THE MANAGEMENT OF FALSE UNACCOMPANIED MINORS IN EUROPE AND FRANCE

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The number of “unaccompanied” foreign minors entering Europe illegally is constantly increasing, as have the migration flows since 2015. States have a duty to take care of these minors under international and national laws, provided that the minority is established by an assessment. A large number of evaluations in France reveal that these migrants are actually adults who lie about their age in order to benefit from the favorable status of unaccompanied minors. It is therefore essential to develop the most reliable methods possible to evaluate the reality of the minority in a common manner throughout Europe.

The strategy to deal with this problem depends on different points of view, and must strike a balance between protecting the rights of the child and combating illegal immigration. Thus, if the current methods are sometimes criticized (in particular bone analysis) and
Difficult to implement (problem of false documents obtained with
the complicity of local authorities), they remain the best means to
address fraud. The strengthening of the fight against the specific
networks of smugglers, and the development of new assessment
procedures combined with a positive strategy in this area should
make it possible to address this issue more effectively: the creation
of special units, the implementation of the international coopera-
tion, and the use of new age determination technologies and da-
tabases.

Key words: migrants, combating illegal immigration, minors, un-
accompanied minors, management.

1. INTRODUCTION.

Problem Actualization. The number of unaccompanied mi-
nors (UM) fleeing their countries has been continuously increas-
ing in recent years. According to UNICEF, at least 300,000 unac-
accompanied children have been registered in about 80 countries in
2015 and 2016.94

The treatment of these minors in Europe is a subject of de-
bate, intensified by ideological convictions, the risks of human
trafficking or terrorism, the sometimes violent delinquency of
these young people, but also the very high financial cost of pro-
tection measures.

For the border police in France, especially in Montpellier, it is
the main source of illegal immigration. Indeed, it is estimated that
around 60% of these migrants are actually adults who hijack the pro-
cess.

There is no definition of “unaccompanied minor” at internation-
al level, nor even at national level for some countries such as France.
For the association “France Terre d’asile”, this is a “young person

94 UNICEF, « A child is a child : Protecting children on the move from violence, abuse and
under 18 years of age who does not have French nationality and is separated from their legal representatives on French soil”95.

For the purposes of this article, he is defined as a foreigner in an irregular situation who declares himself to be a minor to the authorities, who has the nationality of a country outside the European Union, and who has neither of his parents with him.

The purpose of this study is to find the best solution to deal with the issue of migrants who have entered Europe by land (particularly in France) and declare themselves to be minors in order to be granted reception, when they are actually over 18 years old.

The subject of the presentation is mainly drawn from my professional experience and knowledge, but also from national or international studies.

The strategy to deal with this problem depends on different points of view, and must strike a balance between protecting the rights of the child and combating illegal immigration.

This is an important and complex issue of concern, which requires the implementation of assessment tools, the development of police investigations, and the continuous improvement of procedures.

2. RESEARCH RESULTS

False unaccompanied minors: an important issue of concern.

The issue of unaccompanied minors continues to grow in France. It is estimated that their number has risen from 5,000 in 2013 to 17,000 today. This trend is also applicable in Spain, where more than 14,000 foreign minors are handled, particularly in the municipality of Barcelona. In Italy, police data indicate that 5,000 minors arrived in the

95 Delbos (France Terre d’asile), Poulou M (i-RED) Gallardo A & MARTIN P (El movimiento por la paz) Palmieri N & Benassi E (CIR) « the reception and care of unaccompanied minors in eight countries of the European Union » Synthesis october 2010. Project co-funded by the European Union’s Fundamental Rights and Citizenship Programme.
first half of 2020 (more than 7,000 for the same period in 2019, and 13,000 in 2018).

Greece is not spared with a large number of unaccompanied minors in the camps (more than 400 of them were evacuated from the Moria camp on the island of Lesbos after the fire of 8th September 2020). Germany is also impacted as well as Bosnia-Herzegovina (particularly the district of Tuzla).

