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“the [medical] assessment should give us an answer to the question we have posed: is the person a child or an adult?” (Interview, Expert Migration Agency)

The boundaries of medical age assessments on
unaccompanied minors in Swedish asylum procedures

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Abstract

With the events of 2015, commonly referred to as the *refugee-situation*, a light has been cast on various European Union member states' handling of asylum seekers. In relation to overall stricter procedures, the Swedish state has proposed a series of restrictive policies to cope with *the situation*. Of focus is the Swedish government's effort to regulate the area of unaccompanied minors seeking asylum, a group steadily rising since 2010.

Unaccompanied minors seeking asylum have certain rights connected to their age, as legally separated by the age of eighteen. As many lack proper documents these rights have been identified as both difficult to access, but also to provide to children only. In response the Swedish government has initiated policies aimed at separating adults from children and thus reduce the costs of asylum. Medical age assessments have been proposed through collaboration between the National Board of Forensic Medicine and the Migration Agency. To achieve the goal of reducing costs, the age assessment has also been moved from the final to the initial part of the asylum investigation.

Countering the legislative objectives posed, the thesis embarks on an analysis of what can be achieved through legislation. Through interviews with participants working with unaccompanied minors, the policies' boundaries are analysed in relation to Niklas Luhmann's systems theory. Aiming at observing what the identified systems of politics, science and law can manage in their communications. Concluding that the age assessments are not reasonably placed on the Migration Agency (within the legal system). As a result the issues surrounding age assessment remains as the policy expectations fall outside of the system's boundaries.

Keywords: *Sweden, unaccompanied minors, asylum, medical age assessments, communications, systems theory*

Word Count: 20 063

Abbreviations

EU	European Union
SFS	Swedish Code of Statutes [<i>Svensk Författningssamling</i>]
SOU	Swedish Government Official Reports [<i>Statens Offentliga Utredningar</i>]
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

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1. Introduction

While Sweden is preparing a draft on the implementation of the UN Convention on the Rights of the Child (*Socialdepartementet* 2016), the events of 2015 have led to a couple of restrictive policies in the Swedish reception of unaccompanied minors. In a Swedish Government Official Report (henceforth SOU), a mapping was conducted of the Swedish reception and preparedness for the *refugee-situation*, referring to the amount of refugees that arrived mainly during the fall of 2015. The report directly critiques the disregard towards the early signals that the estimations were too low, which could have improved the Swedish overall acceptance (Antemar et al. 2017). At focus in this thesis is the collaboration regarding medical age assessments between the Migration Agency and the National Board of Forensic Medicine (henceforth NBFM), and its contextual relation to the new regulation placing the age assessments earlier in the asylum process. As the literature review will show, there is a tension regarding the use of medical age assessments, which governmental consultation bodies mention in referrals to the legislation and collaboration as well.

The introductory chapter to come is quite extensive due to policies and regulations interlinking on the area of medical age assessments in Sweden. Through the literature review that follows, it becomes evident that there are multiple factors of importance in regard to the implementation of the medical age assessments. As medical age assessments are not separated from age assessments overall, there will also be references to age assessments overall when contextualising the thesis through the new collaboration with the NBFM and the Migration Agency.

1.1 Relevance of area

Since the year 2000, a tenth of those who applied for refugee status in Sweden have been unaccompanied minors, a number that has been rising since 2010 (Antemar et al. 2017, p. 62). An unaccompanied minor is a child under the age of eighteen, who upon arrival in Sweden is separated from their parents or an adult

who could have entered in the parents place (UNHCR 1997; SFS 1994:137). During 2015, 35 000 unaccompanied minors arrived in Sweden. Of the total number registered a majority were from Afghanistan, then primarily from Syria, Somalia, Eritrea, Iraq and Ethiopia (Antemar et al. 2017, pp. 71-73). The SOU mapping (ibid) on the handling of the fall of 2015 shows that of those arriving during the fall of 2015, 14 933 unaccompanied minors still had not initiated their asylum investigation when their report was published in March, 2017 (ibid, p. 17).

On the 31st of March 2017, the Migration Agency and the NBFM held a press release on the implementation of medical age assessments. Introducing the press release, *identity* was presented as an important factor in relation to granting protection status due to its connection to the person. *Identity* is not regulated in legislation but is expressed through courts and propositions. *Identity* consists of a name, date of birth and most often a citizenship (Nyman 2017; *Inrikesdepartementet* 1997, p. 15). The emphasis on age is important due to the rights connected to being legally under eighteen (Nyman 2017). Argued from the EU directive 2005/85/EG art. 25.5 member states can perform medical examinations to determine the age of unaccompanied minors in asylum procedures. The Swedish government has therefore chosen to initiate collaboration between the Migration Agency and the NBFM (*Justitiedepartementet* 2016a).

The matter of age in asylum cases mainly regards the age of eighteen, as there are certain entitlements one does not receive as an adult. The age of fourteen is also somewhat relevant in asylum procedures (see EU 603/2013 art 9 on fingerprints), but is not a part of the collaboration and will therefore not be included. In accordance with EU law, an unaccompanied minors' asylum process should be made where the minor is present, hence they are not to be subject to the Dublin Regulation (604/2013 art 8.4). Separate from adults they are entitled education, a custodian, and accommodation adapted for children (*Justitiedepartementet* 2016b, p. 6).

In asylum cases, the applicant has the *burden of proof* regarding the protection status, which is connected to one's identity. Of all the unaccompanied

minors who applied for asylum during 2015, twelve percent had identification cards or passports supporting their identity. A majority were from Afghanistan, of whom only two percent had any documentation at all (Nyman 2017). In relation to the *burden of proof*, the evidence provided should make the applicant's age *probable*. As ruled in court however, the applicant can normally not make their age probable only through an oral statement, and neither should the Migration Agency try to assess their age based on their appearance (*Migrationsdomstolen* 2014:1, p. 6). If there is doubt during the process, the international principle of *benefit of the doubt* should be effective in favour of the asylum seeker (UNHCR 1997, art 5.11).

1.2 Important changes

While writing this thesis a change in legislation has moved the time of age assessment from the final part of the asylum investigation, to making a *temporary* decision on age in the initial phase instead. The *temporary* age is effective immediately. The government bill on earlier age assessment emphasise a child rights motive as adults should not reside with children or use resources intended for children, this should cut costs of not having to pay for adults in the asylum process (*Justitiedepartementet* 2016b, pp. 12,19,29-31). Prior to implementation, the proposal was criticised and questioned by numerous consultation bodies¹, i.e. the Parliamentary Ombudsman questioned if the need for age assessments earlier was not an effect of the long handling times currently existing at the Migration Agency. Consultation bodies were critical to the direct effect of a *temporary* age assessment, among them the Ombudsman for Children in Sweden (*ibid*, p. 18). An important part of the government bill was the initiation of medical age assessments on unaccompanied minors. The assessments are presented as voluntary and the consent is to be made by the custodian on behalf of the unaccompanied minor, which the County Administrative Board argues puts pressure on the custodian's knowledge and education (*ibid*, p. 23).

¹The Parliamentary Ombudsman, The County Administrative Board in Stockholm and Malmö, Swedish Bar Association, Amnesty International & Uppsala University

1.3 Aim and research question

Scholars and government consultation bodies present medical age assessments as problematic², and although there are practical difficulties with implementation, previous age assessment methods have also been criticised (European Asylum Support Office 2013; *Barnombudsmannen* 2016). The thesis aims to map how those working with unaccompanied minors understand the new procedures. Which will then culminate into an analysis through Niklas Luhmann's systems theory of what is feasible through legislation. The main research question to be answered is:

- ❖ What communications can be managed in relation to the legislatures expectations of medical age assessments?

Sub-questions

- Is it possible to meet the evidentiary requirement of burden of proof without consenting to a medical age assessment?
- How are the interdisciplinary complexities of medical age assessment understood by those working with unaccompanied minors?
- What are the unintended/unanticipated consequences of medical age assessment procedures?

1.4 Delimitations

The thesis regards a sensitive topic with ethical limitations. The limitations will be addressed in the methodological chapter, however clarifying that the intention is not to question or map reasons for asylum. Neither have children been included. Narrowing the focus to unaccompanied minors does not diminish problems Swedish authorities have had with i.e. implementing the child's best interest in other asylum cases (See *Barnombudsmannen* 2016, 2017; *Socialdepartementet* 2016). The focus is instead placed on the medical age assessments. This narrows the focus to unaccompanied minors as the main category inflicted by the

² See chapter 3. Literature Review

assessments (Nyman 2017). As a part of the NBFM assignment, NBFM were also instructed to assess age in criminal cases. This aspect will not be covered, but an interesting discussion could be followed in Swedish media regarding the problematic relationship of *burden of proof* (Makboul & Bergsten 2016) in asylum and criminal cases (See Svea hovrätt B 10485-15). Differences in both process and evidentiary requirement make such a comparison difficult and insensitive in the frame of this thesis, as the two are not comparable.

Within the EU there is a variety of age assessments, medical, non-medical, a combination of both and so on. The intention is neither to cover various methods, nor will it provide a discussion on EU countries' choice to use medical age assessments (See EASO 2013). The thesis will not analyse what methods constitute the best approach due to disciplinary boundaries. However, research in the field indicates that there is a discussion within the medical discipline on the use of medical age assessments, which will be presented as a part of the literature review. As the legislation has changed in the duration of writing, the interviews presented in this thesis can only present possibilities from the participants' previous experiences. The thesis instead aims at understanding how the medical age assessments are understood in the application phase, and by those working with unaccompanied minors. The thesis is therefore a contribution to the already existing debate on asylum policies, which could easily be used as basis for a follow up after the collaboration has been in place for some time.

1.5 Important concepts

The focus is unaccompanied minors in the asylum process. In accordance with the 1951 Geneva Convention (UNHCR 1951, art 1) an asylum seeker can claim refugee-status. If not given a refugee status the person can be sent back to the country of departure (Loescher & Milner 2012, p. 193). As protection status is applied for, the terms asylum seeker and applicant will be used interchangeably in the thesis in relation to unaccompanied minors. The Swedish state is presented through its territorial boundaries and placed at the level of analysis with respect for international agreements.

2. The medical age assessments

The NBFM's response to the government's task been based on a systematic overview conducted by The National Board of Health and Welfare, which will be presented as a part of the literature review (*Rättsmedicinalverket* 2016). The assessments will be conducted through two doctors in the field of dental x ray and two in magnetic resonance image (henceforth MRI) of the knee.

The NBFM's aim is not to determine a certain age, rather to assess if an individual is an adult or child. These comparisons are made through average tables of full-grown stages. The dental stage is estimated to an individual who is 18-20 years old. The MRI of the knee should show a full-grown stage when a person is 22-24 years old (Nyman 2017).

1. The dental examination is analysed by two separate doctors (not employed by the NBFM), requiring a unanimous decision. If not, the result will be 'non assessable' and will be assessed by a third doctor from the NBFM. If still found 'non assessable' it should give a negative result in relation to the international principle of *benefit of the doubt: the applicant might be under 18*.
2. Same procedure is presented in regards to the MRI of the knee.
3. The results will then be sent to the NBFM for final evaluation. If the dental analyses concur that the applicant is an adult, regardless of a negative result from the MRI, the result will be used as basis for their assessment: *the applicant might be over 18*.
4. Likewise if the analyses from the MRI are positive but the dental is not: *the applicant might be over 18*.
5. The final step is their report to the Migration agency, separating the results through three levels of accuracy:

- The applicant is likely over 18 [*Talar för att den sökande är över 18*]
- The applicant might be over 18 [*Talar möjligen för att den sökande är över 18*]
- The applicant might be under 18 [*Talar möjligen för att den sökande är under 18*] (Rättsmedicinalverket 2016, pp. 7-8; Nyman 2017).

3. Literature Review

The subject of this review is unaccompanied minors, medical age assessment and asylum policies in Sweden. The search was conducted in two steps. First a broad search for literature assessing asylum policy and medical age assessment subsequently altered to include Swedish results. The review is divided into three sections to include articles, reports and books according to relevance of area. As the area of research is newly implemented in the Swedish context, official reports have been included, and are limited to Swedish reports and presented separately from medical reports written by other than Swedish officials. Among the Swedish reports, age assessments overall have been discussed due to a rising number of missing children, particularly during the fall of 2015, why these reports have been deemed relevant.

There are various perspectives on the topic of medical age assessments, particularly in medical science. As Gregor Noll (2016) argues below, there is an interdisciplinary struggle in the use of medical age assessments. Although there is an overall consensus that the medical methods available today are not reliable in whole, there is a discrepancy of how and if they should be used, particularly in the process of asylum. Hence the debate on medical age assessments in asylum cases is three folded, covering legal, political and medical aspects, arguing for and against medical age assessments.

3.1 On the complexity of medical age assessments and asylum

An important condition for medical age assessments is the applicant's consent. The new regulation (SFS 2005:716 chapter 13 art. 18) requires the Migration Agency to inform the applicant about the possibility of a medical age assessment to strengthen their application if their age is not *probable*. That it is voluntary, and that the examination will be provided and paid for through the Migration Agency (ibid). Voluntary consent has been questioned by a number of medical scholars through the possibility of damaging their chances by not conforming to an assessment, creating a feeling of coerced decision (See Shaw 2009; Hjern,

Brendler-Lindqvist & Norredam 2011; Hjern & Ascher 2015; *Svenska Föreningen för Barn- och Ungdomspsykiatri* 2016).

Departing from a critical stance against medical age assessment, the main argument is based on the international principle of *benefit of the doubt* in asylum procedures (UNHCR 1997; UNHCR 2009). Against the use of radiological (medical) age assessment is Gregor Noll. Arguing that a medical assessment can not take away previous doubt by the those determining the application. The doubt should instead be used in favour of the applicant (Noll 2016, p. 236). The relation between the disciplines of law and medicine are presented as problematic, constituting a risk for *type III errors*. The *type III error* appears when knowledge is transferred between disciplines. As medical experts lack the knowledge to include socioeconomic and ethnic deviations in their research, they tend to overestimate the scientific validity of their findings. On the other hand, lawyers are not trained on the methods of forensic medicine. When medical experts try to translate findings in a juridical language they do not fully understand, it becomes an issue of interdisciplinary character (ibid, p. 248). Considerations to be made when using medical assessments are presented through instructions read by those performing the medical assessments, but not the decision-makers (ibid).

