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**“Be consistent, young man!”**

## **Spoken and unspoken issues of age assessment among unaccompanied young foreigners in Paris**

**Lisa Carayon, Julie Mattiussi, and Arthur Vuattoux<sup>1</sup>**

*Translated and edited by Cadenza Academic Translations*

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### **Résumé**

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<sup>1</sup> The authors contributed equally to the work and are listed in alphabetical order. This study originated in the “Masculinités, genre et égalité” project at the Université Paris Lumières, and the initial results were discussed in the context of this project.

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Les jeunes isolés étrangers sont confrontés, à Paris, à une évaluation administrative de leur situation, visant à déterminer s’ils sont ou non mineurs, et donc fondés à demander une protection spécifique. Une enquête sur les dossiers de ces jeunes et les acteurs qui les évaluent a permis d’étudier leur catégorisation comme « mineurs » ou « majeurs ». L’évaluation des jeunes se base sur leur apparence physique et la cohérence de leur récit, et on perçoit l’influence des normes de genre, race, classe et âge dans les décisions administratives. De telles catégorisations visent en réalité à distinguer des demandeurs légitimes (les « vrais » mineurs) de demandeurs illégitimes (les jeunes étrangers majeurs).

### **Abstract**

In Paris, unaccompanied young foreigners have to undergo an assessment of their case by the public services, in order to determine whether or not they are minors, and therefore whether or not they should be taken into care. We studied the files of several hundred young people and carried out a number of in-depth interviews. Our study highlights how the categorization of these young people as “minors” or adults is linked to their physical appearance and the consistency of their story. This shows the influence of gender, race, class, and age in these administrative decisions. Such categorizations are designed to distinguish between legitimate applicants (“real” minors) and illegitimate applicants (young adult foreigners).

“A legal and non-biological concept, [age] is not proven as a fact, but is observed through a temporal relation to the birth certificate.”<sup>2</sup> Defined as such, the legal concept of age appears to be a simple one, and is in fact usually established without difficulty. The date of birth is declared to the registrar when the birth certificate is drawn up, and this then serves as a reference for determining a person’s age throughout his or her life.<sup>3</sup> The date of birth shown on the certificate is of course only valid in the absence of evidence to the contrary,<sup>4</sup> but in practice is not usually legally contested. However, this is not the case for everyone. For young foreigners, the determination of age is of major importance and is subject to an extensive institutional procedure.

The reason that this system exists and that age is such a significant issue is because the care of unaccompanied young foreigners is caught in a tension between child protection policy and immigration policy, and because the overriding issue for the departments (*départements*),<sup>5</sup> which are responsible for receiving unaccompanied minors, is to keep

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<sup>2</sup> Frédérique Dreifuss-Netter, “Les seuils d’âge en droit à l’épreuve des sciences de la vie,” in *Études offertes au Doyen Philippe Simler* (Paris: Litec/LexisNexis/Dalloz, 2006), 95–103. See also Gérard Cornu, “L’âge civil,” in *Mélanges en l’honneur de Paul Roubier* (Paris: Dalloz et Sirey, 1961), vol. II, 8. **Translator’s note:** Unless otherwise stated, all translations of cited foreign-language material in this article are our own.

<sup>3</sup> Civil Code, art. 57.

<sup>4</sup> This applies to both French civil status documents (see in particular Jean Carbonnier, *Droit civil – Introduction – Les personnes – La famille, l’enfant, le couple* [Paris: PUF, 2004], 480) and foreign civil status documents (Civil Code, art. 47).

<sup>5</sup> The department is one of the levels of administrative division of the French state. There are one hundred and one in total, including five overseas departments (Gadeloupe, Martinique, Guyane [French Guiana], La Réunion, and Mayotte).

down the cost of care.<sup>6</sup> The departmental authorities and child welfare services (*aide sociale à l'enfance*, ASE) are more used to managing cases that involve risk to children who are permanent French residents, and find it difficult to act as the gatekeepers of immigration for unaccompanied minors. Particularly since the criteria for distinguishing minors from other young foreigners are by no means clear, and come into play in a context where identity or civil status documents have already been ruled invalid. The ideological and normative context that steers the actions of those whose day-to-day work involves assessing minors thus seems to push them—sometimes unwillingly—to lean more toward rejecting foreigners, based on a “technology of suspicion,”<sup>7</sup> rather than toward a “policy of hospitality”<sup>8</sup> guided by the need to protect children and young people. To explain this phenomenon, we will set out the various stages of age determination for young foreigners who arrive in France, before presenting our research method.

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## The stages of age determination for unaccompanied young foreigners

There are usually three stages to determining a young person’s age: ruling identity documents invalid; creating public services for “sorting” between adults and minors; and finally, the judicial determination of age.

### Ruling identity documents invalid

French child protection law is clear: in theory, it applies to all minors, whether or not they are of French nationality.<sup>9</sup> All minors who are at risk, in particular because they are unaccompanied, may therefore receive a placement from the ASE public services, under the authority of departmental councils.<sup>10</sup> However, such protection can only be granted if they are under the age of eighteen. In this regard, an individual’s foreign nationality should not pose any particular problems, as civil status documents issued abroad are valid, in the absence of evidence to the contrary, under French law.<sup>11</sup> Thus, when the

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<sup>6</sup> While it is difficult to quantify the annual number of requests for accommodation at the national level, the latest report on the issue suggests a figure of around 70,000 for 2017: “Note de la mission bipartite de réflexion sur les mineurs non accompagnés,” January 2018, 5.

<sup>7</sup> Collectif Cette France-là, “La technologie du soupçon: tests osseux, tests de pilosité, tests ADN,” *Mouvements* 62, no. 2 (2010): 80–83.

<sup>8</sup> Guillaume Le Blanc, “Politiques de l’hospitalité,” *Cités* 46, no. 2 (2011): 87–97.

<sup>9</sup> French Family and Social Action Code, art. L111-2; see also the United Nations Convention on the Rights of the Child, art. 20: “1/ A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. 2/ States Parties shall in accordance with their national laws ensure alternative care for such a child.”

<sup>10</sup> As the study population primarily consisted of young men, we have decided to use male pronouns throughout the article. These pronouns should however be understood as including young women.

<sup>11</sup> Civil Code, art. 47.

date of birth of the party concerned indicates he is a minor, this must in principle be presumed. It should therefore be down to those who wish to contest the person's status as a minor to prove that he *is not* a minor.

In practice, however, this is not the case for young foreigners applying for protection from the ASE in Paris. When these young people present their foreign identity documents, they are very often quickly ruled invalid, judged to be unreliable or fraudulent and to have been issued under questionable circumstances.<sup>12</sup> Despite the fact that official circulars urge local authorities not to “question the minor’s claim to the administrative documents he presents and whose authenticity is not contested,”<sup>13</sup> the reality is that the Parisian authorities, and the courts in turn, very often rule invalid the identity documents presented by these young people, particularly if they do not include an identifying photograph.<sup>14</sup> This rejection of documents is facilitated by the fact that the Bureau de la fraude documentaire (BFD) (Office for Document Fraud), which can be consulted by judges or departmental councils,<sup>15</sup> can state whether a document is genuine or fake without providing its opinion on the conditions in which the document was issued (the BFD can therefore never know if a document is a genuine document created from a fake). Dismissing the identity documents that are supposed to prove the date of birth in general law makes it possible to implement a system for assessing the specific age of young foreigners requesting protection.<sup>16</sup> Considerations relating to biological age,<sup>17</sup> behavior, or the physical appearance of the foreigner presenting himself as a minor are then often taken into consideration, and this is the case at all stages of the process.

## Creating public services for sorting

The process for young foreigners who come to France and want to be recognized as minors is long and interspersed by stages in which sometimes the public services,<sup>18</sup> and

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<sup>12</sup> Laurent Gebler, “La problématique du mineur isolé étranger pour le juge des enfants”, in “Mineurs isolés étrangers”, *AJ Famille* (February 2014): 90–3; Corentin Bailleul and Daniel Senovilla-Hernández, “Dans l’intérêt supérieur de qui? Enquête sur l’interprétation et l’application de l’article 3 de la Convention internationale des droits de l’enfant dans les mesures prises à l’égard des mineurs isolés étrangers en France,” study report, University of Poitiers/Migrinter, 2016, 70; see, however, Court of Appeal of Colmar, November 15, 2016, no. 16/03110.

<sup>13</sup> Circular May 31, 2013, NOR: JUSF1314192C, appendix 2, para. 2, protocol appended.

<sup>14</sup> See, for example, Court of Appeal of Paris, March 5, 2013, no. 12/19907, or conversely Court of Appeal of Metz, January 23, 2006, no. 06/8.

