

Chasing forensic age assessment

Reference literature on specific criticism

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If one gets lost ...

"... I consider such kind of expert opinion as questionable from an ethical point of view, says now a doctor though herself performing age assessments ... There are too many unresolved issues ... We readily make decisions on a more than shaky basis ..."

*„Scruples
of a bone gager“*

Specific perspective

*„... There is much to be learned .. by
entering the phrase ‚age assessment‘ into
the internet search engines ...“*

Professor Sir Al Aynsley-Green, 2011

of what is to come ...

Forensic age reports are based amongst other on

- **Missing** reference studies plus
- **Harmful, forbidden** and **uninformative** X-ray imaging

thus being

- **Incapable** of delivering an exact chronological age

producing only

- **Crude** age estimations with wide margins of error.

Misunderstanding #1

concerning the ‚best interest of the child‘

Age assessment violates the
**‚Convention on the Rights of
the child‘** (CRC), since it does
not primarily consider the ‚best
interest of the child‘ (Art. 3)

Working Group ‚Human rights for children
refugees‘ 2009 complaining the implementation of
AGFAD-recommendations into the Austrian
Asylum Act

ANSWER

*„... CRC does not .. demand to follow its
principles as long as it is uncertain,
whether an individual in question is a
child according to the CRC ...“.*

VG Göttingen 17.07.2014, 2 B 195/14. OVG Hamburg
09.02.2011, 4 Bs 9/11

**CRC applies to individuals acknowledged to be
<18 years of life**

Misunderstanding #2

concerning the position of an expert

Age assessment violates the

“therapeutic relationship

established between doctor and

patient” ...”

Australasian Paediatric Endocrine Group et al.
(19.08.2011) Letter to Minister for Immigration and
Citizenship of Australia

ANSWER

An appointment as an expert to

authorities and courts constitutes a

non-therapeutic relationship.

Either treating doctor or assigned expert, never both in one

Misunderstanding #3

concerning the requirement to an age report

True, but not asked

*"... Remember that there is no single reliable method for making **precise age estimates** ..."*

RCPCH (16.02.2016) Refugee and unaccompanied asylum seeking children and young people: age assessment and children in detention

ANSWER

For forensic purposes an age report is not asked to deliver a "*precise*" chronological age of an individual, but evidence to allow an **age differentiation along a legally relevant cut-off** with a certain probability.

E.g. Majority cut-off: Art. 2/k Qualification Directive 2011/95/EU (13.12.2011)

Age differentiation instead of age estimation

Misunderstanding #4

concerning the result of an age report

Missing the point

Forensic age assessment breeds nothing but **rough age estimates** with **huge standard deviations**

Hjern et al (2012) Age assessment of young asylum seekers. Acta Paediatr 101:4ff

ANSWER

Though an age report does line out a possible age range, **1 parameter is of main importance**: the overall **minimum age** of findings corresponding with the **latest possible birthday**.

Schmeling et al. (2016) Dtsch Ärztebl 113:44ff

Minimum age concept

Misunderstanding #5

concerning the value of sexual development



Wrong again!

Sexual maturity is used to assess age.

Child refugees are subjected to genital tests to prove their age — and they may not even work:

<http://qz.com/520832/child-refugees-are-subjected-to-genital-tests-to-prove-their-age-and-they-may-not-even-work/>

ANSWER

„... [The medical observation of] *sexual maturity characteristics* [has] *the main purpose to **identify or rule out growth and developmental disorders*** ...“

Schmeling et al. (2016) Dtsch Ärztebl 113:44ff

Misunderstanding #6

... and genital metrics

Testicular age?

„... She measures the size of the **Adam's apple**, the **foot**[?] ... of **penis and testicles** ...“ (British Paediatrician)

British High Court 08.05.2009, CO/2334/2008

“... **testicular volume** equals a 14-years old, **bone age** of the left hand an 18-years old ...“ (German Paediatrician)

VG Düsseldorf 21.06.2007, 13 K 6992/04.A

ANSWER

Measuring ones genitals for age assessing purposes is **not part of the AGFAD-guidelines**, if of any standard.

Schmeling et al. (2008) Criteria for age estimation in living individuals. Int J Legal Med 122/6:457ff.

Misunderstanding #7

concerning the justification of X-ray-imaging

“... *X-ray imaging* [for age assessment purposes] *is not permitted* from a legal point of view being an *unjustifiable exposure* ...”

Nowotny et al. (2014) Strittiges Alter – Strittige Altersdiagnostik. Dtsch Ärztebl 111:A 786ff

ANSWER

Almost 20 years ago EU-law expressis verbis defined

- **Medical-radiological procedure** and
- **Medico-legal procedure** for purposes without medical indication,

a terminology that has been maintained since then mentioning recently “*radiological age assessment*”.

Art. 1/2 Radiation protection Directive 97/43/Euratom

Meeting, Berlin 18.03.2016

EU-law justifies medico-legal exposures, if implemented into national law

Misunderstanding #8

concerning the value of the ‚Bone age‘-concept according to G/P

True, but its use isn't suggested anyway

„... [Average] **Bone age**
assessed by hand-wrist X-ray
is uninformative and should
not be used ...“

Cole TJ (2015) The evidential value of developmental age imaging for assessing age of majority. Ann Hum Biol 42/4:379ff

ANSWER

Greulich/Pyle (G/P) nothing but delivers stereotypes of appearances, to which **modern studies added statistical parameter** to allow its actual chronological interpretation. Hence an average ‚bone age‘-value is not applied in forensic age reports - if lege artis performed.

Misunderstanding #9

concerning reference studies on medial clavicular ossification

Age related clavicular
ossification data are only based
on **Kellinghaus et al.**

Nowotny et al. (2014) Letter:

http://www.ippnw.de/commonFiles/pdfs/Soziale_Verantwortung/Erwiderung_zu_den_Leserbriefen_der_Rechtsmediziner_DAE_25_2014.pdf

ANSWER

Since 2010 a **number of studies**
on the time course of clavicular
ossification by means of CT imaging
got published.

Misunderstanding #10

concerning ‚Psychosocial age estimation‘

„... The psychosocial age assessment has two aims:

- an **improvement of accuracy of age determination** and
- a determination of the actual psychosocial maturity and of the **needs which require support** ...“

Berger et al. (2006) Psychosocial age assessment

Answer

„... The weakness of psychosocial age assessment:

The **inaccuracy** in the age of adolescents or young adults ...“

Berger et al. (2006) Psychosocial age assessment

Impossible medical approach for age differentiation purposes

Conclusions

- In order to understand the complexity of forensic age assessment one has to realize that it resides in a **cross-over of legal requirements and medical possibilities**.
- In case of asylum-related undocumented minority-allegations the observation of a **procedure according to legal principles** is the first and foremost commitment.
- Any forensic age report has to follow the **acknowledged methodical ,state of the art`**.

The primacy of administrative fact-finding

If such procedure is ignored ...

An ,unaccompanied
child refugee`
is pictured in 2012,
when he was reported
to be Sweden's
fastest "14-year-old"