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Committee of Experts on the Rights and the Best Interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE)

Preliminary Draft Explanatory memorandum to the Draft Recommendation CM/Rec(2024)x of the Committee of Ministers to member States on the protection of the best interests of the child and his or her rights in parental separation proceedings

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Table of content

PREAMBLE	4
Introduction	5
<i>Decision-making on the best interests of the child in parental separation</i>	<i>5</i>
<i>Rights of the child, parental rights, responsibilities and duties, and State obligations</i>	<i>6</i>
<i>Legal and policy framework: international and Council of Europe standards</i>	<i>7</i>
<i>Recommendations.....</i>	<i>9</i>
<i>Drafting process.....</i>	<i>13</i>
<i>Child consultations.....</i>	<i>14</i>
APPENDIX TO RECOMMENDATION CM/REC	15
I. Definitions and scope.....	15
<i>Scope.....</i>	<i>15</i>
<i>Definitions</i>	<i>16</i>
II. Overarching principles	20
<i>Best interests of the child.....</i>	<i>20</i>
<i>Right to be heard/to participate</i>	<i>20</i>
<i>Rule of law</i>	<i>20</i>
<i>Dignity.....</i>	<i>21</i>
<i>Timeliness.....</i>	<i>22</i>
<i>Non-discrimination.....</i>	<i>23</i>
<i>Right to respect for private and family life</i>	<i>24</i>
III. Child’s best interests’ assessment	25
IV. Right to be heard	35
V. Right to information and assistance	43
<i>Right to information.....</i>	<i>43</i>
<i>Right to assistance and to legal counsel and representation.....</i>	<i>44</i>
<i>Complaints mechanism</i>	<i>46</i>
VI. Course of parental separation proceedings and alternative dispute resolution processes	47
<i>Before proceedings.....</i>	<i>47</i>
<i>In court.....</i>	<i>49</i>
<i>Emergency and interim measures.....</i>	<i>51</i>
<i>Decision.....</i>	<i>53</i>
<i>Review of the decision.....</i>	<i>53</i>
<i>Preventive and alternative dispute resolution processes</i>	<i>54</i>
<i>Implementation and enforcement.....</i>	<i>59</i>

VII. Relocation.....61

VIII. Miscellaneous provisions64

Data protection 64

Training and professional standards 66

Monitoring and research..... 67

International co-operation..... 68

PREAMBLE¹

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

A. ²*Considering* that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and promoting the ideals and principles which are their common heritage, *inter alia*, by promoting the adoption of common standards and policies and harmonising legislation on matters of common interest;

B. *Reaffirming* the principle of the inherent and equal dignity of all human beings, and underlining the importance of guaranteeing all children within the jurisdiction of a Council of Europe member State, the full exercise, respect, protection and promotion of their human rights and fundamental freedoms, without discrimination on any ground;

C. *Bearing in mind* the Council of Europe Strategy for the Rights of the Child (2022-2027) which includes the strategic objectives of “child-friendly justice for all children” and “giving a voice to every child”;

D. *Reaffirming* the obligations and commitments towards children as set out in relevant international and European Conventions, notably the United Nations Convention on the Rights of the Child (UNCRC), the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) and their respective additional protocols;

E. *Recalling* the relevant case law of the European Court of Human Rights, the standards and guidance from the Committee of Ministers in the area of family law and relevant judicial proceedings, notably the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice;

F. *Acknowledging* the views and opinions of consulted children from member States of the Council of Europe;

G. *Recognising* the important role of civil society, including non-governmental organisations, in supporting children, parents and families in co-operation with state actors, under a common framework;

H. *Having regard* to the fact that the best interests of the child should be a primary consideration and, in some circumstances, a paramount consideration in all actions concerning the child and concerned that the child’s best interests may not always be given due consideration in parental separation situations;

¹ For ease of reference, Principles of the draft recommendation have been reproduced in boxes. To be removed once approved by CDCJ and CDENF.

² Lettering only for purposes of facilitating examination of the preamble. To be removed once approved by CDCJ and CDENF.

I. *Convinced* that the status of the child as rights holder should be accorded appropriate legislative, procedural and substantive recognition and that he or she should benefit from appropriate support in exercising their rights in all matters affecting them;

J. *Wishing* to guide member States in improving their legislation, policies and practice regarding parental separation proceedings and to support them in providing guidance for officials and professionals as well as parents involved in such proceedings;

K. *Emphasising* that this Recommendation aims at establishing a common framework for the assessment of the best interests of the child while acknowledging the diversity of legal systems of the member States;

Introduction

Decision-making on the best interests of the child in parental separation

1. In situations of parental separation and relevant proceedings, adults make decisions that directly or indirectly affect children. Not only what is decided, but also the way in which decisions are made, is likely to affect the day-to-day life, family and social relations, education, health, wellbeing, development and life chances of the children concerned, in the immediate as well as medium and longer term.

2. In situations of parental separation, parents are primarily responsible for decisions concerning the rights and best interests of the child. They may be assisted by lawyers, mediators, social services, family therapists or other relevant professionals. Private agreements of separating parents may be subject to review by a competent administrative body, judicial institution or court of law. Where parents are unable to reach an amicable agreement on their separation, they may take recourse to adversarial judicial proceedings to resolve separation-related disputes.

3. This Recommendation focuses on decision-making processes on the rights and best interests of children involved in parental separation. It embraces a diversity of situations – private decision-making of parents and families, decisions made by competent authorities in the context of administrative and judicial proceedings, as well as decision-making in the context of alternative dispute resolution. It recognises that decisions made by parents and other private actors may be closely related to and conditioned or determined by decisions made by administrative or judicial bodies. Irrespective of the context, decision-making on the rights and best interests of the child should be guided by a common set of fundamental, overarching principles and safeguards for children, rooted in international and Council of Europe standards.

4. The Recommendation is targeted at States and, through its appendix, aims at providing practical guidance to state officials and professionals, as well as parents, mediators and other relevant actors involved in decision-making affecting children in the context of parental separation in the judiciary, administration, service provision and private life, as well as policymaking.

5. The principles and practical guidance set out in this Recommendation aim at establishing a common framework for the assessment and consideration of the best interests of the child in the

context of parental separation proceedings, while acknowledging the diversity of legal and judicial systems in member States.

6. In recognising the important role of non-governmental organisations and other civil society actors in supporting children, parents and families before, during and after parental separation proceedings, this Recommendation provides a common framework for their actions in this field, and their collaboration with state actors.

Rights of the child, parental rights, responsibilities and duties, and State obligations

7. The UN Convention on the Rights of the Child (UNCRC) sets out the rights of the child, obligations of state authorities, as well as duties and responsibilities of private actors, such as parents and guardians or private service providers.

8. The child has the right to be cared for by his or her parents and not to be separated from the family, except where this would be in the best interests of the child (UNCRC Articles 7 and 9). Family relations are considered an element of the child's identity, alongside the child's name and nationality, which the State has to undertake to preserve (UNCRC Article 8). In situations where the child does not cohabit with one or both parents, the child has the right to maintain personal relations and direct contact on a regular basis with both parents (UNCRC Article 9). These rights apply also in situations of cross-border family separation (UNCRC Article 10).

9. The UNCRC sets out, as a principle, that both parents have common responsibilities for the upbringing and development of the child and the best interests of the child will be their basic concern. Where the parents are unable or unavailable to provide for their children, this responsibility is passed to a legal guardian (UNCRC Article 18.1). Parents or legal guardians are responsible for ensuring living conditions adequate to the child's physical, mental, spiritual, moral and social development, within their abilities and financial capacities (UNCRC Article 27). Article 5 obliges States to respect parental responsibilities, rights and duties to provide appropriate direction and guidance in a manner consistent with the evolving capacities of the child. The article recognises that parental direction and guidance diminishes in accordance with the child's evolving capacities of autonomous thinking and acting, of discernment and decision-making.

10. States have a legal obligation to assist parents in fulfilling their childcare and child-rearing responsibilities. UNCRC Article 3.2 obliges States to ensure children enjoy the protection and care necessary for their wellbeing, taking into account the rights and duties of the parents. The articles setting out parental responsibilities provide for parallel obligations of the State to support parents through social and financial assistance, childcare facilities and services, and other support programmes (UNCRC Articles 18 and 27). Article 19 provides for the development of social support programmes for children and their caregivers to prevent and respond to all forms of violence, exploitation and neglect of children. Article 26 establishes the child's right to benefit from social security. Under Article 37, the use of cruel, inhuman or degrading treatment or punishment against children is prohibited, which applies to all situations and contexts, including the home, the school and any institution.

11. Under the UNCRC, States have positive and negative obligations to support parents in exercising their rights, duties and responsibilities and should intervene where parents do not fulfil

their duties and responsibilities without interfering with private and family life in an arbitrary manner. In exercising their responsibilities and duties, parents enjoy a certain degree of self-determination and discretion. In view of this complex interplay of roles, the UNCRC considers parental rights, duties and responsibilities as limited in time as determined by the evolving capacities of the child, limited in scope as determined by the best interests of the child, and functional in nature as they are to provide for the care, protection and well-being of the child.³ The best interests principle plays a fundamental role in qualifying these limitations and functions.

Legal and policy framework: international and Council of Europe standards

12. The European Convention for Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (UNCRC) with their respective additional protocols, as well as the case law of the European Court of Human Rights (ECtHR), provide the overarching human rights framework underlying this Recommendation.

13. The Recommendation builds further on international and Council of Europe standards relevant for the rights and the best interests of the child in parental separation, child-friendly justice and family law. Whereas the examples given in the preamble are not exhaustive, these standards include,

- legally binding standards⁴;
- recommendations and guidelines of the Committee of Ministers, as well as resolutions and declarations of the Parliamentary Assembly of the Council of Europe⁵;

³ Ruggiero, Roberta, Diana Volnakis and Karl Hanson, The inclusion of 'third parties': The status of parenthood in the Convention on the Rights of the Child, *Children's Rights Law in the Global Human Rights Landscape, Isolation, inspiration, integration?* Edited by Eva Brems, Ellen Desmet and Wouter Vandenhoele, Routledge Research in Human Rights Law, 2017, pp.71-89, pp. 82-83. See also: Jonathan Law, Elizabeth A. Martin, A Dictionary of Law, 7th edition, Oxford University Press, 2014.

⁴ Notably: UNCRC and its Optional Protocols. ECHR (ETS No. 5) and protocols. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ETS. No. 126). European Convention on the Exercise of Children's Rights (ETS No. 160). Revised European Social Charter (ETS No. 163). Convention on Contact concerning Children (ETS no. 192). Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201). Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210). United Nations Convention on the Rights of Persons with Disabilities (2006). United Nations Convention on the Elimination of all Forms of Discrimination Against Women (1979). Hague Conference on Private International Law, Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996).

⁵ Notably: Guidelines and Recommendations of the Committee of Ministers of the Council of Europe: Recommendation Rec(84)4 of the Committee of Ministers to member States on parental responsibilities. Recommendation Rec(91)9 on emergency measures in family matters. Recommendation No. R(98)1 on family mediation. Recommendation Rec(2002)10 on mediation in civil matters. Recommendation Rec(2006)19 on policy to support positive parenting. Committee of Ministers Guidelines on child-friendly justice (2010). Recommendation Rec(2011)12 on children's rights and social services friendly to children and families. Committee of Ministers Guidelines on child-friendly health care (2011). Recommendation Rec(2012)2 on the participation of children and young people under the age of 18. Recommendation Rec(2015)4 on preventing and resolving disputes on child relocation. Resolutions of the Parliamentary Assembly of the Council of Europe: Resolution 2232 (2018) on Striking a balance between the best interest of the child and the need to keep families together. Parliamentary Assembly Resolution 1714 (2010) on Children who witness domestic violence.

- general comments and decisions on individual communications of the Committee on the Rights of the Child⁶;
- decisions and recommendations of other international and Council of Europe monitoring bodies and committees.⁷

14. The principles and practical guidance provided by this Recommendation aim at supporting member States in ensuring these standards are fully and effectively implemented in practice in accordance with Council of Europe strategic objectives in this field. The Council of Europe Strategy for the Rights of the Child (2022-2027), as part of a series of Strategies adopted in the framework of the programme “Building a Europe for and with Children”, aims at advancing the protection and promotion of the rights of the child and putting the child at the centre of the Council of Europe’s work.⁸ The Recommendation is cutting across several of the Strategy’s objectives, particularly child-friendly justice for all children, giving a voice to every child, freedom from violence for all children, and equal opportunities and social inclusion for all children.

15. This Recommendation is a non-binding legal instrument. The frequent use in this instrument of the conditional “should” must not be understood as reducing the legal effect of relevant principles taken from binding Council of Europe or other international legal instruments. When implementing this Recommendation, member States are free to apply higher standards or more favourable measures to secure and promote the rights and best interests of the child in parental separation.

⁶ Notably: Committee on the Rights of the Child, General Comment No. 24 (2019) on children’s rights in the child justice system, CRC/C/GC/24, 18 September 2019. Committee on the Rights of the Child, General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016. Committee on the Rights of the Child, General Comment No. 19 (2016), Public budgeting for the realization of children’s rights (art. 4), CRC/C/GC/19, 20 July 2016. 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 par.1), CRC/C/GC/14, 29 May 2013. Committee on the Rights of the Child, General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), CRC/C/GC/17, 17 April 2013. Committee on the Rights of the Child, General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, CRC/C/GC/13, 18 April 2011. Committee on the Rights of the Child, General Comment No. 12 (2009) on the right of the child to be heard, CRC/C/GC/12, 20 July 2009. Committee on the Rights of the Child, General Comment No. 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), CRC/C/GC/8, 2 March 2007. Committee on the Rights of the Child, General Comment No. 9 (2006) on the rights of children with disabilities, CRC/C/GC/9/Corr.1, 13 November 2007. Committee on the Rights of the Child, General Comment No. 7 (2005), Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006. Committee on the Rights of the Child, General Comment No.5 (2003), General Measures of Implementation for the Convention on the Rights of the Child, CRC/GC/2003/5, 3 October 2003.

⁷ Notably: United Nations, Guidelines for the Alternative Care of Children, Resolution adopted by the General Assembly, [A RES 64 142-EN](#), 24 February 2010. Hague Conference on Private International Law, [Mediation](#), *Guide to good practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, 2012.

⁸ Council of Europe, [The new Strategy for the Rights of the Child \(2022-2027\) adopted by the Committee of Ministers](#), Newsroom on Children’s Rights, 24 February 2022. Council of Europe, [Strategy for the Rights of the Child \(2022-2027\): “Children’s Rights in Action: From continuous implementation to joint innovation”](#), CM(2021)168-final, 23 February 2022.

Recommends that governments of member States:**1. In parental separation proceedings:**

- ensure that the best interests of the child are a primary consideration or, where required by law, the paramount consideration;
- ensure that the rights of the child are respected and safeguarded throughout the proceedings;
- ensure that decisions concerning the child are implemented or enforced in an effective and timely manner, in accordance with the best interests of the child.

2. Develop and promote alternative dispute resolution processes which take account of the rights and best interests of the child in parental separation proceedings.

3. Take or reinforce all measures they consider necessary with a view to implementing the principles set out in the appendix to this Recommendation in relevant national law, policy and practice.

4. Ensure that this Recommendation and its explanatory memorandum are translated and disseminated as widely as possible and, specifically, to relevant competent authorities, professionals and other stakeholders working with children in parental separation proceedings.

Recommendations

16. In all administrative and judicial proceedings concerning the child in the context of parental separation, as well as relevant alternative dispute resolution processes, member States should ensure that the best interests of the child are a primary consideration or, where required by law, the paramount consideration. This recommendation has implications for matters of substantive and procedural law and practice.

17. The Committee on the Rights of the Child explains the best interests principle as a substantive right, a fundamental, legal interpretive principle and a rule of procedure. As a *substantive right*, UNCRC Article 3.1 is considered self-executing and directly applicable and can be invoked before a court: each child has the right to have his or her best interests assessed and taken as a primary consideration. As a *fundamental, interpretive legal principle*, the best interests principle offers guidance for the application of laws: when there is room for interpretation and discretion in applying a specific law, the interpretation, which most effectively serves the best interests of the child should be applied. As a *rule of procedure*, the principle implies that in all procedures concerning children, in particular those aimed at assessing and determining the best interests of a child, an evaluation of the possible positive and negative impact on the child needs to be made. This applies to individuals or groups of children or to matters concerning children in general. Procedural safeguards need to be in place to ensure that decision-making on the best interests of the child is transparent and lawful.⁹

⁹ 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 par.1)*, CRC/C/GC/14, 29 May 2013, para. 6.

18. The case law of the European Court of Human Rights affirms the interpretation of the best interests of the child as a substantive right, a fundamental, interpretive legal principle and a rule of procedure. As a substantive right, for instance, the principle places an obligation on state authorities to ensure that the child is protected against harm to his or her health and development, and is able to maintain family relations, except in cases where the family has proved particularly unfit. State authorities are held to do everything to preserve family relations and, if and as appropriate, to rebuild and reunite the family. Family ties can only be severed in very exceptional circumstances.¹⁰ The Court's case law refers to the General Comment No. 14 of the Committee on the Rights of the Child and affirms thereby the authoritative value of the guidance it provides to state authorities. It underlines that States should put in place formal processes for the assessment and determination of the best interests of the child, which are protected by procedural safeguards. These processes should be transparent and objective and guide decisions made by legislators, judges, and administrative authorities, which directly affect the child or children.¹¹

19. The Committee on the Rights of the Child underlines that the use of "shall" in UNCRC Article 3.1 places a strong legal obligation on States and means that States may not exercise discretion as to whether children's best interests are to be assessed and ascribed the proper weight as a primary consideration.¹²

20. As "a primary consideration", the best interests of the child may not be considered on the same level as other considerations. The Committee on the Rights of the Child explains that any conflicts – or potential conflicts – between the rights and best interests of a child and the rights of other persons should be resolved on a case-by-case basis: "If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and [are] not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best." The Committee justifies this strong position "by the special situation of the child: dependency, maturity, legal status and, often, voicelessness. Children have less possibility than adults to make a strong case for their own interests and those involved in decisions affecting them must be explicitly aware of their interests. If the interests of children are not highlighted, they tend to be overlooked."¹³

21. The European Court of Human Rights underlined that in decisions concerning children, the best interests of the child are of paramount importance and must be a primary consideration.¹⁴

¹⁰ *Gnahoré v. France*, no. 40031/98, § 59, 19 September 2000. *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 207, 10 September 2019.

¹¹ *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 207, 10 September 2019. *Haddad v. Spain*, no. 16572/17, § 72, 18 June 2019.

¹² 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 par. 1)*, CRC/C/GC/14, 29 May 2013, para. 36.

¹³ 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 par. 1)*, CRC/C/GC/14, 29 May 2013, paras. 36-40.

¹⁴ *Chbihi Loudoudi and Others v. Belgium*, no. 52265/10, § 131, 16 December 2014. *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 204, 10 September 2019.

