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Child-friendly age assessment for unaccompanied migrant children

Report¹

Committee on Migration, Refugees and Displaced Persons

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Summary

The multiple methods of determining the age of young migrants used in Europe reflect the lack of a harmonised approach and of an agreed method of age assessment.

This report reflects how good practices in holistic, child-centred age assessment can enable child support agencies to meet the needs of migrant children more rapidly and mitigate the negative outcomes of waiting periods.

It also highlights how, by generating operational and strategic partnerships, a holistic approach to age assessment can foster better professional co-operation and facilitate the development of policies and procedures which reflect and include the universal principles of children's rights.

The Council of Europe member States are invited to support the development of a child-sensitive model of age assessment for young migrants in Europe to replace inaccurate and potentially traumatising medical tests and which will be compatible with the Council of Europe's human rights standards.

1. Reference to committee: Doc. 14175, Reference 4257 of 23 January 2017.



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A. Draft resolution²

1. More and more unaccompanied children are travelling to Europe, fleeing conflicts, seeking protection or looking for a better life. Many of them are seeking reunification with their families in Europe. The United Nations Children's Emergency Fund (UNICEF) reported that 170 000 unaccompanied minors travelled to Europe in 2015-2016. These children often do not have identity documents, which poses a real challenge for the authorities tasked with identifying, protecting and supporting them. For children to obtain the necessary protection and assistance to which they are entitled, it is necessary to determine the age of any undocumented young migrant who may be a child.
2. Age assessment is a process by which authorities seek to establish the chronological age, or age range, of a person, or determine whether an individual is an adult or a child. Currently there is no process of assessment, medical or otherwise, which can determine the exact age of an individual with 100% accuracy. There is also considerable variation in the methods and quality of age assessments undertaken in European States.
3. The Parliamentary Assembly has raised the issue of age assessment of unaccompanied children in several resolutions, in particular [Resolution 2136 \(2016\)](#) on harmonising the protection of unaccompanied minors in Europe, [Resolution 1810 \(2011\)](#) "Unaccompanied children in Europe: issues of arrival, stay and return", [Resolution 1996 \(2014\)](#) "Migrant children: what rights at 18?" and [Resolution 2020 \(2014\)](#) on the alternatives to immigration detention of children, in which it established a number of safeguards pertaining to age assessment, emphasising that age assessment should only be carried out if there are reasonable doubts about a person being underage and should always be conducted in the best interests of the child.
4. The Assembly welcomes and supports the Parliamentary Campaign to End Immigration Detention of Children and in particular its action to promote child-friendly age assessment of migrant children.
5. The Assembly is particularly concerned that certain age-assessment methods can be frightening and traumatising for children and may involve inhuman and degrading treatment. In addition, the process can be negatively life-changing – if a child's age is disputed or if he or she is pronounced an adult, immigration detention and removal are likely to become a reality. In cases of detention, the negative physical and psychological effects on children's health and development are far-reaching and lasting
6. The many methods of age assessment used in Europe reflect the lack of a harmonised approach and agreed method. The Assembly believes that the development of a child-sensitive, holistic model of age assessment would enable European States to meet the needs of unaccompanied and separated children. It therefore calls on member States to:
 - 6.1. conduct case-by-case, reliable age assessment of unaccompanied migrant children only in cases of serious doubt about the child's age and as a last resort, in the best interests of the child;
 - 6.2. provide unaccompanied migrant children with reliable information about age-assessment procedures in their own language, so that they can fully understand the different stages of the process they are undergoing and its consequences;
 - 6.3. appoint a guardian to support each unaccompanied migrant child individually during the age-assessment procedure;
 - 6.4. ensure that an unaccompanied migrant child or his or her representative can challenge the age-assessment decision through appropriate administrative or judicial appeal channels;
 - 6.5. use only as a last resort x-ray examinations in the form of dental or wrist x-rays and all other invasive medical procedures for the purpose of determining the age of unaccompanied or separated migrant children;
 - 6.6. ensure that all medical examinations are ethnic specific;
 - 6.7. prohibit, in all situations, the use of physical sexual maturity examinations for the purpose of determining the age of unaccompanied and separated migrant children;
 - 6.8. prohibit the detention of unaccompanied and separated children who are awaiting or undergoing age assessment, and prohibit the detention of young migrants whose age has been determined as 18 years or more but within a two to three-year margin of error;

2. Draft resolution adopted unanimously by the committee on 20 September 2017.

- 6.9. identify and provide alternative accommodation options for children awaiting or undergoing age assessment, with a view to avoiding the detention of children during disputes about age, including by temporary placement in centres for children where appropriate safeguards should be in place to protect them and other children in the centres;
- 6.10. support and promote the development of a single, holistic model of age assessment in Europe, based on the presumption of minor age;
- 6.11. whenever possible, ensure that the procedure of age assessment is carried out by professionals acquainted with the children's ethnic, cultural and developmental characteristics.

B. Draft recommendation³

1. The Parliamentary Assembly refers to its Resolution ... (2017) on child-friendly age assessment for unaccompanied migrant children.
2. The Assembly welcomes the work of the Ad hoc Committee on the Rights of the Child (CAHENF), with the support of its Drafting Group of Experts on Children's Rights and Safeguards in the context of Migration (CAHENF-Safeguards) to develop guidelines on guardianship and age assessment, in order to provide appropriate safeguards for children in the context of migration.
3. The Assembly calls on the Committee of Ministers to:
 - 3.1. adopt the guidelines for guardianship and child-friendly age assessment as soon as they have been elaborated by the CAHENF, taking into account the Assembly's relevant recommendations;
 - 3.2. ensure, through the relevant intergovernmental body, the follow-up to the implementation of these standards in the member States.

