



EUROPEAN COURT OF HUMAN RIGHTS  
COUR EUROPÉENNE DES DROITS DE L'HOMME

## FIRST SECTION

### **CASE OF DARBOE AND CAMARA v. ITALY**

*(Application no. 5797/17)*

## JUDGMENT

Art 8 • Positive obligations • Private life • Failure to act with reasonable diligence in respect of declared unaccompanied minor asylum-seeker, not benefitting from minimum procedural guarantees in age-assessment procedure • Importance of age assessment procedure in migration context, including procedural safeguards, for guaranteeing rights deriving from a person's minor status • Identification of relevant safeguards drawn from EU and international law

Art 3 (substantive) • Inhuman and degrading treatment • Placement of minor in adult reception centre in inadequate conditions for more than four months and subjected to age-assessment procedure breaching Art 8

Art 13 (+ Art 3 and Art 8) • No effective remedies

STRASBOURG

21 July 2022

**FINAL**

**21/10/2022**

*This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.*



**In the case of Darboe and Camara v. Italy,**

The European Court of Human Rights (First Section), sitting as a Chamber composed of:

Marko Bošnjak, *President*,

Péter Paczolay,

Krzysztof Wojtyczek,

Alena Poláčková,

Raffaele Sabato,

Ioannis Ktistakis,

Davor Derenčinović, *judges*,

and Renata Degener, *Section Registrar*,

Having regard to:

the application (no. 5797/17) against the Italian Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by a Gambian national, Mr Ousainou Darboe, and a Guinean national, Mr Moussa Camara (“the applicants”), on 18 January 2017;

the decision to give notice to the Italian Government (“the Government”) of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicants;

the comments submitted by the AIRE Centre, the Dutch Council for Refugees and the European Council on Refugees and Exiles (ECRE), which have presented joint comments, and the *Défenseur des droits* (Article 36 § 2 of the Convention and Rule 44 § 3 of the Rules of Court), who were granted leave to intervene by the President of the Section;

Having deliberated in private on 28 June 2022,

Delivers the following judgment, which was adopted on that date:

## INTRODUCTION

1. This case concerns the arrival in Italy of the applicants, unaccompanied minors seeking asylum, their placement in an adult migrant centre and the subsequent age-assessment procedure. It raises issues under Articles 3, 8 and 13 of the Convention.

## THE FACTS

2. The applicants were allegedly born in 1999. Mr Ousainou Darboe lives in Padua. The whereabouts of Mr Moussa Camara are unknown. The applicants are represented before the Court by Mr M. Ferrero and Ms E. Chiaretto, lawyers practising in Padua.

3. The Italian Government (“the Government”) were represented by their Agent, Ms E. Spatafora, and subsequently by Mr L. D’Ascia, her successor.

4. The facts of the case may be summarised as follows.

## I. MR MOUSSA CAMARA

5. According to Mr Moussa Camara, he reached the coast of Sicily in 2016 and was transferred to an adult reception centre in Cona (Venice).

6. By a letter dated 24 June 2021, his representatives informed the Court that they had lost contact with their client. It is therefore proposed to strike this part of the application out of the list of cases (see paragraphs 95 et seq. below).

7. Thereinafter, the Court will then refer to Mr Ousainou Darboe as “the applicant”, with the only exception of paragraphs 95 to 98 below.

## II. MR OUSAINOU DARBOE

### A. The applicant’s arrival in Italy and age assessment

8. The applicant reached the coast of Sicily on 29 June 2016 aboard a makeshift vessel.

9. He submitted that he had declared his minor age and orally expressed his intention to apply for international protection shortly after his arrival. However, no information on how to initiate the relevant procedure was provided to him, and no request for international protection was eventually lodged in his case.

10. The applicant was initially housed in a centre for foreign unaccompanied minors.

11. On 27 September 2016 he was transferred to the adult reception centre in Cona. A healthcare card was provided to him, indicating his date of birth as 22 February 1999. According to this date, the applicant was seventeen years old at the time.

12. On 27 October 2016, at the request of the prefecture, a doctor of the local health authority carried out a medical examination of the applicant to determine his age. The corresponding medical report stated that his bone age, as evaluated by X-ray examinations of the left wrist and hand on the basis of the Greulich and Pyle method<sup>1</sup>, corresponded to that of an eighteen-year-old male.

13. The applicant alleged that his consent to undergo this examination had not been acquired and that he had not been provided with a copy of the

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<sup>1</sup> “Greulich and Pyle” is a wrist and hand bone markers method. According to the “Medical Age Assessment of Juvenile Migrants” report (JRC - Science for policy report, European Commission, 2018), wrist and hand bone markers “consist of the evaluation of the form and size of bone elements as well as the degree of epiphyseal ossification. Evaluation is done by either comparing against a radiographic atlas (most prominently the one of Greulich and Pyle from 1959) or at individual bone level according to the Tanner-Whitehouse approach. The Greulich and Pyle atlas distinguishes 31 images of males and 27 images of females. Each image is considered as an individual phase. For each of these phases, a number of studies have investigated the corresponding age distribution”. Other important types of age markers are the collar bone and the third molars. Knee-based methods also exist.

relevant medical report at the time. No margin of error was indicated therein, nor was any administrative or judicial decision regarding his age assessment communicated to him.

14. Once in Cona, the applicant was assisted by lawyers, who eventually filed his application with the Court.

**B. The applicant's application to the Venice District Court to obtain the appointment of a legal guardian**

15. On 16 January 2017 the applicant's representatives lodged an application with the Venice District Court to obtain the appointment of a legal guardian. They stated that the applicant had declared to be an unaccompanied minor upon his arrival in Italy and had been registered as a minor by the local health authority, which had provided him with a healthcare card.

16. They explained that the applicant had requested international protection since his arrival, and that he had been interviewed once in Cona by someone whose functions remained unknown, without the assistance of an interpreter or understanding the content of the document drawn up on that occasion, which had possibly been transmitted to the Venice Prefecture. The applicant had not yet received a provisional stay permit or been called by the relevant police department in Venice to file his request for international protection. No information had been provided to him with regard to the international protection procedure. He had not been interviewed in order to assess his possible vulnerability and specific needs as a minor.

17. The representatives submitted that the applicant's situation was in violation of Article 19 §§ 1, 4 and 5 of Legislative Decree no. 142 of 2015 (see paragraph 47 below), considering that, under these provisions, unaccompanied minors had to be accommodated in governmental initial reception facilities for the time strictly necessary for their identification, their possible age assessment and to receive all relevant information about their rights, in a manner appropriate to their age, including the right to apply for international protection. Moreover, during his stay, the applicant should have been interviewed with a view to assessing his personal situation. By no means should minors be housed in structures dedicated to adults. In addition, the police authorities should have immediately informed the Juvenile Court and its prosecutor that the applicant was there, so that the relevant guardianship proceedings could be initiated. None of these guarantees had been applied in his case.

18. As to the applicant's international protection request, the representative referred to the guarantees laid down in Article 19 of Legislative Decree no. 25 of 2008 (see paragraph 45 below), as regards in particular the obligation to provide the necessary assistance to the minor in order to formulate the request, the appointment of a legal guardian, the possibility of undergoing a non-invasive age-assessment medical examination, with the individual's consent, and information pertaining to the type of examination

and its consequences. The representatives also referred to the measures laid down in the context of age-assessment procedures by Prime Ministerial Decree no. 234 of 2016 (see paragraph 55 below) and reiterated that the applicant had not benefited from the above-mentioned safeguards.

19. Lastly, the representatives asked that the applicant be granted all the above-mentioned rights as an unaccompanied minor asylum-seeker.

20. On 19 January 2017 the guardianship judge annotated the first page of the application with the words “To be sent to the Venice police headquarters for the necessary checks”.

21. In their observations, the Government did not provide any information concerning the outcome of that application. The applicant’s representatives indicated that no further communication had been addressed to them either.

### **C. The applicant’s living conditions in Cona**

#### *1. Living conditions as described by the applicant*

22. The applicant complained of an overcrowding situation in the Cona reception centre, which was intended to house solely adults. Notwithstanding its 542-person capacity, the centre accommodated around 1,400 people at the time of his stay. The 360 sq. m dormitory housed 250 adults, sleeping in bunk beds.

23. Proper heating and hot water in the bathrooms were lacking. The number of bathrooms and canteen benches was insufficient, educational and recreational activities were poor, and there were only twenty-five members of staff. Furthermore, knives, alcohol and narcotics circulated in the centre. Episodes of violence and prostitution took place during his stay.

24. The applicant also complained of a lack of proper healthcare, including psychological assistance, and of access to legal information and assistance.

#### *2. Evidence submitted by the applicant*

25. The applicant submitted a number of pictures showing, among other things, overcrowded dormitories.

26. He also provided a parliamentary question submitted by a member of parliament on 6 December 2016 following a visit to Cona on 16 November 2016. The relevant document indicated that the centre housed 1,256 people, living in seven large, overcrowded tents, measuring from 340 to 1,500 sq. m.

27. The report stated that the centre was understaffed and that healthcare, provided by local practitioners who had to take care of a high number of patients, was inadequate. It was also noted that some people had been residing in the centre for more than one year.

28. In addition, the applicant submitted a report from a non-governmental organisation, *Associazione Giuristi Democratici*. The report stated that, at the time of its visit on 4 January 2017, the centre had housed 1,400 people.

29. According to this report, migrants were crammed into small brick buildings and large tents without proper heating. Bunkbeds were placed so close together that there was no space to pass between them. The number of canteen tables and chairs was insufficient compared to the number of people eating. Only one doctor was present during the day in the centre, while one nurse was there at night and during the holidays.

#### **D. The applicant's transfer to a minor migrant centre**

30. On 21 January 2017 the applicant lodged a Rule 39 request to the Court asking to be transferred to facilities where his reception conditions as an unaccompanied minor could be ensured.

31. Replying to the Court's request for information on 26 January 2017, the Government stated that the applicant had undergone an X-ray examination of his wrist and hand, in the light of which he had been considered an adult. He was therefore still in Cona.

32. On 14 February 2017 the Court decided to apply Rule 39 and to indicate to the Government to transfer the applicant to facilities where his reception conditions as unaccompanied minor could be ensured.

33. The applicant's representatives submitted the applicant's X-ray results of 27 October 2016 to another doctor. A statement by that doctor, issued on 13 February 2017, expressed the view that the Greulich and Pyle method alone was not sufficient to determine an individual's age with certainty and was only indicative, subject to biological variability. The degree of biological maturity, particularly during puberty, presented a wide statistical variability. Applying the TW3 method<sup>2</sup>, the statement concluded that the applicant's date of birth was compatible with that initially indicated by him, namely 22 February 1999.

34. On 18 February 2017 the applicant was transferred to the "Villa Sarina-Aria" centre for minors in Vedrana di Budrio (Bologna). His stay in the Cona reception centre had lasted more than four months.

35. On 2 March 2017 a representative of FAMI (*Fondo Asilo, Migrazione e Integrazione 2014-2020* – the 2014-2020 Asylum, Migration and Integration Fund), a project organised by the Ministry of the Interior and co-financed by the European Union, met the applicant and drew up a report detailing his personal and family situation in his country of origin and the different steps of his journey to Europe.

36. On 9 March 2017 a representative of FAMI met the applicant again, assisted by an interpreter.

37. The applicant was asked to answer certain questions concerning the period of his stay in Cona. The facts of the case presented to the Court were read to him, and he confirmed the circumstances and information described

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<sup>2</sup> According to the report, TW3 refers to Tanner-Whitehouse, an age-assessment method published in 2001, considered to be more advanced and reliable compared to the Greulich and Pyle method.

therein, also with regard to his identification procedure and the living conditions in Cona. In particular, he reported his difficulties living in an overcrowded facility housing adult and minor migrants together, without any information being provided to him and without any control and respect for the minimal rules of civil cohabitation.

38. According to the relevant reports, the applicant pointed out that he had only had the opportunity to be interviewed once, upon his arrival. On that occasion, few questions had been put to him as regards his migration plans and no information as to the place he had reached, his rights as a minor migrant and the possibility of international protection had been provided to him. As regards his age assessment, the applicant stated that he had declared his minor age immediately upon his arrival, during the above-mentioned interview. However, his interlocutor had clearly expressed doubts as to the credibility of the information provided and informed him that he would have to undergo a medical examination in order to verify the veracity of his statements.

39. During this second meeting with a FAMI representative, the applicant changed his date of birth to 22 May 1999 and provided a photo of what he considered to be his birth certificate, a copy of which was annexed to the file.

40. The reports also indicated that the lack of information provided to the applicant, the absence of any qualified support and the suspicious and biased attitude towards him had clearly been a source of distress and disorientation.

41. On 7 November 2018 Rule 39 was lifted.

## RELEVANT LEGAL FRAMEWORK AND PRACTICE

### I. DOMESTIC LAW

#### **A. Preliminary considerations**

42. At the time of the facts of the case, the relevant Italian legislative framework consisted only of the original texts of Legislative Decrees no. 25 of 20 January 2008 (see paragraph 45 below) and no. 142 of 18 August 2015 (see paragraph 47 below).

43. Further parts containing some important provisions relating to the treatment of unaccompanied minors were later added to Legislative Decree no. 142 of 18 August 2015 by Law no. 47 of 7 April 2017, which entered into force on 6 May 2017 (see paragraph 48 below). These new parts are indicated in the footnotes to the Articles concerned (see paragraph 47 below).

44. The legislative framework also included Legislative Decree no. 24 of 4 March 2014 (see paragraph 46 below), but that only addressed questions of human trafficking and became applicable on 6 January 2017, after the entry into force of Prime Ministerial Decree no. 234 of 10 December 2016 (see paragraph 55 below).