The problematic relationship between juridical and medicinal language could be exemplified through the meaning of *beyond reasonable doubt* in the two separate fields, having strong legal meaning, but lacking a sufficiently probable definition in medical terms. In line with Noll's argumentation, a specialist in hand surgery and orthopaedic who conducts age assessments, argues in a Swedish newspaper that modern age assessment technology can provide results *beyond reasonable doubt* (Zeba 2016). According to Noll's standpoint this type of formulation creates a risk for *type III errors*.

The *burden of proof* placed on the asylum applicant can be viewed in the light of Isabel Schoultz' (2016) article as part of her doctoral dissertation inspired by Bourdieu's field theory in the analysis of control of the state. Although Schoultz (2016) does not include particular policies, the analysis of bodies of control in migration, here asylum policies are necessary to understand in this

thesis as well. Schoultz (2016) purposely distances the analysis from including the individual in the power play for legitimacy and recognition. Thus, in analysing legitimacy, it would be, as noted by Schoultz insensitive to compare the stakes for a refugee and the state apparatus (ibid, p. 4). This consideration is taken into this thesis as well, however through a different theoretical framework, focusing on the communications on medical age assessments, as *the burden of proof* in the area of age assessments is directly connected to the applicants possibilities to make their age *probable*. Accordingly, Noll (2016) argues, placing such a *burden* would be reasonable on i.e. Europeans where there is a civil registration system and where locating and comparing such information is possible. The lack of similar systems in asylum seekers countries of departure is presented as the main obstacle, explicitly in the case of Afghanistan (Noll 2016, pp. 237,248).

Placing Sweden in an EU context the weaknesses regarding age assessments (overall) have been mapped by the European Asylum Support Office (EASO 2013). Through a Strength-Weaknesses-Opportunities and Threats mapping, the EASO, cover the different methods used in member states. Acknowledging the lacking scientific approach on the use of among other protocols and checklists used when performing interviews with asylum seekers (ibid, p. 26). A problem the Ombudsman for Children in Sweden mentions in relation to Sweden as well (*Barnombudsmannen* 2017, p. 34). Despite these shortcomings, the medical age assessments should be a final resort due to the margins of error and lack of proper reference data. The EASO encourage countries to instead strive for a multidisciplinary approach (EASO 2013, pp. 24,30; Asylum Information Database 2015, p. 5).

Noll's (2016) legal approach introduces non-governmental organisations (henceforth NGOs) but does not include them in his analysis, missing an important factor of asylum. Further contextualising the thesis to Sweden, and including NGOs through discourse analysis of official documents and semi structured interviews Schoultz (2016) similar to Noll, initiates a human rights perspective, but includes the NGOs working with asylum seekers as an important actor of criticism and analysis of state operations (ibid, p. 3). Schoultz' (ibid)

Swedish context becomes important, as asylum is presented as departing from human rights, but dealt as a problem through security measures to protect state members (ibid, p. 1). An aspect covered by Noll (2016) in line with the government bill, is the host state's desire to minimise the cost of asylum seekers, adding the aspiration to possibly deter future asylum seekers (Noll 2016, p. 235). In another article part of Schoultz' doctoral dissertation the perception of the welfare state's limited capacities serves to separate those perceived as in need and those who are not (Schoultz 2013, p. 220). Argued through Schoultz (2016) it is important to provide a nuanced presentation through including NGOs as well, but acknowledging their often dependent role towards governments (Schoultz 2016, p. 12).

Further questioning states' restrictive refugee policies, Shahram Khosravi (2010, p. 33) argue that they create discrepancies in the possibility to apply for asylum. Schoultz (2016) portrays the Swedish government's handling of giving the impression of framing problems as “*shortcomings rather than systemic failures*” (Schoultz 2016, p. 8; See Antemar et al. 2017). Khosravi (2010) analyses the problematic relationship of being educated on how to become a refugee, what to say and how to act to fit the definition in accordance with the “*Eurocentric juridical language*” (ibid, p. 33). The asylum process requires asylum seekers to act without agency (ibid, p. 72). Finally, concluding that through unrealistic expectations of asylum seekers, states are creating *illegality* (ibid, p. 100). This is countered through Schoultz' conclusion that:

“/.../ those who challenge doxa by questioning border controls and a restrictive immigration policy, and by promoting the opening of safe and legal routes for people in need, today being viewed as even less reasonable.” (Schoultz 2016, p. 16).

3.2 An overview of the Swedish official discourse on unaccompanied minors in the asylum process

The access to information for children in asylum cases is questioned in relation to the UN Convention on the Rights of the Child (*Barnombudsmannen* 2017, pp. 6,19). Through qualitative interviews with children, the report presented by the Ombudsman for Children in Sweden includes a thorough mapping of experiences, particularly during the fall of 2015. Questions posed by the Migration Agency were not adapted for children, and the presence of numerous adults made it difficult for minors to talk about sensitive topics (*ibid*, pp. 21-22). The need of trained interpreters and clarity in the asylum process, are presented as shortcomings in assessments of the Migration Agency (*ibid*, p. 9).

Further questioning the lack of information, the SOU (Antemar et al. 2017) conclude it led to rumours among minors that documents should be hidden and that behaviour or stories could damage their application (*ibid*, p. 387). The SOU based their analysis on the Ombudsman for Children in Sweden's report, who also added that few knew what was expected of them in different situations (*Barnombudsmannen* 2017, p. 24). These issues could be viewed through Khosravi's (2010, p. 33) notion of expressing oneself to fit the juridical language. The SOU (Antemar et al. 2017) presents NGOs as collaborating with authorities, and assisting applicants through legal advising, activities, and accommodation (*ibid*, pp. 20,275-278). Their role was somewhat problematised in relation to information they provided, but was counteracted through NGOs' important presence due to often missing authorities on site (Antemar et al. 2017, pp. 21,281,286). The lack of information was presented as hindering the possibilities of accessing legal rights (*ibid*, p. 33).

The absence of documents requires well-prepared questions suitable for children in asylum investigations. The age assessment methods used until now have been criticised as against the rule of law (*Barnombudsmannen* 2017, p. 34). As oral statements are essential in the asylum process, the Ombudsman for Children in Sweden's report examined 145 cases, where the evidence was handled

incorrectly in 38 cases (ibid). An age assessment earlier in the process is however positively embraced (ibid, p. 35), but presented through a referral psychosocial aspects should be included as well (*Barnombudsmannen* 2016, p. 3).

Of relevance is the SOU report's choice to stress the need to prevent children from disappearing, where the authorities actively should collaborate if it happens (Antemar et al. 2017, pp. 22,190,249). Focusing on the rising number of missing unaccompanied minors in Sweden, the County Administrative Boards was tasked to provide a mapping of the disappearances. The mapping showed a relation between chances of obtaining a residence permit and disappearances. There was also considerable uncertainty among social services as to how they should handle those cases (Ali Akbar et al. 2016, pp. 57-58). The County Administrative Board choose to include a risk assessment of the amended law regarding temporary residence permits as effective of July 2016 (SFS 2016:752). However, the mapping does not involve an analysis or discussion on age assessments, but is only briefly mentioned in several parts of the report.

The choice to include the County Administrative Boards report relates to the SOU report's notion of knowledge to act earlier "*means better preparedness and conditions for dealing with a situation whose development is difficult to predict.*"(Antemar et al. 2017, p. 35). Through surveys and interviews with staff from municipalities disappearances were related to a common distrust or fear of authorities (Ali Akbar et al. 2016. p. 21). Also the fear of a possible upward adjustment of age, and the risk of receiving a rejection as their eighteenth birthday was approaching. This was further confirmed through the NGOs interviewed in the mapping (ibid, p. 17,34). Why the County Administrative Board avoided to elaborate on the current debate on medical age assessments is therefore questionable. Their inclusion of unaccompanied minors accounts through NGOs is not methodologically explained, but the NGOs are presented as important in relation to unaccompanied minors, especially those outside the asylum system, as the NGOs meet them through their activities (ibid, p. 11). Further emphasising NGOs' role as presented earlier through the SOU (Antemar et al. 2017) and Schoultz (2016).

The accuracy of age assessments overall have been debated, but the use of them is widely spread. As rights are connected to one's identity, these processes are deemed necessary (EASO 2013, p. 15; Nyman 2017). In a systematic literature review of existing medical age assessment methods, the Swedish National Board of Health and Welfare mapped the accuracy of methods with the aim to conclude if there was a reason for new research on the area (Flodmar, Holmström, & Larsson 2016). Their findings show that there is research confirming MRI processes of the knee-joint and ankle as minimising the risk of inaccurate assessments. The method has not been properly tested and the National Board of Health and Welfare is therefore initiating a new pilot-study (ibid, pp. 7-10). The need for an inclusion of MRI is due to disagreements among dental assessments, making them problematic to use in regard to the age of eighteen (ibid, pp. 13,17). Repetitive in the research presented is that the studies show sparse results regarding accurate measures used for assessment, making the material difficult to use (ibid, p. 10; Noll 2016).

Further, in line with Noll (2016, p. 248), the current research on MRI does not show effects of ethnic deviations (Flodmar, Holmström, & Larsson 2016, p. 11). The National Board of Health and Welfare's systematic overview has received some critique in the field of osteology disagreeing with assessing a biological age but presenting it as a chronological age in a legal sense (Alfsson et al. 2016). The biological age is set by comparisons of population, hence a person can be younger or older biologically than chronologically, which is set by the date of birth, only possible to verify through documentation. Prior to implementation the margins of error should therefore be further minimised (ibid).

The distinction of biological and chronological age surfaced in the ethical analysis as well, ordered by the National Board of Health and Welfare, conducted by three external analysers (Sandman, Furberg & Malmqvist 2016). The chronological age of eighteen is presented as important to separate adults from children, but the margins of error requires the Migration Agency to be generous when assessing the age. Separating biological/chronological is however argued as possibly disfavouring those in possession of documents confirming their age,

creating practical issues (ibid, pp. 17,42). Thus although promoting generous assessments, the possible shortcomings are presented as negative. An argued consequence is that some children might not get the resources they are entitled to (ibid, pp. 7,34). As long as there are benefits of being under eighteen, there has to be a way to distinguish those who are over (ibid, p 18). A discussion of costs inevitably problematises the practicalities of assessments (ibid, pp. 8,34). The ethical analysis concludes the age assessments should be done on the minor's initiative (ibid, pp. 8,10).

Similar to Khosravi (2010), the analysis includes an interesting analysis on politics, and states' territory, where legitimacy for the chronological age derives from the UN, and Swedish law (Sandman, Furberg & Malmqvist 2016, p 13). As presented through Noll (2016), there are concerns regarding the accuracy of radiological methods, and although the ethical analysis acknowledges these concerns, the focus is limited to the National Board of Welfare's systematic overview and the Swedish Agency for Health Technology Assessment and Assessment of Social Service's (henceforth SBU) scientific evidence on the matter. The latter however only systematically reviewed other than radiological medical methods. The two studies used as background for the ethical analysis are therefore not confirming or questioning the other's results. Further the articles used by SBU were not quality-tested and only read by one person (Dagerhamn, Lintamo & Liliemark 2016, p. 2). The ethical analysis is thus based on the conditions presented, where the margin of error are presented as marginal, and without better alternatives (ibid). It is therefore realistic that the ethical analysis assumes that those under eighteen as opposed to those over would voluntarily take part in a medical age assessment (Sandman, Furberg & Malmqvist 2016, pp. 13,27).

Another important aspect presented through Noll (2016) and the National Board of Health and Welfare (Flodmar, Holmström, & Larsson 2016, pp. 7-10) is that there are ethical concerns regarding medical age assessments on individuals from countries without reference data. A methodological issue arguably possible to circumvent if the child assessed has been raised and had a similar childhood to

those of the reference data (Sandman, Furberg & Malmqvist 2016, p. 25). This is usually not the case in asylum processes. The issue of proper reference data thus remains. The ethical analysis further problematises the possibilities of new research, as ethnicity is an ethically complicated area, connected to suppression and racism. Due to this, the pilot-study proposed by the National Board of Health and Welfare will not consist of ethically problematic populations (ibid).

The ethical deviations have been argued as not relevant by the NBFM. The MRI of knees is not connected to ethical deviations but rather socio-economic factors (*Rättsmedicinalverket* 2016, p. 8). The sparse research however requires the use of a dental assessment as well, contradicting the recommendation by the National Board of Health and Welfare against the use of dental examinations (Flodmar, Holmström, & Larsson 2016, pp. 13,17). The NBFM circumvent possible socio-economic factors by using reference data from France, where those undergoing a medical age assessment are presented as likely coming from a lower socio-economic background. Therefore it is presented as most likely including some over eighteen as well, which should then cover the principle of *benefit of the doubt* (*Rättsmedicinalverket*, 2016, p. 8). This is based on the systematic overview conducted by The National Board of Health and Welfare (Flodmar, Holmström, & Larsson 2016), and their own literature review, which is not presented in their report. Practicalities have been presented in chapter 2.³

The ethical analysis places the precondition of a qualified interpreter who can aid the asylum seeker in understanding the meaning of a medical age assessment (Sandman, Furberg & Malmqvist 2016, p. 32). Voluntarism is problematised through the perceived aim of the implementation of medical assessments as wanting to minimise the amount of individuals presenting a false age. Such an aim could only be achieved if the medical methods were obligatory for all, assuming the methods used are correct. This would then however, according to their own analysis be considered unethical (ibid, p. 41). Further argued as problematic is if the Migration Agency will be aware if a medical age assessment has been made prior to their decision, complicating voluntarism

³ See chapter 2. The medical age assessments

(Sandman, Furberg & Malmqvist, 2016, p. 33). Now when implemented, the Migration Agency will be the ones offering the medical age assessments, and will thus definitely know if a medical assessment has been made.