3. Draft recommendation adopted unanimously by the committee on 20 September 2017.

C. Explanatory memorandum by Ms Doris Fiala, rapporteur

1. Introduction

1. As the European migration and refugee “crisis” continues, more unaccompanied children are embarking on the dangerous journey to Europe. The overall increase in migration and the difficulties of the journey make it ever more likely that families will be separated, leaving young people to find their way alone.
2. With the increasing numbers of unaccompanied and separated children arriving in Europe, real challenges arise for the authorities tasked with identifying, protecting and supporting them. Particularly with the recent developments of the crisis in the context of the partial or total closure of routes across Europe, the treatment of children at certain border crossings has been raised by non-governmental organisations (NGOs) such as Amnesty International as a major human rights concern.
3. Questionable conduct towards these children, combined with the lack of an appropriate and safe process of identification and reception, can push children to flee from one European country to another, seeking protection.
4. It is therefore critical for children to be protected appropriately, and to receive the services they need and are entitled to, such as decent accommodation and school placements. For this, it is necessary to determine the age of anyone seeking asylum who may be a child.
5. In this context, the question of children being seen first and foremost as children and second as migrants, as reflected in Article 2 of the United Nations Convention on the Rights of the Child (UNCRC)⁴ has even greater significance. There have been serious concerns raised by the Council of Europe about the treatment of refugees by some European States.⁵
6. Currently there is no process of assessment, medical or otherwise, which can determine, with 100% accuracy, the exact age of a child. This has led to considerable variation in the methods and quality of age assessments undertaken in European States.
7. This level of variation leads to a range of negative outcomes for children such as their being misidentified as adults and detained before and during the process of age assessment. Children who are disbelieved risk falling out of a European State’s child care arrangements and potentially going missing.
8. Along with the risk that the range of rights that should be afforded to a child as a child may not be provided, certain age-assessment processes can even, in their design and implementation, traumatise a child.
9. This report reflects findings based on European States’ contributions, fieldwork, and testimony from children. It reflects how good practice, stemming from holistic child-centred age assessment, can increase the speed by which child support agencies meet the needs of children and mitigate the range of negative outcomes.
10. I also highlight how a holistic approach to age assessment can, in terms of operational and strategic partnerships, foster better working co-operation and facilitate the development of policies and procedures which reflect and include the core principles pertaining to the rights of the child.
11. The Parliamentary Assembly has adopted a number of resolutions where the problem of age assessment of migrant children has been raised, including the recent [Resolution 2020 \(2014\)](#) on the alternatives to immigration detention of children. Rapporteur Manlio Di Stefano’s report on “Harmonising the protection of unaccompanied minors in Europe”⁶ sets out a number of issues requiring action, including the uneven transposition of international standards into national regulatory frameworks and the need to harmonise procedures involving unaccompanied migrant children. In the report “Migrant children: what rights at 18?”⁷, recommendations were made on such issues as incorrect determination of age,⁸ the use of physical appearance as a sole method of age assessment,⁹ and the principle of the benefit of the doubt being applied.¹⁰

4. UNCRC, [Article 2](#).

5. The Council of Europe Commissioner for Human Rights, Mr Nils Muižnieks, has stated with regard to migration and refugee issues: “There are alarming trends in the treatment of asylum seekers and refugees, as well as of irregular migrants in all parts of Europe” and drew attention to the fact that “one of the most vulnerable groups in Europe today is migrant children, who often are denied basic health care and education, and run the risk of being exploited by traffickers or smugglers”, Comment Council of Europe, [Thematic work on migration](#).

6. [Doc 14142](#).

12. The Assembly outlined a number of safeguards pertaining to age assessments: they should only be carried out if a reasonable doubt exists; by an independent authority; with the informed consent of the child or the guardian; and must be based on a multidisciplinary approach, using the least intrusive methods compliant with medical ethical standards. The outcome of this process should be subject to appeal, and the benefit of the doubt in favour of the child (presumption of minority). In [Resolution 1810 \(2011\)](#) “Unaccompanied children in Europe: issues of arrival, stay and return”, a set of 15 common principles was established which member States were invited to observe. It concludes that “unaccompanied children must be treated first and foremost as children, not as migrants”.

13. I take the opportunity of this report to pay tribute to the Parliamentary Campaign to End Immigration Detention of Children which has been run by the Parliamentary Assembly over the last two years and which has put a special focus on the problems related to the age assessment of unaccompanied migrant children. In the framework of the campaign two round tables were organised on this topic and a stocktaking study of Council of Europe member States’ age-assessment policies and procedures, identifying those practices respectful of children’s rights, was prepared.

14. The present report builds on the substantial work of the Assembly in the area of child protection, age assessment and the treatment of unaccompanied and separated children in terms of their rights as children. Through a harmonisation approach, this report seeks to add value to this work and to promote improved age-assessment practices, and proposes measures for consideration which could inform arrangements pertaining to unaccompanied and separated children and enhance inter-agency co-operation.

15. I would like to thank Mr Philip Ishola, Chair of the Age Assessment Strategic Oversight Group in the United Kingdom, for his valuable contribution to this report.

2. Figures for unaccompanied children

16. In 2016 across the European Union, 63 290¹¹ unaccompanied children were recorded as claiming asylum and almost 96 465 unaccompanied children applied for asylum in the European Union in 2015.¹² The present migration and refugee crisis poses real challenges for those organisations tasked with identifying children so as to ensure that the needs of the child are met both in terms of their immediate physical and mental well-being and their rights as enshrined in child protection and rights law.