<sup>15</sup> The circular of January 25, 2016, NOR: JUSF1602101C, specifies that departmental councils may “themselves consult the ‘document fraud’ expert network within prefectures and certain mayoral offices” as part of their role of assessing young foreigners (p. 7). We did not observe this practice in Paris during our study.

<sup>16</sup> For a critical comparison of assessment methods used in various European countries, see Daja Wenke, *Age Assessment: Council of Europe Member States’ Policies, Procedures and Practices Respectful of Children’s Rights in the Context of Migration* (Strasbourg: Council of Europe, Children’s Rights Division, 2017).

<sup>17</sup> In the study files we also found a decision to reject a placement request that compared the lack of scientific accuracy of bone tests with the presumed lack of reliability of the birth certificates presented: “You claim [. . .] to be sixteen but the bone age tests conclude non-specifically that you have reached the age of majority, that is a difference of at least eighteen months. Although bone age tests are not 100 percent ‘reliable’ to a few weeks or months but to no more than a year, everyone knows the very relative reliability of the birth certificates produced, which can also be subject to a kind of trade.” In relation to these tests, see below.

<sup>18</sup> On the elements taken into consideration in the context of the social assessment of age, see the order of November 17, 2016 applied by decree no. 2016-840 of June 24, 2016 on the methods for assessing minors temporarily or permanently deprived of the protection of their family, *Journal officiel de la République française (JORF)*, November 19, 2016, art. 5 and 6.

sometimes a judge, will attempt to determine the validity of their claim.<sup>19</sup> Specific assessment bodies have been created in response to the growing number of young people seeking protection from the ASE. While it is of course difficult to provide an exact figure for the number of people concerned, there is no doubt that it has increased over the last fifteen years or so.<sup>20</sup> The first responsibility of these bodies in relation to new arrivals is to determine whether or not they are unaccompanied minors who should be taken into care. Despite differences in the assessment criteria from one country to another,<sup>21</sup> in France and in Europe more generally, these bodies are essentially organized at a local level, namely the departmental or municipal level. In comparison with other countries, France has a highly institutionalized and relatively homogenous system for receiving unaccompanied foreign minors, as it is connected to its child protection policy. In other countries, such as Italy (a major arrival point for migrants in Europe), there is significant infranational variability and there has been fierce debate about the appropriate institutional and political response to migrant populations.<sup>22</sup> The situation in France may change, as there are current plans to transfer the assessment of young foreigners to the state, due to its authority over migration policy. However, for now, the responsibility remains at the departmental level.<sup>23</sup>

In Paris, a dedicated body was created in 2011 under the name PAOMIE (Permanence d'accueil et d'orientation des mineurs isolés étrangers) (Center for the Reception and Orientation of Unaccompanied Foreign Minors). This was formed through a government contract with the organization France Terre d'Asile to provide reception facilities for young people, but also to assess their age and whether or not they were unaccompanied. Initially, the PAOMIE was responsible for deciding whether a young person was a minor and therefore eligible for an ASE placement. However, the rules changed in 2015, with the Direction de l'action sociale de l'enfance et de la santé (DASES) (Directorate of Social Action, Children, and Health) in Paris becoming responsible for taking this decision based on a recommendation from the PAOMIE, without meeting the young person concerned. The assessment operator has now changed, with the government contract moving to the French Red Cross in January 2016, but the task of assessment has remained and is now made explicit in the new name of the service, with the PAOMIE becoming the DEMIE (Département d'évaluation des mineurs isolés étrangers) (Unaccompanied Foreign Minors Assessment Service). As our study covers the years 2013 to 2015, we will focus on the assessment activities of what was then the PAOMIE, but the DEMIE plays the same role. Pending a potential placement, this service is able to refer young people to a temporary reception facility where they can be placed in short-term accommodation, usually in a hotel. This falls under the work of the SEMNA (Secteur éducatif mineur non accompagné) (Education Service for Unaccompanied Foreign Minors). Temporary accommodation is supposed to be provided to all, but in practice this norm is variably applied since it does not cover people who are “clearly”

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<sup>19</sup> On this process, see the special report “Mineurs isolés étrangers” in *AJ Famille*, February 2014; and Bailleul and Senovilla-Hernández, “Dans l'intérêt supérieur de qui?”

<sup>20</sup> See in particular Élisabeth Doineau and Jean-Pierre Godefroy, *Rapport d'information au nom de la commission des affaires sociales sur la prise en charge des mineurs non accompagnés* (Paris: Senate, 2017), 23 and following.

<sup>21</sup> Nisrine Eba Nguema, “La protection des mineurs non accompagnés en Europe,” *La Revue des droits de l'homme* 7 (2015).

<sup>22</sup> See in particular Filippo Furri's work on the city of Venice as a “sanctuary city,” in the Italian context of rejection of foreigners (Filippo Furri, “Venise, ville-refuge,” *Vacarme* 81, vol. 4 (2017): 10–15.

<sup>23</sup> See Doineau and Godefroy, *Rapport*, 70.

adults.<sup>24</sup> More generally, the assessment process involves rigorous sorting, with the DASES apparently rejecting 75 percent of the applications it receives.<sup>25</sup> In such cases, the decision can be contested in court with a view to the placement being ordered by a judge. Although this study does not consider the legal side of assessment, it is necessary to take a look at the barriers that may be put in place at this stage.

## Judicialization of the procedure

Unusually, the question of who the competent judge is to decide on the care of an unaccompanied foreign minor has not been formally settled. Over the years, several paths have been explored, thanks in particular to the work of activist groups. However, despite the lack of clarity in the legal texts, the possible routes of appeal for persons claiming to be minors are gradually being closed off.

When a young person is passed over by the public assessment services that have denied him minor status, an appeal before an administrative judge appears to be the most obvious way to challenge this decision and apply for care from the ASE. However, the Council of State (Conseil d'État) has ruled that it is impossible for the administrative court to decide on such an appeal, on the grounds that a person claiming to be a minor does not have the legal capacity to take legal action.<sup>26</sup> This is a clearly paradoxical solution that could soon be challenged.<sup>27</sup> Due to this initial barrier, attempts have been made to take appeals to the family court judge who, as a guardianship judge for minors, might have had the authority to appoint a person to represent the child and exercise his rights. However, this judge is not legally competent to order an emergency placement with the child welfare services. This leaves the route of an appeal with a children's judge (*juge des enfants*, JE). But the question of competence in this area is again not straightforward.

While the public prosecutor's office can, in certain cases, issue orders for temporary emergency placements for a very short period of time, only JEs, since they are responsible for protecting children at risk, can order long-term placements for minors. Despite this, however, some judges have decided that the cases of unaccompanied foreign minors do not fall under their remit, arguing that their role is to mitigate the inadequate exercise of parental authority rather than its absence.<sup>28</sup> This resistance has

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<sup>24</sup> On the operational difficulties of providing accommodation more generally, see Doineau and Godefroy, *Rapport*, 49 and following.

<sup>25</sup> This figure was communicated to us during an interview conducted with the PAOMIE but cannot be confirmed by the official documents. Nationally, however, the ASE rejection rate is nearly 60 percent, and as high as 85 percent in some departments (Doineau and Godefroy 2017, 54).

<sup>26</sup> Council of State, July 1, 2015, no. 386769.

<sup>27</sup> See Council of State ref., July 13, 2017, nos. 412134 and 412135.

<sup>28</sup> The files include several successive decisions from the same judge who, throughout 2013, gave the same reason for these decisions: "The children's judge, who is not the grand protector or defender of all children, is not competent in relation to a minor with no legal representative on French territory." Arguing that a placement measure "indicates to parents their failure to provide proper care, which clearly has no meaning and no use in the case of a child who is claimed by no one and whose parents are absent," he stated that a public protection measure was sufficient to protect the child. He thus systematically refused to hear the cases (considering one of the parties—the parents—to be absent) and issued temporary placement orders of six months designed for a ruling from the guardianship judge. In April 2015, he went as far as dismissing a case on the same grounds: "The JE is not competent in any case concerning minors with no legal representative on French territory," "social services must provide care for unaccompanied minors in a vulnerable situation and can do this without the JE

however been dismissed by the rulings of courts of first instance and by appeal decisions,<sup>29</sup> and the JE is now the main judge dealing with the cases of unaccompanied minors (UAM).<sup>30</sup>

This leaves the whole other issue of determining minority, the *sine qua non* condition for the competence of children's judges. As we will see, it is generally on this point that ASE placement is rejected. While it is theoretically possible for a foreign citizen with recognized minor status not to be provided with a placement—for example, because investigations reveal that he does have a legal representative or trusted person in the country who can care for him—the reality is that “sorting” is primarily between “real” and “fake” minors. The decision of the children's judge can subsequently be appealed: not only by the young person who wants to challenge a rejection, but also by the departmental council who wants the placement decision to be annulled. Here, the strain on the care system becomes clear: the ASE services may decide they are so overloaded that they cannot execute placement decisions, or even challenge them, on the grounds that they are unable to fulfil their reception role under acceptable conditions.

