

5.4.1. Lack of diligence defines undue delay

Significant weight is given to the promptness of age assessment procedures, since a delayed start may deprive applicants who may be children of access to all the safeguards examined in this report, and the mere passage of time may result in applicants reaching the age of majority before an official determination is made, rendering the process moot (see ECtHR judgments in *Mahamed Jama* v *Malta*, 26 November 2015, para 147; *A.D.* v *Malta*, 17 October 2023, para 189; and *J.B. and Others* v *Malta*, 22 October 2024, para 118).

Human rights bodies assess delays in light of the impact they cause to the applicant's rights. In the examined ECtHR case law, this has typically concerned the right to liberty under Article 5(1) of the ECHR, and in some cases the prohibition of inhuman or degrading treatment under Article 3 and the right to private and family life under Article 8, respectively, when applicants have been exposed to inadequate reception conditions and a lack of procedural safeguards. This was the case in *Darboe and Camara* v *Italy* (21 July 2022, paras 122-126, 144, 157) and *T.K.* v *Greece* (18 January 2024, paras 22-25).

In *Darboe*, the ECtHR found a breach of Article 8 due to the authority's failure to promptly identify the applicant as a child, which deprived him of age-appropriate safeguards for 4 months and prevented him from effectively and duly submitting an asylum request. The court further stressed that countries have a duty under the Convention to examine asylum cases promptly, ensuring that situations of insecurity and uncertainty are kept as short as possible. In *T.K.* v *Greece*, the applicant had initially been registered as an adult in the absence of reasons to believe otherwise, but he later submitted a copy of his birth certificate which the authorities disregarded. The age assessment then took over 1 year to be completed, during which the applicant was treated as an adult, deprived of procedural safeguards and lived in an informal settlement outside a refugee camp for an unspecified period, in breach of Articles 3 and 8 of the ECHR.

The diligence of authorities in age assessments has been particularly scrutinised in ECtHR case law concerning the detention of applicants pending the verification of their age. The court has held that determining an applicant's age is a prerequisite for assessing their asylum or migration status and may therefore fall within the scope of Article 5(1)(f) of the ECHR where national law permits detention to establish identity or determine the applicant's right to enter the territory. In such cases, the ECtHR has focused on whether the authorities carried out the age assessment in due time or, in other words, whether the detention was maintained in "good faith", remained closely connected to the purpose relied upon and was not prolonged beyond the time

reasonably necessary to determine the applicant's age (see *Mahamed Jama v Malta*, 26 November 2015, para 150 and *A.D. v Malta*, 17 October 2023, para 189).

One judgment in which the ECtHR found that authorities took an unreasonable amount of time to verify the ages of the detained applicants, in breach of Article 5(1), is *Abdullahi Elmi and Aweys Abubakar v Malta* (22 November 2016, paras 144-148). In the case, one applicant waited over 7 months for a final age assessment, remaining in detention throughout, despite the authority having been orally informed 6 months earlier that he had been found to be a minor. The second applicant waited 5 months for a wrist X-ray and a further 2.5 months for a final decision, also remaining in detention during the entire period. The court held that the number of alleged minors processed annually, as presented by the government, could not justify a period exceeding 7 months to determine the applicants' claims, a situation rendered even worse by the fact that the applicants lacked any procedural safeguards.

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