

*“MEDICAL EXAMINATIONS TO DETERMINE THE AGE  
OF  
UNACCOMPANIED MINORS”*

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# Key words

'Unaccompanied minor refugees'

Identification process for doubtful minority declaration

Issue of administrative consideration

Medical examinations acc. Art. 25/5 ProcD

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# Definition 1

## Minority and consequences

“‘Minor’ means a third-country national or a stateless person **below the age of** [completed] **18 years**”

Art. 2/l ProcedureD 2013/32/EU

Art. 2/k QualificationD 2011/95/EU

Unaccompanied minors are **vulnerable persons** in need of **special reception and procedural guarantees**

Art. 20/3 QualificationD 2011/95/EU

Art. 29/7b ProcedureD 2013/32/EU

Art. 22 ReceptionD 2013/33/EU

Alleging unacc. minority = not just a statement, but a claim to benefits, which has to be approved

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## Definition 2

*„Identification of applicants in need of special guarantees“*

*“Member States should  
endeavour to **identify** applicants  
in need of special procedural  
guarantees before a first instance  
decision is taken”*

Regard 29 ProcedureD 2013/32/EU

*„... In the course of the asylum  
procedure, Member States **identify** a  
person as an unaccompanied minor*

*...”*

Art. 25/6 ProcedureD 2013/32/EU

**Beneficiaries have to be identified**

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# Legal background

EO resides within a tight legal framework

- Procedural law allows authorities/courts to make use of the usual **means of evidence, part of which is expert opinion**, if a specific issue demands such knowledge.
- Hence expert opinion is „*guided*“ by administrative considerations concerning the **issue** and **evaluation of evidence** and the **required probability**.
- Being just a piece of evidence expert opinion has to follow in an almost ritualized manner certain **obligations**, as there are completeness, comprehensibility, conclusiveness plus the observation of its ‚state of the art‘.

Expert law

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# EU-Regulations since 1997

on ‚medico-legal‘ age assessment of questionable UMA

„Medical exams“	„Radiological age assessment“
Art. 4/3b ‚UMA-Resolution‘ 97/C 221/03 ( <b>26.06.1997</b> )	Artt. 2, 4/2c, 5/4 Radiation protection Directive 97/43/Euratom ( <b>30.06.1997</b> )
↓	↓
Art. 17/5 ProcedureD 2005/85/EC ( <b>01.12.2005</b> )	
↓	↓
Art. 25/5f ProcedureD 2013/32/EU ( <b>26.06.2013</b> )	Annex V Medical exposure Directive 2013/59/Euratom ( <b>05.12.2013</b> )

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Asylum related age assessment since almost 20 years

## Art. 25/5 Procedure Directive 2013

### Sentence 1 – „*Medical examinations*“

#### “*Member States*

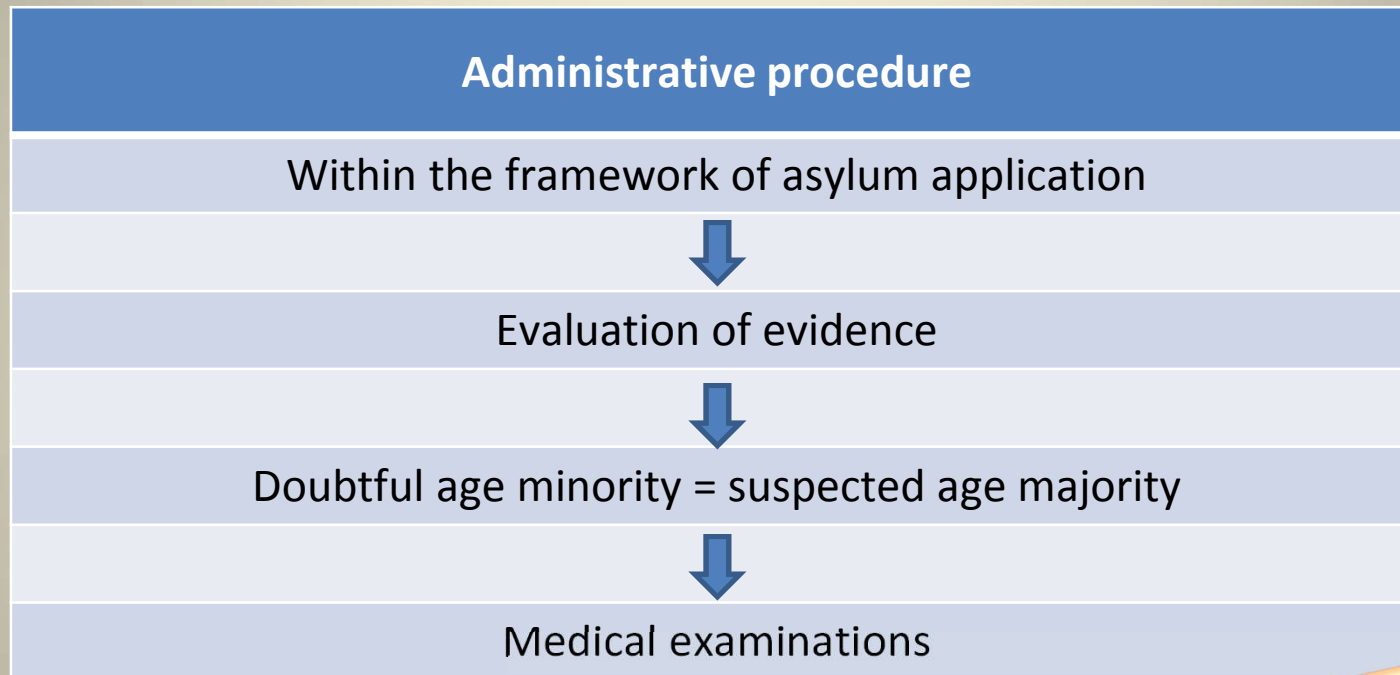
- may use **medical examinations** to determine **the** [minor] **age of** [alleged] **unaccompanied minors**
- **within the framework** of the examination **of an application for international protection** where, following general statements or other relevant indications,
- Member States have **doubts** concerning the applicant’s age”.

