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**HUMAN DIGNITY AND AGE TESTING IN THE FINNISH  
ASYLUM PROCEDURE**

Master's thesis

Programme Law, specialisation European Union and international law

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Tallinn 2018

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The document length is 19 839 words from the introduction to the end of summary.

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## ABBREVIATIONS

AGFAD	<i>Arbeitsgemeinschaft für Forensische Altersdiagnostik</i>
AIDA	The Asylum Information Database
CEAS	Common European Asylum System
CFR	The Charter of Fundamental Rights of the European Union
CRC	The Convention of the Rights of the Child
EASO	the Common European Asylum Office
ECHR	The European Convention on Human Rights
EEA	European Economic Area
EFTA	European Free Trade Association
ESC	The European Social Charter
FIS	the Finnish Immigration Service
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
MRI	magnetic resonance imaging
NGO	non-governmental organizations
STUK	The Finnish Radiation and Nuclear Safety Authority
TEU	The treaty on the European Union
THL	The National Institute for Health and Welfare
UDHR	The United Nations' Universal Declaration of Human Rights
UNHCR	The United Nations Refugee Agency

## **ABSTRACT**

The aim of this thesis is to explore the age estimation process for asylum seekers proceeded in Finland. The study is done from the point of view of human dignity. In 2015 after the so-called migration crisis the process of asylum applications congested and the use of age examinations became more common. According to international, as well as Finnish legislation these proceedings should be done respecting of human dignity. The hypothesis of the thesis is that the age estimation in the asylum procedure does not take the human dignity of minors into consideration.

The use of the term human dignity in this context is discussed and the rights of the minors are presented. The age assessment practice in Finland as well as the Finnish Aliens Act is analyzed and the consequences to a minor as well as to the state are discussed. The on-going legal changes are studied and finally the Finnish practice is compared to Danish, Norwegian, Swedish, Austrian and German procedures.

As the conclusion of the study the thesis shows that there is room for improvement with the methods currently used to estimate the age of the asylum seeker. There are parts where Finland has taken human dignity well into consideration, but the full respect of human dignity is a distant principle. The results are inaccurate, the process violates several rights of the examinee and the currently used methods affects the health of the examinee.

Keywords: human dignity, asylum seekers, rights of the minors, age assessment

## INTRODUCTION

The so-called European migration crisis started in 2015, when the conflict in Syria, violence in Afghanistan and Iraq, abuses in Eritrea and poverty in Kosovo escalated. More than a million migrants and refugees came in to Europe during that year. Germany received the most of the asylum applications whereas in proportion to the population of the state Hungary received the most. Finland along got 591 asylum applications per 100 000 local population and was the fifth of the whole Europe.<sup>1</sup> The largest increase of the first time applications from 2014 to 2015 was in Finland. The increase was more than nine times as much as the previous year.<sup>2</sup> The increased amount of asylum seekers brought along many related issues, such as sudden need for several new reception centers for adults and separate ones for minors who had arrived by themselves. All of the centers were in an urgent need for workers who could understand the needs and rights of the asylum seekers.<sup>3</sup>

When a minor launches an asylum application the first action that is taken is the age assessment. Based on the results of this age assessment the asylum seekers are located to different centers in Finland and different rights are guaranteed to the adult seekers compared to the minors. The applications of the minors are treated differently from the adults. If reliable information of the age cannot be obtained the age may be tested with a forensic age estimation process. Before 2015 the age estimations were done only on rare occasions<sup>4</sup>, and the rarity of the procedure is probably the reason why we do not have a common age testing system in the European Union at the moment. This does not guarantee equal treatment of the asylum seekers inside the EU.

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<sup>1</sup> *Migrant crisis: Migration to Europe explained in seven charts* (2016). BBC. Accessible: [bbc.com/news/world-europe-34131911](http://bbc.com/news/world-europe-34131911), 31 January 2018.

<sup>2</sup> Metsäniitty, M., Varkkola, O., Waltimo-Siren, J., Ranta, H. (2016). Forensic age assessment of asylum seekers in Finland. - *International Journal of Legal Medicine*, Vol 131 Issue 1, 243-250.

<sup>3</sup> *Pihlajalinna avaa pikavauhdilla kolme vastaanottokeskusta* (2015). YLE. Accessible: [yle.fi/uutiset/3-8353917](http://yle.fi/uutiset/3-8353917), 31 January 2018.

<sup>4</sup> Visnapuu, V. (2017). Oikeuslääketieteelliset tutkimukset turvapaikanhakijoiden iän selvittämiseksi Suomessa. – *Suomen Hammaslääkärilehti*. Vol 24, Issue 13, 46-48.

The process of age estimation has become more common inside the EU as well as in Finland. 149<sup>5</sup> age estimations were done in Finland in 2015 and in 2016 the amount was 642. During 2011-2015, 56-79% of the tested people who claimed to be under 18 years old were estimated to have reached the age of majority.<sup>6</sup> This thesis claims that an age estimation process might be a stressful experience for a vulnerable asylum seeker minor and will discuss the reasons of it. The questions of human dignity should be the priority during the estimation.

Currently the harmonization of the asylum procedures among EU member states is an on-going process. The European Commission published a communication<sup>7</sup> about the protection of children in migration on 12 April 2017. The Finnish government and some non-governmental organizations (NGO) have prepared their answer to the communication. The commentaries brought along the fact that the procedure of how the age of an asylum seeker is estimated in Finland is old fashioned and does not meet the fundamental rights of the asylum seekers<sup>8</sup>.

Several international as well as Finnish national legislations state that every one of us should be treated with human dignity. A person should feel respected and appreciated, the physical and the mental integrity should be respected and no one should be sentenced to any kind of torture, death or overwhelmingly humiliating situation. It is a fundamental right that should be respected without any doubt. Despite this, human dignity is still a subjective term. The definition of human dignity is discussed in the chapter 1.1. This thesis focuses on the aspects of human dignity and age estimation process of the asylum seekers in Finland. In order to evaluate does this legal right occur in reality the definition of how people should be treated with the respect of their human dignity is presented in the chapter 1.1. The relevant international case law of human dignity is presented to serve better understanding of human dignity.

The aim of this thesis is to find out how the testing done in Finland meets with the human rights, especially from the perspective of human dignity? The research is descriptive and it analyses the current legal norms in Finland and compares it to the procedures done internationally. It finds an

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<sup>5</sup> Metsäniitty *et al.*, *supra nota* 2.

<sup>6</sup> Visnapuu *et al.*, *supra nota* 4.

<sup>7</sup> Communication (EC) from the Commission to the European Parliament and Council COM(2017) 211 final The protection of children in migration SWD(2017) 129 final. 12 April 2017.

<sup>8</sup> Valiokunnan lausunto StVL102017 vp E 37/2017 vp, Eduskunta. (2017). Committee's opinion. Accessible: [https://www.eduskunta.fi/FI/vaski/Lausunto/Sivut/StVL\\_10+2017.aspx](https://www.eduskunta.fi/FI/vaski/Lausunto/Sivut/StVL_10+2017.aspx), 31 January 2018.

answer to the question, does the age testing in asylum procedure take human dignity into consideration?

The methodology of the research is also doctrinal; it describes the current law and systematizes the legal norms. The thesis establishes the facts of the age estimation process in Finland and clarifies the contents of the legal norms of human dignity.<sup>9</sup> There are currently no cases disputed in the Supreme Administrative Court of Finland about the age estimation process. Does this mean that there are no issues with the age estimation process or have the vulnerable minor asylum seekers just lost their hope for the justice?

The hypothesis of the study is that age estimation in the asylum procedure does not take human dignity of the minors into consideration. The thesis has five chapters. The first one discusses international law and presents the relevant legislation and international agreements. The chapter defines the term human dignity and represents the rights of the minors. The second chapter goes more deeply into the Finnish legislation and practice and analyses current legislation and describes the asylum procedure in Finland. First it shortly describes the asylum process in Finland and discusses the unaccompanied minors. Subsequently it describes and analyses the actual age estimation process. At the end of the chapter the Finnish Aliens Act is analyzed.

Chapter three concerns about the specific issues of human dignity and age estimation and it deals with the consequences to the minors as well as the state. Chapter 3.3 presents current changes done in the EU asylum procedure and compares it to the changes done to the Finnish legislation. The thesis analyses how human dignity has been taken into consideration during these changes. The following chapter discusses the different practices done inside the EU and compares them to the Finnish standards. One of the reasons why the asylum seekers claim to be minors might be that the Nordic countries are seen as “child-friendly states<sup>10</sup>”. This is discussed more at the beginning of the fourth chapter. The final chapter concludes the study.

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<sup>9</sup> Aarnio, A. (2011). What Is the Doctrinal Study of Law?. - *Essays on the Doctrinal Study of Law*. (Ed.) Aulis, A., Berlin: Springer, 19-24.

<sup>10</sup> Wahlström Smith, Å. (2018). ‘Hiding in Plain Sight’: Daily Strategies and Fear Management among Undocumented Refugee Children in Sweden. – *Journal of Refugee Studies*, Fex 046.



# **1. INTERNATIONAL LAW**

The first chapter of this research consists of the relevant international legislation as well as the international agreements concerning the forensic age estimation process. To make the study more understandable and easier to follow, in the first instance the term human dignity is described. The rights of the minors are presented to make it clear that also children deserve human rights and the best interest of the child should be always considered.

The topics of this research are regulated on an international level. Human dignity is something that one can find for example in The United Nations' Universal Declaration of Human Rights<sup>11</sup> (UDHR) and minors' rights are regulated by the Convention of the Rights of the Child<sup>12</sup> (CRC). Currently there is no unified age testing procedure among EU countries, but this does not mean that there are no international regulations concerning it. When it comes to the asylum procedures, there are various international laws, regulations and recommendations, on both international and EU level.

## **1.1. Human dignity**

According to international as well as the Finnish legislation, the age estimation process should be conducted with the respect of the examinees human dignity. But what does the term human dignity actually mean? The analyses might have religious, philosophical or legal definitions. For example the Catechism of the Catholic Church presents us the model that human dignity comes from the idea that man is an image of God. It states that "man is 'able to know and love his creator'. He is 'the only creature on earth that God has willed for its own sake', and he alone is called to share, by knowledge and love, in God's own life. It was for this end that he was created, and this is the fundamental reason for his dignity ... Being in the image of God the human individual possesses the dignity of a person, who is not just something, but someone. He is

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<sup>11</sup> Universal Declaration of Human Rights, GA Res 217A (III), UN Doc A/810, at 71, 10 December 1948.

<sup>12</sup> Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), 2 September 1990.

capable of self-knowledge, of self-possession and of freely giving himself and entering into communion with other persons”.<sup>13</sup>

Whereas on philosophical definition there are as many versions as there are philosophers, in general all of these definitions can be categorized in three groups: the ontological value of human, the moral and laudable virtues and the honorable social position<sup>14</sup>. As an example philosopher Immanuel Kant has argued that “everything has either price or dignity”<sup>15</sup>. If it has price, then it can be replaced with something of equal value, but if it is something special and unique, something that cannot be replaced, then it has dignity. There are various studies about the definition of human dignity by Kant. For instance Oliver Sensen has discussed why Kant says that “all human beings should be respected, but only a morally good will has absolute value” or why does he say that “human beings have dignity because they should be respected ... not that they should be respected because they have dignity?”<sup>16</sup>

The religious and philosophical definitions have different kinds of approaches. The former states that every human being, and only a human, is an image of God. Because of the ability to love and having his own sake, a human has dignity. Whereas the latter states that besides the cogitation of existence, human dignity is something that can be earned with virtues and social position. Then again the general idea is the same; if one is not something, but someone, someone special who cannot be replaced, then he or she has dignity. This brings us to the same conclusion, every human being has dignity.

If every human being has dignity, what does it mean that everyone should be treated with human dignity? The author of this thesis sees that in summary it can be defined that no matter what the situation is, a person should have respect and appreciation no matter who he or she is, from where he or she comes from or what he or she believes in. Human dignity is a subjective issue, only a person him- or herself can determine whether he or she feels respected and valued. This is why a legal definition is needed in order to give international frames for it.

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<sup>13</sup> The Catechism of the Catholic Church. Part One: The Profession of Faith, Section 2: The Profession of the Christian Faith, Chap. 1, Art. 1, paras. 6, 356–357.

<sup>14</sup> Bienkowska, D., Kozłowski, R. (2016). Finding dignity. The philosophical, social and legal contexts of crisis in human dignity. - *Journal of Teaching and Education*, Vol 5, No. 1, 425-436.

<sup>15</sup> *Kant: Groundwork of the Metaphysics of Morals*. (Ed.) Gregor, M. (1998). New York: Cambridge. p.42.

<sup>16</sup> Sensen, O. (2011). *Kant on Human Dignity*. Berlin: De Gruyter. p.1.

This research focuses on the legal definitions. Human dignity is something that several states have in their constitution. The constitution of Finland<sup>17</sup> starts with the statement "... The constitution shall guarantee the inviolability of human dignity and the freedom and rights of the individual and promote justice in society."<sup>18</sup> There is no actual definition for human dignity, but it can be deduced that the sections of that act secure that human dignity exists in Finland. The particular word is mentioned three times after the former: "No one shall be sentenced to death, tortured or otherwise treated in a manner violating human dignity"<sup>19</sup>, "A foreigner shall not be deported, extradited or returned to another country, if in consequence he or she is in danger of a death sentence, torture or other treatment violating human dignity."<sup>20</sup> and "Those who cannot obtain the means necessary for a life of dignity have the right to receive indispensable subsistence and care."<sup>21</sup>

On international level one of the most important references for human dignity is the Universal Declaration of Human Rights. The UDHR was created after the Second World War in 1948. It was the first document in the world which collected together the rights and freedoms of all human beings equally.<sup>22</sup> The idea was to declare the common standards of achievement of freedom, equality and dignity. The first article states that "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."<sup>23</sup> This means that human dignity is something that we are born with and our task here as humankind is to ensure that it is secured for all of us at all times. Every one of us should be treated equally, also during the age estimation process.

Originally the UDHR was not intended to have a legal force, but it has become so valuable that its provisions have gained binding characters as a customary law.<sup>24</sup> In addition to customary law, there are two covenants to give an official legal force to the UDHR. These are the International

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<sup>17</sup> Suomen perustuslaki 11.6.1999/731.

<sup>18</sup> *Ibid.*

<sup>19</sup> *Ibid.*, art 7.

<sup>20</sup> *Ibid.*, art 9.

<sup>21</sup> *Ibid.*, art 19.

<sup>22</sup> Flowers, N. (1998). *Human Rights Here and Now: Celebrating the Universal declaration of Human Rights*. New York: Amnesty International.

<sup>23</sup> UDHR, art 1.

<sup>24</sup> *Introduction to the convention on the rights of the child: Definition of a key terms*. UNICEF. Accessible: <https://www.unicef.org/french/crc/files/Definitions.pdf>, 13 March 2018.

Covenant on Civil and Political Rights<sup>25</sup> (ICCPR) and the International Covenant on Economic, Social and Cultural Rights<sup>26</sup> (ICESCR). Covenants are legally binding to all the states that have signed them. Finland signed both of them on 11 October 1967 and they were ratified on 19 August 1975<sup>27</sup>. Both of the preamble of the covenants start with the same statement that includes *inter alia* the part “Recognizing that these rights derive from the inherent dignity of the human person”. ICCPR defines that a person whose liberty has been deprived should be treated with human dignity<sup>28</sup> and when ICESCR clarifies the right to an education it states “education shall be directed to the full development of the human personality and the sense of its dignity”. These topics on international legislations are relevant to the asylum process. If the age of an asylum seeker is not clarified, the seeker might be situated to a detention center, where his liberty is deprived, whereas if the result of an age examination states that the asylum seeker is an adult, he or she will lose the right to an education.

