

Annex D.12



Argentina | Belgium | Canada | France | Germany | Greece | Japan | Luxembourg | Netherlands | Portugal | Spain | Sweden | Switzerland |
United Kingdom | United States of America

AGE ASSESSMENT FOR UNACCOMPANIED MINORS

*When European
countries deny children
their childhood*

Vivien Feltz

MdM International Network Head Office

28 August 2015

CONTENT

WHAT IS AN AGE ASSESSMENT?.....	3
INACCURACY OF AGE ASSESSMENT TECHNIQUES.....	5
LEGISLATIVE FRAMEWORK CONCERNING AGE ASSESSMENT	10
SAFEGUARDS ON THE RIGHTS OF THE CHILD PUT AT RISK BY AGE DETERMINATION.....	10
THE POSITION OF EU INSTITUTIONS AND MATTERS OF COMPETENCE	12
RELEVANT INTERNATIONAL CONVENTIONS	13
THE UNITED NATION CONVENTION ON THE RIGHTS OF THE CHILD.....	13
THE ABSENCE OF A STATEMENT FROM THE EUROPEAN COURT OF HUMAN RIGHTS.....	14
EUROPEAN POLICY FRAMEWORK.....	14
CONCLUSIONS	17

TESTIMONY

I am 17 years old. I arrived in Nantes in August 2013. As I was unaccompanied, an NGO directed me to the police station where they checked my identity and asked me for some documents before referring me to a community centre. I stayed there for three days. On the fourth day they sent me to the hospital where I undertook bone tests. The results falsely concluded that I was 18 years old. I was 16 back then.

From that day on I have been living on the street. I kept calling the 115 number (social emergencies service) the police had given me. I have never managed to get a bed there. I discovered a squat where I could spend the nights but I had to sleep on the stairs. Eventually I found a room there.

I contacted an NGO to launch an appeal. I gave them documents and they got me an appointment with a lawyer, who asked for more documents. We sent some of them to the authorities but they said they were counterfeits. So we sent them other documents but with the same result: “not authentic”. But I took the same documents and brought them to my country’s embassy in Paris, and obtained a passport there. Overall, I spent a year and a half without housing before I was finally taken in again by the CDEF (Centre Départemental de l’Enfance et de la Famille, the official organization responsible for the reception of unaccompanied minors) on the 22nd of January 2015. I used to hang out in the city centre, in parks, not knowing what to do all day. There is a lot of stuff happening in those parks.

Someone from the CDEF explained to me that a judge had ordered me to be taken in again, and that my documents still needed to be analysed by the State’s Attorney and another bone test might be necessary. I told her that I had already done an age assessment and that I didn’t want to do it again because I feared to end up on the street again. Even my doctor had written a note for my lawyer saying a bone X-ray isn’t a valid proof of age. In August, I’ll turn 18 and I have no idea what’s going to happen to me.

Zacharia, 17, from Ivory Coast. MdM France (Nantes) – March 2015

What is an age assessment?

An age assessment is a procedure organised by a public body to determine the chronological age of an individual lacking legal documents. This report addresses the key issues concerning age assessments of unaccompanied minors. In 2013, the European Commission estimated the number of asylum-seeking or “protected” unaccompanied minors in the European Union to be 25,000¹. Statistics about the number of unaccompanied minors having to undergo medical examinations to determine their age are unavailable.

Being considered an “undocumented migrant” by the administration and not an “unaccompanied child” may have serious consequences. If the age assessment concludes that the individual is 18 years of age or older, he/she will not benefit from the protective regime afforded to child asylum-seekers which includes lodging, access to healthcare and education and legal provisions limiting the recourse to detention. Incorrect age assessments often result in children being wrongfully detained or made homeless. Negotiating who should benefit from the rights afforded by childhood on the basis of arbitrary measurements is unacceptable.

The unaccompanied minors concerned by these tests are defined by the “Qualification Directive”² as “a minor who arrives on the territory of the Member States unaccompanied by an adult responsible for him or her whether by law or by the practice of the Member State concerned, and for as long as he or she is not effectively taken into the care of such a person; it includes a minor who is left unaccompanied after he or she has entered the territory of the Member States”.

In order to establish a minor’s age, a majority of European Union Member States impose medical examinations such as dental examinations and X-rays of various bones of the body to determine bone maturity. Based on this measure, forensic doctors attempt to determine the age of the person using different methods but with one constant: a margin of error of at least 2 years. Non-medical methods are also in use, such as research of documentary evidence. Although informal assessments are not as harmful to children, they are often very inaccurate. For instance, in April 2010 in the UK, the local Government Ombudsman found that an unaccompanied 15-year-old girl who was an asylum-seeker was denied care after being age-assessed by untrained social workers in Liverpool³.

