

Vulnerable people, Unaccompanied minors/separated children and age assessment procedures

Perspective from Slovakia

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Vulnerable People in SVK

VP in Slovak law: „under-aged persons (minors), disabled person, VoT, person older than 65y, pregnant woman, single parent with minor child and victim of torture, rape or other serious forms of mental, physical or sexual violence; in reasonable cases person younger than 65y can be considered as elderly“ (demonstrative specification)

VP enjoy „protected“ or „privileged“ status under SVK Act on the Residence of Aliens (no. 404/2011) :

- infringement with the protection of VPs may be considered an action against public order
- entitlement for police not to deport, or shorten the entry ban in case of VP
- protection against detention: UAMs can never be detained, other VPs only if this is necessary and for shortest possible time + absolute protection against prolongation of the detention
- detention conditions shall be utilized for VPs and special consideration shall be given during medical examination

Vulnerable People in SVK - practice

- lack of any useful guidance on **process of identification** of the VP and official **recognition of their „status“** and trainings available for police/detention staff → usually, people are **identified** after the **detention** has been ordered only (exception: UAMs) e.g. during the judicial procedure
 - Lack of any **alternatives** to detention available to VP
 - Lack of any **official status** for VPs identified in the procedure on administrative expulsion (accommodation, health insurance, support, etc.) → sometimes the detention is perceived as being „humanitarian resort“
- → Proper identification is the first step in protection system

Separated children and Age Assessment

Separated children:

- one of the most vulnerable persons coming to our territories
- process of their identification – age assessment - has been one of the most controversial issues for many years

SVK:

- one of the most favourable legislation for SC (prohibition of detention and protection against expulsion, entitlement for residence permit)
- one of the least favourable legislation and practice for age assessment (March 2013 – *Child or Adult?*)
- almost hostile conditions for integration prospects (775 UAMs placed / almost all went missing), October 2014: *Missing children. Position paper.*

Why Do Children Move?

UNICEF:

- [17,000 children die every day](#), mostly from preventable or treatable causes.
- The births of nearly [230 million children under age 5 worldwide \(about one in three\) have never been officially recorded](#), depriving them of their right to a name and nationality.
- 2.5 billion people lack access to improved sanitation, including 1 billion who are forced to resort to open defecation for lack of other options.
- Out of an estimated 35 million people living with HIV, over 2 million are 10 to 19 years old, and [56 per cent of them are girls](#).
- Globally, about one third of women aged 20 to 24 were [child brides](#).
- Every 10 minutes, somewhere in the world, an [adolescent girl dies as a result of violence](#).
- [Nearly half of all deaths in children under age 5 are attributable to undernutrition](#). This translates into the unnecessary loss of about 3 million young lives a year.

Big picture - Why Do Children Move?

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Worrying Facts from Syria

- 5.5 mil. : No. of Syrian children affected by the war /1.25 mil living as refugees in neighboring countries
- 1/3+ : Syrian families who no longer live in their homes
- 37 000+ Syrian babies born as refugees
- 4072+ schools destroyed, school attendance dropped from 97% to 30%
- 500 000+ Syrian refugee children are out of school
- 8000+ Syrian children arrived to Syrian border without their parents
- 1 in 5 Syrian refugee girls in Jordan is marrying early
- Source:
<http://www.unicefusa.org/stories/mission/emergencies/conflict/syria/infographic-syrian-children-under-siege/582>

Understanding migration of children: All the different reasons

- War, persecution, discrimination
- Access to services, such as education or health care
- Labor migration, incl. family survival strategy
- Family reunification
- Loss of family
- Domestic violence; run-a-ways
- Trafficking, forced labor, slavery
- And many others, including climate changes (ILO, 2010)

Numbers: UAMs in Europe

- Eurostat (2010-2013): 12-13 000 separated asylum seeking children, majority: boys aged 16 - 17y, AFG, SOM, other African countries
- Non-asylum seeking separated children: data very scarce, almost non-existing; only if residence is granted
- SCEP: around 100 000 UAMs in Europe in each moment (T. Smith, 2010)
- Guardian, 23 May 2015: **3 000+ trafficked children in UK** (1/4 of estimation of all VoT in UK)
- Main countries of arrival: Italy, Sweden, Germany



The arrival and presence of separated children in Europe is not temporary factor but permanent part of migration flows!

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Children: Basic Rights and General Principles

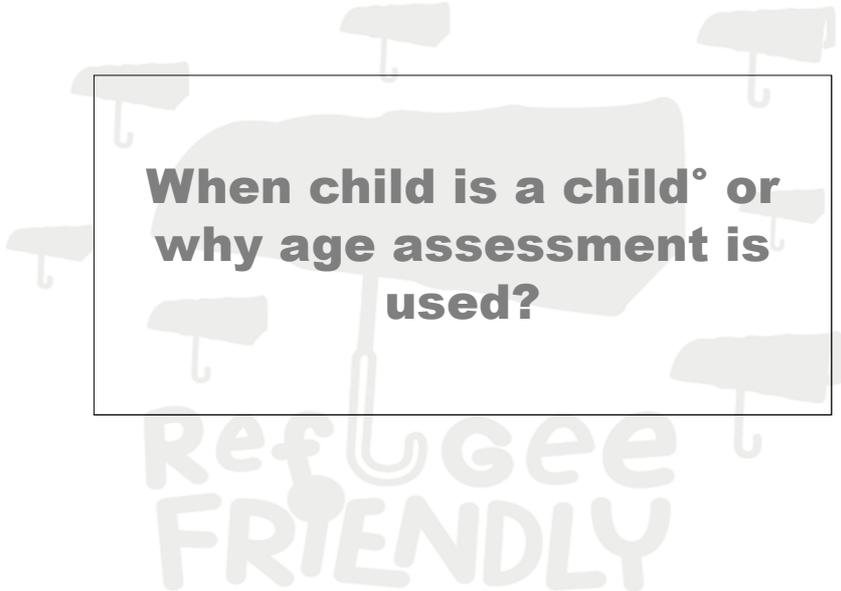
CRC (1989) basic principles:

- Best interests principle (CRC General Comment No. 14) – Art. 3; guiding principle (substantive right, procedural rule and basic interpretation principle)
- Non – discrimination , Art. 2
- Right to life and survival and development, Art. 6
- Right to be heard, Art. 12, (CRC General Comment No. 12)

CRC General Comment No. 6 on the Treatment of Unaccompanied and Separated Children outside their Country of Origin

EU relevant:

- Charter
- Action Plan on Unaccompanied Minors (2010–2014)
- EU Anti – Trafficking Strategy and **Anti- Trafficking Directive** 2011/36/EU
- CEAS legislation



**When child is a child° or
why age assessment is
used?**

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WHY?

- AA as CREDIBILITY issue: Doubts: mistrust e.g. we suspect that person lies about the age in order to benefit from being assessed as minor (+ „culture of disbelief“). **Rarely** do we suspect that person **declares him/herself as adult although being minor** (very often in trafficking issues) and in such situations, AA has not been used widely.
- AA in the situation of improper or lack of documentation
- AA as migration control tool

Culture of disbelief - UAMs in Slovakia

- 2009-2014: **775 (796)** UAMs identified and cared for in Slovakia – AFG, SOM, GEO, MLD, VIE / majority boys 15-17+y (**90%** missing – no data collected)
- Peak: 2010-2011 (**2011: 145** UAMs identified after illegal crossing of SVK-UKR border, majority: SOM/111, AFG 11, MLD 9), 2013 – 2014 significant decrease (2013: 46, **2014: 20**)
- 2012: Rapid increase of age assessment performance (85 individual examinations out of 226 persons declaring to be underage – **37,6%**: 145 UAMs, 79 adults), 2013: 25 AA (36% of all persons declaring to be underage)

What kind of age are we looking for?

AGE:

- Chronological: birth to death
- Biological: skeletal, cell, dental, ... : overall development of the body
- Social, psychological

Legally relevant is **chronological age only**, but it may not correspond with biological age.

Age assessment refers to the procedures through which **authorities seek to establish the chronological age of an individual**. This shall include seeking documentary evidence as well.

However, **narrow approach**, reduced to medical exams only, is being widely practiced, thus focusing merely on **biological age** determination.

AND!

Age assessment should be initiated with the genuine and primary aim of ensuring **protection to separated children and take the **best interests of the child** as primary consideration.**

Age Assessment Procedural Standards

Initiation: **Serious doubts** + **other** methods of determining age (documentary evidence, etc.), **failed** → reasons for AA shall be clearly and formally justified in writing; individual application (not general use)

Methods: Multi-disciplinary approach + the reasons to use each method clearly and formally justified; least intrusive methods tried, gender and culturally sensitive, medical exams being last resort

Important: To understand that **no clear results are going to be provided!**

Age Assessment Procedural Standards

- Results of AA: clearly and formally justified (in writing)
- Decision provided: results of AA shall materialize in the form of written decision, including reasoning and **statement on DOB/exact age** that is going to be presumed for the person (the statement on scale of the age or uncertain statements shall not be sufficient); including right to appeal
- Best option: referral to court procedure (actions related to „statuses of people“)

Situation in Slovakia again

AA governed by **Act on the Residence of Aliens** and Act on Asylum, but in practice, the AA is performed based on the Residence of Aliens Act and results are respected in other procedures

Residence of Aliens Act: art. 127 (1) „TCN who declares himself to be UAM is obliged to undergo **medical examination** in order to determine his age **unless obviously being minor**.

(2) If TCN **refuses** to undergo medical examination, shall be **considered as adult** for purposes of this Act; if agree to undergo the medical examination shall be **considered as adult until proven otherwise** by result of medical examination. Result of medical examination on age assessment shall be delivered in the form of **expert opinion** by the doctor. If there is no possibility to determine if the person is child or adult, shall be considered as child for the purposes of this law. The police is **obliged to inform** TCN on entitlement to order medical examination on age assessment, methods being used and consequences of the results for the procedures according to this Act and on the consequences of refusal.

Situation in Slovakia again

- AA ordered by BG after person is caught at the border
 - Purpose: to determine if police shall proceed with the person as with irregular TCN or refer to child-care institution (no best interests principle; no room for searching for other evidences; lack of credibility presumed in respect to all who are not „obviously minor“)
 - Presumption of **adulthood**
 - No guardian or lawyer present
 - Medical examination performed in the local hospital by un-trained and not specialized radiologist
 - X - rays of wrists and collarbone
 - No decision on age is ever issued, no possibility to appeal
- Lot of room for improvements

Further readings

- H. Crawley: When is a child not a child (2007)
- SCEP: Position Paper on Age Assessment (2012)
- EASO: Age Assessment Practice in Europe (Dec 2013)
- UNHCR, UNICEF: Safe and Sound (2014)
- HRL: Missing Children (2014); Child or Adult? (2013)

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The Implementation of the Return Directive: challenges and good practices from the perspective of the Central and Eastern European countries. Project co-funded under the European Return Fund Community Actions 2012

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Thank you!

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