

# AGE ASSESSMENT PROCEDURES ON LESVOS: A DEAD LETTER



## **Acknowledgements**

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## **Introduction**

Age is a fundamental part of the child's identity, and in the context of seeking asylum it is also an essential element in determining special procedural guarantees and safeguards, and special reception conditions.<sup>1</sup> Therefore, where the age is unknown or there are 'substantiated doubts'<sup>2</sup> about the declared age, a child-centred age assessment plays a vital role in accessing child-related rights and guarantees.<sup>3</sup> Nonetheless, age assessments should not be a systematic practice, and their necessity should be justified.<sup>4</sup> Most experts agree that age assessment is not a determination of chronological age but an estimation and must be conducted after an assessment of the best interests of the child.<sup>5</sup>

Several international and European institutions and organisations have been making resolutions and statements on age assessments. In 2019, in a statement on age assessments of unaccompanied minors who are asylum seekers, the World Medical Association held that medical age assessment should only be carried out in exceptional circumstances and only after all non-medical methods have been exhausted.<sup>6</sup> The European Parliament also stated in a resolution in 2013 that it "deplores the unsuitable and intrusive nature of the medical techniques used for age assessment in some Member States, which may cause trauma, and the controversial nature and large margins of error of some of the methods based on bone maturity or dental mineralisation."<sup>7</sup> The Parliament Assembly of the Council of Europe has called on member States to "conduct case-by-case, reliable age assessment of unaccompanied minor children only in cases of serious doubt about the child's age and as a last resort" and to appoint a guardian during the age assessment.<sup>8</sup>

This report aims to delve into the legal framework - domestic and European - and the various policies in place in relation to age assessment procedures in Greece, with a particular focus on Lesbos, during the period 2020-2023.

## **Methodology**

The information provided in this report is collected through a thorough examination of 14 cases of unrecognised minors represented during 2020-2023 by the legal team of Fenix and numerous others that Fenix staff have encountered while providing legal representation, information sessions and other services.

Desk research related to the topic has also been used. Even though the cases presented are not exhaustive, they provide a sample of the systemic deficiencies of the practice in relation to age assessment procedures covering mainly the island of Lesbos until today. In parallel, the report also takes into consideration diverse scholars, relevant case law, institutional frameworks, policy developments, and diverse reports from international and non-governmental organisations.

The data collected by Fenix is not a representative sample of the population living on Lesbos and who are unrecognised minors. Rather, Fenix's data is based on the information acquired through

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<sup>1</sup> Article 1, 7 and 8 and CRC. EUAA, 2018, *EASO Practical Guide on age assessment*, available at:

<https://euaa.europa.eu/sites/default/files/publications/2022-01/easo-practical-guide-on-age-assessment-v3-2018.pdf>, p 16.

<sup>2</sup> There is a situation of 'substantiated doubts' the age stated by the applicant is not supported or is contradicted by evidence gathered by authorities (e.g. information on databases, statements from family members, relatives or guardian, or physical appearance if considered with previous elements) and there is no valid documentation. EUAA, 2018, *EASO Practical Guide on age assessment*, available at:

<https://euaa.europa.eu/sites/default/files/publications/2022-01/easo-practical-guide-on-age-assessment-v3-2018.pdf>, p 23.

<sup>3</sup> EUAA, 2018, *EASO Practical Guide on age assessment*, available at:

<https://euaa.europa.eu/sites/default/files/publications/2022-01/easo-practical-guide-on-age-assessment-v3-2018.pdf>, p 17.

<sup>4</sup> EUAA, 2018, *EASO Practical Guide on age assessment*, available at:

<https://euaa.europa.eu/sites/default/files/publications/2022-01/easo-practical-guide-on-age-assessment-v3-2018.pdf>, p 23.

<sup>5</sup> UNHCR, June 2015, *UNHCR observations on the use of age assessments in the identification of separated or unaccompanied children seeking asylum*, available at: <https://www.refworld.org/pdfid/55759d2d4.pdf>; EUAA, 2018, *EASO Practical Guide on age assessment*, available at:

<https://euaa.europa.eu/sites/default/files/publications/2022-01/easo-practical-guide-on-age-assessment-v3-2018.pdf>, p 21.

<sup>6</sup> WMA, October 2019, *Statement on Medical Age Assessment of Unaccompanied Minor Asylum Seekers*, available at:

<https://www.wma.net/policies-post/wma-statement-on-medical-age-assessment-of-unaccompanied-minor-asylum-seekers/>.

<sup>7</sup> European Parliament, Resolution of 12 September 2013 (2012/2263(INI)), *The situation of unaccompanied minors in the EU*, para15.

<sup>8</sup> Parliamentary Assembly of the Council of Europe, Resolution 2195 (2017), *Child-friendly age assessment for unaccompanied migrant children*.

providing legal representation, protection and mental health services to asylum seekers and beneficiaries of international protection on Lesvos in the aforementioned period.

This report is a sequel of Fenix's previous report, *A Child's Best Interests? Rights Violations in the Absence of Presumption of Minority*, published in 2022.

## **Chapter 1: Basic principles and legal framework in age assessment procedures**

As stated by the Committee of Ministers of the Council of Europe (CoE), ‘in relation to age assessment in the context of migration, the fundamental principle underlying all others is respect for the dignity of each child as a human being and rights holder. The laws, procedures and practices relating to age assessment should be based on respect for human rights and fundamental freedoms’.<sup>9</sup> Age assessments should be carried out with respect for human dignity and safety, and any method involving nudity or the examination, observation or measurement of the genitalia or intimate parts should be prohibited during the process of age assessment.<sup>10</sup> The European Court of Human Rights (ECtHR) considers the presumption of minority as an inherent element of protecting the right to respect for the private life of a third-country national who declares to be an unaccompanied minor.<sup>11</sup>

Article 3 of the Treaty on the European Union (TEU) and Article 24 of the Chapter of Fundamental Rights of the EU (the Chapter) are established in the primary law of EU children’s rights. Provisions regarding the best interest of the child may also be found in the secondary legislation, namely the Asylum Procedures Directive (Article 25), the Reception Procedures Directive (Article 23) and Dublin III (Article 6). Furthermore, the Convention on the Rights of the Child (hereinafter CRC) in a series of articles (such as Articles 3, 12, 22) and the International Covenant on Civil and Political Rights (ICCPR) in Article 24 provide relevant provisions which should be taken into consideration for the age assessment procedures.

In domestic legislation, the Joint Ministerial Decision 9889/2020 (JMD 9889/2020) is Greece’s main legal instrument for conducting an age assessment. It describes the type of doubts which may lead to the initiation of an age assessment procedure, the age assessment procedure and the fundamental principles that it must follow, such as the best interest of the child. However, as will be examined below, the practice often does not follow the legal framework. The JMD 9889/2020 must be read in combination with a series of articles in Law 4939/2022, such as Articles 41, 62, 63, 64, 65, 66, 66A, 66B, 66C, 66E, 66Z, 66IA, 66IC, 80, 84 and 95 of this Law. The JMD 9889/2020 replaced the pre-existing legal framework on age assessment established in the JMD 1982/2016.

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<sup>9</sup> Committee of Ministers of the Council of Europe, December 2020, *Recommendation CM/Rec(2022)22 of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration and its Explanatory Memorandum*, available at: [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=0900001680a96350#showSearchBox=0](https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a96350#showSearchBox=0).

<sup>10</sup> Committee of Ministers of the Council of Europe, December 2020, *Recommendation CM/Rec(2022)22 of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration and its Explanatory Memorandum*, available at: [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=0900001680a96350#showSearchBox=0](https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a96350#showSearchBox=0).

<sup>11</sup> CASE OF DARBOE AND CAMARA v. ITALY, (Application no. 5797/17), October 2022, para 153.