## **B. Legislative framework**

1. *Legislative Decree no. 25 of 20 January 2008 “Implementation of EU Directive 2005/85/CE on minimum standards on procedures in Member States for granting and withdrawing refugee status”*

45. The relevant provisions of this Legislative Decree state as follows:

### **Article 19 - Guarantees for unaccompanied minors**

“1. Unaccompanied minors who have expressed their intention to ask for international protection shall be provided with the necessary assistance to lodge such a request. They shall be provided with the assistance of a legal guardian at all stages of the examination of the application, in accordance with Article 26 § 5.

2. In case of doubt about the minor’s age, the individual may be subjected, with his or her consent or that of his or her representative, to non-invasive medical examinations. If the examinations do not allow the exact age to be determined, the provisions of this Article shall apply.

3. The person shall be informed that his or her age can be determined through a medical examination, of the type of examination to be carried out and of its consequences in relation to the result of his or her request. Refusal to undergo the examination does not constitute grounds for not granting asylum or adopting the relevant decision.

4. The minor shall participate in a personal interview [for the asylum request] and shall be duly informed of the significance and possible consequences of the personal interview ...

### **Article 26 - Treatment of requests for international protection**

...

5. When the request is presented by an unaccompanied minor, the receiving authority shall suspend the proceedings and immediately inform the Juvenile Court in order to open guardianship proceedings and appoint a legal guardian ... Within forty-eight hours the court shall appoint a legal guardian. The legal guardian ... shall make immediate contact with the minor to inform him or her of his or her appointment ... and with the police [*Questura*] to confirm and follow up the request [for international protection]. ...”

2. *Legislative Decree no. 24 of 4 March 2014 “Implementation of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims”*

46. The relevant provisions read as follows:

### **Article 4 - Unaccompanied minors who are victims of human trafficking**

“1. Unaccompanied minors who are victims of human trafficking shall be duly informed of their rights, including that of access to the international protection procedure.

2. A [Prime Ministerial] Decree ..., to be adopted within six months of the entry into force of this Decree, shall settle the mechanisms through which, if there are well-

founded doubts about the victim's minor age, and the age cannot be assessed through identification documents, in accordance with the best interests of the child, age shall be assessed through a multidisciplinary procedure carried out by specialised staff, following appropriate procedures that take into account the specificities of the minor's ethnic and cultural origin, as well as, where appropriate, the identification of minors through the involvement of diplomatic authorities.

Pending the age-assessment and identification procedures, a victim of human trafficking is considered to be a minor with regard to access to assistance and protection. Minority is also presumed where the multidisciplinary procedure does not allow the age of the person concerned to be established with certainty.”

### *3. Legislative Decree no. 142 of 18 August 2015*

47. This Decree implemented EU Directives 2013/32 and 2013/33 (see paragraphs 76 and 77 below). The relevant provisions state as follows:

#### **Article 15 - Identification of the reception facility**

“1. The prefecture shall provide a place for the applicant in the facility that has been identified ...

6. A refusal to place someone in a reception facility can be challenged before the administrative courts.

#### **Article 18 - Provisions on minors<sup>3</sup>**

1. In implementing the reception measures provided for by this Decree, the principle of the best interests of the child is of primary importance with a view to ensuring adequate living conditions, compatible with minority, in relation to the protection, well-being and development (included social development) of minors ...

2. In order to evaluate the best interests of the child, it is necessary to interview the minor, taking into account his or her age, level of maturity and personal development, also with a view to evaluating his or her past experience and the risk that he or she is a victim of human trafficking, and to evaluate the possibility of family reunification ...

*2 bis.* Emotional and psychological support of unaccompanied foreign minors shall be ensured at all ... stages of the proceedings by the presence of suitable persons, indicated by the minor, as well as of groups, foundations, associations and non-governmental organisations with proven experience in the field of assistance to foreign children ...

*2 ter.* An unaccompanied foreign minor has the right to participate, through his or her representative, in all administrative and judicial proceedings concerning him or her, and to be heard on the merits. To this end, the presence of a cultural mediator shall be ensured.

#### **Article 19 - Accommodation of unaccompanied minors<sup>4</sup>**

1. ... Unaccompanied minors shall be accommodated in governmental initial reception facilities ... for the time (which should not exceed thirty days) strictly

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<sup>3</sup> Paragraphs *2 bis* and *2 ter* have been added by Law no. 47 of 2017, which entered into force on 6 May 2017.

<sup>4</sup> Article 19 has undergone several amendments since enactment, including:  
- Paragraph *3 bis*, added by Decree Law no. 113 of 2016.

necessary for their identification (which should not exceed ten days), for their possible age assessment and for receiving all adequate information about their rights and their implementation, in a manner appropriate to their age, including the right to apply for international protection ... During their stay at the reception facility, an interview with a developmental psychologist shall be carried out, if necessary in the presence of a cultural mediator, in order to assess the minor's personal situation, the reasons and the circumstances of his or her departure from the country of origin and travel, as well as their personal expectations ...

1 *bis*. Under no circumstances shall a foreign unaccompanied minor be subject to removal at the border [*respingimento alla frontiera*].

2. Unaccompanied minors shall be received in the framework of the system of protection of asylum-seekers, refugees and unaccompanied minor migrants ...

2 *bis*. While choosing the place of reception, among those available, importance shall be given to the specific needs and characteristics of the minors that emerged from the interview described in paragraph 1 ... The accommodation for unaccompanied minors shall respect the minimum standards of services and assistance generally provided by the assistance facilities for minors and shall have authorisation under the relevant national and regional regulations ...

3. In the event that reception facilities are temporarily unavailable, assistance shall be given by the public authority of the municipality in which they are located.

3 *bis*. In the event of mass arrivals of unaccompanied minors and the impossibility of ensuring their reception as provided above, minors shall be accommodated, following a request by a prefect, in temporary structures exclusively dedicated to unaccompanied minors, suitable for up to fifty people each and only for the time necessary for their transfer to ordinary facilities ...

4. A minor shall not be housed in structures dedicated to adults.

5. The police authorities shall immediately inform the Juvenile Court and its prosecutor of the presence of unaccompanied minors, in order to open the relevant guardianship proceedings ...

6. A legal guardian shall have the necessary competences to exercise his or her functions and shall perform his or her duties in conformity with the principle of the best interests of the child ...

7 *bis*. Within five days of the interview described in paragraph 1 of Article 19-*bis*, if there is no risk to the foreign unaccompanied minor or his or her family members, once the minor's consent has been acquired, and exclusively in his or her own interest, the person exercising parental authority, even temporarily, can send a report to the competent institution, which shall immediately commence enquiries [in respect of the minor's family].

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- Paragraphs 1 *bis*, 2 *bis*, 7 *bis*, 7 *ter* and 7 *quater*, added by Law no. 47 of 2017.

- The same law: reduced from "sixty" to "thirty" the maximum duration of stay in the reception facilities indicated in paragraph 1, and added the maximum duration of the identification procedure indicated in the same paragraph; - amended paragraph 5, requiring the police to inform, rather than the Guardianship Judge and other entities (including the Juvenile Court and its prosecutor) as previously provided for, the Juvenile Court (and its prosecutor), which became competent to open guardianship proceedings

Modifications introduced by Law no. 47 of 2017 entered into force on 6 May 2017.

7 *ter*. The results of the above-mentioned enquiries shall be communicated to the Ministry of the Interior, which shall promptly inform the minor, the person exercising parental authority and those who held the above-mentioned interview.

7 *quater*. If family members able to take care of the unaccompanied foreign minor are identified, this solution shall be preferable to placing the minor in a centre (*comunità*) ...

**Article 19 *bis* - Identification of foreign unaccompanied minors<sup>5</sup>**

1. As soon as a foreign unaccompanied minor has contacted the police, social services or other representatives of local entities or the judicial authority (or those authorities have been notified of his or her presence), qualified staff of the initial reception facility shall carry out ... an interview with a view to assessing the individual's personal and family history and any other elements useful for his or her protection, following the procedure set up by the Prime Ministerial Decree to be adopted within 120 days of the date of entry into force of this provision<sup>6</sup>. A cultural mediator shall be present during the interview.

2. If there are well-founded doubts concerning the age declared by the minor, paragraphs 3 et seq. shall apply. In any event, pending the results of the identification procedure, the minor shall be housed in a dedicated initial reception facility for minors; where the conditions are fulfilled, the provisions of Article 4 of Legislative Decree no. 24 of 4 March 2014 shall apply.

3. The identity of a foreign unaccompanied minor shall be verified by an authority responsible for public safety, with the assistance of a cultural mediator, in the presence of his or her legal guardian or provisional legal guardian, where already appointed, only once the minor has been provided with initial humanitarian assistance. When doubts as to the person's age persist, the latter shall be verified primarily through an identity document, with the assistance of the diplomatic and consular authorities, where appropriate ...

4. When reasonable doubts as to the unaccompanied minor's age still persist, a prosecutor at the Juvenile Court can order a social and medical assessment in order to assess the person's age.

5. The foreigner shall be informed, with the assistance of a cultural mediator, in a language that he or she understands and in language adapted to his or her level of maturity and literacy, of the fact that his or her age can be determined through social and medical assessments, of the kind of examinations to be carried out and possible consequences of their results, as well as those resulting from a refusal to undergo such examinations. This information shall also be provided to the presumed minor's legal guardian, even if exercising such powers temporarily.

6. A social and medical age assessment shall be carried out in an appropriate environment and through a multidisciplinary approach by adequately trained professionals and, where appropriate, in the presence of a cultural mediator, using the least invasive method possible and with due respect to the person's presumed age, sex, and physical and mental integrity. Social and medical assessments which could compromise the person's physical and mental integrity shall not be carried out.

7. The result of the social and medical assessment shall be communicated to the foreign national in a manner appropriate to his or her age, maturity and level of literacy,

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<sup>5</sup> Article added by Law no. 47 of 2017, entered into force on 6 May 2017.

<sup>6</sup> Prime Ministerial Decree no. 234 of 10 December 2016, paragraph 55 below.

in a language that he or she can understand. [It shall also be communicated] to the person exercising parental authority and the judicial authority that ordered the age assessment. The margin of error must always be indicated in the final report.

8. If, after the social and medical assessment, doubts about the person's minor age still persist, minor age shall be presumed ...

9. The age-assessment certificate [issued by the Juvenile Court, pursuant to Legislative Decree no. 220 of 22 December 2017] shall be served on the alien and, at the same time, on the legal guardian, where one has been appointed, and can be challenged on appeal, in accordance with Article 739 and et seq. of the Code of Civil Procedure. If appealed against, the judge shall decide the appeal within ten days ...”

4. *Law no. 47 of 7 April 2017 - Provisions concerning the protection of unaccompanied minors*

48. This Law aims at ensuring foreign unaccompanied minors all the rights granted to minors of Italian or European Union nationality, with consideration in particular for their increased vulnerability (Article 1).

49. The different phases of the age-assessment procedure have been summarised in the new Article 19 *bis* and in the new paragraphs of Articles 18 and 19 of Legislative Decree no. 142 of 2015.

50. Other protective measures concern, *inter alia*, the following issues: pending the appointment of a guardian, the person in charge of the reception centre is entitled to act on behalf of the minor in order to apply for a residence permit or international protection (Article 6); unaccompanied minors' placement with families (to be preferred to their placement in reception centres) (Article 7); procedural guarantees concerning unaccompanied minors' repatriation (Article 8); the need to keep a “social report”, to be sent to social services, concerning the situation of unaccompanied minors and a long-term solution to be considered in their best interests (Article 9); the granting of a residence permit (Article 10); drawing up a list of duly trained voluntary guardians (Article 11); and informing foreign unaccompanied minors of their right to legal assistance (Article 16).

51. The first paragraph of the latter Article has added paragraph 4 *quater* to Article 76 of Presidential Decree no. 115 of 30 May 2002 (on legislative provisions and regulations concerning legal expenses). The new paragraph reads as follows:

“Unaccompanied foreign minors involved in judicial proceedings of any kind shall have the right to be informed of the opportunity to appoint a lawyer of their own choice, including via the appointed guardian or the person exercising parental authority ... and to make use, based on the applicable legislation, of public free legal aid at every type and stage of the procedure ...”

### C. Administrative measures

#### 1. *Circular of the Minister of the Interior of 9 July 2007 (Identification of minor migrants)*

52. The relevant parts of this Circular read as follows:

“The current applicable legislation proscribes the expulsion of certain categories of individuals, including minor migrants ...

The need to properly assess the age of migrants appears then to be of particular importance given that, in the event of a minor being wrongly identified as an adult, serious measures in breach of his or her rights, such as expulsion, removal or detention in a reception or identification centre, could be wrongly adopted.

Therefore, if there are doubts about a possible minor’s age, it is necessary to carry out all the age-assessment examinations set out in the current legislation as a priority in public facilities with paediatric wards.

However, as such assessments cannot provide exact information and can only indicate an age range, it is possible that the margin of error could include both minor and adult ages.

In this regard, [we reiterate] ... that age assessment shall be carried out in a scientific and secure way, respecting the age, sex, physical integrity and dignity of the person concerned, and that the benefit of the doubt should always be applied.

The principle of presumption of minor age [recognised in the framework of criminal proceedings against minors] shall also be applied in migration cases, as it is aimed at providing children with the broadest guarantees possible ...”

#### 2. *Guidelines on unaccompanied foreign minors of the Ministry of Labour and Social Policies of 19 December 2013*

53. The relevant parts of these Guidelines state that, in the absence of identity documents and if there are well-founded doubts concerning the information provided by the individual concerned, age must be assessed by the competent authorities with due respect for the rights and the guarantees set out for minors. Minor age is presumed if, at the end of the assessment, doubts about minority still persist.