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Issue of evidence = doubtful age minority allegation

# Art. 25/5 Procedure Directive 2013

Sentence 1 – ,if condition, then‘ - link



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Medical expert report as ,ultima ratio‘ evidence



## Art. 25/5 Procedure Directive 2013

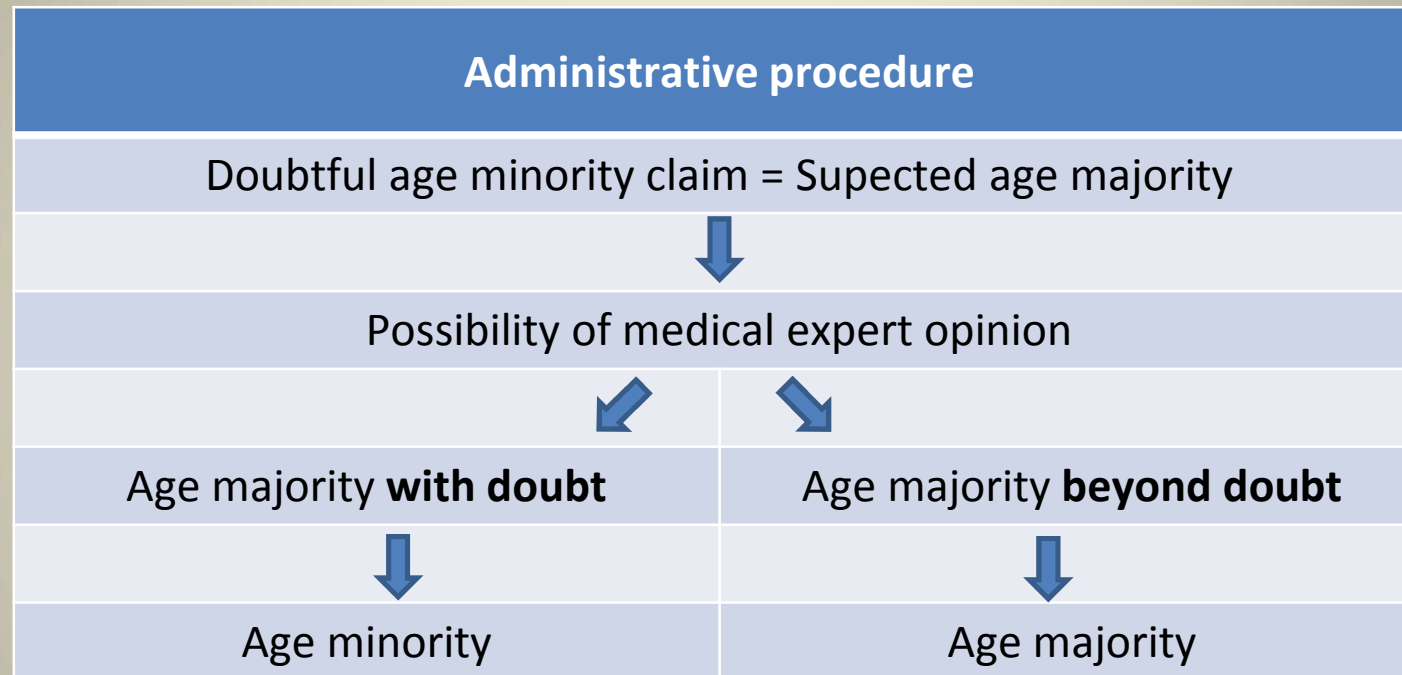
### Sentence 2 – The ‘principle of doubt’

- "If, **thereafter** [i.e. after medical exams],
- Member States are still **in doubt** concerning the applicant's age,
- they **shall assume that the applicant is a minor**".

