

5.2.2. Consequences of refusing to undergo a medical age assessment

The requirement under EU law that applicants referred for an age assessment must be informed of the possibility and consequences of declining medical methods raises the question of what follows from such a refusal. Article 25(6) of the APR clarifies that, for the purposes of age determination, this may only give rise to a rebuttable presumption that the applicant is not a minor, while the CRC Committee has held that “a person should not be declared to be an adult exclusively on the basis of his or her refusal to undergo medical tests” and that automatic findings of adulthood based on such a refusal breach Articles 3 and 12 of the CRC.

This was affirmed in the CRC Committee decision in *J.A.B.* v *Spain* (31 May 2019, paras 13(4), 13(5) and 13(9)) concerning a Cameroonian applicant who was classified as an adult solely due to his refusal to undergo a medical age assessment. The applicant had been admitted to the child protection system through the intervention of a local NGO, which also assisted him in obtaining authentic identification documents from the embassy. After an original birth certificate was issued and retained by the embassy pending the issuance of the applicant’s passport, the authorities nevertheless considered him undocumented and required him to undergo a medical age assessment. He declined, arguing that he was documented and the passport would be issued within 2 weeks.

Similarly, in *A.D.* v *Spain* (4 February 2020, paras 10(11), 10(16)) a Malian applicant was initially held in detention and released after receiving an original birth certificate attesting his age. Although he was in the process of obtaining a passport and had a birth certificate, the applicant was required to undergo bone testing, which he refused.

Following their respective refusals, both applicants were declared to be adults although their documentation, which was not given probative value by the authority, showed that they were minors. Both cases illustrate the CRC Committee’s stance that a refusal to undergo medical testing cannot override the documentation available *(see Section 2.1)* nor justify an automatic declaration of adulthood, a position also taken by the French Constitutional Council (21 March 2019). This approach reflects the broader principle that medical age assessment methods may be used only as a last resort, and as exemplified by the Belgian Council of State’s ruling in *A.M.* v *Belgian State* (27 May 2025), even when applicants cannot provide evidence of minority, authorities must exhaust any less intrusive means available.

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