#### 3. *Protocols on age assessment of unaccompanied minors*

54. A Protocol of 3 March 2016, signed by the Conference of Regions and Autonomous Provinces following the entry into force of Legislative Decree no. 142 of 2015 (see paragraphs 47 et seq. above) restated *inter alia* the applicable legislation and rules on this matter (including the Circular of the Minister of the Interior of 11 July 2007 and the Legislative Decree no. 24 of 4 March 2014, see paragraph 46 above). The document, based on a previous Protocol drawn up by the Ministry of Health in 2009 (“Protocol on the age assessment of minors based on a multidimensional approach”), was followed in turn by the “Multidisciplinary Protocol on the age assessment of unaccompanied minors” which was circulated to Regions and Autonomous

Provinces on 19 November 2018. Only the latter Protocol was adopted by the Presidency of the Council of Ministers on 9 July 2020.

4. *Prime Ministerial Decree no. 234 of 10 December 2016 “Regulation of the mechanism for age assessment of unaccompanied minors who are victims of human trafficking”*

55. The relevant parts of this Decree, which entered into force on 6 January 2017, state as follows:

**Article 2 - Administrative identification procedure and age assessment**

“1. In all age-assessment procedures, the best interests of the child constitute the main criterion.

2. The police shall verify the age of the person on the basis of the available identity documents ... and of the data collected from [public institution] databases ...

4. If the assessment of the person’s age through the said documents is not possible, the police ... shall hold an interview with the presumed minor, explaining, possibly with the help of a cultural mediator and an interpreter, and in a language that is comprehensible and appropriate for a presumed minor, the importance of declaring correct information and the legal consequences of possible false declarations. The person shall also be informed that, if there are reasonable doubts as to his or her age, the judicial authority can authorise certain examinations (*accertamenti*), which can be medical in nature, in order to determine his or her age.

5. The actions described in paragraphs 2 and 4 shall be carried out within twenty-four hours of the first contact with the potential human-trafficking victim, pursuant to Articles 600 and 601 of the Criminal Code ...”

**Article 3 - Intervention of the judicial authority**

“1. Once the actions referred to in Article 2 § 5 have been carried out, if reasonable doubts about the person’s age still persist ... the police can ask the competent guardianship judge for authorisation to carry out the procedure described in Article 5 ...

4. While authorising the said procedure, the judge shall identify the person who is going to exercise legal guardianship [of the presumed minor] ... and a medical institution equipped with multidisciplinary paediatric staff where the examination described in Article 5 can be carried out ...”

**Article 4 - Right to information**

“1. The presumed minor shall be informed by qualified staff of the medical facility ... that his or her age is going to be determined through the age-assessment procedure described in Article 5. The information shall be provided in a language that the person can understand, and shall be adapted to his or her level of maturity and literacy, by means of the support of multilingual material and a cultural mediator, where appropriate. In any event, the presumed minor shall be informed:

a) of the fact that his or her age shall be determined by means of a multidisciplinary procedure which can involve medical examinations;

b) of the activities involved in the said procedure, of the expected results and of their consequences;

c) of his or her right to refuse to submit to any steps of the examination described in Article 5.

2. The steps described in paragraph 1 shall take place in the presence of a legal guardian or of a person temporarily entitled to guardianship ...”

#### **Article 5 - Multidisciplinary age-assessment procedure**

“1. Age assessment shall be carried out by qualified staff of the medical institution identified in accordance with Article 3 § 4 ... A medical examination shall be held following a method of progressive invasiveness. At all stages of the examination the guarantees and protections reserved to minors, taking into account their sex, culture and religion, shall be taken into account.

2. The age-assessment procedure shall be carried out by a multidisciplinary team. It shall consist of an interview held by social workers (*colloquio sociale*), focusing on previous life experiences that might be relevant for the assessment, an auxological examination, and a psychological or neuropsychiatric evaluation, in the presence of a cultural mediator, where appropriate.

3. The procedure shall start within three days of the date of the authorisation, as set down in Article 3 § 4, and end within the following twenty days. The final report, written by the multidisciplinary team, shall indicate the estimated chronological age, specifying the margin of error inherent in biological variability and the methods used, and the relevant minimum and maximum value of the age that can be attributed.

4. The procedure’s results shall be communicated to the guardianship judge, the legal guardian or the person exercising, even temporarily, guardianship powers, and to the presumed minor in a language that he or she understands, taking into account the person’s age, maturity and level of literacy.”

#### **Article 6 - Age-assessment final decision**

“1. A guardianship judge shall take the decision concerning the attribution of age on the basis of the results of the multidisciplinary procedure ...

2. In the event that the elements collected are not sufficient to establish, beyond any reasonable doubt, the person’s age, the judge takes the final decision on age assessment, stating the inability to attribute the exact age, and the minimum value referred to in Article 5 § 3;

3. The decision is served on the person undergoing the examination, together with a translation in a language that he or she can understand well, as well as to the legal guardian or to the person exercising, even temporarily, guardianship powers; the decision can be challenged ...”

#### **Article 7 - Presumption of minor age**

“1. Pending the identification and age-assessment procedure, in view of the immediate access to assistance, support and protection, the victim of human trafficking shall be ... considered a minor.

2. For the same purpose, minor age shall be presumed in the case described in Article 6 § 2.”



## **D. Domestic case-law**

56. The Italian Supreme Court of Cassation, both in its Civil and Criminal Chambers (Chamber I, no. 6520 of 2020 and Chamber I, no. 43322 of 2021 respectively), has clarified that the multidisciplinary age-assessment procedure pursuant to Article 19 *bis* of Legislative Decree no. 142 of 2015, as amended (see paragraph 47 above), in force starting on 6 May 2017, has a pre-eminent position in the Italian legal system, as is made clear by the provision contained therein which stipulates that all other pending proceedings are suspended until age is assessed. The outcome of the assessment therefore has authority in any other set of civil or criminal proceedings, both pending or started subsequently.

## **II. INTERNATIONAL LAW AND PRACTICE**

### **A. United Nations**

#### *1. Convention on the Rights of the Child of 20 November 1989*

57. The United Nations Convention on the Rights of the Child (“the CRC”) sets out universally recognised standards for the protection and promotion of children’s rights. The relevant provisions provide as follows:

#### **Article 3**

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

#### **Article 12**

“1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely 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.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

## 2. *The UN Committee on the Rights of the Child*

58. The implementation of the CRC is monitored by the UN Committee on the Rights of the Child, which is composed of independent experts. Amongst other activities, it decides individual complaints and issues authoritative interpretative guidance on CRC provisions.

59. By a decision of 27 September 2018 on individual complaint no. 11/2017 lodged against Spain in relation to the Optional Protocol to the CRC on a communications procedure (which entered into force on 14 April 2014), the Committee found a breach of the principle of the best interests of the child and of the right of the child to be heard, guaranteed by Articles 3 and 12 of the CRC, in a case where a migrant applicant, on arrival in Spain, had declared that he was a minor to the authorities. He had then been subject to an age-assessment examination on the sole basis of the Greulich and Pyle method, following which the authorities had adjudged that he was an adult. The Committee also noted that the applicant in that case had not been represented by a legal guardian or representative on his arrival, nor interviewed and assisted by a psychologist.

60. The relevant General Comments of the UN Committee on the Rights of the Child are the following.

61. General Comment no. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin describes the particularly vulnerable situation of such children and outlines the multifaceted challenges faced by States and other actors in ensuring that children are able to access and enjoy their rights.

62. General Comment no. 12 (2009) on the right of the child to be heard strengthens the objective of supporting States Parties in the effective implementation of this right.

63. General Comment no. 14 (2013) focuses on the right of the child to have his or her best interests taken as a primary consideration.

## 3. *Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly resolution 45/158 of 18 December 1990*

64. The relevant parts of Joint general comment no. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and no. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration provide as follows:

“35. ... it is critical to implement fully [children’s] right to express their views on all aspects affecting their lives, including as an integral part of immigration and asylum proceedings, and for their views to be given due weight. Children may have their own migration projects and migration-driving factors, and policies and decisions cannot be effective or appropriate without their participation. The Committee also emphasizes that these children should be provided with all relevant information, inter alia, on their rights, the services available, means of communication, complaints mechanisms, the

immigration and asylum processes and their outcomes. Information should be provided in the child's own language in a timely manner, in a child-sensitive and age-appropriate manner, in order to make their voice heard and to be given due weight in the proceedings.

36. States parties should appoint a qualified legal representative for all children, including those with parental care, and a trained guardian for unaccompanied and separated children, as soon as possible on arrival, free of charge. Accessible complaints mechanisms for children should be ensured. Throughout the process, children should be offered the possibility to be provided with a translator in order that they may express themselves fully in their native language and/or receive support from someone familiar with the child's ethnic, religious and cultural background. These professionals should be trained on the specific needs of children in the context of international migration, including gender, cultural, religious and other intersecting aspects.

37. States parties should take all measures appropriate to fully promote and facilitate the participation of children, including providing them with the opportunity to be heard in any administrative or judicial proceeding related to their or their families' cases, including any decision on care, shelter or migration status. Children should be heard independently of their parents, and their individual circumstances should be included in the consideration of the family's cases. Specific best-interests' assessments should be carried out in those procedures, and the child's specific reasons for the migration should be taken into account.

Regarding the significant relationship between the right to be heard and the best interests of the child, the Committee on the Rights of the Child has already stated that there can be no correct application of article 3 if the components of article 12 are not respected. Likewise, article 3 reinforces the functionality of article 12, facilitating the essential role of children in all decisions affecting their lives."

65. The relevant parts of 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 of 16 November 2017 provide as follows:

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

15. The Committees are of the view that States should ensure that their legislation, policies, measures and practices guarantee child-sensitive due process in all migration and asylum administrative and judicial proceedings affecting the rights of children and/or those of their parents."

## **B. Council of Europe**

### *1. Committee of Ministers*

66. The relevant parts of Recommendation of the Committee of Ministers CM/Rec(2019)11 of March 2020, entitled “Effective guardianship for unaccompanied and separated children in the context of migration”, state as follows:

“III. Guiding principles for an effective guardianship system

#### **Principle 1 – Protection of the rights of unaccompanied and separated children in migration through guardianship**

States should have in place an effective system of guardianship which takes into account the specific needs and circumstances of unaccompanied and separated children in migration in order to protect and promote their rights and secure their best interests.

#### **Principle 2 – Guardianship frameworks and measures**

States should adopt and implement adequate legal, policy, regulatory and/or administrative frameworks to ensure the provision of guardianship for unaccompanied and separated children in migration.

#### **Principle 3 – Appointment or designation of guardians without undue delay**

States should ensure that an unaccompanied or separated child in migration has a guardian appointed or designated without undue delay, taking into account individual characteristics, to provide support to the child until the age of majority, and that care and support are available through guardianship or other means for a transitional period after reaching 18 years of age, as may be deemed appropriate in specific situations.

#### **Principle 4 – Legal responsibilities and tasks of guardians**

States should take measures to empower guardians to inform, assist, support and, where provided by law, represent unaccompanied and separated children in migration in processes affecting them, to safeguard their rights and best interests and to act as a link between the child and the authorities, agencies and individuals with responsibilities for them. States should ensure that guardians enjoy the independence and impartiality appropriate to their role.

#### **Principle 5 – Information, access to justice and remedies, including child-friendly complaint mechanisms**

States should ensure that unaccompanied and separated children in migration are provided with relevant information and advice, and that they have access to an independent complaint mechanism and remedies to effectively exercise their rights or act upon violations of their rights.

#### **Principle 6 – Institutional measures**

States should ensure that a competent authority is in place with responsibility for the management of guardianship for unaccompanied and separated children in migration

taking into account the manner in which responsibilities for guardianship are organised in member States.

**Principle 7 – Resources, recruitment, qualifications and training**

States should allocate adequate resources to ensure effective guardianship for unaccompanied and separated children in migration, including ensuring that guardians are adequately screened, reliable, qualified and supported throughout their mandate.

**Principle 8 – Co-operation and co-ordination at national level**

States should, in accordance with their domestic systems, establish mechanisms and take measures to ensure effective co-operation and co-ordination between people exercising responsibilities towards unaccompanied and separated children in migration, and the guardian and/or guardianship authority.

**Principle 9 – International co-operation**

States should rapidly, constructively and effectively provide the widest range of international co-operation in relation to unaccompanied and separated children in migration, including for family tracing and identifying and implementing sustainable, rights-based solutions, and involve in appropriate ways their guardianship authority and/or guardians.”

*2. Parliamentary Assembly*

67. The relevant material of the Parliamentary Assembly of the Council of Europe reads as follows:

**(a) Resolution 1810 (2011) “Unaccompanied children in Europe: issues of arrival, stay and return”, 15 April 2011**

“...

5. The Assembly believes that child protection rather than immigration control should be the driving concern in how countries deal with unaccompanied children. With this in mind, it establishes the following ... principles, which it invites member states to observe and work together to achieve:

5.1. unaccompanied children must be treated first and foremost as children, not as migrants;

5.2. the child’s best interests must be a primary consideration in all actions regarding the child, regardless of the child’s migration or residence status;

...