Determining the age of young foreigners claiming ASE protection is therefore an integral aspect of their care, since it is what makes it possible to determine their inclusion or exclusion from the care system. However, it is extremely difficult to observe the reality of these practices solely by examining legal decisions in the public domain. For while there are many legal challenges involving UAMs in the courts of first and second instance, the decisions are of limited theoretical interest in themselves.<sup>31</sup> They demonstrate a very wide margin of appreciation on the part of the courts and often provide incomplete justification. It is therefore often difficult to identify what led to the decision, particularly since the materials submitted to the judge cannot be studied. This is compounded by the fact that, since the persons concerned are particularly vulnerable and the situations are often urgent, there are very few legal proceedings—which are time-consuming and of uncertain outcome—resulting in decisions by the upper courts (Court of Cassation and Council of State); decisions that apply to all legal jurisdictions and are the only ones to be published widely. Studying court decisions alone would therefore tell us almost nothing about the reality of the experiences of unaccompanied young foreigners.

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who must be consulted only in exceptional circumstances”; “in relation to helping a minor unaccompanied by his family, whom no one is looking after, and whose care by the social services therefore concerns no one, the JE is not competent to intervene.”

<sup>29</sup> See, for example, Children's Court, Paris, May 22, 2013, no. I12/0532, in which the judge stated: “It should also be recalled that the children's judge is not competent in relation to minors with no legal representative on French territory, these latter are concerned if applicable by public protection measures and the family court judge in relation to appointing a legal representative.” In a slightly later decision, the same judge stated that she still believed she lacked competence but that “a practice has been established which consists of taking care of minors with no representative of parental authority” and that she agreed to conform to this “in order to unify case law and to avoid creating inconsistencies in treatment.” However, for the discussion of a decision of the Court of Appeal of Versailles that was particularly harsh in this regard, see Françoise Monéger, “Le juge des enfants et les mineurs étrangers isolés,” *Revue de droit sanitaire et social* 1 (2004): 187. The Court of Cassation recently ruled however that the state of being unaccompanied required care to be provided: Court of Cassation, 1<sup>st</sup> Civil Court, November 16, 2017, no. 17-24.072.

<sup>30</sup> This term (“*mineurs non accompagnés*”) has been used since law no. 2016-297 of March 14, 2016 on child protection, *JORF*, March 15, 2016.

<sup>31</sup> On the political criticism of some of these decisions and the controversies that have arisen on this subject, see Benoît Hurel, “Discrédit du discrédit,” *Délibérée* 1 (2017): 104 (particularly the boxed text).



Examining only the applicable legal texts would be no more enlightening, since the specific features that define the experiences of these young people, when they are taken into consideration, are generally done so only through measures with limited normative value: official circulars, action plans, or decisions from the defender of rights. This is a specific characteristic of the law on foreign nationals, described by Danièle Lochak many years ago as an “infra-law” phenomenon.<sup>32</sup>

## Research method

Caught between a general law that sometimes fails to cover their specific situations and an unspoken particular law, unaccompanied foreign minors are in a legal no man’s land to which legal doctrine has paid little attention. Theoretical work on this issue is therefore primarily produced by legal professionals, social workers, or volunteers, and is generally published in activist journals.<sup>33</sup> However, understanding the institutional drivers relating to the care of young foreigners and therefore, necessarily, the determination of their age, requires a dual legal and sociological approach. This study is primarily based on the analysis of files held by an organization that supports unaccompanied minors in dealing with the law and the public services.<sup>34</sup>

### Methodology

From the original corpus, we analyzed 300 cases of young people (representing around 10 percent of the archives available to us, and covering the period between 2013 and 2015) by considering the following variables: gender, stated age, nationality, existence of a PAOMIE interview, gender of the assessor, comment on physical appearance in the age

<sup>32</sup> Danièle Lochak, “Observations sur un infra-droit,” *Droit social* 5 (1976): 43–9; Anita Bouix and Serge Slama, “La fabrique d’un infra-droit d’exclusion,” in “Mineurs isolés étrangers,” *AJ Famille* (February 2014): 84–9.

<sup>33</sup> See, for example, Nathalie Ferré, “La détermination de la minorité,” *Plein droit* 52, no. 1 (2002): 15–20 (and the special report in this issue); Jean-Luc Rongé, “Mineurs étrangers isolés: une discrimination notoire,” *Journal du droit des jeunes* 337, no. 7 (2004): 23–37; “Mineur isolé étranger: une nouvelle figure de l’altérité?,” special report of *Migrations Société* 129–30, nos. 3–4 (2010); Jean-François Martini, “Mineurs étrangers: le tri qui tue,” *Plein droit* 92, no. 1 (2012): 11–15; “Les mineurs non accompagnés,” special report of *Vie sociale et traitements* 130, no. 2 (2016). There have also been many personal accounts concerning this issue; see for example: Agathe Nadimi and Morgann Barbara Pernot, “Mineurs isolés étrangers à Paris: une tragédie,” <https://blogs.mediapart.fr/la-chapelle-en-lutte/blog/030816/mineurs-isoles-etrangers-paris-une-tragedie-par-nadimi-et-morgann-b-pernot>; “On achève bien les mineurs isolés étrangers,” February 19, 2017, <https://blogs.mediapart.fr/tokiprrriii/blog/190217/acheve-bien-les-mineurs-isoles-etrangers>; “‘L’Angleterre, il faut que t’oublies.’ Entretien avec une travailleuse d’un CAOMI,” February 20, 2017, <https://iaata.info/L-Angleterre-il-faut-que-t-oublies-Entretien-avec-une-travailleuse-d-un-CAOMIE-1884.html>.

<sup>34</sup> Access to these data was undeniably made easier by the fact that one of the authors belonged to one of the collective’s member organizations, as these organizations required assurance that their data would be properly used, particularly in relation to providing access to personal files. It was also useful to have an activist anchoring in the research team (with the two other authors having no personal connection to the collective or its member organizations). For the avoidance of all doubt, we should state that this study was not conducted in partnership with the collective, nor for any financial compensation. The authors viewed the collective as a forum for the expression of field-related expertise and integrated it into the subject of study on this basis. On the legitimacy of the knowledge produced by activist organizations, see the special report “Associations: lieux méconnus de savoir et d’expertise sur les migrations,” *Migrations Société* 170, no. 4 (2017), in particular Josselin Dravigny, “Questionner la dichotomie entre registre savant et registre militant: la nature des ‘associations productrices de connaissances sur les migrations’,” 11–19.

assessment, reference to consistency of the story, reference to family situation, outcome of the assessment, existence of an identity document, nature of the document, document consultation provided, result of document consultation, medical consultation to determine age, result of the medical consultation, court of first instance decision, court of second instance decision, information on health and education. These variables were chosen primarily based on the aspects that were most often referred to in the assessments or decisions analyzed. However, the data and their exploitation were subject to several limitations that should be noted before moving on to the initial results. The database cannot claim to be entirely representative, due to its size (n = 300) and constitution. It was created by purposive sampling: specifically, choosing to only include cases that included either a PAOMIE assessment or a court decision. These were the elements we considered best able to provide indications on the motivations for including or not including a young person in the care system. As with all samples of this type, there may be some biases in its constitution and data analysis. This analysis therefore seeks merely to develop and test the hypotheses formulated during the study. In relation to this type of quantitative study within a primarily ethnographic investigation, Aude Béliard and Émilie Biland write that the use of such a database primarily serves to “situate ethnographic data in relation to the changing population at the site of investigation as a whole.”<sup>35</sup> One further difficulty is that the study database was “evolving” at the time of the study, as it was regularly modified due to the organization’s activity: new files were added to the study archives, and other files might be added to or reopened. In addition to this database, our study included a number of semi-structured interviews with various actors involved in the care of young people: activists, PAOMIE employees, and specialist lawyers. These interviews shed light on the experiences of these young people, but also gathered data concerning the historical evolution of the assessment of young foreigners claiming state protection.<sup>36</sup>

Analysis of the data reveals the main elements considered in age assessment. For the PAOMIE, the criteria that were explicitly investigated are: the existence and relevance of civil status documents; an assessment of the consistency of the individual’s story; and an assessment of the individual’s physical appearance and behavior (criteria that are explicitly found only in the oldest assessment sheets). For judges, the key information used to determine their rulings are: civil status documents; medical assessments, in the form of bone tests (including a panoramic dental X-ray, wrist X-ray, and an interview with an expert physician) and puberty tests, recently regulated by child protection law<sup>37</sup>; the attendance of the minor in person, making it possible to both hear his story and assess

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<sup>35</sup> Aude Béliard and Émilie Biland, “Enquêter à partir des dossiers personnels: une ethnographie des relations entre institutions et individus,” *Genèses* 70, no. 1 (2008): 106–19.

