

## Undocumented migrant persons claiming to be minors: jurisdiction, applicable law, and cooperation

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*Abstract:* In this article we compare the possible outcomes of the before and after reform of the assessment procedure from a private international law perspective. We focus on resolving an issue prior to the establishment of the minority/age of the subject (obtaining information and evidence/indicia of nationality), a main issue (the age assessment), a related issue (the provisional protection of the presumed minor), and a subsequent issue (the decision of permanence in Spain, family reintegration in the country of residence or relocation of the minor in another Member State or third State).

*Keywords:* undocumented minor    international jurisdiction    applicable law

### (A) INTRODUCTION: STAGES IN AGE ASSESSMENT

When a foreign person is located in Spanish territory (sea, air or land), without proof of age and claims to be a minor before the competent Spanish border control authority, the main procedure on which their permanent protection depends is initiated, or not, by the authorities with competence in medium and long term protection of minors, their stay in Spain, or their return to the country of habitual residence (family reintegration), or to a third country (relocation). The establishment of minority is the key issue in the protection of minors, which we must analyse through a previous issue, a related issue, and an issue subsequent to the assessment of the age of an alleged undocumented minor<sup>†</sup>. We are talking about:

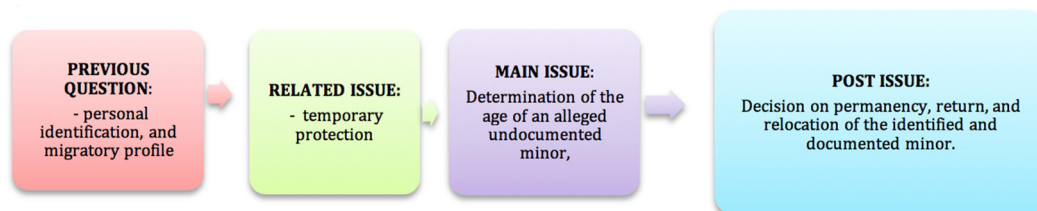


Figure 1: Phases in determining the age of a presumed undocumented minor and their protection.

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<sup>†</sup> In this work, an undocumented person is understood as a person who lacks a passport or any other document accrediting his or her personal identity, such as a national identity card, a literal birth certificate, a family book, etc. If he had any of these documents, at least the question about his minority or majority of age, and perhaps also about his nationality, would disappear.

As can be seen in Figure 1, the main question reviews the competence and applicable law in the process of establishing the minority/majority of age of an undocumented and foreign person, who claims to be a minor before a Spanish judicial/administrative authority. We anticipate that this issue must be resolved, in accordance with Spanish private international law, on the basis of the personal law of the subject, but, *a priori*, this law is unknown in the case of alleged undocumented minors.

For this reason, prior to<sup>2</sup> assessing the age of the presumed undocumented minor, cooperation mechanisms should be activated to obtain personal information in the possession of the competent authorities for aliens, or any other Member State. In immigration instruments, as we will see below, there is an obligation for certain authorities to collect evidence/indicia of nationality and share it with the police authorities. We will have to analyse in this preliminary question whether the information and proof of foreign law is done *ex officio* in the case of a presumed minor under provisional protection measure, or on the contrary, it is done at the request of a party.

As a related issue to the previous one, we will analyse the competence and applicable law in the provisional/cautionary protection of a foreign person, presumed to be an unaccompanied minor, while his exact age is being determined. A question that up to now depends on the autonomous regulation belonging to the Autonomous Community where the minor was located. In most cases, no representative or provisional guardian is granted in the age determination procedure. This is why Spain is one of the most condemned countries in this matter by the Committee on the Rights of the Child<sup>3</sup>, and the primary reason why the Spanish Government is working on a Draft Law regulating the age assessment procedure<sup>4</sup>. A rule that will undoubtedly affect the personal status of the minor and becomes the main object of our research, and that should incorporate the Recommendation CM/Rec (2022) 22 of the Committee of Minister to members States on human rights principles and guidelines on age assessment in the context of migration and its Explanatory Memorandum of 14 December 2022<sup>5</sup>, which provides part of the legal framework, as well as an interpretation of the principle of best interest of the child concerning the age assessment.

Once the information on the minor has been collected and the foreign law has been proven, the exact age of the minor is determined. That is when there is already certainty

<sup>2</sup> “The law that regulates the main question is the law that indicates if there is a previous question and if this must be sort out before the main one”. *Vid.* A. L. Caravaca and J. Carrascosa González. “Cuestión previa. concepto” in *Tratado de Derecho internacional privado, Tomo 1*, Tirant lo Blanch, Valencia, 2022, p.606. And A. Bononi, “Incidental (preliminary) question” in *Encyclopaedia of Private international law*, vol.2, Edward Elgar Publishing Limited, Cheltenham, UK, 2017, pp.912-924.

<sup>3</sup> Part of the mandatory rules that Spanish private international law must incorporate are contemplated in the many opinions adopted by the Committee in relation to the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Decisions regarding the procedure for determining the age of unaccompanied foreign minors. See at <https://juris.ohchr.org/Search/Results> . Accessed 23 August 2022.

<sup>4</sup> Draft Law available at: <https://www.mjusticia.gob.es/es/AreaTematica/ActividadLegislativa/Documents/APL%20procedimiento%20evaluacion%20de%20la%20edad.pdf> . Accessed December 11, 2022.

<sup>5</sup> Recommendation available at: [https://search.coe.int/cm/pages/result\\_details.aspx?ObjectId=0900001680ag635o](https://search.coe.int/cm/pages/result_details.aspx?ObjectId=0900001680ag635o).

as to whether the minor should be protected as a minor under 18 years of age<sup>6</sup>, but a subsequent question must be resolved. Their best interests will have to be interpreted and a decision of permanence in Spain, family reintegration in the country of habitual residence, or relocation to a Member State or third State will have to be taken<sup>7</sup>. We positioned ourselves in this article in the same line as the recent Recommendation of the Council of Europe mentioned above. We just establish a difference by going one step further pointing out that the child should be transferred, if necessary, from one State to another. In this case, depending on the case, *ad intra* and *ad extra* EU cooperation instruments will be applied to relocate the child once it has been documented and accredited that the child is a minor.