22. In regard to some family law matters, the best interests of the child shall be a “paramount consideration”, as provided for in relation to adoption (UNCRC Article 21) and international standards preceding the UNCRC:

- a. The 1959 Declaration of the Rights of the Child provides in Principle 2 that “the best interests of the child shall be the paramount consideration” in the enactment of laws securing and promoting the development and protection of children.
- b. The 1979 Convention on the Elimination of All Forms of Discrimination against Women provides for the recognition, in family education, of “the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases” (Article 5.b). With a view to eliminating discrimination against women in all matters relating to marriage and family relations, it provides for the same rights and responsibilities of men and women as parents, irrespective of their marital status, in matters relating to their children, as well as with regard to guardianship; in all cases, the interests of children shall be paramount (Article 16.d and f). The Convention on the Rights of the Child does not dilute those standards.¹⁵
- c. In its general comments, the Human Rights Committee underlined repeatedly that the interests of children are paramount in situations of parental separation.¹⁶

23. The UN Convention on the Rights of Persons with Disabilities (2006) reiterates the wording of UNCRC Article 3.1 and affords that “in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration” (Article 7.2).

24. The Committee on the Rights of the Child observes in General Comment No. 12 on the right of the child to be heard that “[m]any jurisdictions have included in their laws, with respect to the dissolution of a relationship, a provision that the judge must give paramount consideration to the “best interests of the child”.¹⁷

25. ***Governments of member States should ensure that the rights of the child are respected and safeguarded throughout the proceedings.*** The Recommendation addresses a set of rights that typically require specific attention in substantive and procedural matters relevant to proceedings within its scope: the right of the child to be heard; the right to information; the right to have the child’s best interests assessed and made a primary consideration or, where provided for by law, the paramount consideration; the right to care, appropriate direction and guidance in accordance with the evolving capacities of the child; the right to be protected from all forms of violence, exploitation and neglect; the right to maintain family relations, as well as direct and regular personal contact; the right to private and family life; the right to an adequate standard of living and

¹⁵ Council of Europe, Commissioner for Human Rights, [The principle of the best interests of the child – what it means and what it demands from adults](#), Lecture by Thomas Hammarberg, Commissioner for Human Rights, Council of Europe, Warsaw, 30 May 2008, CommDH/Speech(2008)10, p. 3.

¹⁶ International Human Rights Instruments, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, [HRI/GEN/1/Rev.8](#), 8 May 2006, p. 185, para. 6; p. 189, para. 8-9.

¹⁷ Committee on the Rights of the Child, General Comment No. 12 (2009) on the right of the child to be heard, CRC/C/GC/12, 1 July 2009, para. 51.

the right to development (*cf. section "Rights of the child, parental rights, responsibilities and duties, and State obligations*). In addition, the Recommendation focuses on the procedural rights of children where children are parties or participants in proceedings.

26. The Committee on the Rights of the Child explains in General Comment No. 14 (2013) that "[t]he concept of the child's best interests is aimed at ensuring both the full and effective enjoyment of all the rights recognised in the Convention and the holistic development of the child. (...) It recalls that there is no hierarchy of rights in the Convention; all the rights provided for therein are in the "child's best interests" and no right could be compromised by a negative interpretation of the child's best interests."¹⁸ The Committee noted further that "an adult's judgment of a child's best interests cannot override the obligation to respect all the child's rights under the Convention."¹⁹

27. Governments of member States should ensure that decisions concerning the child are implemented or enforced in an effective and timely manner, in accordance with the best interests of the child.

28. "Implementation" refers to the measures taken by state authorities, service providers or private actors to ensure administrative and judicial decisions are executed.

29. "Enforcement" means the putting into effect of judicial decisions, and also other judicial or non-judicial enforceable titles in compliance with the law, which compels the defendant to do, to refrain from doing or to pay what has been adjudged, as set out in Recommendation Rec(2003)17 of the Committee of Ministers to member States on enforcement.²⁰ Recommendation Rec(2003)17 notes that the enforcement of a court judgment is an integral part of the fundamental human right to a fair trial within a reasonable time, in accordance with Article 6 of the European Convention on Human Rights.

30. It is further recommended that governments of member States **develop and promote alternative dispute resolution processes in the context of parental separation situations, which take account of the best interests of the child**. Alternative dispute resolution processes include mediation and other appropriate services supporting parents in reaching an amicable separation agreement or settlement of any dispute. Alternative dispute resolution can take place as complementary to legal proceedings or as a private service.

31. The Recommendation recognises that member States have taken steps to secure and promote the rights and best interests of the child in the context of parental separation and recognises the diversity of national legal and judicial systems, as well as systems for social welfare, child

¹⁸ 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 par.1)*, CRC/C/GC/14, 29 May 2013, para. 4.

¹⁹ Committee on the Rights of the Child, General Comment No. 13 (2011) *on the right of the child to freedom from all forms of violence*, CRC/C/GC/13, 18 April 2011, para. 61. Committee on the Rights of the Child, General Comment No 14 (2013) *on the right of the child to have his or her best interests taken as a primary consideration*, CRC/C/GC/14, 29 May 2013, para. 4.

²⁰ Council of Europe, Recommendation [Rec\(2003\) 17](#) of the Committee of Ministers to member states on enforcement, Principle I.a. See further: Council of Europe, Recommendation [Rec\(2003\)16](#) of the Committee of Ministers to member States on the execution of administrative and judicial decisions in the field of administrative law.

protection and family support. Acknowledging national progress achieved thus far, member States are ***recommended to take or reinforce all necessary measures to ensure the full and effective implementation of the principles set out in the appendix to the Recommendation***. This may include, but is not limited to, legislative, policy and administrative measures, specific consideration to the rights and best interests of the child in the context of judicial reforms, a review of services for children and parents with a view to strengthening support in the context of parental separation, as well as budgetary appropriations.

32. ***Member States are invited to translate the text of the Recommendation, its appendix and explanatory memorandum, and disseminate them as widely as possible among all relevant actors.*** Translation and dissemination are fundamental for making the text widely available and accessible to all relevant state and non-state actors, to ensure it is known and used in service provision, proceedings, training, communication and monitoring.

33. Relevant actors include, but are not limited to, state authorities at the national, regional and local levels, the judiciary, including judges, judicial and court staff, and, where applicable, prosecutors; institutions, organisations and professionals in the field of social and family services, child protection services and childcare; lawyers, mediators and other professionals providing alternative dispute resolution services; representatives and guardians *ad litem* of children; child psychologists; health care professionals; relevant professional associations, civil society and non-governmental organisations and, where applicable, central authorities, notary and consular staff.

34. Member States should ensure that the principles set out in the Recommendation are made available to children, including children concerned by proceedings within the scope of the Recommendation and the child population more widely, in child-friendly language, through a range of child-friendly information materials and communication channels.

Drafting process

35. The Recommendation was drafted by the Committee of Experts on the rights and the best interests of the child in parental separation and in care proceedings (CJ/ENF-ISE), under the supervision of the Steering Committee for the Rights of the Child (CDENF) and the European Committee for Legal Co-operation (CDCJ).²¹

36. The Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe collaborated in the drafting process as a participant of the Committee of Experts.

37. The drafting process was informed by several steps:

- the relevant administration among member States of a questionnaire and a survey for selected practitioners to gather information on the rights and the best interests of the child in the context of parental separation in member States (2020-2021);

²¹ Council of Europe, Committee of experts on the rights and the best interests of the child in parental separation and in care proceedings ([CJ/ENF-ISE](#)).

- the development of a feasibility study on a legal instrument on the protection of the best interests of the child in situations of parental separation²² (2021);
- consultations of children in three member States (2022);
- an international conference followed by a hearing of stakeholders (representatives of international non-governmental organisations, professional associations and international networks of lawyers, family mediators and other professionals), organised under the Presidency of Ireland of the Committee of Ministers of the Council of Europe (2022).

Child consultations

38. During 2022, the Council of Europe collaborated with the Hintalovon Children's Rights Foundation (Hungary), the National Ombudsperson for Children and Adolescents (Italy) and the National Commission for the Promotion of the Rights and the Protection of Children and Young People (Portugal) to consult children on the rights and the best interests of the child in parental separation and care proceedings. In total, 59 children and young adults aged between 7 and 19 years participated in the consultations; 17 of them in Hungary and Italy, where the consultations focused on situations of parental separation. The objective was to ensure that children's views and experiences informed the drafting of the Recommendation and its appendix.

39. The consultations revealed that the participating children had never or rarely had opportunities to speak about the issues they were consulted on, even though most of them had lived through parental separation or care proceedings themselves and perceived these situations as complex, often highly emotional and sensitive.²³

40. The participating children emphasised that adults should hear and consult children on matters concerning them, without judging children or pretending to know what is best for them. They expect of adults to be reassuring and help children stay calm and cope with daily life, also in difficult and stressful situations. Ensuring well-being, stability and continuity in a child's life and relations was important to them. At the same time, when changes are unavoidable, the children would appreciate to have some time to understand, prepare and adapt to the changes.

41. They underlined the importance of an individual assessment of each case, transparency of decision-making, access to information and open dialogue. The children recognised that adults make mistakes, just as children do, and recommended that, whenever mistakes were made, a person should be open about and rectify them as far as possible.

42. The children noted that it can be difficult to concentrate in formal settings and encounters, for instance when meeting with service providers or judges. If provided with information at the moment of a hearing, a child may not be able to fully understand all the information in that moment and setting. The children recommended that there should be time to reflect on information, to look it up

²² Mole, N., Mallevaey, B., [Feasibility study of a legal instrument on the protection of the best interests of the child in situations of parental separation](#), Council of Europe, 2021.

²³ This section is based on: Council of Europe, *Committee of Experts on the Rights and the Best Interests of the Child in Parental Separation and in Care Proceedings (CJ/ENF-ISE), Summary report on child consultations*, Report prepared by Hintalovon Children's Rights Foundation, [CJ/ENF-ISE\(2022\)10](#), English, 22 September 2022.

again in written or digital materials. They would appreciate to have easy access to detailed child-friendly information, tips and ideas for coping with situations of parental separation.

43. The children recommended further that children should be able to prepare for their involvement in legal proceedings, to allow the child to understand what will happen, the own role and the level of influence he or she has on decisions, the alternatives and options available for the child and how the child's views will be used, shared and taken into consideration. They would appreciate being informed about decisions in a timely and transparent manner.

44. The participating children described their contact with the justice system and professional service providers as difficult and unpleasant. They said that it could be difficult for them to know if telling the truth was good or harmful for them, because a child may have been instructed to keep quiet or to say or not say something specific. The children underlined that they would benefit from having someone to turn to, whom they can trust and who supports them throughout the proceedings as long as they need support. They noted that a hearing should not feel like a school exam and that children do not like being judged, or feeling as if they were judged, when participating in proceedings.

45. The children expressed views on the training and qualifications of officials and professionals involved in proceedings. It was important for them that officials and professionals understand the rights and best interests of the child and promote them in their work, are skilled in child-sensitive communication and sensitised to the emotional needs of children. The children would prefer to encounter professionals whom they feel they can trust, who are calm and patient and act with respect, who listen genuinely and engage children in a dialogue. They recommended that, at the same time, professionals working with children should be fair, consistent and firm, explain rules and decisions and make sure everyone abides by them.

46. It was important for the children that the responsibility for decisions rests on adults, either the parents or a judge or other relevant professionals. They perceived parental separation as an emotional rather than a legal process and were aware that their views may not always coincide with what is in their best interests. For this reason, they did not want to be asked or pressured to choose between parents. They recognised that children's views could change over time and that, if they have views, their views should be carefully considered and given appropriate weight in the decision-making process.

APPENDIX TO RECOMMENDATION CM/REC

I. Definitions and scope

Scope

The present Recommendation applies to administrative or judicial proceedings, as well as alternative dispute resolution processes, in which parental responsibility for, custody or upbringing of, or access to, or contact with a child, is under consideration where the parents of a child are not living together or no longer wish to do so.

47. The present Recommendation applies to administrative and judicial proceedings, as well as alternative dispute resolution processes, in which decisions on parental responsibility for, custody or upbringing of, or access to, or contact with a child are made in the context of parental separation situations. Such proceedings include adversarial court proceedings, administrative proceedings aimed at checking and giving legal effect to parental agreements, as well as mediation and other alternative dispute resolution processes. The review of private agreements of parents regarding decisions identified above by administrative or judicial authorities or notary offices is considered included within the scope of this Recommendation.

48. The Recommendation aims at securing the rights and best interests of the child with continuity before, during and after parental separation. It provides recommendations and practical guidance on a) decision-making concerning children in such proceedings or processes; b) measures to support parents in providing care and direction to children in accordance with their parental rights and responsibilities in situations of parental separation; as well as c) measures ensuring the implementation and, where necessary, enforcement of decisions, as well as ancillary measures.

Definitions

a. “Alternative dispute resolution (ADR)” refers to processes whereby parties negotiate to reach an agreement, with the assistance of one or more professionals; these may take place before, during or after legal proceedings, as provided for by national law.

49. “Alternative dispute resolution (ADR)” is defined as any process whereby parties negotiate to reach an agreement with the assistance of one or more professionals, such as lawyers, mediators or other relevant professionals. ADR processes typically take place as complementary to legal proceedings and may be initiated before, during or after legal proceedings, as provided for by national law.

50. Arbitration is not considered an ADR process within the scope of this Recommendation as it is not a process of negotiation and some member States prohibit the use of arbitration in the context of parental separation in their jurisdictions.

b. “Child” means any person under the age of 18 years.

51. “Child” is defined as any person who has not yet reached the age of 18, in accordance with UNCRC Article 1. In Council of Europe member States, the usual age of majority is 18 years.²⁴

52. Irrespective of the legal age of majority, national law may give children legal capacity to take specific decisions or exercise certain rights. In Council of Europe member States, at a specific age, adolescents typically acquire legal capacity to consent to medical treatment, to live independently or to vote in municipal elections; national laws typically set out compulsory school education up to a specific age, as well as the age of sexual consent and age of criminal responsibility. Irrespective of legal age limits, the Recommendation applies to children under 18 years, as all children, without

²⁴ Council of Europe Recommendation [Rec\(2012\)2](#) on the participation of children and young people under the age of 18, p. 6.

discrimination, have the right to a best interests determination in decisions and actions concerning them.

c. “Contact” refers to stays of limited duration, meetings and communication in any form with the child by a person when the child is not living with that person.

53. The Recommendation defines “*contact*” in accordance with the Council of Europe Convention on contact concerning children (ETS 192) of 2003 (Article 2.a) as:

- a. the child staying for a limited period of time with or meeting a parent or other person with whom the child has strong relations and with whom he or she is not usually living;
- b. any form of communication between the child and such person;
- c. the provision of information to such a person about the child or to the child about such a person.

54. Definitions of contact in member States’ national law differ in wording and scope: as some jurisdictions refer to “access” or “custody” rather than “contact”, there is currently no unified terminology regarding contact. As noted by the feasibility study preparing the drafting of this Recommendation, the term “custody” tends to lose relevance as a concept in parental separation as it “... emphasises that the parent with “custody” is the holder of rights over the child. More modern thinking makes reference to concepts such as parental responsibility, residence, “child arrangements”, contact, or access ... and thus has moved ... towards seeing the situation from the child’s perspective. ... the term “custody” is generally understood in the context of decisions relating to the determination of the residence of the child but it may include much wider and further reaching rights.”²⁵

55. For the purpose of this Recommendation, the right to contact concerns contact for a limited period of time between the child and parents or other persons, such as siblings, including step and half-siblings, grandparents or other members of the extended family. It does not refer to regular direct and personal relations of child and parents in situations of co-parenting with shared parental responsibility.

56. Recommendation CM/Rec(2015)4 of the Committee of Ministers to member States on preventing and resolving disputes on child relocation defines contact as “stays of limited duration, meetings, communication in any form and the provision of information”.²⁶ It explains further that “[r]elocation of the child will primarily affect the child’s personal, direct, or face-to-face contact. Direct contact will invariably include spending time together inside or outside the home with the other parent or other holder of parental responsibilities, as well as, in most cases, staying over for short periods of time in their home. There are also other forms of less direct contact which are nonetheless important for the child. These include written correspondence, telephone and internet

²⁵ Mole, N., Mallevaey, B., [Feasibility study of a legal instrument on the protection of the best interests of the child in situations of parental separation](#), Council of Europe, 2021, para. 198.

²⁶ Recommendation [CM/Rec\(2015\)4](#) of the Committee of Ministers to member States on preventing and resolving disputes on child relocation, 11 February 2015, Definitions, d.

communications, as well as the provision of information (photographs, school reports, medical reports, etc.)”.²⁷

57. Whereas the right to contact comprises a right to information about the person, some jurisdictions provide for the possibility to grant a right to information independently of any right to contact.

d. “Competent authority” refers to a judicial or administrative body that is competent to make a legally binding decision about the arrangements concerning a child involved in parental separation proceedings.

58. “Competent authority” refers to state authorities, such as courts of law and other judicial or administrative bodies, which are competent to make a legally binding decision about the arrangements concerning a child involved in parental separation proceedings. In this context, decision refers not only to decisions on the merits but also other decisions made in the case, such as decisions on the review of a specific arrangement or giving legal effect to a private decision or agreement reached by the parents.

e. “High conflict case” means a case in which one or both parents are unable or unwilling to put aside their sharp differences and to focus on the best interests of the child for the purpose of reaching a separation settlement or agreement; such cases are generally characterised by one or more of the following:

- **high levels of hostility, antagonism and distrust between the parents;**
- **continuous communication difficulties and repeated litigation;**
- **non-cooperation between parents, in particular in the implementation of a settlement or agreement reached or a decision made concerning parental responsibility for, custody or upbringing of, or access to or contact with the child.**

59. “High conflict case” refers to cases of parental separation, in which one or both parents are unable or unwilling to put aside their sharp differences, to focus on the best interests of the child or to fulfil their parental responsibilities towards the child for the purpose of reaching a separation settlement or agreement, even in cases where parents receive assistance and support in doing so.

60. High conflict cases typically show one or more of the following characteristics:

- a high level of hostility, antagonism and distrust between the parents,
- continuous communication difficulties and repeated litigation,
- absent or insufficient cooperation between the parents, in particular with regard to the implementation of an agreement or settlement reached or a decision made by a competent authority concerning parental responsibility for, custody or upbringing of, or access to or contact with the child.

²⁷ Recommendation [CM/Rec\(2015\)4](#) of the Committee of Ministers to member States on preventing and resolving disputes on child relocation – Explanatory Memorandum, 11 February 2015, para 12.

61. High conflict cases may be tried in court or in mediation or other ADR processes. Repeated litigation refers to litigation within the scope of this Recommendation and to situations where mediation or other ADR processes are repeated or a case is taken back to court due to insufficient adherence and implementation by one or both parents with the relevant agreement or decision. It does not refer to situations where a parent addresses the court again after some time because the child has developed and his or her situation has changed, and these changes require adaptation of the court decision or mediated agreement.