## **Chapter 2: Incorrect age assessment procedure – inadequate implementation of the domestic legislation**

The Asylum Procedures Directive provides that the medical examination ‘shall be performed with full respect for the individual’s dignity, shall be the least invasive examination and shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result’.<sup>12</sup> As the Asylum Procedures Directive states, the age assessment, as a medical examination, must be performed through the least invasive type of medical examination and in full respect for the individuals’ dignity.<sup>13</sup> Due to the lack of agreement on which is the least intrusive method, this assessment must be done on a case-by-case basis.<sup>14</sup>

In Greece, the JMD 9889/2020, as the vital piece of legislation in relation to age assessment procedures within the Greek legal framework, provides a detailed description of the age assessment procedures. Article 1(5) of the JMD 9889/2020 provides three successive stages which the authorities should follow to determine the disputed age of an applicant. The exhaustion of each stage is mandatory before the application of the next one and shall be adequately justified:

- The first stage includes an assessment of the physical development of the macroscopic characteristics of the applicant, including height, weight, body mass, voice and hair growth. This clinical evaluation must be conducted by a duly trained healthcare professional (e.g., a paediatrician).
- In case of justified inability to assess the age based on the above examination, a psychosocial assessment by a trained psychologist and social worker follows, who examine the cognitive, behavioural and psychological development of the person and draw up a report. This second stage should include at least one semi-structured interview related to the personal history of the minor, conducted by the above specialists.
- If a reasonable doubt continues to exist, the third stage includes either an X-ray of the left wrist or a dental X-ray, or any other appropriate method based on international literature and practice.

### **2.1. Lengthy delays in the age assessment procedures**

Unrecognised minors often encounter long delays while awaiting the procedures to take place. Between January and June 2021, age assessment procedures on the island of Lesbos were suspended entirely due to the pending training of National Public Health Organisation (EODY) personnel, but based on the observations of the Fenix team, it remains unclear whether the training has even taken place. After six months of suspension of age assessments, the pending procedures were conducted by a Juvenile Unit funded under paragraph 4 of the JMD 9889/2020, which was sent temporarily from the mainland to provide training and to support EODY in reducing the backlog. Since then, EODY has been the only competent authority for conducting the age assessment procedures.

In more recent cases during 2023, Fenix teams have observed a reduction in the wait times before minors are submitted to an age assessment, and no gaps in the availability of the competent authorities have been detected; nonetheless, the quality of the procedure did not improve, as detailed below.

### **2.2. Quality of age assessment procedures**

Fenix has observed low-quality procedures and a lack of compliance with the legal framework, particularly in late 2022 and 2023. In at least 10 cases represented between 2020 and 2023, the

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<sup>12</sup> Article 25(5) Directive 2013/32/EU.

<sup>13</sup> EUAA, 2018, *EASO Practical Guide on age assessment*, available at: <https://euaa.europa.eu/sites/default/files/publications/2022-01/easo-practical-guide-on-age-assessment-v3-2018.pdf>, p 31.

<sup>14</sup> EUAA, 2018, *EASO Practical Guide on age assessment*, available at: <https://euaa.europa.eu/sites/default/files/publications/2022-01/easo-practical-guide-on-age-assessment-v3-2018.pdf>, p 31.

age assessment procedures lasted for less than 10 minutes, during which the unrecognised minors were asked a few questions in relation to their country of origin and journey and superficially examined by a doctor who did not appear to have the proper training in conducting age assessments. Additionally, the medical opinion included in their file does not provide sufficient justification and lacks reference to the collection of biometric data or comparison with the growth curves or other elements of the Tanner scale or otherwise.<sup>15</sup>

The Greek Ombudsman has highlighted challenges in other parts of the country, including in the Closed Controlled Structure of Samos, where the second stage psychosocial evaluation was not being carried out due to a lack of training in EODY's psychosocial unit.<sup>16</sup> Similarly, in Athens, difficulties were observed in identifying a specialised entity to carry out psychosocial evaluations.<sup>17</sup>

### 2.2.1. Unlawful use of X-rays

A systematic failure to comply with the provisions of the law has been observed on the island of Lesbos. During 2020-2021, the use of the third stage of the X-rays, in violation of the relevant framework, was repeatedly observed. While during 2022-2023, the use of X-rays was significantly reduced.

In at least 5 cases represented by Fenix during the above-mentioned period, the physical examination was not in line with the provisions of the domestic legislation: the first stage lasted less than 5 minutes and the minors were directly referred for an X-ray, bypassing the requisite second stage psychosocial evaluation. None of them received any justified medical opinion, and in the medical files acquired by their legal representatives there was no justification for the exhaustion of the previous stages and the need for a referral to the third stage X-ray. In appeals submitted against the results determining the applicants as adults in 2 of the above cases, the authorities acknowledged that there was no succession of the stages provided by the JMD 9889/2020, and there was no adequate justification for the referral to the next stage.<sup>18</sup>

While X-rays were systematically used for several years on Lesbos to assess the age of minors, the Committee on the Rights of the Child finds the use of radiological methods inaccurate, with wide margins of error, the possibility of causing trauma and leading to unnecessary legal processes, and ultimately calls upon states to refrain from using them.<sup>19</sup> Further, the European Committee of Social Rights has found that 'medical age assessments as currently applied can have serious consequences for minors and that the use of bone testing to determine the age of unaccompanied foreign minors is inappropriate and unreliable. The use of such testing violates Article 17 § 1 of the [European Social] Charter'.<sup>20</sup> The European Economic and Social Committee (EESC) adopted a firm position regarding the use of bone tests: 'given that bone tests are not really reliable, the EESC calls for them to simply be stopped. Methods we know to be approximate should not be employed just because no reliable verification method is available'.<sup>21</sup>

<sup>15</sup> Tanner Scale or Sexual Maturity Rating (SMR) is an objective classification system that is used to assess and document the development of sex characteristics of children. This scale created by Marshall and Tanner while conducting a longitudinal study during the 1940s to the 1960s in England. Mickey Emmanuel; Brooke R. Bokor., 11 December 2022, *Tanner Stages*, National Library of Medicine, available at: <https://www.ncbi.nlm.nih.gov/books/NBK470280/>.

<sup>16</sup> Letter of the Greek Ombudsman on the 19/12/2022 addressed to the Ministry of Migration and Asylum, Minister of Health, Special Secretariat for the Protection of Unaccompanied Minors, Asylum and Reception Legal Support Directorate, Asylum Service, Reception and Identification Service with protocol numbers: 322116/293545/294342/310174/305748/313397/299347/298582/298581/295828/296494/297335/311261/312884/314081/316713/300268/299970/325195/296821/69118/2022.

<sup>17</sup> Letter of the Greek Ombudsman on the 19/12/2022 addressed to the Ministry of Migration and Asylum, Minister of Health, Special Secretariat for the Protection of Unaccompanied Minors, Asylum and Reception Legal Support Directorate, Asylum Service, Reception and Identification Service with protocol numbers: 322116/293545/294342/310174/305748/313397/299347/298582/298581/295828/296494/297335/311261/312884/314081/316713/300268/299970/325195/296821/69118/2022.

<sup>18</sup> Decisions by RIC Commander, protocol numbers 2544/18-3-2021 & 2543/18-3-2021.

<sup>19</sup> Committee on the Rights of the Child, February 2019, *Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 11/2017*, available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2F79%2FED%2F11%2F2017&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2F79%2FED%2F11%2F2017&Lang=en).

<sup>20</sup> European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France Complaint No. 114/2015, January 2018, available at: <https://www.refworld.org/cases/COEECSR/5b2cc7494.html>, paragraph 113.

<sup>21</sup> European Economic and Social Committee, 2020, *The protection of unaccompanied minors in Europe (own-initiative opinion)*, SOC/634-EESC-2020.