For the analysis of each of these issues we will use a perspective emanating from the private international law, jointly and intersectionally, in comparison with the public international law and immigration law<sup>8</sup>. A multidisciplinary approach must be incorporated in the resolution of the various cases to allow the weighting of the different regulatory areas affected. And as we have already stated, the answers to these questions should incorporate the mandatory rules<sup>9</sup> on the protection of unaccompanied minors emanating from the interpretation of international public, private and immigration law,

<sup>6</sup> The presumption of minority must be applied from the moment the subject claims to be a minor. This is stipulated by international law standards, and after multiple condemnations to Spain in age determination procedures, by the Draft Bill regulating the age assessment procedure.

<sup>7</sup> Irene Claro Quintans affirms that the best interests of the minor must be interpreted and adjusted to the vulnerability profile detected. In the case of victims of trafficking, it must be prevented from being revictimised as a result, for example, of having been treated by their parents. Then, family reunification with their trafficker parents will be avoided, and the granting of refugee or subsidiary protection beneficiary status will be assessed. *Vid.* I. Claro Quintans, “Una aproximación a la determinación del interés superior de los niños víctimas de trata”, *Revista del Ministerio de Empleo y Seguridad Social*, n° 145, 2019, pp.75-96. We agree with the previous author; only that we affirm that there are more legal categories of minors than those who are victims of trafficking. The vulnerability profile of each minor is different, as is the best interest. For this reason, we advocate for a legal categorization of unaccompanied foreign minors.

<sup>8</sup> The Recommendation mentioned above points part of the legal framework that should be applied to the age assessment. International public legal instruments and private international law instruments. Among them is, for example, the Hague Convention concerning the powers of authorities and the law applicable in respect of the protection of infants (1961). This confluence between public international law, private international law, and immigration law was sustained by other authors in another works linked to this one such as Mercedes Moya Escudero, Marta Requejo Isidro and Beatriz Campuzano Díaz. *Vid.* M. Moya Escudero, “Igualdad versus seguridad y control: los menores extranjeros en Europa” en *Nuevo mundo, nueva Europa. La redefinición de la Unión Europea en la era del Brexit: XXVIII Jornadas de la Asociación Española de Profesores de Derecho internacional y Relaciones internacionales*. Pablo Martín Rodríguez (Dir.), 2020, pp.219-248. B. Campuzano Díaz, “El nuevo Reglamento 2019/111: Análisis de las mejoras en las relaciones con el Convenio de La Haya de 19 de octubre de 1996 sobre responsabilidad parental”, *CDT*, vol.12, núm.1, 2020, pp.97-117; and M. Requejo Isidro, “La protección del menor no acompañado solicitante de asilo: entre estado competente y estado responsable”, *Cuadernos de Derecho Transnacional*, vol. 9, núm.2, 2017, pp. 482-505.

<sup>9</sup> D. Fernandez Arroyo, “Denationalising Private international law. A law with multiple adjudicators and enforcers”, *Yearbook of Private International Law*, Volume 20 (2018-2019), pp. 31-45. These mandatory rules on the protection of unaccompanied foreign minors can be found mostly in the following documents in L. Serrano Sánchez, “Capítulo 3. Definición y medición del grado de vulnerabilidad del colectivo MENA; una guía legal desde el marco supranacional” en *Vulneración y acceso a los sistemas de protección de los derechos de la niñez y adolescencia inmigrante no acompañada en España y El Salvador*, Edit. UPNA, 2021, pp.299-354. Disponible en: [https://academica-e.unavarra.es/bitstream/handle/2454/40770/Serrano\\_VulneracionAcceso.pdf?sequence=1&isAllowed=y](https://academica-e.unavarra.es/bitstream/handle/2454/40770/Serrano_VulneracionAcceso.pdf?sequence=1&isAllowed=y).

binding for Spain, thus configuring a specific protection given the vulnerability of the aforementioned subjects.

(B) JURISDICTION AND APPLICABLE LAW ON ASSESSING THE AGE OF AN UNDOCUMENTED PERSON

Let us begin with the main question regarding the competence of the Spanish authorities, since it is the one that triggers both the related question and the preliminary question, before resolving the merits of the case according to the *lex fori* or foreign law. In this sense, it should be noted first of all that the Spanish authorities are competent to determine the minority or majority of age of an alleged foreign minor located in Spain undocumented<sup>10</sup>. But which authorities? Is it an international or national competence question?

Competence in assessing the age of an undocumented person	Old procedure (under reform)	New procedure (pending approval)
Authorities.	State security forces; Health authorities; Public Prosecutor's Office.	State security forces; Health authorities; Public Prosecutor's Office; Family judge; Judge of first instance; Juvenile judge.

Figure 2: Spanish authorities responsible for assessing undocumented minors.

As shown in Figure 2 above, and based on current legislation, the administrative authorities with competence in matters of aliens (art.35.3 LOEx<sup>11</sup> and art.190 RLOEx<sup>12</sup>) would be: the State Security Forces in the first place, and the health authorities in the second place, as they are the ones who issue the medical report. The Public

<sup>10</sup> Art.25.5 of Directive 2013/32/EU of the European Parliament and of the Council of 26/06/2013 on common procedures for granting or withdrawing international protection attributes the competence to determine the age of unaccompanied minors about whom there are doubts about their age to the Member States. Tests that should go from less invasive to more invasive (I. Gómez Fernández, “Determinación de la edad de los niños y niñas que llegan solos a España”, *Revista Crítica Penal y Poder*. 2019, nº 18, 2019, pp. 267-277). An age determination procedure and competence that extends to all legal categories of unaccompanied minors. When an alleged minor is undocumented, if he fails to be documented by his diplomatic representation in Spain, his age is determined by Spanish authorities with evidentiary methods determined in Spanish law. Vid. STJA 1209/2018, Contentious-Administrative Chamber of Malaga of 5/06/2018. Roj: STSJ AND 10573/2018 ECLI:ES: TSJAND: 2018:10573. STJM 118/2017, of 16/02/2017, Contentious-Administrative Chamber. Roj: STSJ M 1347/2017 ECLI:ES: TSJM: 2017:1347. Cendoj: 28079330012017100074.

<sup>11</sup> See art.35.3 of Organic Law 4/2000, of January 11, on the rights and freedoms of foreigners in Spain and their social integration. *BOE* no.10, of 12/01/2000.

<sup>12</sup> See art.190 of Royal Decree 557/2011, of April 20, which approves the Regulations of Organic Law 4/2000, on the rights and freedoms of foreigners in Spain and their social integration. *BOE* no.103, of 30/04/2011.

Prosecutor's Office will be the one who issues the Resolution of Minority/Majority of Age. Thus, according to the Spanish Law under reform it is a "national" competence linked to immigration law. But we have our doubts about the new procedure pending approval where a judge is resolving this cross-border dispute: the age assessment and the correlative establishment of the minority or majority age by the judge of first instance or the juvenile judge<sup>13</sup>.

