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AGE ASSESSMENT: POLISH PRACTICE AND INTERNATIONAL STANDARDS

Abstract: *This article addresses the legal aspects of assessing the age of foreign minors. It is a juxtaposition of the development of international legal standards in this area with the law and practice of the Polish authorities. The basic thesis of this analysis is the statement that Polish law in its current form requires fundamental change with respect to at least three elements. First, it is necessary to extend the methods of age assessment to also include non-medical methods. Secondly, the law should clearly define the legal form in which the age of a foreigner is determined and, at the same time, impose an obligation to provide a foreigner with the results of the assessment. Thirdly, a person concerned should have a direct opportunity to appeal.*

Keywords: age assessment, unaccompanied children, international protection

INTRODUCTION

Currently, Poland is facing two migration-related humanitarian crises. The first, which has been developing since August 2021, is related to the influx of foreigners in an irregular situation from Belarus.[1] The second is related to the armed conflict in Ukraine and the necessary protection of displaced persons. One aspect of these phenomena concerns the situation of undocumented and unaccompanied children. Providing them with adequate protection relies on their proper identification as minors. Therefore, even though it seems to be only one of many elements of migration or international protection procedures, age assessment is of fundamental importance.

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[1] For a legal commentary on the law and the reaction of the Polish authorities to this crisis, see studies in: W. Klaus (ed.), *Beyond the Law. Legal assessment of the Polish state's activities in response to the humanitarian crisis on the Polish-Belarusian border*, ILS PAS, Warsaw: 2022.

The term "age assessment" refers to any activities undertaken by state authorities to establish an individual's chronological age; or the age range of a person; in particular in cases to determine whether an individual is an adult or a child.[2] It should be underlined that age could be assessed by the variety of measures, which include: searching for documents, contacting embassies, verifying specific circumstances in the country of origin, interviewing the foreigner, conducting psychological examinations, and finally a medical examination.[3]

From the legal point of view, the use of age assessment techniques requires the reconciliation of two important circumstances. On the one hand, this term should not be understood as a "determination" of age. If there is no available, credible documentation, it is impossible to establish the exact age of a person and any assessment will be subject to a degree of inaccuracy. On the other hand, in the case of children the individual's age should be estimated as accurately as possible, because many legal solutions are connected with the specific age or maturity of the child.[4]

These considerations give rise to the within analysis of the legal provisions and juridical documents of the Polish Border Guard. They are aimed at determining not only the *content* of the legal norms applied, but also the *practice* of their application in Poland. At the same time, the comparative method also involves the juxtaposition of these elements with a certain desirable state of affairs, which results from international legal standards. At the international level, there are a growing number of soft law documents and rulings of treaty bodies which develop the substantive and procedural standards in this field. A special inspiration for these considerations is the recent judgment of the European Court of Human Rights (ECtHR) in the case of *Darboe and Camara v. Italy*.[5] While this was not the first time that the issue of age assessment appeared in the Strasbourg case law,[6] it deserves particular attention for two reasons. First, in this case the only method used to assess the applicants' age was a wrist X-ray,[7] which largely corresponds to the Polish practice. Secondly,

[2] Parliamentary Assembly, *Resolution 2195(2017) on child-friendly age assessment for unaccompanied migrant children*, 24 November 2017, para. 2.

[3] For a detailed description of these methods together with an indication of the bibliography see, *inter alia*, EASO, *Practical guide on age assessment* (2nd ed.), 2018, pp. 47-51; T. Smith, L. Brownlee, *Age assessment practices: A literature review & annotated bibliography*, Discussion Paper, UNICEF: 2011, pp. 13-18.

[4] For a legal justification of the use of age assessment, *see* J. Markiewicz-Stanny, *Age assessment procedures and the protection of children's rights: an analysis of international standards*, in: M. Półtorak, I. Topa (eds.), *Women Children and (Other) Vulnerable Groups. Standards of Protection and Challenges for International Law*, Peter Lang, Berlin: 2021, pp. 287-290.

[5] ECtHR (GC), *Darboe and Camara v. Italy* (App. No. 5797/17), 21 July 2022.

[6] ECtHR, *Ahmade v. Greece* (App. No. 50520/09), 25 September 2012, paras. 77 and 78; *Mahamed Jama v. Malta* (App. No. 10290/13), 26 November 2015; *Abdullahi Elmi and Aweys Abubakar v. Malta* (App. Nos. 25794/13 and 28151/13), 22 November 2016.

[7] It should be noted that in the time between the lodging of the complaint and its examination by the ECtHR, the Italian system concerning age assessment changed fundamentally. On 7 April 2017 the Italian

the ECtHR set out important procedural safeguards that should apply to the age assessment procedure. As will be explained in more detail below, these rules do not seem to be respected in Poland.

1. POLISH LAW AND PRACTICE

1.1. General remarks

Before discussing the regulations concerning age assessment, it should be pointed out that the legal status of third-country nationals in Poland is subject to two different legal regimes. One of them covers children with Ukrainian citizenship who came from the territory of this country after 24 February 2022. The situation of these minors is regulated by The Act on assistance to Ukrainian citizens in connection with the armed conflict on the territory of that state (Act on Assistance).[8] Pursuant to its provisions, every person who has the citizenship of Ukraine and arrived from the territory of this country after 24 February 2022 has the right to legally stay in Poland (Art. 2(1)) and enjoys temporary protection (Art. 2(6)). It should be noted that this act implements EU law concerning temporary protection, which provides obligations on the part of Member States towards persons enjoying this status.[9]

It is noteworthy that a vast majority of children from Ukraine are documented, hence the legal issues that are identified in their cases are not related to age assessment. Even if there are some deficiencies, it is possible to remove them as a result of cooperation with the consular authorities of Ukraine. In practice, in the cases of Ukrainian children, problems with determining parental authority and the right to custody are most common, because many of them stay in Poland under the care of adults other than their parents. Although Polish law requires this situation to be

Parliament adopted the Law No. 47 entitled "Provisions on Protective Measures for an Unaccompanied Foreign Minor" (the so-called "Zampa Law") [Legge 7 aprile 2017, n. 47, Disposizioni in materia di misure di protezione dei minori stranieri non accompagnati], G.U. Serie Genrale n. 93, del 21-04-2017. *See more* A. Maneggia, *The Principle of the Best Interests of the Child in the Italian System of Protection of Unaccompanied Migrant Children*, in: J. Markiewicz-Stanny, T. Milej, A. Wedeł-Domaradzka (eds.), *Children in Migration: Status and Identity*, Nomos Verlag, Baden-Baden: 2022, pp. 246-253.