Further, the Parliamentary Assembly of the Council of Europe called upon member states to 'use only as a last resort dental or wrist x-ray examinations and all other invasive medical procedures' and to 'ensure that all medical examinations are sensitive to the child's gender, culture and vulnerabilities and that the interpretation of results takes into account the child's national and social background as well as previous experiences'.<sup>22</sup> The Council of Europe Commissioner for Human Rights (CHR), following a visit to France, also called on the authorities 'to guarantee in particular that all age assessment procedures are multidisciplinary. The use of bone age tests must cease to be automatic and effectively only be a last resort within a legal framework. Their results must in no circumstances be the sole factor in age assessment'.<sup>23</sup>

The Greek Ombudsman, in his report, states that '[t]he determination of age by means of these medical examinations is nowadays also disputed by the international scientific community of health experts, since there is a discrepancy between the bone age, as shown by radiography, and the biological age, a discrepancy which may increase with advancing age or with the race of the person examined.'<sup>24</sup>

In General Comment n.4, the UN Committee on the Protection of the Rights of All Migrant Workers "calls on Member States to refrain from the use of medical methods based on, inter alia, bone and dental analysis, which can be inaccurate, with large margins of error and can also be traumatic and lead to unnecessary legal proceedings."<sup>25</sup>

### 2.2.2. Lack of specialised personnel

The domestic legislation (Article 1(6) of the JMD 9889/2020) and the international standards require duly trained personnel to conduct age assessments. According to the Committee on the Rights of a Child, 'a comprehensive assessment of the child's physical and psychological development, [is] conducted by specialist paediatricians or other professionals who are skilled in combining different aspects of development'.<sup>26</sup> The above is confirmed by Article 25(5) of the Directive 2013/32/EU, highlighting that 'any medical examination [...] shall be carried out by qualified medical professionals allowing, to the extent possible, for a reliable result'.

With regard to the age assessment report, according to European Union Agency for Asylum (EUA), 'the experts' professional qualifications, experience and relevant training should be mentioned in it as well as the margin of error of the methods used'.<sup>27</sup> A report by the Greek Ombudsman notes as a problematic practice the signing of examinations by doctors of different specialities, such as radiologists, pathologists, and paediatricians, most of whom lack special expertise in the evaluation of the relevant findings. A reading of the specific opinions submitted to the Authority by the parties concerned reveals a standardised way of carrying out the examination without recording the method used or other elements, making it difficult to further verify the scientific accuracy of the opinions.<sup>28</sup> Further, the Greek Ombudsman, in its recommendations, highlights that the procedures should be assigned to independent and specialised professionals with appropriate expertise and familiarity with the ethnic and cultural background of the child.<sup>29</sup>

<sup>22</sup> Parliamentary Assembly of the Council of Europe, Resolution 2195 (2017), *Child-friendly age assessment for unaccompanied migrant children*.

<sup>23</sup> CHR, CommDH(2015)1, 2015, *Report following his visit to France from 22 to 26 September 2014*, para 96.

<sup>24</sup> Greek Ombudsman, 2014, *The issue of assessing the minority of unaccompanied minors, October 2014, Chap. The reliability of the medical examination*, available at: [https://old.synigoros.gr/resources/porisma\\_diapistosi-anilikotitas-asynodefton-anilikon.pdf](https://old.synigoros.gr/resources/porisma_diapistosi-anilikotitas-asynodefton-anilikon.pdf).

<sup>25</sup> UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW), 16 November 2017, CMW/C/GC/4-CRC/C/GC/23, *Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return*, available at: <https://www.refworld.org/docid/5a12942a2b.html>.

<sup>26</sup> Committee on the Rights of the Child, *Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 28/2017*.

<sup>27</sup> EASO, 2018, *Practical Guide on age assessment Second edition*, available at: <https://euaa.europa.eu/sites/default/files/easo-practical-guide-on-age-assessment-v3-2018.pdf>, p. 43.

<sup>28</sup> Greek Ombudsman, 2014, *The issue of assessing the minority of unaccompanied minors, October 2014, Chap. The reliability of the medical examination*, available at: [https://old.synigoros.gr/resources/porisma\\_diapistosi-anilikotitas-asynodefton-anilikon.pdf](https://old.synigoros.gr/resources/porisma_diapistosi-anilikotitas-asynodefton-anilikon.pdf).

<sup>29</sup> Greek Ombudsman & UNICEF, 2019, *Annual report of 2018* by, available at: <https://old.synigoros.gr/resources/docs/ee2018-kdp-dikaion-paid-pou-metakin.pdf>.



Despite the existence of a legal framework, Fenix has observed that age assessment procedures on Lesbos are conducted by either urologists or general practitioners without any further expertise on the topic, according to applicants' files. Following a request for intervention by Fenix, the Greek Ombudsman has requested from the authorities clarifications on the type of medical specialists who can carry out the first stage of the age assessment procedures, and as of this writing, the authorities have not provided additional information.<sup>30</sup>

### **2.3. Failure to appoint a guardian – lack of information regarding the procedure, methods and potential consequences of the age assessment**

As it has been accurately stated by the Fundamental Rights Agency and the European Commission, 'before the age assessment procedure begins, the person who carries out a guardian's tasks should be assigned to the individual claiming to be a child. [...] The person should prepare the child for the assessment and should accompany and support the child throughout the entire process'.<sup>31</sup>

While appointing guardians to unaccompanied minors is of fundamental importance, Fenix has observed a systematic failure to do so during 2020-2023. The guardianship aims to protect the personal and pecuniary interests of the unaccompanied minor by establishing a quasi-family relationship that replaces the parental care of the unaccompanied minor, which is absent or not exercised during the period of time the minor is in Greece.<sup>32</sup> Law 4960/2022 established a National Unaccompanied Minors Guardianship Program, but until the moment of the writing of this report, it has yet to be implemented due to the lack of issuance of the Ministerial Decisions for the full implementation of the new Law.<sup>33</sup> Law 4960/2022 on the National Guardianship System and Framework of Accommodation of unaccompanied minors replaced Law 4554/2018 on guardianship.

Law 4554/2018, which established a registry of professional guardians to be implemented by National Centre for Social Solidarity (EKKA) under the Ministry of Labour and Social Affairs, never came into force, and the non-governmental organisation (NGO) Metadrasī was carrying out the guardianship tasks,<sup>34</sup> filling some of the government's void. According to the pre-existing legislation, the Juvenile Prosecutor or, in case of absence, the local Public Prosecutor should be temporarily appointed as the guardian. Following this, the Prosecutor should appoint a permanent guardian to act on a daily basis as the legal representative of the minor. Part of their responsibilities is to accompany the minor to public services, to establish direct and frequent communication with the minor and to ensure their safety.<sup>35</sup> Despite the recent legislative changes of Law 4960/2022 and Law 4939/2022, the new procedure is still not followed in practice due to the lack of permanent guardians and the workload of the Public Prosecutors. Therefore, Prosecutors continue to be the guardians of unaccompanied minors "on paper", as the competent Public Prosecutor cannot, due to his/her multiple competencies, act, in practice, as a guardian for unaccompanied minors.

Routinely, unrecognised minors represented by Fenix during 2020-2023 either had no appointment of a guardian in some of the cases, or no guardian had been appointed other than

<sup>30</sup> Letter of the Greek Ombudsman on 19/12/2022 addressed to the Ministry of Migration and Asylum, Minister of Health, Special Secretariat for the Protection of Unaccompanied Minors, Asylum and Reception Legal Support Directorate, Asylum Service, Reception and Identification Service with protocol numbers: 322116/293545/294342/310174/305748/313397/299347/298582/298581/295828/296494/297335/311261/312884/314081/316713/300268/299970/325195/296821/69118/2022.

<sup>31</sup> Fundamental Rights Agency et European Commission, 2014, *Guardianship for children deprived of parental care: A handbook to reinforce guardianship systems to cater for the specific needs of child victims of trafficking*, Publications Office of the European Union, available at: [https://fra.europa.eu/sites/default/files/fra-2014-guardianship-children\\_en\\_0.pdf](https://fra.europa.eu/sites/default/files/fra-2014-guardianship-children_en_0.pdf), p. 101.

<sup>32</sup> Article 1 of the Law 4939/2022.

<sup>33</sup> AIDA, 8 June 2023, *Country Report Greece: Legal Representation of unaccompanied children*, available at: <https://asylumineurope.org/reports/country/greece/asylum-procedure/guarantees-vulnerable-groups/legal-representation-unaccompanied-children/>.