- f. **“Parents” refers to the persons who are considered to be the parents of the child under national law.**
- g. **“Parental responsibility” refers to the set of duties and rights which aim to promote and safeguard the rights and welfare of the child in accordance with the child’s evolving capacities, as provided for by national law.**
- h. **“Other holder of parental responsibility” refers to the person(s), institution or other body having parental responsibilities in addition to or instead of the parent of the child.**

62. The Recommendation refers to “*parents*” as the persons who are considered to be a child’s parents under member States’ national law. It recognises that “parent” could refer to the child’s biological, legal or social parents where national legislation recognises their role.

63. A parent is typically also holder of parental responsibility, but there are situations where the two functions may not coincide: for instance, the parental responsibility of a parent may have been limited by a court decision in the context of care proceedings; a biological parent who was not registered as parent at the child’s birth may wish to initiate proceedings to become a holder of parental responsibility; in some jurisdictions, national law provides for the possibility of a cohabiting partner of a parent to become a holder of parental responsibility. Other holders of parental responsibility are persons, institutions or other bodies to whom a competent authority, by means of an administrative or judicial decision, assigned parental responsibility in addition to or instead of the child’s parent.

64. As a legal term, “parental responsibility” is distinct from “custody” in a range of member States’ jurisdictions and can overlap in others. In cases where one parent has sole custody of the child, the other, non-custodial parent typically continues to hold some parental rights and responsibilities even though the child does not reside with the parent.²⁸

- i. **“Siblings” includes half-siblings and stepsiblings.**

65. Sibling refers to the child’s brothers and sisters, as well as any half-siblings and stepsiblings.

²⁸ Mole, N., Mallevaey, B., [Feasibility study of a legal instrument on the protection of the best interests of the child in situations of parental separation](#), Council of Europe, 2021, para. 194.

II. Overarching principles

66. The overarching principles reiterate human rights standards as set out under international and Council of Europe law and policy. They provide an overarching framework to guide the implementation and interpretation of the Recommendation and the principles contained in its Appendix, in substantive and procedural matters.

Best interests of the child

A. The best interests of the child should be a primary consideration or, where required by law, the paramount consideration, when securing agreement and resolving disputes in parental separation proceedings and alternative dispute resolution processes.

67. In accordance with UNCRC Article 3.1., all administrative and judicial proceedings and ADR processes within the scope of the Recommendation should secure the right of the child to have his or her best interests assessed and made a primary consideration. The best interests of the child should be a primary consideration substantively and procedurally, in accordance with the overarching principles set out in international and Council of Europe standards and the Council of Europe Guidelines on child-friendly justice.

Right to be heard/to participate

B. The child should have the right to be informed and consulted, and to express his or her views. Due weight should be given to the child's views in accordance with his or her age and maturity.

68. In accordance with UNCRC Article 12 and the Council of Europe Guidelines on child-friendly justice, the child has the right to be heard in all matters affecting the child and his or her views should be given due weight, in accordance with the age and maturity of the child. The right to be heard applies to the private and family context, the child's contact with service providers, as well as in the context of administrative and judicial proceedings and ADR processes. (*cf. sections on best interests assessment; procedural safeguards*)

Rule of law

C. Due process standards should apply to the child in the same way as to adults; these standards should be applied in a child-sensitive and age-appropriate way and not be denied or diluted under the pretext of the child's best interests.

69. The Council of Europe Guidelines on child-friendly justice set out the overarching principles of access to justice and rule of law specifically for children: "Elements of due process such as the principles of legality and proportionality, the presumption of innocence, the right to a fair trial, the right to legal advice, the right to access to courts and the right to appeal, should be guaranteed for children as they are for adults and should not be minimised or denied under the pretext of the child's

best interests. This applies to all judicial and non-judicial and administrative proceedings.”²⁹ The Guidelines guide member States in ensuring legal proceedings involving children respect and secure the rights of children while being sensitive to the needs and any vulnerabilities of the individual child.

70. States should ensure all children enjoy the full and unconditional right of access to justice. The right to access justice is a fundamental right, as afforded by ECHR Article 13. The child’s access to justice is regulated by national law and applies in whatever situations a child feels that his or her rights have been infringed or violated or inappropriately addressed.³⁰ The substantive and procedural law should be clear, coherent and enforceable so as to enable families to resolve issues arising in the context of parental separation.

71. Access to justice, which is typically understood as the right to have a case heard in a court of law, can be achieved also through alternative measures to judicial proceedings, such as mediation and other forms of ADR, or restorative justice, whenever these may best serve the child’s best interests. Whether any alternatives to judicial proceedings are to be pursued in a specific case, and the most appropriate alternatives to be chosen, should be determined in accordance with the best interests of the child. Recourse to alternative measures should not be used as an obstacle to the child’s access to courts.³¹

72. Children should be promptly and adequately informed about their right to access justice and to have recourse to administrative or judicial proceedings or other relevant measures to secure respect for their rights and best interests. (*cf. section on right to information*)

73. It is the State’s obligation to remove any obstacles to children’s access to justice. Obstacles could be posed by a lack of awareness of, or information on, rights and how to access justice, high administrative hurdles or costs related to accessing justice, and limited access to support, such as legal aid.³²

74. The European Court of Human Rights underlines that the principle of access to justice and rule of law apply to children and parents involved in proceedings.³³

75. In some member States, access to justice could also be supported by national human rights structures such as Ombudspersons for children, national human rights institutions, or comparable independent institutions.

Dignity

D. Every child should be treated with sensitivity and respect at all times; special attention should be given to the child’s level of maturity, personal situation and specific needs.

²⁹ Council of Europe, [Guidelines](#) of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010, III.E.2.

³⁰ *Ibid*, III.E; B; D.

³¹ *Ibid*, IV.B.24

³² *Ibid*, IV.B.24

³³ *Haddad v. Spain*, no. 16572/17, § 72, 18 June 2019. *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 207, 10 September 2019.

76. Respect for the inviolability of the child's inherent dignity is a fundamental human right and principle of child-friendly justice.³⁴ It applies in all phases before, during and after legal proceedings and ADR processes.

77. Officials and professionals involved in proceedings and ADR processes within the scope of this Recommendation should treat children with care, sensitivity and respect, and with due regard for their well-being, their physical and psychological integrity, and taking into consideration any specific needs or vulnerabilities of the individual child. In the case assessment phase, the needs of the child, including specific needs, as well as any vulnerabilities, should be identified to enable a treatment in full respect of the child's dignity and effective preventive and response services and measures. (*cf. section on best interests assessment*)

78. When implementing measures, which are to be taken in the best interests of the child, or enforcing decisions, States should ensure respect for the inviolability of human dignity and the child's personal freedom. As spelt out in para. 54 above, decisions and measures involving and affecting children should always be implemented or enforced in a child-friendly manner that respects the dignity and situation of vulnerability of the child; in addition, they should comply with international standards, national law, and the principle of proportionality.

Timeliness

E. Proceedings in which a child is involved should be initiated, concluded and followed-up in a timely manner and should be treated with exceptional diligence. Delays in proceedings are generally not in the best interests of the child and may indeed be prejudicial to the child.

79. Proceedings in which children are involved should be prioritised and considered as urgent and completed in the shortest time possible, while respecting the rule of law.³⁵ Where the judicial systems of member States provide for specialised family courts trying exclusively civil law proceedings involving children, the principle of prioritisation may be considered implicit within the specialised jurisdiction. The principles of timeliness and exceptional diligence apply, however, irrespective of any specialisation of jurisdiction.

80. Timeliness and exceptional diligence are overarching principles in each phase of proceedings involving children and in all phases of a best interests determination: case assessment, decision-making, including any interim and emergency decisions, follow-up and implementation, as well as, where appropriate, review and evaluation.

81. The European Court of Human Rights recognises that any procedural delay will result in the *de facto* determination of the issue submitted to the court, in some cases even before the court has held its hearing. Effective respect for family life requires that future relations between the parent and

³⁴ Council of Europe, [Guidelines](#) of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010, III.C.

³⁵ *Ibid.*, IV.D.4.

child be determined solely in the light of all relevant considerations and not by the mere effluxion of time.³⁶

82. A child's situation is dynamic and in constant evolution due to the child's development and evolving capacities. In legal proceedings, these dynamics should be reflected by the *rebus sic stantibus* nature of decisions concerning children, which may need to be reviewed and adapted even within a short period of time, including in the phase of implementation or enforcement of decisions. (cf. sections on emergency and interim measures; implementation and enforcement)

83. Timeliness is relevant for children of all ages and may require specific considerations for very young and young children, as well as for adolescents. Decision-makers should consider how a decision could benefit the child in the specific situation of the moment and in the medium and longer term and consider the child's perception of time. Timely decision-making, implementation and follow-up are essential also to prevent family disputes and conflicts from continuing or escalating over time and, in consequence, to prevent or reduce harm inflicted on the child.

84. In some circumstances, delays may occur due to the need of gathering information, considering this may be lengthy especially where more than one jurisdiction is involved, in terms of the involvement of different state and administrative authorities in decentralised or federal states or in cross-border cases. To prevent or reduce such delays to the minimum, States should develop effective mechanisms for cooperation and communication that facilitate all necessary steps of case assessment, decision-making and, where applicable, implementation or enforcement.

Non-discrimination

F. The rights of the child should be secured, and the child's needs should be met without discrimination on any grounds.

85. The rights of the child should be secured without discrimination on any grounds such as sex, gender identity, sexual orientation, [race,] colour, age, language, religion, political or other opinion, national or social origin, association with a national minority, property, disability, birth, immigration or other status of the child, the child's parents or holders of parental responsibilities, or other relevant family members.³⁷

86. UNCRC Article 2.2 obliges States to take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

87. In addition to effective legal protection against discrimination, State authorities should safeguard the right to non-discrimination through proactive and preventive measures to ensure equality of care, equal opportunities and the social and economic inclusion of particularly

³⁶ *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 211-212, 10 September 2019.

³⁷ United Nations Convention on the Rights of the Child, Article 2. European Convention on Human Rights, Article 14 and Protocol No. 12 to the European Convention on Human Rights. European Court of Human Rights, *Guide on Article 14 of the European Convention on Human Rights and on Article 1 of Protocol No. 12 to the Convention, Prohibition of discrimination*, Updated on 31 August 2022.

marginalised individuals and groups. Specific support and protection may need to be provided to children and parents in vulnerable situations, such as children or parents struggling with health or mental health issues, physical, mental or intellectual disabilities or chronic illness, substance abuse, belonging to minority groups, living in institutions, victims of violence or exploitation, migrant, refugee and asylum-seeking persons, homeless persons and persons living or working on the streets, as well as children or parents in conflict with the law. An effective prevention of and response to discrimination requires in addition specific attention to intersectional discrimination.

88. The Human Rights Committee emphasised the equal rights of parents and the principle of non-discrimination in the context of parental separation, while the Committee on the Elimination of Discrimination against Women underlined that equal rights apply irrespective of whether parents are married: “During marriage, the spouses should have equal rights and responsibilities in the family. This equality extends to all matters arising from their relationship, such as choice of residence, running of the household, education of the children and administration of assets. Such equality continues to be applicable to arrangements regarding legal separation or dissolution of the marriage. Thus, any discriminatory treatment in regard to the grounds and procedures for separation or divorce, child custody, maintenance or alimony, visiting rights or the loss or recovery of parental authority must be prohibited (...).”³⁸

Right to respect for private and family life

G. States should ensure the right to respect for the private and family life of children, parents and other holders of parental responsibility, as well as other family members.

89. States should guarantee the respect for private and family life of children, parents and other holders of parental responsibility, as well as other family members concerned by proceedings and measures within the scope of this Recommendation, in accordance with Article 8 ECHR. (*cf. section on data protection*)

90. The right to respect for private and family life is an element of child-friendly justice and a fundamental right of the child and applies before, during and after administrative and judicial proceedings or ADR processes. Effective respect for this right is essential for protecting the child’s dignity.³⁹

³⁸ International Human Rights Instruments, Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies, [HRI/GEN/1/Rev.8](#), 8 May 2006, p. 189, para. 8-9; p. 312, para. 19.

³⁹ UN Convention on the Rights of the Child, Article 16. European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 6. Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108). Council of Europe, Convention for the protection of individuals with regard to the processing of personal data, Convention 108 +, 2018. Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, p. 22, 82. Committee on the Rights of the Child, General Comment No. 24 (2019) on children’s rights in the child justice system, 18 September 2019, [CRC/C/GC/24](#), par. 66-71.

III. Child's best interests' assessment

1. The best interests of the child should be regarded as a primary consideration or, where required by law, as the paramount consideration.
2. To assess the best interests of a child, consideration should be given to the circumstances of the case and all factors relevant to securing the rights of the child and meeting his or her needs. These may include, but are not limited to:
 - a) the child's age, level of maturity and evolving capacities;
 - b) the child's views where he or she has chosen to express them or, for a child who is unable to form or express her or his own views, the child's perspective;
 - c) the appropriate preservation of the child's family and social environment;
 - d) the willingness and ability of each parent, without discrimination on any ground, to care for and meet the needs of the child, including a parent's willingness to allow meaningful personal relations of the child with the other parent or other persons who are significant to the child;
 - e) the history of the child's upbringing and care;
 - f) the protection of the child from physical or psychological harm, or from being subject to, or exposed to abuse, neglect or violence as a direct victim or witness;
 - g) any situation of vulnerability or risk as well as sources of protection and support;
 - h) the child's developmental, health and education needs;
 - i) the child's culture and identity;
 - j) the child's usual day-to-day activities and hobbies.

91. The UNCRC sets out that “[i]n 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” (Article 3.1). As a general principle of the UNCRC, Article 3.1 sets out a legally binding framework for all decisions concerning children taken by state authorities in the judiciary, administration and legislative, as well as state and private institutions providing services for children and families.⁴⁰ As a fundamental principle of child-friendly justice⁴¹, the best interests of the child is a guiding principle of family law proceedings in Council of Europe member States.

92. The best interests of the child should guide decisions and actions also of third parties under the UNCRC: Article 18.1 provides that the best interests of the child will be the basic concern of parents and legal guardians who have the primary responsibility for the upbringing and development of a child.

93. In view of the significance of the best interests of the child as a general principle applicable in the public and private sphere, the best interests should be adequately assessed in parental separation situations and proceedings.

⁴⁰ 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 (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5, 27 November 2003, para. 12.

⁴¹ Committee of Ministers Guidelines on child-friendly justice (2010), III.B.

94. Principles concerning the best interests assessment are common to all decision-making processes within the scope of the Recommendation, irrespective of whether the assessment is undertaken by a competent authority, such as a court of law or administrative body or service provider, or private actors, such as parents.

95. The overall objective of the assessment is to obtain a thorough, accurate and comprehensive understanding of the child's situation as basis for decision-making to ensure the full and effective enjoyment of all the rights of the individual child, as set out in the ECHR and UNCRC, and the holistic development of the child, in view of guidance provided by the Committee on the Rights of the Child.⁴² (*cf. section Recommendations*)

96. The rights of the child, as afforded under the European Convention on Human Rights and the UN Convention on the Rights of the Child, their respective additional protocols, and other international and Council of Europe standards, provide the overarching framework for the assessment. The rights of the child are universal and apply to all children; they are connected to States' obligations and can be claimed and enforced.

97. As opposed to rights, the child's needs comprise not only universal needs of all children, but also individual and specific needs. Children may require different levels of support, including special individualised support, to be able to enjoy their rights on equal terms. The best interests assessment aims at identifying the child's needs as a basis for the provision of services and measures necessary to secure the rights of the individual child without discrimination. In order to respond to the child's needs and secure his or her rights, the best interests assessment therefore is always an individual assessment with due consideration to the circumstances of the case, the child's age, level of maturity and evolving capacities and all relevant factors.

98. In the context of administrative and judicial proceedings, the best interests assessment has not only a substantive but also a procedural dimension. The European Court for Human Rights observed that, as a general rule, national courts are held to assess the evidence before them, including the means to ascertain the relevant facts. Recognising the primordial interest of the child in the decision-making process, the Court noted however also that national authorities have to undertake a thorough examination of the family situation and perform a genuine balancing exercise between the interests of the child and the family. To enable this balancing exercise, the case assessment has to take into account a range of factors, including factual, emotional, psychological, material and medical factors. The Court underlined the importance of assessing a case with diligence taking into account the dynamics of the situation and new evidence that may become available during the proceedings.⁴³ (*cf. principle of timeliness and exceptional diligence, as well as section on the review of the decision*) The assessment of the facts and evidence in the specific case constitutes the basis on which the national court makes a decision, giving sufficient reason for its decision.⁴⁴

⁴² 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 par.1), CRC/C/GC/14, 29 May 2013, para. 4.

⁴³ *Haddad v. Spain*, no. 16572/17, § 61, § 63, 18 June 2019. *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 213, § 220, § 224, 10 September 2019.

⁴⁴ *B.B. and F.B. v. Germany*, nos. 18734/09 and 9424/11, 14 March 2013.

99. In General Comment No. 14, the Committee on the Rights of the Child sets out a list of non-exhaustive and non-hierarchical factors to guide the best interests assessment.⁴⁵ Several member States have set out a list of factors in national law to the effect that the consideration of these factors becomes legally binding upon decision-makers.⁴⁶ Research has shown that legally binding criteria for the best interests assessment sensitise decision-makers to the complexity of the assessment and link the assessment with specific rights of the child, while reducing the level of discretion in decision-making on the best interests of the child.⁴⁷

100. The Recommendation lists relevant factors to be considered in the best interests assessment, which reflect the rights of the child as afforded by the UNCRC. The list of factors is not considered exhaustive, it is not a static list of factors, and not imposing any hierarchy or ranking of rights in terms of importance. The relevance of factors may vary in accordance with the circumstances of the case.

101. Several of the factors to be assessed reflect the understanding that obligations of the State and the responsibilities and duties of parents and other third parties under the UNCRC are closely connected.⁴⁸ (*cf. section rights of the child, parental responsibilities and duties and State obligations*)

102. The best interests assessment should take account the **child's age, level of maturity and evolving capacities**, recognising that physical, emotional, cognitive and social needs evolve as the child grows up. In accordance with UNCRC Article 5, the best interests assessment should establish the facts relevant for securing parental rights, duties and responsibilities to provide appropriate direction and guidance in accordance with the child's evolving capacities of autonomous thinking and acting, of discernment and decision-making, while ensuring that the child is able to form and maintain appropriate emotional bonds with each parent. Consideration for the child's age and an assessment of the child's level of maturity and evolving capacities are of transversal importance; consideration for these factors will influence the assessment of other relevant factors and allow for an appropriate participation of the child in the determination of his or her best interests and in the relevant proceedings or processes. (*cf. section on right to be heard*)

103. Every child who is capable of forming his or her own views has the **right to express those views freely** and that his or her views are heard and given due weight, in accordance with UNCRC Article 12 and the Council of Europe Guidelines on child-friendly justice. This factor reflects the concept of children's agency without imposing on children an obligation or power to decide or undermining parental responsibilities and duties to offer appropriate care and protection, guidance

⁴⁵ 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), [CRC/C/GC/14](#), 2013, Chapter IV.B, V.A.1 and par. 44. See further: Council of Europe, [The Best Interests of the Child, A dialogue between theory and practice](#), 2016, p. 149.