<sup>36</sup> Despite repeated requests, we were unable to meet with any judges handling these cases in Paris.

<sup>37</sup> Law no. 2016-297 of March 14, 2016 on child protection, *JORF*, March 15, 2016, art. 43 (supplementing article 388 of the Civil Code): “Radiological bone examinations for the purpose of determining age, in the absence of valid identity documents and when the alleged age is not credible, may only be conducted upon the decision of the legal authority and after having gained consent from the party concerned. The conclusions of these examinations, which must specify the margin of error, cannot be used alone to determine whether the party concerned is a minor. The benefit of the doubt is in favor of the party concerned. If there is any doubt regarding whether the party concerned is a minor, an assessment of his age based on an examination of the pubertal development of his primary and secondary sexual characteristics may not be conducted.” For an analysis of this law as a whole in relation to the treatment of UAMs, see for example Jean-Luc Rongé, “Les ‘mineurs isolés étrangers’ (MIE) deviennent des ‘mineurs non accompagnés’ (MNA) – Que tout change... pour que rien ne change!,” *Journal du droit des jeunes* 358-359-360, nos. 8-9-10 (2016): 20–42.

its credibility, as well as assess his physical appearance and whether or not he is “believable” as a minor; and the PAOMIE assessment, if relevant.

The first conclusion that can be drawn from these initial observations is that the PAOMIE opinion is the key element of the system, since its assessment plays a role not only in how the young applicant is handled by the public services, but also by the courts. Second, it is clear that the physical appearances and statements of young people lie at the heart of the assessment since, as we have shown, although their identity documents are formally taken into consideration, they are in reality regularly ruled invalid. The study will therefore focus on these elements, leaving aside the use of anatomical tests in determining age.<sup>38</sup>

This study aims first to demonstrate the way in which the image of what a “real” unaccompanied minor should be is constructed around the subject of assessment, namely the young person. Second, we will see that it is ultimately the object of the assessment—the irregularity of the status of adulthood—that lies at the heart of the analysis.<sup>39</sup>

## **The subject of assessment: Constructing the image of the unaccompanied minor**

Within the institutional space of study, a departmental system for assessing minors prior to potentially taking them into care, various classification procedures are in operation. These classification procedures go beyond the binary of “minor” or “adult” and bring many social norms into play. Since identity documents—even if they are thought to be genuine—are generally judged to be insufficient to prove the young person’s age, assessors have developed various alternative strategies to judge who is an adult and who is a minor.<sup>40</sup> There appears to be a multitude of age indicators, but these are perceived by the various actors involved in the assessment in a combined manner, making an intersectional analysis appropriate.

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<sup>38</sup> The information gathered during the study provides no new insight on this point: consultations are almost routinely ordered when a court is asked to rule on the case of a person claiming to be a minor. If they conclude that the person is an adult, the results are used to support rejecting the application for protection, but often in conjunction with elements taken from the young person’s statement or assessment. For a critical look at medical age assessment examinations, see for example Patrick Chariot, “Quand les médecins se font juges: la détermination de l’âge des adolescents migrants,” *Chimères* 74, no. 3 (2010): 103–11, and the opinion of the French Defender of Rights, no. 17-03, February 7, 2017, 12. For an international comparison, see the decision from the Upper Tribunal (United Kingdom) on November 11, 2017, AS, R vs. Kent County Council, in which the court ruled in favor of taking into care a young man whose age could not be exactly established, based on the benefit of the doubt, noting in particular the uncertain nature of medical age determination techniques.

<sup>39</sup> On the reflection of this position in the change in legal texts relating to young foreigners, see in particular Gilles Frigoli and Cécile Immelé, “Les protéger et s’en protéger: les mineurs isolés étrangers en débat au Parlement français,” *Migrations Société* 129–130, nos. 3-4 (2010): 129–45.

<sup>40</sup> For a critical report on some of the motivations behind PAOMIE decisions, see also “Permanence d’accueil et d’orientation des mineurs isolés étrangers (PAOMIE): une moulinette parisienne pour enfants étrangers,” *Journal du droit des jeunes* 328, no. 8 (2013): 6–9.

## The multitude of age indicators

Various age indicators are used for the purposes of assessment. Our analyses reveal that the young person's physical appearance and behavior are the most important elements, but that significant weight is also placed on assessing the consistency of their stories.

### *References to physical appearance and behavior*

Assessors' use of criteria relating to physical appearance (a young person "seems to be" a minor or an adult) is clearly evident in the corpus of assessments to which we had access. Far from simply resembling an arbitrary form of judgment typical of gatekeeper ("guichet") activities,<sup>41</sup> judgment of physical appearance is authorized by the legal texts covering assessment. The official circular regarding the assessment of unaccompanied foreign minors at the time of our study thus sets out a framework for assessors, suggesting they should pay attention to the "young person's physical development and the compatibility of his physical appearance with his alleged age." Paradoxically, the same circular also states a few lines later that assessors "must be wary of stereotypes."<sup>42</sup> As the legal texts that have since come into force have not altered this legal situation,<sup>43</sup> it is reasonable to believe that such a practice continues.

Among the 305 assessments we consulted, 110 (around 36 percent) explicitly refer to the young person's physical appearance. Some simply briefly mention that a young person's appearance is "not compatible with his alleged age" or, conversely (but more rarely), that it is compatible. For example, the assessor for Daouda, a sixteen-year-old from Côte d'Ivoire, notes that his appearance is compatible with his alleged age, as he has a "baby face" and a "developing lower jaw."<sup>44</sup> Conversely, the assessor for Youssoufa, a seventeen-year-old originally from Guinea, writes: "He is of average height with a very stout build. He has significant beard and moustache hair growth. He has a few wrinkles on his forehead. His physical appearance is not compatible with his alleged age of seventeen years and one month." Some assessments reveal the assessor's discomfort in the face of potentially contradictory legal requirements (the need to assess appearance without falling into stereotype). For example, the interview report for Omar, aged fourteen and a half, from Mali, states: "the fact that his appearance, features, and physical development are not compatible with his alleged age stands out, as it is immediately obvious and a point that the assessor must seek to verify throughout the assessment."<sup>45</sup> The report for an Ivoirian boy of sixteen years also cites the 2013 official circular to support the fact that "it should be noted that it is difficult to believe his claims to be a minor given his physical development and adult features."

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<sup>41</sup> Vincent Dubois, *La vie au guichet* (Paris: Economica, 2008).

<sup>42</sup> Circular of May 31, 2013 on the procedure for taking unaccompanied young foreigners into care: national system for housing, assessment, and referral, *Bulletin officiel du ministère de la Justice*, June 28, 2013, appendix 1.

<sup>43</sup> Interministerial circular of January 25, 2016, NOR JUSF1602101C, appendix 1, then order of November 17, 2016 applied by decree no. 2016-840 of June 24, 2016 on the methods for assessing minors temporarily or permanently deprived of the protection of their family, *JORF*, no. 0269, November 19, 2016, in particular, art. 5 and 6.

<sup>44</sup> First names have been anonymized and the age shown is the age alleged by the young person.

<sup>45</sup> *Bulletin officiel du ministère de la Justice*, June 28, 2013.

In some cases, criteria related to physical appearance also seem to be weighed against other aspects of the young person's life experiences, as if to confirm the assessor's opinion with objective information. However, this approach does not necessarily benefit the minor, as seen in the case of seventeen-year-old Amadou, originally from Guinea, whose face is described by the assessor as "visibly marked by life on the streets," but with the conclusion that his appearance is incompatible with his being a minor as he "has a wrinkled forehead." We found many examples of a common association between the young person's hair growth or muscles and his age (the report on Abdel, from Bangladesh, thus states: "[Abdel's] well-developed physical appearance and demeanor are not compatible with his declared age of sixteen years. Presenting signs of frequent shaving"). This reference to hair growth is so common that, when their case is being heard by a judge, some lawyers recommend that their clients shave before they go to court in order to make themselves look younger.