[8] Ustawa o pomocy obywatelom Ukrainy w związku z konfliktem zbrojnym na terytorium tego państwa [The Act on assistance to Ukrainian citizens in connection with armed conflict on the territory of that state], Journal of Laws 2022, item 583.

[9] Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof [2001] OJ L 212, p. 12-23; Council Implementing Decision (EU) 2022/382 of 4 March 2022 establishing the existence of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC, and having the effect of introducing temporary protection [2022] OJ L 71, p. 1-6.

regulated by the institution of so-called 'temporary guardianship' (Art. 25 of the Act on Assistance), a large group of Ukrainian people have not fulfilled this obligation.[10]

Temporary protection solutions do not cover persons who came from the territory of Ukraine but do not have Ukrainian citizenship. Published studies show that although such minors have documents and their age is known, they still experience issues with regulating their right to stay on the territory of the Republic of Poland.[11]

The problem of a lack of documentation particularly concerns minors crossing the Polish-Belarusian border. This is partly due to passports and other travel documents having been confiscated by smugglers or Belarusian officials. According to the statistics of the Border Guard in Poland, 7,374 people applied for international protection in 2022. In the same year, 207 minors were detained in Guarded Centres, including 45 unaccompanied minors.[12] As of today, there is no data on the number of people subjected to the age assessment procedure. The Border Guard does not collect such information.[13]

The conditions and rules for determining the age of third country nationals are contained in two acts: the Aliens Act (AA),[14] which applies to foreigners in return procedures, and the Act on granting protection to foreigners within the territory of the Republic of Poland (AGP),[15] which applies to asylum seekers. In addition, the Statement of the Board for Foreigners of the Border Guard Head Command of 9 December 2016 on the age assessment of foreigners (Statement of BGHC)[16] is worthy of particular attention here. It is an internal document, one which does not belong to the catalogue of generally applicable regulations in Poland.[17] It is addressed to Border Guard officers and cannot be a source of rights and obligations

[10] *See more broadly* A. Tymińska, *Dzieci z pieczy zastępczej oraz małoletni bez opieki z Ukrainy: ocena ex-post regulacji i praktyki stosowania specustawy ukraińskiej* [Children from foster care and unaccompanied minors from Ukraine: ex-post evaluation of the regulations and practice of applying the Ukrainian Special Act], HFPCz, Warszawa: 2022, available at: https://tinyurl.com/yc87zhxz (accessed 30 April 2023), pp. 46-68.

[11] *Ibidem*, pp. 29-30.

[12] Letter of the Commander-in-Chief of the Border Guard from 17 January 2023, KG –OI-VIII.0180.184.2022, p. 1.

[13] Letter of the Commander-in-Chief of the Border Guard from 9 February 2023, KG-OI-VIII.0180.184.2022.BK, pp. 10-11. This document was obtained by the author from the Helsinki Foundation for Human Rights.

[14] Ustawa o cudzoziemcach [Aliens Act], Journal of Laws 2013, item 1650, consolidated text Journal of Laws 2021, item 2354, as amended.

[15] Ustawa o udzielaniu cudzoziemcom ochrony na terytorium Rzeczypospolitej Polskiej [Act on granting protection to aliens within the territory of the Republic of Poland], Journal of Laws 2003, No. 128, item 1176, consolidated text Journal of Laws 2022, items 1264, 1383 as amended.

[16] It should be noted this is a conventional name chosen by the author, as this document is not officially entitled or described - Document from 16 December 2016, signature FAX-CU-8301- II/IW/16. This document was obtained by author from the Helsinki Foundation for Human Rights.

[17] See the catalogue of sources of law in Art. 87 of the Constitution of Republic of Poland, Journal of Laws 1997, No. 78, item 483, as amended.

for anyone else. Nevertheless, it is a very important document, serving as the main point of reference for officers in their daily work.[18] It is also worth mentioning here that this document does not differentiate between the rules for determining age in return procedures and in international protection procedures. This is difficult to understand, given that the Polish legislator clearly differentiated the situation of foreigners in these two procedures and the regulations concerning these two acts differ in this respect.

1.2. Substantive norms

In the Polish legal framework, the general rule is that age assessment should be done only in cases of doubt about the age of an individual claiming to be a minor (Art. 397(4) AA; Art. 32 AGP). In both acts the authority responsible for age assessment is the Border Guard. In the return procedures, age assessment is limited to cases where a foreigner claiming to be a minor is admitted to a guarded centre or arrest for foreigners (Art. 397(4) AA). This is understandable because detention is permissible only if an unaccompanied child is 15 years old or older (Art. 397(3) AA). Additionally, a minor foreigner staying in a guarded centre without a guardian or related adults should be placed in a separate part of the centre (Art. 414(4) AA).[19]

In international protection procedures, age assessment should be done in each and every situation where the Border Guard authority has doubts as to the age of the applicant, either on the basis of the declarations made by the applicant claiming to be an unaccompanied minor or on the basis of other unclear circumstances. According to Art. 32(1) AGP, these procedures are aimed to determine the actual age of the applicant. What is worth noting, in next part of the same article (namely in para. 5) it is stated that the intended result of the medical examinations is to indicate whether the applicant is an adult (Art. 32(5) AGP). Undoubtedly, Polish legislation is inconsistent on this point. There is a fundamental difference between efforts to assess if a person is either 16 or 17 years old, and a general statement about their minority or majority.

Both laws make no mention of a search of documents, and consequently do not indicate that a medical examination should be a last resort. Of course, it can be considered that the stage of checking and searching for documents has been omitted because the obligation to perform these activities results from other regulations. Interestingly however, these elements are present in the Statement of BGHC. Accord-

[18] See the interesting findings on the attitude of Border Guard officers that they tend to assign a hierarchy of norms, and the syndrome of reversal of normative hierarchy, P. Tacik, *Law, Life, Impossibility: Theorising 'Law Application' in Detention Centres for Foreigners*, 4(186) Studia Migracyjne. Przegląd Polonijny 35 (2022), pp. 42-44.

