SUPREME COURT OF NORWAY

J U D G M E N T

given on 12 December 2019 by the Supreme Court composed of

Justice Bergljot Webster
Justice Kristin Normann
Justice Arne Ringnes
Justice Cecilie Østensen Berglund
Justice Kine Steinsvik

HR-2019-2344-A, (case no. 19-093113SIV-HRET)
Appeal against Borgarting Court of Appeal 29 April 2019

A B C D E	(Counsel Georg Abusdal Engebretsen)
Norwegian Organisation for Asylum Seekers (NOAS) (third-party intervener)	(Counsel Jan Fougner)
v.	
The State represented by the Immigration Appeals Board	(The Office of the Attorney General represented by Ingrid Skog Hauge)

(1) Justice **Østensen Berglund:**

(2) ***Subject matter***

(3) The case concerns the validity of the Immigration Appeals Board's administrative decision to refuse asylum. The question is which standard of proof to apply when determining whether an asylum seeker is older or younger than 18 years.

(4) *Background*

(5) The appellants, A, E, D, B and C, are Afghan citizens who came to Norway during the period 26 July to 1 October 2015. All five applied for asylum, see section 28 of the Immigration Act.

(6) Upon arrival in Norway, they claimed to be 15–16 years old. Some of them were not certain of their date of birth, and all of them agreed to have their age clarified by medical examinations.

(7) The applications for asylum were rejected by the Directorate of Immigration (UDI), and so were the appeals to the Immigration Appeals Board (UNE), as both UDI and UNE found that all five were older than 18 years. The applicants were also not granted asylum on humanitarian grounds. After having received a third-party notice in the case, UNE reversed the administrative decision for A's part. In the reversed decision, A was assumed to be a minor, and he was granted a temporary residence permit that may be granted to minor asylum seekers over the age of 16 who will lack proper care if returned, see section 8-8 of the Immigration Regulations.

(8) After the expiry of the temporary residence permit, A stayed illegally in Norway until he was granted a residence permit in September 2019, as he is now risking persecution in his home country for having converted to Christianity.

(9) B and C have both been transported out to Afghanistan, but according to information provided, they have now left the country. E and D are staying in an unknown place in Europe.

(10) *Procedural history*

(11) During the autumn and winter of 2016–2017, the five appellants filed writs of summons to Oslo District Court. The District Court decided on 16 February 2017 to hear the cases jointly, on the condition that the issue in dispute for all five be limited to the age examination. Norwegian Organisation for Asylum Seekers (NOAS) joined the case as a third-party intervener.

(12) By Oslo District Court's judgment 30 November 2017, the Immigration Appeals Board's rejections of all five applications were declared invalid, and costs were awarded.

(13) The State represented by the Immigration Appeals Board appealed the judgment to Borgarting Court of Appeal, which on 29 April 2019 concluded as follows:

> **"1. Judgment is given in favour of the State represented by the Immigration Appeals Board.**
>
> **2. Costs are not awarded in either the District Court or the Court of Appeal."**

(14) A, D, E, C and B have appealed the judgment to the Supreme Court. The appeal challenges the application of law related to the standard of proof when determining age, the application of law and findings related to the burden of proof, as well as the application of law and findings related to the medical age examinations and the significance thereof.

(15) On 14 August 2019, the Supreme Court's Appeal Selection Committee granted leave to appeal with regard to the application of law and the standard of proof when determining whether an asylum seeker is older or younger than 18 years. Otherwise, leave to appeal was refused.

(16) NOAS has acted as third-party intervener for the appellants, also in the Supreme Court.

(17) ***The parties' contentions:***

(18) The appellants, *A, E*, *D, B and C*, contend:

(19) The Court of Appeal has incorrectly concluded that a stricter standard of proof does not apply when assessing whether an asylum seeker is a minor. Sources of law clearly suggest a stricter standard of proof. The consequences of erroneous age determination are serious, and the consideration of the best interests of the child implies that the normal preponderance of the evidence standard is not adequate. There must instead be clear and convincing evidence that the person is older than 18 years, combined with the asylum seeker's unquestionable duty of loyalty and cooperation to clarify his or her age.