Under the system set out by the Dublin Regulation – the European legislation determining the country responsible for an asylum application – the age of an individual as assessed by a Member State and recorded into the European databases can be taken for granted by any other Member State, thus harmonising downwards the flaws and margin of error of the results obtained therein, with life-threatening consequences and sometimes no legal appeal accessible.

¹ Directorate-General Migration and Home Affairs : http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/uam/uam_infographic_a4_en.pdf

² Directive 2011/95/EU on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, “Qualification Directive”, available : <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32011L0095>

³ Fundamental Rights Agency, [Guidelines on Separated, Asylum Seeking children in EU Member States](#), April 2010

“Considerations relating to security or immigration control tend to routinely outweigh the child’s best interests in many national contexts”⁴ said Nils Muižnieks, Commissioner for Human Rights of the Council of Europe. Migrant children should not be faced with mistrust and unnecessary examinations when they first encounter authorities, after challenging journeys to get to Europe. Disputes over age bring into question the child’s past and identity in a way that goes beyond the asylum process, at a time when they are facing numerous factors of vulnerability.

The UK Royal College of Paediatrics and Child Health even estimates⁵ that there is currently no reliable method available which can determine the exact age of a person: many factors influence the onset of puberty and the whole process of skeletal maturation⁶, making the medical procedures in use in EU Member States unreliable. Age determination procedures endanger the physical and mental health of the child, and the information they provide bring no real added value to the age determination process. Using potentially harmful ionizing radiation for migration control purposes where there is no therapeutic benefit is at odds with medical ethics. As bone testing is completely unreliable and has an unacceptable margin of error, it should be banned from European policies and practices.

Doctors of the World – Médecins du monde (MdM) is opposed to the use of medical examination purely for migration control purposes. These methods are used as a tool to regulate migration flows rather than as a tool to promote the fair treatment of particularly vulnerable children



©Guillaume PINO – Young people in the Pikpa refugee camp in Lesvos (Greece)

⁴ Commissioner for Human Rights of the Council of Europe Nils Muižnieks, [Protecting Children's Rights: Europe should do more](#), November 2014

⁵ The Royal College of Paediatrics and Child Health, [The Health of Refugee Children - Guidelines for Paediatricians](#), 1999; and see other studies quoted in the document

⁶ Ibidem

Inaccuracy of age assessment techniques

Member States are free to choose the method used to scrutinize the age of an individual. The most common are wrist/carpal x-rays, followed by dental examinations and dental x-rays. To a lesser degree, collar bone and hip x-rays as well as physical development assessments are also used.

In the context of its Action Plan⁷ on unaccompanied minors, the European Commission asked the European Asylum Support Office (EASO) to produce a comprehensive mapping of the scientific literature and national legal frameworks on the matter, which was released in December 2013⁸. According to them, the United Kingdom is the only EU Member State that stopped performing medical age assessments altogether.

In the UK, bone testing is not required anymore for judicial settlement of age disputes. The *B v Merton LBC* case⁹ set the guidelines applicable to assess a disputed age: a medical report was found to be unnecessary. The UK Supreme Court later clarified the situation in *A v Croydon*¹⁰: since medical reports have a margin of error of two years, they cannot be considered as conclusive evidence of age, and should only be taken into consideration with all the evidence presented. De facto, age is being determined by social workers trained in that regard, during an interview conducted as part of the asylum procedure. The prominent role given to social workers' subjective interpretations however, has been heavily criticised by various NGOs.

- Carpal (hand/wrist) X-ray

It is the most widely used medical method. Wrist X-rays are taken and then compared to the Greulich and Pyle Atlas or the Tanner and Whitehouse pictures in order to determine the bone age of the child.

The Greulich and Pyle (GP) Atlas was elaborated in 1959, using data collected from Caucasian children of the upper socioeconomic class living in the United States of America in the 1940's. It was never intended to be used for forensic purposes¹¹ and has a margin of error of 18 months¹².

The ethnic and socioeconomic characteristics of adolescents examined today in Western Europe may differ greatly from those presented in the Atlas. According to the EASO, "it has generally been accepted that bone maturity is affected by ethnic, socioeconomic and nutritional factors".

