

'CADRE' Training

Child protection and age assessment in Italy



Good practices and challenges

THE ITALIAN CONTEXT

- **Italy: one of first European country of entry**
- **Increase of minors in 2014, 2015, 2016**
- **Disappearance upon entry prior to inclusion in care**
- **Disappearance of 'children-in-transit' to other EU MS**
- **Flows in the reception and protection system**
- **Inadequate system of appointment of guardians**
- **No national coordination**
- **EC infringement procedure against Italy** “the Italian asylum system failed to grant both an expeditious and adequate procedure for the minors seeking international protection, and to grant a high standard of conditions for their reception in the territory”

RISKS AND FUNDAMENTAL RIGHTS BREACHES



When misidentified, children are at higher risk of:

- being detained with adults,
- being subjected to violence, notably sexual exploitation and abuse,
- becoming a victim of trafficking or forced labour,
- being involved in criminal activities for survival reasons,
- planning to abscond.

Source: Age Assessment for Children in migration:
<https://rm.coe.int/ageassessmentchildrenmigration/168099529f>

LEGISLATIVE REFORMS

- **Lgs Decree 142/2015**: asylum procedure and reception of asylum seekers
- **L. 47/2017 (Zampa Law)**: unaccompanied foreign minors



KEY POINTS

- unaccompanied minor as a **vulnerable subject**
- **principle of non-refoulement** and the special return policy
- general **prohibition of detention**
- significant procedural guarantees **in the identification and determination of the age of minors**
- child-oriented **reception system**
- innovation of the procedure to **appoint a guardian**

Focus: THE RECEPTION SYSTEM FOR MINORS

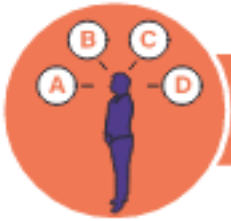
- **MAIN CHALLENGES: AVOID PROMISQUITY WITH ADULTS – AVOID DE FACTO DETENTION**
- **The reception system for UMs is organized in two stages.**
- During the first phase, children are accommodated in **first reception facilities for minors (called “FAMI” centres)**, for first aid and immediate assistance purpose
- The second phase of UMs reception takes place in **“SAI” (Accommodation and Integration System)**: the centres are run by Municipalities and have to comply with the standards of assistance of the general Italian system of residential care facilities for children
- **As a general rule, children should remain for a very short time in first reception facilities, and immediately be transferred to SAI facilities.** However, the lack of places in SAI has resulted, over the years, in longer periods spent by minors in first reception or extraordinary centres

INTERNATIONAL AND EU PRINCIPLES ON AGE ASSESSMENT

- **BEST INTEREST OF THE CHILD**
- **RIGHT TO BE HEARD**
- **BENEFIT OF THE DOUBT**
- **INFORMED CONSENT**

- **LESS INTRUSIVE METHODS**
- **NO EXACT METHOD**
- **MULTIDISCIPLINARY APPROACH**
- **ADEQUATELY TRAINED PROFESSIONALS**

INTERNATIONAL AND EU PRINCIPLES



Keep in mind

- There is no single age assessment method whereby an exact conclusion can be reached on age.
- The best interest of the child principle must be integrated into the age assessment policy and implemented during age assessment procedures.
- The benefit of the doubt principle must be applied through age assessment procedures which must treat the person as a child at all times.
- The child must be informed about age assessment procedures and their rights during them.
- Children must be provided with guardians and/or representation during the age assessment procedure.