5.5. every unaccompanied child should be provided immediately with a guardian mandated to safeguard his or her best interest. The legal guardian should be independent and should have the necessary expertise in the field of childcare. Every guardian should receive regular training and undergo regular and independent check-ups/monitoring;

5.6. legal, social and psychological assistance should be provided without delay to unaccompanied children. Children should be informed immediately upon arrival or interception, individually and in a language and form that they can understand, about their right to protection and assistance, including their right to seek asylum or other forms of international protection, and the necessary procedures and their implications;

5.7. all interviews with an unaccompanied child concerning his or her personal details and background should be conducted individually by specialised and well-trained staff and in the presence of the child's guardian;

5.8. access to asylum and international protection procedures must be made unconditionally available to all unaccompanied children. A harmonised, child-sensitive asylum system needs to be established, including procedures that take into consideration the additional difficulties children may have in withstanding trauma and in expressing coherently what has happened to them and their child-specific experiences of persecution. Asylum applications by unaccompanied children should be given priority and processed within the shortest appropriate time frame, while allowing children sufficient time to understand and prepare for the process. All unaccompanied children in asylum proceedings must be represented by a lawyer in addition to a guardian, provided free of charge by the state and be able to challenge before a court decisions regarding their protection claims;

5.9. no detention of unaccompanied children on migration grounds should be allowed. Detention should be replaced with appropriate care arrangements, preferably foster care, with living conditions suitable for children's needs and for the appropriate period of time. Where children are accommodated in centres, they must be separated from adults;

5.10. age assessment should only be carried out if there are reasonable doubts about a person being underage. The assessment should be based on the presumption of minority, involve a multidisciplinary evaluation by an independent authority over a period of time and not be based exclusively on medical assessment. Examinations should only be carried out with the consent of the child or his or her guardian. They should not be intrusive and should comply with medical ethical standards. The margin of error of medical and other examinations should be clearly indicated and taken into account. If doubts remain that the person may be underage, he or she should be granted the benefit of the doubt. Assessment decisions should be subject to administrative or judicial appeal;

5.11. the child's views should be heard and given due weight in all relevant procedures, in accordance with his or her age and maturity. Administrative and judicial procedures within member states should be conceived and applied in a child-friendly manner ...”

**(b) Recommendation no. 1985 (2011) “Undocumented migrant children in an irregular situation: a real cause of concern”, 7 October 2011**

“... 1. A child is first, foremost and only, a child. Only after this may he or she be seen as a migrant. This, together with the need to take into account the best interest of the child, as stipulated by Article 3 of the United Nations Convention on the Rights of the Child, and the requirement not to discriminate between children, should be the starting point of any discussion about undocumented migrant children. The issue of migratory status can only ever be a secondary consideration.

2. Undocumented migrant children are triply vulnerable: as migrants, as persons in an undocumented situation and as children. ...

9. Bearing in mind the need for a firm legislative basis and implementation of the laws in practice, the Assembly recommends that member states: ...

9.4.7. where a doubt exists as to the age of the child, the benefit of the doubt should be given to that child ...”

**(c) Resolution no. 1996 (2014) “Migrant children: what rights at 18?”, 23 May 2014**

“... 3. The Parliamentary Assembly observes that there is no legal instrument, or even consensus, with regard to procedures for assessing a person’s age and stresses the need to apply the benefit of the doubt, bearing in mind the higher interest of the child. ...

10. In view of the above, the Assembly calls on member States of the Council of Europe to:

10.1. take due account of the specific situation of unaccompanied young migrants who are reaching adulthood, bearing in mind the higher interest of the child;

10.2. give young migrants the benefit of the doubt when assessing their age and ensure that such assessment is made with their informed consent ...”

**(d) Resolution no. 2020 (2014) on the alternatives to immigration detention of children, 3 October 2014**

“... 9. The Assembly considers that it is urgent to put an end to the detention of migrant children and that this requires concerted efforts from the relevant national authorities. The Assembly therefore calls on the member States to:

... 9.4. ensure that children are treated as children first and foremost, and that persons who claim to be children are treated as such until proven otherwise;

9.5. develop child-friendly age-assessment procedures for migrant children ...”

**(e) Resolution 2136 (2016) on harmonising the protection of unaccompanied minors in Europe, 13 October 2016**

“... 5. The Assembly recalls that the general principle of respect for migrant minors’ rights first and foremost as children implies that they should benefit from special protection, including social and health care which ensure their physical and psychological integrity and development, sufficient and child-friendly information, education and empowerment. On observation of the situation in member States, it is clear that these conditions are far from being systematically guaranteed for unaccompanied migrant minors. ...

8.2.5. in cases where a child’s age cannot be established by identity documents and only where there is doubt as to the individual’s status as a minor, carrying out early and non-intrusive age assessment in full respect for the dignity and integrity of children. The procedure should be multidisciplinary and carried out by independent professionals, familiar with their ethnic, cultural and developmental characteristics. Similar principles should apply when there is a dispute over the country of origin;

8.2.6. improving or introducing accelerated asylum application procedures for unaccompanied minors, including the early designation of sufficiently trained guardians and legal representatives who can assist children and who are each allocated a small number of migrant children ...”

**(f) Parliamentary Assembly: Resolution no. 2195 (2017) on Child-friendly age assessment for unaccompanied migrant children, 24 November 2017**

“... 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 ...

...

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 or separated children. It therefore calls on member States to:

6.1. conduct case-by-case, reliable age assessment of unaccompanied migrant children only in cases of serious doubt about the child's age and as a last resort, in the best interests of the child;

6.2. provide unaccompanied migrant children with reliable information about age-assessment procedures in a language that they understand, so that they can fully understand the different stages of the process they are undergoing and its consequences;

6.3. appoint a guardian to support each unaccompanied migrant child individually during the age-assessment procedure;

6.4. ensure that an unaccompanied migrant child or his or her representative can challenge the age-assessment decision through appropriate administrative or judicial appeal channels;

6.5. use only as a last resort dental or wrist x-ray examinations and all other invasive medical procedures for the purpose of determining the age of unaccompanied or separated migrant children;

6.6. ensure that all medical examinations are sensitive to the child's gender, culture and vulnerabilities and that the interpretation of results takes into account the child's national and social background as well as previous experiences;

6.7. prohibit, in all situations, the use of physical sexual maturity examinations for the purpose of determining the age of unaccompanied and separated migrant children;

6.8. prohibit the detention of unaccompanied or separated children who are awaiting or undergoing age assessment, and always apply the margin of error in favour of the person so that the lowest age in the margin determined by the assessment is recorded as the person's age;

6.9. identify and provide alternative accommodation options for children awaiting or undergoing age assessment, with a view to avoiding the detention of children during disputes about age, including by temporary placement in centres for children where appropriate safeguards should be in place to protect them and other children in the centres;

6.10. support and promote the development of a single, holistic model of age assessment in Europe, based on the presumption that the person is a minor;

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. ..."



**(g) Parliamentary Assembly: Resolution no. 2449(2022) on Protection and alternative care for unaccompanied and separated migrant and refugee children, 22 June 2022**

“...6. The Assembly underlines that all member States should adopt a common approach whereby unaccompanied and separated migrant and refugee children are, first and foremost, considered as children. This entails ensuring that their best interest is the primary consideration, irrespective of their migration status in the country concerned. In this context, member States must ensure that unaccompanied and separated migrant and refugee children benefit from:

6.1. all due child protection safeguards, including adequate and immediate identification and registration of their identity and legal, family and social situation;

6.2. a robust and gender sensitive assessment of their immediate protection, support and care needs; particular attention should be paid to victims of violence, abuse and human trafficking as well as to children with special needs including medical and psychological needs;

6.3. the immediate appointment of a guardian, who will act to protect the child’s best interest and link the child to required services, while searching for the child’s parents and family members;

6.4. an exhaustive assessment and determination of their best interest by their guardians, child protection services or competent courts where necessary;

6.5. access to education; governments must provide for the integration of unaccompanied migrant minors in the field of education, ensure their learning process and facilitate their link with school and with other children of their age;

6.6. child-sensitive age-assessment procedures, which should only be carried out if there are serious doubts about a person’s age, and which should always be carried out in the best interests of the child, and be subject to independent monitoring; the development of a single model of age assessment in Europe, based on the presumption that the person is a minor; systematic application of the margin of error in favour of the person concerned, so that the lowest age in the margin determined by the assessment is recorded as the person’s age; and access to effective remedies.

7. Furthermore, the Assembly underlines that member States are legally responsible for unaccompanied and separated migrant and refugee children within their territory in accordance with Article 8 of the European Convention on Human Rights and, therefore, should offer solid child protection systems, which include strong co-ordination between the competent child protection and migration bodies as well as with other authorities and relevant civil society. Appropriate and sustainable budgeting and investment in human and other resources can ensure adequate and gender sensitive protection and care...”

3. *The Council of Europe Commissioner for Human Rights – “Realising the right to family reunification of refugees in Europe”, February 2017*

68. The relevant parts read as follows:

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

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

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

4. *“Thematic Report on migrant and refugee children” prepared by the Special Representative of the Secretary General on migration and refugees (SRSG), 10 March 2017*

69. This report follows four fact-finding missions held by the SRSG to Greece and North Macedonia, Turkey, northern France (Calais and Grande-Synthe) and Italy. It was published following the Council of Europe Secretary General's proposals for priority actions in the context of “Protecting children affected by the refugee crisis: a shared responsibility”. The relevant parts read as follows:

“The United Nations Children's Fund (UNICEF) has noted that almost one child in ten lives in a country affected by armed conflict and more than 400 million children live in extreme poverty (UNICEF June 2016). Such harsh circumstances have led to half of the world's displaced now being children under the age of 18 (UNHCR Global Trends 2015). ...

According to figures from Eurostat and the European Parliamentary Research Service (EPRS), around 30% of asylum seekers arriving in Europe in the last two years were children. Nearly 70% of these children were fleeing conflict in Syria, Afghanistan and Iraq. The number of unaccompanied children who applied for asylum in the European Union reached 96,465 in 2015 and they accounted for almost one quarter of all asylum applicants under 18 years of age ...

Identification and age assessment

In order to access special protection and assistance measures, unaccompanied children must be identified and referred to child protection authorities. Without proper identification procedures in place, children are at risk of being treated like adults and placed in detention, as witnessed in the field.

Therefore, age assessment measures are necessary when an individual's stated age is disputed. However, as observed, such measures are not always comprehensive because psycho-social aspects appear to be neglected. The Committee on the Rights of the Child of the United Nations advises that age assessment measures should be multi-disciplinary and holistic (CRC General Comment No. 6) and should be carried out with appropriate safeguards.

Registration and guardianship

Following identification, children and families should be registered. Unaccompanied and separated children, as well as age-disputed individuals, should have a guardian appointed as soon as possible. As observed in the field, unaccompanied children are not always identified, registered and provided with a guardian. Without a guardian and suitable care, such children may be exposed to

serious protection risks, such as sexual exploitation, and are more likely to go missing. Until a guardian is appointed, there is often a vacuum in terms of the child's ability to access and to enjoy protection, particularly in countries where children need guardians in order to complete administrative procedures, including applications for asylum and requests for relocation and family reunification. While guardianship practices vary across Europe, good practice standards do exist ...”

##### 5. *The European Social Charter*

70. In its decision of 15 June 2018 (*EUROCEF v. France*, complaint no. 114/2015), the European Committee of Social Rights found, among other things, that “medical age assessments as currently applied can have serious consequences for minors and that the use of bone testing to determine the age of unaccompanied foreign minors is inappropriate and unreliable. The use of such testing therefore violates Article 17 § 1 of the [European Social] Charter”.

71. In its 2019 Conclusions, the European Committee of Social Rights highlighted the following with regard to the right of children and young persons to social, legal and economic protection (Article 17 of the [European Social] Charter):

“ ... An issue that was considerably developed during the cycle was the right to assistance. The Committee is increasingly concerned about the treatment of children in an irregular migrant situation unaccompanied or not and asylum seeking children. In particular it stated that the detention of such children cannot be considered as being in their best interests and States Parties should find alternatives to detention. Further accommodation must be appropriate and in particular safe, in order to protect this vulnerable group from violence and exploitation. In the respect it found two countries not to be in conformity on the ground of the inadequate and often unsafe accommodation of unaccompanied migrant children or the inadequate protection from violence and abuse (Greece, Hungary).

The Committee also raised a question regarding age assessments and bone testing. It noted that the use of bone testing in order to assess the age of unaccompanied children is inappropriate and unreliable. It asked whether the state uses bone testing to assess age and in what situations the state does so. Should the state carry out such testing, the Committee asked what potential consequences such testing may have (e.g., can a child be excluded from the child protection system on the sole basis of the outcome of such a test) ...”

##### 6. *Council of Europe Greta (Group of Experts on Action against Trafficking in Human Being) reports*

72. While noting that the following sources concern trafficking in human beings, which is not *per se* the subject matter of the present case, the Court acknowledges that some of the principles referred to therein are worth citing in the present context.

**(a) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy (first evaluation round), published on 22 September 2014, GRETA(2014)18**

“...135. GRETA urges the Italian authorities to ensure that all victims of trafficking are properly identified and can benefit from the assistance and protection measures contained in the Convention, in particular by:

...

- taking steps to address the problem of disappearance of unaccompanied foreign children by providing suitable safe accommodation and assigning adequately trained legal guardians;

- developing age assessment tools and effectively implement the presumption and the measures foreseen in Article 10, paragraph 3, of the Convention when the age of the victim is uncertain and the measures foreseen in Article 10, paragraph 4, of the Convention if an unaccompanied child is identified as a victim of trafficking;

...”

