

5. Presumption of minority and procedural safeguards during age assessments

The previous sections have examined the international and EU law provisions governing evidentiary activities carried out during an age assessment, as well as the relevant case law interpreting them. While applicants are the subject of the process, when the competent authority challenges their claim to minority, the same authority often becomes responsible both for conducting the evidentiary process and deciding its outcome. Given the far-reaching implications of such decisions for inherently vulnerable individuals,[43] procedural fairness requires the process to be structured around strong safeguards.

The first such guarantee is the presumption of minority, which is grounded in the principle of the best interests of the child and the authority's obligation to do no harm. It means that, when there are reasons to believe that an applicant may be a child or when an individual plausibly claims to be a child, they must be treated as such unless and until evidence proves otherwise.[44] This principle is expressly recognised in Article 13(2) of the Anti-Trafficking Directive[45] and can also be inferred from the benefit-of-the-doubt rule in Article 25(2) of the APR, which requires applicants to be treated as minors when an age assessment remains inconclusive *(see Section 4).* Since an age assessment is initiated precisely because the applicant's minority is uncertain, the protection afforded by the benefit of the doubt should extend to the period during which that uncertainty remains unresolved. Otherwise, applicants would be denied that protection while the very procedure intended to determine their age is still ongoing.[46]

This section first outlines the scope and procedural safeguards associated with the presumption of minority, and examines when courts consider that the presumption is triggered and when it comes to an end. Following subsections address these protections in detail, namely with regard to the appointment of a representative or guardian *(see Section 5.1),* the right to informed consent *(see Section 5.2)*, the right to an effective remedy *(see Section 5.3)*, and the obligation of authorities to assess age without undue delay *(see Section 5.4)*.

Regarding the presumption of minority itself, courts and international bodies have held that:

- An applicant must be treated as a child from the moment authority has grounds to suspect that they may not be an adult. The ECtHR has not required applicants to substantiate their claims at this stage, as long as they are not "unfounded or unreasonable". Instead, the court has considered it the authority's duty to verify the claims and has held that they cannot disregard claims of minority on the basis that they were raised late.

- The UN CRC Committee and several national courts have held that the presumption of minority continues at the appeal stage until the decision on the applicant's age becomes final.

- While the presumption of minority applies, international human rights, EU and national frameworks as interpreted by relevant courts require that applicants be assigned a guardian or representative, be provided with information about the age assessment process in a language they understand, be given the right to refuse medical examinations and be ensured age-appropriate reception conditions during the age assessment procedure.

Triggering the presumption of minority

Courts and human rights bodies largely agree that the presumption of minority applies throughout the entire age assessment process. Determining precisely when this presumption is triggered is, however, a delicate matter. As early as *Abdullahi Elmi and Aweys Abubakar v Malta* (22 November 2016, paras 111-115, 119-124, 144-148), the ECtHR held that children must be afforded protection before their minority is formally established by the State, since the court indicated that the obligation to treat an applicant as a child arises once the authority has reason to believe that they may be a minor and continues throughout the age assessment procedure. In the case, two unaccompanied Somali minors, aged 16 and 17, informed the Maltese authorities of their age upon arrival but were nevertheless placed in migrant detention for 8 months in conditions unsuitable for children until their minority was officially confirmed. The ECtHR emphasised that specific arrangements should have been made from the outset to accommodate the applicants pending the outcome of the age assessment, and therefore it found violations of Articles 3, 5(1) and 5(4) of the Convention.

Similarly in Italy, in its landmark judgment *Darboe and Camara v Italy* (21 July 2022, paras 131, 153-156), the ECtHR first referred to this obligation as "the principle of presumption of minor age". The court outlined several procedural safeguards that must apply from the moment the authorities become aware of a claim to minority, insofar as it is not "unfounded or unreasonable", and throughout the age assessment process. The court found that the State's failure to apply the presumption of minority from the outset, after the Guinean applicant revealed to be a minor upon arrival, engaged Articles 3, 8 and 13 of the ECHR due respectively to inappropriate reception conditions, the lack of procedural safeguards such as a representative, and the absence of an effective remedy to challenge both.