One of the most relevant international legal instruments for asylum process and the age estimations in Finland is the Convention for the Protection of Human Rights and Fundamental Freedoms<sup>29</sup>. The Council of Europe drafted it in 1950 and it is more commonly called the European Convention on Human Rights (ECHR). At the beginning, the acceptance of the convention was optional, but during the years the situations have changed and the value of human right has increased. Nowadays all members of the Council of Europe are parties of the convention and new members are expected to ratify it as soon as possible.<sup>30</sup> Because of the evolution of Europe, there have been several changes and protocols for the ECHR, but human dignity was added to it only in 2002<sup>31</sup>. Despite the former absence of human dignity in the

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<sup>25</sup> United Nations No. 14668 International Covenant on Civil and Political Rights United Nations, 16 December 1966 Treaty Series, vol. 999, p. 171. 23 March 1976.

<sup>26</sup> United Nations No. 14531 International Covenant on Economic, Social and Cultural Rights, 3 January 1976, United Nations, Treaty Series, vol. 993, p. 3. 3 January 1976.

<sup>27</sup> *International Covenant on Economic, Social and Cultural Rights*. (2018). United Nations Treaty Collection. Accessible: [treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=IV-3&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4&lang=en), 29 January 2018.; *International Covenant on Civil and Political Rights*. (2018). United Nations Treaty Collection. Accessible: [treaties.un.org/PAGES/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-4&chapter=4&clang=en](https://treaties.un.org/PAGES/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&clang=en), 29 January 2018.

<sup>28</sup> ICCPR, art 10.

<sup>29</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, ETS 5, 4 November 1950.

<sup>30</sup> Rainey, B., Wicks, E., Ovey, C. (2017). *Jacobs, White & Ovey: The European Convention on Human Rights*. 7th ed. Oxford: Oxford University Press.

<sup>31</sup> Buyse, A. (2016). *The Role of Human Dignity in ECHR Case-Law*. Accessible: <http://echrblog.blogspot.fi/2016/10/the-role-of-human-dignity-in-echr-case.html>, 12 March 2018.

ECHR, the discussion about asylum seekers and human dignity has often referred to it. The most relevant part is section 3, prohibition of torture and “inhuman or degrading treatment”<sup>32</sup>.

Other relevant legal documents related to human dignity and asylum age assessments are the European Social Charter<sup>33</sup> (ESC) and the European Union level the Charter of Fundamental Rights of the European Union<sup>34</sup> (CFR). The revised ESC<sup>35</sup>, also known as the Social Constitution of Europe, is a collection of international standards on everyday social rights, such as human dignity and an action for monitoring the implementation of them<sup>36</sup>. The CFR is a document that has collected together the different rights of every individual within the EU covering dignity, freedoms, equality, solidarity, citizen’s rights and justice.<sup>37</sup> The first chapter of the Charter discusses dignity and it starts with the statement “Human dignity is inviolable. It must be respected and protected.”<sup>38</sup> Then, in the same chapter, follow two rights, the Right to life<sup>39</sup> and the Right to the integrity of the person<sup>40</sup> as well as two prohibitions, the Prohibition of torture and inhumane or degrading treatment or punishment<sup>41</sup> and the Prohibition of slavery and forced labor.<sup>42</sup> The rest of the rights and prohibitions are placed in one of the five other chapters. Based on this, Catherine Dupré<sup>43</sup> has argued that human dignity is a constitutional concept in the EU.

Out of all of the international legislation, the Charter of Fundamental Rights of the European Union serves us the most explanatory answer for the question of how a person could be treated with human dignity. CFR has its own chapter about dignity, which clarifies the rights, and prohibitions on how human dignity can be respected. People should be treated in a way that their rights to life and integrity are respected. This means that no one should be executed or sent to a state or a place where death is most likely the fate of the person or a persons body should not be

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<sup>32</sup> ECHR, art 3, p 1.

<sup>33</sup> The treaty of the Council of Europe ETS No.035 18 October 1961 European Social Charter, 26 February 1965.

<sup>34</sup> Charter of Fundamental Rights of the European Union 2012/C 326/02, OJ C 326, 26.10.2012, p. 391–407. 26 October 2012.

<sup>35</sup> The treaty of the Council of Europe ETS No.163 3 May 1996 European Social Charter (Revised), 1 July 1999.

<sup>36</sup> *The European Social Charter*. Council of Europe. Accessible: <https://www.coe.int/en/web/turin-european-social-charter>, 18 January 2018.

<sup>37</sup> *EU Charter of Fundamental Rights*. European Commission. Accessible: [http://ec.europa.eu/justice/fundamental-rights/charter/index\\_en.htm](http://ec.europa.eu/justice/fundamental-rights/charter/index_en.htm), 19 January 2018.

<sup>38</sup> CFR, art 1.

<sup>39</sup> *Ibid.*, art 2.

<sup>40</sup> *Ibid.*, art 3.

<sup>41</sup> *Ibid.*, art 4.

<sup>42</sup> *Ibid.*, art 5.

<sup>43</sup> Dupré, C. (2015). *The Age of Dignity*. Oxford: Hart Publishing. p. 82,84,110-111.

touched without ones consent. All kind of torture, inhumane or degrading treatment and punishment as well as slavery are prohibited when dealing with human beings. This is not a comprehensive answer, but it presents us a satisfying perspective to the issue.

Susan Baer has presented her idea of a triangle of rights, equality and liberty<sup>44</sup>. The author of this research agrees that these in all truth are the elements of human dignity. Based on this and the above-mentioned information, the following definition of Roberto Andorno is justifiable. ““Dignity” is defined as “the state of being worthy of honor or respect” (Oxford Encyclopedic English Dictionary). When this concept is associated with the adjective human, it is used to denote that all human beings possess equal and inherent worth and therefore ought to be accorded the highest respect and care, regardless of age, sex, socioeconomic status, health condition, ethnic origin, political ideas, or religion.”<sup>45</sup> There is an inherent dignity, it is the same for all and everyone will have it no matter who they are and what they have done. In addition there is also a moral dignity, which is something that you can earn with your actions.<sup>46</sup>

The discussion of case law presents us a better understanding of how human dignity can be respected during the age estimation process. There are no relevant international or Finnish cases concerning about age estimation, but according to Antonio Buyse<sup>47</sup> the usage of human dignity in court cases is differentiated and can be divided into three groups; “the specific rights to which it is mostly applied”, “the way it differentiates according to the specific facts and context of a case” and “the role it plays in the legal argument”.

As an example he has used the Jalloh case<sup>48</sup> for the first dimension. Mr Jalloh was arrested for the possession of hard drugs, and against his will a tube was put into his nose forcibly. The event made him vomit the evidence he had swallowed. The court stated that the incident had violated his human dignity. His rights for physical and mental integrity were disregarded with a

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<sup>44</sup> Baer, S. (2009). Dignity, Liberty, Equality: A Fundamental Rights Triangle of Constitutionalism. – *University of Toronto Law Journal*, Vol 59, Issue 2, 417-468.

<sup>45</sup> Andorno, R. (2014). Human Dignity and Human Rights. - *Handbook of Global Bioethics*. (Ed.) ten Have, H., Gordijn, B. Berlin: Springer, 45-57.

<sup>46</sup> *Ibid.*

<sup>47</sup> Buyse, *supra nota* 31.

<sup>48</sup> Judgement on merits and just satisfaction delivered by Grant Chamber, *Jalloh v. Germany* (just satisfaction) [GC], no. 54810/00, §§ 3, 6, 6-1, 8, 8-1, and 41, ECHR 2006-IX

humiliating and threatening manner. The Selmouni<sup>49</sup> case illustrates the second dimension where human dignity is seen differently depending on the context. The case clarified that the violation of the right not to be tortured is also evaluated on the basis of gender, age and for example the health or physical state of the person being chastened for. The last dimension presents human dignity as a tool, it can be used by both parties of the case. An applicant can claim that his or her human dignity is violated, whereas a state can protect the human dignity of different kinds of groups in society. The discussions about human dignity can help to find a balance between the rights and other interests or it can support new norms or international legislation.<sup>50</sup>

The former president of the ECtHR, Jean Paul Costa, has argued that human dignity *per se* has a pedagogical role. When a discussion on human dignity is presented in a court decision, it gives an idea of which issues are current. One of the most relevant cases of asylum procedures and human dignity is the M.S.S. case<sup>51</sup>. The court stated that Greece had violated articles 3<sup>52</sup> and 13<sup>53</sup> of the ECHR because the applicant was sent to detention and the living conditions in the detention were not incompatible with human dignity. In addition the applicant did not have any access to effective remedy and there was a risk that he would be returned to Afghanistan without examination of his asylum application. Belgium was also seen violating the same articles because it was sending the applicant to Greece based on the Dublin Convention. Following the convention, Belgium was exposing the applicant for the risks mentioned above. Greece was violating human dignity because of inhumane living conditions and violations to the right of an asylum, whereas Belgium was violating the human dignity by sending him there.

As a conclusion, the UDHR is generally agreed to be the foundation of international human rights law<sup>54</sup> and human dignity is seen as the foundation of human rights<sup>55</sup>. International law, as well as regional and national legislations, protects the standards of inherent human dignity, namely the rights and the prohibitions of how to reach the inherent worth. On the other hand, the

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<sup>49</sup> Judgment on merits and just satisfaction delivered by Grand Chamber, *Selmouni v. France* (just satisfaction) [GC], no. 25803/94, §§ 3, 6, 6-1, 35, 35-1 and 41, ECHR 1999-V

<sup>50</sup> Buyse, *supra nota* 31.

<sup>51</sup> Judgment on merits and just satisfaction delivered by Grand Chamber *M.S.S v. Belgium and Greece* (just satisfaction) [GC], no. 30696/09, ECHR 2011

<sup>52</sup> Prohibition of torture

<sup>53</sup> Right to an effective remedy

<sup>54</sup> *The Foundation of International Human Rights Law*. United Nations. Accessible:

[www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html](http://www.un.org/en/sections/universal-declaration/foundation-international-human-rights-law/index.html) , 23 January 2018.

<sup>55</sup> Moka-Mubel, W. (2017). *Reconciling Law and Morality in Human Rights Discourse: Beyond the Habermasian Account of Human Rights*. Berlin: Springer. p. 89.

concept of moral dignity, the equalization together with who we can respect and honor, is still something whereof the opinions differ between different states and individuals. To treat age estimation examinees with the respect of human dignity, the understanding of the goal of human rights is needed, ensuring that each individual can lead dignified lives with equality and right to non-discrimination<sup>56</sup>. The harmonized age assessment procedures among EU member states are needed. When it comes to age estimation, the violation of the examinees physical and mental integrity should be prevented. The background of an asylum seeker should be paid respect to and the consent to any examinations should be obtained. Considering the fact that the authority is dealing with minors, the respect of human dignity should be appreciated even more

## 1.2. Rights of the minors

When discussing if human dignity meets age testing in Finland, we need to be aware of the rights of the minors. Before the result of the estimation is concluded, according to international law, the examinee should be treated as a minor<sup>57</sup>. The UDHR as well as The ESC and The CFR emphasize the rights of the children. There are also international documents about the rights of the minors. In 1989 the United Nations adopted the Convention of the Rights of the Child<sup>58</sup>. The convention is one of the most ratified conventions in the world, it is ratified by 196<sup>59</sup> countries. The convention has 54 articles and it can be divided into key principles, specific rights and ways in which they are monitored. All these principles are relevant to the age determination process. The convention presents civil, political, economic, social and cultural rights of the child. Children are seen as full human beings, with the same right to human dignity.<sup>60</sup>

Article 8 of the CRC guarantees the right of an identity to a child. “States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and

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<sup>56</sup>Guild, E., Grant, S., Groenendijk, C.A. (2017). *Human Rights of Migrants in the 21st Century*. London: Routledge.

<sup>57</sup> Committee on the rights of the child, General comment No. 6 (2005), treatment of unaccompanied and separated children outside the country of origin, 1 September 2005.

<sup>58</sup> Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), 2 September 1990.

<sup>59</sup> *Convention on the Rights of the Child*. (2018) United Nations Treaty Collection. Accessible: [treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en), 26 January 2018.

<sup>60</sup> Muscroft, S. (1999). *Children's Rights: Reality or Rhetoric? - The UN Convention on the Rights of the Child - The First Ten Years*. London: Save the Children. p 15-16.



family relations as recognized by law without unlawful interference.”<sup>61</sup> Age is not mentioned here, but in general the age is seen as a part of one’s identity<sup>62</sup>. The second paragraph clarifies that “Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.”<sup>63</sup> This is creating a legal right to the age estimations.

All European Union states have ratified the CRC. Because of that, there is no need for separate charter on EU level, but for example the treaty on the European Union (TEU) states that one of the Union’s obligations is to promote the protection of the rights of the child.<sup>64</sup> The CFR and the ESC concern children’s right as well and in addition there are several directives and conventions such as the Young Workers Directive<sup>65</sup>, Directive on combating the sexual abuse and sexual exploitation of children and child pornography<sup>66</sup>, Directive on preventing and combating trafficking in human beings and protecting its victims<sup>67</sup> and Convention on Action against Trafficking in Human Beings<sup>68</sup>. None of these legal instruments address the situation of when the minority is disputed.

Before going deeper into the Finnish practice of the age estimations, the most relevant international norms concerning the age testing are shortly discussed. A council resolution on unaccompanied minors<sup>69</sup> discusses in detail the minor asylum seekers who have travelled by themselves. If an asylum seeker claims to be an unaccompanied minor, he or she should present evidence. In case there is no evidence or there is serious doubt, an age assessment may be

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<sup>61</sup> art 8, p 1.

<sup>62</sup> Nieminen, L. (2006). *Lapsuudesta vanhuuteen perus- ja ihmisoikeuksien merkitys eri ikävaiheissa*. Helsinki: Edita. p 257.

<sup>63</sup> art 8, p 2.

<sup>64</sup> Council of Europe, European Union Agency for Fundamental Rights. (2018). *Handbook on European law relating to the rights of the child*. Luxembourg: Publications Office of the European Union. p.3

<sup>65</sup> Council Directive (EC) No 94/33/EC of 22 June 1994 on the protection of young people at work, OJ L 216, 20.8.1994, p. 12–20 22 June 1994.

<sup>66</sup> Directive (EU) No 2011/92 of the European Parliament and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography, OJ L 335, 17.12.2011, p. 1–14 13 December 2011.

<sup>67</sup> Directive (EU) 2011/36 of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ L 101, 15.4.2011, p. 1–11, 5 April 2011.

<sup>68</sup> The treaty of the Council of Europe CETS No.198 16 May 2005 Convention on Action against Trafficking in Human Beings, 1 February 2008.

<sup>69</sup> Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries, OJ C 221, 19.7.1997, p. 23–27. 26 June 1997.

performed. Qualified medical personnel should carry it out objectively and consent is needed.<sup>70</sup> UN Committee on the rights of a child has given a general comment on the treatment of unaccompanied and separated children outside their country of origin<sup>71</sup>. It clarifies that the identification of an unaccompanied child includes the age estimation. The estimation should take into consideration physical appearance and maturity and it should respect human dignity.

