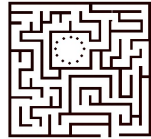




Advice on
Individual Rights
in Europe



The Registrar
European Court of Human Rights
Council of Europe
Strasbourg
France

5 July 2017

Application No. 5797/17
Darboe and Camara v. Italy

Dear Sir/Madam,

The above three organisations, the AIRE Centre, the Dutch Council for Refugees and ECRE are attaching their third party intervention in the above case for the attention of the Court.

The narrative is accompanied – for the convenience of reference by the Court – by a number of relevant documents as an annex. Please note that in order to minimise unnecessary printing we are providing only hyperlinks for those documents which are readily available.

Yours faithfully,

Julia Zelvenska
Head of Legal Support & Litigation, ECRE

On behalf of the AIRE Centre, Dutch Council for Refugees and ECRE

Darboe and Camara v. Italy

Application no. 5797/17

WRITTEN SUBMISSIONS ON BEHALF OF THE AIRE CENTRE (ADVICE ON INDIVIDUAL RIGHTS IN EUROPE), THE DUTCH COUNCIL FOR REFUGEES (DCR) AND THE EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE)

INTERVENERS

pursuant to the Registrar's notification dated 9 June 2017 that the Court had granted permission under Rule 44 § 3 of the Rules of the European Court of Human Rights

5 July 2017

Summary

- I. Children's inherent vulnerability has led international human rights law, including the European Convention on Human Rights ('ECHR') and this Court's jurisprudence, to accord special status to the child. Under Article 3 of the UN Convention on the Rights of the Child ('CRC') the child's best interests must be a primary consideration in all actions concerning children. Article 53 of the ECHR stipulates that the Convention rights must be construed in accordance with other international human rights obligations of State Parties, including the CRC.
- II. It is paramount that age assessment procedures are fair and effective so as to prevent unaccompanied children from being treated as adults, to guarantee that their rights are protected throughout the asylum procedure and to ensure adequate reception conditions suitable for their specific needs. Unaccompanied non-national children wrongly identified as adults risk being subject to treatment contrary to their special status and best interests, resulting in a potential violation of Articles 3 and 8 ECHR.
- III. Age assessment should never be undertaken as a routine practice and may only be resorted to where there are serious doubts about the claim of minor age and only after the principle of the benefit of the doubt has been applied. Where the individual circumstances of a particular case require an age assessment, a holistic, safe and dignified procedure should be carried out by qualified experts with due respect to material and procedural safeguards under Articles 3 and 8 ECHR. Medical methods should be avoided due to their low evidential value, intrusiveness and a risk of a disproportionate interference in the child's private life that may lead to a violation of Article 8 ECHR.
- IV. State Parties should guarantee unaccompanied asylum seeking children material conditions and reception facilities which are adapted to their specific needs, in view of their age, condition of dependency and enhanced vulnerability. To do otherwise, results in a failure by States to give full effect to their obligations under Article 3 ECHR.
- V. The interveners submit that, under Article 53 ECHR, as regards EU Member States, Articles 3 and 8 ECHR must be interpreted in a manner consistent with EU law obligations binding on States as a matter of national law. EU Member States are obliged to provide suitable reception conditions, adapted asylum procedures and understandable information to children in order for them to have effective access to their rights under the Charter of Fundamental Rights of the EU ('CFR'), namely Articles 18 and 24.

Introduction: the status of children as vulnerable persons under the ECHR and International law

1. This Court has consistently held that children, due to their age and personal situation, are amongst the most vulnerable persons in society.¹ Where children are also seeking asylum their extreme vulnerability is enhanced.² Respect for this enhanced vulnerability of child asylum seekers,³ *qua* child and *qua* asylum seeker, must be a primary consideration, taking precedence over their irregular migration status,⁴ and entail a number of protective measures as guaranteed by Articles 3 and 8 ECHR. This is particularly so concerning reception conditions for asylum seeking children since the effects of the conditions in which they are accommodated in can amount to a breach of Article 3 ECHR even where there might be no breach for similarly situated adults.⁵ Moreover, this Court has frequently referred to the special consideration that has to be given to members of vulnerable groups and has noted that any margin of appreciation in relation to the rights of such individuals is much narrower than in relation to others.⁶ The Court has further acknowledged that the benefit of the doubt as to the credibility of statements or documents must be given to asylum seekers in light of their vulnerability and the special situation in which they find themselves in.⁷
2. International treaties oblige States to provide specific safeguards and guarantees for the protection and care of children. The UN Convention on the Rights of the Child ('CRC'),⁸ the International Covenant on Civil and Political

¹ UN CRC General Comment No. 14, para. 6; *Rahimi v. Greece*, (No. 8687/080), 5 July 2011, para. 87.

² *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (No. 13178/03), 12 October 2006, para. 55; *Popov v. France* (Nos. 39472/07 and 39474/07), 19 April 2012, para. 91; *Tarakhel v. Switzerland* [GC] (No. 29217/12), 4 November 2014, para. 99.

³ *M.S.S. v. Belgium and Greece* [GC] (No. 30696/09), 21 January 2011, para. 232.

⁴ *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (No. 13178/03), 12 October 2006, para. 55.

⁵ *Muskhadzhieva and Others v. Belgium* (No. 41442/07), 19 January 2010, para. 58; *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (No. 13178/03), 12 October 2006, para. 50.

⁶ *Bjedov v. Croatia* (No. 42150/09), 29 May 2012, paras. 64 and 68; *Tarakhel v. Switzerland* [GC] (No. 29217/12), 4 November 2014, paras. 118 and 119.

⁷ *M.A. v. Switzerland*, (No. 52589/13), 18 November 2014, para. 55.

⁸ Convention on the Rights of the Child (CRC), 20 November 1989, United Nations, Articles 2(1), 22(1) and 39 (**Annex 1**).

Rights ('ICCPR')⁹ and the International Covenant on Economic, Social and Cultural Rights ('ICESCR')¹⁰ all acknowledge the specific vulnerability and status of a child and the extreme vulnerability of unaccompanied children. **This Court has previously held that the ECHR does not exist in a vacuum and States remain bound by the obligations under international law when implementing the Convention.¹¹ In this respect, particular importance should be given to the obligations stemming from the CRC.**