The connecting rule of the old procedure being reformed with the Preliminary Draft Law regulating the new age assessment procedure of March 2022, is the twenty-fourth Final Provision of the LO 8/2021 on comprehensive protection of children against violence<sup>14</sup>. It contemplates the creation of a new civil procedure in which the determination of age is extracted from the rules of aliens, and a specific rule is created that includes a judicial procedure to declare the age for alleged undocumented minors. Through this specific law, the LEC<sup>15</sup>, Law 1/1996 on legal assistance<sup>16</sup>; LECrim<sup>17</sup>, LRC<sup>18</sup>, LPJM<sup>19</sup>, LOEx<sup>20</sup>, and RLOEx<sup>21</sup>, are reformed, and any regulation of equal or lower rank that contradicts this one is repealed.

If the Preliminary Draft is approved, the competent authorities for the determination of the age of the minor will be, in addition to those with jurisdiction over foreigners, the aforementioned civil and criminal authorities. Specifically, the Family Judge or Judge of first instance, or the Judge of minors in the case of undocumented persons detained

<sup>13</sup> We adhere to the given concept of international jurisdiction by Alfonso Luis Calvo Caravaca and Javier Carrascosa González: "it is a question of determining in which cases and according to which criteria and principles the Spanish courts and public authorities can hear disputes arising from international private situations" such as minority/majority of age. *Op. cit.* A. L. Caravaca and J. Carrascosa González. "Concepto de competencia judicial internacional" in *Tratado de Derecho internacional privado, Tomo 1*, Tirant lo Blanch, Valencia, 2022, p.319.

<sup>14</sup> It establishes a 12-month term for the regulatory development of the age determination procedure. This deadline has not been complied with. See Final provision twenty-four of Organic Law 8/2021, of June 4, on the comprehensive protection of children and adolescents against violence. *BOE* no. 134, of 05/06/2021.

<sup>15</sup> An age assessment procedure is incorporated with a Chapter V bis. Articles 748, 749, 750 and 753 of Law 1/2000, of January 7, 2000, on Civil Procedure are also amended. *BOE* No. 7, of 08/01/2000. See pp.8-12 of the Preliminary Draft Bill regulating the March 2022 age assessment procedure.

<sup>16</sup> Article 2 of Law 1/1996, of January 10, 1996, on Free Legal Aid is modified to incorporate free legal aid in the procedure for the evaluation of the age of unaccompanied foreign minors. *BOE* No. 11, of 12/01/1996. See page 12 of the Preliminary Draft.

<sup>17</sup> Article 375 of the Law of Criminal Procedure, approved by Royal Decree of September 14, 1882, is modified, incorporating the competence of the Juvenile Judge in the case of minors detained who allege to be minors. *Madrid Gazette* No. 260, of 17/09/1882. See p.12 of the Preliminary Draft.

<sup>18</sup> Articles 13 bis and 48 bis are introduced in Law 20/2011 of July 21, 2011, on the Civil Registry to allow the registration of judgments that determine minority in the Spanish Civil Registry. In such inscription will appear when the age of majority is reached. *BOE* no.175, of 22/07/2011. See pages 12 and 13 of the Preliminary Draft.

<sup>19</sup> The First Final Provision of the Preliminary Bill amends Article 12.4, first paragraph of Organic Law 1/1996, of January 15, 1996, on the Legal Protection of Minors. *BOE* no.15, of 17/01/1996. With this reform, it is possible to challenge the documentation that proves the identity of the alleged minor. Among the documents that can be challenged are the passport and the equivalent identity document when it is not reliable. See page 13 of the Preliminary Draft.

<sup>20</sup> The Second Final Provision of the Preliminary Draft modifies art.35.3 and deletes art.35.4 LOEx. See page 14 of the Preliminary Draft.

<sup>21</sup> Article 190.1, third paragraph of the RLOEx is repealed by means of the Sole Repealing Provision. See page 13 of the Preliminary Draft.

who claim to be minors. These authorities will have the final decision on the age of the minors, being able to make the registration in the Spanish Civil Registry of those judicial resolutions in which the minor age of the subject is determined<sup>22</sup>.

We could understand from this fact of transferring competence from immigration authorities to civil authorities, that the age assessment is moving from being an internal issue (related to immigration law) to an international one (related to private international law).

Once we determine that the competent authority to hear the factual assumption “age determination” is Spain and which competent authorities are specifically, we will now analyse the law applicable by them to the resolution of the merits of the matter. Private international law must provide a solution deciding which law is applicable to the substantive issue. Currently, there is no material standard in force for determining the age of undocumented minors localized in Spanish territory. There is no extension rule either, so the Spanish authority should apply the conflict rule in order to determine the minority or majority of age of that alleged undocumented minor. The law applicable to legal issues relating to the natural person is personal law (art.9.1 CCiv.)<sup>23</sup>.

However, we should particularize that the new procedure under reform could be incorporating imperative material standards. Procedure where the international competence of the Spanish authorities determining the exact age of the alleged undocumented minor, as discussed below, is only based in his presence in our territory, ignoring the habitual residence of the “minor”, his personal law in order to decode his minority or majority of age, and any type of international cooperation rules that are highly recommended in order to obtain proofs or evidences of his exact age.

Let’s have a look over the applicable law on age assessment process in the actual procedure and another one under reform.

Applicable law on age assessment	Old procedure (Foreigners’ procedure)	New procedure (Declaratory court procedure)
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<sup>22</sup> Through this law under reform, the notion of facts registrable in the Spanish civil registry would also be modified: “The Civil Registry will record the registrable facts and acts that affect Spaniards and those referring to foreigners, occurring in Spanish territory. Likewise, the facts and acts that have taken place outside of Spain will be registered, when the corresponding registrations are required by Spanish Law” (Art.9 of Law 20/2011, of July 21, of the civil registry). *BOE* n° 75, del 22/07/2011.