Seeking an asylum is a fundamental right<sup>72</sup> and the United Nations has published the Refugee Convention<sup>73</sup> securing the implementation of the right. The convention is also known as the Geneva Convention and it is substantively relevant to the age estimation process. It presents the definition of a refugee and with the later published protocol<sup>74</sup> of the convention it has provided the most extensive collection of rights of the refugees on an international level. A refugee is “someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion”<sup>75</sup>. The convention presents principles of non-discrimination, non-penalization and non-refoulement. The first one designates that it should be applied without discrimination of among others “sex, age, disability [or] sexuality”<sup>76</sup>, the second one explains that if a refugee has entered to the country or is staying illegally, they should not be penalized for that and the third one considers the returning of a refugee “against his or her will ... to a territory where he or she fears threats to freedom of life”<sup>77</sup>. Since age estimations are generally done with x-ray, the Medical Exposure Directive<sup>78</sup> is also relevant. It determines the general principles of radiation protection<sup>79</sup> and justification of medical exposures<sup>80</sup>.

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<sup>70</sup> *Ibid*, art 4, p 3.

<sup>71</sup> Committee on the rights of the child, General comment No. 6 (2005), treatment of unaccompanied and separated children outside the country of origin, 1 September 2005.

<sup>72</sup> UDHR, art 14 (1).

<sup>73</sup> Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137. 22 April 1954.

<sup>74</sup> Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267. 4 October 1967.

<sup>75</sup> *Convention and Protocol relating to the Status of Refugees*. (2010). The UN Refugee Agency. Accessible: [www.unhcr.org/3b66c2aa10](http://www.unhcr.org/3b66c2aa10) 30 January 2018. Introductory note

<sup>76</sup> *Ibid*.

<sup>77</sup> *Ibid*.

<sup>78</sup> Council Directive (EURATOM) 2013/59 of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom, OJ L 13, 17.1.2014, p. 1–73, 5 December 2013.

<sup>79</sup> art 5.

<sup>80</sup> art 55.

The first international age estimation analyzes were done in Germany in 1999 and based on them the Study Group on Forensic Age Diagnostic (AGFAD, *Arbeitsgemeinschaft für Forensische Altersdiagnostik*) created international recommendations for age estimations.<sup>81</sup> The recommendation states that there are various methods for the age estimations, but when considering the ethics and medical legal aspects, the number of suitable methods decreases. It presents four currently acceptable methods; physical examination, x-ray of the left hand, dental examination with x-ray and, if skeletal development of the hand is completed, the x-ray of the clavicles. These methods should be used together to reach more accurate results. The AGFAD discusses the reference studies, expert reports and quality assurance. It claims that the examinations should be justified by a court order and the examinee must be informed of the purpose and the type of the examination. A specialist should conduct the examination. The AGFAD reminds that the minimization of radiation doses and the national legislation on ionizing must be focused In the Finnish examination practice the strict ionization legislation has been taken into account, but courts do not order individual examinations, it will be done at the request of the Finnish Immigration Service (FIS). The first and fourth presented methods are not used in Finland. This will be discussed more on the next chapter.

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<sup>81</sup> Schmeling, A., Dettmeyer, R., Rudolf, E., Vieth, V., Geserick G. (2016). Forensic Age Estimation: Methods, Certainty, and the Law. –*Deutsches Ärzteblatt International*, Vol 113, Issue 4, 44-50.

## 2. FINNISH LAW AND PRACTISE

This chapter will discuss the Finnish legislation and practice considering the asylum age assessment. At the beginning it shortly describes how the overall process of asylum is handled in Finland. After that the age estimating process is analyzed. This part will find out how human dignity is taken into consideration in the current practice. Finally, at the end of the chapter the Finnish Aliens Act is analyzed from the point of view of the age estimation and human dignity.

As it has been mentioned before, Finland is bound to several international as well as regional legislations that are related to the age estimating process. There is also national legislation that regulates among others human dignity and asylum procedures. Finland was one of the first countries to add human dignity on their constitution in 1919<sup>82</sup>. Dignity has been recognized in Finland almost for one hundred years now, but do the nationals and especially the people coming to the country actually meet their dignity?

Immigration to Finland has not been an issue in the past, it was not until 1990s when the annual number of immigrants in Finland exceeded the number of emigrants<sup>83</sup>. The slow awakening of the immigration policy, joining the EU and the other international treaties has changed the Finnish asylum law constantly. The current Aliens Act<sup>84</sup> is from 2004 and it has had several changes during the times. The latest change is from the on-going year<sup>85</sup> and most likely more changes are coming soon.

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<sup>82</sup> McCrudden, C., (2008). Human Dignity and Judicial Interpretation of Human Rights. –European Journal of International Law, Vol 19 Issue 4, 655-724.

<sup>83</sup> Railo, E., (2012). Finland: The Slow Awakening of Immigration Policy, - *Opening the Door? Immigration and Integration in the European union*. (Ed.) Novotny, V. Berlin: Springer, 423-447. p.423.

<sup>84</sup> Ulkomaalaislaki 30.4.2004/301.

<sup>85</sup> Laki ulkomaalaislain muuttamisesta 30.1.2018/121.

## 2.1. The asylum procedure and unaccompanied minors

The procedure of the asylum starts with the asylum application. In Finland one can ask for an asylum at the state border or as soon as possible from the police in Finland. The application can also be presented orally and the authoritative has to take the application into consideration even if the applicant does not mention the actual word asylum. Because of the protection of the non-refoulement, every single application has to be considered and every time somebody comes to the border without any travel documents, the border authority has to find out if the person is aiming for asylum.<sup>86</sup> The author of this thesis thinks that this part of the process takes human dignity well into consideration. The person in need of help is taken seriously even if there is no common language or she or he cannot choose his or her words right. No one is refused at the border before the investigation of the case. The same goes also for the minors.

As soon as the application is presented, the applicant will become an asylum seeker and has a legal permit to stay in the country during the asylum process. If the applicant cannot credibly prove his or her identity, the applicant is sent to a detention center.<sup>87</sup> Finland has two detention units<sup>88</sup> and the operation of them as well as who can be detained is strictly regulated by the Act on the Treatment of the Detained Foreigners and the Detention Units<sup>89</sup>. It is an important matter that the detention units have their own act since the right for freedom and human dignity is violated when the asylum seeker is captured to the center. An unaccompanied minor asylum seeker cannot be placed to a detention center before the decision of an expulsion has become enforceable<sup>90</sup>.

The attempt to identify the true identity of the asylum seeker is the phase when the age estimation might be needed. In case the identity is clear, the asylum seeker is located to a reception center. In some cases, the seeker can also stay with their family or have a private accommodation<sup>91</sup>, but these options are not possible for unaccompanied minors. The FIS organizes an interview for the asylum as soon as possible. At first the itinerary is clarified and the stated identity and nationality is verified for example by language tests. If the person has applied

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<sup>86</sup> Juvonen, A-M. (2012). *Maahanmuuton juridiikkaa: Käytännön käsikirja*. Helsinki: Edita. p.76.

<sup>87</sup> Laihia, M-L., Siirto, U. (2016). Turvapaikkahakijoiden vastaanotto –toteutuvatko ihmisoikeudet?, - Pakolaisuudesta kotiin. (Toim.) Gothoni, R., Siirto, U. Helsinki: Gaudeamus Oy, 113-136.

<sup>88</sup> *Detention*. Finnish Immigration Service. Accessible: <http://migri.fi/en/detention>, 27 February 2018.

<sup>89</sup> Laki säilöön otettujen ulkomaalaisten kohtelusta ja säilöönottoyksiköstä 15.2.2002/116.

<sup>90</sup> Ulkomaalaislaki, art 122, p 3.

<sup>91</sup> Laki kansainvälistä suojelua hakevan vantaanotosta 17.6.2011/746. act 8.

for asylum in another EU member state before, according to Dublin III Regulation<sup>92</sup> the seeker will be returned to that particular country. In case of unaccompanied minors, this procedure is disputed. If the seeker is a first-time applicant he or she has the opportunity to tell with his or her own words, why he or she is seeking for an asylum, what has actually happened and why he or she does not feel safe in the country of origin. The idea is to find out if the seeker, according to Geneva definition<sup>93</sup>, is a refugee.<sup>94</sup> The interviewer will ask clarifying questions and among others clarifies how the seeker feels about the possible removal out of the country and the decision on refusal of entry<sup>95</sup>.

The question of human dignity comes along when the actual fear and the veracity of the statements of the seeker are questioned. The information gained during the interview is an important source for the final decision. Human dignity during the whole process is secured with the Act on the Integration of Immigrants and Reception of Asylum seekers<sup>96</sup>. It clarifies that the seekers has the right to accommodation, social and healthcare services, reception allowance, spending money and interpretation as well as work and study activities.<sup>97</sup> If the seeker receives a positive decision he or she becomes a refugee. The livelihood and wellbeing of the accepted asylum seeker is ensured for example by a municipal place, which offers an apartment, integration services, health care and school place as well as a day care for the children.<sup>98</sup> If the seeker is not accepted as a refugee, but the returning of the seeker is against human dignity, the applicant may get a subsidiary protection or a residence permit on other grounds<sup>99</sup>. In case of a negative decision the seeker has a right to appeal against the decision to the administrative court or the right to apply for assisted voluntary return. The seeker has 30 days to leave the country voluntarily, after that the police will remove him or her.<sup>100</sup> In 2015 and 2016 about 30% of

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<sup>92</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31–59. 26 June 2013.

<sup>93</sup> art 1.

<sup>94</sup> Laihia, Siirto, *supra nota* 88.

<sup>95</sup> Kuosma, T. (2016). *Turvapaikka ja pakolaisasema: Kasainvälisen suojelun periaatteet*. Kemi: Nordbooks. p.36.

<sup>96</sup> Laki maahanmuuttajien kotouttamisesta ja turvapaikanhakijoiden vastaanottamisesta 9.4.1999/493.

<sup>97</sup> *Daily life in a reception centre*. Finnish Immigration Service. Accessible: <http://migri.fi/en/daily-life-in-a-reception-centre>, 27 February 2018.

<sup>98</sup> *Moving to a municipality*. Finnish Immigration Services. Accessible: <http://migri.fi/en/moving-to-a-municipality>, 27 February 2018.

<sup>99</sup> *Positive decision*. Finnish Immigration Services. Accessible: <http://migri.fi/en/asylum-in-finland/positive-decision>, 27 February 2018.

<sup>100</sup> *Negative decision*. Finnish Immigration Services. Accessible: <http://migri.fi/en/asylum-in-finland/negative-decision>, 27 February 2018.

asylum seekers inside the EU were children<sup>101</sup>. In 2015, of the applications of children, 25% came unaccompanied<sup>102</sup>. Finland received more than 3000 unaccompanied children that year<sup>103</sup>.

The temporary protection directive<sup>104</sup> defines unaccompanied minors a “third-country nationals or stateless persons below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively taken into the care of such a person, or minors who are left unaccompanied after they have entered the territory of the Member States”. It means that these people, besides of being traumatized asylum seekers who have had to leave their home, they are also children without any support or safety from a known relative. In the name of dignity, they deserve help and support from the country of arrival.

In general, the process of asylum seeking is the same as for an unaccompanied minor as an adult, but the application has to be handled with urgency and the best interest of the child has to be taken into consideration<sup>105</sup>. As soon as the minor has filed the application, the tracing of his or her parents will start<sup>106</sup> and there is an opportunity to a family reunion<sup>107</sup>. Unlike the general practice of a member state responsible of the handling of the application, in the first instance, the member state responsible for the asylum procedure of the unaccompanied minor is the member state where a family member or a sibling is legally present<sup>108</sup>. The CJEU case<sup>109</sup> presented that if the applicant has no family members inside the EU, the original Dublin rule is not followed. If the applicant has lodged asylum applications to several member states, to respect the best interest of the child, the member state responsible for the application, is the member state where the child

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<sup>101</sup> Communication (EC) from the Commission to the European Parliament and Council COM(2017) 211 final The protection of children in migration SWD(2017) 129 final. 12 April 2017.

<sup>102</sup> Metsäniitty *et al.*, *supra nota* 2.

<sup>103</sup> Kuusisto-Arponen, A-K. (2016). Perheettömiksi suojellut: yksintulleiden alaikäisten oikeus perheisiin. - *Perheenyhdistäminen: Kuka saa perheen Suomeen, kuka ei ja miksi?*. (Toim.) Fingeroos, O., Tapaninen, A-M., Tiilikainen M. Tampere: Vastapaino Oy, 89-109. p.89.

<sup>104</sup> Council Directive (EC) 2001/55 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, OJ L 212, 7.8.2001, p. 12–23. 20 July 2001. art 2 (f).

<sup>105</sup> Ulkomaalaislaki act 6.

<sup>106</sup> *Ibid.* art 105b.

<sup>107</sup> *Ibid.* art 38.

<sup>108</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31–59. 26 June 2013. art 8, p 1.

<sup>109</sup> Court decision, 6 June 2013, MA and others, C-648/11, ECLI:EU:C:2013:367

is situated at the moment if he or she has applied asylum in that country. This prevents unreasonable moving of the minor from one member state to another.

The minors are located in group homes or supported living units for minors during the application process. As soon as the minor arrives, an application for a legal representative is filed. The minor has an opportunity to express his or her preferences about the representative. The representative will take part in the interviews and will work in cooperation with the reception center workers, as a legal guardian of the child. He or she will make the decisions concerning the child with knowledge of the Finnish legal system. As soon as the minor turns 18, the relationship with the representative ends.<sup>110</sup>

There are some relevant administrative case decisions concerning unaccompanied minors in Finland. The most recent ones are from last year. One of the cases<sup>111</sup> illustrates how different kind of legislation as well as human dignity is taken into consideration. An unaccompanied minor from Morocco filed an asylum application in Finland. While he was waiting for a decision he committed several crimes against property and was taken into custody. The FIS rejected his application for a residence permit and issued a return and a rejection for an entry to the state on the basis that there are grounds to suspect that he will commit repeated offences<sup>112</sup>.

FIS presented an argument that he has a normal relationship with his mother and sister who are still living in Morocco and they subsist economically. There is someone who can take care of him and it is safe for him to travel back to the country of origin. According to their studies he may be returned to Morocco without being subjected to persecution, serious harm or any kind of treatment against human dignity. They took into consideration the best interest of the child, the length and purpose of the applicants stay, the applicants ties to Finland, his family's social and cultural ties to the country of origin and the quality of his crimes as well as the harm they cause to the public order and security.

The applicant appealed to the administrative court about the decision. The court rejected his appeal. The argumentation remained the same; it was not against the best interest of the child or

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<sup>110</sup> Björklund, K. (2015). *Unaccompanied refugee minors in Finland: Challenges and good practices in a Nordic context*. Turku: Institute of Migration. p.35.