The Tanner and Whitehouse method compares each of the 20 bones of the hand with a series of pictures of the development of that particular bone. It is thought to be a particularly unreliable method for older age groups (those aged 15-18 years) and for those from different ethnic backgrounds¹³. Its cross-ethnic reliability has been studied at length: bone age was significantly overestimated for Asian

⁷ European Commission, [Action Plan on Unaccompanied Minors \(2010-2014\)](#)

⁸ European Asylum Support Office (EASO), [Age assessment practice in Europe](#), December 2013

⁹ R. (on the application of B) v. London Borough of Merton, [2003], United Kingdom: High Court (England and Wales), 14 July, available at: <http://www.refworld.org/docid/4a8172e62.html> [accessed 13 August 2015]

¹⁰ R. (on the application of A) v London Borough of Corydon [2009], United Kingdom: Supreme Court, available at: https://www.supremecourt.uk/decided-cases/docs/uksc_2009_0106_judgment.pdf

¹¹ Marie-Odile Pruvost, Cyril Boraud, Patrick Chariot [Skeletal age determination in adolescents involved in judicial procedures: from evidence-based principles to medical practice](#). Published by group.bmj.com

¹² Among others : Intervention of Docteur Odile Diamant-Berger, [Quelle Protection en Europe Pour les Mineurs Isolés Demandeurs d'Asile](#), 27 October 2000. P36-37

¹³ UNHCR BO Vienna, Einzenberger B, Annex 6 of Separated Children in Europe Programme, [Report of the Workshop on Age Assessment and Identification](#), Bucharest 20-22 March 2003

and Hispanic children¹⁴, as well as for Black girls¹⁵. Post pubertal White American European males were also found to have advanced skeletal maturation when compared to postpubertal African-American males¹⁶.

In 2007, the **French Academy of Medicine**¹⁷ stated that the results obtained by comparing wrist x-rays to the Greulich and Pyle Atlas could not be relied upon for children past the age of 15 years old due to the standard-deviation of one to two years observed. EASO considers that “the margin of error is taken to be two years either side”.

In 2014, the **French High Public Health Council**¹⁸ considered the tool to be too imprecise to determine the age of young adults because of a margin of error estimated to be 18 months on average.

The **UK Royal College of Paediatrics and Child health**¹⁹ underlines that a boy’s skeleton today is fully developed at the age of 16 to 17 years of age and that of a girl at 15 to 16. For both sexes, these standards differ by 2 to 3 years from the GP atlas.

- Dental examination

Some Member States use external examination, x-rays or mineralisation density determination of the wisdom teeth or of the whole mouth as a basis for dental and consequently also biological maturity of growing children to assess their age. Yet, there is an absence of consensus amongst dental experts concerning these examinations’ reliability and validity. They are thought to be giving a confidence interval of over two years around the estimated age²⁰.

According to the EASO report²¹, “a recent study has shown that the third molar is an imperfect marker of chronological age: it misclassifies no less than 64% of 18 to 20 years old individuals as being minor”. For most people, eruption of all third molars (“wisdom teeth”) is observed only after the age of 18 – if it ever happens. On the other hand, the eruption of third molars had also been reported in adolescents as young as 13 years old, as far back as 1946 in India²² and 1960 in Uganda²³ as well as in several other countries (Kenya, Nigeria, and Japan).

Dental age assessment is regarded as being unreliable by the Committee on Age Determination in the Netherlands, as 25% of people grow no wisdom teeth and an extreme degree of inter-personal

¹⁴ Aifeng Zhang, James W. Sayre, Linda Vachon,, Brent J. Liu, and H. K. Huang, [Racial Differences in Growth Patterns of Children Assessed on the Basis of Bone Age](#)

¹⁵ Ontell FK, Ivanovic M, Ablin DS, Barlow TW. [Bone age in children of diverse ethnicity](#). American Journal of Roentgenology 1996

¹⁶ Mora S., Ines Boechat M., Pietka E, Huang HK and Gilsanz V., 2001, Pediatric Research, Vol.50, No.5, pp.624-628

¹⁷ Chaussain JL, Chapuis Y [Reliability of physical examination for determining the chronological age of adolescents under 15 years](#) (in French only), Bull. Acad. Natle Méd., 2007, 191, no 1, 139-142,

¹⁸ Haut Conseil de la Santé Publique, [Avis sur l'évaluation de la minorité d'un jeune mineur étranger isolé](#), 23 janvier 2014

¹⁹ The Royal College of Paediatrics and Child Health, [The Health of Refugee Children - Guidelines for Paediatricians](#), 1999

²⁰ Kullman, L, [Accuracy of two dental and one skeletal age estimation methods in Swedish adolescents](#), 1995

²¹ European Asylum Support Office (EASO), [Age assessment practice in Europe](#), December 2013.

²² Shourie KL. [Eruption age of teeth in India](#). Indian Journal of Medical Research 1946

²³ Chagula WK. [The age at eruption of third permanent molars in male East Africans](#). American Journal of Physical Anthropology 1960;18:77e82, 1960

variation in the maturation process is observed²⁴. “About 10% of all girls and 16% of all boys reach the criterion for exclusion before they are 18 years old, and may therefore be unjustly refused treatment as a minor”²⁵.

