



# **Position Paper on Age Assessment in the Context of Separated Children in Europe**

**2012**

The **Separated Children in Europe Programme (SCEP)** started as a joint initiative of some members of the International Save the Children Alliance<sup>1</sup> and the United Nations High Commissioner for Refugees (UNHCR). It has grown and evolved and it now comprises a Network of non-governmental organizations (NGOs) as partners throughout Europe who continue to work closely with UNHCR.

The Programme aims to realize the rights of separated children who have travelled to, or across Europe, by establishing a shared policy and commitment to best practice at national and European levels. SCEP has developed a broad definition of the term ‘separated child’, which recognizes that some children may appear ‘accompanied’ but in practice the accompanying adult may be either unable or unsuitable to assume responsibility for their care. SCEP defines separated children as ‘under 18 years of age, outside their country of origin and separated from both parents, or their previous legal, or customary primary caregiver’<sup>2</sup>.

In order to provide a clear and simple overview of the principles, policies and practices required to ensure the promotion and protection of the rights of separated children, SCEP, together with UNHCR, has produced the *Statement of Good Practice*, which outlines good practice on specific issues including, among others, identification, age assessment, guardianship, interim care and best interests determination to find durable solutions. In 2009, also UNICEF contributed to the revision of and endorsed the 4<sup>th</sup> revised edition of this document<sup>3</sup>.

SCEP has identified age assessment as one among the priority areas in its current strategy that Network partners are focusing their work on, pursuing the shared long-term objective that ‘separated children whose age is disputed enjoy all their rights (especially to protection) provided by national and international legal frameworks, as a result of age assessment methods and procedures being in line with the Statement of Good Practice’.

This Paper was primarily drafted by Maria Antonia Di Maio. It benefited from considerable editorial review by Sarah Di Giglio, Eموke Takacs, Heinz Fronck, Thale Skybak, Terry Smith and Lise Bruun. It was produced thanks to the invaluable contributions from a large number of NGO-members of the SCEP Network and Rebecca O’Donnell, Save the Children EU Office, Brussels. Virginia Rodriguez and Roberto Calleja contributed to designing its outline. Comments and suggestions to improve the Paper were generously provided by Sir Al Aynsley-Green, Annemieke Keunen and Han Schumacher.

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May 2012



With financial support from the European Commission, Daphne III. The sole responsibility for the content lies with the Separated Children in Europe Programme, the European Commission is not responsible for any use that may be made of the contents.

<sup>1</sup> Save the Children has merged to become one Organization and is now called ‘Save the Children International’.

<sup>2</sup> SCEP, *Statement of Good Practice*, 4<sup>th</sup> Revised Edition, 2009, p.I.

<sup>3</sup> The Statement of Good Practice is available at [http://www.separated-children-europe-programme.org/separated\\_children/good\\_practice/index.html](http://www.separated-children-europe-programme.org/separated_children/good_practice/index.html). The current and past editions have been translated in several languages spoken in Europe.

## Introduction

This Paper represents the position of the SCEP on age assessment in the context of separated children in Europe. In particular, it aims to provide concrete recommendations to States and other relevant stakeholders on how to ensure full respect of the rights that separated children are entitled to, when doubts concerning their age may arise. This Paper represents the basis on which SCEP will pursue advocacy around age assessment in Europe.

SCEP's positions presented in this Paper are based on the current situation concerning laws, policies and practices related to age assessment in Europe, primarily as it resulted from a review undertaken by SCEP in 16 European countries<sup>4</sup>. The bibliography in this Paper identifies some further reports and studies that are relevant in the area and that have informed this document (Annex 2). Further details concerning examinations currently applied to assess the age of separated children in Europe are contained in Annex 1.

The Paper builds upon the principles and standards outlined in the SCEP's Statement of Good Practice (above), which are primarily based upon and informed by the United Nations Convention on the Rights of the Child ('CRC', 1989), the United Nations Committee on the Rights of the Child's General Comment Number 6 on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin (2005) and the UNHCR's Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum (1997). These key principles and standards are highlighted in the Paper in boxes. Full reference for relevant legal provisions and guidance on how to apply them is provided in Annex 3.

This Paper will tackle the following issues:

- What is age assessment? (p.4)
- Relevance of age assessment in the context of separated children in Europe (p.4-7)
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  - State obligation to provide special protection and assistance to separated children
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<sup>4</sup> SCEP, *Review of current laws, policies and practices relating to age assessment in sixteen European Countries*, May 2011.

The countries covered by the study are: Austria, Belgium, Denmark, Estonia, Finland, Hungary, Ireland, Italy, Malta, The Netherlands, Norway, Poland, Portugal, Slovenia, Spain and The United Kingdom.

## What is age assessment?

In the framework of this document, **age assessment** refers to the procedures through which authorities seek to establish the chronological age<sup>5</sup> of an individual. While in a broad sense, ‘age assessment’ refers to any attempt to establish an individual’s age, including seeking documentary evidence, in Europe this term is frequently used more narrowly to indicate medical and other exams aimed to assess the age of an individual, as these are increasingly and widely being practiced.

Age assessment is carried out in a **variety of contexts** and for a number of different purposes. First and foremost, the ratification of the CRC by all but two countries in the world, created the first definition of a child as ‘any person below the age of eighteen years’ (Art. 1). This circumstance has made the need of proving identity with confirmation of chronological age fundamentally important, as it determines whether and for how long an individual will be eligible for the specific rights envisaged by the CRC and relevant domestic legislation.

For children who enter the criminal justice system it is very important to establish whether they have reached the age of criminal liability, and whether they are under or over eighteen years, as children in conflict with the law have a right to be treated in a manner which takes into account the needs related to their age (Art. 37 CRC). Age assessment has gained increasing importance in international-level sports, where most activities are classified on the basis of chronological age, with competition being compartmentalized by age group to ensure equal chances of success<sup>6</sup>.

Age assessment is of special concern to the SCEP when it pertains to **separated children**. As it will be described below, in Europe in the vast majority of cases age assessment is applied to separated children to establish whether or not (and for how long) they are under 18 years of age<sup>7</sup>.

