

5.3.3. National approaches to appealing age assessment decisions

While EU law now sets common requirements for age assessments, it does not harmonise how these decisions can be challenged. Appeal mechanisms are therefore largely governed by procedural autonomy at the country level, which is reflected in national practices and to which the ECtHR generally defers. Rather than prescribing how age assessment decisions must be appealed, it is apparent that the ECtHR examines whether the domestic system as a whole provides an effective remedy capable of addressing the consequences of an erroneous age determination.

In practice, applicants before the ECtHR have frequently challenged their classification as adults indirectly by contesting downstream consequences, such as exclusion from child protection systems, the termination of guardianship, detention or placement in adult accommodation. The court has accepted such indirect or aggregate avenues of review when they are effective in practice and capable of safeguarding related rights under Articles 3, 5 and 8 of the ECHR, namely with regard to access to age-appropriate reception conditions, protection from detention or the rights to information and representation.

In practice, indirect or aggregate remedies remain common across EU jurisdictions. According to the EUAA's Age Assessment Practices in EU+ Countries: A baseline for Pact implementation (March 2026, p. 20), only a limited number of countries, including Belgium, Denmark, Luxembourg, Italy and Sweden, provide a direct procedure to appeal age assessment decisions. Consequently, the reviewed case law offers numerous examples of applicants contesting age assessment decisions through appeals concerning guardianship, placement in age-appropriate accommodation, detention or within the international protection procedure and related issues, such as AMMR proceedings.

Examples of age assessments reviewed through appeals against the termination of **guardianship** can be found in Belgium (9 December 2019, 10 October 2024) and Germany (5 April 2017, 4 June 2018, 26 January 2024, 9 April 2024), where several Higher Administrative Courts have granted interim relief to applicants excluded from the child protection and accommodation system following their classification as adults. Dutch courts have similarly issued interim measures preventing the transfer of applicants claiming to be minors to the adult **reception** system after they were declared to be adults by COA (see decisions by the Court of The Hague seated in 's-Hertogenbosch on 4 November 2022 and Roermond in 23 May 2023), although whether such transfers were themselves open to challenge remained contentious until the Council of State confirmed in May 2024 that they were. Classification as an adult has also

been challenged in **detention** decisions by the Maltese Immigration Appeals Board (see *W.K.A. v The Principal Immigration Office (PIO)* and *F.B. v PIO*, both delivered on 4 October 2021; *Y.M.O. v The PIO*, 3 December 2021; *R.M. v The PIO*, 24 March 2022; *M.M. v The PIO*, 13 April 2022; and *D.A. v The PIO*, 21 April 2022) and the Athens Administrative Court of First Instance (23 April 2024).

Age assessments may also arise within the procedure concerning **transfers to the Member State responsible for the application**, as shown in the CRC Committee decision in *A.M. v Switzerland* (21 May 2024, paras 1(2), 1(3) and 4(3)), in which the Swiss authorities disregarded a prior age assessment in Sweden and issued a take back request. The applicant appealed the resulting transfer decision, arguing that unaccompanied minors must not be transferred under Article 8(4) of the Dublin III Regulation. The Swiss authorities dismissed the appeal, but the transfer was suspended following interim measures issued by the CRC Committee, which reaffirmed the applicant's right to be treated as a child pending Dublin (currently AMMR) proceedings and to challenge the outcome on age-related grounds.

Likewise, the Swiss Federal Administrative Court and the Belgian Council of State have examined age assessments in cases concerning **birth date entries in national migration databases**. In two Swiss cases, the court kept the fictitious date of birth in the migration database. In the first case (August 2018), it considered the recorded date more likely to be correct than the date claimed by the applicant; while in the second (December 2025), it found the applicant's claim no more plausible than the recorded date, which it retained but marked as 'disputed'. By contrast, in Belgium (October 2018), the court held that the Guardianship Service could assess whether a person was a minor but could not establish a new, fictitious date of birth based on a medical assessment of biological age. In Germany, an Afghan national challenged his date of birth in the Central Register of Foreigners, which had been determined in the absence of documentary evidence on the basis of an interview and visual assessment by the Senate Youth Welfare Administration (*Senatsjugendverwaltung*). The latter refused to revise its assessment, arguing that it was an internal administrative measure rather than a separately challengeable administrative act. In October 2024, the Berlin Administrative Court upheld this position, clarifying that the assessment could be relied on but was not binding when determining the date of birth to be recorded in the register.

Importantly, applicants have also challenged age determinations within **international protection procedures** themselves, as illustrated by cases in Belgium (2023), Hungary (see the ECtHR case below), the Netherlands (2019 and 2021) and Switzerland (2020). However, relying on appeals within long, complex procedures, such as international protection, as the only path to contest age assessments may interfere with access to an effective remedy, particularly when a direct redress mechanism does not exist against the age assessment decision itself.

To address this, the Dutch Council of State (18 December 2024) adopted an expansive interpretation of procedural law to allow an age classification to be reviewed on procedural fairness grounds. The case concerned a Syrian applicant who had initially been registered as a minor but was later reclassified as an adult following an age assessment and a Eurodac hit. He objected to this reassessment and submitted an extract from the population register, which temporarily led to a change in his recorded age. When the document was later deemed invalid,

however, the authorities reinstated the original date of birth without notifying him. By that time, the deadline to appeal the asylum decision had already expired and his objection to the age assessment was declared inadmissible, leaving him no clear path to challenge it.