In subsequent rulings, the ECtHR has maintained the position that the presumption of minority applies from the moment the authorities possess plausible indications that an applicant may be a minor. Significantly, the court's case law does not require applicants at this stage to provide evidence substantiating their claims, nor has the court focused on the reliability of documents, when available, to trigger the presumption of minority. The ECtHR has accepted copies, untranslated documents and non-legalised or non-biometric civil status documents, such as birth certificates, as sufficient. Its focus has instead been on whether the State provided adequate procedural safeguards and reception conditions from the moment minority was disclosed.

As in the two previously cited ECtHR rulings, in *A.D. v Malta* (17 October 2023, paras 74, 124) the ECtHR confirmed that a mere claim to minority, provided that it is neither "unfounded or unreasonable", is sufficient to trigger the presumption of minority. It observed that the applicant, an undocumented Ivorian national who maintained that he was a minor, had in principle benefited from that presumption when, 2 weeks after his arrival, the Juvenile Court ordered the appointment of a guardian, his placement under the temporary custody of the reception authority, and his transfer to accommodation suitable for children. However, the authorities failed to ensure adequate conditions thereafter, leading the ECtHR to find violations of Articles 3, 5(1) and 13 of the Convention.

In other judgments, such as in *Diakitè v Italy* (14 September 2023, paras 21-26), *T.K. v Greece* (18 January 2024, paras 4, 22 and 23) and *F.B. v Belgium* (6 March 2025, para 81), in which applicants submitted civil status documents in support of their minority claims, the ECtHR focused on the authorities' failure to apply the presumption of minority and to provide procedural safeguards from that moment onwards, rather than on whether the documents themselves constituted sufficient proof of age. In *Diakitè*,the applicant submitted a birth certificate upon arrival but was nonetheless not presumed to be a child nor appointed a representative; instead, he was immediately subjected to a medical age assessment and classified as an adult. In *T.K.*, a Sierra Leonean unaccompanied minor who had initially been registered as an adult in a reception camp on Samos, belatedly submitted an untranslated and non-legalised copy of his birth certificate. In both cases, the court held that the applicants should have benefited from the procedural guarantees established in *Darboe* from the moment they made a plausible claim to minority, thereby engaging Article 8 of the ECHR.

In *T.K.*, the court additionally found violations of Articles 3 and 13 because the applicant had been treated as an adult for more than 1 year, during which he was exposed to inadequate reception conditions and lacked an effective remedy to challenge the situation. By contrast, in *F.B.*, the ECtHR found that authorities had, in principle, respected the presumption of minority, since the applicant, a Guinean girl who presented a non-legalised copy of her birth certificate, was accommodated in a centre for minors throughout the age assessment procedure.

For its part, the CRC Committee has likewise clarified that the presumption of minority applies as soon as authorities have indications that an applicant may be a child. In *Jas.K.B., C.K.B., M.S.B. and J.K.B.* (14 September 2026, para 9(7)), the committee examined the case of an Afghan family detained in Czechia, whose birth dates were all recorded as 1 January, resulting in the elder daughter being considered 18 without an age assessment. The younger daughter was not formally detained but was placed with her relatives in a detention centre adapted to families. Despite the respondent State's claim that the elder daughter "consistently identified herself as 18, and this was supported by available documentation without contradiction", the committee noted that it had failed to verify her age despite the fact that her recorded birth date was approximate and very close to minority. Stressing that States "have an obligation to promptly identify children in migration contexts" and treat them "as minors pending appropriate assessment", the committee found violations of Articles 3 and 37 of the CRC.

The triggering of the presumption of minority has also been addressed by national courts, with many decisions likewise holding that, as soon as an applicant claims to be a minor, the presumption applies and remains in force unless and until it is proven otherwise. Referring to

CRC Committee General Comment No 6,[i] the Norwegian Supreme Court (12 December 2019) found that the presumption applies from the moment the presumed child undergoes the initial screening, notably requiring a lower evidentiary threshold than that applicable in Norway to the age determination itself.

