

Insufficient safeguards surrounding age assessment of foreign national claiming to be a minor

In today's **Chamber judgment**¹ in the case of [F.B. v. Belgium](#) (application no. 47836/21) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 8 (right to respect for private life) of the European Convention on Human Rights.

The case concerned the decision to terminate the applicant's entitlement to support as an unaccompanied foreign minor following an age assessment.

The Court found, without ruling on the reliability of the bone tests or on the applicant's minor status, that the decision-making process that had resulted in the decision to terminate her entitlement to support as an unaccompanied foreign minor had not been surrounded by sufficient safeguards for the purposes of Article 8 of the Convention. In particular, it noted that there was no indication in the file that the applicant had actually been informed of the need for her consent to the medical test. In addition, it emphasised that, given their invasive nature, medical examinations should only be performed as a last resort, where alternative means of dispelling doubts as to the age of the person concerned had yielded inconclusive results. In this connection, it noted that the applicant had been interviewed by an employee of the guardianship office who was specially trained in the reception of minors only after the bone tests had been performed, whereas a preliminary interview could potentially have made it possible to ascertain whether the doubt as to the her minor status could be dispelled by less intrusive means and have allowed the qualified professional to ensure that she had received all the necessary information to defend her rights effectively.

Principal facts

The applicant, F.B., is a Guinean national who arrived in Belgium on 2 August 2019.

On 5 August 2019 she lodged an application for international protection, stating that she was a minor, aged 16. She produced a non-legalised copy of her birth certificate and stated that she had fled her country of origin to escape mistreatment resulting from her forced marriage.

That day she was interviewed by an employee of the Minors and Victims of Human Trafficking Department of the Aliens Office, who completed the form registering her as an "unaccompanied foreign minor". The employee, who expressed doubts as to F.B.'s minor status, ticked the following boxes in particular: "doubt as to minor status", "request for medical examination", "person concerned informed of doubts", "information document on age-assessment process delivered". He also ticked the box certifying that F.B. did not object to undergoing the age assessment.

Before the Court, F.B. submitted that she had not been informed during the interview that a doubt had been noted as to her age and that she had not received any information or document concerning the bone tests sought, in particular concerning the possibility of refusing to undergo such

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

tests. The Government argued that, during the interview, F.B. had received an information form about the age-assessment process, drafted in French, which was a language she understood.

F.B. was then transferred to a “monitoring and guidance centre” run by the Federal Agency for the Reception of Asylum-Seekers, which was a centre for unaccompanied minors.

A few days later, F.B. was taken to hospital, where she underwent a triple bone test consisting of hand and wrist, collarbone and dental X-rays, following which the experts concluded that she had been 21.7 years old on the day of the tests, with a standard deviation of two years.

Later, F.B. was interviewed about her age and identity by an employee of the guardianship office. She claimed that she had understood, during this interview, that her age had been questioned and that the documents she had provided were of no value.

F.B. subsequently forwarded to the guardianship office the original of the supplementary judgment delivered in May 2019 by the Conakry III-Mafanco Court of First Instance, serving as a birth certificate, and an original short-form birth certificate. Both documents indicated that F.B. was born on 15 January 2003.

The guardianship office nevertheless considered that the documents had no evidential value because they had not been legalised in accordance with Article 30 of the Code of Private International Law. They therefore gave precedence to the age assessment over the documentation submitted by the applicant.

Consequently, F.B.’s entitlement to support from the guardianship office was terminated by operation of law and she was transferred to a centre for adults, where she was able to receive assistance from a lawyer who helped her to lodge a request for a stay of execution and an application for judicial review, which were dismissed by the *Conseil d’État*.

According to the information in the case file, F.B. was recognised as a refugee by the Office of the Commissioner General for Refugees and Stateless Persons and was able to register for school to pursue her education, notwithstanding the termination of her entitlement to support on 11 September 2019.

Complaints, procedure and composition of the Court

Relying in particular on Article 8 of the Convention, the applicant complained that the decision to terminate her entitlement to support as an unaccompanied foreign minor following an age assessment had interfered with her right to respect for her private life.

The application was lodged with the European Court of Human Rights on 24 September 2021.