The Swedish National Council on Medical Ethics (henceforth SMER), an advisory organ of the government conducted an ethical analysis on their own initiative after the National Board of Health and Welfare's systematic overview and ethical analysis (Asplund et al. 2016). SMER (ibid) return to discuss voluntarism, where the problematic relationship of *burden of proof* and lack of documents create forceful compliance, acknowledging the possible consequences if an asylum seeker would abstain a medical assessment (ibid, pp. 12-13). Further emphasising that the margins of error have to be understood by everyone using the methods, including the Migration Agency, and the courts. If not it is an ethically invalid approach (ibid, pp. 13,20-21). SMER argues that medical age assessment should not be performed as a routine, but first after all other aspects have been acknowledged (ibid, p. 19). Knowledge gaps on the area require new research. The NBFM are however portrayed as the better of only bad alternatives, as an exclusion of medical age assessment is viewed as subjective (ibid, p. 15).

A reservation was made, as the gaps are considered too broad for implementation. The question of age assessments was criticised as surfacing as a costal issue, which arguably should not be done through ethically questionable methods. Instead focus should be to achieve an overall good acceptance (ibid, p. 23).

3.3 Questionable methods

The lack of civil registration in an asylum seeker's country of departure is a recurring problem throughout the medical literature as well. Anders Hjern and Henry Ascher (2015, p. 1) question the use of standardised charts of i.e. white American children born in the 1930s as reference data, comparing the chart with a new study conducted with children in South Africa showing discrepancies in growth of a 1.5 to 2 years margin of error (ibid, p. 2). Similar critique is lifted through Aynsley-Green et al. (2012, p. 37) where examinations may show results

from a person's physical maturity, without direct correlations to the chronological age. These analyses are similar to the critique from the field of osteology (Alfsson et al. 2016). Such a physical maturity is argued to be possible to measure from the age of fifteen, and that physical maturity does not mean one is an adult in the legal sense. Combining various medical methods difference would most probably present a margin of 2 to 3 years in 95 percent of the cases (Aynsley-Green, et al. 2012, p. 34).

There are no medical age assessments, which can provide an objective and scientific answer to a precise chronological age. Hjern and Ascher (2015) question the MRI method proposed in Sweden, as similar issues persist in variations between ages and individuals in relation to skeletal maturity. The NBFM argue it is not a problem as the reference data is from France where the socio-economic differences should outweigh that problematic. According to Hjern and Ascher (2015) there are further no, non-European reference populations to compare and evaluate the results with. Mostly they oppose the proposed difference MRI will make in contrast to other medical methods determining chronological age (ibid, p. 1). Concluding through placing hope that the ethical analysis ordered by the National Board of Health and Welfare would regard the medical methods as unreliable and therefore unethical (ibid, p. 2).

Presented in the previous section through Swedish officials' emphasis on the importance of an appropriate and consistent approach to age assessment for all actors, Aynsley-Green et al. (2012) agree it would be the best solution and one to strive for, but that more research is required prior to implementation. However, in line with Swedish official reports, Aynsley-Green et al. (2012) conclude that overall results are more likely to show a person as under eighteen than over eighteen at the time of skeletal maturity. However, the range of possible ages is too wide to be implemented in immigration cases (ibid, p. 39). Accordingly, Schmeling et al. (2016, p. 44), address the procedural benefits through a legal age, however they solely provide an overview of various methods used for age assessment and do not include any political or ethical aspects (ibid). This has been criticised and separates their study from other research on the area (See Nowotny

2016). Further Schmeling et al. (2016) confirm other research findings, as there is no reference study where all relevant age characteristics are collected simultaneously, hence it is not possible to confirm a possible “*statistical spread of the combined age assessments*” (ibid, p. 48). Concluding that persons should therefore be given the legal *benefit of the doubt* regarding age assessments.

Aynsley-Green et al. (2012) highlight the difficulties of transferring information for those outside of clinical medicine, where there are fundamental problems and limitations to be acknowledged (ibid, p. 28). Connecting to Noll’s discussion on the possible *type III error* (Noll 2016, p. 248). Schmeling et al. (2016) acknowledge the importance of being careful when transferring information between disciplines, and that if medical assessments are used, they require an open, honest, informed and evidence based acknowledgement of limitations of current procedures. Expert reports must be written to allow the decision-making bodies (i.e. the Migration Agency or Administrative court in the Swedish context) to consider and understand any possible doubt (ibid, p. 49). Schmeling et al. (ibid) further approach reliability in age assessments through a minimum age concept to reach the highest standard of proof, which they explain as “*probability bordering on certainty*”(ibid). The reference data is derived from the age minimum of the used reference study, hence the age of the youngest person should present a characteristic value. This should ensure that assessed persons are not overestimated but instead almost underestimated. Arguably if the reference-age is above eighteen, the person is with “*probability bordering on certainty*” at least eighteen (ibid, p. 49)

This is closer to the Swedish approach in asylum cases. Thomas Nowotny (2016), a paediatrician advocating for human rights criticises the concept of minimum age and the lack of psychological developmental status when assessing maturity as there is no relevant data to define a minimum age (ibid, p. 486). Nowotny (2016) therefore concludes that the same issue persists and argue for a psychological assessment as well. Therefore all medical examinations (other than radiological as well) should be avoided unless there is a valid medical reason (ibid, p. 486). Against this, Aynsley-Green et al. (2012, p. 37) counters that a

person's mental and psychological ability is difficult to measure on persons who have little or no education, and particularly on persons who come from a different cultural background or have experienced trauma, deemed a relevant aspect in asylum cases.

3.4 Summarising literature review

As the review highlights there are multiple aspects to consider regarding medical age assessments, but also age assessments overall. Sweden has been criticised for being subjective in their assessments, which lacked proper guidelines. However, the newly implemented methods have prior to implementation been questioned medically, legally and ethically. As mentioned in the introducing section to the literature review, the only consensus is that there is no single method that works on its own. There is also an ethical consensus regarding the informative consent and voluntarism, which as presented has been disputed if even possible in asylum.

The inclusion of medical age assessments in asylum cases makes it an area of interdisciplinary research. The disparities in the handling of age assessments (overall) however, could be questioned regarding the implementation of medical age assessments and the earlier assessment in relation to the rule of law. To answer the research question, the focus is further placed on how these methods are understood, and communicated by those working with unaccompanied minors in Sweden.

4. Methodological considerations

Approaching an interdisciplinary area of research, which age assessments in asylum processes clearly are, attempts to make clear descriptions of “*things that are complex, diffuse and messy*” (Law 2004, p. 2) is problematised as no method can provide explanation grounded in certainty if the area it is researching is complex (ibid, p. 9). Through Niklas Luhmann's systems theory the medical age assessments will be *observed* in relation to the social systems. Although Luhmann rejected the term constructivism and instead refers to a natural epistemology there are similarities between the two, where the latter is mainly different due to its rejection of reality as it is limited to the observer's position, where all *knowledge* is contingent, as it could always be different (Luhmann 1995, p. 178). Luhmann's theory will be used as both a theoretical and methodological tool in separating the empirical data through the autopoietic nature of systems (Banakar & Travis 2005, p. 57).

As Debra Skinner (2008) argues policymakers use the interdisciplinary benefits of including multiple perspectives and methods to better understand and solve complicated issues, but which are often accompanied with practical challenges (ibid, p. 448). In line with the aim of mapping how those working with unaccompanied minors understand the new procedures, face-to-face, semi-structured interviews are the empirical foundation of this thesis. The interviews are chosen due to the participant's ability to provide meaning in the Swedish context through their position and professional background (Ayress 2008, p. 810). The Swedish Research Council's (2011, pp. 31-32) work on ethical codes in social science research is considered throughout. Ranging from how the presented method is used in relation to the questions asked, but also valuing the participants' time, the sampling has been made through conscious decisions (ibid), although not effortlessly as some obstacles arose.

The literature has shown that there are tensions in the area of medical age assessments, which provides familiarity with the theme and context, arguably an important precondition for qualitative inquiry (Kvale 2007, p. 49). The

participants are included to provide a nuanced image of how these tensions are managed in the Swedish context. As the field of inquiry is of interdisciplinary character the interviews laid the foundation for further inquiry. All the participants work with unaccompanied minors, or with policies directly affecting them (Morse 2004, p. 885). The interviews were conducted between the 16th of March and 18th of April, and lasted between 35-50 minutes. Methodological limitations and obstacles are included in the various sub-chapters instead of compiling a separate chapter to avoid repetition.

4.1 Semi-structured interviews

The character of semi-structured interviews allowed to both determine the topic of the interviews but also include the participants' inputs, which was encouraged prior to, and during the interviews. An interview guide⁴ was used with a set of questions and not only overall topics (Ayress 2008, p. 810). The guide was altered after interviews if questions seemed broad or created confusion. An initial question related to the participant sharing experiences with unaccompanied minors, which was perceived as difficult to answer. It was therefore altered into sub questions referring to the participants professional role, and if there were certain aspects, which were apparent in their work with unaccompanied minors. In the following interviews these questions were easier to answer and followed more naturally. This approach is encouraged through Kathryn Roulston (2008a, p. 583), explaining that the interviewer is responsible for providing the context, making sure questions are not too broad to avoid confusion.

Another beneficial aspect of semi-structured interviews was that they allowed for questions to be adjusted in relation to the participants, vital as all the participants have different backgrounds. Although not all questions were identical in all interviews, they all included similar themes, and related to both concrete information as "*What value of proof do documents have?*" but also for, as Lioness Ayress (2008) presents it, narrative information (ibid, p. 810) as the ones above relating to the participants' experiences with unaccompanied minors. Throughout

⁴ See Appendix 2 Interview Guide

the interviews, when provided with a lengthy response, using the participants' own words a brief summary or questions was made to encourage the participant to continue on a topic (Roulston 2008b, p. 683). This assisted in elaborating and developing certain topics through probes (ibid, pp. 582-583). Gorden (cited in Roulston 2008b, p. 682) has outlined different forms of probing used to manage the topic while interviewing. Including words as 'mm' could be perceived as encouraging the participant to continue (ibid), but where i.e. facial expressions could give an effect of leading questions, which could jeopardise the credibility of the information (Ayress 2008 p, 811; Lincoln 1995, p. 277).

To avoid asking leading questions, possible risks or benefits with medical age assessments were asked through a more neutral phrasing of: "*How would you evaluate the need for medical age assessments?*" Initially it was difficult to listen and think of follow-up questions simultaneously but became easier throughout the process (Roulston 2008b, p. 683). A discussion of the materials trustworthiness through credibility, transferability, dependability and confirmability (Guba 1981; Lincoln 1995) is reserved for later.

Sampling

The initial search for possible participants was made through a purposive sampling where contact with NGOs, the NBFM and the Migration Agency was established due to their knowledge on the area, argued through the understanding of possible informants based on the literature review (Morse 2004, p. 885). As presented, NGOs play an important role, and the Migration Agency is responsible for applying the medical age assessments in the asylum cases (SFS 2007:996). Only those working with unaccompanied minors were contacted and included in the sampling.

Finding participants was trickier than expected. No one from the NBFM chose to participate due to time constraints. Contact with the Migration Agency was often redirected to another possible contact in another region. Caseworkers managers were contacted through email, but also caseworkers and decision-makers through media outlets as LinkedIn. Some rejected participation due to the

new implementation, referring to the collaboration with the NBFM, although medical age assessments are not new in the asylum process. One of the caseworkers included in the thesis was hesitant at first due to that reason particularly. Others only referred to the press releases and argued that they covered the area, and some refrained due to current workload. Due to difficulties of finding participants the range of persons of interest widened to include persons who work with unaccompanied minors in or outside of the asylum process but who had contact with the process at the Migration Agency. As shown in the report by Swedish Government Official Report (Antemar et al. 2017) the duration of the handling processes increased significantly during 2015, and unaccompanied minors primarily reside in HVB homes⁵ (ibid, pp. 116,137).

HVB homes

The HVB homes support the unaccompanied minors with their integration to the Swedish society and their process of becoming an adult (Hult Backlund 2013, p. 5). HVB homes have been criticised for their results, and mainly regarding the fall of 2015, which is similar to the critique in other areas during the fall of 2015 as many performed work related duties they lacked the knowledge and experience for (Antemar et al. 2017, pp. 256,394).

The choice to extend the sampling and include HVB homes was done with the aim to combine the knowledge from various perspectives. Due to the currently long handling times at the Migration Agency, the homes have the most contact with the minors. The four interviews covered various aspects of organisation, and different homes. One of them is a caseworker, one a manager of several homes. The third a psychologist, and the last participant is the supervisor of a HVB home. The inclusion is argued with the aim of providing a nuanced image of how medical age assessments are perceived at different levels and communicated among those in contact with unaccompanied minors. All agreed regarding the difficulties in meeting the aim of the home, due to uncertainty among the minors and questionable methods in regards to age assessments. Voluntarism was

⁵ Due to the lack of an official translation the term HVB has not been altered. HVB homes are residential care homes for children and young people. [*Hem för vård eller boende*]

discussed and two of the participants argued against all age assessments. Two argued the need for, and one preferring medical age assessments, and the other opted for a combination, including psychosocial aspects.

NGO

Both the lawyer, and project manager interviewed have a leading role in the NGO, especially the latter with unaccompanied minors. In their position as human rights advocates certain bias in favour of generous policies is acknowledged. They are as presented strong actors in the research area (Antemar et al. 2017; Schoultz 2016).

Through the interviews the main topic of medical age assessments included both hesitation and the argument that anything is better than current methods. A wish for more effective handling, and that the long processes should be taken advantage of when assessing the age of a minor, where statements from i.e. social workers are not given as much weight they ought to, instead of turning to questionable medical methods. In the NGO's work, they meet a lot of minors outside of the asylum process as well, who, for different reasons have either gotten their age written up or have chosen not to seek asylum. Where the participants differed was through their perception of the set age of eighteen, where the lawyer argued it was important in order to maintain the rights of the child, but the project manager found the distinction unreasonable. Valuable from these interviews was further the inclusion of policy effects, through discussions of the police work and ignorance towards the increasing group of missing minors.