SOURCE: <https://euaa.europa.eu/sites/default/files/public/EASO-Age-assessment-practice-in-Europe.pdf>;

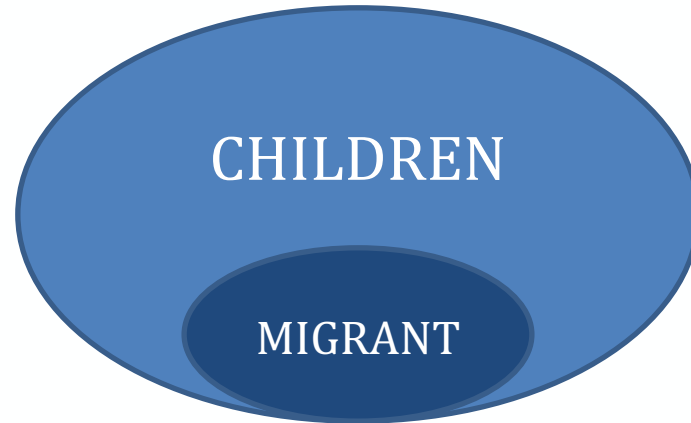
AGE ASSESSMENT METHODS

- It is widely acknowledged that **there is not currently a method available which can determine the exact age of a person.**
- No single method can tell us with certainty how old someone is, and this **needs to be taken into consideration as part of the evidence assessment process**
- Two essential mechanism allows for finding a balance

**BENEFIT OF THE DOUBT
MARGIN OF ERROR**

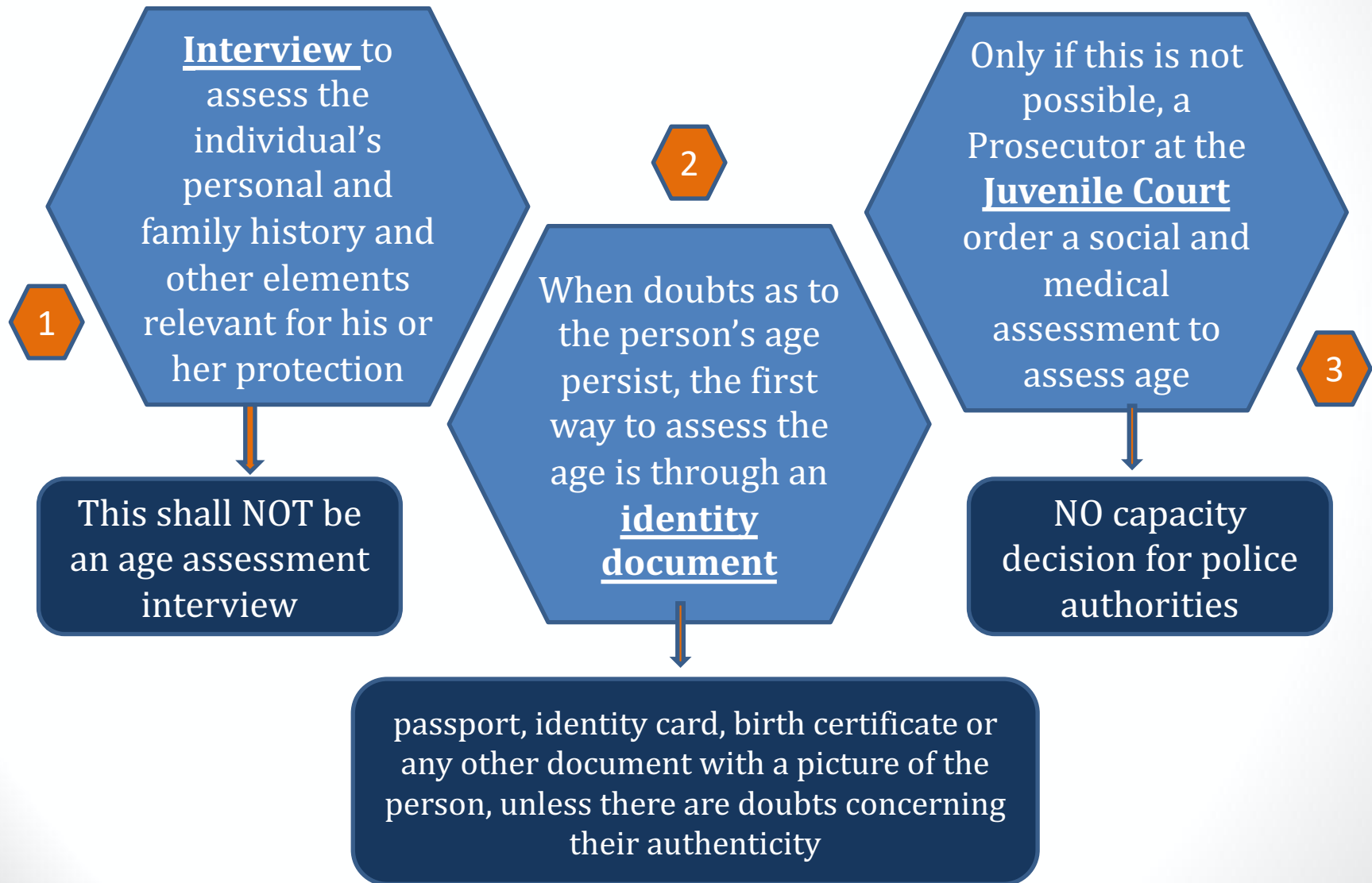
- While there is no universally accepted method to determine the age, EASO suggests for instance that **one way to improve the reliability of age assessment could be to include different methods as part of the process + the best interests of the child should be a primary consideration**