17. There is no comprehensive data available on the number of arrivals of documented and undocumented children in Europe which includes arrivals by air and land and arrivals via irregular methods which often involve smuggling and trafficking of human beings, the latter being difficult to identify and track. The number of asylum applications lodged by unaccompanied children is used to provide an indication of the actual total figure of unaccompanied children arriving in Europe. However this does not necessarily provide an accurate picture as some children who continue their onward irregular journey do not apply for asylum at all or are recorded as adults when they may be children. In addition, due to different definitions and national procedures and practices, collecting accurate data on unaccompanied and separated children is particularly challenging (for example separated children being registered as either accompanied or unaccompanied).

3. Legislative framework and the position of European institutions on age assessment

3.1. International regulatory frameworks

18. The UNCRC provisions are used as a reference guide and influence policies in most European States. However, even when referenced, the UNCRC is not necessarily transposed into actual guidelines or practice within the statutory systems of child protection related to the asylum and immigration system. This lack of incorporation can perpetuate a situation of confusion and conflict between national laws and the UNCRC. This confusion and conflict is apparent where the principle of a child being seen first as a child and only then as a

7. [Doc 13505](#).

8. *Ibid.*, paragraph 24.

9. *Ibid.*, Section 2.2 – The strategy envisaged.

10. *Ibid.*, paragraph 25.

11. Asylum applicants considered to be unaccompanied minors [Eurostat](#) annual data 2016.

12. Asylum applicants considered to be unaccompanied minors [Eurostat](#) annual data 2015.

migrant, reflected in Article 2 of the UNCRC,¹³ is undermined in terms of how children are assessed and by whom, the child's best interest, the services provided to a child and the agency which has ultimate responsibility for caring and supporting him/her.

19. The "Best interests of the child"¹⁴ is one of the four general principles of the Convention on the Rights of the Child. As such, it has to be directly applicable before national courts. It is an interpretative legal principle and a rule of procedure in any decision-making process of States that have ratified the United Nations Convention on the Rights of the Child.

20. The UNCRC's Article 8 obliges an authority to respect "the right of a child to preserve his or her identity" which includes their age and date of birth.

21. Article 12 of the UNCRC states that "State Parties shall assure to the child who is capable of forming his or her own views the right to express those views in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child".

22. Article 39 of the UNCRC states that "all appropriate measures should be taken to promote physical and psychological recovery and social reintegration of a child victim of any form of neglect, exploitation or abuse".

23. The UN Committee on the Rights of the Child (CRC) General Comment No. 6 (2005) recognises the importance of identifying, as a best interest consideration, not only the status of a child but their age. General Comment No. 6 also stipulates that identification measures "should not only take into account the physical appearance of the individual, but also his or her psychological maturity".

24. General Comment No. 6 addresses benefit of the doubt and presumption of minority. If there is a chance that the individual is a child, he or she should be treated as such. A decision to deny international protection should not be based solely on a child's refusal to undergo a medical examination.

25. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, "Lanzarote Convention") in its Article 11.2 states that "Each Party shall take the necessary legislative or other measures to ensure that when the age of the victim is uncertain and there are reasons to believe that the victim is a child, the protection and assistance measures provided for children shall be accorded to him or her pending verification of his or her age".

26. Within the UNHCR, Guidelines on International Protection No. 8 Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees,¹⁵ reflect the importance of a process of age determination which must be safe, child- and gender-sensitive, and respect the dignity of the child.

3.2. European Union

27. There are two sources of procedural safeguards in European Union law: the Qualification Directive and the European Union Charter of Fundamental Rights.¹⁶ The main objective of the Qualification Directive is "on the one hand, to ensure that Member States apply common criteria for the identification of persons genuinely in need of international protection, and, on the other hand, to ensure that a minimum level of benefits is available for these persons in all Member States". The Asylum Procedures Directive¹⁷ is the only one dealing directly with the issue of age assessment for unaccompanied children. Notwithstanding the regulative form it may take, children are entitled to protection, which should not depend on administrative status or procedures.

28. Article 25 of the Asylum Procedures Directive authorises the use of medical examination in order to determine the age of an unaccompanied minor in EU member States. However, it does not specifically deal with the different existing methods, but lays down the rights and safeguards of the child: a presumption of minority, to have a representative appointed, personal interview(s) conducted by a qualified professional, to

13. UNCRC, Article 2.1.

14. [United Nations Convention on the Rights of the Child, Article 3](#); [Charter of Fundamental Rights of the European Union, Article 24](#); [\(Recast\) Asylum Procedure Directive, Article 25, paragraphs 1 and 6](#), [Recast Qualification Directive, Article 20.5](#), [Treaty on European Union, Article 3.3](#).

15. UNHCR, Guidelines on International Protection No. 8, Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08, paragraph 75.

16. Council Directive [2004/83/EC of 29 April 2004](#) on Minimum Standards for the Qualification and Status of Third Country Nationals or Stateless Persons as Refugees or as Persons Who Otherwise Need International Protection and the Content of the Protection Granted, [2004] OJ L304/12.

17. EU of the European Parliament and of the Council Directive [2013/32](#) of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), paragraph 6.

be provided legal and procedural information free of charge, the use of the least invasive method, informed consent, the fact that no decision of non-minority can be based solely on a refusal to undergo medical examination, and finally the protection of the best interests of the child.

29. In 2013 the European Asylum Support Office (EASO) published a report “EASO Age assessment practice in Europe”¹⁸ aimed at providing practical support to EU member States in the field of age assessment. One key issue EASO highlighted is that the best interests of the child should be a primary consideration in age-assessment procedures.

30. Regarding exposure to ionisation, “The Euratom Directive”¹⁹ is the EU regulation which deals with exposure to ionisation for non-medical purposes, under the title “practices involving the deliberate exposure of humans for non-medical imaging purposes”. It states that “all individual non-medical imaging exposure procedures using medical radiological equipment shall be justified in advance, taking into account the specific objectives of the procedure and the characteristics of the individual involved”.

