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6 Social cohesion

6.1 Steering Committee for the Rights of the Child (CDENF)

b. Explanatory Memorandum to the Recommendation CM/Rec(2025)4 of the Committee of Ministers to member States on the protection of the rights and best interests of the child in parental separation proceedings

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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. Parents are primarily responsible for decisions concerning the rights and best interests of the child, including in situations of parental separation. Where necessary, they may be assisted by lawyers, mediators, social workers, 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 have recourse to adversarial judicial proceedings to resolve separation-related disputes, including with regard to their parental responsibility, custody or upbringing, access to, or contact with the child.
3. This Recommendation focuses on decision-making processes on the rights and best interests of children in the context of parental separation proceedings. 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. 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 member States and, through its appendix, aims at providing practical guidance to state officials and professionals, in particular judges, lawyers, mediators as well as parents or other relevant actors involved in decision making affecting children in the context of parental separation proceedings in the judiciary, administration, service provision and private life.

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, bearing in mind that their collaboration with state actors should be based on the principles of international and Council of Europe standards.

The best interests principle in family law proceedings: balancing the rights of the child, parental rights, responsibilities and duties, and state obligations

7. The United Nations 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 (Articles 7 and 9 UNCRC). 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 (Article 8 UNCRC). 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 (Article 9 UNCRC). These rights apply also in situations of cross-border family separation (Article 10 UNCRC).

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 (Article 18.1 UNCRC). 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 (Article 27.1 and 2 UNCRC). 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.

10. States have a legal obligation to assist parents in fulfilling their childcare and child-rearing responsibilities. Article 3.2 UNCRC 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 services and facilities, and other support programmes (Articles 18.2 and 3; and 27.3 and 4 UNCRC). 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(a), 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. [1] 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 on Human Rights (ECHR) and the United Nations Convention on the Rights of the Child (UNCRC) with their respective additional protocols, the European Social Charter and its revised version, 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 standards; [2]
- recommendations and guidelines of the Committee of Ministers, as well as resolutions and declarations of the Parliamentary Assembly of the Council of Europe; [3]
- general comments and decisions on individual communications of the Committee on the Rights of the Child; [4]
- decisions and recommendations of other international and Council of Europe monitoring bodies and committees. [5]

14. The principles and practical guidance provided by this Recommendation aim to support 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 to advance the protection and promotion of the rights of the child and to put the child at the centre of the Council of Europe's work. [6] A child-friendly version of the Strategy is available. [7] 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.

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 (CRC) explains the best interests principle as a substantive right, a fundamental, legal interpretive principle and a rule of procedure. As a substantive right, Article 3.1 UNCRC 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. [8]

18. The case law of the European Court of Human Rights (ECtHR) affirms the interpretation of the best interests of the child as a substantive right, a fundamental, interpretive legal principle and a rule of procedure. The ECtHR 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. [9]

19. The CRC underlines that the use of "shall" in Article 3.1 UNCRC places "a strong legal obligation on States and mean[s] 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 ...". [10]

20. As "a primary consideration", the best interests of the child "may not be considered on the same level as all other considerations". [11] The CRC 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 harmonisation 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." [12] 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 ECtHR stated repeatedly that in decisions concerning children, the best interests of the child are of paramount importance and must be a primary consideration. In numerous cases regarding child custody and contact after parental separation, the ECtHR underlined that the best interests of the child should be the primary consideration. [14]

22. In regard to some family law matters, the best interests of the child should be the "paramount consideration", as provided for in relation to adoption (Article 21 UNCRC) 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 UNCRC 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 Article 3.1 UNCRC 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. 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 the right to development. In addition, the Recommendation focuses on the procedural rights of children where children are parties or participants in proceedings.

25. The CRC 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." [17] 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." [18]

26. 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.
27. "Implementation" refers to the measures taken by state authorities, service providers or private actors to ensure administrative and judicial decisions are executed.
28. "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. [19]
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 ECHR.
29. 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. [20]
30. While alternative dispute resolution processes involving decisions about children should be in line with the rights and best interests of the child, these processes should also follow their own, non-judicial terms. Therefore, the guidelines set forth in the Appendix of this Recommendation should not be understood to apply to all alternative dispute resolution processes in the same manner as to parental separation proceedings. In particular, the child's right to information and assistance, the child's right to be heard and the assessment of the child's best interests should be adapted to the role of professionals involved in alternative dispute resolution processes and the primary responsibility of parents.
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 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 training, research and budgetary appropriations.
32. Member States should ensure to translate the text of the Recommendation, including the guidelines in its appendix, 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, as well as to parents, children and the general public, 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 on 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 dissemination of a questionnaire to member States and a survey to 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);
- the development of a feasibility study on a legal instrument on the protection of the best interests of the child in situations of parental separation [22] (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) [23].

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. Fifty-nine children and young adults aged between 7 and 19 participated in the consultations. In Hungary and Italy, the consultations focused on situations of parental separation and involved 17 children and young people. 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 themselves and perceived these situations as complex, often highly emotional and sensitive. [24]
40. The participating children emphasised that adults, both parents and professionals, should listen and consult children on matters concerning them, with care and respect, without judging or assuming that they, as adults, know what is best for them.
41. They expected adults to be reassuring and help children stay calm and cope with their daily lives, but also with difficult and stressful situations, without hiding the truth or making them believe that everything was fine when it is not. They need time to express their concerns and questions, and they need adults to give them the feeling that they are important. They would like adults to explain their decisions in a language they can understand and which enables them to have an overview in the short and long term.
42. Ensuring well-being, stability and continuity in the 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.
43. The children expressed the wish to be able to talk to someone about their situations and the issues and feelings that arise from their parents' separation. They did not feel they had adults to turn to during parental separation proceedings who were specifically concerned about their feelings and well-being. They underlined that it would be useful for them to have a support expert who would be there throughout the process to accompany them and explain it. Such a "comforting" person, as they put it, would be someone whom they could trust and who would help them without trying to solve their problems and above all who would not feel sorry for them but who would be able to treat them without bias and capable of objectivity.
44. The children described their participation in parental separation proceedings as difficult and unpleasant, either due to fear of the legal system or fears regarding their relationship with their parents. In particular, they were concerned that their participation could cause harm to a parent. 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. For them, parental separation is an emotional rather than a legal process. 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 are being judged, when participating in proceedings. They do not wish to be asked or pressured to choose between their parents.
45. The children said they would welcome easy access to detailed child-friendly information, advice and ideas to help them cope with parental separation. They also recommended that children should be able to prepare for their involvement in the proceedings, so that they understand how it will work, what their own role is, how much influence they will have on decisions, what other solutions and options are available and how their views will be used, shared and taken into account. They would appreciate being informed of decisions in a timely and transparent manner.
46. The children felt that it could be difficult to concentrate in a formal setting or when meeting with service providers or judges. If information is provided at the time of the hearing, a child may not be able to understand all of it at that time and in that environment. The children recommended that there should be time to reflect on information they receive, to look it up again in written or digital materials.

47. The children underlined the importance of a systematic individual assessment, transparency in decision making, access to information and open dialogue. They recognised that adults make mistakes, just like children, and recommended that, in such cases, the person responsible should be open about and rectify the mistake wherever possible.

48. It was important for the children that the responsibility for decisions rests on adults, whether parents, a judge or other professionals. They were aware that their views may not always be in line with their best interests and that a child's views could change over time and be influenced by others or the circumstances. They understood that it was not upon them to make a decision but they wanted their views to be carefully considered and given appropriate weight in the decision-making process, particularly if they had a strong and reasoned opinion.

49. The children commented on the training and skills of officials and professionals involved in proceedings. It was important to 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 sensitive to children's emotional needs. Children would prefer to encounter professionals whom they feel they can trust, who are calm, patient and respectful, 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, explaining rules and decisions and make sure everyone abides by them.

APPENDIX TO RECOMMENDATION CM/REC(2025)4

I. Scope and definitions

Scope

50. This Recommendation applies to all proceedings as well as to alternative dispute resolution processes involving the parents of a child who are not living together or no longer wish to do so, which may lead to decisions regarding parental responsibility, custody or upbringing, access to, or contact with the child. 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 approval of private agreements of parents regarding decisions identified above by administrative or judicial authorities or notary offices is considered to be included within the scope of this Recommendation.

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

Definitions

52. For the purposes of this Recommendation:

53. "Proceedings" refer to all administrative and judicial proceedings before a competent authority, which are within the scope of the Recommendation.

54. "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. Arrangements

may regard parental responsibility, custody or upbringing, access to, contact with a child where the parents of a child are not living together or no longer wish to do. 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.

