

5.3.1. Standard-setting case law by the ECtHR

Under the ECtHR's interpretation of Article 13 of the Convention, an effective remedy must allow applicants to challenge the substance of the age determination in practice. This remedy does not need to be judicial, and it may be ensured through a combination of aggregate measures, but it must be accessible and provide a response quickly enough to remain effective. The ECtHR has typically found remedies ineffective when a formal or reviewable decision does not exist, the decision is not communicated to the applicant, a clear avenue to challenge is not available or delays render the remedy meaningless.

For instance, in the landmark ECtHR case *Darboe and Camara* v *Italy* (21 July 2022, paras 186, 198-199), the applicant contended that the results of the age assessment were never disclosed to him, a judicial decision had not been issued in his case and, in any event, the administration had failed to indicate any remedy through which he could challenge his classification as an adult. As a result, he was left without a formal finding that he could appeal. The ECtHR rejected the government's objection that he could have brought the matter before the guardianship judge, noting that 4 months after his initial minority claim upon arrival in Sicily, he had submitted an application to the Venice guardianship judge, yet received no communication beyond an acknowledgment of receipt. The ECtHR recalled that, while Article 13 does not require the remedy to be judicial in nature, it must be before an authority with sufficient powers to render it effective in practice, which may be achieved through an aggregate of remedies under domestic law when a single remedy does not suffice. In this case, the lack of procedural clarity, coupled with the absence of a reviewable decision, rendered any potential remedy ineffective, in violation of Article 13 of the ECHR, read in conjunction with Articles 3 and 8 of the Convention.

In contrast, in both *A.C.* v *France* (16 January 2025, paras 204-221)59 and *F.B.* v *Belgium* (6 March 2025, paras 96-105), the ECtHR found that, although the authorities had breached Article 8 in their handling of the respective age assessments, the applicants nevertheless had access to an effective remedy, satisfying the requirements of Article 13.

In *A.C. v France*, a non-asylum-seeking Guinean national whose claim to minority had initially been rejected was denied access to the child welfare system in France. He complained before the ECtHR about the resulting lack of protection, and the court found a breach of Article 8 of the Convention. He further alleged under Article 13 that no remedy with suspensive effect had been available to challenge the decision excluding him from child protection. The ECtHR, recalling that the set of remedies provided by domestic law may collectively satisfy the requirements of

Article 13 even if none of them, taken individually, does so in full, noted that several remedies were indeed available to address the effects of wrongful classification as an adult. It noted that under French law, juvenile judges may grant educational assistance measures, including placing an unaccompanied minor under the care of a departmental child welfare service. Pending such a decision, juvenile judges may also provisionally order educational assistance measures, although this is a discretionary power that does not itself suspend the refusal decision; alternatively, urgent interim measures may be sought before the administrative court. The ECtHR further observed that the applicant had submitted requests both to the administrative judge and the juvenile judge, and the latter's refusal to grant him educational assistance had been quashed by the court of appeal as soon as he submitted civil status documents, which were presumed genuine even though the documents had not been considered reliable in an expert report *(see Section 2.1).*

In *F.B.* v *Belgium*, the applicant appealed the decision terminating guardianship, basing her challenge on procedural flaws in the age assessment process, which the ECtHR found to constitute a breach of Article 8 of the Convention. With regard to her complaint under Article 13, the applicant argued that the remedies available before the Belgian Council of State were ineffective, in particular because its review was limited to legality and did not extend to a full examination of the merits of the case. The ECtHR declared this complaint inadmissible, noting that the applicant had in fact been able to bring two proceedings before the Council of State: an action for the annulment of the contested decision and, importantly, an application for interim measures seeking a suspensive effect under Article 17(1) of the Coordinated Laws on the Council of State60 which, if granted, could have prevented the decision from taking effect pending the outcome of the proceedings.

- 59

  Council of Europe, European Court of Human Rights, *A.C.* v *France*, 15457/2025, 16 January 2025, para 204-221.

- 60

  Belgian Parliament (12 January 1973). Lois coordonnées sur le Conseil d'État [12 January 1973, Coordinated Laws on the Council of State], Article 17(1).

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