3.3. Council of Europe current activities on age assessment and related subjects

31. In September 2016, the Ad hoc Committee on the Rights of the Child (CAHENF) convened the Drafting Group of Experts on Children’s Rights and Safeguards in the context of migration (CAHENF-Safeguards) to assist in its mandate related to the development of standards on legal guardianship and age assessment to provide appropriate safeguards to children in the context of migration.

32. The CAHENF-Safeguards group is mandated to review and develop guidelines on legal guardianship and age assessment. In terms of age assessment prior to and as part of the first meeting, current age-assessment guidance and practice within the Council of Europe were reviewed, which provided a comprehensive overview of current arrangements and options as they relate to age assessment and the rights of an unaccompanied child.

33. The office of the Council of Europe Commissioner for Human Rights is an institution which is very active on the question of age assessment. In 2011, the former Commissioner, Mr Thomas Hammarberg, identified the need for a multidisciplinary approach when assessing age and to trust and respect children. He emphasised that “X-rays can never determine exact age”²⁰ because of a margin of error inherent in the technique. He defended the fact that children should have the benefit of the doubt, and that no decision should be taken merely on the basis of bone testing. He explained at great length the reasons that make these methods unreliable.²¹ In 2013, the current Commissioner for Human Rights, Mr Nils Muižnieks, reiterated in his report following his visit to Denmark,²² that age assessment “should not depend only on a medical examination” and “multidisciplinary procedures should be established and minors must be given the benefit of the doubt where there is uncertainty as to their age” as reflected in the UN Committee on the Rights of the Child, General Comment No. 6 (2005).²³ In the latest thematic report “Realising the right to family reunification of refugees in Europe”, the Commissioner makes three recommendations on how to establish clear limits on age-assessment processes,²⁴ insisting that age assessment should be carried out “only if there are reasonable doubts about a person being minor”, suggesting that it “should rather involve multidisciplinary evaluation by independent authority over a period of time” and in cases where a medical evaluation is needed, it “should only be carried out with the consent of the child or his or her guardian”.

4. Age assessment of unaccompanied and separated children

4.1. Age assessment methodology

34. Age assessment is a process for determining the age of unaccompanied or separated children and young people who are without documentation in the countries where they are seeking protection.

18. [EASO Age assessment practice in Europe 2013](#).

19. [“Euratom” Directive Standards for protection against the dangers arising from exposure to ionising radiation 2013/59](#).

20. Comment of the Commissioner for Human Rights Thomas Hammarberg, [«Methods for assessing the age of migrant children must be improved»](#), 2011.

21. Ibid.

22. [Report](#) by Nils Muižnieks, Commissioner for Human Rights, following his visit to Denmark from 19 to 21 November 2013, pp. 11 and 36.

23. Committee on the Rights of the Child, General Comment No. 6 (2005), op. cit., p. 31(i).

24. Realising the right to family reunification of refugees in Europe, Issue paper, Council of Europe Commissioner for Human Rights, June 2017, p. 35.

35. In European countries, age assessment is conducted when young people arriving from a third country have no identity documents and the authorities have doubts as to their age. This procedure is important as it can facilitate the recognition of an individual as a child with all the deriving safeguards, such as protection by a guardian, the right to child-friendly accommodation and care, the right to seek appropriate international protection and assistance and the right to education. These safeguards also contribute to protecting children from violence and exploitation, forced labour and trafficking.

36. Across Europe, a large number of methods are employed which include assessing physical appearances and a variety of medical assessments which include dental examinations and x-rays of both teeth and bones, sexual maturity tests and holistic assessments that may include psychosocial elements, or any combination of these. But none of these can produce exact results.²⁵ The EASO publication *Age Assessment Practice in Europe 2013*²⁶ provides a detailed description and analysis of all existing age-assessment procedures.

37. This task of assessing the age of an unaccompanied or separated young migrant falls to State authorities in most European States. Depending on each European State's legislative arrangements, most age determination interviews are carried out by immigration officials. A range of medical assessments may then be utilised following the dispute of age. In a handful of States, social workers are involved in the determination of age.

38. This variation of practice could reflect a lack of guidance, training and support for those tasked with undertaking an age assessment leading to an over-reliance on physical appearance, as indicators of age and the use of scientific tools (medical examinations and the use of x-rays) as methods to quickly determine age. Apart from the impacts these processes may have on a child's mental state, this may also leave States open to legal action as a consequence of these practices.

4.2. Who should carry out the age-assessment procedure?

39. There is a robust debate around the purpose of age assessments and who should be responsible for undertaking them. The arguments put forward include the position that an age assessment is a mechanism by which adults who claim to be children can be identified in order to stop them from gaining access to a system of support designed for children.

40. Those undertaking age assessments face a number of issues which complicate the process when interviewing or assessing them. Most children will have experienced hardship and often trauma in their home countries and during the journey to the country where they become known to authorities. One of the main issues is the risk that age assessors may traumatise or re-traumatise a child as a consequence of conducting an age assessment without knowledge of psychosocial factors.

41. A number of questions arise regarding who is best placed to carry out these functions. Which professionals could undertake child assessments in a way appropriate to the age of a child and skilled in identifying risk in a child-sensitive way? What is the role of the police, border officials and the medical professionals in determining age?