⁴⁶ See for instance: Austria, General Civil Code, Paragraph 138. Finland, Child Welfare Act (417/2007), Chapter 1, Section 4(2). Ireland, Child and Family Relationships Act 2015, Article, Child Care (Amendment Act) 2022. Romania, Law no. 272/2004 regarding the protection and promotion of the rights of the child. Spain, Law on the Legal Protection of Minors of 1996, Article 2.

⁴⁷ Skivenes, Marit and Line Marie Sørdsdal, [The Child's Best Interest Principle across Child Protection Jurisdictions, Human Rights in Child Protection](#), 2018, pp. 59-88.

⁴⁸ Newell, P., Hodgkin, R. *Implementation Handbook for the United Nations Convention on the Rights of the Child, Revised third edition*, UNICEF, 2007, pp. 40-41

and direction to the child, in accordance with UNCRC Article 5: “For the best interests of the child to be determined, it is important that the child himself or herself be heard. With increased age and maturity, the child should be able to influence and decide more. ... This approach does not necessarily mean that the child can take complete responsibility for the decision. The spirit of Article 12 is rather to ensure consultation and growing participation than to relinquish all power to the child.”⁴⁹ (*cf. section right to be heard*)

104. Officials and professionals hearing children involved in proceedings and processes within the scope of this Recommendation should be able to avail themselves of appropriate tools to guide any conversation with the child. Appropriate tools should be sensitive to the needs of children at different ages and levels of maturity, as well as the specific needs and vulnerabilities of individual children, for instance of children with disabilities, children who are victims of violence or exploitation, children who require interpretation or cultural mediation. Parents may require support in hearing the views of their child and giving the child’s views due weight in their decisions and actions.

105. Where national law makes the right of the child to be heard conditional on the child’s capacity of discernment, officials and professionals should be able to avail themselves of appropriate tools and methods to assess the child’s capacity of discernment. Such tools should be based on evidence on child development and should be periodically reviewed and updated. (*cf. section on right to be heard*)

106. As part of the best interests assessment, a social inquiry and family assessment should be undertaken to assess the **appropriate preservation of the child’s family and social environment** and, in particular, the benefit to the child of being able to maintain meaningful relationships with each parent, siblings (including half and step siblings (see definition i)), other family members and with other persons significant to the child, such as friends and peers. What makes a relation meaningful, and the amount of time a child should be able to spend with each parent or other relevant person to enable a meaningful relation, should be decided taking into consideration the circumstances of the case and the best interests of the child. In view of the child’s right to maintain regular, direct contact and family relations, the assessment should aim also at identifying any obstacles to meaningful relationships, including practical, logistical and financial obstacles, and assess possibilities for removing such obstacles as far as possible.

107. A parental capability assessment will reveal the **willingness and ability of each parent to care for and meet the needs of the child**, including a parent’s willingness to allow meaningful contact or relations of the child with the other parent or other persons who are significant to the child. The assessment should enable decision-makers to devise appropriate support services to strengthen the capability of parents to care for and meet the needs of the child, wherever possible in accordance with the best interests of the child. It should further help to assess the capability and willingness of parents to share responsibility for the child in a co-parenting arrangement and assist in the identification of any attempts to unduly influence the child’s relation with the other parent and any loyalty conflicts of the child resulting from such attempts.

⁴⁹ Council of Europe, Commissioner for Human Rights, [The principle of the best interests of the child – what it means and what it demands from adults](#), Lecture by Thomas Hammarberg, Commissioner for Human Rights, Council of Europe, Warsaw, 30 May 2008, CommDH/Speech(2008)10, p. 5. See further: Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, para. 22-25.

108. The willingness and ability of each parent to care for and meet the needs of the child should be assessed ***without discrimination on any grounds*** and with due consideration to the obligations of the State under the UNCRC to support parents in their childcare and child rearing roles in accordance with their individual and specific needs. (*cf. principle of non-discrimination, section on the rights of the child, parental rights, responsibilities and duties and State obligations*).

109. Special consideration for grounds of discrimination, as well as proactive measures to prevent discrimination against a parent, may need to be considered in relation to parents having a chronic illness or disability, including cognitive impairments; parents who are non-nationals, with or without a regulated immigration status, or stateless persons; parents belonging to minority groups, including due to their religion or the colour of their skin; parents affected by poverty; or parents at risk of discrimination due to their sexual or gender identity or sexual orientation.

110. The assessment of the ***history of the child's upbringing and care*** should aim at understanding the story of the child and the family relevant for the decision-making. Understanding the child's and the family's story may be essential for the identification of any needs, including specific needs, or any vulnerabilities rooted in the past, any aspects or events of the past that continue nurturing a family conflict, a history of violence or neglect of a child or of violence by or against a parent, as well as relations with persons who have been important for the child, possible support persons and sources of protection that have been relevant to the child and the family and should be maintained or (re-)activated to provide support during the separation process and beyond.

111. The assessment of the history of a child's upbringing and care may bring to light to what extent the needs and rights of the child, as well as rights and responsibilities of each parent, have been met and respected in the past. While ensuring continuity of care and stability for the child is an important principle⁵⁰, this principle applies to situations that have been assessed to be in compliance with the rights and best interests of the child. It should not be a pretext for upholding or prolonging situations created by the mere effluxion of time and where a child is deprived of a right or a child's need remains unmet, for instance where a very young child has been deprived of the opportunity to develop emotional bonds with both parents. The assessment, therefore, should aim at identifying any measures suitable for ensuring continuity and stability, as well as rectifying any situations, in accordance with the rights and the best interests of the child.

112. The best interests assessment should further aim at identifying the level of ***protection and safety of the child***, as well as any incidents or risks of violence against the child, or another family member, with a view to ensuring a non-violent upbringing and effective child protection, in accordance with UNCRC Article 19. Violence perpetrated in the family, including corporal punishment, domestic and gender-based violence, or sexual violence, is harmful for children in the moment it happens and in the medium and longer term, and damages the child's health, well-being and development. Wherever acts or risks of violence are identified, referrals to child protection services and reports to law enforcement services should be ensured in accordance with national

⁵⁰ 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), [CRC/C/GC/14](#), 2013, para. 84.

law, regardless of whether violence is directed against the child or another family member. The same applies to any identified risks to the safety and well-being of the child.⁵¹

113. The Committee on the Rights of the Child defines ‘corporal’ or ‘physical’ punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.”⁵²

114. Corporal punishment has been evidenced to cause direct and indirect physical harm, impaired cognitive ability and reduced achievements in education, mental health problems such as depression, anxiety, hopelessness, post-traumatic stress symptoms and self-harming behaviour. It nurtures aggressions, substance abuse and can lead to violent behaviour or involvement in crime, which could persist into adulthood.⁵³ Since the Committee recognises corporal punishment as a cruel or degrading form of punishment of children, its prohibition falls within the scope of UNCRC Article 37.a.⁵⁴ The ECtHR found in numerous occasions that corporal punishment of children in the home or in school was a form of degrading punishment in violation of Article 3 ECHR.⁵⁵

115. The Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) defines domestic violence as “all acts of physical, sexual, psychological or economic violence that occur within the family or domestic unit or between former or current spouses or partners, whether or not the perpetrator shares or has shared the same residence with the victim” (Article 3.b). In situations of domestic violence, children are considered

⁵¹ Reference to Council of Europe Committee of Ministers Recommendation on reporting mechanisms concerning violence against children (*to be adopted in 2023*).

⁵² Committee on the Rights of the Child, General Comment No. 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), [CRC/C/GC/8](#), 2 March 2007, para. 11.

⁵³ End Violence Against Children, End Corporal Punishment, [Corporal punishment of children: summary of research on its impact and associations](#), 2021, pp. 2-5. Gershoff, Elizabeth Thompson, Corporal Punishment by Parents and Associated Child Behaviours and Experiences: A meta-analytic and theoretical review, Columbia University, *Psychological Bulletin*, Vol. 128, No. 4, pp. 539–579. Committee on the Rights of the Child, General Comment No. 13 (2011), The right of the child to freedom from all forms of violence, [CRC/C/GC/13](#), 18 April 2011.

⁵⁴ Committee on the Rights of the Child, General Comment No. 8 (2006), The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), [CRC/C/GC/8](#), 2 March 2007, para. 12.

⁵⁵ *Tyrer v. the United Kingdom*, 25 April 1978, Series A no. 26. *Campbell and Cosans v. the United Kingdom*, 25 February 1982, Series A no. 48. *Y v. the United Kingdom*, 29 October 1992, Series A no. 247-A. *Costello Roberts v. the United Kingdom*, 25 March 1993, Series A no. 247-C. *A v. the United Kingdom*, 23 September 1998, *Reports of Judgments and Decisions* 1998-VI.

victims of violence irrespective of whether the violent act is directed against the child or the child witnesses such violence between the parents or other family members.⁵⁶

116. Domestic violence and corporal punishment of children are often closely linked. Research shows that the harmful impact is more severe where children have a double exposure as victims of corporal punishment and witnessing violence between the parents or against siblings. Children who experience such a double exposure to violence in the home have also a higher risk of exposure to violence outside the family, for instance by peers or at school.⁵⁷

117. The **vulnerability assessment** of a child and parents should aim at identifying and assessing risks, barriers or threats to the child and parents. It should further identify and assess possible sources of support, protection and resilience suitable to redress and remediate identified risks and prevent or reduce harm to the child. Support and protection can be activated from public or private actors and, where appropriate, within the child's family, social support networks and community-based service providers. Where a competent authority is in charge of the assessment, any risks identified in the course of the assessment, as well as a mapping of available support and protection services, should be part of the documentation provided to decision-makers in the case.

118. UNCRC Article 6 provides for the right of the child to life, survival and development and is considered a general principle of the Convention.⁵⁸ The Committee on the Rights of the Child understands development as a "holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development".⁵⁹

119. A child's **developmental needs** depend on the child's age and level of maturity, the child's situation and any specific needs or vulnerabilities, and are in constant evolution as the child grows up and develops skills and capacities and interacts with his or her physical and social environment. They differ for new-born and very young children⁶⁰, adolescents⁶¹ and children transiting to adulthood and independent life. The Committee on the Rights of the Child therefore refers to the best interests as a "dynamic concept that requires an assessment appropriate to the specific context".⁶² (*cf. sections on timeliness and periodic review of decisions*).

⁵⁶ Council of Europe, [Domestic violence](#). Council of Europe, *Council of Europe Convention on preventing and combating violence against women and domestic violence*, [Children's rights](#).

⁵⁷ End Violence Against Children, End Corporal Punishment, [Corporal punishment of children: summary of research on its impact and associations](#), 2021, pp. 6-7. Gershoff, Elizabeth Thompson, Corporal Punishment by Parents and Associated Child Behaviours and Experiences: A meta-analytic and theoretical review, Columbia University, *Psychological Bulletin*, Vol. 128, No. 4, pp. 539–579.

⁵⁸ 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 (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5, 27 November 2003, para. 12.

⁵⁹ 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, par.1), CRC/C/GC/14, 29 May 2013, footnote page 2.

⁶⁰ Committee on the Rights of the Child, General Comment No. 7 (2005), Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006.

⁶¹ Committee on the Rights of the Child, General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016.

⁶² 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, par.1), CRC/C/GC/14, 29 May 2013, para. 1.

120. Every child enjoys the right to the highest attainable standard of health (UNCRC Article 24). The World Health Organisation defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.⁶³ The **assessment of the child’s health** aims at identifying the child’s needs – including general and specific needs – to ensure the child’s health and well-being, health care and medical treatment, including with regard to nutrition, hygiene and sanitation, preventive health care, dental care, sexual-reproductive health care, mental health care, as well as needs of psychological, emotional or psycho-social support.

121. The child’s **education** should be assessed with a view to ensuring full and effective access to quality early childhood, primary and higher education, vocational training, non-formal or informal education in accordance with the rights of the child to education and the aims of education as afforded under UNCRC Articles 28 and 29 and taking into consideration any special needs or vulnerabilities of the individual child.⁶⁴

122. UNCRC Article 8 sets out the right of the child to identity. Assessment of the **child’s needs to preserve the own culture and identity** includes consideration for the child’s name, nationality, national and cultural origin, language, religion and spirituality. Children belonging to minority groups, migrant or refugee children, stateless children, and children of migrant or stateless parents, may have special needs with regard to culture and identity.

123. Decisions on the best interests of the child should take into consideration **the child’s usual day-to-day activities and hobbies**, such as leisure time and recreational activities, arts and sports. These activities, therefore, should be assessed. UNCRC Article 31 obliges States to respect and promote the right of the child to rest and leisure, and to participate fully and with equal opportunities in cultural and artistic life, as well as play and recreational activities appropriate to the age of the child.⁶⁵ Enabling the child to continue such activities before, during and after parental separation is important for the continuity and stability in the child’s life.

3. The content and weight of each factor varies in each specific case and circumstances. If the assessment of the factors taken into account in a case leads to conflicting conclusions, they should be balanced against each other, with due consideration also of any possible short term, medium- and long-term consequences for the child.

124. The assessment should establish all factors relevant to enable decision-makers to predict the impact of a decision on the child in the immediate, medium and longer term and, subsequently, to assess and evaluate the actual impact of the decision on the child. Where a competent authority makes the decision, the assessment should be carried out with exceptional diligence and, as far as possible, provide accurate and reliable information, facts and evidence in the case, which have been verified. Documentation of the assessment findings is important to establish baseline data for the impact evaluation following the decision in the short-, medium- and longer term. (*on non-exhaustive*,

⁶³ World Health Organisation, [Constitution of the World Health Organisation](#), 1946, Preamble.

⁶⁴ Committee on the Rights of the Child, General Comment No. 1 (2001), The aims of education, CRC/GC/2001/1, 17 April 2001.

⁶⁵ Committee on the Rights of the Child, General Comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), CRC/C/GC/17, 17 April 2013.

non-hierarchical list of factors and individual assessment in accordance with the UNCRC, cf. paras. 91-96 above)

125. The Committee on the Rights of the Child advises that the “elements in the best-interests assessment may be in conflict when considering a specific case and its circumstances. (...) In such situations, the elements will have to be weighed against each other in order to find the solution that is in the best interests of the child or children. In weighing the various elements, one needs to bear in mind that the purpose of assessing and determining the best interests of the child is to ensure the full and effective enjoyment of the rights recognised in the Convention and its Optional Protocols, and the holistic development of the child.”⁶⁶

4. The young age of a child should not be a decisive factor depriving the child of the rights to establish and maintain contact with his or her parent.

5. In parental separation proceedings involving a parent or a child with a disability, appropriate arrangements should be in place to enable a meaningful participation of the parent or the child.

126. In accordance with the principles and guidelines set out in this Recommendation and its Appendix, and General Comment No. 14 of the Committee on the Rights of the Child, the best interests assessment should be conducted as an individualised procedure in each case without exception to prevent that any generalised presumptions about children or parents predetermine decisions in the case.

127. In the case of young and very young children, age should not be the only factor determining decisions about the right of the child to establish and maintain personal relations and direct contact with both parents. The rights and needs of the child in relation to his or her age should be duly assessed and considered alongside all other relevant factors in the case.

128. Where a parent or a child is affected by a disability or chronic illness, appropriate arrangements should be in place to enable their effective and meaningful participation in the proceedings or process. Such arrangements may include facilitated physical access and transportation, interpretation, making relevant documents available in easy language, specially trained (legal) representatives, mediators and other relevant professionals, and other appropriate assistance. The specific needs of a parent or child should be assessed by qualified professionals in each case.

6. In awarding custody and contact rights, the competent authority should give effect to the child’s right and the principle that a child should have as much direct contact with each parent as is consistent with his or her best interests. Sufficient time should be allocated to enable the child to maintain and develop a meaningful relationship with each parent, in accordance with the best interests of the child.

⁶⁶ Committee on the Rights of the Child, General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, 29 May 2013, paras. 81-82.

129. In all situations of parental separation, the right of the child to maintain personal relations and direct contact with both parents on a regular basis should be considered a principle to be afforded specific attention when awarding custody and contact rights in accordance with the best interests of the child. In some cases, this may require consideration for the right and need of the child to be able to develop a meaningful relationship with each parent, for instance in cases of young and very young children. Where a parent or a child has specific needs related to disability, vulnerability or any other factor, or where the family members are separated across a long distance, careful consideration should be given to the identification of any obstacles to contact and relations and remedying measures, as far as possible. The amount of time and the modalities of contact and relation between the child and each parent should be determined in each case on the basis of the best interests assessment.

7. Where unrestricted contact is not in the best interests of the child, the possibility of supervised contact or other forms of contact with the parent concerned should be considered. The possibility that, in some cases, no contact might be in the best interests of the child should also be recognised.

130. The best interests assessment should aim at identifying cases where unrestricted contact between a parent and a child is not in the best interests of the child, and where supervised contact, or no contact, is in the best interests of the child. Where it is not in the best interests of a child to maintain unsupervised contact with a parent, for instance in the case of allegations or suspicions that a parent may constitute a risk to the child, or where there are other serious doubts about the quality of the relation between a parent and a child, or where a parent requires support due to illness or disability, the possibility of assisted or supervised contact with the parent should be considered, as appropriate in the circumstances of the case. To enable this, member States should ensure that appropriate services are available and accessible to children and parents, taking into account their circumstances, needs and any vulnerabilities. Providers of supervised contact should effectively remove any obstacles to the access and use of these services, for instance by providing for interpretation services or appropriate transportation for parents and children. Where appropriate, the observations made during supervised contact sessions should be taken into consideration for the best interests assessment. (*cf. Chapter IV, Before proceedings*)

8. In proceedings in which more than one child is affected, or likely to be affected, the best interests of each child should be assessed individually.

131. In proceedings in which more than one child is affected, or likely to be affected, the best interests of each child should be assessed individually, in accordance with the Guidelines on child-friendly justice.⁶⁷ This may be the case where a child has siblings, including step or half siblings, within the same family, irrespective of whether the children are cohabiting or not. (*cf. section on the right of the child to be heard in cases where more than one child is involved*)

9. Competent authorities, where justified in the circumstances of the case, should have the possibility of activating relevant services and expertise to assess the needs of the child, as well as the level of conflict between the parents, using a multidisciplinary approach.

⁶⁷ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, III.B.3.

132. Where a competent authority makes a decision on the best interests of a child, the situation of the child and his or her family should be assessed by a multidisciplinary team of well-trained professionals with appropriate judicial involvement.⁶⁸

133. States should ensure that competent authorities have the possibility to avail themselves of relevant services and expertise in assessing the best interests of the child. In particular in high conflict cases, as well as in cases where the competent authority identifies a need of the child or of one or both parents to receive multi-professional support, the competent authority should be able to activate coordinated multidisciplinary and interagency services for this purpose.

134. To this end, member States should ensure child-centred interagency and multi-disciplinary cooperation and service models are in place to carry out best interests assessments and, where applicable, follow-up evaluation and review, which are appropriate to the circumstances of cases under private law, such as case conferences, Family Justice Centres or Barnahus.