The method taken to be the most accurate to determine chronological age from dental age²⁶ is the one developed by **Demirjian**, which indicates whether a child is dentally advanced, average or delayed compared to a reference baseline. However, critics from the German Association of Forensic Medicine and researchers in Sweden, Finland, France and the USA highlight the fact that the development of teeth depends on individual factors such as environment, nutrition or ethnicity²⁷.

A lack of consistency regarding country specific populations has been pointed out. Out of 184 South Indians on whom the Demirjian methodology was tested, an overestimation of approximately 3 years was found²⁸. Discrepancies were also found for Brazilian children²⁹. Therefore, the possibility of such deviations for other specific populations should not be excluded.

A study carried out in 1995³⁰ aimed at determining if bone age measurement together with dental examinations would lead to more precise results. In a study done on Swedish adolescents, it was found that combined assessments still yielded significant overestimations of chronological age

The UK Royal College of Paediatrics and Child Health concludes that “there is not an absolute correlation between dental and physical age of children, but estimates of a child’s physical age from his or her dental development are accurate to within +/-two years for 95% of the population and form the basis of most forensic estimates of age”.

- Collar bone X-ray

It is considered to be efficient only to determine whether or not an individual is over or below the age of 21.

²⁴ Dutch Committee on Age Determination 2006 (as cited in Unicef, [Age assessment practices: a literature review & annotated bibliography](#), 2010)

²⁵ Ibidem

²⁶ Unicef, [Age assessment practices: a literature review & annotated bibliography](#), 2010

²⁷ Pedersen, C (2004), [Chronological Age Determination for Adopted Children](#), unpublished, (as cited in Unicef, [Age assessment practices: a literature review & annotated bibliography](#), 2010)

²⁸ Koshy, S and Tandon, S [Dental age assessment: the applicability of Demirjian’s method in south Indian children](#), Forensic Science International 94 (1-2), 73-85, 1998

²⁹ Eid, Simi R, Friggi MN, Fisberg M, [Assessment of dental maturity of Brazilian children aged 6 to 14 years using Demirjian's method](#), Int J Paediatr Dent. 2002

³⁰ Kullman, L, [Accuracy of two dental and one skeletal age estimation methods in Swedish adolescents](#), 1995

- Sexual maturity examination

It has a wide margin of error. According to the **EASO**, “assessing age on the basis of physical traits is the least precise”. Certainly the most intrusive method of them all, it is at odds with respect to the privacy and dignity of the person as it requires invasive physical examinations. The average age for the onset of puberty is 11 and may vary from one person to another. The method is ineffective pass the age of 13. And yet nipple measurements for girls and genitalia appraisal for boys are still being reported to MdM in France.

- Physical development assessment by a paediatrician

Physical development assessment is the process of comparing a child’s physical development to that of children of similar age from a representative sample of the population (also called “anthropometrical measurement”). The US Center for Disease Control and prevention based in Atlanta (CDC) promotes one set of growth charts³¹ for children of all age and from all geographical origins, as the World Health Organization (WHO) does. The WHO growth chart³² was determined by aggregating data from children from different ethnic horizons and provides information on children up to 5 years of age.

As with skeletal or dental development, anthropometrical measures are determined by a panoply of genetic and environment factors³³.

However, according to the UK Royal College of Paediatrics and Child Health, “it is virtually impossible to deduce the age of an individual from anthropometric measures”³⁴.

- Informal measurements

The age determination process leaves room for informal assessment based on physical appearance, performed by untrained administrative or social staff out of their sphere of competence. Though they might have a considerable importance, these “assessments” are often based on quick visual appraisals during the interview process for asylum-seeking children, as it is the case in Germany, Austria and Greece³⁵.

The available age assessment techniques only allow estimating the percentage of development growth that has taken place. That measure differs greatly from one individual to another, and is impacted by numerous genetic and environmental factors that are systematically not taken into account. In any circumstance, bone testing cannot be considered as assessing the chronological age of an individual with rigor and preciseness.

³¹ Center for Disease Control, [Clinical Growth Charts](#), 2000

³² World Health Organization, [Child Growth Standards](#) 2006

³³ Intervention of Docteur Odile Diamant-Berger, [Quelle Protection en Europe Pour les Mineurs Isolés Demandeurs d’Asile](#), 27 October 2000. P36-37

³⁴ Royal College of Paediatrics and Child Health, “[The Health of Refugee Children - Guidelines for Paediatricians](#)”, 1999

³⁵ Unicef, [Age assessment practices: a literature review & annotated bibliography](#), 2010

Crawley, H. [When is a child not a child? Asylum, age disputes, and the process of age assessment](#), Immigration Law Practitioners Association (ILPA), 2007

TESTIMONY

I was 17 when I arrived in France and requested asylum. I was accommodated in a hotel for two weeks. After that time, the CDEF (Centre Départemental de l'Enfance et de la Famille, the local official organ competent for the reception of unaccompanied minors) told me that I had to pass a bone test. A week later, I found a letter on my bed. It informed me that someone would pick me up the next day to meet the head of the CDEF. When I got there, he told me that I would not be taken care of anymore, and that I had to free my hotel room. I asked him why, and he just answered that the "decision came from higher up". He could not, in fact, answer any of my questions. He just told me that a decision had been taken, that it came from higher up and that I had to free the premises.