<sup>111</sup> Korkein Hallinto-Oikeus, KHO:2017:172, 10.11.2017

<sup>112</sup> Ulkomaalaislaki, art 148, p 1,8.



his safety to be returned to the country of origin and he did not have ties<sup>113</sup> to Finland. The Supreme Administrative Court agreed with the decision of a residence permit but returned the case back to the FIS concerning the decision of returning the applicant and the refusal of entry to the state. According to the Child welfare Act<sup>114</sup>, in case the child has been taken into custody, the municipal body responsible for the social services has the right to “in order to implement the purpose of taking the child into care, to decide on the child's whereabouts and care, upbringing, supervision and other care and the instruction and health care necessary for the provision of these.” The Child Protection Service has issued a statement where it stated that the best interest of the child would be if he could stay in Finland. On these grounds the applicant cannot be returned before the child protection measures have come to an end. This case indicates that the best interest of the child is taken into consideration in the Finnish asylum procedure in general. The same usage should be incorporated to the age assessment procedure.

Another similar case<sup>115</sup> also considers the return directive<sup>116</sup> and human dignity. At the moment of the decision of the Supreme Administrative Court, a 13 years old unaccompanied minor had applied for an asylum in Finland. The minor had come to Finland with his uncle. FIS had denied his asylum application and issued the return of him back to Iraq. He had a family in Iraq and the augmentation stated that the best interest of the child would be with his family and no suspicion that he would meet any violations against human dignity at the country of origin was found. The way home would be safe because the asylum application of the uncle had also been denied and consequently he could travel with the minor.

The Supreme Administrative Court stated that the reasoning for the refusal of an asylum application is justified. The situation was inspected precisely and there was no need to change the decision. The return directive states that before the return of an unaccompanied minor can be justified, the authorities must be sure that the family will take care of the child at the country of origin or that there will be appropriate reception. The decision on him having a caring family at the country of origin is based only on the statement of the minor. The FIS had not researched the information of the family at all and based on that, the cooperation with the family and the safety

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<sup>113</sup> Ulkomaalaislaki, art 146.

<sup>114</sup> Lastensuojelulaki 13.4.2007/417, act 45, p 1.

<sup>115</sup> Korkein Hallinto-Oikeus, KHO:2017:173, 10.11.2017

<sup>116</sup> Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, OJ L 348, 24.12.2008, p 98-107. 16 December 2011.

of the return is not secured. Taking into consideration the young age of the applicant, the Supreme Administrative Court returned the case back to the immigrant service. According to the court case the minor had learned Finnish and had integrated well with the help of the support guaranteed to underage minors. The Supreme Administrative Court ordered that in case the security of the return cannot be guaranteed the grant of the residence permit for him should be considered. This case also stresses the best interest of the child, it is something what we need to focus also during the age estimation.

The special rights granted to the unaccompanied minors are dependent on the legal definition of the minority. In the Finnish legislation, the definition can be found for example from the Guardianship Services Act<sup>117</sup>. To know when the person turns 18, a chronological age, an actual date of birth is needs to be known. There are still several countries that do not register the birth of the children and thus the asylum seeker might not know their date of birth or they might be scared to reveal any kinds of facts of themselves. The official birth documents might be impossible to get from the courtiers with conflicts and the chronology might be different there. If an adult is seen as a minor, it might be a safety risk when he or she is located to the family homes, whereas if a minor is seen as a major the seeker will suffer from a wide violation of human rights.<sup>118</sup> This creates a need for the forensic age assessment procedures.

## **2.2. The Age estimating process**

In Finland the age of an asylum seeker is determined based on the documents and an interview. If there are no documents, the age is registered according to what the seeker tells the authorities. In case there is a well-founded reason to doubt that the presented age is not correct, they may start the age estimation process. Currently used methods of the estimation are dental observations as well as x-rays of dental and carpal bones. Before the process can start, the examinees and his or her guardian's or legal representative's written consent is needed. This gives a legal option to refuse to take the examination, but if there is no consent the asylum seeker is considered as an adult.<sup>119</sup>

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<sup>117</sup> Laki holhoustoimesta 1.4.1999/442. act 2.

<sup>118</sup> Juvonen, *supra nota* 87, p 103.

<sup>119</sup> *Age assessment, or establishment of age of a person younger than 18 (age test)*. Finnish Immigration Service. Accessible: [migri.fi/en/age-assessment-or-establishment-of-age-of-a-person-younger-than-18](https://migri.fi/en/age-assessment-or-establishment-of-age-of-a-person-younger-than-18), 3 March 2018.

Before 2010 the process was not regulated by the legislation. The first forensic age estimations in Finland were done in the middle of 1990's and the cases were related to international adoptions. At the end of 2008 more immigrants, whose ages were not clear, and unaccompanied minors started coming to Finland and finally in 2009 a governmental proposal<sup>120</sup> for the government to change the current Aliens Act was presented by the Ministry of the Interior. Beside the urgent need for regulation, the proposal wished to improve the implementation of a procedure directive<sup>121</sup> that was in force during that time.

The article 17 paragraph 5<sup>122</sup> states that “Member States may use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for asylum.” If these examinations are used, the unaccompanied minor has to be informed of all of the relevant information concerning the process. Requisite information is the used methods and how the results or refusal of the forensic estimation affect the application. The refusal itself cannot be the reason to decline the asylum application. The information must be given in a language “which they may reasonable be supposed to understand” and the consent of a minor or his or her representative is needed. The directive is now replaced with the asylum procedure directive<sup>123</sup>. The same information can be found from the article 25 paragraph 5. The revised version also includes the part that clarifies that in case the medical examination does not bring a solution, the applicant should be assumed to be a minor. The second relevant amendment was that “[a]ny 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>124</sup>

The qualified medical professionals are ensured by the act 6 b of the Finnish Aliens Act<sup>125</sup>. Since the resent amendment of the Act<sup>126</sup> from 2017, the request of age estimation has to be done by the FIS and the National Institute for Health and Welfare (THL) is responsible for the process. Two forensic odontologists will study the x-ray pictures and at least one of the two has to work

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<sup>120</sup> Draft Government proposal. (2009). Hallituksen esitys, HE 240/2009, 13.11.2009. Accessible: <https://www.finlex.fi/fi/esitykset/he/2009/20090240#idp451115632>, 5 March 2018.

<sup>121</sup> Council Directive (EC) 2005/85 of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326, 13.12.2005, p. 13–34, 1 December 2005.

<sup>122</sup> *Ibid.*

<sup>123</sup> Directive (EU) 2013/32 of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, p. 60–95. 26 June 2013.

<sup>124</sup> *Ibid.*, art 5 p 2.

<sup>125</sup> Ulkomaalaislaki

<sup>126</sup> Laki Ulkomaalaislain muuttamisesta 29.6.2016/501.

for THL. In Finland, dentists have had a possibility to obtain special competence in forensic odontology since 1999<sup>127</sup>. The least invasive examinations are secured by the chapter 10 or the Radiation Act<sup>128</sup> as well as instructions given by the Finnish Radiation and Nuclear Safety Authority (STUK).

In 2013, the EU published a new Radiation protection directive<sup>129</sup>. During the implementation of the directive, the Finnish government was drafting a new Radiation Act. The New act would include regulations concerning the use of ionizing radiation for non-medical purposes such as the forensic age estimations.<sup>130</sup> The above-mentioned substantiate how two latter parts of the Asylum procedure directive<sup>131</sup> are well covered in the Finnish legislation. The situations, as well as the needed amendments, are done regularly, while the situation with the first part is unclear. Does the amendment to the Aliens Act<sup>132</sup> from 2010, the current legislation, secure the full respect for the individual's dignity? There are parts where dignity is taken into consideration, such as the right to receive information about the estimation process, the right to refuse from the examination as well as the right to take a guardian or a legal representative along to the process. In case of uncertainty, the best interest of a child is always considered and if there are no results the applicant is considered as a child. Nevertheless, the author of this research does not think that the full respect is met.

The process starts with an interview done by a forensic odontologist. The purpose of an interview is to find out if the person is the one who was requested to the investigation and among others to find the information of any medical or nutritional information related to growth. The reported age, the gender and the ethnical background of an examinee are reported. If an examinee can state for example the ages of his or her possible siblings, that gives more credibility to the statement of the seeker or if the size of a shoe has changed, it can be predicted that the skeletal development is still in process. If there is any previous information from the

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<sup>127</sup> Metsäniitty *et al.*, *supra nota* 2.

<sup>128</sup> Säteilylaki 27.3.1991/592

<sup>129</sup> Council Directive (EURATOM) 2013/59 of 5 December 2013 laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation, and repealing Directives 89/618/Euratom, 90/641/Euratom, 96/29/Euratom, 97/43/Euratom and 2003/122/Euratom, OJ L 13, 17.1.2014, p. 1–73, 5 December 2013.

<sup>130</sup> Draft Government proposal. (2018). *Hallituksen esitys eduskunnalle säteilylaiksi ja eräksi siihen liittyviksi laeiksi, luonnos 28.2.2018*. Accessible:

[www.stuk.fi/documents/12547/103352/HE\\_sateilylaki\\_kokonaisuus\\_luonnos\\_28\\_2\\_2018.pdf/9f791ae1-ba86-2fbf-8c96-297e1bb6c667](http://www.stuk.fi/documents/12547/103352/HE_sateilylaki_kokonaisuus_luonnos_28_2_2018.pdf/9f791ae1-ba86-2fbf-8c96-297e1bb6c667), 5 March 2018.

<sup>131</sup> art 25, p 5.

<sup>132</sup> Laki Ulkomaalaislain muuttamisesta 11.6.2010/549.

dentist, they are valuable. After the interview, the height and weight of the applicant are measured.<sup>133</sup>

The STUK has allowed the use of ionizing radiation for non-medical purposes for the age estimations for radiographic examinations of the dentition and wrist. Due to this permission, the used methods in Finland, besides the dental observation, are a dental panoramic tomogram and an x-ray of the left wrist. In cases when the third molars, also known as wisdom teeth, as well as all the permanent teeth have completed, periapical intraoral x-rays might be used. If all wisdom teeth are missing or it is impossible to interpret their radicular development, the result will be inconclusive.<sup>134</sup> Alternative methods have been proposed since the absence of wisdom tooth has become more common. The studies of a secondary dentine have started since 1950's as well as the subsequent narrowing of the pulp cavity, but these methods still need future studies and can only be used in combination with other methods<sup>135</sup>.

After all these medical examinations are done, two forensic odontologists will separately study the radiographs. More attention is given to the dental information, because skeletal development is more susceptible to diseases, nutrition and other kinds of environmental factors<sup>136</sup>. Poor socio-economic status as well as ethnicity among others may affect the development of the skeleton. The influence of external factors in dental development is considerably lesser, but the ethnical differences do vary. To be more accurate, the odontologists use different kinds of methods for analyzing the radiographs. The methods give an average age for a person whose dental development is at a certain phase, the statistical dispersion for this is  $\pm 2$  years. In case the dental development is fully finished, the studies have shown that with a certainty of 90% the person has turned 18.<sup>137</sup>

Both of the final evaluations of the odontologists are then put together and they sign it jointly. The final evaluation clarifies the statistical dispersion and the lack of reference material from the ethnical background of the examinee. The best interest of a child is considered when the result is

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<sup>133</sup> Visnapuu *et al.*, *supra nota* 4.

<sup>134</sup> Metsäniitty *et al.*, *supra nota* 2.

<sup>135</sup> Marroquin, T.Y., Karkhanis, S., Kvaal, S.I., Vasudavan, S., Kruger, E., Tennant, M. (2017). Age estimation in adults by dental imaging assessment systematic review. – *Forensic Science International*, Vol 275, 203-211.

<sup>136</sup> Christensen, A., Bartelin, E., Passalacqua, N. (2013). *Forensic anthropology : current methods and practice*. Oxford: Academic Press. p.279.

<sup>137</sup> Metsäniitty *et al.*, *supra nota* 2.; Visnapuu *et al.*, *supra nota* 4.

uncertain and in case there is no result at all, the examinee is treated as a child. The immigrant authorities make the final decision based on the report. The examinee has the opportunity to appeal to the Administrative Court about the decision as a part of the final asylum decision, but this privilege has been used rarely<sup>138</sup>. The result of the final asylum application might come months after the result of the age estimation. If the age examination incorrectly states that the examinee is an adult, he or she will automatically lose the right to a representative and an education and will be transferred to a reception center of adults. The result of the age estimation should be able to be challenged *per se*, which would respect human dignity and prevent unnecessary violations of rights.

It is peculiar that today different kinds of mobile applications can locate a person or a retail store can accurately predict their customer's pregnancy and due day before any of the relatives know,<sup>139</sup> but we still cannot estimate the actual age of a human. Every one of us develop and mature at a different rate, and most likely there is no behavioral data online of a person, that is being estimated. Despite all this, in an era of technology<sup>140</sup>, we should have some way to give us more specific information about the actual chronological age. This is something we should focus on in our studies in Finland.

Currently performed uncertain result of the age estimation violates human dignity in several ways. If a child who is seeking an asylum is incorrectly treated as an adult, he or she will lack several rights such as the right to a legal representative and a general pursuit of best interest of him or her. The methods used in Finland violate the right to not to be touched and there are even health risks from the operations involved. In case the adult is incorrectly treated as a child, it might violate the human dignity of other minors with whom he or she is situated. Besides all of the previously mentioned, in the long run, the rights of the minors cause costs to the state. If these rights are commonly misused, the money needs to be taken from somewhere else. This might even create a violation of human dignity of the citizens of Finland. The current Finnish legislation enables these kinds of violations of human dignity.

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<sup>138</sup> Metsäniitty *et al.*, *supra nota* 2.; Visnapuu *et al.*, *supra nota* 4.

<sup>139</sup> Tene O., Polonetsky, J. (2014). A Theory of Creepy: Technology, Privacy and Shifting Social Norms. – *Yale Journal of Law and Technology*, Vol 16, Issue 1, Article 2.

<sup>140</sup> Chatfield, T. (2016). *What does it mean to be human in the age of technology?* The Guardian. Accessible: <https://www.theguardian.com/technology/2016/jan/20/humans-machines-technology-digital-age>, 5 March 2018.

## 2.3. The Aliens Act

The Aliens Act is the most important Finnish law related to the whole asylum procedure. This chapter analyses the act, discusses does it secure the human dignity during the age estimation process. The current Aliens Act is from year 2014. A new Aliens Act was needed since the previous version had become unclear as a result of several changes and amendments. After the previous act from 1991, Finland had joined the EU and agreed upon several international agreements concerning, among others, unaccompanied minors and age estimation. The need for a completely new act was justified with the need for a more transparent law. It was wanted to secure the legal protection of an alien and to rationalize the handling time of asylum applications as well as to prevent the abuses of the asylum.<sup>141</sup> A renewed Aliens Act clarified these regulations and allowed the formation and development of a case law<sup>142</sup>.

The Act has all together 15 chapters. The relevant chapters for this research are the first chapter, general provisions and the sixth chapter, which consist of international protection. The purpose of the Act “is to implement and promote good governance and legal protection in matters concerning aliens. In addition, the purpose of the Act is to promote managed immigration and provision of international protection with respect for human rights and basic rights and in consideration of international agreements binding on Finland”<sup>143</sup>.

Besides the purpose of the act, the first chapter defines the terms used in it. It clarifies that a definition of a refugee of the Refugee Convention<sup>144</sup> is also used in the Finnish legislation. It states that the internal protection in a Finnish legislation consist of “refugee status, subsidiary protection status or a residence permit granted on the basis of humanitarian protection”<sup>145</sup> and an asylum is a residence permit that can be issued to a refugee after the asylum procedure.<sup>146</sup> It discusses the use of a counsel or a translator as well as the guaranteed legal aid. The first chapter gives a good overview of the act. The part on definition is comprehensive and the language used in the articles is understandable.

