the compliance with prevention measures created additional strain on already scarce capacities. The pandemic affected the work of the state administration, social services and government institutions, and the limited daily working hours reduced the access for the public. The government of Bosnia and Herzegovina has diverted a part of the limited public resources to address the pandemic, while already heavily depending upon international assistance and support. At the same time, the international financial support for NGOs in Bosnia and Herzegovina decreased, and this led to a

[16] European Union Agency for Fundamental Rights, Child protection systems, undated.

[17] Safer Internet Centre of Bosnia and Herzegovina, www.sigurnodijete.ba; https://www.unicef.org/bih/en/press-releases/usaid-and-unicef-procure-communication-equipment-centres-mental-health-within-covid;

[18] Statistical records of the NGO "Nova generacija" operating the SOS line for domestic and related violence "Plavi telefon/Blue Phone" show an increase in reports to the SOS Line during the pandemic - records were presented during the Conference on Risks of Digital Technologies hosted by the Tijana Jurić Foundation in Belgrade, in December 2020;

[19] UNODC - United Nations Office of Drugs and Crime, *Thematic Brief: Impact of the COVID-19 Pandemic on Trafficking in Persons*, 2020; https://www.un.org/ruleoflaw/wp-content/uploads/2020/05/Thematic-Brief-on-COVID-19-EN-ver.21.pdf;

[20] Interpol, COVID-19 Impact on Migrant Smuggling and Human Trafficking, 2020; https://www.interpol.int/en/News-and-Events/News/2020/COVID-19-impact-on-migrant-smuggling-and-human-trafficking;

reduction in the services provided by NGOs.[21] During the first phase of the pandemic (March – June 2020) all court procedures were interrupted for a few months, which slowed down the proceedings and delayed the access to justice.[22]

Overview of the report

This study was carried out in the context of the joint programme of the European Union and the Council of Europe "Horizontal Facility for the Western Balkans and Turkey 2019-2022". The programme aims at assisting state and civil society actors in South-East Europe to comply with the Council of Europe standards and European Union acquis in the framework of the enlargement process. Within this broader programme, the Council of Europe is implementing the Horizontal Facility Action on "Preventing and Combating Trafficking in Human Beings in Bosnia and Herzegovina", in the time frame from 24 May 2019 to 31 December 2022. The Action aims to assist national institutions to follow up on the recommendations of the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina. It aims thereby to enhance the protection of persons who are victims of trafficking and to promote stronger safeguards for their rights.

One of the main components of the Action concerns prevention and responding to child trafficking in Bosnia and Herzegovina. One of the themes to be addressed in this context is research on age assessment of children at risk of trafficking, with the aim to inform the authorities on methods taking into account psychological, cognitive and behavioural factors and thus enabling them to review the existing procedures to ensure that the best interests of the child are effectively determined and protected. The resulting findings and proposals for action shall inform the continued law reform process, policy making and programming, as well as training and other targeted measures to support the human rights compliant age assessment in Bosnia and Herzegovina.

This study is structured as follows:

Chapter 1 provides an overview of statutory age limits in Bosnia and Herzegovina. This is considered important to understand why and how age determines the access of children to rights, entitlements and services in the country and identifies, in consequence, the areas where age assessment is particularly pertinent.

Chapter 2 presents the age assessment practice identified by this study – the social interview method developed in the Canton of Sarajevo. A recent practice, this method offers a valuable foundation on which an age assessment procedure could be developed and sensibly be disseminated throughout the country.

Chapter 3 outlines the main steps of an age assessment procedure with quality standards and requirements that need to be in place to ensure the procedure is carried out in accordance with European and international standards. This model procedure is ambitious for the national context

[21] Information shared at coordination meetings of stakeholders responsible for anti-trafficking activities in Bosnia and Herzegovina;
[22] High Judicial and Prosecutorial Council of Bosnia and Herzegovina,https://vstv.pravosudje.ba/;

of Bosnia and Herzegovina and, in fact, for countries throughout Europe. It may therefore not be realistic to aspire a full translation of this model to the national context. Nonetheless, the model can guide the deliberations to develop and regulate an age assessment procedure with due respect to international and European standards.

Chapter 4 discusses general principles and human rights standards that an age assessment procedure has to respect.

The conclusions summarise the main findings of the study and propose a set of actions to be considered by national and international actors to promote the development and dissemination of a model procedure for age assessment of children in migration, including children at risk of exploitation and trafficking, child victims and presumed victims.

Methodology

This report was developed through a multi-step process involving a literature review and a consultation phase involving key informants from relevant institutions and organisations in Bosnia and Herzegovina. The preliminary findings were presented at a roundtable meeting convened on 19 May 2021[23], and the outcomes of the discussions with leading actors from state authorities, specialised institutions and organisations, as well as service providers informed the finalisation of the study. In addition, the Regional Conference "Acting Together in the Face of Crisis: Protecting children from trafficking and exploitation in the Western Balkans" organised by the Council of Europe and the European Union and convened on 22 and 23 June 2021, informed the study process.

The desk research comprised several streams of analysis: One part focused on an analysis of international and European standards concerning age assessment and how it relates to the reception of children in migration and the prevention of and response to exploitation and trafficking. The second part reviews how these international and European standards are reflected in the law and policy frameworks in Bosnia and Herzegovina, in institutional mandates and referral mechanisms for children. A third component assessed the level and quality of implementation of these standards for children in the country, looking at children at risk of exploitation and trafficking, as well as child victims, with a particular focus on migrant and refugee children. The objective of this review was to understand in how far age, and the correct identification and recognition of children, matters for ensuring children are referred to age-appropriate and rights-based services in Bosnia and Herzegovina.

Key informants were consulted to gather the expertise of state officials, professionals from the civil society, including service providers, and representatives of international organisations. Between November 2020 and January 2021, fifteen key informants were consulted, including officials from the Ministry of Security and the Ministry of Human Rights and Refugees, the State Investigation and Protection Agency, the Federal Police Directorate, the State Prosecutors Office and the Prosecutors Office of the Federation of Bosnia and Herzegovina, the Centres for Social

[23] European Union and Council of Europe Horizontal Facility Action "Preventing and Combatting Trafficking in Human Beings in Bosnia and Herzegovina", Age assessment procedures, Round Table, 19 May 2021 (online event).

Work in Banja Luka and Sarajevo, as well as informants from the University of Criminology in Sarajevo, the Organisation for Security and Cooperation in Europe (OSCE), the International Centre for Migration Policy Development (ICMPD), and four staff members of civil society organisations, including organisations of the Roma population and organisations providing assistance services to victims of human trafficking. The roll-out of the study was impacted by the pandemics, particularly the consultative part, so that meetings and consultation had to be mostly organised in a digital setting online.

1. THE RELEVANCE OF AGE: STATUTORY AGE LIMITS UNDER INTERNATIONAL, EUROPEAN AND NATIONAL LAW

Under international human rights law, age marks the distinction between children and adults. All children enjoy the rights and safeguards afforded under the UN Convention on the Rights of the Child, which defines a child as any person under 18 years of age (Article 1). The age of majority is the age at which a child becomes an adult and acquires full legal capacity.[24] Up to the age of majority, children require the support of a parent or guardian to complement their limited legal capacity in formal procedures and decisions and in administrative or judicial proceedings.

Whereas the UN Convention on the Rights of the Child identifies the age of majority, international and European law refrain from determining other age limits and leave this to the discretion of national legislative authorities. Discrimination on the grounds of age is prohibited under the UN Convention on the Rights of the Child (Article 2), under Article 21 of the EU Charter of Fundamental Rights, Article 14 the European Convention on Human Rights and Fundamental Freedoms[25] and numerous other European and international instruments. Preventing discrimination does not simply mean equal treatment for all children. Affirmative action, i.e. the "legitimate differentiation in treatment of individual children" is important to prevent and address marginalisation and exclusion. The Committee on the Rights of the Child has "consistently underlined the need to give special attention to disadvantaged and vulnerable groups".[26]

The UN Convention on the Rights of the Child affords the right of the child to preserve their identity (Article 8). The correct identification of the child's age and their official recognition as being underage forms part of the right of the child to preserve the own identity.

Age is therefore an important element of a person's identity and has implications on status. Where a person's age is uncertain, undocumented or disputed, it will be difficult to apply these statutory age limits correctly. This may be the case where a child has not been registered at birth, has lost their identity documents due to migration or flight, or is for other reasons not in a position to provide documentary evidence of their age. In these cases, age assessment procedures might be initiated to determine if a person is an adult or a child, or to decide about specific entitlements and rights of a person, in accordance with his or her age.

National legislation typically defines statutory age limits to regulate the rights, entitlements or obligations of citizens, state authorities and service providers. Establishing the age of a child can be decisive, therefore, for the child to obtain access to services for safety and protection, wellbeing and development, as well as social and political participation. In many countries, statutory age limits are relevant for the right of the child to access education or compulsory schooling. Young age helps to protect children against child labour, child marriage or forced marriage, conscription into military service and participation in active combat. Children under 18 years of age have the

[24] European Union Agency for Fundamental Rights, Age of Majority;
[25] See European Court of Human Rights, Guide on Article 14 of the European Convention on Human Rights and on Article 1 of the Protocol No. 12 to the Convention, Prohibition of discrimination, Updated on 31 August 2021.
[26] United Nations Children's Fund, Implementation Handbook for the Convention on the Rights of the Child, Fully Revised Edition, prepared for UNICEF by Rachel Hodgkin and Peter Newell, New York and Geneva, 2002, p. 19.

right to special protection against all forms of violence and exploitation, including in the context of trafficking and sale. Specific safeguards exist to protect child victims of crime during criminal investigations and proceedings and to ensure they receive support for recovery and rehabilitation.

Where children are in trouble with the law, young age is associated with special procedures and safeguards in the juvenile justice system.[27] For children placed in alternative care or in reception centres for migrants and refugees, turning 18 years old means that the young adult loses the entitlement to care services and the support of a guardian. To ensure the continued support for the child's transition to adulthood, the UN Guidelines for the Alternative Care of Children provide for aftercare services for children ageing out of care. Where aftercare is regulated under national law, an age limit is typically defined, so that the verification of age can be relevant also with regard to young adults.[28]

Under international and European law, migrant and refugee children enjoy special safeguards and rights, such as the placement in child-friendly accommodation, services for care and protection, access to education and training, and the support of a guardian for unaccompanied children. Unaccompanied children have the right to a durable solution in accordance with the best interests of the child. Where return or repatriation is determined to be in the best interests of the child, the competent state authorities are held to ensure the child receives protection and support in preparation for the return, during the journey and after return. Children who seek asylum, unaccompanied or together with family members, have a right to have child-specific grounds of asylum recognised.

Children who are involved in administrative or judicial proceedings, irrespective of whether they concern civil, penal or administrative matters, enjoy procedural safeguards that are sensitive to their rights and individual needs, such as the right to child-friendly information, the right to be heard, guardianship and representation, a timely and transparent procedure with clear legal reasoning and access to remedies. Procedural safeguards in the context of the age assessment procedure are discussed in more detail in Chapter 4.

Age is therefore a decisive factor that determines the access of children to services. Where children are not correctly identified, they risk remaining excluded from services they are entitled to or receiving services that are inappropriate for their specific age and needs. This may be connected to risks for their safety, for instance where children are accommodated together with unrelated adults. It may prevent children from accessing education or health care services necessary for their healthy development. Where children do not receive information adapted to their age and maturity, they may be prevented from participating in a meaningful way in a service provider's assessment of their situation, investigations and proceedings concerning them or complying with administrative duties such as registering as migrants.

[27] Council of Europe, Guidelines on Child-friendly Justice, 2011. Directive (EU) 2016/800 of the European Parliament and of the Council of 11 May 2016 on procedural safeguards for children who are suspects or accused persons in criminal proceedings.
[28] United Nations General Assembly, Guidelines for the Alternative Care of Children, Resolution adopted by the General Assembly on the report of the Third Committee (A/64/434) 64/142, 24 February 2010.

To understand the relevance of age and, in consequence, of age assessment, in Bosnia and Herzegovina, the following section explores statutory age limits defined in relevant legislation, considering laws at the state and entity levels and of the Brčko District.

Legal definitions of a "child" and statutory age limits in Bosnia and Herzegovina

Although the term "child" is widely used in national legislation, there is currently no unified legal definition of the "child" in Bosnia and Herzegovina. In some contexts, criminal codes, child protection laws, family laws, labour laws and other legislation refer to the child as a person who has not yet completed 18 years of age. Some laws, however, do not define the term "child" and some criminal laws differ between a "child" and a "minor". The definition of a "child" and statutory age limits differ not only between sectoral laws but also between legislation at the national and sub-national levels:

Social protection laws:

Entity laws on social protection[29] define a child as a "person up to 18 years of age", while the Law on Social Protection of Brčko District[30] does not provide for a definition of a child.

Laws on family matters and domestic violence:

Family laws in Bosnia and Herzegovina[31] do not provide for a definition of a child.[32] The family laws of the entities and the Brčko District refer to a "minor" in relation to marriage and provide that the court may allow a "minor" over 16 years old to get married. According to the entity laws on protection against domestic violence, a child is any family member under the age of 18 years old.[33]

Laws on education:

The Framework Law on Primary and Secondary Education in Bosnia and Herzegovina[34] provides that a child is any person under the age of 18 years old, while the Law on Primary Education of Republika Srpska[35] and the Law on Primary and Secondary Education in Brčko District[36] do not define a child. Compulsory education begins at the age of six years old and lasts for eight years. In

[29] Law on Social Protection, Protection of Civil Victims of War and Protection of Families With Children of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina No. 36/1999, 54/2004, 39/2006, 14/2009, 7/2014 - decision of the Constitutional Court of BiH, 45/2016, 19/2017 and 40/2018; and Law on Social Protection of Republika Srpska, Official Gazette of Republika Srpska No 37/2012, 90/2016, 94/2019 and 42/2020;
[30] Official Gazette of Brčko District Bosnia and Herzegovina No. 1/04, 4/04, 19/07, 2/08, 21/18 and 32/19;
[31] Family Law of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina No. 5/2005, 41/2005 - correction, 31/2014 and 32/2019 – decision of the Constitutional Court; https://www.paragraf.ba/propisi/fbih/porodicni-zakon-federacije-bih.html;
Family Law of Republika Srpska, Official Gazette of Republika Srpska No. 54/2002, 41/2008, 63/2014 and 56/2019 – decision of the Constitutional Court; https://www.paragraf.ba/propisi/republika-srpska/porodicni-zakon.html;
[32] Ministry of Human Rights and Refugees, Combined Fifth and Sixth Report of Bosnia And Herzegovina on its Implementation of the Convention on the Rights of the Child, 2017; http://www.mhrr.gov.ba/ljudska_prava/djeca_bih/E%20Kombinovani%20V%20i%20VI%20periodicni%20izvjestaj%20BiH.pdf;
[33] Law on Protection from Violence Within the Family of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina No. 20/2013 and 75/2021; and Law on Protection of Family Violence of Republika Srpska, Official Gazette of Republika Srpska No. 102/12, 108/2013, 82/2015 and 84/2019;
[34] Official Gazette of Bosnia and Herzegovina No. 18/2003 and 88/2007; https://www.paragraf.ba/propisi/bih/okvirni-zakon-o-osnovnom-i-srednjem-obrazovanju-u-bosni-i-hercegovini.html
[35] Official Gazette of Republika Srpska No. 44/17, 31/18, 84/19, 63/20; ; https://www.vladars.net/sr-SP-Cyrl/Vlada/Ministarstva/mpk/PAO/Pages/Osnovno_obrazovanje.aspx
[36] Official Gazette of Brčko District Bosnia and Herzegovina No. 4/13, 48/16, 22/17 and 2/20; https://skupstinabd.ba/3-zakon/ba/Zakon%20o%20obrazovanju%20u%20osnovnim%20i%20srednjim%20s--kolama/06B20-20%20Zakon%20o%20obrazovanju%20u%20osnovnim%20i%20srednjim%20s--kolama%20u%20Brc--ko%20distriktu%20BiH%20-%20prec--is--c-eni%20tekst.pdf;

the Federation of Bosnia and Herzegovina, some Cantons have defined a child as a person under the age of 18 years old in laws on education, while others do not provide for a legal definition in this context.

Health insurance law:

Entity health insurance laws[37] and Brčko District law[38] do not define the term child but include children of different age groups within the definition of the insured person.[39]

Criminal law:

The criminal legislation of Bosnia and Herzegovina uses the terms "child" and "minor" in relation to different age limits and contexts. The criminal codes of Bosnia and Herzegovina[40], Federation of Bosnia and Herzegovina[41] and Brčko District[42] define a child as a person who has not reached the age of 14 years old, whereas children aged between 14 and 17 years old are considered "minors". The Criminal Code of Republika Srpska states that child victims of criminal offences are under 18 years old. Amendments to the Criminal Code of the Federation of Bosnia and Herzegovina are in the parliamentary procedure and include a definition of a child in accordance with the UN Convention on the Rights of the Child (Article 1). There are no consistent provisions with regard to the legal definition of a "child victim of trafficking" in Bosnia and Herzegovina.

The entity Criminal Codes and Criminal Code of Brčko District prohibit any sexual act with a child under 14 years old, also where they are considered voluntary or initiated by a child. The extramarital union of an adult with a child under the age of 16 years old is considered a criminal offence under all criminal codes.[43]

The Laws on the Protection and Treatment of Children and Juveniles in Criminal Proceedings of the Federation of Bosnia and Herzegovina[44] and Republika Srpska[45] define a child as "any person

[37] Law on Health Insurance of the Federation of Bosnia and Herzegovina, Official Gazette of the Federation of Bosnia and Herzegovina No. 30/97, 7/02, 70/08, 48/11 and 36/18; https://www.fmoh.gov.ba/index.php/zakoni-i-strategije/zakoni/zakon-o-zdravstvenom-osiguranju; Law on Health Insurance of Republika Srpska, Official Gazete of Republika Srpska No. 18/99, 51/01, 70/01,51/03,57/03,17/08,1/09, 106/09, 39/16 – decision of the Constitutional Court of BiH, 110/16, 94/19 and 44/20; https://www.paragraf.ba/propisi/republika-srpska/zakon-o-zdravstvenom-osiguranju.html;

[38] Law on Health Insurance of Brčko District Bosnia and Herzegovina , Official Gazette of Brčko District Bosnia and Herzegovina No. 19/20 – consolidated text; https://www.paragraf.ba/propisi/brcko/zakon-o-zdravstvenom-osiguranju-brcko-distrikta-bosne-i-hercegovine.html;

[39] „The insured may be a child who has reached the age of 15, i.e. an older minor up to the age of 18, who has not completed primary education or has not been employed after completing primary education, provided that he / she has registered with the Employment Service. The insured is also a child from birth, as well as children during regular schooling in primary and secondary schools, i.e. during studies at colleges and universities...."