<sup>34</sup> Fundamental Rights Agency, 2022, *Guardianship Systems for Unaccompanied Minors in the European Union – Developments since 2014*, available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2022-guardianship-systems-developments\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2022-guardianship-systems-developments_en.pdf).

<sup>35</sup> Ο Θεσμός της επιτροπείας των ασυνόδευτων ανηλίκων προσφύγων Πελοπίδας Νικολόπουλος, Δικηγόρος, ΔΜΣ Αστικού Δικαίου και Νέων Τεχνολογιών, Μέλος ΔΣ και Συντονιστής της ναυτικής βοήθειας του Δικτύου για τα δικαιώματα του Παιδιού, available at: <https://ddp.gr/wp-content/uploads/2018/08/%CF%80%CE%B5%CF%81%CE%B9%CE%BF%CE%B4%CE%B9%CE%BA%CF%8C-%CE%A3%CE%A5%CE%9D%CE%97%CE%93%CE%9F%CE%A1%CE%9F%CE%A3-%CE%B5%CF%80%CE%B9%CF%84%CF%81%CE%BF%CF%80%CE%B5%CE%AF%CE%B1.pdf>

the temporary guardian of the Prosecutor of the Mytilene District Court. In all cases represented by Fenix, a guardian or their representative was not present in the age assessment procedures as required by the JMD 9889/2020. The absence of a guardian resulted in the violation of procedural guarantees provided for and aimed at ensuring the institutional imperative of protecting children and, in particular, the absence of a guardian does not ensure the representation of the minor, prior information as to the rights and the procedure to be followed and the provision of consent.

The European Committee on Social Rights, in a complaint against Greece, has concluded that the failure to appoint legal guardians to unaccompanied and separated migrant children to provide them with effective assistance violates the right to social and economic protection under Article 17(1) of the Charter.<sup>36</sup>

As regards the provision of information and the required consent of the unrecognised minors, it is worth mentioning that both the Asylum Procedure Directive Article 25(5) and the JMD 9889/2020 Article 1(8) provide the right to be informed about the methods of the age assessment procedure and the possible consequences of the examination. In most of the cases represented by Fenix during the above-mentioned period, there has been observed a complete lack of provision of information to the unrecognised minors.

Additionally, due to a variety of reasons, such as overpopulation of the reception facilities on the island of Lesbos, lack of familiarity with the legislation and lack of guardian, unrecognised unaccompanied minors were facing multiple hurdles in expressing doubts about their wrongly registered age, notably when they were lacking legal representation during the period 2020-2021. In 3 Fenix cases in 2020, no referral decisions for age assessment procedures were even issued by the Commander of Reception and Identification Centre (RIC) of Lesbos, as this practice of issuing referral decisions for age assessment procedures starts in 2021. In other cases when they were referred to the age assessment procedures, sometimes more than a year after arrival,<sup>37</sup> unrecognised minors were not informed accordingly. They were also not notified of the referral decisions. The only indication that they were referred to an age assessment was that they were invited by the medical unit at the RIC, but without clarity on the procedure itself. Consequently, in at least 5 cases represented by Fenix and numerous others that Fenix has encountered, the unrecognised minors were unsure if they had been through an age assessment procedure. In at least 4 cases, there was no relevant documentation proving the written consent of the minors prior to undergoing the age assessment. At least 10 clients were not informed about the procedure and the methods of the age assessment or the consequences of it.

In 2023, in the cases that Fenix represented, even though the minors were informed that they would undergo a procedure determining their age, there was no information provided in relation to the methods and the potential consequences of the outcome or a guardian present.

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<sup>36</sup> European Committee on Social Rights, International Commission of Jurists (ICJ) and European Council for Refugees and Exiles (ECRE) v. Greece, Complaint No. 173/2018, available at: <https://hudoc.esc.coe.int/fre/?i=cc-173-2018-dmerits-en>, para 83, 86, 90, 93, 156-158, 163-168.

<sup>37</sup> For more details, read Fenix, October 2022, *A Child's Best Interests? Rights Violations in the Absence of Presumption of Minority*, available at: <https://www.fenixaid.org/articles/a-childs-best-interests-rights-violations-in-the-absence-of-presumption-of-minority>.

### **Chapter 3: Lack of notification of the decisions, medical opinions and results, insufficient information regarding the right to appeal and insufficient remedy**

Despite the existence of a legal framework providing the notification of decisions regarding the age assessment procedures and the right to an effective remedy, several hurdles have been observed in practice. According to the JMD 9889/2020, the medical opinions, the result of the examination and the administrative act determining the age shall be notified to the applicant, who has the right to appeal within 15 days from the day of the notification.

As Fenix has observed, during the period 2020-2021, unrecognised minors were neither receiving the medical opinions nor the relevant administrative acts and, as a result, they could not appeal against the results determining them as adults.<sup>38</sup> In several cases, the decisions were issued and notified to the applicants only after written requests were submitted by their legal representatives at Fenix.

In at least 4 cases, unrecognised minors represented by Fenix were not informed about the right to appeal. Additionally, where the decision on age determination is issued, it is only issued in the Greek language, a language that applicants frequently do not speak. Therefore, particularly applicants without legal representation are often unable to understand the content and their legal rights. At least 3 unregistered minors represented by Fenix were wrongfully provided with the right to appeal within 10 days instead of 15 days as described by the law.

In at least 4 cases of unrecognised minors represented by Fenix, even when they received the legal acts determining their age, they were not notified of the medical opinions and examinations that led to the result. As a consequence, the right to appeal was severely restricted. In 2023, the unrecognised minors represented by Fenix were able to access the medical opinions of the age assessment result and appeal against the decisions. However, the opinions did not include specifics on biometric data or other measurements used during the age assessment procedures. Appeals submitted during 2023 to the competent authorities on Lesbos were largely rejected.

Additionally, even if the appeal is accepted and the minors are referred to a new age assessment, it is not guaranteed that the same irregularities will not occur since it will be conducted by the same EODY staff who conducted the first age assessment. In several cases represented by Fenix, when the unrecognised minors were referred to a second age assessment after the appeals were accepted and irregularities were recognised, the proceedings were performed by the same doctors and the same systematic deficiencies were recorded, in particular, short time proceedings, inadequate medical assessments, lack of specialised personnel, absence of consent and guardian.

Finally, there are no effective remedies against decisions issued following the appeal. Remedies against the outcome of the appeals proceedings can only be done to the Council of State, which means that there are high court fees and excessive length of the court proceedings.<sup>39</sup>

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<sup>38</sup> It is noted that before the amended JMD 9889/2020 which was adopted in August 2020, the JMD 1982/2016 was providing the right to appeal ("αίτηση θεραπείας") according to the Administrative Procedure Code (Article 24).

<sup>39</sup> RSA, January 2022, *Asylum and the rule of law: Serious concerns persist in Greece*, available at: <https://rsaeqan.org/en/asylum-and-the-rule-of-law-greece/>, para 8-9; RSA et al, January 2023, *Rule of Law Backsliding Continues in Greece: Joint Civil Society Submission to the European Commission on the 2023 Rule of Law Report*, available at: [https://rsaeqan.org/wp-content/uploads/2023/01/RoL2023\\_JointSubmission\\_CSQ\\_Greece.pdf](https://rsaeqan.org/wp-content/uploads/2023/01/RoL2023_JointSubmission_CSQ_Greece.pdf), para 24-26.

#### **Chapter 4: Lack of referral to an age assessment procedure and lack of communication between GAS and RIC regarding pending procedures**

Article 1(2) of JMD 9889/2020 names numerous stakeholders responsible for their obligation informing the Commander of the RIC or Commander of the Closed Control Access Centre (CCAC) or the Director of Reception and Identification Service (RIS) or the Director of the Regional Asylum Office (RAO) in case doubts about the minority have arisen, such as employees of RIC or Greek Asylum Service (GAS) or any competent child protection authority (e.g. the Special Secretariat for the Protection of Unaccompanied Minors) or organisation acting in the field of child protection or health or the responsible prosecutor.