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<sup>141</sup> Kuosma, T. (2004). Uusi ulkomaalaislaki. Helsinki: Lakimiesliiton kustannus., p 21-23.

<sup>142</sup> Aukia, J-P., (2017). *Ulkomaalaislaki kaipaa kokonaisarviointia*. Lakimies Uutiset. Accessible: <http://lakimiesuutiset.fi/ulkomaalaislaki-kaipaa-kokonaisarviointia/>, 6 February 2018.

<sup>143</sup> art 1.

<sup>144</sup> art 1.

<sup>145</sup> art 3,13.

<sup>146</sup> art 3.

Chapter six discusses the international protection. It clarifies on what basis the asylum can be granted and in which occasions it can be denied<sup>147</sup>. It also presents the subsidiary protection<sup>148</sup> in case there is no justification for an asylum but it is not safe to return the applicant to the country of origin. The phases of an asylum-seeking process are discussed and among others the rights and the obligations for a seeker are mentioned<sup>149</sup>. Article 105b states that in case a minor has come unaccompanied, the tracing of “his or her parents or some other person responsible for his or her actual guardianship” has to be performed as soon as possible. These are important regulations. However the most relevant sections for age estimation, sections five and six can be found in the first chapter.

The fifth section states that the rights of the aliens should not be violated unless it is necessary. At the same time, it secures the human dignity for the aliens and gives an excuse not to respect the rights of them. An interpreter of the law may determine when a violation of human dignity of a refugee is necessary. This brings us to the minors and the age estimation process that are regulated in article six. At the beginning, it is clarified that if an alien is less than 18 years old, the best interest of the child and his or her health and development should be taken into consideration and reminds that the issues concerning minors should be handled with urgency.<sup>150</sup>

According to the Alien Act, an age estimation process may be performed if there are “reasonable grounds” to question the information that the alien is giving him- or herself. The information “on the importance of age assessment, the examination methods used, potential health effects, and the consequences of having and of refusing an examination” has to be given and after that the written consent of the minor and the representative is needed. If the consent is not given, the alien will be treated as an adult. However, the refusal of the age estimation cannot be *per se* the reason for refusing an asylum application.<sup>151</sup> Later on, the act also defines how the forensic age estimation can be proceeded legally in Finland. The FIS may ask about the procedure and the National Institute for Health and Welfare is responsible of it.<sup>152</sup> It is important that the legislation regulates the age estimation and herewith the equal treatment of everyone and the human dignity of a minor can be secured during the process.

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<sup>147</sup> art 87.

<sup>148</sup> art 88.

<sup>149</sup> art 95a.

<sup>150</sup> art 6.

<sup>151</sup> art 6a.

<sup>152</sup> art 6b.



The Act has been criticized on EU level, because it does not have the principle of benefit of the doubt<sup>153</sup>. Currently there are no methods that could provide accurate information on the chronological age of the examinee and therefore the principle of a benefit of doubt is presented on the Asylum Procedure Directive<sup>154</sup> as well as Anti-Trafficking Directive<sup>155</sup>. The idea of the principle is, that in case of uncertainty, the person should be treated as a child. In practice, the examinee is treated as a child during the whole age estimation process. The best benefit of the child is respected and during the process as well as in case of an uncertain result the examinee is treated as a child. According to Metsäniitty *et al.*<sup>156</sup> “An expert report has to exclude age minority in an individual case beyond reasonable doubt, before age majority is ruled by authorities”. Albeit the principle is respected in practice, the principle of a benefit of doubt should be added to the Aliens Act, in order to respect human dignity.

In addition, the principle is not fully respected because according to the Finnish legislation, in case of a refusal of the examination an examinee is automatically treated as an adult. The practice is untestable from the state’s point of view because it is preventing the abuses of the system. There is generally no option to refuse of the estimation. What else could the state do in case the examinee refuses to be examined? Human dignity has been taken into consideration, because if there is a good reason to refuse, the examinee is not automatically treated as an adult. Besides the presented identity documents, Finland is not using any non-medical methods, such as interviews, for the age assessment. Human dignity would be respected more if there were alternative methods in case of the refusal of the medical examinations. In this case the refuse would not cause automatically the treatment of an adult.

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<sup>153</sup>EASO *practical guide on age assessment Second edition*. (2018). EASO. Accessible: <https://www.easo.europa.eu/sites/default/files/easo-practical-guide-on-age-assesment-v3-2018.pdf>, 16 April 2018.

<sup>154</sup> art 25 p 5.

<sup>155</sup> art 13.2

<sup>156</sup> Metsäniitty, *supra nota 2*.

### **3. SPESIFIC ISSUES OF THE FORENSIC AGE ESTIMATION AND HUMAN DIGNITY**

This chapter discusses the specific issues of the forensic age estimation and human dignity. The first part presents the consequences to the minors and discusses an individual Parliamentary Ombudsman case. The second part brings together the consequences of the age estimation for the state. The final part provides the current legal changes proceeded and planned on the EU level concerning the asylum process and age estimation. The current changes on the Aliens Act are compared and it is discussed if human dignity has been emphasized and will it get less valued after the drafted changes.

#### **3.1 Consequences for the minors**

An unaccompanied minor has to go through a lot. Their own safety in their home environment has changed to a place of a crisis or a war. People around the minor might have died and violence is everywhere. In the end, the situation has become so bad that the minor has had to leave their home and relatives behind. He or she has gotten separated from the parents, or the parents may have died in front of the minor. The travel has been long, and most likely not the safest one. The minor might be a victim of smuggling, human trafficking or a sexual assault. The people met during the journey might have been intimidating the minor, the adults might have said that the minor should not tell any information about him- or herself because the family at the country of origin might be in danger. Adults might have stated to the minor that he or she should lie about the age and the identity. Finally, the minor arrives to a new country, with a new culture and a language that he or she might not understand. Most likely the minor has not travelled before and everything is new, scary and the cold weather in Finland does not help the situation. As soon as the minor has arrived, the authorities ask different kinds of questions, which might seem extremely threatening to the child, who has gone through all the above mentioned. The future and the right to stay in the country are not clear and there might be relocations between

the centers and the people around the minor are changing once again. Sandahl *et al.*<sup>157</sup> have found in their research that all the phases of asylum seeking might include traumatic experiences, which might cause mental health problems. Considering all of the mentioned, we should do everything to help vulnerable minors

Thevissen *et al.*<sup>158</sup> have argued that the ethics in age estimations can be found only if the process is evaluated step by step. The consequences of the age estimation process for the minors in Finland are now analyzed step by step from the point of view of human dignity. Starting from the beginning of the process, when the stated age is questioned, the idea of undergoing a medical procedure might feel stressful and it might even feel that human dignity is violated when the reliability of one's words is questioned. There is not enough appreciation to trust one's words. This is regrettably the necessary evil, because of the absence of the official documents and the increased abuse of the asylum system. It is also a question of human dignity to get the age of the asylum seeker right, since minors and majors receive different kinds of rights, such as the right to education or the right to make decisions by themselves. The minors' rights are much more comprehensive and they are supported for example by representatives and social workers. These rights are something that adults as well would appreciate in this insecure situation. They are so appealing that some of the asylum seekers, especially the young adults, are ready to lie about their age.

The biomedical ethics are in generally divided into four groups. The groups are autonomy, non-malevolence, beneficence and justice<sup>159</sup>. Starting from the first one, the ICCPR states that every human being has a right to self-determination<sup>160</sup> and to accept or refuse a medical treatment or investigations. In Finland the constitution secures the right to integrity<sup>161</sup> and the written consent is needed before the process can start. The autonomy of the refusal of the age estimation is criticized. There is a legal possibility to not to accept the forensic age estimation, but this automatically leads to the definition of an adult, if there is no reasonable explanation for the

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<sup>157</sup> Sandahl, H., Norredam, M., Hjern, A., Asher, H., Smith Nielsen, S. (2013). Policies of access to healthcare services for accompanied asylum-seeking children in the Nordic countries. – *Scandinavian Journal of Public Health*, Vol 41, 630-636.

<sup>158</sup> Thevissen P.W, Kvaal S.I, Dierickx K., Willems, G. (2012). Ethics in Age Estimation of Unaccompanied Minors. – *Journal of Forensic Odontostomatology*, Vol 30, Issue 1, 85-102.

<sup>159</sup> *Ibid.*

<sup>160</sup> ICCPR, art 1.

<sup>161</sup> Perustuslaki, art 7.

refusal<sup>162</sup>. A reasonable explanation might be for example pregnancy and in some cases due to religious reasons. At the moment there is no other way to define the chronological age of an asylum seeker in Finland than the age estimation process. In the end, the information of an actual age is in the best interest of the seeker. In case the minor is actually a healthy minor, there should be no reason to refuse the investigation.

A seeker has the right to know the consequences of the refusal before the final decision. The information has to be given in a language that the seeker would understand and the legal representative has to be present when the information is given. This part of the legislation is followed and the representative may order an interpreter along to the process to make sure that the examinee understands the consequences. There is a guide for the interpreters<sup>163</sup> in asylum process to secure the justice and the respect of human dignity also on the work of the interpreter. An examinee has the right to complain of the process also during the examination. If he or she decides to refuse in any case, this alone cannot be the reason to reject the asylum application.<sup>164</sup> It seems that the human dignity of the autonomy in medical investigations of age estimations is taken into consideration as much as it can be with these recourses.

The second principle in biomedical ethics, non-malevolence, means that during the diagnosis only the necessary harm for the optimal recovery should be used. The use of ionizing tools might cause harm to the examinee because the human body is sensitive to the radiation.<sup>165</sup> The use of ionizing tools is strictly regulated by the Finnish legislation. The AGFAD recommends that if the skeletal development of an examinee is completed, also the examination on the clavicles should be done<sup>166</sup>. In Finland, the latter method is not used because of the higher effective radiation doses. The examination of the clavicles is unreliable because additional oblique pictures may display different stage impressions. Lately it has been discussed if the use of thin-slice computed tomography of the clavicle should be added to the Finnish age estimating process because of the

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<sup>162</sup> Metsäniitty *et al.*, *supra nota* 2.

<sup>163</sup> *Tulkkaus turvapaikkamenettelyssä; Opas tulkeille* (2009). Finnish Immigration Service, ERF, Finnish Refugee Advice Centre. Accessible: <https://migri.fi/documents/5202425/6164491/Tulkkaus+turvapaikkamenettelyssä+-+opas+tulkeille+%28fi%29>, 2 May 2018.

<sup>164</sup> Thevissen *et al.*, *supra nota* 159.

<sup>165</sup> *Ibid.*

<sup>166</sup> Schmeling, A., Grundmann, C., Fuhrmann, A., Kaatsch, H-J., Knell B., Ramsthaler, F., Reisinger, W., Riepert, T., Ritz-Timme S., Rösing F.W., Rötzscher, K., Geserick, G. (2008). Criteria for age estimation in living individuals. – *International Journal of Legal Medicine*, Vol 122, Issue 457, 457-460.

widespread absence of the wisdom teeth.<sup>167</sup> According to the study of Thevissen *et al.*<sup>168</sup>, when comparing the radiation doses, the exposure time during the age estimation process corresponds to the amount of received doses from natural surroundings in ten days. When a person is on an airplane, the radiation doses are the same or in some cases even higher than in the estimation process.

Besides the radiation doses, the age testing might also cause psychological harm. One of the most contrary on human dignity, of the used methods for age estimation, is the sexual maturity examination. In some countries, during the examination, the child has to be naked and the physical integrity is violated. This can be extremely humiliating for an already vulnerable minor. In the name of dignity, the sexual maturity examinations are not done in Finland<sup>169</sup>. All in all the currently used medical age examinations are not the best option for an asylum seeker since it might cause harm to their health. The question of human dignity is still taken into consideration and the harm is minimized as much as it is possible at the moment. The non-ionizing methods, such as magnetic resonance imaging (MRI), should be considered in the future.

The age estimation process in Finland includes medical procedures, which are covered by the Act on the status and rights of the patients<sup>170</sup>. The act states that the “patient has a right to good quality health care and medical care. The care of the patient has to be arranged so and he/she shall also otherwise be treated so that his/her human dignity is not violated and that his/her conviction and privacy is respected”<sup>171</sup>. The beneficence in the age estimating process is served when the chronological age is given. The redeeming feature of using x-rays is that the process might bring along other radiological findings that are in the best interest of the asylum seeker to know in order to receive the needed treatment. During the whole process the applicant is treated as a child and the final result is always interpreted in the best interest of the child.

The final group of biomedical ethics is justice. Justice has a wide definition. As an example, justice in medical treatments should include equal treatment to all patients. This is covered in the Finnish age estimations because of the strictly regulated legislation. It is correct to take into consideration the risks and the benefits of the medical treatment, as it is discussed earlier on this

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<sup>167</sup> Metsäniitty *et al.*, *supra nota* 2.

<sup>168</sup> *supra nota* 160.

<sup>169</sup> Metsäniitty *et al.*, *supra nota* 2.

<sup>170</sup> Laki potilaan asemasta ja oikeuksista 17.8.1992/785.

<sup>171</sup> *Ibid.* art 3, p 2.

research. Justice is also respecting human dignity and all of the fundamental rights of the patients. Religion is one relevant part of one's identity, when clarifying the identity of the asylum seeker, the right to a religion should be valued. During the medical procedures, the mother tongue, the individual needs and the culture of the patient should be taken into account as much as possible<sup>172</sup>. As an example, for age estimations, a permission to request for a female specialist for a girl examinee or a special cover for a girl who has to take off her hijab during the examination should be respected<sup>173</sup>.

There are also various consequences after the final result is reached. In case the result corresponds with the truthful age, the asylum seeker receives the rights that he or she deserves and human dignity is met. In case the result is incorrect, the seeker loses several rights. If an adult is considered to be a child, the asylum seeker loses the rights of the majority. He or she cannot make any decisions by him- or herself. The asylum seeker cannot work in all industries, cannot get married in Finland without a special permission, sell his or her property or take loans. Also, the human dignity of other children is questioned when an adult is living among them and treated as a child. Then again, the consequences are more harmful if a child is considered to be an adult. The seeker loses all the special rights secured in the CRC. He or she has to take responsibility of his or her life by himself or herself. The seeker is also located in a reception center with other adults, which might be harmful if the seeker is actually a minor.

One of the benefits of being an underage asylum seeker is the right to a family reunion. As soon as the asylum seeker turns 18, or is estimated to have reached majority, this right stops existing. According to the Finnish legislation, a family member is a spouse or an unmarried minor child of a person living in Finland. In case the minor is the one living in Finland, a family member is his or her parent.<sup>174</sup> The Alien Act states that the accepted asylum seeker minor has to be under 18 on the date when his or her application of a family reunion is decided<sup>175</sup>. On the day the minor turns 18, his or her parent stops being the legal family member and the existing family reunion process does not have any effect anymore.

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<sup>172</sup> *Ibid.* art 3 p.3.

<sup>173</sup> Thevissen *et al.*, *supra nota* 159.

<sup>174</sup> Ulkomaalaislaki, art 37.

<sup>175</sup> art 38.

