



**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITE EUROPEEN DES DROITS SOCIAUX**

19 May 2015

Case Document No. 1

**European Committee for Home-Based Priority Action for the Child and the Family
(EUROCEF) v. France**
Complaint No .114/2015

COMPLAINT

Registered at the Secretariat on 27 February 2015

COMPLAINT TO THE
EUROPEAN COMMITTEE OF SOCIAL RIGHTS

This complaint relates to the treatment by France of unaccompanied foreign minors, who are also referred to in France as “mineurs *isolés étrangers*” (literally “*isolated* foreign minors”).

Complaint lodged by the European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) against France for the violation of Articles 7, 11, 13, 14, 17, 30 and 31 of the revised European Social Charter, read alone or in conjunction with the non-discrimination clause in Article E.

France does not fulfil its obligations under the revised European Social Charter (hereinafter “the revised Charter”) with regard to the right of children and young people to appropriate economic, legal and social protection.

I. Admissibility

1. The complainant organisation

The European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) is a non-governmental organisation set up in 1988.

For over twenty years, EUROCEF, like other INGOs with participatory status with the Council of Europe, has been a member of the Conference of INGOs. It contributes actively to work on education and social welfare in Europe. It provides international expertise to national and European political bodies.

Under Article 2 of its statute, EUROCEF's purpose is to promote social and educational assistance for children and families in the home environment, particularly through the following activities:

- Collecting and disseminating experience and research in this specific field.
- Promoting innovative experiments aimed at keeping children in their home environment, showing due regard for human rights and the International Convention on the Rights of the Child.
- Helping to devise social policies at the highest level so as to ensure that it is not just economic considerations which prevail.
- Attempting to convince European institutions of the need for professionalisation and an interdisciplinary approach in the sphere of social and educational work.

To achieve these aims (Article 3 of the statute), EUROCEF states that it will use various methods such as working groups, publications, training activities, position papers, meetings, conferences, studies, surveys and recommendations and proposals to national and European institutions.

It may bring legal proceedings and refer the issues raised in that context to the European Court of Human Rights.

2. Applicability to France of the revised European Social Charter and of the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints

France signed the European Social Charter of 1961 on 18 October 1968, and deposited its instrument of ratification on 9 March 1973. Subsequently, it signed the 1995 Additional Protocol to the European Social Charter providing for a system of collective complaints on 9 November 1995 and the revised European Social Charter on 3 May 1996. It ratified both these texts on 7 May 1999.

In accordance with the declarations contained in the instrument of ratification of the revised Charter of 1996 deposited by France on 7 May 1999, France considers itself bound by all the articles of Part II of the revised Charter.

3. Compliance by the European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) with the criteria of the Additional Protocol.

- Compliance with Article 1 (b) of the Additional Protocol of 1995

EUROCEF submits this collective complaint to the Executive Secretary, acting on behalf of the Secretary General of the Council of Europe, in accordance with the collective complaints procedure established by the Council of Europe on 9 November 1995 in order to give full effect to the principle of social rights for all.

Unlike the bodies referred to in Articles 1(c) and 2§1 of the Additional Protocol, international non-governmental organisations entitled to submit collective complaints need not necessarily fall under the jurisdiction of the High Contracting Party against which the complaint has been lodged. This means that EUROCEF can lodge a collective complaint against any country which has ratified the Charter or revised Charter or both, and has agreed to be bound by the collective complaints mechanism, without prejudice to any other admissibility requirement.

EUROCEF has consultative status with the Council of Europe and appears on the Governmental Committee's list of international non-governmental organisations entitled to submit collective complaints.

- Compliance with Article 3 of the Additional Protocol of 1995

EUROCEF's activities assign it the necessary competence for the questions to which the complaint relates.

Article 2 of its statute reads:

The purpose of the Committee is to promote social and educational assistance for children and families in the home environment, particularly through the following activities:

- Collecting and disseminating experience and research in this specific field.
- Promoting innovative experiments aimed at keeping children in their home environment, showing due regard for human rights and the International Convention on the Rights of the Child.
- Helping to devise social policies at the highest level so as to ensure that it is not just economic considerations which prevail.
- Attempting to convince European institutions of the need for professionalisation and an interdisciplinary approach in the sphere of social and educational work.

In this way EUROCEF aims to help to improve social policies for families and oppose policies which would appear to it to infringe their rights.