[40]Official Gazette of Bosnia and Herzegovina No. 3/03, 32/03 – correction, 37/03, 54/04, 61/04, 30/05, 53/06, 55/06, 8/10, 47/14, 22/15, 40/15, 35/18 and 46/21 (Odluka Visokog predstavnika za BiH); https://www.paragraf.ba/propisi/bih/krivicni-zakon-bosne-i-hercegovine.html;

[41] Official Gazette of the Federation of Bosnia and Herzegovina No. 36/03, 21/04 - correction, 69/04, 18/05, 42/10, 42/11, 59/14, 76/14, 46/16 and 75/17 ; https://www.paragraf.ba/propisi/fbih/krivicni-zakon-federacije-bosne-i-hercegovine.html;

[42] Official Gazette of Brčko District of Bosnia and Herzegovina No. 19/2020 – consolidated text; https://www.paragraf.ba/propisi/brcko/krivicni-zakon-brcko-distrikta-bosne-i-hercegovine.html;

[43] Criminal Code of the Federation of Bosnia and Herzegovina, Article 216, https://www.paragraf.ba/propisi/fbih/krivicni-zakon-federacije-bosne-i-hercegovine.html; Criminal Code of Republika Srpska, Article 184, Official Gazette of Republika Srpska No. 64/2017, 104/2018, 15/2021 and 89/2021; https://www.paragraf.ba/propisi/republika-srpska/krivicni-zakon-republike-srpske.html; Criminal Code of Brčko District of Bosnia and Herzegovina, Article 213, https://www.paragraf.ba/propisi/brcko/krivicni-zakon-brcko-distrikta-bosne-i-hercegovine.html

[44] Official Gazette of the Federation of Bosnia and Herzegovina No. 7/2014 and 74/2020; https://www.paragraf.ba/propisi/fbih/zakon-o-zastiti-i-postupanju-sa-djecom-i-maloljetnicima-u-krivicnom-postupku.html;

[45] Official Gazette of Republika Srpska No. 13/2010, 61/2013 i 68/2020; https://www.paragraf.ba/propisi/republika-srpska/zakon-o-zastiti-i-postupanju-sa-djecom-i-maloljetnicima-u-krivicnom-postupku.html;

who has not reached 18 years of age". The age of criminal responsibility in Bosnia and Herzegovina is 14 years.[46]

Constitutional law:

The Constitution of Bosnia and Herzegovina provides for the automatic incorporation of the UN Convention on the Rights of the Child and other international treaties to which Bosnia and Herzegovina is a State party (Annex I of the Constitution, see Box 1). The international treaties listed in the Constitution's Annexe take precedence where national law is not in compliance with the standards they provide. In consequence, the definition of a "child" provided for under the UN Convention on the Rights of the Child (Article 1) is directly applicable.

Although a unified definition of a child is not yet in place, the Constitution offers an important legal foundation for the age assessment procedure. On this basis, the definition of a child as any person under the age of 18 years old, as stipulated by the UN Convention on the Rights of the Child, could be applied consistently throughout the country in any laws, policies or protocols regulating age assessment procedures at the local, cantonal or entity level.

Child wintess givinig testimony in front of empty court (image source: https://lawtimesjournal.in/can-a-child-testify/)

[46] Law on Protection and Treatment of Children and Juveniles in Criminal Proceedings adopted in Republika Srpska in 2010, in Brčko District to Bosnia and Herzegovina in 2011 and in Federation of Bosnia and Herzegovina in 2014; Official Gazette of Bosnia and Herzegovina No. 3/2003, 32/2003 - correction, 36/2003, 26/2004, 63/2004, 13/2005, 48/2005, 46/2006, 29/2007, 53/2007, 58/2008, 12/2009, 16/2009, 53/2009, 93/2009, 72/2013 and 65/2018; https://www.paragraf.ba/propisi/bih/zakon-o-krivicnom-postupku-bosne-i-hercegovine.html; Official Gazette of the Federation of Bosnia and Herzegovina No. 35/2003, 56/2003 - correction, 78/2004, 28/2005, 55/2006, 27/2007, 53/2007, 9/2009, 12/2010, 8/2013, 59/2014 and 74/2020; https://www.paragraf.ba/propisi/fbih/zakon-o-krivicnom-postupku-federacije-bosne-i-hercegovine.html; Official Gazette of Brčko District of Bosnia and Herzegovina No. 34/2013, 27/2014, 3/2019 and 16/2020; https://www.paragraf.ba/propisi/brcko/zakon-o-krivicnom-postupku-brcko-distrikta-bosne-i-hercegovine.html; Official Gazette of Republika Srpska No. 53/2012, 91/2017, 66/2018 and 15/2021; https://www.paragraf.ba/propisi/republika-srpska/zakon-o-krivicnom-postupku-republike-srpske.html;

Box 1: Constitutional law of Bosnia and Herzegovina

The Constitution of Bosnia and Herzegovina provides that the State and both entities are obliged to assure "the highest level of internationally recognised human rights and fundamental freedoms", including the right not to be held in slavery or servitude or to perform forced or compulsory labour,[47] the right to non-discrimination and additional human rights agreements to be applied through annexes. The Constitution incorporates the international human rights treaties to which the state is a party.[48] Article 2, for instance, provides that the „…rights and freedoms set forth in the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols shall apply directly in Bosnia and Herzegovina … and shall have priority over all other law".[49] The Constitution affords further that „the enjoyment of the rights and freedoms provided for in this Article or in the international agreements listed in Annex I to this Constitution shall be secured to all persons in Bosnia and Herzegovina without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

The constitutions of Bosnia and Herzegovina, Federation of Bosnia and Herzegovina, Republika Srpska and the Statute of Brčko District regulate the competences for the development and implementation of legal frameworks and policies in the multi-level jurisdiction. The competence for the implementation of international Conventions rests with institutions at the national level. This applies to policies concerning immigration, refugees and asylum- seekers, the implementation of international and inter-entity criminal law regulations.

Institutions in the entities and in Brčko District are responsible for guaranteeing human rights and fundamental freedoms, security policy and combatting crime, health and social policy, labour and employment policy, education, economic and financial policy, and citizenship policy. In the Federation of Bosnia and Herzegovina, the competences are divided between the entity and the 10 cantons, inter alia, in the areas of implementing human rights, healthcare, social policy, implementation of legislation and other regulations relating to citizenship, immigration and asylum.

The General Framework Agreement for Peace in Bosnia and Herzegovina[50] sets forth Bosnia and Herzegovina's legal alignment with the rights afforded under the UN Convention on the Rights of the Child. The general principles of the Convention are reflected in the legislation of Bosnia and Herzegovina at all levels of governance, including provisions concerning the best interests of the child. There is at present, however, no comprehensive overview of all legislation at the national, entity or canton levels to assess the compliance of national and sub-national laws with the Convention.[51]

In light of these complex constitutional provisions, the competences relevant for the development of an age assessment procedure for children in migration are spread across the multi-level governance system of the state, the entities and Brčko District, as well as the Cantons of the Federation of Bosnia and Herzegovina. The cooperation and coordination of state agencies and public authorities across all these levels would be required to develop a harmonised age assessment procedure and promote its consistent application in practice.

[47] Official Gazette of Bosnia and Herzegovina , No. 25/2009 – Amendment II; Article II (3); https://www.paragraf.ba/propisi/bih/ustav-bosne-i-hercegovine.html;

[48] Constitution of Bosnia and Herzegovina, Article II Human Rights and Fundamental Freedoms; The Annex includes among others the following treaties with relevance for the prevention and response to child trafficking: International Covenant on Civil and Political Rights (1966) and the Optional Protocols (1966 and 1989), International Covenant on Economic, Social and Cultural Rights (1966), Convention on the Elimination of All Forms of Discrimination Against Women (1979), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1987), European Convention for the Prevention of Torture, Inhuman or Degrading Treatment or Punishment (1987), Convention on the Rights of the Child (1989), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

[49]Article II. 1 and 2 of the Constitution of Bosnia and Herzegovina – Human rights and international standards; Convention for the Protection of Human Rights and Fundamental Freedoms (1950); https://www.coe.int/en/web/conventions/full-list?module=treaty-detail&treatynum=005;

[50] Known as the Dayton Peace Agreement, signed In Paris in 1995;

[51] World Vision & Stronger Voice for Children Network, Child Protection Index 2.0 in Bosnia and Herzegovina: Measuring Government Efforts to Protect Girls and Boys, 2019; https://www.wvi.org/sites/default/files/2019-06/Child%20Protection%20Index%202.0%20for%20BiH_engl_0.pdf;

The relevance of age in receiving migrant and refugee children

Over the past years, Bosnia and Herzegovina has experienced a significant increase of mixed migration flows and undocumented migration, which is related to the overall migration crisis in the Balkans during the last decade. Massive migration flows across the Western Balkans Route began in the second half of 2015 and lasted until 2016 when borders along this route were closed for migrants and refugees. The closure led to changed migration trends and the development of alternative routes of migrants and refugees through Greece, Albania, Macedonia or Bulgaria, through Montenegro and/or Serbia, passing through the territory of Bosnia and Herzegovina towards Croatia and further North and West to other EU member States. The Ministry of Security of Bosnia and Herzegovina reported organised smuggling and human trafficking operations facilitating the undocumented entry and transit through the country at a large scale in early 2017 with further increases from 2018 onwards.[52] Since 2018, state institutions have registered over 74,300 migrants arriving in the country, with about 29,300 of them during 2019 and 16,190 during 2020.[53] According to the International Organization for Migration (IOM) over 11,100 migrants are registered during the first three quarters of 2021[54]. As per records of international organisations, by the end of 2019, about 8,600 migrants and refugees were staying in reception facilities in Bosnia and Herzegovina, including almost 1,000 children, of whom 30 percent were estimated to be unaccompanied or separated.

Although some migrants and refugees who do not possess valid travel documents are stopped and refused entry at border crossings of Bosnia and Herzegovina by the Border Police, the majority, including unaccompanied children, approach one of the field offices of the Service for Foreigners Affairs[55] for expressing their intention to apply for asylum.[56] A person who has expressed the intention to apply for asylum shall be issued by The Service for Foreigners Affairs is responsible for issuing a Certificate of Intent to all persons who express their intention to apply for asylum. This certificate remains valid for 14 days. Within this timeframe, the person shall file an application for asylum to the Asylum Sector of the Ministry of Security of Bosnia and Herzegovina. Expressing intent to apply for asylum in Bosnia and Herzegovina is an instrument that allows the person to reside on the territory of Bosnia and Herzegovina for the duration of the validity.[57] Once the certificate has been issued, the persons are instructed on the "direction of movement", whereby they are referred to the Asylum Centre "Delijaš", or one of the temporary reception facilities in the country, dependent on the decision of the field office of the Service for Foreigners Affairs and the established identity and/or age of the person. According to the Law on Asylum, persons who apply for asylum are protected against return to the country where there is a real risk that they will be subjected to death penalty or execution, torture, inhuman or degrading

[52] Ministry of Security of Bosnia and Herzegovina, Sector for Immigration, Bosnia and Herzegovina Migration Profile for 2017 and 2019, 2020; http://www.msb.gov.ba/PDF/MIGRACIONI%20PROFIL_2017_%20HRV.pdf and https://dijaspora.mhrr.gov.ba/wp-content/uploads/2020/07/Migracijski-profil-Bosne-i-Hercegovine-za-2019.-godinu.pdf;
[53] Statistical records of state institutions provided for the purpose of this research and the Migration Profile of Bosnia and Herzegovina – a mechanism developed for gathering statistical data on migration and international protection, adopted by the Council of Ministers of Bosnia and Herzegovina since 2009; http://msb.gov.ba/dokumenti/arhiva/default.aspx?id=4362&langTag=bs-BA;
[54] Europe — Mixed Migration Flows to Europe, Quarterly Overview (July - September 2021) | Displacement (iom.int)
[55] Ministry of Security Sector for Immigration, Bosnia and Herzegovina Migration Profile 2019, 2020;
[56] Law on Aliens, Article 110;
[57] Law on Asylum, Article 32; Official Gazette of Bosnia and Herzegovina No. 11/16 and 16/16;

treatment or punishment, in accordance with the principle of non-refoulement (Articles 109 and 110).

Centar "Delijaš" Sarajevo (image url: https://sarajevotimes.com/wp-content/uploads/2014/09/asylum-center.jpg)

Although there are specialised accommodation centres and reception services for unaccompanied children in Bosnia and Herzegovina, it is not guaranteed that the children are referred to these services. Unaccompanied children are placed in not only in reception centres, but also in immigration detention centres and family-based accommodation. The reception centres are managed by state agencies or international organisations or in public-private partnership of international and national organisations with state agencies (see Box 2).

Box 2: Overview of reception centres and accommodation for unaccompanied children

State-run reception centres include the Asylum Centre "Delijaš" with a capacity of hosting 150 children, managed by the Asylum Sector of the Ministry of Security of Bosnia and Herzegovina[58]; Refugee Reception Centre "Salakovac" managed by the Ministry of Human Rights and Refugees of Bosnia and Herzegovina[59]; and the Immigration Detention Centre managed by the Service for Foreigners Affairs (SFA) of Bosnia and Herzegovina with a capacity of 120 persons.[60]

Temporary reception centres managed by international organisations, some of which in cooperation with SFA Bosnia and Herzegovina, have been established in mainly two cantons:

- Una-Sana Canton: "Sedra" in Cazin established in July 2018 with a capacity of 420 places for families and unaccompanied children; "Bira" in Bihać established in October 2018 with a capacity of hosting 1,500 persons, mainly families and unaccompanied children; "Borići" in Bihać established in January 2019 for single migrants; "Miral" in Velika Kladuša opened in November 2018 with 700 places for unaccompanied children[61] and "Lipa" for single men, established in April 2020.[62]
- Canton Sarajevo: "Blažuj" reception centre and former military barracks "Ušivak" established in 2018, both initially established for single migrants, families and unaccompanied children[63], whereas "Ušivak" currently accommodates only unaccompanied children and is managed by the Service for Foreigners Affairs of Bosnia and Herzegovina.

The accommodation facility "Centre for Children and Youth" in Doboj East, managed by the NGO International Forum of Solidarity-EMMAUS as per protocols signed with the Ministry of Security/Asylum Department and Service for Foreigners Affairs, has a capacity for hosting 130 unaccompanied children. In addition, there are many other children staying in private accommodation and informal camps across the country, who are not registered.[64]

During 2020, the Centre for Children and Youth accommodated and provided assistance to 34 unaccompanied minors who had expressed intention to seek asylum and were transferred from other reception centres in Bosnia and Herzegovina and 133 children who were identified in various locations in Bosnia and Herzegovina and referred by the Service for Foreigners Affairs field offices[65], originating mainly from Pakistan 69, Afghanistan 74, Egypt 8, Morocco 8, Algeria, Libya, Nepal and other countries.

As per state records[66], on 19 May 2021 the number of unaccompanied children placed in temporary reception centres were 8 in "Borići", 17 in "Miral", 43 in "Sedra", 7 in "Blažuj" and 151 in "Ušivak". There are further 350 children accommodated in families in "Borići", "Sedra" and "Ušivak" reception centres[67], as well as 14 in the "Centre for Children and Youth" in Doboj East[68].

[58] http://msb.gov.ba/onama/default.aspx?id=1673&langTag=bs-BA;
[59] Official Gazette of Bosnia and Herzegovina No. 6/14, Rulebook on the Functioning and House Rules of Refugee Reception Center Salakovac in Mostar; http://www.sluzbenilist.ba/page/akt/Dcg2n1d3tNQ=;
[60] http://sps.gov.ba/imigracioni-centar/;
[61] https://dijaspora.mhrr.gov.ba/wp-content/uploads/2020/07/Migracijski-profil-Bosne-i-Hercegovine-za-2019.-godinu.pdf;
[62] https://www.dw.com/hr/korona-pomogla-migrantima-u-bosni-i-hercegovini/a-53207523;
[63] https://dijaspora.mhrr.gov.ba/wp-content/uploads/2020/07/Migracijski-profil-Bosne-i-Hercegovine-za-2019.-godinu.pdf;
[64] IOM - UNHCR Interagency Coordination Meeting Minutes, December 2019, UN House, Sarajevo;
[65] Statistical records provided by NGO IFS-EMMAUS;
[66] Statistical overview/records by Service for Foreigners Affairs of Bosnia and Herzegovina from May 20, 2021 provided for purposes of this research;
[67] IOM - UNHCR Interagency Coordination Meeting Minutes, December 2019, UN House, Sarajevo;
[68] Statistical records provided by NGO IFS-EMMAUS;

While state systems are struggling to respond to these high numbers of migrants and refugees, many services are provided by NGOs and international organisations, such as accommodation, food, health care and protection. Many children are traumatised by experiences in their home countries or during the journey. Insufficient and inadequate reception facilities, overwhelmed child protection and asylum systems, and rising xenophobia, expose in particular migrant women, girls and boys to high risks of physical and gender-based violence, exploitation and trafficking.[69]

The key informants consulted for this study considered migrants and refugees to be at a particularly high risk of human trafficking.[70] NGOs providing free legal aid to migrants[71] reported that it was difficult to prevent or identify exploitation within the reception facilities, as smugglers and traffickers are amongst the migrants and refugees and cannot be easily differentiated from the group. They noted also that the limited access to age assessment procedures and guardianship services makes it difficult to correctly identify the children in the mixed migration flows and to refer them to appropriate shelter and services. In this situation, many children who are not correctly identified are at a high risk of exploitation and trafficking. In addition, it can be challenging to identify unaccompanied children transiting Bosnia and Herzegovina together with families or small groups of people. Research and experience of service providers noted that these small groups of unrelated children and adults, as well as families accompanying unaccompanied children, can pose risks of violence and exploitation but can also have a protective role. For service providers, it is often difficult to assess the nature and quality of these relations and to correctly identify if young people travelling in groups are underage.[72]

Although key informants from state agencies and NGOs are concerned that there may be victims of trafficking among the migrants and refugees, there have been no official identifications of child victims of trafficking or sexual exploitation within this group. As one of the reasons, key informants noted that many migrants and refugees are unwilling or scared to talk about experiences of exploitation, and many of them leave the reception centres overnight without informing the authorities or service providers. Some key informants suspect that they depart to continue their journey towards Western Europe, trying to avoid controls when crossing, in the so-called "Game"[73], the Croatian border.