55. "Alternative dispute resolution" is defined as any process whereby parties negotiate to reach a full or partial agreement with the assistance of one or more professionals, such as lawyers, mediators or other relevant professionals. Alternative dispute resolution processes typically take place as complementary to proceedings and may be initiated before, during, after or instead of proceedings, as provided for by national law. Such alternative dispute resolution processes may include, inter alia, mediation, collaborative negotiations, parental coordination, contact facilitation, settlement proceedings, therapeutic family justice and similar instruments.

56. Arbitration is not considered as an alternative dispute resolution 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.

57. "High-conflict case" refers to cases of parental separation, in which one or both parents are unable or unwilling to put aside their differences and 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, unless domestic violence is involved.

58. 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). Domestic violence includes violence against the child that occurs within the family or domestic unit. [25]

59. Cases involving incidents of violence perpetrated by one parent against the other are excluded from the definition of high conflict cases. Safeguards need to be put in place to allow for the detection and screening of cases that involve not only direct violence perpetrated on the child but also violence by one parent against the other.

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 co-operation 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, custody or upbringing, access to, or contact with the child.

61. High-conflict cases may be tried in court or resolved in mediation or other alternative dispute resolution processes. Repeated litigation refers to litigation within the scope of this Recommendation and to situations where mediation or other alternative dispute resolution 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.

62. "Child" is defined as any person who has not yet reached the age of 18, in accordance with Article 1 UNCRC. In Council of Europe member States, the usual age of majority is 18 years. [26]

63. Irrespective of the legal age of majority or minimum ages set out by national law to give children legal capacity to take specific decisions or exercise certain rights, this Recommendation applies to children under 18 years, as every child, without discrimination, has the right that his or her best interests are given due consideration in decisions and actions concerning the child.

64. The Recommendation refers to "parents" as the persons who are considered to be the child's parents under member States' national law.

65. A parent is typically also a holder of parental responsibility. However, the parental responsibility of a parent may have been limited by a competent authority's decision. Furthermore, a parent may be required to undertake certain steps to be recognised as a holder of parental responsibility, in particular if the parents are not married to each other or if another person has acquired parental responsibility in lieu of a parent. Other holders of parental responsibility in the context of parental separation may be the new partner of a parent or other persons.

66. "Parental responsibility" is understood as the set of rights and duties connected with the upbringing of, care and decision making and support for a child, as defined in the applicable national law. In many member States, the set of duties and rights connected with upbringing, care and decision making, but without maintenance of the child, have been given a narrower notion, but these notions differ in name and content [27] (see definition of contact).

67. Some member States distinguish between decision-making responsibility and custody, whereas custody usually covers decision-making responsibility concerning day-to-day activities and more significant, major decisions are left to a specific decision-making responsibility. In those member States, the term "parental responsibility" as used in this Recommendation refers to the specific decision-making responsibility for major decisions only, and this Recommendation's definition of "custody" applies to the day-to-day responsibility. In member States using only one definition of "custody" this Recommendation's definitions of "parental responsibility" and "custody" should apply to both. For member States not having a legal term for "custody", this Recommendation's definition of "contact" will apply in a broader sense covering parenting time and similar terms. This Recommendation is using a functional rather than terminological approach: If a paragraph is dealing with personal relations and spending time with each other, it uses the term "contact" but will cover all domestic terms dealing with this situation. If a paragraph is dealing with major decision making for a child, it uses the terms "parental responsibility" or "custody". Furthermore, some member States use the term "residence" in their national legislation instead of "custody" as it is used in the context of this Recommendation.

68. The Recommendation defines "contact" in accordance with the Council of Europe Convention on contact concerning children (ETS No°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.

69. Definitions of contact in member States' national law differ in wording and scope: as some member States 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." [28]

70. 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. This Recommendation is using the notion "contact" to cover both contact *stricto sensu* and parenting time allocated to a parent or to another person significant to the child. Therefore, in shared parenting arrangements the time the child should spend with one parent after spending time with the other parent is understood as "contact" in this instrument whenever the relevant paragraph indicates to do so. Should unrestricted parenting time or custody cause risks for the child, the competent authority has to take steps to restrict any "contact" between parent and child. Should one parent obstruct the other parent's parenting time or custody, this has to be handled in a similar manner as obstruction of "contact".

71. 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". [29] 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 communications, as well as the provision of information (photographs, school reports, medical reports, etc.)". [30]

72. Under national law of member States, the right to contact may or may not comprise a right to information. Some member States provide for the possibility to grant a right to contact, which does not comprise a right to information about the person of the child; this may apply to persons who are significant to the child. As an example, a former non-parent spouse of a child may have a right to contact without having also a right to information about the child, for instance with regard to the development of the child, the child's health or school achievements.

73. "Siblings" refers to the child's brothers and sisters, as well as any half-siblings and stepsiblings.

II. Overarching principles

74. 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

75. In accordance with Article 3.1 UNCRC, all administrative and judicial proceedings and alternative dispute resolution processes within the scope of the Recommendation should secure the right of the child to have his or her best interests assessed and given due consideration. Due consideration refers to primary or paramount consideration, in accordance with national law. The best interests of the child apply in substantive and procedural law, in accordance with the overarching principles set out in international and Council of Europe standards and the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

Right to be heard

76. In accordance with Article 12 UNCRC and the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, the child has the right to be informed and consulted 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 alternative dispute resolution processes (see chapter on Assessment of the child's best interest and section on the Right to be heard).

Rule of law

77. The Guidelines of the Committee of Ministers of the Council of Europe 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." [31]

78. The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice 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. They provide guidance on appropriate measures to secure and respect the rights of the child in legal proceedings, without minimising or denying due process standards under the pretext of the child's best interests. As an example, the protection of a child from being exposed to administrative or judicial proceedings should not be a pretext for denying the child his or her right to participate in the proceedings. Whenever the best interests of a child would appear to contradict adult-centred due process standards, member States should ensure a child-sensitive adaptation of these standards.

79. Member States should ensure all children enjoy the full and unconditional right of access to justice in accordance with Article 13 ECHR. In the context of parental separation proceedings, the right of the child to access to justice does not necessarily imply a right of the child to initiate proceedings and to participate as a party to the proceedings, but it applies, subject to the provisions of national law, in situations where a child feels that his or her rights have been infringed or violated or inappropriately addressed. [32] 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.

Dignity

80. Respect for the inviolability of the child's inherent dignity is a fundamental human right and principle of child-friendly justice. [33] It applies in all phases before, during and after legal proceedings and alternative dispute resolution processes. Competent authorities and professionals involved in proceedings and alternative dispute resolution processes within the scope of this Recommendation should treat children with care, sensitivity and respect, special attention should be given to the child's level of maturity, personal situation and specific needs.

Timeliness

81. Proceedings in which children are involved should be prioritised and considered as urgent and completed without undue delay, while respecting the rule of law. [34] 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 irrespective of any specialisation of jurisdiction.

82. Timeliness and exceptional diligence are overarching principles in each phase of family law proceedings to avoid any risk of adverse consequences. [35] This applies equally to all phases of a best interests determination concerning the child: case assessment, decision making, including any interim and emergency decisions and implementation. Timely decision making and implementation are essential also to provide the child with clarity and stability, and to prevent family disputes and conflicts from continuing or escalating over time and, in consequence, to prevent or reduce harm inflicted on the child.

83. The ECtHR recognised that a procedural delay may 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 the right to private and family life requires that future relations between the parent and child be determined solely in the light of all relevant considerations and not by the mere effluxion of time. [36]

84. A child's situation is dynamic and in constant evolution due to the child's development and evolving capacities. In legal proceedings, therefore, decisions concerning children may need to be reviewed and adapted even within a short period of time, including in the phase of implementation or enforcement of decisions (see sections on Emergency and interim measures, and Implementation and enforcement).

85. 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.

86. In some circumstances, delays may occur due to the need to gather 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, member States should develop effective mechanisms for co-operation and communication that facilitate all necessary steps of case assessment, decision making and, where applicable, implementation or enforcement.

Non-discrimination

87. The rights of the child should be secured without discrimination on any grounds such as sex, gender identity, sexual orientation, "race" [37], colour, age, language, religion, political or other opinion, national or social origin, association with a national minority, property, disability, birth, immigration or any other personal characteristics or other status of the child, the child's parents or holders of parental responsibilities, or other relevant family members. [38]

88. Article 2.2 UNCRC 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.

89. In addition to effective legal protection against discrimination, proactive and preventive measures may be necessary to support children and parents in vulnerable situations. [39]

Right to respect for private and family life

90. Member 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 (see section on Data protection).

91. 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 alternative dispute resolution processes. Effective respect for this right is essential for protecting the child's dignity. [40]

92. The right to family life is of particular importance in parental separation proceedings. The ECtHR has established that the mutual enjoyment by parent and child of each other's company is a fundamental element of family life, even when the relationship between the parents has broken down. [41] Moreover, the ECtHR emphasised the legitimate, long-term interest of children to develop and sustain a bond with their parent [42] and that "severing such ties means cutting a child off from its roots". [43] Therefore, if no exceptional circumstances are at hand, state authorities must do everything to preserve personal relations. [44] A serious limitation of parental rights should only be ordered for reasons relating to the parenting skills of the involved

parent and should always serve the child's best interests. [45] A total severance of contact can only be justified in exceptional circumstances, and competent authorities should always review whether less restrictive means could achieve the aim of protecting the child.