135. The operation of appropriate multidisciplinary and interagency service methods, models or centres should be established by law or policy or institutionalised through cooperation protocols or other appropriate agreements to regulate the cooperation of competent authorities and relevant professionals involved in assessing the best interests of the child and providing services in situations of parental separation.

IV. Right to be heard

10. The child should be provided with a genuine and effective opportunity to express his or her views, either directly or otherwise, and be supported in doing so through a range of child-friendly mechanisms or procedures. The child's level of understanding and ability to communicate, as well as the circumstances of the case should be taken into account.

136. The provision on the rights to be heard applies to all administrative or judicial proceedings and ADR processes within the scope of this Recommendation. UNCRC Article 12 provides that the child who is capable of forming his or her own views has 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. In administrative and judicial proceedings, as well as in ADR processes falling under the scope of this Recommendation the child should be provided the opportunity to be heard, either directly, or through a representative or an appropriate body. (*cf. overarching principle on the right to be heard*)

137. According to the case-law of the European Court of Human Rights, whilst ECHR Article 8 contains no explicit procedural requirements, the child must be sufficiently involved in the decision-making related to his or her family and private life. The Court observed that, in any judicial or administrative proceedings affecting children's rights under Article 8, it cannot be said that the children capable of forming their own views were sufficiently involved in the decision-making process

⁶⁸ Committee on the Rights of the Child, General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, 29 May 2013, para. 64. Council of Europe, [Guidelines](#) of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010, IV.5.

if they were not provided with the opportunity to be heard and thus express their views. For children of a certain age, therefore, the Court favours the national judge hearing them in person in any proceedings affecting their rights under Article 8.⁶⁹

138. The general principles set out originally in *Sahin v. Germany*, have been developed to provide the child with the right to be consulted and heard in order to protect his or her best interests.⁷⁰ Depending on the age and maturity of the child concerned, interviews by experts and subsequent reports for the judges referred to in the judicial decisions could be considered appropriate to secure the right of the child to be heard. As children mature and become, with the passage of time, able to formulate their own opinion on their contact with the parents, the courts should give due weight also to their views and feelings, as well as to their right to respect for their private life.⁷¹

11. It should be presumed that a child is capable of forming his or her views. Where age limits below which a child is not considered to have sufficient level of understanding to express his or her views exist in legislation, such age limits should be subject to periodic review.

12. Where a child needs assistance or is unable to express his or her views due to age or capability, the child's perspective on relevant matters should, where relevant, be ascertained and conveyed by a specially appointed and skilled representative or professional.

13. Due weight should be given to the child's views or, where appropriate, perspectives in accordance with his or her age and level of maturity.

139. The Committee on the Rights of the Child notes that research demonstrates that “children’s levels of understanding are not uniformly linked to their biological age.”⁷² In General Comment No. 12 on the right of the child to be heard, the Committee on the Rights of the Child “... discourages States parties from introducing age limits either in law or in practice, which would restrict the child’s right to be heard in all matters affecting him or her”.⁷³ The Committee advises States parties to recognise the right of the child to express his or her views on the basis of a general presumption that children are capable of forming their own views.

140. The Council of Europe Guidelines on child-friendly justice promote the understanding that it is generally in the best interests of the child to be heard in administrative and judicial proceedings

⁶⁹ *M. and M. v. Croatia*, no. 10161/13, § 181, ECHR 2015 (extracts), *C v. Croatia*, no. 80117/17, § 78, 8 October 2020, and for the relevant international instruments, *M.K. v. Greece*, no. 51312/16, §§ 91-92, 1 February 2018 and *C v. Croatia*, cited above, § 76.

⁷⁰ *Sahin v. Germany* [GC], no. 30943/96, § 70 and 72, ECHR 2003-VIII; *Sommerfeld v. Germany* [GC], no. 31871/96, ECHR 2003 VIII (extracts).

⁷¹ *N.Ts. and Others v. Georgia*, no. 71776/12, § 72, 2 February 2016 with reference to the relevant international instruments.

⁷² Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, para. 29.

⁷³ Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009, para. 21.

concerning the child.⁷⁴ The Council of Europe Recommendation on the participation of children and young people under the age of 18 underlines that the right of children to be heard applies without discrimination on any grounds and there is no age limit on the right of the child to express her or his views freely.⁷⁵ At the same time, participating in proceedings and processes within the scope of this Recommendation and expressing their own views on relevant matters is a right and not a duty of the child.⁷⁶ Relevant matters refers to all possible matters at stake in proceedings and processes within the scope of this Recommendation.

141. Where a child is unable to form or express views, or needs assistance in doing so, for instance due to young age or limited capacity, the child should be heard through an independent, trained professional where this is assessed to be in the best interests of the child. Such professionals include, for instance, specifically trained judges, social workers, child psychologists or forensic interviewers specifically trained in interviewing and hearing the views of children in the context of legal proceedings.

142. States should adopt specific measures to guarantee the equal exercise of the right to be heard of very young children and children with specific needs. The Council of Europe Recommendation on the participation of children and young people under the age of 18 underlines that particular efforts should be made to enable participation of children and young people with fewer opportunities, including those who are vulnerable or affected by discrimination, including multiple discrimination”.⁷⁷

143. The Committee on the Rights of the Child notes that “[t]he fact that the child is very young or in a vulnerable situation (e.g., has a disability, belongs to a minority group, is a migrant, etc.) does not deprive him or her of the right to express his or her views, nor reduces the weight given to the child’s views in determining his or her best interests. The adoption of specific measures to guarantee the exercise of equal rights for children in such situations must be subject to an individual assessment which assures a role to the children themselves in the decision-making process, and the provision of reasonable accommodation and support, where necessary, to ensure their full participation in the assessment of their best interests.”⁷⁸

144. With regard to adolescence, the Committee recommends that States should “introduce measures to guarantee adolescents the right to express views on all matters of concern to them, in accordance with their age and maturity, and ensure they are given due weight, for example, in

⁷⁴ Council of Europe, *Guidelines on Child-friendly Justice*, 2010. Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 1 July 2009.

⁷⁵ Council of Europe Recommendation [Rec\(2012\)2](#) on the participation of children and young people under the age of 18, p. 6.

⁷⁶ Council of Europe, *Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice*, 2010, IV.D.3.46.

⁷⁷ Council of Europe Recommendation [Rec\(2012\)2](#) on the participation of children and young people under the age of 18, p. 6.

⁷⁸ Committee on the Rights of the Child, General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14, 29 May 2013, para. 54.

decisions relating to their education, health, sexuality, family life and judicial and administrative proceedings".⁷⁹

145. Where national law requires that the capacity of discernment of children under a certain age is to be assessed to determine whether the child should be heard in person, the assessment of the child's capacity of discernment should be documented and the outcome should be communicated to the child and parent, other holder of parental responsibility or guardian and, where applicable, the child's legal representative. (*cf. section on best interests assessment*)

14. It should be made clear to the child that his or her opinion will be an important factor in the decision-making process but that it will not necessarily determine the decision of the competent authority; the competent authority will take the opinion into account, together with other relevant factors, for the purpose of determining his or her best interests. The child cannot be considered responsible for the competent authority's decision.

146. To be able to form the own views and to make a decision on whether or not to exercise the right to be heard, the child needs access to child-friendly information. It should be made clear to the child and parents that while the child's views are an important factor that will be given due weight in the decision-making, the child's views are not the only factor to be taken into account and he or she will not be responsible for the final decision or for the weight assigned to the child's views in the final decision. (*cf. section on right to information*)

147. The ECtHR observed that the views of children are not necessarily immutable, and their objections, which must be given due weight, are not necessarily sufficient to override the parents' interests, especially in having regular contact with their child. No unconditional veto power should be given to children without any other factors being considered and an examination being carried out to determine their best interests.⁸⁰

148. Where a child is heard in proceedings or processes within the scope of this Recommendation, the person hearing the child should inform the child that he or she will not be asked to make any choices or decisions and explain to the child,

- a. how his or her views will be heard, documented and, where applicable, shared or communicated to the parties in the proceedings or to any other actors;
- b. how the child's views will be taken into account and given due weight; and
- c. how the best interests of the child will be a primary consideration in the decision-making process.

15. Where proceedings concern more than one child, each of them should be provided with the opportunity to express his or her views separately.

⁷⁹ Committee on the Rights of the Child, General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016, para. 23.

⁸⁰ *Zelikhha Magomadova v. Russia*, no. 58724/14, §116, 8 October 2019; see also *Cința v. Romania*, no. 3891/19, § 115, 18 February 2020.

149. Where more than one child are concerned by proceedings, for instance in the case of siblings, including half- or steps-siblings, and the children express the wish to be heard together, their wish can be accommodated by arranging for their hearing at the same place and time. The hearing may be structured into a joint hearing of the siblings and separate, individual hearings of each child. Competent officials and professionals should make the relevant arrangements to ensure that each child has a genuine and effective opportunity to form his or her opinion and express the own views and is heard also individually, in accordance with the individual needs of each child.

16. The child's views may be ascertained in various ways, such as:

- a) through the child being interviewed by the judge subject to appropriate safeguards;**
- b) through an interview report prepared by a trained professional (social worker or psychologist) appointed by a competent authority.**

17. The mechanism or procedure to be used in any particular case should take account of the circumstances of the case, the child's age and level of understanding, as well as his or her ability to communicate; where considered appropriate, the child should be consulted on the manner in which he or she wishes to be heard. In cases involving older children, it may be appropriate to hear the child directly.

18. In order to avoid undue stress and discomfort, the hearing of a child's views should take place in a child-friendly environment.

150. The ECtHR observed that, in view of children's evolving capacities and specific circumstances of cases before national courts, States should ensure that different mechanisms are in place to hear children in legal proceedings. National courts ought to seek expert opinions on whether it is possible, given the younger children's age and maturity, to interview them in court, if needs be with the assistance of a specialist in child psychology.⁸¹ The ECtHR observed further that, taking into account the margin of appreciation enjoyed by the domestic authorities, who are better placed than the Court, the domestic courts could reasonably consider that it was not appropriate, given the expert advice, for them to hear the child in person.⁸²

151. Research has evidenced that children are able to give accurate accounts of their experiences and views beginning from an early age, even though the child's capability to narrate in free recall and to resist suggestive questions evolves significantly with age. The ability of children to make accurate and reliable statements in legal proceedings depends on several factors: a) a child-friendly environment for the interview or hearing; b) support services for the child before, during and after the hearing, in accordance with the child's needs and best interests; and, particularly, c) the interviewer's ability to elicit information and the child's willingness and ability to disclose it. Research in this field has identified some fundamental principles and rules that professionals should observe to positively influence the child's willingness and ability to express their views. These principles and rules form the basis of evidence-based interviewing protocols, which guide the interviewer step-by-

⁸¹ *Ibid*, §116; see also *Cîrîța v. Romania*, no. 3891/19, §§ 53-54, 18 February 2020.

⁸² *R.M. v. Latvia*, no. 53487/13, § 117, 9 December 2021

step through the interview and help creating supportive conditions for the child to speak out and express the own views.⁸³

152. A child-friendly environment for the hearing of a child is ensured where children are heard in specific facilities or institutions for children, such as Barnahus, Family Justice Centres, or other multidisciplinary and interagency service centres for children in contact with the justice system. Where a judge hears a child in court, special attention for making the place more child-friendly may include hearing the child in camera, providing seating arrangements without tables and the judge should not wear a robe. Even minor adjustments to the room can help reducing feelings of intimidation or anxiety, particularly of younger children. Providing a child-friendly environment requires also considerations of how the child reaches the place of the hearing and spends time in any waiting areas.

153. Where a child is unable to form or express views, for instance due to very young age or disability, the professional who conveys the child's perspective to the decision makers should be independent from the parties to the proceedings and have no vested interests. In private law proceedings, the professional should be independent from both parents. They should further be independent from professionals providing services to the child or parents, such as social or child protection services, care or education. Where the professional hearing the child is employed by a competent authority, it should be ensured that, when delivering an expert opinion on the child's perspective, the professional is only bound by his or her professional standards and prepares the opinion in accordance with the rights and the best interests of the child.

154. States should ensure that professionals who hear children in the context of administrative or judicial proceedings are specifically trained and qualified for this purpose. In particular, they should be trained in child-sensitive and age-appropriate communication, sensitive to children's behaviour and expression.

155. Officials and professionals hearing children in the context of proceedings should be able to avail themselves of appropriate tools and methods for hearing the child in a manner appropriate to the child's age and level of maturity and the circumstances of the case, as well as any specific needs or vulnerabilities a child may have. They should be trained and supervised in the use of such tools and methods. (*cf. section on best interests assessment*)

156. Where appropriate, the child should be consulted on the way in which he or she would like to be heard. Where a child refuses to be heard, for instance in cases where a child refuses to be heard in court or to be heard directly by a judge or other competent authority, the competent authority should seek to identify the reasons for the child's refusal and make appropriate adjustments to the manner in which the child will be heard, including the provision of appropriate support and assistance, in accordance with the best interests of the child.

⁸³ Lamb, Michael E., Orbach, Y., Hershkowitz, I., Esplin, P.W., Horowitz, D., Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol, <https://www.ncbi.nlm.nih.gov/entrez/eutils/elink.fcgi?dbfrom=pubmed&retmode=ref&cmd=prlinks&id=18023872>.

157. Subject to appropriate safeguards and qualification of the person hearing the child and depending on the age and level of maturity of the child, it may be appropriate to consult privately with the child. In cross-border situations or long distance within a country, the use of video-conferencing tools or other appropriate solutions to hear the child should be explored and appropriately regulated, with all due safeguards.

19. Adequate safeguards should be in place to ensure as far as possible that the child is able to express himself or herself freely and that any expressed views are not the result of undue influence or duress.

158. Adequate safeguards refer to measures suitable to ensure the child's safety and well-being while enabling his or her genuine and effective participation in proceedings and processes within the scope of this Recommendation, in accordance with the child's age and evolving capacities and level of maturity and with due regard to any specific needs and individual vulnerabilities. This includes measures to inform the child (*cf. section on right to information*), to prepare the child for any hearing and ensure appropriate follow-up support after the hearing. Safeguards may require considerations for providing a child-friendly environment for the hearing of the child, including safe access to the place of hearing and any waiting areas, the accompaniment by a person of trust to support the child, the appointment of a guardian *ad litem* or other representative (*cf. section on right to assistance and to legal counsel and representation*), as well as the use of appropriate methods and tools for hearing the child or ascertaining his or her perspective. Safeguards should always be guided by the rights and the needs of the child, in accordance with the best interests of the child, and be proportionate in the circumstances of the case.

159. Safeguards should be in place to ensure, as far as possible, that any expressed views are those of the child and are not the result of undue influence or duress. The ECtHR held that, should a court base a decision on the views of children who are palpably unable to form and articulate an opinion as to their wishes – for example, because of a loyalty conflict and/or their exposure to the alienating behaviour of one parent – such a decision could run contrary to Article 8.⁸⁴

160. The Committee on the Rights of the Child advises in General Comment No. 12 that “freely” means that the child a) can express the own views without pressure and can choose whether or not he or she wants to exercise the right to be heard; b) should not be manipulated or subjected to undue influence or pressure; and c) has the right to express her or his own views and not the views of others. It means further that States should ensure “conditions for expressing views that account for the child's individual and social situation and an environment in which the child feels respected and secure when freely expressing her or his opinions.”⁸⁵

20. A child should never be subject to cross examination on the content of his or her views.

161. States should ensure that the child who is heard in proceedings within the scope of this Recommendation is not subject to cross-examination on the content of his or her views. To this end,

⁸⁴ *K.B. and Others v. Croatia*, no. 36216/13, § 143, 14 March 2017.

⁸⁵ Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 20 July 2009, para. 22-23.

the measures and safeguards referred to in para. 147-154 above should be effectively in place to support the child in forming their own views, expressing them freely and making an accurate and reliable statement on their views.

21. Repeated hearing of the child should be avoided wherever possible, except where it is in the child's best interests.

162. The number of interviews and hearings of children should be reduced to a minimum. Where more than one hearing is necessary, they should be carried out by the same person to ensure a coherent approach. Children should have the possibility to choose the gender of the person conducting the interview and, where applicable, any participating support staff such as interpreters or cultural mediators. The length of the hearing should be adapted to the child's age and attention span and the timing should take into account the needs of the child.⁸⁶ A repeated hearing may be in the best interests of the child when the child requests it to convey new information or where the child's views have changed significantly since a first hearing, for instance because of the evolving situation of the child, changed circumstances or new developments in the case.

22. For reasons of procedural fairness, a summary report of any views expressed by the child should be brought to the attention of the parties by all appropriate means to protect the child.

163. In parental separation proceedings, the competent authority should be free to exercise discretion in deciding how to refer to the child's views in the decision, in accordance with the circumstances of the case and the best interests of the child. To this end, a summary report of the child hearing should be shared with the parents and their respective lawyers, rather than a detailed report, minutes of the hearing or a transcription. Child safeguarding considerations and the protection of the child against any form of harm are a key concern in this phase of the proceedings. In exercising this level of discretion, the competent authority should prevent that the child experiences any form of reprimands, harassment or secondary victimisation or any other adverse consequences, due to the nature of his or her views expressed in the hearing.

164. In preparation for the hearing of the child, and at the moment of the hearing, the child should be duly informed about the way he or she will be heard and how the views of the child will be conveyed to the parents and if or how they will be shared with other persons, authorities or service providers in accordance with national law.

165. The competent authority should be able to activate appropriate support services for the child and the parents in accordance with their needs to support them during the proceedings, and the child hearing specifically, and to prevent harm. These may include parental support programmes, assistance for parents in communicating with their child about separation, guidance for parents on how to hear and take into account the views of the child and informing the child whom to turn to in case of need. The competent authority should further inform the parents on how to prepare and

⁸⁶ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, IV.D.6. para. 66, 67. Committee on the Rights of the Child, General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, 20 July 2009, para. 24.

support the child's participation in the proceedings or process without exerting any pressure on the child with regard to his or her statement, and how to handle the content of the child's statement.

V. **Right to information and assistance**

Right to information

23. States should ensure that child-friendly information services are in place to inform the child, in particular on:

- a) the reasons of the proceedings;**
- b) his or her role in the proceedings;**
- c) the stages and the likely duration of the proceedings;**
- d) the mechanisms or institutions as well as procedural adjustments available to support the child during and after the proceedings;**
- e) where relevant, on access to appeals, including any applicable time limits, and independent complaints mechanisms.**

166. States should ensure that information services are in place to provide child-friendly information to children involved in or affected by proceedings and ADR processes within the scope of this Recommendation, collectively and individually. The child should be effectively informed on all matters relevant to enable his or her genuine and effective participation, such as:

- (a) the reasons of the proceedings or ADR process;
- (b) the child's role during different phases of the proceedings or process, including
 - i. the rights of the child in the proceedings or ADR process and the rights and responsibilities of parents;
 - ii. the role of different actors involved and how they relate to the child, including any competent authorities and professionals;
 - iii. any decisions concerning the hearing of the child, such as the means by which a child is heard, the date, time and location of the hearing, the person hearing the child, as well as any decision not to hear the child where this is assessed to be in the child's best interests and the relevant motivations for such decisions;
- (c) the stages and likely duration of the proceedings or ADR process, including the outcomes of the proceedings or ADR process, the reasons for decisions made or agreements reached and, where applicable, the different forms of follow-up services and alternatives available to the child;
- (d) the mechanisms, institutions or services available to support the child during the proceedings or ADR process, including any possible adjustments available to facilitate and support the child's participation;
- (e) where, under national law, a child has the right to appeal decisions, the child should receive information on access to appeals, including any applicable time limits and how to access them, as well as any available complaints mechanisms, including independent complaints mechanisms, and how to access them.