<sup>23</sup> We could find this definition about regulatory techniques in private international law and applicable law to personal status in *Op. cit.* A. L. Calvo Caravaca and J. Carrascosa González. “Tipos de normas en Derecho internacional privado” and “Ley aplicable a las cuestiones jurídicas relativas a la persona física” in *Tratado de derecho internacional privado, Tomo 1*, Tirant lo Blanch, Valencia, 2022, pp.486-498 and 1245. However, other authors such as Salomé Adroher indicates that the criterion of nationality is falling into disuse to govern issues of the person, sometimes being replaced by the law of habitual residence or by the law chosen by the parties. *Vid.* S. Adroher Biosca. “Elección de ley aplicable al estatuto personal en el derecho internacional privado europeo: un análisis desde la práctica española” in *La Unión Europea y los*

PROCESS	<b>Foreigners Legislation</b> (Art.35.3 Foreigners Law, and Art.190 Foreigners Regulation). <b>Connecting rule:</b> Final Provision 24 Organic Law 8/2021 on the comprehensive protection of children against violence.	<b>Specific age assessment law</b> (Preliminary draft law regulating the age assessment procedure). <b>Reform:</b> Civil Procedure Act; Law 1/1996 on legal assistance; Criminal Procedure Act; Civil Registry Act; and Law on the Legal Protection of Minors Regulation on Aliens Does it derogate from art.9.1 of the Civil Code??
MERITS OF THE MATTER	Art.9.1 Civil Code: Personal law. In practice only foreigners' legislation is applied.	Specific age assessment law.

Figure 3: Law applicable to the process and merits of the case in age assessment.

As we can see in Figure 3, in the procedure in force as far as the age determination procedure is concerned, the *lex fori regit processum* rule (art.3 LEC)<sup>24</sup> is applied, and as far as the age determination of the undocumented subject is concerned, the personal law should be applied (art.9.1 Cciv.).

This would result in the competent authorities, guarantees and rights of the alleged minors in the age determination procedure being governed by domestic law (Spanish law), and the assessment of the exact age of the undocumented person by foreign law (personal law of the subject). However, in practice, both for the process and for the merits of the case, Spanish immigration law is applied.

The aforementioned Preliminary Draft, however, establishes that it will be the civil legislation that will coexist and be applied in conjunction with the legislation on aliens. The procedural guarantees included in this reform are: the principle of presumption of

muros materiales e inmateriales: desafíos para la seguridad, la sostenibilidad, y el Estado de Derecho, Tirant lo Blanch, Valencia, 2021, pp.117-138.

<sup>24</sup> Vid. M. D. Adam Muñoz, “La regla *“lex fori regit processum”*”, *Justicia: revista de derecho procesal*, n.º.3-4, 2002, pp.121-143. A. Font I Segura, “Una lectura comunitaria del principio *lex fori regit processum*”, *Anuario Español de Derecho internacional privado*, n.º.1, 2001, pp.283-314. A. L. Calvo Caravaca and J. Carrascosa González, “Capítulo I. La regla *lex fori regit processum* y la legitimación procesal en los litigios internacionales: Tesis del Tribunal Supremo” en Alfonso Luis Calvo Caravaca (coord.), *El Tribunal Supremo y el Derecho internacional privado*, Rapid Centro Color SL, Tomo 1, Vol. 1, 2019, pp.1-32. N. Marchal Escalona, “Lugar y plazos de presentación de un escrito procesal: ¿cuestión sometida a la *lex fori regit procesum*?”, *La Ley Unión Europea*, n.º 71, 2019.

minority of age<sup>25</sup>; the principle of proportionality in the assessment of documents; the principle of speed; consent for the performance of tests; respect for dignity; prohibition of full nudity and invasive medical tests; and the principle of the best interests of the minor. Also noteworthy are the rights recognized: the right to be heard; free legal assistance; legal representation of the minor, by means of a legal representative and legal defender; the right to be informed; and the right to an interpreter. This regulation, instead of referring us to a foreign law to resolve the merits of the matter, provides us with a direct solution, including rights and guarantees. If it were to be approved, it could be considered an authentic rule of private international law that provides a direct solution to the age assessment.

Returning to the current procedure and how the question of age assessment is resolved. In order to determine the specific age of the undocumented minor or the one whose age is in doubt, as we have already mentioned, it is not the personal law that is being applied but the *lex fori*.

The repercussions of the application of Spanish law to determine the minority/majority of age of undocumented minors are already known to us. The age of majority is decreed in error by using evidentiary means that are not suitable for non-Western bodies. An error that derives in the lack of protection of the minor, in his expulsion or in his internment in an internment centre for foreigners. This fact is aggravated in the case of undocumented persons who intend to go by themselves to the diplomatic representation of their country in Spain to be documented with a passport and who are declared minors when applying their personal law when they act as administrators before their Administration abroad. The damage derived would be the denial of documentation due to lack of representation. This is even more serious, if possible, for minors and victims of domestic violence who run away from home.

To prevent involuntary changes in the civil status of persons, we consider that the evidentiary documents of an undocumented person regarding his or her exact age, minority, or majority of age, should not be those contemplated in Spanish law, but in the

<sup>25</sup> On the non-existence of presumption of minority in the Spanish legal system for unaccompanied foreign minors, and legal representation in the age determination procedure before the reform of the Draft Bill. Vid. L. Serrano Sánchez. “Problemática alrededor de la determinación de la edad del menor no acompañado indocumentado” in *Vulneración y acceso a los sistemas de protección de los derechos de la niñez y adolescencia no acompañada en España y El Salvador*, UPNA, Pamplona, España, 2022, pp.240-257. C. Fábrega Ruiz et al. “Recomendación 2.- Proceso garantista de determinación de la edad, con la asignación de un representante ad hoc como mecanismo de inicio del sistema de protección” en *Guía de buenas prácticas para la efectividad de los derechos de la niñez, de la adolescencia y de la juventud en situaciones de movilidad transfronteriza desde la perspectiva de género*, Tirant lo Blanch, 2022, pp.164-178. On the age determination procedure, evidentiary means, and protective measures. Vid. M. A. Sánchez Jiménez, “Protección de los menores extranjeros no acompañados (MENA) y su situación tras el acceso a la mayoría de edad”, *Revista Aranzadi doctrinal*, n.º. 8, 2012, pp. 173-210. N. Alonso García and D. Aguado Carrizo, “La dialéctica entre legalidad y humanidad en la protección de los menores extranjeros no acompañados”, *Revista de Derecho de Familia; doctrina, jurisprudencia, legislación*, n.º 82, 2019, pp.381-398. M. C. García Garnica, “La guarda como medida de protección de menores y personas con discapacidad tras su reforma por la Ley 26/2015, de 28 de julio, de modificación del sistema de protección a la infancia y a la adolescencia”, *Anuario de derecho civil*, vol. 70(4), 2017, pp. 1375-1421. L. Lafont Nicuesa. *La determinación de la edad del presunto menor extranjero: pasaporte contra pruebas médicas. Aspectos civiles, penales y contencioso-administrativos*, Valencia, Tirant lo Blanch, 2018.

corresponding foreign law. That is to say, the medical tests carried out by the Spanish health authorities and the Decree of minority or majority of age issued by the Public Prosecutor's Office cannot be used exclusively and preferentially.