III. Assessment of the child's best interests

93. 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. [46] As a fundamental principle of child-friendly justice, [47] the best interests of the child is a guiding principle of family law proceedings in Council of Europe member States.

94. 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.

95. 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.

96. 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.

97. The overall objective of the assessment is to obtain a thorough, accurate and comprehensive understanding of the child's situation as the 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 CRC (see section Recommendations). [48]

98. The rights of the child, as afforded under the ECHR and the UNCRC, 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.

99. Whereas the rights of the child are universal, 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.

100. 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 of the circumstances of the case, the child's age, level of maturity and evolving capacities and all relevant factors.

101. In the context of administrative and judicial proceedings, the best interests assessment has not only a substantive but also a procedural dimension. The ECtHR stated that, as a general rule, national courts are responsible for assessing the evidence before them, including the means to ascertain the relevant reasons. Recognising the primordial interest of the child in the decision-making process, the ECtHR also noted, however, 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 ECtHR 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 [49] (see sections Timeliness, and 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. [50]

102. Several member States have set out a list of factors in national law to the effect that competent authorities must consider these when making decisions on the best interests of the child. [51] 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. [52] In General Comment No. 14, the CRC also sets out a list of factors to guide the best interests assessment, emphasising that they are to be considered non-exhaustive and non-hierarchical. [53]

103. The Recommendation lists relevant factors, which should be considered in the best interests assessment and 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.

104. Several of the factors 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. [54]

105. The best interests assessment should take into account the child's age, level of maturity and evolving capacities, recognising that physical, emotional, cognitive and social needs change over time and evolve as the child grows up. In accordance with Article 5 UNCRC, the best interests assessment should establish the facts relevant 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. Consideration of 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 assessment of his or her best interests and in the relevant proceedings or processes (see section on the Right to be heard).

106. 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 Article 12 UNCRC and the Guidelines of the Committee of Ministers of the Council of Europe 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 and direction to the child, in accordance with Article 5 UNCRC. The CRC underlines that the principles of the best interests of the child and the right to be heard (Article 3.1 and 12 UNCRC) are complementary: "the first aims to realize

the child's best interests, and the second provides the methodology for hearing the views of the child or children and their inclusion in all matters affecting the child, including the assessment of his or her best interests" [55] (see section on the Right to be heard).

107. Competent authorities 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, and 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.

108. 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 (see section on the Right to be heard).

109. As part of the best interests assessment, a social 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 j), 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.

110. A parental capability assessment will reveal the willingness and ability of each parent or other person 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, in accordance with the best interests of the child. The assessment should indicate where it may be appropriate for the competent authority to require parents to use services 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.

111. The willingness and ability of each parent to care for and meet the needs of the child should be assessed without discrimination on any ground 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.

112. 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 gender identity or sexual orientation.

113. The assessment of the history of the child's upbringing and care should aim at understanding the experiences of the child and the family relevant for the decision making. Understanding the child's and the family's experiences 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, abuse or neglect of a child or of violence or abuse 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.

114. 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 principle, [56] 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. In regard to the rectification of past situations that have been contrary to the rights and best interests of the child, for instance where contact between a parent and a child or children has been obstructed, the ECtHR explains that there may be a need to adopt preparatory or phased measures to rebuild contact. [57] Where the assessment identifies such situations, it should gather the facts necessary to advise the competent authority on appropriate preparatory or phase measures.

115. 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 Article 19 UNCRC. Violence perpetrated in the family, including corporal punishment, [58] 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 law, regardless of whether violence is directed against the child or another family member. The same applies to any actual or potential harm to the child's health, physical, psychological and emotional integrity, survival or development. [59]

116. 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 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. [60] In member States that have ratified the Convention, the ECHR is to be interpreted in the light of its provisions. [61]

117. The vulnerability assessment of a child and parents should aim to identify and assess 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. Article 6 UNCRC provides for the right of the child to life, survival and development and is considered a general principle of the Convention. [62] The CRC understands development as a "holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development". [63]

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 children, [64] adolescents, [65] and children transiting to adulthood and independent life. The CRC therefore refers to the best interests as a "dynamic concept that requires an assessment appropriate to the specific context" [66] (see sections on Timeliness, and Review of decisions).

120. Every child enjoys the right to the highest attainable standard of health (Article 24 UNCRC). 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". [67] 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 for 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 Articles 28 and 29 UNCRC and taking into consideration any specific needs or vulnerabilities of the individual child. [68]

122. Article 8 UNCRC sets out the right of the child to identity. The child's identity includes consideration of the child's name, sex, sexual orientation, nationality, national and cultural origin, language, religion and spirituality, or any other characteristics of the child, which the competent authority considers relevant. In this respect, the CRC provides further explanations in its General Comment No. 14: "The identity of the child includes characteristics such as sex, sexual orientation, national origin, religion and beliefs, cultural identity, personality. Although children and young people share basic universal needs, the expression of those needs depends on a wide range of personal, physical, social and cultural aspects, including their evolving capacities.

The right of the child to preserve his or her identity is guaranteed by the Convention (Art. 8) and must be respected and taken into consideration in the assessment of the child's best interests. (...) Although preservation of religious and cultural values and traditions as part of the identity of the child must be taken into consideration, practices that are inconsistent or incompatible with the rights established in the Convention are not in the child's best interests. Cultural identity cannot excuse or justify the perpetuation by decision-makers and authorities of traditions and cultural values that deny the child or children the rights guaranteed by the Convention." [69]

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. Article 31 UNCRC 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. [70] 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.

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 (see above on non-exhaustive, non-hierarchical list of factors and individual assessment in accordance with the UNCRC).

125. The CRC 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." [71]

126. The Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice provide that, 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. [72] 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. Where the assessment of the best interests of children lead to different decisions for each child, and the children are living in the same household or in the same conditions, such differences should be justified by a transparent reasoning based on the assessments made (see section on the Right of the child to be heard).

127. 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 trained professionals with appropriate oversight by competent authorities, where justified in the circumstances of the case. [73]

128. Member States should ensure that competent authorities are able to activate relevant services and expertise in assessing the best interests of the child. This may be justified particularly in high conflict cases, in cases of domestic or gender-based violence, 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 services for this purpose.

129. Multidisciplinary and interagency services can provide important assistance in assessing the best interests of the child. To this end, member States are encouraged to have such services in place when carrying out best interests assessments and, where applicable, follow-up evaluations and reviews, which are appropriate to the circumstances of cases under private law, such as case conferences, Family Justice Centres or child-friendly justice centres inspired by the Barnahus model. [74]

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

131. 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 competent authority should assess the specific needs of a parent or child in each case, where relevant with the assistance of qualified professionals.

132. 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 is a principle that should be afforded specific attention when making decisions on custody and contact rights in accordance with the best interests of the child. This may require consideration for the right and need of the child to be able to develop a meaningful relationship with each parent. In cases of very young children, the frequency and duration of such contact may evolve gradually. 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 remediating 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, bearing in mind the quality and quantity of contact between the child and each parent.

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

134. 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.

135. The best interests assessment should identify cases where assisted or 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 relationship between a parent and a child, or where a parent or a child require support due to illness or disability, the possibility of assisted or supervised contact between child and a 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 assisted or 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.

136. This applies also to families with a history of violence, as custody and visitation decisions in such cases require a careful balancing of the different rights and interests at stake. Article 31 of the Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) requires that incidents of violence, in particular domestic violence, are taken into account in decisions on custody and visitation rights to ensure that the exercise of these rights does not harm the rights and safety of the parent or child who are victims of such violence. In cases of intra-parental violence, assistance for the exercise, supervision, suspension or termination of contact may be required.

IV. Right to be heard

137. The right to be heard applies to all administrative or judicial proceedings and alternative dispute resolution processes within the scope of this Recommendation. Article 12 UNCRC 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 alternative dispute resolution 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 (see Overarching principle on the right to be heard).