167. Child-friendly information refers to information that is provided in a manner adapted to the child's age and maturity, in a language which the child can understand and which is gender and

culture sensitive.⁸⁷ When communicating child-friendly information, officials and professionals should give due consideration to the specific needs of the child, for instance with regard to any disability or trauma, and ensure the child understands the information.

168. Child-friendly information materials should be available and accessible to children, parents, service providers and state officials involved in proceedings or ADR processes. Children should be supported in accessing child-friendly information from a range of sources, be given time to reflect on information they have been provided, look it up again and ask questions.

169. States should ensure that parents and other holders of parental responsibilities receive support in providing information to their child, in accordance with the specific needs of the child and of the parents or other holders of parental responsibilities.

170. Information services should ascertain that the child, as well as the child's parents or other holders of parental responsibilities and, where applicable, guardian *ad litem* and legal representative, are promptly and adequately informed with continuity throughout the proceedings.

171. In addition to the provision of information to individual children affected by proceedings, children should collectively have access to child-friendly material informing them about situations of parental separation, including legal, social and psychological aspects, as well as emotions and behaviours that are considered normal in such situations and where to turn to for support.

172. In Germany, the International Social Service has developed an information website for parents and children affected by parental separation, relocation or international child abduction, with support by the Federal Ministry of Family Affairs, Senior Citizens, Women and Youth.⁸⁸ The website is part of a centralised contact point for cross-border parental disputes over childcare and mediation, providing information and advice for parents and children and referring them to relevant local support services. The website offers separate access points for parents, younger children and adolescents, with age-appropriate language. Children can access information about what it means to be in a situation of parental separation, relocation or international abduction. The website provides information in child-friendly language and explains important terms, such as the Youth Office (local child protection services), the mediator, counselling services, family court, lawyer and guardian *ad litem*.

Right to assistance and to legal counsel and representation

24. States should ensure that the child has the right to receive independent support and legal advice and, where appropriate, to have access to legal representation separate from the parties throughout the proceedings, in accordance with the Guidelines of the Committee of Ministers of the Council of Europe on Child-Friendly Justice. .

173. States should ensure that the child has access to independent support and legal advice and, where appropriate, legal representation separate from the (other) parties. Such support should be

⁸⁷ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, IV.A.1.2.

⁸⁸ ZAnk – Zentrale Anlaufstelle für grenzüberschreitende Kindschaftskonflikte und Mediation [Zank – Central contact point for cross-border parental disputes over childcare and mediation], <https://kinder.zank.de/>.

provided throughout all phases of proceedings and ADR processes.⁸⁹ Support may include legal advice and counselling, psycho-social and emotional support, in accordance with the rights and needs of the child.

174. Where national law of member States provides that a child is a party to parental separation proceedings, or a participant, the child should have access to appropriate procedural rights and safeguards in accordance with his or her status and role in the proceedings. The Council of Europe Guidelines on child-friendly justice apply to all situations where children are concerned by proceedings and ADR processes within the scope of this Recommendation.

175. In *A and B v. Croatia* case,⁹⁰ the judges Koskelo, Eicke and Ilievski held, in their concurring opinion, that where “in any proceedings involving children their best interest [*sic*] should be a primary consideration, the absence of separate representation of the child (and its best interest) makes it extremely difficult if not impossible for this Court to ascertain in any meaningful way what the best interests of the child, in fact, are or were. In highly stressful situations such as e.g., a family break-up it would certainly not be right for this Court to assume that the parent(s) can or should always be the final arbiter of what is in the child’s best interest; a conflict of interest will frequently arise.”

25. The child should have the right to be assisted by a person who is able to advise and support the child to facilitate his or her comprehension of the legal process, to provide reliable and relevant information, to ascertain the child’s wish to exercise his or her right to be heard, to accompany him or her, during the hearing and, where relevant, during the appeal proceedings. The child should be able to contact this person at any time for information and advice.

176. The children and young people consulted in the course of the drafting process of this Recommendation, advised that children involved in parental separation proceedings benefit from the support of a person of trust suitable to advise and support the child throughout all phases of parental separation proceedings. In particular, the person of trust should be available and accessible to the child at all times to help the child to access and understand relevant information and comprehend the legal process. The person of trust should be available and prepared to accompany the child to any hearings in the proceedings, and to provide emotional support.

177. A person of trust may be provided by appropriate service providers, such as social services, child protection services, psycho-social support or independent advocacy services for children in contact with the justice system, or community-based services. In addition, a person from within the child’s private support network whom the child trusts should be able to provide this service. A person of trust should not be a party or participant to the proceedings and should not have any vested interests in the case.

⁸⁹ Council of Europe, [Guidelines](#) of the Committee of Ministers of the Council of Europe on child-friendly justice, 2010, IV.D.2.

⁹⁰ *A and B v. Croatia*, no. 7144/15, §18, 20 June 2019. See further, in a different context, *Charles Gard and Others v. the United Kingdom*, no. 39793/17, § 67, 27 June 2017.

26. Where the protection of the best interests of the child requires it, a special guardian *ad litem* or a separate legal representative should be appointed as early as possible to represent the child.

178. In accordance with the Council of Europe Guidelines on child-friendly justice, the competent authority should appoint either a guardian *ad litem* or another independent representative to represent the views and interests of the child in legal proceedings where there are conflicting interests between parents and children.⁹¹

179. The ECtHR found that in cases where there are conflicting interests between parents and children, for instance when the applicant is the child of divorced parents in a dispute over custody, the issue of the appointment of a special guardian *ad litem* in respect of the applicant to protect his or her interests may arise.⁹²

180. The appointment of a guardian *ad litem* may be considered necessary to uphold the procedural rights of young children affected by legal proceedings: The ECtHR expressed itself as satisfied that the procedural requirements implicit in Article 8 of the Convention were complied with in a case where the Court refused to hear young children and appoint them a special guardian instead of social services who represented them in the proceedings.⁹³

27. Access to an effective, sustainable and reliable legal aid scheme should be available for the child and parents. Where relevant, access to a free legal aid scheme should be available for the child involved under more lenient conditions than those applicable to adults.

181. States should ensure that an effective, sustainable and reliable legal aid scheme is available and accessible to children and parents concerned by proceedings and ADR processes within the scope of this Recommendation. Where relevant, access to free legal aid schemes should be available to the child under more lenient conditions than those applicable to adults. The Guidelines on child-friendly justice explain that the recommendation to provide children with access to free legal aid should not necessarily require a completely separate system of legal aid: “It might be provided in the same way as legal aid for adults, or under more lenient conditions, and be dependent on the financial means of the holder of the parental responsibility or the child him- or herself. In any case, the legal aid system has to be effective in practice.”⁹⁴

Complaints mechanism

28. An independent and effective non-judicial complaints mechanism should be accessible to the child regarding the way in which his or her rights, including the right to be heard, have been applied in the proceedings.

⁹¹ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, IV.D.2.42.

⁹² *C. v. Croatia*, cited above, §§ 76-77, § 80.

⁹³ *Q and R v. Slovenia*, no. 19938/20, 8 February 2022.

⁹⁴ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, IV.C.2.38 and p. 77.

182. An independent and effective non-judicial complaints mechanism should be available and accessible to the child and his or her parents or other holders of parental responsibility, guardian *ad litem* or legal representative, to report infringements against the rights of the child or to complain about misconduct of service providers and professionals working with the child in the context of the proceedings, such as social workers, child psychologists, professional interviewers, interpreters and cultural mediators, educational or medical staff, guardians, professional caretakers, lawyers and legal representatives, law enforcement services and other relevant professionals. Children should be effectively informed on how to access the complaints mechanism.⁹⁵

VI. Course of parental separation proceedings and alternative dispute resolution processes

Before proceedings

29. Specialised services should be in place to inform and support parents in exercising their responsibilities towards the child before, during and after parental separation proceedings and help them to reach an amicable agreement in the best interests of the child. Competent authorities should be empowered to require parental use of such services as a term of the separation agreement.

183. States should ensure that a range of universal, selective and indicated services are in place, which are specialised on parental separation situations, to strengthen and stabilise families, support positive parenting and secure the best interests of the child with continuity before, during and after parental separation and relevant proceedings. Parents and children should have easy access to such services at low threshold, in communities and in the digital environment, and should be systematically informed about available services and how to access them:

- a) *Universal services and programmes* targeting all families with children in the population are particularly useful for broad-based prevention, support and empowerment of children, parents and families. Universal services should facilitate contact between families and service providers in an inclusive and non-stigmatising way. They should enable the early identification of needs for more specific support and appropriate referral. Many universal services are community-based, such as family centres, which provide a diversity of services under one roof, or health-focused, such as home visits by midwives to new parents, regular health checks for very young children, or school-based, such as social workers, child psychologists or nurses operating in schools. In addition, education and awareness raising campaigns are useful to sensitise and inform the population.
- b) *Selective services or programmes* are targeting children, parents and families who have been identified to have a specific need or risk, for instance due to illness, poverty, disability, low parental capacity or substance abuse. Selective services or programmes include, for instance, individual and group education programmes for positive parenting reaching out to parents in a separation process or, more specifically, to parents affected by specific or multi-dimensional problems, or family group conferences for families with a high level of conflict. Selective services cover a broad range of services for primary or secondary prevention.

⁹⁵ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, III.E.3.

- c) *Indicated services or programmes* are targeting children, parents and families who are considered to belong to particular vulnerable groups and those who have experienced violence.⁹⁶ Indicated services include different forms of therapy and treatment and aim at ending violence in the family and achieving tertiary prevention.

184. The Council of Europe Committee of Ministers Recommendation Rec(2006)19 on policy to support positive parenting defines “parenting” as all the roles falling to parents in order to care for and bring up children; parenting is centred on parent-children interaction and entails rights and duties for the child’s development and self-fulfilment. “Positive parenting” refers to parental behaviour based on the best interests of the child that is nurturing, empowering, non-violent and provides recognition and guidance which involves setting of boundaries to enable the full development of the child.⁹⁷

185. Parenting programmes should be provided for parents of children in different age groups and children with specific needs and vulnerabilities, and take into account the needs of parents, including specifically with regard to separation related disputes. Parenting programmes should be based on the rights and best interests of the child, informed by research and evidence and adopt a multi-disciplinary approach. They should enable parents to strengthen their capacities for positive, non-violent child rearing.⁹⁸

186. States should enable and facilitate the effective access to services of parents and children, including through the provision of information for parents and child-friendly information. Parents involved in parental separation proceedings should receive information on the needs of the child in situations of parental separation and in the context of proceedings, as well as support to enable them to use this information in the best interests of the child. For parents living separately, specialised services should be in place to support them in exercising their responsibilities towards the child. In the case of high conflict, reinforced and multi-disciplinary family support should be provided in a coordinated manner.

187. A range of advisory and support services should be in place to support separating parents in reaching and implementing an amicable agreement on separation-related matters, such as family therapy, as well as mediation and other ADR processes (*cf. section on preventive and alternative dispute resolution*). Relevant service providers should be equipped with specific service models and methods to support and strengthen children, parents and families with continuity before, during and after parental separation, and should be trained and supervised in their application. Service models and methods should be based on evidence and knowledge and a child rights-based approach.

188. Competent authorities should be empowered to require parents to use services that are relevant and appropriate in the case, in accordance with the best interests of the child. The provision

⁹⁶ Council of the Baltic Sea States, *Parenting for non-violent childhoods, Positive parenting to achieve an end to corporal punishment*, 2018. pp. 11-12.

⁹⁷ Council of Europe Committee of Ministers Recommendation Rec(2006)19 on policy to support positive parenting, para. 1.

⁹⁸ Council of the Baltic Sea States, [Parenting for non-violent childhoods](#), *Positive parenting to achieve and end to corporal punishment*, 2018.

of mandatory services should be motivated by the findings of the best interests assessment. It should be regulated and subject to periodic review.

189. States should ensure that children have the right to contact service providers on their own initiative and that they are fully and effectively informed about this opportunity and can exercise their right in practice, at low threshold.

190. States are encouraged to invest in the progressive development and rollout of digital services for children, parents and families and to increase the reach and use of these services by children and parents, including children and parents with specific needs and in situations of vulnerability, and those belonging to minority groups.

191. Member States should ensure that sufficient human and material resources are allocated to the family justice system and systems for social welfare, family support, childcare and protection. Specific attention should be paid to preventive actions and early interventions. These allocations should be maintained or increased, if necessary, also during economic crisis. Resources should be channelled and monitored to ensure effective support for children and families and to support multidisciplinary methods and models for multi-professional cooperation.

In court

30. Competent authorities, where justified in the circumstances of the case, should have the possibility of activating relevant services and expertise to assess the best interests of the child and identify the most appropriate tailored intervention with families.

192. Competent authorities should have the possibility of activating relevant services and expertise to assess the best interests of the child. This may be justified in high conflict cases or in other cases where the competent authority holds reasonable doubts about the willingness and ability of one or both parents to assess the best interests of the child and give it due consideration in their agreement or decisions. Relevant services or expertise for the best interests assessment may further be required where children or parents have specific needs or vulnerabilities, or where the competent authority considers the information provided by parents on the best interests of the child as incomplete or incorrect.

193. Relevant services may include, but are not limited to, social and child protection services, medical and health care services, including child psychiatrists, forensic interviewers or other forensic specialists, child psychologists, or cultural mediation services. Where a competent authority activates these or other relevant services for the best interests assessment, they should collaborate in conducting a multi-disciplinary assessment. Service providers should provide transparent documentation of the assessment and findings, an assessment of the possible positive and negative impact of specific decisions on the child in the immediate, medium and longer term based on their professional expertise, as well as a recommendation on the most appropriate tailored intervention with the family, if and as appropriate in the specific case.

31. States should put in place mechanisms and case management measures to enable timely identification of high conflict cases in order to allow for the earliest and most appropriate intervention with families, with a view to securing the rights and best interests of the child. Such measures may include early screening, supervised contact, mediation or other alternative dispute resolution processes, parental education programmes and parental coordination.

194. Mechanisms and case management measures should be in place to enable the competent authority or other relevant actors, such as mediators or other professionals providing services or ADR processes in parental separation situations, to identify effectively and in a timely manner high conflict cases and cases with a risk of developing a high level of conflict. Relevant mechanisms and measures include, but are not limited to, checklists of typical indicators, screening tools and other appropriate assessment methods. High conflict cases may be identified in the course of information and counselling sessions for parents, supervised contact sessions, in mediation and other ADR processes, as well as in the course of service provision for children and families in situations of parental separation, such as parenting programmes and parental coordination services for parents struggling with multi-dimensional problems. A mechanism or measure for the early identification of high conflict cases should be combined with an automatic and timely referral to appropriate services to allow for early intervention and support. To be effective, such mechanisms and measures should be provided as a standardised integral element of relevant systems and services.

32. In high conflict cases and in other cases where necessary to protect the best interests of the child, competent authorities should assess the necessity to activate any care protective procedures and/or measures. Where protective measures or services are considered to be necessary, the competent authorities, where separate, should cooperate closely with each other.

195. In conducting relevant assessments and throughout proceedings, the competent authority should assess the necessity of activating any childcare and protection services, such as the appointment of a guardian *ad litem* for the child, referral to child protection services, parental support programmes or, where necessary, initiating care proceedings, in accordance with the rights and best interests of the child and as provided for by national law.

196. Where protective measures or services are activated and this requires the involvement, under the national law of member States, of another competent authority, the relevant competent authorities should cooperate closely with each other and share all necessary personal data, case documentation and the best interests assessment, in a timely manner and in accordance with applicable laws and regulations on data protection. Repeated interviews of the child should be prevented, as far as possible. (*cf. section on data protection*)

Emergency and interim measures

33. In situations of imminent risk to the health or safety of the child, especially in high conflict cases, national law should provide the availability of urgent referral and accelerated procedures in order to obtain an emergency decision or interim protective measures. In accordance with the child's best interests, emergency measures may be adopted without prior hearing of the child, provided that the child has the possibility to be heard before the final decision on the merits is made.

197. A competent authority in parental separation proceedings should have the possibility by law to adopt emergency or interim measures, of its own motion, at the request of a party or of any other relevant person concerned. Emergency and interim measures include measures for urgent referral, accelerated procedures to obtain an emergency decision or interim protective measure, provisional decisions or preliminary judgements in situations where there is an imminent risk of irreparable harm.

198. The Guidelines on child-friendly justice provide for the possibility of provisional decisions or preliminary judgements by judicial authorities to be monitored for a certain period of time in order to be reviewed later. Judicial authorities should have the possibility to take decisions, which are immediately enforceable in cases where this would be in the best interests of the child.⁹⁹

199. Where an emergency or interim measure has been ordered, the necessary assessments and investigations should be conducted without delay to gather all relevant facts and evidence for the review of the measure in accordance with the rights and best interests of the child and with full procedural safeguards. Relevant assessments and investigations may include a social inquiry, an investigation by a competent authority acting under civil or criminal law, including courts of law, prosecutors and other law enforcement services, a hearing of the child, a risk assessment and any other measure or assessment appropriate in the case. Assessments and investigations should preferably be conducted in a multidisciplinary and interagency manner and the findings should be taken into consideration for the best interests assessment in the case.

200. National law should provide for expedited decisions on the merits or expedited proceedings following *ex-parte* applications to a competent authority providing evidence of the urgent nature of the application in accordance with the best interests of the child. Where the competent authority is satisfied that the evidence provided justifies an expedited decision or proceeding, it should be able to order an urgency hearing on the issue.

34. Where, due to the circumstances of the case, or the nature of the proceedings, a final decision is likely to be delayed, especially when the case needs some special investigation, appropriate interim measures should be provided in order to safeguard the rights and best interests of the child.

201. Where, due to the circumstances of the case or the nature of the proceedings, a final decision on the merits is likely to be delayed, appropriate interim measures should be taken in order to

⁹⁹ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, IV.D.4. paras. 52-53.

safeguard the rights and best interests of the child. Decisions on interim measures are not decisions on the merits and are subject to review.

35. In cases where a child is at risk of abuse or harm by a parent, measures in place should enable competent authorities to promptly suspend direct contact on an interim basis or to order indirect contact, supervised or supported contact or any other measure.

36. In cases of parental obstruction of contact or persistent refusal of a child to have contact, interim measures should be provided with regard to contact until a final decision is adopted.

202. Where, in parental separation proceedings, an *ex-parte* application has been made to the competent authority in view of an immediate risk or threat, competent authorities should be able to order interim measures, or initiate accelerated or expedited proceedings, to prevent harm to the child.