Migration Agency

Lastly, three participants from the Migration Agency agreed to participate, two caseworkers, one currently working with unaccompanied minors' asylum applications, the other a previous employee, whose knowledge in the area is still deemed valuable for an understanding of the practical work but also the methods regarding age assessments. Throughout they will be separated as caseworker and previous caseworker. The third holds an upper position within the Agency. The last interview was important as it provided information on the current events at the Migration agency, as the collaboration with NBFM is new. For the remains of the

thesis the last participant will be referred to as expert. All the interviews included both personal reflections and descriptive explanations relating to age assessments, voluntarism and burden of proof. The three participants provide separate perspectives on the function of the steering documents provided and how they are used. The previous caseworker only had positive experiences with medical age assessments, as it was often the younger ones that had issues with orally providing a *probable* age statement.

Saturation

As Steinar Kvale (2007) approaches the number of interviews necessary, “*the answer is simply, ‘Interview so many subject that you find out what you need to know.’*” (ibid, p. 43). Although not fully agreeing, it highlights the qualitative focus. Acknowledging that more interviews within the separate professions would have been beneficial in this context, the area chosen can be researched in a way where the interviews conducted together show strength in how the communications occur, which is what this thesis aims to map. Quantity could give magnitude, certainly in relation to participants from the Migration Agency, but it does not have to. During the process, there were a couple of obstacles when finding participants, and it is nowhere argued to be an exhaustive list of participants or perspectives.

Instead the question concerns if more interviews would have provided additional knowledge relevant to answering the research question (ibid, p. 44). As qualitative research suggest, focus should be put in the preparations of the interviews and the analysis of them when aiming at reaching the point of *saturation* as mentioned by Kvale (ibid). As all the participants hold positions representable of their knowledge, the participants possess the knowledge and experience needed for answering the research questions posed: “*What communications can be managed in relation to the legislatures expectations of medical age assessments?*” Thus considered to cover “*what [I] need to know*” in accordance with Kvale's point of saturation (ibid, p. 43).

4.2 Ethical considerations

Approaching a sensitive topic requires methodological considerations. This has been acknowledged through mainly focusing on the communications between organisations and authorities, and not involving case-specific information regarding reasons for asylum. As presented considerations have been made in regard to the steps provided through the Swedish research council's recommendations and will be elaborated below.

Regarding methods and participants

The initial contact varied, however the participants were presented with an initial introduction of researcher and the aim of the study. This was repeated prior to all interviews as well through a briefing protocol⁶. Also including information about the voluntarism of participation, that they did not have to answer all questions (Ogden 2008, p. 112) and that they could withdraw at any time (Kvale 2007, p. 24). All answers were promised to be kept confidential and information was provided regarding their anonymity, and that the interviews would only be used for this research purpose (The Swedish Research Council 2011, pp. 21-23). Finally they were all offered access to both the transcripts and the thesis prior to publishing if requested. All participants were asked if comfortable with having the interview audio recorded and if notes could be taken (Kvale 2007, p. 55).

Towards the end of the interview, they were asked if they had any other comments or concerns, namely a *debriefing* (ibid, p. 56). They were also encouraged to remain in contact if any other question would surface, and reminded of the possibility to receive the material. It was often after the debriefings, when the recorder was off that more information appeared which was then noted. In one of the interviews we decided to continue recording.

Recording and Transcribing

All nine interviews were audio recorded and transcribed (Kvale 2007, p. 162). Although there are some benefits with not recording an interview, such as the

⁶ See Appendix 1 Briefing/Debriefing

participant possibly feeling more comfortable sharing personal views on a topic, the benefits of recording outweighed the possible consequences. Also as they were voluntary which was emphasised prior to all interviews. Kvale (1996) here includes influence of the researchers selective memory when interviewing without recording, which could make the material one-sided (ibid, p. 161). Although the questions in a recorded interview are prepared in advance as well, the recordings and transcripts leave room for a possibly defaulted memory. The reliance of memory and the distraction of taking notes could compromise the need to focus on both information provided and useful follow up questions through the qualitative, semi-structured approach, which was initially difficult to manage although the interviews were recorded. The recorder allowed for focus on the participant and also left room for taking notes if certain questions, or there was a need for clarification (Gorden cited in Roulston 2008b, p. 682).

When transcribing the interviews, a final section was included on topics discussed after the recorder was turned of. All participants except for one wished to receive the transcripts, further all wanted a copy of the final paper.

Anonymity and Confidentiality

All are partially anonymous, in the sense that their participation is anonymous except for their professional role as it was important for the aim of the study. Due to difficulties in finding participants, complete anonymity could have made it difficult to account for the material provided (Ogden 2008, p. 17). Their professional role relates to a certain level of knowledge within the area. The anonymity is maintained through using codes for the various participants, and by removing personal connections. Therefore the name of the NGO has been excluded, likewise the Migration Agency's participants' regions and the HVB homes municipalities (The Swedish Research Council 2011, p. 46). In the summary of interviews, the participants are presented through their occupation. In one case in particular, the expert from the Migration Agency was contacted and asked what term should be used in the thesis. The term expert was then encouraged. As Russel Ogden (2008, p. 17) argues, anonymity can increase the

likelihood of more elaborate information. This worked variously, and depended on their roles, mainly cautious was the expert from the Migration Agency as answers often referred to the propositions of the new legislative changes. However, still providing a crucial understanding of the work at the Agency.

4.4 Analysis

The transcripts were coded in order to find relevant parts for comparison and analysis. As the experiences and professional background differed the interviews were, as mentioned earlier adapted to the participants, but still regarded same themes which made the coding process easier. Comparisons were made with respect to the boundaries of the participants' profession through the three stages presented by Flick (2007, p. 102):

- What do we find in the different interviews?

In this part of the process, the transcripts were read and through finding codes which were sorted through the following main themes⁷: burden of proof, benefit of the doubt, information/voluntarism, information/knowledge regarding medical age assessments, and costs/outcomes. Due to their different professional backgrounds some participants are more frequent than other in some themes and vice versa.

- What does the participant say about different issues, how consistent or contradictory are statements?

In relation to particularly the Migration Agency, there were some aspects worth mentioning. The participants' different roles, previously employed, currently employed and figuring as an expert representing the agency at times reflected their answers. The previous caseworker spoke more freely about the Agency's work with the minors, the caseworker often paused to repeat the question, to give time to think of a proper answer. However, overall they did not contradict, and in relation to age assessments the answers were similar. The knowledge of medical age assessments varied among all three, and on the practical parts there were some differences to be included later. As mentioned the lawyer from the NGO and the

⁷ See Appendix 3 Thematic mapping of interviews

project manager both had experiences in the area but where one defended the age of eighteen as important for accessing rights and the other found it difficult to achieve. Among the HVB home, mainly consistent was their critique of the current handling of age assessments, both in relation to stricter assessments, and mainly regarding subjectivity.

- How different or similar are the responses of various participants on the level of one topic/category

Relating to the previous question, there were areas of focus depending on their professional role. This final stage as presented by Flick (ibid) will particularly be present in the summary of material to come.

4.5 Trustworthiness

The participants can only present their own interpretations and perceptions of a certain event, or policy. As Barbara Czarniawska (2004) explains, the different perceptions can i.e. give an implemented reform a completely new meaning (ibid, p. 49). Although caution was taken to avoid possible bias of wanting to present the material in a certain way, even in the process of transcribing it is difficult to provide the material in a truly objective way. All nodes, smiles, and moving around cannot be captured (Kvale 2007, p. 93). The following criteria's have been used to reach a high level of trustworthiness:

- *Credibility*

An important factor has been to provide a nuance image through both different perspectives and available material. Grounded in previous research the credibility also regards possible contradictions and participants' positions, acknowledged in relation to their professional roles. Those that participated did so voluntarily with the possibility to withdraw at any time (Shenton 2004, p. 67), and were encouraged to take part of both transcripts and thesis (Bryman 2011, p. 354).

- *Transferability*

The methodological considerations made have been explained in a manner that the process should be easy to follow. The interview questions and not only themes further strengthen the transferability (Guba 1981, p. 81). The material can

however, only provide true meaning to what has been observed in this thesis. Relating to the theoretical approach chosen, Luhmann (2004) would argue, there is no absolute truth and what is observed depends on the observer observing the communications (ibid, p. 411).

The systems theory however aids the methods used, as the systems allow for observations. The communications could be transferred to different contexts and different systems, particularly on the use of medical age assessments in criminal cases. With that said, the thesis does not aim to provide generalisations to take on any context (Guba 1981, p. 80).

➤ *Dependability*

In the best way deemed possible, all information on the area has been provided arguing for the methodological approach chosen. As the implementation of the collaboration is new, it necessitated interviews, as documents are mainly provided from official outlets only and thus i.e. an discourse or document analysis would do not give the nuanced perspective aimed for. It would have steered the thesis in another direction as questions of practicalities was raised through the documents presented in the literature review as well (Guba 1981, p. 85). Through thick descriptions of the compilation of material, with both recordings and transcripts available in order to double check the results it is difficult to reach a high level of dependability. Here the faculty supervisor has assisted through following and questioning the approach chosen (Bryman 2011, p. 355; The Swedish Research Ethics Council 2011, pp. 39-40).

➤ *Confirmability*

As part of the meaning can get lost when transcribing from a recording (Kvale 2007, p. 93), all transcripts were written the same day of the interviews to be able to incorporate aspects, difficult to understand through only a recording. Due to the quantity of transcripts the main body of this thesis only includes a summary of the interviews according to the themes presented. The summary covers the material to be used as basis for the analysis, quotes presented through numbered reference in Appendix 4 are only for reference. As all interviews were conducted in Swedish, some Swedish words are present in brackets. They are always placed after the

closest English translation as a proper translation was lacking or where the meaning of the expression got lost in translation (Shenton 2004, p. 72; Guba 1981, p. 88).

5. “This is not complexity for complexity’s sake”

... “*It is complex because modern society itself is a mass of complexities.*” (King & Thornhill 2003, p. 1.) The reason for an inclusion of Luhmann’s theory of society as the main theoretical framework is the changing nature of asylum policies, and the observation made that in the issue of age assessments various social systems, such as law, medicine (science) and politics appear to interact. Luhmann’s ‘radical sociology’ has been both praised and criticised. Conscious efforts have been made in explaining its applicability without losing meaning of the concepts Luhmann shares, and without overburdening this theoretical section.

5.1 The boundaries of Luhmann(ia)

Firstly, Luhmann does not aim at social critique, partly because the notion of truth is presented as a problematic one, and what is observed is always limited and could always be different (ibid, p. 31). Despite this departure, Luhmann is aware of the *self-referential* systems’ shortcomings and the overburdening of social systems (Luhmann 2004, p. 411). The theory further does not focus on individuals as conscious actors, rather society (albeit complex) is better adapted for empirical study through communications of meaning within it (ibid, p. 142). This focus is important in the application of medical age assessments, and the participants in this thesis will only be present according to their communications - through their occupation.

Luhmann's focus on communications is particularly evident as the systems do not exist without them, and the systems are only present when communications are made. The continuation of society is therefore dependent on its communicating systems, and the central form of communications can be observed within the systems and their environments (Luhmann 1990, p. 28). Law, politics and science are the systems at focus, the system of science instead of medicine is argued through its functional meaning (King & Thornhill 2003, p. 11). Through Luhmann the system of medicine communicates health and illnesses, which is not relevant as the medical age assessments are not in any way related to health

aspects (See McQueen et al. 2007, p. 88). Instead *science* includes i.e. experts as child psychiatry in the legal system, but still allowing the courts to distinguish what should be considered reliable in decision-making, as science produces solutions through prognoses, law through decisions (Luhmann 2004, p. 339). Luhmann's theory will be applied in relation to what is possible within the different systems' boundaries through the Migration Agency, the NGO, and HVB homes. Luhmann's concept of contingency (Luhmann 1995, p. 25) will be accompanied by Robert Merton's (1936) reference to unintended/unanticipated consequences. As Luhmann would argue one cannot predict the future and would instead present it as a paradox. Through law's programme of justice this is presented as for there to be equality there will be inequalities (Luhmann 2004, p. 226). Merton will mainly be applied in the analysis of the HVB homes and NGOs work with the unaccompanied minors.

In developing Luhmann's theory, Talcott Parson's notions of society as an evolving system were influential, but where the important difference of relevance was Luhmann's emphasis on the conflicts in and between the different subsystems (Banakar & Travers 2013, p. 50). Of particular focus was Luhmann's adamant belief that legislation cannot guarantee that a society will be managed successfully (Banakar & Travers 2005, p. 50). Neither can society (the system of all systems) be controlled through political planning (King 2013, p. 59). The way system theory approaches complexities and assumptions of progress is in line with the aim of this thesis relating to what political authorities are trying to achieve through legislation and implementation of medical age assessments in asylum procedures (Banakar & Travers 2013, p. 55). Luhmann allows for the analysis to include an observation of observations (King & Thornhill 2003, p. 2; Luhmann 2004, p. 338).

5.2 The system's self-reference as function system

The systems are operatively closed, namely they are *autopoietic*, and can only communicate *self-referentially*. The system thus reduces its *complexities* for the system to manage *communications* within their environment. The reduction of

complexities is done through applying the system-specific binary codes. In the legal system this code is based on illegal/legal and lawful/unlawful. In science it is true/false, likely to be true/unlikely to be true. Finally the political system operates through governed/government and government/opposition (King & Thornhill 2003, pp. 71-72). To achieve the reduced complexity, the systems have to remain *operatively closed* to other systems, but as they exist within environments, they are *cognitively open* and can influence each other, through the systems' environments (Luhmann 2004, pp. 105,86). Depending on how *objects* are coded/programmed they can become a part of the environment and then communicated into the systems.