The principle of the best interests of the child

3. The principle that the best interests of the child shall be a primary consideration in all actions concerning children is a fundamental interpretive legal principle, a substantive right and a rule of procedure under international law on the rights of the child.¹² It is established in Article 3(1) CRC and applies to public or private social welfare institutions, courts of law, administrative authorities or legislative bodies who must assess and be guided by the principle in all their acts.¹³
4. This Court has frequently recognised, in its jurisprudence, the principle of the primacy of the best interests of the child.¹⁴ In *Rahimi v. Greece* it confirmed that in all actions relating to children an assessment of the child's best interests must be undertaken separately and prior to a decision that will affect that child's life.¹⁵ This principle requires that any decision making process involving children includes an evaluation of the possible impact of the decision on the child's best interests.¹⁶ In the migration context, it requires a special regime in respect of asylum procedures and reception conditions, distinct from that applicable to adults, whereby an assessment of all elements of a child's interests in a specific situation is undertaken.¹⁷
5. The best interests principle is aimed at ensuring the child's full, equal and effective enjoyment of human rights, including non-discrimination, family reunification, the right to be heard,¹⁸ protection from abuse, access to asylum, the receipt of appropriate protection, a standard of living adequate for the child's development and a full access to education.¹⁹ For unaccompanied and separated children, it relies, as an initial step, on children's prioritised identification and their prompt registration in a specific child-sensitive procedure.²⁰ It additionally depends on the appointment of a competent guardian or adviser as soon as the unaccompanied or separated child is identified²¹ and at the very latest prior to administrative or judicial proceedings.²² The principle further hinges on the child's free of charge access to a qualified legal representative.²³
6. The UN Committee on the Rights of the Child has stated that, in the case of a displaced child, the "best interest" principle must be respected during all stages of the displacement. At any of these stages, a "best interest" determination must be documented in preparation of any decision fundamentally affecting the unaccompanied or separated child's situation, and should include a comprehensive assessment of the child's identity, upbringing, ethnic, cultural and linguistic background, particular vulnerabilities and protection needs.²⁴

⁹ International Covenant on Civil and Political Rights, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171, Article 24 (**Annex 2**).

¹⁰ International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3, Article 10 (**Annex 3**).

¹¹ *Pini and Ors v. Romania* (No. 78028/01), 22 June 2004, para.138.

¹² *Rahimi v. Greece* (No.8687/080), 5 July 2011, para. 108.

¹³ UN Committee on the Rights of the Child (UN CRC), General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14, pp. 7-9 (**Annex 4**).

¹⁴ *Neulinger and Shuruk v. Switzerland [GC]* (No. 41615/07), 6 July 2010, para. 135.

¹⁵ *Rahimi v. Greece* (No. 8687/080), 5 July 2011, para. 108.

¹⁶ UN CRC, General comment No. 14, paras 6(c) and 14(b).

¹⁷ UN CRC, General comment No. 14, para 54.75 -76.

¹⁸ UN CRC, General comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12 (**Annex 5**).

¹⁹ Articles 2, 5, 10, 12, 19, 22 and 27 CRC; UN CRC General comment No. 14, paras 4, 51, 82; UN CRC, General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5, para. 12 (**Annex 6**); UN CRC General comment No. 14, para. 46; *N.T.S.v. Georgia* (No. 71776/12), 2 February 2016.

²⁰ UN CRC General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6, para. 31 (**Annex 7**). See further United Nations High Commissioner for Refugees (UNHCR), Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, February 1997, para. 5 (**Annex 8**).

²¹ UN CRC, General comment No. 6, paras. 21 and 33.

²² The guardian should be consulted and informed regarding all actions taken in relation to the child; UN CRC General comment No. 6, paras. 21, 33 and 72; UN CRC, General Comment No. 14, para. 96; Parliamentary Assembly of the Council of Europe (PACE), Unaccompanied children in Europe: issues of arrival, stay and return, Resolution 1810 (2011), para. 5.7 (**Annex 9**).

²³ UN CRC General Comment No. 6, paras. 36-69.

²⁴ UN CRC General comment No. 6, paras. 19-20.

7. Age assessment in asylum proceedings refers to the procedures through which authorities seek to establish the chronological age of a person to determine which immigration procedures and rules need to be followed.²⁵ This Court has noted that age assessment is a preliminary step of examining an asylum claim given a number of procedural safeguards attached to asylum claims lodged by children.²⁶
8. On a number of occasions this Court has reiterated that the obligation of the State Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken together with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to ill-treatment, including ill-treatment administered by private individuals.²⁷ These measures should provide for the effective protection of children in particular and require that the best interests of the child as well as the right to human dignity and psychological integrity are respected.²⁸
9. This Court has not yet given guidance as to the characteristics of an age assessment procedure as a measure that can significantly impact the fundamental rights of non-national children. However, it is the interveners' position that due to its potential impact on the moral and physical integrity of the subject, age assessment procedures fall under the scope of measures, acts or omissions covered by Article 8, and therefore need to comply with its requirements. The interveners recall that this Court has found that for any interference to comply with the guarantees under Article 8 it must be in accordance with the law,²⁹ necessary in a democratic society to achieve the legitimate aim in question in the particular case³⁰ and should be proportionate to that aim.³¹ The interveners submit that improper age assessment practices are not proportionate to any legitimate aim given the enhanced vulnerability of unaccompanied asylum seeking children.
10. The interveners wish to draw the Court's attention to the fact that currently, no method of age assessment exists that can determine a person's age with certainty.³² This is particularly crucial with regard to medical examinations performed to assess the age, which have sparked severe criticism amongst medical experts.³³ It has been recognised that a number of age assessment methods have been criticised for a lack of scientific, empirical basis and reliability, producing a high risk of arbitrary results.³⁴ Importantly, it has also been noted that a number of age assessment methods are invasive and may cause physical or mental harm to the person subject to them.³⁵ Further, the UNHCR has cautioned States on the use and implications of age assessments in the asylum context.³⁶
11. Indeed, experts within the field recognise that medical examinations – such as the use of X-rays to examine skeletal (bone) and dental maturity, the use of other methods of imaging bone development (MRI) and physical examination – are not able to determine the age of a person with sufficient precision, since they disregard environmental, socio-economic and ethnographic factors that can play an important role in bone and dental growth.³⁷ These methods are particularly unreliable for persons between 15 and 20 years of age given the lack of official valid reference data for

²⁵ Separated Children in Europe Programme, Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012 (**Annex 10**).

²⁶ *Mahamad Jama v Malta*, (No. 10290/13), 26 November 2015, para. 150.

²⁷ *A. v. the United Kingdom*, 23 September 1998, Reports of Judgments and Decisions 1998-VI, p. 2699, para. 22.

²⁸ *C.A.S and C.S. v Romania*, (No. 26692/059), 20 March 2012, para. 82

²⁹ *Malone v. the United Kingdom*, (No. 8691/79), 2 August 1984, paras. 66-68; *Hasan and Chaush v. Bulgaria [GC]* (No. 30985/96), 26 October 2000, para. 84 with further references.

³⁰ *Coster v. the United Kingdom [GC]* (No. 24876/94), 18 January 2001, para. 104, with further references.

³¹ *Connors v. the United Kingdom*, (No. 66746/01), 27 May 2004, paras. 81–84.

³² *Depallens et al.* (2017), p. 152 (**Annex 11**); European Asylum Support Office (EASO) (2013), p. 16. (**Annex 12**); Aynsley-Green et al. (2012) p. 24 (**Annex 11**).

³³ 'Health professionals should not participate in age determination until methods with acceptable scientific and ethical standards have been developed'; International Society for Social Pediatrics and Child Health (ISSOP) Migration Working Group (2017), p. 2 (**Annex 11**). See also Sauer et al. on behalf of the Advocacy and Ethics Group of the European Academy of Paediatrics) (2016), p. 302 (**Annex 11**).

