

3.1. Use of physical examinations and prohibition of sexual maturity examinations

Physical examinations are among the methods used by medical professionals to ascertain an applicant's age, although they have long been regarded as both intrusive and unsuitable for determining age on their own, except in the most obvious cases. Courts have provided some rationale for the use of physical medical examinations, while also recognising the limits to such examinations, including the requirement, codified in the APR, to respect the dignity of the child, with particular emphasis on the prohibition of sexual maturity examinations.

Scientific literature cited in jurisprudence recognises the role of an assessment by a medical professional prior to resorting to radiological methods. One of the most prominent examples is the 2008 *Updated Recommendations for Age Estimation in Living Persons in Criminal Proceedings*, issued by the Working Group for Forensic Age Assessments of the German Society for Legal Medicine (AGFAD), which has been cited by courts in Austria, Germany and Switzerland.29 The recommendations advise conducting a physical examination, including the recording of anthropometric measurements such as body height and weight, body build and possible developmental disorders relevant to age, prior to any methods involving ionising radiation. This was clearly explained by the Swiss Federal Administrative Court in a landmark case decided in August 2018, in which the court held that physical examinations are not, in themselves, suitable to determine whether a person is a minor or an adult but that, when combined with a targeted medical history, they may provide indications of anomalies in physical development that could lead to irregularities in age estimation.

Non-radiographic dental examinations are another kind of physical examination method that has likewise been regarded as unreliable in ECtHR case law. For instance, in *Mugenzi* v *France* (10 October 2014, paras 29-33 and 58), the ECtHR questioned the evidentiary value of a simple oral cavity examination, noting that there was no indication that it had been complemented by radiological testing. The court held that, in the absence of a dental X-ray, a visual examination alone cannot provide even an approximate indication of age and was therefore insufficient to undermine the credibility of the documentary evidence submitted by the applicant.

Relatedly, physical checks have at times included examinations of the applicants' primary and secondary sexual characteristics, a practice that the UN CRC Committee has affirmed "must never be performed on children". This was the case in *R.Y.S.* v *Spain* (4 February 2021, paras 8(8) and 8(16)), where a 16-year-old girl who had fled Cameroon after experiencing sexual

abuse in her family environment was required to undergo a sexual maturity assessment. The committee observed that the physical examination was invasive and unnecessary, as girls generally reach full sexual maturity by the age claimed by the applicant. According to the committee, such tests “violate a child’s dignity, privacy and bodily integrity and should be prohibited”, constituting an unlawful interference in her private life and a violation of her rights to privacy and dignity under Article 16 of the CRC.

Consequently, national legal frameworks in the EU are increasingly moving towards excluding sexual maturity examinations from age assessment procedures. This is reflected, for instance, in Spain’s legislative reforms following the above-mentioned views of the CRC Committee;30 Article 388 of the French Civil Code which, as recalled by the Court of Cassation, prohibits examinations of pubertal development and primary and secondary sexual characteristics; and the previously cited AGFAD recommendations, which note that genital inspection is not permissible in age assessments conducted by the Youth Welfare Offices (*Jugendamt*) on the basis of Section 42f of Book VIII of the German Social Code.

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  Working Group for Forensic Age Assessments of the German Society for Legal Medicine (AGFAD) (14 March 2008). Aktualisierte Empfehlungen für Altersschätzungen bei Lebenden im Strafverfahren [Updated Recommendations for Age Estimation in Living Persons in Criminal Proceedings].

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  Spanish Parliament. Ley Orgánica 8/2021, de 4 de junio, de protección integral a la infancia y la adolescencia frente a la violencia [Organic Law 8/2021 of June 4 on the comprehensive protection of children and adolescents against violence].

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