Among these isolated minors are actually hiding many adults. In France, evaluations made by the child welfare services or the police indicate that around 60% of false declarations are reported.

In France, most of these “false unaccompanied minors” arrive from West Africa via Spain. They are mainly Guinean, Malian and Ivorian nationals (60% of the total number of UMs). But there is also an increasing number of Bangladeshi nationals.

How this issue of UMs can be explained?
They are mainly migrants over the age of 18 who are part of the usual migratory flows and who do not meet the conditions for obtaining asylum and refugee status.

Then, they declare themselves to be minors, abusing the system to obtain state protection. Indeed, national and international law protects any foreign minor who finds himself alone on European territory. If they are rejected for treatment of a foreign minor, they will move to another country or region until their case is accepted. In France, not only is the foreigner immediately treated (housing, food, care, education) but he also obtains a formal recognition of his administrative situation (residence permit or French nationality) once he has reached the age of majority (French interministerial Circular of 25 January 2016).

Henceforth, how to manage this flow of foreigners who are so-called minors? This is a tricky and complex issue.

**False unaccompanied minors: a complex problem.** The European Association for the Defense of Human Rights writes in a 20 June 2017 report “within the Member States, national standards
and practices are not sufficient to ensure their rights and sometimes even contravene their protection needs.

Age assessment procedures, reception conditions, the processing of files and the formalities they have to face vary from one Member State to another, without the principle of the best interests of the child being really taken into account(…) and should take precedence over them being nationals of a third country”\textsuperscript{96}.

In Human Rights Review No. 7 it is reported that “Age identification procedures, the treatment offered, the accommodation facilities vary from State to State and do not always respect the best interests of the child as guaranteed by the International Convention on the Rights of the Child”\textsuperscript{97}.

In France, for some media and part of the population, as well as some unions of social educational staff, it is not acceptable that young foreigners who have crossed deserts and seas to flee war and poverty find themselves without treatment of their own, or even in prison or detention centres.

On the other hand, abuses are frequent and even flagrant. One example is the case of a 34-year-old Guinean who had participated in a conference in Geneva on telecommunications before presenting himself to the child welfare office in Montpellier with a birth certificate bearing the age of 17, on the basis of a suppletive judgment.

How should we respond to these situations?

The first principle is of course the treatment of these minors in application of international laws, including in particular:

- The International Convention on the Rights of the Child
- The Hague Convention of 5 October 1961
- United Nations General Assembly Regulation 44/25

\textsuperscript{96} ADEH -In Europe unaccompanied minors are not protected- 20 juin 2017. URL: http://www.aedh.eu/en/in-europe-unaccompanied-minors-are-not-protected/

\textsuperscript{97} Revue des droits de l’homme N°7 -2015 (The protection of unaccompanied migrant minors in Europe- Human Rights Review). URL: https://journals.openedition.org/revdh/1147
The Council of Europe Regulation of 26 January 1967 on the treatment of unaccompanied minors.

Once the first emergency measures have been taken, there comes a phase of evaluation of the minority and the situation of isolation, based on the statements and documents provided. If the situation of isolation is almost always confirmed, the same does not apply to the minority.

**The minority assessment process.** It differs from country to country. In Germany, for example, there is provision for bone examinations and the study of identity documents. In France, the verification officially lasts 5 days and also covers the intellectual maturity.

The pattern is complex (see the “Montpellier” protocol below).

Faced with the increase of arrivals on the territory, the education services are unable to manage the situation properly. There is a lack of accommodations and educators. More and more, local services refuse to provide care for people presenting themselves as minors when their physical appearance is clearly in contradiction with their statements after a check of only a few hours or less. The court can then be referred to them and ordered to do so.

The educators themselves are no longer able to deal with real minors as they are overwhelmed with an increasing number of “false minors”. Moreover, there are also the risks involved in having children and young adults co-existing in the same facilities (risk of sexual exploitation or abuse).