When doubts regarding the registered age have arisen, the above-mentioned stakeholders shall immediately inform the Commander of the RIC (or Commander of the CCAC) or the Director of the RAO. The Commander and Director shall then, based on a reasoning decision, order the referral of the person to the relevant age assessment procedures. However, during 2020-2021, Fenix has observed systematic deficiencies in the application of the above provisions.

In at least 5 cases represented by Fenix, the unrecognised minors expressed multiple times upon arrival their wrongly registered age without being referred to an age assessment procedure. They were only referred after several months of being treated as adults and only following the intervention of their legal representatives. In 4 other cases, even though there were doubts already from the registration of the application for international protection (which was recorded in the registration form), the unregistered minors were not referred directly to the age assessment procedures but only after interventions of the legal representatives in violation of the relevant provisions of the JMD.

Moreover, in another case represented by Fenix, the unrecognised minor repeatedly expressed during his asylum interview that his age was wrongly registered. When, in the interview, he insisted on being referred to an age assessment prior to conducting the interview, the GAS caseworker not only did not refer him to an age assessment as provided by the law but also issued an act interrupting the examination of his application for international protection, and therefore his asylum application was not examined on the merits.

Based on the above-mentioned cases, it appears that the competent authorities, as defined in Article 1(2)(3) of JMD 9989/2020, despite the doubts raised before them regarding the minority of the unrecognised unaccompanied minors, systematically did not follow the prescribed procedure. They did not immediately inform the Commander of the RIC Lesvos or the Head of RAO Lesvos and thus the alleged unaccompanied minors were not referred at the time of the suspicions and in any case in a timely manner to the process of an age assessment procedure.

For 3 of the cases, a complaint to the Fundamental Rights Officer (FRO) of the European Agency for the Management of Operational Cooperation at the External Borders (FRONTEX) submitted on their behalf by Fenix representatives on the faults of the registration led to further recommendations to the Greek authorities and the personnel of FRONTEX.<sup>40</sup> In their recommendations, the FRONTEX's FRO highlights that 'when, during the registration procedure, a person claims to be a minor, even without presenting supporting documents, the officers shall consider that person as a minor and refer them to the competent host Member State authorities for proper assistance, irrespective if the declared age raises doubts' and that 'it is paramount that throughout this process the officers ensure respect of the presumption of being a minor of persons claiming to be minors, by treating them as such'.<sup>41</sup>

<sup>40</sup> Final Report by FRONTEX Fundamental Rights Officer for Complaint CMP-2020-00024 submitted by Fenix, received October 12, 2022. For further information, see Fenix, October 2022, *A Child's Best Interests? Rights Violations in the Absence of Presumption of Minority*, available at: [https://uploads-ssl.webflow.com/60bcf98f54ccd12605b18048/6347d89f2dc71a36f95a3275\\_A%20Child%27s%20Best%20Interests%20-%20Fenix%20Humanitarian%20Legal%20Aid.pdf](https://uploads-ssl.webflow.com/60bcf98f54ccd12605b18048/6347d89f2dc71a36f95a3275_A%20Child%27s%20Best%20Interests%20-%20Fenix%20Humanitarian%20Legal%20Aid.pdf).

<sup>41</sup> Final Report by FRONTEX Fundamental Rights Officer for Complaint CMP-2020-00024 submitted by Fenix, received October 12, 2022.

In a recent intervention of the Greek Ombudsman,<sup>42</sup> it was requested from the Greek Asylum Service and Reception and Identification Service to provide the official guidelines in relation to the procedures of referral, the provision of consent, and what this entails. As of the time of writing, there has been no response by the authorities.

During 2023, Fenix observed minors being initially registered as minors but immediately referred to an age assessment procedure. Nonetheless, the age assessment seems to continue to present many of the deficiencies and obstacles aforementioned. Due to the fact that they are being accommodated inside the camp and their freedom of movement is restricted, access to legal aid prior to the age assessment seems to be rather difficult.

Unrecognised minors lack evidence to provide to the Asylum Service or elsewhere that an age assessment is pending, or they are often unaware if they have been referred for an age assessment or if it is completed. While on Lesbos, Fenix has observed in the past a general lack of communication between RIC and GAS regarding pending or concluded age assessments between 2020 and 2022.

In at least 1 case represented by Fenix, the unrecognised minor was orally informed about completing the age assessment procedure which determined him as a minor, and he was invited to be served with his decision the following day. On the same day that he received verbal notification of the age assessment results, he was invited for an asylum interview for his application for international protection with GAS. Despite the oral objections raised by the applicant and his legal representative about the minority and the issuance of a relevant decision, the minor underwent an asylum interview as an adult, without the presence of a guardian, without any procedural guarantees as required by domestic, European and international standards,<sup>43</sup> under the border procedure,<sup>44</sup> violating the best interest of the minor and the presumption of minority and with complete disregard to the issued decision of minority.

In another case also represented by Fenix, the unrecognised minor underwent an asylum interview despite the pending age assessment, and GAS informed him that a decision would not be issued until the completion of the age assessment procedures. Soon after, and while the age assessment was still pending, a decision was issued and he was notified; his application for international protection had been examined, considering him an adult.<sup>45</sup> On appeal, the Appeals Authority did not take into account the pending age assessment and decided to maintain the decision of the first instance. Several months later, the applicant was recognised as a minor.

During 2023, Fenix did not observe asylum interviews being conducted while age assessments were still pending.

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<sup>42</sup> Letter of the Greek Ombudsman on 19/12/2022 addressed to the Ministry of Migration and Asylum, Minister of Health, Special Secretariat for the Protection of Unaccompanied Minors, Asylum and Reception Legal Support Directorate, Asylum Service, Reception and Identification Service with protocol numbers: 322116/293545/294342/310174/305748/313397/299347/298582/298581/295828/296494/297335/311261/312884/314081/316713/300268/299970/325195/296821/69118/2022.

<sup>43</sup> Article 63, 72, 80 para 1 of Law 4939/2022, Article 25 of the Asylum Procedures Directive.

<sup>44</sup> Article 95 para 4 of Law 4939/2022.

<sup>45</sup> This applicant received Subsidiary Protection.

## Chapter 5: Non-acceptance of identification documents

The domestic legislation under JMD 9889/2020 provides that the pending age assessment procedure is interrupted, and the doubts are allayed, when official identification documents are submitted. However, as Fenix and numerous other organisations have observed, GAS regularly rejects the submitted identification documents as of doubtful authenticity not because they are considered counterfeit but because they are unable to verify their authenticity.<sup>46</sup> Furthermore, identification documents issued from Afghanistan were not accepted due to widespread corruption in the country, as GAS had orally expressed.<sup>47</sup>

Despite interventions of the Greek Ombudsman to the Central Asylum Service on this issue<sup>48</sup> and the conclusion by the Greek Ombudsman that minors with proof of their age should be registered as such without referral to further medical examinations,<sup>49</sup> the rejection of identification documents on Lesbos still has a systematic character. The Committee for the Rights of the Child notes that 'the documents available should be considered genuine unless there is proof to the contrary'.<sup>50</sup>

In at least 1 case represented by Fenix, the unrecognised minor submitted an original identification document (Tazkira) during their asylum interview, requesting the correction of his wrongly-registered age. The Tazkira was considered of doubtful authenticity according to the abovementioned practice. In questions raised by their legal representative regarding the procedures followed, GAS responded a year later that the authenticity of the document was carried out by employees of FRONTEX and that GAS was only informed orally about the result. No relevant opinion or report of the document authentication existed in their file, raising questions regarding the legality and accuracy of the proceedings.