42. These questions also highlight a conflict between child-focused age assessments designed to provide age appropriate support, and a process designed to determine age for other purposes, such as the administrative process of an asylum claim or to ensure adults are not claiming to be children. Both are important in terms of outcome; however age determination for administrative purposes should not be the main driver in initiating it. Within a holistic age-assessment framework, social workers would be the lead professionals as they will put the needs of the child first, and therefore they are best placed to avoid or mitigate the risk of traumatising or re-traumatising a child. The role of other professionals would be to contribute to the holistic age assessment of an unaccompanied child and be guided by the outcome.

43. The main outcome of a child-focused age assessment is to lead to age appropriate support and begin a process whereby an unaccompanied child is afforded the range of rights they are entitled to and to the regularisation of their status as a child.

44. A holistic child-centred approach that captures the social aspects of a child's life (family circumstances, education history, ethnic and cultural considerations and a child's level of understanding of their world and experiences) would provide a mechanism by which any dispute of age can be resolved.

25. European Asylum Support Office (2013) Age assessment practice in Europe www.refworld.org/pdfid/532191894.pdf.

26. Ibid., chapters 3, 3.1 to 3.2.5, pp. 23-34 and 41.

45. A holistic approach, if followed, can also be sensitive to the needs and experience of the child, non-confrontational, supportive and child friendly. Such an approach is also relevant in terms of partnerships for all of those who work with vulnerable children. It is important to engage with the network of professionals who may be supporting them. The views of the professionals (border and immigration officials, teachers, psychologists, guardians, legal representatives, police officers, health professionals or other relevant practitioners), if sought and relevant, can help synthesise the views of the professional conducting the age assessment, while fostering good and supportive inter-agency practice. Allowing agencies to work together in a child-focused manner facilitates the development of agency specific guidance and procedures.

46. In considering the question as to who is best placed to assess a child in a way that is sensitive, safe and supportive and is trained to assess need and identify risk, the social worker would seem the professional best placed to assess age holistically. Also the relationships social workers have with other professionals could be built upon to support the development of a multi-agency approach.

4.3. Assessment of age by medical means

47. There is much debate as to the validity, accuracy and ethics of medical tests used to determine age. Such procedures often require children to undergo physical examinations, which can include, as in Germany and Sweden, an examination of a child's genitalia as part of a sexual maturity physical examination. This practice has been described as an inhuman and degrading treatment in the January 2014 "UN Committee on the Rights of the Child – Concluding observations on the combined third and fourth periodic reports of Germany".

48. Unaccompanied children may also be exposed to ionised radiation (x-rays) in the form of dental and wrist x-rays. There are inherent inaccuracies in these techniques, as in the case of dental x-rays where the margin of error is estimated to be between two and three years while for wrist x-rays, the margin is between three and four years. This margin of error becomes particularly problematic for unaccompanied children claiming to be 15 or 16 years of age.²⁷

49. In addition, a wealth of evidence now exists indicating that a holistic approach to age assessment precludes the use of medical examinations which include the use of ionised radiation. The Royal College of Paediatrics and Child Health (RCPCH) is recommending the holistic evaluation of age as the "most appropriate approach".²⁸ The RCPCH also states that "[t]he use of radiological assessment is extremely imprecise and can only give an estimate of within two years in either direction and the use of ionising radiation for this purpose is inappropriate".²⁹

50. The British Society for Paediatric Endocrinology and Diabetes takes a similar view and makes clear that "it is not possible to accurately assess a child's age based on physical examination or bone age assessment".³⁰ The current position of the RCPCH and advice for paediatricians,³¹ is that "when contacted, explain that dental x-rays, bone age and genital examination will currently not add any further information to the assessment process, however this may change in future with new evidence".

51. This being the case, these methods not only raise ethical questions regarding the potential impact on a child's physical health with the use of x-rays, but also on their mental health such as when subjecting a child to a sexual maturity physical examination which could be viewed, as referenced above, as an abusive and degrading treatment and at variance with UNCRC Article 37(a).³²

27. Gunilla Klingberg, professor of pediatric dentistry at Malmö University in Sweden, "[Quartz](#)": "While dental X-rays can estimate the age of children from three to 13 as they have more teeth developing, the room for mistakes increases significantly for young adults". "The margin of error for dental X-rays is estimated to be someone's age is between 2-3 years, while for wrist X-rays the margin is between 3-4 years." "This margin of error can be particularly problematic for asylum seekers claiming to be 15 or 16, you would never judge the age of someone by measuring their height, so why ignore the same biological variations that exist for teeth?"

28. RCPCH "[Refugee and unaccompanied asylum seeking children and young people: age assessment and children in detention](#)", February 2016.

29. Ibid.

30. BSPED [Statement on Paediatric Age Assessment 2010](#).

31. RCPCH and advice for paediatricians "when contacted, explain that dental x-rays, bone age and genital examination will currently not add any further information to the assessment process however this may change in future with new evidence".

32. UNCRC, [Article 37\(a\)](#).

52. According to an EASO publication,³³ Austria, Belgium, Denmark, Finland, Germany, Hungary, Italy, Latvia, Norway, Poland, Portugal, Sweden and Romania use dental observation in combination with various types of x-ray procedures³⁴ to determine age. While Austria, Bulgaria, Denmark, Estonia, Germany, Greece, Hungary and Romania indicate that they also use sexual maturity observation³⁵ in combination with dental observation and various types of x-ray procedures.

4.4. Age assessment and age disputes

53. For unaccompanied or separated children the consequences of being wrongly evaluated as an adult and being treated thus are potentially devastating. An age-disputed child does not benefit from any of the procedures put in place to ensure that children's experiences and vulnerability are taken into account during the asylum determination process. Their application for asylum may be refused and the child put in immigration detention and removed without ever having their age formally assessed.

54. A system which requires that any child whose age is disputed by authorities be immediately referred for age assessment and which excludes a requirement for all unaccompanied and separated children to undergo an age assessment, would be a useful safeguard against such errors.

