

Spain Acting Ombudsman warns that age assessment practices do not comply all necessary guarantees

- Cava de Llano calls for a standardized set of criteria for all Spanish territory.
- The report “Children or adults? Age assessment practices” underscores that there are severe shortcomings in this area.
- Acting Ombudsman has drafted 41 recommendations for several agencies whose duties encompass these matters.
- Seven real case studies are included in this report as examples of the different types of issues that this Institution receives on daily basis
- The Ombudsman asks for legislative amendments that would guarantee the right to free legal assistance for irregular and undocumented migrants whose reported age is subject to question.

Spain Acting Ombudsman, M^a Luisa Cava de Llano presented the report “Children or adults? Age assessment practices”. This publication gathers the deficiencies encountered during these procedures and discusses the 41 recommendations made by the Institution to address them.

Conclusions

Among the major conclusions of this report is the conviction of the scientific community that wide margins of error exist among the range of currently available age determination techniques, such as bone maturity analyses and dental mineralization testing. Indeed, from a medical standpoint, nutritional, pathological, health and hygiene, or physical activity factors must certainly be taken into account when performing any age assessment study.

Moreover, the fact that experts in legal medicine are not sufficiently involved in the process of interpreting diagnostic tests for age assessment often means that official age estimation reports and statements may merely be based on isolated tests (such as X-ray testing, for example), and, thus, lack sufficient scientific grounding. It has also been observed that, among the medical reports reviewed, a few failed to discuss the potentially significant margins of error that could arise among the different types of testing available. Nor did they mention the need for caution when attempting to draw any legal conclusions from any such reports in light of this factor.

Additionally, one of the pending tasks of the Administration is to resolve deficiencies currently hampering functions at the Unaccompanied Minors Registry. According to the Spanish Ombudsman's Office, the poor running of this Registry seriously compromises oversight for any age assessment practices carried out. As such, tests are sometimes needlessly repeated on the same subjects. This situation also makes it impossible to provide personalized treatment for those concerned, to track their individual circumstances and

mobility, or to adopt measures meant to better coordinate the activities of the various authorities involved in these issues.

The diversity of authorities with powers and duties in this matter has resulted in a wide range of different practices being used throughout Spanish territory. Although the Attorney General's Office has indeed followed up on this matter through the publication of a variety of documents, the Spanish Ombudsman feels that many important issues have yet to be addressed, such as the fact that the Attorney General must always assume the leading role irrespective of the need to implement a coordination protocol as per new regulations governing immigration.

The Ombudsman has also found on several occasions that tests have been requested either by police authorities, or by child protection services, with no prior authorization by the Attorney General's Office. There are also cases in which a simple medical test for therapeutic reasons has been used to rescind a minority age report for an earlier test. These kinds of practices demonstrate the authority of the Attorney General in such cases has not been acknowledged.

With foreign arrivals declining dramatically, it is the opinion of this Institution that the current situation represents an opportune moment to study the knowledge gained and to analyse any flaws found in the system so as to establish a proper lawful protocol that does not condition the provision of legal assistance upon prior age assessment testing.

Recommendations

The Spanish Ombudsman Institution has found that age assessment practices do not offer sufficient safeguards. It was also discovered that each Spanish region applies different criteria, and there is a lack of coordination among the range of agencies involved in age estimation procedures. For these reasons, among the recommendations made, those that should be underscored discuss the establishment of a protocol that would permit an exchange of medical and forensic reports and tests among these institutions so as to facilitate the a background check required for those who must undergo age assessment testing.

Additionally, through Organic Law 2/2009, which amends the Immigration Law, legislators implemented the Ombudsman's recommendations that foreigners should be offered free legal assistance at the time of their repatriation. Nevertheless, in age assessment procedures, irregular and undocumented migrants whose age is difficult to determine are not offered this free legal assistance. This is the reason why Spanish Acting Ombudsman has offered a recommendation to the Ministry of Labour and Immigration for the amendment of LO 4/2000, on rights and freedoms of foreign people in Spain, as well as their social integration, to guarantee said legal assistance.

The Institution has also addressed several administrations, as well as the Police and Guardia Civil Headquarters, to establish protocols that would enhance the effectiveness of the Unaccompanied Minors Registry.

Likewise, this Institution has reminded the Medical College that diagnostic tests with no therapeutic indications, but with the purpose of estimating the age of a person, must only be prepared by judicial order or at the request of the Attorney General.

From a panoramic viewpoint

At the end of 2010, the Ombudsman Institution organized two meetings centred on age assessment issues to provide a forum for professionals involved in age estimation practices. The findings of these workshops are published in this report. Forensic doctors from across Spain took part in the first workshop, and they reached certain conclusions that are discussed in this report. The second was attended by representatives of central and regional government, members of the Attorney General's Office, the Police and various non-governmental organizations that work with foreigners.

The Spanish Ombudsman Institution has always accorded special attention to unaccompanied foreign minors, as this group is especially vulnerable for two reasons: they are minors, and they are irregular migrants, hence the heightened concern at this Institution with regard to this group. The Ombudsman Institution urges that we aspire to draft rigorous age assessment practices so that failures that could unfairly alter people's future prospects may no longer arise.