[19] According to Art. 88a(3)(3) AGP detention of unaccompanied children seeking international protection is prohibited.

ing to this document, a medical examination is carried out only when determining the age of a foreigner is not possible on the basis of the collected documentation or checks in the VIS system.[20] It should be postulated that this rule should be worded directly on the level of acts generally applicable in Poland.[21] Additionally, the Statement of BGHC includes the rule that if, as a result of identification activities, a travel document or official correspondence was obtained that contains personal data of the person, including the date of birth, the data in that document are final and binding regardless of the outcome of previous findings. These guidelines appear to be applicable in practice. In 2022, the Polish Border Guard (Odra Border Guard Unit) recorded several cases of minors who claimed to be adults and were detained in the Guarded Centre for Foreigners in Krosno Odrzańskie. This centre is for male adults only. The fact that the foreigners were children was established as a result of identity verification in diplomatic representations of their countries of origin. After obtaining information that the foreigners were minors, actions appropriate to their legal situation were immediately taken. This means that the children were either released or transferred to the Guarded Centre in Kętrzyn (suitable for children), or placed under institutional care.[22]

Polish regulations only generally indicate that foreigners are subject to medical examinations, and is silent about personal reviews and psychological observations, which are based on perceptions of a person's physical appearance, maturity, and psycho-social development. Such assessments are conducted by professionals working within the immigration or care authorities in Germany,[23] Norway,[24] the United Kingdom,[25] and France.[26] Therefore, it can be concluded that Poland belongs to

[20] Regulation (EC) No 767/2008 of 9 July 2008 concerning the Visa Information System (VIS) and the exchange of data between Member States on short-stay visas (VIS Regulation) [2008] OJ L 218, p. 60-81.

[21] *See e.g.* in Austria Art. 13(3) of the Federal Office for Immigration and Asylum Procedures Act; Art. 29(4) of the Settlement and Residence Act; in Croatia *see* Art. 217(5) of the Aliens Act, Art. 18(2) of the Act on International and Temporary Protection.

[22] The Letter of Commander Odra Border Guard Unit, 3 March 2023, NO-OI-II.0180.2.2023, p. 4. Document obtained by the author from the Helsinki Foundation for Human Rights.

[23] *See* para. 42f of the Sozial Gesetzbuch (Achtes Buch), 26 June 1990, recently amended 21 December 2022, Bundesgesetzblatt 2022 Teil I, No. 56, 28.12.2022, p. 2824.

[24] A.T. Sørsveen, M. Ursin, *Constructions of 'the ageless' asylum seekers: An analysis of how age is understood among professionals working within the Norwegian immigration authorities*, 35 Children and Society 198 (2021), p. 203.

[25] *See* Nationality and Borders Act 2022, 2022 Chapter 36, part 4, section 50-52, text available https://www.legislation.gov.uk/ukpga/2022/36/enacted; Guidance as to the requirements of a lawful assessment by a local authority of the age of a young asylum seeker could be found in the so called Merton Case: *B v. London Borough of Merton* [2003] EWHC 1689 (Admin); additionally the Home Office has published *Age assessment joint working guidance,* March 2023, available at: https://tinyurl.com/bdehemv2 (both accessed 30 April 2023).

[26] *See* Art. 222 - R.11 Code de l'action sociale et des familles [Family and Social Code], text available at: https://www.legifrance.gouv.fr/codes/texte_lc/LEGITEXT000006074069/; Arrêté du 20 novembre 2019 pris en application de l'article R. 221-11 du code de l'action sociale et des familles relatif aux modalités de l'évaluation

a group of those European countries that do not apply a holistic or multidisciplinary approach to age assessment.[27] Other such countries include Bulgaria, Czech Republic, Hungary, Latvia, Lithuania,[28] Slovakia,[29] and Finland.[30]

Polish provisions on granting international protection mention that medical examinations shall be carried out in a manner that respects the applicant's dignity, using the least invasive examination technique possible (Art. 32(4) AGP). The wording of Art. 397(4) AA provides no details related to the way and methods of performing the medical assessment of age. Findings published in the report of the Polish National Mechanism for the Prevention of Torture (NMPT) deserve attention in this regard.[31] Its representatives examined the files of some foreigners detained in guarded centres in Poland – in particular they analysed the personal documentation of individuals whose age was estimated as 18 or 19 years. They found that the X-ray examination of the wrist was used in most cases.[32] Nevertheless, it should be noted here that other methods are used as well in Poland. For example, cases of dental examination of the mouth and dentition, or pantomographic X-ray examination are recorded. In some cases, two examinations were used even though only one expert was involved.[33]

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des personnes se présentant comme mineures et privées temporairement ou définitivement de la protection de leur famille. *See also*, a guide for services in charge of age assessments published by the authorities in 2019, in order to harmonise current practices: Guide de bonnes pratiques en matiere d'evaluation de la minorite et de l'isolement, des personnes se déclarant comme mineur(e)s et privies temporairement ou définitivement de la protection de leur famille Décembre 2019, text available at: https://sante.gouv.fr/IMG/pdf/guide-de-bonnes-pratiques-en-matiere-d-evaluation-de-la_minorite-et-de-l-isolement.pdf (both accessed 30 April 2023).

[27] According to the European Asylum Office, a multidisciplinary approach for the purpose of age assessment would imply the exploration of different aspects or factors, e.g. of a physical, psychological, developmental, environmental and cultural nature. Conversely, an age assessment process based solely on medical methods cannot be considered multidisciplinary – see EASO, *EASO Age assessment practices in EU+ countries: updated findings,* July 2021, p. 8, ftn 4.

[28] In Lithuania, X-ray examination remains the only method used to assess the age of an unaccompanied minor According to the ruling of the Supreme Court of Lithuania of 14 July 2015 in civil case No e3K-3-412-690/2015, such an age assessment test is considered to be sufficient in legal practice.

[29] See more broadly the European Migration Network (EMN), *Ad hoc query on 2021.10. Unaccompanied minors - age assessment methods used by Member States Requested by EMN NCP Czech Republic on 18 February 2021*, available at: https://tinyurl.com/2sp6kat3 (accessed 30 April 2023).