There is an example case<sup>176</sup> from the Supreme Administrative Court of Finland. According to the Aliens Act<sup>177</sup>, the decision of a family reunion has to be given no later than nine months after the application is filed. The unaccompanied minor had received his first residence permit on 3<sup>rd</sup> of December 2010 and thereafter on 6<sup>th</sup> of June 2011 he filed an application for a residence permit for his parents and siblings on the basis of family ties. Eight months later on 3<sup>rd</sup> February 2012 the applicant turned 18. The FIS rejected the application on 31<sup>st</sup> of July 2012 on the basis that he was not a minor anymore<sup>178</sup> and his parents were not seen as his family members<sup>179</sup>. The applicant appealed against the decision, but the administrative court rejected the application. The Supreme Administrative Court rejected the decisions of the FIS and the administrative court. The application of a minor has to be handled with urgency<sup>180</sup>. In a situation like this, where the decision is subject to the age of the applicant on the date of the decision, the urgency is particularly important. The decisions of the FIS or the administrative court did not have any argumentations on why the time of the handling had taken so long. The Aliens Act has a paragraph<sup>181</sup> that states that the residence permit cannot be denied if the processing of the application has been significantly delayed and the applicant has contributed to the settlement of the case. From this case we can learn that in practice the FIS might not have always followed the principle of urgency in the case of minors and the administrative court allowed that. Now we have a Supreme Administrative Court case that indicates that the urgency should be followed in the Finnish asylum practice.

There are no relevant cases concerning the actual age estimation process from the Supreme Administrative Court of Finland, but there is a petition for a review<sup>182</sup> to the Parliamentary Ombudsman that indicates the consequences of the invalid result of an age estimation as well as the faults during the process. A representative of an unaccompanied minor complained about the proceedings of the FIS. The complainant considered that there were no grounds for the age examination and the sufficient and adequate information was not given and the examinee was not heard after the result of age assessment. The decision to send the examinee to the age assessment after more than nine months of arrival had delayed the applicant's asylum procedure. The

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<sup>176</sup> Korkein Hallinto-Oikeus, KHO:2015:26, 26.2.2015

<sup>177</sup> art 69a.

<sup>178</sup> Ulkomaalaislaki, art 38.

<sup>179</sup> *Ibid.*, art 37.

<sup>180</sup> *Ibid.* art 6, p 3.

<sup>181</sup> art 38, p 2.

<sup>182</sup> EOAK/1487/2017-6, 2 June 2017.

relation between the applicant and the representative had unilaterally terminated after the result and the applicant had been placed to an adult reception center and the right to study had abolished. Subsequently the examinee was found to be a minor on the basis of a genuine identity document.

The Parliamentary Ombudsman answered that the process of the asylum application took more than 14 months. For a minor applicant that is too long, even when considering the congested asylum application process in 2015. The right to an urgent process had been violated. According to the complainant, the inspector general from the FIS had told that it is a common practice in the FIS to send the minors to the age estimation and after that the consent was asked. The complainant had asked the grounds for the age estimation and the inspector general had answered that these are done based on the current mood. From the record of the FIS, it can be seen that the consent was asked after the asylum interview, but no grounds for the age examination were reported to the record. There was no notation that the information of the importance of the age estimation, the methods or the consequences were given. The FIS answered that the practice is that this kind of information is written to the record, but it has not been a rule. A recording is always taken from the asylum interviews, but they could not find this particular recording. Subsequently, the FIS presented the grounds for the age estimation to the Ombudsman. The inspector general was not working for the FIS any longer and consequently his or her opinion could not be given. The Ombudsman stated that the FIS had violated the Constitution<sup>183</sup> and the general obligation of diligence.

The invitation to participate in the age estimation was sent a day before the actual examination and thus the representative was not able to participate on such short time of notice. The dispute also considered if the right to be heard<sup>184</sup> should be respected after the examination, before the final result. According to the complainant the hearing was held only after his request and at this time the applicant had already been moved to the adults' reception center and there was no official relation between the applicant and the representative, following that the complainant was not invited to the hearing and he was not able to use his right to speech. During the hearing, the possibility to gain an official identity document from the country of origin was founded. The Ombudsman stated that especially when the result of the age examination cannot be challenged

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<sup>183</sup> Suomen perustuslaki 11.6.1999/731.

<sup>184</sup> *Ibid.* art 21 para 2.



*per se*, the hearing should be organized before the final result. The FIS had violated the Administrative Procedure Act<sup>185</sup>, because the parties were not able to present their point of view before the final decision.

The Finnish Immigrant Service acted according to the law when the relationship with the applicant and the representative as well as the right to study was ended and the applicant was moved to the adult reception center after the examinee was found to be an adult. This case indicates how the results of the age examinations with the current methods used are unreliable. Along with the problematic administrative procedure during which result into waiting periods of months, it can be stated that the uncertainty of the results of age estimation is definitely violating the human dignity of the asylum seeker. The redeeming feature from the point of view of human dignity is that in Finland, a minor asylum seeker is offered a representative. The representative can intervene in these kinds of violations of rights and breaches of the law.

### **3.2. Consequences for the state**

The definition of a human dignity presented earlier on this research is something what a state cannot obtain or give, however the dignity of a person has to be respected by the state. The age estimations do influence the state as well. The process is costly to ensure the rights of the minors. The need for the estimations has increased since the increased abuse of the asylum system and the rights of the minors. As an example, in Finland the examinee might refuse the examinations at any stage of the process, but after the refusal, the examinee is treated as an adult. This violates the human dignity of the applicant, but it is a powerful tool against the abuses of the Finnish asylum policy.

The state of Finland has publicly admitted, that some of the changes done in the asylum legislation are in order to avoid being a more attractive place of an asylum than other member states<sup>186</sup>. It seems that human dignity has not been taken into consideration at all in this case. The process of helping a person is on purpose challenging the process and not an attractive one. It is understandable from the state's point of view. The large amounts of asylum seekers require a lot of work and a variety of resources. In case the asylum process is not done properly and for

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<sup>185</sup> Hallintolaki 6.6.2003/434, act 34.

<sup>186</sup> HE 240/2009.

example the age is estimated incorrectly, the fault might cause, among others, mental health problems for the examinee. A person suffering from mental issues causes more expenses and might even be of danger to the state.

The costs of an asylum process are covered by the state. The incurred costs of unaccompanied minors are significantly larger than the costs of an adult asylum seeker. The best interest of a child is ensured for example with a legal representative and more extensive social and healthcare services than to the adults are offered. The minors live in separate centers where there are more workers and the minors have different kinds of free time activities. As an example, in 2008 the costs of one adult asylum seeker in a year was 14 900 euros, whereas the annual cost for an unaccompanied minor was 49 700 euros. The exact amounts have probably changed in ten years, but this illustrates the difference between the costs of a minor and an adult asylum seeker.<sup>187</sup> There are no separate information of current amounts, but the annual cost of one asylum seeker, including adults and minors, is about 22 000 euros<sup>188</sup>.

The increased amount of immigrants, as well as the media publishing several stories of the abuses of the system and the violations of the Finnish laws by asylum seekers has increased xenophobia in Finland<sup>189</sup>. It has created new unjustified terms such as an anchor child (*ankkurilapsi*) or a beard child (*partalapsi*). An anchor child in the vernacular, is a child who is not in need of care or an asylum, but the parents have sent the minor to seek for asylum in order to later on bring the family along<sup>190</sup>. The term beard child is used mainly in the context of anti-immigration for adult asylum seekers who claim to be underage in order to receive the special rights granted to minor seekers. It has also been argued that the extremist groups are recruiting the vulnerable asylum seekers and paying their trip to Europe<sup>191</sup>. The difficulty is that the need for a dignified process must be secured, while still making sure that the system is not being abused. The state needs weapons to fight against issues as mentioned earlier, and therefore the process needs to be stricter and the veracity of the asylum seekers must be evaluated critically.

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<sup>187</sup> *Ibid.*

<sup>188</sup> *Usein kysytyt kysymykset turvapaikanhakijoista*. Ministry of the interior. Accessible: <http://intermin.fi/maahanmuutto/turvapaikanhakijat-ja-pakolaiset/ukk>, 12 May 2018.

<sup>189</sup> Ndukwe, C.N., (2015). Between Multiculturalism and Conservatism in Finland: Experiences of African Immigrants in the Helsinki Region. –*The Journal of Multicultural Society*, Vol 5, No 2, 146-193.

<sup>190</sup> Björklund, *supra nota* 111, p 16.

<sup>191</sup> Rafiq, H., Malik, N. (2016). *Refuge: Pathways of Youth Fleeing Extremism*. Quilliam. Accessible: <http://www.quilliaminternational.com/wp-content/uploads/2017/02/refuge-pathways-of-youth-fleeing-extremism-executive-summary.pdf>, 9 March 2018.

However this creates a common issue, when due to a small misbehaving group the whole group has to suffer. Due to the strict restrictions human dignity of an asylum seeker might then be violated.

The lack of accuracy of an age estimation results causes the most consequences for the state. A common result is that the person is most likely to be underage. The age estimating process takes sources as well. It would be the best option for all of the parties, if the result was exact and could be trusted. To achieve this, the current methods are the best that a state can offer at the moment, there are no more accurate methods. Also from the state's point of view, in the end they create more benefits than cause harm. It is the best interest of a state that the age estimating process is strictly regulated by legislation. The restricted asylum procedures will reduce the groundless applications and this saves costs and resources of a state and at the same time ensures faster handling time to the people in true need of an asylum.

### **3.3. On-going legal changes**

The European Union is aiming for a harmonized asylum process. The revision of the current relevant legislation considering the asylum process is an on-going process and it also discusses the age estimation processes done at the member states. The Refugee Convention is a part of human rights law. The human rights law informs the refugee law in definitional and substantive terms. The substantive terms are questioned and according to Harvey<sup>192</sup> it “shifts the focus towards human rights violations and abuses, including those that cause displacement”.

In addition to the Refugee Convention, there are several other international conventions and treaties that are associated with the asylum procedures and the age estimation, such as the conventions against torture<sup>193</sup> and the elimination of all forms of discrimination against women<sup>194</sup>. Sonia Morano-Foadi has argued that there are differences in the approaches of the asylum seekers between the EU and the Council of Europe. The Council sees them as individuals

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<sup>192</sup>Harvey, C. (2015). Time for Reform? Refugees, Asylum-seekers, and Protection Under International Human Rights Law. – Refugee Survey Quarterly, Vol 34, Issue 1, 43-60.

<sup>193</sup> United Nations No. 24841 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, Treaty Series, vol. 1465, p. 85. 26 June 1987.

<sup>194</sup> United Nations No. 20378 Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979, Treaty Series, vol. 1249, p. 13. 3 September 1981.

who have rights regardless of their nationality, whereas the EU is separating the EU citizens and the third country nationals.<sup>195</sup> Inside the EU there are even deeper interests to find a common procedure for the asylum seekers and the refugees because of its open borders and free movement within it. In the event in 1999 the member states agreed to establish a Common European Asylum System (CEAS). It has created several legislative measures for harmonizing the minimum standards of the asylum procedures, as an example the directive<sup>196</sup> on standards for the qualification of third-country nationals or stateless persons as the beneficiaries of the international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted from 2011.<sup>197</sup>

In 2010 the European Refugee Fund was created and the Common European Asylum Office (EASO) was founded. The idea of the office was to give assistance to the implementation of the CEAS, it provides information related to the asylum to the member states, such as the best practices, the countries of origin or analyze how human dignity is met in other member states. EASO cooperates closely with The United Nations Refugee Agency (UNHCR).<sup>198</sup>

Before the establishment of the EASO, in 2008 the European Commission's Policy Plan on the Asylum<sup>199</sup> was published. The Plan presented three pillars: the first one was the harmonization of the member states' asylum legislation, second one the practical cooperation and the last one the sense of responsibility among member states as well as with the EU and the non-EU countries. The plan is adopted well and it has created several revised legislations. Probably the most important ones are the three revised directives: the Asylum Procedures<sup>200</sup>, the Reception

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<sup>195</sup> Morano-Foadi, S. (2015). Migration and Human Rights: The European Approach. – *Fundamental Rights in the EU*. Oxford: Hart Publishing, p. 117.

<sup>196</sup> Directive (EU) 2011/95 of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted, OJ L 337, 20.12.2011, p. 9–26. 13 December 2011.

<sup>197</sup> *Common European Asylum System*. European Commission. Accessible: [ec.europa.eu/home-affairs/what-we-do/policies/asylum\\_en](http://ec.europa.eu/home-affairs/what-we-do/policies/asylum_en), 5 February 2018.

<sup>198</sup> Goudappel, F., Raulus, H. (2011). Introduction—The Future of Asylum in the European Union? Proposals, Problems and Interaction with International Human Rights Standards. - *The future of asylum in the European Union*. (Ed.) Goudappel, F., Raulus, H. Berlin: Springer, 1-14. p.1,10.

<sup>199</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions—Policy plan on asylum—An integrated approach to protection across the EU COM (2008) 360 final, 17 June 2008.

<sup>200</sup> Directive (EU) 2013/32 of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, p. 60–95. 26 June 2013.

Conditions<sup>201</sup> and the earlier mentioned Qualification as well as the two revised regulations, Dublin<sup>202</sup> and EURODAC<sup>203</sup>. The latter is about the EU database of the fingerprints of the asylum seekers. All of these are related to the age estimation process.

The Dublin regulation defines the member state as responsible for examining the application. In 2013, Dublin III was presented, but because of the happenings in 2015, by now they are preparing the Dublin IV<sup>204</sup>. The first state where a third country national is seeking for an asylum is responsible for the application of the asylum seekers. In case the age of an asylum seeker is unclear and it occurs, for example from the database of the EURODAC, that the person has asked for an asylum in another member state before, the asylum seeker will be returned to that particular state without the age estimation process. The proposal for Dublin IV<sup>205</sup> is discussing the rights of unaccompanied minors and the best interest of a child more. It states that “the Member State of first application shall be responsible, unless this is not in the best interests of the minor<sup>206</sup>”.

The Qualification directive presents the grounds for granting international protection, it sets out the standards for protection and recognition of refugees at EU level. The Reception Conditions directive guarantees the standard of living for the asylum applicants while waiting for their decision, in addition it has separate regulations concerning the unaccompanied minors. The

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<sup>201</sup> Directive (EU) No 2013/33 of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, OJ L 180, 29.6.2013, p. 96–116. 26 June 2013.

<sup>202</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ L 180, 29.6.2013, p. 31–59. 26 June 2013.

<sup>203</sup> Regulation (EU) No 603/2013 of the European Parliament and of the Council of 26 June 2013 on the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) No 604/2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes, and amending Regulation (EU) No 1077/2011 establishing a European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice, OJ L 180, 29.6.2013, p. 1–30. 26 June 2013.

<sup>204</sup> Country responsible for asylum application (Dublin). European Commission. Accessible: [ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants\\_en](http://ec.europa.eu/home-affairs/what-we-do/policies/asylum/examination-of-applicants_en), 5 February 2018.

<sup>205</sup> European Commission, Proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) 2016/0133 (COD), COM(2016) 270 final, 4 May 2016.