138. According to the case-law of the ECtHR, whilst Article 8 ECHR 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 ECtHR 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 if they were not provided with the opportunity to be heard and thus to express their views. For children of a certain age, therefore, the ECtHR favours the national judge hearing them in person in any proceedings affecting their rights under Article 8. [75]

139. The ECtHR developed the general principles set out originally in *Sahin v. Germany* in view of the right of the child to be consulted and heard when his or her best interests are under assessment. [76] 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. [77]

140. The Committee on the Rights of the Child notes that “children’s levels of understanding are not uniformly linked to their biological age.” [78] In its 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”. [79] The CRC 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. [80] In particular, when a child asks to be heard, a sufficient level of understanding should be presumed. [81] To achieve this, competent authorities should assess the level of understanding of the child on a case-by-case basis.

141. Where age limits below which a child is not considered to have a sufficient level of understanding to express his or her views exist in legislation, such age limits should be subject to periodic review. A review may examine if the age limit continues to correspond to a typical child development in the society, taking into account that children have been encouraged and have become used to participating in family life and that, conscious of their right, they expect and demand to be heard on matters concerning them. A review may further consider how competent authorities are applying relevant age limits in practice, particularly where national law leaves them a margin of discretion, and if or how the relevant case law evolves.

142. The diversity of approaches chosen by member States suggests that there may be no objective criteria for setting out minimum ages in national law to determine as of what age a child has the right to be heard in legal proceedings. [82] Research has evidenced that children are able to express their views beginning from an early age, even though the child’s capability to narrate freely and to resist suggestive and leading questions evolves significantly with age. In addition to age and level of maturity, the ability of children to speak out and express their views in legal proceedings depends in particular on:

- 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
- c. the interviewer’s abilities in child-sensitive communication and the child’s willingness and ability to speak out. [83]

143. The Guidelines of the Committee of Ministers of the Council of Europe 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 concerning the child. [84] Recommendation CM/Rec(2012)2 of the Committee of Ministers to member States 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. [85] 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. [86]

144. Where a child needs assistance to express his or her views, such assistance should be provided. The child should be heard through a trained professional where this is assessed to be in the best interests of the child. Such professionals may include 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. Where a child is unable to form or express views, for instance owing to his or her very young age or limited capacity, such professionals may be tasked to convey the child's perspective where

appropriate and as far as possible. Hearing a specifically trained professional on the child's perspective should ensure it is considered in addition to the perspectives of the (other) parties in the proceedings. An expert opinion on the child's perspective may be based on expertise in child development and the needs of children at different ages, including specific needs relevant in the individual case.

145. The CRC 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." It underlines further that member States should adopt specific measures to ensure that children can exercise their rights in such situations without discrimination. These measures "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." [87]

146. To be able to form his or her 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 the child will not be responsible for the final decision or for the weight assigned to the child's views in the final decision (see section on the 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. [88] When a child objects to contact, the reasons for this objection should be thoroughly investigated and addressed in accordance with the best interests of the child. [89]

148. Where a child is heard in proceedings or processes within the scope of this Recommendation, the person hearing the child should inform the latter 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 his or her views will be taken into account and given due weight; and
- c. how the best interests of him or her will be a primary consideration in the decision-making process.

149. Where more than one child is concerned by proceedings, or their outcome, for instance in the case of siblings, each of them should be provided with a genuine opportunity to express their views separately. Where children express the wish to be heard together, their wish can be accommodated by arranging for their hearing at the same place and time. In such case, the hearing may be structured into a joint hearing of the siblings, and the competent authorities 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 his or her views by hearing each child individually as well, without the other sibling being present, in accordance with the individual needs of the child.

150. The ECtHR observed that, in view of children's evolving capacities and specific circumstances of cases before national courts, member States should ensure that different mechanisms are in place to hear children in legal proceedings and this may include the need 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. [90] 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. [91]

151. Where a child is unable to form or express views, for instance due to very young age or limited capacity, 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.

152. Member 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.

153. 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 suitable 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 (see section on Best interests of the child, and Training).

154. 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, the competent authority may explore if making adjustments to the manner in which the child will be heard, including the provision of appropriate support and assistance, could help the child to express his or her views.

155. In order to avoid undue stress and discomfort, the hearing of a child's views should take place in a child-friendly environment, in accordance with the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice. [92] When hearing a child in court, a judge should not only hear the child in camera but also take special care to make the room more child-friendly, for instance by furnishing and decorating the room in a home-like atmosphere, providing seating without tables and the judge not wearing a robe. Providing a child-friendly environment also requires consideration of how the child reaches the place of the hearing and spends time in any waiting areas. A child-friendly environment for the hearing of a child may be ensured for instance where children are heard in multidisciplinary and interagency service centres.

156. The CRC 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.” [93]

157. 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 (see section on the 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 (see section on the 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.

158. 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 a child who is obviously unable to form and articulate an opinion on his or her 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 ECtHR. [94]

159. Competent authorities, therefore, should be alert to signs of loyalty conflicts, coercive control or other forms of influence on the child’s views. In such cases, exceptional diligence is required to guarantee the child’s safety and the possibility for the child of expressing his or her views freely. [95] This may involve the provision of services such as 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 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.

160. Member 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, the measures and safeguards referred to in paras. 148 to 158 above should be effectively in place to support the child in forming his or her own views, expressing them freely and making an accurate and reliable statement on their views.

161. The number of interviews and hearings of children should be reduced to a minimum, wherever possible, and where interviews or hearings of children are dealing with the same situation. Where more than one hearing is necessary at the same procedural stage, they should

be carried out by the same person to ensure a coherent approach. 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.

162. For reason of procedural fairness, a report of the views expressed by the child should be brought to the attention of the parties. When sharing this report, consideration should be given to the protection of the child against any form of harm resulting from the nature of his or her views as expressed in the hearing, including any reprimands, harassment or secondary victimisation or any other adverse consequences. This report could be made orally by the judge or formulated in a written report of the judge shared with the lawyers without being given to the parents.

163. In preparation for the hearing of the child, and at the moment of the hearing, the child should be duly informed about how his or her views 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.

164. 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 and to prevent harm when sharing the report.

V. Right to information and assistance

Right to information

165. Member States should ensure that information services are in place to provide child-friendly information to children involved in or affected by proceedings and alternative dispute resolution 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 for the proceedings or alternative dispute resolution 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 alternative dispute resolution 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 reasons for such decisions;
- c. the stages and likely duration of the proceedings or alternative dispute resolution process;
- d. the mechanisms, institutions or services available to support the child during the proceedings or alternative dispute resolution 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.

166. In accordance with the Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, 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. [96] Children should have the right to receive information irrespective of age and of the child's role in the proceedings; in particular, the right to information should not be limited to information about the hearing of the child. 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.

167. Child-friendly information materials should be available and accessible to children, parents, service providers and state officials involved in proceedings or alternative dispute resolution 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.

168. Member 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.

169. 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. This may require of member States to determine which state authority or public or private service provider is responsible for providing relevant information.

170. 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.

Right to assistance and to legal counsel and representation

171. Member States should ensure that the child has the right to receive independent support and legal assistance and, where required by national law, legal representation, separate from the other parties. Such support should be provided throughout all phases of proceedings and alternative dispute resolution processes. [97] Support may include legal advice and counselling, psycho-social and emotional support, in accordance with the rights and needs of the child. Professionals providing legal advice and representation to children should be specialised in assisting, advising and representing children and communicating in a child-friendly way. The provision of legal representation separate from the (other) parties is appropriate where the child is a party to the proceedings.

172. 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

Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice apply to all situations where children are concerned by proceedings and alternative dispute resolution processes within the scope of this Recommendation.

173. 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.

174. 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 social support network whom the child trusts, who is able to provide this service, can act as a person of trust. A person of trust should not be a party or participant to the proceedings, should not provide legal or other forms of representation of the child in the proceedings, and should not have any vested interests in the case. The person of trust should have a basic knowledge regarding the rights of the child and the proceedings, or have a willingness and capability to acquire this kind of knowledge. Moreover, this type of role holds with it responsibilities that the person should be informed about and accept.

175. In accordance with the Guidelines of the Committee of Ministers of the Council of Europe 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. [98]

176. 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. [99]

177. 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 was satisfied that the procedural requirements implicit in Article 8 ECHR were complied with in a case where the domestic court refused to hear young children and to appoint them a special guardian instead of the social services who represented them in the proceedings. [100]

178. Member States should ensure that an effective, sustainable and reliable legal aid scheme is available and accessible to children and parents concerned by proceedings and alternative dispute resolution processes within the scope of this Recommendation. Where relevant, access to free legal aid schemes should be available to the child under the same or more lenient conditions than those applicable to adults. The Guidelines of the Committee of Ministers of the Council of Europe 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." [101]

Complaints mechanism

179. An independent and effective non-judicial complaints mechanism, such as an ombudsperson for children, 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. A non-judicial complaints mechanism operates outside the judiciary and does not replace judicial review or oversight. To be accessible and effective, children should be informed in a child-friendly language on how to access the complaints mechanism and it should be sensitive to the needs of children. [102]

VI. Conduct of parental separation proceedings

Before proceedings

180. Member 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 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. Positive parenting programmes may be provided to support parents and strengthen families. In addition, education and awareness raising campaigns are useful to sensitise and inform the population. Universal services and programmes support and empower children, parents and families in accordance with their needs and prevent them from getting into vulnerable situations (primary prevention).
- b. Selective services or programmes are targeting children, parents and families who have been identified as having 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 programmes 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 secondary prevention; secondary prevention refers to service provision that

supports children and adults in preventing harm when in a vulnerable situation, reducing vulnerability and becoming independent of service provision (secondary prevention).