A number of third parties were granted leave to intervene in the written proceedings.

Judgment was given by a Chamber of seven judges, composed as follows:

Ivana Jelić (Montenegro), *President*,
Erik Wennerström (Sweden),
Georgios A. Serghides (Cyprus),
Frédéric Krenc (Belgium),
Alain Chablais (Liechtenstein),
Artūrs Kučs (Latvia),
Anna Adamska-Gallant (Poland),

and also Ilse Freiwirth, *Section Registrar*.

Decision of the Court

Article 8

The Court noted that the decision to terminate the applicant's entitlement to support as an unaccompanied minor had been based in law (Title XIII "Guardianship of unaccompanied foreign minors", Chapter 6, section 7, of the Law of 24 December 2002) and had pursued legitimate aims, namely, the protection of public order and safety, and of the rights and freedoms of others.

Concerning the necessity of the interference, the Court noted, firstly, that the parties agreed that the medical test in question could not be performed without the consent of the person concerned and that such consent had to be expressly given.

The Government had explained that, for the purposes of meeting this requirement, the person in question was given a special document that explained the testing process in simple terms and in a language that he or she understood. Delivery of the document to the person in question and the absence of any objection on his or her part to undergoing such tests were recorded in the pre-printed form by the employee conducting the interview during which doubts as to the person's minor status were noted. However, the signature of person concerned was required neither to certify delivery of the special information document nor on the pre-printed form to certify the accuracy of the recorded answers.

In the Court's view, communication of such information was particularly important where, as in the present case, the person concerned, who was still presumed to be an unaccompanied minor and was an applicant for international protection, was assisted neither by a representative nor by a lawyer at the age-assessment stage.

The Court did not, however, consider it necessary to rule on the question whether the applicant had actually received the information concerning the triple bone test since, even assuming that the document in question had in fact been delivered to her, it could only note that this document made no mention of the need for her consent, indicating only that it was open to her to "express [her] opinion on the matter" and, if she disagreed with the final decision, to challenge it before the *Conseil d'État*. Nor was the existence of the applicant's consent mentioned in the decision to terminate her entitlement to support as an unaccompanied foreign minor, which merely pointed out that she had been informed of the medical testing process.

In this connection, the Court reiterated the importance of patients' free and informed consent to medical procedures and pointed out that the absence of such consent could amount to interference with their physical integrity in a manner capable of engaging the rights protected under Article 8 of the Convention.

Secondly, the Court noted that the bone tests had been performed immediately after an employee of the Aliens Office had expressed doubts as to the applicant's minor status. In fact, Belgian law expressly provided that such tests should be performed "immediately" in the event of doubt as to the individual's age.

The Court emphasised that, given their invasive nature, such medical examinations should only be performed as a last resort, where alternative means of dispelling doubts as to the person's age had yielded inconclusive results.

In the present case, the fact remained that the applicant had been interviewed by an employee of the guardianship office who was specially trained in the reception of minors only after the bone tests had been performed. It was solely in the course of that interview that the applicant had been asked about, *inter alia*, her marital status, her family situation, her living conditions in her country of origin and her education, whereas a preliminary interview with an employee of the guardianship office could potentially have made it possible to ascertain whether the doubt as to her minor status could

be dispelled by less intrusive means and have allowed the qualified professional to ensure that she had received all the necessary information to defend her rights effectively.

It was not for the Court to rule on the reliability of the bone tests, which had been amply discussed by the parties and the third-party interveners and remained the subject of substantial debate. In the present case, without its having to decide on this point or on the applicant's status as a minor or otherwise, it observed that the decision-making process that had resulted in the decision to terminate her entitlement to support as an unaccompanied foreign minor had not been accompanied by sufficient safeguards for the purposes of Article 8 of the Convention. Consequently, there had been a violation of that provision.

Other Articles

The Court rejected the applicant's complaints under Article 13 (right to an effective remedy) and Article 14 (prohibition of discrimination) in conjunction with Article 8, finding that they were manifestly ill-founded.

Just satisfaction (Article 41)

The Court held that Belgium was to pay the applicant 5,000 euros in respect of non-pecuniary damage.

The judgment is available only in French.

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The European Court of Human Rights was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.