After that I took my belongings and left. I went to a social center run by an NGO to explain my situation, and that I did not know where to sleep that night. We tried to call 115 (social emergencies service number) but the line was busy. The social center' staff was kind enough to find me somewhere else to sleep, and told me to call 115 every day to find a shelter for the night.

I tried once, twice but no one picked up. The third time I managed to talk to someone and explain that the CDEF had made me leave the hotel. But I was told that the 115 only takes care of adults, and that they could not help me. That night I could not find a place to spend the night. The day after, I went back to the social center again. They tried to help me but they didn't succeed at helping me access the 115 either. I slept in a squat that night, and that's where I've been spending my nights ever since.

Abou, 17. MdM France (Nantes) – March 2015



© Frédéric Pauwels – Adolescent in Calais (France)

Legislative Framework concerning age assessment

Safeguards on the Rights of the Child put at risk by age determination

There are three sources for procedural safeguards in EU law: the Asylum procedure Directive³⁶, the Qualification Directive and, to a lesser extent, the European Charter of Fundamental Rights. The Asylum procedure Directive is the only one dealing explicitly with the issue of age assessment for unaccompanied minors. Regardless of the regulative form it might take, children are entitled to protection, and this protection should never depend on administrative status or procedures.

*Best interests of the child*³⁷

It is one of the four general principles of [the Convention on the Rights of the Child](#)³⁸. As such, the best interests of the child have to be directly applicable before national courts. It is an interpretative legal principle and a rule of procedure within any decision-making process of Member States that have ratified the UN Convention on the Rights of the Child³⁹.

To ensure the highest degree of protection of the rights of the child during age assessment, it is necessary to approach every step from the perspective of the best interests of the child, including his or her own particular circumstances. They must be a primary concern, even over the State's political interests.

*The benefit of the doubt: presumption of minority*⁴⁰

If there is a chance that the individual is a child, he or she should be treated as such⁴¹.

A decision to deny international protection should not be based solely on a child's refusal to undergo a medical examination⁴². If doubts remain once the results of the tests are known and margins of error are taken into account, then the minority of the child should be presumed.

*Informed consent*⁴³

Prior to the undertaking of an age assessment, the child and his/her representative should be informed of the procedure awaiting the child, its risks, and the consequences that may arise from the conclusions or a refusal to proceed, in a language and a way that the child and his/her representative can understand.

³⁶ [\(Recast\) Asylum Procedure Directive](#)

³⁷ [United Nations Convention on the Rights of the Child](#) article 3; [Charter of Fundamental Rights of the European Union](#) Article 24; [\(Recast\) Asylum Procedure Directive](#) Article 25.1, 25.6, [Recast Qualification Directive 20.5](#), [Treaty on European Union](#) 3.3

³⁸ UNCRC, [General Comment No. 5](#), 2003

³⁹ UNCRC, [General Comment No. 14](#), 2013

⁴⁰ UNCRC, [General Comment No. 6](#); Recast Asylum Procedure Directive 25.5

⁴¹ UNCRC, [General Comment No. 6](#)

⁴² [\(Recast\) Asylum Procedure Directive](#) 25.5

⁴³ [United Nations Convention on the Rights of the Child](#) 13; Recast Asylum Procedure Directive 19, 25.5; EURATOM 22.4 (a)

The least invasive method⁴⁴

To ensure the highest level of protection of one's dignity when undergoing a medical examination, the least invasive and intrusive method should be used. The first step should be to consider all evidence available before having recourse to a medical assessment. Intrusive methods should be used as a last resort only – bearing in mind their doubtful added value.

Options to challenge⁴⁵

For administrative decisions having such crucial importance on the life of individuals, an appeal or a judicial review should always be available. Due to their extremely vulnerable position, unaccompanied minors and young isolated adults face many difficulties in accessing the judicial system. They need to be provided with legal advice in a language they can understand with explanations regarding the reason for the decisions and their possibility for appeal.

Qualified professionals⁴⁶

All those who work alongside children should receive appropriate initial and ongoing training concerning the rights and needs of children, and have proven their skills and abilities to successfully and respectfully work with them.