³⁴ Ad hoc Committee for the Rights of the Child (CAHENF) – Drafting Group of Experts on Children's Rights and Safeguards in the Context of Migration (CAHENF-Safeguards), Council of Europe member States' age assessment policies, procedures, and practices respectful of children's right, Report prepared by Daja Wenke, draft 17 March 2017, para. 8, referencing the Separated Children in Europe Programme Position Paper on Age Assessment in the Context of Separated Children in Europe, 2012, p.6-7, 16-18. (**Annex 13**).

³⁵ *Ibid.*, para. 8

³⁶ UNHCR, Guidelines for International Protection, Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, HCR/GIP/09/08, 22 December 2009, paras. 75. (**Annex 14**).

³⁷ See Sauer et al. on behalf of the Advocacy and Ethics Group of the European Academy of Paediatrics) (2016), pp. 300-301 and Cole (2015), p. 386; Defensor del Pueblo de España (2012), p. 37 (**Annex 15**), Henriette D.C. Roscam Abbing, European Journal of Health Law, Volume 18, Issue 1, pp. 20-21, (**Annex 16**).

people from non-Western countries with different ethnic backgrounds.³⁸ Experts assert that hand-wrist X-rays are not at all informative; the MRI dental and wrist scans present risks for children being misclassified as adults and overall more than one third of assessments are wrong.³⁹ These methods ‘were simply not designed to assess disputed chronological age—they were prepared for medical use in diagnosing and monitoring disorders of growth’.⁴⁰ Moreover, the use of medical examinations to perform age assessment involves strong ethical concerns, particularly relating to the free and informed consent of the person subject to the age assessment procedure as well as the use of radiation without any medical purpose or benefit.⁴¹

12. **It is the interveners’ submission that the State Parties should ensure that the age assessment procedure as a whole, including procedural safeguards and the methods used to assess age, guarantees respect for the child’s private life under Article 8 ECHR. Construed in light of the best interest of the child and benefit of the doubt principles, the interveners submit that age assessment procedures concerning asylum-seeking children should not be contemplated as routine measures and should satisfy the necessity and proportionality test under Article 8 ECHR in order to achieve the legitimate aim pursued. The requirements underpinning Article 8 cannot be fulfilled where non-holistic and intrusive medical age assessment methods are used as they have a low evidential value and a detrimental effect on children’s rights, including respect for moral and physical integrity.**⁴²
13. The interveners recall that a number of key principles and standards governing age assessment stem from international instruments and are meant to guide States’ Parties practices in this regard. In particular, as articulated by the UN Committee on the Rights of the Child, the guiding principles on age assessment are the best interests of the child and the benefit of the doubt.⁴³ As the best interests’ principle applies to ‘all acts, conduct, proposals, services, procedures and other measures’⁴⁴ which directly concern children or can affect them, it shall inform the conduct of authorities throughout every step of the age assessment procedure, including any decision regarding age. Importantly, the principle of the benefit of the doubt must be applied from the very beginning of the age assessment procedure and until a decision on the age is reached.⁴⁵ This principle requires that, in case of uncertainty, the individual will be considered and treated as a child.⁴⁶
14. It is the interveners’ submission that failure to comply with these two guiding principles deprives children of the enhanced guarantees and protection due to them under international law.⁴⁷ This includes, *inter alia*, information on the asylum procedures, their entitlements and services available in a manner appropriate to their maturity and level of understanding.⁴⁸ Moreover, in order to effectively fulfil their obligation to ensure the child’s right to be heard in any judicial or administrative procedure affecting them and the child’s right to freely express their views in all procedures concerning them, States are called to obtain a child’s informed consent prior to undergoing any age assessment procedure and must provide them with an effective opportunity to challenge any subsequent decision.⁴⁹
15. **Therefore, the interveners submit that (a) age assessment procedures must only be ordered where truly necessary—if following the application of the principle of benefit of doubt, a serious doubt remains regarding the child’s age; (b) an age assessment procedure may only be carried out following the child’s informed consent and only in the best interests of the child; (c) the methods of age assessment must be proportionate to the legitimate aim pursued, bearing in mind that the current methods can never lead to an exact identification of the age of a child; (d) to be proportionate, age assessment methods must not detrimentally interfere with the child’s moral and physical integrity, and the competent expert or authority undertaking the age assessment procedure must be in a position to ensure the special needs, welfare and well-being of the child during the**

³⁸ See, e.g., Cole (2015), pp. 387-388: ‘The unpalatable truth is that physical maturation is problematic for assessing age. [...] The use of developmental markers, be they skeletal, dental or other, for age assessment purposes, is imperfect and where they are used the quality of their evidence should be challenged.’ (Annex 11). See also Roscam Abbing (2011), p. 20 (Annex 16).

³⁹ Cole (2016) p. 579 (Annex 11).

⁴⁰ See, among others, Aynsley-Green et al. (2012), p. 24 (Annex 11).

⁴¹ These ethical concerns raise issues as to whether physicians, particularly pediatricians, should take part to medical age examinations. See, e.g., Aynsley-Green et al. (2012), pp. 23-36 and The Royal College of Paediatrics and Child Health of the United Kingdom (2007) (Annex 11).

⁴² X and Y v. The Netherlands (No.8978/80), 26 March 1985, para. 22-23.

⁴³ UN CRC General Comment No. 6, para 31(A).

⁴⁴ UN CRC General Comment No. 14, para. 17. See also UNHCR, Guidelines No. 8, para. 75.

⁴⁵ UNHCR, Guidelines No. 8, paras. 73 and 75.

⁴⁶ UN CRC General Comment No. 6, para 31(A). See also UNHCR, Guidelines on International Protection No. 8, para 75.

⁴⁷ Ad hoc Committee for the Rights of the Child (CAHENF) – Drafting Group of Experts on Children’s Rights and Safeguards in the Context of Migration (CAHENF-Safeguards) (2017), p. 6, fn. 5.

⁴⁸ UN HCR Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, paras. 5.14-5.15.

⁴⁹ UN CRC General Comment No. 6, para. 25; Separated Children in Europe Programme (SCEP) (2012), p. 25.

procedure;⁵⁰ (e) in order for children's rights under the Convention to be practical and effective rather than theoretical or illusory,⁵¹ State Parties must ensure a child is appointed a competent guardian and a legal representative, as well as access to an effective remedy against an age assessment decision.

16. The interveners submit that the negative consequences of an incorrect age assessment can constitute inhuman and degrading treatment under Article 3 and a violation of the child's private life under Article 8. An erroneous age assessment denies children of the substantive and procedural rights they are entitled to under international and European law throughout the asylum procedure, which may adversely affect the outcome of the child's asylum claim.⁵² Amongst the most deleterious consequences is the improper accommodation of children with adults where they face a much higher risk of ill-treatment.