- c. Indicated services or programmes are targeting children, parents and families who have experienced violence and who are living in situations of particular vulnerability and risk. [103] Indicated services include different forms of therapy and treatment and aim at ending violence in the family and preventing the continuation of or new experiences of violence (tertiary prevention).

181. Recommendation Rec(2006)19 of the Committee of Ministers to member States 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. [104]

182. 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. [105]

183. Member 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.

184. 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 alternative dispute resolution processes (see section on 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.

185. Competent authorities should be able 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 of mandatory services should be governed by the findings of the best interests assessment. The requirement of mandatory services should be regulated and subject to periodic review. The competent authority cannot require parents to participate in mediation or other alternative dispute resolution processes (in accordance with the Council of Europe Convention on

preventing and combating violence against women and domestic violence (CETS No. 210), Article 48.1) nor to use other mandatory service in cases where domestic or gender-based violence have been established.

186. Member States should enable children to contact service providers on their own initiative and that they are fully and effectively informed about this opportunity, in accordance with their age and level of maturity, and can exercise that possibility in practice, at low threshold.

187. Member 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.

188. 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 co-operation. Insufficient financial resources should not be used as a justification for not respecting the rights of the child in parental separation proceedings.

During proceedings

189. Competent authorities should be able to activate 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. The waiting time for receiving services and expertise should be as short as possible. The prompt provision of relevant services and expertise is particularly important in cases involving young and very young children.

190. 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 and share information in accordance with the best interests of the child and applicable data protection laws (see section on Data protection). 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.

191. Mechanisms and case-management measures should be in place to enable the competent authority 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 alternative dispute resolution 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 at the earliest appropriate moment during the proceedings.

192. In conducting relevant assessments and throughout proceedings, the competent authority should assess the need to activate 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.

193. 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 co-operate 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 (see section on Data protection).

Emergency and interim measures

194. A competent authority in parental separation proceedings should be able 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 significant harm.

195. The Guidelines of the Committee of Ministers of the Council of Europe 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 be able to take decisions, which are immediately enforceable in cases where this would be in the best interests of the child. [106]

196. 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.

197. 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 urgent hearing on the issue.

198. 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, especially when the case needs special investigation, appropriate interim measures should be taken in order to secure the rights and best interests of the child. Decisions on interim measures should be made in a timely manner and in accordance with the best interests of the child. Decisions on interim measures are not decisions on the merits and are subject to review in accordance with national law.

199. Where an ex-parte application has been made to the competent authority in view of an immediate risk or threat, or the competent authority becomes aware of such a risk or threat by other means, it should be able to order interim measures, or initiate accelerated or expedited proceedings, to prevent harm to the child.

200. 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 or inter-parental violence 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 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 in the family. Due consideration should be given to the views of the child where interim measures relating to contact are proposed. There should be no coercion of the child to enable a parent to have interim contact.

201. 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.

202. 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.

Alternative dispute resolution processes

203. Member States are encouraged to develop and promote mediation and other voluntary alternative dispute resolution processes, which are provided complementary to administrative or judicial proceedings, to support parents in reaching an amicable agreement giving due consideration to the rights and best interests of the child. Alternative dispute resolution processes include, but are not limited to, mediation, conciliation, parental coordination, contact facilitation, collaborative negotiations, and amicable settlement, 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.

204. Providers of mediation and other alternative dispute resolution processes should be able to avail themselves of appropriate guidance and tools for identifying those cases where alternative dispute resolution 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 alternative dispute resolution should always be voluntary and conditional on the informed consent of the person.

205. The Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) obliges States Parties to prohibit mandatory alternative dispute resolution 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 alternative dispute resolution methods is mandatory and replace adversarial court proceedings". The prohibition of mandatory alternative dispute resolution processes recognises that perpetrators of such violence may exude a sense of power and dominance and the victim may not be able to enter the alternative dispute resolution processes on an equal basis with the perpetrator [107].

206. 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 (CETS No. 210).

207. In assessing whether a case is suitable for mediation or other alternative dispute resolution, the mediator or other facilitator should ascertain that each parent has the capacity to engage in mediation, that is, the 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 alternative dispute resolution process. To facilitate this process, standardised screening tools for relevant risks that could reduce a parent's mediation competence, including 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.

208. 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. [108]

209. When screening for violence, mediators and other facilitators of alternative dispute resolution processes should not only ask about incidents or experiences of violence but also about controlling behaviour, 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. [109]

210. 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." [110] 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. [111]

211. Whether or not a case is suitable for mediation needs to be assessed case by case. To facilitate this process, standardised screening tools for relevant risks that could reduce a parent's mediation competence, including domestic violence, 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.

212. In addition to the screening in the context of the suitability assessment prior to mediation or other alternative dispute resolution, 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 or other factors that may reduce a parent's capacity to engage in mediation. [112]

213. The Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210) 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. [113] As the risks of victims can be dynamic and evolve over time, the assessment should be updated periodically.

214. Before parental separation proceedings are initiated, the parents should be invited and encouraged to participate in an information meeting on alternative dispute resolution processes. An information meeting is useful to inform the parents of the benefits of mediation and other alternative dispute resolution 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, as well as screening for cases of domestic and other forms of violence between parents or against the child.

215. The benefits of mediation and other alternative dispute resolution 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 alternative dispute resolution 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 alternative dispute resolution 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. [114]

216. 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).

217. The commencement of legal proceedings should not prevent parents from engaging in alternative dispute resolution at any time. Competent authorities should encourage parents to engage in mediation and alternative dispute resolution processes 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.

218. Periods during which mediation and alternative dispute resolution processes take place should be excluded under national law from any applicable limitation periods.

219. In accordance with the principle of voluntariness, the commencement of mediation or other alternative dispute resolution processes should not exclude a parent from having the possibility to have recourse to adversarial judicial proceedings at any time prior to the conclusion of the mediation or other alternative dispute resolution process.

220. The best interests of the child should be a primary consideration in any alternative dispute resolution measure and the parents should be encouraged to focus on the needs and best interests of the child at all times. Recommendation No. R (98) 1 of the Committee of Ministers to member States 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". [115]

221. Professionals conducting mediation and other alternative dispute resolution processes should be specifically trained on the rights and best interests of the child and on communicating with children in situations of parental dispute and separation. Member 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.

222. The right of the child to be heard and to participate applies in alternative dispute resolution processes as in legal proceedings and should be ensured where appropriate, in accordance with sections IV and V of this Recommendation and in accordance with the best interests of the child. Mediators and other professionals facilitating alternative dispute resolution processes in the context of parental separation proceedings should be specially trained to hear children in accordance with the age and level of maturity of the child.

223. Where a child is unable to form or express views, due to young age or capacity, the child's perspective should be given due consideration in the alternative dispute resolution processes, in accordance with section IV.

224. The principles of voluntariness, confidentiality, impartiality and self-empowerment that generally guide alternative dispute resolution processes apply to the child's participation as they do for adults. [116]

225. As required by Recommendation CM/Rec(2023)8 of the Committee of Ministers to member States on strengthening reporting systems on violence against children, member States should encourage and support professionals involved in alternative dispute resolution processes to report violence against children. [117] Member States should also ensure that professionals reporting risks and safety concerns to a child are not hindered by any obstacles or barriers about reporting violence or risk of violence, such as legal uncertainty with regard to principles of confidentiality and reporting obligations. 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 alternative dispute resolution providers should be regulated in law and clarified in relevant professional standards and codes.

226. The agreements reached as a result of mediation or other alternative dispute resolution processes should be subject to registration by a competent authority. 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. Registration may be necessary to give legal effect to the agreement, to ensure its enforceability and for the circulation of parental agreements in cross-border family situations, in accordance with applicable law.

227. 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 or other alternative dispute resolution process. The mediator's position, actions and communication should reflect these principles to ensure that the parties are able to participate in

mediation or other alternative dispute resolution processes with equal opportunities and equal bargaining powers. [118] The principles of voluntariness, confidentiality, impartiality and self-empowerment that generally guide mediation and other alternative dispute resolution processes in cases of parental separation apply to the child's participation as they do for adults. [119]

228. The principle of confidentiality of mediators and other alternative dispute resolution 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 alternative dispute resolution processes should be duly informed about these regulations and the relevant obligations on professionals.