AGE ASSESSMENT AFTER L. 47/17



- **Protection of *all* unaccompanied minors** irrespectively of their migration status (NB. Difference regime persists as for victims of trafficking)
- Principle of the **best interest of the child**: implies the benefit of the doubt and right to participate in proceedings
- Immediate appointment of a **guardian** (pending age assessment)
- **Reception** in ad hoc child (pending age assessment)

AGE ASSESSMENT AFTER L. 47/17



AGE ASSESSMENT AFTER L. 47/17

MAIN ELEMENTS OF THE AGE ASSESSMENT PROCEDURE

'social and medical assessment'

conducted in an appropriate environment

through a multidisciplinary approach

by adequately trained professionals

at the presence of a cultural mediator

using the least invasive methods possible and with due respect to the person's sex, presumed age, physical and mental integrity

AGE ASSESSMENT AFTER L. 47/17

MAIN ELEMENTS OF THE AGE ASSESSMENT PROCEDURE

- In order to **guarantee a uniform application on the national territory** of the methods of socio-healthcare age assessment and of the criteria for identifying the specialized figures who must be involved, a **Protocol for determining the age of MSNAs was adopted on 9 July 2020 by the Unified State-Regions Conference**
- The Protocol further specified the elements of the age assessment, providing that it consists of **three sequential and incremental phases**:
 - 1) a **social interview**,
 - 2) a **psychological** or neuropsychiatric assessment,
 - 3) an **auxological paediatric examination** using the least invasive methods possible respecting the presumed age, sex and psycho-physical integrity of the minor

Final multidisciplinary report that includes all the previous evaluations. The final report includes the estimated chronological average age with the margin of error due to biological variability.

AGE ASSESSMENT AFTER L. 47/17

MAIN ELEMENTS OF THE AGE ASSESSMENT PROCEDURE

«Safe environment»

- a) the centre where the minor is housed; or
- b) a public health facility of the National Health Service (SSN)

«Professionals»