Reception conditions for non-national unaccompanied children under Article 3 ECHR

17. This Court has held that inadequate individual living conditions that are attributable to the States' actions or omissions may give rise to a violation of Article 3 ECHR. In order to constitute a violation, the inadequacy of the living conditions "must attain a minimum level of severity [...] the assessment of [which] depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim".⁵³
18. This Court has considered the application of Article 3 in the context of migration and, specifically, reception and detention conditions. The Court has stated that where the personal space of a detainee is less than 3 meters squared there is a weighty presumption of a violation of Article 3.⁵⁴ The Court has also taken into account the lack of ventilation, access to natural air, light and outdoor exercise, quality of heating and compliance with basic hygiene requirements within its assessment of Article 3.⁵⁵
19. When considering reception and detention conditions in the context of asylum, the Court has recognised that asylum seekers are members of a '*particularly underprivileged and vulnerable population*'.⁵⁶ Furthermore, the Court has stated that Article 3 of the Convention requires the State to ensure that detention conditions are compatible with respect for human dignity.⁵⁷ Therefore it is crucial 'to *provide accommodation and decent materials conditions*' for asylum seekers in order not to render them more vulnerable.⁵⁸
20. This Court has recognised children's "*extreme vulnerability*" and declared this vulnerability to be the "decisive factor" in the broader migration context.⁵⁹ The Court has specifically considered this extreme vulnerability when examining living conditions in reception and detention centres.
21. This Court has found a violation of Article 3 based on the following factors whether in isolation or combination: accommodating children with unrelated adults;⁶⁰ overpopulated facilities;⁶¹ unsanitary, insalubrious, violent or dangerous environments, lack of privacy;⁶² lack of adapted facilities providing legal advice, "proper counselling and educational assistance from qualified personnel specifically mandated for that purpose";⁶³ and organised activities and entertainment facilities.⁶⁴

⁵⁰ UN CRC General Comment 6 para. 31(A). See also Aynsley-Green (2011), p. 13 and p. 30.

⁵¹ Artico v. Italy, (No 6694/74), 13 May 1980, para. 12.

⁵² UNHCR, Guidelines No. 8, paras. 65 and 75.

⁵³ M.S.S. v. Belgium and Greece [GC] (No. 30696/09), 21 January 2011, para. 219; Sufi and Elmi v UK, (Nos. 8319/07 and 11449/07), 28 June 2011, para. 213.

⁵⁴ Ananyev and others v Russia (Nos. 42525/07 and 60800/08), 10 January 2012, para. 145; Aarabi v Greece, (No. 39766/09), 2 April 2015, para 50.

⁵⁵ Abdullahi Elmi and Aweys Abubakar v Malta, (No. 25794/13 and 28151/13), 22 November 2016, para. 102.

⁵⁶ M.S.S. v Belgium and Greece [GC] (No 30696/09), 21 January 2011, para. 251.

⁵⁷ M.S.S. v Belgium and Greece [GC] (No. 30696/09), 21 January 2011, para. 221; Rahimi v. Greece, (No. 8687/080), 5 July 2011, paras. 104 - 106.

⁵⁸ M.S.S. v Belgium and Greece [GC] (No. 30696/09), 21 January 2011, paras. 250-251.

⁵⁹ Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, (No. 13178/03), 12 October 2006, para. 55; Popov v. France, (Nos. 39472/07 and 39474/07), 19 January 2012, para. 91.

⁶⁰ Çoşelav v. Turkey, (No. 1413/07), 9 October 2012, para. 60; Güveç v. Turkey, (No. 70337/01), 20 January 2009, para. 98.

⁶¹ Tarakhel v. Switzerland [GC] (No. 29217/12), 4 November 2014, para. 120.

⁶² Rahimi v. Greece, (No. 8687/080), 5 July 2011, paras. 81-86.

⁶³ Mubilanzila Mayeka and Kaniki Mitunga v. Belgium, (No. 13178/03), 12 October 2006, paras. 50 and 58.

⁶⁴ Popov v. France, (Nos. 39472/07 and 39474/07), 19 January 2012, para. 62.

22. As far as reception conditions for children seeking asylum are concerned, this Court has stated that such conditions must not create “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.”⁶⁵
23. This Court has recognised that children have specific needs that are related to their age, lack of independence and their asylum-seeker status.⁶⁶ This Court has also observed that the CRC encourages States to take the appropriate measures to ensure that a child who is seeking to obtain refugee status enjoys protection and humanitarian assistance, whether the child is alone or accompanied by his or her parents.⁶⁷ Therefore, Article 3 ECHR imposes positive obligations to take appropriate measures to protect and care for a child in the circumstances of migration⁶⁸.
24. The interveners submit that in order to fully comply with their obligations under the Convention, States must ensure that **both the material conditions and the facilities of reception are adapted to asylum seeking children’s specific needs, in view of their age, condition of dependency and enhanced vulnerability. To do otherwise, results in a failure by States to give full effect to their obligations under Article 3.**

Reception conditions for asylum seeking children under international law

25. Asylum seeking children are explicitly recognised as being vulnerable under Article 22 of the CRC.⁶⁹ In order for children to fully enjoy the rights provided in the Convention, State Parties must ensure that children are appropriately protected and assisted. This includes providing specific accommodation arrangements.⁷⁰ The interveners recall that under Article 27 of the CRC, State Parties must respect the right of children to have a standard of living adequate to their physical, mental, spiritual, moral and social development. In implementing this right States have undertaken to ensure that the child is provided with such protection and care as is necessary for his or her well-being when assessing and determining the child’s best interests⁷¹. This should be interpreted as requiring States to take into account the child’s basic material, physical, educational, and emotional needs, as well as needs for affection and safety.⁷²
26. A child’s special protection and assistance and the requirement to undertake a holistic assessment of what is suitable and necessary for a child’s accommodation, in light of their own specific vulnerabilities, has been reiterated by the UN Committee of the Rights of the Child.⁷³ Similarly, the European Committee of Social Rights has held that children must be accorded full and sustainable access to adequate housing resources and that “a general decline in living and housing conditions, directly attributable to policy and legislative decisions by States parties...would be inconsistent with the obligations under the Covenant.”⁷⁴ Unaccompanied non-national children should not be accommodated with unrelated adults to ensure they are **shielded from trafficking, and from sexual and other forms of exploitation, abuse and violence that they are particularly vulnerable to.**
27. The interveners further refer the Court to Article 7 ICCPR, which aims at protecting “both the dignity and the physical and mental integrity of the individual.” The Court is directed to recent views of the Human Rights Committee indicating that compliance with Article 7 requires reception conditions to be adapted to the children’s age and vulnerable status. According to the Human Rights Committee Article 7 ICCPR is further to be read in conjunction with Article 2, paragraph 3, of the Covenant, requiring State parties to ensure an effective remedy to individuals whose rights under the Covenant are violated. In addition, complaints must be investigated promptly

⁶⁵ Tarakhel v. Switzerland [GC] (No. 29217/12), 4 November 2014, para. 104.

⁶⁶ Tarakhel v. Switzerland [GC] (No. 29217/12), 4 November 2014, para. 99.