Migrant children who are not in possession of any identity documents are considered to have a higher risk of human trafficking and exploitation. For this group of children, the official recognition as a child would make a significant difference, as it would help to refer them to accommodation facilities for children, higher quality nutrition, childcare services, education and related support services for children, and to separate them from smugglers, traffickers and other persons who might exploit or harm them. In the case of unaccompanied adolescents who do not have identity documents, age assessment is particularly important for obtaining access to services and preventing their placement, as "undocumented migrants", in immigration detention.[74]

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[69] UNICEF Situation Analyses of Children in Bosnia and Herzegovina, 2020; https://www.unicef.org/bih/media/4971/file/Situation%20Analysis%20of%20Children%20in%20Bosnia%20and%20Herzegovina.pdf;
[70] KIIs1-4 and KIIs 8-10;
[71] NGOs „Vaša prava" and „BH Women Initiative" (BHWI) interviewed for another Council of Europe study on trafficking in human beings for purposes of labour exploitaton;
[72] UNICEF, Making the invisible visible, The identification of unaccompanied and separated girls in Bulgaria, Greece, Italy and Serbia, 2020.
[73] "The Game" is a term migrants and refugees use to describe the practice of evading the Croatian (or other) police in their desperate and continuous attempts to cross the border to the European Union; European Union – Council of Europe Horizontal Facility Action "Preventing and Combatting Trafficking in Human Beings in Bosnia and Herzegovina", Age assessment procedures, Round Table, 19 May 2021 (online event).
[74] V. Feltz (2015), Age Assessment for Unaccompanied Minors; https://mdmeuroblog.files.wordpress.com/2014/01/age-determination-def.pdf;

The relevance of age in responding to child trafficking

As a post-war country in transition with close proximity to the European Union, a complex political structure and underdeveloped economy, Bosnia and Herzegovina has been an origin, destination and transit country of human trafficking for almost two decades. A high number of migrants, refugees and internally displaced persons, the challenges of building a social welfare state and effective migration management create the conditions for the exploitation of nationals and non-nationals, including in the context of trafficking. In the period 2000-2019, 1,552 persons have been officially identified as victims of human trafficking in Bosnia and Herzegovina,[75] 376 of them were children under 18 years of age.[76]

Age is decisive for the correct identification of child victims of trafficking under international, European and national law of Bosnia and Herzegovina. According to the international definition of child trafficking, a child has the right to be recognised as a victim of trafficking even where the traffickers did not resort to any of the "illegal means" that constitute a key element of the human trafficking definition concerning adults, such as coercion, threat or use of force, the abuse of power or of a position of vulnerability.[77] The distinct definition of child trafficking has been incorporated in the criminal codes at the national and entity levels of Bosnia and Herzegovina and in Brčko District.[78] Age determines also, to what degree the person who is a victim is entitled to special protection measures and safeguards.

The national law and policy framework regulating responses to child trafficking in Bosnia and Herzegovina is relatively strong and provides for important protection measures for child victims of trafficking and presumed victims. Non-national children who are presumed to be victims of trafficking are entitled to the same rights to care and protection as children who are citizens of Bosnia and Herzegovina.[79] Article 10(5) of the Rulebook stipulates that, if the age of the victim of trafficking cannot be determined with certainty, and there are reasons to assume that the victim of trafficking is a child, the person shall be treated as a child until the accurate age of the child has been determined.[80] The Rulebook provides for the presumption of minority of child victims of trafficking and presumed victims. Although this provision is strong and important, it is rarely applied in practice as most of the identified child victims and presumed victims carry identity papers.

This chapter explores in more detail the relevance of age in the identification of child victims of trafficking and children at risk.

[75] Ministry of Security of Bosnia and Herzegovina, State records of identified victims 2000-2019, http://msb.gov.ba/anti_trafficking/dokumenti/godisnji_izvjestaj/Archive.aspx?langTag=bs-BA&template_id=104&pageIndex=1;
[76] As per state records for the period 2005-2019 there are no offficial statistical records on the number of child victims of human trafficking for the period 1999-2004;
[77] United Nations Office on Drugs and Crime, Human Trafficking, 2011, accessed from http://www.unodc.org/unodc/en/human-trafficking/what-is-human-trafficking.html.
[78] Criminal Code of the Federation of Bosnia and Herzegovina, Article 210a. Criminal Code of Brcka District, Article 207a and 207b. Criminal Code of Republika Srpska, Article 198a, 198b, 198v.
[79] Rulebook on the Protection of Foreign Victims of Human Trafficking in Bosnia and Herzegovina, Article 20(2);
[80] Ibid ;

The duty to identify child victims of exploitation and trafficking

The Council of Europe Convention on Action against Trafficking in Human Beings recognises two important factors for the identification of victims of trafficking: one is that the identification of a person as a victim of trafficking is considered a 'process' rather than a single event (Article 10.2); the other is that correctly identifying victims of trafficking is often challenging for multiple reasons. In consequence, the official verification of a person's status as a victim of trafficking is not considered a precondition for granting access to assistance and a short-term regularisation of stay but can be understood as a possible outcome and consequence of support measures. A person is entitled to receive assistance and protection as a victim of trafficking when there are reasonable grounds to assume that the person is a victim.[81]

The Council of Europe Convention on Action against Trafficking in Human Beings provides that States parties shall make qualified personnel available for the identification of victims of trafficking and that different authorities and organisations shall collaborate in the identification process (Articles 10 and 35). The Explanatory Report to the Convention clarifies that the provision of assistance for victims of trafficking in accordance with the Article 12 of the Convention falls under the responsibility of the State party in whose territory the victim is located.[82]

For countries with a strong transit of migrants and refugees, such as Bosnia and Herzegovina, this implies an obligation to identify presumed victims of trafficking, adults and children, among migrants and refugees and to provide assistance to enable their correct identification. The age assessment procedure offers important opportunities to correctly identify children, to hear the child's story and assess the child's case and, in this context, to screen for indicators or signs of violence, exploitation and trafficking.

Recognising the difficulties in the identification of persons who are victims of trafficking, the Council of Europe Convention on Action against Trafficking in Human Beings uses the concept of 'presumed' victim of trafficking.[83] It refers to persons whom the authorities or service providers consider to be victims of trafficking or at risk and who are referred to specific support services while their cases are further assessed.[84] The concept of a 'presumed victim of trafficking' offers important opportunities to identify and assist children at risk as well as children who have been exposed to violence or exploitation, even where it is not immediately clear whether the case qualifies as trafficking in accordance with the relevant criminal law definition.

Whereas the Council of Europe Convention on Action against Trafficking in Human Beings holds States responsible for the identification of children who are victims of trafficking, the duty to identify is not limited to child trafficking cases. It is equally important that other contexts, in which children are exploited or are at risk of exploitation, are also identified and addressed with due

[81] Council of Europe Convention on Action Against Trafficking in Human Beings, Articles 10 and 13.
[82] Council of Europe Committee of Ministers, Council of Europe Convention on Action against Trafficking in Human Beings, Explanatory report, CM(2005)32 Addendum 2 final, 3 May 2005, par. 148.
[83] Council of Europe Convention on Action Against Trafficking in Human Beings, Article 13.
[84] Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights, National Referral Mechanisms, Joining efforts to protect the rights of trafficked persons, A practical handbook, OSCE/ODIHR, Warsaw, 2004, accessed from http://www.osce.org/odihr/13967, p. 17.

priority. The UN Convention on the Rights of the Child prohibits the exploitation of children in any form (Articles 19, 32-36), and States Parties have committed to assisting and protecting all children who are victims of violence or exploitation (Article 39). According to international standards, children who have been exploited in any form would be considered 'child victims of crime' and are entitled to support and assistance for their recovery and (re-)integration. As victims of crime, they enjoy special rights and safeguards in the context of judicial proceedings. From a child rights perspective, the identification of a trafficking situation is therefore equally important as the identification of situations of violence and exploitation of children more generally. Verifying a child's status as a victim of trafficking is a complex and, at times, a long-term process. Identifying a child as a victim of exploitation may often be more realistic and feasible even in the short term.

In Bosnia and Herzegovina, the identification of victims of human trafficking who are nationals of Bosnia and Herzegovina is regulated by the Rules on the Protection of Victims and Victims Witnesses of Human Trafficking Nationals of Bosnia and Herzegovina (hereafter: Rules).[85] The Rules define "responsible institutions" and "authorised organisations" in Bosnia and Herzegovina tasked with the identification and assistance of victims of human trafficking, including child victims. Pursuant to Article 4, an unofficial identification can be performed by any institution, CSO, physical or legal person who suspects that a person may be a victim of human trafficking. These cases should be reported to the State Investigation and Protection Agency or the Prosecutor's Offices or police departments at state, entities or Brčko District levels who conduct a formal interview and are responsible for the official identification of the person as a victim of trafficking. Article 7 stipulates that the victim or victim-witness is identified on the basis of a report or information gathered by the authorised institutions or organisations in Bosnia and Herzegovina or "facts collected during a voluntary interview with a person who is strongly believed to be a victim or victim-witness of human trafficking …". This provision enables service providers to continue assisting and supporting child victims, even where the victim status was not officially confirmed by a court verdict. The official recognition of a person as a victim of human trafficking requires the initiation of court proceedings and the conviction of the perpetrator for the criminal offence of trafficking in persons.

Identification of victims of trafficking who are non-nationals is regulated by the Rulebook on Protection of Foreign Victims of Human Trafficking in Bosnia and Herzegovina[86] (hereafter: Rulebook). The reporting in such cases is performed by the Service for Foreigners Affairs

[85] The Rules define in more detail the state, entity, cantonal and municipal bodies and institutions in Bosnia and Herzegovina that have statutory competencies to coordinate or implement activities to prevent and combat trafficking in human beings, and are responsible for providing assistance and protection. These bodies and institutions are: State Coordinator for Combating Trafficking in Human Beings and Illegal Immigration in Bosnia and Herzegovina , Ministry of Security of Bosnia and Herzegovina , State Investigation and Protection Agency of Bosnia and Herzegovina (SIPA), Interpol Bosnia and Herzegovina , Border Police of Bosnia and Herzegovina , Prosecutor's Office and Court of Bosnia and Herzegovina, Ministry of Human Rights and Refugees of Bosnia and Herzegovina , Agency for Gender Equality of Bosnia and Herzegovina , Ministry of Civil Affairs of Bosnia and Herzegovina , Ministry of Justice of Bosnia and Herzegovina , Ministry of Foreign Affairs of Bosnia and Herzegovina , and entity, cantonal and municipal institutions and organisations, as well as competent departments of Brčko District of Bosnia and Herzegovina for internal affairs, social, family and health care, science and education, displaced persons and refugees, Gender Centres, courts and prosecutors' offices.

[86] The Rulebook on the Protection of Foreign Victims of Trafficking in Human Beings also defines the institutional framework for the suppression of human trafficking and the responsible institutions: Ministry of Security of Bosnia and Herzegovina, Service for Foreigners Affairs, Border Police of Bosnia and Herzegovina , as well as prosecutor's offices, law enforcement agencies, inspection bodies and competent social protection bodies - centres for social work on state, entities, Brčko District of Bosnia and Herzegovina , cantonal and municipal level. The Rulebook also defines that services of direct assistance to victims of human trafficking can be provided by civil society organisations authorized by the state to have the capacity and resources to perform these tasks, who have signed protocols on cooperation with the Ministry of Security of Bosnia and Herzegovina.

responsible for interviewing and identification of non-national victims of trafficking. The identification and first interview conducted as part of the National Referral Mechanism are followed by a case assessment and planning and the referral to accommodation and assistance services.[87] With regard to non-national children, the Rulebook provides that wherever there is a suspicion that the child is a victim of trafficking, the child shall be treated as a victim until proven otherwise (Article 3e).

The Rulebook and Rules regulate the reporting obligations and referral mechanism concerning child victims of trafficking and presumed victims. All relevant state institutions and organisations, individuals and legal entities, are obliged to report immediately to the Centres for Social Work when they get in contact with a child who is presumed to be a victim of trafficking. In response to these reports, the Centres for Social Work are responsible for referring the child to the guardianship authority.[88]

The Ministry of Security of Bosnia and Herzegovina issued Guidelines for Centres for Social Work on the Treatment of Victims of Trafficking in Persons, which emphasise the importance of identifying child victims correctly and underline that an exploited child can be considered a victim of trafficking even where no use was made of threat, force or deceit, or other illicit means, and that any form of consent of the child to the exploitation is considered irrelevant.[89]

Article 20 of the Rulebook provides that non-national child victims of trafficking are entitled to the same rights to care and protection as children who are citizens of Bosnia and Herzegovina. Article 10(5) stipulates that, if the age of the victim of trafficking cannot be determined with certainty, and there are reasons to assume that the victim of trafficking is a child, the person shall be treated as a child.

The age of a person who is identified as a victim of trafficking, or presumed victim, determines the person's status and referral to services, in accordance with the distinct definitions of trafficking in human beings relating to adults and children. National and non-national children who are identified as victims of trafficking in Bosnia and Herzegovina are entitled to special treatment and protection measures as per the Rulebook[90] and the Rules.[91] Special protection measures for child victims include the right of the child victim to shelter and safety, the right of the child to be heard and to have their views taken into account, the right to data protection and privacy, the right to information, considerations for the best interests of the child, as well as the support by a guardian and referral to alternative care where a child is deprived of parental care.[92]

[87] Depending on the victim identified, human trafficking victims might not always be in need of shelter accommodation, which is usually provided for foreign victims lacking appropriate accommodation or facing security concerns, and/or Bosnia and Herzegovina national victims with security issues, or where family/acquaintances have been involved in the THB process and the victim must be safely accommodated and protected.
[88] Rulebook, Article 9(2) and Rules, Article 7(3);
[89] Ministry of Security of Bosnia and Herzegovina, Guidelines for Centres for Social Work on the Treatment of Victims of Trafficking in Persons; Catholic Relief Services, 2010; http://www.msb.gov.ba/anti_trafficking/dokumenti/prirucnici/?id=5318;
[90] Official Gazette of Bosnia and Herzegovina No. 33/04 and 79/16; http://msb.gov.ba/PDF/Pravilnik_o_zastiti_stranaca_zrtava_trgovine_ljudima_B03112016.pdf; ;
[91] Official Gazette of Bosnia and Herzegovina 66/07; http://www.podaci.net/_gBiH/propis/Pravila_o_zastiti/O-upzzsz02v0766.html; ;
[92] Article 3(f) of the Rulebook and Article 3 of the Rules;

Protection of child victims of trafficking from sanctions or prosecution

The non-punishment principle is fundamental for situations where children who are exploited or trafficked get in trouble with the law. In fact, international standards afford this protection to all child victims and witnesses of crime so that, where a child is a victim of crime, the correct identification of the child's age in this specific context may be considered even more important than the identification of their status as a victim of trafficking. Removing doubts about age and ensuring children are correctly identified is therefore decisive for protecting child victims of crime who are in trouble with the law.

The UN Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime acknowledge the risk that "children who are victims and witnesses may suffer additional hardship if mistakenly viewed as offenders when they are in fact victims and witnesses."[93] The guidelines emphasise that child victims should be considered and treated as such "... regardless of their role in the offence or in the prosecution of the alleged offender or groups of offenders".[94] This broad approach calls for the protection of child victims of trafficking from prosecution irrespective of any form of 'consent' or active involvement of a child in an illegal or criminal conduct, and irrespective of national laws defining the age of criminal responsibility.[95]

The OHCHR Recommended Principles and Guidelines on Human Rights and Human Trafficking and the UNICEF Guidelines on the Protection of Child Victims of Trafficking reiterate the right to non-criminalisation specifically in relation to the situation of victims of trafficking who are to be protected from criminal liability for "any criminal offence that was a direct result from being trafficked".[96] This provision is further strengthened by the non-punishment clause of the 2011 EU Anti-trafficking Directive[97] and by the Council of Europe Convention on Action against Trafficking in Human Beings: "Each Party shall, in accordance with the basic principles of its legal system, provide for the possibility of not imposing penalties on victims for their involvement in unlawful activities, to the extent that they have been compelled to do so" (Article 26).

In Bosnia and Herzegovina, there are at present no general legal provisions to ensure that child victims of trafficking are protected from prosecution or sanctions for offences committed in relation to their situation as victims. With regard to immigration matters, the Rulebook provides in Article 5 that a victim of human trafficking would not be prosecuted for undocumented entry and stay in the country, as long as such actions have been committed as a result of being a victim of human trafficking. Thus far, there have been no reports about child victims of trafficking who have been sanctioned or prosecuted for offences committed as result of being trafficked.

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[93] United Nations Economic and Social Council, *Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime,* Economic and Social Council Resolution 2005/20, 22 July 2005, accessed from https://www.un.org/en/ecosoc/docs/2005/resolution%202005-20.pdf, par. 7e.
[94] *Ibid*, par. 9a.
[95] *Ibid*, par. 6.
[96] United Nations Economic and Social Council, Recommended Principles and Guidelines on Human Rights and Human Trafficking, Report of the United Nations High Commissioner for Human Rights to the Economic and Social Council, E/2002/68/Add.1, 20 May 2002, p. 3. United Nations Children's Fund, Guidelines on the Protection of Child Victims of Trafficking, Provisional Version, September 2006, p. 20.
[97] European Parliament and Council of the European Union, Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Official Journal of the European Union, 15.4.2011.

Temporary residence permits for victims of trafficking

The Council of Europe Convention on Action Against Trafficking in Human Beings provides that States parties shall issue a renewable residence permit to victims of trafficking, when it is considered necessary for them to remain in the country due to their personal situation, and/or when their stay is required for the purpose of their cooperation with the competent authorities in criminal investigations and proceedings.[98] The Convention states that for child victims of trafficking, the "residence permit ... when legally necessary, shall be issued in accordance with the best interests of the child and, where appropriate, renewed under the same conditions."[99]

When a non-national child is identified by state authorities as being unaccompanied or separated from parents or caregivers, and when there are no grounds for the child to be issued a permit to remain in the country, the possibility of returning the child to the country of origin will be assessed. The Committee on the Rights of the Child emphasises that the return of an unaccompanied or separated child needs to take place in a safe, child-appropriate and gender-sensitive manner, and in accordance with the best interests of the child.[100] The Council of Europe Convention on Action against Trafficking in Human Beings provides that decisions concerning residency and return should be made in accordance with the best interests of the child (Articles 14 and 16).

The Council of Europe Convention provides that each State party shall "... ensure that, if the competent authorities have reasonable grounds to believe that a person has been a victim of trafficking in human beings, that person shall not be removed from its territory until the identification process ... has been completed by the competent authorities ...".[101] The Convention states further that a child victim shall not be returned to a State when there are indications following a risk and security assessment that such return would not be in the best interests of the child".[102] Before a child is returned to another country, the best interests of the child therefore need to be determined on a case-by-case basis.