Similarly, drawing on the ECtHR's judgment in *Darboe*, the Dutch Council of State (9 October 2024) held that the presumption of minority takes effect from the moment an applicant claims to be a minor. The council further emphasised that the presumption is essential to safeguarding the rights afforded to children under national and international laws, thereby preventing potential violations of their fundamental rights. At the same time, the council recognised that the presumption is rebuttable *(see Section 4.1)*, provided that the authorities conduct an adequate investigation and properly justify their conclusions. This line of case law was subsequently confirmed in several Council of State rulings delivered on 20 August 2025, 13 October 2025, 23 October 2025 and 17 November 2025.

Lifting the presumption of minority

The ECtHR has not addressed in detail whether the presumption of minority extends until a first instance age assessment decision is issued or continues until that decision becomes final. Notably, the CRC Committee has consistently held that applicants must be presumed to be children for as long as age determination procedures are ongoing, including during any appeal proceedings (see *A.L.* v *Spain*, 31 May 2019, para 12(3); *J.A.B.* v *Spain*, 31 May 2019, para 13(3); *R.K.* v *Spain*, 18 September 2019, para 9(13); *A.D.* v *Spain*, 4 February 2020, para 10(3); *M.B.* v *Spain*, 28 September 2020, para 9(8); *C.O.C.* v *Spain*, 29 January 2021, para 8(8); and *A.M.* v *Switzerland*, 21 May 2024, paras 4(3), 4(6)). Moreover, in *R.Y.S.* v *Spain* (4 February 2021, paras 2(13), 8(3) and 8(14)), the CRC Committee emphasised that examining an asylum application on the assumption that the applicant is an adult, despite a pending challenge to the age determination, may have serious consequences for the assessment of protection needs and may expose the individual to irreparable harm, in breach of Articles 3 and 12 of the CRC.

Several national courts, for instance in Greece, Malta and the Netherlands, have similarly held that applicants with a claim to minority must be treated as minors throughout the judicial review. For example, the Administrative Court of First Instance of Athens (23 April 2024) ruled in a detention case that the presumption of minority applies throughout the age assessment, including during a judicial review of the age determination decision.

Also in case law predominantly involving detention, the Maltese Immigration Appeals Board has equally found that the presumption of minority applies during appeals against age assessment decisions declaring majority and applicants are to be placed in the care of the reception agency until the appeal is concluded (see *F.B.* v *The Principal Immigration Officer (PIO)*, 4 October 2021; *W.K.A.* v *The PIO*, 4 October 2021; and *M.M.* v *The PIO*, 13 April 2022).

For its part, the Dutch Court of the Hague seated in 's-Hertogenbosch (4 November 2022) and in Roermond (23 May 2023) has held that the presumption of minority applies until a definitive decision on age is adopted, thereby preventing applicants in those cases from being transferred to adult accommodation following declarations of majority that were not yet final. More recently,

the Dutch Council of State has nuanced the practice of the Agency for the Reception of Asylum Seekers (COA) to rely on age assessments conducted by the Minister for Migration and Asylum to transfer applicants to adult accommodation (15 May 2024, 10 December 2025, and 13 March 2026). The council has held that, while responsibility for determining age lies with the Minister, and COA may rely on the Minister's assessment, when an applicant provides concrete indications that their classification as an adult may be incorrect, COA must apply the presumption of minority and refrain from transferring the applicant while it seeks clarification from the Minister. Mere assertions do not meet this threshold; applicants must provide reasons why COA should not rely on the Minister's determination. In such cases, COA must inquire with the Minister and form its own view on the applicant's accommodation needs. This does not require COA to independently verify the Minister's age assessment or review procedural aspects, such as the timeliness of notifications. However, COA must take into account the information provided by both the Minister and the applicant when deciding whether to transfer an applicant to adult accommodation.

Scope of the presumption of minority

While authorities are in the process of verifying whether applicants are minors, the presumption of minority applies, producing cross?cutting effects that extend beyond the migration context and triggering safeguards that include age?appropriate reception conditions, the right to a guardian or representative, the right to information and to refuse medical methods of age assessment, as well as the right to an effective remedy to challenge the findings of the assessment.