⁶⁷ *Ibid.*

⁶⁸ Rahimi v. Greece, (No.8687/080), 5 July 2011, para. 87.

⁶⁹ UN CRC General comment No. 14, paras 75-76.

⁷⁰ UN CRC General Comment No. 6 paras 40 and 44.

⁷¹ UN CRC, Article 3(2).

⁷² UN CRC General comment No. 14, paras. 71; UN CRC, General comment no. 6, paras 44-45; Jasin v. Denmark – Communication no. 2360/2014 - Views adopted by the Committee at its 114th session (29 June - 24 July 2015) (**Annex 17**); Rezaifar v. Denmark – Communication no. 2512/2014 - Views adopted by the Committee at its 119th session (6-29 March 2017) (**Annex 18**); Y.A.A. and F.H.M v. Denmark – Communication no. 2681/2015 - Views adopted by the Committee at its 119th session (6-29 March 2017) (**Annex 19**).

⁷³ UN CRC General Comment No. 6, paras 39-40.

⁷⁴ Committee on Economic, Social and Cultural Rights, General Comment 4, The right to adequate housing (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991), para. 11. (**Annex 20**).

and impartially by competent authorities so as to make the remedy effective.⁷⁵ Ensuring that the voice of the child is heard is essential to guaranteeing full compliance with the above standards.⁷⁶

Relevance of EU law under Article 53 ECHR

28. The interveners submit that under Article 53 ECHR, as regards EU Member States, the ECHR must not be applied in such a way as to diminish human rights protection, “which may be ensured under the laws of any High Contracting Party or under any other agreement to which it is a party.” Where Contracting Parties to the ECHR are also bound by EU law, the Court must ensure that the Convention rights are interpreted and applied in a manner which does not diminish the rights guaranteed under the applicable EU law.⁷⁷

EU fundamental rights relating to non-national children

29. The EU Charter of Fundamental Rights (CFR)⁷⁸ is primary EU law, which binds Member States when implementing EU law.⁷⁹ This includes their obligations under the asylum *acquis* with particular reference to the Recast Reception Conditions Directive 2013/33 (rRCD)⁸⁰ and Recast Asylum Procedure Directive 2013/32 (rAPD).⁸¹ The relevant provisions of the asylum *acquis* must comply with the provisions under the CFR. In particular, Article 24 states children shall have the right to protection and care necessary for their well-being, bearing in mind that a primary consideration “in all actions relating to [them] whether taken by public authorities or private institutions” must be their best interests.⁸²
30. The EU asylum *acquis* implemented in light of the Charter and the jurisprudence of the Court of Justice of the European Union (‘CJEU’) requires that the best interests of the child is a primary consideration in all decisions taken with regard to children, which requires Member States to ensure the child’s protection and care as necessary for their well-being.⁸³ The CJEU has also held that children must have access to legal procedures and conditions which enable them to express their views freely.⁸⁴
31. Article 4 CFR, prohibition of torture and inhuman or degrading treatment, places both positive and negative obligations on Member States. In the context of asylum, the CJEU has held that “systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers” can give grounds for finding a violation of Article 4.⁸⁵
32. Article 1 CFR recognises that human dignity is inviolable and must be respected and protected. The Explanations Relating to the CFR, under Title 1, Article 1, further suggests that human dignity “is not only a fundamental right in itself but constitutes the real basis of fundamental rights.”⁸⁶ Particularly, human dignity has been recognised as “closely linked” to the prohibition of inhuman and degrading treatment under Article 4.⁸⁷ In doing so the CJEU stated that the rights guaranteed by Article 4 of the Charter are absolute, which is confirmed by Article 3 ECHR, to which Article 4 CFR corresponds.⁸⁸ In the context of asylum, the CJEU has given particular consideration to human dignity when reaffirming the Member States’ obligations to provide minimum standards of reception at all times through the asylum procedure.⁸⁹

⁷⁵ UN Human Rights Committee (HRC), UN Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992, para 14. (**Annex 21**).

⁷⁶ UN CRC General Comment 12 p. 7; UN CRC General Comment No. 6, para 25.

⁷⁷ The Court will recall that in MSS the Grand Chamber took into account Greece’s obligations under the Reception Conditions Directive, as part of its national law, to ensure adequate material reception conditions, finding that the situation of extreme poverty brought about by the inaction of the State was treatment contrary to article 3 ECHR.

⁷⁸ European Union, Council of the European Union, Charter of Fundamental Rights of the European Union (2007/C 303/01), 14 December 2007, C 303/1. (**Annex 22**).

⁷⁹ Article 51 CFR.

⁸⁰ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180. (**Annex 23**).

⁸¹ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), [2013], OJ L. 180/60. (**Annex 24**).

⁸² Article 24(2) CFR.

⁸³ C-648/11, MA, BT and DA v Secretary of State of the Home Department, 6 June 2013.

⁸⁴ C- 491/10, Joseba Andoni Aguirre Zarraga v Simone Pelz, 22 December 2010, paras. 65-66. See further Article 12 of the UN CRC.

⁸⁵ Joined Cases C-411/10 and C-493/10, NS and ME, 21 December 2011, para. 123(2).

⁸⁶ Explanations Relating to the Charter of Fundamental Rights, Title 1—Human Dignity, Explanation on Article 1, 2007/C 303/02 (**Annex 25**).

⁸⁷ Joined Cases C-404/15 and C-659/15 para. 85.

⁸⁸ Joined Cases C-404/15 and C-659/15 para. 86.

⁸⁹ C-79/13, Cimade and Gisti, , para. 56.

33. EU law also ensures the prohibition of *refoulement*⁹⁰, the right to family life⁹¹, the right to an effective remedy⁹² and the right to be heard, which grants every person “the opportunity to make known [their] views effectively during an administrative procedure and before the adoption of any decision liable to affect [their] interests adversely”⁹³
34. Finally, Article 53 prescribes that nothing in the Charter “shall be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised... [by] international instruments to which the Union, the Community or all the Member States are party.” The guarantees deriving from the obligations under the CRC are of particular relevance in the present case. **The interveners submit that the aforementioned rights enshrined in the Charter and in the CRC constitute foundational ones in the asylum context and as such must guide the interpretation given to secondary EU law standards relating to procedures and reception conditions for those seeking asylum.**
- [The EU asylum *acquis* – procedural guarantees for unaccompanied non-national children](#)
35. The EU asylum *acquis* envisages specific identification and tailored procedural and reception guarantees to children as a category of particularly vulnerable persons⁹⁴ in accordance with their special needs.⁹⁵ Children’s special protection and reception needs must be promptly recognised and adequately addressed by Member States. While Article 25(5) of the rAPD foresees that Member States *may* use medical examinations to assess the age of unaccompanied minors, this provision is far from giving them a blanket permission to do so. Conversely, the provision must necessarily be **interpreted and applied in light of Member States’ obligations under the CFR, *in primis* to respect human dignity and the best interests of the child.**⁹⁶ Central to Article 25(5) rAPD is the **principle of the benefit of the doubt**, which shall be applied first and foremost ‘following general statements or other relevant indications’ on the applicant’s age.⁹⁷ If and once this principle is correctly applied, the possibility to use medical examinations is rendered unnecessary.⁹⁸
36. Acknowledging that ‘age assessment is not absolutely precise’⁹⁹, should a doubt remain, Member States shall ‘treat the person as a child and grant the right to appeal age assessment decisions’.¹⁰⁰ In recognition of the potential negative impact on the child’s wellbeing and the inherent shortcomings of medical age assessment procedures, Article 25(5) rAPD includes a number of important safeguards, *inter alia*¹⁰¹ that a refusal to undergo a medical examination shall not be the sole basis for rejection of the application for international protection.¹⁰²
37. The interveners draw this Court’s attention to reports from the medical community and Ombudsmen in many EU Member States which **criticise the use of medical examinations for age assessment, as these are unsuitable, inaccurate and unethical.**¹⁰³ Hence, notwithstanding all the safeguards in place – which constitute the minimum