**(b) Report on Italy under Rule 7 of the Rules of Procedure for evaluating implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, published on 30 January 2017, GRETA (2016)29**

“...74. GRETA is seriously concerned by the fact that unaccompanied children disappear within a few days of being placed in reception centres. In the context of quick disappearances, it is not possible to establish whether the child is already in the process of being trafficked and what are his/her concrete individual protection needs, including that of international protection. GRETA once again urges the Italian authorities to take steps to address the problem of disappearance of unaccompanied children, in particular by:

- providing enhanced safeguarding measures in reception facilities specialised for children, with adequately trained staff;

- ensuring that unaccompanied children are assigned a legal guardian, as expeditiously as possible, and providing adequate training to legal guardians and foster families to ensure that the best interests of the child are effectively protected, in accordance with Article 10, paragraph 4, of the Convention.

75. Further, GRETA considers that the Italian authorities should review the age assessment procedures, ensuring that the best interests of the child are effectively protected and that the benefit of the doubt is given in cases of age disputes and special protection measures are provided, in accordance with Article 10, paragraph 3, of the Convention, and taking into account the requirements of the UN Convention on the Rights of the Child and General Comment No. 6 of the Committee on the Rights of the Child...”

**(c) Report concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by Italy (second evaluation round), published 25 January 2019, GRETA(2018)28**

“...48. *Guardia di Finanza* organises training for first-line staff dealing with emergencies related to irregular migration. In 2017, five training initiatives, both at central and peripheral level, were organised.

In the training plan for 2018, there are also five training initiatives envisaged in the form of e-learning for first-line staff (a total of 1 600 persons).

49. In collaboration with the Ministry of the Interior, UNHCR has provided training on the identification of victims of THB among asylum seekers to members of the Territorial Commissions dealing with asylum applications, on the basis of the new guidelines for the identification of THB victims among asylum-seekers (see paragraph 150). In 2017, 11 training workshops were organised throughout the territory of Italy. In 2018, four training sessions for members of Territorial Commissions were organised (in Milan, Brescia, Perugia and Cagliari) and another four were scheduled by the end of 2018 (in Foggia, Reggio Calabria, Trapani and Trieste). Since the beginning of the project almost 230 members of Territorial Commissions, 70 interpreters and 285 anti-trafficking personnel have been trained. Further, the subject of human trafficking was one of the focuses of the training organised by the National Commission for 250 new members of Territorial Commissions. The National Commission for the Right to Asylum and UNHCR, together with the High Council for the Judiciary, organised in 2017 and 2018 joint training of Presidents of Territorial Commissions and specialised judges dealing with asylum applications. Another training on trafficking in human beings for judges of Juvenile Courts was held in Naples in May 2018.

50. Since 2017, the Department for Civil Liberties and Immigration of the Ministry of the Interior, with the support of EASO, has delivered training on the reception and protection of unaccompanied children to staff of first-line reception centres, Prefectures, and municipal police, health and social services. Eight trainings were delivered in 2017 and another six in 2018, including trainers from IOM and UNHCR. Several sessions were dedicated to children with special reception needs, including victims of trafficking. Further, EASO presented its tool for identification of persons with special needs.

51. Further, in the framework of the project ADITUS which runs until the end of 2019, IOM implements training for staff working at facilities for asylum seekers and staff of the Prefectures involved in the management of the phenomenon of trafficking and exploitation. Training has already taken place in the regions of Piedmont, Veneto, Treviso, Liguria, Emilia Romagna, Tuscany, Lazio, Molise, Campania, Apulia, Calabria, Sicily and Sardinia (see also paragraph 148)...”

7. *Council of Europe Strategy for the Rights of the Child (2016-2021), March 2016*

73. This document set the priorities of the Council of Europe in the area of protection and promotion of the rights of the child for the period 2016 to 2021. The relevant parts read as follows:

“7. Migration

22. Children on the move and otherwise affected by migration are one of the most vulnerable groups in Europe today. In some countries, they face limited access to justice, education, social and health services. While unaccompanied children face a particularly precarious situation, migrant children at large even when accompanied by parents often suffer persistent violations of their human rights. The principle of the best interests of the child is too often neglected in asylum and immigration procedures. The use of detention instead of child welfare protection, failures in appointing effective guardianship, family separation and demeaning age-assessment procedures are emblematic of the different ways in which migrant children fall through loopholes

in child protection frameworks. They are also at high risk of trafficking and exploitation. Children left behind when their parents migrate, as well as stateless children are likewise at a heightened risk of finding their rights violated.”

*8. Other Council of Europe instruments*

74. Further relevant information concerning minor migrants’ rights are illustrated in the following reports: “Age assessment: Council of Europe member States’ policies, procedures and practices respectful of children’s rights in the context of migration”, September 2017, and the Roundtable conference report “Child-friendly information for children in migration”, Council of Europe 29-30 November 2017.

III. EUROPEAN UNION LAW

**A. EU Directives and Resolution**

*1. EU Directive 2005/85*

75. The relevant Article of this Directive states as follows:

**Article 17 - Guarantees for unaccompanied minors**

“1. With respect to all procedures provided for in this Directive and without prejudice to the provisions of Articles 12 and 14, Member States shall:

(a) as soon as possible take measures to ensure that a representative represents and/or assists the unaccompanied minor with respect to the examination of the application. This representative can also be the representative referred to in Article 19 of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers;

(b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself/herself for the personal interview. Member States shall allow the representative to be present at that interview and to ask questions or make comments, within the framework set by the person who conducts the interview.

Member States may require the presence of the unaccompanied minor at the personal interview, even if the representative is present.

2. Member States may refrain from appointing a representative where the unaccompanied minor:

(a) will in all likelihood reach the age of maturity before a decision at first instance is taken; or

(b) can avail himself, free of charge, of a legal adviser or other counsellor, admitted as such under national law to fulfil the tasks assigned above to the representative; or

(c) is married or has been married.

3. Member States may, in accordance with the laws and regulations in force on 1 December 2005, also refrain from appointing a representative where the

unaccompanied minor is 16 years old or older, unless he/she is unable to pursue his/her application without a representative.

4. Member States shall ensure that:

(a) if an unaccompanied minor has a personal interview on his/her application for asylum as referred to in Articles 12, 13 and 14, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;

(b) an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for asylum.

In cases where medical examinations are used, Member States shall ensure that:

(a) unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they may reasonably be supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for asylum, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;

(b) unaccompanied minors and/or their representatives consent to carry out an examination to determine the age of the minors concerned; and

(c) the decision to reject an application for asylum from an unaccompanied minor who refused to undergo this medical examination shall not be based solely on that refusal.

The fact that an unaccompanied minor has refused to undergo such a medical examination shall not prevent the determining authority from taking a decision on the application for asylum. L 326/22 Official Journal of the European Union 13.12.2005 EN The best interests of the child shall be a primary consideration for Member States when implementing this Article.”

2. *EU Directive 2011/95 (the so-called “Recast Qualification Directive”, “Standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted”)*

76. The relevant parts of this Directive read as follows:

#### **Article 31 - Unaccompanied minors**

“1. As soon as possible after the granting of international protection Member States shall take the necessary measures to ensure the representation of unaccompanied minors by a legal guardian or, where necessary, by an organisation responsible for the care and well-being of minors, or by any other appropriate representation including that based on legislation or court order.

2. Member States shall ensure that the minor’s needs are duly met in the implementation of this Directive by the appointed guardian or representative. The appropriate authorities shall make regular assessments.

3. Member States shall ensure that unaccompanied minors are placed either:

- (a) with adult relatives; or
- (b) with a foster family; or
- (c) in centres specialised in accommodation for minors; or
- (d) in other accommodation suitable for minors.

In this context, the views of the child shall be taken into account in accordance with his or her age and degree of maturity. ...

6. Those working with unaccompanied minors shall have had and continue to receive appropriate training concerning their needs.”

3. *EU Directive 2013/32 (the so-called “Asylum Procedures Directive”, “Common procedures for granting and withdrawing international protection”)*

77. The relevant parts of this Directive read as follows:

**Article 25 - Guarantees for unaccompanied minors**

“1. ... Member States shall:

(a) take measures as soon as possible to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of a representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child and shall have the necessary expertise to that end. The person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives. The representative may also be the representative referred to in Directive 2013/33/EU;

(b) ensure that the representative is given the opportunity to inform the unaccompanied minor about the meaning and possible consequences of the personal interview and, where appropriate, how to prepare himself or herself for the personal interview. Member States shall ensure that a representative and/or a legal adviser or other counsellor admitted or permitted as such under national law are present at that interview and have an opportunity to ask questions or make comments, within the framework set by the person who conducts the interview.

Member States may require the presence of the unaccompanied minor at the personal interview, even if the representative is present.

2. Member States may refrain from appointing a representative where the unaccompanied minor will in all likelihood reach the age of 18 before a decision at first instance is taken.

3. Member States shall ensure that:

(a) if an unaccompanied minor has a personal interview on his or her application for international protection as referred to in Articles 14 to 17 and 34, that interview is conducted by a person who has the necessary knowledge of the special needs of minors;



(b) an official with the necessary knowledge of the special needs of minors prepares the decision by the determining authority on the application of an unaccompanied minor.

4. Unaccompanied minors and their representatives shall be provided, free of charge, with legal and procedural information as referred to in Article 19 also in the procedures for the withdrawal of international protection provided for in Chapter IV.

5. Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection where, following general statements or other relevant indications, Member States have doubts concerning the applicant's age. If, thereafter, Member States are still in doubt concerning the applicant's age, they shall assume that the applicant is a minor.

Any medical examination shall be performed with full respect for the individual's dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result.

Where medical examinations are used, Member States shall ensure that:

(a) unaccompanied minors are informed prior to the examination of their application for international protection, and in a language that they understand or are reasonably supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for international protection, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination;

(b) unaccompanied minors and/or their representatives consent to a medical examination being carried out to determine the age of the minors concerned; and

(c) the decision to reject an application for international protection by an unaccompanied minor who refused to undergo a medical examination shall not be based solely on that refusal.

The fact that an unaccompanied minor has refused to undergo a medical examination shall not prevent the determining authority from taking a decision on the application for international protection.

6. The best interests of the child shall be a primary consideration for Member States when implementing this Directive. ...”

4. *EU Directive 2013/33 (the so-called “recast Reception Conditions Directive”, “Laying down standards for the reception of applicants for international protection”)*

78. The relevant parts of this Directive read as follows:

**Article 23 - Minors**

“1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors. Member States shall ensure a standard of living adequate for the minor's physical, mental, spiritual, moral and social development.

2. In assessing the best interests of the child, Member States shall in particular take due account of the following factors:

- (a) family reunification possibilities;
- (b) the minor's well-being and social development, taking into particular consideration the minor's background;
- (c) safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking;
- (d) the views of the minor in accordance with his or her age and maturity.

3. Member States shall ensure that minors have access to leisure activities, including play and recreational activities appropriate to their age within the premises and accommodation centres. ...”

#### **Article 24 - Unaccompanied minors**

“1. Member States shall as soon as possible take measures to ensure that a representative represents and assists the unaccompanied minor to enable him or her to benefit from the rights and comply with the obligations provided for in this Directive. The unaccompanied minor shall be informed immediately of the appointment of the representative. The representative shall perform his or her duties in accordance with the principle of the best interests of the child, as prescribed in Article 23(2), and shall have the necessary expertise to that end. In order to ensure the minor's well-being and social development referred to in Article 23(2)(b), the person acting as representative shall be changed only when necessary. Organisations or individuals whose interests conflict or could potentially conflict with those of the unaccompanied minor shall not be eligible to become representatives.

Regular assessments shall be made by the appropriate authorities, including as regards the availability of the necessary means for representing the unaccompanied minor.

2. Unaccompanied minors who make an application for international protection shall, from the moment they are admitted to the territory until the moment when they are obliged to leave the Member State in which the application for international protection was made or is being examined, be placed:

- (a) with adult relatives;
- (b) with a foster family;
- (c) in accommodation centres with special provisions for minors;
- (d) in other accommodation suitable for minors.

Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult applicants, if it is in their best interests, as prescribed in Article 23(2).

As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.

3. Member States shall start tracing the members of the unaccompanied minor's family, where necessary with the assistance of international or other relevant organisations, as soon as possible after an application for international protection is made, whilst protecting his or her best interests. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection,

processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.

4. Those working with unaccompanied minors shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.”

5. *Resolution of the Council of the European Union of 26 June 1997 on unaccompanied minors who are nationals of third countries*

79. The relevant parts of this Resolution read as follows:

“Article 4 Asylum procedure

...3. (a) In principle, an unaccompanied asylum-seeker claiming to be a minor must produce evidence of his age.

(b) If such evidence is not available or serious doubt persists, Member States may carry out an assessment of the age of an asylum-seeker. Age assessment should be carried out objectively. For such purposes, Member States may have a medical age-test carried out by qualified medical personnel, with the consent of the minor, a specially appointed adult representative or institution.

...Article 6 Final provisions

1. Member States should take account of these guidelines in the case of all proposals for changes to their national legislations. In addition, Member States should strive to bring their national legislations into line with these guidelines before 1 January 1999.

2. Member States shall remain free to allow for more favourable conditions for unaccompanied minors.”

**B. EU Action Plan on Unaccompanied Minors 2010-14**

80. This Action Plan aims at providing concrete responses to the challenges posed by the arrival of significant numbers of unaccompanied minors on EU territory.

81. It recognises that the EU has a significant role in this matter and aimed at a global and integrated approach across its policies. It addressed the challenges of insufficient data, and then three main strands for action: prevention, regional protection programmes, reception and identification of durable solutions.

82. Some priorities emphasised in the Action Plan include achieving higher standards of protection for unaccompanied children in EU law and evaluating the need to introduce targeted amendments or a specific instrument setting down common standards on reception and assistance for all unaccompanied minors regarding, among other things, guardianship, legal representation, access to accommodation and care, initial interviews and education.