2<sup>nd</sup> notion: Probability

# Art. 25/5 Procedure Directive 2013

## Sentence 2 - Algorithmus



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„Principle of doubt“ asks for exclusion of doubts towards age majority

## Art. 25/5 Procedure Directive 2013

Sentence 3 – ‚State of the art‘

“Any medical examination shall be

- performed with **full respect for the individual’s dignity,**
- **the least invasive examination** and
- carried out by **qualified medical professionals**
- allowing, **to the extent possible,** for a **reliable result”**.

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‚State of the art‘ of forensic age assessment

# Art. 25/5 Procedure Directive 2013

## Sentence 3 – ‚State of the art‘

Terms		Refers to/regarding
Full respect for the individual's dignity	➔	‚Informed consent‘
The least invasive examination	➔	Methodological ‚state of the art‘
Qualified medical professionals	➔	<b>Medical expert opinion</b>
<b>To the extent possible</b>	➔	Medical ‚state of the art‘
<b>A reliable result</b>	➔	Issue of admin. consideration

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# Forensic age diagnostics

„State of the art“

3 somatic age indicators

Combined evidence gathering including

- **Anamnesis/physical examination,**
- **Dental OPT,**
- Left **forearm/hand X-ray,** if ossification of forearm/hand skeleton is completed,
- Thinslice **collar bone CT-scan**

Such standard allows age assessment **at its full** only in individuals >16 completed years of life

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

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AGFAD-Standard only for late adolescents

# Forensic age diagnostics

## The „*extent possible*“ of a testimonial

- An age report always delivers a **highest possible ,minimum age`** of the findings corresponding with a ,fictional` **latest possible birthday**.
- Such ,minimum age` excludes an age **before** that with the highest possible probability.
- If that minimum age locates **before** the majority-cut off, then age minority cannot be excluded (doubts persist).
- If that minimum age locates **after** the majority-cut off, then age minority is excluded beyond doubt.

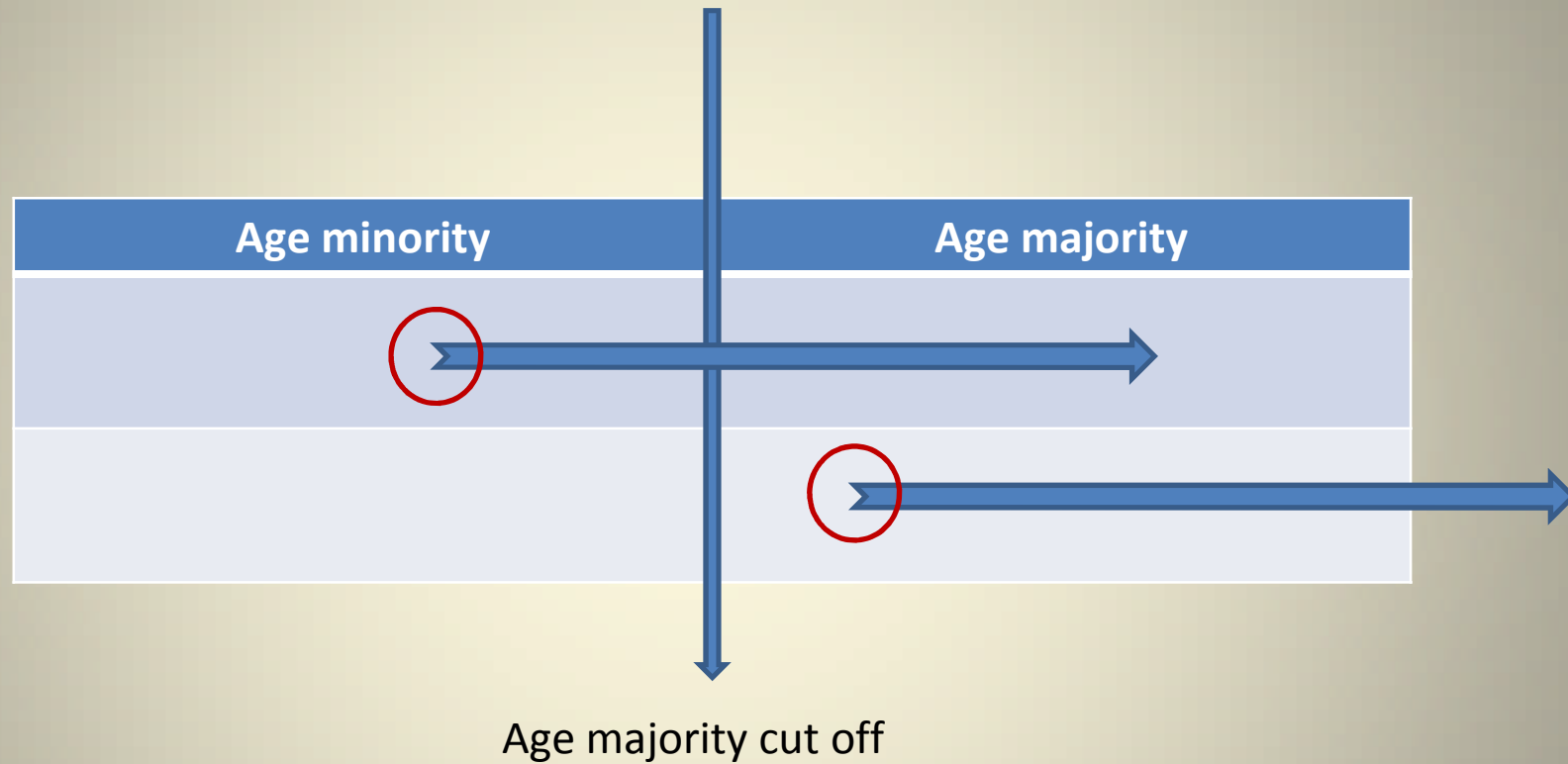
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**„Minimum age concept“**

