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EDITORIAL ARTICLE

Current situation of the forensic estimation of the age of non-accompanied foreign minors in Spain[☆]



Situación actual de la estimación forense de la edad en menores extranjeros no acompañados en España

Pedro M. Garamendi-González^{*}, Manuel López-Alcaraz

Instituto de Medicina Legal y Ciencias Forenses de Huelva, Huelva, Spain

It has been 21 years since Dr José Luis Prieto and Dr José María Abenza published, in the REVISTA ESPAÑOLA DE MEDICINA LEGAL, their seminal work in which the means available for age determination in the adolescent was treated from the medico-legal point of view. Three years later, Dr Prieto organised in Madrid the first meeting in Spain to focus on the then incipient medico-legal problem of estimating the age of undocumented minors.¹ In 2011, the same journal published the Spanish document, Consensus of Good Practice in the Institutes of Legal Medicine (ILMs) (*Institutos de Medicina Legal, IML*, in Spanish), on forensic age estimation for unaccompanied minors (*menores no acompañados, MENA*).² This consensus became a technical reference document in 2014 for the Framework Protocol on specific actions related to the MENA prepared by the Ministry of the Presidency.³

During 2018, the Scientific-Technical Committee of the Medical Forensic Council in Spain organised a national survey to ascertain how closely the Legal Medicine and Forensic

Sciences (LM-FS) Institutes and the juvenile and foreigner prosecution services in Spain followed that Framework Protocol and the Consensus of Good Practice document. A previous 2004 survey had revealed that the ILMs and prosecution services had poor adhesion to the then international recommendations on the matter and that finding out the current situation in the field of medical forensic practice was necessary.⁴

The recent survey about the MENA activity of the LM-FS Institutes and of the juvenile prosecution services in 2017 yielded various interesting facts. On the one hand, there was an improvement over the 2004 statistics in the extent to which LM-FS Institutes and the prosecution services complied with the national and international recommendations (the LM-FS Institutes directly participated in up to 51% of the cases). However, in spite of the fact all the LM-FS Institutes surveyed had an action protocol in line with the consensus document and the Framework Protocol, the prosecution services sent the MENA to public healthcare hospitals without LM-FS Institute participation in up to 49% of the cases, consequently not following that protocol strictly (Fig. 1). On the other hand, the recent survey revealed a very asymmetric distribution of the cases under study among the autonomous communities; the majority of cases per inhabitant were located in the coastal communities of Andalucía and Murcia and in the autonomous cities of Ceuta and Melilla (Fig. 2). Finally, the most difficulties were identified in the

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^{*} Corresponding author.

E-mail address: imanolgaramendi@gmail.com
(P.M. Garamendi-González).