EUROCEF is a non-profit-making association and all the money it raises is reinvested in its activities. The members of the Committee's bureau and governing board are not entitled to

any payment in return for the functions they perform. EUROCEF plays an active part in INGO activities at the Council of Europe and is competent in areas of activity connected with social rights and the European Social Charter.

II. Introduction to the complaint

1. The legal status of unaccompanied foreign minors

▪ The persons concerned

EUROCEF is aware that, under the revised Charter, undeclared migrants cannot claim the rights enshrined in this text. The Appendix to the revised Charter states that its scope is limited to foreigners who “are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned”.

A strict interpretation of the Appendix to the revised Charter would imply that some of the persons concerned by this complaint, namely unaccompanied foreign minors not requesting asylum, are not protected by the revised Charter.

However, EUROCEF notes that the Charter was drafted with the aim of enabling the effective exercise of the rights enshrined therein. The European Committee of Social Rights (ECSR) has drawn attention to this matter, insisting on the interconnection between the revised Charter and other human rights related instruments, particularly the International Convention on the Rights of the Child (CRC) and the European Convention on Human Rights (ECHR). The scope of the revised Charter guarantees “to foreigners not covered by the revised Charter rights identical to or inseparable from those of the revised Charter”¹.

According to the Committee, the Charter was envisaged as a human rights instrument to complement the European Convention on Human Rights and is a living instrument.² Accordingly, it must be interpreted so as to give life and meaning to fundamental social rights (FIDH v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, § 29; DCI v. the Netherlands, Complaint No. 47/2008, decision on the merits of 20 October 2009, § 34) and in harmony with other rules of international law of which it forms part.³ The Committee has also stated that “restrictions on rights are to be read restrictively, i.e. understood in such a manner as to preserve intact the essence of the right and to achieve the overall purpose of the Charter” (FIDH v. France, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 27-29).⁴

In its decisions on the merits in DCI v. the Netherlands (Complaint No. 47/2008, decision of 20 October 2009, §§ 37 and 38) and in FIDH v. France (Complaint No. 14/2003, decision on the merits of 8 September 2004, § 30), the Committee states that “the restriction in paragraph

¹ECSR, Conclusions 2005, Statement of Interpretation on Article 11, § 5, p.10.

²ECSR, DCI v. the Netherlands, 20 October 2009, Complaint No. 47/2008, §34.

³Ibid, §35.

⁴Ibid, §36.

1 of the Appendix attaches to a wide variety of social rights and impacts on them differently”. It also stipulates that “such restriction should not end up having unreasonably detrimental effects where the protection of vulnerable groups of persons is at stake”. Children are acknowledged to be extremely vulnerable persons, who, for a large part of their existence, are dependent on others for their survival. This dependence on others entails that they have very limited (or no) influence on their place of residence. The complainant organisation argues therefore that the adult’s choice should not result in substandard, unfit living conditions for the child.

While in some cases, it may seem justified for France to treat children present on its territory differently according to whether they are in a legal or an illegal situation, EUROCEF considers, with reference to the decision on the merits of Collective Complaint No. 47/2008, DCI v. the Netherlands, that the desire of states to foil attempts to circumvent immigration rules must not deprive foreign minors, especially if unaccompanied, of the protection their status warrants. The Committee has also pointed to the need to reconcile fundamental rights and the constraints imposed by a state’s immigration policy (see, *mutatis mutandis*, European Court of Human Rights, Mubilanzila Mayeka and Kaniki Mitunga v Belgium, judgment of 12 October 2006 § 81)⁵.

Referring to the decision on the merits of Complaint No. 14/2003 ([FIDH](#) v. France)⁶, EUROCEF considers that social, legal and economic protection, like healthcare, constitutes a vital precondition for the preservation of human dignity. Any practice which denies foreigners the right to social, legal and economic protection – or healthcare – even if they are not legally present in the territory, must therefore be deemed incompatible with the revised Charter.

International approach

- **Office of the United Nations High Commissioner for Refugees (UNHCR):** “an unaccompanied child is a person who is under the age of eighteen, unless, under the law applicable to the child, majority is attained earlier and who is separated from both parents and is not being cared for by an adult who by law or custom has responsibility to do so”.
- **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984)**
- **Convention against Transnational Organised Crime (2000) and two of the three protocols thereto (2000)**
- **United Nations Convention on the Rights of the Child (1989) and the optional protocols thereto (2000, 2000, 2011, 2014)**
 - **Article 2** lays down the fundamental principle of rights for all children without discrimination and, in particular, “irrespective of their national, ethnic or social origin”.