Sometimes, in addition to physical signs, the assessors refer to "behavior," particularly toward "the adult" that they themselves represent. One assessor thus notes that a young person has "the behavior of an adult speaking to an equal"; another, that he "seems very mature in the way he expresses himself, his gestures; he does not have the demeanor of a minor in the way he speaks to the interpreter"; and a third, that "his demeanor is not that of an adolescent, he behaves more like a young adult, appearing poised, thoughtful, and calm." In relation to a young person who was told that he was not credible, the assessor also writes: "His behavior is not that of a young adolescent being questioned by an adult." These references to "behavior" are typically linked to the interaction, during which the assessor claims to perceive signs of maturity that cast doubt on the alleged age. Although it is difficult to distinguish between mature minors and young adults, some assessments do however attempt to do so, as in the case of Mariam, a fifteen-year-old girl from Guinea: "her statements are consistent with her declared age. Her behavior is that of an adolescent girl, although she is relatively mature." What matters, therefore, to use the words of an assessor during an interview, is the "human relation that is formed with the young person"—a relation that is, however, limited by the case load of the assessment service, resulting in relatively brief interviews that are almost never repeated.<sup>46</sup>

### ***The requirement of a consistent story***

The factor of a consistent story, often added to an assessment determined by physical appearance, plays a key role in the assessments.<sup>47</sup> Traces of this—in more or less detail—can be found in more than half of the assessments studied (163 out of 305, or 53 percent). Typically, assessors note that a story is "inconsistent" or "incomplete." This was the case, for example, for Ahmed, a sixteen-year-old originally from Afghanistan: "The account you provide of your life in the country and your migration journey is

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<sup>46</sup> In their report, Bailleul and Senovilla-Hernández relate that, across all departments studied, the interviews conducted with minors do not last more than an hour, and specify that "the formal nature of the interviews and the lack of long-term work put young people in an uncomfortable position, with a great deal of anxiety and apprehension" (Bailleul and Senovilla-Hernández, "Dans l'intérêt supérieur de qui?" 63).

<sup>47</sup> In relation to this, see Karine Parrot and Jean-François Martini, "Jeunes isolés étrangers: l'impossible preuve de la minorité," note on Court of Cassation, 1<sup>st</sup> Civil Court, May 11, 2016, no. 15-18731, *Recueil Dalloz* (2016): 1545; Jean-Luc Rongé, "La cohérence de l'incohérence," commentary on Court of Cassation, 1<sup>st</sup> Civil Court, May 11, 2016, no. 15-18731, *Journal du droit des jeunes* 358-359-360, no. 8 (2016): 179–82.

incomplete and unclear.” This formulation is typically used without further elaboration, but the reasons for such an opinion are sometimes set out in the assessment. We find inconsistencies concerning family structure (difficulty stating position in the sibling group, providing parents’ ages, etc.), education (inconsistency between age and the past education described), or the migration journey (places travelled through, length of stay, etc.).

Sometimes the assessments report asking questions about abuse experienced during the migration journey, and it is striking to see these aspects treated in the same way as questions about education or family. One assessor, for example, criticizes Louis, a sixteen-year-old originally from Cameroon, for a lack of clarity regarding the sexual abuse that he stated as a reason for his departure for Europe. He writes: “In relation to the allegations of sexual abuse, [. . .] he cannot describe the frequency or type of abuse he suffered.” This seems particularly astonishing given that in other contexts (for example, in care proceedings in the children’s court), children and adolescents are always considered to be vulnerable witnesses, particularly when describing trauma.<sup>48</sup> Here we see the extent to which these young people are not treated as presumed minors who are at risk and who require protection. The potential “inconsistencies” in their stories are considered to be more important than focusing attention on the alleged abuse.<sup>49</sup> Although the aim of the assessment is to discover a young person’s age, assessors also take into consideration the truth of their story, and a story that is “incomplete” and potentially “fake” will thus count against the young person.

This assessment of the “truth” of the story is all the more questionable when it focuses expressly on the young person’s unaccompanied status. We found several examples in which an individual’s overly neat appearance was judged to be incompatible with their reported homelessness. Marik, a sixteen-year-old from Bangladesh, is thus described as “clean-cut and close-shaven. It is doubtful whether he spent a night on the street.” A similar assessment is made in relation to Thierno, Diba, and Mahamed, sixteen- and seventeen-year-olds from Mali who stated that they were unable to wash due to their difficulties finding housing. For the first boy, it is written that “the lack of washing facilities is absolutely not credible. The user presents none of the characteristics of someone who has lived on the street for two weeks”; for the second, “your clothing and appearance do not reflect in any way the homelessness you describe to us”; and the assessment of the third boy states “your neat and proper appearance does not indicate a situation of homelessness and of being unaccompanied.” The same wording is used for Ali, from Côte d’Ivoire: “Your neat and proper appearance (clothing and hygiene) does not indicate a situation of homelessness and of being unaccompanied.” This might prompt us to question the dual requirement faced by these young people, who are presenting themselves before a public service (a social situation in which taking care

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<sup>48</sup> Pierrine Robin and Nadège Séverac, “Parcours de vie des enfants et des jeunes relevant du dispositif de protection de l’enfance: les paradoxes d’une biographie sous injonction,” *Recherches familiales* 10, vol. 1 (2013): 91–102.

<sup>49</sup> In several files, voluntary support workers note that the young person has mentioned persecution in his country of origin or sexual abuse during his journey or in France, but that this information was not taken into consideration, or not detected, during assessment. This is despite the fact that a recent Unicef report shows that young migrants crossing the Mediterranean are particularly likely to be victims of abuse during their journey: Unicef, *Harrowing Journeys: Children and Youth on the Move Across the Mediterranean Sea, at Risk of Trafficking and Exploitation* (Geneva: Unicef/International Organization for Migration, 2017), <https://data.unicef.org/resources/harrowing-journeys>).

over one's appearance is expected), but for whom an overly neat appearance may be held against them.

More astonishing still are the numerous examples of "overly consistent" stories in the assessments, which are also held against minors. Julien Bricaud writes, in relation to the assessments, that "doubt becomes suspicion when the supposed lie becomes the dominant explanatory factor for a young person's behavior. Thus, the overly compliant demeanor of a young person or the expression of a certain level of maturity can quickly become suspicious."<sup>50</sup> For example, the assessor reporting on the case of Drissa, a sixteen-year-old originally from Mali, writes that "the context in which he claims to have grown up is culturally consistent," but that this over-consistency "probably hides something about the circumstances of how he ended up in the assessment system." In the case of another young person, the assessors write that "the accuracy of [his] statements may seem suspect." The notes made on another young person from Mali, sixteen-year-old Ibrahim, perfectly encapsulate the nature of the suspicion to which these young people are subjected: "His statements are consistent, but his spontaneity is suspect, particularly as he has an answer for everything, which is another reason to question his sincerity." Even the explanations provided for over-spontaneity can be treated as suspicious, as in the case of Jaled, a sixteen-year-old from Pakistan: "It was explained [to the young person] that the spontaneity, detail, and accuracy of his statements may be considered suspect—he replied that he remembered [the date of an event] very well because he had begun to work and earn a little money—this response does not really make sense."

The consistency of the story thus seems to play an ambivalent role in assessment. In a broader context in which individuals are expected to be able to give an account of themselves and develop a biographical narrative,<sup>51</sup> the content of the account seems to serve almost routinely as a pretext for not recognizing minor status. While an appearance judged to be "clearly" compatible with minor status (a young person with the features of a young child, for example) is not questioned (minority is recognized), the story, whether or not it is consistent, does not single-handedly determine the assessors' decision. It is as if they did not really know what to do with these stories: should they consider them, since they are coming from children or adolescences, to be understandably inconsistent? Or is an inconsistent story rather a sign of a clear lie, casting doubt on whether a young person is a minor? The ambivalence is seen throughout the files: in relation to Mariam, whose maturity was noted, it is reported that her "story is stereotypical [. . .]. However, there is no reason to doubt her words," while for Sama, a sixteen-year-old from Guinea, "the timeline and facts of the story are consistent," but it lacks "sincerity." This descriptor is often seen to demonstrate the credibility, or lack thereof, of a story. However, one of the difficulties with assessment is that the young people have to repeat their stories several times, to multiple institutions, and this repetition produces an increasingly stereotypical story: "When the people responsible for assessment highlight the stereotypical or learned nature of a story, or assume that a young person has appropriated it from elsewhere, they appear to overlook the possibility that repeating a

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<sup>50</sup> Julien Bricaud, *Mineurs étrangers isolés: L'épreuve du soupçon* (Paris: Vuibert, 2006), 54.

<sup>51</sup> Isabelle Astier and Nicolas Duvoux, *La société biographique: Une injonction à vivre dignement* (Paris: L'Harmattan, 2006).

story many times over the course of a journey and in the early days of arrival in France may polish its edges and alter its substance.”<sup>52</sup>

These elements—physical appearance, behavior, and the consistency of the story—all have norms of age, race, and gender running through them. The assessment of these young people can therefore be analyzed using an intersectional approach.

