



## Submission to the UN Human Rights Committee on the follow-up to the concluding observations on Greece

### I. Introduction

Doctors of the World / Médecins du Monde – Greece (MdM-Greece), founded in 1990, is a medical humanitarian non-governmental organization and member of Médecins Du Monde International which consists of 15 delegations (Argentina, Belgium, Canada, France, Germany, Greece, Japan, Luxembourg, the Netherlands, Portugal, Spain, Sweden, Switzerland, United Kingdom and the United States of America).

Since the beginning of its operations in the early 90s, MdM-Greece, has been implementing several projects in order to provide medical as well as psychosocial services to marginalized populations that cannot access healthcare services and medical care. Having completed 27 years of continuous humanitarian action this year, Doctors of the World – Greece (MdM Greece) is standing by all persons in need of protection and assistance.

MdM Greece has, since the first moment, been present and active in the refugee-migrant crisis, reinforcing its ongoing and already existing structures and programs to respond to the increasing and pressing needs of the high numbers of refugees arriving daily and residing for longer periods in Greece. At the same time, MdM Greece has undertaken new initiatives intervening in those places where third-country nationals concentrate, such as the usual entry and exit points for refugees in Greece.

Médecins du Monde – Greece welcomes the opportunity to contribute to the work of the UN Human Rights Committee on the follow-up to the Concluding observations on the second periodic report of Greece (CCPR/C/GRC/2).

### II. Background – Concluding observations on Greece by HRCttee

The specific recommendation for which the HRCttee requested in 2015 from the authorities of Greece relevant information on their implementation so as to conducts in 2017 a follow-up is:

[...] 32. The State party should ensure that the principle of the best interests of the child is given due consideration in all decisions concerning unaccompanied children, including by: (a) Ensuring that unaccompanied minors who enter the country in an irregular manner are not detained, or remain in detention only as a measure of last resort and for the shortest period of time necessary;

(b) Creating new reception facilities and increasing the number of detention spaces in already existing structures, while ensuring adequate conditions for unaccompanied minors in those facilities, including segregation of unaccompanied minors from adults;

(c) Pursuing its efforts to redesign the guardian assignment procedure and ensure that each unaccompanied child is provided with a legal guardian; and

(d) Ensuring that the age assessment procedure is based on safe and scientific methods, take the children's mental well-being into account and avoid all risks of violating their physical integrity.

Therefore, Mdm wish to share with the HRCttee the following considerations regarding the situation and protection of unaccompanied minors in Greece (par. 32):

### III. On unaccompanied children

#### *a) Detention of unaccompanied children*

According to Article 19 of Directive 2003/9/EC, which sets out minimum standards for the reception of asylum seekers, unaccompanied minors must be placed in accommodation centres with special provisions for minors, a condition incorporated in Article 11-3 of the Directive 2013/33/EC<sup>1</sup> which provides for a general ban on detaining minors except under "exceptional circumstances".

Greek law does not prohibit detention of unaccompanied minors who enter Greece without valid papers, although it enjoins authorities to "avoid it" (Article 13(6) (c) PD 114/2010; Article 12(8) (c) PD 113/2013 and article 46 (10) b of the recent law 4375/2016 which repealed PD 113/2013). Unaccompanied children can be detained only until a place in a special facility for minors is found<sup>2</sup>. What is more, Article 32 of Law No 3907/2011 (implementing Directive 2008/115/EC) stipulates that minors and families with minor children should only be detained as a measure of last resort, and only if no other adequate but less burdensome measures can be taken, and for the shortest appropriate period of time<sup>3</sup>.

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<sup>1</sup> Directive 2013/33/EC <http://www.refworld.org/docid/51d29db54.html>

<sup>2</sup> <http://www.asylumineurope.org/reports/country/greece/detention-asylum-seekers/legal-framework-detention/detention-vulnerable>

<sup>3</sup> Law 3907/2011, <http://www.refworld.org/docid/4da6ee7e2.html>

Yet, the authorities detain unaccompanied children, either on arrival or when they are found without valid documents, for periods of ranging from a few hours to several days or months<sup>4</sup>. The reasons for detaining children for longer or shorter periods appear to be arbitrary<sup>5</sup>. The detention of children is also caused by the fact that the large influx of asylum seekers to Greece has overwhelmed existing centres.

Reception capacity for children, despite government's efforts, remains insufficient: at national level, there are 1,382 places in special centres for unaccompanied minors (filled, pending assigned cases, including 209 vacant places in the process to be filled)<sup>6</sup>. As of April the 3<sup>rd</sup> 2017, 952 unaccompanied children remain on the waiting list of National Centre for Social Solidarity (E.K.K.A.) for shelter, among which 184 in closed premises (Reception and Identification Centres) and 31 in protective custody (at police stations) due to lack of accommodation facilities<sup>7</sup>.

