

# AGE ASSESSMENT

*and art 41 and 47 CFR*

A focus on one pending case v. Italy  
at the European Court of Human Rights

*(Chiara Pretto)*

# Age assessment based on «medical examination» itself could be valid for civil, administrative and criminal procedure?

An evidence based on uncorrect medical procedures: are really national administration and judges reflecting on the basis of article 41 CFR?

An evidence based on a medical or multidisciplinary procedure in the lack of the right to information, defence, legal aid : what about article 47 of CFR ?

# Age assessment : multilevel and multidisciplinary system

## Law:

- Directives 2005/85/EU and anti trafficking Directive 2011/36/EU
- Convention on the rights of the child
- Other international obligations
- Article 3, 8 and 13 ECHR
- Some national legislation

## Soft law:

- NGOs guidelines
- UNHCR position on age assessment as a multidisciplinary approach in the respect of the best interest of the child
- EASO guidelines on age assessment

## «Scientific Method» and age assessment

- Any scientific method can give itself exact age assessment: the key word is «range»
- The need to point out the margin of error is also underlined by all the major age-specific recommendations at national, European and international level
  - Greulich Pyle (1959, American citizens )
  - TW3 (2001, international individuals)

- Right to information
- Right to adequate assessment of the case: minors as vulnerable category
- Right to a remedy against the age assessment decision: who is acting : the minor ? The guardian? Which procedure/ which Judge is competent? Legal aid?

# Darboe Camara v Italy

## interim measure , appeal pending

Application no. 5797/2017, Darboe and Camara complained of the following violations of the European Convention on Human Rights:

- art. 3, as the dramatic reception conditions of the two minors appellants in *Cona center* represented inhuman and degrading treatment under the Convention;
- art. 8, since the Italian State did not take any action to protect the applicants' private life as unaccompanied minors, thus violating their privacy;
- artt. 3 and 8 in order to have the Italian State subjected to an examination by the Italian State of an inadequate medical and scientific age by which they were identified as being adult and therefore treated as adult;
- art. 13, since there were any Italian remedies available to complain about the breaches which have been committed against the applicants.

## Age assessment not in conformity with the best interest of the child: violation of articles 3,8 ECHR and connection with article 41 of CFR?

The “reports” on which the two applicants were identified as age groups did not indicate the margin of error inherent in the biological variability and the methods used, in violation of the provisions of national law, already in force at the time of the facts, which states:

*"The concluding report, drawn up by the multidisciplinary team, indicates the attribution of the estimated chronological age by specifying the margin of error inherent in the biological variability and the methods used and the resulting minimum and maximum values of the attributable age. "*

In the case of the applicants the possibility of exercising a right to an effective remedy has not been made effective and possible in the absence of an age determination measure and / or any communication in that sense that could somehow be known to the applicants ( violation of the right to information about the effect of the medical examination and of the decision of the administrative authorities .

On a more strictly procedural basis, concerning the derogation from the requirement of the exhaustion of internal appeals pursuant to art. 35 § 1 where, pursuant to art. 13, there are no effective internal appeals, it must first be noted, as will be stated on several occasions, that the Government itself in its defense does not appear to be able to identify any specific judicial path that could have been assumed ignored by the applicants. The inability of the Government to indicate specifically which actions and means of protection should have been activated in the present case and which in itself is a strong indication that such actions or means of protection do not exist.



... waiting for the ECtHR decision on this and Dansu case... what is changing...

- New law on unaccompanied minors protection « Law 47/2017»: right to a fair procedure and effective remedy on case of age assessment : but Any explicit reference to artt 41 and 47 CFR
- Lack of awareness : the best interest of the child as prescribed by bounding international European and national laws could be violated in case of uncorrect application of age assessment without safeguarding during the assessment and the absence of an effective remedy could be a violation of the charter and as article 3,8 and 13 of ECHR
- Gaps at the national law and practices regarding to artt 41 and 47 CFR