[30] Dental examination is also used in Finland, but it should only be done by two experts – compare Section 6b, Aliens Act 30.4.2004/301, published in https://www.finlex.fi/fi/laki/ajantasa/2004/20040301 (accessed 30 April 2023).

[31] H. Machińska, M. Kusy, P. Kazimirski (eds.), *Sytuacja cudzoziemców w ośrodkach strzeżonych w dobie kryzysu na granicy Polski i Białorusi Raport z wizytacji Krajowego Mechanizmu Prewencji Tortur* [Condition of foreigners in guarded centers during the period of crisis on the Polish-Belarusian border. Report on the visit of the National Mechanism for the Prevention of Torture], RPO, Warszawa: 2022, available at: https://tinyurl.com/42vwvp38 (accessed 30 April 2023).

[32] *Cf. ibidem*, p. 23.

[33] The Letter of Commander Odra Border Guard Unit, *supra* note 22, p. 3.

There are no specific legal regulations authorising a particular medical institution to perform examinations.[34] In practice, the request is directed to the nearest specialised medical centre.[35] Also, no information is collected on the competence of the physician(s) conducting the examinations.[36]

The representatives of the NMPT reported that in the case of some foreigners, there was no information about the examination conducted, even though their date of birth was marked as 1 January 2003, a date used by the Border Guard to mark persons whose declared date of birth indicated their minority, but who were determined to be adults. This means they were considered to be over 18 years of age, but the basis for such an evaluation is unknown.[37]

Importantly, in Poland there are no specific solutions determining how many examinations should be performed. In practice, one examination made by one expert is usually deemed sufficient. In comparison, some EU countries either use or combine multiple medical examinations.[38] In Austria, for example, a multifactorial examination technique is based on three individual medical examinations: physical, dental, and X-ray examinations.[39]

The Polish Aliens Act states that the results of such an examination should include information about the margin of error (Art. 397(4), last sentence). However, this requirement is not connected to any obligation to take said margin of error into account in favour of a foreigner.[40] In the provisions applicable to international protection, the element of the margin of error is, for unknown reasons, omitted by the legislator. Here, the element of ambiguity inscribed in age assessment is present in a different way. Specifically, Art. 32(5) AGP states that the applicant shall be considered a minor when it is impossible to obtain a clear result from a medical examination.

What deserves special attention is that the condition that reports of medical examinations should include information about the margin of error is included in the Statement of BGHC. Moreover, according to this document a foreigner is considered to be a person at the age defined by the lower limit of the estimated age error. In cases when medical examinations estimate the age to be over 18, and the

[34] In some countries there are dedicated centres: Utrecht Forensic Medical Service, X-ray National Forensic Institute in Netherlands; Medical Institute of the Ministry of Interior in Bulgaria; Estonian Forensic Science Institute; National Board of Forensic Medicine in Sweden.

[35] EMN, *supra* note 29, p. 24.

[36] Letter of the Commander-in-Chief of BG, KG-OI- VIII.0180.184.2022.BK, *supra* note 13, pp. 10-11.

[37] *Cf.* Machińska, *supra* note 31, pp. 24-25.

[38] These are Austria, Belgium and Luxembourg.

[39] Art. 2(1)(25) of the Asylum Act 2005.

[40] *See* para. 6.8. of the CoE Parliamentary Assembly, Resolution 2195 (2017). This provision calls on States to always apply the margin of error in favour of the person, such that the lowest age in the margin determined by the assessment is recorded as the person's age.

margin of error shows that such a person may be under 18, such a person is to be treated as a minor. These norms have protective value, and it may be postulated that they should be included in the context of the generally applicable law. This is all the more justified inasmuch as the visiting team of NMPT found only one description of an examination with an indication of the margin of error. In other cases, only laconic information appeared, for example: "The test result clearly indicates that the subject is over 18 years of age".[41] Due to the lack of complete data, it is difficult to assess whether the described situations revealed irregularities which occurred only occasionally, or whether they reflect to a constant practice of infringement of foreigners' rights.

Finally, it should be mentioned that refusal to undergo a medical examination means automatic recognition of the given person as an adult (Art. 397(5) AA, Art. 32(6) AGP).[42]

1.3. Procedural safeguards

In both acts, medical examinations are subject to the consent of the person concerned or their statutory representative (Art. 397(4) AA, Art. 32(2) AGP). The scope of the Aliens Act is limited to the mere statement of the need to express consent. Again, legislation concerning international protection offers more detailed obligations imposed on the State in this field. Prior to the medical examination, the Border Guard authority is obliged to provide information in a language understandable to the minor about the possibility of determining his or her age, the manner in which it will be carried out, the importance of this examination in the procedure for granting international protection, and the legal consequences of the minor's refusal (Art. 32(3)(1-4) AGP). According to both regulations, the refusal to undergo a medical examination results in the recognition of a given person as an adult (Art. 397(5) AA; Art. 32(6) AGP).

It must be stated that Polish law does not include, i.e. lacks, a number of procedural guarantees. There are no provisions related to the way of communicating the examination results. Most crucially, however, the legal form of recognizing a person as an adult or a minor is not determined. This is not clear as it is not mentioned in either act. The legislator regulated neither the legal form of the examination's result itself, nor the formal activities of the Border Guard confirming on this basis that a given person is of a certain age. As a consequence of this omission, there are no legal provisions offering remedies that enable the results of an age assessment to be

[41] *Cf.* Machińska, *supra* note 31, pp. 24-25.

[42] A similar approach to refusal is in place in Denmark, Hungary, Finland, Netherlands, Slovakia and Slovenia. In other countries refusal is not automatically connected with recognition of having majority age (*see* EASO, *supra* note 27, p. 12).

directly questioned.[43] It seems that the activities of the Border Guard officers in this regard should be classified as actions aimed at establishing the facts in both return proceedings and international proceedings. Thus, the possibility of questioning an age assessment should be sought, for example, by challenging the decision on granting international protection, or by questioning the legality of detention in return procedures.

2. INTERNATIONAL LAW AND EU LAW

2.1. Substantive standards

At the international level, the rules of age assessment are developed on the basis of three groups of legal provisions: general human rights treaties;[44] the Convention on the Rights of the Child (CRC);[45] and international refugee law standards.[46] In the EU law this issue is regulated directly in Art. 25(5) of the Directive on common procedures for granting and withdrawing international protection.[47] However, it should be noted that the scope of these EU solutions is limited to unaccompanied children and medical examination conditions.