Appointment of a representative⁴⁷

This can be a person or an organisation, designated by a competent body in order to assist and represent an unaccompanied minor in procedures, with a view to ensuring the best interests of the child and exercising legal capacity for the minor where necessary.

Regulations regarding exposure to ionization

The Euratom Directive⁴⁸ is the only European regulation dealing with exposure to ionization for non-medical purposes, under the title “practices involving the deliberate exposure of humans for non-medical imaging purposes”. It states, rather vaguely, that “all individual non-medical imaging exposure procedures using medical radiological equipment shall be justified in advance, taking into account the specific objectives of the procedure and the characteristics of the individual involved.”

⁴⁴ [\(Recast\) Asylum Procedure Directive](#) 25.5

⁴⁵ [United Nations Convention on the Rights of the Child](#) articles 4, 12; [\(Recast\) Asylum Procedure Directive](#) 19, 25.4

⁴⁶ [\(Recast\) reception conditions Directive](#); [\(Recast\) Qualification Directive](#) 30.6

⁴⁷ [\(Recast\) reception conditions Directive](#); UNCRC 18(2) and 20(1) as interpreted by the [Committee on the Rights of the Child General Comment 6](#)

⁴⁸ “Euratom” Directive [Standards for protection against the dangers arising from exposure to ionising radiation](#) 2013/59

The position of EU institutions and matters of competence

The European Union has competence to deal with ‘legal migration’ (e.g. people coming to Europe on invitation of a specific employer, family reunification, etc.) and hence to lay down conditions of entry and residence of third-country nationals. The EU is also competent to prevent and reduce ‘irregular migration’ according to article 78 and 79 of the Treaty on the Functioning of the EU (TFEU)^{49,50}. This means that the EU is competent to legislate on common standards concerning age assessment.

Article 25 of the Directive on common procedures for granting or withdrawing international protection (“Asylum Procedures Directives”)⁵¹ authorizes the use of medical examination in order to determine the age of an unaccompanied minor in European Law. It does not specifically deal with the different existing methods, but lays down rights and safeguards for the child: to be provided **legal and procedural information free of charge, to have a representative appointed, personal interview(s) conducted by a qualified professional, a presumption of minority, the use of the least invasive method, informed consent, the fact that no decision of non-minority can be based solely on a refusal to undergo medical examination, and finally the protection of the best interests of the child.** Consequently, the Commission will be very interested to receive NGO observations that expose systematic violations of these safeguards.

According to the **European Commission Action Plan on Unaccompanied Minors**⁵² (2010-2014), “the Commission will issue best practice guidelines, in collaboration with scientific and legal experts and in cooperation with the European Asylum Support Office (EASO) who will prepare technical documents on age assessment”. The “technical document” has indeed been elaborated by the EASO but no “Good Practice guidelines” have yet been issued by the European Commission⁵³.

The **European Parliament resolution** of 12 September 2013 on the situation of unaccompanied minors in the EU⁵⁴ calls for additional measures to ensure that unaccompanied minors are not subjected to **“unsuitable and intrusive” medical tests “which may cause trauma”** to determine their age. They further note that these tests come with **“large margins of error”** and should not be used to accurately determine age. The resolution also underscores the need for an **option to challenge** the results of age assessments and that medical examinations should only be conducted **by respecting the integrity of the individual**.

The resolution also reminds the Commission to draw up the promised strategic guidelines for Member States which should, based on best practices, take the form of common minimum standards and address each stage of the process.

⁴⁹ [Treaty on the Functioning of the EU](#) (TFEU)

⁵⁰ See the [Factsheet on immigration policies issued](#) by the EU, 2015

⁵¹ [\(Recast\) Asylum Procedure Directive](#)

⁵² [Action Plan on Unaccompanied Minors \(2010-2014\)](#)

⁵³ Last visited in August 2015. A handbook recapitulating the rights afforded to unaccompanied minors in general was issued by the Commission, available at : http://www.connectproject.eu/PDF/CONNECT-EU_Reference.pdf, 2014

⁵⁴ [European Parliament resolution on the situation of unaccompanied minors](#) in the EU, 2013

Relevant international conventions

The United Nation Convention on the Rights of the Child

The [United Nations Convention on the Rights of the Child](#) (UNCRC) entered into force in 1990. It is the most significant international legal instrument with regard to age assessment and all matters relevant to the legal status of children. As of today, only two countries have yet to ratify the landmark treaty – South Sudan and the United States. By agreeing to undertake the obligations laid down in the UNCRC, State Parties have agreed to be held accountable before the international community and the Committee of the Rights of the Child. State Parties are subject to Committee’s evaluations of the implementation of the Convention that occur every five years.