### **The intersectional analysis of age indicators**

The different classification criteria produced by the assessment of young foreigners are characterized by porous relations with more or less implicit age, gender, class, and race norms.<sup>53</sup>

The majority of those assessed are boys (this was the case for 96 percent of the young people in our corpus<sup>54</sup>) and the traits considered to be signs of their adulthood generally relate to the gendered body, namely the male body (we have already noted the importance of hair growth and muscles). The consistency of the story, or the evaluation of the statement, is also considered from the perspective of the gender of the young people assessed: as highlighted above, experience of sexual abuse is thus very little explored when it comes to boys.<sup>55</sup> Class also plays a role, insofar as assessment of the consistency of the story is often based on living conditions in the country of origin, and on the resources (social, but also economic, capital) to which a young person has access during their migration journey. Thus, in relation to Yassa, a sixteen-year-old originally from Mali, the assessor writes: “The young man does not have the demeanor of an illiterate adolescent.” Other examples are found in the reports for a second young Malian boy, stating that the detail in which he describes the timeline of his journey contradicts his claim to have attended only three years of school,<sup>56</sup> and for a third, whose lack of education is said to be inconsistent with the fact that he can speak “a little” French. The assessment report for Adbou, a sixteen-year-old Pakistani boy, highlights that it is hard to believe he “comes from a poor family [as] he appears to have traveled with significant sums of money.” Harsh comments are sometimes made about the intellectual ability of the young people being assessed. In relation to Abdel, a seventeen-year-old from Guinea, the assessment first notes that “he claims to be intelligent, but does not remember the year he dropped out of school,” and a little later on that “he seems to be accepted into adult circles and considerations would therefore appear compatible with adulthood.”

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<sup>52</sup> Bailleul and Senovilla-Hernández, “Dans l’intérêt supérieur de qui?,” 68.

<sup>53</sup> The word “race” is sometimes put in inverted commas, in order to move away from an essentialist, or racist, ideology. Here we have decided not to use this convention (which could equally be applied to “gender” or “class”) in order to avoid euphemizing the existence of race as a social construct. Colette Guillaumin writes that: “No, race does not exist. And yet it does. Not in the way that people think; but it remains the most tangible, real, and brutal of realities” (Colette Guillaumin, “I Know It’s Not Nice, But. . .” *The Changing Face of Race*,” in *Racism, Sexism, Power and Ideology*, trans. Andrew Rothwell and Max Silverman, 107 [New York: Routledge, 1995]). We note that while race has no biological existence, it does have a sociological existence: it produces effects on the social world, as do class and gender.

<sup>54</sup> This is very similar to their proportion in the overall population of unaccompanied young foreigners: Doineau and Godefroy, *Rapport d’information*, 27.

<sup>55</sup> Greater attention is paid to the vulnerability of a number of girls presented for assessment: the PAOMIE protocol states that they should be routinely referred to the SEMNA.

<sup>56</sup> Conversely, we found a similar file in which the applicant’s difficulties situating events chronologically were justified by his lack of education.



These different norms of perception of the bodies and stories of the young people are typically connected to a perception of age, and in particular of what is “childish,” “adolescent,” or “adult” speech, and what is expected in terms of consistency and detail. These norms used by the assessors are interlinked and can only be considered in light of the intersectionality of power relations.<sup>57</sup> This is because, when an assessor judges a story to be “too consistent” for a particular young person, he does so in relation to his age (only an adult can produce such a consistent story) but also his nationality or “culture of origin.” For example, the assessors claim to be aware that a particular migrant community teaches newcomers to present a pre-prepared story, and sometimes they go as far as arguing for the inconsistency of a story based on the young person’s ethnic origin. For instance, this is the case for Moussa, a fifteen-year-old from Mali, whose Soninke origin, according to the assessor, explained his difficulty setting out a consistent timeline. The assessment of Imba, a Guinean boy aged fifteen and a half, provides an even more striking example: “The reasons and circumstances of the user’s departure are hard to believe. It is still very common for users of Guinean origin to claim mistreatment by an uncle, their father’s second wife, or an aunt as their reason for leaving. Stories of the ‘heaven-sent’ figure, always a friend of their late father, who pays for the entire journey only to then leave the child on the streets of a foreign country are hard to believe.” Ethnic origin thus plays an active role in evaluating the value of the statement.

The “expectation” of what a childish statement should be is also constructed in relation to the idea of vulnerability: because the young person has requested help, this request must be consistent with their general demeanor, that of a child at risk. Thus, the person assessing Madi, a sixteen-year-old from Mali who claimed to have spent twenty days on the streets in Rome, considered his story to be inconsistent, since “it is hard to believe that the user could feed himself through begging for nearly a month and remain on the streets without asking for help.” This makes the paradoxical nature of the requirements clear, since, conversely, the stories in which the young people claim to have been helped by adults during their migration journey are often seen as hard to believe. The assessors often refuse to believe in the “heaven-sent figure,” though without ever asking questions about the nature of the relations between the young person and these adults. We found several files in which the young person is described as not displaying a sufficient level of emotion when recounting tragic events such as the death of a close friend or family member, or crossing the Mediterranean. Beyond the issue of the influence of repetition on the statement, as mentioned above, these comments highlight the way in which the assessment is based on the image of what an “unaccompanied, vulnerable migrant child” should be like.

The files also include traces of this requirement for vulnerability continuing after a decision on placement has been made. In two cases in question, the ASE spontaneously terminated the support it had itself decided to provide due to the young person’s rebellious and demanding attitude. In the first case, the assigned children’s judge ultimately ruled that the applicant was an adult, based on the fraudulent nature of the documents presented and on bone tests, and denounced the fact that presenting a fake document had not prevented him from “leading a movement to improve the quality of care for unaccompanied foreign minors at the risk of undermining the credibility of his fellows.” In the second case, the young person was described as “settling” for a hunger strike and the same judge conversely paid great attention to the young person’s reasons for rebelling “against requirements he does not understand.” Despite the suspect nature of his birth certificate, the judge ultimately ruled that a placement

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<sup>57</sup> The concept of intersectionality proposes—in the social sciences but also through legal applications, in antidiscrimination law—the need to jointly analyze the different aspects of power relations, including class, gender, and race relations (see Patricia Hill Collins and Sirma Bilge, *Intersectionality* [New York: Polity, 2016]).

should be provided, stating that “even if the young person’s identity and the truth of his story are not entirely clear, there would appear to be a great danger in leaving him to his own devices, given how isolated he is, even from his loved ones, and directionless.” This clearly demonstrates the tension experienced by the same system actor between the repressive policy of combating “fraud” and a policy of compassion toward young people at risk.

Failing to consider the situation of these young people from an intersectional perspective would therefore obscure the numerous mechanisms that construct their alterity in relation to adult society, whose work consists here of classifying those who claim to belong to it. Yet one implicit feature of this classification procedure is that it does not settle for determining a group of “real” and a group of “fake” minors: in reality, those ruled to be adults fall under the category of undocumented foreigners.

## **The subject of assessment: The legality of status rather than minority**

The standard process of legal definition consists of subsuming concrete facts under an abstract legal category.<sup>58</sup> In this case, it involves attaching a cluster of elements (documents, appearance, story, etc.) to a legal category of persons: minors or adults. In theory, this reflective process makes it possible to classify an object between alternative categories that are mutually exclusive. The same object can however be put in different category groups, depending on the question asked. A person can, for example, be employed or self-employed; married, in a civil partnership, or single; male or female, but these different classifications result from different questions. The peculiarity of the situation for unaccompanied foreign minors is that the question that the individuals assessing their minor status are required to answer is unclear and depends on the interlocutor in question. The PAOMIE is thus required to answer three questions: Is the person foreign? Are they a minor? Are they unaccompanied? The children’s judge, on the other hand, is more interested in whether the person is a minor and whether they are at risk; in principle, this is not exactly the same question as that of being unaccompanied. In theory, each actor therefore takes a different approach to the situation of the young people with which they are presented. Yet examining the different assessment materials—decisions from both the PAOMIE and judges—shows that the only question that matters is that of minor status. This question is central not so much because it conditions the legal competence of the actors, but because it hides within it another question: if these young people are not minors, then they are undocumented migrants. Although the question appears to be about the classification between “minor requiring protection” and “adult who can protect himself,” the real goal of assessment is the classification between “unaccompanied minor requiring protection” and “undocumented foreigner.”

The situation of foreign minors in relation to residence rights is in fact unclear, as the concept of “legality” of residency applying to minors is complicated. The sole clear norm in this regard is that an obligation to leave the French territory cannot be issued to anyone under the age of eighteen.<sup>59</sup> But the law does not provide any specific mechanism for recognizing the

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<sup>58</sup> See, for example, Patrick Wachsmann, “Qualification,” in *Dictionnaire de la culture juridique*, eds. Denis Alland and Stéphane Rials (Paris: Lamy/PUF, 2003), 1277–83.