(20) The appellants invite the Supreme Court to pronounce the following judgment:

> **"1. The following administrative decisions are invalid:**
>
> - **The Immigration Appeals Board's administrative decision for A of 16 January 2017**
> - **The Immigration Appeals Board's administrative decision for D of 14 October 2016 and subsequent decisions of 24 November 2016**
> - **The Immigration Appeals Board's administrative decision for E of 14 November 2016**
> - **The Immigration Appeals Board's administrative decision for C of 1 December 2016 and subsequent decisions of 12 December 2016**
> - **The Immigration Appeals Board's administrative decision for B of 16 September 2016 and subsequent decisions of 14 October 2016 and 16 December 2016**
>
> **2. The State represented by the Immigration Appeals Board will pay the costs of the appellants in the Supreme Court with the addition of statutory default interest from the due date until payment is made."**

(21) The third-party intervener, *Norwegian Organisation for Asylum Seekers (NOAS)* has supported the appellants' contentions, and emphasised that Norway's international obligations suggest a stricter standard of proof.

(22) The third-party intervener has invited the Supreme Court to pronounce the same judgment as the appellants with regard item 1, but demands costs as follows in item 2:

"The State represented by the Immigration Appeals Board will pay costs to Norwegian Organisation for Asylum Seekers (NOAS) in the Supreme Court with the addition of statutory default interest from the due date until payment is made."

(23) The respondent, *the State represented by the Immigration Appeals Board*, contend:

(24) The main standard under Norwegian law is normal preponderance of the evidence. This also applies when determining the identity of asylum seekers, which involves determining their age. There is no reason to depart from this standard, as conflicting considerations, such as the need for immigration control and the risk of misuse, arise.

(25) The respondent invites the Supreme Court to pronounce the following judgment:

"1. The appeal is dismissed.

2. The State represented by the Immigration Appeals Board is awarded costs in District Court, the Court of Appeal and the Supreme Court."

(26) ***My assessment of the case:***

(27) I have concluded that the appeal must be dismissed.

(28) *Legal interest*

(29) Before I consider the main issues of the case, I mention that section 1-3 of the Dispute Act requires that the claimant demonstrate a genuine need to have its claim decided during the entire process, also in the Supreme Court. The court is to consider whether the claimant has such legal interest, and dismiss the case if the legal interest is lost on the way.

(30) The issue in dispute is whether the authorities' assessment of the applicants' age should have been based on a more beneficial standard of proof than the normal preponderance of the evidence. At present, however, all claimants have reached the age of 18, even if one relies on their claimed age. In addition, A has been granted a residence permit on different grounds in a subsequent administrative decision.

(31) Against this background, one may ask whether the claimants in general, and A in particular, still have a genuine interest in having the case decided. With reference to the principle in section 9-6 subsection 1 final sentence, this is irrelevant, as I have concluded that the appeal must be dismissed.

(32) *The standard of proof in civil cases*

(33) The main rule in Norwegian civil procedure is that the court must base its ruling on the most probable facts, which means that normal preponderance of the evidence is sufficient. This is supported in longstanding case law, such as the Supreme Court judgment Rt-1992-64 *The contraceptive pill judgment II* and HR-2018-874-A paragraph 11 with reference to the preparatory works to the Dispute Act. The preponderance of the evidence standard is justified by several factors, including the requirement of equality between the parties and the prospects of obtaining most substantively correct rulings, see the Supreme Court judgment Rt-2008-1409 paragraph 39.

(34) In certain cases, the standard is precluded by law, for instance in section 4-12 subsection 1 (d) of the Child Welfare Act on care orders. Furthermore, on a non-statutory basis, certain exceptions have been made from the standard, typically that a stricter standard of proof is required where the facts forming the basis for the ruling are particularly incriminating for the party, or such a solution is expedient for the purpose of securing evidence, see the Supreme Court judgment HR-2016-2579-A paragraph 42. I will come back to this.