The Committee has no mandate to accept complaints from individuals and render legally binding judgment, but encourages State Parties and NGOs to support children to present their views and observations to the Committee, either on their own or through NGOs (cf. art. 12 on the right to be heard). Prior to the Committee session at which the State Party's report is reviewed, the pre-sessional working group of the Committee convenes a private meeting with UN agencies and bodies, NGOs, and other competent bodies such as National Human Rights Institutions and youth organizations which have submitted additional information to the Committee.

The State Party report is then discussed in public Committee meetings. Once discussions have taken place with the State Party, the Committee will, in a closed meeting, agree on written concluding observations which include suggestions and recommendations.

International standards on the treatment of unaccompanied minors deriving from the UNCRC have been identified by the Committee on the Rights of the Child in [General Comment No 6](#) (2005) “Treatment of unaccompanied children outside their country of origin”. Accordingly, “the assessment must be conducted in a **scientific, safe, child and gender-sensitive fair manner, avoiding any risk of violation of the physical integrity of the child; giving due respect to human dignity; and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt so that if there is a possibility that the individual is a child, she or he should be treated as such**”.

[General Comment No 14](#) (2013) emphasizes the importance to implement the best interests of the child in all policies.

The absence of a statement from the European Court of Human Rights

The European Court of Human Rights has never received a complaint concerning age assessment procedures. It is unlikely that age assessments could be considered as torture or ill treatment (article 3 of the Convention). However, these assessments could constitute a violation to the right to privacy (article 8). When age assessment is systematic, and its result used as the only ground to take a decision of majority, the Court might consider that the means are not proportionate to the aim, especially given the high margin of error of the process, the importance of the consequences on the life of the plaintiff, and the intrusiveness of the method over the child's physical integrity and dignity. The absence of options to appeal the decision might be a breach of Article 13 of the Convention, providing for the right to an effective appeal.

European policy framework

Various European bodies expressed opinions on age assessment procedures and treatment of migrant children. They all denounce the way those methods are carried out, or urge for more child-friendly health services in general.

The Committee of Ministers of the Council of Europe, in its "[Guidelines on child-friendly health care](#)"⁵⁵ recalls that medical care for children "should focus not only on managing the child's health condition, but also on their physical or social environment, **thus avoiding the medicalisation of social problems**".

The Council of Europe Commissioner for Human Rights is one of the most active institutions on the matter. In 2011, the former Commissioner, Thomas Hammarberg, pleaded for the necessity of a multidisciplinary approach when assessing age and to trust and respect children. He also emphasized that "X-rays can never determine exact age"⁵⁶ because of a margin of error of two to three years. He defended that children should have the **benefit of the doubt**, and that no decision should be taken merely on the basis of bone testing. He explained at great length the reasons that make these methods unreliable⁵⁷, quoting the College of Radiologists of London that qualified as "unjustified" a radiograph examination for age examination purpose, due to the lack of consideration given to the geographical descent factor and socio-economic situation of the child.

The Parliamentary Assembly of the Council of Europe (PACE), in its resolution ([1810 \(2011\) Unaccompanied children in Europe: issues of arrival, stay and return](#)), outlines a number of safeguards concerning age assessment : they should only be carried out if a **reasonable doubt** exists; by an **independent authority**; with the **informed consent** of the child or the guardian; and must be based on a **multidisciplinary approach**; using the **less intrusive methods compliant with medical ethical standards**. The outcome of this process should be **subject to appeal**, and the doubt in favour of the child (**presumption of minority**).

⁵⁵ 21 September 2011

⁵⁶Comment of the Commissioner for Human Rights Thomas Hammarberg « [Methods for assessing the age of migrant children must be improved](#) », 2011.

⁵⁷ Ibidem

The Assembly believes that child protection, rather than immigration control, should be the driving concern in how countries deal with unaccompanied children. With this in mind, it establishes a set of 15 common principles, which it invites Member States to observe. It concludes that *“unaccompanied children must be treated first and foremost as children, not as migrants.”*

[Resolution 1996 \(2014\) “migrant children: what rights at 18”](#) proposes to establish a transition category, between the ages of 18 and 25, to help young migrants access healthcare, welfare, education, information and housing assistance, and recalls that the benefit of the doubt should play in favour of the child, and the importance of bearing in mind the best interests of the child.

The position that a transition category would mitigate the consequences of turning 18 for children lacking documentation is also held by **the European Parliament (EP)**. In the resolution discussed above, the EP condemns “the very precarious circumstances with which these minors are suddenly confronted when they reach the age of majority”.

The Office of the UN High Commissioner for Refugees (UNHCR) issued [guidelines on protection and care of refugee children](#) in 1994 that deal with age assessment. The UNHCR recalls the unreliability of such tests, that must however be carried out in a safe manner, respectful of human dignity, with the presumption of minority. In their [guidelines on policies and procedure on dealing with unaccompanied children](#) (1997), the UNHCR advised, *inter alia*, to take into account the psychological maturity and the margin of error inherent to age assessment.

