Short Summary Report on Age Assessment (Gregor Noll)

Asylum applications by adolescents might raise the question whether the applicant is a minor or not. Being a minor offers advantages in the asylum procedure, such as access to procedural benefits and safeguards, the exemption from removal to other EU Member States under the Dublin Regulation, and a much higher likelihood of being granted protection as an "unaccompanied minor". Host states are interested in limiting the group to which those benefits apply so as to minimize costs and possibly to deter future asylum seekers. In cases where applicants arrive without documents, or hold documents deemed unreliable, there are no formal or historical sources that may alleviate or confirm this doubt. So decision takers speculate on what age the applicant's biological or intellectual development might indicate. When in doubt, decision takers, or, at times even the representative of the applicant, may resort to medical age assessments in such situations.

The methods used and the medical sub-disciplines involved in medical age assessments vary. On one end of the spectrum, the applicant is presented to a paediatrician, who makes a comprehensive assessment on the basis of an individual anamnesis. Radiological examinations might form part of that anamnesis together with other forms of examination. At the other end of the spectrum, the applicant is merely x-rayed to produce images of body parts such as wisdom teeth, clavicle or wrist bones. A doctor specialized in radiology will then produce a statement on the basis of these x-ray images, featuring the statistical probabilities of a range of ages.

But should radiological age assessment at all be considered as a means to alleviate the doubts of a decision taker in the asylum procedure? In the working paper which reports my research in full, I ask whether the use of radiological imaging methods in the age assessment of unaccompanied adolescents seeking asylum are a) in compliance with internal norms of the forensic science community b) scientifically authoritative according to the current state of the art in forensic medicine and traumatology and c) sufficiently safeguarded against a particular kind of communicative error. For each of these questions, my answer is 'no'. I present three separate but interrelated arguments in support for that conclusion. My fourth argument is that any doubt on the age of an applicant will necessarily persist after a radiological examination, which automatically triggers particular rule of an EU directive on asylum procedures, according to which the applicant has to be treated as a child.

In the working paper which reports my research in full, I argue that the use of radiological imaging methods in the age assessment of unaccompanied adolescents seeking asylum is not in compliance with internal norms of the forensic science community. This is so because the most important nationalities of unaccompanied minor asylum seekers are countries as Afghanistan and Somalia. For these, we have no relevant reference group to compare an individual age-contested asylum applicant to. Comparing her or him to non-Asian or non-African reference groups would counterfactually assume that our skeletons are developing identically across the world, differences in nutrition, health care, living standards and geographical-genetic pools

notwithstanding. If we would nonetheless perform such a comparison, it would be unscientific speculation. It would lack medical authority, and therewith the authoritative status accorded to expert evidence in legal proceedings.

Is forensic medicine aware of its limitations in the area of radiological age assessments? To my knowledge, my argument that deficient civil registration produces deficient age assessments has not been presented in the discourse of that discipline before. But over the past decade, forensic medicine itself has produced research that seems to defy earlier assumptions on the reliability of its own age assessment practices. I suggest that our reading of this research be informed by the findings of traumatology, another medical sub-discipline. I conclude that both establish a second stream of arguments against the use of radiology in age assessment, independently of my argument on civil registration.

Over the past decade, forensic research has come to reflect that populations against which the single migrant is compared might be significantly different from that to which the migrant belongs. The realization that such variables matter has led forensic researchers to test the applicability of standard age assessment methods on non-Western populations.

What do the changes that the science of age assessment has undergone in the last decade mean for the practice of age assessment? A point I make in the full report is that practitioners of age assessment encounter momentous difficulties in interpreting them. To sum up, practitioners largely rely on methods first developed in the 1930s and 1940s on relatively narrow Western populations. These methods now seem to be relativized by ethnic and socioeconomic factors, but nobody seems to have a scientifically based suggestion on exactly how to weigh in these factors. What is more, it remains very hard for practitioners to interpret the built-in methodological limitations of the reference studies they use under the constraints of temporal and institutional pressure.

It is well established by medical, and in particular traumatological research that stress may affect physiological growth and maturation in complex ways. Post-traumatic stress syndrome (PTSD) in combat exposure leads to early physiological aging. Maltreatment and abuse has been associated to the early onset of puberty, accounting for a difference of eight months in one particular study. A 2013 study has shown that partial or full PTSD may be equivalent to an estimated five years in partial and ten years in full PTSD of premature aging.

This leads me to a finding that radiological age assessments are not scientifically authoritative according to the current state of the art in forensic medicine and traumatology. Reading the current results from epidemiology, psychiatry, traumatology and radiological paediatrics together requires a degree of interdisciplinarity that the ordinary radiologist writing expert statements arguably lacks. Stress is a factor separate from and additional to the known factors of ethnicity and socioeconomic status. We have no clear idea exactly how ethnicity and socioeconomic status should affect assessments under the standard methods of age assessment. Neither do we know how the degree of stress prevalence in a population affects it. And neither do we know how the three factors – ethnicity, socioeconomic status and stress – interact with each other, further destabilising any inferences we

draw from the standard methods. While correlations between PTSD and premature aging are known to exist, their details are still to be researched, why they cannot be weighed in when assessing the age of undocumented children seeking asylum. Not weighing them in, however, as is done today, means to ignore an important body of scientific knowledge.