## Relevance of age assessment in the context of separated children in Europe

### The situation of separated children in Europe

Separated children may travel to, or within Europe, because they are seeking international protection owing to a fear of prosecution or the lack of protection in their country of origin due to human rights violations, armed conflicts or disturbances. They may have been trafficked for sexual or other forms of exploitation, or they may travel in order to escape conditions of extreme poverty or in search of increased opportunities and a better life abroad, for example, from the perspective of educational or economic opportunities. Some separated children are seeking reunification with family members already present in Europe.

Many of these children are without valid identity or residence documents, as these might have been lost or confiscated prior to or during their travel. In some areas of the world, including Europe (albeit on a

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<sup>5</sup> **Chronological age** is measured in years, months and days from the moment when the person was born. **Biological age** is defined by an individual’s present position with respect to his or her potential life span, meaning that an individual may be younger or older than his or her chronological age. **Social age** is defined by an individual’s roles, responsibilities and habits with respect to other members of the society of which he or she is a part. An individual may therefore be older or younger depending on the extent to which he or she shows the age-graded behaviour expected of him by his particular society or culture [...]. **Psychological age** is defined by the behavioural capacities of individuals to adapt to changing demands and includes the use of adaptive capacities of memory, learning, intelligence, skills, feelings, motivations and emotions for exercising behavioural control and self-regulation (Settersen et al, 1997:240)<sup>7</sup>. (Terry Smith, Laura Brownlees, *Age assessment practices: a literature review & annotated bibliography*, UNICEF 2011, p.7-8, emphasis added).

<sup>6</sup> Sir Albert Aynsley-Green Kt., *The assessment of age in undocumented migrants*, March 2011, p.3.

<sup>7</sup> Although anecdotal cases of age disputes arising for children travelling to or across Europe with their parents are reported by SCEP Network members, age assessment normally affects separated children – as defined by the SCEP (above).

much more limited scale), considerable numbers of children do not have their birth registered and therefore lack documents that can prove their (identity and) chronological age<sup>8</sup>. In other cases, though, children travel with identity or residence documents, but their regularity or validity is questioned by authorities in Europe, who consequently often do not rely on such documents to assess the child's identity and chronological age.

### State obligation to provide special protection and assistance to separated children

According to international law, States in Europe are obliged to grant special protection and assistance to separated children. In particular, the key-principles enshrined in the CRC should always be respected when dealing with separated children. States have the duty to ensure **protection** to every child from any form of neglect, abuse, violence and exploitation (Art. 19, 32, 34, 35 e 36 CRC<sup>9</sup>). States are obliged to provide special protection and assistance to children deprived of their family environment (Art. 20 CRC). The **best interests of the child** should be the primary consideration in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies (Art. 3 CRC). All considerations pertaining to immigration or crime control should be secondary.

All separated children have an inherent **right to life, survival and development** (Art. 6 CRC). Furthermore, with respect to the **right to participate**, States should assure to the child who is capable of forming his/her own views the right to express those views freely in all matters affecting the child, his/her views being given due weight in accordance with his/her age and maturity (CRC Art. 12).

All key-principles and fundamental rights enshrined in the CRC apply to all children within a State's jurisdiction, **without any discrimination** based on nationality, immigration status or statelessness (Art. 2 CRC). Therefore, States shall treat separated children as children first and foremost. This means that, when travelling to or across Europe, separated children should be regarded and treated as any other children and granted equal access to their fundamental rights as national children, with additional special protection as they are (temporarily or permanently) deprived of their family environment and parental care.

Generally, States in Europe have incorporated the CRC into national law – directly or as international law. The entry into force of the Lisbon Treaty on the 1<sup>st</sup> of December 2009 led to the protection of the rights of the child, both internally and externally, being identified as an objective of the European Union ('EU'), further strengthening the obligation of the EU to respect children's rights. At the same time, the position of separated children is regulated – both at regional (primarily EU) and national levels - by different sets of laws. These are, namely, the legal frameworks applicable to third-country nationals' migration, movement of European Union citizens within the EU, asylum and trafficking. While providing specific protection regimes for individuals who qualify for international protection (asylum and subsidiary protection) and/or who are identified as victims of trafficking and exploitation, these laws regulate the possibilities for non-nationals to legally reside within a country in relation to the fulfillment of specific, often restrictive criteria related to job or family reasons, and the standards that States should respect in treating them. In particular, non-EU nationals who are found without a document entitling them to legal entry and stay, may be subject to administrative detention and (voluntary and forced) return, and in some European countries irregular entry and stay have been made a crime within domestic legislation. Furthermore, it has to be noted that protection paths for individuals qualifying for international protection or identified as victims of trafficking, typically provide a series of specific safeguards and protection measures that apply to children within those processes.

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<sup>8</sup> UNICEF, *Progress for Children: Achieving the MDGs with Equity*, No.9 September 2010, p.44.

<sup>9</sup> Other CRC articles relevant to children's right to protection are: Art. 9,10, 11, 16, 20, 21, 22, 23, 24, 25, 37, 39, 39 and 40.

Therefore, being under or over eighteen years makes a crucial difference in the context of migration in Europe in terms of protection provisions. In several countries, this circumstance can drastically change the possibility to legally remain in a country, to be granted safe accommodation, access to education and training, to be appointed a guardian, or to be instead detained, expelled and deported, or to remain in an irregular/‘illegal’ condition, being vulnerable to abuse and exploitation, with very limited access to fundamental rights. It is a matter of fact that a large number of individuals migrate towards Europe seeking better life prospects for themselves and their families, escaping conditions of serious deprivation, but are not entitled to legal residence upon arrival. Other migrants may instead lose their residence entitlements for certain periods (due to unemployment, for instance).

On the one hand, children and young adults may be inclined or convinced to declare a false age in the migration context. Young persons may declare themselves as being under eighteen years of age to benefit from the full range of protection measures granted to children. At the same time, children may be convinced to state that they are adults hoping to receive easier access to work and independent living conditions, or they may be forced by exploiters and traffickers to do so in order for them to avoid stricter control and higher punishments under criminal law.