The Fundamental Rights Agency of the European Union (FRA) [issued guidelines on separated, asylum-seeking children in EU Member States](#) in April 2010. Age assessment techniques are criticized as well: “Scientific research has shown that age assessment through medical examination is not always exact”, for example, in cases of children who have experienced malnutrition or severe trauma, or who “tend to have a growth spurt with accelerated skeletal and sexual maturation”. It also underlines the necessity of a **possibility to appeal a decision**, and that **investigations should be led by a different body than the public authority**. **“Member States should not use age assessment as standard practice”**. If it considered essential that children undergo medical examinations, they should be performed by **qualified professionals, presuming the child’s minority**.

[EASO: age assessment practice in Europe](#) (2013) is a comprehensive report, ordered by the Commission as part of its Action Plan for unaccompanied minors 2010-2014. The report details at great length national practices, the legal framework shaping age assessment, as well as disadvantages and alleged advantages of each method in use. It concludes that “there is currently no method which can identify the exact age of an individual,” and “there are concerns about the invasiveness and accuracy of the methods in use.” Out of the 30 countries⁵⁸ participating in the questionnaire, only 10 countries attempted other approaches before resorting to age assessment examinations and only 16 stated that refusing to undertake medical age assessments did not result in automatic assessment as an adult. In another questionnaire, out of the 34⁵⁹ participating states:

⁵⁸ The 28 Member States of the European Union, Switzerland and Norway

⁵⁹ The 28 Member States of the European Union, Switzerland, Norway, New-Zealand, Australia, Canada and the United-States

- 23 countries made use of carpal (hand/wrist) X-ray
- 17 countries made use of dental X-ray;
- 15 countries made use of collar bone X-ray;
- 14 countries made use of dental observation;
- 8 countries undertook sexual maturation observation

It also states that “use of X-ray for administrative purposes, where there is no health benefit, may well be unlawful in some countries”.

[The European Migration Network](#) study on policies regarding unaccompanied minors gathered and analysed data from the reports produced by 22 of the EMN National Contact Points. It highlighted, *inter alia*, that the interpretation of data may also vary from country to country. It may even vary from one specialist to another.

The vast majority of **health professional organizations** consider that chronological age cannot be precisely assessed by medical methods. **The UK Royal College of Paediatrics and Child Health** study [“The Health of Refugee Children - Guidelines for Paediatricians”](#) on age assessment is considered as a reference⁶⁰. It is extremely skeptical regarding the use of bone testing and dental mineralisation with the aim of determining age: *“age determination is an inexact science and the margin of error can sometimes be as much as 5 years either side.”* (...) *“Overall, it is not possible to actually predict the age of an individual from any anthropometric measure, and this should not be attempted”*. The **French Academy of Medicine**⁶¹ and the **French High Public Health Council**⁶² also concluded that results obtained from a medical age assessment cannot be relied upon to assess the chronological age of an individual because of the high margin of error inherent in any of the existing tools.

⁶⁰ EASO report, FRA report on separated and asylum seeking children, Commissioner for Human Rights of the Council of Europe

⁶¹ Chaussain JL, Chapuis Y [Reliability of physical examination for determining the chronological age of adolescents under 15 years](#) (in French only), Bull. Acad. Natle Méd., 2007, 191, no 1, 139-142,

⁶² Haut Conseil de la Santé Publique, [Avis sur l'évaluation de la minorité d'un jeune mineur étranger isolé](#), 23 janvier 2014

Conclusions

- Medical procedures for age assessment are unanimously considered as unreliable and disproportionately intrusive by the UN, the institutions of the Council of Europe, healthcare providers, and even by EU institutions such as the FRA or EASO. Having recourse to a holistic approach is recommended, but despite this X-rays are still widely used by EU Member States.
- As health professionals, MdM refuses the use of medical examinations which have no therapeutic benefit and are purely requested for migration control purposes. The only foreseeable outcome of such unreliable methodologies is the wrongful exclusion of minors on a regular basis.
- We urge Member States to implement existing legislation with the best interests of the child in mind, using the UN Convention on the Rights of the Child as a starting point, and effectively implementing procedural safeguards.
- We urge Member States to own up to their responsibility and ensure decent reception conditions for minors.
- We urge the European Commission to develop policies and advocate to replace medical age assessment procedures with a system based on respect for a child's dignity and his or her best interests.
- As expressed by the PACE and the European Parliament, migrants should not face a wall when they turn 18. The factors that render them vulnerable do not disappear from one day to the next.



© Benoit Guenot – Calais (France).