<sup>206</sup> *Ibid.*

Asylum Procedures directive<sup>207</sup> has also provided particular protection for unaccompanied minors. First of all, it guarantees the right for a minor to request for an asylum<sup>208</sup>. Article 25 presents the special guarantees for unaccompanied minors. Member states have to ensure that a representative for a minor is arranged. The authorities that are working with the minor need to have understanding for the special needs of a minor and the best interest of a child should always be a primary concern. The discussion on an age determination is also found under article 25. It clarifies that the examinations should be done with full respect of human dignity. All the relevant information has to be presented to the minor and the estimation cannot be performed without the consent of the minor or his or her representative. In the end, if the examination is not clarifying the accurate age of an applicant, he or she should be assumed to be a minor. Member states may prioritize the examination of an unaccompanied minor's application<sup>209</sup>.

For all the other above-mentioned regulations, a proposal for new regulations was presented in July 2016. These proposals are a part of a comprehensive package of Proposals for the CEAS reform. On 6<sup>th</sup> April 2016, the European Commission published a press release<sup>210</sup> where it was noted that the refugee crisis showed the weakness of the CEAS. The member states still had different national approaches, which increased the situations where the applicant seeks for an asylum more than in one member state or chooses a particular state, for example because of the perceived higher standard of social security or reception conditions. This situation is called asylum shopping. The responsibility of the seekers was not reasonably equable between the states because of the current Dublin rules. Human dignity was not valued on the same level and *inter alia* the age estimation processes still vary a lot. There is a need for a more fair and sustainable system. According to Steve Peers these changes do not solve the problems that have arisen from the refugee crisis, but are “a big step forward compared to the history of EU action in this area<sup>211</sup>”. This on-going reforming process of the CEAS is taking more into consideration the age estimating processes among the member states.

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<sup>207</sup> Directive (EU) 2013/32 of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, 29.6.2013, p. 60–95. 26 June 2013.

<sup>208</sup> art 7, p 3.

<sup>209</sup> art 31, p 7,b.

<sup>210</sup> *Commission presents options for reforming the Common European Asylum System and developing safe and legal pathways to Europe*. (2016). European Commission. Accessible: [europa.eu/rapid/press-release\\_IP-16-1246\\_en.htm](http://europa.eu/rapid/press-release_IP-16-1246_en.htm), 5 February 2018.

<sup>211</sup> Peers, S. (2016). *EU Justice and Home Affairs Law: Volume I: EU Immigration and Asylum Law*. Oxford: Oxford University Press. p. 318.

At the same time, the amendments of the Finnish legislation have reduced the respect of human dignity for avoidance of being a more attractive place for asylum. Since 2004, the Act has been changed 71 times<sup>212</sup>. Lavapuro<sup>213</sup> has argued that when we reduce the rights of the disadvantaged group step by step, the overall status is hard to find. It has been agreed that the member states of the EU are trying to fulfill the minimum standards of the asylum procedures in a way, that the state would not be more attractive than any other member state. The intention is that the immigrants would not be as interested about that particular state.<sup>214</sup>

Trying to lower the standards in order to not receive so many asylum applications sounds harsh, but considering the recent changes in the Finnish legislation, such as complicating the family reunion policies, reducing the possibility to a legal aid and shortening the appeal time limits, show us that the Finnish government is trying to fight against the mass immigration. The government has admitted that Finland does want to reduce the attractiveness of the place for asylum in Finland. When the fundamental rights are not secured, it is a violation against the Constitution of Finland<sup>215</sup>. The supervising bodies do not pay attention to minor changes done to the legislation, but in the end several minor changes create a significant change. The status of the refugees in Finland should be discussed. It seems that the aspect of human dignity has been reduced from the act.

At the EU level human dignity is valuated, several changes have been created to increase the respect of human dignity during the asylum process. The problem is, the member states who are aiming to be less attractive countries for the asylum seekers, are aiming more for the best interest of the state than the best interest of the child. Finland is one of these notorious states.

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<sup>212</sup> Ulkomaalaislaki 30.4.2004/301.

<sup>213</sup> Aukia, *supra nota* 143.

<sup>214</sup> Juvonen, *supra nota* 87, p. 9.

<sup>215</sup> act 22.

## 4. EXAMPLES FROM OTHER COUNTRIES

In general, the age estimations of unaccompanied minors have been criticized inside the EU. In 2015 The Asylum Information Database (AIDA) published an article that stated “The over-reliance of Member States on medical methods of age assessment exposes unaccompanied children too readily to intrusive examinations of dubious accuracy, which are often immune to legal challenge.”<sup>216</sup> EASO has stated that in first hand, all other methods should be used before the medical examination<sup>217</sup> but according to a study from 2013, only 10 out of the 30 studied members states were using alternative methods. The used radiological techniques are criticized among others because of the margin of error, it is against the non-maleficence principle of bioethics and the lack of a valid reference group.<sup>218</sup>

After 2015 several countries have changed their age estimation methods and in 2018, EASO published a revised second edition of the Practical guide on age assessment<sup>219</sup>. Finland still uses the same methods that are criticized because of being uncertain and old-fashioned procedures. We have found out earlier on this research that the process among the EU member states varies a lot. Could we find a better way to proceed the age assessment from another country? This part analyses and compares the methods done inside the EU and Norway. The analysis is based on the EASO practical guide.

### 4.1 Nordic countries

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<sup>216</sup> AIDA. (2015). Detriment of the Doubt: Age Assessment of Unaccompanied Asylum-Seeking Children. *AIDA Legal Briefing No. 5 December 2015*.

<sup>217</sup> Age assessment practice in Europe. (2013). EASO. Accessible: <https://www.easo.europa.eu/sites/default/files/public/EASO-Age-assessment-practice-in-Europe.pdf>, 8 April 2018.

<sup>218</sup> AIDA *supra nota* 216

<sup>219</sup> EASO 2018, *supra nota* 154.



Sykes *et al.*<sup>220</sup> compared the information on the age estimation processes done globally. They had 16 different countries as a sample and from this survey, during the years from 2005 to 2015, Norway, Sweden and Denmark had done most of the age examinations. The result indicates that these Nordic countries should be experts on this area, or at least they have the experience of accomplishing the estimation processes. This part of the chapter compares the Finnish practice to these three Nordic countries.

Nordic countries have international reputation of being “child-friendly states” where refugee children’s rights are secured among others with generous welfare benefits<sup>221</sup>. This is most likely one of the reasons why asylum seekers claim to be minors in these countries. Besides of the common reputation, the Nordic countries have quite a different approach to refugees and age assessments. According to Brochmann and Hagelund<sup>222</sup> from these four countries Sweden is the most generous with the asylum policy whereas Denmark is the most restrictive.

Denmark is a member state of the EU, but it is not bind to any of the agreements concerning the Area of Justice Freedom and Security of the EU, which includes the asylum policy<sup>223</sup>. Notwithstanding the special treatment, the age estimation process does not vary much from the EU frames. The Danish Alien act<sup>224</sup> states that “The police and the Danish Immigration Service may require an unaccompanied alien claiming to be under the age of 18 to submit to a medical examination to determine the alien’s age”<sup>225</sup>. Whereas Finland uses only the documents submitted as a non-medical method for age estimation, Denmark has also an age estimation interview. The process in Finland includes a perfunctory interview as well, but the idea is to gain more background information to the examination and even if the examinee admits during the interview that he or she is adult, the medical examination is done nevertheless<sup>226</sup>. The age assessment interview is more intercourse, it is conducted with the migration authorities that are

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<sup>220</sup> Sykes, L., Bhayat, A., Berniz, H. (2017). The Effects of the Refugee Crisis on Age Estimation Analysis over the Past 10 Years: A 16-Country Survey. – *International Journal of Environmental Research and Public Health*, Vol 14, Issue 6.

<sup>221</sup> Wahlström Smith, *supra nota* 10.

<sup>222</sup> Brochmann, G., Hagelund A. (2011). Migrants in the Scandinavian Welfare State. – *Nordic Journal of Migration Research*, Vol 1, Issue 1.

<sup>223</sup> Consolidated version of the Treaty on the Functioning of the European Union, Protocol (No 22) on the position of Denmark, OJ C 326, 26.10.2012, p. 299–303, 26 October 2012.

<sup>224</sup> Udlændingeloven nr. 608 af 17.07.2002.

<sup>225</sup> *Ibid.* 40c (2).

<sup>226</sup> Metsäniitty, *supra nota* 2.

trained to use “child-friendly techniques”<sup>227</sup>. The idea is to “reconstruct a chronological sequence of life events where the age of the person can be deducted or estimated”<sup>228</sup>. The interviewer goes through significant events and dates for a specific geographic area and asking if this was before or after the birth of the examinee. Of the medical methods, Denmark is using carpal x-rays and dental x-rays as Finland does, but unlike Finland, they are not using dental observation but physical development. This method uses reference values and compares them to the height, weight and skin rating of the examinee.<sup>229</sup>

During the age estimation process, in Denmark, the examinee is not informed about the reasons, methods, consequences and results of the whole age estimation process, the information is served only in case the process has a medical assessment part. The consent is also needed only for the use of medical methods.<sup>230</sup> From the point of view of human dignity it seems that during the process, Finland respects the rights of the minors more. Human dignity in Denmark is secured only when the medical methods come along, whereas in Finland the information is served and the consent is needed for the whole age assessment procedure. From the non-radiation medical methods, the dental observation meets human dignity better than the physical development measurement. None of these two methods can provide the information of the chronological age, but the study of the physical development affects the physical integrity more. In both countries the dental x-rays are conducted and at the same time the dental observation could be done and thus there is no need for the examinee to participate in another examination. Then again Finland should follow Denmark and start using the age assessment interview. When the interview is conducted with professionals it does not violate human dignity at all and while this method also has a wide margin of error, it respects the child’s right to participate in the process.

Norway is not a EU member state but it is part of European Economic Area (EEA) and European Free Trade Association (EFTA)<sup>231</sup>. Norway and Switzerland are also added to the EASO practical guide. Finland is using only one non-medical method for age assessment and Denmark is using two, but Norway is using three. Besides the documents submitted and the age assessment interview, Norway is using estimations based on physical appearance. When it comes

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<sup>227</sup> EASO 2018, *supra nota* 154.

<sup>228</sup> *Ibid.*

<sup>229</sup> *Ibid.*

<sup>230</sup> *Ibid.*

<sup>231</sup> Johnsen, T., Rieker, P. (2015). The EEA and Norway Grants: A Source of Soft Power?. – *Journal of European Integration*. Vol 37, Issue 4, 417-432.

to the medical estimation, Norway is using the same three methods as Finland: dental observation, carpal x-ray and dental x-ray. But at the end of 2016 they developed a new, more statistical and objective tool for the study of the radiographs. According to Norway Today<sup>232</sup> the Department of Forensic Sciences at Oslo University Hospital is currently studying a new method for the age estimation in molecular biology. Norway has the same approach to the information given as Denmark. The applicant is informed only on the medical assessment and the consent of the examinee and of the representative is needed only for the medical methods.<sup>233</sup>

The Norwegian Immigration Act<sup>234</sup> states that “If the foreign national refuses to allow himself or herself to be examined, he or she shall be made aware that this may be of significance for the assessment of the case”<sup>235</sup>. This leads to the situation that if an examinee refuses the medical examination, for example because of pregnancy, it might affect the decision of her asylum application. This part violates human dignity - every one of us has a right for inherent dignity and that should not cause any denials from the authority. On the other hand, where in Finland the examinee is treated as an adult in case of refusal when there are no justification for it, in Norway the examinee is not automatically seen as an adult after the refusal. Denmark uses the same practice. This puts Norway and Denmark to a better position than Finland from the point of view of human dignity and Norway also deserves a merit on the on-going studies of the age estimation methods. The best way of securing the human dignity of an examinee is more accurate methods that would not violate the integrity.

Sweden differs from these four countries the most, because it has its own methods. Like Norway, Sweden also has three non-medical methods; submitted documents, age estimation interview and social service assessment. The latter is an interview with one or more social workers. The idea is to assess mental maturation with cognitive and behavioral appraisal. The life story of the examinee is considered. According to the UN Committee’s comment<sup>236</sup> “age assessment ... should not only take into account the physical appearance of the individual, but also his or her psychological maturity”<sup>237</sup>. This method answers to the above. It needs time, since there should

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<sup>232</sup> Wijnen, P. (2017). *Tool to estimate the age of young asylum seekers*. Norway Today. Accessible: <http://norwaytoday.info/news/young-asylum-seekers-tool-age/>, 17 April 2018.

<sup>233</sup> EASO 2018, *supra nota* 154.

<sup>234</sup> Utlendingsloven Nr 35 av 2008.

<sup>235</sup> *Ibid.*, section 88 (2).

<sup>236</sup> *supra nota* 58.

<sup>237</sup> *Ibid.* V a) A.

be trust between the interviewer and examinee and the margin of error is so wide, that it cannot be used as one and only method, but it is still a good method which brings the process closer to human dignity. It respects the right to participate in the process and information gained from the interview can also be used for the special needs of the examinee.<sup>238</sup>

Sweden is using only two medical methods, dental x-ray and magnetic resonance imaging of the knee. The MRI is a radiation free method where radio waves, advanced computer system and a powerful magnet create an elaborate picture of the internal body structures. According to Dedouit *et al.* “MRI appears to be the most appropriate non-invasive imaging procedure for forensic age estimation.”<sup>239</sup> Further study is still needed, but the strong positive correlation between the chronological age and the MRI has been found. The learning process of the MRI is short and the scans are easy to read, but the problem is that the equipment is expensive and not suitable in case the examinee has metal, such as cardiac pacemakers, tattoos or metal implants, in their body.<sup>240</sup>

Among others Sweden has a case<sup>241</sup> from 2014 considering the age asylum policy. The court stated that “it is the applicant who holds the burden of proof for his or her stated age and that there is no obligation for the Migration Agency to offer a medical examination, only an obligation to inform about the possibility to undergo such.”<sup>242</sup> These aspects reduce the respect of human dignity in Sweden. The vulnerable asylum seeker has to prove his or her age without even knowing the language or the procedures in the new country. Subsequently the policy on age estimation within Migration Agency in Sweden is currently being revised and in 2017 there was a change in the Swedish Aliens Act<sup>243</sup> that distinguishes the age estimation process from the asylum application. The Swedish Migration Agency will make a temporary decision of the age after the conducted age assessment. This decision can be appealed *per se*. In case the examinee does not have enough evidence supporting his or her minority, he or she should be offered an opportunity to take part in the age estimation process.<sup>244</sup> These revises respect the human

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<sup>238</sup> EASO 2018, *supra nota* 154.

<sup>239</sup> Dedouit, F., Saint-Martin, P., Mokrane, F-Z., Savall, F., Rosseau, H., Crubezy, E, Rouge, D., Telmon, N. (2015). Virtual anthropology: useful radiological tools for age assessment in clinical forensic medicine and thanatology. – *La radiologia medica*. Vol 120, Issue 9, 874-886.

<sup>240</sup> *Ibid.*; EASO 2018 *supra nota* 154.

<sup>241</sup> Migrationsöverdomstolen, MIG 2014:1, 11 February 2014

<sup>242</sup> EASO 2018, *supra nota* 154.

<sup>243</sup> Utlänningslag SFS 2005:716.

<sup>244</sup> EASO 2018, *supra nota* 154.

dignity much more and it is the best interest of every party to get the chronological age of the asylum seeker correct.

As there are still no methods that could offer as accurate results, there is always a risk that the result of the age estimation might be incorrect. This is also the case in Sweden, where after the revision an examinee does not need to wait until the end of the asylum handling, before the results can be challenged. The uncertainty and long handling times puts the asylum seeker into an uncomfortable situation, the more we can expedite the process and the possibilities to challenge incorrect results, the more human dignity can be respected.