In Bosnia and Herzegovina, non-nationals who are victims of trafficking and do not have a regulated permit of stay in the country, have the status of a protected person and can submit a request for temporary residence on humanitarian grounds to the competent unit of the Service for Foreigners Affairs. Temporary residence is granted for a maximum of six months and may be extended under the same conditions under which the stay was granted.[103] The request is usually submitted through the service provider of free legal aid or, in cases of child victims of trafficking, by the child's guardian. Where the age of a non-national child victim of trafficking is unclear, the recognition as a child is relevant for receiving the support from a guardian in matters concerning the regularisation of stay and, where applicable, special safeguards in the repatriation procedure,

[98] Council of Europe Convention on Action Against Trafficking in Human Beings, Article 14.1.
[99] *Ibid*, Article 14.2..
[100] United Nations Committee on the Rights of the Child, General Comment No.6 (2005): Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, par. 87.
[101] Council of Europe Convention on Action Against Trafficking in Human Beings, Article 10, Subsection 2. See also Article 13.1.
[102] *Ibid*, Article 16, Subsection 7
[103] Law on Foreigners of Bosnia and Herzegovina, Article 58, Official Gazette of Bosnia and Herzegovina No. br. 88/2015 and 34/2021; https://advokat-prnjavorac.com/zakoni/Zakon-o-strancima-BiH.pdf; Law on Asylum of Bosnia and Herzegovina, Official Gazette of Bosnia and Herzegovina No. 11/16 and 16/16; https://www.parlament.ba/law/DownloadDocument?lawDocumentId=b5f199f4-8733-44d4-a676-48a26a3e1af2&langTag=bs

as well as assistance services and accommodation for the duration of the temporary residence permit.

The Rulebook on the Protection of Foreign Victims of Trafficking in Human Beings, Article 11(1), defines that "a foreigner suspected of being a victim of trafficking acquires the status of a protected person for a period of 30 days from the date of admission to the shelter, which is considered a time of recovery and reflection, giving him/her time to make an informed decision without the influence of the perpetrators, whether to cooperate with the competent authorities in Bosnia and Herzegovina for the purpose of investigation in the detection and prosecution of the criminal offence of trafficking in human beings". Non-nationals who are presumed victims of trafficking and have the status of a protected person, are protected from expulsion from Bosnia and Herzegovina, Article 11(2).

The Rulebook provides that unaccompanied non-national children who are presumed victims of trafficking are accommodated in a shelter until the procedure of assessing the child's case and establishing contact with the competent authority of the country of origin, the parent or legal guardian, is completed, and until the child's return is ensured. The competent service, with the consent of the guardian, is obliged to accommodate the unaccompanied child, if there is a reasonable suspicion that the child is a victim of trafficking. The Rulebook provides that children are accommodated, if possible, in special shelters for children and separately from adults, unless this was contrary to the best interests of the child (Article 21).[104] The wording leaves ample room for discretion to accommodate children together with unrelated adults, wherever this remains the only available possibility. Measures to strengthen the age assessment procedure for unaccompanied non-national children who are presumed victims of trafficking should therefore be combined with safeguards to ensure accommodation in accordance with the rights and the best interests of the child, as well as a best interests determination procedure to identify a durable solution for the child.

The Rulebook holds the Service for Foreigners Affairs responsible for the return of children to their countries of origin, ensuring that the child is admitted to the country of origin or habitual residence or to the country where a competent child protection authority and/or the child's parent or legal guardian receive the child. The child's guardian, with the assistance of the Service for Foreigners Affairs and other competent state authorities, is in charge of obtaining documentation and information from the child's country of origin or place of habitual residence to perform a risk and safety assessment, after which a decision shall be made if it is in the best interests of the child to be reunited with the family in the state of origin or habitual residence. In some cases, the return is organised and carried out in collaboration with international organisations.[105] There are assisted voluntary return programmes to repatriate migrants from Bosnia and Herzegovina to their countries of origin. The practice has thus far not been carried out with regard to unaccompanied children.

[104] Rulebook, Article 21: Accommodation of a child in the shelter;
[105] Rulebook, Article 22: Return of the Child;

2. AGE ASSESSMENT IN BOSNIA AND HERZEGOVINA: THE SOCIAL INTERVIEW METHOD IN CANTON SARAJEVO AS AN EXAMPLE OF GOOD PRACTICE

In Bosnia and Herzegovina, the age assessment procedure is at present not regulated by law or policy, and this study did not identify any official protocols, guidance or recommendations on age assessment.[106] There are state laws and policies that regulate how to proceed when a migrant or refugee or a non-national victim of trafficking does not carry identity documents and the age of the person is unclear. Although the applicable laws and policies provide for the presumption of minor age, the provisions are inconsistent and not yet fully in accordance with international standards. There is to date no systematic overview of how these persons are received and treated in the country.

Confronted with high numbers of young migrants and refugees whose age is unclear when arriving in Canton Sarajevo, the social service institutions in the capital have developed an age assessment method, the so-called "social interview".[107]

In Canton Sarajevo, migrants and refugees undergo an initial interview by a field officer of the Service for Foreigners Affairs. Migrants and refugees who are considered as unaccompanied children, are referred to the Temporary Reception Centre Ušivak in the municipality of Hadžići, where they undergo a health check and receive medical assistance and other services responding to their immediate needs. Professionals of the Service for Foreigners Affairs identify those children whose age is unclear and refer them to the social interview for age assessment.

Temporary Reception Centre "Ušivak" in the municipality of Hadžići Photo: D. S./Klix.ba

[106] Muratbegović & Lučić-Ćatić, Mapping Counter-trafficking in Potential Migrant Crisis in Bosnia and Herzegovina, Original Scientific Article, 2018; https://www.researchgate.net/publication/343114147_Mapping_Counter-Trafficking_in_Potential_Migrant_Crisis_in_Bosnia_and_Herzegovina;

[107] Social Interview Method is based on an interview protocol developed for children whose age is in doubt and for so-called "male families", i.e. adults travelling together with adolescent children, or several male adolescents and adults travelling together, who claim to be related and of whom some or all are presumed to be children. The interview guide is an unofficial document available at Canton Sarajevo social services department. This chapter was informed by consultations with key informants and the discussions at the European Union – Council of Europe Horizontal Facility Action 20, "Preventing and Combatting Trafficking in Human Beings in Bosnia and Herzegovina", Age assessment procedures, Round Table, 19 May 2021 (online event).

The social interview is conducted by a multi-professional team composed of a social worker, a child psychologist, a professional from the Service for Foreigners Affairs, a social service professional employed at the reception centre, as well as the temporary legal guardian who is appointed to support the child. The temporary legal guardian is typically a staff member of the Centre for Social Services or another professional appointed by the Centre. The social interview takes place in the presence of an interpreter and/or a cultural mediator.

The interview is conducted on the premises of the reception centre. The child is interviewed in a maximum of two to three sessions with breaks. The interview can take place over the course of two days if needed. This shall help to reduce the stress level and the risk of re-traumatisation for the child. The overall age assessment procedure is usually completed within a few days.

As noted by key informants consulted for this study, the multi-professional team generally succeeds to gather sufficient information from the child to make a decision on the child's age. In many cases, the child declares his or her age, and the professionals assess it on the basis of the child's responses during the interview. If the child states an age that coincides with the assessment made by the multi-professional team, the age assessment decision affirms the child's declared age. If the child's declared age differs significantly form the assessment, the multi-professional team declares that it doubts the child's stated age and may issue an opinion declaring the person was an adult.

The multidisciplinary team does not issue a decision on the outcomes of the age assessment, but an opinion, which it communicates in writing to the Inspector of the Service for Foreigners' Affairs and the Social Protection Service. The Inspector of the Service for Foreigners' Affairs makes the final decision based on team's opinion and his or her own discretion. In most cases, the decision of the Inspector of the Service for Foreigners Affairs coincides with the opinion of the team.

The decisions issued on the basis of the social interview method are often contested by the persons who undergo age assessment. Key informants consider that some persons who claimed to be children might change their statements and declare to be adults when they understand that a legal guardian will be appointed for them who will be in charge of making decisions on behalf of the child. The age assessment decision might be contested by persons assessed as adults who counted on being referred to accommodation and treatment for children. At present, there is however not evidence to substantiate these considerations and to evaluate the quality and reliability of the opinions issued by the multi-professional team and the decisions made by the Inspector of the Service for Foreigners Affairs.

The person is informed immediately about the outcome of the assessment, typically by the social service professional or the psychologist who participated in the interview. Persons who are assessed to be adults are referred to the Temporary Reception Center Blažuj, which is hosting adults.

Where the person is assessed to be a child, he or she remains accommodated in the Temporary Reception Centre Ušivak and undergoes the procedure of admission to the reception centre. This includes taking the child's biometric data, registration, medical examination, accommodation

and, immediately after that, the appointment of a "special guardian for unaccompanied minors". The special guardian is appointed by the competent Social Welfare Service, as the guardianship authority, and holds this mandate as long as the child stays in the reception centre. 48 hours after the child leaves the centre, the decision for the appointment of the special guardian is repealed and the guardian's mandate ends.

The Temporary Reception Centre Ušivak has child-friendly spaces and offers care and protection services, psychological support, sundries, clothes and other supplies, recreation and occupational therapy, education courses or access to school, as well as treatment for child victims of violence. When the centre is overcrowded, children may be transferred to the Centre for Children and Youth managed by the CSO IFS-EMMAUS.[108]

While the social interview aims to assess the child's age, hearing the child's story helps to identify also indicators of exploitation and trafficking. Where there are suspicions that a child may have been trafficked, the referral to support and assistance shall enable the child to interrupt the contact with possible exploiters with whom the child might have been travelling.

Interviews are conducted not only with children who are identified as unaccompanied but also with so-called "male families", groups of adult men and boys travelling together who claim to be related. The members of these groups are interviewed separately, using the same or similar questions, so that the responses of the individual members of the group can be compared. Through the interview, the multi-professional group aims to understand whether the boys would like to be accommodated separately from the adults they are travelling with, if there are family relations between the children and the adults travelling together, and if the child feels safe and protected in the presence of the adults. On the basis of the responses, the multi-professional group draws conclusions on the age of the child, the quality of their relationship with the accompanying adults and if they can be accommodated together.

The multi-professional team uses a standardised interview guide to elicit relevant information from the child (see Box 3). Additional questions can be added in the course of the interview, depending on the information shared by the child.

[108] By January 2021, 376 unaccompanied children were accommodated in the temporary reception centre „Ušivak";

Box 3: Interview guide for the social interview for age assessment in Canton Sarajevo

The social interview is structured as follows:

- Initial questions:
    - What is your name and surname?
    - When were you born (date of birth)?
    - What is your country and place of origin?
    - What is your native language?
    - What are the names of your parents?
    - Do you have any siblings? What are their names?
- Questions regarding the family:
    - How many brothers and sisters do you have?
    - In case you do not have any siblings, how many cousins do you have? Which other close relatives are there in your family?
    - How old are your siblings? Who is the oldest and who is the youngest? Can you order them by their age, and where do you come in?
- Questions on education:
    - Did you go to school? When did you start school?
    - Do you know how to write and read? When have you learned that in school? What else were you learning in school?
    - At what age do children in your country start school?
    - How long did you attend school? How many grades have you passed?
    - Did you have any friends in your country? How old were they?
- Questions concerning the journey:
    - When did you leave your home country? Why did you leave? Can you remember, in which season you left?
    - With whom did you travel? Is that person a relative or a friend of the family, or your friend? Have you known this person from before? Is this person from your hometown?
    - Does he/she know how old you are? Did you attend school together?
    - How long have you been travelling? Which countries have you passed? How long have you stayed in each of those countries? Have you attended school there and if so, for how long?
    - When did you arrive in Bosnia and Herzegovina? How long have you been here?
- Questions concerning identity papers:
    - Do you have any identity documents?
    - Do you have any other documents, for instance medical documents, or photographs?
    - Did you have any documents when leaving your country? What happened to them?
    - Have any documents been issued for you in the countries you travelled through?
    - Does the person you are travelling with have any documents that belong to you?

The interview guide was developed on the basis of a forensic interview protocol used with children who are victims and witnesses of a crime, in accordance with the Manual for the Treatment of Child Victims and Witnesses of Crime.[109] The manual defines the different phases of a forensic interview with a child and a set of principles and rules for conducting such interviews. The use of this protocol is a strength of the social interview method and should be upheld, if the method is promoted throughout the country. Protocols for conducting forensic interviews with children, such as the NICHD protocol[110], are evidence-based and enable professionals who are trained in working with these protocols to elicit accurate and reliable statements from children. Statements obtained in this manner have a high probative value when used as evidence in administrative or judicial proceedings, even if the child is young and traumatised.

The social interview method was developed upon the initiative of the Ministry of Security of Bosnia and Herzegovina, Service for Foreigners Affairs, and the Centre for Social Work of Canton Sarajevo. This initiative responded to the high numbers of young migrants and refugees arriving in the Canton Sarajevo, including unaccompanied children. The method has been used since mid-2020, whereas the team of professionals who conduct the interview was formally established in December 2020.

In the period between 1 January and 31 August 2021, the Social Welfare Service "Hadžići" completed 480 appointments of temporary legal guardians for children in the reception centre "Ušivak", while additional 310 requests had been received by the Ministry of Security/Sector for Asylum. In total, this amounts to 790 children or presumed children identified and assisted by the Social Welfare Service Hadžići during this eight-month period. The 206 social interviews for age assessment undertaken or initiated by the multi-professional team by the end of August 2021 represented therefore more than one quarter of the cases of the young migrants and refugees received at the reception centre. As noted by the key informant, the demand for social interviews is too high to be met with the available capacities and resources.[111]

The key informants consulted for this study noted that migrants and refugees tend to continue their journeys and rarely stay long in the same place. This observation raises questions regarding the follow-up of the children who undergo age assessment in the Canton Sarajevo. The state authorities, service providers and the children concerned would have a legitimate interest in having a written and/or digital age assessment decision issued, as long as the age assessment procedure was compliant with human rights standards and protected by procedural safeguards. Entering an age assessment decision into a digital registry of unaccompanied children, it may be accessible for state authorities and service providers who get in contact with the child in other places in the country, and along the route through neighbouring countries and EU Member States.

The specific costs of conducting the social interview have thus far not been estimated. The multi-professional team avails itself of the container, allocated with the support of UNICEF to the Hadžići

[109] Unicef (2017), Priručnik za postupanje sa djecom žrtvama i svjedocima krivičnog djela; https://portalfo1.pravosudje.ba/vstvfo-api/vijest/download/69663;
[110] NICHD Protocol, International Evidence-Based Investigative Interviewing of Children, http://nichdprotocol.com/. A recent version of the NICHD Protocol can be accessed from http://nichdprotocol.com/wp-content/uploads/2017/09/InteractiveNICHDProtocol.pdf.
[111] KII9

Social Welfare Service and located within the Temporary Reception Centre Ušivak. The premises are not adequately equipped and do not serve only that purpose, and it often happens that due to overcrowding, the children undergoing age assessment have to wait for the premises to be vacated for the social interview. Further investments would be considered useful to make the interviewing room more child-friendly, with appropriate equipment and furniture.

The team members have transportation costs to get to the SFA. There is always the need for an interpreter, which is a costly service. Compared to medical age assessment methods, the social interview method is however considered cost-effective and sensible from a budgetary perspective.

The social interview method is thus far an isolated and a rather recent practice developed by practitioners working directly with migrants and refugees in Canton Sarajevo. The method is not yet regulated by law nor by a cooperation protocol for the different state authorities and services involved, and is therefore at present still an informal practice. It represents nonetheless a valuable basis for the development of a formal age assessment procedure in Bosnia and Herzegovina.

The method is strong due to its multi-disciplinary approach, the use of an evidence-based interviewing protocol, and the comparatively low cost compared to more invasive medical examinations. In addition, the hearing of the child's story during the social interview offers important opportunities for the identification of incidents or risks of violence, exploitation and trafficking. The method could be strengthened by institutionalising it as a formalised procedure, ensuring due respect of procedural safeguards and upholding the principle of the presumption of minority and the benefit of the doubt.

The following chapter describes a model procedure for age assessment in accordance with international and European standards. This international model serves as a basis on which to explore subsequently the existing legal framework that could support the strengthening of the age assessment procedure in Bosnia and Herzegovina. More detailed considerations and proposals for action are presented in the concluding chapter.

3. AGE ASSESSMENT IN ACCORDANCE WITH INTERNATIONAL STANDARDS AND THE RIGHTS OF THE CHILD: STEPS OF A MODEL PROCEDURE

There are no international or European treaties that regulate age assessment specifically. The body of international and European law provides however for legal standards, procedural safeguards and principles that apply to age assessment. These standards derive from Conventions of the Council of Europe and the United Nations, as well as European Union law. In addition, several recommendations and guidelines offer orientation for ensuring that age assessment procedures are rights-based and sensitive to the needs of children.[112] As age assessment procedures are typically implemented in the context of migration, the international and European standards that guide age assessment procedures relate to the rights of the child, including in the context of migration, child protection and the prevention of all forms of violence against children, as well as exploitation and trafficking.[113]

This chapter provides an overview of the main steps of an age assessment procedure from the referral to age assessment, the different methods applied, through to the age assessment decision and appropriate follow-up.[114] The main steps outlined in is chapter are based on international and European standards and may serve as a reference for the development of a formalised age assessment procedure in Bosnia and Herzegovina.

Referral to age assessment

The institutional competence for referring a child to age assessment should be clearly regulated by law or policy. The institution has to be competent to carry out a best interests assessment as basis for the referral decision and be impartial when making the best interests of the child a primary consideration.

Motivation, documentation and transparency of the referral decision

The referral to age assessment should be justified in writing in each case and provide the reasons why the competent authority holds serious doubts about the age of a child, why referral to age assessment is considered necessary and how it has been assessed to be in the best interests of the child.[115]

The documentation of the referral decision should include details of the steps taken in order to assess the best interests of the child with regard to age assessment, information about the child's own statement of their age as well as other sources of information pursued in order to verify the

[112] European Asylum Support Office, EASO Practical Guide on age assessment, Second edition, EASO Practical Guides Series, 2018. United Nations Committee on the Rights of the Child, General Comment No.6 (2005): Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005. 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.
[113] For an overview of relevant standards and guidance, see: Council of Europe, Council of Europe Member States' Age Assessment Policies, Procedures and Practices Respectful of Children's Rights, Council of Europe, Ad hoc Committee for the Rights of the Child (CAHENF), Drafting Group of Experts on Children's Rights and Safeguards in the context of Migration (CAHENF-Safeguards), 2017.
[114] This chapter draws significantly on: Council of Europe, Council of Europe Member States' Age Assessment Policies, Procedures and Practices Respectful of Children's Rights, Council of Europe, Ad hoc Committee for the Rights of the Child (CAHENF), Drafting Group of Experts on Children's Rights and Safeguards in the context of Migration (CAHENF-Safeguards), 2017.
[115] Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p. 8.

child's declared age. The documentation should make a statement about the weight that has been attached to each source of information and how different interests and possible risks have been balanced in the decision-making process.