This is much more complicated because false unaccompanied minors do not leave the French territory for all that. Some of them run away as soon as they are summoned to the Border Police for investigation. This leads to the emergence of slums and precarious situations. It is therefore necessary to consider the process as part of a voluntarist and innovative strategy from a legal and scientific point of view.

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98 Hanan ZAHOUAN « Le traitement de Mineurs non accompagnés en Allemagne» (Treatment of Unaccompanied Minors in Germany) 2020. URL: https://lighthouseua.hypotheses.org/2381
a) The medical assessment
The medical examination, including exposing the intimate organs in order to assess the development of the migrant, is considered to be a violation of human dignity. Following complaints, doctors have stopped this practice in France.

Secondly, it is widely admitted that the results of analyses using bone analysis (which is based on the calcification and fusion of the bones of the wrist and hand known as “Greulich and Pyle” method)\(^9\) are unreliable and non-determining, both for the general public and for associations defending the rights of migrants, a section of the medical profession and even the administrative and judicial authorities. This is the point of view, for example, of the “French High Council of Public Health” or the “United Nations Committee on the Rights of the Child”. The margin of error is estimated around 1-2 years.

In the United Kingdom, these bone scans are prohibited in this context. In Spain, they are only allowed in the absence of a conclusive identity document.

The application of this examination also comes up against the reluctance of some assessment actors who believe that the minority should take precedence over nationality.

Some radiologists in France, for instance, refuse to carry out the examinations knowing the possible legal and administrative consequences for the patient, either for ideological reasons or under pressure and threats from associations for the defense of foreigners.

Some educators refuse to take part in the evaluation by the border police and to have the fingerprints taken from migrants who then risk being removed from the territory if it is discovered that they are of age.

However, another point of view argues that bone examinations are reliable as long as they are carried out in a comprehensive form.

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\(^9\) Hanan ZAHOUAN « Le traitement de Mineurs non accompagnés en Allemagne» (Treatment of Unaccompanied Minors in Germany) 2020. URL: https://lighthouseua.hypotheses.org/2381
This is an X-ray scan of the hand, wrist and arm, combined with a dental X-ray analysis (root growth and wisdom teeth).

There are studies and scientific literature on bone analysis (Evidence based medicine) with extensive national and international recommendations100.

Dr Lossois, a specialist in the field of bone analysis, mentioned in his 1st November 2020’s report, the international study set up in Germany from 2008 to 2016 and the validation by the “Berman medical assembly” which has 134 members from 18 different countries and which takes into account in its studies and evaluations the differences due to the different ethnic and socio-economic indicators and individual development according to the life course, with accelerated or disrupted development101.

Dr. Lossois also mentioned in an interview within the newspaper “Le midi libre” on May 24, 2019, that “the exams have been tested on thousands of subjects and the results have been consistent”. Examinations of the clavicle, although more expensive, have considerable probative value. A result at level 3C or 4, for example, in the light of existing studies, proves the morphological development of an adult individual.

However, the point is that it is the accumulation of methods which is effective. In her work published on November the first 2020, Dr Lossois wrote: “as the age assessment is complicated and has serious consequences for the subject, all necessary precautions need to be taken... It is inadmissible to use only one method, or to base a decision on only one criterion”102.


102 Journal « Midi libre » vendredi 24 mai « Medecins du Droit d'asile » -Newspaper "Midi libre" Friday 24th May " Medecins du Droit d'asile " ("Doctors of the Right of Asylum")
These analyses are also well supported from a scientific and ethical point of view. Examinations of unaccompanied minors are carried out in a language they understand. They are carried out in a safe procedure (most studies have demonstrated that bone scanning is not dangerous for humans in terms of radiation, even for minors). They are performed only with his or her consent and on the request of magistrates. The result is based on the “minimum age” and not a precise age. It always benefits the person. Finally, whether it is a question of scientific methods or legal prescriptions such as the Decision of the “Constitutional Council” French court of 21 March 2019 which validates bone investigations under certain conditions, the determination of a person’s age cannot be based exclusively on medical analyses and must be accompanied by other investigations.