In 2 more recent cases represented by Fenix during 2023, RIS responded following a report submitted to the Prosecutor of Mytilene in relation to the non-acceptance of an identification document of two unrecognised minors, that in order for a public document issued by foreign authorities to be accepted by Greek public services, it must first be legally authenticated and then translated. RIS mentioned that the validation precedes its official translation by the Certified Translators of the Registry of Certified Translators of the Ministry of Foreign Affairs or by a lawyer who knows the language. In particular, if the foreign public document originates from the authorities of a country that is not a party to the Hague Convention<sup>51</sup> or if it is a public document that is expressly excluded from the text of the Convention as regards the application of an apostille (such as documents issued by Diplomatic or Consular agents) in order to be accepted by the Greek authorities it requires consular authentication.<sup>52</sup>

However, many applicants' countries of origin (CoO) are not part of the Hague Convention - such as Afghanistan or Syria. Further, the requirement of a stamp from the Foreign Ministry of the CoO and access to a consulate cannot be reasonably expected as often the persecution emanates from the State or the asylum claim is connected with political reasons forcing the minor to flee. Thus, applicants in general, and minors in particular, cannot and should not be expected to access services from stakeholders persecuting them.

<sup>46</sup> RSA et al, May 2020, *Observations on the implementation of the law 4636/2019 in relation to international protection and other provisions in the hotspot of Lesbos*, available at:

<https://refugeeobservatory.geogean.gr/sites/default/files/%CE%9A%CE%BF%CE%B9%CE%BD%CE%8C%20%CE%95%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CF%8C%20%CE%A3%CE%B7%CE%BC%CE%B5%CE%AF%CF%89%CE%BC%CE%B1.pdf>.

<sup>47</sup> RSA et others, May 2020, *Observations on the implementation of the law 4636/2019 in relation to international protection and other provisions in the hotspot of Lesbos*, available at:

<https://refugeeobservatory.geogean.gr/sites/default/files/%CE%9A%CE%BF%CE%B9%CE%BD%CE%8C%20%CE%95%CE%BD%CE%B7%CE%BC%CE%B5%CF%81%CF%89%CF%84%CE%B9%CE%BA%CF%8C%20%CE%A3%CE%B7%CE%BC%CE%B5%CE%AF%CF%89%CE%BC%CE%B1.pdf>.

<sup>48</sup> Intervention of Deputy Ombudsman for Children's Rights with protocol number 277715/20830/21.05.2020.

<sup>49</sup> Συνήγορος του Πολίτη, 2014, *Το ζήτημα της διαπίστωσης της ανηλικότητας των ασυνόδευτων ανηλίκων*, available at: <http://www.synigoros.gr/resources/porisma-diapistosi-anilikotitas-asynodefton-anilikon.pdf>.

<sup>50</sup> Committee on the Rights of the Child, November 2020, *Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 26/2017*, available at: <https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6OkGid%2FPPRiCAghKb7vhskyvPvmag1XAb6zxcISoy8lqXwoFxbxDjXVUa7427tWGMhJvqYRCMJZXFSe49K9Z1pyl9E5cMYdGbVbiH8RpUOMemG2JfKFuDHpXqLlZjov>.

<sup>51</sup> Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, 5 October 1961, available at: <https://assets.hcch.net/docs/b12ad529-5f75-411b-b523-8eebe86613c0.pdf> (Hague Convention).

<sup>52</sup> Protocol number 383277/2023, issued on the 09-08-2023 by the RIS Commander.

In both cases, the applications for a change of data were rejected by RAO Lesvos on identical grounds that in accordance with the 3 of Law No. 4939/2022, in conjunction with Circular No. 86750/14.02.2022 of the Governor of the Asylum Service, the change of date of birth is not possible '*without the submission of an original document proving your identity issued by the authorities of the country of origin (passport or identity card, or alternatively a certificate of marital status or a birth certificate, provided that the conditions of the foreign public document are met) which indicates a date of birth different from that established by the [...] Decision of Age Assessment of the Commander of KED Lesvos*'.<sup>53</sup>

Following a report submitted by Fenix, the Greek Ombudsman addressed a letter to CCAC Lesvos and RAO Lesvos by which all the problematic policies of the Administration related to the age assessment procedures and the modification of data for applicants residing in the CCAC Lesvos were highlighted. The reexamination of both cases was proposed by considering the possibility of revoking the decisions in the context of the administrative authority's discretion to revoke administrative acts, for reasons relating to their legality, taking into account the documents submitted during the reassessment and, in general, all the necessary measures to ensure the best interests of the child and the benefit of the doubt, in the context of the increased obligations under the Convention on the Rights of the Child as ratified by Law 2101/1992, in particular by Articles 3, 8 and 22. In this context, it was also proposed by the Greek Ombudsman to ensure the implementation of the benefit of the doubt pending the review of their case by the Administration.<sup>54</sup>

Following the intervention of the Greek Ombudsman, the Commander of the Reception and Identification Service sent his reply, according to which the Administration '*does not intend to revoke the respective administrative decisions of the Reception and Identification Service, as it considers that they are not vitiated in terms of legality and substance*'.<sup>55</sup> Based on that reply, the Greek Ombudsman addressed a letter to the General Secretariat for Vulnerable Citizens and Institutional Protection requesting further clarifications.<sup>56</sup> Moreover, the General Secretariat asked for further clarifications from the Directorate of Legal Support of Asylum and Reception and from RAO Lesvos.

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<sup>53</sup> Protocol number 290419/07.06.2023 RAO Lesvos' answer and Protocol number IP/2023/15055/12.07.2023 RAO Lesvos's answer.

<sup>54</sup> Protocol number Φ1500-1599/340800/48576/2023.

<sup>55</sup> Protocol number 340800/53271/2023.

<sup>56</sup> Protocol number 340800/53271/2023.



## **Chapter 6: Failure to Provide Procedural Guarantees during the Examination of the Application for International Protection and Loss of Rights in Family Reunification Cases**

As mentioned above and based on Fenix's experience in the field during 2020-2022, the Greek Asylum Service, particularly of Lesbos, regularly conducted asylum interviews even when the age assessments of the unrecognised minors were pending. Consequently, unrecognised minors are deprived of special procedural guarantees during the interviews as provided by Law 4939/2022.

In almost all the cases represented by Fenix between 2020-2022, minors were treated as adults during their interviews, and relevant objections and requests for postponement raised by their legal representatives were left unanswered. The applications were examined under the border procedure instead of the regular procedure as they should be in line with the domestic legislation,<sup>57</sup> and no guardian was called to present or was present in the different procedures that took place, violating the best interest of the minor and the Regulation of the Asylum Service.<sup>58</sup>

In numerous cases, unrecognised minors were also deprived of their family reunification rights. Due to the incorrect registration and wrongful implementation of the presumption of minority,<sup>59</sup> unrecognised minors with family members in the European Union could not submit a request to be reunified with their family members based on Article 8 of Regulation 604/2013/EU. Whether the minor is recognised as a minor later on or if the minor is not recognised as such, the family reunification request can only be submitted based on the discretionary clause of Article 17 of Regulation 604/2013/EU due to the lapse of the three-month deadline from the submission of the application for international protection, which minimises the chances of success.

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<sup>57</sup> Article 95(4) of Law 4939/2022, taking also into consideration Articles 72 and 80(2) of Law 4939/2022.

<sup>58</sup> Regulation of Operations of the Asylum Service, Article 14(9).

<sup>59</sup> For more details Fenix, October 2022, *A Child's Best Interests? Rights Violations in the Absence of Presumption of Minority*, available at: [https://uploads-ssl.webflow.com/60bcf98f54ccd12605b18048/6347d89f2dc71a36f95a3275\\_A%20Child%27s%20Best%20Interests%20-%20Fenix%20Humanitarian%20Legal%20Aid.pdf](https://uploads-ssl.webflow.com/60bcf98f54ccd12605b18048/6347d89f2dc71a36f95a3275_A%20Child%27s%20Best%20Interests%20-%20Fenix%20Humanitarian%20Legal%20Aid.pdf).

## **Chapter 7: Breach of the presumption of minority and best interest of the child.**

As Fenix has stated in the past,<sup>60</sup> both the domestic legislation and the European and international legal frameworks include provisions on the treatment of minors in cases of doubts about the age of the applicant, establishing in law the presumption of minority principle. Law 4939/2022<sup>61</sup> and Joint Ministerial Decision 9889/2020 (JMD)<sup>62</sup> state that as long as doubts about the applicant's minority persist, the third-country national or stateless person is considered a minor.