On the other hand, when individual migrants are identified as children, they shall benefit from protection measures that have considerable implications for State human and financial resources. Thus - especially at the time of major financial crisis and subsequent cuts to public welfare expenditures - national and local authorities may be pressured to adopt a restrictive approach when allowing individuals to benefit from care and protection measures granted to children. Even when such a direct pressure does not exist, institutions and other stakeholders dealing with young migrants may be overly assuming that adults will try and abuse the protection system by declaring to be under eighteen years of age. Finally, institutions and other stakeholders may be concerned about identifying and treating adults like children as this raises child protection concerns, especially in terms of placing the two groups together in residential care facilities for children deprived of parental care/separated children.

While the legal definition of childhood and the enjoyment of specific rights to which all children are entitled is increasingly recognized, it has to be acknowledged that children do not become adults overnight. Especially while migrating alone, young adults are exposed to risks and bring vulnerability factors that should be taken into account when deciding whether and what kind of protection an individual should be entitled to when travelling to or across Europe.

**SCEP recognizes that chronological age has significant limitations in terms of social age, maturity, and capability, and that, as these greatly affect a person’s ability to cope in a new context, a holistic assessment of vulnerability and needs that more accurately accounts for the entire young person is needed.**

Bearing that in mind, this Paper aims to provide guidance and recommendations in order to ensure that the rights of separated children whose age may be disputed are fully protected and promoted in the current legal and policy frameworks relating to child protection, migration, asylum and trafficking at European, national and local levels.

### **The need for standards and safeguards concerning age assessment**

States in Europe apply a variety of methods for age assessment in the context of separated children, including medical and other examinations. These mainly consist of: physical examinations (sexual maturity assessment; dental observation; anthropometric assessment); radiological tests (carpal, dental or collarbone x-rays); and practical observation (ranging from the very rudimentary – e.g. immigration officials using rough visual estimates - through to psychological and sociological reviews undertaken by trained professionals). Checking documentary evidence, anamnesis account and non-radiological

methods of imaging bone development are sometimes also used. Further details on exams applied to age assessment in the context of separated children in Europe are contained in Annex 1.

States in Europe use the above-techniques independently or in conjunction with one another. All such techniques have been widely criticized as they are often arbitrary, do not take into account ethnic variations, are based on reference materials that for the most commonly used exams are out of date, are invasive and procure harm to the individuals whose age is assessed, and generate a margin of error that makes them too inaccurate to use. Moreover, there is a lack of standardized approach between or even within countries.

Consequently, there are risks that due to the imprecision of age assessment techniques, individuals have their age wrongly assessed. In particular, separated children may be wrongly assessed as adults and denied the special protection and assistance that States are obliged to grant them under the CRC and other international and regional human rights provisions (above). Moreover, the assessment itself can represent a danger to the individual concerned<sup>10</sup>.

**Common standards are needed so that age assessment respects children's rights and in order to provide appropriate safeguards to the individuals whose age is being disputed, prior to and throughout the whole procedure.**

## Referral of separated children to age assessment

### Why and how to initiate age assessment?

Age assessment procedures should be undertaken taking the best interests of the child as a primary consideration.

In the context of separated children in Europe, age assessment is most often **initiated because** authorities suspect that an individual who declares to be a child is above the age of 18. Seldom attention is given to persons claiming to be adults whose age might be at doubt, and this practice is usually confined to suspected/actual cases of trafficking and/or involvement in commercial sex work. In few cases, age assessment is initiated with the aim of determining the precise age of the separated child recognized as such or to assess whether the child is over 14/16 years, to determine criminal liability or access to different protection schemes (for instance, accommodation for children above 16 etc.)

In most of countries in Europe there are some legal provisions concerning age assessment, or they are currently being introduced. Existing legal provisions almost never form a comprehensive legal act and are often very general or limited to some aspect of age assessment. As a result, in practice there is often plenty of room for discretionary application of these provisions by a range of different stakeholders. In particular, age assessment may be **triggered by** a number of different authorities (border guards, governmental bodies dealing with asylum, social workers, professionals working in child care facilities and the individual him/herself). In several cases, professionals triggering age assessment do not have an explicit and clear mandate in this respect according to the legal framework existing at country level.

**Age assessment should be initiated with the genuine and primary aim of ensuring protection to separated children. Migration control should never be the main reason for initiating age assessment. The same attention should be paid to individuals who state to**

<sup>10</sup> UNICEF Child Rights Advocacy & Education Section – PFP Geneva, *Identification of Unaccompanied and Separated Children: Exploring Age Assessment Challenges. Background and Discussion Paper for the Expert Seminar on Unaccompanied Minors, Children Crossing the External Borders of EU in Search of Protection organized by the Belgian Presidency of the European Union*, 2010, p.1.

be adults and may instead be children – because they have been forced, pressured or convinced to do so.

There should be clear and exhaustive provisions concerning age assessment, detailing conditions under which age assessment may be allowed, methods to be applied and the need of detailed protocols therein, key-safeguards, possible outcomes and possibilities to appeal against results. In particular, law provisions should specify and restrict authorities and professionals who are allowed to refer children to age assessment. Such provisions should be consistently applied and respected in practice.

### When to initiate age assessment?

Age assessment procedures should be undertaken as a measure of last resort, where a) there are grounds for serious doubt and b) other approaches (such as attempts to gather documentary evidence) have failed to establish the individual's age.

In the majority of countries and cases in Europe, age assessment procedures are initiated as a **routine practice** and involve an increasing number of separated children. Most often, children whose age is disputed do not bring identification documents, however in other cases the authenticity of the documents that they have is questioned and/or they are not considered as a sufficient proof of the child's age. Usually, authorities who initiate age assessment do not attempt **other approaches** (e.g. to gather documentary evidence through diplomatic channels, provided that this is not dangerous for the individual concerned) prior to resorting to examinations, with a few exceptions limited to anamnesis accounts (e.g. questions about the family of origin, the child's life before migrating, his/her education level etc.)

