

5.3.2. Suspensive effect of appeals

Unlike in ECtHR case law related to *non-refoulement*, the court does not require an appeal against an age assessment decision to have an automatic suspensive effect. In the judgment in *A.C.* v *France* (16 January 2025, paras 208-211),61 for instance, the court was satisfied that the judge could have issued discretionary interim measures provisionally to order the applicant's placement in age-appropriate accommodation. Similarly, in *F.B.* v *Belgium* (6 March 2025, paras 96-105) the ECtHR noted that the Belgian Council of State could have granted an interim suspensive effect to the appeal.

Meanwhile, the CRC Committee has long held that decisions concerning best interest assessments and best interest determinations must have automatic suspensive effect,62 with recent case law reaffirming that this also applies to age assessment decisions and a suspensive effect should be ensured from the outset. In this regard, the CRC Committee's decision in *S.E.M.A.* v *France* (6 March 2023, paras 7(2) and 8(7)-8(9)) provides a helpful comparative reference with the ECtHR case law as delivered in *A.C. v. France*, as they both concerned non-asylum-seeking applicants with rejected claims to minority who had sought access to the child welfare system in France. In the two cases, the government argued that, although the first instance appeal against the age assessment did not have an automatic suspensive effect, the applicant could have obtained provisional accommodation from the Juvenile Court and could have subsequently requested suspensive effect in the onward appeal.

While in *A.C. v. France* the ECtHR examined flaws in the information provided to the applicant about deadlines and avenues of appeal as violating Article 8 of the ECHR *(see Section 5.2.1)*, but at the same time concluded that an effective remedy under Article 13 had been available, in *S.E.M.A. v. France*, the CRC Committee treated the procedural shortcomings as engaging the right to an effective remedy and found them to constitute breaches of Articles 3 and 12 of the CRC. First, the committee noted that the administrative decision had not been translated into a language the applicant understood, nor did it indicate the available remedies or the possibility of obtaining legal assistance, with the result that the applicant was only able to lodge the appeal after a social worker referred him to a lawyer. Second, neither the appeal before the Juvenile Court nor the onward appeal before the Court of Appeal of Lyon had an automatic suspensive effect. Third, the Juvenile Court declined to exercise its discretionary power to order temporary accommodation, while the subsequent appeal lasted more than 1 year. Although the Court of Appeal eventually overturned the Juvenile Court's decision and accepted the authenticity of the applicant's documents, confirming that he was a minor, the absence of an automatic suspensive effect combined with the excessive delay rendered the remedy ineffective within the meaning of Article 7(e) of the CRC Optional Protocol.63

It can therefore be concluded that the ECtHR and the CRC Committee standards on the suspensive effect of appeals do not entirely align, with the CRC Committee requiring an automatic suspensive effect, while the ECtHR does not require that age assessment decisions be automatically suspended, but that such protection may instead be ensured through interim relief mechanisms. Likewise, the requirement that applicants be informed of how to appeal and the applicable deadlines are addressed by the ECtHR as part of the procedural safeguards inherent in Article 8 of the ECHR instead of under Article 13, whereas the CRC Committee examines it as an element of the right to an effective remedy, although both bodies ultimately converge in requiring such safeguards.

At the national level, several EU jurisdictions, such as in Germany, Greece, Malta and the Netherlands, provide examples of suspensive effects being granted through interim measures. Frequently, applicants' requests for a suspensive effect have been addressed through the provisional suspension of the consequences of being classified as adults following an age assessment, such as the termination of guardianship, placement in adult accommodation or detention. These cases are therefore examined in *subsection 5.3.3*, which discusses how age assessment decisions are appealed in practice, often through indirect means.

- 61

  Council of Europe, European Court of Human Rights, *A.C.* v *France*, 15457/2025, 16 January 2025, para 208-211.

- 62

  UN (16 November 2017). Joint General Comment No 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, CMW/C/GC/4-CRC/C/GC/23, paras 14 and 17(h).

- 63

  UN General Assembly (25 May 2000). Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, United Nations General Assembly resolution A/RES/54/263.

© European Union Agency for Asylum 2026 | Email: info@euaa.europa.eu