We position ourselves with the Council of Europe's Recommendation (2022) 22 of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration and its Explanatory Memorandum, when we run against the Spanish practice in the age determination procedure. In practice the immigration Spanish law is applied in the sense of setting down concrete proofs or evidence to determine the minority or majority of age such as the personal impression of the immigration authority or medical proofs. Spanish practice and the immigration law in force would go against the Council of Europe's Recommendation mentioned when they apply mainly medical examinations. More specifically, the Principle 3- Age assessment involving an evidence-bases multidisciplinary approach consisting of examination documentation as proof or evidence of identity, and an interview. This principle remarks that a multidisciplinary approach should be taken including an examination of the documentation available to the competent authorities or provided by the person undergoing age assessment. At the same time, it mentions that identity documents where available should be systematically checked and considered to be determinative of age, unless considered invalid in line with procedures set out in law verification of person's identity documents. The person should be given the opportunity to clarify any inconsistencies arising during the interview and reasonable time to provide evidence of identity which is not in their possession. The authorities should reach a decision based on the evidence and information. Only when this approach has been exhausted, It would be possible to apply medical examinations (Principle 4 of Recommendation (2022) 22).

Then, the doubt about the personal identity and migratory profile of the subject will have to be resolved as a prior question in order not to compromise on his marital status by erroneously determining his age according to proofs or evidence regulated in the Spanish law. To this end, first of all, personal information and documentation must be obtained in order to ascertain the nationality of the subject and to know which foreign law to apply in order to resolve the merits of the case.

In the case of a stateless person (art.12.1 New York Convention of 28 September 1954 on the Status of Stateless Persons)<sup>26</sup>, dual or multiple nationals (art.9.9 Cciv.)<sup>27</sup>, refugee or person of undetermined nationality (art.9.10 Cciv.), the applicable law for determining minority or majority would change. If all undocumented persons are considered of undetermined nationality after having exhausted all avenues of cooperation to obtain the possible evidence/indicia of nationality, only then, if they have habitual residence in Spain, Spanish law is applicable<sup>28</sup>.

<sup>26</sup> Personal law of stateless persons: law of domicile and law of residence.

<sup>27</sup> To learn about solutions to cases of plurinationality *Vid.* M. Soto Moya "Plurinacionalidad y suficiencia de las soluciones previstas por el legislador en el art.9.9 CC" in *M. Moya Escudero (Dir.) Plurinacionalidad y derecho internacional privado de familia y sucesiones*, Tirant lo Blanch, Valencia, 2020, pp.229-279.

<sup>28</sup> A. L. Calvo Caravaca and J. Carrascosa González, "Tema XX: La persona física" in *Compendio de Derecho internacional privado*, 2021, pp.435-441.

We now move on to analyse the question prior to the determination of the minority/majority of age of the undocumented person who claims to be a minor.

### (C) COMPETENCE AND COOPERATION IN PERSONAL IDENTIFICATION AND OBTAINING EVIDENCE/INDICIA OF NATIONALITY

The competence for the personal identification of the undocumented minor at the border is held by the European Border and Coast Guard Agency (FRONTEX) (Regulation 2019/1896)<sup>29</sup>, and the Spanish authorities with competence in border control (General Commissariat for Aliens and Borders, and the Directorate General of the Civil Guard)<sup>30</sup>. These would be the competent authorities for the personal identification of the minor through observation methods and a first personal interview to help detect their vulnerabilities, and thus assign them, subsequently, a possible appropriate legal category. This categorization is not being carried out at present<sup>31</sup>.

The European Border and Coast Guard should refer persons in need of international protection, victims of human trafficking, unaccompanied minors or persons in vulnerable situations to the competent national authorities (art.38.3, letter m, of Regulation 2019/1896)<sup>32</sup>.

If they are still unable to identify the minor due to the refusal of the minor to answer the questions of the European or Spanish authorities with competence in border control, or when there is doubt about the veracity of the answers given by the minor, it is when the Spanish authorities with competence in aliens consider that they should activate in a subsidiary and complementary manner the *ad intra* cooperation between EU Member States and cooperation with immigration liaison officers. It is the latter authorities that have *ad extra* cooperation tools between Member States and third

<sup>29</sup> Regulation 2019/1896 of the European Parliament and of the Council of 13 November 2019 on the European Border and Coast Guard. *DOUE* n°. L295/1, de 14/11/2019.

<sup>30</sup> *Vid.* art.12 LO 2/1986, of 13 March, on Security Forces and Corps, BOE no.63, of 14/03/1986; Order INT/558, of 16 May, which develops the organic structure and functions of the central and peripheral services of the General Police Directorate, BOE no.123, of 23/05/2019; and art.3.3, letter d, of Royal Decree 734/2020, of 4 August, which develops the basic organic structure of the Ministry of the Interior, BOE no.211 of 5/08/2020.

<sup>31</sup> The legal categorization is needed to attend to the specific vulnerabilities of each minor, and to identify the right rule on jurisdiction. It could be a preliminary matter even before deciding the international judicial competence in the determination of the age of the undocumented minor and in the subsequent protection once his minority or majority has been established. We position ourselves in the same line of what is established in the Preliminary Document, n° 7, February 2020 revised version of the Hague Conference on Private international law Available at: <https://assets.hcch.net/docs/64150323-gfia-4f32-83a8-8f558ea75e60.pdf>. In this document the private law doctrine is distinguishing between the next types of unaccompanied or separated migrant children: runaway or abandoned child; refugee; internationally displaced children; trafficked children; and children without habitual residence known. These legal categories are used to apply the right rules of jurisdiction. In addition, in this document appears some examples of which children belong to each one of these legal categories.

<sup>32</sup> The competence and international cooperation of authorities in the identification of unaccompanied foreign minors is dealt with in another paper. *Vid.* L. Serrano Sánchez, “Competencia y cooperación internacional de autoridades. El interés superior de la y el menor no acompañado como eje en la identificación y reubicación” en *Protección de la niñez, adolescencia y juventud y sus familias en situaciones transfronterizas: análisis multidisciplinar desde las perspectivas de género, de los derechos humanos y de la infancia*, Tirant lo Blanch, 2022. In press.