However communications are restricted, and only the system determines if, what and how the communications can be used (Luhmann 2004, p. 293; 1990, p. 191). Luhmann's concept of double contingency presents the relationships between the systems as where the different systems emerge is in its communications through the interactions as it "*describes something given (something experienced, expected, remembered, fantasized) in the light of its possibly being otherwise; it describes objects within the horizon of possible variations*" (Luhmann 1995, p. 106). The communications become a question of "*How much do the participants have to understand each other in order to communicate?*" (ibid, p. 108).

Through the differentiated systems, the problem of double contingency can be solved by transferring reduced complexities, which can only be reduced within the operatively closed systems. The issue of double contingency is however always present when two systems try to communicate with each other (King & Thornhill 2003, p. 30). The systems' *function* provides them with *meaning*, i.e. the *function* of the *political system* is to provide how collectively binding decisions will be made, law's *meaning* is to provide normative expectations, and science should distinguish what is 'true' (King & Thornhill 2003, p. 11). What is important is that one system's way of organising *meaning* cannot take over another systems function. When two separate systems perceive an issue in separate ways Luhmann would see this as a "*probability of conflict*,

with the attendant risk of societal instability”(ibid, p. 71) as society depends on its communications. Law can be forced to change due to either political or economic reasons (Luhmann 2004, p. 292). Here King and Thornhill (2003) on Luhmann add that when the political system expands its objectives, it “*engenders chronic rationality*” (ibid, p. 85). Understanding the function systems closure and the relationships through contingency King and Thornhill (2003) offers a descriptive example:

“Since neither is able to ‘get inside the head of the other’, this means A’s selection from its range of possible meanings is dependent upon B’s selection of possible meanings and vice versa. Hence, the improbability of communications is made more probable by the development of functionally different subsystems. Indeed, according to Luhmann these have evolved as a direct response to the double-contingency problem.” (ibid, p. 30)

Contingency is therefore the systems way of “*distinguishing itself from its environment and its limitation*” (ibid, p. 32). The *legal system* when faced with a change of law, decides how (and if) it can become legally relevant. Here, through Luhmann (2004, p. 292) courts are presented as an *organisation* within the legal system. Likewise is the structure of the Migration Agency an organisation through caseworkers’ and decision-makers’ communications maintaining the function of the system. The organisations evolve when the function of systems becomes complex and where the organisation assists or *irritate* through legal argumentations in the legal system. In the political system these organisations could be exemplified through referrals from different organisations, aiding the political systems *administration* in legislation (ibid, p. 299).

5.3 Are the systems on speaking terms?

To fully understand Luhmann’s concept of communication one has to understand the separations of communications within different systems. The separation between *interactions*, *organisations* and the relevance for *communications* in society, where interactions are done on an individual level, and the latter can only

occur if they provide *meaning* for a system. Likewise, within organisations consisting of interactions, here the NGO as organisation can irritate the political system through values as *self and other-reference* through which the political systems filters its communications. The values create political options making the communications meaningful for the system. For example values of peace, equality, and freedom (King & Thornhill 2003, p. 93).

In asylum, the interactions through interpreters are only of importance if it provides meaning for the legal system (ibid, p. 6). The codes in turn are always made through the system's programme, and the programme's (different from the *codes* which are always identical) can be changed or replaced which offers flexibility for the systems (ibid, pp. 24-26). Through the implementation of medical age assessments, which are initially communicated through the political system, the science and legal system through *structural coupling* observe the communications in their environment and finally *code* through their system's *self-referential* in their prognoses (science) or decisions (legal). As neither politics nor law can decide issues of medical assessment, all they can do is transform science communication through their own codes (ibid). *Structural couplings* then both link and separate systems and their environment through a *time dimension*.

To explain the *time dimension*, Luhmann (2004, p. 382) uses the example of how the different systems *operate* (work). I.e. legal proceedings taking the time necessary may not become effective in the operations of another system's goal, as the legal system's function is another (to provide normative expectations). The *political goal* presented to minimise costs, the *legal system* where the Migration Agency as decision-maker is located, will still operate within its own system where *legitimacy* and *meaning* is connected to *equal* processes, which might take more time than expected by the political or science system. The *legal system* will be able to observe the medical system but can only create irritations in the *legal system's* environment, which the *legal system* will then process through, *self-referential*. If the communications give meaning to the system they will be communicated, otherwise rejected as merely noise (King & Thornhill 2003, p. 17). In relation to science, it is an “‘*expertise*’ as an *autonomous, objective entity*

which has authority independent of the institutional setting in which it is used...” (ibid, p. 96). Incorporating what is argued as the best for a child can however, only be done by attaching it to the binary code of lawful/unlawful which depends on what information has been made accessible for law’s programme, entering the positive side of the code, as a lawful alternative (King & Thornhill 2003, p. 153).

Through legal texts which *couple structurally* with the system of law, the legal argumentation (as an *operation* within the system) is how the system provides *just* decisions, in the meaning of equal cases being treated equally (Luhmann 2004, p. 305). The argumentation only appears when there is a different opinion regarding what should be attached to its binary codes (lawful/unlawful) where Luhmann also includes i.e. how a human rights article has been used. The only reason for such an argumentation is that it could give meaning to the system (King & Thornhill 2003, p. 46). If a code conflicts and thus declares the system’s own decision as *unlawful* it is a way for the system to reaffirm and adjust, as “*Law is lawful, until the law decides otherwise*” (ibid, p. 57). In particular regarding human rights, the law will decide how to select and interpret legal text.

In the Swedish welfare state, the political apparatus regards social well-being and *inclusion*, Luhmann (1990, pp. 35-36) would argue that when the political system tries to include minority groups or movements, it forces its limits to include objects it is not equipped to deal with (ibid; King & Thornhill 2003, pp. 85,98). The practical difficulties of *identity*, and determining the legal age of eighteen will be reflected through *inclusion* in the analysis. The system of law cannot separate how people should be treated *just* “*unless law provides otherwise*” (Luhmann 2004, p. 136). *Inclusion* becomes the sociological concept used when addressing the welfare state, here Sweden, and where the *inclusion* is connected to *access* and *dependence* which when achieved different groups as i.e. minorities disappear, and become *excluded* (Luhmann 1990, p. 34).

5.4 Dealing with the system's boundaries

Here legislation is the way the *political system* (administration as legislature) communicates with the public (King & Thornhill 2003, p. 89). The problems which the political system cannot resolve, can then according to Luhmann undermine the political system's *legitimacy* and only be solved through reducing the expectations of the political system in politicising 'social problems' (ibid, p. 85). *Legitimacy* should be understood through systems' autopoietic nature, as only the systems themselves create, maintain and strive for *legitimacy*. As part of the political system however, the *politics*, *administration* and *public* are important but are still separate within the system (ibid, p. 93).

If the political system would fail to accomplish the objectives set it would undermine its own *legitimacy* - as it needs the *public* for its preservation (ibid, pp. 87,90-94). The *legal system* is not strictly connected to lawyers - but to those communicating legal communications, as all systems are dependent on communications and not individuals. This broadens the inclusion of i.e. employees at the Migration Agency without a legal degree, although all participants presented in this thesis have one (Luhmann, 1990, p. 190).

In a modern democracy, the state is located within the political system and commands the law, but only within the limits of law (a paradox). Luhmann (2004) explains this as *self-irritation* by the political system, which constantly strives at "*stimulating a change in law*" (ibid, p. 411). When a change of law is suggested it is part of the political system, and the *legal system* gets exposed by the initiatives taken by the political system (ibid). Although politics have initiated a process of medical age assessments, it is up to the system of *science* how they will be performed through offering *prognoses*, and the legal system how they will be applied through *decisions*.

5.5 Unintended/unanticipated consequences

Finally through Luhmann the systems' boundaries when including human rights and political incentives of effectiveness can be analysed. Through reducing complexities in each system, a systems approach provides an understanding of how medical age assessments could be communicated and how the communications may become problematic through the concept of contingency and expectations of systems. The self-referential of the legal system might not meet the political system's expectations. All selections made within the systems are presented as contingency, which then provides a risk of another possibility (Luhmann 1995, p. 25). However, Luhmann purposely chooses not to elaborate on effects as what is observed is always limited, but relates to fulfilment or disappointment of expectations within and between the different systems (King & Thornhill 2003, p. 17). When an issue falls outside of a system's boundaries, expectations cannot be met, as they would undermine the system's legitimacy. Understood through Luhmann, we can only observe possibilities through the system's communications (Luhmann 2004, p. 338). The possible effects will through Merton (1936) provide a discussion of how unintended/unanticipated consequences may emerge.

Unanticipated and unintended should be understood separately as what is unintended is not always unanticipated, and is not necessarily undesirable by those performing a certain action, here enforcing a policy of medical age assessments, shortly described as '*the lesser of two evils*' (Merton 1936 p. 895). Changes of policies are a formally organised action (ibid, p. 896), as they work to achieve a common procedure in assessing age. Further clarified by Frank de Zwart (2015 p. 286) (1) unanticipated consequences can only be unintended, (2) but the unintended can be both anticipated or unanticipated.

The (2) unintended consequences are of most relevance, but Merton (1936) raises doubts one should consider regarding the causal imputation, meaning what relevance the proposed procedure has, and if it is really an effect of the procedure or something else (ibid p. 897). Taking this into consideration, parts

of the literature review will be used to clarify and assist sections of the analysis. The most relevant limitation presented by Merton (*ibid*) is existing knowledge in relation to unanticipated consequences. The choices made are argued to be rational through the context that an action may lead to a certain goal (*ibid* p. 898). Through Luhmann's notion of contingency then (Luhmann 1995, p. 25), the goals set by the political system to use resources for children, on children only, may defeat other political values, which will be further developed in the analysis to come.

6. Summarising interviews

The chapter will follow according to the sub-questions posed, through the main themes; Burden of proof, benefit of the doubt, information/voluntarism, information/knowledge, and costs/outcomes. Although the focus is put on the use of medical age assessments, for proper context, other areas of overall age assessment have been included when presenting the material.

6.1 Is it possible to meet the evidentiary requirement of burden of proof without consenting to a medical age assessment?

Burden of proof

In achieving a probable age, the Migration Agency has an investigation duty to assist in the asylum process. It should reflect how they ask their questions relating to who the asylum seeker is as *identity* as described is an important factor in the asylum process (Caseworker Migration Agency). Prior to the new regulation placing the age assessment earlier in the process, the question about age was connected to mapping the protection status, where oral and written evidence was used as basis for decision. Documents verifying identity are mainly identification cards and passports, but other documents are also encouraged (Caseworker Migration Agency). According to the previous caseworker (Migration Agency) they have instructions on i.e. an Afghan passport and the Tazkira⁸, but not on for vaccination cards, school records etcetera. These were handled differently between various caseworkers and decision makers (Previous Caseworker). Although other documents did not have evidentiary value, it could benefit the process by coming of as being willing to participate.

Comparing the information with specific land information provided through the Migration Agency it served as basis for the decision, where the asylum seekers are responsible for providing the material, thus has the burden of proof (Caseworker Migration Agency). The expert (Migration Agency) explained

⁸A Tazkira is a id-card from Afghanistan which has no evidentiary value in Sweden due to its simplistic character

that if there is reason to question stated age the Agency should now make a *temporary* decision, which becomes effective directly. Prior to that, they should give the asylum seekers the possibility to undergo a medical examination as it is within their investigation duty to inform in what ways the applicant can make their age probable, applicable to those who arrived prior to the change of legislation as well. Further, it is important to explain that the applicant has the *burden of proof* and the various ways they can make their age probable. Information is provided on how the medical assessments will be used in relation to other evidence and that the medical assessments are not an elimination tool (Expert Migration Agency).

The previous caseworker (Migration Agency) perceived medical age assessments as positive as they presented objective facts in relation to otherwise more subjective parameters (as documents were seldom provided). All three participants from the Migration Agency marked the difference in the evidentiary requirement to make the age probable, not confirmed [*styrka*]. When assessing the age as probable, the previous caseworker (Migration Agency) acknowledged that an individual's literacy was important when formulating questions for them to answer in relation to their age but that not all took this into consideration. The additional medical examination was explained as becoming an including part to assist the Migration Agency in the overall age assessment (Expert; Caseworker, Migration Agency).

If assessing the age earlier in the asylum investigation would change their work was not perceived to have any significance, as the identity-investigation would carry on. The project manager (NGO) was positive to earlier age assessments as long as they were in accordance with the rule of law, and prompted the process needed to become more effective due to the long waiting times, as people got older during the process. The long processes were to the minors' disadvantage as the new medical methods can only show a possible age (Project Manager NGO). However emphasising that placing the *burden of proof* on persons from i.e. Afghanistan is extremely difficult as they seldom have anything to prove it, except for the Tazkira, which lacks evidentiary value, which was

confirmed by all participants. The expert (Migration Agency) followed a similar explanation as the caseworker in regards to the new process, but altered in relation to how it will work practically. The new procedure would require them to detach parts of age assessments from the overall asylum investigation, by doing it earlier in the process and that it will be temporary (until final asylum investigation) but effective immediately. A positive aspect with the new legislation is the possibility to appeal the age separately. In relation to the Administrative court the expert (Migration Agency) also explained that it will be up to the court to decide if the temporary age set by the Agency should be postponed. As a positive aspect having the age assessment as a part of the final asylum investigation (as before), was the applicant's possibility to through a longer time have the possibility to collect evidence to assist in the assessment, other positive aspects acknowledged was that the Migration Agency did not have to separate the question of age and could investigate identity through getting the full picture which is easier [1] (Expert Migration Agency).

The lawyer (NGO) argued they should instead take advantage of the long handling times and in a higher degree include statements from those working with the minors as the medical age assessments are not in accordance with the rule of law and that emphasis should instead be placed on those working with the minors (ibid). The Project manager (NGO) problematised the *burden of proof* in relation to personal experiences with minors in the Administrative court, where the courts would be in favour of the Migration Agency's decision that the applicant had not made their age probable, despite witnesses who work with the minors witness in favour of the applicant. Understanding the *burden of proof* placed on the applicant, being under eighteen is presented as a benefit one applies for where proving that their situation is such in accordance with the classification of receiving protection from another country. Where the Migration Agency's role was also mentioned in relation to their need to assist them in achieving the level of probable [2] (Caseworker Migration Agency).