Most experts agree that age assessment is not a determination of chronological age but an educated guess<sup>11</sup>. All medical and other exams currently used – in Europe and beyond - to assess the age of an individual can never lead to precise results and will always bring a considerable risk to the safety, well-being and protection of the individual whose age is disputed. Consequently, the objective of all legal, policy, research and programme initiatives on age assessment should pursue the ultimate aim of decreasing the use of medical and other exams for establishing the age of individuals, confining their application to last-resort measures.

Progress should be achieved in finding ways to seek documentary evidence from the country of origin, when this does not put at risk the wellbeing and safety of the individual and his/her close persons.

The lack of trust in the rule of law in his/her country of origin, including the suspect that identity document issued by authorities therein may be fake, cannot be loaded as a burden on the individual.

Prevailing cultural constructs and perceptions of childhood based on European parameters cannot be considered as objective criteria in questioning the declared age of separated children.

It should not be allowed to initiate age assessment when there are no reasonable grounds for doubting the age declared by an individual. Professionals mandated to initiate age assessment should be required to clearly and formally justify the reasons

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<sup>11</sup> Terry Smith, Laura Brownlees, *Age assessment practices: a literature review & annotated bibliography*, UNICEF 2011, p.13.



why they doubt an individual's declared age. Such reasons should be motivated on an individual, case-by-case basis.

## Approaches and methods used to assess separated children's age

A multi-disciplinary approach to age assessment shall be adopted. Procedures applied should balance physical, developmental, psychological, environmental and cultural factors. Examinations should never be forced or culturally inappropriate. The least invasive options should be selected and the child's dignity should be respected at all times. The assessment should be gender appropriate.

In almost all countries in Europe, examinations used for assessing the age of separated children do not comply with a **multi-disciplinary approach**. Even though age assessment is rarely based solely on one type of exam, the process hardly ever focuses holistically on physical, developmental and psychological factors, and does not take into account environmental and cultural elements. In particular, cognitive and/or behavior appraisals and psychological assessments are generally not included among the procedures applied, which seldom encompass an appropriate anamnesis of the child's own story.

All efforts based on available knowledge should be made to select the most appropriate and complementary exams, whose application shall anyway be confined to last-resort measure. Professionals mandated to initiate age assessment should be required to clearly and formally justify the reasons why they resorted to such exams in each specific case.

Invasive and intrusive exams conducted solely for the purpose of chronological age assessment of an individual must be avoided. These include: x-rays; intimate sexual maturation assessment.

Based on the existing knowledge, after all safe and reliable means to establish the individual's chronological age have been pursued without success (above), age assessment methods should envisage a multi-disciplinary, holistic assessment involving specialized professionals and encompassing non-invasive and non-intrusive physical development assessment, cognitive appraisals, social and psychological assessments, based on updated and appropriate references.

Provided that age assessment through medical and other exams should be avoided and used only as a last-resort measure, based on experts' indications, research could be undertaken about non-invasive and non-intrusive methods that could be incorporated within age assessment procedures, including: non-radiological methods of imaging bone development; dental observation; non-invasive and non-intrusive physical examinations (e.g. of height and weight); cognitive appraisals; social and psychological assessments. Such research should aim to a) assess the validity of each exam and method and b) provide updated and relevant evidence as for the parameters used to assess the age applicable to the different geographical, ethnic, as well as cultural environments from which separated children travelling to or across Europe come.

Detailed and scrupulous protocols should be developed by expert professionals and guide the application of age assessment methods in practice.

## Who should perform age assessment?

Age assessment should be undertaken by professionals who are a) independent (whose role is not in potential/actual conflict with the interests of the individual), b) with appropriate expertise (adequately trained) and c) familiar with the individual's ethnic and cultural background.

**Professionals conducting age assessment examinations** of separated children in Europe include: radiologists, general practitioners, dentists and doctors with expertise in forensic medicine. Pediatricians are involved in the process in several countries, although not regularly. Social workers are very seldom involved, although in some countries social workers belonging to government institutions determine the child's age based on a practical assessment. Cultural-linguistic mediators are almost never involved in the procedure. Professionals undertaking the examinations often have a role that is not in potential conflict with the child's interest to be identified and treated as such. They however almost never receive training on how to conduct testing and the reasons for age assessment, nor are they generally familiar with the child's cultural and environmental background.

**A central role in the age assessment process should be assigned to experts in children's development, including pediatricians, social workers and psychologists. Professionals engaged in age assessment should be regularly trained and supported by cultural-linguistic mediators or – if not possible – qualified interpreters<sup>12</sup>**

**No professionals whose role is in potential/actual conflict with the child's best interests should be involved in conducting age assessment procedures or in interpreting results. In particular, professionals conducting age assessment should have no financial interest nor any advantage deriving from the results or outcomes of the assessment. In no case those professionals should be working for the institution or organization that requested the assessment.**

## Possible outcomes of the age assessment process

### Margin of error

It is fundamental to note that age assessment is not an exact science and a considerable margin of uncertainty will always remain inherent in any procedure. When making an age assessment, individuals whose age is being assessed should be given the benefit of doubt. Margins of error adequate to each exam (based on updated references) should always be indicated clearly. If the age range resulting from the assessment includes the minor age, the individual shall be considered and treated as a child.

None of the age assessment methods currently available and used is able to establish the exact age of an individual. A **margin of error**, with years between the anticipated minimum and maximum age, will therefore always be present. Nevertheless, only some countries clearly indicate a margin of error in the results of age assessment examinations and there is no consensus – within and among countries - about the width of such margins in relation to each exams applied.

In other countries age assessment results normally indicate “minimum age” or “compatibility with adult age”. Where a margin of error is indicated, the individual is usually considered a child if the range encompasses the minor age. However, even in these cases, the margin of error applied is often neither accurate nor based on reliable references and indicators.

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<sup>12</sup> See also below on Informed consent.