States to share or obtain information on minors. Authorities should take in account the principles 8 and 9 about privacy and personal data and research and co-operation for the purpose of age assessment of the Council of Europe’s Recommendation (2022) 22 of Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration and its Explanatory Memorandum: “The child’s right to private family should be guaranteed in the context of the processing data for the purpose of age assessment” and “States are encouraged to promote research, exchange of good practice and co-operation for the purpose of ensuring human rights-compliant age assessment procedures”.

So, the main purpose is to obtain as much information about the minor as possible to properly interpret the best interests of the minor; first, the age assessment decision, and later, in a subsequent decision on his stay, return (family reintegration in the country of habitual residence), or relocation by the relevant authorities in child protection. According to the principle 7 of the mentioned Recommendation (2022) 22: “The age assessment decision resulting from the multidisciplinary procedure should be notified to the person in a child-friendly manner and, where appropriate, to the parent, guardian, or legal representative, and include details of the legal and evidence-based factual reasons for the decision and information on effective remedies available. The decision should be open for review or appeal before an independent authority”.

KEY ISSUES	COMPETENCE	LEGAL FRAMEWORK
Obtaining information about minors in third States	European network of immigration liaison officers	Considering no. 8 and art.3 Regulation 2019/1240
Sharing information between Member States	European network of immigration liaison officers  European Border and Coast Guard Agency (FRONTEX)	Arts.5.2, 9, y 10 Regulation 2019/1240 Art.38.3 m Regulation 2019/1986

Figure 4: Cooperation to obtain information on the unaccompanied minor in third States and data sharing between Member States.

The competence for obtaining information from third countries, as mentioned above and as can be seen in Figure 4, lies with the immigration liaison officers (Regulation 2019/1240)<sup>33</sup>. Specifically, Recital 8 and Article 3 of Regulation 2019/1240 list the tasks of immigration liaison officers, among which are: the collection of information on migratory flows that may be useful at the operational level, at the strategic level or both.

Information that, where possible and relevant, includes the declared age of migrants, gender profile, family, and unaccompanied minors; assistance in determining the identity and nationality of irregular third-country nationals and facilitating their

<sup>33</sup> Regulation (EU) 2019/1240 of the European Parliament and of the Council of 20 June 2019 on the creation of a European network of immigration liaison officers (recast). *DOUE* n°. L198/88, 25/07/2019.

return; confirmation of the identity of persons in need of international protection; and the exchange of information obtained in the performance of their duties within the immigration liaison officers' networks with the competent authorities of the Member States, including law enforcement authorities. All this with the aim of preventing and detecting illegal immigration and combating smuggling of migrants and trafficking in human beings.

Among the personal data that immigration liaison officers are authorized to process are: biometric or biographical data, where necessary to confirm the identity and nationality of third-country nationals, including all types of documents that may be considered evidence or indications of nationality. This would be our case for ascertaining the personal law applicable to the assessment of the alleged undocumented minor.

Data that are collected for return purposes, for legal migration admission purposes, or to determine those in need of international protection for resettlement purposes (art.10.3 Regulation 2019/1240). We understand that such documents may include birth certificate, passport, family book, or declaration of paternity/maternity, etc. Proof of nationality that can be provided by the minors themselves, and which, like a sector of Spanish doctrine, we consider that they should be presumed valid until proven otherwise<sup>34</sup>.

All the above information should be collected and shared by the Spanish police authorities with the competent judicial or administrative authorities in the procedure to determine the age of the presumed unaccompanied and undocumented foreign minor. With this information collected by the Spanish authorities, together with the information provided by the minor himself or his representatives, would be sufficient to know the applicable law to establish the minority/majority of age of the undocumented subject. We consider that the *lex fori* should only be applied to collect subsidiary and residual evidence to determine the minority/majority of age in the case of those minors who are declared of undetermined nationality after trying to collect all possible information and evidence/indicia of nationality.

While all the above information is ascertained, provisional protection will have to be offered to the presumed undocumented and unaccompanied minor.

#### (D) PROVISIONAL PROTECTION OF THE ALLEGED UNDOCUMENTED MINOR

Several factors are key to the precautionary protection of the undocumented person: the presumption of the undocumented minor's minority; his/her presence in European/Spanish territory; and lack of knowledge of essential personal data, such as nationality, place of habitual residence or the location of his/her relatives or responsible adults<sup>35</sup>.

<sup>34</sup> The presumption of validity of foreign documents provided by minors has been a recommendation made by various authors in *Op. Cit.* C. Fábrega Ruiz et al., 2022: 164-178.

<sup>35</sup> The age of minority is 18 years in the applicable regulations of private international law, as well as in the regulations on foreigners and in the legislation of public international law. See the concepts of minor and emancipated minor at M. C. Chéliz Inglés, "El laberinto jurídico de la protección de los menores migrantes abandonados: una aproximación desde el Derecho internacional privado," *REDI*, vol. 73, 2021, 2, pp.37-51.

This means that while the preliminary question and the main question are being resolved, provisional protection must be provided to the presumed minor.

All information on personal identity and evidence/indicia of nationality should be used for the subsequent issue of making a decision to stay, return, or relocate the subject<sup>36</sup>. A question that is currently oriented only towards the return of the minor by applying the current legislation on aliens.

This obligation of provisional protection of the presumed minor disappears when there is certainty that he is over 18 years of age, as well as when a decision of permanence, return or relocation of the minor is adopted. In this second case, the “provisional” protection would become “permanent”, either in Spain or in another Member State or third State that is competent, or that even if it is not, accepts its international judicial competence in the protection of that minor. Not only should the undocumented minor be protected in the age determination procedure, but also, it is understood that he should be protected in the personal interview to obtain information by the authorities with competence in border control, as well as in the documentation procedure of the minor before the diplomatic or consular representations in Spain, and in the procedure of return or relocation of the minor under 18 years of age.

Let us remember that one of the main characteristics of the migratory entry phase of the unaccompanied minor is the lack of any personal or family data or information, which would help us to know where the minor’s habitual residence is and to define his/her best interests. That is, it is unknown whether the unaccompanied minor’s best interests lie in remaining in Spain, in being sent to an EU Member State, to a State party to the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children, done at The Hague on 19/10/1996<sup>37</sup> hereinafter CH 1996-, or in being returned to a non-party third State.