The benefit of the doubt

The project manager (NGO) argued the Migration Agency used the Administrative courts when insecure, instead of giving the applicant the *benefit of the doubt*. In the interview with the previous caseworker (Migration Agency), similar experiences were described in relation to disagreements with decision-makers at the Migration Agency, but which were seldom. The project manager (NGO) also found it problematic that the written documents that most unaccompanied minors brought did not hold any value, which was at part understood due to their simple character (ibid).

The previous caseworker (Migration Agency) mentioned difficulties with meeting children where they were evidently children but lacked documentation and could not provide information about their age orally. The differences among decision-makers in how these cases were handled was presented as frustrating, and that having to write those persons age up was particularly difficult [3] (Previous Caseworker Migration Agency). Therefore in some cases the principle of *benefit of the doubt* was a relief and in relation to this the medical age assessments were presented as positive, as the experience was that it would more often be the younger ones who struggled with the oral statements. Also as a majority of the unaccompanied minors were from Afghanistan without any documents, the principle of *benefit of the doubt* was helpful in cases where it could be hard to prove a person had made their age probable through an oral statement, but that the applicability of the principle varied between different caseworkers and decision-makers (Previous Caseworker Migration agency).

Information/Voluntarism

In relation to the question of information on medical age assessments the previous caseworker (Migration Agency) raised concerns regarding the interpretations, as the language barriers among interpreters was evident when translating information about medical age assessments. There was often a lack of a correct translation of particularly medical age assessments and that the bureaucratic language of the Migration Agency could complicate the matter, but that it was seldom completely

wrong [4] (Previous Caseworker Migration Agency). All participants except the caseworker (Migration Agency) raised similar experiences with interpreters and the topic did not surface with the expert. Due to the shortage of interpreters since 2015, some interpreters did not speak the same dialect or language as the applicant (Previous Caseworker Migration Agency; Manager; Psychiatrist; Caseworker HVB).

The expert (Migration Agency) refers to the concepts of voluntarism and consent in respect to the Migration Agency's assessment of the need for more evidence. If not consenting to the medical age assessments in such a situation, and where the situation remains unchanged, the overall assessment could be the same as before the offer to complement with a medical age assessment. Thus the applicant cannot be considered to have made their age probable in relation to the burden of proof [5] (Expert Migration Agency). Voluntarism was problematised by the caseworker (HVB) through similar references as presented in the literature review. That the feeling of coercion due to not wanting to perform a medical assessment could be perceived as confirming that one is over eighteen, there was definitely a certain compulsory feeling attached to them (Caseworker HVB). The minors had a lot of questions about them, and understood that they were not completely accurate, which created anxiety (Supervisor; Caseworker HVB).

6.2 How are the interdisciplinary complexities of medical age assessment understood by those working with unaccompanied minors?

Information/Knowledge

Most participants were positive if a medical age assessment would result in a safer age assessment, but were hesitant when answering about their own knowledge about the new methods [6]. Meeting the minors, the estimated ages were between 15-25, which made the previous assessments particularly difficult (Previous Caseworker Migration Agency). That a majority were in their upper teens was also mentioned by the caseworker (HVB). Mentioned by the HVB manager and

psychiatrist as well (HVB). The manager (HVB) explained that the accommodations were for boys between 14-17 but that: *“not everyone was between 14-17 years, and they told us that as well, but if you put yourself in their situation/.../if you want to live that’s what you say.”* (ibid).

The expert (Migration Agency) clarified that in Sweden we need the chronological age when separating certain rights and obligations, why the psychosocial alternatives present i.e. England are not relevant as they focus on a different maturity. Age is important in various aspects, both in asylum and criminal law (ibid). Several participants explained that age was not as important in some of the countries of departure as it is in Sweden, where examples were given from Afghanistan as age is connected to i.e. certain events. On the possibility of providing age assessments for the Migration Agency, the supervisor clarified that neither the HVB homes nor the Migration Agency are *“age assessment experts”* (Supervisor HVB). Also few minors knew their actual date of birth, which could only be presented through an estimation (Previous Caseworker; Caseworker Migration Agency; Project Manager NGO). The lawyer (NGO) argued that the applicant’s story should instead be given more focus.

In relation to the new methods proposed, the expert (Migration Agency) explained that the medical age assessments would assist in answering not a specific age, but that *“the [medical] assessment should give us an answer to the question we have posed: is the person a child or an adult?”* [7] (Expert Migration Agency). The previous caseworker (Migration Agency) recognised the difficulties in applying the (previous) medical methods, as the reports were difficult to understand and perceived as a foreign language. That they had not received proper information on how to read them, and that the perception was that most caseworkers did not know what the assessments really meant, why only the final statement was used [8]. Both the expert and the caseworker confirmed only using the final statement, with the new methods as well (Migration Agency). The expert (Migration Agency) mentioned that they have worked on mutual documents to provide information through the Agency. In relation to the validity of medical methods they have to trust the NBFM as they provide the methods and the

Migration Agency's work is to identify the need for such an assessment [9].

Throughout it was also highlighted as important that the Migration Agency strive to have uniformed norms of how to understand and make decision in accordance with the principle of equal treatment, with respect for separate cases [10] (Expert Migration Agency). The spread of information through mutual steering documents was also mentioned by the two caseworkers (Migration Agency). On the practical implementation of the medical age assessments provided through the NBFM emphasis was put on having to show clear results as it should not be up to caseworkers, decision-makers or judges to assess the separate cases, once again referring to the need for a uniform application, but that the higher courts could decide and in a guiding "*way call out the methods that have been used*" [11] (Expert Migration Agency).

6.3 What are the unintended/unanticipated consequences of medical age assessment procedures?

One of the arguments for an inclusion of medical age assessments is that recourses set for children should not be used on adults, and that adults and children should live separately. The expert (Migration Agency) explained that the future prognosis of handling times would be significantly shorter as there are still 16 000 cases pending since 2015. This was highlighted as a caution for an increasing amount of disappearances by the project manager and lawyer (NGO) as it was not realistic to assume that asylum applicants would leave the country if rejected or having their age written up after staying in Sweden for such a long time. All participants acknowledged the long handling times, estimating to two years on average. On the benefits of earlier age assessment the expert (Migration Agency) explained that the applicant could then early in the process know what might be missing in their application in relation to age and can now appeal the age separately which was not possible through previous legislation [12] (ibid).

On the effects of age assessments the expert (Migration Agency) explains that one should remember the Migration Agency's role as limited in relation to other aspects of the applicants life. As the Agency's work is a limited mission in

relation to the whole picture, the Migration Agency separate from the cases through their decisions [13] (ibid), the separation was also mentioned by the caseworker (Migration Agency).

Costs and Outcomes

All participants agreed that the number of medical age assessments would probably increase significantly. Some raised questions regarding their cost, and discarded the prognosis of six to eight weeks as unreasonable due to all the pending cases since 2015 [14] (Project Manager NGO). Mainly assisting minors outside the 'system' the NGO aims at preventive measures to avoid disappearing children. Highlighted as a growing target group relating to, among other, getting their age written up. Through writing impediments to enforcement of rejections and checking the asylum process for possible loopholes the NGO works to legalise the minor's stay [15] (ibid).

A problem mentioned is the lack of clear guidelines on the follow-up work with minors. Several participants mentioned this as when the minor's age is assessed upwards, the Migration Agency handles them as adults. If a person disappears in the 'transition process' there are no actual statistics (Psychiatrist; Caseworker HVB; Project Manager; Lawyer NGO). The lawyer (NGO) mentioned that in the cases where there is a police report, it will fall into the police statistic, but that the figures are hard to separate from other disappearances, and that no authority really has any knowledge of the youth's whereabouts. This was also mentioned in relation to whose responsibility missing minors are by the project manager (NGO) as *"in some municipalities it is the custodian, in some the HVB home, in others the Migration Agency, there are no really clear structures, routines for how to handle [missing minors]"* (ibid). If decisions are made regarding a re-evaluated age and followed with enforcement to move to another municipality in a couple of hours, it was presented as evident that youths would disappear (Project Manager NGO; Caseworker HVB).

The supervisor's (HVB) response to the implementations of the medical age assessment was a combination of multiple factors, as they were previously

seldom, and that the main reason was the loss of efficiency for the Migration Agency in handling the asylum investigations. Likewise pressure on the other areas of welfare was mentioned as affected and therefore requiring political change (Supervisor HVB). Presented as problematic through reference to the budgets set in the municipalities as they went over an entire year and when resources were lacking in one area, they would have to take money from another and that “*the citizens don’t like that*” [16] (Manager HVB).

As mentioned, the follow-ups were explained as non-existent. The manager (HVB) further argued that in accordance with LVU (SFS 1990:52)⁹, Swedish youths in need of care could have their eighteenth birthday ‘postponed’ until they turned twenty-one, as it is important to ensure the care needed is provided. The manager (HVB) was therefore critical of the handling of unaccompanied minors being sent off as soon as they turn eighteen, which lead to some of them going underground. The difficulties of remaining in contact was mentioned by the Psychiatrist (HVB) as some minors worked undocumented and would register at a accommodation but not actually live there. Contact could therefore only be made on the youth's own initiative (Psychiatrist HVB). The difficulties of keeping contact was also argued being due to the youth’s mobility and ability to adjust [17] (Project Manager NGO), and likewise explained as risky behaviour in how they moved around careless of possible expulsions from the country (Lawyer NGO).

Emphasised as naive was the thought of particularly those arriving in 2015 just leaving after being re-evaluated and rejected residence (Project Manager NGO). The lawyer (NGO) referred to the disappearing minors as consciously ignored. Through the NGO’s meetings with the police, statistics have been presented estimating thousand youths which were searched for, where the police conclude that they had no idea of their whereabouts (Lawyer NGO). Also that the police mission of localising missing minors is not taken seriously, where

⁹ If the parents of someone under the age of 18 cannot, for some reason, provide the young person with the support he or she needs, or if the young person her or himself lives a destructive life involving, for instance, substance abuse or criminality, it is possible for such a young person to be cared for according to the Care of Young Persons (Special Provisions) Act (LVU) (SFS 1990:52)

references were made to Swedish children as disappearances would not be written off after two weeks (Project manager NGO).

This was particularly problematised in relation to the police work on expulsions, as they now use other authorities to localise the address of those waiting expulsion, but were the increasing number of minors disappearing could not be localised the way i.e. a family receiving social benefits could through Social Services. Thus, the expulsions are deemed impossible to enforce, as there are no proper guidelines on who is responsible when a person goes missing. The project manager (NGO) here also added that many of the ones the NGO came into contact with have gone missing from places far off, making the police work difficult in trying to localise the minors.

7. What communications can be managed in relation to the legislatures expectations of medical age assessments?

7.1 Medical age assessments in relation to the system's boundaries

Introducing the age assessments (overall) earlier in the process, the legislature (the administration) in the political system wants to respect state finances and cut costs in the asylum process. The changes also include a children's right motive as unaccompanied minors should not reside with adults (*Justitiedepartementet* 2016b, pp. 19,29-30). This is performed through reacting to the critique in the political system's environment regarding adults using resources set for children, which has caused irritations in the political system's environment. The age of eighteen is presented to separate adults from children, and thus becomes a way of legitimising further actions taken in any direction, through *inclusion/exclusion* (Luhmann 1990, pp. 35-36). As the literature review and the empirical summary has shown, assessing the chronological age of eighteen is nearly impossible without proper documentation. Certain margins are therefore present in the different function systems to manage communications regarding age. In the legal system it is a *lawful* decision if the age is made *probable*. In science as presented in the chapter on the medical age assessments¹⁰, the communications are of a 'likely' - matter where the applicant might be both underage/overage in relation to the age of eighteen, thus neither law or science are trying to determine a certain age.

The political system's legitimacy is connected to its system, but it needs the *public* for this continuation, this way the legitimacy sets the boundaries for the political system's operations. A discussion of state finances was present in the interview with the HVB home's manager in reflections of management of municipalities' budgets were the citizens did not approve of finances being taken from other social areas as elderly of child care (Manager HVB). Luhmann's scepticism towards the political systems continuous attempts to regulate social

¹⁰ See chapter 2. The medical age assessments

problems becomes evident when they fail to realise their own systematic boundaries, *engendering chronic rationality* and where the only way to solve it is by reducing the expectations of the political system (King & Thornhill 2003, p. 85). The supervisor (HVB) response to the implementations of the medical age assessment was a combination of multiple factors, as the Migration Agency could ask for medical assessments before as well but that they were seldom, and that the main reason for the new collaboration was the loss of efficiency for the Migration Agency in handling the asylum investigations (ibid). The efficiency is however an expectation from the political system, and in relation to the *time-dimension* and *contingency* through Luhmann, proposing a collaboration and earlier age assessments means there will be selections within the system that could have been taken differently (King & Thornhill 2003, p. 30). Further as presented the legal system cannot achieve the political goals if that would mean it could undermine law's own function of normative expectations (ibid, p. 32).

The implementation of medical age assessments is new and the effects are not possible to analyse, but approaching the area through Luhmann the theory of system allows us to study society as it is now. Luhmann focus on what communications the systems are capable of operating in regard to asylum and medical age assessments. How the systems' of politics, law and science communicate and if the communications can persist. As no system can intervene directly upon another due to the systems autopoietic nature the political system can only present legislation (through its administration). When doing so the system is engaged in legal communication as well through i.e. referrals (organisations assisting the political system) where the system observe communications and interpret those that give meaning according to the political systems programmes and codes. The political systems thus depend on *values*, which open up for questioning, as another choice could have been made (contingency) (ibid, p. 93; Luhmann 1995, p. 25).