(35) *On the standard of proof in immigration law*

(36) Also in the area of immigration law, a normal preponderance of the evidence standard applies as a starting point, see Rt-2006-1657 paragraph 33 on pro-forma marriages. However, certain exceptions have been made from this standard in asylum cases where particular care must be taken when assessing whether asylum seekers risk persecution if returned to their home country. I refer to the Supreme Court judgment Rt-2011-1481 paragraph 45, where a lower standard of proof was applied in accordance with section 28 of the Immigration Act.

(37) The question to be answered is whether similar exceptions should apply when determining whether an asylum seeker is older or younger than 18 years, as it would be detrimental to the applicant to be wrongly treated as an adult. This is particularly relevant when deciding which rules to apply in the processing of the asylum application.

(38) *Terminology*

(39) I note that the parties have used the expression "stricter standard of proof" to describe a requirement of clear and convincing evidence when determining actual age. To me, it is more natural to consider it as a question whether a lower standard of proof should apply to determine whether a person is a minor, see the above-mentioned Rt-2011-1481 paragraph 45. However, the terminology is not relevant to the result.

(40) *The Immigration Act's provisions on identity*

(41) In the assessment of which standard of proof to apply when determining age, I find it expedient to start with the Immigration Act's provisions on identity.

(42) The main rule under the Immigration Act is that the foreign national must clarify his or her identity. This is established in sections 8 and 21 of the Immigration Act on the travel documents requirement, and section 15 on the right to carry out a body search if there is reason to suspect false identity. Foreign nationals are also obliged to assist in clarifying their identity under sections 83 and 93. It is also a general requirement for asylum that the foreign national procures documentation for his or her identity, see section 38, unless this for some reason is impossible, see section 8-12 of the Immigration Regulations.

(43) Based on the appellants' and the third-party intervener's closing statements in the Supreme Court, it is clear that a person's identity comprises more than a name, see Article 8 of the UN Convention on the Rights of the Child, which mentions nationality and family relations as a part of the identity. Other personal information is also included, such as information relating to age, see also Proposition to the Odelsting No. 75 (2006–2007) on amendments to the Immigration Act, page 50 and Proposition to the Odelsting No. 17 (2006–2007) page 14 where this is a premise.

(44) As a step in determining the identity of a foreign national, in cases where it is not possible to establish whether the he or she is older or younger than 18 years, the foreign national may be asked to undergo a medical examination. The provisions on age examination are set out in section 88 of the Immigration Act and read:

> **"If, in a case concerning asylum or in a case concerning a residence permit for a family member, it is not possible to establish with reasonable certainty whether the foreign national is over or under the age of 18, the foreign national may be requested to allow himself or herself to be examined in order to clarify his or her age. The result of the examination shall be assessed in relation to the other information in the case."**

(45) The provision establishes that age examination may be carried out on young foreign nationals upon their consent. The expression "with reasonable certainty" is used as a condition for age examination, and does not in my opinion dictate which standard of proof to apply.

(46) Thus far, I cannot see that the wording in section 88 of the Immigration Act on age examination or other provisions in the Act suggest a different standard of proof in cases like the present.

(47) The appellants contend that the Immigration Act's provisions must be interpreted in light of Article 104 of the Constitution and Article 3 of the Convention of the Rights of the Child, stating that the child's best interests are the basic consideration in all matters affecting the child. I agree, and will come back to the significance of this principle in my discussion of the child's best interests.

(48) *The preparatory works of the Immigration Act*

(49) I will now turn to the question of whether a lower standard of proof may derive from statements in the preparatory works to the Immigration Act.

(50) As age is a part of the person's identity, it is relevant to refer to the statements in the preparatory works on the standard of proof to determine identity. This is further referred to in Proposition to the Odelsting No. 75 (2006–2007) on page 49:

> **"In asylum cases, UDI requires in practice that the applicant has demonstrated his or her identity, either through presentation of valid identity documents, or otherwise. The requirement for demonstrated identity entail according to practice that there must be a likelihood of at least 50 percent that the foreign national is in fact who he or she is claiming to be."**

(51) The statement shows that the normal preponderance of the evidence standard applies when determining a person's identity.