**If age assessment examinations are applied and the age range includes the minor age, the precise date of birth to be recorded in the child's file should be the one declared by him/her. In case the child is not able to indicate his/her birth date, the lowest value in the range should be selected. In any case, if any documentary proof of age emerges at any point in time, this should override any previous result recorded on the basis of medical or other exams.**

### **Mutual recognition of age assessment results**

Recognition of age assessment results within a State (by different institutions) and between States has considerable implications for the rights of the individual concerned.

Mutual recognition of age assessment is relevant especially in the context of transfers of individuals according to the EU Dublin II Regulation<sup>13</sup>, establishing criteria to determine the EU Member State responsible for examining an asylum application. There are frequent cases where individuals seeking international protection who have been fingerprinted in the first country of arrival and considered by the authorities as adults, are treated as children in other countries. When transferred back to the first country, they are treated as adults again<sup>14</sup>.

In other cases, the age of an individual assessed by a Member State and recorded into the European databases such as Eurodac and the Visa Information System (VIS) is taken for granted by another Member State without questioning the reliability of the assessment carried out<sup>15</sup>.

Across Europe, 'age assessment procedures apply a variety of methods' and there is 'a lack of a standardized approach between or even within EU countries'<sup>16</sup>.

**As long as there is no common standard on age assessment and procedures to assess an individual's age do not comply with required safeguards and standards, recognition of age assessment results should not be mutual. However, the age of an individual that has been assessed through medical and other exams should be considered as such and not equated to the individual's real and exact age.**

**Mutual recognition within and between States should be practiced only after harmonization of methods, standards and safeguards concerning age assessment is reached in practice. Mutual recognition would thus avoid multiple assessments. The right to appeal age assessment results should anyway be preserved.**

**If an individual has been considered as a child in a State and his/her age cannot be established without doubts, s/he should be considered and treated as a child in another State where s/he will travel or be transferred to, based on the principle of the benefit of doubt.**

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<sup>13</sup> Council Regulation (EC) No 343/2003 of 18 February 2003.

<sup>14</sup> CIR, *Dubliners Project Report*, 2010, p.51.

<sup>15</sup> UNICEF Child Rights Advocacy & Education Section – PFP Geneva, *Identification of Unaccompanied and Separated Children: Exploring Age Assessment Challenges. Background and Discussion Paper for the Expert Seminar on Unaccompanied Minors, Children Crossing the External Borders of EU in Search of Protection organized by the Belgian Presidency of the European Union*, 2010, p.3-4.

<sup>16</sup> European Union Agency for Fundamental Rights (FRA), *Separated, asylum-seeking children in European Union Member States. Summary Report*, 2010, p.36.

## Key-safeguards in the process

### Informed consent

If an age assessment is thought to be necessary, informed consent must be gained from the individual.

In practice in Europe, consent is in most cases obtained from the individual. S/he is generally informed about the fact that his/her age will be determined through medical and/or other examination and the possible outcomes and consequences. However, information is in several instances not provided to the child in a language and/or manner that s/he can effectively understand.

**Evidence of consent obtained from the individual whose age is assessed should be recorded and made available. Cultural-linguistic mediators or – if not possible – interpreters specifically trained to facilitate exchange between professionals and the child in the process of age assessment, should be involved in the procedure from the start.**

### Benefit of doubt pending age assessment

In cases of doubt, before and/or pending age assessment procedures, the person claiming to be under eighteen years should be treated as a child.

In Europe, pending age assessment results, the individual whose age is being disputed is in principle considered a child. However, in most countries and cases, this consideration does not trigger fundamental safeguards that shall be applied to children (below).

**The principle of the benefit of doubt shall be always applied in favor of the presumed child. Pending the results of age assessment an individual who may be a child should be considered and treated as such, including access to fundamental rights and safeguards that all children are entitled to according to the international legal framework.**

**Limited resources available for guardianship and child-care cannot be accepted as reasons to neglect the application of the principle of benefit of doubt in practice.**

### Guardian

Immediately when a separated child is identified, or where an individual claims to be a separated child, regardless of whether further assessment of their age is required by the authorities, an independent guardian must be appointed to advise and protect them. S/he should have oversight of the age assessment procedure and be present if requested to attend by the individual concerned<sup>17</sup>.

Even if an individual whose age is being disputed is in principle considered to be a child (above), in most countries and cases a **guardian** is not appointed and does not represent him/her throughout the age assessment procedure.

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<sup>17</sup> The appointment of an independent guardian is a key-protection issue for separated children. Guardians may be drawn from a range of specialist backgrounds. However, in order to carry out their role effectively, guardians will require specialist skills in working with separated children and an understanding of the context of child migration. They must have relevant childcare expertise and an understanding of the special and cultural needs of separated children. They must receive on-going training and professional support, and undergo police or other appropriate reference checks. Guardians must not hold positions which could lead to a potential conflict of interest with the best interests of the child (SCEP, *Statement of Good Practice*, 4<sup>th</sup> Revised Edition, 2009, p.14).

**Procedures and practices for the appointment of a guardian must not be less favorable for individuals who may be children, in order to fulfill the principle of benefit of doubt, according to which the minor age shall be presumed pending age assessment results (and in case doubts still remain after age assessment is conducted – above). The guardian shall be mandated to ensure that all decisions have the best interests of the presumed child as a primary consideration, including in the process of age assessment<sup>18</sup>.**

**Moreover, the guardian can start a relationship of trust with the child whose age is being disputed. Thus, information can be obtained more accurately and easily and the efficiency of the age assessment procedure can be increased.**

### Care and accommodation

Separated children must be found suitable care placements as soon as possible after arrival or identification. They should never be detained for reasons related to their immigration status or illegal entry. Whether they are placed in foster care or in residential settings, separated children must be cared for by suitably trained professionals. Such training should focus specifically on the rights and needs of separated children, but also on cultural factors and the development of appropriate skills for communicating with them.

Even if an individual whose age is being disputed is in principle considered to be a child (above), in various countries and cases in Europe, s/he is **placed** with adults.