After implementation it does not mean that the system of science and law will meet the expectations set by the political system. Once again portraying the political system's boundaries in relation to contingency (King & Thornhill 2003,

pp. 32,85). The separation was particularly evident through the expert (Migration Agency) who spoke of political goals as identified through the parliament and government and then separately regarded the mission of the Migration Agency in finding uniform ways to include the medical assessments in their operations.

The NBFM as presented through the scientific system communicates the medical age assessments through the presented codes *likely/unlikely* of a person being overage or underage. The issue at point here is that for the legal system to interpret the communications observed through their environment, the expectations is an answer regarding adult/child, which the science system cannot provide. The legal system has been criticised as subjective for how age assessments have been conducted through the participants in this thesis. This could be seen as a boundary within the legal system. However, through law's binary codes, the assessments could be argued as lawful in relation to the system's communication. Although the decisions have not been in line with the expectations of the legal system, it can present an *irritation* in relation to the systems programme of *justice*, as presented by the previous caseworker (Migration Agency) there have been varieties in how different caseworkers and decision makers make use of the information provided. It has thus been difficult to assess cases equally according to the system's function of normative expectations.

The political and legal systems place expectations of clear information regarding age. Fulfilling such expectations would fail the science system's *legitimacy*, as they can merely constitute *truth* through what is *likely to be true*. Although the science system produces these communications it will still be up to the legal system how they will react to these observations once they become a part of the legal system's environment. Through Luhmann the system of law can use science in their age assessments, after legal coding. The objectives set by the political system can thus possibly be undermined and cause *societal instability* as the three separate function systems do not understand the *issue* the same way (King & Thornhill 2003, p. 71).

7.2 Communications in asylum

As Luhmann would argue, *interactions* can only produce *meaning* if the system considers them as meaningful (King & Thornhill 2003, p. 6). Distinguishing what is meaningful in the area of asylum can then be done through what the system of law should manage through the programme of justice. In relation to human rights, the only way to include them is through *justice's* (programme) binary codes of equal/unequal and freedom/limitations (Luhmann 2004, p. 226). Whenever there is a reference to law or injustice, these communications give meaning to the system and thus attribute themselves to the legal system (ibid, p. 101).

The communication regarding *identity* is a part of law's environment as it is identified through courts and legal texts. When taking a decision (law's *operation*), the communication regarding identity creates *structural coupling* within the legal system. As ruled in court (*Migrationsdomstolen* 2014:1) the age can normally not be assessed through only an oral statement. The court as an organisation within the system holds the function of assisting through reducing complexities. However, this is up for legal argumentation as the three participants from the Migration Agency argued that was not the case and that the oral statement had strong evidentiary value. As presented through the project manager (NGO) and the previous caseworker (Migration Agency) the administrative court was sometimes used when the Migration Agency was in doubt. In reference to Luhmann (2004, p. 299) this would strengthen the court's role as an organisation within the legal system, reducing the system's complexities.

The legal system's autopoietic nature also becomes clear in reference to the limited use of external opinions on minor's age as argued by the two participants from the NGO, both in the asylum process but also in the Administrative courts. Within the legal systems these argumentations are operations within the system, but it is the legal texts that *couple structurally* and cause *irritations* through *justice* programme of treating equal cases equally (ibid, p. 305). Which was emphasised as important through the Migration Agency's common *operations* based on their steering documents (Caseworker; Expert,

Migration Agency). Regarding age assessments so far, they have *irritated* the legal system's environment through laws programme of *justice*, as it has been difficult to process cases equally. The political and human rights incentives of consideration in relation to age assessments can therefore arguably not be communicated within the legal system in relation to age.

Burden of proof

The three participants from the Migration Agency mentioned the specific land information provided used to compare narratives when assessing if the *interaction* are in line with the legal communication of *probable*, but also in relation to *burden of proof*. As mentioned by the previous caseworker (Migration Agency) there were instructions on how to handle a Tazkira, but not Vaccination Cards etcetera. This was also mentioned by the caseworker (Migration Agency) as it was only passports and identification cards, which would be sent for analysis, however if deemed valid they would achieve a higher legal requirement than *probable*. For the legal system to handle asylum, there are legally communicated criteria applied to operate in accordance to the function of the system. The Migration Agency further *operates* by interpreting the *interactions*, which in these specific asylum cases are most often communicated through *interactions* with interpreters if they give meaning to the system. Thus *interactions* not fitting the legal texts cannot be considered.

All participants from the HVB homes had been asked regarding the assessed age of youths. They referred to the through Luhmann problematic placement of age assessments within the legal system. Neither the HVB homes nor the Migration Agency are "*age assessment experts*" (Supervisor HVB). As the function of the law is creating normative expectations such critique can cause *irritations* in the legal system. Both the caseworker and the previous caseworker (Migration Agency) explained that they could complement cases with information through others working with the youth, which was as presented encouraged by the lawyer (NGO). These interactions would then be *coupled* into legal communications and made accessible for the legal system through their codes to reduce complexity.

An explicit problematic presented, which creates *irritations* within the legal system is not being able to handle cases where it was obvious that an applicant was a child but could not provide legally meaningful communications to make their age probable. The only legal argumentation available was through the international principle of *benefit of the doubt*, which could be difficult to apply, as some decision-makers were stricter than others. In relation to the legal system's communications the principle could be both a lawful/unlawful decision in relation to the importance of obtain the function of the legal system, and where the international principle leaves room for legal argumentation (Previous Caseworker Migration Agency; King & Thornhill 2003, p. 46).

Being under eighteen in asylum cases is legally programmed as a *benefit* one must prove to be eligible for (Caseworker Migration Agency). This reduces the complexity for the legal system to handle these communications. Human rights constitutions can only give meaning to the legal system in attaching the legal systems binary codes through the legal argumentation (King & Thornhill 2003, p. 46). The NGO here *irritate* the legal system with their work in legalising those denied asylum through producing communications in the legal system by writing impediments to enforcement of expulsion and decisions (Project Manager, NGO).

7.3 Observing other system's communications

As mentioned by the caseworker and expert (Migration Agency), their responsibility is time-limited in taking a decision in a case. This was also evident in the expert's (Migration Agency) response to the County Administrative Board's mapping of missing minors where clarification on the Migration Agency's responsibilities was provided where other part of an applicant's life reflected other agents as the police and social services (*ibid*). Further, the administrative court's possibility to postpone the temporary age set by the Migration Agency, the organisation of courts within the legal system can thus assist in achieving *legitimacy* through reducing *complexity* through *structural coupling*. This might inflict on the political expectations proposed. An important aspect of the *time-*

dimension through Luhmann, *structural coupling* between the systems and their environment is done at different speeds within the different system. What was intended by the political systems through the proposed regulation of early age assessments and use of medical assessments is therefore not per se possible: neither within the legal nor science systems boundaries as presented, the medical assessments should not be used as an elimination tool (Expert Migration Agency).

The separations are also evident through the clarifications of how the medical age assessments will be understood, as the Migration Agency will need to legally understand the circumstances proposed by the science system. Through Luhmann this can only be done through *observing* the science system's *observations* and then integrate these through law's own communications. The only communication comprehensible to law is the final statement of the reports regarding the medical age assessments. Relating to how the caseworker and previous caseworker (Migration Agency) understood the context of the medical reports there were obvious discrepancies in knowledge and trust for the science system as the old reports were referred to as foreign language and that few knew what medical age assessments really meant in practice. They were still perceived as objective in relation to information from those working with minors.

Without being certain of the methods proposed due to new implementation, the caseworker (Migration Agency) argued that the new methods provided safer results. Through Luhmann the *legal system* cannot question nor criticise the *scientific system's* communications on medical age assessments. As reflected by the expert (Migration Agency) the Agency has to trust the NBFM and their methods. The legal system can only consider if the methods are deemed reliable through the *legal system's* own communications on how to include it in the system as science operates through prognoses and law through decisions (Luhmann 2004, p. 339). Explicitly as the higher courts have the possibilities to, as referred to by the expert (Migration Agency) in a guiding way question the medical methods used.

Voluntarism

Analysing communications in asylum, the age assessments (overall) are important, as there are certain rights and benefits connected to being underage. In order to claim these rights one must first fit the legally determined age, but also know how to claim them through structural coupling by the interpreters' interactions with the legal system (Luhmann 1990 p. 37). Although Luhmann's theory of systems does not focus on individual communication if not providing meaning, the interpreters as a professional group *structurally couple* as they through their knowledge can determine what the legal system can *observe* as giving meaningful communications. The lack of knowledgeable interpreter, especially during 2015, has therefore made it difficult for the legal system to properly include the communications as the legal system can only observe what the interpreters select to share depending on their knowledge.

Due to the Migration Agency's spare knowledge on medical age assessments and the previous issues and critique regarding age assessments overall, the question of possibly volunteering to a medical age assessments is highly doubtful. The court's decision, the empirical material and the literature review indicates that for those lacking documents, *interactions* perceived as giving meaning to the legal system are not communicated in relation to the legal age of eighteen. Likewise in the case of medical age assessments as the science system cannot distinguish adult/child through more than *likely*.

The separation through Luhmann is coded as a negative side of inclusion – an *exclusion*, and is necessitated for a possible *inclusion*. The difficulties therefore become a communication issue and jeopardise which benefits can be included for children in asylum procedures, if it is not possible to separate children from adults. It is further difficult to see alternatives to the present system, in the context of the modern world as it is. The medical age assessments are however not voluntary as long as it is legally coded in relation to the burden of proof as placed on the applicant. Although Luhmann refers to the paradox of *inclusion* as necessitating exclusion, in relation to medical age assessments the political system seems to overburden its system through *self-irritation*. While striving at

“stimulating a change in law” exceeding the expectations of other systems through their imposed legislations (Luhmann 2004, p. 411).

7.4 The unintended/unanticipated consequences of medical age assessment procedures

There have been early signals regarding missing minors for a substantial amount of time. The government's consultation bodies are also questioning the effects of the new implementations. A problem, which was evident through the interviews, there are no clear rules on the follow-up work with the minors. As mentioned by several participants, based on the police knowledge, the County Administrative board notions, and the participants' views presented, arguably these consequences are what Merton (1936) would call unintended, but not unanticipated. In relation to the public goals presented through legislation, the political system aims at maintaining legitimacy through presenting the goals of respecting state finances and children's rights. The political system is aware of the high risk of disappearances, and also of the police issues enforcing expulsions. Mentioned as a caution through Merton (1936) is the causal imputation between the procedures proposed and if the possible consequences are their real effect (ibid, p. 897). Considering the complex area of age assessments, this arguably limits the arguments made, which is also in line with Luhmann's notion of contingency. However, the consequences presented are primarily relevant for those who arrived during 2015 and are still waiting for their asylum investigation. As most of them were in their upper teens when they arrived, the margins of error in both medical assessments but also age assessments overall will inevitably cause doubts in the asylum process relating to their age. As stated, those lacking documents will have a hard time achieving a level of *probable* age without consenting to a medical age assessment.

Through the participants from the NGO and the literature review, the prognosis for disappearances are connected to stricter policies, especially those who have already been in the country for a long time, where it is unlikely that they will return to their country of origin. Of particular focus is the problematic issue

of being moved to another municipality once re-evaluated upwards and that these decisions become effective immediately, which then differs among municipalities (Project Manager NGO; Caseworker HVB). Instead it becomes a matter pushed onto NGOs (as they are partially funded by the government). In the case of those arriving during 2015 this could become particularly problematic, as they are likely to stay in Sweden even if having to go underground. In the light of the Swedish police issues of effecting expulsions, this could create other social problems (NGO), which could be understood in relation to political values of peace, freedom etcetera (King & Thornhill 2003, p. 93).

Through Luhmann, the political system's selection in relation to the expectations set on the science and legal system will only present a range of possible meanings depending on the systems' operations (Luhmann 1995, p. 106). Regarding the unanticipated consequences, one can then question the costs of medical age assessments. All participants estimated an increased use of the new medical age assessments (as opposed to the previous medical methods). When in doubt, instead of providing the international principle of the benefit of the doubt, some participants argued that the Migration Agency could now use the medical age assessments instead, as they sometimes used the courts previously. Relating to the political system's expectations, for the science system to maintain its *legitimacy* it can only provide answers of a *likely* matter. To do so, the system will produce communications through using two different medical methods and a total of at least five different doctors in their analysis of each applicant's medical age assessment to achieve *likely* criteria.

In relation to the expert's prognosis of significantly less applications in the coming year this is an important consideration of political selection. As presented in the literature review and the NBFM response, there is also the possibility of the medical age assessments showing adults as underage due to the margins of error (also necessary to maintain legitimacy within the science system), which might inflict further on the actual costs. Finally the possibility to appeal the age separately could also affect the assessments cost and undermine the political goal of using resources aimed for children on only children and adults residing in

accommodations adapted for children. Here the courts will play a significant role depending on how they choose to take decisions in these cases as they can postpone the direct effect of the temporary age assessment earlier in the process, reducing the legal system's complexity by deciding if the age should become effective in the final asylum investigation instead.

7.5 Conclusion

Despite having to wait for the actual effects of the implementation of medical age assessments, the analysis presented argues that the methods available today will not allow neither *inclusion* nor an *exclusion* as hoped for. Those missing proper documents cannot be communicated the way the political system as legislature expects within the boundaries of the systems of science or law. However, the legal decisions made are lawful only through the legal system's self-reference as they are connected to the age of eighteen and what communications the system can handle. The decisions depend on what information is made accessible for the legal system. In line with Noll's argument the legally determined age of eighteen is valid for those who belong to the parts of the world where these medical age assessments can be made as there are civil registration systems and reference data for comparison. Thus the benefits of being underage can only be accessible for those who can be part of the *inclusion*.

