

4.1. Shifting the burden of proof to the authorities when minority is challenged, even in cases of late disclosure

International human rights bodies have consistently emphasised that the burden of proof cannot rest exclusively on applicants, with the ECtHR underscoring the authority's duty to verify claims of minority when they are neither unfounded nor unreasonable. This has also been reflected at the national level, for example in decisions of Dutch and Belgian courts. Likewise, citing standards established by both the UN CRC Committee and the Committee of Ministers of the Council of Europe,34 the EUAA Practical Guide on Age Assessment (November 2025, p. 22) further highlights that the burden of proof to rebut the presumption of minority *(see Section 5)* lies with the authorities.

The ECtHR has consistently held, on the one hand, that applicants are required to substantiate their claims to minority and may be called upon to explain inconsistencies in their statements or respond to objections about the authenticity of documents when their submissions give rise to serious doubts (see *Mugenzi* v *France*, 10 October 2014, para 47; *A.C.* v *France*, 16 January 2025, para 157;35 and *F.B.* v *Belgium*, 6 March 2025, para 72). On the other hand, the ECtHR has emphasised that authorities are under a positive obligation to verify claims of minority.

In *Darboe and Camara* v *Italy* (21 July 2022, paras 79 and 131) the court referred to the EU Council Resolution on unaccompanied minors who are nationals of third countries,36 cited in the part of the judgment outlining the EU legal framework. The resolution provides that an asylum seeker claiming to be a minor must, in principle, submit evidence of age, but when such evidence is unavailable or serious doubt persists, States may carry out an age assessment.

Central to this sub-section, the ECtHR did not focus on whether the applicant was in fact a minor upon arrival in Italy or whether he had produced documentation. Instead, it analysed whether the authorities took steps to verify his claim insofar as it was not unfounded or unreasonable, in this case through a medical age assessment, and whether this verification was accompanied by adequate procedural safeguards. The court concluded that it was not, in breach of Articles 3, 8 and 13 of the Convention.

The ECtHR has also held authorities accountable for not verifying claims to minority when applicants initially misrepresented their age, as illustrated by *M.H. and S.B.* v *Hungary* (22 February 2024, para 79). In that case, the court found that the State had violated the Convention by presuming that the applicants were adults solely on the basis of their initial

declaration of age and by placing on them the burden of proving otherwise. The court noted that for detained asylum seekers, especially children, obtaining evidence of age can be challenging or even impossible. It held that the authority's refusal to verify the late disclosure of minority effectively shifted the burden of proof onto the applicants, from that point onwards rendering their detention arbitrary and in breach of Article 5(1) of the ECHR.

Similarly, in *O.A. v Denmark* (7 November 2017), the CCPR held that Denmark was required under Articles 7 and 24 of the ICCPR to re-examine a Syrian applicant's minority claim and suspend his deportation to Greece pending the review, even though he had initially misrepresented his age before the Greek authorities out of a fear of detention and later repeated the misrepresentation in Denmark. During the appeal proceedings in his asylum case, the applicant revealed to be a minor for the first time and submitted a birth certificate and a family book. The committee emphasised that authorities must properly examine minority claims, taking into account that children may lack maturity and may provide inaccurate information about their identity because of fear or misinformation.

Likewise, the CRC Committee has repeatedly emphasised that the burden of proof does not rest solely with applicants, given the structural imbalance in access to evidence between them and the State during age determination processes (see *C.O.C. v Spain*, 29 January 2021, para 8(2); *A.L. v Spain*, 31 May 2019, para 11(2); *R.K. v Spain*, 18 September 2019, para 8(2); *A.D. v Spain*, 4 February 2020, para 10(2); *M.B. v Spain*, 28 September 2020, para 9(2); and *A.M. v Switzerland*, 21 May 2024, para 4(5)). In all these cases, the committee found that the respective authorities, which disregarded the applicants' evidence without verifying it, breached Articles 3 (best interests of the child), 8 (right to preserve the child's identity) and 12 (right to be heard) of the CRC.

The CRC Committee's views in *R.Y.S. v Spain* (4 February 2021, para 8(11)) further highlight that child applicants for international protection may face particular difficulties in obtaining evidence, including official documents. Authorities must therefore accordingly consider all available evidence, while taking into account the risks that verifying such evidence or seeking additional proof would pose to the applicants. As in the above cases, the committee found violations of Articles 3, 8 and 12 of the CRC, as well as Articles 16, 20, 22(1), 27 and 39 of the same Convention, noting the authority's disregard for the applicant's well-founded fear of contacting her family in Cameroon, arising from sexual abuse by her father. It likewise noted that the authorities had failed to give weight to the documents submitted by the applicant, yet faulted her for not obtaining a passport to substantiate her age.

These standards have informed the development of national jurisprudence, including in Belgium and the Netherlands, where courts have recognised the authority's obligation to verify claims of minority by undertaking evidentiary measures of their own motion. Drawing on *Darboe and Camara v Italy*, the Dutch Council of State ruled in October 2024 that, while under national law the burden of proof for age and identity lies with the applicant, the unique challenges asylum seekers face in submitting evidence, together with the duty to cooperate under Article 4(1) of the recast QD, mean that the burden is shared with the authorities. Thus, when an applicant claims to be a minor, the presumption of minority applies initially, placing the onus on the minister to rebut it through further investigation if necessary. The council further emphasised

that this process must prioritise the best interests of the child, in line with Article 24 of the EU Charter and Article 3 of the CRC, and grant applicants the benefit of the doubt when evidence is scarce. This standard-setting judgment was later confirmed in other Council of State rulings held in October and November 2025.

In the same vein, in its recent ruling *A.M.* v *Belgian State* (27 May 2025) which followed the ECtHR landmark ruling in *F.B.* v *Belgium*, the Belgian Council of State established that, when an applicant cannot provide evidence of age, the authorities have an obligation to ascertain it of their own motion using the least-invasive means available. In this judgment, the council reviewed the referral of an undocumented applicant to a medical age assessment and concluded that the authorities were obliged to consider whether the applicant's age could have been verified by less intrusive means than a bone test, which was not done in this case, in breach of Article 8 of the ECHR.

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  Council of Europe. Recommendation CM/Rec(2022)22 of the Committee of Ministers to member States on human rights principles and guidelines on age assessment in the context of migration, 2022, Principle 2.

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  Council of Europe, European Court of Human Rights, *A.C.* v *France*, 15457/2025, 16 January 2025, para 157.

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  Council of the European Union. Council Resolution of 26 June 1997 on unaccompanied minors who are nationals of third countries (97/C 221/03), Article 4.

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