⁵Ibid., §42

⁶ECSR, FIDH v. France, 3 November 2004, Complaint No. 14/2003, §§ 31-21.

- **Article 3** provides that "in all actions concerning children, ... the best interests of the child shall be a primary consideration".
- **Article 20** guarantees that "a child temporarily or permanently deprived of his or her family environment ... shall be entitled to special protection and assistance provided by the State", regardless of his or her nationality.

The Committee on the Rights of the Child points out in General Comment No. 6 of 1 September 2005 that "the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children - including asylum-seeking, refugee and migrant children - irrespective of their nationality, immigration status or statelessness".

Europe's approach

▪ **The Resolution of the Council of the European Union of 26 June 1997**

- **Article 1** states that the resolution relates to "third-country nationals below the age of eighteen, who arrive on the territory of the Member States unaccompanied by an adult responsible for them whether by law or custom, and for as long as they are not effectively in the care of such a person ... [and] minors who are nationals of third countries and who are left unaccompanied after they have entered the territory of the Member States" (97/C 221/03).
- **Article 3** provides that "irrespective of their legal status, unaccompanied minors should be entitled to the necessary protection and basic care in accordance with the provisions of national law".

- **The Council of Europe** (Recommendation CM/Rec(2007)9 of the Committee of Ministers to the member states on life projects for unaccompanied migrant minors) recommends the implementation of life projects for unaccompanied minors: "life projects, fully in accord with the best interests of the child, as defined in the Convention on the Rights of the Child, pursue objectives relating to the social integration of minors, personal development, cultural development, housing, health, education and vocational training, and employment".

"This recommendation concerns unaccompanied migrant minors who are outside their country of origin, regardless of their status, irrespective of the reasons for their migration and whether or not they are asylum seekers. The expression 'unaccompanied migrant minors' includes separated children and minors who have been left to their own devices after entering the territory of the member state.

Unaccompanied minors are children under the age of 18 who have been separated from both parents and other relatives and are in the care of an adult who, by law or custom, is responsible for doing so.

Separated children are children under the age of 18 who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. They may, therefore, be children accompanied by other adult family members.”

- **Recommendation 1985(2011) of the Parliamentary Assembly of the Council of Europe** highlights the concerns about the situation of migrant children in the member states. The Assembly recommends that the member states:
 - strengthen children’s rights in five areas: education, health care, housing, detention and exploitation;
 - assign a legal guardian to unaccompanied minors separated from their parents;
 - provide these children with continuous and reliable support beyond the age of majority thus avoiding unnecessary psychological pressure caused by uncertainty about their future, which may otherwise affect their development at an early age and deprive them of their right to development as protected by Article 6 of the United Nations Convention on the Rights of the Child;
 - support local authorities and civil society, to allow them the possibility of assisting children who would otherwise be destitute.

- **The European Economic and Social Committee (EESC)** gave its view on the international protection of unaccompanied minors in an opinion of 15 October 2014⁷ recommending in particular that:
 - personnel dealing with unaccompanied minors should be properly trained in respect for children’s rights;
 - it should be ensured that minors are assisted by properly trained social workers, independent interpreters and qualified representatives acting as legal guardians so that they are able to understand the implications of the whole process of lodging an application for international protection in any EU Member State;
 - the **legal guardian** should be a “qualified representative”, with experience in dealing with minors and a knowledge of national alien law and child protection legislation;
 - member states should ensure that any age assessment procedures are based on the minor’s best interests with the primary aim being to ensure that the minor is granted the rights and protection he/she is entitled to. The assessment should be carried out in the presence of a legal guardian;

⁷“Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) No 604/2013 as regards determining the Member State responsible for examining the application for international protection of unaccompanied minors with no family member, sibling or relative legally present in a Member State” COM(2014) 382 final – 2014/0202 (COD)

- every child should be provided with information on his/her rights suitable to his/her age, based on the relevant UN Convention, thus ensuring that minors, especially "invisible" minors who are under no proper care, can be empowered to seek protection.

France's approach

In contrast with the Council of the European Union, which limits the designation "unaccompanied minor" to minors from third countries, the French authorities make no distinction in relation to the minor's country of origin or even his or her nationality. The term, "isolated foreign minor" used in France has no legal status in French law.