An indispensable condition of the lawfulness of an age assessment is the existence of its legal basis as well as its legitimate purpose.[48] From the perspective of children's rights, both of these elements are defined by the overarching point of reference, that is, the best interests of the child.[49] An age assessment should not be used routinely and it is postulated that it be used as a measure of last resort.[50] Therefore, migration management is not a sufficient ground in and of itself for taking such actions.[51]

[43] For example in Italian Law the final decision about the age of the minor is adopted by the Juvenile Court and may be challenged in a judicial manner, see Art. 19bis(10) of the Legislative Decree No. 142 of 18 August 2015 implementing Directive No 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

[44] Arts. 7, 9, 17 of the Convention for the Protection of Human Rights and Fundamental Freedoms,; International Covenant on Civil and Political Rights (adopted on 16 December 1966, entered in force 23 March 1976), 999 UNTS 171 and 1057 UNTS 407.

[45] Convention on the Rights of the Child (signed on 20 November 1989, entered into force 2 September 1990), 1577 UNTS 3, Arts. 3, 8 and 12.

[46] UN High Commissioner for Refugees (UNHCR), *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*, February 1997.

[47] Directive 2013/32/EU of 26 June 2013 on common procedures for granting and withdrawing international protection (recast) [2013] OJ EU L 180/60.

[48] Markiewicz-Stanny, *supra* note 4, p. 291.

[49] Art. 3 CRC; EU Charter of Fundamental Rights and Freedoms Art. 24.2; Asylum Procedure Directive, Recital 33 and Art. 25(6); Reception Conditions Directive, Art. 23(1)(2); *Darboe and Camara v. Italy*, para. 139.

[50] Separated Children in Europe Programme, *SCEP Statement of Good Practice*, March 2010, 4th Revised Edition, available at: https://www.refworld.org/docid/415450694.html (accessed 30 April 2023), para. D5; Study of the Office of the United Nations High Commissioner for Human Rights on challenges and best practices in the implementation of the international framework for the protection of the rights of the child in the context of migration A/HRC/15/29, 5 July 2010, para. 44.

[51] *Cf.* D. Wenke, *Age assessment: Council of Europe member states' policies, procedures and practices respectful of children's rights in the context of migration*, CoE, Strasbourg: 2017, p. 13.

An immanent component of the criterion of legality is the certainty of law and its content being in compliance with the rule of law. This means, *inter alia*, that the law should be accessible, which is understood primarily as the publication of legal provisions in the relevant official journals.[52] This criterion seems to be not met in Poland, as some elements of age assessment are based on internal regulations that have not been published or otherwise made available.[53]

There is a consensus that the legitimacy of age assessment is conditioned on the existence of a genuine doubt concerning the age of an individual. What is important to note, however, is that the level of such doubt is described in various ways. Some legal instruments – Art. 25(5) of the Directive for example – refer to the existence of age doubt in general terms,[54] while others indicate that the doubt should be reasonable[55] or substantial,[56] and finally some indicate that the doubt should be serious.[57]

Another aspect of the best interest principle is the requirement that the whole process of assessing a person's chronological age should be based on the presumption that the person is a child.[58] Consequently, these procedures are expected to be child-sensitive,[59] multidisciplinary[60] and include interviews of children in a language the child understands.[61]

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[52] ECtHR, *Al - Agha v. Romania* (App. No. 40933/02), 12 January 2010, para. 89.

[53] *See mutatis mutandis,* ECtHR, *Nolan and K. v. Russia* (App. No. 2512/04), 12 February 2009*,* paras. 98-99.

[54] Art. 25 (5) of Directive 2013/32; UNHCR, *Guidelines on International Protection no 8: Child Asylum Claims under Articles 1(A) 2 and 1(F) of the 1951 Convention and/or 1967 Protocol relating to the Status of Refugees*, 22 December 2009, para. 75; CoE Parliamentary Assembly, *Resolution 2136 (2016) on harmonising the protection of unaccompanied minors in Europe*, 13 October 2016, para. 8.2.5.

[55] *See* CoE Parliamentary Assembly, *Resolution 1810 (2011)*, para. 5.10; CoE Committee of Ministers Recommendation 2022, paras. 26-27.

[56] *See* EASO, *supra* note 3, p. 17.

[57] CtRC, *Concluding Observation on the combined fifth and sixth periodic reports of Spain*, CRC/C/ESP/CO/5-6, para. 45(5)(b); UNICEF, *Age Assessment: A Technical Note*, January 2013, standard 2, p. 12, available at: https://www.refworld.org/docid/5130659f2.html (accessed 22 June 2023); CoE Parliamentary Assembly, Resolution 2449 (2022), *Protection and alternative care for unaccompanied and separated migrant and refugee children*, 22 June 2022, para. 6.6; CoE Parliamentary Assembly, Resolution 2195 (2017), para. 6.1.

[58] *See* the presumption of minority in: Art. 10(3) of the Europe Convention on Action against Trafficking in Human Beings (2005); Art.11(2) of the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, 25 October 2007 (Lanzarote Convention); ECtHR, *Darboe and Camara v. Italy*, para. 139; CtRC, General Comment No 6, (2005), *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, CRC/GC/2005/6, 1 September 2005, para. 31 (i); *see also* CoE Parliamentary Assembly Resolutions: 1810(2011), para. 5.10 and 2195 (2017), para. 6.10; CtRC, *N.B.F. v. Spain*, CRC/C/79/D/11/2017, 27 September 2018, para. 12.3; additionally according to Art. 25(5) of the Asylum Procedure Directive, if the results of a medical age assessment are inconclusive, Member States shall assume that the applicant is a minor.

[59] CoE Parliamentary Assembly, Resolution 2195 (2017), para. 6.

[60] CoE Parliamentary Assembly, Resolution 2136 (2016), para. 8.2.5.

[61] CtRC, *A.L. v. Spain*, para. 12.4.