(52) When the Proposition was issued, the possibility of age examination had recently been included in the previous section 37 (g) of the Immigration Act. The background was uncertainty with regard to the identity of foreign nationals who sought asylum in Norway, see Proposition to the Odelsting 17 (2006–2007) om DNA testing and age examination in immigration matters. It is stated in Proposition to the Odelsting No. 75 (2006–2007), page 49, that 93.3 percent of the asylum seekers in 2005 were registered without valid travel documents.

(53) When a legal basis for age examination was implemented, several of the hearing instances were sceptical towards the quality of the methods. The Ministry therefore assumed that such examinations were only to be carried out when the age could not be determined from other information provided in the case. Particularly interesting in our case is the fact that the Ministry stressed that the administrative decision should take into account the uncertainty attached to age examination. Furthermore, it was stressed that the result had to be included in a broader assessment, which also appeared from the wording of the provision, see Proposition to the Odelsting No. 17 (2006–2007) page 13 where this is thoroughly discussed. The views of the Ministry were in accordance with the then guidelines for UDI, where it was also stated that the applicant should be given the benefit of doubt, see the same page of the Proposition.

(54) In Recommendation to the Odelsting No. 44 (2006–2007), the Standing Committee on Local Government and Public Administration supported the age examination proposal under the conditions accepted in preparatory works. It was stated that the applicant should have the benefit of any doubt as to his or her age, see page 4.

(55) The appellants insist that the Committee's remarks on the burden of proof indicate that the normal preponderance of the evidence standard is not sufficient to determine whether the applicant is older than 18 years.

(56) I cannot see how the statements can be interpreted that way. In my view, the statements support a broader assessment and the application of a safety margin, but the Committee does not promote any standard of proof other than that is set out in the Proposition. If that had been the case, it would have been natural for the Committee, based on the Ministry's premise that normal preponderance of the evidence applies, to express this clearly.

(57) In my view, one must also note that the Committee was also silent with regard to the standard of proof when this was discussed later in Proposition to the Odelsting No. 75 (2006–2007) on a new Immigration Act.

(58) Furthermore, the standard of proof in this area has recently been dealt with in Proposition to the Storting 126 L (2016–2017) on amendments to the Immigration Act (enforcement measures etc.). In the chapter "More specifically on arrest and detention of minors", the following is stated on the standard of proof for determining age:

> **"In cases concerning arrest and detention under the Immigration Act, the Ministry finds that in line with the general standard in civil law, and in line with the main rule in criminal procedure, it should be considered adequately proven that the foreign national is not a minor if this seems more likely (preponderance of the evidence). … If both options are equally likely, the foreign national should be given the benefit of the doubt, see the main rule on the burden of proof in civil cases. The Ministry finds that this is applicable law, and thus, *no special regulation of the standard of proof is proposed in the Immigration Act.***
>
> **A different matter is that some findings in themselves may lead to a certain level of uncertainty. This applies for instance in connection with medical age examinations. *Any uncertainty attached to a finding is part of the weighing of evidence, and does not entail that the general standard of proof is changed*, see also the Supreme Court's Appeals Selection Committee's order of 29 March 2017 (HR-2017-664-U) paragraph 16 …".**

(59) The ruling by the Supreme Court's Appeals Selection Committee to which it is referred, concerned the arrest of a minor where special limitations for detention of minors manifested themselves. Nonetheless, the Appeals Selection Committee relied on a general standard of

proof, and noted that the same standard applied in the underlying public administration case. I will come back to the significance of this ruling.

(60) Based on the wording of the Immigration Act, in conjunction with the extensive preparatory works, I find it clear that there is no statutory exception from the normal preponderance of the evidence standard when it comes to the overall assessment when determining age, nor has it been intended to make any such exception statutory.

(61) *Non-statutory exception? The best interests of the child.*

(62) The next aspect to consider is whether, nonetheless, there is reason to make a non-statutory exception from the standard of proof.

