

5.2.1. Adequate information as a precondition for consent

Consent to a medical age assessment must be genuine and therefore requires that the applicant understands the methods, procedure and implications of the examination. Accordingly, international human rights bodies and courts have consistently held that sufficient, age-appropriate information provided in a language that the applicant understands is a precondition for valid consent.

The ECtHR has addressed the obligation of EU+ countries to provide adequate information in age assessment procedures and the validity of consent in several rulings. It has examined such claims under Article 8 of the Convention, requiring that applicants be informed of the type of medical age assessment to be conducted and the possibility to give or withhold consent, often also assessing, under Article 8 or Article 13, whether they were informed of the medical conclusions and of how to challenge them.

In *Darboe and Camara* v *Italy* (21 July 2022, paras 142-148), the ECtHR noted that authorities carried out an X-ray of the applicant's left wrist without providing any information on the type of age assessment procedure or its possible consequences. In these circumstances, it held that there was "no need to examine the existence or validity of his consent to undergo a medical examination, or to assess its appropriateness". The court thus confirmed that the provision of adequate information is a precondition for valid consent and found that the failure to appoint a guardian and to provide such information amounted to a violation of Article 8 of the Convention.

The fact that information is a precondition for giving or withholding consent was made strikingly clear in the ECtHR judgment in *F.B.* v *Belgium* (6 March 2025, paras 87-90), in which the court examined the Belgian authority's referral policy for medical age assessments. In the case, a Guinean applicant underwent a medical age assessment consisting of a triple X-ray of her hand, collarbone and teeth before being interviewed by the guardianship service, which only took place afterwards. She challenged the subsequent termination of child custody, arguing that she had not been informed of her right to refuse the medical examinations and had never given written consent.

The authorities submitted that she had received an information leaflet in French, explaining that her stated age was under question, the assessment procedure, the margin of error, the benefit of the doubt and her right to appeal the decision. She contested having received this information before the age assessment, stating that she only learned of the doubts about her age during the guardianship interview which took place after. The ECtHR held that, even assuming the leaflet

had been provided, it did not explicitly mention the right to give or withhold consent because it merely stated that she could “express her opinion” and appeal the decision. The court stressed that informed consent must be meaningful and explicit, especially where the individual lacks legal assistance or representation, as was the case, since conducting medical procedures without free and informed consent constituted an interference with physical integrity and personal autonomy, in violation of Article 8 of the Convention.

Following this judgment, Belgian courts overturned several national decisions based on age assessments that were not consistent with the findings of the ECtHR. For instance, in May 2025 the Belgian Council of State confirmed that the decision-making process leading to the denial of guardianship failed to meet the procedural safeguards required under Article 8 of the ECHR. The court noted that, although the applicant had been informed of doubts regarding his age and had received a document explaining the age test, to which he did not object, neither the interview record nor any other evidence in the case file indicated that he had been informed of the need to give consent for the medical examination.

The CRC Committee has likewise issued views requiring informed consent to medical examinations for the purposes of age assessment. Notably, in *R.Y.S. v Spain* (4 February 2021, para 8(8)) the committee found several violations, including of Articles 3 (best interests of the child), 12 (right to be heard) and 16 (privacy and dignity) of the CRC, in a case where a 16-year-old Cameroonian girl was subjected to a wrist X-ray, a panoramic dental X-ray and a genital examination for age assessment purposes without being properly informed. The committee noted that, as the applicant had not been informed of the purpose of the examinations in a language she could understand and was not represented by counsel, she could not be considered to have given informed consent.

Similarly, the Czech Constitutional Court (7 July 2021) held that the right to information applies throughout the entire age assessment process, which includes the right to interpretation at each stage. The court’s ruling concerned a case in which the applicant had been informed, with the assistance of an interpreter, that he would undergo a medical examination and the purpose of that examination. However, neither an interpreter nor a representative were present during it, the applicant was not informed of the outcome, and he was not given an opportunity to comment before being treated as an adult. Drawing on the CRC Committee’s views, the court ruled that this violated the child’s right to be heard and human dignity, as the applicant was treated more as an object than as a subject of rights.

For its part, German case law has elaborated on the allocation of the obligation to inform applicants, the burden of proof where it is disputed whether the required information was provided, and the content of that information. In June 2018, the Higher Administrative Court of Bremen clarified that, when an applicant disputes having received the required information, the burden of proof lies with the administration. The court held that this requires written documentation setting out the specific content of the information provided and signed by a Youth Welfare Office (*Jugendamt*) employee, the applicant and, when necessary, an interpreter. It reasoned that, although physicians have their own duty to provide information, a failure by the *Jugendamt* to properly inform the applicant before the medical examination cannot be remedied by information subsequently provided by a medical practitioner, since the statutory obligation under Book VIII of the German Social Code (SGB VIII) rests with the *Jugendamt*. Drawing on

Section 42f(2) of the SGB VIII and Article 25(5) of the APD, the court explained that the information must cover the methods used and the possible consequences of both the age assessment and any refusal to undergo it, including the fact that entitlement to protective custody depends on its outcome, as well as the practical consequences of the termination of provisional protective custody under the Social Code and, when applicable, migration law provisions. In the absence of such information, the court held that neither the applicant nor the representative could be regarded as having validly consented to the examination.

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