The basic principle should be to avoid arbitrariness. Age assessment should fulfil the standards of science, security, and fairness.[62] The key issue in this regard is to understand the disadvantages and problems associated with a particular method. The inaccuracies and the wide margin of error of dental examinations and X-rays are now quite widely discussed in the literature.[63] In fact, they are serious enough for the skeletal bone and dental age assessment to be described as "an unethical and unprofessional use of science and medicine for procedures that are both inconclusive".[64] Some health care associations have published recommendations that their members not participate in medical age assessment procedures.[65] Others suggest their involvement only on the condition that individuals' chronological age be assessed in a holistic and multifaceted way.[66] Therefore, in Council of Europe soft law standards it is recommended that age assessment should *not be based exclusively on medical assessment*.[67] In cases against Spain, the Committee on the Rights of the Child (CtRC) unequivocally stated that States should refrain from using bone and dental examinations, which may be inaccurate, contain wide margins of error, and can also be traumatic and lead to unnecessary legal procedures.[68]

[62] Human Rights Committee, Concluding observations on the sixth periodic report of Spain, 24 August 2015, CCPR/C/ESP/CO/6, para. 23.

[63] K. Alshramani, F. Messina, A. Offiah, *Is the Greulich and Pyle atlas applicable to all ethnicities? A systematic review and meta-analysis*, 29(6) European Radiology 2910 (2019), p. 2920; F.M. Mansourvar et al., *The applicability of the Greulich and Pyle atlas to assess skeletal age for four ethnic groups*, 22 Journal of Forensic and Legal Medicine 26 (2014); R.T. Loder et al., *Applicability of the Greulich and Pyle skeletal age standards to black and white children of today*, 147(12) American Journal of Diseases of Children 1329 (1993); T. Smith, L. Brownlee, *supra* note 3, p. 20. For other studies discussing the problem of a medical examination's reliability, see Markiewicz-Stanny, *supra* note 4, pp. 298-299; P. Sauer, A. Nicholson, D. Neubauer, *Age determination in asylum seekers: physicians should not be implicated,* 175 European Journal of Pediatrics 299 (2016), pp. 300-301; The position of the French Ombudsman intervening in the case *A.L. v. Spain*, CRC/C/81/D/16/2017, 31 May 2019, para. 8.4.

[64] R. Mishori, *Case Report The Use of Age Assessment in the Context of Child Migration: Imprecise, Inaccurate, Inconclusive and Endangers Children's Rights*, 6 Children 85 (2019), p. 87.

[65] The French Academy of Medicine, the French National Ethic Committee and the Dutch National Society of Physicians, European Academy of Pediatrics – Sauer, Nicholson & Neubauer, *supra* note 63, p. 302; *see also* the position of the Austrian physicians – AIDA, *Country Report: Austria*, 2016, available at: https://www.asyl.at/files/33/05-aida_at_2016update1.pdf (accessed 30 April 2023), p. 51.

[66] *E.g.* Royal College of Pediatrics and Child Health, *Refugee and asylum seeking children and young people - guidance for paediatricians*, published online: https://www.rcpch.ac.uk/resources/refugee-asylum-seeking-children-young-people-guidance-paediatricians#age-assessment (accessed 30 April 2023).

[67] Resolution 1810 (2011), para. 5.10.

[68] CtRC, *A. L. v. Spain*, para. 12.4; *see also M.A.B. v. Spain*, CRC/C/83/D/24/2017, 7 February 2020, para. 10.6; Concluding observations on the fifth periodic report of France, CRC/C/FRA/CO/5, 23 February 2016, para. 73(b); 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*, CMW/C/GC/4-CRC/C/GC/23, 16 November 2017, para. 4. *See also* the findings of the European Committee on Social Rights, *European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) v. France*, Complaint No. 114/2015, Decision of 15 June 2018, para. 113.

At the same time non-medical methods, used exclusively or in isolation, are not perfect as well.[69] Scientific research has proven that professional evaluation is often determined by an ethnocentric perception of childhood when it comes to appearance, body language, and narratives of life experiences. The same applies to other than chronological ways of dating birth.[70] For these reasons, the most appropriate approach seems to be to combine non-medical and medical examinations and make a comprehensive assessment of the child's physical and psychological development.[71]

The method of conducting the examination itself should be consistent with the rules of objectivity, independence, and professionalism.[72] As Sauer, Nicholson and Neubauer rightly observed, medical personnel participating in age assessment become part of the legal procedures that affect the fate of asylum seekers. This raises the problem of loyalty and potential violation of the Hippocratic oath. One of the other interesting questions posed by these authors is the unclear scope of physicians' responsibility for the unjustified return of persons mistakenly recognized as adults.[73]

The margin of error inherent in medical examinations should always be taken into account,[74] but it is worth noting that this element is not present in Art. 25(5) of Directive 2013/32. This provision includes another type of safeguard, namely if the results of age assessment do not provide a clear answer as to whether the person is a minor, the benefit of the doubt should apply.[75] The CtRC is of the view that a person should not be declared to be an adult exclusively on the basis of his or her refusal to undergo medical tests.[76]

There is general consensus that States should resort to the least invasive methods available.[77] Therefore, it is preferable that non-medical means be used first, and

[69] *See e.g.* S.J. Cemlyn, M. Nye, *Asylum seeker young people: Social work value conflict in negotiating age assessment in the UK*, 55(5) International Social Work 675 (2012).

[70] Sørsveen, Ursin, *supra* note 24, pp. 207-208; Cemlyn, Nye, *supra* note 69, p. 688.

[71] *See* CtRC, *A.L. v. Spain*, para. 12.4; General comment No. 6 (2005) stating that it should not be based solely on the physical appearance of the individual, but also on his or her degree of psychological maturity.

[72] It is recommended that professionals assessing age should be familiar with ethnic, cultural and developmental characteristics – *see* CoE Parliamentary Assembly, Resolution 2136 (2016), para. 8.2.5.

[73] *See* Sauer, Nicholson, Neubauer, *supra* note 63, p. 301.

[74] *See* ECtHR, *Darboe and Camara v. Italy*, para. 140. *Cf.* CoE Parliamentary Assembly, Resolution 1810(2011), *Unaccompanied Children in Europe: Issues of arrival, stay and return*, 15 April 2011, para. 5.10.

[75] CoE Parliamentary Assembly, Recommendation 1985 (2011): *Undocumented migrant children in an irregular situation: a real cause of concern*, 7 October 2011, para. 9.4.7; CoE Parliamentary Assembly, Resolution 1996 (2014): *Migrant children: what rights at 18?*, 23 May 2014, para. 10.2.