⁹⁰ Article 19 CFR.

⁹¹ Article 7 CFR.

⁹² Article 47 CFR, C - 222/84 Johnston [1986] ECR 1651, paras 18-19.

⁹³ C-277/11 M. M. v. Minister for Justice, Equality and Law Reform, Ireland, Attorney General [2012], para. 87.

⁹⁴ C-648/11, MA, BT and DA v Secretary of State of the Home Department, 6 June 2013, para. 55.

⁹⁵ Articles 11, 17, 18, 21-24 Recast Reception Conditions Directive; Articles 7, 15, 25 and 31(7)(b) Recast Asylum Procedures Directive.

⁹⁶ Recital 33 and recital 60 recast Asylum Procedure Directive.

⁹⁷ Similarly see Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, Recital 22 and Article 13 which states that where the age of a person subject to trafficking in human beings is uncertain and there are reasons to believe that the person is a child, that person is presumed to be a child in order to receive immediate access to assistance, support and protection.

⁹⁸ See the European Commission’s Staff Working Document on the Implementation of the Action Plan of UAMs (2010-2014) accompanying the Communication from the Commission to the Council and the European Parliament ‘The protection of children in migration’, COM(2017) 211 final, 12 April 2017, p. 38: ‘Age assessment should only be used where there are grounds for serious doubt about an individual’s age. **(Annex 26).**

⁹⁹ *Ibid.*, p. 38.

¹⁰⁰ *Ibid.*

¹⁰¹ Particularly, unaccompanied minors shall be informed, in a language they understand and prior to the age assessment procedure, about the methods that will be used for the age assessment and the consequences that the result may have on their asylum application. The provision of information is functional to the need to obtain the consent of the unaccompanied minor and/or her or his representative before carrying out any medical examination to assess the applicant’s age.

¹⁰² Recast Directive 2013/32/EU, Article 25(5).

¹⁰³ See, in particular, Commission Nationale Consultative des Droits de l’Homme (CNCDH) (2014) *Avis sur la situation des mineurs isolés étrangers présents sur le territoire national. Etat des lieux un an après la circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers (dispositif national de mise à l’abri, d’évaluation et d’orientation)*, para. 12 : “[...] la CNCDH entend rappeler qu’il n’existe à ce jour aucune méthode médicale sûre de détermination de l’âge et recommande en conséquence qu’il soit mis fin à tout examen physique pour conclure à la minorité ou à la majorité d’un jeune isolé étranger. Dans ces conditions, elle regrette que l’article 25.5 de la directive 2013/32/UE du 26 juin 2013 relative aux procédures communes pour l’octroi et le retrait de la protection internationale reconnaisse la possibilité aux Etats « de procéder à des examens médicaux afin de déterminer l’âge d’un mineur non accompagné dans le cadre de l’examen d’une demande de protection internationale ». ” and P. J. J. Sauer, A. Nicholson & D. Neubauer (on behalf of the Advocacy and Ethics Group of the

Member States are bound to¹⁰⁴ – more and more Member States are distancing themselves from medical examinations and are introducing less intrusive age assessment procedures.¹⁰⁵

38. In furtherance of its goal to “ensure full respect for human dignity” and to give full effect to the CFR, the rRCD affords heightened guarantees to specific groups of asylum seekers who are regarded as vulnerable persons.¹⁰⁶ The Directive requires States to continuously assess an individual’s special needs, provide the appropriate level of support, and monitor their situation throughout the asylum procedure.¹⁰⁷ The rRCD also obliges EU Member States to ensure children receive competent representation and assistance as soon as possible.¹⁰⁸

The EU asylum *acquis* – material reception conditions procedural guarantees for unaccompanied non-national children

39. Among vulnerable persons identified by the rRCD, children, in particular unaccompanied, are explicitly recognised.¹⁰⁹ Due to their special needs, distinct from other categories of vulnerable persons, the rRCD affords them enhanced forms of protection under Articles 23 and 24. The ultimate aim of the Directive in respect of children is to guarantee that Member States ensure a standard of living adequate for a child’s physical, mental, spiritual and social development. To this end, the “best interests of the child shall be a primary consideration for Member States when implementing the provisions of the Directive that involve children.”¹¹⁰
40. To guide States’ assessment of the best interests of the child, the rRCD requires States to give particular consideration to “the minor’s well-being and social development, taking into particular consideration the minor’s background...safety and security considerations, in particular where there is a risk of the minor being a victim of human trafficking... [and] the views of the minor in accordance with his or her age and maturity.”¹¹¹
41. The rRCD further requires that in both temporary and long-term reception centres, States ensure minors have access to leisure activities adapted to their age.¹¹² Regardless of where children are accommodated, States must ensure they have access to rehabilitation services when they have been victims of “any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflict.”¹¹³ States must also ensure that appropriate mental health care is developed and that minors are provided qualified counselling when needed.¹¹⁴
42. The Directive also provides an exhaustive list of accommodation options in which Member States shall place unaccompanied asylum seeking children: (a) with adult relatives, (b) with a foster family, (c) in accommodation centres with special provisions for minors, and (d) in other accommodations suitable for minors¹¹⁵. Unaccompanied minors must be placed in one of these four options from the moment they are admitted to the territory until the moment they are obliged to leave, limiting changes of residence to a minimum.¹¹⁶ The only exception to this requirement is that children sixteen or older may be placed in an accommodation centre with unrelated adults provided that it is in their best interests as prescribed in Article 23 (2) of the rRCD.¹¹⁷
43. As previously stated¹¹⁸, ensuring full respect for human dignity is an objective of the rRCD and in furtherance of that objective Member States are required to ensure a dignified standard of living for all asylum applicants.¹¹⁹ This

European Academy of Paediatrics) (2016) *Age determination in asylum seekers: physicians should not be implicated*, European Journal of Pediatrics, 175:3, p. 302: ‘The European Academy of Paediatrics strongly recommends all paediatricians in Europe not to participate in the process of age determinations in minor asylum seekers stating they are minors. It also recommends all paediatricians to convey this opinion to all other physicians. All physicians should let the representatives in their countries know that they oppose the asylum Procedures Directive (2005/85/EC) according to which the member states may use medical examinations to determine age in relation to the procedure of an asylum application.’