**While it has to be acknowledged the risk of placing adults (i.e. individuals whose age is disputed and who may be adults) with children in child care centers, it is certainly more risky to accommodate a child with adults in designated facilities for adult migrant population. Firstly, a presumed child pending age assessment would be accommodated with adults of all age-ranges, who could therefore be considerably older than a child or young adult's age. Secondly, residential care facilities and reception centers where separated children are accommodated<sup>19</sup> are generally more regulated and safe than an administrative detention center or center for reception of adult asylum seekers. It would be more appropriate to place those children whose age is disputed in special wings created within existing facilities for children pending age assessment results.**

### Information and possibility to appeal the results

The procedure, outcome and consequences of the age assessment should be explained to the individual in a language that s/he understands. The outcomes should be presented in writing. There should be a procedure to appeal against the decision and the necessary support should be provided to the individual concerned.

The possibility to appeal age assessment outcomes is in principle available in most countries in Europe, but in practice there are serious constraints that hinder the capacity of the individual whose age is disputed to access effective appeal mechanisms. First of all, age assessment results are often not made through a specific decision, but are either part of a broader procedure's outcome (typically the asylum procedure) or simply form the basis for other decisions (e.g. expulsion; placement in accommodation

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<sup>18</sup> In exceptional cases, when a guardian could not be appointed prior to age assessment, an independent temporary guardian should be selected among individuals experienced and knowledgeable in working with separated children, in order to represent the child and uphold his/her best interests throughout the procedure. As a minimum, the temporary guardian should consult with and advise the child and provide information concerning the age assessment procedures and its possible outcomes.

<sup>19</sup> In many countries in Europe, these are the same facilities for national children deprived of adequate parental care.

with adults etc.)<sup>20</sup>. Secondly, the child in several countries and cases is not sufficiently informed about the possibility to appeal and there is often lack of adequate support for the child in order to lodge an appeal.

**Age assessment results should always be made through a specific decision. The individual whose age has been assessed should be effectively informed<sup>21</sup>, supported in considering available options, and assisted to appeal against results, unless his/her guardian can clearly demonstrate that this is not in his/her best interests. The appeal should have a suspending effect on the outcomes of the assessment results (e.g. administrative detention, deportation etc.)**

### Possibility to refuse to undergo (certain) exams

A refusal to undergo certain procedures should not prejudice the assessment of age or the outcome of the application for protection.

In its review across Europe, SCEP did not identify one case in which refusal to undergo age assessment did not have a negative impact on the individual concerned<sup>22</sup>. Often, the individual who refuses to undergo the medical exams is simply treated as an adult. For those seeking international protection, often such refusal undermines the entire procedure, fostering doubts and disbeliefs over their application and entire story. In some cases, individuals who do not intend to participate in age assessment simply drop out of the reception centres and disappear. In general, there is very limited information about cases of refusal to undergo age assessment procedures and their consequences.

**In respect of the principle of informed consent, an individual should be effectively allowed to refuse to undergo age assessment exams, especially if medical exams are being used.**

**States shall not assume that a refusal to undergo (certain) age assessment exams is due to the individual's fear to uncover his/her chronological age. The individual who refuses to undergo age assessment should have the possibility to be heard about the reasons for such refusal.**

**A refusal to undergo age assessment should not lead to an immediate decision unfavorable to the individual concerned. S/he should have access to counseling – including consultation with his/her guardian - in order to be supported in evaluating his/her position and its consequences.**

### Timing of age assessment

Age assessment shall be undertaken in a timely fashion, taking into account the child's perception of time. Whilst all decisions should be given thorough consideration, delay shall be presumed to be prejudicial to the child.

The time when age assessment is initiated and its duration varies between one/two days and several months, mainly depending on whether age assessment is performed in the framework of a broader status determination procedure (e.g. the asylum process) or prior to/independently from that

<sup>20</sup> Often, even the results of the medical or other exams undertaken are not provided in writing.

<sup>21</sup> See also above on Informed consent.

<sup>22</sup> SCEP, *Review of current laws, policies and practices relating to age assessment in sixteen European Countries*, May 2011, p.30.

procedure. The decision to conduct the assessment at a given time does not seem to depend primarily upon a consideration of the child's best interests.

**Age assessment through medical or other exams should be applied as a last resort measure. Sufficient time should be allowed to establish the individual age through reliable evidence – in full respect of the well-being, safety and privacy of the individual concerned.**

**Age assessment should not be prioritized over, or treated as a pre-condition for, care and protection of individuals who may be separated children.**

**Time is needed to build trust with the individual who may be a separated child and to allow for proper recollection and sharing of information about the child's own story useful to establish his/her age. Thus, age assessment should not be carried out immediately upon interception of presumed separated children in border areas and/or on the territory.**

## Data

The development of a detailed and integrated system of data collection on separated children is a prerequisite for the development of effective policies for the implementation of the rights of such children.

**Lack of data** is a widespread problem concerning age assessment in Europe. Statistics are seldom available at all. Data are not systematically collected and/or made publicly available. If they exist at all, data are normally limited to the number of age assessments conducted.

**Comprehensive data should be regularly collected and made available concerning individuals whose age is disputed, including: methods used, results of age assessments and outcomes of appeals against the results, and/or of other evidence collected after age assessment has been completed.**

**Independent processes to oversee and scrutinize age assessment procedures and practices (e.g. led by children's Ombudsperson) should be in place in each country. This should also ensure that the views of individuals who undergo age assessment are routinely collected and made available to all relevant stakeholders.**

## Annex 1 – Chart of methods applied

This Annex provides with a brief description of the main methods currently used to assess the chronological age of separated children in Europe. The main criticisms pointing to limitations of each method as emerging from the available literature are highlighted for each exam.

### Non-medical methods

Non-medical methods applied to assess the chronological age in the context of separated children in Europe vary. The commonly used methods are briefly outlined below.

- **Analysis of existing documentation:** The age of an individual can be ascertained by searching for documentation that substantiates the date of birth declared by him/her or provides an indication of the age.