An exception to this scenario would be the case in which the European Border and Coast Guard Agency (FRONTEX), when executing border control and locating an unaccompanied minor, manages to collect sufficient information to determine where he has his habitual residence, detects his specific protection needs, and obtains information on whether he has relatives in an EU Member State<sup>38</sup>. In this case, in the case of an

<sup>36</sup> The exact age is necessary to know if you are a protectable subject under European private international law. You should be under 18 years of age to be a protectable subject. However, your personal law may establish the age of majority at a later age as is the case in some African countries. *Vid.* The African Child Policy Forum. “Age of Majority”, 2013. Available in: [http://www.africanchildforum.org/cfr/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation\\_2\\_en.pdf](http://www.africanchildforum.org/cfr/Harmonisation%20of%20Laws%20in%20Africa/other-documents-harmonisation_2_en.pdf). Please note that this table should be updated to today’s date. Some of the countries mentioned above have already modified their legislation and lowered the age of majority from 20 or 21 years to 18 years, such as Morocco or Rwanda.

<sup>37</sup> Instrument of Ratification of the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, done at The Hague on 19 October 1996. *BOE* no. 291, of 2/12/2010.

<sup>38</sup> *Vid. Op. cit.* Chéliz Inglés, 2021: 47-50. We only differ with the author in that the habitual residence of an unaccompanied minor should be known, because in most cases they arrive in Spain undocumented so that any information about the minor is unknown a priori. In this sense, Regulation 2019/1111 should be applied as a priority, because it is unknown whether the habitual residence of the minor is in another

unaccompanied minor seeking asylum, it will be referred to the competent national authorities for the analysis of the application for international protection<sup>39</sup>.

Despite the fact that the minor is sent by the European Border and Coast Guard to another Member State, the corresponding urgent or provisional protection measures will be adopted, according to Spanish law (art.15 Regulation 2019/1111, arts.11<sup>40</sup>, arts.11 and 12 CH 1996; and Annex 1 A, 1 B, and 1 C of the Hague Prel.7 Doc.7<sup>41</sup>). Also, all those mandatory protection measures, which derive from European immigration regulations, and which have to be exercised when border control is executed by the competent authorities (Regulation 2019/1986<sup>42</sup> and the Schengen Borders Code), as well as the correct legal categorization of minors. A diversity of legal categories of unaccompanied minors is not being recognized<sup>43</sup>.

The drawback of the pending legislation (Draft Bill on age assessment) and the current one is that there are no specific protection measures for presumed undocumented minors. Moreover, the Preliminary Draft obliges to separate these subjects from the rest of the minors, but, however, it has not contemplated the creation of specific accommodations for them. A shortcoming that could have been made up for with a state law for the protection of immigrant children that would harmonize the protection measures for these minors throughout the Spanish territory, and that would specify the specific protection measures to be adopted at each stage of the minor's migratory process, as well as the legal categories to which they can have access.

When moving on to the subsequent phase, it is understood that the previous and main issues have already been resolved, and the subsequent issue must be dealt with.

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Member State until the appropriate inquiries are made (consultation of European database). And only subsidiarily the forum of the mere presence of the CH 1996 would apply when there is certainty about the habitual residence of the child in a third State.

<sup>39</sup> If it is determined that the State responsible for hearing the request for protection is Spain, it will be necessary to clarify the competent Spanish authorities. *Vid.* L. A. Pérez Martín, "Práctica española de Derecho internacional privado. Autoridades españolas ante las que iniciar el procedimiento de protección internacional a tener de la jurisprudencia del TJUE y del TS de 2020", *REDI*, vol. 74, 2022, 1, pp.253-260. Sobre el procedimiento *Vid.* M. C. Chéliz Inglés, "La protección internacional de los menores refugiados en la UE: el equilibrio entre las barreras migratorias y el interés superior del niño", in *La Unión Europea y los muros materiales e inmateriales. Desafíos para la seguridad, la sostenibilidad, y el Estado de Derecho*, Tirant lo Blanch, 2021, pp.139-150. L. Serrano Sánchez, "Derecho Humano al asilo de la y el menor migrante no acompañado en tiempos de pandemia por COVID-19 en España" in *Cristian Altavilla (dir.) Derechos humanos de personas en situación de vulnerabilidad*, Editorial Brujas, Córdoba, Argentina, 2021.

<sup>40</sup> Council Regulation 2019/1111 of 25/06/2019 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility and international child abduction. *DOUE* no. L 178/1 of 02/07/2019.

<sup>41</sup> The Hague, Council on General Affairs and Policy, Prel. Doc.7 of February 2020 -Doc.Prel.7 2020 (Available in: <https://assets.hcch.net/docs/4a6f76b4-71f9-44be-ab0d-31588fdde06.pdf>).

<sup>42</sup> *Vid.* Arts.3.1, a, 62.2, 80.3, y 81.1 Regulation 2019/1986.

<sup>43</sup> Among the legal categories in Spanish private international law, in another work we had already revealed that a distinction is made between runaway minors, abandoned minors, trafficked minors, refugee minors, internationally displaced minors and minors with unknown habitual residence. These are legal categories that in most cases do not coincide with the legal categories of EU or Spanish law. *Vid. Op. cit.* L. Serrano Sánchez, 2022. In press.

(E) COMPETENCE IN THE DECISION (PERMANENCE, FAMILY REINTEGRATION AND RELOCATION) AND PERMANENT PROTECTION)

Once the presumed undocumented minor has been identified, it is when the Spanish authorities with jurisdiction over the protection of minors, and not the authorities with jurisdiction over foreigners, should adopt a decision to stay, a decision to return (family reintegration), or a decision to relocate the minor, although in practice, as we have noted, this is not the case.

When a decision is taken on the return of the child, it is because the place of the child's habitual residence should be known, and it is where the child's family or legal guardians from whom the child has escaped are located. It has been classified, therefore, as a "runaway minor" or "trafficked minor", "abandoned minor", and it has been considered that the country of the habitual residence of the minor has the international judicial competence in its protection. In the usual Spanish practice, they are simply classified as "unaccompanied foreign minors" and are equated to "minors in an irregular situation" in order to proceed to activate the return mechanism.

If the minor was residing in another Member State before moving to Spain, Article 7 of Regulation 2019/111 should be applied to return him/her to his/her family or legal guardians in the country of habitual residence. This could be the case, for example, of those Romanian and Bulgarian unaccompanied minors staying in Spain in an irregular situation, who have increased their presence in the Spanish protection systems. Previously, before executing the return it would be necessary to notify their legal representatives in that country about the location of the minor, and the child protection services of that country, so that they can assume their guardianship if the legal representatives of the minor do not want or consider that they are not suitable to continue with the guardianship of the minor.