Consequently, the protection of these unaccompanied minors is covered by the term "children in danger" and the relevant legislation does not make entry into this category dependent on conditions of origin or nationality.

It is **Articles 375 of the Civil Code and L221-1 of the Social Welfare and Family Code (CASF)** which apply when "an unemancipated minor's health, safety or morals are under threat or if the prerequisites for his or her physical, emotional, intellectual or social development are seriously compromised".

Article L112-3 of the CASF adds the following: "The aim of child protection shall be to prevent the difficulties which parents may face when exercising their child-rearing responsibilities, to support families and, where necessary, to provide total or partial care for minors according to their needs. For this purpose it shall comprise a series of measures to support minors and their parents. These measures may also be designed for adults under the age of 21 experiencing difficulties liable to seriously unsettle their equilibrium. Child protection shall also aim to prevent the difficulties which may be encountered by minors who are temporarily or permanently deprived of the protection of their families and to provide care for them".

2. The French legal framework

As stated in the report by Martina Andreeva and Jean-Philippe Légaut on the research conducted in France under the PUCAFREU project, "increasing numbers of children are migrating to Europe in search of international protection and/or for other reasons, and for many of them France is a country of destination"⁸.

The problems associated with receiving and caring for unaccompanied foreign minors vary according to the French *département* concerned, depending on whether they are close to the country's borders, have airport facilities or are attractive to migrants. Clearly, the Parisian region fulfils the two latter conditions and unaccompanied minors are particularly numerous in this region. It is understandable therefore that this is the source of the most enlightening

⁸ Andreeva, M and Légaut, J.P, 2013, *Mineurs isolés étrangers et sans protection en Europe*, p.9

accounts of the difficulties encountered by these minors. As a result, our complaint will focus on facts reported in Paris and the surrounding region while not ruling out the possibility that similar problems are encountered in other French regions or *départements*.

To place our arguments in context, we will outline the current national legislation with regard to care for unaccompanied foreign minors but also provide you with some information about the arrangements that apply specifically in the *département* of Paris.

On 31 May 2013, the national system for the shelter, evaluation and allocation of isolated foreign minors came into force, allocating these minors to places throughout France. After the five days of emergency shelter provided for by Article L.223-2 of the Social Welfare and Family Code, if the *département* council of the young person's place of arrival recognises that he or she is a minor and is unaccompanied, the public prosecutor of that place "designates the *département* of their permanent placement" (Ministry of Justice, Ministry of Social Affairs and Health, Ministry of the Interior, 2013, p.2). This allocation is carried out on a nationwide scale and according to allocation guidelines based on the percentage of persons under 19 years of age in each *département* (Ministry of Justice, Ministry of Social Affairs and Health, Ministry of the Interior, 2013, p.4). This system should make it possible to limit disparities between *départements* with regard to the numbers of minors arriving and to "provide the young people involved with every guarantee connected with the need to protect their interests, respect their rights and secure their status" and "to harmonise practice between *départements*" with regard to the shelter, evaluation and allocation of these young people (Assessment of the system for isolated foreign minors set up by the agreement and the circular of 31 May 2013, General Welfare Inspectorate (IGAS), July 2014).

"The agreement and the circular clearly identify two different stages, outlining the legal framework for each:

- An administrative stage of shelter and evaluation, during which, after an initial interview, the *département* council provides accommodation for the young person for the period of emergency shelter of up to five days provided for by Article L.223-2 of the CASF and evaluates the minor's situation to ensure that he or she is a minor and is unaccompanied as part of the duties assigned to the chair of the *département* council by Article L.226-4 of the CASF;
- A judicial stage, which begins with referral to the prosecution department after the expiry of the five-day emergency shelter period. At this stage, the prosecutor issues a provisional placement order either allocating the young person concerned to another *département* or extending the evaluation stage in the *département* in which he or she arrived for a period of up to eight days. After such extensions, the prosecutor may proceed with allocation to another *département* or refer the case to the local juvenile court, particularly if the evaluation stage has not yet been completed".⁹

⁹ IGAS report (July 2014). Assessment of the system for isolated foreign minors set up by the agreement and the circular of 31 May 2013.