(63) Here, I believe there is less room for such non-statutory exceptions in areas where the legislature has, or must be interpreted to have had, views on the standard of proof. When it comes to immigration law matters, there is strong support in the preparatory works that the normal standard of proof applies. Yet, I cannot see that any statements are absolute or that the standard of proof is so expressly addressed that it is unthinkable for the courts to make such an exception.

(64) As mentioned in the introduction, certain exceptions have developed from the normal standard of proof. Any departure from the preponderance of the evidence standard requires special justification that must be balanced against possible conflicting considerations. The assessment is individual, and the more weighty concerns on the one side, the stronger justification is required on the other.

(65) With regard to incriminating facts, as also contended here, the status of the law is summarised as follows in HR-2016-2579-A paragraph 42:

> **"The sources of law can be summarised by the general existence of a qualified standard of proof where the relevant facts are decidedly reprehensible, incriminating or infamous to one of the parties. The more incriminating the facts, the more reason to apply a stricter standard of proof. At the same time, conflicting considerations may imply that the ordinary standard of proof is maintained, despite the facts being incriminating. In that case, it would depend on a balancing between the incriminating facts and the considerations weighing against a stricter standard of proof."**

(66) The exceptions are regarded as a continuation of the criminal law principle of giving the accused the benefit of the doubt, see the Supreme Court judgment HR-2018-874-A paragraph 12. Thus, it is particularly in cases bordering on criminal law that exceptions from the normal standard of proof have been relevant.

(67) In the case at hand, it is mainly a question of whether the child's best interests may justify a lower standard of proof, although certain other factors have been pointed out.

(68) In cases involving children, it follows directly from Article 104 of the Constitution and Article 3 of the Convention on the Rights of the Child that the child's best interests are fundamental. With regard to immigration, it is also set out in preparatory works that there is a need for a *child-sensitive application* of the law, see Proposition to the Odelsting No. 75 (2006–2007) page 92 and Recommendation to the Odelsting No. 42 (2007–2008) where children's needs and rights are stressed. The same is set out in the Supreme Court judgments

Rt-2012-1985 *Long-staying children I* paragraphs 119 and 134, and HR-2015-2524-P *Internal flight* paragraph 84. The child perspective is also stressed in UDI's memo on practices and procedures PN 2012-011, last amended in 2018, section 2. I add that also the UN's recommendations in the area, the UNCHR Guidelines on Determining the Best Interest of the Child and UNCHR Guidelines on International Protection: Child Asylum Claims, suggest such a position.

(69) The appellants contend that the UN Committee on the Rights of the Child in General Comment No. 6 (2005) has interpreted the obligations under the Convention on the Rights of the Child to mean that a lower standard of proof applies when determining age.

(70) On the significance of statements from the Committee, I refer to the Supreme Court judgment HR-2015-2524-P *Internal flight* paragraph 150–152.

(71) General Comment No. 6 (2005) concerns "Treatment of unaccompanied and separated children outside their country of origin", and in paragraph 31, under chapter V, it is assumed that the states should give "the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such".

(72) I find no reason to discuss whether the statement concerns the standard of proof at all, or whether it must be regarded as an interpretation of provisions in the Convention on the Rights of the Child. I confine myself to pointing out that it is primarily an "[i]nitial assessment and measures", that is, upon arrival in the country and the initial phase. Under Norwegian internal law, the foreign national is normally treated as a minor during this phase when claiming to be younger than 18 years. The Committee's remarks to the processing of the very application are provided in the Comments' Chapter VI, in which there are no statements suggesting that the minor must be given the benefit of the doubt. Read in context, I cannot see that General Comment No. 6 gives rise to a general principle that a lower standard of proof must be applied when determining age.

(73) It is clear that the legislature assumed that the provisions of the Immigration Act, as they are worded, correspond with the obligations under the Convention on the Rights of the Child, see Proposition to the Odelsting No. 75 (2006–2007) on page 53 et seq. Furthermore, the Supreme Court's Appeals Selection Committee assumed in the mentioned ruling HR-2017-664-U on age examination upon detention, that neither the Constitution nor the Convention may be interpreted to mean that a standard applies other than the normal preponderance of the evidence. Although the Supreme Court is bound by neither the legislature's premises nor the Appeals Selection Committee's ruling, I believe these are weighty sources of law in this context.