It is sensible to develop standardised modules to document the decision-making process and the motivation for referring a child to age assessment. The documentation should be accessible for the child and his or her guardian or parent or legal representative.

The right of the child to information

The child should be informed about the referral to age assessment, who will undertake the assessment and where, who will accompany them and support them during the assessment, how long the procedure will take, when they will be informed about the outcome, and who else will be informed. Information must also be provided on the possible outcomes of the assessment and the respective consequences. The child shall also be informed about procedural safeguards in the age assessment procedure, including the right to legal representation and the right to appeal. The information must be accurate and reliable and provided in a language that the child understands. The provision of information is essential to enable the child to form an opinion and to participate in the procedure.[116]

Preventing repeated or multiple age assessments

Persons who claim to be a child and whose age is in doubt should be protected from undergoing repeated or multiple age assessments unless referral to a repeated age assessment is considered to be in the best interests of the child.[117] There is a risk of repeated age assessment in cases where the individual moves or is transferred within a country or between countries, when previous age assessment results are not communicated or not recognised by the authorities in the new place or country of arrival. Repeated age assessment procedures might expose the child to new intrusive and potentially harmful assessments and examinations and increase the risk of (re-)traumatisation. Conducting a new age assessment procedure might be in the best interests of the child, where the results of a previous age assessment are considered manifestly unfounded and where the results and methods used were unreliable, unsafe or otherwise inappropriate.

Age assessment methods

As a general principle, age assessment procedures must at all times uphold the person's dignity and integrity.[118] Age assessments are typically carried out as multi-step procedures, whereas the least invasive methods are used first, and the referral to any medical examinations for the purpose of age assessment remains a measure of last resort. Age assessment methods and the review of evidence should be carried out through a multi-disciplinary approach, and be sensitive to gender, culture and special vulnerabilities of the person undergoing age assessment. The age assessment

[116] United Nations Children's Fund, Age Assessment: A technical note, 2013, pp. 12-13, 16. Médecins du Monde, Age Assessment for Unaccompanied Minors, When European countries deny children their childhood, 2015, p. 10.
[117] See for instance the good practice example of the Barnahus ("Children's House") in Iceland: Barnaverndarstofa (Government Agency for Child Protection), Barnahus as Implemented in Iceland, Council of the Baltic Sea States and Council of Europe Conference, Tallinn 19-20 February 2015, Presentation by Bragi Guðbrandsson, Director General, 2015, accessed from: https://rm.coe.int/1680700233.
[118] See Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, Article 25(5).

should take place in a friendly and safe atmosphere.[119] Interviews and physical examinations must be conducted in premises that guarantee privacy. Physical examinations must not involve nudity or examinations of genital and breast development.[120]

Age assessment methods include the following:

- Review of the documents provided by the individual whose age is disputed,
- Age assessment interview,
- Gathering and review of additional documentary evidence, if and as required and appropriate,
- Physical and dental observations,
- Physical and medical examinations as a measure of last resort.

Review of documents

Age assessment is typically initiated when a young person does not carry identity documents, or where the authenticity of identity documents is questioned. Identity documents provide evidence of core identifiers of the person, such as name, date and place of birth. Most States recognise passports, identity cards and birth certificates as proof of the unique identity of a person, although the criteria of identity documents vary between countries and evolve over time in view of new technologies and the increasing relevance of digital proof of identity. Identity documents are typically issued by or on behalf of the competent authorities of a national state. Persons having refugee status may have been issued proof of identity by an international organisation with a relevant mandate.[121]

It is not uncommon that unaccompanied children lose their identity documents during the journey, are able to provide only copies of their documents or are for other reasons not able to proof their identity. Where this is the case, the child should be given the possibility to contact the authorities of their countries of origin to obtain the required documents, unless doing so was not in the best interests of the child. This may require an extension of any applicable time limits in the age assessment procedure in view of possible consular delays. In the case of asylum-seeking children, the authorities of the child's country of origin must not be contacted.[122]

As a general rule, a person who holds a valid identity document should not be referred to age assessment. The Committee on the Rights of the Child underlined that documents issued or authenticated by a relevant State authority or embassy should be accepted as genuine.[123]

[119] Committee on the Rights of the Child, General Comment No. 6 (2005), par. 20.
[120] United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 15.
[121] 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.
[122] 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).
[123] 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.

Age assessment interviews

Age assessment interviews aim to elicit from the child a recount of their story and a recollection of events that could give a hint on the child's age. The interview provides also an opportunity to assess the mental, cognitive and emotional development of the child, the child's physical appearance and demeanour.[124]

The child can be asked to share memories of special events or cyclical events. Understanding the family composition, especially with regard to younger and older siblings, can provide helpful indications. Information about the education level of the child and any brothers or sisters can provide hints about the age. Ethnological knowledge about traditional age classes and initiation rites can be helpful for the assessment.[125]

Any interviews with the child in the context of age assessment procedures should be conducted by qualified professionals in a child-friendly environment. Interview questions need to be open-ended and solicit the child's free narrative while avoiding any leading questions or other ways to exert influence on the child's narrative.[126]

Gathering and review of additional documentary evidence of age

If the child is not in a position to give sufficient hints, information or documentary evidence of age, the competent authorities should seek to check other sources of information, such as school records, if available. The child has a right to be informed about the types of documents and evidence that are being collected for the purpose of age assessment. The child needs to give their informed consent, with the support of the guardian or parent and legal representative, for the gathering of documents and evidence. The measures taken to gather and share any documentary evidence have to respect the child's right to privacy and data protection. If the child is seeking or intending to seek international protection, the authorities in the child's country of origin must not be contacted, in due respect of the principle of non-refoulement, as this may put the child at risk of harm.[127]

Physical and medical examinations as a measure of last resort

Medical and physical age assessment methods can be justified as a measure of last resort in cases where there remain serious doubts about the person's age even after the interview and the review of documentary evidence; when it is assessed to be in the best interests of the child to have their age assessed; and when other sources of information and means to identify and verify the person's age have been exhausted.[128]

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[124] United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 18.
[125] United Nations Children's Fund, Age Assessment Practices: A literature review and annotated bibliography, 2011, p. 7. United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 13. Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p. 8.
[126] United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 19.
[127] 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.
[128] 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.

Physical and medical age assessment methods enable, at best, an educated guess. Physical observations might include an observation by a paediatrician of the child's physical development, or a dental observation. Medical examinations typically involve radiation, such as x-ray examinations of the carpal bone, collarbone, or the teeth. In addition to the scientific weaknesses and inaccuracy of age assessment methods, several methods have been evidenced to have a harmful impact on the physical and mental health and wellbeing of the person undergoing age assessment. Against this background, the use of invasive medical exams, such as x-ray examinations or other methods employing radiation, should be reduced to a minimum and remain a measure of last resort.[129]

The risks associated with medical examinations and the low degree of accuracy or added value of the outcomes do not support the use of these methods as ethically appropriate. The use of potentially harmful ionizing radiation for the purpose of age assessment, which exposes the person to radiation for non-medical purposes and holds no therapeutic benefit, is considered to be in conflict with medical ethics and potentially unlawful. They may also reduce the capacity of the relevant medical departments to conduct examinations for citizens who have an established medical need.[130] The refusal of the person to undergo age assessment based on an x-ray examination should therefore be respected without imposing any penalties or negative consequences.[131] In the case of girls, pregnancy has to be excluded prior to ordering medical examinations involving radiation.

Examination of genital maturity must be excluded from age assessment methods not only due to the proven inaccuracy but also due to the infringement against the privacy and physical integrity of the person concerned and as this may amount to inhuman and degrading treatment.[132]

Informed consent

A child shall be referred to a medical examination for the purpose of age assessment only after the child and his or her parent or guardian have given informed consent to participate in the procedure.[133]

Before giving informed consent, the child has a right to seek and receive information on the method used, including any health impact or risks and measures taken to reduce the risks. The child has to be informed about the right to refuse participation in the proposed method and the

[129] 2013 EU Asylum Procedures Directive (recast), Articles 19 and 25.5 Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p. 8. See also: "Euratom" Directive Standards for protection against the dangers arising from exposure to ionising radiation 2013/59. United Nations Children's Fund, Age Assessment Practices: A literature review and annotated bibliography, 2011, p.13.
[130] Aynsley-Green, A. et al., Medical, Statistical, Ethical and Human Rights Considerations in the Assessment of Age in Children and Young People Subject to Immigration Control, British Medical Bulletin, June 2012. Vol 102 issue 1 Cited in: European Council of Refugees and Exiles, Detriment of the Doubt: Age Assessment of Unaccompanied Asylum-Seeking Children, Asylum Information Database, AIDA Legal Briefing No. 52015, p. 5. United Nations Children's Fund, Age Assessment: A technical note, 2013, pp. 12-13. Médecins du Monde, Age Assessment for Unaccompanied Minors, When European countries deny children their childhood, 2015, p. 3.
[131] United Nations Children's Fund, Age Assessment: A technical note, 2013, pp. 12-13. Médecins du Monde, Age Assessment for Unaccompanied Minors, When European countries deny children their childhood, 2015, p. 3.
[132] Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, pp. 9, 17. Médecins du Monde, Age Assessment for Unaccompanied Minors, When European countries deny children their childhood, 2015, p. 8. European Asylum Support Office, Age Assessment Practice in Europe, 2014, p. 33. See also: European Union Agency for Fundamental Rights, Separated, Asylum-Seeking Children in European Union Member States – Comparative Report, 2010, p. 53.
[133] UN Convention on the Rights of the Child, Article 12. 2013 EU Asylum Procedures Directive (recast), Articles 19 and 25.5. Council of Europe Parliamentary Assembly, Unaccompanied Children in Europe: Issues of arrival, stay and return, Resolution 1810(2011), 15 April 2011, par. 5.10.

implications of refusal. The child must be given the opportunity to express his or her views, including any questions for clarification, doubts or concerns, and to receive further information and counselling on these matters if and as required.[134]

When seeking the informed consent of the child, the communication with the child has to be sensitive to the child's age, gender and level of development, the evolving capacities of the child and any impairments or disabilities, as well as cultural and linguistic factors, and experiences of violence or traumatisation.[135] The child's capacity to give informed consent should be assessed and, where required, the child should be given the time, conditions and possibility to recover before any steps are taken to seek their informed consent to a specific method.[136]

The informed consent given by the child and his or her guardian, parent or legal representative should be documented, providing details on how the child and the parent, guardian or legal representative have been informed and how the responsible official or professional has ascertained that the child has understood the information.[137]

The right to refuse medical examination

The child should be given the possibility to withhold consent to a medical examination for the purpose of age assessment. The refusal should be motivated, with the support of a legal representative, on the basis of concerns that the proposed method will have a detrimental effect on the physical or mental health and wellbeing of the child or is otherwise in conflict with the best interests of the child. The shall not lead to any automatic decisions concerning the age or immigration status of the child or their application for international protection. When refusing, the child should not have to fear direct or indirect negative consequences resulting from the refusal. The presumption of minor age should be upheld.[138]

When a child refuses to participate in age assessment, the competent authority should hear the child and his or her legal representative to understand the child's motivations for refusal and any concerns about the proposed method. In light of these concerns, the competent authority and the child might clarify any uncertainties, misunderstandings or open questions that have previously not been addressed appropriately. On the basis of this consultation, the competent authority might consider to revisit its previous decision or propose different assessment methods to prevent any harmful impact on the physical or mental health of the child.

[134] United Nations Children's Fund, Age Assessment: A technical note, 2013, pp. 12-13, 16.
[135] United Nations Children's Fund, Age Assessment: A technical note, 2013, pp. 12-13, 16.
[136] *Ibid*, p. 19.
[137] Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p. 12.
[138] 2013 EU Asylum Procedures Directive (recast), Article 25.5(c). United Nations Children's Fund, Age Assessment: A technical note, 2013, pp. 12-13. Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p. 14.

Box 4: Example of practice from other European countries

In Italy, the child is free to refuse a medical examination for the purpose of age assessment. If a child objects against a specific method, the assessment should be carried out without the use of this method. In cases where the responsible practitioners consider that the specific method to which the child has objected is however essential and sufficient to assess the child's age, they should inform the Guardianship Judge. The Judge will consider the objections raised by the child and the reasons given by the medical practitioners and may authorise the medical staff to proceed with the examinations that are deemed essential and sufficient.[139]

Applying the margin of error in favour of the person

In light of the scientific inaccuracy and unreliability of most age assessment methods, age assessment results have to be presented with a margin of error. The age assessment documentation should include a clear statement on the methods used and, in the case of medical examinations, the scientific margin of error of the specific method. In light of the principles of presumption of minor age and the best interests of the child, the margin of error should always be applied in favour of the person who has undergone age assessment. The person should be treated as a child in accordance with the lowest age of the identified margin, until any further evidence is provided to substantiate the age of the person.[140]

Safety, ethics and prevention of violence during physical examinations

If age assessment methods involve medical observations and examinations, the examinations must be carried out safely and ethically and ensure the prevention of violence, in line with the standards afforded under the UN Convention on the Rights of the Child. It is considered good practice that the responsible practitioner conducts the examination in the presence of a second practitioner to ensure that ethical standards, safeguards and impartiality are maintained. The child's guardian or parent or another appropriate adult should accompany the child to the examination to chaperone the child, unless this was assessed not to be in the best interests of the child.[141]

If the practitioner has any doubts with regard to the child's informed consent and understanding of the procedure, or notices any risks to the child from the examination, such as distress and risk of re-traumatisation, the practitioner should stop the examination.[142]

Methods sensitive to gender, culture and vulnerabilities

Age assessment methods must at all times be sensitive to the gender and culture as well as any specific vulnerabilities of the child. Children should be asked, if they have preferences with regard

[139] Italy: Legislative Decree 25/2008, Article 19(3). Regulation on age assessment of unaccompanied minors, victims of trafficking, Article 4.
[140] Council of Europe Parliamentary Assembly, Unaccompanied Children in Europe: Issues of arrival, stay and return, Resolution 1810(2011), 15 April 2011, par. 5.10. United Nations Children's Fund, Age Assessment: A technical note, 2013, pp. 15-16.
[141] United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 15.
[142] United Nations Children's Fund, Age Assessment Practices: A literature review and annotated bibliography, 2011, p. 28.

to the gender of the person conducting the assessment, irrespective of the methods chosen, and their preferences should be respected. Wherever possible, gender preferences should be respected also with regard to the selection of the guardian, legal representative and interpreter. In the case of physical observations or medical examinations, respecting the child's preferences with regard to the gender of the practitioner and any other person present during the examination is an imperative.[143]

Assessments should preferably be undertaken by professionals who are familiar with the national, social and cultural background of the child. Social and cultural preconceptions about childhood and child development must not influence the assessment.[144]

The child's family background and origin can have an impact on the child's level of development, physical appearance and behaviour. Physical development depends, for instance, on the child's diet, living and environmental conditions in the home and during the journey, access to health care, physical activities, or involvement in child labour and household chores. Communication skills, the level of knowledge and cognitive skills depend on the child's possibilities for learning, schooling and education. Exposure to violence and exploitation can have a detrimental impact on the child's development and evolving capacities. Children who have been exposed to sexual exploitation might demonstrate a sexualised behaviour that is uncommon for peers who have grown up in a protected environment. Cultural and gender norms and social constructs of childhood might have an influence on the child's interaction with adults. Children might undergo initiation rites at an early age and start taking on responsibilities for contributing to the family income and subsistence. Children might be married or have children of themselves at a young age. Children who have witnessed violence or who have been forced to commit violence, for instance in the context of armed conflicts, might have been coerced to display a high level of violence or aggression when interacting with others.[145] Age assessments need to be sensitive to the experiences and vulnerabilities of the child and take them into account when interpreting the results.

Multi-disciplinary and holistic approach

Age assessment should adopt a holistic approach based on a consideration of physical, psychological, developmental, environmental and socio-cultural factors. In order to balance these different factors, professionals from different disciplines need to participate or be consulted in the assessment.[146] Professionals with expertise in child development should have a central role, such as paediatricians and child psychologists or psychiatrists.[147] Multi-disciplinary approaches should

[143] United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 15.
[144] Ibid, p. 15.
[145] Ibid, p. 16.
[146] Council of Europe Parliamentary Assembly, Unaccompanied Children in Europe: Issues of arrival, stay and return, Resolution 1810(2011), 15 April 2011, par. 5.10. United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 16. Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p. 9.
[147] Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p. 10.

include expertise on social and cultural differences in childhood and child development to ensure a social assessment of the child assigns weight to the child's origin and story.[148]

Multi-disciplinary assessment procedures should be defined, regulated and mandatory under relevant national laws, policies and regulations.[149] Multi-disciplinary cooperation is likely to be more effective when regulated by a written agreement, standard operating procedures and clear protocols for cooperation.

Procedural safeguards in age assessments procedures

Procedural safeguards are essential features of any administrative or judicial proceeding. They ensure that proceedings are legal and in compliance with the principles of rule of law and due process. When children are concerned, procedural safeguards have to be sensitive to the rights and needs of the child.

Age assessment decision

The age assessment decision needs to be documented in writing with clear and transparent legal reasoning.[150] It shall include information about the methods used, their scientific reliability and margin of error of the outcome. The age assessment decision and all supporting documentation should be made available promptly to the child, the child's legal representative and parent or guardian.[151]

If the age assessment concludes that the assessed age of the child falls within a range that includes minor age, the individual should be officially recognised as a child. If the child has declared his or her date of birth prior to the age assessment and that date falls within the range affirmed by the assessment, it should be recorded and recognised as the child's official date of birth. If the child has not been able to state his or her date of birth, the lowest age in the margin determined by the assessment should be recorded as the child's age.[152]

Right to be heard

The child has the right to express his or her views and to have them taken into account in all phases of the age assessment procedure. States have to ensure that the child has access to assistance by a legal representative as well as a qualified interpreter and cultural mediator, where applicable, to enable them to express their views.[153]

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[148] United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 16. Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p. 9. United Nations Children's Fund, Age Assessment Practices: A literature review and annotated bibliography, 2011, pp. 41-42.
[149] The absence of clear definitions and procedures for multi-disciplinary cooperation and a holistic approach in age assessment has been reported as an obstacle to achieve a holistic procedure in practice. See: United Nations Children's Fund, Age Assessment Practices: A literature review and annotated bibliography, 2011, p. 37.
[150] Committee on the Rights of the Child, General Comment No. 14 (2013), par. 97.
[151] Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, pp. 13-14.
[152] *Ibid*, p. 15.
[153] UN Convention on the Rights of the Child, Article 12. International Covenant on Civil and Political Rights, Article 14. Committee on the Rights of the Child, General Comment No. 6 (2005), par. 25. Committee on the Rights of the Child, General Comment No. 12 (2009). Committee on the Rights of the Child, General Comment No. 14 (2013), par. 90.