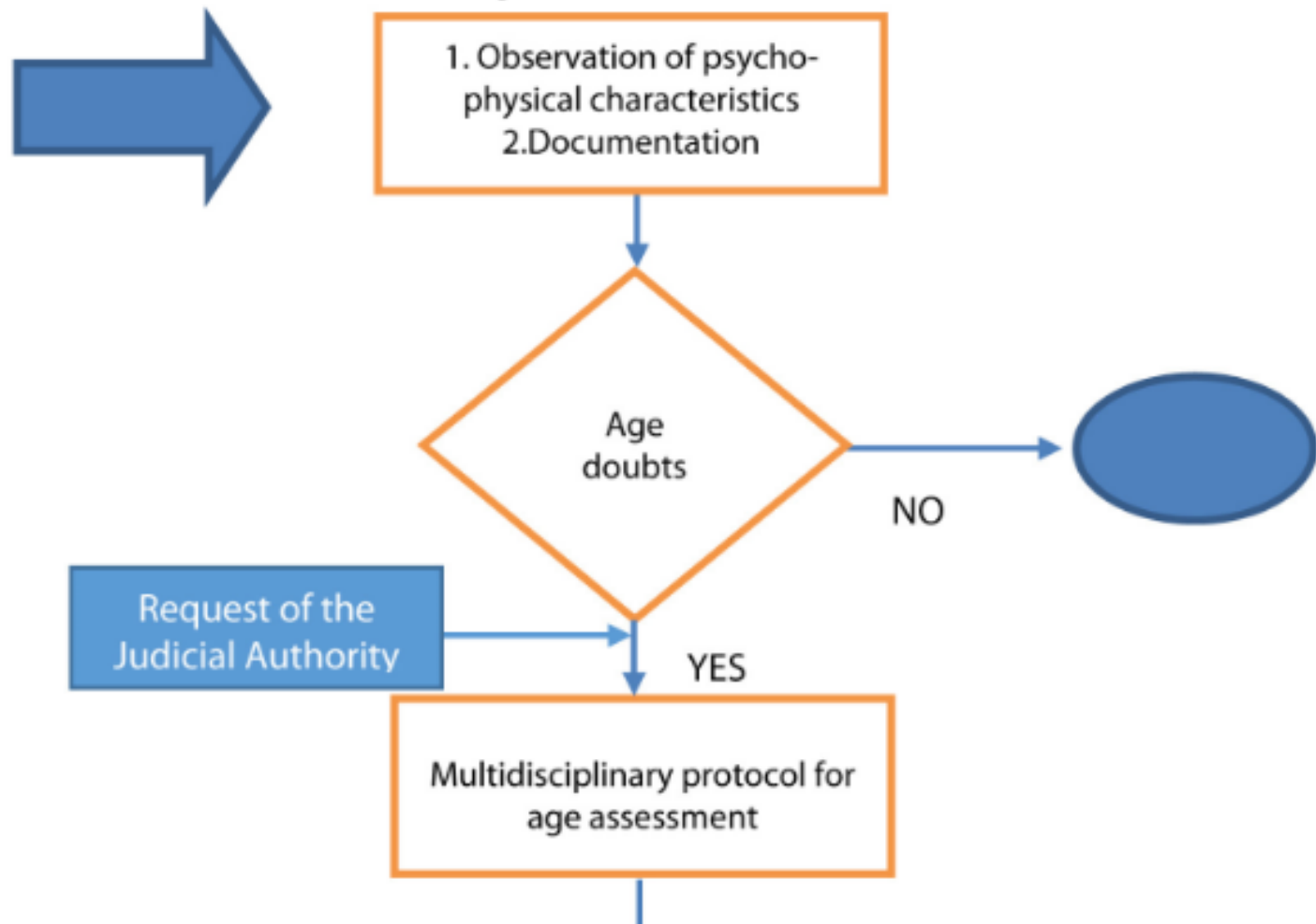
- a) a paediatrician with auxological skills of the National Health Service;
- b) a developmental psychologist or a child neuropsychiatrist of the National Health Service;
- c) a cultural mediator;
- d) a social worker working for the National Health Service or the local authority in the areas related to the subject