The Council of State confirmed that, while a notification altering an applicant's date of birth constitutes a decision under the General Administrative Law because it changes the person's legal status from minor to adult, it is not a final decision and therefore cannot be appealed independently. As a result, any challenge must be brought as part of the asylum appeal. However, because this was no longer possible in the applicant's case, the council found that he should nonetheless have been afforded an opportunity to contest the age determination in court and therefore instructed the State Secretary to examine it on its merits.

A similar issue was raised before the ECtHR in *F.S. and A.S.* v *Hungary* (19 June 2025, paras 23-24), in which two detained Afghan brothers, one of whom had been confirmed as a minor, complained about the lack of a direct avenue to challenge the age assessment. The applicants argued that the Hungarian legal framework required them instead to contest the assessment as part of proceedings against the substantive asylum decision. Since they had been granted subsidiary protection, they contended that they did not wish to challenge that decision and, in any event, that by the time it was delivered on 23 April 2018, an appeal would not have had any practical impact on age-dependent matters. The court's dismissal of this specific ground as out of time, given that the application before the ECtHR was lodged on 22 October 2018, within the time limit following the international protection decision but not the age assessments, which were conducted in October and November 2017, further reinforces the importance of a separate appeal avenue to ensure an effective remedy.

In response to the same concerns, the CRC Committee has generally held that individuals must be able to challenge the outcome of an age assessment separately, through child-sensitive procedures before an appropriate and independent body. Firmly established in soft law instruments,64 the committee's position has been developed through its jurisprudence regarding the Spanish system, where a decree determining a person's majority or minority issued by the Public Prosecutor's Office cannot be appealed directly. Any challenge must instead be brought indirectly, typically by appealing a subsequent decision terminating child protection measures. Against this backdrop, the committee has consistently found that this lack of a direct remedy violates Article 12 of the CRC and, consequently, has repeatedly emphasised the need for direct appeals against age assessment decisions and for authorities to establish effective and accessible redress mechanisms that safeguard the best interests of the child and their right to be heard.

Examples of this case law can be found in *J.A.B.* v *Spain* (31 May 2019, para 13(3)), *A.L.* v *Spain* (31 May 2019, para 12(3)), *R.K.* v *Spain* (18 September 2019, paras 9(3) and 10), *A.D.* v *Spain* (4 February 2020, paras 10(9) and 11), *M.B.* v *Spain* (28 September 2020, paras 9(8) and 10), *C.O.C.* v *Spain* (29 January 2021, paras 8(8) and 10) and *R.Y.S.* v *Spain* (4 February 2021, paras 2(8), 2(9), 7(3), 8(3), 8(5) and 9). In the latter, a Cameroonian applicant was erroneously declared an adult due to a clerical error in her medical age assessment. Although she attempted to challenge directly the age determination, her claim was outright dismissed on grounds that such decisions are not explicitly regulated as administrative acts subject to an appeal under

Spanish law. Still, in the case file before the court, the applicant had access for the first time to her medical file and discovered that the X-ray results had been incorrectly recorded, which prompted her to request a review from the Public Prosecutor's Office. The review was initially denied and later conducted on the authority's own motion.

Separately, she appealed the decision terminating her placement in child protection, which was also dismissed at first instance, with second instance proceedings ongoing at the time of the committee's decision. The CRC Committee found these failures to breach Articles 3 and 12 of the CRC and reiterated the call for an effective and accessible redress mechanism for reviewing age assessment findings, while emphasising that the positive outcome of the asylum request, which the applicant was forced to submit as an adult, did not constitute a remedy for the violations of her rights as a minor.

While EU law establishes common requirements to conduct age assessments, it does not regulate how such decisions can be challenged. As a result, the design of appeal mechanisms remains largely governed by procedural autonomy at the country level, leading to significant variations across Member States, as the reviewed jurisprudence shows. However, the significant expansion of age assessment provisions under the Pact, moving towards more uniform EU procedural standards, may now open the way for CJEU case law to develop how the right to an effective remedy under Article 47 of the EU Charter applies to these new EU law provisions.

Key gaps concern the availability of a direct appeal against age assessment decisions and the suspensive effect of appeals, both areas left largely unregulated at the EU level and treated differently in ECtHR and CRC case law. The ECtHR does not require direct appeals against age assessments and accepts indirect or 'aggregate' remedies when these are effective and allow for case-by-case interim measures to address the consequences of an erroneous age determination, whereas the CRC Committee requires direct appeals with an automatic suspensive effect.

Among other safeguards at risk, because the APR and the amended RCD provide that the duties of representatives cease once an age assessment finds the applicant to be an adult, wrongly classified applicants may be left without a guardian during the review of the decision unless a suspensive effect is attached to the appeal.

In practice, age assessments are often challenged indirectly through proceedings on guardianship, access to child protection or within the international protection procedure and related issues, such as placement in reception or in procedures concerning transfers to the Member State responsible for the application. However, this approach may hinder a child's ability to challenge the age assessment directly and effectively, as it becomes embedded in a separate and more complex procedure. In response, some national courts have introduced additional safeguards grounded in procedural fairness, allowing appeals beyond the explicit legal basis and enabling a swift judicial review, including the possibility of interim measures, in order to secure the right to an effective remedy and the best interests of the child.

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  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 4 and 14.

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