Right to information

At all times during the age assessment procedure, the child has a right to seek, receive and impart information. Information has to be provided in a language that the child understands.[154] Information and advice should be gender and culture sensitive and should be provided to the child in a manner that is adapted to the child's age and maturity.[155]

Box 5: Examples of practice from other European countries

In Belgium, a leaflet for persons undergoing assessment explains in simple and easily accessible language the age assessment procedure and why it is considered necessary. The leaflet is available in different languages and supplements the information provided orally to the person. It presents information about the doubts that have been raised with regard to the individual's age, what will happen during the assessment, how the medical examination will be carried out, as well as the consequences of age assessment. It explains also what kind of documentation could be considered as proof of age.

In Italy, the national Law No. 47 of 21 April 2017 on protection measures for unaccompanied minors provides that the person who is presumed to be a child and undergoing age assessment is informed that his or her age is to be assessed through social and medical evaluation. The child shall be informed about the type of assessment that he or she shall undergo, about the possible outcomes and consequences and about the possibility to refuse undergoing such exams. The child has to be informed in a language that he or she understands and, where necessary, with the aid of a cultural mediator and with due regard to his or her level of maturity and literacy. The information is also provided to the child's guardian.[156]

The Council of Europe and the European Asylum Support Office have developed a video animation on age assessment for children in migration. The video is available in many different languages: English, French, Portuguese and Spanish, as well as Arabic, Bambara, Dari, Moroccan Arabic, Pashto, Punjabi, Somali, Tigrinya, and Wolof. In addition, a child-friendly leaflet is available to provide information in English and French on the rights of the child in the age assessment procedure.[157]

Assistance by a legal representative and a guardian

A legal representative should be appointed to assist the child with all legal and procedural matters related to the age assessment procedure. The legal representative supports the child to seek and receive information in a language that the child understands, ensures that the child's views are heard and taken into account and that the procedure respects the rights of the child at all times.[158]

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[154] UN Convention on the Rights of the Child, Article 17. International Covenant on Civil and Political Rights, Article 19. Committee on the Rights of the Child, General Comment No. 6 (2005), par. 25. Committee on the Rights of the Child, General Comment No. 12 (2009). Committee on the Rights of the Child, General Comment No. 14 (2013), par. 90.

[155] Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice, 2010, Guideline IV. A. 2.

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

[157] Council of Europe, *Age assessment for children in migration: Animation launched in 6 new languages and child-friendly leaflet*, 18 June 2021.

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

A qualified legal representative should be assigned without delay and free of charge. Any private lawyers chosen to represent the child should be recognised as their legal representative.[159]

In cases of unaccompanied or separated children, or children whose parents are not in a position to complement the limited legal capacity of their child, the child has a right to have a guardian appointed. If a guardian cannot be appointed promptly, a temporary guardian should fulfil the guardian's mandate pending the appointment of the guardian. The guardian shall be mandated to promote the best interests of the child and to complement the limited legal capacity of the child in all matters concerning the child. The guardian's support is therefore essential before and during age assessment and as long as the confirmation of the child's age is pending. The legal representative and guardian should be present at all times during the age assessment procedure.[160]

Training, qualifications and impartiality of professionals undertaking age assessment

Age assessments should be carried out by professionals who are specifically trained and qualified for this purpose and have experience in working and communicating with children.[161] Professionals who undertake age assessments should be familiar with the national, social and cultural background of the person whose age they assess and they should be able to consider the impact of different lifestyles, environmental conditions and experiences on a child's physical, emotional and cognitive development.[162]

The professionals undertaking age assessment procedures need to be institutionally and professionally independent from the immigration authorities, authorities that provide services to children or any other authority that holds a vested interest in the outcomes of age assessment procedures.[163]

All professionals involved in age assessments, such as immigration officers, police officers, prosecutors, judges, lawyers, legal guardians, health-care professionals, interpreters and other relevant professionals, should receive periodic training, including joint and multi-disciplinary training, on the rights of the child, the reception of migrant children and conducting age assessments in accordance with state-of-the art science. Training should be provided in child-sensitive interviewing, the communication with children from different national and cultural backgrounds and with traumatised children, and working with interpreters or cultural mediators while communicating with children.[164]

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[159] Views adopted by the Committee under article 10 of the Optional Protocol, concerning communication No. 22/2017, CRC/C/81/D/22/2017, 9 July 2019, para. 14.

[160] United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 14. Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, pp. 12-13.

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

[162] United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 15.

[163] Ibid, p. 17.

[164] United Nations Committee on the Rights of the Child, General Comment No.6 (2005): Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, Chapter VIII. Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p. 10.

Timeliness of the age assessment procedure

Age assessments shall be carried out in a timely manner, recognising the significance of the assessment for other proceedings or decision-making processes. Undue delay shall be prevented, as any delay is presumed to be prejudicial to the child.[165] The time required for age assessment must not, for instance, prevent the individual from applying for international protection as a child and to assert child-specific grounds of asylum.

The timing of the age assessment procedure needs to give due account to any immediate needs that the child may have. Age assessment should therefore not be initiated upon the first contact after arrival but after the child has been referred to accommodation, care and protection services.[166] The need to appoint a (temporary) guardian and/or a legal representative shall not cause undue delay of the procedure.

Timely follow-up to age assessment

Whenever age assessment confirms that the child is underage, and where the child was previously not accommodated in childcare facilities or other child-friendly accommodation, the child should be promptly referred to such accommodation.[167] If the child has been excluded previously from services and treatment for children, access to these services shall be provided promptly.

Complaints mechanism

Persons undergoing age assessment should have access to a child-sensitive reporting and complaints mechanism. They should be informed in a language that they understand on their right to report infringements against their rights during the age assessment procedure and how to access these mechanisms. It is important to ensure effective follow-up to any reports and complaints received.[168]

Right to appeal

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

Where documentary evidence of age becomes available after the age assessment decision has been issued, such evidence should be reviewed and taken into account promptly. If such evidence specifies a date of birth within the margin of age determined or if it overrides the results of the previous age assessment, the recorded age of the person shall be adjusted accordingly.[169]

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[165] Committee on the Rights of the Child, General Comment No. 14 (2013), par. 93. Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, pp. 14-15.
[166] Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, pp. 14-15.
[167] United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 21.
[168] UN Convention on the Rights of the Child, Article 12. United Nations Committee on the Rights of the Child, General Comment No. 2 (2002). United Nations General Assembly, National Institutions for the Promotion and Protection of Human Rights, A/RES/48/134, 1993.
[169] Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, pp. 10-11.

Age assessment decisions and the procedure itself should be subject to administrative or judicial appeal.[170] Appeal procedures have to be child-sensitive and accessible for the child and his or her legal representative. Information on the possibility to appeal needs to be provided in a language that the child understands.[171]

In order to request the review or revision of the age assessment decision, or to appeal against the decision, the child needs to have access to legal remedies, including legal assistance and representation by a qualified lawyer free of charge as well as interpretation wherever required. Appeal procedures need to be timely and child-sensitive.

Right to consular assistance

While abroad, children have a right to receive help and assistance from the embassies or consular offices representing their countries of origin in the country where they are currently staying. Consular offices can support the child in obtaining access to identity documents and other relevant official documents that are requested for the purpose of age assessment.[172]

If a child is applying for international protection, the authorities of their country of origin should never be contacted, in accordance with the principle of non-refoulement, as this may endanger the child and the child's family members in the country of origin. This general rule applies to contacts made by the child, the child's guardian, legal representative or by the authorities conducting the age assessment.

[170] EU Charter, Article 47. European Convention on Human Rights, Article 13. International Covenant on Civil and Political Rights, Articles 2, 13, 14(5). Council of Europe Parliamentary Assembly, Unaccompanied Children in Europe: Issues of arrival, stay and return, Resolution 1810(2011), 15 April 2011, par. 5.10. United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 17. Médecins du Monde, Age Assessment for Unaccompanied Minors, When European countries deny children their childhood, 2015, p. 11.
[171] EU 2013 Asylum Procedures Directive Articles 19 and 25.4.
[172] United Nations Vienna Convention on Consular Relations.

4. GENERAL PRINCIPLES AND HUMAN RIGHTS GUIDING AGE ASSESSMENT OF CHILDREN AT RISK OF TRAFFICKING IN HUMAN BEINGS

In the absence of a clearly regulated age assessment procedure, the age assessment practice in Bosnia and Herzegovina is highly fragmented. The social interview method developed in Canton Sarajevo is the most prominent practice identified by this study. It constitutes a positive example that may inform the development of a harmonised and regulated age assessment procedure for the entire country.

In some cases, where a migrant or refugee is a suspect in a criminal investigation and considered to be an unaccompanied child, DNA analysis is used to identify if the person is a "child" or a "minor".[173] Other medical age assessment methods, such as carpal or collarbone x-ray, or sexual maturity observation, are currently not used in Bosnia and Herzegovina.[174]

This chapter provides an overview of the general human rights and child rights principles guiding age assessment of children in the context of migration. The general principles derive from international and European standards and are of cross-cutting relevance to all the steps of the age assessment procedure outlined in the previous chapter. They include in particular the presumption of minor age, the best interests of the child as a primary consideration, the right to non-discrimination, the right to development and the right to be heard.

The chapter compares the relevant international and European standards with legal provisions and policies in place in Bosnia and Herzegovina to assess compliance and identify elements that a future age assessment procedure could build on. This analysis aims to map existing legal provisions that are relevant for the procedure, as well as state and non-state actors who could be assigned competences in age assessment.[175]

Presumption of minor age

The presumption of minor age ensures that a person whose age is unknown is given the benefit of the doubt and presumed to be a child as long as there are reasons to assume that the person is a child. The principle applies throughout all steps of the age assessment procedure, until there is evidence to confirm that the person is an adult.[176] In accordance with this principle, the person shall have access to the services and safeguards that children under 18 years of age are entitled

[173] KII3 and KII5;
[174] Ibid;
[175] This chapter draws on the Council of Europe's previous work on age assessment of children in migration: Council of Europe, Council of Europe Member States' Age Assessment Policies, Procedures and Practices Respectful of Children's Rights, Council of Europe, Ad hoc Committee for the Rights of the Child (CAHENF), Drafting Group of Experts on Children's Rights and Safeguards in the context of Migration (CAHENF-Safeguards), 2017.
[176] Committee on the Rights of the Child, General Comment No. 6 (2005), par. 31(A). 2013 EU Asylum Procedure Directive 2013/32/EU (recast), Article 25(5). 2011 EU Anti-trafficking Directive, Article 13.2. Council of Europe Convention on Action against Trafficking in Human Beings Article 10.3. UNHCR Guidelines on Child Asylum Claims, 2009, par. 75. United Nations High Commissioner for Refugees, Conclusion on Children at Risk No. 107 (LVIII), 2007, 5 October 2007, par. g(ix). UNHCR, Guidelines on Unaccompanied Children Seeking Asylum, 1997, par. 5.11 and 6. Council of Europe Parliamentary Assembly, Unaccompanied Children in Europe: Issues of arrival, stay and return, Resolution 1810(2011), 15 April 2011, par. 5.10. SCEP Statement of Good Practice, 2009, par. D.5.1. and D.5.3. See also: 2011 EU Qualifications Directive, Article 4.5.

to under the UN Convention on the Rights of the Child and other relevant international and European standards.[177]

In respect of this principle, States have to ensure that a person whose age is in doubt is not given the burden of proof in age assessment procedures. A person whose age is assessed cannot be expected to pay medical examinations to prove his or her age, and persons who have never been registered at birth cannot be held responsible for failing to provide birth certificates.[178]

The Law on Aliens of Bosnia and Herzegovina provides that non-nationals shall be treated in accordance with the information they provide on their identity, until other information is obtained or the person's identity is established. This provision applies even where there are doubts about the person's stated identity (Article 14 (2) and (6)).[179] In accordance with this law, if a migrant or refugee claims to be a child, the person should be treated as a child until proven otherwise. If a migrant or refugee child claims to be an adult, the authorities would however be expected to treat them as an adult, even where they have doubts that the person may be a child. In this latter case, the law is not in compliance with the principle of the presumption of minor age and children who claim to be adults would lose out on the special protection they are entitled to. Key informants consulted for this study noted that this provision of the Law on Aliens is applied in practice and the statement of a migrant or refugee on their identity is considered valid until proven otherwise.[180]

The Rulebook on the Protection of Foreigners Victims of Trafficking in Human Beings provides that if the age of a non-national who is a victim of trafficking or a presumed victim, cannot be determined with certainty, and there are reasons to assume that the person is a child, the person shall be treated as a child. In accordance with the Rulebook, non-national victims of trafficking, or presumed victims, who are assumed to be under 18 years of age are entitled to the same rights to care and protection as children who are citizens of Bosnia and Herzegovina.[181]

Care and protection prior to and during age assessment

For the duration of the age assessment procedure, persons whose age is unknown and who are presumed to be children should be referred to appropriate accommodation, services, care and protection in accordance with the rights and entitlements of children.[182] The Committee on the Rights of the Child underlined that unaccompanied children who are victims of violence should receive culturally appropriate and gender sensitive mental health care and psycho-social counselling to facilitate their recovery.[183]

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[177] Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p. 12. Médecins du Monde, Age Assessment for Unaccompanied Minors, When European countries deny children their childhood, 2015, pp. 10, 15. UNHCR, Guidelines on Protection and Care, p. 103.
[178] European Council of Refugees and Exiles, Detriment of the Doubt: Age Assessment of Unaccompanied Asylum-Seeking Children, Asylum Information Database, AIDA Legal Briefing No. 52015, p. 1.
[179] Official Gazette of Bosnia and Herzegovina No. 88/15;
[180] KII3 and KII5;
[181] Rulebook on the Protection of Foreign Victims of Trafficking in Human Beings, Article 10(5), Article 20(2);
[182] UN Convention on the Rights of the Child, Articles, 2, 3, 19, 20 and 22. 2013 EU Reception Conditions Directive, Articles 11, 23 and 24. European Court of Human Rights, A.B. and Others v. France (No. 11593/12), 12 July 2016, §110. Council of Europe, Committee of Ministers, Recommendation Rec(2003) 5 of the Committee of Ministers to Member States on Measures of Detention of Asylum Seekers, 16 April 2003, para. 23. UN Convention on the Rights of the Child, Articles 3, 19 and 20.
[183] United Nations Committee on the Rights of the Child, General Comment No.6 (2005): Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, para. 48.

As long as the age of the person remains unknown, the risks for a child to be placed wrongfully in an institution or detention centre with unrelated adults are considered higher than the risks resulting from a young adult placed in accommodation facilities for children.[184] In order to avoid the placement of persons whose age is disputed in childcare facilities, special units or departments should be dedicated to accommodate this group of persons until their age has been assessed.[185]

In Bosnia and Herzegovina, non-national children enjoy the same statutory rights to care and protection as children who are citizens of Bosnia and Herzegovina.[186] The recognition of the child's age is therefore decisive for children to access these services. There are at present no specific accommodation facilities in Bosnia and Herzegovina to host the persons who are undergoing age assessment in separate accommodation facilities or units.

The competent state authorities have delegated the task of providing care and protection services for child victims of trafficking to civil society organisations, as regulated in the Rulebook on Protection of Foreign Victims of Human Trafficking in Bosnia and Herzegovina (Article 10) and Rules on the Protection of Victims and Victims Witnesses of Human Trafficking Nationals of Bosnia and Herzegovina (Article 17). Assistance to officially identified and recognised victims of trafficking is provided in accordance with Protocols of Understanding signed by the Ministry of Security and the Ministry of Human Rights and Refugees and the authorised CSOs. Services for child victims of trafficking comprise adequate and secure accommodation, food, clothing, hygienic supplies, primary medical care and hospitalisation, if needed, psychological support, rehabilitation and repatriation services, access to the labour market, education and training, including occupational therapy, vocational and on-the-job training, as well as free legal assistance.

The two ministries tasked with anti-trafficking responsibilities, Bosnia and Herzegovina Ministry of Security and Bosnia and Herzegovina Ministry of Human Rights and Refugees, initiated in cooperation with the CSO "IFS-EMMAUS" and with the support of USAID, the development of Minimum Standards for the Assistance to Victims of Human Trafficking in Bosnia and Herzegovina in 2019. These standards are expected to define the minimum quality of care and protection services also for child victims of trafficking. The document is expected to be submitted to the Council of Ministers of Bosnia and Herzegovina in 2021[187] to be adopted as a binding baseline for standardised victim assistance in this field. The development of this document offers a valuable opportunity to consider guidance on age assessment of non-national child victims of trafficking whose age is unclear and where there are doubts that the person may be a child.

Migrant and refugee children whose age is unclear are to be treated in accordance with their declared age. Those who claim to be adults, will therefore remain excluded from the reception services for children. Even when a migrant or refugee child is presumed to be a child, the child cannot rely on being referred to age appropriate accommodation and services, as the referral is

[184] Council of Europe, Lanzarote Committee, Special Report: Protecting Children Affected by the Refugee Crisis from Sexual Exploitation and Sexual Abuse, March 2017, p. 34.
[185] Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p. 13.
[186] Family laws of entities and Brčko District of Bosnia and Herzegovina ;
[187] KII1 and KII2;

not strictly regulated and the available spaces for children in reception facilities are often insufficient to receive the high number of children arriving (see Chapter 3).

Age assessment procedures in the best interests of the child

The UN Convention on the Rights of the Child provides that the best interests of the child shall be the primary consideration in all actions concerning children (Article 3.1). The EU Charter provides under Article 24(2), with an even stronger wording, that the best interests of the child must be a primary consideration. In accordance with the presumption of minor age, the best interests of the child shall be a primary consideration in all steps of the age assessment procedure, including in the referral decision.[188]

It is in the best interests of the child to be officially recognised as a child, and age assessment can resolve serious doubts about age. Serious doubts exist when the person's physical appearance and the impression of the person do not allow for any clear conclusions whether the person is under or above 18 years old; when the person is not in possession of any identity documents or the documents are considered insufficient to prove identity or there are obvious inconsistencies between the age declared by the person and the age stated by the document; and when the person is not in a position to state his or her own age.[189]

Age assessment can be in the best interests of a person who claims to be an adult when there are reasonable doubts to believe the person is a child. This may be the case when children claim to be over 18 years old in order to proceed more easily to their final destination country, in order to access employment, or because they have been instructed, incentivised or coerced by third parties to do so, for instance in the context of smuggling, human trafficking and exploitation.[190]

The UN Convention on the Rights of the Child affords the child a right to identity and States are held to respect the right of the child to preserve his or her identity (Article 8). As age is an important element of a child's identity[191], age assessment procedures can constitute a measure to (re-)establish the child's identity, as long as they are conducted in accordance with the rights and the best interests of the child.