¹⁰⁴ See the European Commission’s Action Plan, p. 38.

¹⁰⁵ Ombudsman, Decision MDE-2016-052, 26 February 2016 (**Annex 27**).

¹⁰⁶ Recital 35 and Article 21 Recast Reception Conditions Directive.

¹⁰⁷ Article 22(1) Recast Reception Conditions Directive.

¹⁰⁸ Article 24(1) Recast Reception Conditions Directive.

¹⁰⁹ Article 21 Recast Reception Conditions Directive.

¹¹⁰ Article 23 Recast Reception Conditions Directive.

¹¹¹ Article 23(2)(b) - (c) Recast Reception Conditions Directive.

¹¹² Article 23(4) Recast Reception Conditions Directive.

¹¹³ *Ibid.*

¹¹⁴ Article 23(4) Recast Reception Conditions Directive.

¹¹⁵ Article 24(2) Recast Reception Conditions Directive.

¹¹⁶ *Ibid.*

¹¹⁷ Articles 23(2) and 24(2) Recast Reception Conditions Directive.

¹¹⁸ Recital 35 Recast Reception Conditions Directive.

objective is reflected in the case law of the CJEU. In *Cimade and GISTI* the CJEU held that the general scheme and purpose of the Directive and the observance of fundamental rights precluded asylum seekers from being deprived, even temporarily after making an application for asylum, of the protection of the minimum standards laid down by that Directive.¹²⁰ The Court reaffirmed this principle in the subsequent case of *Saciri*. In that case it held that the best interests of the child is a primary consideration in determining the sufficiency of financial allowances allotted for reception conditions.¹²¹

44. It is the interveners' submission that any domestic **legislation or administrative policies of EU Member States implementing EU law cannot be interpreted in such a way that disregards fundamental rights.**¹²² **Where children seeking asylum are concerned their best interests, vulnerability and human dignity as protected by CFR and EU secondary law must be the driving force behind all decisions affecting them.**¹²³ **This ensures that non-national unaccompanied children receive the protection and care necessary for their well-being and safety.**

¹¹⁹ Article 20(5) and Recitals (11), (25) and (35) Recast Reception Conditions Directive.

¹²⁰ C-179/11, *Cimade and GISTI* at para. 56.

¹²¹ C-79/13, *Federaal agentschap voor de opvang van asielzoekers v Selver Saciri and Others*, 27 February 2014, para 35 and 41.

C-648/11, *MA, BT and DA v Secretary of State of the Home Department*, 6 June 2013, paras. 57-59.

¹²³ See further Communication from the Commission to the European Parliament and Council, *The protection of children in migration*, COM(2017) 211 final, 12 April 2017, p 14 (**Annex 28**).

BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS

Application No. 5797/17

B E T W E E N:

Darboe and Camara

Applicant

- and -

Italy

Respondent

SUBMISSIONS FOR THE INTERVENORS
THE AIRE CENTRE (ADVICE ON INDIVIDUAL RIGHTS IN EUROPE), THE DUTCH
COUNCIL FOR REFUGEES (DCR) AND THE EUROPEAN COUNCIL ON REFUGEES
AND EXILES (ECRE)

Notes:

- (1) The order of the annexes corresponds with the order of appearance in the text and endnotes of the Intervention.
- (2) Hard copies of the Annexes referred to follow, except where provided by hyperlink.

Annex	Document
1.	Convention on the Rights of the Child (CRC), 20 November 1989, United Nations, Treaty Series, vol. 1577: http://bit.ly/2nEnMCs
2.	International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171: http://bit.ly/1wxg8Ku
3.	International Covenant on Economic, Social and Cultural Rights (ICESCR), 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3: http://bit.ly/2o4EKwL
4.	UN Committee on the Rights of the Child, General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14: http://bit.ly/1uMTcWZ
5.	UN Committee on the Rights of the Child, General comment No. 12 (2009): The right of the child to be heard, 20 July 2009, CRC/C/GC/12: http://bit.ly/2o4DEB9
6.	UN Committee on the Rights of the Child, General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5: http://bit.ly/2nSfszD
7.	UN Committee on the Rights of the Child, General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin, 1 September 2005, CRC/GC/2005/6: http://bit.ly/1KeZoPH
8.	UN High Commissioner for Refugees (UNHCR), Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum, February 1997: http://bit.ly/1PsB0xG
9.	Council of Europe, Parliamentary Assembly (PACE), Unaccompanied children in Europe: issues of arrival, stay and return, Resolution 1810 (2011), 15 April 2011: http://bit.ly/2aYgeGU
10.	Separated Children in Europe Programme, <i>Position Paper on Age Assessment in the Context of Separated Children in Europe</i> , 2012: http://bit.ly/2twBZrG
11.	Compilation of Expert Medical Opinions on the Use of Medical Examinations for Age Assessment of Non-National Children

12.	European Asylum Support Office (EASO), EASO Age assessment practice in Europe, December 2013: http://bit.ly/1NQGLTp
13.	Ad hoc Committee for the Rights of the Child (CAHENF) – Drafting Group of Experts on Children’s Rights and Safeguards in the Context of Migration (CAHENF-Safeguards), Council of Europe member States’ age assessment policies, procedures, and practices respectful of children’s right, Report prepared by Daja Wenke, draft 17 March 2017: http://bit.ly/2tIJv1G
14.	UN High Commissioner for Refugees (UNHCR), Guidelines on International Protection No. 8: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees, 22 December 2009, HCR/GIP/09/08: http://bit.ly/1JRWflu
15.	Defensor del Pueblo de España, <i>Menores o adultos? Procedimientos para la determinacion de la edad</i> , Madrid, 2012: http://bit.ly/2trkHMa
16.	H.D.C. Roscam Abbing (2011) <i>Age Determination of Unaccompanied Asylum Seeking Minors in the European Union: A Health Law Perspective</i> , European Journal of Health Law, 18:11-25: http://bit.ly/2smnC4R
17.	UN Human Rights Committee (HRC), Jasin et al. v. Denmark, Communication No. 2360/2014, CCPR/C/114/D/2360/2014, 25 September 2015: http://bit.ly/1La8fx9
18.	UN Human Rights Committee (HRC), Rezaifar v. Denmark, Communication No. 2512/2014, CCPR/C/119/D/2512/2014, 10 April 2017: http://bit.ly/2spoLgh
19.	UN Human Rights Committee (HRC), Y.A.A. and F.H.M. v. Denmark, Communication No. 2681/2015, CCPR/C/119/D/2681/2015, 21 April 2017: http://bit.ly/2t8kFpL
20.	UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 4: The Right to Adequate Housing (Art. 11 (1) of the Covenant), 13 December 1991, E/1992/23: http://bit.ly/1XLMrjX
21.	UN Human Rights Committee (HRC), CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 10 March 1992: http://bit.ly/2u6bKFx
22.	European Union, Council of the European Union, Charter of Fundamental Rights of the European Union (2007/C 303/01), 14 December 2007, C 303/1: http://bit.ly/2oE2wNZ
23.	Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection [2013] OJ L 180, 9 June 2013, p. 96–116: http://bit.ly/2nSnFEEd
24.	Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status [2003] OJ L 326/13, p. 13-34: http://bit.ly/2o4OJ5m
25.	European Union, Praesidium of the Convention, Explanations Relating to the Charter of Fundamental Rights of the European Union, OJ C 303, 14 December 2007, p. 17-35: http://bit.ly/2sYMsdN
26.	Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA [2011] OJ L 101, 15 April 2011, p. 1–11: http://bit.ly/2sYGwl7
27.	European Union, European Commission’s Staff Working Document on the Implementation of the Action Plan on UAMs (2010-2014) accompanying the Communication from the Commission to the Council and the European Parliament ‘The protection of children in migration’, COM(2017) 211 final, 12 April 2017: http://bit.ly/2t8q2W9
28.	Défenseur des droits, Décision MDE-2016-052 Relative à l’accès aux droits et à la justice des mineurs isolés étrangers, 26 Février 2016: http://bit.ly/2stqSuu
29.	European Union, Communication from the Commission to the European Parliament and the Council, The protection of children in migration COM(2017) 129 final, 12 April 2017: http://bit.ly/2p50KbT