203. These measures should be provided by law to make it possible for parents to obtain an immediate decision pending the final decision. Interim measures may be in the best interests of the child in situations of high-conflict parental separation to prevent escalation of the conflict, stabilise the family and prevent harm to the child. This may be necessary, for instance, in cases where the child is deprived of direct contact with one parent where this contact has been assessed to be in the best interests of the child, or where parents with shared responsibility for the child are living separately and the child refuses to stay with one of the parents, or in situations where a child is threatening to commit suicide if his or her choices are not respected. They may also be necessary in cases with a high risk of wrongful removal or retention of a child by a parent or allegations of or confirmed acts of violence against the child by one of the parents.

204. Competent authorities should be able to avail themselves of interim measures in relation to contact, for instance to order or suspend contact, or provide for appropriate solutions in contact, such as supervised or supported contact or other measures considered relevant and appropriate in the case, in accordance with the rights and best interests of the child.

37. Emergency and interim measures should be immediately enforceable, of short duration and be followed by further decisions taken with full procedural safeguards for the rights of the child and all relevant parties.

205. Emergency and interim measures may be taken without the prior hearing of the child and without ensuring full compliance with procedural safeguards, on the condition that the full respect for the procedural and substantive rights of the child and all relevant parties to the proceedings is ensured in the timely review of the measure and before the final decision on the merits is made. Decisions on emergency and interim measures are immediately enforceable. The maximum length of an emergency or interim measure should be set out in law; it should be of short duration and not exceed the duration of the proceedings.

Decision

38. A decision should explain how the views of the child or, where appropriate, the child's perspective, have been heard and how they have been given due weight; where a child has not been heard, the reasons should be explained.

39. A decision should contain a clear and transparent reasoning, explaining how the relevant factors have been assessed, verified and assigned weight and how the best interests of the child and the interests of the parties have been given due consideration.

40. The decision should be communicated promptly to the child and explained having regard to his or her age and maturity.

206. The Recommendation sets out principles and practical guidance regarding the decision on the merits of the case. Decisions should be motivated and contain a clear and transparent reasoning, explaining how the relevant factors have been assessed, verified and assigned weight. The decision should explain how the different rights and needs of the child and the rights and responsibilities of each parent have been given weight and how, in this balancing process, the best interests of the child were made a primary or, where provided for by law, the paramount consideration.

207. The decision should explain how the views of the child or, where appropriate, the child's perspective, have been heard and how they have been given due weight; where a child has not been heard, the reasons should be explained.¹⁰⁰

208. The decision, its meaning and consequences, should be notified promptly; they should be explained to the child, in a manner appropriate to his or her age and level of maturity. (*cf. section on the right to information*)

Review of the decision

41. States should ensure that the decision concerning the child is subject to effective administrative or judicial oversight or review.

209. States should ensure that decisions made in parental separation proceedings, that is the final decision on the merits of the case, are subject to effective administrative or judicial oversight or review.

210. States should ensure that any review and appeal procedure is conducted in a child-sensitive manner and accessible to the child and, where applicable, the child's parents or other holders of parental responsibilities, guardian *ad litem* or legal representative, without imposing any financial burden on the child.

211. Where a child can rectify previously submitted information or present new information in the case, the child should have the possibility to ask for a review of the final decision in the proceedings,

¹⁰⁰ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, IV.D.49.

the best interests determination, or any decisions consequent on it. Such a review should be accessible to the child free of charge.

Preventive and alternative dispute resolution processes

42. States are encouraged to develop and promote mediation or other alternative dispute resolution processes to support parents in reaching an agreement or settlement, which takes account of the best interests of the child.

212. States are encouraged to develop and promote mediation and other ADR processes, which are provided complementary to legal proceedings, to support parents in reaching an amicable agreement giving due consideration to the rights and best interests of the child. ADR processes include, but are not limited to, mediation and conciliation, with a diversity of methods and models suitable to the needs of separating parents and their children, as well as models of therapeutic justice or restorative justice.

43. Mediation or other alternative dispute resolution processes may not be appropriate where domestic violence or violence against the child has been established or there are well-founded risks of violence or abuse.

44. Domestic violence can impair the capacity of parents to reach a mutual agreement about childcare matters freely. Parents should not be required to participate in joint counselling, mediation, amicable settlement or similar mutual activities to seek agreement unless the competent authority has established both parents' capacity is not impaired.

213. Providers of mediation and other ADR processes should be able to avail themselves of appropriate guidance and tools for identifying those cases where ADR is unsuitable or, where applicable, prohibited by national law, paying specific attention to cases involving domestic violence, irrespective of whether the perpetrator of violence is a man or a woman. As a general rule, the participation of parents and children in ADR should always be voluntary and conditional on the informed consent of the person.

214. The Council of Europe Convention on preventing and combating violence against women and domestic violence obliges States Parties to prohibit mandatory ADR processes, such as mediation and conciliation, in relation to all forms of violence falling within the scope of the Convention (Article 48.1). The drafters of the Convention recognised that, "in particular in family law, methods of resolving disputes alternative to judicial decisions are considered to better serve family relations and to result in more durable dispute resolution". They noted however also "the negative effects these can have in cases of violence covered by the scope of this Convention, in particular if participation in such ADR methods are mandatory and replace adversarial court proceedings". The provision recognises that perpetrators of such violence may exude a sense of power and dominance and the victim may not be able to enter the ADR processes on an equal basis with the perpetrator. The prohibition of mandatory participation in ADR processes is intended to "avoid the re-privatisation of domestic violence and violence against women and to enable the victim to seek justice".¹⁰¹

¹⁰¹ Council of Europe, [Explanatory Report](#) to the Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11.5.2011, para. 251-252.

215. In view of these considerations, some member States provide for a general prohibition by law of mediation in cases of violence falling within the scope of the Council of Europe Convention on preventing and combating violence against women and domestic violence. (*cf. para. 115 above*)

216. In assessing whether a case is suitable for mediation or other ADR, the mediator or other facilitator should ascertain that each parent is able and willing to protect his or her personal interests, as well as the rights and best interests of the child with continuity before, during and after the mediation or other ADR process. Where domestic violence has been alleged, several factors should be considered, such as the severity and frequency of the alleged violence, the alleged perpetrator(s) and victim(s), the physical and mental health of the parents and the child, and any risks or threats.¹⁰²

217. When screening for violence, mediators and other facilitators of ADR processes should not only ask about incidents or experiences of violence but also about emotional abuse and about the level of fear a parent has felt or still feels. Research shows that persons who experienced domestic violence suffered fear not only of physical violence but also of verbal, psychological and emotional abuse and, where such abuse occurs daily, its effects can be more distressing and longer lasting than those of physical attacks.¹⁰³

218. Emotional abuse can take many different forms; it “includes threats to harm a person or pet or threats to self-harm and blame the partner. Understanding the impact of abusive behaviour on the abused person and on children who witness or overhear it is a key factor in assessment. An abused person may experience fear and humiliation to such an extent that it impairs their ability to assess the risks they continue to face. It is helpful to ask individuals if they can rate the level of fear they are experiencing on a scale of 1–10.”¹⁰⁴ In addition, specific questions should be asked about the child’s safety and wellbeing, acts of violence against the child and whether the child has witnessed violence between the parents.¹⁰⁵

219. Whether or not a case is suitable for mediation needs to be assessed case by case. To facilitate this process, standardised screening tools for domestic violence and other relevant risks should be in place to guide mediators and other relevant professionals in effective screening, with due consideration to the rights and best interests of the child.

220. As an example, the Mediator’s Assessment of Safety Issues and Concerns (MASIC) guides the mediator through a personal interview with each parent to assess the presence and frequency of indicators associated with different forms of domestic violence and to assess the suitability of mediation in view of the specific form of violence identified. The tool guides professionals in screening for seven forms of violence while also comprising a risk assessment: psychological abuse,

¹⁰² Hague Conference on Private International Law, [Mediation](#), *Guide to good practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, 2012, pp. 72-77. International Social Service, [Charter for International Family Mediation Processes](#), a collaborative process, 2017, pp. 5-7.

¹⁰³ Bagshaw, D., *Disclosure of Domestic Violence in Family Law Disputes: Issues for Family and Child Mediators*, Conflict Management Research Group, University of South Australia, 2001. Cited in: Parkinson, L., *Family Mediation*, Fourth edition, Lexis Nexis, 2020, pp. 67-68.

¹⁰⁴ Parkinson, L., *Family Mediation*, Fourth edition, Lexis Nexis, 2020, pp. 67-68.

¹⁰⁵ *Ibid.*

coercive controlling behaviours, threats of severe violence, physical violence, severe physical violence, sexual violence and stalking. The tool has been tested and was found to lead to more frequent identification of domestic violence than other screening approaches. Initial evidence confirms its internal consistency, as well as the reliability and validity of its results.¹⁰⁶ MASIC is considered a promising screening tool, which has to undergo further testing and evaluation, including with specific attention to the rights and safety of the child. It is freely available in the public domain.¹⁰⁷

221. In addition to the screening in the context of the suitability assessment prior to mediation or other ADR, research findings indicate that screening should be continued throughout the mediation process as this enhances the possibility of identifying acts or risks of violence that were not detected in the initial screening.¹⁰⁸

222. The Council of Europe Convention on preventing and combating violence against women and domestic violence (2011) obliges States parties to conduct risk assessments for persons who are victims of violence within the scope of the Convention. Article 51 requires States parties to take the necessary legislative and other measures to ensure that the risks of persons are effectively assessed by all relevant authorities and to devise a safety plan, including for children who are victims or witnesses. The Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) recommends that risk assessments are carried out according to a standardised procedure and ideally as multi-professional assessments.¹⁰⁹ As the risks of victims can be dynamic and evolve over time, the assessment should be updated periodically.

223. Any risk assessments carried out in the case should be made available to the competent authority in charge of informing parents about mediation and other ADR processes and should be considered in the suitability assessment of the case, in accordance with applicable law on data protection.

45. Information explaining the benefits of mediation or other alternative dispute resolution processes should be provided prior to the commencement of any legal proceedings; it may be appropriate under national law to require the parents to attend an information meeting on such processes.

¹⁰⁶ Pokman, V., Rossi, F.S., Holtzworth-Munroe, A., Applegate, A.G., Beck, C.J.A., D'Onofrio, B.M., Mediator's Assessment of Safety Issues and Concerns (MASIC): reliability and validity of a new intimate partner violence screen, *Assessment*, 21(5), 2014, pp. 529-542.

¹⁰⁷ Holtzworth-Munroe, A., Beck, C.J.A., Applegate, A., The Mediator's Assessment of Safety Issues and Concerns (MASIC): [A Screening Interview for Intimate Partner Violence and Abuse Available in the Public Domain](#), *Family Court Review*, 48(4), pp. 646-662.

¹⁰⁸ McCutcheon, R., [Addressing domestic violence in mediation: the need for more uniformity and research](#), *Harvard Negotiation Law Review*, 2021.

¹⁰⁹ This section is informed by and based on: Council of Europe, *Risk Assessment Standards and Methodologies for Diverse Stakeholders in Ukraine: Next steps in implementing international standards to ensure the safety of victims of violence against women and domestic violence*, [Analytical Report](#), 2020. Kostopoulou, Maria-Andriani, *The work of GREVIO in promoting risk assessments in accordance with the Council of Europe Istanbul Convention*, Presentation at 'Preventing secondary and repeat victimisation of child victims of crime: Risk assessments and solutions in the best interests of the child', E-PROTECT II International Workshop, 24 March 2021.

224. Before parental separation proceedings are initiated, the parents should be invited and encouraged to participate in an information meeting on ADR processes. An information meeting is useful to inform the parents of the benefits of mediation and other ADR processes. It may be appropriate to make the participation in an information meeting mandatory, as long as safeguards are in place such as the possibility for each parent to attend the information meeting separate from the other parent, screening for cases of domestic and other forms of violence between parents or against the child, and the possibility for a parent to opt out from the mandatory information meeting where violence is confirmed.

225. The benefits of mediation and other ADR processes have been evidenced and widely acknowledged. Mediation helps to improve the relationship and communication of parents and supports them in reaching an amicable agreement while focusing on the needs and best interests of their child. The confidentiality of mediation and other ADR processes encourages parents to engage in an open dialogue to resolve their dispute. Compared to adversarial judicial proceedings, parents tend to feel a stronger sense of ownership in mediation and ADR processes and, therefore, tend to be more willing to adhere to the mediated agreement, which makes mediated agreements typically more sustainable than court orders. Mediation specifically tends to be more cost-effective than judicial proceedings, in particular where parents have access to mediation aid.¹¹⁰

226. The Hague Conference on Private International Law observes that parents tend to consent to relocation if their contact with the child is settled through mediation prior to relocation and recommends therefore mediation in parental separation cases involving disputes on cross-border contact and relocation. It may help, therefore, to prevent international child abduction. A mediated agreement on child relocation approved by a court, or a court decision based on a mediated agreement, will be recognised and enforceable in all other Contracting States of the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (Articles 23 and 28).

46. The commencement of legal proceedings should not prevent a competent authority from encouraging parents to engage in mediation or other alternative dispute resolution mechanisms at any time.

227. The commencement of legal proceedings should not prevent parents to engage in ADR at any time. Competent authorities should encourage parents to engage in mediation before initiating proceedings, after the commencement of and at any time prior to the conclusion of legal proceedings, as well as after the conclusion of proceedings where *ex-post* mediation may be indicated to support parents in complying with their agreement or implementing a relevant decision.

228. Periods during which ADR processes take place should be excluded under national law from any applicable limitation periods.

229. In accordance with the principle of voluntary participation in mediation, the commencement of mediation or other ADR processes should not exclude a parent from the possibility to take

¹¹⁰ Hague Conference on Private International Law, [Mediation](#), *Guide to good practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, 2012, pp. 21-26.

recourse to adversarial judicial proceedings at any time prior to the conclusion of the mediation or other ADR process.

47. The best interests of the child should be a primary consideration for the mediator or other professionals involved in the process. They should encourage parents to focus on the best interests of the child at all times and remind them of their primary responsibility for the welfare of their child and the need for them to inform and consult their child.

230. The best interests of the child should be a primary consideration in any ADR measure and the parents should be encouraged to focus on the needs and best interests of the child at all times. The Council of Europe Recommendation on family mediation sets out that the mediator should “have special concern for the welfare and best interests of the children, should encourage parents to focus on the needs of children and should remind parents of their prime responsibility relating to the welfare of their children and the need for them to inform and consult their children”.¹¹¹

231. Professionals conducting mediation and other ADR processes should be specifically trained on the rights and best interests of the child in situations of parental dispute and separation. States should ensure that such professionals can avail themselves of information material for parents and practical guidance to support parents in focusing on the rights and needs of the child.

48. Where, during alternative dispute resolution processes, there are indications that a child is at risk of harm or neglect, the mediator or other professional should report such indications to the competent authorities in accordance with national law.

232. Where professionals conducting mediation or other ADR processes identify any risks of harm to the child or other concerns about the safety and well-being of the child, they should activate relevant mechanisms for reporting and referral of the child to appropriate assistance, support and protection, in accordance with national law. Mediators and other relevant professionals should be trained and supported in fulfilling their roles and responsibilities in this regard. Where applicable, relevant responsibilities of individual professionals and mediation or ADR providers should be regulated in law and clarified in relevant professional standards and codes.

49. Provision should be made for the registration of mediation or other alternative dispute resolution agreements or their approval by a competent authority where that authority is satisfied that the agreement gives due consideration to the best interests of the child and is fair to all participants.

233. The agreements reached as a result of mediation or other ADR processes should be subject to registration by a competent authority to be given legal effect as a precondition for their enforceability, as well as for their circulation in cross-border family situations, in accordance with applicable law. The conditions and requirements for such registration should be regulated by law, providing for appropriate review and checks ensuring the agreement gives due consideration to the rights and best interests of the child and is fair to the parties and participants in the case.

¹¹¹ Council of Europe, Committee of Ministers, [Recommendation No. R \(98\) 1 of the Committee of Ministers to member States on family mediation](#), 21 January 1998, Principle III.viii.

50. Communications, including statements and records, relating to the mediation should be regarded as confidential and not be disclosed in any proceedings or otherwise; disclosure should be permitted only where required by law or where there are safeguarding or child protection concerns.

234. The Hague Conference on Private International Law underlines that mediators have to act in a neutral, independent and impartial manner and be fair and unbiased towards each of the parties and participants in the mediation process. The mediator's position, actions and communication should reflect these principles to ensure that the parties are able to participate in mediation with equal opportunities and equal bargaining powers.¹¹² The principles of voluntariness, confidentiality, impartiality and self-empowerment that generally guide mediation and other ADR processes in cases of parental separation apply to the child's participation as they do for adults.¹¹³

235. The principle of confidentiality of mediators and other ADR providers should not prevent or exclude the appropriate referral and reporting of cases. Where applicable, national law should regulate how relevant reporting and referral obligations of service providers relate to the principle of confidentiality. Children and parents participating in mediation or other ADR processes should be duly informed about these regulations and the relevant obligations on professionals.

236. In accordance with the European Code of Conducts for Mediators and Mediation Providers, mediation providers have to ensure that the working conditions of mediators guarantee their independence, impartiality and neutrality. To this end, mediation services should not be provided in conjunction with other services that could lead to conflicts of interests.¹¹⁴

Implementation and enforcement

51. In order for enforcement procedures to be as effective and efficient as possible, national law should provide for a range of measures in the event of non-compliance.

237. Decisions and measures concerning the rights and best interests of the child in parental separation proceedings should be able to be implemented in practice and enforceable. The objective of implementation and enforcement is to ensure the rights and best interests of the child and the rights of each parent are effectively secured and guaranteed in practice, in accordance with the best interests of the child as assessed in the course of the proceedings and reflected in the decision. To this end, States should provide appropriate measures and instruments to support implementation and to enable enforcement in the event of non-compliance. (*cf. Introduction, section Recommendations, for a definition of implementation and enforcement*)

238. Enforcement procedures should be provided for and regulated by law to enable enforcement of decisions in the event of non-compliance. To be as effective and efficient as possible, the

¹¹² Hague Conference on Private International Law, [Mediation](#), *Guide to good practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, 2012, p. 58.

¹¹³ *Ibid.*

¹¹⁴ Council of Europe, European Commission for the Efficiency of Justice (CEPEJ), [European Code of Conduct for Mediation Providers](#), CEPEJ(2018)24, 3-4 December 2018, p. 3. [European Code of Conduct for Mediators](#), 2004, p. 2.

competent authority should be able to avail itself of a range of measures appropriate to the circumstances of the case and the nature of non-compliance and reasons for it.

52. Orders relating to the enforcement of contact should always promote and protect the best interests of the child, and should be determined on a case-by-case basis.

239. Orders relating to the enforcement of contact between a parent and a child should always be based on a best interests assessment and aim at securing and promoting the rights and best interests of the child. This requires an individualised approach in each case and a clear and transparent reasoning of the order issued, the specific enforcement measures chosen and how they have been assessed to be in accordance with the rights and best interests of the child.