(74) In my opinion, it can thus not be accepted that Article 104 of the Constitution or the Convention requires that a lower standard of proof must generally apply in cases like the one at hand.

(75) However, the appellants also contend that factors having justified a stricter standard of proof in other cases imply that the normal standard of proof should be departed from in this case.

(76) With a child-sensitive position as a starting point, I will therefore address this more closely.

(77) According to case law, it is mainly when *incriminating facts* are relevant that the standard of proof becomes stricter. The appellants hold that if the claimed age is not considered documented, it entails that the applicants are branded as liars, which would be incriminating.

(78) To me, this view can clearly not be heard. It is also clear that the five applicants come from a documentless society where birth certificates and similar are generally difficult to verify. None of them knew exactly how old they were when arriving in Norway, and only one had an idea of his date of birth. Therefore, it is not so that if the applicants' age is determined to be different from the age claimed, it means that the applicant is considered to be lying. Moreover, even if it had been assumed that they were lying, it would not, in any case, have led to a stricter standard of proof.

(79) The appellants also contend that the *purpose of securing evidence* implies a departure from the normal standard of proof. This cannot also be heard. The clear main rule in the Immigration Act is that it is the foreign national that must document his or her identity, while it is acknowledged that this is not always possible.

(80) Nor does the evidentiary situation call for an exception. Preparatory works state that one must bear in mind that minors do not have the same possibility as adults to account for their age or procure documentation, see Proposition to the Odelsting No. 75 (2006–2007) page 92. Furthermore, the result of a possible medical age examination must, according to law, be part of a broader assessment. As mentioned, it is stressed in the preparatory works that the uncertainty attached to age examinations must be taken into account.

(81) UDI's memo on practices and procedures, PN 2012-011, presents the factors relevant for the age determination and expresses that it is the general requirement of preponderance of the evidence that applies as a starting point. Circular 2010-183 from UDI sets out that in case of unclear evidence, the applicant must be given the benefit of the doubt. The statement does not justify a lower standard of proof.

(82) However, I note that the Parliamentary Ombudsman expressed in a statement of 10 April 2019 – SOM-2017-4181– that the guidelines in the memo on practices and procedures are not necessarily followed. UDI and UNE were asked to ensure intensification of the requirements of a holistic assessment under section 88 subsection 1 of the Immigration Act. I assume that the Parliamentary Ombudsman's statement is followed up, see also the legislature's clear position in this regard in the preparatory works.

(83) The appellants have emphasised *the personal consequences of erroneous age determination* and pointed out the risk of being deprived of special rights attributed to minors.

(84) It is clear that, within immigration law, exceptions can be made from the preponderance of the evidence standard because of the consequences of a wrong decision. I refer once more to the judgment Rt-2011-1481, which questioned whether the applicant had a well-founded fear of persecution. The Supreme Court stated that a lower standard of proof applies to determine the need of protection under 28 subsection 1 (a) and (b) of the Immigration Act.

(85) In continuation of this, the State has mentioned that a lower standard of proof will also apply to age examination when the basis for protection is directly linked to applicant's status as a child, see section 29 (f), for instance the risk that the child is given away in marriage. I agree with this view.

(86) I do not rule out that the interaction between age and the need of protection in certain cases may entail that the age issue itself will become such an integrated part of the evaluation of the need of protection that the standard of proof must be similar to that under section 29 subsection 2 (f) of the Immigration Act, cf. section 28 subsection 3 on the significance of the applicant being a child. However, there is no need to discuss this further, as the reservation cannot in any case form a basis for setting up a general rule on the application of a lower standard of proof. Nor has it been held in the present case that UNE's evaluation of the claimed grounds for seeking asylum are wrong because the applicants were considered to be adults.