Annex 11

Compilation of Expert Medical Opinions and Positions on the Use of Medical Examinations for the Age Assessment of Non-National Children

❖ Recommendations to medical practitioners not to participate in age assessment procedures

- [Switzerland] S. Depallens, F. Jäger, N. Pellaud, O. Jenni, V. Schwitzgebel and G. Eich (2017) *Détermination de l'âge des jeunes migrants: Position de la Société Suisse de Pédiatrie*, Prim. Hosp. Care (fr). 2017;17(08):151-152, available at <http://bit.ly/2smpV7f>, p. 152.
- International Society for Social Pediatrics and Child Health (ISSOP) Migration Working Group (2017) *Migrant child health - ISSOP Position statement n° 8*, available at <http://bit.ly/2tT54u7>, p. 2 and p. 8.
- P. J. J. Sauer, A. Nicholson & D. Neubauer (on behalf of the Advocacy and Ethics Group of the European Academy of Paediatrics) (2016) *Age determination in asylum seekers: physicians should not be implicated*, European Journal of Pediatrics, 175:3:299-303, DOI: 10.1007/s00431-015-2628-z, available at <http://bit.ly/2s2loaT>, pp. 301-302.
- [Germany] K. Mohnike (2013) *Altersfeststellung bei unbegleiteten minderjährigen Flüchtlingen*, available at <http://bit.ly/2s2ggn1>, p. 30.
- [Norway] Den Norske legerening (2010) *Leger bør ikke bør delta i aldersvurdering av asylsøkere basert på røntgen*, available at <http://bit.ly/2sRhHYd>.

❖ Unsuitability of medical examinations to be used in the context of age assessment

- P. J. J. Sauer, A. Nicholson & D. Neubauer (on behalf of the Advocacy and Ethics Group of the European Academy of Paediatrics) (2016) *Age determination in asylum seekers: physicians should not be implicated*, European Journal of Pediatrics, 175:3:299-303, DOI: 10.1007/s00431-015-2628-z, available at <http://bit.ly/2s2loaT>, p. 300.
- International Society for Social Pediatrics and Child Health (ISSOP) Migration Working Group (2017) *Migrant child health - ISSOP Position statement n° 8*, available at <http://bit.ly/2tT54u7>, p. 8.
- T. J. Cole (2016) *Response to letter by Thodberg et al.*, Annals of Human Biology, 43:6:579-580, DOI: 10.3109/03014460.2016.1153146, available at <http://bit.ly/2uiRKyS>, p. 580.
- T. J. Cole (2015) *The evidential value of developmental age imaging for assessing age of majority*, Annals of Human Biology, 42:4:379-388, DOI: 10.3109/03014460.2015.1031826, available at <http://bit.ly/2uiPaZy>, pp. 386-387.
- [Germany] Tätigkeitsbericht der Bundesärztekammer (2014) *Altersfeststellungen bei Flüchtlingen*, available at <http://bit.ly/2tl06bJ>.
- [France] Commission Nationale Consultative des Droits de l'Homme (2014) *Avis sur la situation des mineurs isolés étrangers présents sur le territoire national. Etat des lieux un an après la circulaire du 31 mai 2013 relative aux modalités de prise en charge des jeunes isolés étrangers (dispositif national de mise à l'abri, d'évaluation et d'orientation)*, available at <http://bit.ly/1Uhu9XE>, paras. 10-12 and 17.
- [Italy] L. Benso L. and S. Milani (2013) *Alcune considerazioni sull'uso forense dell'eta' biologica*, available at <http://bit.ly/2s28KZd>, p. 2.
- A. Aynsley-Green, T. J. Cole, H. Crawley, N. Lessof, L. R. Boag, R. M. Wallace (2012) *Medical, Statistical, Ethical and Human Rights Considerations in the Assessment of Age in Children and Young People Subject to Immigration Control*, British Medical Bulletin, 102:17-42, available at <http://bit.ly/2tlie5y>, p. 24 and p.30.
- A. Aynsley-Green (2011) *The assessment of age in undocumented migrants. A report for the Office of the Defensor del Pueblo, Madrid, Spain*, available at <http://bit.ly/2sRBhn4>, p. 7 and p. 15.
- [United Kingdom] British Society for Paediatric Endocrinology and Diabetes (BSPED), *Statement of Paediatric Age Assessment*, available at <http://bit.ly/2tl4HL7>.
- [United Kingdom] The Royal College of Paediatrics and Child Health of the United Kingdom (2007) *X-Rays and Asylum Seeking Children: Policy Statement*, available at <http://bit.ly/2sdb4w8>.
- [France] Comité consultatif national d'éthique (CCNE) (2005) *Avis sur les méthodes de détermination de l'âge à des fins juridiques*, available at <http://bit.ly/2uizm98>, p. 2, p. 4 and p. 5.

❖ **Unreliability, inadequacy and inaccuracy of medical examinations to assess the age (particularly hand-wrist X-Ray, dental examination and X-Ray, and MRI)**

- [Switzerland] S. Depallens, F. Jäger, N. Pellaud, O. Jenni, V. Schwitzgebel and G. Eich (2017) *Détermination de l'âge des jeunes migrants: Position de la Société Suisse de Pédiatrie*, Prim Hosp Care (fr). 2017;17(08):151-152, available at <http://bit.ly/2smpV7f>, p. 152.
- International Society for Social Pediatrics and Child Health (ISSOP) Migration Working Group (2017) *Migrant child health - ISSOP Position statement n° 8*, available at <http://bit.ly/2tT54u7>, p. 8.
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