53. In cases where a decision is not being respected by a party, the competent authorities should firstly promote voluntary compliance accompanied, if needed, with a mediation or negotiation phase concerning its implementation.

240. When identifying the most suitable enforcement measure in a case, the competent authority should consider the reasons for non-compliance, the impact of non-compliance on the child and the other parent involved in the case, and any imminent risk or risk of irreparable harm in this regard. The competent authority should further assess the possible impact of a specific enforcement measure on the child in the immediate, medium and longer term.

241. Where appropriate in the individual case, enforcement procedures should provide for the possibility to consider gradual measures from requesting voluntary compliance, to encouraging and supporting parents in complying with the decision, through to the issue of an enforcement order.

242. Before enforcement measures are ordered, the use of alternative means should be considered. Alternative means may include assisted negotiation by lawyers, *ex-post* mediation or other ADR processes, or the activation of relevant services or support measures for a parent or child to enable compliance and support them in the implementation of a decision. Mediation and negotiation can support parents in understanding and accepting a decision and improve their collaboration and communication in the implementation of the decision, while focusing on the needs and best interests of the child. While these alternative means will concern the modalities of implementation and the parental cooperation to this end, they will not aim at reviewing the decision on the merits in the case. Enforcement measures may include, but are not limited to, ordering mandatory services to be used by one or both parents, or the initiation of care proceedings in accordance with national law to limit the parental responsibilities where both parents are not complying, or imposing a fine, or the involvement of specially trained police (see para. 244 below) or, in particular severe cases where non-compliance entails a breach of criminal law, the initiation of criminal proceedings.

243. Where the authority competent for enforcement procedures differs from the competent authority having made the enforceable decision, their cooperation should be clearly regulated to ensure relevant data and case files are shared in a timely manner, with full respect of data protection regulations.

54. Decisions and measures involving and affecting children should always be implemented or enforced in a timely and child-friendly manner that respects the dignity and the situation of vulnerability of the child.

244. Measures for the implementation and enforcement of decisions should ensure the timely compliance with all elements of the decision. Where enforcement measures are considered necessary, they should be ordered in a timely manner and with full respect of the dignity and any vulnerability of the child.

245. Where the competent authority considers taking recourse to law enforcement measures to enforce a decision, they should remain a measure of last resort and be applied, where necessary in the case, with due consideration to the best interests of the child. Where available, specialised police officers should be used to enforce decisions concerning children. Police officers executing enforcement orders should not wear uniform, be trained in child-sensitive communication and in acting in a sensitive and child-friendly manner, they should be assisted by qualified professionals as appropriate in the case, such as a social worker or a child psychologist, and be supported, where applicable, by an interpreter or cultural mediator. The timing of any law enforcement measures should be determined in accordance with the best interests of the child to prevent any traumatising and victimisation of the child by the measure and to protect the child's dignity.

246. Respect for the dignity and any vulnerability of the child requires due consideration to the age and level of maturity of the child, gender, social and cultural background, and any illness or disability or other specific needs.

55. In cases of persistent non-compliance, mechanisms should be in place to enforce the decision or to review it and to make any necessary adjustments.

247. In the case of persistent non-compliance, the range of available enforcement measures should allow for more stringent measures, such as law enforcement measures or initiation of legal proceedings against the non-compliant parent. Particularly stringent measures and the use of reasonable force should remain, however, a measure of last resort and be applied with due consideration to the rights and best interests of the child and in respect of principles of legality, necessity and proportionality.

248. In cases of hardship or significantly changed circumstances, it may be appropriate for a competent authority to consider a review of the decision on the merits to allow for necessary adjustments taking account of such changes. Any such review should be motivated in accordance with the rights and best interests of the child.

VII. Relocation

56. Relocation of a child should be decided by the holders of parental responsibility jointly, or by a competent authority in case of disagreement

249. The Recommendation on preventing and resolving disputes on child relocation¹¹⁵ defines “*child relocation*” as a change in the child’s habitual residence and applies to relocation within the jurisdiction of a member State or abroad. The term “*child’s habitual residence*” corresponds to the place, which reflects substantial degree of integration by the child in a social and family environment. It is either for the parents or other holders of parental responsibility to establish the child’s habitual residence or it is for a competent authority to determine the habitual residence of the child, taking account of all the circumstances specific to each individual case.¹¹⁶

250. As joint holders of parental responsibility, parents have the right and responsibility to decide about the relocation of a child. Where parents have a dispute about questions concerning relocation of a child, they may resort to mediation or other ADR processes to reach an amicable agreement on relocation. Where parents are unable to reach an agreement on child relocation, the decision should be made by a competent authority.

251. Decisions on child relocation, whether made by parents or other holders of parental responsibility or a competent authority, should be made in accordance with the rights and best interests of the child.

57. A parent intending to relocate with or without the child should give timely prior notice to the other parent. Notice about a relocation of the child should be given to other family members of the child having an enforceable contact right.

252. A parent intending to relocate should give timely prior notice to the other parent, irrespective of the motivations of the intended relocation and whether or not the parent intends to relocate with or without the child. Notification should further be given to other family members having an enforceable contact right. The terms for providing such notice, including any time-limits and persons to be notified, should be provided for by law or other relevant regulation of member States.

253. The minimum timeframe established between notification and the date of relocation should be sufficient to allow the other parent, or other family members having enforceable contact rights, to apply to the competent authority in case of non-agreement.

58. Where a competent authority decides about relocation of a child, there should be no general presumption in favour of or against relocation. Decisions in relocation cases should seek to balance parents’ freedom of movement rights with the best interest of the child and right to respect for family life of both parents and the child.

254. Where a competent authority decides about relocation of a child, the decision should be based on a best interests assessment in accordance with Chapter III of this Recommendation, giving due consideration to all relevant factors in the case, and should always be an individualised decision.

255. When balancing the rights and best interests of the child with the rights of the parents and other family members having enforceable contact rights, the competent authority should give due

¹¹⁵ Recommendation [CM/Rec\(2015\)4](#) of the Committee of Ministers to member States on preventing and resolving disputes on child relocation, 11 February 2015, Definitions, b; Scope.

¹¹⁶ *Ibid.*, [Explanatory Memorandum](#), para. 10.

consideration to the rights of each parent, including the right to freedom of movement and choosing the own place of residence within the country of residence or, as appropriate, in another State, and the right to respect for private and family life of the child and both parents and other relevant persons concerned.

59. All relevant factors should be considered during the best interests' assessment process, with specific attention given to maintaining meaningful relationships with each parent, siblings, other family members and with other people who are significant to the child.

256. The best interests assessment should give specific attention to the right of the child to maintain personal relations and direct contact on a regular basis with both parents. In addition to the parents, personal relations and direct contact on a regular basis with siblings, including step- and half-siblings, as well as grandparents and significant third persons, may be of particular meaning for the child and should be assessed and considered as part of the best interests assessment.

257. In view of the Recommendation on preventing and resolving disputes on child relocation, which recognises the risk that a child would lose contact or experience a significant disruption of contact due to relocation, the maintenance of meaningful relationships should be given due priority in the context of the best interests' assessment process. Those relationships that operate positively and beneficially for the child and which may be adversely impacted by relocation should be identified and receive careful consideration.

60. Where regular physical contact between the relocated child and the other parent is no longer feasible or possible, agreed relocation arrangements should include provision for regular remote contact and for the receipt of correspondence and gifts to mark significant dates and events in the child's life.

258. Agreements or decisions on relocation should be as detailed as considered necessary and appropriate in the circumstances of the case to ensure compliance with the rights and best interests of the child and the rights of each parent, as well as other relevant persons concerned. To this end, the agreement or decision may need to regulate in detail the modalities of relations and contact between the child and both parents, siblings and other family members or other significant persons. This may include, but is not limited to, provision for regular remote contact and the modalities of it, in addition to periodic personal contact, as well as the exchange of correspondence and gifts on significant dates and events in the life of the child or a parent or other family members.

61. The reasonableness of the proposed relocation and, where appropriate, the reasons advanced by the parent seeking to relocate should be subject to an objective assessment in order to ensure that the relocating parent has taken into account the best interests of the child.

259. Whereas a parent enjoys the right to freedom of movement and to relocate for personal, professional or other reasons, the motivations for a parent's relocation should be considered for the purpose of the best interests assessment regarding any relocation of the child or contact arrangements with the relocating parent. Where a parent proposes to relocate together with the child, the reasons for a parent's proposed relocation, and the reasonableness of relocation, should be

subject to an objective assessment taking into account all relevant factors to ensure that the relocating parent has given due consideration to the best interests of the child.

62. The practicality of any proposed contact arrangements, having regard to the costs and levels of disruption involved, should also be subject to an objective assessment.

260. When deciding on arrangements for contact and personal relations between a child and both parents after relocation, the proposed arrangements should be able to be implemented and, to this end, their practicability should be assessed in an objective manner. The assessment should specifically have regard to the costs that each parent will incur to comply with contact arrangements and their sustainability in the medium and longer term. In addition, any risks or levels of disruption should be carefully considered.

VIII. Miscellaneous provisions

Data protection

63. Any proceedings involving a child should, to the extent possible, be held other than in public in order to protect the privacy of the child.

64. The personal data of the child and other persons involved in the parental separation proceedings should be collected, used, shared and stored in accordance with law.

261. States should guarantee the respect for private and family life of children, parents and other holders of parental responsibility, as well as other family members concerned by proceedings and measures within the scope of this Recommendation, in accordance with Article 6 ECHR. (*cf. section on overarching principles*) The right to respect for private and family life is an element of child-friendly justice and a fundamental right of the child and applies before, during and after proceedings or ADR processes. Specific measures should be taken to protect the child's data processed in the context of proceedings or ADR processes, in accordance with the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) 1981 and Protocols and the Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data (Convention 108+).¹¹⁷ Effective respect for these rights is necessary to protect the child's dignity.

262. The Guidelines on child-friendly justice set out some principles for the child's participation in proceedings in accordance with data protection standards: the limitation of access to case files and records containing personal and sensitive data of children; data transfer in accordance with data protection legislation; the hearing of the child in camera or otherwise without the presence of the

¹¹⁷ UN Convention on the Rights of the Child, Article 16. European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), Article 6. Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108). Council of Europe, Convention for the protection of individuals with regard to the processing of personal data, Convention 108 +, 2018. Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, p. 22, 82. Committee on the Rights of the Child, General Comment No. 24 (2019) on children's rights in the child justice system, 18 September 2019, [CRC/C/GC/24](#), par. 66-71.

public; confidentiality rules for professionals, and the prevention of violations of privacy rights by the media.¹¹⁸

263. Proceedings within the scope of this Recommendation should be held other than in public, as far as possible, to prevent identification of the child, as mandated by ECHR Article 6. Court hearings involving children should be held in the absence of the public. In practice, this requires also consideration to ensure the child's identity is not disclosed in any written or oral announcements made in court. Measures taken should be compatible with the principle of a fair, public hearing, in accordance with Article 6 ECHR, as well as the child's right to private and family life and protection of personal data in accordance with the Council of Europe Guidelines on child-friendly justice.

264. The Council of Europe Guidelines on child-friendly justice state: "Whenever children are being heard or giving evidence in judicial or non-judicial proceedings or other interventions, where appropriate, this should preferably take place in camera. As a rule, only those directly involved should be present, provided that they do not obstruct children in giving evidence."¹¹⁹ The Guidelines' explanatory memorandum states that "this principle should, however, be reconciled with the principle of free access to judicial proceedings, which exists in many member States."¹²⁰

65. Where it is in the best interests of the child, the sharing of his or her personal data between relevant competent authorities, professionals and service providers should be ensured in practice.

265. Where it is in the best interests of the child, the sharing of his or her personal data between relevant competent authorities, professionals and service providers should be ensured in practice. To facilitate this, member States should ensure child-centred multidisciplinary and interagency cooperation and service models are in place and facilitate a collaborative multi-professional assessment of a child's case. (*cf. section on child's best interests assessment, multidisciplinary approach*)

266. The Recommendation on children's rights and social services friendly to children and families provides that "rules on confidentiality should facilitate multidisciplinary co-operation by setting up a common framework for respecting the right to privacy. This entails allowing the sharing of information with persons bound by professional secrecy, and only if it is in the best interest of the child. Sharing information should be limited to what is strictly necessary to achieve this end and should generally be subject to the approval of the child and her or his parents."¹²¹

66. The child and, where applicable, his or her parents or other holders of parental responsibility, guardian or legal representative, should be informed about the procedures for

¹¹⁸ Council of Europe, [Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice](#), 2010, IV.A.2.

¹¹⁹ *Ibid.*, IV.A.9.

¹²⁰ *Ibid.*, Explanatory Memorandum, p. 62.

¹²¹ Council of Europe Recommendation on children's rights and social services friendly to children and families ([CM/Rec\(2011\)12](#)), V.H.d.

exercising the child's data protection rights, including the right to apply for rectification of incorrect or incomplete personal data in relevant records.

267. The child should be informed about his or her data protection rights and how to exercise these rights in the context of any judicial or non-judicial proceedings in the scope of this Recommendation. All relevant information should be provided to the child in child-friendly language. (*cf. section on right to information*)

268. The child's parents or other holders of parental responsibility and, where applicable, guardian *ad litem* or legal representative should be informed about the child's data protection rights. Where a child wishes to access personal data records and to rectify incorrect or incomplete personal data in relevant records, the child should have access to effective support in doing so.

67. States should protect children involved in parental separation proceedings from being identified or identifiable in media coverage.

269. Media reporting on children involved in proceedings within the scope of this Recommendation should uphold the child's right to privacy and family life, in accordance with national law and the self-regulation of media. Media reports should prevent the identification of children, for instance by referring to a child in an anonymous way or using a pseudonym, disguising voices and images, and ensure that descriptions of the child or the child's family do not enable the indirect disclosure of the child's identity. A breach of privacy, especially in media reporting, is causing harm to the child, which may have significant detrimental and life-long impact on the child.

Training and professional standards

68. States should ensure that competent authorities and professionals involved in parental separation proceedings including judges, lawyers, mediators, psychologists and social workers, receive appropriate support, practical guidance and training in order to have the necessary levels of expertise on the needs and the rights of the child in parental separation proceedings and on child hearing techniques.

270. States should ensure that state officials and professionals involved in parental separation situations and proceedings are adequately and continuously trained in interacting with the child and have the necessary levels of expertise. Training should be provided as part of the academic and vocational training and, subsequently, as continuous and on-the-job training.

271. Training should address all aspects of the rights and best interests of children and child-friendly justice, child development, child-sensitive communication as well as psycho-emotional needs of children at different ages. Training should prepare officials and professionals to guarantee substantive and procedural rights of children concerned by proceedings and to comprehend, assess and respond to the child's psycho-social, emotional and affective needs.

272. Officials and professionals should receive training in the use of service methods and tools required to assess the relevant factors in a best interests assessment and continue receiving coaching and supervisory support in applying these methods and tools in practice. (*cf. section on best interests assessment*)

273. The Council of Europe Human Rights Education for Legal Professionals (HELP) online courses offer targeted education for professionals, including judges, lawyers and other legal professionals, relevant for the implementation of this Recommendation, such as courses on children's rights, child-friendly justice, family law and human rights, anti-discrimination, ethics for judges, prosecutors and lawyers, violence against women and domestic violence, data protection and privacy rights. The courses are available online in a range of languages and free of charge.¹²² Member States should encourage the active use of these training resources, either directly among public officials, as well as through relevant professional associations and organisations.

69. Codes of good practice for mediation or other alternative dispute resolution mechanism should be put in place to ensure high professional standards at all times.

274. European codes of conduct and ethical standards for mediation, such as the European Code of Conduct for Mediators (2004) and the European Code of Conduct for Mediation Providers developed by the European Commission for the Efficiency of Justice (CEPEJ) of the Council of Europe (2018), apply to a broad scope of civil and commercial matters, including family law matters.¹²³ In addition, international guides and codes provide more specific attention to the rights and best interests of the child, such as the Guide to Good Practice in mediation of the Hague Conference on Private International Law and the Charter for International Family Mediation Processes of the International Social Service.¹²⁴

275. To ensure ethical standards and codes of conduct are in place for family mediation and ADR processes, member States should translate international and European guides and codes and adapted them to their specific national context, giving due consideration to the rights and best interests of children, as well as child safeguarding and wellbeing standards. States should further ensure that such guides and codes are effectively in use by mediation and other ADR providers, as well as individual professionals providing services in this field. For this purpose, the commitment to relevant national codes should be part of any formal accreditation process of mediation and ADR providers and professionals and training should be provided systematically.

Monitoring and research

70. All legislative, policy and budgetary decisions concerning parental separation should be based on independent monitoring and scientific research findings.

276. All legislative, policy and budgetary decisions concerning parental separation situations and relevant proceedings should be based on monitoring and scientific research findings. Monitoring and research should be undertaken by, or on behalf of, state authorities, as well as independent, academic and civil society actors. Monitoring and research should include participatory methods to

¹²² Council of Europe, *Human Rights Education for Legal Professionals*, <https://help.elearning.ext.coe.int/>.

¹²³ [European Code of Conduct for Mediators](#), 2004. Council of Europe, European Commission for the Efficiency of Justice (CEPEJ), [European Code of Conduct for Mediation Providers](#), CEPEJ(2018)24, 3-4 December 2018.

¹²⁴ Hague Conference on Private International Law, [Mediation, Guide to good practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction](#), 2012 International Social Service, General Secretariat, [International Family Mediation](#). International Social Service, [Charter for International Family Mediation Processes](#), a collaborative process, 2017.

ensure the voices of children and parents as service users and parties or participants in proceedings and ADR processes are heard and taken into account.

71. States should ensure that the development and review of parental separation related services for children, parents and families are based on periodic consultations of children, parents and professional service providers from relevant disciplines.

277. Legal and policy systems in member States, as well as services for children and families, should be responsive to social change. Laws, policies and services in the field of parenting and childcare, child protection and family strengthening should be reviewed periodically to ensure they comply with the evolution of family and childhood and the specific needs of children and parents before, during and after parental separation. To this end, States should ensure that the development, evaluation, funding and review of services for children, parents and families is informed by periodic consultations of children, parents and professional service providers from all relevant disciplines.

International co-operation

72. States should strengthen their cooperation in order to effectively secure and promote the best interests of the child in cases of parental separation with a cross border dimension.

73. States should promote cross-border exchange of experience, research and service models, as well as cross-border training of competent authorities and professionals.

278. States should strengthen their cooperation in order to effectively secure and promote the best interests of the child in cases of parental separation with a cross border dimension. To this end, relevant central authorities, social services and cross-border judicial and social service networks should be strengthened.

279. States should promote cross-border exchange of experience in supporting children and parents in relation to parental separation with a transnational dimension. Transnational and multi-country research should be supported, for instance through the use of comparable indicators for data collection. Cross-border collaboration and exchange should further be supported with a view to foster an exchange of effective service models, which are based on evidence, including multidisciplinary and interagency, child-centred and rights-based service models, as well as cross-border training of competent authorities and professionals.