In line with the above provision, the European Economic and Social Committee has noted that "in accordance with the 'presumption of minority' principle, a young person who presents themselves as a minor must be considered a minor until a final court ruling has been delivered".<sup>63</sup> Similarly, EUAA has recommended among others to 'assume that the applicant is a child (benefit of the doubt) while there are doubts on the applicant's age'.<sup>64</sup>

The presumption of minority is directly linked with numerous consequences of great importance for the unrecognised minors, such as adequate and safe accommodation, access to education and recreational activities, the appointment of guardians and asylum proceedings. However, Fenix has observed a systematic non-application or misinterpretation of the above principle clearly provided by the domestic and EU legislation until 2023. On Lesbos, unrecognised minors were not considered to fall within the scope of the presumption of minority and consequently, only applicants who have been initially registered as minors benefit from it.<sup>65</sup> This policy exacerbated the existing problems in the registration of applications for international protection as well as violated the best interests of the child, as examined in the last Fenix report on the topic.<sup>66</sup> As a consequence, unrecognised minors, while awaiting to be referred to an age assessment and during the procedure itself, were being treated as if they were adults, had no access to education and were manifestly exposed to conditions which raised concerns from a child protection perspective. In 2022, Fenix observed a change in the treatment unrecognised minors with pending age assessments that were accommodated with other unrecognised minors in the same situation but still in the premises of the camp.

In 2023, the practice suffered a new change. Fenix has observed minors being registered as such during the reception and identification procedures and still being referred to an age assessment prior to their asylum registration. For the period between the beginning of the age assessment and its completion, minors were accommodated inside the CCAC, but in a separate area ('safe area') where access to the rest of the facilities is restricted until the procedures are completed. Despite the formal existence of this 'safe area', adults have access to this space without permanent protection measures being guaranteed.

Following actions and legal interventions of Fenix since 2020, the Assistant Ombudsman for Children's Rights, in a letter addressed to the Commander of the RIC of Lesbos on the 26 of May 2021, notes that there is no clear provision in the JMD 9889/2020 that establishes the differentiation between the situation of minors who are registered as minors and referred to an age assessment, and those who are registered as adults and referred to an age assessment - in both cases presumption of minority must be applied. Additionally, the Assistant Ombudsman for Children's Rights requested further clarifications from the RIC Commander regarding the differentiation.<sup>67</sup>

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<sup>60</sup> Fenix, October 2022, *A Child's Best Interests? Rights Violations in the Absence of Presumption of Minority*, available at: [https://uploads-ssl.webflow.com/60bcf98f54ccd12605b18048/6347d89f2dc71a36f95a3275\\_A%20Child%27s%20Best%20Interests%20-%20Fenix%20Humanitarian%20Legal%20Aid.pdf](https://uploads-ssl.webflow.com/60bcf98f54ccd12605b18048/6347d89f2dc71a36f95a3275_A%20Child%27s%20Best%20Interests%20-%20Fenix%20Humanitarian%20Legal%20Aid.pdf).

<sup>61</sup> Article 41 and 80 of Law 4939/2022.

<sup>62</sup> Article 1(10) of JMD 9889/2020.

<sup>63</sup> European Economic and Social Committee, SOC/634-EESC-2020, *The protection of unaccompanied minors in Europe (own-initiative opinion)*.

<sup>64</sup> EASO, 2018, *Practical Guide on age assessment: Second edition*, EASO Practical Guide Series.

<sup>65</sup> Prosecutor's office of Mytilene, protocol number 387/13-04-202.

<sup>66</sup> Fenix, October 2022, *A Child's Best Interests? Rights Violations in the Absence of Presumption of Minority*, available at: [https://uploads-ssl.webflow.com/60bcf98f54ccd12605b18048/6347d89f2dc71a36f95a3275\\_A%20Child%27s%20Best%20Interests%20-%20Fenix%20Humanitarian%20Legal%20Aid.pdf](https://uploads-ssl.webflow.com/60bcf98f54ccd12605b18048/6347d89f2dc71a36f95a3275_A%20Child%27s%20Best%20Interests%20-%20Fenix%20Humanitarian%20Legal%20Aid.pdf).

<sup>67</sup> Protocol number Φ1500-1599/294342/30002/2021.

RIC Lesvos responded to the request by providing a document of the Public Prosecutor of Mytilene favouring the above interpretation, which has been used as guidance on this topic.<sup>68</sup> According to such interpretation of presumption of minority, where a third country national registered as an adult does not give rise to the presumption of minority, and before the completion of the age assessment, they cannot be treated as unaccompanied minors. In this opinion, the Prosecutor refers to guidelines provided by the Special Secretariat for the Protection of Unaccompanied Minors.

Subsequently, the Ombudsman addressed a letter to the Secretariat requesting additional clarifications.<sup>69</sup> In its response, the Special Secretariat argues that the presumption of minority applies to those cases where the applicant has initially been registered as a minor without providing any further argumentation.<sup>70</sup> Recently, Fenix has filed a report to the Public Prosecutor of Mytilene and to the Special Secretariat for Unaccompanied Minors highlighting the systemic deficiencies of the age assessment procedures in Lesvos. The Public Prosecutor of Mytilene ordered a preliminary investigation for possible penal crimes, and finally, the penal case was put in the archive on July 2023. The Special Secretariat for Unaccompanied Minors requested further clarifications from RAO Lesvos, the Central Asylum Service, RIS, RIC Lesvos and the Directorate of Legal Support on Asylum and Reception and during 2022 and 2023 received answers.

In a more recent intervention of the Ombudsman to various competent authorities, following numerous complaints of various organisations, it was requested by the Ministry of Immigration and Asylum to clarify if the presumption of minority applies only to those initially registered as minors.<sup>71</sup> It was also requested by the Asylum Service to provide clarifications on the treatment of those initially registered as adults and whose age assessments are pending in relation to the asylum procedures, particularly regarding the postponement of the asylum interview and the provision of procedural guarantees.<sup>72</sup> To Fenix's knowledge, there has been no response by the competent authorities.

The above interpretation of the presumption of minority is not aligned with international and European standards. As acknowledged by the ECtHR, a person's age is part of a person's identity, and the presumption of minority is an inherent element of the protection of a foreign unaccompanied individual declaring to be a child.<sup>73</sup> On the same judgement, the ECtHR concludes that the presumption of minor age should apply during the age assessment procedure, which means that the person is treated as a minor as long as it is not established that the person is, in fact, an adult considering that a wrong identification as an adult can lead to severe breaches of their rights.<sup>74</sup>

In favour of the interpretation of applying the presumption of minority to those initially registered as adults is also the FRONTEX's FRO. In his response to the complaint submitted by Fenix on behalf of three applicants, the FRONTEX's FRO stated that '[...] when officers doubt the age declared by the undocumented person to be registered, the principle of "presumption of minority" should prevail and the situation should immediately be notified to the national authorities to start the age determination procedure'.<sup>75</sup> Additionally, the FRO recommended that where a third-country national states to be a minor, they should be considered as such and referred to the competent authority to proceed with the adequate assistance.<sup>76</sup>

<sup>68</sup> Protocol number 387/2021.

<sup>69</sup> Protocol number 294342/61717/2021.

<sup>70</sup> Protocol number 394/01.04.2021.

<sup>71</sup> Letter of the Greek Ombudsman on 19/12/2022 addressed to the Ministry of Migration and Asylum, Minister of Health, Special Secretariat for the Protection of Unaccompanied Minors, Asylum and Reception Legal Support Directorate, Asylum Service, Reception and Identification Service with protocol numbers: 322116/293545/294342/310174/305748/313397/299347/298582/298581/295828/296494/297335/311261/312884/314081/316713/300268/299970/325195/296821/69118/2022.