<sup>59</sup> Art. 511-4, 1, Law on the Entry and Residence of Foreigners and the Right to Asylum: “The following cannot be issued with an obligation to leave the French territory: 1/ Foreigners under eighteen years of age.” On this

legality of residence of minors: in theory, the concept is irrelevant since a minor is supposed to be treated under general child law whether they are of French or foreign nationality. However, once someone is considered to be an adult, to remain in France they must hold a residence permit whose conditions of issuance are set out in law. Yet very often young people claiming state protection do not meet any of the criteria for of issuance of these permits, in particular due to their very recent arrival in France. In reality, assessing these individuals as adults means assigning them to “undocumented” status. This asymmetry of categorization is perfectly understood by actors involved in their care: both by social workers—who thus find themselves placed in an ambiguous position—and by activists, who may take a more directly critical position.

## **The ambiguous position of social workers**

When asked about their perception of their position in the child welfare service, the PAOMIE assessors we met expressed unease regarding their role, which they described as “more administrative than social.”<sup>60</sup> Yet the “administrative” aspect of their work consists of selecting the young people who are presented to them. We can thus take it that, unwillingly, the role of assessors is more to police foreigners than to protect children. This is also what justifies their presence in the system even though they are not social workers: their training focuses on international affairs, enabling them to acquire a certain knowledge of the geopolitical issues related to the countries of departure, as well as the administrative, educational, and family systems in these countries. The profile of these assessors is in fact atypical for employees in the sphere of social work: they are neither social workers nor educators, but have training in history, psychology, and policy management, and experience in international and humanitarian cooperation (with master’s-level qualifications). At the time of our study, the profile and training of these assessors was not regulated nationally but determined by the expectations of local actors.<sup>61</sup> A recent study report on the reception of unaccompanied minors, conducted across several departments, also showed significant differences in recruitment from one department to the next.<sup>62</sup> The assessors that we met explained that their respective training pathways gave them a “different [perspective] on these minors.” They presented themselves as experts on the experiences of these minors, while regretting the need for a “balancing act” between their social role (providing these young people with immediate help, since minors must be placed in accommodation within five days) and their administrative role, which requires them to “sort” these minors—although they claimed that, at their level, they did not have “quotas” (a maximum number of young people recognized as minors) to fill. These employees presented their knowledge as helping to prevent them from ruling a young person’s statement invalid (“you can’t assume they’re

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point, see Catherine Delanoë-Daoud, Béatrice de Vareille-Sommières, and Isabelle Roth, “Les mineurs isolés étrangers devant le tribunal pour enfant de Paris,” *AJ Pénal* 1 (January 2016): 16–20.

<sup>60</sup> For studies on the work of these assessors in other departments and from different angles, see for example Roman Petrouchine, Bintily Konaré, and Halima Zeroug-Vial, “Les mineurs isolés étrangers: de l’assignation paradoxale comme épreuve de professionnalité,” *Enfances & Psy* 67, no. 3 (2015): 113–24; and Anaïs Lebœuf, “L’accompagnement des mineurs isolés étrangers par les professionnels du social: entre tensions et ‘professionnalité,’” *Migrations Société* 129–130, nos. 3–4 (2010): 161–79.

<sup>61</sup> Their recruitment may however be gradually harmonized by application of the decree of November 17, 2016 cited above, which states, in article 4, that “professionals must therefore provide evidence of training or experience, particularly in terms of knowledge of migration journeys and the geopolitics of countries of origin, child psychology, and the rights of minors.”

<sup>62</sup> Bailleul and Senovilla-Hernández, “Dans l’intérêt supérieur de qui?,” 60.

talking rubbish when they refer to ‘their uncle’ to mean someone in the village”<sup>63</sup>). Information linked to the knowledge of assessors in relation to the stories of the young people assessed can in fact sometimes be found in the reports.<sup>64</sup> There is a striking comparison between this activity involving knowledge of the country of origin and the role given to staff at the Office français de protection des réfugiés et apatrides (OFPRA) (French Office for the Protection of Refugees and Stateless Persons), whose knowledge of regions of origin is meant to help them assess the credibility of asylum applications.<sup>65</sup> The parallels between these two procedures do not stop there. The assessors also note that the quality of their working conditions is dependent on migration “pressures.” They can be classed under what Didier Fassin and Carolina Kobelinsky describe as a “moral economy of asylum” in their work on the judges of the Cour nationale du droit d’asile (CNDA) (National Court of Asylum).<sup>66</sup> According to Fassin and Kobelinsky, this moral economy is characterized by the feeling that their work is particularly just, in an environment characterized by the double pressures of migration and politics (leading the public authorities to display a desire to control both legal and illegal migration), because it is based on selectivity. Like the judges at the CNDA, the assessors of minor status explained that their role is not to provide shelter to “all individuals,” but to identify those who really need protection: in other words, quality over quantity. As Gabriella Petti notes in an Italian context, the social actors working with these young people have a moral function, marking out those who “deserve protection from those who do not deserve it.”<sup>67</sup>

In relation to the social aspects of the work of assessment, we asked assessors about their attitude toward the people whom they rule to be adults but who are still very young and vulnerable. We wanted to shed light on the possible difficulty of working in the social work sphere while excluding a significant number of potential users from the system. Their position was clearly an uncomfortable one: initially, assessors freely expressed the need to protect those who were “really minors,” but when asked about the difficulty of “passing over” young adults in need of protection, they suggested, without great conviction, that it might be dangerous for the minors to be mixed up with adults in reception facilities.<sup>68</sup> This discourse is therefore a way to give the administrative role a “social” foundation: refusing to include “fake

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<sup>63</sup> We did however find one file in which the credibility of the story was questioned due to a confusion between the roles of father and uncle.

<sup>64</sup> This is the case in the assessment of Siradjo, aged sixteen, in which the assessor questioned the veracity of a story reporting mistreatment of the Fula people in Guinea; in the assessment of Ibrahima, aged sixteen, in which the assessor ruled her claim to have started school at the age of four to be inconsistent; and in that of Adil, in which it was noted, as an element casting doubt on his credibility, that he claimed to attend school from the age of five “when schooling begins at the age of six in Pakistan.”

<sup>65</sup> The way in which OFPRA is organized internally means that the protection officers working on cases specialize by geographic area. See “Les métiers de l’Ofpra,” <https://www.ofpra.gouv.fr/fr/l-ofpra/travailler-a-l-ofpra/les-metiers-de-l-ofpra>. The similarity between the training expected for these two professional groups has been highlighted by the Senate: Doineau and Godefroy, “Rapport d’information,” 60. In the study corpus we also found a case in which the PAOMIE assessor spontaneously compared the assessment of the young person’s credibility with the process of assessing an asylum application, writing that the applicant’s story was “stereotypical and incomplete, and more like the elements of an asylum application.”

<sup>66</sup> Didier Fassin and Carolina Kobelinsky, “Comment on juge l’asile: l’institution comme agent moral,” *Revue française de sociologie* 53, no. 4 (2012): 657–88.

<sup>67</sup> Gabriella Petti, *Il male minore: La tutela dei minori stranieri come esclusione* (Verona: Ombre Corte, 2005), 113. See also Alessandro Bergamaschi and Franco Pittau, “Les mineurs étrangers en Italie: données statistiques et implications sociales,” *Migrations Société* 141–142, nos. 3–4 (2012): 71–86.

<sup>68</sup> Yet they freely admit—with regret—a lack of time and training to investigate, in particular, the abuse—notably sexual abuse—that young people, even minors, may have suffered. This argument about the danger of shared accommodation for minors and adults is also repeated, with little more conviction, in the recent Senate report on the issue: see Doineau and Godefroy, “Rapport d’information.”

minors” as a way to better protect real minors. The difficulties of migration are also minimized by the fact that some see it as having a “rite of passage” aspect: one assessor thus claimed that “in some cultures, heading off on an adventure is part of becoming a man,” thus implying that, once arrived, it would be inconsistent to claim minor status—and therefore not so bad for them to reject such a claim.

The insights provided by the words of the assessors directly echo the professionalization of migrant support organizations and their growing dependence on state systems, such as the work of organizations in administrative detention centers, studied by Nicolas Fischer.<sup>69</sup> In relation to this, a European comparison shows how, in other countries, organizations have maintained a greater degree of independence from the state and its bodies, while providing emergency reception facilities for migrants.<sup>70</sup> Meanwhile, it appears that the assessors in Paris have to reconcile the values promoted by their employer, a French humanitarian organization, with the public authority they report to, which is driven by a more strictly accounting logic. They thus embody the “humanitarian reason” described by Didier Fassin, which seeks to support policies for governing populations rather than calling for a change in the social structures.<sup>71</sup> The assessors are thus clearly distinguished from activists who are involved in the reception of unaccompanied young foreigners and in helping them through legal proceedings.