What are the implications of deficient civil registration and the declining relevance of standard methods in radiological research for the legal professional using radiological age assessments? First, practitioners authoring expert statements for the use by courts do not necessarily understand how ethnic, socioeconomic and stress deviations affect the validity of their findings. By consequence, their testimony tends to overstate the scientific validity of their own findings. Second, lawyers hardly understand the reservations that forensic experts *are* making on known limitations of their research. This is because lawyers quite simply are not trained in the methods of forensic medicine. Third, in order to be useful to lawyers, medical experts at times employ a juridical language that they do not fully understand. The forensic expert understates her limitations, the judge disregards the reservations she nevertheless makes, and the expert's use of juridical language foreign to her makes it hard near impossible to reconstruct her assumptions.

In addition, I believe that radiological age assessments routinely answer a question different from the one that the lawyers are asking. Let us have a look what happens when a forensic expert is asked to provide expert knowledge on the age of an asylum seeker (which forensic medicine terms as a "proband", indicating that we deal with an evidentiary process according to the standards of forensic science).

Here is the question asked by the jurist: "How old is A?"

The answer delivered by the forensic expert could be this:
'Compared to existing image banks of dental and skeletal developments in researched populations, the images of the proband suggest that there is a 95 per cent likelihood that s/he is 18,2 years old.'

Why is this an answer to a question different from the one asked by the jurist? The jurist did *not* ask

'What age would the proband be, if s/he had been part of the populations that previous medical studies had tested?'

Had she done so, the expert's answer would have been adequate. And why is this exchange of question and answer treacherous? Either the lawyer will simply *not realize* that the populations earlier researched in forensic sciences are significantly different from the population the asylum seeker is part of. Or the lawyer may think that the forensic expert already considered these differences, and found them insignificant, while the forensic expert never intended to take a position on the significance of that difference. Put simply, the forensic expert merely said "if the asylum seeker is really comparable to the populations studied in the reference literature I use, it is most probable that she is over 18 years of age". But the judge understands the expert to say "It is most probable that the asylum seeker is over 18 years of age", omitting the reservation on comparability.

A close look at how expert statements on age are organized in Sweden would seem to confirm this. Three professional organizations have developed instructions and a template for age assessment in migration law contexts (the Swedish Paediatric Society, the Swedish Dentists' Association and the Swedish Association for Paediatric Radiology). The most extensive and complex instructions and template are those of the Swedish Paediatric Society. In the instructions, the difficulties and insecurities burdening the assessment of age of young persons are highlighted in various contexts. These instructions will be read by the paediatric performing the assessment, but hardly by the lawyer using the assessment in taking a decision.

What the jurist will read is the formal expert statement, based on the Society's template. In its concluding section, it offers three choices. First, the expert may tick a box indicating that the findings "**show** that the age claimed by the examined him- or herself (…. years) is probable". Second, there is a box indicating that the findings "**do not show** that the age claimed by the examined him- or herself (…. years) is probable" In that case, the expert is to fill in a field for a "probable age". Third, there is a box indicating that a "sufficient base is lacking for assessing whether the age claimed by the examined him- or herself (…. years) is probable".

Apart from the latter box signalling a non-liquet, the complexity of the instructions have been reduced to the binary of age either being probable or not being probable. To be sure, this binary is an import from Swedish migration law. The relevant standard of proof is that age must be "made probable" by the claimant if written documentation on age is absent. It seems that the Swedish Paediatric Society simply wanted to be useful for lawyers by adapting their terminology. And this kindness produces a problem. There are no agreed scientific thresholds for when a particular age is sufficiently probable to motivate it being labelled "probable" in the legal sense. In fact, the use of probability terminology in the sciences and in law respectively are what false friends are in learning a language. Identical on the surface, they conceal a wealth of different meanings.

So what happens when a judge at the Migration Court reads the concluding section of a paediatric age assessment based on the template? She will find a straightforward verdict on probable age, ready-made for consumption in the legal procedure. Why on earth would the judge go back behind that age verdict? Why would she read the instructions with all their complications, or, indeed, the forensic-medical literature behind the instructions? With the case balances to be managed, there is no reason to problematize the knowledge that already seems to have been translated into the evidentiary terminology of the law. So, the template *actually already embeds* a type III error. The lawyer will read it as giving the answer to a legal question, unqualified by the instructions' recognition that forensic science is working with large insecurities and that its knowledge is incomplete in significant regards. Yet the medical expert will believe that the age assessment is an answer to a question qualified by these insecurities, and that the lawyer understands this.

Any doubt on the age of an applicant will necessarily persist after a radiological examination. Under a particular rule of an EU directive on asylum procedures, the doubts generated by a radiological examination will automatically entail that the applicant *has* to be treated as a child. So, as a matter of consequence, it is self-

defeating for a state hosting doubts on the age of an applicant to use radiological expertise in an effort to dispel those doubts.

I conclude that the problem of radiological age assessment is really a problem of civil registration. The lack of reliable civil registration in important source countries for unaccompanied adolescents seeking asylum blocks the production of reliable ID documents needed for legal practice. What is more, it blocks the production of reliable reference studies in forensic medicine. Medical science is premised on the reliability of bureaucratic practice. Putting the burden of proof for age onto adolescents originating from such source countries is to treat them as if they had roughly the same evidentiary resources as European citizens. It is a case of treating unlike cases alike. To state it clearly: if Afghan and Somali adolescents, or any adolescent national of a country with weak civil registration are made to the burden of proof for their age, they are discriminated due to their nationality. Domestic and EU law apart, such discrimination is prohibited by the 1951 Refugee Convention as much as by international human rights law.