As indicated earlier, the ECtHR first expressly referred to the presumption of minority in *Darboe and Camara* v *Italy* (21 July 2022, paras 153-155), in which it characterised it as an inherent element of the right to respect for private life under Article 8 of the ECHR. The court stressed that, when such a presumption applies, authorities must ensure a set of procedural safeguards, including the appointment of a representative or guardian, access to legal assistance, the applicant's informed participation in a multidisciplinary age assessment procedure, and access to an effective remedy to challenge its outcome. It further held that, in order to comply with both Article 3 and the child's right to personal development under Article 8, authorities are obliged to provide reception conditions appropriate to children, such as placement in specialised centres or with foster families.

This approach was later reaffirmed in subsequent case law, including *Diakitè* v *Italy* (14 September 2023, para 22), *T.K.* v *Greece* (18 January 2024, paras 19-21) and *F.B.* v *Belgium* (6 March 2025, para 73), all concerning applicants for international protection.

Similarly, the UN CRC Committee has long held that applicants undergoing an age assessment must be promptly appointed a guardian or a representative to uphold their best interests and ensure informed participation in the procedure (*A.D.* v *Spain*, 4 February 2020, paras 10(11) and 10(16)). Beyond the assessment itself, the committee has further emphasised that individuals who may be minors should be referred to child protection systems and granted access to child-specific services, including education and psychological support tailored to their needs (see *R.Y.S.* v *Spain*, 4 February 2021, paras 2(13), 8(8) and 8(14)).

The overarching role of the presumption of minority has also been addressed by national courts. Notably, the Italian Supreme Court of Cassation (8 October 2025) recently held that the determination of age by the Italian Juvenile Courts is not merely instrumental to the adoption of protective measures but also produces effects across other branches of the legal system, including administrative and criminal proceedings, where age operates as the decisive threshold to determine the applicable legal regime. In this case, the court examined the case of a detained, undocumented Tunisian national who claimed to be a minor but had been classified as an adult following an X-ray examination. The court reiterated that, under Italian law, age determination must follow a sequential procedure involving the competent public authorities and, only when strictly necessary, socio-medical examinations can be ordered exclusively by the Juvenile Prosecutor. Importantly, the Supreme Court of Cassation held that, pending a final decision by the Juvenile Court, all proceedings treating the individual as an adult must be suspended and any remaining doubt must be resolved in favour of minority.

While it is established that the presumption of minority applies throughout the entire age assessment process, its exact boundaries have been subject to judicial interpretation. The recommendations of the Committee of Ministers of the Council of Europe state that the presumption of minority should apply from the moment an applicant is referred for an age assessment.[ii] ECtHR case law, however, suggests that the presumption arises even earlier, namely as soon as the authorities have reason to believe that an applicant may be a minor. The court has linked this threshold to whether the claim to minority is “unfounded or unreasonable” and whether the authorities possess reasonable grounds for treating the applicant as an adult.

Because the age of majority constitutes a decisive threshold between the legal regimes applicable to minors and adults, the presumption of minority produces effects that extend to those regimes well beyond the asylum context. The scope of the presumption of minority in the context of international protection is well established, with both the ECtHR and the CRC Committee having emphasised that the appointment of a guardian, ensuring informed participation in the procedure, the right to an effective remedy and access to age-appropriate reception conditions are essential safeguards for applicants subject to age assessment procedures. These safeguards will be examined in greater detail in the following sub-sections.

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[i] 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.

[ii] Council of Europe (14 December 2022). 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, Principle 2(22).

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  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 1; Council of Europe, European Court of Human Rights, *F.B.* v *Belgium*, 47836/21, 6 March 2025, para 79.

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  Council of Europe (September 2017). Age assessment: Council of Europe Member States' policies, procedures and practices respectful of children's rights in the context of migration, para 47 and all sources cited therein.

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  European Parliament and Council of the European Union (15 April 2011). Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims.

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  EUAA (25 November 2025). Practical Guide on Age Assessment: Third Edition, pp. 21-22; 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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