<sup>72</sup> Letter of the Greek Ombudsman on 19/12/2022 addressed to the Ministry of Migration and Asylum, Minister of Health, Special Secretariat for the Protection of Unaccompanied Minors, Asylum and Reception Legal Support Directorate, Asylum Service, Reception and Identification Service with protocol numbers: 322116/293545/294342/310174/305748/313397/299347/298582/298581/295828/296494/297335/311261/312884/314081/316713/300268/299970/325195/296821/69118/2022.

<sup>73</sup> ECtHR, CASE OF DARBOE AND CAMARA v. ITALY, (Application no. 5797/17), [https://hudoc.echr.coe.int/eng/#/{%22itemid%22:\[%22001-218424%22\]}](https://hudoc.echr.coe.int/eng/#/{%22itemid%22:[%22001-218424%22]}), paras 123 and 153.

<sup>74</sup> ECtHR, CASE OF DARBOE AND CAMARA v. ITALY, (Application no. 5797/17), [https://hudoc.echr.coe.int/eng/#/{%22itemid%22:\[%22001-218424%22\]}](https://hudoc.echr.coe.int/eng/#/{%22itemid%22:[%22001-218424%22]}), para 125.

<sup>75</sup> Fenix, October 2022, *A Child's Best Interests? Rights Violations in the Absence of Presumption of Minority*, available at: [https://uploads-ssl.webflow.com/60bcf98f54ccd12605b18048/6347d89f2dc71a36f95a3275\\_A%20Child%27s%20Best%20Interests%20-%20Fenix%20Humanitarian%20Legal%20Aid.pdf](https://uploads-ssl.webflow.com/60bcf98f54ccd12605b18048/6347d89f2dc71a36f95a3275_A%20Child%27s%20Best%20Interests%20-%20Fenix%20Humanitarian%20Legal%20Aid.pdf); FRONTEX, Final Report Fundamental Rights Officer Complaint CMP-2020-00024, p 5.

<sup>76</sup> FRONTEX, Final Report Fundamental Rights Officer Complaint CMP-2020-00024, p 6.

Given the importance of guaranteeing safeguards to unaccompanied minors and acknowledging that the presumption of minor age is essential to guaranteeing those safeguards, it has been argued that the principle should be applied broadly, leaving a small margin of interpretation to States.<sup>77</sup> Arguments for a broad application of the presumption of minority can be found in decisions of the Human Rights Committee, which states that even in cases when a person declared falsely to be an adult before submitting they are a minor, the presumption of minor age should not automatically be denied.<sup>78</sup>

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<sup>77</sup> Daniel Simon and Mark Klaassen, October 2022, Age Assessment and the Presumption of Minority as a Prerequisite for Effective Human Rights Protection of Asylum Seekers: a Discussion of Darboe and Camara v Italy, available at: <https://strasbourgothers.com/2022/10/04/age-assessment-and-the-presumption-of-minority-as-a-prerequisite-for-effective-human-rights-protection-of-asylum-seekers-a-discussion-of-darboe-and-camara-v-italy/>.

<sup>78</sup> Daniel Simon and Mark Klaassen, October 2022, Age Assessment and the Presumption of Minority as a Prerequisite for Effective Human Rights Protection of Asylum Seekers: a Discussion of Darboe and Camara v Italy, available at: <https://strasbourgothers.com/2022/10/04/age-assessment-and-the-presumption-of-minority-as-a-prerequisite-for-effective-human-rights-protection-of-asylum-seekers-a-discussion-of-darboe-and-camara-v-italy/>, Human Rights Committee OYKA v. Denmark, [http://ccprcentre.org/files/decisions/CCPR\\_C7121\\_D\\_2770\\_2016\\_26714\\_E-2.pdf](http://ccprcentre.org/files/decisions/CCPR_C7121_D_2770_2016_26714_E-2.pdf).

## **Conclusion and Recommendations**

Age is a fundamental part of the child's identity, therefore, where the age is unknown, or there are 'substantiated doubts' about the age of an applicant, a child-centred age assessment must be conducted to guarantee that all minors can access their special procedural guarantees and safeguards, and special reception conditions.<sup>79</sup>

Despite its relevance, studies have shown that the age assessment process may strongly impact the psychological well-being of unaccompanied minors.<sup>80</sup> Young people may need to invest in aspects of their lives that were never important before, such as (exact) age; they often feel hopeless during the process because the only thing they can do is keep up with prolonged procedures, but they feel even more helpless when their declared age is contested. There is nothing they feel they can do about this decision and its consequences on their daily life.

These feelings of powerlessness are highly detrimental to children's mental health and development. For some, this process leads to feelings of anger and frustration, while others lose all motivation to invest in their future in the new country. Overall, not being believed and feeling they are treated unfairly can significantly threaten unaccompanied minors' feelings of belonging in the host country, challenging later integration processes in the host society.<sup>81</sup>

As this report focuses on the recognition of minors, particularly on Lesvos, it should be noted that the competent authorities adopted different practices and policies at different moments in time. Between 2020 and 2023 practices varied, but severe procedural infringements were consistently observed, which inevitably led to violations of the fundamental rights of minors. Before 2021, for a minor, getting through an age assessment was very difficult, and when the age assessments occurred it would be after months of waiting and the procedure suffered several procedure violations, such as no adequate provision of information, no notification of the age assessment, incorrect and/or incomplete assessments, systematic use of X-ray, the lack of notification of decision of the age assessment procedure and no respect for the principle of presumption of minority. During the first six months of 2021, the age assessments were suspended on Lesvos. In June 2021, the Juneville Unit for the age assessments from Athens came to Lesvos and conducted the majority of these assessments. When this team left the Island, many of the previous procedural infringements returned, in particular, the lack of respect for the principle of presumption of minority. Finally, from 2023, as soon as a minor arrives at the CCAC of Lesvos and there are doubts about their age, they are referred to an age assessment. Nonetheless, many of the problems observed during the assessment, namely no adequate provision of information, incorrect and/or incomplete assessments and lack of guardians, continue to be verified in practice.

Thus, Fenix recommends that:

- The principle of presumption of minority is respected and no differentiation is made between those who are initially registered as minors and those who wrongfully registered as adults while the age assessment or the appeal against it is pending;
- Training is provided to all Greek competent authorities who entered in contact with unaccompanied minors on how to identify minors and how to deal with them;
- Training is provided to the EODY staff who is competent to conduct age assessment;
- Guarantee that the age assessment procedures are conducted according to the provisions of the law and with respect to the dignity and safety of the child;
- Guarantee that all minors, including those whose age assessments are pending, effectively access their reception conditions guarantees, in particular, they are accommodated in adequate housing and have access to education opportunities and other recreational activities;

<sup>79</sup> EUAA, 2018, *EASO Practical Guide on age assessment*, available at: <https://euaa.europa.eu/sites/default/files/publications/2022-01/easo-practical-guide-on-age-assesment-v3-2018.pdf>, p 17.

<sup>80</sup> A. HIERN, H. ASCHER, M. VERVLIT and I. DERLUYN, 2018, *Identification: age and identity assessment*, J. BHABHA, J. KANICS and D. SENOVILLA HERNÁNDEZ (eds.), Research Handbook on Migration and Childhood, Cheltenham/ Northampton, Edwar Elgar Publishing.

<sup>81</sup> Fatoumata Diaraye BARRY v. Belgium Third Party Intervention By The Human Rights Centre (Hrc) And The Centre For The Social Study Of Migration And Refugees (Cessmir), Ghent University, available at: [https://hrc.ugent.be/wp-content/uploads/2022/03/TPI-BARRY\\_Ghent-University\\_17March2022.pdf](https://hrc.ugent.be/wp-content/uploads/2022/03/TPI-BARRY_Ghent-University_17March2022.pdf).

- Guarantee the creation of a permanent system of guardianship with a long-term perspective and its implementation for the best interest of the child;
- Ensure that guardians are appointed and minors have timely access to free legal aid;
- Guarantee that the authorities take into consideration the documentation from the CoO that minors submit as proof of their age and refrain from implementing age assessment procedures.