AGE ASSESSMENT AFTER L. 47/17

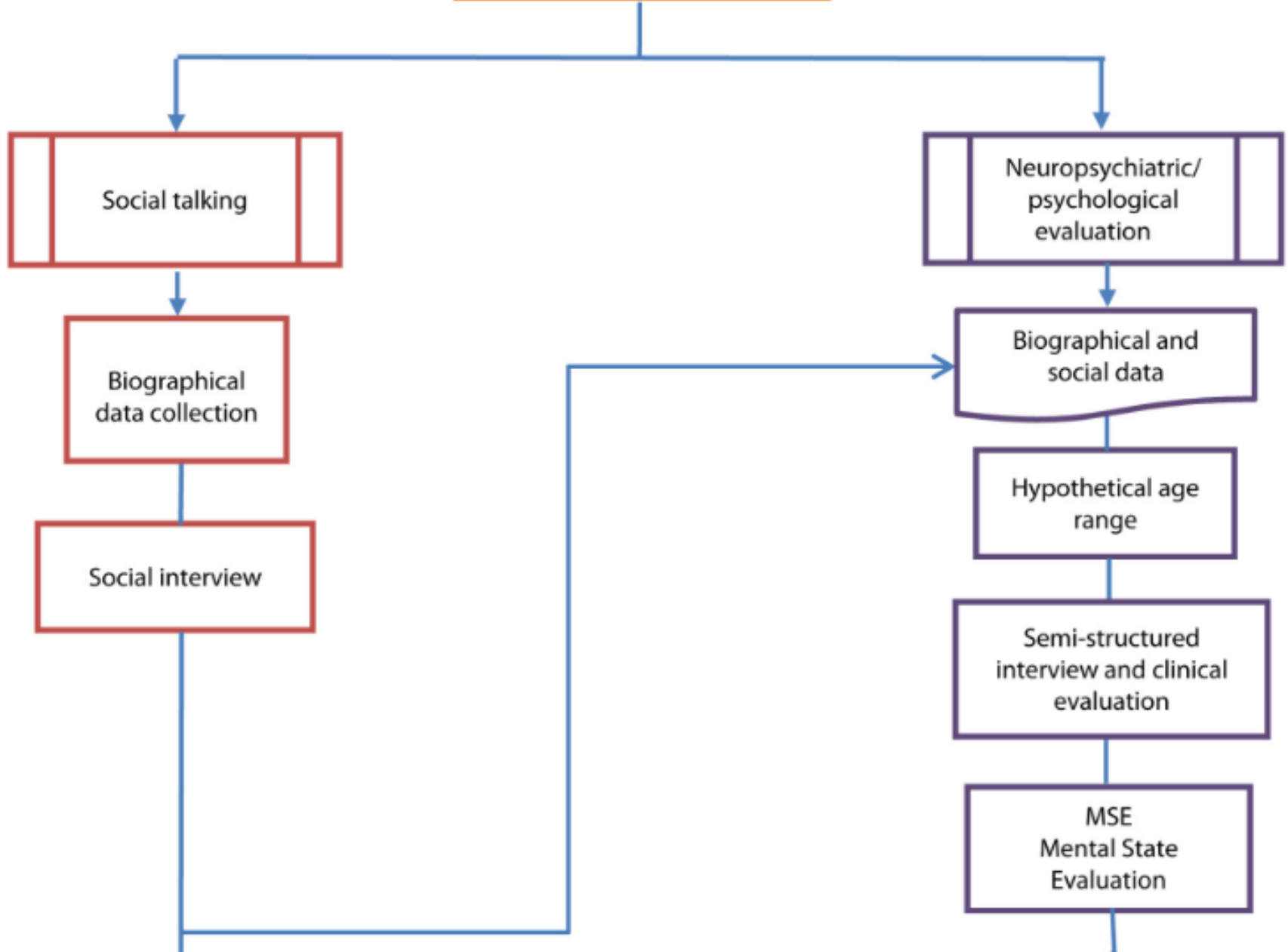
PROCEDURAL SAFEGUARDS

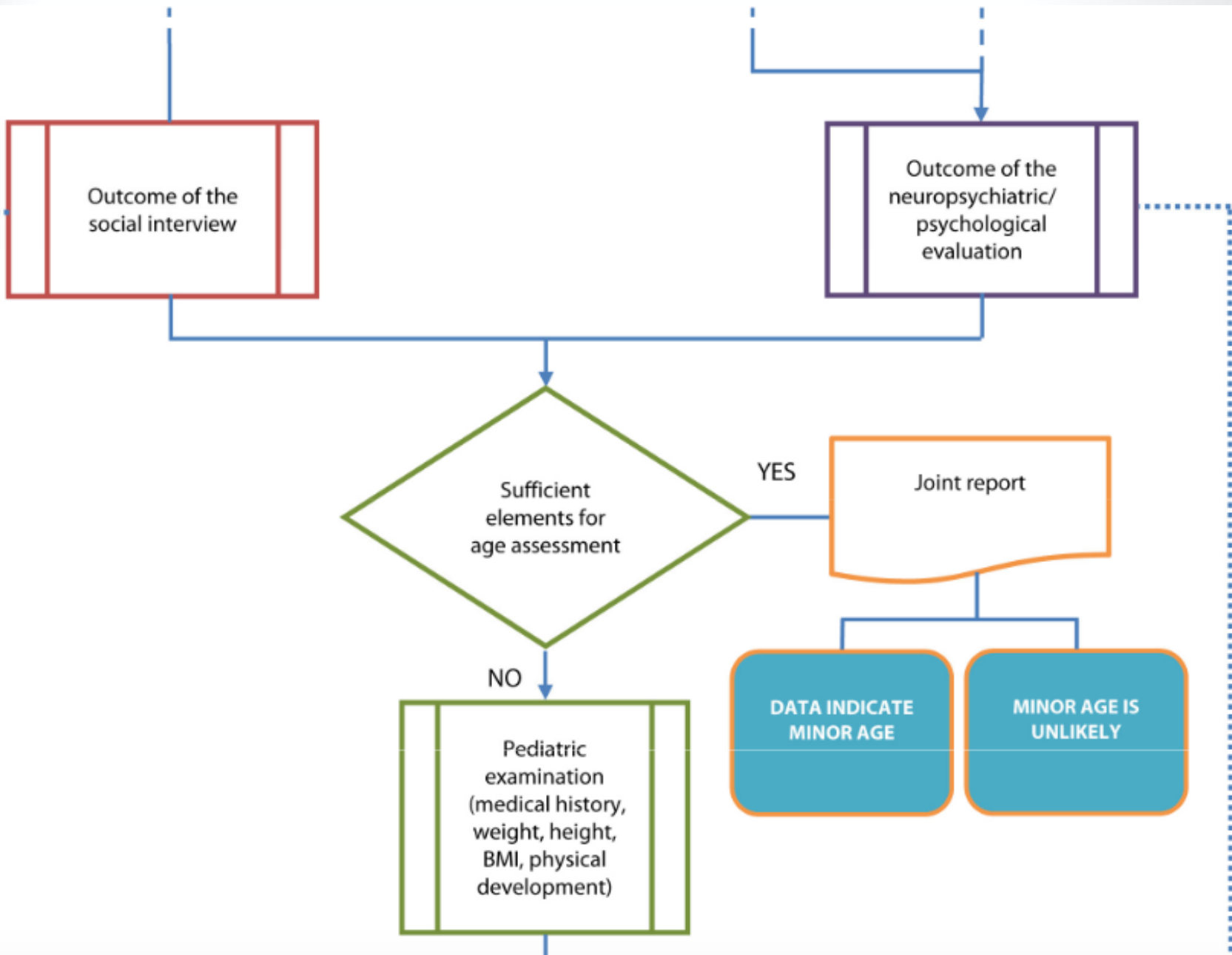
- **RIGHT TO EXPRESS AN INFORMED CONSENT:** the minor shall be informed in advance of the fact that he or she will be subject to social and medical examinations, and that they can refuse them. The information shall be given **in a language the minor can understand**, according to his or her maturity and literacy level. The same information shall also be provided to the person who, **even temporarily, exercises guardianship over the alleged minor.**
- **RIGHT TO BE HEARD AND TO PARTICIPATE IN THE PROCEEDING** (through an interpreter / a cultural mediator + right to appoint a lawyer)
- **RIGHT TO APPEAL:** The age assessment decision issued by the **Juvenile Court** is communicated to both the presumed minor and the guardian and **it can be appealed (in ten days)**
- <https://www.icj.org/eu-training-materials-on-alternatives-to-detention-for-migrant-children/>