229. 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. [120]

Decision

230. The Recommendation sets out principles and practical guidance regarding the decision on the merits of the case. Clear and transparent reasons should be given for decisions, explaining how the relevant factors have been assessed, verified and assigned weight, whilst ensuring that this explanation does not jeopardise the child's health or safety (see section on the Right to be heard). 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.

231. 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. [121]

232. The content of the decision, its meaning and consequences, should be communicated promptly and explained to the child, in a manner appropriate to his or her age and level of maturity (see section on the Right to information). It should be clarified who is responsible for communicating the decision to the child. Preferably, the competent authority, which made the decision, should give the child this explanation in a child-friendly manner, for instance in a follow-up meeting with the child in a child-friendly environment or in a written explanation, for instance in a letter addressed to the child. Competent authorities and practitioners should not rely upon the parents of the child to divulge this information without preparing and educating them on how to best fulfil this task.

Implementation and enforcement

233. 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 that 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, member States should provide appropriate measures and instruments to support implementation and to enable enforcement in the event of non-compliance (see Introduction and Recommendations for a definition of implementation and enforcement).

234. 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 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.

235. 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.

236. 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.

237. 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.

238. 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 alternative dispute resolution 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, negotiation and therapeutic assistance 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 co-operation to this end, they will not aim at reviewing the decision on the merits in the case.

239. Should the use of alternative means prove to be unsuccessful, more far-reaching steps might be taken. In this context, even though the ECtHR prefers the voluntary execution of judgments, the ECtHR also observes that parents frequently adopt entrenched positions, making proportionate coercive measures necessary. [122] Therefore, the ECtHR stresses that "the use of sanctions must not be ruled out in the event of manifestly unlawful behaviour". [123]

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

241. When implementing measures, which are to be taken in the best interests of the child, or enforcing decisions, member States should ensure respect for the inviolability of human dignity and the child's personal freedom, as well as any vulnerability of the child. Measures for the implementation and enforcement of decisions should ensure the timely compliance with all elements of the decision. They should comply with international standards, national law, and the principle of proportionality.

242. Where the competent authority considers having 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 a uniform, they should 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.

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

244. 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 should remain, however, a measure of last resort and always be applied with due consideration to the rights and best interests of the child and in respect of principles of legality, necessity and proportionality.

245. 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. Where the competent authority decides to review the decision on the merits, any adjustments made should be motivated by the rights and best interests of the child.

Review of the decision

246. Member States should ensure that decisions made in parental separation proceedings, namely that the final decisions on the merits of the case, can be subject to effective administrative or judicial oversight and, in case of change of circumstances, to review. Specific attention should be paid to the situation of adolescents subject to decisions that have been in force for several years.

247. Member States should ensure that any appeal procedure and review are 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.

VII. Relocation

248. The Recommendation CM/Rec(2015)4 of the Committee of Ministers to member States on preventing and resolving disputes on child relocation [124] 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 make a decision affecting the habitual residence of the child, taking account of all the circumstances specific to each individual case. [125]

249. 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 alternative dispute resolution 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.

250. 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.

251. Where required to do so by applicable law, a parent who has an enforceable right to contact and is intending to relocate should give timely prior notice to the other parent or holders of parental responsibility, 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 others who have an enforceable right to contact. 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.

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

253. 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.

254. Decisions in relocation cases should give due consideration to the best interests of the child, when balancing the rights of the child with the rights of the parents and others having an enforceable right of contact. In this balancing exercise, the competent authority should give due 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.

255. The Recommendation CM/Rec(2015)4 of the Committee of Ministers to member States on preventing and resolving disputes on child relocation recognises the risk that a child would lose contact or experience a significant disruption of contact due to relocation. The best interests assessment therefore 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, such as close friends of the child, may be of particular meaning for the child and should be assessed and considered as part of the best interests assessment. 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.

256. 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, grandparents, and siblings. 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.

257. 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 with or without 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 in accordance with section III, Child's best interests assessment, to ensure that the relocating parent has given due consideration to the best interests of the child.

258. 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 have regard specifically 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

259. Member 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 (see 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 alternative dispute resolution processes. Specific measures should be taken to protect the child's data processed in the context of proceedings or alternative dispute resolution 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) of 1981 and Protocols, and the Modernised Convention for the Protection of Individuals with Regard to the Processing of Personal Data (Convention 108+). [126] Effective respect for these rights is necessary to protect the child's dignity.

260. The Guidelines of the Committee of Ministers of the Council of Europe 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 records or documents 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 public; confidentiality rules for professionals, and the prevention of violations of privacy rights by the media. [127]

261. 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 Article 6 ECHR. Court hearings involving children should be held in the absence of the public. In practice, this also requires 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 Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice.

262. 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 co-operation and service models are in place and facilitate a collaborative multi-professional assessment of a child's case (see section on Best interests of the child).

263. 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." [128]

264. 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 (see section on the Right to information).

265. 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.

266. 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. The media should respect the right of the child to privacy also in cases where the child's parents breach this right and reveal personal data or images of the child in public or to the media. 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

267. Member States should ensure that state officials and professionals involved in parental separation situations and proceedings are adequately and continuously trained on the rights of the child, as well as on interacting with children, 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.

268. 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.

269. Relevant professional groups, such as social and child protection workers, health care and medical staff, child psychologists, as well as law enforcement services should receive training on methods for screening cases for domestic and other forms of violence and identifying children as victims of domestic and other forms of violence, including when they have witnessed it, assessing its harmful impacts on the health and well-being of the child, as well as relevant risks before, during and after parental separation proceedings.

270. Competent authorities 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, where appropriate, continue receiving coaching and supervisory support in applying these methods and tools in practice (see section on Best interests of the child).

271. 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. [129] 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.

272. 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. [130] 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. [131]

273. To ensure ethical standards and codes of conduct are in place for family mediation and alternative dispute resolution processes, member States are encouraged to translate and adapt international and European guides and codes to their specific national contexts, giving due consideration to the rights and best interests of children, as well as child safeguarding and wellbeing standards. Member States should further ensure that such guides and codes are effectively in use by mediation and other alternative dispute resolution 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 alternative dispute resolution providers and professionals and training should be provided systematically.

Monitoring and research

274. 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, academic and civil society actors. Monitoring and research should include participatory methods to ensure the voices of children and parents as service users and parties or participants in proceedings and alternative dispute resolution processes are heard and taken into account.

275. 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, member 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

276. Member States should strengthen their co-operation 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, cross-border judicial and social service networks and child protection services should be strengthened. For European Union Member States and for Contracting States of the relevant Conventions of the Hague Conference on

Private International Law, the implementation of relevant applicable standards [132] and co-operation through the relevant networks are particularly important for cross-border cases and to prevent international child abduction, as far as possible, and to protect the children at risk of or concerned by such abductions.

277. Member 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.

[1] Ruggiero R., Volonakis D. and Hanson K. (2017), "The inclusion of 'third parties': The status of parenthood in the Convention on the Rights of the Child", in Brems E., Desmet E. and Vandenhoele W. (ed.), *Children's Rights Law in the Global Human Rights Landscape, Isolation, inspiration, integration?* pp.71-89. Routledge Research in Human Rights Law, Oxfordshire. See also: Law J. and Martin E. A. (2014), *A Dictionary of Law* (7th edn), Oxford University Press, Oxford.

[2] Notably: United Nations Convention on the Rights of the Child (UNCRC) and its Optional Protocols. Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (ETS No. 005) and its 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). European Social Charter (revised) (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).

[3] Notably: Guidelines and Recommendations of the Committee of Ministers to member States of the Council of Europe: Recommendation No. R (84) 4 on parental responsibilities; Recommendation No. R (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. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010). Recommendation CM/Rec(2011)12 on children's rights and social services friendly to children and families. Guidelines on child-friendly health care (2011); Recommendation CM/Rec(2012)2 on the participation of children and young people under the age of 18. Recommendation CM/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 interests of the child and the need to keep families together. Resolution 1714 (2010) on Children who witness domestic violence.

[4] Notably: Committee on the Rights of the Child (CRC), General Comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, 18 September 2019. General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20, 6 December 2016. General Comment No. 19 (2016) on Public budgeting for the realisation of children's rights (art. 4), CRC/C/GC/19, 20 July 2016. 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, 29 May 2013. 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. 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. General Comment No. 12 (2009) on the right of the child to be heard, CRC/C/GC/12, 20 July 2009. General Comment No. 8 (2006) on 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. General Comment No. 9 (2006) on the rights of children with disabilities, CRC/C/GC/9/Corr.1, 13 November 2007. General Comment No. 7 (2005) on Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006. General Comment No. 5 (2003) on General Measures of Implementation for the Convention on the Rights of the Child, CRC/GC/2003/5, 3 October 2003.