However, through Luhmann separations as mentioned by Noll including minorities is not possible as the legal system cannot separate those who are outside of the law's boundaries. Especially not if it conflicts with the system's functional meaning of creating normative expectations through treating equal cases alike. These issues are presented through the Migration Agency participants, and are similar to the practical issues presented by the National Board of Health and Welfare's analysis. Although the aim is not to assess the best methods on age assessments, in relation to Luhmann's theory to reach the political systems goals of legislation, the age assessments should be placed outside of the legal system. It should only become an operation within the science system, which could only create meaningful communication to the legal system once it can provide an

answer to the question of adult/child. However, as it stands today, neither proposed method are deemed reliable and the Migration Agency can only operate in relation to their steering documents and procedures. As mentioned by the Supervisor (HVB), the Migration Agency is not more an age expert than anyone else working with the minors, and should not be expected to be either.

More minors will most likely go underground as effect of more restrictive policies, and not only the implementation of medical age assessments. The lack of cooperation among authorities and difficulties in locating minors will most probably also persist. The NGOs working with the minors will most probably have to take on a leading role, offering human rights the political system cannot include through its boundaries, and possibilities through legislation. If the amount of applicants is reduced as the prognosis presented by the expert indicates, the cost of the medical age assessments (including the pilot study currently proceeded), and the court appeals could become more expensive than expected. But as the political system cannot inflict on the other system's operations, through the concept of contingency a question of the effect then offers several possible outcomes.

Finally concluding that the use of medical age assessments, as they stand, are a lawful legal decision taken within the legal system, but which requires data from other systems as science. Because the legal system can only *observe* the information on its own communicative terms through reducing its own complexities, as a result, the controversy surrounding medical age assessments remains. The political administrations legislating incentives are not possible to achieve through its expectations on law, as law cannot resolve the problem of age assessments overall through their operations. It can only recognise evidence produced in the science system on its own communicatively closed terms, in order to maintain the reduced complexities within the systems the legal system cannot respond to the expectations set. The political system is therefore engaged in an area, which is currently too complex for legislation to meet the goals posed of minimising costs and achieving a child's right motive and where the only way to solve the communication problems is by lowering the expectations.

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Appendix 1

Briefing/Debriefing

Briefing

This interview is a part of my Master thesis in Sociology of Law at Lund University. My area of research is medical age assessments in the asylum process. Age Assessments have been discussed from various perspectives and my aim is to bring a nuanced perspective to the discussion. The interview will be used as part of the material for analysis, and therefore aims at creating an understanding for the process. You as a participant will be offered anonymity through the process, and thus all information connected to you as a person will be confidential. However your professional role is important for contextualising the analysis. The interview will only be used in this thesis and will not be forwarded or used in any other material.

To enhance my recapturing of our interview I will suggest that we record the interview and that I take notes. If you do not feel comfortable with having the interview recorded or me taking notes, I will respect that. If you at any time during the interview feel uncomfortable or do not want to answer a question, just let me know and we will proceed with another. Should you during or after the interview feel that you do not want to continue participating this too will be respected. Your participation is completely voluntary and any decision you take will be respected. You will have full access to the material, including the finished thesis. If you would like to receive the thesis prior to publishing just let me know.

Before we start,

- Do you have any questions or concerns you would like to bring forward?
- Would you feel comfortable if we record the interview and I take notes?

After we finish our interview, I will transcribe and offer you a copy.

Note to self: Always double check the audio recorder prior to start.

Debriefing

Ask if they have any other questions, comments, concerns?

Encourage further communication if anything would come up,

- also would it be possible with another interview if necessary?

Make sure to repeat possibilities of receiving transcripts, and thesis.

Appendix 2

Interview Guide

Think of throughout

- Do I understand you correct if...? Use when in need of clarification or elaboration
- Questions through: What? Where? Who? When? How?

Questions

- What is your professional background
- Tell me about your workplace?
- How long have you worked at XX?
- What has been your role?
- What does a normal workday look like?
- What are your professional experiences of unaccompanied minors?
 - Through other personal participation in other organisations?
- What is important in your work with children?
- What is the age of the persons you usually come in contact with?
- How do you communicate with the minors, could you describe a meeting?
- Who is present in the meetings with the minors?
- How do you perceive the daily work through interpreters?
- What is your perception of age assessments?
- Is there a need for **medical** age assessments?
- Could you give me some examples?
- What information is there regarding medical age assessments for the asylum seekers?
- What is your perception of the voluntary medical age assessments currently in place?
- What is your perception of the asylum seeker's burden of proof?
 - And in relation to the methods available?
- What evidentiary value do documents that asylum seekers bring have?
- Is there a level of accuracy for what documents better than other?
- Do you know if a medical age assessment has been done?
- How is the information shared with the applicant?
- How long are the handling times at the Migration Agency?
- With the National Board of Health and Welfare taking over the age assessments, will the number of medical age assessments change?
- Are there any alternatives?
- How do you colleagues work together?

- Who is responsible for the youth ones the age is re-evaluated upwards?
- Have you read the County Administrative Boards report published in January, 'Lost in Migration'?
- What did you think of it?

Particularly the Migration Agency

- What is happening right now at the Migration Agency in regard to age assessments?
- How do you perform your age assessments?
- What is the information regarding medical age assessments on your workplace?
- Alternatively: What are your instructions on age assessments?
- How much information is available?
- Is the information easy to access?
- Who takes part of the medical reports that are written on medical age assessment?
- How are the medical reports used in your daily work?
- What information is there to custodians?
- How will the levels of accuracy from the National Board of Forensic Medicine be applied in your practical work?
- Will the changed legislation about placing the age assessments earlier have any impact on your daily work?
- What happens if the age is assessed earlier in relation to the burden of proof?
- What evidentiary value does the medical age assessment have?

Appendix 3

Thematic Mapping of Interviews*

Participants Professional role	Burden of proof	Benefit of the doubt	Information/ Knowledge	Rule of law	Voluntarism	Outcome/ Cost
Previous Caseworker, Migration Agency	X		X	X		
Caseworker, Migration Agency	X	X	X	X	X	X
Expert Migration Agency	X	X	X	X	X	X
Lawyer NGO	X	X	X	X		X
Project Manager NGO	X	X	X	X		X
Supervisor HVB home	X		X		X	X
Manager HVB home	X	X	X	X		X
Psychiatrist HVB home		(Best interest of the child)	X		X	
Caseworker, HVB home	X	X	X	X	X	X

* The themes were marked according to colour in the transcripts from the interviews, and later used for the analysis.

Appendix 4

Example quotes used in summary

6.1 Is it possible to meet the evidentiary requirement of burden of proof without consenting to a medical age assessment?

The Benefit of the doubt

[1]“another positive aspect with placing it later is that we show that we do not separate this question in a way that we have to now(...) where we could have gotten the full picture, it’s much easier to work around a theme then, now we detach [*knoppa av*] and cause several investigation occasions”(Expert Migration Agency).

[2] “But, it is always like that, it is a, it is a benefit [*förmån*] that one applies for, to get protection of another country, and that’s the way it is within the Administrative court so that’s kind of the foundation when you apply for a benefit [*förmån*], that you as a benefit [*förmån*] applicant need to prove, that the situation is such that you are classified to get a certain benefit, so I think it works well, and as mentioned, it is, we also have our share in it, the burden of proof, in helping them on the way to live up to the burden of proof” (Caseworker Migration Agency)

[3] “the hardest part was when you got a child, and you saw it was a child but the person could not provide their birth date or something, and eh, could not state their age at different occasions, and like that, and then, ehm, some decision-makers were decent and then, if I went to them they would trust me, that I am not stupid, I know, when a, when a person is a child for instance, for instance a 14 year old is pretty easy to see, but there were decision-makers who meant that no, you should only see to the material [*underlaget*], and like that, it was pretty tough

to write up a person's age like, when you knew.” (Previous Caseworker Migration Agency)

Information/Voluntarism

[4] “when we would explain medical age assessments in particular, as that phenomenon is not present in for example [mentions country], the interpretation would get skewed, they interpreted sort of what you said, it was not exact, but then I would usually say that talk with your public counsel(...)when it regarded medical age assessments in particular I would say the interpretation was not as good as in the rest of the investigation.(...)sometimes it would be really hard to translate, considering we use very bureaucratic language(...)but it was very rare that it was completely wrong,” (Previous Caseworker Migration Agency)

[5] “if you chose not to do it, well then the evidentiary position remains unchanged, and then we’ll see what judgement the Migration Agency will make when we decide the case, if we still do the same assessment as the time when we gave the information about medical age assessment, well then you have not lived up to the burden of proof.”(Expert Migration Agency)

6.2 How are the interdisciplinary complexities of medical age assessments understood by those working with unaccompanied minors?

Information/Knowledge

[6] “everything is relatively new now, if we think of this, this new type of medical age assessments, they have existed before and they have not been particularly great, I personally think if you then see to the old assessments, then the, reference material have not been the best, where they have compared to a white male American population, I think it is, if you’re then going to say, eh, compare with youth that have lived a much harder life which also set it trace, in,

so to say, den physical development, that becomes a bit skewed(...) but the new assessment is going to be, partly this with the wisdom teeth that are going to be x-rayed, then it's the kneecaps that they will do an magnetic resonance image of, and without having to much knowledge, about it, it should be a safer method to see how old someone is" (Caseworker Migration Agency)

[7] "the most important question, eh, that these methods should answer is whether if the applicant can be considered an adult or child, not try to see what age one has this is to minimise possible margins of error(...)but at least be able to answer the question, at least adult or child". (Expert Migration Agency)

[8] "you get the entire report, but since we have not learned anything about this, so the only thing we look at, or the only thing I looked at was the summary ehm, the final statement(...) when you have not learned anything about it, it is a foreign language(...)I think, myself and many of my colleagues didn't really know what it meant in practice" (Previous Caseworker Migration Agency)

[9] "take care of the results which they provide us, eh, understand it procedurally [*processuellt*] and legally and then work them into, our cases with unaccompanied minors, as it is them at first hand it applies to" (...)Regarding our own part we have had to set up, mutual rules(...)how we will understand these circumstances which lead to [*föranleder*] that we see a case, a case where there is a need of continuous age assessment." (Expert Migration Agency)

[10] "norms in a uniformed way so the entire agency understands the question the same way, and, can make, decisions according to the principle of equal treatment(...) with respect for the separate cases, but through the same methods" (Expert Migration Agency)

[11] *I: How will they use the different levels in their work?*

Expert: It will be presented through relative terms, in the actual assessment, what a certain conclusion relate to, where it will appear, to take another example, that

this individual is assessed to ha...,hm, certain qualities which puts this person above the standard population which has been estimated at another time, then we have an information [*uppgift*] which puts that information [*uppgift*] in relation to another, eh, so that way we can understand what strengthens this conclusion, and then it needs to be easy for the Migration Agency and also the judges because they do not possess any other medical knowledge than ours, Eh decision-makers at the Migration Agency to understand what conclusion the National Board of Forensic Medicine conclude, because of that it should be constructed that we ourselves understand the conclusion in a correct way and it should not be to the separate judge or the individual to evaluate, the medicine, science, more than that the higher courts decides to in a guiding way call out the methods that have been used, but the assessment should give us the answer to the question we have posed: is the person a child or an adult, what do your assessments argue? [*Vad talar era undersökningar för*]? (Expert Migration Agency)

6.3 What are the unintended/unanticipated consequences of medical age assessment procedures?

[12] “There is an advantage with placing this earlier, it can give more, eh, assurance for the individual applicant to know that yeah, this is what the Migration Agency thinks through an assessment of the age I have stated and I at least have the possibility to appeal it if I should not be unanimous with the Migration Agency,(...) because that possibility has not existed, until now, an advantage mentioned in the proposition to the law changes is that resources reserved for children should go to children at first hand, so adults should not enjoy the benefits that are reserved for children, and adults and children should not live together, (...) those are the advantages the Parliament and Government has identified(...) since we now have this requirement to do this earlier, we have to detach [*knoppa av*] those parts completely, simply that we take the identity-investigation and put it earlier in the process, ehm, shortly after one has applied for asylum(...) we summon a thorough [*fördjupad*] application dialogue(...) where

we examine the identity(...) since we now do it earlier in the process, the Government and Parliament mean that we can now at least make a temporary decision, that decision will be possible to appeal, and proceed to review in court” [4] (Expert Migration Agency)

[13] “in these cases, it is to take on the application, try the case regarding residence permit [*uppehållstillstånd*] and the separate from the case through a decision, eh, all these other things that go on in the applicant's life it reflects what other agents out in the community, the most important agents in the question regarding the unaccompanied minor, that's the municipality, but also other against, police, eh, health care, there are so many who are around, and the Migration Agency has a limited role, a limited mission in relation to the whole picture” (Expert Migration Agency)

Cost and outcomes

[14] “ and that cost, what is it going to be then? In relation to this new? With two dentists, two independent doctors who will look at the knee-joints, and then someone from the National Board of Medicine who is going to do this assessment, I mean it's like(...) this method requires a lot of resources as well” (Project Manager NGO)

[15] “To legalise their stay through [name]'s work(...) write regulatory impediments to enforcement, check if something has been missed in the asylum process(...) it is a lot of custodians who contact us(...) What we like, well this, you can do this, you still have your public counsel(...) we try to work preventive, because we don't want children to disappear(...) we would never recommend someone to go underground, because it is really, really tough to live in a parallel community in Sweden(...)and it is a growing target group this and the ones we meet are primarily young afghan boys who have gotten their age re-evaluated upwards” (Project manager NGO)

[16] “The municipalities budget, that’s also one funny aspect, it is planned from January to December, and the money have to do, so it is enough if you have a couple of LVU placements or LVM and the money will be finished, and where will you then receive the money, from elderly care, child care? The citizens don’t like that (sigh)” (Manager HVB)

[17] “we have youths in our target group who disappear that may have went to Germany, who we believe have went to Germany, or Italy of any other city, it is an issue for us as well to keep in contact with them because it is a target group which receives those ‘Lyca mobile’ things outside of the Central station

I: What were they called?

Project Manager: Yeah, well they change numbers, they don’t have a contract for their cell phone, they have debit cards, and when getting like a twenty for calling someone ‘sweet I’ll change number’, it’s really hard to establish follow ups” (Project manager NGO)