Age assessment procedures may be frightening for children. In some cases, the procedures may interfere with a child's physical integrity and dignity, and undergoing age assessment procedures could in some cases be (re-)traumatising. Where this is the case, the child may not be able to participate in the age assessment in an appropriate way, which could undermine the validity of the results. Age assessment should therefore not be initiated as a routine or arbitrary procedure but only if a best interests determination concludes that the assessment is required to promote the best interests of the child.[192]

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[188] UN Convention on the Rights of the Child, Article 3. EU Charter, Article 24.2. 2013 EU Asylum Procedures Directive (recast), Article 25.6. 2011 EU Qualifications Directive (recast), Article 20.5. EU 2013 Reception Conditions Directive (recast), Article 23.1-2.
[189] United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 13. Council of Europe Parliamentary Assembly, Unaccompanied Children in Europe: Issues of arrival, stay and return, Resolution 1810(2011), 15 April 2011, par. 5.10.
[190] Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, pp. 7-8.
[191] European Union Agency for Fundamental Rights, Separated, Asylum-Seeking Children in European Union Member States – Comparative Report, 2010,
[192] United Nations Children's Fund, Age Assessment: A technical note, 2013, p. 12.

When determining the best interests of a child in relation to the necessity of age assessment, the competent authorities should ascertain that the least invasive methods are used, that results will be reliable and that the procedure upholds the child's dignity at all times. The best interests assessment should therefore identify the child's specific needs and risks and how these might affect, or be affected by, the age assessment procedure. This is important for ensuring that the age assessment procedure does not cause any harm to the health and wellbeing of the child. The best interests assessment should also establish that the professionals who undertake the age assessment are qualified and impartial and that procedural safeguards are in place and accessible for the child. It is in the best interests of the child that the age assessment takes place in a child-friendly environment.[193]

In Bosnia and Herzegovina, Guidelines for the Assessment and Determination of the Best Interests of the Child were developed in 2019.[194] They provide guidance for professionals in the field of social and family protection, health care, education, as well as civil and criminal proceedings. The Guidelines have been developed under the Action Plan for Children in Bosnia and Herzegovina 2015–2018[195] and in response to the concluding observations issued by the UN Committee on the Rights of the Child in 2012.[196]

The Guidelines provide orientation for best interests determinations in respect of the individual needs of each child, the specific situation and timeframe, in which the decision is made, and with a view to reaching the best possible solution for the child. The aim is to guide professionals in the implementation of laws in all areas regarding the child and the child's position in the family and the wider community, in educational, health care and social service institutions, criminal and administrative procedures.[197]

Under the Rulebook on Protection of Foreign Victims of Human Trafficking in Bosnia and Herzegovina (Article 3f: Special treatment of the child) and the Rules on the Protection of Victims and Victims Witnesses of Human Trafficking Nationals of Bosnia and Herzegovina (Article 3(3): Basic principles), the responsible institutions and authorised organisations are obliged to "protect the best interests of the child".

Despite these important developments, the principle of the best interests of the child is not yet applied effectively across all the levels of the government and administration.[198] The Guidelines for best interests determinations developed in 2019 offer an important opportunity to strengthen the consideration for the best interests of the child. The orientations they offer is directly relevant to service provision and decision-making concerning migrant and asylum-seeking children.

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[193] European Asylum Support Office, Age Assessment Practice in Europe, 2014, p. 16. Mougne, Christine and Amanda Gray, A New Approach to Age Assessment of Unaccompanied and Separated Children: Current practices and challenges in the UK, 2010, p. 5.
[194] Ministry of Human Rights and Refugees of Bosnia and Herzegovina (2019); https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019020112314016bos.pdf;
[195] Government of Bosnia and Herzegovina, Action Plan for Children in Bosnia and Herzegovina 2015–2018; http://www.mhrr.gov.ba/PDF/djeca/akcijski%20plan%20za%20djecu-BH-web.pdf;
[196] http://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2FPPRiCAqhKb7yhsh8%2FU426pHwccUxzN5kmnhLtdnrWm1hJzGwfirOtSF7im%2Btj4%2BJ5n5CPlpIDWXA35DpHXskxTdDvCoa0RW9yOJTACORyOJ17Auf%2Bpplgz6CB;
[197] https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2019020112314016bos.pdf;
[198] Ministry of Human Rights and Refugees of Bosnia and Herzegovina, Combined Fifth and Sixth Report of Bosnia And Herzegovina on its Implementation of the Convention on the Rights of the Child, 2017;

Since a formally defined procedure for assessing the age of children in the context of migration and of child victims of trafficking is not yet in place, the recent initiatives to provide official guidelines for the best interests determination procedure and the related efforts to clarify the meaning of the principle in service practice, offer important opportunities for the development of an age assessment procedure. For this context, it will be necessary to define, which „serious doubts" about the age of a person would prompt a referral to an age assessment procedure in the best interests of the child, as well as situations in which age assessment would be considered not to be in the best interests of the child. In addition, the principle needs to be clarified as a rule of procedure for age assessment, service provision for children before, during and after the assessment, the training and qualification of professionals involved, as well as the environment in which the procedure will be performed.

The right to non-discrimination

Age assessment policies, procedures and practices have to respect the general principle of non-discrimination, in accordance with Article 2 of the UN Convention on the Rights of the Child and other relevant international and European standards. Safeguarding the right to non-discrimination in age assessment requires a standardised procedure that prevents different standards or discrimination against individuals or specific groups. Upholding the principle of non-discrimination requires considerations for the training of staff, information for the persons undergoing age assessment as well as effective monitoring and complaints mechanisms.[199]

While a standardised procedure should be applied in a uniform way with all persons whose age is debated, it should give due consideration to the specific needs of the individual. In referrals to age assessment and throughout the procedure, the person must not be discriminated against on the grounds of sex, language, religion, national or social origin, culture, colour, disability, sexual orientation, accompanied or unaccompanied arrival, immigration or other status.

In 2009, Bosnia and Herzegovina adopted the Law on Prohibition of Discrimination[200] that provides for the protection of the rights of the child from discrimination, including protection from discrimination by the family, society and the state. The Law establishes a framework for the implementation of equal rights and opportunities for all persons in Bosnia and Herzegovina, and regulates the system of protection against discrimination. Article 2(1) prohibits direct or indirect discrimination on any grounds. A weakness of the law is that no code of conduct or other appropriate measures have been introduced to prohibit stereotypical and stigmatising reporting about persons belonging to minority groups, such as the Roma people, in the media.[201]

Provisions on the prohibition of discrimination on any ground are also contained in the Constitution of Bosnia and Herzegovina, the entity and cantonal constitutions and the Brčko District of Bosnia and Herzegovina Statute, and in the laws relating to education, social and health protection, criminal legislation and other fields.

[199] United Nations Children's Fund, Age Assessment: A technical note, 2013, pp. 13-14.
[200] Law on Prohibition of Discrimination, Chapter III, Protected Rights, Official Gazette of Bosnia and Herzegovina No. 59/09; and Law on Changes and Amendments to the Law on Prohibition of Discrimination, Official Gazette of Bosnia and Herzegovina No. 66/16;
[201] UN Human Rights Council, Report of the Special Rapporteur on Minority Issues, 2015; www.ohchr.org;

These laws need to be more effectively applied and enforcement mechanisms need to be improved. There are at present no countrywide anti-discrimination strategies. The Action Plan for Children of Bosnia and Herzegovina 2015-2018 included a chapter on non-discrimination, targeting children who are citizens of Bosnia and Herzegovina, including Roma children. Comparable measures to promote the right to non-discrimination of migrant and asylum-seeking children or child victims of trafficking are currently not in place.

The Rules on the Protection of Victims and Victims Witnesses of Human Trafficking Nationals of Bosnia and Herzegovina stipulate (Article 3) that the principle of non-discrimination and compliance with human rights is the basic protection standard, which the authorised institutions and organisations shall ensure for all victims and victim-witnesses in Bosnia and Herzegovina.

In 2016, the first Child Protection Index (CPI) for Bosnia and Herzegovina was promoted[202], with a goal to develop a coherent, region-wide and cross-country comparable monitoring agenda on progress made in implementing child protection reforms. The Index reviews Bosnia and Herzegovina country scores on specific child protection issues through the five dimensions of government action: policy and law; services; capacity; coordination and accountability. The CPI aims to promote the implementation of the UN Convention on the Rights of the Child, comprising indicators that measure Bosnia and Herzegovina state policy and actions to protect and care for children under its jurisdiction. On the indicators related to CRC Article 2, Bosnia and Herzegovina scored 0,812 out of a maximum possible of 1 in 2019. The relatively high score indicates that the state authorities have taken significant steps to implement the rights of the child in terms of non-discrimination.[203]

For the development of age assessment procedures in Bosnia and Herzegovina, it will be important to ensure that in referrals to age assessment and throughout the procedure, the person must not be discriminated against on the grounds of sex, language, religion, national or social origin, culture, colour, disability, sexual orientation, accompanied or unaccompanied arrival, immigration or other status. Subjective preconceptions about the validity of identity papers or the credibility of persons from a specific national or social origin must not influence procedures, methods or decisions regarding age assessment.

The right to be heard

Under Article 12 of the UN Convention on the Rights of the Child, a child has the right to have their views heard and taken into account in all matters concerning them, including in judicial and administrative proceedings. The Convention provides for several other rights that are critical to enable children to form an opinion and communicate their views. They include the right to freedom of expression and to seek, receive and impart information (Article 13), the freedom of thought, conscience and religion (Article 14) and the freedom of association (Article 15), and the right to access information (Article 17). The Convention recognises that children develop skills,

[202] Network Stronger Voice for Children and World Vision Bosnia and Herzegovina , supported by UNICEF; The Index framework of indicators heavily relies on the Implementation Handbook for the Convention on the Rights of the Child, published by UNICEF;
[203] World Vision & Stronger Voice for Children Network (2019), Child Protection Index 2.0 in Bosnia and Herzegovina: Measuring Government Efforts to Protect Girls and Boys; https://www.wvi.org/sites/default/files/2019-06/Child%20Protection%20Index%202.0%20for%20BiH_engl_0.pdf;

competences and capacities at different ages, and that children need different degrees of support to exercise their right to be heard in a meaningful way and in light of their evolving capacities (Article 5). States are obliged to give due weight to the views of children in accordance with the child's age and maturity, including in the context of administrative and judicial proceedings (Article 12).

For age assessment procedures, the right to be heard implies that children are generally considered competent to participate in the procedure even though they may require support in accordance with their evolving capacities and specific needs. The child's participation can only be meaningful if the age assessment procedure takes place with the informed consent of the child and when the child is supported in making his or her views heard, for instance by a qualified interpreter, a legal representative and a guardian, if applicable.

In constitutional law, the right to be heard is recognised generally for all persons under the jurisdiction of Bosnia and Herzegovina, regardless of age. The legislation of Bosnia and Herzegovina recognises the right of the child to express their views specifically in family laws and in the context of social welfare and child protection. This applies also to the right to be heard in judicial and administrative proceedings concerning the child.

For the context of placement decisions, the family law at entity level and Brčko District of Bosnia and Herzegovina stipulates that the guardianship authority is obliged to enable the child to freely express their opinion regarding family accommodation and to assess the child's opinion in accordance with the child's age and maturity. [204] The child has the right to receive in a timely manner all the information he or she needs to form an opinion.

The above-mentioned Guidelines for the determination of the best interests of the child emphasise that child participation and the right to be heard are basic elements for assessing and determining the best interests of the child. The Guidelines provide also instructions to professionals that hearing the views of the child is one of the methods that need to be employed to assess and determine the child's best interests.

There is a general legal basis in place in Bosnia and Herzegovina to provide for the right of the child to be heard in administrative and judicial proceedings. This could be expanded and specified in more detail for the development of an age assessment procedure. To ensure a meaningful opportunity for the child to be heard, the age assessment procedure should provide for clear measures to inform the child about his or her rights, all the steps of the procedure, and the services available to the child. Information should be provided in a continuum before, during and after the age assessment procedure. The Council of Europe Handbook on child-friendly information for children in migration offers guidance for practice.[205] An age assessment procedure should include

[204] As per family laws on entity level and Brčko District of Bosnia and Herzegovina , the child has "a right to expression and right for his/her opinion to be acknowledged, in line with his/her age and maturity"; Family law of the Federation of Bosnia and Herzegovina (Article 125), of RS (Article 81a and 81b) and Brčko District (Article 108). Furthermore, as per Article 81b of RS Family Law, the "child has the right to receive information needed for the creation of his/her opinion".

[205] Council of Europe, How to Convey Child-friendly information to children in migration, A handbook for frontline professionals, Building a Europe for and with Children, 2018.

specific methods, tools and training for professionals on how to inform and hear children of different age groups and backgrounds.

The right to development

Age assessment procedures are typically conducted for adolescents and young adults to determine whether the person is under 18 years old. The individuals concerned are at a critical moment of their transition from childhood to adulthood. In this period of life, the treatment of the young person and the safeguards and support available to them can have a decisive impact on their development.

The right to development is a fundamental principle of the UN Convention on the Rights of the Child (Article 6). Children have a right to develop their evolving capacities, their skills, talents and potentials. States are held to support and safeguard children in their individual development and to provide support to parents, guardians and caretakers to this end (Articles 5, 7, 9, 18, 20). The right to development relates closely to the right to health, social security and an adequate standard of living and the right to education (Articles 24, 26-29). Children who seek international protection have a right to special support under Article 22; children whose parents or family members cannot be found shall be accorded the same protection as other children who are permanently or temporarily deprived of parental care. For children placed in alternative care, international standards afford that even after turning 18 years old, young adults and care leavers continue to enjoy rights with regard to after-care and support for their development to an independent life.[206]

The impact of protracted exposure to war and armed conflict, high levels of generalised violence, sexual violence and exploitation, humanitarian crises and emergencies or poverty can slow down the development of children and young people. There is a high risk that migrant and refugee children and young people are exposed to violence and exploitation during the journey.[207] These experiences might determine their need for support much more than their age.

Against this background, age assessment procedures need to be designed in a way to not disrupt the development of adolescents and young adults. The age assessment procedure should therefore be integrated institutionally and structurally with systems for social welfare, childcare and protection, youth development and aftercare supporting the young person's transition to adulthood and independent life. Institutionally, age assessment procedures need to give due consideration to the coherence and continuity between the human rights of children and young adults, the regulations of the immigration and asylum regime, as well as special support afforded to specific groups such as women, persons with disabilities, and persons who are victims of crime such as human trafficking, sexual violence, inhuman or degrading treatment or torture.

[206] UN Guidelines on Alternative Care, 2010, par. 131-136.
[207] UNICEF, A Deadly Journey for Children: The Central Mediterranean Migration Route, February 2017.

Box 6: Legislation in support of a transition period for young migrants

The Parliamentary Assembly of the Council of Europe proposes in its Resolution 'Migrant Children: What rights at 18?' (2014) to establish a transition period for young migrants aged between 18 and 25 years old. A transition period would enable young adults to access healthcare services, social welfare, education and housing assistance. It could contribute to supporting adolescents and young adults in their development and reduce any disruptive impact of turning 18 years old with the associated termination of services, or being assessed as a young adult within this age range.[208]

In Bosnia and Herzegovina, a child without parental care has the right to accommodation until they reach the age of majority, i.e. until the end of regular schooling, and up to 26 years of age, provided they continue to be enrolled in school or other forms of education. The right to accommodation of young care leavers is directly related to enrolment in education. These regulations apply also to migrant and refugee children.[209]

Children who live and work in the streets do not enjoy specific safeguards in Bosnia and Herzegovina, which is detrimental to their development. Due to differences in social protection laws at the entity level, the services and treatment for children involved in begging on the streets differ, including with regard to shelter, health care, education and protection.[210] There are some general minimum standards for institutionalised social services in Bosnia and Herzegovina, but they are not specific for children who live and/or work in the streets.[211]

The law and policy frameworks in Bosnia and Herzegovina provide specific standards and services in support of the development of children who have officially been recognised as victims of trafficking, irrespective of whether the child is a citizen or a non-national. A child victim of trafficking who is not a citizen of Bosnia and Herzegovina enjoys the same rights to care and protection as children who are citizens of Bosnia and Herzegovina, which means that they are automatically subject to all laws governing education, social, child and health care. During their shelter stay, all children are entitled to these services (see Chapter 3). In practice, however, the scope and quality of the services vary as they depend on the financial support available to the CSOs authorised for the protection and care of child victims of trafficking.

The right to privacy and data protection

Children whose age is disputed have a right to data protection and the right to be protected from arbitrary interference with their privacy in line with international and European data protection

[208] Council of Europe Parliamentary Assembly, Resolution 1996 (2014) Migrant Children: What rights at 18?, 23 May 2014.
[209] Article 76: Rights of asylum seekers stipulates the rights of asylum seekers to: 76(1c) Accommodation in centres for asylum seekers; 76 (1e) primary and secondary education.
[210] Save the Children, Istraživanje o oblicima i raširenosti prisilnog, štetnog i rada djece na ulici u Bosni i Hercegovini, 2013; http://www.novageneracija.org/literatura/ostala_literatura/istrazivanje_o_oblicima_i_rasirenosti_prisilnog_%C5%A1tetnog_i_rada_djece_na_ulici_u_BiH.pdf;
[211] Ministry of Security of Bosnia and Herzegovina/Catholic Relief Services, Smjernice o postupanju centara za socijalni rad sa žrtvama trgovanja ljudima, 2010; http://www.msb.gov.ba/anti_trafficking/dokumenti/prirucnici/?id=5318;

laws and regulations.[212] In the context of age assessment, the child has a right to be informed, which personal data and information are shared between authorities or requested from authorities or other sources, within a country or across borders. Professionals and officials involved in age assessment procedures need to be trained to understand the relevant data protection regulations and to respect them in practice.

