

4.2. Evidence submitted by applicants considered as a whole and afforded the benefit of the doubt

Soft law instruments and courts have often addressed the reliability of applicants' documents, which must be presumed genuine for the purposes of age assessment *(see Section 2.1)*, as well as the credibility of their statements *(see Section 2.2)*. The European Council on Refugees and Exiles (ECRE), for instance, recommends that national authorities refrain from relying on inconsistencies or contradictions in a child's account to the detriment of their rights, unless there are obvious and serious reasons for doing so.37 This is illustrated in the case law of the ECtHR, which has consistently affirmed that both applicants' statements and documents must be afforded the benefit of the doubt (see *Mugenzi* v *France*, 10 October 2014, para 47). National courts have adopted similar reasonings. For example, the Higher Administrative Courts of Bavaria (5 April 2017) and Rhineland-Palatinate (26 January 2024) observed that some cultures attach little significance to the date of birth and may not formally register it, and therefore held that inconsistencies arising from these circumstances should not automatically be interpreted against applicants.

Medical age assessment methods have also been addressed by courts and international human rights bodies *(see Section 3)*, with the CRC Committee repeatedly noting that such techniques can provide only approximate estimates of biological age and therefore are not suitable as the sole method to assess chronological age (see for example *A.L.* v *Spain*, 31 May 2019, para 12(6); *R.K.* v *Spain*, 18 September 2019, para 9(6); *A.D.* v *Spain*, 4 February 2020, para 10(12); *C.O.C.* v *Spain*, 29 January 2021, para 8(11); and *R.Y.S.* v *Spain*, 4 February 2021, para 8(6)). Similarly, UNICEF38 has issued guidance recalling that these examinations must indicate a margin of error, which must be interpreted in favour of the applicant, a requirement now codified in Article 25(2) of the APR.

Several national jurisdictions, including Austrian, Swiss, Belgian, Czech and French courts, have coupled the above evidentiary benefit with the obligation to consider all available evidence as a whole, which is now stipulated in Article 25(3) of the APR. In this regard, the Austrian Federal Administrative Court (28 November 2017) found the medical age assessment to be flawed and disregarded its findings. In the absence of other evidence, the court applied the benefit of the doubt and accepted the applicant's stated date of birth. Similarly, the Swiss Federal Administrative Court (4 March 2019) held that decisive weight had been unreasonably assigned to a bone test based on the G&P Atlas, despite scientific literature attributing a wide margin of error and therefore low probative value to the method. The court further found that the

assessment arbitrarily disregarded the Eritrean applicant's statements, baptism certificate and student card, and that an overall assessment of the evidence was not conducted, including the reasons for the absence of identity documents.

When evidence yields conflicting findings of minority and majority, courts have often applied the benefit of the doubt and resolved in favour of minority. For instance, the Belgian Council of State (9 December 2019) annulled a decision declaring an undocumented Guinean applicant to be an adult on the basis of a triple bone test of the clavicle, hand/wrist and dental X-ray, because the latter included an age range extending below 18 years. The court held that the medical report failed to justify why the clavicle result had been preferred over other indicators that did not definitively rule out minority.

Similarly, in 2021 the Czech Constitutional Court overturned a Supreme Court ruling concerning a radiological age assessment which, when applying the G&P Atlas method, indicated majority, while the TW3 method indicated minority. The applicant's claim to minority had been contested on the basis of the G&P results, while the TW3 findings were unduly disregarded on the grounds that the discrepancy between his claimed age and the G&P results was excessive. Citing UN CRC Committee General Comment No 6 and Resolution 1810 of the Parliamentary Assembly of the Council of Europe,39 the court held that the applicant must be given the benefit of the doubt and noted that the discrepancy between his claimed age and the assessment result was 2 years, which was insufficient to cast doubt on his claim. In addition, the court noted that the applicant had submitted copies of documents that had been disregarded and had not been given an opportunity to clarify the discrepancies, reiterating that children may provide inconsistent information due to immaturity or trauma.

As in the two preceding cases, French case law has likewise established that all evidence relevant to age assessments, and not only medical methods, must be considered. In March 2019, the French Constitutional Council examined Article 388 of the Civil Code, which stipulates that radiological bone tests may be carried out only with the applicant's consent, in the absence of valid identity documents and when the claimed age is not plausible; their conclusions must include a margin of error; and applicants must be afforded the benefit of the doubt. The council noted that all available evidence, such as social assessments or interviews conducted by child protection services, must be taken into account and medical conclusions cannot constitute the sole basis for determining age.

Accordingly, in January 2022 the French Court of Cassation quashed a decision declaring the applicant to be an adult on the basis of radiological results alone, without giving due weight to other evidence or applying the benefit-of-the-doubt principle. While the applicant's civil status documents indicated minority and a social assessment suggested that he appeared to be 16-17 years old, the radiological examinations concluded an age range of 18-20 years. This, together with the fact that the bone test did not indicate a margin of error in its conclusions but only in the body of the report, led the court to find a violation of Article 388 of the Civil Code and to annul the decision. The Court of Cassation found that, by giving primacy to the medical examination over other means of proof, the authorities had failed to afford the benefit of the doubt to the applicant and upheld his appeal.

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ECRE (December 2022). Age Assessment in Europe: Applying European and International Legal Standards at all Stages of Age Assessment Procedures, Legal Note 13, pp. 15-16.

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  UNICEF (January 2013). Age Assessment: A Technical Note, Standard 7, pp. 15-16.

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  Council of Europe, Parliamentary Assembly (15 April, 2011). Resolution 1810 on unaccompanied children in Europe: issues of arrival, stay and return, para 5(10); UN Committee on the Rights of the Child (1 September 2005). General Comment No 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin, CRC/GC/2005/6, para 31(A).

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