### **b) Age assessment**

Until February 2016, Greek legislation provided a comprehensive procedure for age assessment of minors only in the context of Reception and Identification procedures which take place at the six (6) relevant Centers that operate at the moment in Greece (5 "hotspots" on the islands of Lesbos, Chios, Samos, Kos, Leros and 1 at Fylakio Orestias center on the mainland).

In February 2016, such a procedure has also been adopted for the cases of asylum-seekers of contested age during the asylum process, but those provisions may have limited –or no- application in practice.

For those who do not fall into the scope of the reception and identification procedures or asylum process -usually those third-country nationals who are apprehended by police authorities irregularly entering/living on the mainland- there is no institutionalized legal procedure to assess their age.

As a result many of them often undergo in public hospitals medical examinations such as X-rays of various bones of the body to determine bone maturity –a method largely considered by various European and international institutions as well as medical scientific bodies as inaccurate and intrusive<sup>8</sup>.

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<sup>4</sup> *Platform for International Cooperation on Undocumented Migrants (PICUM)*, Recommendations to the European Union to Urgently Address Criminalisation and Violence Against Migrants in Greece, Brussels, 2014, [http://picum.org/picum.org/uploads/publication/Recommendations%20to%20address%20criminalisation%20and%20violence%20against%20migrants%20in%20Greece Reprint%20May%202014 2.pdf](http://picum.org/picum.org/uploads/publication/Recommendations%20to%20address%20criminalisation%20and%20violence%20against%20migrants%20in%20Greece%20Reprint%20May%202014%202.pdf)

<sup>5</sup> Ibid.

<sup>6</sup> *National Center for Social Solidarity (E.K.K.A.)*, Situation Update: UAC in Greece April, 3rd 2017, <http://www.ekka.org.gr/files/aglika03042017.pdf>

<sup>7</sup> Idem.

<sup>8</sup> See, among other *EASO*, Handbook on age assessment practices in Europe, December 2013, p. 38, *UNICEF*, Age assessment practices: a literature review & annotated bibliography, 2010,

With particular regard to the *issue of age assessment* of persons claiming to be minors, *within the framework of Reception and Identification procedures*, the law foresees that in the event that any doubt arises at any stage of the procedure, as to the minority of any third country national or stateless person, the Director of the Centre may decide to refer that person for age assessment in accordance with applicable provisions. In any case, until a conclusion is drawn regarding their age, the individual is considered to be a minor and must be treated as such<sup>9</sup>.

Initially, *age assessment is based on macroscopic characteristics* such as height, weight, body mass index, voice and hair growth, following a clinical examination *by a paediatrician*, who will take the above data into consideration to justify their final opinion.

International literature states that *the assessment of age based on physical characteristics is considered one of the least accurate medical age assessment methods*, since the measurements do not take into account fluctuations due to ethnic and racial background, nutrition and social and economic background, while maturation may also be affected by any diseases the interested party may have. Besides, *in practice, many of the Reception and Identification Centres currently lack specialized paediatricians* who could perform the clinical examination in question.

Furthermore, the law foresees that *in the event that the paediatrician is unable to establish age on the basis of macroscopic characteristics* or in the event of *unavailability of a paediatrician, an evaluation shall be performed by a psychologist and a social worker*. Evaluation by a psychosocial team shall be based on an assessment of the individual's cognitive, behavioural and emotional characteristics, as well as on a social background examination.

*One of the greatest disadvantages of the method* in question is the *lack of a scientifically valid method of establishing the general margins of errors* and therefore the *wide range of subjective interpretations* by psychologists and social workers with respect to age assessment. Also, the *effect of the differing cultural and ethnic/racial characteristics* of third country nationals on the above psychosocial evaluation raises concerns as to the accuracy of the final assessment.

Furthermore, *completion of the age assessment procedure* by the psychologist and social worker *is dependent on conditions* that guarantee that the individual is able to provide the necessary information for *drafting a psychosocial background report*. At the same time, psychosocial support experts must be provided with *an adequate time-frame that will allow*

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[http://www.unicef.org/protection/Age Assessment Practices 2010.pdf](http://www.unicef.org/protection/Age%20Assessment%20Practices%202010.pdf), Fundamental Rights Agency of the European Union (FRA), Separated, asylum-seeking children in European Union Member States, April 2010, [http://fra.europa.eu/sites/default/files/fra\\_uploads/866- SEPAC-SUMMARY-REPORT-conference-edition en.pdf](http://fra.europa.eu/sites/default/files/fra_uploads/866-SEPAC-SUMMARY-REPORT-conference-edition_en.pdf) , Haut Conseil de la Santé Publique, Avis sur l'évaluation de la minorité d'un jeune mineur étranger isolé, 23 janvier 2014, <http://www.hcsp.fr/explore.cgi/avisrapportsdomaine?clefr=412>, The Royal College of Paediatrics and Child Health, The Health of Refugee Children - Guidelines for aediatricians", 1999, [http://www.rcpch.ac.uk/system/files/protected/news/refugee\\_1.pdf](http://www.rcpch.ac.uk/system/files/protected/news/refugee_1.pdf)

<sup>9</sup> See article 14(8), item d, Law 4375/2016, as valid.