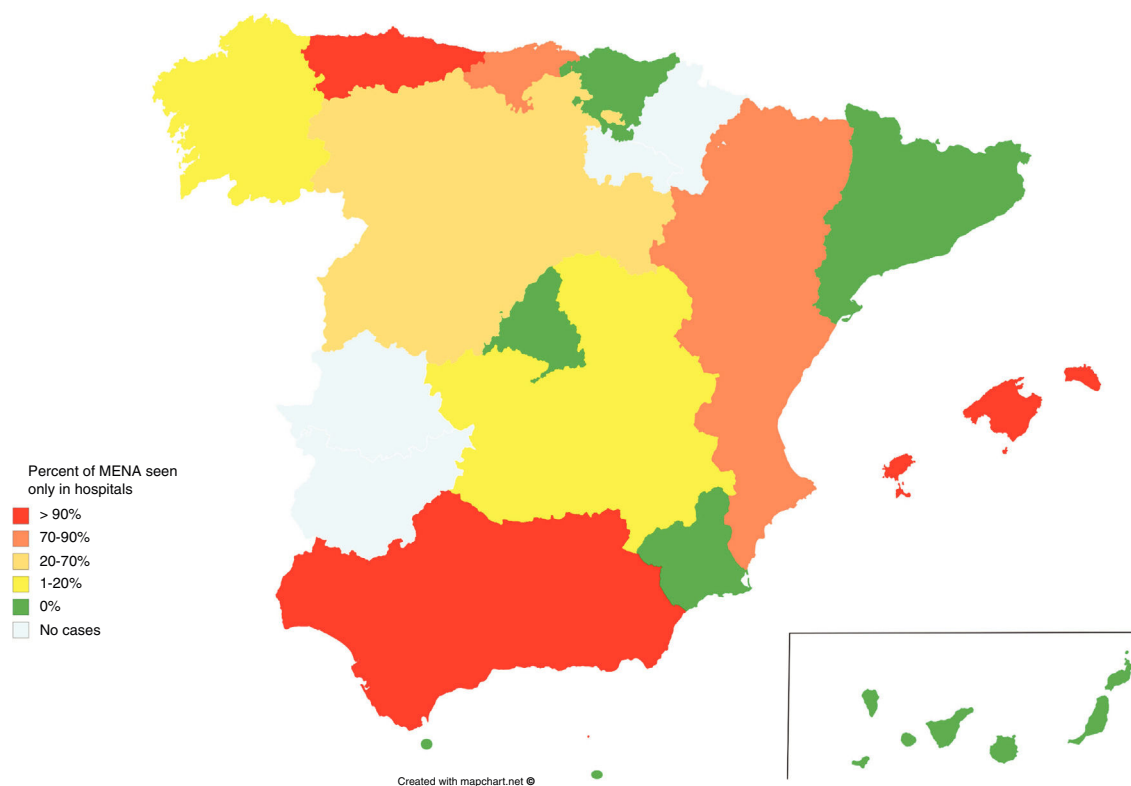


Figure 1 Hospital participation without ILMFS collaboration in the estimation of the age of unaccompanied minors (MENA).



Figure 2 Total number of unaccompanied minors (MENA) referred by provincial Offices of the Prosecutor for age estimation, both only to hospitals and to hospitals and the ILMFSs, distributed by autonomous communities.

Autonomous Community of Andalucía, where up to 45% of the MENA cases were received and where the LM-FS Institutes did not participate in up to 99.7% of the cases, with the studies being restricted to the participation of the public healthcare hospitals.

Throughout 2018, meetings sponsored by the Andalucía Office of the People's Advocate have also been held to treat this and many other problems that surround the MENA in our community. The juvenile and foreigner prosecution services in Andalucía are committed to adapt the actions on this matter to the Framework Protocol and to ensure that the LM-FS Institutes participate. The province of Huelva has served as a pilot centre for developing a standard work protocol for estimating MENA ages. In Huelva, the protocol involves the social services, the police, the prosecution services and the LM-FS Institutes and has had satisfactory results in 2018 and in the first third of 2019.

The European work model for determining MENA age has repeatedly been criticised by several international organisations. The role of the prosecutor as the one responsible for the decision of whether to estimate age or not has been subject to debate because, in other European countries, the decision is reached by administrative authorities outside the judicial context. The fact that the prosecutor in Spain has a double role – serving as the judge in procedures within the jurisdiction for minors and, simultaneously, as the guardian of the rights of the minor involved in the proceedings – is often poorly understood. With varying rigour in scientific arguments, there have also been discussions about the suitability of applying medical examinations to determine MENA age because there may be errors in the tests that have to be used.⁵ The role of the medical examiners in this has to be clear: they have to insist on the need to perform appropriate medical examinations under conditions of absolute respect for the rights of the alleged minors, while recognising the inevitable possibility of errors in the determination of majority or minority of age and specifying the margin of error as closely as possible when known and exhausting the reasonably required means of identifying potential pathological or socioeconomic sources of such error.

The experience gained in these years has emphasised the need for action protocols to ensure homogeneous actions

when facing the same type of cases in different territories and to guarantee uniform criteria to prevent discrepancies that call the role of the medical examiner into question. The organisation of forensic medicine in the ILMs has undoubtedly facilitated this requisite uniformity. Nevertheless, the recent study by the Spanish Scientific-Technical Committee of the Medical Forensic Council indicates that it is necessary to continue advancing in that direction. Along the same line, a commitment is needed from the teaching organisms in the Ministry of Justice and in the Autonomous Communities, through national courses and meetings and LM-FS Institute guidance, to permit medico-legal work to be consistent and in line with the recommendations and protocols. The experience of our autonomous communities, which have been applying these protocols and recommendations in practical situations for several years now, might be fundamental in developing common work guidelines among all the communities to ensure uniform medico-legal practice throughout the national territory.

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