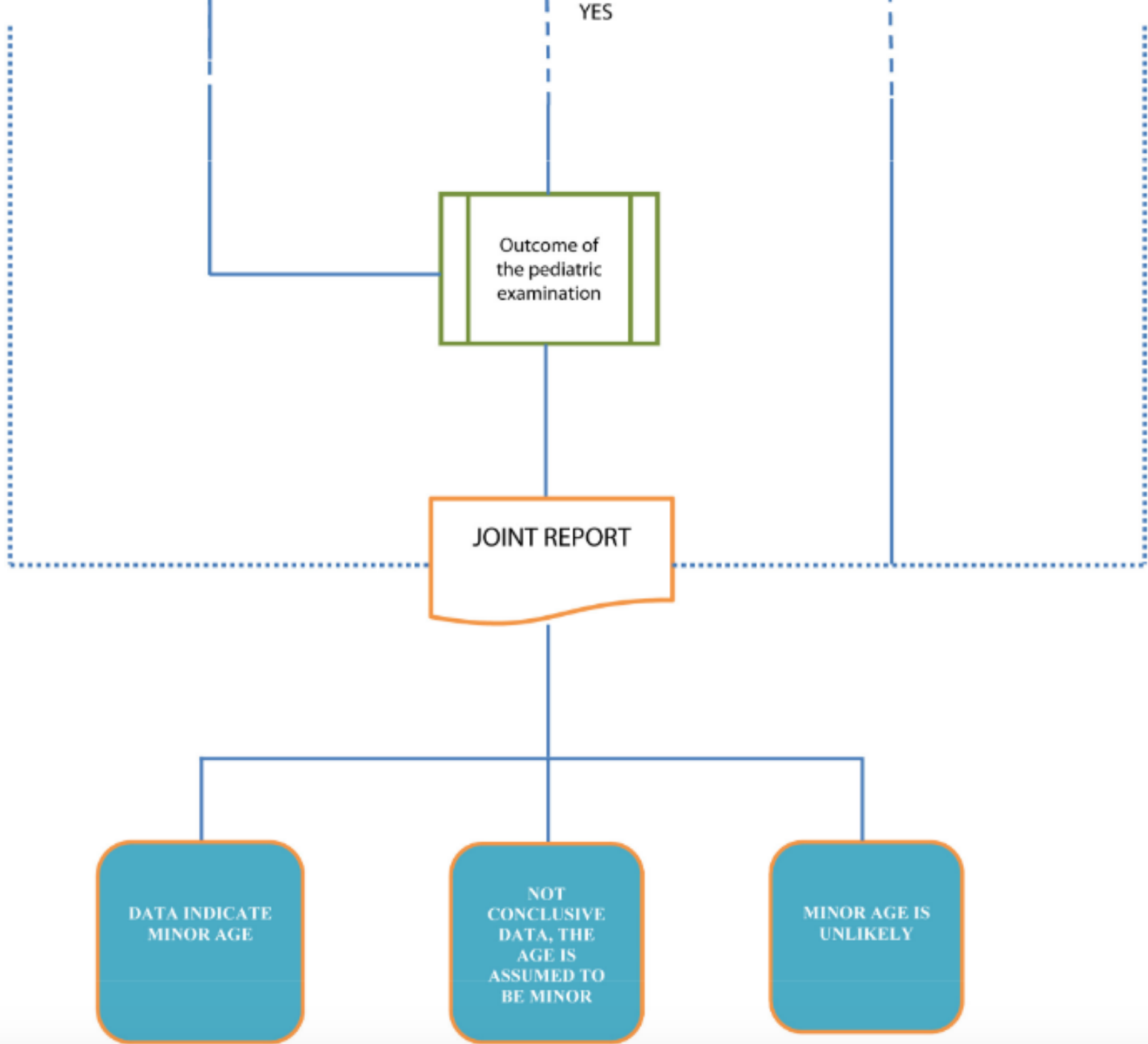
OPERATIONAL FLOW CHART



Multidisciplinary protocol for age assessment







PERSISTENT CHALLENGES

- **DELAYS IN THE PROCEDURES.** Procedure to appoint guardians and to assess minors' age can be very long and reach sometimes several months or even years
- **AGE ASSESSMENT BY POLICE INSTEAD OF COURTS.** Migrants age is determined by police authorities at ports, after disembarkation and it might be quite difficult for the person to challenge that identification
- **FAILURE IN AGE ASSESSMENT LEADS TO DETENTION.** Higher chances that minors coming from countries with which the Italian government has a readmission agreement (e.g. Tunisia, Morocco) are wrongly identified as adults and detained in detention centres to enforce their removal
- **DETENTION IN HOTSPOT.** Between 2016 and 2018 (cases are growing again in the last year) minors have been kept for weeks or months in overcrowded hotspot facilities, often because of **delays in age assessment procedures.** They were subjected to degrading living and hygienic conditions and were forced to sleep on the ground and near unrelated adult migrants, exposing them to risks of sexual abuses

CASE STUDY 1

- D.C. entered the country by crossing its external border on a makeshift vessel.
- He declared his minor age and orally expressed his intention to apply for international protection shortly after his arrival. **No information on how to initiate the relevant procedure was provided** to him, and no request for international protection was eventually lodged in his case.
- A few months later **he was transferred to the adult reception centre, which was severely overcrowded.**
- After one month, at the request of the Prefecture, a doctor of the local health authority carried out a medical examination of the applicant to determine his age. The corresponding medical report stated that his bone age, as evaluated by X-ray examinations of the left wrist and hand on the basis of the Greulich and Pyle method corresponded to that of an eighteen-year-old male.
- D.C. **alleged that his consent to undergo this examination had not been acquired** and that he had not been provided with a copy of the relevant medical report at the time. **No margin of error was indicated therein, nor was any administrative or judicial decision regarding his age assessment communicated to him.**

What are the rights at stake? What are the possible violations? Which remedies could be activated?

CASE STUDY 2