55. Many children and young people are not able to provide evidence as to their age, and some may not even know their chronological age. An unaccompanied or separated child may have experienced physical, mental, sexual or emotional abuse on their journey to Europe and have undiagnosed Post Traumatic Stress Disorder.³⁶ These experiences may affect a child's ability to participate fully and openly in an age-assessment process and appear to an untrained professional as being unco-operative or deceitful. This may simply be an expression of a lack of trust in adults in positions of authority or the child may be traumatised or frightened.

56. For some organisations, this raises the question of a child's credibility when it could simply relate to his/her previous experiences and not necessarily be an indication that he/she is trying to deceive. Therefore, disputing the age of children as opposed to applying the benefit of the doubt can affect the way they engage, as the questioning of their credibility and identity may be perceived as another form of mental and or emotional abuse.

57. A holistic approach to age assessment with trained and skilled practitioners can anticipate these risks. It can provide a framework by which the circumstances surrounding each child or young person can be considered sensitively and in a child-friendly way, mitigating any risk of harm.

58. In terms of when an age assessment should be carried out, the phrases "disputed age" and "age in doubt" have led to considerable discussion amongst professionals involved in age assessments, especially when using visual indicators of age. What one professional deems a valid reason to dispute age may substantially differ from another and can be subjective. The United Kingdom has now stipulated, within the statutory guidance "Care of Unaccompanied and Trafficked Children",³⁷ that age assessments should not be carried out on every child or young person approaching a Children's Services Department for support. It should only be used to ensure that appropriate services (including education) are offered. The guidance also states that a child should not be subjected to multiple assessments for administrative purposes only and that there must be a "significant reason" to doubt the age of a child.³⁸ This statutory guidance has been transposed into practice guidance for social workers through the [Age Assessment Guidance 2015](#) of the Association of Directors of Children's Services.

4.5. Child detention

59. As with the issue pertaining to UNCRC Article 37(a)³⁹ in regard to "inhuman or degrading treatment", the Article 37(b)⁴⁰ in regard to "arbitrary detention" is also relevant where lawful detention is used: the latter "shall be used only as a measure of last resort and for the shortest appropriate period of time". This is due to

33. EASO, [Age Assessment practice in Europe](#) publication 2013, p. 88.

34. Ibid.

35. Ibid., p. 89.

36. A summary of research can be found in *The British Journal of Psychiatry*: <http://bjp.rcpsych.org/content/191/1/3>. See also Centre for the Study of Emotion and Law: www.csel.org.uk/csel_publications.html.

37. Department for Education, statutory guidance, [Care of Unaccompanied and Trafficked Children 2014](#).

38. Ibid., paragraph 22, pp. 7 and 8, "Age assessments should only be carried out where there is significant reason to doubt that the claimant is a child. Age assessments should not be a routine part of a local authority's assessment of unaccompanied or trafficked children"; paragraph 36. p. 10, "As for any looked after child, a health plan and a personal education plan should be produced as part of the overall care plan".

the fact that children may be detained as a consequence of an incorrect determination of age or held in detention or detention-like facilities while an age assessment is carried out. Both could be interpreted as at variance with UNCRC Article 37(b).⁴¹

60. Findings show that there are far more risks attached to the placement of a child in a reception or detention centre for adults in case of doubt about his or her age than to the placement of an adult in an accommodation facility for children.⁴² It is therefore very important to provide alternative accommodation options for children awaiting or undergoing age assessment, with a view to ending the detention of children during disputes about age, including temporary placement in centres for children where appropriate safeguards should be in place to protect them and the other children accommodated there.

4.6. Examples of age-assessment practices in different European countries

4.6.1. Malta

61. Malta, in line with Article 1 of the UNCRC, recognises a child to be anyone under the age of 18 years of age.

62. In Malta, age assessments are carried out by the Agency for the Welfare of Asylum Seekers (AWAS). This approach enables the AWAS to develop all the skills needed to implement a holistic approach to age assessment. Malta's age-assessment framework includes the option to use medical assessment techniques, including the use of ionising radiation (X-rays), and specifically bone density tests, to determine age.

63. The existing age-assessment procedure developed and implemented to assess age claims of migrant children was reviewed in late 2014, making positive improvements to the procedure which recognised the need for a holistic approach, including greater integration of the benefit of the doubt in decision-making. Indications show, however, that the incorporation of these improvements between the 2014 review and March 2017 has been slow. According to the new policy, irregular migrants who are undoubtedly children shall immediately be treated as such without recourse to any age-assessment procedures. Age assessment shall be undertaken in all other cases. This process affords the option to apply the benefit of the doubt criteria.

64. Although there are some references to this procedure in legal and policy documents, the procedure itself is not regulated by law. The only reference to age-assessment procedures found in law are set out in Regulation 17 of the Procedural Regulations, dealing with the use of medical procedures to determine age in the context of a claim for asylum.

4.6.2. Serbia

65. Serbia considers an unaccompanied migrant minor to be "a foreigner yet to reach 18 years of age and who, at the time of entry into the Republic of Serbia or upon having entered it, is not accompanied by their parents or guardians"⁴³.

66. The identification of unaccompanied minors and determination of age are carried out by officials (usually police officers) during first contact with a child who may be unaccompanied or separated from their parents or guardian. There are no official methods or procedures for ascertaining the asylum seeker's age, meaning that the asylum seeker's word, or any documentation they may possess, as well as an official's personal observations, are the only criteria by which age is determined.