### **C. EASO (EU European Asylum Support Office)<sup>7</sup>**

83. The report “Age assessment practice in Europe” (2013) offers practical guidance, recommendations and tools on the implementation of the best interests of the child during age assessment. It promotes a multidisciplinary and holistic approach.

84. It focuses, among other things, on the principle of the benefit of the doubt, the right of the individual to information and to express his or her views, the importance of designating a legal guardian and representative and the need for the opportunity to challenge age-assessment results.

85. The “Practical guide on age assessment” second edition (2018) builds upon the information on the age-assessment process and methods analysed in the EASO 2013 report.

86. In addition to the content of the latter, the guide highlights that there is no age-assessment method that can provide absolutely accurate results in respect of the chronological age of a person, and that all methods have a margin of error. As regards carpal (hand/wrist) maturity tests, the most practised group of tests among member States, the EASO stresses that “socioeconomic status is a key factor that affects the rate of ossification” leading to underestimating a person’s age. Dental observation is considered “not designed to estimate chronological age”, whilst physical development assessment is “the least accurate”.

87. The EASO guide also points out the need to conduct age assessment using the least intrusive method. All X-ray examinations are physically intrusive since they use ionising radiation that maybe harmful. There is also opposition on ethical grounds to using radiation if it is not for medical purposes. Sexual maturity examinations are of a highly intrusive nature, conflicting with the rights of dignity, integrity and privacy, and should be precluded for age-assessment purposes.

### **D. Summary Report – Separated, asylum-seeking children in European Union member States, (FRA) 2010**

88. The European Union Agency for Fundamental Rights (FRA) carried out a study on living conditions, provisions and decision-making procedures in respect of asylum-seeking children in twelve EU member States through child-centred participatory research.

89. It identified the good practices and shortcomings of the existing systems in relation to aspects such as accommodation, access to healthcare, education and training, legal representation, the role of social workers, age assessment, family tracing and reunification.

90. As regards age assessment, the comparative report reads as follows:

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<sup>7</sup> The European Asylum Support Office (EASO) became the European Union Agency for Asylum (EUAA) on 19 January 2022 following the entering into force of the Regulation (EU) 2021/2303 on the establishment of a European Union Agency for Asylum (EUAA).

“Age assessment should only be used where there are grounds for serious doubt of an individual’s age. If medical examinations are considered essential, the child must give his/her informed consent to the procedure after any possible health and legal consequences have been explained in a simple, child-friendly way and in a language that the child understands. Age assessment should be undertaken in a gender appropriate manner by independent experts familiar with the child’s cultural background and fully respecting the child’s dignity. Recognising that age assessment cannot be precise, in cases of doubt, authorities should treat the person as a child and grant the right to appeal age assessment decisions.”

**E. Age assessment and fingerprinting of children in asylum procedures – minimum age requirements concerning children’s rights in the EU” (FRA) 2018**

91. The EU Agency for Fundamental Rights mapped national legislative provisions on this matter and produced the following three recommendations with regard to age-assessment procedures:

“1. In conducting an age assessment medical test, EU Member States should consider seeking the explicit consent of both the person concerned and their legal representative.

2. EU Member States should use age-assessment procedures only where there are grounds for doubting an individual’s age. They should only use medical tests if they cannot base their age assessment on other, less invasive methods, such as documents or an interview by specialised social workers. Medical tests, especially involving radiation, should be a method of last resort to establish the age of a person seeking international protection, whereas sexual maturity tests should be prohibited. Medical tests should always be carried out by qualified medical staff, adhering to all relevant medical protocols and in a gender-sensitive way, taking into consideration the cultural background of the person concerned. If Member States still have doubts about the age of the person after a medical assessment test, they should decide in favour of the person being under the age of 18 years (presumption of minority), as provided in Article 25 (5) of the Asylum Procedures Directive.

3. Persons having to undergo an age assessment medical test should be informed about the nature of the medical test and the possible health and legal consequences, especially as regards their legal status as international protection seekers. This information should be provided by competent national authorities in a child-friendly manner and in a language that they understand. To ensure that the rights of the child are respected, it is essential that before an age-assessment procedure, national authorities appoint a guardian to support and represent the person undergoing the assessment.”

**F. “Approaches to Unaccompanied Minors Following Status determination in the EU plus Norway”, Report of the European Migration Network (EMN) of the European Commission, July 2018**

92. This report, produced by the EMN, focuses, in particular, on the situation of unaccompanied minors who have been granted a residence permit or issued a return decision.

93. As to the scale of unaccompanied minors in the EU, the report states that the number increased dramatically in 2015, reaching a total of 99,995 minors (an increase of 315% in comparison to the previous year)

before returning to 31,975 in 2017. Germany, Sweden, Italy, Austria and Hungary received the highest number of minors applying for asylum in the EU over the 2014-17 period. The majority of these minors were boys (89%). Most of them were between the ages of 16 and 17 (65%) with only a small portion being less than 14 years old.

94. The report provides information about EU member States' care arrangements for unaccompanied minors, including when they turn 18 years old, their accommodation, guardianship, integration and healthcare.

## THE LAW

### I. THE PART OF THE APPLICATION LODGED BY MR MOUSSA CAMARA

95. The Court reiterates that an applicant's representative must not only supply a power of attorney or written authority (Rule 45 § 3 of the Rules of Court), but that it is also important that contact between the applicant and his or her representative be maintained throughout the proceedings. Such contact is essential both in order to learn more about the applicant's particular situation and to confirm his or her continuing interest in pursuing the examination of his or her application (see *V.M. and Others v. Belgium* (striking out) [GC], no. 60125/11, § 35, 17 November 2016; *Sharifi and Others v. Italy and Greece*, no. 16643/09, § 124, 21 October 2014; and, *mutatis mutandis*, *Ali v. Switzerland*, 5 August 1998, § 32, *Reports of Judgments and Decisions* 1998-V). In the case of *N.D. and N.T. v. Spain* [GC] (nos. 8675/15 and 8697/15, § 73, 13 February 2020), the Court found that some cases in which the applicant's representative had lost touch with his or her client, including in cases concerning the expulsion of aliens, might warrant striking the application out of the list under Article 37 § 1. The lack of contact was sometimes taken as an indication that the applicant no longer wished to pursue the application within the meaning of Article 37 § 1 (a) (see *Ibrahim Hayd v. the Netherlands* (dec.), no. 30880/10, 29 November 2011, and *Kadzoev v. Bulgaria* (dec.), no. 56437/07, § 7, 1 October 2013) or that examination of the application was no longer justified because the representative could not "meaningfully" pursue the proceedings before it in the absence of instructions from the applicant, despite the fact that the lawyer had authority to continue with the proceedings (see *Ali*, cited above, §§ 30-33, and *Ramzy v. the Netherlands* (striking out), no. 25424/05, §§ 64-66, 20 July 2010). In some cases, the Court's findings combined these two reasons (see *M.H. v. Cyprus* (dec.), no. 41744/10, § 14, 14 January 2014, and *M.Is. v. Cyprus* (dec.), no. 41805/10, § 20, 10 February 2015). In *Sharifi and Others* (cited above), the Court struck the application out of its list with regard to some of the applicants in respect of whom the information provided by the lawyer was vague and superficial and insufficiently substantiated (§§ 127-29 and 131-34).

96. In the present case, following the Court's request to be informed whether the applicant's representatives were still in contact with their client, on 24 June 2021 the latter replied by letter that they had lost contact with him. The Court also notes that the representatives have not insisted that the Court nonetheless continue the examination of his application (contrast *V.M. and Others*, cited above, § 32).

97. In the light of the foregoing, and in the absence of any special circumstances regarding respect for the rights guaranteed by the Convention and the Protocols thereto, the Court, in accordance with Article 37 § 1 (a) of the Convention, considers that it is no longer justified to continue the examination of the application lodged by Mr Moussa Camara.

98. Accordingly, this part of the application should be struck out of the list of cases.

## II. THE PART OF THE APPLICATION LODGED BY MR OUSAINOU DARBOE

### A. The applicant's *locus standi*

99. The Government pointed out that, at the time the applicant's application was lodged, the applicant had been a minor and had not been represented by a legal guardian. He therefore had no standing in the proceedings before the Court.

100. The applicant observed that, in his case, no legal guardian had been appointed at the initiative of the national authorities, despite it being required by law, and that this in fact constituted one of the core issues of his complaints.

101. The Court has already examined cases where the power of attorney to be represented before the Court was provided by a minor applicant (see *Rahimi v. Greece*, no. 8687/08, 5 April 2011) or by an applicant whose age could not be determined with certainty (see *Ahmade v. Greece*, no. 50520/09, 25 September 2012).

102. The Court sees no reason to depart from this approach. Moreover, it is apparent from the case file that the applicant's complaints are based, *inter alia*, on the fact that no representative was appointed in his case, notwithstanding his declaration that he was of minor age.

103. Even assuming that the Government's preliminary consideration could be read as an objection of inadmissibility of the case for lack of the applicant's *locus standi*, the Court concludes that their argument must be rejected.

**B. The Government's objection of non-exhaustion of domestic remedies**

104. In the framework of their observations on the merits of the applicant's complaint under Article 13 of the Convention, the Government submitted that the applicant had had the possibility of challenging his age assessment under Article 19 of Legislative Decree no. 25 of 2008 (see paragraph 45 above), which provides as follows:

“Unaccompanied minors who have expressed their intention to ask for international protection shall be provided with the necessary assistance to lodge such a request. They shall be provided with the assistance of a legal guardian at all stages of the examination of the application ...”

105. Moreover, the Government pointed out that Article 26 of the Decree stated that when the international protection request was presented by an unaccompanied minor, guardianship proceedings to appoint a legal guardian had to be opened immediately.

106. In the Government's view, the applicant or his representative could have appealed against the applicant's age-assessment result by challenging the decision of the guardianship judge.

107. Relying on the above-mentioned arguments, the Government concluded that the application should be declared inadmissible under Article 35 § 1 of the Convention.

108. The Court observes that on 16 January 2017 the applicant lodged an application with the Venice Regional Court to obtain the appointment of a legal guardian. On that occasion, his representatives pointed out that he had not benefited from the guarantees granted to him by domestic law as an unaccompanied minor asylum-seeker. It should also be noted that, owing to the lack of appointment of a guardian on his arrival in Italy, the applicant promptly lodged his application as soon as he received legal assistance (see paragraphs 14 and 15 above). On 19 January 2017 the guardianship judge annotated the first page of the application with the words “To be sent to the Venice police headquarters for the necessary checks”. However, following this annotation, no further communication was addressed to the applicant's representatives with regard to the outcome of that application, nor did the Government provide any information in this regard.

109. In the light of the foregoing, the Court concludes that the applicant used, to the extent available to him, the domestic remedy pointed out by the Government, but to no avail. Accordingly, their objection should be dismissed.



### **C. Alleged violation of Article 8 of the Convention**

110. The applicant complained that the competent authorities had failed to recognise his rights as an unaccompanied minor asylum-seeker. He alleged that the lack of protection had amounted to a violation of his right to respect for his private life. He relied on Articles 3 and 8 of the Convention.

111. The Court, being master of the characterisation to be given in law to the facts of the case (see *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, § 114, 20 March 2018), will examine the complaint from the standpoint of Article 8 alone, the relevant parts of which read as follows:

“1. Everyone has the right to respect for his private ... life ...

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

#### *1. The parties' submissions*

##### **(a) The applicant**

112. The applicant submitted that, despite having stated that he was a minor, he had been accommodated in an adult reception centre where he had been unable to benefit from the support and protection measures appropriate to his age.

113. He further complained of a lack of access to legal information and of difficulties in communicating his discomfort and needs, in the absence of an interpreter or cultural mediator.

114. Lastly, he drew the Court's attention to the fact that he had been considered to be adult on the basis of an age-assessment procedure carried out in violation of the relevant provisions of national and international law.

##### **(b) The Government**

115. The Government argued that the applicant had been placed in Cona as an initial and temporary reception centre in order to be identified, in accordance with the law and on the basis of their statements. He had eventually been transferred to a centre for minors, as requested by the Court in application of Rule 39 of the Rules of the Court.

116. As to the guarantees afforded to the applicant as an unaccompanied minor, the Government referred to several provisions of domestic law, including Legislative Decrees nos. 25 of 2008 and 142 of 2015, the Protocol on the identification and holistic multidisciplinary age assessment of unaccompanied minors of 2016, the Circular of the Minister of the Interior of 9 July 2007 and Prime Ministerial Decree no. 234 of 2016.

2. *The third-party interveners' submissions*

(a) **AIRE Centre, Dutch Council for Refugees, European Council on Refugees and Exiles (ECRE)**

117. These third parties highlighted the vulnerability of minor migrants and the importance of the principle of the best interests of the child in taking all actions concerning children. This requires a special regime in respect of asylum procedures and reception conditions, distinct from that applicable to adults.

118. It was the interveners' position that, owing to its potential impact on the mental and physical integrity of the subject, age-assessment procedures fall under the scope of Article 8 of the Convention. This includes age-assessment procedural safeguards such as information on the asylum procedure, the right of children to be heard in any judicial or administrative procedure and the need to collect their informed consent before proceeding with an age-assessment examination.

(b) *Défenseur des droits*

119. This third party emphasised that the vulnerability of minor migrants calls for governments to ensure effective protection of their rights, including the guarantee of being appointed a guardian or legal representative, who should be independent and qualified in order to duly assist the minor.

120. Minors should be also informed about the proceedings they are undergoing, with the help of an interpreter if necessary.