- A.T., together with other **12 unaccompanied foreign minors** crossed the external border by sea and arrived in Italy
- They declared their minor age and orally expressed their intention to apply for international protection shortly after their arrival.
- Their **applications were not registered** and, instead, they were moved to the **hotspot in Taranto**, a semi-closed centre in which adults were not separated by children. They had to remain there for 40 days. They were not appointed with a guardian and they **were not able to leave the facility**.
- Following the initial period in the hotspot, some of them were moved to unaccompanied minors' reception facilities, while A.T. and others were eventually **identified as 18 years old by the police and moved to pre-removal detention centres**. Once there, they reiterated that they were minors.

What are the rights at stake? What are the possible violations?
Which remedies could be activated?

CASE STUDY 3

- A.B. arrived in Italy when he was 16 years old. He was initially accommodated in a first reception centre for unaccompanied minors in the south (Sicily), where he also applied for international protection and got a humanitarian permit
- After two years he was moved to an integration reception facility in the north (Piemonte): shortly after his arrival in Piemonte an age assessment procedure was activated by the Prosecutor of Juvenile Court
- The result of the age assessment procedure showed a date of birth compatible with the one initially declared by the A.B. (1.1.2001) who, in the meanwhile, reached 18 years old. The margin of error of the result was +- 1.
- The Prosecutor at the Juvenile Court appealed the decision of the Court claiming that, in light of the best interest of the child and based on the age assessment margin of error, the date of birth should have been fixed at 1.1.2002

What are the rights at stake? What are the possible violations?
Which remedies could be activated?

CASE STUDIES

- **CASE 1:** Darboe Camara, 21 July 2022,
[https://hudoc.echr.coe.int/eng#{%22appno%22:\[%225797/17%22\],%22itemid%22:\[%22001-218424%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%225797/17%22],%22itemid%22:[%22001-218424%22]})
- **CASE 2:** Trawally (partially) – to be decided:
[https://hudoc.echr.coe.int/eng#{%22appno%22:\[%2247287/17%22\],%22itemid%22:\[%22001-180670%22\]}](https://hudoc.echr.coe.int/eng#{%22appno%22:[%2247287/17%22],%22itemid%22:[%22001-180670%22]})
- **CASE 3:** Turin Court of Appeal, n. 727/2019 (21 Novembre 2019)