b) The clue bundle
Judicial investigations into suspicions of fraud (major who declares himself a minor to obtain benefits) are thus based on a clue bundle: medical evaluation but also an investigation by social workers and, in case of doubt, by the police. It is also interesting to mention that the result of the police investigation is shared with the doctors in order to refine their results and studies a posteriori. The clue bundle content:

It is rarely about confessions because migrants follow the instructions of silence given by the smugglers. But the interviews make it possible to reveal contradictions in the declarations. Moreover, it is essential to study the documents provided by the minor in order to establish his or her minority. On many occasions, the research carried out by specialists in document fraud has provided decisive elements for the investigation.
However, recently, passports, falsified or counterfeit identity cards that are easy to analyze have given way to false birth certificates. Documentary analysis then turns out to be more difficult, especially when the document is drawn up with complicity in the source country (civil records or the police). These investigations require additional, often lengthy investigations with the help of non-EU countries.

Consultation of databases is also a determining factor in this kind of file.

Actually, it often happens that the so-called minor is identified by fingerprints as an adult who has already obtained a visa. Therefore, consulting VISABIO is an essential part of the process. The same applies to EURODAC, because some minors have already applied for asylum as an adult in Italy or Spain before coming to France pretending to be a minor. Some migrants are also registered as offenders in France or in other countries (SIS).

Finally, the investigation of the respondent’s immediate background may also prove successful. It is not unusual to find, for example, surprising elements in the mobile phone or on social networks. For example, a foreigner who had declared himself to be a minor published on Facebook the pictures of his 18’s birthday. Recent photos or conversations with parents who are supposed to have died a long time ago may also be found.

Once the scheme is in place with all the stakeholders, the evaluation policy is efficient, while also respecting the rights of the child.

However, proving the reality of the majority is actually not enough and it is necessary to step up the investigations aimed at dismantling the networks which organize this traffic.

**Combating the smugglers.** In the course of investigations with UMs, the police forces therefore look for evidence on the smugglers through interviews and mobile phone analyses. After all, migrants, even if they are adults, are nonetheless victims of smuggling networks.

The investigations carried out in this field have revealed the existence of real networks of smugglers who sell undetectable
“unaccompanied minor packages” (documents registered on local administrative databases, false school reports, judgments of convenience).

In 2019, the border police of Montpellier dismantled a criminal network involving Portuguese, Guinean and French traffickers. The main organizers were providing false civil status documents to Guineans of legal age in order to be treated as unaccompanied foreign minors by the children’s home or to obtain visas to remain on the National Territory. The search of the home carried out revealed a fake Guinean driving license, Portuguese passports bearing fake Guinean visas, fake birth certificates, certificates from a football club involved in the case, as well as declarations of fraudulent acknowledgement of paternity.

Another file was carried out in the Cameroonian community. It led to the detection of a communication between a Cameroonian police officer offering to fraudulently obtain a genuine Cameroonian passport in exchange for cash, and an employee of the Cameroonian Consulate in Madrid. Unaccompanied minors were sent by post or e-mail a Cameroonian birth certificate under the identity of a minor. With this document they then obtained a Cameroonian passport through the embassy.

A similar network was dismantled with Ivorian minors from Douala. At the end of the investigation in France, the information was transmitted to the country of origin and several perpetrators were arrested by the Ivorian authorities for making and issuing forgeries. At the head of the network, an officer of the public prosecutor’s office admitted the facts before being arrested.

Between the evaluation process and the judicial investigations, the process in Montpellier is effective but could be improved. And new proposals could be made.

**The continuous improvement of the process.** Faced with the ingenuity of the smugglers, the reticence, and the evolution of migratory flows, it is requisite to improve the methods through a voluntarist approach.
In spite of scientific progress (especially on the clavicle) bone scans are not carried out everywhere in Europe and are still contested. It is therefore planned to develop the determination of an individual’s age based on his or her genetic profile (DNA), with the study of telomeres and even more so the methylation of DNA (epigenetic method) which is less costly and simple (mouth smear) with a lower estimated margin of error than bone analysis. This is the subject of the VISAGE (Visible Attributes trough genomics) project. This project is funded by the Horizon 2020 program (EU research and innovation funding) and involves members of universities and forensic services in several Member States.  