All four criminal codes in Bosnia and Herzegovina provide for the criminal offence of unauthorised use of personal data. Bosnia and Herzegovina has also enacted the Law on Protection of Personal Data in 2006, which stipulates that personal data processed by professionals employed in competent institutions and organisations are an official secret.[213] This law still needs to be aligned with the EU General Data Protection Regulation 2016/679 (GDPR) and with the EU Law Enforcement Directive 2016/680.[214]

The law does not regulate the use of personal data in the media, although Article 19 stipulates that the processing of personal data for journalistic purposes, for the purposes of artistic and literary expression has to comply with a special regulation and codes of conduct. There are cases in which journalists publish personal data of children and young people who are victims or perpetrators of criminal acts, including migrant and refugee children.[215] At the state level, there is no legislation prohibiting the media and journalists from publishing personal data of children, which would ensure appropriate penalties for such conduct.[216] There are no specific mechanisms for children to complain about breaches of their privacy.[217]

The Communications Law[218] provides that the Council of Ministers and the Communications Regulatory Agency undertake all reasonable measures to implement the privacy regulations established by the law, including the right of the child to privacy in electronic media.

Thus far, there have been no awareness raising campaigns to inform journalists and other media professionals about of the child's right to privacy. The Rulebook for Foreign Victims of Trafficking in Human Beings addresses this issue in Article 20, which provides that all measures must be taken in order to protect the privacy and identity of a child victim of trafficking. The identity of a child victim of trafficking and any data enabling the identification of the child shall not be made public through the media or in any other way, unless, in exceptional cases, this would be considered to

[212] UN Convention on the Rights of the Child Article 16, Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, ETS No. 108, 28 January 1981. Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. EC Asylum Procedures Directive (recast), 2013/32/EU, Recital 52 and Article 48. United Nations High Commissioner for Human Rights, General Comment No. 16, Article 17, The right to respect of privacy, family, home and correspondence, and protection of honour and reputation, HRI/GEN/1/Rev.9 (Vol. I), 8 April 1988.
[213] Law on the Protection of Personal Data in Bosnia and Herzegovina , Official Gazette of Bosnia and Herzegovina No. 49/06, 76/11 and 89/11;
[214] DIRECTIVE (EU) 2016/680 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA, 2016; https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L0680; ;
[215] UN Women, Istraživanje o medijskom izvještavanju o rodno zasnovanom nasilju nad ženama u Bosni i Hercegovini, 2016;
[216] Media Centar Online, Mediji u BiH i prava djeteta – pravni osnov, 2008; https://www.media.ba/bs/etikaregulativa-novinarstvo-pravda-i-sigurnost-etika/mediji-u-bih-i-prava-djeteta-pravni-osnov;
[217] Institution of the Human Rights Ombudsman of Bosnia and Herzegovina, Preporuke za unapređenje zaštite prava djece na privatnost kada su prava narušena od strane medija u BiH, 2012; https://www.ombudsmen.gov.ba/documents/obmudsmen_doc2013020406523264cro.pdf;
[218] Official Gazette of Bosnia and Herzegovina No. 31/03, 75/06, 32/10 and 98/12; https://www.rak.ba/hr/articles/80;

be in accordance with the best interests of the child, for instance for the purpose of family tracing, disclosing only the necessary minimum of personal data.

In the first half of 2018, Bosnia and Herzegovina ratified the Optional Protocol to the UN Convention on the Rights of the Child on a Communications Procedure. The Protocol gives children the right to complain where their rights afforded under the UN Convention have been violated by the State party, including the right to be protected by law against arbitrary interference with his or her privacy.[219]

The existing legal provisions on data protection and the right to privacy offer a basis that an age assessment procedure can build on. The relevant laws still need to be strengthened, in particular with regard to the protection of personal data of migrant and refugee children. For the development of an age assessment procedure, the international and European standards in this field should provide orientation, in particular the EU General Data Protection Regulation 2016/679 (GDPR). The procedure should regulate how the personal data of children undergoing age assessment is to be used, shared and stored, in particular within the multi-professional team conducting the assessment, as well as in regard to any referral of the child within the country, as well as transnational cooperation for the reception, transfer and relocation of migrant and refugee children.

Image URL : (https://www.liberties.eu/en/stories/why-do-thousands-of-refugees-children-disappear-from-europe-asylum-system/7574)

[219] Official Gazette of Bosnia and Herzegovina No. 2/18, International agreements;

5. CONCLUSIONS AND PROPOSALS FOR ACTION

This study aimed to assess the law and policy frameworks regulating age assessment of children at risk of human trafficking and the relevant practice in Bosnia and Herzegovina. **The study identified a need for age assessment, as a high number of migrant and refugee children arriving in the country do not carry identity documents and their ages are uncertain.** In addition, some parts of the population are not reliably registered at birth, which may lead to doubts about the age of the children concerned.

The laws and policies regulating the reception of migrant and refugee children, as well as registered asylum seekers, provide for specific safeguards and services for children. **The correct identification of migrant and refugee children is a precondition for them to access these services and safeguards.**

As many of these children are considered to continue their journey from Bosnia and Herzegovina to neighbouring countries and EU Member States, the legitimate interest in establishing their identities, including age, is a concern not only to the state authorities of Bosnia and Herzegovina, but also to other European countries. The development of an age assessment procedure should therefore give due consideration to how the results of age assessment are documented, registered and shared within the country and, where applicable, across borders, in accordance with international and European law.

Thus far, **the principle of the presumption of minor age, a cornerstone of any age assessment procedure, has been formally recognised only with regard to non-national child victims of trafficking and presumed victims** in the relevant Rulebook. As the provisions of the Rulebook apply only to this specific group of children, **migrants and refugee children do not enjoy the same safeguards** in national law and policy. They are treated according to their declared age, in accordance with the Law on Aliens, and might therefore be considered and treated as adults if they self-identify in this way.

Although the presumption of minor age is a fundamental principle for safeguarding children whose age is unknown, the principle is only meaningful if integrated into an age assessment procedure. Age assessment is instrumental to transform the presumption of minor age into a confirmed and recognised status of the person as a child. Where the procedure is missing, there is a risk that adults are wrongly considered and treated as children and placed together with unrelated children; or that children who are not correctly identified are placed with unrelated adults. These inappropriate placements are connected with an increased risk for children to experience violence and exploitation. The development of an age assessment procedure aims also to prevent this, in addition to ensuring age-appropriate and right-based service provision.

The approach to children whose age is uncertain in Bosnia and Herzegovina is today highly fragmented and based on only rudimentary provisions in the laws concerning migrant and refugee children and non-national victims of trafficking. This fragmented approach creates

uncertainty for professionals working with and for children whose age is in doubt, including children at risk of exploitation and trafficking and child victims. **There is a need to integrate the existing elements of age assessment into a formal and clearly regulated age assessment procedure, in accordance with the rights and the best interests of the child and irrespective of the child's social or national origin, background and migration story.**

Whereas the study revealed that age assessment procedures have thus far not been regulated by law or policy in Bosnia and Herzegovina, it identified a **nascent and promising practice in Canton Sarajevo, where a social interview method has been developed for age assessment**. The multi-professional group applying the social interview method in Canton Sarajevo has done important groundwork. This practice remains at present still limited to an age assessment method and does not represent a complete and formalised procedure. Yet, it is sufficiently solid to be developed further and mainstreamed throughout the country to ensure children whose age is unclear are assessed and recognised as children in accordance with international and European standards.

The social interview method developed in Canton Sarajevo is an outstanding example of practice due to its multi-professional approach and the strong effort to create a child-centred method, even in light of difficult working conditions of the professionals involved and a high caseload. Although the method causes a burden on public resources, it is comparatively low-cost as there is no recourse to medical examinations, such as x-rays, which cause a high financial burden on the public health care system. As a still rather recent practice, the social interview model will need to be regulated and institutionalised to become embedded into an age assessment procedure with clearly regulated steps from the referral through to the age assessment decision, and due consideration to procedural safeguards that are sensitive to the rights and needs of migrant and refugee children. The method has important strengths that could be built on when promoting age assessment procedures in Bosnia and Herzegovina and the wider South-East European region. Multi-disciplinary and joint training, as well as evaluation and monitoring, should be considered as measures to accompany the roll-out of the method on a larger scale.

The social interview method is centred around the interview of the child, based on a standardised interview guide and the use of a child-sensitive interviewing protocol applied by trained professionals. The interview offers an important opportunity for the multi-professional group to hear the child's story and to assess the child's case. This approach is essential to screen for indicators or signs of violence, exploitation and trafficking and to refer the child to services for protection and assistance in accordance with the identified needs and risks. To strengthen this two-fold approach of the age assessment interview, the collaboration with social services and reception services and considerations for referral are important.

An age assessment procedure is only meaningful, if the procedure and its consequences are in accordance with international and European standards and, in particular, the principle of the best interests of the child. The development of an age assessment procedure in Bosnia and Herzegovina has to be addressed, therefore, in light of broader considerations for the rights and wellbeing of children, meaningful services in support of their development, and their protection against all forms of violence, exploitation and trafficking. Ensuring continuity in the support

offered to adolescents in care and their transition to adulthood and independent life is essential to render age assessment a rights-based procedure that is empowering and promotes the wellbeing and development of children.

The study found that the law and policy framework regulating the identification and assistance of (presumed) child victims of trafficking is well developed in Bosnia and Herzegovina. Laws and policies are in place also to promote the application of the general principles of the UN Convention on the Rights of the Child and to regulate childcare and protection services, as well as the reception of migrant and refugee children. Although the study identified areas where law reform is recommended, the legislative and policy frameworks offer a good basis to protect and support migrant and refugee children, child victims of trafficking, presumed victims and children at risk. The development of an age assessment procedure can build on the existing laws and policies and incorporate them. The existing legal basis constitutes an important opportunity, as the development of a formal age assessment procedure can be initiated in a timely manner, without awaiting the outcomes of lengthy processes of national law reform.

There are significant challenges, however, in ensuring the implementation of these laws and policies to safeguard the rights of the child in practice. As GRETA pointed out in its second evaluation round, there remains in particular an imperative to strengthen the national systems and services for welfare, social protection and inclusion, and child protection as key measures for the prevention of exploitation and trafficking and the protection of child victims.[220] The European Commission's Analytical Report of 2019 affirmed also that the legislative and institutional frameworks for the protection of fundamental rights in Bosnia and Herzegovina was largely in place, but that it has yet to be fully implemented in practice. The report recommended however a harmonisation of legislation throughout the country, with a view to align it fully with European standards, providing adequate resources for the effective implementation and enforcement of fundamental rights.[221]

The experience in Canton Sarajevo offers lessons learned, which are relevant for matters concerning age assessment and the reception of migrant and refugee children. Beyond these thematic contexts, the model offers an invaluable potential to inspire bottom-up implementation processes based on innovation and entrepreneurship at the local level. Learning from this spirit of innovation is just as important as the technical value it holds for age assessment. In light of the massive challenges of ensuring the effective and meaningful implementation of state laws and policies in Bosnia and Herzegovina, the dynamics of local initiatives offer a potential for promoting innovative approaches to implementation that cannot be underestimated and might be promoted more strongly. With regard to the development of an age assessment procedure, it may be important to offer strategic support to a combination of "bottom-up" and "top-down" approaches, while aiming at connecting them in an appropriate way. This combined approach

[220] Group of Experts on Action Against Trafficking in Human Beings (GRETA), Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Bosnia and Herzegovina, Second evaluation round, GRETA (2017)15, 2017.
[221] European Commission, Analytical Report Accompanying the document Communication from the Commission to the European Parliament and the Council Commission Opinion on Bosnia and Herzegovina's application for membership of the European Union, 2019; https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/20190529-bosnia-and-herzegovina-analytical-report.pdf;

offers important opportunities, particularly for strongly decentralized multi-level governance systems as in Bosnia and Herzegovina.

To prevent that general implementation challenges slow down the introduction of a formalised age assessment procedure throughout the country, a decentralised implementation process might be more appropriate to ensure tangible progress in this field. To enable this, it would be important to launch a country wide consultation on the social interview method developed in Canton Sarajevo and the model procedure proposed by this study, based on international and European standards, as well as national law. The consultative process would be instrumental to generating commitment to further action. Where this is the case, and leading actors throughout the multi-level governance system of Bosnia and Herzegovina reach an agreement on the aim, and some leaders at entity or local level commit to take responsibility for the issues at stake, a decentralised bottom-up development process could be initiated, leaving key questions concerning the institutionalisation of the age assessment procedure to the competent actors at the local level. Any decentralised initiatives should be embraced by a broader national programme that offers orientation and joint review, coaching and necessary support, in accordance with national, European and international law.

In light of these considerations, the study concludes with the following proposals for action:

Proposals for action:

Legislative authorities:

- **Reform the Law on Aliens t**o reflect the principle of the presumption of minor age in relation to migrant and refugee children whose age is in doubt

- Develop a **legal or policy framework to regulate the age assessment procedure** in accordance with international and European standards, the rights of the child and the principle of the best interests of the child

Actors involved in policymaking and programming:

- Development of a model procedure for age assessment of children in migration:

  Strengthen the social interview method for age assessment developed in Canton Sarajevo by integrating it into an **age assessment procedure, regulated by law or policy,** and a **protocol for interagency and multi-disciplinary cooperation**. A formally regulated age assessment procedure would assign clear institutional responsibilities, promote accountability and ensure safeguards for children. It should also aim at connecting the age assessment procedure with existing referral mechanisms for children to ensure effective and appropriate follow-up in cases where violence, exploitation or trafficking is identified or suspected.

Legislate for and strengthen procedural safeguards, which are sensitive to the rights and needs of children, in accordance with international and European standards guiding age assessment procedures for children in the context of migration.

Promote **consensus on and dissemination and implementation of a national model procedure for age assessment, based on the social interview method**, accompanied by training, including joint interagency and multi-disciplinary training, a package of working methods and tools to be used in the procedure, as well as a handbook providing practical step-by-step guidance for practitioners. The procedure should build on and integrate, as far as possible, existing standards and tools used in the country, such as tools for child-sensitive interviewing and best interests' determination. Guidance material should be published in the national languages.

- Information for children:

Strengthen the **awareness and information of migrant and refugee children** regarding access to counselling and reporting mechanism for children, including anonymous reporting, in cases where their rights have been infringed in the course of an age assessment procedure or in other contexts.

Develop child-friendly information material in different languages, print and digital media, videos or social media, including material developed with children, and building on information material for children already available, such as the video animation developed by the Council of Europe and the European Asylum Support Office.[222]

- Data collection, research and monitoring:

Revisit the mechanisms for data collection and the preparation of national statistics on migrant and refugee children, asylum-seeking children, child victims of trafficking and presumed victims to ensure appropriate disaggregation of data. This might include the revision of forms used to register and report the age of the identified migrant, asylum seeking and refugee children, with 18 years of age as an indicator in data disaggregation concerning adults and children and the possibility to register reasonable doubts about the person's age as an indication for referral to age assessment. The development of an age assessment procedure should include considerations for how to register and report the assessed age in national data records and statistics.

Activate the **monitoring of the age assessment procedure** and each of its steps in the country, at all levels, through research and other appropriate means and by consulting with children and young adults who have undergone age assessment, as well as the officials and professionals involved. Monitoring by human rights structures, where

[222] Council of Europe, Age assessment for children in migration: Animation launched in 6 new languages and child-friendly leaflet, 18 June 2021.

applicable, should contribute to strengthening the accountability of state and civil society actors at all levels.

- Strengthening national services for childcare, welfare and protection:

  Continue promoting more effective measures to ensure all children born in Bosnia and Herzegovina are registered at birth. Under the UN Convention on the Rights of the Child, the **right to birth registration** applies without discrimination to citizens of Bosnia and Herzegovina and to children born to migrants and refugees who are residing in or transiting through Bosnia and Herzegovina.

  Continue strengthening measures to ensure **equality of care and the right to development for all children** living in Bosnia and Herzegovina as citizens, migrants, asylum seekers or refugees, irrespectively of their immigration status or status as a victim of violence, exploitation or trafficking.

  Strengthen aftercare for young care leavers and support for their transition to adulthood and independent live to ease any disruptions upon turning 18 for children without parental care, irrespective of the child's immigration status or status as victim of violence, exploitation or trafficking.

- International collaboration:

  Engage national, regional and international actors in the Southeast European region to **promote the model procedure more widely throughout the region**.

  In the medium and longer term, promoting **comparable age assessment standards and procedures throughout the region** might hold benefits for children and States. Where age assessment decisions are made in accordance with international and European standards and the best interests of the child, where they are valid, ethical and reliable, the age assessment decisions could be recognised by the state authorities in different countries of the region and beyond, including by European Union and Council of Europe member States.

<u>International actors:</u>

Offer and provide **technical assistance, financial and organisational support to the national process for the development of a model procedure for age assessment** of children in migration and children at risk of exploitation and trafficking, as well as implementing guidelines targeting competent authorities and other relevant public and civil society actors at the state, entity and local levels.

Support national stakeholders in developing and rolling out an interagency and multi-disciplinary training strategy on the model procedure for age assessment elaborated at the national level, including all relevant specific thematic considerations and tools required, such as child-sensitive interviewing tools, the writing of age assessment decisions, development of child-sensitive procedural safeguards and registration of personal data in respect of data protection rules.

Facilitate the exchange of experience, lessons learned and evidence regarding the use of age assessment interviews in different European countries, for instance through an international conference or consultation, with the aim to identify key lessons learned that could inform the development and dissemination process in Bosnia and Herzegovina, the South-East European region, and the member States of the European Union and the Council of Europe more broadly.

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LIST OF INTERVIEWS:

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KII1	Ministry of Security BiH (MoS)	19 November 2020
KII2	Ministry of Human Rights and Refugees BiH (MHRR)	27 November 2020
KII3	State Investigation and Protection Agency (SIPA)	11 December 2020
KII4	Service for Foreigners Affairs BiH (SFA)	06 May 2021 10 May 2021
KII5	Prosecutor's Office of Bosnia and Herzegovina	11 December 2020

STAKEHOLDERS AT ENTITY, CANTONAL AND MUNICIPAL LEVEL AND EXPERTS FROM INTERNATONAL ORGANISATIONS:

KII6	Federal Ministry of Interior	08 December 2020
KII7	Former Head prosecutor of the Prosecutor's Office of the Federation of Bosnia and Herzegovina	26 November 2020
KII8	Center for Social Work of Canton Sarajevo	11 December 2020 23 January 2021 02 February 2021
KII9	Center for Social Work Hadžići	06 May 2021 10 May 2021
KII10	Center for Social Work Banja Luka, Republika Srpska	26 November 2020
KII11	Zemlja djece (Daily Center for street children, Tuzla)	23 November 2020
KII12	University of Sarajevo, Faculty of Criminalistics, Criminology and Security Studies	26 November 2020
KII13	Organization for Security and Cooperation in Europe (OSCE) Mission to Bosnia and Herzegovina	02 December 2020
KII14	United Nations Investigative Team to Promote Accountability Against ISIL Crimes (UNITAD); former official to Commission on Missing Persons (ICMP)	08 December 2020

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