*the implementation of necessary age assessment procedures. It is clear that a single interview/session which usually takes place in practice with a social worker and psychologist does not qualify as an adequate time-frame for completion of the procedure in question. The conditions of the reception and identification centres after the 20th of March 2016, at which time the EU-Turkey agreement on the refugee/immigration issue became applicable, do not contribute to the creation of a suitable environment for such interviews to be performed, and intensify the stress factors affecting refugees and immigrants. As a result, each individual may be incapable of providing the information necessary for age assessment. Moreover, the lack of specialized and suitably trained interpreters for the in-depth interviews required for age assessment procedures is one more factor affecting the ability to draw accurate conclusions. Consequently, the team of social workers and psychologists providing services at the reception and identification centres often does not have at its disposal the methodological tools (certified by international bodies and the scientific community) that would help them draw safer conclusions on the matter at hand.*

Finally, the law stipulates that, *in the event that no conclusions as regards minority can be drawn* from the above procedure, then the *medical examinations described below* shall be performed - specifically an X-ray of the left wrist and hand to establish bone maturity, a dental examination and a panoramic X-ray of the teeth.

However, as already pointed out, *any medical findings, according to international literature, are incapable of establishing a person's precise age; all they can provide is an age range.* This also results in the increased probability of doubtful conclusions as to the interested party's minority or majority.

One other significant practical problem is the *lack of a functional system for the guardianship of unaccompanied minors* (see below) and the provision of legal assistance to ensure that children's rights are protected, including within the framework of age assessment procedures.

Finally, those who have undergone relevant age assessment examinations have no effective legal remedy at their disposal to challenge such a procedure in practice. According to the applicable legal framework, upon completion of the age assessment procedure, the interested party is informed, in a language that he or she understands, of the content of the age assessment report, against which he or she may appeal according to the administrative process code; the appeal shall be submitted to the First Reception Centre's Secretariat within ten (10) days of notification. However, usually most of the appeals are rejected. In practice, there is minimum or no possibility for a minor to change his age determination, unless he produces before the authorities a valid passport or proper documentation from his/her country of origin. On top of that, the authorities require that these documents to be officially certified-sealed (with "apostille") by the authorities of the country of origin (sic) under Hague Convention Abolishing the Requirement for Legalization of Foreign Public Documents of 5 October 1961 and translated in Greek.

### c) Legal guardianship

For each unaccompanied child, the Public Prosecutor for Children or the First Instance Prosecutor is informed and acts as the temporary guardian for the child and undertakes the necessary actions for the appointment of a guardian<sup>10</sup>. Given the particular characteristics of unaccompanied children, as well as their numbers, the effective exercise of guardianship functions by temporary or permanent guardians becomes particularly difficult, resulting in children not being able to enjoy the protection and rights enshrined in the Convention of the Rights of the Child<sup>11</sup>. Despite the fact that the Ministry of Labour is supposed to be preparing a law on guardianship, which aim to enhance the protection of children deprived of parental care, the relevant amendments have not been submitted before Parliament yet.

There is no institutionalised procedure for determining the best interests of the child, a guiding principle of the protection of children according to international standards and Greece's obligations as a signatory to the UN Convention on the Rights of the Child<sup>12</sup>. As a result of existing shortcomings in Greece's child protection system, unaccompanied minors remain without proper care and protection, often for a long time, in contravention of applicable national and international law<sup>13</sup>.

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<sup>10</sup> <http://www.asylumineurope.org/reports/country/greece/asylum-procedure/guarantees-vulnerable-groups-asylum-seekers/age-assessment>

<sup>11</sup> United Nations High Commissioner for Refugees Greece, *Current Issues of Refugee Protection in Greece*, July 2013, [https://www.unhcr.gr/fileadmin/Greece/News/2013/PCjuly/Greece\\_Positions\\_July\\_2013\\_EN.pdf](https://www.unhcr.gr/fileadmin/Greece/News/2013/PCjuly/Greece_Positions_July_2013_EN.pdf), UNHCR Recommendations for Greece in 2017, February 2017, <http://www.refworld.org/docid/58da795e4.html>

<sup>12</sup> Op. cit. note 12

<sup>13</sup> Op. cit. note 12