(87) It is clear that minor asylum seekers receive special treatment and have special rights in their capacity of children, for instance with regard to the rules under which their application is processed, see the special provision in section 28 subsection 3, section 29 subsection 2 (f), section 38 subsections 2 and 3 of the Immigration Act, as well as section 8-8 of the Immigration Regulations on temporary residence permits for minor asylum seekers. The age is also significant for possible stay at adjusted reception centres and settlement in municipalities if temporary asylum is granted. In the event of rejection, the possibilities of arresting and detaining children are restricted.

(88) These factors are undoubtedly critical for each individual, and it will be detrimental for an applicant to be wrongly considered an adult. Yet, a potential error here cannot be put on a par with the consequences of wrongly returning an applicant who risks persecution in the form of torture. It must also be borne in mind that immigration regulations in general have large consequences for the involved. Nonetheless, the legislature has expressed that a normal standard of proof applies.

(89) As emphasised in the Supreme Court judgment HR-2018-874-A paragraph 13, special justification is required for departing from the standard of normal preponderance of the evidence. This justification must be balanced against various factors suggesting that the normal standard of proof should be applied.

(90) The State holds that a lower standard of proof entails a danger of misuse. The State also refers to the need to prevent that adults enjoy rights reserved for children and that it should be avoided that adults are placed in reception centres meant for children.

(91) In my view, these strong conflicting considerations clearly weigh against a generally lower standard of proof when determining age. There is no doubt that the risk of misuse is genuine, see Proposition to the Odelsting No. 17 (2006–2007) page 8, stating that among the asylum seekers who claimed to be unaccompanied minors upon arrival in Norway, approximately 80 percent of those tested were found to be 18 years or older. A central purpose of implementing medical age examination was to avoid misuse of the rules, see page 12 of the Proposition.

(92) When medical age examination was implemented, several bodies entitled to comment expressed the importance of ensuring that adults may not assert rights reserved for children, see for instance the statement of the Commissioner for Children quoted on page 10 of the Proposition. For children as a group, it is clearly important that they may actually benefit from human and economic resources reserved for just them. The Commissioner for Children also referred to the risks of placing adults together with vulnerable children, which is also an important consideration.

(93) In the individual balancing of the personal consequences for the applicants against the risk of misuse, I find that there are not sufficient grounds for departing from the normal preponderance of the evidence standard in the case at hand.

(94) *Summary*

(95) Against this background, I have arrived at the conclusion that there is no basis for applying a lower standard of proof when determining whether an asylum seeker is older or younger than 18 years, not even when the assessment has a child-sensitive perspective. I have emphasised the fact that we are dealing with a thoroughly regulated area of law that has been the subject of difficult political decision-making, where relatively recently, provisions have been adopted involving increased protection for unaccompanied minor asylum seekers. At the same time, the clear legislative intent has been the application of a normal standard of proof because of the significant risk of misuse of the rules. It is also essential that safety margins are included in all assessments, and that the administrative decision is based on an individual and nuanced evaluation. It is also important that all applicants are treated as minors until their application for asylum or residence permit on a humanitarian basis has been processed. In addition, the need for a child-sensitive assessment is reduced as the child grows older.

(96) In my opinion, a normal standard of proof in this case corresponds best with the justification for applying a lower standard of proof only exceptionally.

(97) ***Costs***

(98) Against this background, the State represented by the Immigration Appeals Board has won the case, and is as a starting point entitled to costs under section 20-2 subsection 1 of the Dispute Act. However, I believe there are compelling grounds for exempting both the appellants and the third-party intervener from liability for costs, see section 20-2 subsection 3 of the Dispute Act, as the State has had an interest in clarifying the issue of principle raised in the case. I have also placed some emphasis on the relative strength between the parties.

(99) *Conclusion*

(100) I vote for this

J U D G M E N T :

1. The appeal is dismissed.

2. Costs are not awarded in any instance.

(101) Justice **Normann:** I agree with Justice Østensen Berglund in all material respects and with her conclusion.

(102) Justice **Ringnes:** Likewise.

(103) Justice **Steinsvik:** Likewise.

(104) Justice **Webster:** Likewise.

(105) Following the voting, the Supreme Court pronounced this

J U D G M E N T :

1. The appeal is dismissed.

2. Costs are not awarded in any instance.