We understand the decision of return as a decision of family reintegration, and, therefore, a decision in civil matters that proceeds to be recognized by the instruments of recognition in civil matters that are available according to the country of habitual residence of the child that is detected. It should not be understood as a decision on aliens, otherwise we would not be prioritizing the status of a minor over that of a foreigner or his administrative situation. Being both Member States, both for the notification and for the transfer of judicial or extrajudicial documents proving the personal identity of the minor, as well as foreign protection measures adopted, or any other matter of parental responsibility, Regulation 2020/1784<sup>44</sup> will be used. On the contrary, if the child had his residence in a State party to the CH 1996, then art.5 CH 1996 would apply for his return, and the applicable instrument for the notification would depend on the country to which the notification should be transferred. That is, if we have a bilateral or multilateral agreement on this matter or not<sup>45</sup>.

<sup>44</sup> Regulation 2020/1784 of the European Parliament and of the Council of 25 November 2020 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters ("service of documents"). *DOUE L* 405/40, of 02/12/2020.

<sup>45</sup> K. Gatzsche, "Child protection in flight situations: the Hague child protection Convention and unaccompanied minors", *Cuadernos de Derecho Transnacional*, Vol. 11, n° 1, 2019, pp. 340-349.

In the case of a child classified as a “refugee minor”, “internationally displaced minor”, “minor beneficiary of subsidiary protection”, “minor beneficiary of temporary protection” and having a family in an EU Member State, the compulsory assumption of international jurisdiction is established in a rule on aliens referring to all of them as “refugees” in a general way. If the family members of these minors were in another State, it would be more difficult to transfer them to that State and for that State to compulsorily accept its jurisdiction to hear the application for international protection and protection. If these types of minors do not have relatives in other States that assume the competence, then Spain, as the main country of entry into European territory, would be the competent country to assume the protection of the minor and, therefore, a decision of permanence should be adopted, and the automatic guardianship should be assumed by the competent autonomous authorities.

The exception to this general rule would be if these minors have relatives or other responsible adults legally residing in Spain, and a protection measure has been adopted for them abroad. These relatives or other responsible adults will have to be notified of the presence of the minor so that they appear before the competent judicial authority, and they will have to be requested to file the application for recognition of the foreign protection measure. In this case, it would have to be weighed up whether it is in the best interest of the minor that the foreign protection measure be recognized in Spain and the guardianship of the minor be granted to these relatives, or other responsible adults, or whether, on the contrary, the guardianship should be assumed by the Administration.

Let us imagine the case, for example, of a Moroccan minor who has been sent by his parents to Spain because he has his older brother residing here, and this brother is shown to have mistreated the minor previously and wants him in Spain to put him to beg. Obviously, in this case, it would not be possible to recognize any foreign protection measure because it would go against Spanish public order (art.23.1 d, CH 1996).

And finally, in the case of minors classified as “minor with unknown habitual residence”, “minor victim of trafficking”, “minor victim of any other crime”, “minor collaborator against organized networks”, a decision of permanence should also be taken on this typology of minors who are placed under guardianship. In this case, we believe that the regulations should be modified in such a way that those minors under guardianship who are not documented by their diplomatic representation in Spain are obligatorily provided with a registration certificate. We also consider that other persons who have been in foster care, guardianship or tutelage of a Spaniard or Spanish Administration, and who are still considered minors by their personal law when they are over 18 years of age, should also be provided with this Spanish document.

However, on all this last classification of minors it could also be interpreted that their best interest is to be relocated in another EU Member State or State party to the Convention of 19 October 1996 of jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children (CH 1996). In these cases, and provided that the other State accepts its competence, arts.12 and 13 of Regulation 2019/1111 would be applicable if he is being relocated to another Member State. Or arts.97.2 b of Regulation 2019/1111 and arts. 8 and 9 CH 1996 if the child is being transferred to a third State that is party to the Convention.

## (F) CONCLUSIONS AND PROPOSALS

As a general conclusion, we consider that the age assessment procedure should include a preliminary question, a main question, a related question, and a subsequent question. Next, we consider it important that, instead of creating a specific age assessment law, a specific law for the protection of unaccompanied and undocumented immigrant children and adolescents should be created. This law would contemplate specific protection measures that the instruments of Spanish private international law do not define, and the autonomous laws do not define either.

Its creation should take into consideration the set of mandatory rules that come from the interpretation of the set of legislation of international public, private and foreign law applicable to minors.

We would like to draw the following particular conclusions:

1. The specific law that is being approved must include the express prohibition of the direct application of the *lex fori* to the civil status of undocumented minors. The personal law shall be compulsorily applied to determine the exact age, and minority/majority of age, when it turns out that the age of majority of their personal law does not coincide with our legal framework. Only then will Spanish public order be applied as a corrective, and it will be established that the age of majority is 18 years old for the purposes of protection. In such cases, the condition of minor would be eliminated and the legislation on foreigners would be applied.
2. The obligation of the competent administrative/judicial authorities to activate the cooperation mechanisms for obtaining information, evidence/indicia of nationality and personal identity, and information on foreign law should be included. The foreign public documents of identity/nationality should prevail over the expert report or medical tests carried out in Spain. This prevalence ensures that there are no multiple personal identities with respect to the subject, which may harm him in his relations with the different public administrations, those of his country and those of the receiving country, and that his/her right to a personal identity is not violated (art. 8 CRC). The consultation of European data and immigration liaison officers should be mandatory, in addition to the personal interview with the child.
3. If it is discovered in the previous question that the minor has relatives or responsible adults in another Member State or in Spain who have guardianship or representation of the minor through a foreign protection measure, these adults shall be notified and requested to appear and file a request for recognition before a Spanish authority. In any case, the best interests of the minor will be assessed, and the adults will be interviewed and investigated prior to the granting of the recognition of the legal representation of the minor and its availability.
4. When there is a denial of documentation regarding (or by) the minor under guardianship, or the person who has been under guardianship, custody or foster care of a Spaniard or a Spanish Administration, he will be provided with a registration certificate, in such a way that he will not be left undocumented.

5. In any case, once the age has been determined, a decision of family reintegration in the country of habitual residence, a decision of permanence in Spain, or a decision of relocation in a Member State or a third State must be adopted by the authorities with competence in the protection of minors. In order to carry out such decisions, in addition to identifying the child, he must first be assigned the appropriate legal category. In order to increase the current legal certainty, the law should establish a table on the different legal categories of unaccompanied minors.
6. Finally, specific centers should be created for the protection of presumed minors of questionable age, with the purpose of providing them with lodging. In this way, they will not be left unprotected in a street situation, while their minority/I don't understand this term is being determined.