Unfortunately, there is no international guidance on what forms of documentation should be accepted, whereas national legal frameworks sometimes specify what types of documents are acceptable as evidence of identity, and therefore of chronological age<sup>23</sup>. Moreover, professionals detecting separated children (and adults) at border crossings or in-country are not trained on how to understand and use age-related documents issued in the countries from which these individuals arrive<sup>24</sup>.

- **Interview and anamnesis account:** This concerns collecting and analyzing the narrative given by the individual whose age is being disputed. It is undertaken by a range of different professionals dealing with migrants and separated children.

Difficulties arise as often interviews are undertaken in intimidating environments, without allowing for appropriate time (e.g. involving just one interview, rather than several separate interviews), by professionals who are not specifically trained in interviewing children and in understanding the background, education and culture in the countries from which they have come<sup>25</sup>.

Moreover, lack of protocols, approaches and checklists on how to perform such interviews and what information needs to be collected and analyzed raise additional concerns<sup>26</sup>.

- **Practical observation, cognitive and/or behavioral appraisal, psycho-social assessment:** These include a number of assessment techniques that use visual, cognitive, behavioral appraisal and psychological assessment of a young person to assess age. These tests range from the very rudimentary – e.g. immigration officials using rough visual estimates - through to psychological and sociological reviews undertaken by trained professionals.

Over-relying on physical appearance to assess the chronological age of an individual leads to arbitrary and inconsistent results. Indeed, there is a very wide range in the rate of physical development during adolescence, and this is reflecting in appearance.

Generally, there is very limited information available about how psycho-social assessments of age are carried out<sup>27</sup>. Some guidelines exist concerning the range of factors to be taken into account while carrying out a social assessment of age. However, as they measure behavior and cognitive ability, practical observations are highly influenced by environmental factors and are subjective. As of today,

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<sup>23</sup> Terry Smith, Laura Brownlees, *Age assessment practices: a literature review & annotated bibliography*, UNICEF 2011, p.25.

<sup>24</sup> Sir Albert Aynsley-Green Kt., *The assessment of age in undocumented migrants*, March 2011, p.14.

<sup>25</sup> Sir Albert Aynsley-Green Kt., *The assessment of age in undocumented migrants*, March 2011, p.14.

<sup>26</sup> Sir Albert Aynsley-Green Kt., *The assessment of age in undocumented migrants*, March 2011, p.14.

<sup>27</sup> Terry Smith, Laura Brownlees, *Age assessment practices: a literature review & annotated bibliography*, UNICEF 2011, p.22.



there is no guidance and no scientifically valid method to determine the overall margins of error across these various assessments<sup>28</sup>.

Often, due to expense, psychological assessments are not undertaken by medical professionals, but instead by government staff.

### Medical methods

- **Physical examinations:** These focus on determining the maturity of a particular part of the body (bones, teeth, etc.) As these points of maturation do not occur in tandem with a particular chronological age, an age determination based on these methods can only establish a range of possible ages. The most commonly used techniques for assessing physical development include:
  - **Sexual maturity assessment.** Standards for puberty exams are largely based upon the work of JM Tanner, who in 1962 identified clear stages of puberty, which develop over a 2-3 year period. However, 11 is the average age for the onset of puberty, often making this material ineffectual past the age of 13 and therefore unsuitable to assess whether the age of an individual is above or below 18.
  - **Anthropometric measurements:** these include height, weight and skin rating, compared across individuals or populations in relation to a set of reference values. However, these measurements do not take into consideration variations between ethnicity, race, nutritional intake and socio-economic background.
  - **Dental observation:** Like puberty, teeth develop in clear patterns in certain age ranges. Inopportunistly, the only teeth that can be used as an indicator of whether or not someone is an adult are 3rd molars, which, due to genetic and environmental factors, may appear anywhere from 16-25 years of age. The alternative, a study of tooth mineralization, is unaffected by ethnicity or nutrition, but even without these influences has a +/-2 year margin of error.

None of these measurements by themselves gives any reliable assessment of age<sup>29</sup>. These all carry a significant margin of error that makes them inappropriate and useless to use<sup>30</sup>.

Moreover, visual inspections, corporal assessments and nude pictures of children and young adults whose age is assessed, can be traumatizing, especially if carried out in a non-gradual way and by different medical professionals at the same time.

- **Radiological tests:** These scrutinize skeletal changes that occur near the chronological ages of 15/16 or 18.
  - The most commonly used technique is a **carpal (hand and wrist) x-ray**, where the fusing progression of the carpal bones is examined. This test is highly criticized as the reference material for it has not been updated since the 1930s and this material drew upon a small test group from the United States of America only.
  - Other options include, **dental x-rays** - where the presence of and/or development of the roots of 3rd molars are examined - or the **collar bone x-ray**, where the fusing process is once again examined. Similar bias as above apply to these types of x-rays.

Generally, imaging of bones or teeth can never tell the precise chronological age of an individual. First of all, there are no standards for the populations in countries that many separated children come from

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<sup>28</sup> Terry Smith, Laura Brownlees, *Age assessment practices: a literature review & annotated bibliography*, UNICEF 2011, p.25.

<sup>29</sup> Sir Albert Aynsley-Green Kt., *The assessment of age in undocumented migrants*, March 2011, p.3; Terry Smith, Laura Brownlees, *Age assessment practices: a literature review & annotated bibliography*, UNICEF 2011, p.21.

<sup>30</sup> UNICEF Child Rights Advocacy & Education Section – PFP Geneva, *Identification of Unaccompanied and Separated Children: Exploring Age Assessment Challenges. Background and Discussion Paper for the Expert Seminar on Unaccompanied Minors, Children Crossing the External Borders of EU in Search of Protection organized by the Belgian Presidency of the European Union*, 2010, p.3.

(in Asia, Africa or the Middle East). Even if compared to the relevant standard, these x-rays correlate with the chronological age with a variation of at least +2/-2 years. The determination of the exact chronological age is not compatible with the biological process of the very gradual maturation of a growth plate. Moreover, often x-rays images are not interpreted by experienced pediatricians, dentists or radiologists<sup>31</sup>.