[5] Notably: United Nations General Assembly (2010), *Guidelines for the Alternative Care of Children*, A_RES_64_142-EN. Hague Conference on Private International Law (2012), *Mediation, Guide to good practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*.

[6] Council of Europe (2022), *The new Strategy for the Rights of the Child (2022-2027) adopted by the Committee of Ministers*, Newsroom on Children's Rights. Council of Europe (2022), *Strategy for the Rights of the Child (2022-2027): "Children's Rights in Action: From continuous implementation to joint innovation"*, CM(2021)168-final.

[7] Council of Europe (n.d.), *Guide for children and young people to the Council of Europe Strategy for the Rights of the Child (2022-2027)*, Building a Europe for and with children.

[8] CRC (2013), 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, 29 May 2013, para. 6.

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

[10] CRC (2013), 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, 29 May 2013, para. 36.

[11] Ibid, para. 37.

[12] Ibid, para. 39.

[13] Ibid, para. 37.

[14] ECtHR, *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; *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 134, ECHR 2010; *Plaza v. Poland*, no. 18830/07, § 71, 25 January 2011; *M.R. and L.R. v. Estonia*, no. 13420/12, § 37, 15 May 2012; *Gobec v. Slovenia*, no. 7233/04, § 13, 3 October 2013; *Krasicki v. Poland*, no. 17254/11, § 83, 15 April 2014; *Stasik v. Poland*, no. 21823/12, § 81, 6 October 2015; *Mitrova and Savik v. the former Yugoslav Republic of Macedonia*, no. 42534/09, § 78, 11 February 2016 (hereafter: *Mitrova and Savik v. the former Yugoslav Republic of Macedonia*, 2016); *Malec v. Poland*, no. 28623/12, § 67, 28 June 2016; *Wdowiak v. Poland*, no. 28768/12, § 63, 7 February 2017; *Endrizzi v. Italy*, no. 71660/14, § 47, 23 March 2017; *Ónodi v. Hungary*, no. 38647/09, § 30, 30 May 2017; *Grujić*

v. *Serbia*, no. 203/07, § 65, 28 August 2018; *Vyshnyakov v. Ukraine*, no. 25612/12, § 35, 24 July 2018 (hereafter: *Vyshnyakov v. Ukraine*, 2018); *Milovanović v. Serbia*, no. 56065/10, § 117, 8 October 2019.

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

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

[17] CRC (2013), General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3 para. 1), CRC/C/GC/14, 29 May 2013, para. 4.

[18] CRC (2011), General Comment No. 13 (2011) on the right of the child to freedom from all forms of violence, CRC/C/GC/13, para. 61. Committee on the Rights of the Child (2013), General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (Article 3 para. 1), CRC/C/GC/14, 29 May 2013, para. 4.

[19] Council of Europe (2003), Recommendation Rec(2003)17 of the Committee of Ministers to member States on enforcement, Principle I.a. See further: Council of Europe (2003), 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.

[20] The Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, 2011) obliges state parties to prohibit mandatory alternative dispute resolution processes, including mediation and conciliation, in relation to all forms of violence covered by the scope of the Convention (Article 48.1).

[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).

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

[23] Bekkhus B. T. (2022), *Report of the hearing of relevant stakeholders on the protection of the rights and the best interests of the child in parental separation and in care proceedings*, Council of Europe.

[24] This section is based on the summary report on child consultations prepared by Hintalovon Children's Rights Foundation and Consultants to the Committee of Experts on the Rights and the Best Interests of the Child in Parental Separation and in Care Proceedings CJ/ENF-ISE(2022)10, Council of Europe.

[25] See also §§ 114-115 below.

[26] Recommendation CM/Rec(2012)2 of the Committee of Ministers to member States on the participation of children and young people under the age of 18, p. 6.

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

- [28] Mole N. and Mallevaey B. (2021), *Feasibility study of a legal instrument on the protection of the best interests of the child in situations of parental separation*, Council of Europe, para. 198.
- [29] 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.
- [30] *Ibid*, Explanatory Memorandum, para. 12.
- [31] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), III.E.2.
- [32] *Ibid*, III.E; B; D.
- [33] *Ibid*, III.C.
- [34] *Ibid.*, IV.D.4.
- [35] *Ibid.*, IV.D.4.51.
- [36] ECtHR, *Strand Lobben and Others v. Norway* [GC], no. 37283/13, § 211-212, 10 September 2019.
- [37] Regarding the use of terminology, compare, *mutatis mutandis*, the explanation provided in Recommendation CM/Rec(2022)16 of the Committee of Ministers to member States on combatting hate speech: “Since all human beings belong to the same species, the Committee of Ministers rejects, as does the European Commission against Racism and Intolerance (ECRI), theories based on the existence of different “races”. However, in this document, the term “race” is used in order to ensure that those persons who are generally and erroneously perceived as “belonging to another race” are not excluded from the protection provided by this recommendation.”
- [38] UNCRC Article 2. ECHR, Article 14 and Protocol No. 12 to the ECHR. European Court of Human Rights (updated 2022), *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*.
- [39] United Nations Children’s Fund (2002), *Implementation Handbook for the Convention on the Rights of the Child*, Fully Revised Edition, p. 19.
- [40] UNCRC, Article 16. 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 +. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), p. 22, 82. CRC (2019), General Comment No. 24 (2019) on children’s rights in the child justice system, CRC/C/GC/24, para. 66-71.
- [41] Amongst other authorities: ECtHR *Elsholz v. Germany* [GC], no. 25735/94, § 43, ECHR 2000-VIII; *Keegan v. Ireland*, 26 May 1994, § 50, Series A no. 290 ; *Kosmopoulou v. Greece*, no. 60457/00, § 47, 5 February 2004; *Mustafa and Armağan Akin v. Turkey*, no. 4694/03, § 19, 6 April 2010; *Mitrova and Savik v. the former Yugoslav Republic of Macedonia*, no. 42534/09, § 82, 11 February 2016; *Mitovi v. the former Yugoslav Republic of Macedonia*, no. 53565/13, § 57, 16 April 2015; *Kacper Nowakowski v. Poland*, no. 32407/13, § 70, 10 January 2017 (hereafter: *Kacper Nowakowski v. Poland*, 2017).

[42] ECtHR *Krivošej v. Serbia*, no. 42559/08, § 54, 13 April 2010; *Felbab v. Serbia*, no. 14011/07, § 69, 14 April 2009.

[43] ECtHR *Vojnity v. Hungary*, no. 29617/07, § 40, 12 February 2013.

[44] ECtHR, *Kacper Nowakowski v. Poland*, § 75, 2017.

[45] For instance, the fact that a parent disrespects the courts is not sufficient as justification: ECtHR, *Zawadka v. Poland*, no. 48542/99, § 60-61, 23 June 2005.

[46] CRC (2003), 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, para. 12.

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

[48] CRC (2013), 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, para. 4.

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

[50] ECtHR, *B.B. and F.B. v. Germany*, nos. 18734/09 and 9424/11, 14 March 2013.

[51] 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; 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.

[52] Skivenes M. and Sørsdal L. M. (2018), The Child's Best Interest Principle across Child Protection Jurisdictions, *Human Rights in Child Protection*, pp. 59-88.

[53] CRC (2013), 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, Chapter IV.B, V.A.1 and para. 44. See further: Sormunen M. (ed.) (2016), *The Best Interests of the Child, A dialogue between theory and practice*, Council of Europe, p. 149.

[54] Newell, P. and Hodgkin, R. (2007). *Implementation Handbook for the United Nations Convention on the Rights of the Child*, Revised third edition, UNICEF, pp. 40-41.

[55] CRC (2013), 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, para. 43. See further: CRC (2009), General Comment No. 12 (2009), The right of the child to be heard, CRC/C/GC/12, para. 70.

[56] CRC (2013), 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, para. 84.

[57] ECtHR, *R.I. and others v. Romania*, no. 57077/16, 4 December 2018; *Milovanović v. Serbia*, no. 56065/10, 8 October 2019; *Hokkanen v. Finland*, 23 September 1994, § 58, Series A no. 299-A; *D. v. Poland*, no. 8215/02, § 11, 14 March 2006; *Costreie v. Romania*, no. 31703/05, § 84, 13 October 2009; *Gluhaković v. Croatia*, no. 21188/09, § 57, 12 April 2011; *Z.J. v. Lithuania*,

no. 60092/12, § 99, 29 April 2014; *Bondavalli v. Italy*, no. 35532/12, § 72, 17 November 2015; *A.V. v. Slovenia*, no. 878/13, § 74, 9 April 2019; *Olindraru v. Romania*, no. 1490/17, § 57, 19 March 2019.