[76] CtRC, *M.A.B. v. Spain*, para. 13.4.

[77] *See* Art. 25(5) of the Asylum Procedure Directive; CoE Committee of Ministers, Recommendation 2022, The competent authorities should act proportionately and use the least invasive methods available, considering that children should not be exposed to unnecessary radiation or to any medical method which entails risks or detrimental effects to their physical and mental health (para. 37).

X-rays and all other invasive medical procedures be treated as measures of last resort.[78] It should be noted, however, that the same method can be perceived differently in individual cases due to migrants' individual histories.[79] An appropriate standard of conduct in this regard should be established by application the child's fundamental right to be heard (Art. 12 CRC). Another aspect of this right, in the age assessment context, is the States' responsibility not only to interview the child about his or her age, but also take into account the content of his or her statement(s).[80]

All measures used should respect the dignity and intimacy of the child. In view of the above, assessment methods that involve the person subject to the examination getting fully naked, as well as those that assess the development of genitals and other intimate parts of the body, should be considered unacceptable.[81] In the case *R.Y.S. v. Spain* the CtRC stated that these types of examinations should be precluded for the purpose of age assessment, as they constitute an infringement of children's dignity, privacy and bodily integrity protected under Art. 16 CRC.[82]

Still another important issue is the treatment of documents presented by foreigners to authorities. The mere occurrence of doubts as to the authenticity of birth certificates or passports cannot automatically lead to the replacement of documents with medical examinations.[83] Date of birth is an element of a child's identity, which should be preserved by States Parties according to Art. 8 CRC. The rejection as evidence of the documents provided by the interested person, without first clearing up any doubts with the consular authorities, was assessed as contrary to Arts. 3 and 12 CRC.[84] According to the CtRC, assigning a person's date of birth that is inconsistent with submitted documents requires either a prior formal assessment of these data by the competent authority, or their verification with the authorities of the country of origin.[85] In the case *S.E.M.A. v. France* the CtRC stated that States

[78] CoE Parliamentary Assembly, Resolution 2195 (2017), para. 6.5.

[79] *Cf.* EASO, *supra* note 3, p. 31; Markiewicz-Stanny, *supra* note 4, p. 297.

[80] CtRC, *A.L. v. Spain*, para. 12.4.

[81] This method is ruled out at the EU level – *see* EASO, supra note 3, pp. 34, 43, and 55. The practice of gynecological evaluation of sexual maturity can be qualified as an inhuman and degrading treatment; *see also* Parliamentary Assembly Resolution 2195 (2017), para. 6.7, which calls on Member States to prohibit, in all situations, the use of physical sexual maturity examinations for the purpose of determining the age of unaccompanied and separated migrant children; see Resolution 2136 (2016), para. 8.2.5.

[82] CtRC, *R.Y.S. v. Spain*, CRC/C/86/D/76/2019, 4 February 2021, para. 8.8.

[83] For example a problem observed in Spain concerned the use of intrusive age-assessment methods, even in cases where the identification documents appeared to be authentic; particularly in the autonomous cities of Ceuta and Melilla, where they were carried out despite several Supreme Court decisions concerning the illegality of the practice of Spanish authorities - *see* CtRC, CRC/C/ESP/CO/5-6, para. 44; *see also* more recent facts of state in Maltese case *A.M. v. The Principal Immigration Officer*, 5 November 2021, available at: https://tinyurl.com/2p8dhxmc (accessed 30 April 2023).

[84] CtRC, *M.T. v. Spain,* para. 13.6.

[85] CtRC, *A.L. v. Spain,* para. 12.10.

Parties may not act contrary to facts established based on an original and official identity document issued by a sovereign country without having officially challenged its validity.[86] A similar approach can be seen in the most recent Recommendation of the COE Committee of Ministers: "[I]dentity documents should be considered to be determinative of age, unless considered invalid in line with procedures set out in law for verification of a person's identity documents".[87]

2.2. Procedural rights

An incorrect and inadequate assessment of age has a profound impact on the enjoyment of rights arising from the status of a child.[88] Proper classification of persons as younger or older than 18 years of age is intended, among other things, to protect children from being housed with unrelated adults.[89] At the same time, an incorrect recognition of a child as an adult results in their exclusion from the special protection and advantages connected with the status of a minor.

In the case of *Darboe and Camara v. Italy*, the applicant's age was established only by a wrist X-ray based on the Greulich-Pyle method.[90] The medical report stated that his bone age corresponded to that of an eighteen-year-old male, providing no information about the procedure's margin of error. Following the medical examination, the applicant was considered as an adult and placed in an adult reception centre for more than four months. Importantly the applicant was not informed about the type of the age assessment procedure and its possible consequences. In these circumstances, the ECtHR refrained from examining whether such a way of assessing the applicant's age complied with human rights standards, and from establishing the existence or validity of his consent to undergo a medical examination.[91]

Instead, the Strasbourg Court decided to review this case from a different angle – namely from the general principle of the special protection of unaccompanied migrating children. The Court treated this principle as an element of the State's positive obligations under Art. 8 of the European Convention on Human Rights

[86] CtRC, *S.E.M.A v. France*, CRC/C/92/D/130/2020, 25 January 2023, para. 8.5.

[87] 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, 14 December 2022, para. 28; *See also* CtRC, *M.T. v. Spain*, CRC/C/82/D/17/2017, 18 September 2019, para. 13.4.; *A.L. v. Spain*, para. 12.4; *M.A.B. v. Spain*, para. 10.4. CtRC, Joint general comment No. 4 and No. 23, *op.cit.,* para. 4.

[88] ECtHR, *Darboe and Camara v. Italy*, paras. 124-125.

[89] *See e.g.* allegations of applicants in case of *Abdullahi Elmi and Aweys Abubakar v. Malta*, paras. 86, 111.

[90] Due to the lack of contact with applicant Moussa Camara, the case was examined only in relation to Ouisinou Darboe (ECtHR, *Darboe and Camara v. Italy*, paras. 5-7).

[91] ECtHR, *Darboe and Camara v. Italy*, para.146. These elements were examined in cases *Mahamed Jama v. Malta*, paras.147,153 and *Abdullahi Elmi and Aweys Abubakar v. Malta*, para. 145. In both cases delays in the age assessment procedure were found to be in violation of Art. 5(1) ECHR.