3. *The Court's assessment*

(a) **Admissibility**

121. It is not disputed between the parties that Article 8 is applicable and that the case concerns the applicant's right to respect for his private life. The Court sees no reason to hold otherwise, in particular in view of the following reasons.

122. It should be reiterated that the positive obligation of States under Article 8 of the Convention includes the competent authorities' duty to examine a person's asylum request promptly, in order to ensure that his or her situation of insecurity and uncertainty is as short-lived as possible (see, *mutatis mutandis*, *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 262, 21 January 2011).

123. The Court also observes that the concept of "private life" is a broad term which is not susceptible to exhaustive definition (see *Pretty v. the United Kingdom*, no. 2346/02, § 61, ECHR 2002-III). It covers the physical and psychological integrity of a person and can therefore embrace multiple aspects of the person's identity such as, for example, gender identification, sexual orientation, name and elements relating to a person's right to his or her image (see *S. and Marper v. the United Kingdom* [GC], nos. 30562/04 and

30566/04, § 66, ECHR 2008). Article 8 protects, in addition, a right to personal development and the right to establish and develop relationships with other human beings and the outside world (see, for example, *Odièvre v. France* [GC], no. 42326/98, § 29, ECHR 2003-III, *Denisov v. Ukraine* [GC], no. 76639/11, § 95, 25 September 2018 and *Milićević v. Montenegro*, no. 27821/16, § 54, 6 November 2018, all with further references). States' obligations aimed to protect this right are even more important where, like in the present case, personal relationships of an unaccompanied minor are at stake, in a migration context that makes him or her particularly vulnerable.

124. The Court considers that the age of a person is a means of personal identification and that the procedure to assess the age of an individual alleging to be a minor, including its procedural safeguards, is essential in order to guarantee to him or her all the rights deriving from his or her minor status.

125. It also emphasises the importance of age-assessment procedures in the migration context. The applicability of domestic, European and international legislation protecting children's rights starts from the moment the person concerned is identified as a child. Determining if an individual is a minor is thus the first step to recognising his or her rights and putting into place all necessary care arrangements. Indeed, if a minor is wrongly identified as an adult, serious measures in breach of his or her rights may be taken.

126. According to the "Thematic Report on migrant and refugee children" prepared by the Special Representative of the Secretary General on Migration and Refugees (SRSG), as well as the Report of the European Migration Network (EMN) of the European Commission (see paragraph 69 and paragraphs 92 et seq. above), around 30% of asylum-seekers arriving in Europe in recent years have been children. The number of unaccompanied children increased in 2015, reaching a total of 99,995 minors (an increase of 315% in comparison with the previous year) before returning to 31,975 in 2017. Italy is among the countries which received the highest number of minors applying for asylum in the EU over the 2014-17 period.

127. It follows that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

## **(b) Merits**

### *(i) Compliance with Article 8 of the Convention*

#### *(α) General principles*

128. The Court reiterates that although the object of Article 8 is essentially that of protecting an individual against arbitrary interference by the public authorities, it does not merely compel States to abstain from such interference. In addition to this primarily negative undertaking, there may be positive obligations inherent in effective respect for private and family life (see *Bédat v. Switzerland* [GC], no. 56925/08, § 73, ECHR 2016, and *Lozovyye v. Russia*, no. 4587/09, § 36, 24 April 2018). In choosing how to

comply with their positive obligations, States enjoy a broad margin of appreciation (see *A, B and C v. Ireland* [GC], no. 25579/05, § 249, ECHR 2010).

(β) The scope of the applicant's complaint

129. The substance of the applicant's complaint is that the State failed to take all necessary measures to protect him as a minor and ensure the procedural safeguards related to his age assessment. The Court finds it appropriate to approach the present case from the perspective of Italy's positive obligation under Article 8 of the Convention.

130. In order to establish whether the requirements of Article 8 of the Convention were met in the present case, the Court will first acknowledge the national and international legal framework applicable at the time of the facts and, secondly, whether the authorities took reasonable steps to ensure the applicant's procedural rights within the age-assessment procedure.

131. In this context, the Court emphasises that it is not its task to speculate on whether or not the applicant was a minor at the time of his arrival in Italy, or whether he submitted any documents to prove his age. It is however satisfied that he did declare his minor age at some point after his arrival. This is likely to have happened by the time he arrived in Cona, when a healthcare card was provided to him indicating his date of birth as 22 February 1999, meaning he was a minor at the time (see paragraph 11 above). This was not contested by the Government. It should also be noted that there is no indication that the applicant's claims that he was a minor were unfounded or unreasonable. In addition, a possible earlier declaration may have resulted from the initial placement of the applicant in a centre for minors, something on which, however, the Government did not take a clear stance. In the light of this, the scope of the case is to know whether, under Article 8 of the Convention, the domestic authorities ensured the procedural safeguards stemming from the applicant's status as an unaccompanied minor requesting international protection.

(γ) Legal national and international sources applicable at the time of the facts

132. The Court reiterates at the outset that Law no. 47 of 2017 entered into force on 6 May 2017, thus after the facts of the case took place. This law added Article 19 *bis* to Legislative Decree no. 142 of 2015 (see paragraph 47 above) which introduced a social medical age assessment through a multidisciplinary approach by adequately trained professionals. This law establishes, in particular, the guarantees applicable to minor migrants and the different phases of the age-assessment procedure, taking into account the various applicable rules and elucidating the stage and type of action to be taken by the judiciary, the administration and medical staff. Moreover, the legal system has been further improved since the Juvenile Court acquired competence to issue age-assessment certificates (Legislative Decree no. 220

of 22 December 2017, see Article 19 *bis* of Legislative Decree no. 142 of 2015 in paragraph 47 above). The Court welcomes these legislative interventions.

133. It should nevertheless be noted that, at the time the facts of the case were taking place, domestic and EU law already provided a number of guarantees for unaccompanied minor asylum-seekers.

134. The Court refers to Article 19 of Legislative Decree no. 25 of 2008, implementing Article 17 of EU Directive 2005/85, in force at the material time, on minimum standards on procedures for granting and withdrawing refugee status (see paragraphs 45 and 75 above), which laid down guarantees for unaccompanied minors such as the assistance of a legal guardian during the international protection request, the need to obtain the individual's consent for a non-invasive medical examination in case of doubt as to his or her minor age, the right to be informed that age can be determined through a medical examination, the type of examination to be carried out and its consequences in relation to the result of his or her request. Article 26 of the Decree provides that when the international protection request is presented by an unaccompanied minor, the proceedings must be suspended and guardianship proceedings must be opened in order to appoint a guardian for the minor.

135. Paragraphs 1 and 2 of Article 18 of Legislative Decree no. 142 of 2015, implementing EU Directives 2013/32 and 2013/33 on asylum procedures, as in force at the time of the events (see paragraph 47 above), state the primary importance of the principle of the best interests of the child while implementing reception measures, in order to ensure adequate living conditions for minors. They clarify that it is necessary to interview the minor, taking into account his or her age, level of maturity and personal development, also with a view to evaluating his or her past experience and the risk that he or she could be a victim of human trafficking, and to evaluate the possibility of family reunification.

136. The Court likewise reiterates that administrative measures also existed at the material time. In their observations on the admissibility and merits, the Government referred to several sources, including the Circular of the Minister of the Interior of 9 July 2007 (see paragraph 52 above) mentioning the margin of error inherent in the age-assessment examination of minor migrants. Moreover, the Guidelines on unaccompanied foreign minors of the Ministry of Labour and Social Policies of 19 December 2013 (see paragraph 12 above) state that age must be assessed by the competent authorities with due respect for the rights and guarantees established for minors.

137. As regards the EU law in force at the material time, the Court may simply refer to the Directives that have been mentioned (see paragraphs 75, 76, 77 and 78 above), which have been implemented in Italy, as well as to the Resolution of the Council of the European Union of 26 June 1997 (see paragraph 79 above).

138. As to Council of Europe sources, the Court reiterates, in particular, Parliamentary Assembly Resolution 1810 (2011) (see paragraph 67 above).

139. These texts clearly recognise the primary importance of the best interests of the child and of the principle of presumption of minority in respect of unaccompanied migrant children reaching Europe.

140. In particular, attention is given to the need for a child to be immediately provided with a guardian and for him or her to be assisted during the asylum proceedings. Several considerations are made in relation to medical examinations and age-assessment methods. Moreover, the margin of error inherent in medical examinations should always be taken into account.

141. Although it is not for the Court, in the context of its assessments related to Article 8 obligations, to decide on whether these national, European and international legal standards were met, the legal sources cited above show a general recognition, at the material time, of the need for special protection for unaccompanied minor migrants. Therefore, the Court will examine whether the Italian authorities granted such special protection in the context of the applicant's situation.

(δ) National authorities' positive obligation to protect the applicant's rights as an unaccompanied minor

142. The Court finds that the applicant's procedural rights stemming from his status as an unaccompanied minor requesting international protection came into play in two ways in the present case, namely (i) his representation and (ii) the provision of adequate information during the age-assessment process.

– *Appointment of a guardian and/or representative*

143. Referring to the domestic and EU provisions cited above (see paragraphs 134 et seq.) in particular, the Court cannot but acknowledge that the national authorities failed to promptly provide the applicant with a legal guardian or representative. Despite having undisputedly orally expressed his wish to apply for international protection after his arrival, he was unable to request to have a guardian until his application to the Venice Regional Court on 16 January 2017.

144. The Court is thus of the view that the failure to promptly appoint a legal guardian or representative in the applicant's case prevented him from duly and effectively submitting an asylum request.

– *The right of the applicant to information in the framework of the age-assessment procedure*

145. As a consequence of a lack of consideration for his declared status as a minor, the applicant was placed in a reception centre for adults.

146. A month later, on 27 October 2016, an X-ray examination of his left wrist and hand was carried out, without any information as to the type of age-assessment procedure he was undergoing and to its possible consequences. The applicant was then considered to be an adult. In these circumstances, the Court sees no need to examine the existence or validity of his consent to undergo a medical examination, or to assess its appropriateness (see, *mutatis mutandis*, *Mahamed Jama v. Malta*, no. 10290/13, 26 November 2015 and *Abdullahi Elmi and Aweys Abubakar v. Malta*, nos. 25794/13 and 28151/13, 22 November 2016).

147. It is, however, to be noted that the relevant medical report, which failed to indicate any margin of error, was not served on him.

148. The Court also notes that no judicial decision or administrative measure concluding that the applicant was of adult age was issued in his case, which made it impossible for him to lodge an appeal.

149. Once the applicant was in Cona and eventually assisted by his lawyers, he promptly filed an application with the Venice District Court to obtain the appointment of a guardian and recognition of his rights protected by the applicable domestic law as an unaccompanied minor asylum-seeker. However, no information was provided to him concerning the outcome of his application.

150. Shortly after the applicant's Rule 39 request, the Government transferred him to an adequate facility for unaccompanied minors. There, the applicant was interviewed by psychologists and representatives of FAMI and assisted by an interpreter. Despite these positive actions, the Court cannot but observe that owing to the shortcomings in the procedural guarantees afforded to him as a minor migrant after his arrival in Italy, the applicant was not afforded the necessary tools to file an asylum request and was placed in an overcrowded adult reception centre for more than four months.

(e) Conclusion

151. As stated above, the concept of "private life" is a broad term which is not susceptible to exhaustive definition, covering both the physical and the psychological integrity of a person. This notion also includes a right to personal development and the right to establish and develop relationships with other human beings and the outside world (see paragraph 123 above with reference to the Court's case-law).

152. In addition, it reiterates that States' interest in foiling attempts to circumvent immigration rules must not deprive foreign minors, especially if unaccompanied, of the protection their status warrants. The protection of fundamental rights and the constraints imposed by a State's immigration policy must therefore be reconciled (see *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, no. 13178/03, § 81, ECHR 2006 XI).

153. In the present case, the Italian authorities failed to apply the principle of presumption of minor age, which the Court deems to be an inherent

element of the protection of the right to respect for private life of a foreign unaccompanied individual declaring to be a minor.

154. While the national authorities' assessment of the age of an individual might be a necessary step in the event of doubt as to his or her minority, the principle of presumption implies that sufficient procedural guarantees must accompany the relevant procedure.

155. At the time of the facts of the case, these safeguards clearly included, under both domestic and EU law, the appointment of a legal representative or guardian, access to a lawyer and informed participation in the age-assessment procedure of the person whose age was in doubt. The guarantees put in place by EU and international law have gone further to ensure a holistic and multidisciplinary age-assessment procedure. The Court welcomes this development, as well as the implementation by the domestic authorities, subsequent to the facts of the present case, of a legal system which appears to be fully consistent with higher international standards.

156. As regards the applicant's situation, the fact remains that he did not benefit from the minimum procedural guarantees, and that his placement in an adult reception centre for more than four months must have affected his right to personal development and to establish and develop relationships with others. This could have been avoided if the applicant had been placed in a specialised centre or with foster parents. These measures, which are more conducive to the best interests of the child guaranteed by Article 3 of the Convention on the Rights of the Child (*ibid.*, § 83), were considered and eventually put into place by the national authorities, but only after a considerable period of time had elapsed, following a Rule 39 application.

157. In these circumstances, the Court concludes that the authorities did not act with reasonable diligence and therefore did not comply with their positive obligation to ensure the applicant's right to respect for his private life in the present case. There has accordingly been a violation of Article 8 of the Convention.

#### **D. Alleged violation of Article 3 of the Convention**

158. The applicant also complained about his reception conditions in Cona. He alleged that the centre had been overcrowded and only intended for adults. He also complained of a lack of basic facilities such as proper heating and hot water, and a lack of access to medical care. The applicant also complained of a lack of psychological and legal assistance and an insufficient number of staff members and interpreters.