# Forensic age diagnostics

The location of a minimum age (O)



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„Minimum age concept“

# Example 1

„Minimum age concept“

Highest possible minimum age out of 3 values

	a	claim	Hand	teeth	clay
	15				15,6
	16		16,48		
<b>Minimum age</b>	17	17,75		17	
	18				
	19				
<b>Maximum age</b>	20				20
	21				
	22				
	23				



Age range of the findings = 17 – 20a



## Example 2

„Minimum age concept“

Highest possible minimum age out of 3 values

	a	claim	Hand	teeth	clav
	15				
	16		16,1	16	
	17	<b>17</b>			
	18				
Individual minimum age	19				<b>19</b>
	20				
	21				
	22				
	23				

Age range of the findings = 19 – 25a

## What is a „*reliable result*“ of medical examinations?

To produce a „*reliable result*“ an expert opinion has to

- Fulfill the legal **requirements for expert reports**,
- Follow the **scientific ‚state of the art‘** being part of expert knowledge especially concerning methodology and
- Be capable of **answering the question** at stake.

## 2 Questions at stake

Do the **already established doubts** concerning an age minority allegation find **confirmation by medical expert report** excluding age minority with the highest possible probability?, i.e. is the medically found minimum age beyond the majority cut off?

What is the **highest possible minimum age?**

Case handling officer

Expert report

## A „reliable result“

### Legal definition according to AGFAD-guidelines 1

Since only a lege artis performed age report allows such answering, the term ‚reliable age diagnostics‘ has already been defined in **various court decisions**:

*„A reliable age assessment presupposes that the results of a physical examination, possibly also X-rays of the hand and clavicles plus a dental examination are brought together by way of a summary evaluation into a final age diagnosis“*

OLG Karlsruhe, VG Bremen, VGH Bayern, OLG München, OVG Berlin-Brandenburg, OLG Hamm

AGFAD-standard represents the scientific ‚state of the art‘

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## A „reliable result“

### Legal definition according to AGFAD-guidelines 2

By the same token a lege artis performed age diagnostics has been implemented into the **Austrian Asylum Act** since 2010.

*„Following the recommendations of the interdisciplinary ‚Study Group on Forensic Age Diagnostics‘ [AGFAD] the newly introduced age diagnostic, is defined according to the scientific state of the art as an examination model considering physical development , tooth development and bone age ...“*

Comments to the Austrian Asylum Act 2010

AGFAD-standard represents the scientific ‚state of the art‘

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## Conclusions

- Forensic age assessment resides in a **cross-over of** (international and national) **legal requirements and medical possibilities.**
- In case of undocumented asylum-related minority-allegations a **procedure according to legal principles** is demanded.
- Any forensic age report has to follow the **acknowledged methodical ,state of the art`.**