

4.4. Benefit-of-the-doubt principle beyond age determination, including in family reunification procedures

Age determination affects many aspects of a child's legal status, and therefore the benefit-of-the-doubt principle applies across contexts. For instance, in the family reunification procedure for beneficiaries of international protection, the CJEU has held in cases C-550/16 (12 April 2018) and C-560/20 (30 January 2024) that the relevant cut-off date for the age of beneficiaries who reached the age of majority during the asylum procedure is the date on which the application for international protection was submitted.

National courts such as the International Protection Administrative Court of Cyprus in *S.A. v Republic of Cyprus* (7 July 2022) have applied the benefit of the doubt to the applicant's age at that date. The court found that the authorities had determined the applicant's age by referring to the date of the medical examination rather than the date of the asylum application. The age assessment estimated the applicant's age at 19.2 years, with a standard deviation of ±1.2 years, placing the lowest possible age at 18. Since the asylum application had been lodged 2 months earlier, the applicant may have been a minor back then. Applying the benefit of the doubt, the court held that the authorities should have referred to the applicant's age at the time of the asylum application and not at the time of the medical examinations for family reunification purposes.

The benefit-of-the-doubt principle operates at different levels in the context of age assessments. On the one hand, it requires that applicants' statements be taken into account and any inconsistencies be assessed in light of the fact that children may be unable to provide a coherent or complete account for a variety of legitimate reasons, and such inconsistencies should not automatically be held against them. While the ECtHR affords applicants' statements and documentation the benefit of the doubt, the CRC Committee has long held that their documents be considered to be genuine unless proven otherwise, and all evidence be considered as a whole, all of which the Pact has now incorporated into EU law. When authorities challenge an applicant's claimed age, they must substantiate that challenge through an age assessment procedure, effectively bearing the burden of rebuttal.

On the other hand, when the evidence yields competing indications of minority and majority, the benefit-of-the-doubt principle requires that uncertainty be resolved in favour of minority. Article

25(2) of the APR codifies this approach by providing that, when an age assessment is inconclusive or produces an age range extending below 18, the applicant must be treated as a child. In practice, several national jurisdictions have already applied this logic when the possibility that the applicant was a minor could not be excluded, thereby suggesting that the operative standard for establishing minority is lower than the preponderance of the evidence standard and may approach the threshold of ‘mere possibility’.

A lower standard of proof (or, put differently, a higher standard for authorities bearing the burden of proof after questioning an applicant’s claim to minority) may also follow from a State’s obligation to uphold the best interests of the child. This principle has a threefold nature.42 First, as a substantive right, it draws attention to the fact that classification as an adult often brings serious downstream consequences which must be considered in advance and as a whole. These may include the termination of guardianship; changes to reception arrangements, access to education and several other rights; safeguards in asylum and broader migration law procedures, family tracing and reunification; and even exposure to detention and *refoulement*. Second, as a fundamental interpretative legal principle, it requires that, when different interpretations of the applicable legal framework are possible, including with regard to the standard of proof, the interpretation that most effectively serves the child’s best interests should be preferred. And third, as a rule of procedure, authorities must put in place strict procedural safeguards, and decision-makers have a duty to err on the side of caution.

- 42

  UN Committee on the Rights of the Child (29 May 2014). General Comment No 14: on the right of the child to have his or her best interests taken as a primary consideration, CRC/C/GC/14.

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