159. He relied on Article 3 of the Convention, which reads as follows:

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

*1. The parties’ submissions*

**(a) The applicant**

160. The applicant reiterated his complaints, relying on the evidence provided. He also noted that the Government had not disputed his account of the reception conditions in the Cona centre, which were supported by the evidence submitted.

**(b) The Government**

161. The Government stated that reception centres in the Veneto Region housed 8% of migrants entering the State. To cope with the massive phenomenon of migration, Cona, a former military facility, had been converted into a reception centre for migrants in July 2015.

162. Structural renovations had then been carried out with regard to heating, hot water, the canteen facilities, educational activities and healthcare. In this regard, an agreement had been struck with the Italian Red Cross to ensure a proper healthcare service by providing sixteen specialised medical visits every day, as well as psychological assistance, and by deploying fourteen cultural mediators. Moreover, migrants could benefit from a wireless Internet connection, use two places of worship and make use of an area dedicated to sports and recreational activities.

163. The Government also emphasised that the applicant had been provided with a health insurance card and could benefit from free healthcare. They maintained that structural and health and safety conditions in the Cona reception centre were appropriate.

*2. The third-party interveners’ submissions*

**(a) AIRE Centre, Dutch Council for Refugees, ECRE**

164. These third parties highlighted the fundamental rights recognised to minor asylum-seekers as regards reception conditions, referring to the vulnerability of unaccompanied minors and to the principle of the best interests of the child.

**(b) Défenseur des droits**

165. Referring to the Court’s case-law (*Tarakhel v. Switzerland* [GC], no. 29217/12, ECHR 2014, and *Mubilanzila Mayeka and Kaniki Mitunga*, cited above), this third party emphasised that States must provide unaccompanied minors with reception conditions suited to their needs.

### 3. *The Court's assessment*

#### (a) **Admissibility**

166. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

#### (b) **Merits**

##### (i) *General principles*

167. The general principles applicable to the treatment of people held in immigration detention are set out in detail in *M.S.S. v. Belgium and Greece* (cited above, §§ 216-22), *Tarakhel* (cited above, §§ 93-99, ECHR 2014 (extracts)) and *Khlaifia and Others v. Italy* ([GC], no. 16483/12, §§ 158-69, 15 December 2016). In particular, the reception conditions for children seeking asylum must be adapted to their age, to ensure that those conditions do not create for them a situation of stress and anxiety, with particularly traumatic consequences. Otherwise, the conditions in question would attain the threshold of severity required to come within the scope of the prohibition under Article 3 of the Convention (see *Tarakhel*, cited above, §§ 119, ECHR 2014 (extracts)).

168. The Court reiterates that Article 3 of the Convention makes no provision for exceptions. This absolute prohibition of torture and of inhuman or degrading treatment or punishment shows that Article 3 enshrines one of the fundamental values of the democratic societies making up the Council of Europe (see *Soering v. the United Kingdom*, 7 July 1989, § 88, Series A no. 161).

169. In order to fall within the scope of Article 3, the ill-treatment must attain a minimum level of severity, the assessment of which depends on all the circumstances of the case, and in particular the nature and context of the treatment, the manner in which it was inflicted, its duration, its physical or mental effects and, in some cases, the sex, age and state of health of the victim (see, among other authorities, *Raninen v. Finland*, 16 December 1997, § 55, *Reports* 1997-VIII).

170. With more specific reference to children, the Court has found a violation of Article 3 of the Convention on a number of occasions on account of the placement in migrant centres of accompanied and unaccompanied minors (in some cases, placed in administrative detention centres).

171. As regards accompanied children, the Court points to the following cases: *Muskhadzhiyeva and Others v. Belgium* (no. 41442/07, §§ 55-63, 19 January 2010); *Kanagaratnam v. Belgium* (no. 15297/09, 13 December 2011); *Mahmundi and Others v. Greece* (no. 14902/10, §§ 72-74, 31 July 2012); *Popov v. France* (nos. 39472/07 and 39474/07, §§ 91-103, 19 January 2012); *A.B. and Others v. France* (no. 11593/12, §§ 107-15, 12 July 2016); *R.R. and Others v. Hungary* (no. 36037/17, §§ 58-65, 2 March 2021); *M.H. and Others v. Croatia* (nos. 15670/18 and 43115/18, §§ 183-204,

18 November 2021) and *N.B. and Others v. France* (no. 49775/20, §§ 47-53, 31 March 2022).

172. With regard to unaccompanied minors, the Court refers to the following case-law: *Mubilanzila Mayeka and Kaniki Mitunga* (cited above, §§ 50-59); *Rahimi v. Greece* (no. 8687/08, §§ 95-96, 5 April 2011); *Abdullahi Elmi and Aweys Abubakar v. Malta* (nos. 25794/13 and 28151/13, §§ 111-15), 22 November 2016; *S.F. and Others v. Bulgaria* (no. 8138/16, §§ 78-83, 7 December 2017); *Khan v. France* (no. 12267/16, §§ 92-95, 28 February 2019); *Sh.D. and Others v. Greece, Austria, Croatia, Hungary, North Macedonia, Serbia and Slovenia* (no. 14165/16, §§ 52-62, 13 June 2019) and *Moustahi v. France* (no. 9347/14, §§ 65-67, 25 June 2020).

173. It is also important to bear in mind that a child's extreme vulnerability is the decisive factor and takes precedence over considerations relating to his or her status as an illegal immigrant (see *Mubilanzila Mayeka and Kaniki Mitunga*, cited above, § 55). Children have specific needs that are related not only to their age and lack of independence, but also to their asylum-seeker status. The Court has also observed that the Convention on the Rights of the Child (see paragraph 57 above) encourages States to take appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether alone or accompanied by his or her parents (see, in this connection, *Popov*, § 91, and *Tarakhel*, § 99, both cited above).

(ii) *Application of those principles to the present case*

174. The Court notes at the outset that the applicant provided a number of pieces of evidence in support of his claims. In particular, he produced a parliamentary question submitted by a member of parliament following a visit to Cona on 16 November 2016, and the report of the non-governmental organisation *Associazione Giuristi Democratici* on its visit to Cona on 4 January 2017. These documents confirmed the information concerning overcrowding at the centre, the insufficient number of staff and the difficulties in accessing medical care (see paragraphs 22 et seq. above).

175. The Government, for their part, did not dispute the information and figures presented by the applicant and confined themselves to asserting that renovations had been carried out in the reception centre to the heating, hot water, canteen service, educational and recreational activities, healthcare and staff (specifically psychologists and cultural mediators).

176. The Court notes, however, that they did not show that these improvements had taken place before the applicant's arrival in Cona, and that the need for such interventions rather confirms the previous insufficiency of services and facilities during the applicant's stay there.

177. In addition to this, the Court reiterates that, despite having declared himself to be a minor, the applicant was housed in the adult reception centre in Cona.

178. Once there, he was subject to an age-assessment procedure, which the Court has found to have been conducted in breach of Article 8 of the Convention (see paragraph 151 above; contrast *Aarabi v. Greece*, no. 39766/09, §§ 43-45, 2 April 2015).

179. The applicant was then considered to be an adult and was kept in Cona for more than four months until, following the Court's decision to apply Rule 39 of the Rules of Court, the Italian authorities promptly ordered his transfer to a migrant centre for minors.

180. In the Court's view, those circumstances are in themselves problematic with regard to the applicant's vulnerability and dignity.

181. The Court is sensitive to the Government's argument that Cona, a former military facility, was converted into a reception centre for migrants to deal with the massive phenomenon of migration. In this connection, it should be noted that the number of unaccompanied minors arriving in Italy dramatically increased during the period in which the facts of the case were taking place (see paragraph 126 above).

182. That being said, the Court can only reiterate its well-established case-law to the effect that, having regard to the absolute character of Article 3, the difficulties deriving from the increased inflow of migrants and asylum-seekers, in particular for States which form the external borders of the European Union, does not exonerate member States of the Council of Europe from their obligations under this provision (see *M.S.S. v. Belgium and Greece*, cited above, § 223; *Hirsi Jamaa and Others v. Italy* [GC], no. 27765/09, § 122, ECHR 2012; and *Khlaifia*, cited above, § 184; contrast *J.R. and Others v. Greece*, no. 22696/16, § 137, 25 January 2018).

183. Therefore, having regard to the length and conditions of the applicant's stay in the adult reception centre in Cona, the Court concludes that he was subjected to inhuman and degrading treatment and that there has been a breach of Article 3 of the Convention.

#### **E. Alleged violation of Article 13 of the Convention in conjunction with Articles 3 and 8**

184. Lastly, the applicant complained that he had not been afforded an effective remedy under Italian law by which to lodge his complaints under Articles 3 and 8 of the Convention. He relied on Article 13 of the Convention, which provides:

“Everyone whose rights and freedoms as set forth in [the] Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.”

*1. The parties' submissions*

**(a) The applicant**

185. The applicant stated that the Italian legal system had not provided any effective remedy by which to complain about the reception conditions for asylum-seekers or the suitability of a given reception centre. Moreover, he had had no access to any legal information.

186. He also averred that the results of the age-assessment procedure had not been disclosed to him and that no judicial decision had been issued in his case. Moreover, he stressed that the Government had failed to pinpoint any internal remedy that would have been effective in his case.

187. As regards his reception conditions, the applicant observed that an application could be lodged with the administrative courts under Article 15 of Legislative Decree no. 142 of 2015, but only in so far as it concerned the refusal to place him in a reception facility.

188. The applicant also submitted that an application had been lodged with the court for the attention of the guardianship judge of Venice, but that he had had no news concerning its outcome.

**(b) The Government**

189. As to the reception conditions in Cona, the Government argued in general that the applicant had had a number of legal, administrative and health measures at his disposal aimed at his protection. They further submitted that he had been given a healthcare card.

190. The Government's observations on this point are set out in paragraphs 104 et seq. above.

191. They concluded by stating that the applicant's right to an effective remedy with regard to Articles 3 and 8 of the Convention had been respected.

*2. The Court's assessment*

**(a) Admissibility**

192. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

**(b) Merits**

*3. The Court's assessment*

**(a) General principles**

193. Article 13 of the Convention guarantees the availability at national level of a remedy to enforce the substance of the Convention rights and freedoms in whatever form they may happen to be secured. The effect of that provision is thus to require the provision of a domestic remedy to deal with

the substance of an “arguable complaint” under the Convention and to grant appropriate relief.

194. The scope of the Contracting States’ obligations under Article 13 varies depending on the nature of the applicant’s complaint. However, the remedy required by Article 13 must be “effective” in practice as well as in law. The “effectiveness” of a “remedy” within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant. Nor does the “authority” referred to in that provision necessarily have to be a judicial authority; but if it is not, its powers and the guarantees which it affords are relevant in determining whether the remedy before it is effective.

195. Also, even if a single remedy does not by itself entirely satisfy the requirements of Article 13, the aggregate of remedies provided for under domestic law may do so (see, among many other authorities, *Kudła v. Poland*, [GC], no. 30210/96, § 157, ECHR 2000-XI; *Hirsi Jamaa and Others*, cited above, § 197; and *Khlaifia and Others*, cited above, § 268).

**(b) Application of those principles to the present case**

196. Referring to the above conclusions (see paragraphs 151 and 183 above), the Court firstly considers that the applicant clearly has an arguable complaint under the Convention. Article 13 is therefore applicable in the present case.

197. It then observes that the Government failed to indicate any specific remedy by which the applicant could have complained about his reception conditions in Cona.

198. Moreover, it should be noted that the remedies mentioned by the Government with specific reference to the applicant’s age-assessment procedure (see paragraph 45 above, and Article 6 § 3 of Prime Ministerial Decree no. 234 of 2016 in paragraph 55 above) turned out to be ineffective in this case (see the Court’s conclusion with regard to the Government’s objection of non-exhaustion of domestic remedies in paragraphs 104 et seq. above).

199. It follows that there has been a violation of Article 13 taken in conjunction with Articles 3 and 8 of the Convention.

### III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

200. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

**A. Damage**

201. The applicant claimed 45,000 euros (EUR) in respect of non-pecuniary damage.

202. The Government contested this claim.

203. Having regard to the distress and frustration incurred by the applicant stemming from the violations of the Convention set out above, the Court awards him EUR 7,500 in respect of non-pecuniary damage.

**B. Costs and expenses**

204. The applicant claimed EUR 21,210.93 for the costs incurred in the proceedings before the Court.

205. The Government contested the applicant's claims.

206. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, regard being had to the documents in its possession and the above criteria, the Court considers it reasonable to award the applicant the sum of EUR 4,000, covering the costs and expenses for the proceedings before the Court.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to strike the part of the application lodged by Mr Moussa Camara out of the list of cases;
2. *Declares* the remainder of the application admissible;
3. *Holds* that there has been a violation of Article 8 of the Convention;
4. *Holds* that there has been a violation of Article 3 of the Convention;
5. *Holds* that there has been a violation of Article 13 of the Convention taken in conjunction with Articles 3 and 8 of the Convention;
6. *Holds*,
  - (a) that the respondent State is to pay the applicant, Mr Ousainou Darboe, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following amounts:
    - (i) EUR 7,500 (seven thousand five hundred euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;

- (ii) EUR 4,000 (four thousand euros), plus any tax that may be chargeable to the applicant;
- (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;

7. *Dismisses* the remainder of the applicant's claim for just satisfaction.

Done in English, and notified in writing on 21 July 2022, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Renata Degener  
Registrar

Marko Bošnjak  
President