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

[59] Council of Europe (2023), Recommendation CM/Rec(2023)8 of the Committee of Ministers to member States on strengthening reporting systems on violence against children (para. I.2).

[60] Council of Europe (n.d.), *Domestic violence*, Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210, "Istanbul Convention"), *Children's rights*.

[61] ECtHR, *I.M. and Others v. Italy*, no 25426/20, 10 novembre 2022.

[62] CRC (2003), 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 para. 12.

[63] CRC (2013), 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, footnote page 2.

[64] CRC (2006), General Comment No. 7 (2005), Implementing child rights in early childhood, CRC/C/GC/7/Rev.1.

[65] CRC (2016), General Comment No. 20 (2016) on the implementation of the rights of the child during adolescence, CRC/C/GC/20.

[66] CRC (2013), 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, para. 1.

[67] World Health Organisation (1946), *Constitution of the World Health Organisation*, Preamble.

[68] Committee on the Rights of the Child (2001), General Comment No. 1 (2001), The aims of education, *CRC/GC/2001/1*.

[69] CRC, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, para. 55-57.

[70] CRC, 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.

[71] CRC, 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, para. 81-82.

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

[73] CRC, 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, para. 64. Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), IV.5.

[74] Grejer S. and Wenke D. (2023), *Barnahus, a European journey, Mapping study on multidisciplinary and interagency child-friendly justice models responding to violence against children in Council of Europe member States*, Council of Europe, p. 101 no. 10.

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

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

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

[78] CRC, General Comment No. 12 (2009) on the right of the child to be heard, CRC/C/GC/12, para. 29.

[79] *Ibid.*, para. 21.

[80] *Ibid.*, para. 20.

[81] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), Explanatory Memorandum, para. 110.

[82] See Wenke, D. (2021), *Legal instrument on the protection of the best interests of the child in domestic law proceedings by public authorities to limit parental responsibilities or place a child in care, Feasibility study*, Council of Europe, pp. 44-45.

[83] Bruning M.R., et al (2020)., *Kind in process: van communicatie naar effectieve participatie [The child in proceedings: from communication to effective participation]*, Meijer-reeks no. 335, Wolf Legal Publishers, Leiden. Lembrechts S. (2021), *Guide to good practice 2021: recommendations based on the views of children and young people to professionals involved in international child abductions*, Research report funded by the European Union Justice Programme. Lamb M. E., et al (2007). *Structured forensic interview protocols improve the quality and informativeness of investigative interviews with children: A review of research using the NICHD Investigative Interview Protocol*. Child Abuse and Neglect, Vol. 31, 11-12, November-December 2007, Greenwood Village, pp. 1201-1231.

[84] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010); CRC (2009), General Comment No. 12 (2009) on the right of the child to be heard, CRC/C/GC/12.

[85] Recommendation CM/Rec(2012)2 of the Committee of Ministers to member States on the participation of children and young people under the age of 18, p. 6.

[86] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), IV.D.3.46.

[87] CRC (2013), 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, para. 54.

[88] ECtHR, *Zelikha Magomadova v. Russia*, no. 58724/14, § 116, 8 October 2019.

[89] ECtHR, *K.B. and Others v. Croatia*, no. 36216/13, § 144, 14 March 2017.

- [90] ECtHR, *Zelikhha Magomadova v. Russia*, no. 58724/14, § 116, 8 October 2019.
- [91] ECtHR, *R.M. v. Latvia*, no. 53487/13, § 117, 9 December 2021.
- [92] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), IV.D.5.
- [93] CRC, General Comment No. 12 (2009) on the right of the child to be heard, CRC/C/GC/12, para. 22-23.
- [94] ECtHR, *K.B. and Others v. Croatia*, no. 36216/13, § 143, 14 March 2017.
- [95] Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) (2022), *3rd General Report on GREVIO's Activities, covering the period from January to December 2021*, pp. 36-54 and 79.
- [96] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), IV.A.1.2.
- [97] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), IV.D.2.
- [98] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), IV.D.2.42.
- [99] ECtHR, *C. v. Croatia*, no 80117/17, §§ 76-77 and 80, 8 October 2020.
- [100] ECtHR, *Q and R v. Slovenia*, no. 19938/20, 8 February 2022.
- [101] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), IV.D.2.38 and Explanatory Memorandum, para. 102.
- [102] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), III.E.3.
- [103] Council of the Baltic Sea States (2018), *Parenting for non-violent childhoods, Positive parenting to achieve an end to corporal punishment*, pp. 11-12.
- [104] Council of Europe, Recommendation Rec(2006)19 of the Committee of Ministers to member States on policy to support positive parenting, para. 1.
- [105] Council of the Baltic Sea States (2018), *Parenting for non-violent childhoods, Positive parenting to achieve and end to corporal punishment*.
- [106] Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), IV.D.4. para. 52-53.
- [107] Council of Europe Convention on preventing and combating violence against women and domestic violence (CETS No. 210), Explanatory Report, par. 251-252.
- [108] Hague Conference on Private International Law (2012), *Mediation, Guide to good practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, pp. 72-77. International Social Service (2017), *Charter for International Family Mediation Processes, a collaborative process*, pp. 5-7.

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

[110] Parkinson L. (2020), *Family Mediation*, Fourth edition, Lexis Nexis, New York, pp. 67-68.

[111] Ibid.

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

[113] This section is informed by and based on: Council of Europe (2020), *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. Kostopoulou M-A. (2021), *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.

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

[115] Recommendation No. R (98) 1 of the Committee of Ministers to member States on family mediation, Principle III.viii.

[116] Ibid. Council of Europe (2002), Recommendation Rec(2002)10 on mediation in civil matters. IV. Hague Conference on Private International Law (2012), *Mediation, Guide to good practice under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*, p. 7. International Social Service, General Secretariat, *International Family Mediation*. International Social Service (2017), *Charter for International Family Mediation Processes, a collaborative process*.

[117] Recommendation CM/Rec(2023)8 of the Committee of Ministers to member States on strengthening reporting systems on violence against children. "In line with international standards, the term "violence against children" includes acts such as physical, sexual or psychological violence, maltreatment and abuse, as well as omissions such as neglect and negligent treatment, which violate the rights of the child and result in actual or potential harm to the child's health, physical, psychological and emotional integrity, survival or development. This includes disciplinary measures that humiliate the child or inflict pain, however light, as well as exploitation and harassment, the exposure to domestic violence and the witnessing of violence" (para. I.2).

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

[119] Ibid

[120] Council of Europe (2018), European Commission for the Efficiency of Justice (CEPEJ), *European Code of Conduct for Mediation Providers*, CEPEJ(2018)24, p. 3. European Commission (2004), *European Code of Conduct for Mediators*, Project Euromed Justice III, 2004, p. 2.

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

[122] ECtHR, *Vyshnyakov v. Ukraine*, no. 25612/12, § 43, 24 July 2018.

[123] ECtHR, *Neulinger and Shuruk v. Switzerland* [GC], no. 41615/07, § 140, ECHR 2010; *Tocarenco v. the Republic of Moldova*, no. 769/13, § 56, 4 November 2014; *Ribić v. Croatia*, no. 27148/12, § 95, 2 April 2015; *Kuppinger v. Germany*, no. 62198/11, § 103, 15 January 2015; *Mitrova and Savik v. the former Yugoslav Republic of Macedonia*, no. 42534/09, § 77, 11 February 2016; *Muruzheva v. Russia*, no. 62526/15, § 50, 15 May 2018.

[124] Recommendation CM/Rec(2015)4 of the Committee of Ministers to member States on preventing and resolving disputes on child relocation, see Definitions, b, and Scope.

[125] *Ibid.*, Explanatory Memorandum, para. 10.

[126] UNCRC, Article 16. ECHR, Article 6. Council of Europe, Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108); (2018), Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS No. 223, "Convention 108+"); Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice (2010), p. 22 and 82. Committee on the Rights of the Child (2019), General Comment No. 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, para. 66-71.

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

[128] Council of Europe (2011), Recommendation CM/Rec(2011)12 of the Committee of Ministers to member States on children's rights and social services friendly to children and families, V.H.d.

[129] Council of Europe, *European Programme for Human Rights Education for Legal Professionals* (HELP), <https://help.elearning.ext.coe.int/>.

[130] (2004), European Code of Conduct for Mediators. Council of Europe, (CEPEJ) European Commission for the Efficiency of Justice (2018), *European Code of Conduct for Mediation Providers*, CEPEJ(2018)24.

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

[132] European Union (2019), Regulation EU 2019/1111 of the European Union concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels IIb Regulations). Hague Conference on Private International Law: 1980 Hague Convention on the Civil Aspects of International Child Abduction; 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.