(ECHR).[92] In this regard they consisted of two elements: representation; and the provision of adequate information during the age-assessment process. The ECtHR assessed that, at the time of the facts of the case, under both domestic and EU law[93] the State was obliged to appoint a legal representative or a guardian;[94] to provide access to a lawyer; and to ensure informed participation in the age-assessment procedure of the person whose age was in doubt.[95] It must be noted that the position of the ECtHR in this regard is fully reflected in the jurisprudence of the CtRC. A foreigner should be informed about the existence of the age assessment procedures and the possibilities of conducting them. This is necessary to obtain the free and informed consent of the person involved.[96] The appointment of a guardian or a representative to defend the interests of the individual before or during the age assessment process is an essential guarantee of respect for the best interests of children as well as the right to be heard. Failure to do so implies a violation of Arts. 3 and 12 CRC, while failure to provide a timely representation can result in a substantial injustice.[97]

As the CtRC stated, it is therefore imperative that there be a due process to estimate a person's age, as well as an opportunity to challenge its outcome through an appeals process.[98] In this context, it should be mentioned that in the *Darboe and Camara v. Italy* case the following elements were found to be an infringement of the applicant's rights: the applicant was not provided with the medical report on his age, which also included no information about the margin of error;[99] and there was no possibility to appeal because no judicial decision or administrative measure concluding that the applicant was of adult age was issued in his case.[100]

It is worth noting that the European Asylum Support Office (EASO) recommends that an age assessment decision shall be made separately from and before a

[92] ECtHR, *Darboe and Camara v. Italy*, paras.129, 141.

[93] It should be noted that European Asylum Support Offices prepared practical guidelines which provide that reasons shall be given by the authorities to an applicant against whom a decision refuting minority status has been given, as well as information as to how that decision can be challenged (EASO, *supra* note 3, p. 37).

[94] *See also* CoE Parliamentary Assembly Resolution 2195 (2017), para. 6.3.

[95] ECtHR, *Darboe and Camara v. Italy,* para. 155.

[96] *See* Art. 25 (5)(b) of the Asylum Procedure Directive; CoE Parliamentary Assembly Resolution 2195 (2017), where para. 6.2. includes the standard to "provide unaccompanied migrant children with reliable information about age-assessment procedures in a language that they understand, so that they can fully understand the different stages of the process they are undergoing and its consequences".

[97] *See* CtRC, *A.L. v. Spain*, para. 12.8; *M.T. v. Spain*, para. 13.5.

[98] CtRC, *A.L. v. Spain*, para. 12.3; CoE Parliamentary Assembly, Resolution 2195 (2017), para. 6.4. ("ensure that an unaccompanied migrant child or his or her representative can challenge the age-assessment decision through appropriate administrative or judicial appeal channels").

[99] ECtHR, *Darboe and Camara v. Italy*, para. 147.

[100] *Ibidem*, para. 148. It should be noted that the ECtHR considered the failure to disclose the results of the age determination procedure to the applicant and the lack of a court decision in his case to be a violation of Art. 13 ECHR (para. 186).

decision on international protection. If this requirement is not fulfilled, the possibility of challenging the outcome of age assessment shall be provided either through judicial review or as part of the consideration of the overall protection claim.

CONCLUSIONS

Before juxtaposing Polish law and practice with international standards, a few remarks must first be made from a national perspective. The first objection concerns the legality of some of the rules contained in the Statement of BGHC. In the Polish legal framework, all norms concerning rights and obligations of individuals can only be regulated in generally applicable law. Their catalogue is closed and specified in the provisions of the Polish Constitution. Meanwhile, there are legal solutions in the Statement of BGHC which contain key elements concerning the legal situation of foreigners. This applies, for example, to the obligation to take into account the lower age limit indicated in medical examination results. This solution is so fundamental for the final findings of age assessment that it should doubtless be included not just in an internal document, but in both the AA and AGP instead.

The second reservation concerns the fact that the Statement of BGHC is not published. It is available only by submitting a public information request. It can therefore reasonably be concluded that foreigners and their lawyers have no access to the rules deciding about the status of an individual, and there is no judicial supervision of their application. The content of the Statement of BGHC itself contains a whole range of solutions beneficial to foreigners, which however they cannot refer to because they do not know about their existence and content.

The third problem is a lack of consistency in the Polish legal framework. While the Statement of BGHC establishes uniform rules for age assessment, they are regulated differently in return procedures and international protection procedures. Thus Border Guard officers are bound by a document which is inconsistent with higher-level normative acts. Overall, all of these elements indicate that there is a violation here of Art. 2,[101] and Art. 7 of the Constitution of the Republic of Poland.[102]

The currently established international standards for age assessment contain both substantive and procedural elements. These procedures should be applicable only to the foreigners whose age is in doubt, while such persons should be treated as children until it is established that they are adults. The principle of choosing the least invasive method is also of fundamental importance. In addition, due to

[101] Art. 2 of Constitution of the Republic of Poland: "The Republic of Poland shall be a democratic state ruled by law and implementing the principles of social justice".

[102] Art. 7 provides that "The organs of public authority shall function on the basis of, and within the limits of, the law".

the inaccuracy and large margin of error of the medical examination methods and psychological observations as well, there is growing support for a holistic standard of assessment, performed in a multifaceted manner based on the principle of gradation of the methods used. At the same time, the procedural aspect means that the foreigner should be represented by a lawyer or guardian, and that the State is obliged to provide relevant information to them during the age assessment procedure. The person concerned must be provided with a medical certificate or other document recognizing their age, as well as have the opportunity to challenge the result through the appeal process.

Both the Polish law and the practice of the Border Guard treat age assessment as related only to medical examinations, usually based on a single assessment that is made by a single professional. For this reason, it is reasonable to say that the holistic and multifaceted approach recommended at the international level is absent from the Polish national framework. It can also be concluded that the Polish law in its wording has a limited scope when it comes to the procedural dimension of the rights of individuals. Particularly noteworthy is the lack of specification of the legal form of the examination result, as well as the lack of an obligation to present it to the foreigner. The age of the person concerned is determined in a legally unspecified form, and there is no possibility for the foreigner to directly question the age assessment results. Given how important and fundamental the consequences of an age assessment are, this situation should be changed as soon as possible.