Another way of improving the system is to increase the efficiency of the databases.  

In order to create national uniformity in the assessments carried out by local child protection services, a national database known as “Aide à l’évaluation des mineurs” (addressing the assessment of minors) has been established and approved by the french “Council of State” court. This new electronic tool holds the fingerprints of the individuals assessed, during one year. Unfortunately, its implementation is subject to a local decision, and depending on the political party affiliation of the elected representatives, the file may or may not be implemented. The extension of this database at national and European level could be a very efficient instrument against fraud.  

The creation of groups of experts (specialized unit) to deal with this topic is an additional measure. Within the Montpellier Border...
Police service, a taskforce has been set up (a unit for unaccompanied minors), including a specialist in documentary fraud and two inspectors. Their specific knowledge of this topic and their daily relations with stakeholders have produced significant results. Although not provided for in the French system, this initiative has the potential to be developed in France and in Europe\textsuperscript{105}.

It is also crucial to develop international cooperation within the European Union. Some countries reply more easily than others to requests for information. Moreover, some national laws sometimes stipulate that it is not possible to exchange information between countries on the minors’ issues. Bilateral or European agreements might be developed to allow such cross border sharing.

The same applies to cooperation with the sending countries. Thus France, Sweden, Spain and Germany have developed a partnership with Morocco on the issue of unaccompanied minors. Delegations from foreign countries (particularly in West Africa) could be deployed in the cities faced with this problem.

3. CONCLUSIONS AND FURTHER RESEARCH PERSPECTIVES

While the acceptance of unaccompanied foreign minors is a fundamental principle, the fight against fraud committed by adults pretending to be minors must be continued in order to reduce the impact of unaccompanied foreign minors trafficking. Despite the difficulties in establishing the evidence of fraud, it is possible to meet the challenge with effective, innovative and human rights-friendly processes.

This approach should also be part of the more global management of unaccompanied minors, which includes the problem of the acts of delinquency they may commit, attempts to enter the territory by air or the treatment of those claiming for asylum.

\textsuperscript{105} VISAGE Project. URL: http://www.visage-h2020.eu/
LITERATURE


Лоран Сіам. РОБОТА З УЯВНИМИ НЕПОВНОЛІТНИМИ БЕЗ СУПРОВОДУ В ЄВРОПІ ТА ФРАНЦІЇ

Кількість неповнолітніх іноземців без супроводу, які нелегально в'їжджають до Європи, постійно зростає, як і міграційні потoki з 2015 року. Держави зобов'язані піклуватися про цих неповнолітніх згідно з міжнародним і національним законодавством, за умови, що меншість встановлена оцінкою. Велика кількість оцінок у Франції показує, що ці мігранти насправді є дорослими, які брешуть про свій вік, щоб скористатися сприятливим статусом неповнолітніх без супроводу. Тому важливо розробити найнадійніші можливі методи оцінки реального становища меншини загальним способом у всій Європі.

Стратегія вирішення цієї проблеми залежить від різних точок зору та повинна знайти баланс між захистом прав дитини та боротьбою з нелегальною імміграцією. Таким чином, якщо поточні методи їнколи піддаються критиці (зокрема, аналіз кісток) і важко реалізувати (проблема фальшивих документів, отриманих за співучастю місцевої влади), вони залишаються найкращим засобом боротьби з шахрайством. Посилення боротьби з окремими мережами контрабандистів, розробка нових процедур оцінки в поєднанні з позитивною стратегією в цій сфері має дати змогу більш ефективно вирішувати це питання: створення спеціальних підрозділів, здійснення міжнародного співробітництва та використання нових технологій визначення віку та баз даних.

Ключові слова: мігранти, протидія нелегальній імміграції, неповнолітні, неповнолітні без супроводу, управління.

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