Radiology inflicts a dose of radiations which, in case x-ray exams are applied to assess chronological age, bring no health benefit to the individual concerned. These methods, instead, were designed for medical use in diagnosis and monitoring of disorders of growth. Applying them for migration control purposes without therapeutic benefit raises major ethical issues and may be illegal according to existing legal frameworks.

- **Non-radiological methods of imaging bone development:** In light of the ethical limitations in using x-rays for age assessment, the use of non-ionizing radiation methods, such as magnetic resonance imaging (MRI), is attracting increasing interest among medical experts and institutions.

These methods seem to underestimate bone maturation when compared to x-rays. Moreover, there is very considerable variation in the speed of bone development during adolescence and age of attainment of maturity as assessed by MRI<sup>32</sup>.

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<sup>31</sup> Sir Albert Aynsley-Green Kt., *The assessment of age in undocumented migrants*, March 2011, p.21.

<sup>32</sup> Sir Albert Aynsley-Green Kt., *The assessment of age in undocumented migrants*, March 2011, p.27-28.

## Annex 2 - Bibliography

The bibliography listed below is limited to the resources that have substantially informed this document. It therefore does not refer exhaustively to the existing literature on the topic of age assessment in the context of separated children in Europe.

Background information to this Paper was essentially taken from:

- SCEP, *Review of current laws, policies and practices relating to age assessment in sixteen European Countries*, May 2011

Standards on age assessment listed in the Paper are based on:

- SCEP, *Statement of Good Practices. 4<sup>th</sup> Revised Edition*, 2009

Statements on medical and other methods currently applied to assess the age of separated children in Europe are mainly based on:

- Sir Albert Aynsley-Green Kt., *The assessment of age in undocumented migrants*, March 2011

Other documents consulted include:

- Terry Smith, Laura Brownlees, *Age assessment practices: a literature review & annotated bibliography*, UNICEF 2011
- UNICEF Child Rights Advocacy & Education Section – PFP Geneva, *Identification of Unaccompanied and Separated Children: Exploring Age Assessment Challenges. Background and Discussion Paper for the Expert Seminar on Unaccompanied Minors, Children Crossing the External Borders of EU in Search of Protection organized by the Belgian Presidency of the European Union*, 2010
- UNICEF, *Progress for Children: Achieving the MDGs with Equity*, No.9 September 2010

## Annex 3 – SCEP Statement of Good Practice’s standards on age assessment

### D5. Age Assessment<sup>33</sup>

D5.1 Age assessment procedures should only be undertaken as a measure of last resort, not as standard or routine practice, where there are grounds for serious doubt and where other approaches, such as interviews and attempts to gather documentary evidence, have failed to establish the individual’s age. If an age assessment is thought to be necessary, informed consent must be gained and the procedure should be multi-disciplinary and undertaken by independent professionals with appropriate expertise and familiarity with the child's ethnic and cultural background. They must balance physical, developmental, psychological, environmental and cultural factors. It is important to note that age assessment is not an exact science and a considerable margin of uncertainty will always remain inherent in any procedure. When making an age assessment, individuals whose age is being assessed should be given the benefit of the doubt. Examinations must never be forced or culturally inappropriate. The least invasive option must always be followed and the individual’s dignity must be respected at all times. Particular care must be taken to ensure assessments are gender appropriate and that an independent guardian has oversight of the procedure and should be present if requested to attend by the individual concerned.

D5.2 The procedure, outcome and the consequences of the assessment must be explained to the individual in a language that they understand. The outcome must also be presented in writing. There should be a procedure to appeal against the decision and the provision of the necessary support to do so.

D5.3 In cases of doubt the person claiming to be less than 18 years of age should provisionally be treated as such. An individual should be allowed to refuse to undergo an assessment of age where the specific procedure would be an affront to their dignity or where the procedure would be harmful to their physical or mental health. A refusal to agree to the procedure must not prejudice the assessment of age or the outcome of the application for protection.

\* United Nations Committee on the Rights of the Child, General Comment No 6, on the Treatment of Unaccompanied and Separated Children Outside Their Country of Origin, 2005 (‘General Comment No 6’), paragraph 31(i): Age assessments should be safe, child and gender sensitive and the individual should be given the benefit of the doubt

\* General Comment No 6, paragraph 95

\* UNHCR Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum, 1997, paragraph 5.11

\* Council of Europe Convention on Action Against Trafficking in Human Beings, 2005, Art. 10 (1)

\* Charter of Fundamental Rights of the European Union (2000/C 364/01), Art. 3(1): Everyone has the right to respect of his or her physical integrity

\* European Council on Refugees and Exiles: Position on Refugee Children, 1996, paragraph 9

\* Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status,

Art. 17(5a): Unaccompanied minors are informed prior to the examination of their application for asylum and in a language which they may reasonably be supposed to understand, of the possibility that their age may be determined by medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for asylum, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination

<sup>33</sup> SCEP, *Statement of Good Practices. 4<sup>th</sup> Revised Edition*, 2009, p.25-26 and p.64-65.

Art. 17(5b): Unaccompanied minors and/or their representatives consent to carry out an examination to determine the age of the minor concerned

Art. 17(5c): The decision to reject an application for asylum from an unaccompanied minor who refuse to undergo this medical examination shall not be based solely on that refusal

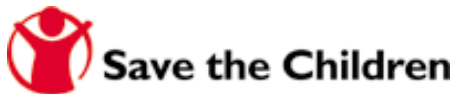
\* EU Resolution on Unaccompanied Minors who are Nationals of Third Countries, 1997, Art. 4(3): Age assessment should be carried out objectively. For such purposes, Member States may have a medical age-test carried out by qualified medical personnel, with the consent of the minor, a specially appointed adult representative or institution

\* United Nations Convention Relating to the Status of Refugees, 1951, Art. 31: Penalties shall not be imposed on asylum seekers who enter a country illegally if they can show good cause for their illegal entrance

\* UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, 1992, paragraphs 196 & 197



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