

5.4.2. Length of the appeals

For its part, the UN CRC Committee has long held that multidisciplinary age assessments should be conducted in a “prompt, child-friendly, gender-sensitive and culturally appropriate manner”, 65 and has repeatedly requested that States adopt interim measures to protect applicants from *refoulement* and inappropriate reception conditions during the review of age assessments (see *A.L.* v *Spain*, 31 May 2019, paras 1(2) and 12(4); *R.K.* v *Spain*, 18 September 2019, paras 1(2) and 9(4); *A.D.* v *Spain*, 4 February 2020, paras 1(2) and 10(10); *M.B.* v *Spain*, 28 September 2020, paras 1(2), 9(9); *C.O.C.* v *Spain*, 29 January 2021, paras 1(2) and 8(9); *R.Y.S.* v *Spain*, 4 February 2021, paras 1(2) and 8(4); and *A.M.* v *Switzerland*, 21 May 2024, paras 1(3) and 4(4)).

Recent case law of the CRC Committee concerning non-asylum-seeking applicants has found violations when judicial review proceedings were so prolonged that they could not be completed before the applicant reached the age of majority. In *S.E.M.A.* v *France* (6 March 2023),66 the applicant was not admitted into the child protection system for almost 1.5 years, despite initially submitting a copy of his birth certificate and later multiple original documents. Regarding the proceedings contesting the age assessment, the CRC Committee noted that the Lyon Court of Appeal postponed the hearing to a date after the applicant would reach the age of majority, without providing him with protection in the child welfare system. The committee concluded that this violated Articles 3, 8, 12, 20(1) and 37(a) of the CRC.

Similarly, in *U.A.* v *France* (5 July 2024),67 the applicant was removed from the child welfare system following a socio-educational assessment that concluded he was an adult, despite having provided original documentation attesting to his age. The committee noted that the applicant lived on the streets from his arrival in Marseille in September 2019 until early January 2020, again from late May 2020 to March 2021, and finally from September to mid-October 2021, without receiving any protective measures. Although he appealed the age determination decision, the hearing was delayed by over 1 year, meaning the case would not be considered until after he had reached adulthood. The CRC Committee found violations of Articles 3, 8, 12, 20(1), 28, and 37(a) of the Convention in this case.

The case law shows that international human rights bodies attach significant weight to the length of age assessment procedures, including during an appeal, and assess delays in light of the harm they cause to the applicant’s rights. Both the ECtHR and the CRC Committee stress that age assessments must be prompt and have expressed concern that excessive delays may result in applicants reaching majority before their minor age is formally determined. The ECtHR, in particular, assesses undue delays by examining whether the authorities acted with sufficient

diligence and whether the process was prolonged beyond what was strictly necessary in the circumstances, and it has been reluctant to accept abstract references to systemic pressure or processing capacity as justifications for lengthy delays. This standard is likely to become more concretely defined as procedures converge under the Pact and underscores the need for Member States to anticipate capacity demands through contingency planning and the use of the solidarity mechanism under the AMMR.

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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, para 4.

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  UN Committee on the Rights of the Child, *S.E.M.A.* v *France*, CRC/C/92/D/130/2020, 6 March 2023, paras 2(6), 8(5) and 8(6).

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  UN Committee on the Rights of the Child, *U.A.* v *France*, CRC/C/96/D/132/2020, 5 July 2024, paras 2(5), 2(6), 2(11) to 2(14), 8(6), 8(11).

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