4.6.3. Spain

67. In line with Article 1 of the UNCRC, Spain recognises a child to be anyone under the age of 18 years of age.

68. In 2014, a Protocol⁴⁴ was adopted in co-operation between the Ministries of Health and Social Services, Interior, Justice, Employment and Foreign Affairs along with the *Fiscalia General* (Prosecutor General's Office) which aimed to co-ordinate the action of all those concerned in the Spanish governmental

39. UNCRC, Article 37(a).

40. UNCRC, Article 37(b).

41. Ibid.

42. Age assessment: Council of Europe member States' policies, procedures and practices respectful of children's rights in the context of migration, report prepared by Daja Wenke for CAHENF-Safeguards, September 2017.

43. Article 2 Asylum Act.

framework in relation to unaccompanied children. The Protocol sets out a framework for the identification of unaccompanied minors who arrive via sea and defines the procedure that should be followed for the conduct of age-assessment procedures in case of doubts about the age of the minor. It should be noted that child-related issues fall within the competence of the autonomous regions between which governance is divided in Spain.

69. The Protocol establishes that migrant minors' passports and travel documents issued by official authorities must be considered as sufficient evidence of their age. The Protocol also sets out a number of exceptions in which a minor can be considered undocumented, and accordingly be subjected to medical age assessment.

70. However, in practice, medical age-assessment procedures are used as a rule rather than the exception, and are applied to both documented and undocumented children, regardless of whether they present official identity documentation or manifestly appear to be minors. The benefit of the doubt is also not accorded in practice.

71. There are no ad hoc organisations or specialised bodies within the Spanish framework for age assessment which carry out medical assessments of the age of unaccompanied or accompanied minors.

4.6.4. Sweden

72. Since 1 May 2017, the Swedish Migration Agency undertakes age assessments of all unaccompanied and separated migrant children at an early stage of the asylum process.⁴⁵ The Aliens Act was modified in order to prevent adult asylum seekers from being identified as children and benefiting from the resources intended for children.

73. The staff of the Swedish Migration Board involved in age assessments are regularly trained in all the different aspects of the age-assessment procedures, including interviewing techniques and evidentiary assessment. The Swedish Migration Agency provides training on interviewing children and on child development, paying special attention to cultural and gender aspects.⁴⁶

4.6.5. Ukraine

74. In Ukraine, the age-assessment procedure is multi-sectorial and consists of three phases. The local commission consists of officials from local authority units on health care, education, social welfare, services for children, as well as social pedagogues and psychologists. The decisions are taken by the majority of votes.⁴⁷

4.7. A holistic approach to age assessment

75. In 2015, the United Kingdom produced guidance on how to undertake age assessment following a holistic methodology that forbids the use of invasive medical techniques, including the use of ionised radiation and all other medical processes used to determine age where there is no medical need. The statutory guidance, "Care of Unaccompanied and Trafficked Children" also provide helpful guidance to practitioners by recognising the importance of affording children the benefit of the doubt: "Where the person's age is in doubt, they must be treated as a child unless, and until, a full age assessment shows the person to be an adult."⁴⁸

76. This approach enables the needs and rights of other children in care to be met while ensuring that the rights of a child whose age is disputed and in the process of being assessed receives the same support and services as any other child. If someone claims to be an unaccompanied child while in custody or immigration detention, this must be brought to the attention of the local Child Services Department unless the person is clearly an adult. When an unaccompanied child whose age is disputed is brought to the attention of child services, he or she must be released into the care of child services, thus becoming a "looked-after child",⁴⁹

44. [Framework Protocol of 13 October 2014 on actions relating to foreign unaccompanied minors.](#)

45. In accordance with amendments to the Aliens Act, see Press Release, March 2017, Government Offices of Sweden, "Age assessment earlier in asylum process".

46. Age assessment: Council of Europe member States' policies, procedures and practices respectful of children's rights in the context of migration, op. cit., paragraph 167.

47. Ibid., paragraph 124.

48. Department for Education, Statutory guidance, [Care of Unaccompanied and Trafficked Children, 2014, paragraph 7, p. 4.](#)

pending the outcome of the age assessment. If determined to be an adult, the person is referred into the adult system of asylum support. Conversely, if the person is deemed to be a child, they would continue to benefit from child-appropriate care.

77. As holistic age assessments are the responsibility of a Child Services Department, they fall within the child welfare and protection framework of assessment and care. This arrangement affords the unaccompanied child swift access to the range of services available to any child in need within the United Kingdom. These services include accommodation, access to education, and physical and mental health services. The age-assessment task itself is carried out by qualified social workers who explore a child's background, family history, education, cultural factors and the child's emotional situation capturing his/her own view and understanding of their situation and experience (emotional assessment).

78. Age assessments are only carried out when the age of a child is disputed by the Home Office UK Home Department or by a Local Authority Child Welfare Department (Children's Services). Other services, such as health institutions or schools may also raise a question regarding the age of a child and scope to review and include their views. However, as reflected in statutory guidance "Care of Unaccompanied and Trafficked Children",⁵⁰ the outcome of the age assessment is binding on all statutory bodies, which, like the child, have redress through the courts.

79. As part of a holistic assessment, the venue for the age-assessment interview is recognised as important and needs to be conducive to helping the child or young person feel safe, comfortable and able to participate to the best of their ability in their interview(s). This is reflected in the ADCS Age Assessment Guidance 2015, which also encourages an unaccompanied child to say where they would prefer the assessment to be held. Facilities such as police stations are considered inappropriate for conducting age assessments.

80. Over a number of years, the age-assessment process has evolved to include information on the country of origin and, where relevant, information from professionals. Social workers take into account the views of these professionals and support workers such as foster carers, teachers and advocates.