## The criticisms of activists

The ambiguity of the classification—minors requiring protection or undocumented foreigners—was also expressed by the activists that we met. In addition to combing through the files of a voluntary collective for supporting young migrants, we also conducted interviews with activists—both employees and volunteers—involved in an advisory service. The collective initially planned to primarily handle the cases of young adults, but as the circumstances of care for UAMs in Paris overturned these plans, the collective became a major actor in supporting their care by the Paris child protection system, receiving an ever-increasing number of young people whose claims had been rejected by the PAOMIE. The position of this collective is thus interesting in a number of ways, as it focuses on a tension between state actors (including voluntary actors who carry out the sorting of foreigners delegated to them by departments) and non-state voluntary actors, activists who are characterized by advocacy on the rights of foreign persons, on public immigration policy, and on child protection. The group studied initially focused on the rights of foreign persons and as such essentially consisted of advisors from this area of activism. It was only through force of circumstance that all those involved in the collective had to specialize in child protection law. This gap in skills and positioning was also expressed in our interviews. Although it was clearly stated that “what binds them together” is a compassionate position toward the young people, whom they refrain from judging or viewing with suspicion, one of the volunteers did state that: “we don’t know how to talk to them.” She also suggested that their public indifference to the cases of young people who are presumed to be minors is not just a political position but also results from a decreased curiosity over time, since the number of cases

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<sup>69</sup> Nicolas Fischer, *Le territoire de l’expulsion: La rétention administrative des étrangers et l’État de droit* (Lyon: ENS éditions, 2017).

<sup>70</sup> See in particular the Italian example of Lampedusa: Marie Bassi, “Les acteurs non-étatiques face à l’immigration en Sicile et à Lampedusa: à la croisée de l’humanitaire, du contestataire et de l’expertise,” *Après-demain* 39, no. 3 (2016): 36–38.

<sup>71</sup> Didier Fassin, *La raison humanitaire* (Paris: Gallimard/Éditions de l’EHESS, 2010).

handled impedes close relationships. The conditions under which migrants are received (working late, overloaded, offices in unsuitable premises) and the lack of interpreters, which makes communication difficult if not impossible, were both mentioned. The individuals interviewed appeared to be aware that, under these conditions, they ultimately provided only legal and administrative support, and that a genuine relationship of trust could only be developed with young people who came back to them on several occasions. As such, one of our interviewees noted that “if sexual abuse [which we had mentioned earlier in the interview], had taken place, we wouldn’t see it.” This position cruelly recalls that of the assessors: the voluntary activists who initially planned to provide an advisory service for foreign citizens who had recently reached the age of majority find themselves interacting with minors, some of whom are very young, just as the professionals theoretically attached to a child welfare service actually work on assessing migration journeys. This provides a reminder, were one required, that the processes of politicization within collectives develop in context, through interaction with other agents in the field, namely assessors and the public services they embody.<sup>72</sup> Here, an activist group usually focused on advocacy and legal support has found itself in the situation of providing social support, which may alter the ideological balance within the group (for example, by creating tension between the most radical positions and by giving credibility to “pragmatic” stances focusing on the cases of young people that have a chance of being recognized as minors<sup>73</sup>).

During one of our interviews, an activist stated the position, approved by the rest of the group, that “saying ‘us’ is the wrong approach.” This highlights the diversity of volunteers participating in advisory services, particularly in terms of their position on the issue of migration. It thus affirms that some volunteers may hold a position that leans toward believing they must not “let themselves be used” and that adults should not be given ASE protection. Some of the files studied do show that the compassionate position adopted does not appear to prevent the advisory staff, for example, from assessing the authenticity of an identity document and ruling out an appeal before the JE if they consider it suspicious. But this approach was also presented by one of the volunteers—an educator—as “informed support”: it is because of the risks incurred (particularly legal proceedings for false claims<sup>74</sup>) that they recommend against the approach, which he saw as “acting considerably toward [the young person].” Conversely, another interviewee said in relation to the young people he saw that he “didn’t care about [their] story” since he “played a role” in the “game” of the system: the role of defender. He did however concede that it is “easier if you come from an organization that supports freedom of movement” (which was the case for him). These words express awareness of the true alternative that is expressed in the classification of young foreigners: minors requiring protection or undocumented foreigners. Being in favor of freedom of movement is thus clearly an attitude that facilitates a certain position: once you believe that “those who are here have the right to be here,” then it does not matter whether or not they are here under a “false” status. The only question that is relevant is the specific situation of the person received: whether they are vulnerable or in need of support or protection. Nevertheless, regardless of the individual political position taken by these activists, their experience of public services and the cases of young people have left them with a critical

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<sup>72</sup> Camille Hamidi, “Éléments pour une approche interactionniste de la politisation: Engagement associatif et rapport au politique dans des associations locales issues de l’immigration,” *Revue française de science politique* 56, no. 1 (2006): 5–25.

<sup>73</sup> One of the files studied includes a children’s judge ruling that refers to the collective in question and states that the organization “is damaging its credibility” by supporting cases from people that the judge believes to be adults.

<sup>74</sup> Penal Code, art. 441-1 and following. Threats of such legal proceedings were found in one of the files studied.

view of the system for receiving unaccompanied young foreigners, and they have a shared opinion on the sorting of young foreigners and the irrelevance of the age criteria that make them eligible for protection.

The driving force behind the assessment of unaccompanied foreign minors is thus clear: because they are situated on the shifting frontier between two categories of migrants—migrants who are acceptable, at least temporarily, because they are minors, and migrants who are unwelcome, or even fraudulent—the situation of unaccompanied young foreigners profoundly questions the very idea of sorting among people in a vulnerable situation. Rejecting claims from young people over the age of eighteen by categorizing them as undocumented adults is a way to avoid questions about where institutional responsibility for their care lies. This system thus contributes to a paradoxical policy that pushes to the forefront both France’s duty of solidarity and humanitarianism in relation to “refugees” and the need to restrict migration flows, which is justified by the impossibility of integrating the new arrivals economically and socially. The adult/minor and foreign/French oppositions are therefore clearly inadequate to express the complexity of the situation for unaccompanied young foreigners, who are caught in the middle between a child welfare system that is increasingly reluctant to care for foreign minors, and a highly repressive migration policy that seeks to flush out those individuals with no “humanitarian need” to leave their country of origin. Again, the existence of a limit situation—here, at the frontiers of child protection and migration policies applied to adult migrants—questions the very relevance of categories that structure our legal and institutional system<sup>75</sup>: namely, the distinction between adults and minors.<sup>76</sup> The officials responsible for conducting categorization are very much aware of this difficulty and, although their activity is situated at the “end of the chain” and they are unable to influence the reception places available or the public policies implemented in relation to unaccompanied young foreigners, they have a non-negligible “discretionary power,” like the “street-level bureaucrats” described by Michael Lipsky.<sup>77</sup> The absence of presumption of minor status, or a protective rather than repressive migration policy, seems to push officials to draw on more informal criteria to distinguish between individuals, particularly as they are encouraged to do so by the public authorities, particularly at the local level (the department), which is subjected to the greatest budgetary pressure.

More broadly, it is clear that the representations and categories linked to different power relations (including gender, age, and race) constitute a basis for the response from the public services to vulnerable situations in which the age of applicants might be considered irrelevant. While the institutional handling of these young people seems, on the face of it, to be based on administrative criteria linked to their civil status, government authorities, and those to whom they delegate the activity of sorting and reducing the costs of immigration, base their assessment on bodies and stories. In summary, the situation of unaccompanied young foreigners reminds us that when it comes to the treatment of foreigners, the biopower described by Michel Foucault has changed very little and appears to still be in effect: here, it

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<sup>75</sup> For a parallel with the question of sex, see for example Marie-Xavière Catto, “La mention du sexe à l’état civil,” in *La loi et le genre: Études critiques de droit français*, eds. Stéphanie Hennette-Vauchez, Marc Pichard, and Diane Roman (Paris: CNRS Éditions, 2014), 29–47, especially 29.

<sup>76</sup> Adeline Perrot, “Devenir un enfant en danger, épreuves d’âge et de statut: le cas ‘limite’ des mineurs isolés étrangers en France,” *Agora débats/jeunesses* 74, no. 3 (2016): 119–30.

<sup>77</sup> Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (New York: Sage, 1980).

is a case of managing the flow of people who are politically constructed as “undesirable”<sup>78</sup> by reinforcing power relations at the local level (for example, by assigning young people to their gendered or racial identity) and the global level (by limiting access to support in the countries of the Global North for vulnerable populations from the Global South). The scale chosen for this study thus enables us to understand how actions seen by certain actors as forms of expertise (that of the assessors) are constrained by the use of essentializing categories and representations, and beyond this by a political and ideological context of the rejection of migrant populations.

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<sup>78</sup> Michel Foucault, trans. Robert Hurley, *The Will to Knowledge: The History of Sexuality 1* (Penguin Books, London, 1998). See also Michel Agier, *Le couloir des exilés: Être étranger dans un monde commun* (Bellecombe-en-Bauges: Éditions du Croquant, 2011).