Whereas Finland uses other approaches before the actual age estimation, such as the report from the examinee itself and different kinds of documents presented, Sweden is using these approaches also during the age estimation process. Like in Norway, also in Sweden the consent is needed only for the medical examinations and in case of refusal it might affect the decision of the asylum. In Finland the result of the age estimation can be challenged only as a part of the asylum decision, whereas in Sweden and Denmark the examinee is able to challenge the result separately. It seems that compared to Finland, Sweden has taken more into consideration human dignity when they have abandoned the use of carpal x-rays and are focusing more of the MRI technology. The reducing of the radiation doses is definitely an act of human dignity. The use of age assessment interview and social service assessment gives the examinee an option to give his or her own thoughts and points of views and take part in the examination.

All of these four countries have some practices where human dignity is taken more into consideration than in other countries, but then there are also practices where dignity is violated. All of the other countries besides Finland are using the age assessment interview. That is something Finland should definitely add to the process. It respects the right of the minor to take part in the examination and give his or her opinion as well as takes into consideration the mental maturity. All of these countries are offering an independent person to support the examinee, but only in Finland and Norway this person has a position of a guardian or a representative. Finland and Sweden are the only countries where the information about the process, methods and other relevant issues are offered for the examinee during the whole process, whereas in Denmark and Norway the info is offered only for the medical examinations.

Finland is the only country of these four where consent is needed for all parts of the process and the examinee can refuse of the examination at any time of the process. In other countries the consent is needed and the option for a refusal is only for the medical examination. The consent of the representative is needed in Finland and for the medical part also in Norway. In Norway and Sweden, the refusal might affect the decision of the asylum application and in Finland and Sweden the examinee is treated automatically as an adult after the refusal of the examination. In all countries, the result is offered in the language that the examinee can understand, but in Denmark only in case the examinee is seen as an adult after the examination. The result can be challenged separately in Denmark and Sweden whereas in Finland and Norway it can be appealed only as a part of the asylum decision. Surprisingly, of this list, when comparing separate points, it seems that Finland is actually the country that has taken human dignity most into consideration. In general, the use and the study of the new methods gives more credit to Norway and Sweden.

## **4.2 Austria, Germany and other EU countries**

Besides the Nordic countries, this thesis compares the Finnish practice of the age estimations with the practices in Austria and Germany. These specific EU countries were opted from the member states of the EU because these countries have a case law concerning the issue. These countries also have a specific aspect distinction of the other states. Austria still uses the criticized physical sexual maturity observation and Germany does not use the x-rays at all.

Austria is the only country of the 30 studied countries that uses all of the six commonly used medical methods. Alongside of the dental observation, estimations based on the physical development, carpal x-ray and dental x-ray, Austria is also using the collarbone x-ray and the physical sexual maturity observation. The collarbone x-ray examines the fusion of the clavicle. The method is criticized because of the high dosages of radiation and the inaccurate results. As an example, if the fusion is complete and a scar is still visible it can be assumed that a woman is at least 20 years old and a man is at least 21, if the scar is not visible anymore the examinee is at least 26 years old. The inaccuracy with the radiation doses violates the human dignity of the examinee more than what the benefit of the examination is. There are various studies that have

indicated that radiation is damaging to human beings<sup>245</sup>. It is against human dignity that states expose asylum seekers to radiation doses only because they do not trust their words.

The sexual maturity observation violates human dignity even more. A pediatrician or for example a gynecologist examines “penile and testicular development, pubic hair, axillary hair, beard growth and laryngeal prominence”<sup>246</sup> in boys and “breast development, pubic hair, axillary hair and shape of the hip”<sup>247</sup> in girls. The EASO recommends “no method implying nudity or the examination of genitalia as a sexual maturity observation should be used under any circumstance”<sup>248</sup>. The examination violates inherent dignity and it puts the vulnerable examinee in an extremely uncomfortable situation.

Of the non-medical methods Austria uses documents submitted, estimations based on the physical appearance and the age assessment interview. The examinee is informed on the reasons, methods and results in case of the medical assessment and there is no need for any kind of consent for the examinations, but there is a possibility for refusal at any stage of the process. The refusal does not automatically lead to the treatment as an adult, but it can affect the decision of the asylum application.<sup>249</sup> The Austrian High Administrative Court has ruled<sup>250</sup> that a decision of the age assessment will be unlawful in case the multiple examination method has not been used. Multiple examination is defined as “a state of the art model to determine the age based on three individual medical examinations (especially physical, dental and x-ray) examination”<sup>251</sup> on the Austrian Asylum Act<sup>252</sup>.

As discussed earlier on this thesis, the biggest problem of age estimation and human dignity is the uncertain result. Austria is asserting it by responding to the uncertainty with using all the available commonly used methods. The more the methods are used, the more likely it is that the result will be accurate. It still cannot offer an exact answer of the chronological age and definitely does not respect human dignity. The more medical methods are used, the more the

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<sup>245</sup> Baldwin, J., Grantham, V. (2015). Radiation Hormesis: Historical and Current Perspectives. – *Journal of Nuclear Medicine Technology*, Vol 43, no 4, 242-246.

<sup>246</sup> EASO 2018, *supra nota* 154.

<sup>247</sup> *Ibid.*

<sup>248</sup> *Ibid.*

<sup>249</sup> *Ibid.*

<sup>250</sup> VwGH 25.2.2016, Ra 2016/19/0007

<sup>251</sup> Art 2 para 1 (25).

<sup>252</sup> Asylgesetz BGBl. I Nr. 100/2005.

vulnerable minor has to take part in the uncomfortable situations where the integrity is violated. Austria is using all the alternative x-ray methods, which exposes the examinee to excessive amounts of doses of radiation. As it has been mentioned before, sexual maturity observation is the most offensive method on human dignity. It might be against several religious rules and it can be traumatizing to a vulnerable asylum seeker, of whom some might have even been a victim of sexual abuses. Austria does not treat the examinee automatically as an adult in case of a refusal of the assessment, but this is the only stage where Austria has taken human dignity more into consideration than Finland.

Whereas Austria violates human dignity on a multidisciplinary way, Germany is the country that offers the instructions to more humane age assessments. In Germany they use all five currently available non-medical methods: documents submitted, estimation based on physical appearance, age assessment interview, social service assessment and psychosocial interview. Psychosocial and social service interviews are almost the same, the latter is preceded by a social worker, whereas the former by a psychologist. Of the medical methods, only the dental observation and the physical development are used. Germany is also using the sexual maturity observation, but only on visual basis in order to respect the physical integrity.<sup>253</sup> They are also studying the MRI and ultrasound<sup>254</sup>. Ultrasound uses sound waves for studying the bones. This method is rapid and economic, but it needs more studies before it can be confirmed for a common use<sup>255</sup>.

The Book VIII of German Social Code<sup>256</sup> regulates the age estimations in Germany and “a radiological investigation is permissible only if medically indicated and ... permitted only by judicial decision”<sup>257</sup>. Then again there is a case<sup>258</sup> from Higher Regional Court in 2015 that rules that radiographic examinations of teeth and skeleton do have a significant and valid part on the age estimation process. The use of x-ray is currently debated in Germany and at least one of the

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<sup>253</sup> EASO 2018, *supra nota* 154.

<sup>254</sup> Masour, H., Fuhrmann, A., Paradowski, I., van Well, E.J., Püschel, K. (2017). The role of forensic medicine and forensic dentistry in estimating the chronological age of living individuals in Hamburg, Germany. – *International Journal of Legal Medicine*. Vol 131, Issue 2, 593-601.

<sup>255</sup> Schulz, R., Zwiesigk, P., Schiborr, M., Schmidt, S., Schmeling, A. (2008). Ultrasound studies on the time course of clavicular ossification. – *International Journal of Legal Medicine*. Vol 122, Issue 2, 163-167.

<sup>256</sup> Sozialgesetzbuch 3.10.1990.

<sup>257</sup> Rötzscher, K. (2014). Age Estimation. - Forensic and Legal Dentistry (Ed.) Rötzscher, K. Berlin: Springer, 195-214.

<sup>258</sup> Oberlandesgericht Karlsruhe, 18 UF 92/15, 26 August 2016



German states is already using carpal x-rays<sup>259</sup>. At the same time, Germany is a forerunner of human dignity and the age estimation process by not using radiation methods and running late for being the last EU member state that debate on starting to use of them.

The information on the process is served before the assessment and consent is needed and the option to refuse is possible during all the parts of the process. In case the examinee refuses the examination, he or she is not automatically treated as an adult and it will not affect the asylum application unless the minority is relevant to the claim. A representative is secured for the examinee and the benefit of the doubt is respected. It is possible to challenge the result of the age estimation, but only as a part of the asylum decision. It seems that Germany is one of the EU countries that respects the human dignity of an examinee the most. The use of the sexual maturity observation however is arguable and any kind of nudity should not be used. On the other hand, Germany respects human dignity while using this questionable method since the examination does not include any physical intercourse.

The use of x-rays on the age assessment in Germany is discussed. Nevertheless there are three legal contexts that allow the use of ionizing imaging in age assessments. In Austria the age disputes affecting the asylum seekers are regulated in detail since 2010. The age estimation process is strictly regulated in Germany, Austria and the Nordic countries, but at the same time there are member states of the EU that lack the legislation.<sup>260</sup> At the end of this chapter, a short summary of the main findings from the EASO report is presented. Besides Germany, also Ireland, Slovenia and United Kingdom do not use radiation methods at all. The most commonly used medical method is the carpal x-ray, it is used by 23 states out of 30. Other than commonly used methods, besides the MRI in Sweden are the pelvic bone x-ray in Hungary and Luxembourg as well as the fourth rib examination in Portugal. The human dignity violating sexual maturity observations are still used in seven countries of which Germany is the only one using merely the visual assessment. The most interesting finding from the report is that Latvia, Luxembourg and Romania do not exploit the documents submitted. It is interesting, because it is the easiest way of assessing the age and it is the only method that does not affect the examinee at all.

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<sup>259</sup>How is age of asylum seekers determined?. (2018). Info Migrants. Accessible: [www.infomigrants.net/en/post/6851/how-is-age-of-asylum-seekers-determined](http://www.infomigrants.net/en/post/6851/how-is-age-of-asylum-seekers-determined), 20 April 2018.

<sup>260</sup> Metsäniitty, *supra nota* 2.

When comparing Finland to all other EU member states as well as to Norway and Switzerland, it seems that Finland has taken human dignity on the age estimation process more into consideration than an average member state. There is still a lot of room for improvement. In a first instance, Finland should take the interviews as a part of the process. They offer valuable information, respect the right to present the views of the examinee as well as the right to not be touched, nor do they risk the health of the examinee. Later on, Finland should consider the abandonment of the x-rays and start to use alternative non-radiation methods.

## 5. CONCLUSIONS

The hypothesis of this research was that the human dignity principle is not met during the asylum seekers age testing procedure done in Finland. Throughout the study, it came across that human dignity is actually considered on several phases of the process. Despite this, the full respect of human dignity is still not reached. The biggest issues are the uncertainty of the forensic age estimations and the health risks of the currently used methods.

Human dignity in the context of age assessment is seen so that all human rights of an examinee should be respected. “Human dignity is the starting place of all human rights and the foundation of them.”<sup>261</sup> They should be treated with equality and the rights to non-discrimination should be respected. On the process of the age estimation, the relevant rights are the right to inherent dignity, the prevention of humiliating proceedings, the right to humane treatment and the right to challenge the result of the age estimation. There are no relevant court cases concerning the age assessment process in Finland, but the asylum cases indicate that in practice, the asylum process in Finland still violates human dignity for example on the basis of long handling times. The Supreme Administrative court has emphasized the importance of urgency on the handling of minors’ applications. The Parliamentary Ombudsman has also emphasized the importance of the given information to the examinee.

When the used methods in Finland were compared to the other methods used among the EU member states, the interviews arise to the discussion. Several EU countries use age assessment interviews, social service assessments and psychological interviews. In Finland there is also a short interview before the age estimation, but it is mainly to indicate that the person is actually the one who is indicated to the examination. This would be an easy and a logical way to start the improvement of the age estimation process and the respect of human dignity in Finland. The

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<sup>261</sup> Guild *et al.*, *supra nota* 57.

conversation with an examinee might help to understand the examinee more and it gives an opportunity for an examinee to present his or her views as well as it respects the right of the minor to participate in the process.

From the point of view of human dignity, one of the best aspects of the Finnish age assessment policy is that a minor is offered a representative. He or she can make sure that the human dignity of the applicant is respected. The process respects the best interest of the child, but the actual principle of benefit of the doubt does not exist in Finland. In practice, the benefit of the doubt is respected, but that should be added to the national legislation. There are no Supreme Administrative Court cases in Finland where the result of the age estimation would be challenged. That could indicate that the age estimation process in Finland is justified. Then again, the possibility to challenge the result is only a part of the asylum decision. The asylum process is long and arduous; even if the asylum seeker is actually a minor he or she might not have the strength to challenge the result after the final decision. After the time of waiting for the final decision, the vulnerable minor might have lost his or her hope for justice. An incorrect result will violate several rights of the examinee and the result should be able to be challenged immediately. At least the benefit of the doubt should be applied before all the parties accept the result. Human dignity would definitely be respected more, if the result of the age estimation process *per se* can be challenged.

The EU is aiming for a harmonized age estimation policy where human dignity of an examinee is fully respected. The equal treatment of the age assessment examinees among the EU member states is a core for human dignity. At the same time, several amendments to the Finnish Aliens Act are done in order to reduce the respect of human dignity. Not only the age estimation, but also the whole Aliens Act should be discussed from the human dignity point of view. As Punto<sup>262</sup> has a bit exaggeratedly, but aptly stated, these actions indicate that Finland does not want to have any aliens in the country. If this is the case, we should not affirm that Finland is a constitutional state that follows international human rights laws while the interpretation of the law is opposite.

As it was presented at the beginning of the thesis, Finnish NGOs sees that the currently used methods in Finnish age estimation process are old fashioned and does not meet the fundamental rights of the asylum seekers. The author of this thesis agrees with the former claim, the methods

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<sup>262</sup> Aukia, *supra nota* 143.

should be revised. Several fundamental rights have been taken into consideration with the process, but there are violations of the rights as well.

The answer to the research question is that the full respect of human dignity is not met on the methods that Finland uses at the moment of the age estimation. This is mostly because the result is not exact and it exposes to radio doses. There are parts where human dignity is respected, such as the decision to not use collarbone x-ray because of the higher exposure to radio doses and the sexual maturity observations because of respect of inherent dignity. There are no interviews in use, but the consent for all the stages of the process is needed and there is always a possibility to refuse the examination, which takes the views of the examinee into consideration. During the whole process, Finland offers a representative for the examinee, who can professionally secure the human rights of the applicant.

In addition, there are several ways to respect human dignity more. After the analysis of the currently used methods in Finland, human dignity has been taken into consideration as much as it is possible at the moment. In case the methods would be changed for example by adding the interviews and reducing the use of x-rays, the respect of human dignity would increase. The proposals for further studies are that scientists should find more modern and accurate methods that would not harm the health of the examinee. Rather than finding more methods by studying the radiographs, the results should focus on MRI or ultrasound. Norway is a good example of the efforts to develop a new, more accurate method for age testing. Maybe Finland could find some completely new method that would fully respect human dignity.

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