81. To sum up, the main focus areas regarding risks and health-related issues, as reflected in the holistic age-assessment guidance ADCS Age Assessment Guidance 2015 are:

- Might the unaccompanied child have been trafficked or experienced abuse?
- Does the unaccompanied child have any other additional needs, aside from being alone?
- Might they have physical, mental or emotional health difficulties?
- Might they have learning difficulties?
- Might their experiences in their country of origin or during their journey to the country have an impact on their ability to respond fully to questions?
- What is the current immigration status of the child or young person and do they need assistance with that before and/or after the assessment?
- Is the child or young person in suitable accommodation before and after the assessment?

82. Incorporating all of these factors into an assessment can reduce risks associated with incorrectly determining age. It mitigates the risk of an adult being determined as a child and placed within a system of child support such as schools, foster homes or child reception and residential centres. On the other hand, it mitigates the risks posed to an unaccompanied child who is incorrectly assessed as an adult and placed in the adult asylum system or returned to the country of origin or to a third country, under the Dublin III Arrangements.⁵¹ Both these risks are real and should not be discounted. However, in terms of child protection and child rights, these situations highlight some of the risks involved in working with vulnerable children in general and the importance of having skilled and trained child specialists engaging with a child.

83. According to a recent Council of Europe study,⁵² 19 European countries apply a holistic approach in age assessment. In six of these countries, a multidisciplinary approach is limited to the mixture of different medical tests. In Ukraine, for example, the age assessment is conducted by a local commission composed of officials from local authority units on health care, education, social welfare services for children, social

49. The definition of looked-after children (children in care) is found in the [Children Act 1989, Article 22.2, Duties of local authorities in relation to children looked after by them](#).

50. Department for Education, Statutory guidance, [Care of Unaccompanied and Trafficked Children 2014](#).

51. [Dublin III Arrangements 2014](#).

pedagogues and psychologists. The procedure consists in three phases and the decision is taken by the majority of votes. In Italy, national legislation provides that age assessment is conducted by the public security authorities with the participation of cultural mediators and in the presence of the child's guardian or temporary guardian. The age-assessment procedure is initiated only after it has been ensured that the child has received immediate humanitarian assistance.

84. The development of a single European model of age assessment, centred and focused on the child would also support the needs of all agencies involved with unaccompanied and separated children and act as the basis for addressing inter-agency conflicts in terms of when, why and how a child's age is disputed.

85. In accordance with the UNCRC and existing Council of Europe human rights standards, a holistic process of age assessment should be designed with enough flexibility to be applied in different situations on the ground, ranging from stable country environments to high migration hotspots and including border crossing points, detention facilities and migration routes.

5. Conclusions and recommendations

86. The findings of this report identify the risks posed to children whose age is incorrectly determined and the negative effects associated with certain age-assessment methods. The report also describes a model of age assessment to address and minimise these effects.

87. The main conclusion of this report is that age assessment should only be conducted in cases of serious doubt about a child's age and as a last resort. It should be carried out only in the best interests of a child and on a case-by-case basis.

88. A primary consideration of any age assessment should be the repercussions that may ensue if the assessment is not accurate. If a child's age is disputed or he/she is assessed as an adult, immigration detention and removal are very real potential outcomes. The psychological effects of detention cannot be overemphasised, especially the negative effects on children's health and development.

89. It is also important to provide unaccompanied migrant children with reliable information about age-assessment procedures in their own language, so that they can fully understand the different stages of the process and its consequences.

90. The multiple methods of age determination used in Europe reflect the lack of a harmonised approach and method by which age is determined. The development of a child-sensitive holistic model of age assessment in conjunction with a training programme would enable European States to meet the needs of unaccompanied and separated migrant children and in so doing to meet their obligations as defined by the relevant articles of the UNCRC. It is also important to reduce over-reliance on judgment according to physical appearance and the negative impacts associated with questioning a child's credibility. A harmonised model of age assessment would also put an end to inaccurate and potentially traumatising sexual maturity tests and the exposure of children to ionised radiation (X-rays) in the form of dental and wrist x-rays, which are inaccurate and ethically questionable as part of medical age determination.

91. An unaccompanied migrant child or his or her representative should have the right to challenge the age-assessment decision through administrative or judicial appeal channels.

92. On the basis of the above conclusions, the Assembly should reiterate its appeal to member States of the Council of Europe made in [Resolution 2020 \(2014\)](#) on alternatives to the immigration detention of children, to end the practice of detaining unaccompanied and separated children, and call on them to:

- prohibit the use of x-ray examinations in the form of dental or wrist x-rays and all other invasive medical procedures for the purpose of determining the age of unaccompanied or separated migrant children, except where an existing health need is demonstrated or diagnosed;
- prohibit, in all situations, the use of sexual maturity physical examinations for the purpose of determining the age of unaccompanied or separated migrant children in the best interest of the child;
- prohibit the detention of unaccompanied and separated migrant children who are awaiting or undergoing age determination and prohibit the detention of young people whose age has been determined as 18 years but is within a two to three-year margin of error;

52. Age assessment: Council of Europe member States' policies, procedures and practices respectful of children's rights in the context of migration, op. cit.

- identify and provide alternative accommodation options for children who are detained pending or during the assessment of their age, with a view to avoiding the detention of a child whose age is or may be disputed. These alternatives may include temporary placement in a children's facility with appropriate safeguards for their protection and the protection of other children;
- end the detention of children whose age was disputed where their age has been determined to be above 18 but within a two to three-year margin of error.

93. At the same time, the Assembly should urge the Committee of Ministers of the Council of Europe to support the development of a single holistic model of age assessment for Europe, firstly by adopting the guidelines for child-friendly age assessment elaborated by the CAHENF-Safeguards group, then by ensuring the follow-up to the implementation of these standards in the member States through the relevant intergovernmental body.