In order to implement the administrative stage described in the circular, several *départements* have set up evaluation systems or reinforced existing ones. Their titles vary according to the *département* but their tasks are always the same: to assess whether young people claiming to be unaccompanied foreign minors are actually minors and unaccompanied, and to check that they have not applied for protection in any other French *département*.

Following this development, evaluation system professionals now attempt to identify young people who are particularly vulnerable (because of factors including their young age or illness) and those for whom there is still a doubt as to whether they are minors.

Minor status must be assessed by means of interviews, authentication of civil status documents and, where necessary, expert medical appraisals ordered by the public prosecutor if there is still a doubt. It should be pointed out that “in the light of the growing number of adolescents and young adults requesting protection, establishing whether or not they are minors has become a key issue, and both a complex and a controversial one as there is no means of determining precisely what a person’s age is if they do not have civil status documents”.¹⁰

3. The true situation of unaccompanied foreign minors in France

- **The problem of assessing whether unaccompanied young foreigners are minors**

- Assessment of unaccompanied foreign minors’ civil status documents is not carried out in accordance with the law

Article 47 establishes a presumption of compliance with procedural requirements for civil status documents drawn up abroad in accordance with this country’s common practices. It also applies procedural safeguards to the investigation and authentication of identity papers and civil status documents presented by foreign nationals. Yet, it would seem that in various *départements*, identity documents are sometimes directly contested by the social workers in charge of assessments without any reference to legal expertise. In the *département* of Hauts-de-Seine, social workers even say that young people who come forward without civil status documents are turned away.¹¹

- Refoulement of persons between the ages of 17 and 18.

Experience shows that young people approaching adulthood are still being refused permission to stay in France, which contradicts the assurances given by the French ombudsman (*Défenseur des droits*) that such practices had been eliminated.

- Assessments often based on stereotypes.

¹⁰ IGAS report (July 2014). Assessment of the system for isolated foreign minors set up by the agreement and the circular of 31 May 2013.

¹¹ Open letter to the Chair of the *département* council of Hauts-de-Seine of 6 June 2013 by the CGT trade union representing the staff of the Hauts-de-Seine *département* council.

Some young people are suspected of being adults because of their physical appearance or their psychological maturity and this prompts associations campaigning for the unconditional reception of unaccompanied foreign minors to tell young people what they must say and how they must behave to increase their chances of being assisted by the child welfare services, thus complicating the assessment tasks of social workers still further.

- Age assessments based on disputed expert appraisals

Age estimation through analysis of bone density is increasingly disputed by scientists because of its highly approximate nature. However, it is still in frequent use. The ombudsman recommends that bone density testing “is not relied on exclusively to determine the age of isolated foreign minors. Otherwise, it is recommended that legal provision be made for the young person to be systematically given the benefit of the doubt and for it to be assumed that he or she is a minor”.¹²

The PUCAFREU report¹³ also highlights instances of abusive practices when determining a person’s age.

Furthermore, according to the circular of 31 May 2013, young persons must give their consent to such procedures and be “informed of the arrangements for and consequences of this examination in a language they understand”.¹⁴

• **Shortcomings of initial reception arrangements**

- Lack of any social or educational assessment prior to presentation to the airport and border police.

In a decision of 19 December 2012¹⁵, the ombudsman noted that in several *départements*, unaccompanied foreign minors were presented to the police before any educational assessment was made, reflecting the fact that the prime consideration was that they were foreigners rather than that they were in a particularly vulnerable situation because of their status as minors.

- There are many reports that the young people concerned are not clearly informed of their rights

Both a number of professionals employed by the *département* council of Hauts-de-Seine, whose comments were passed on by the trade union, the CGT, and the ombudsman have noted that there is a complete lack or insufficient numbers of interpreters to explain to young people what procedures are to be applied to them and what rights they have and to listen to their explanations about their situation.

¹² Decision of the ombudsman No. MDE/2012-179

¹³ PUCAFREU, *Mineurs isolés étrangers et sans protection en Europe*, a study conducted in France for the PUCAFREU project, page 44

¹⁴ IGAS report (July 2014). Assessment of the system for isolated foreign minors set up by the agreement and the circular of 31 May 2013.

¹⁵ Decision of the ombudsman No. MDE/2012-179

- Not all the social workers tasked with this initial reception have had the extra specialised training required to be able to deal appropriately with unaccompanied foreign minors. The ombudsman regrets this in recommendation No. 4 MDE/2012-179. This shortcoming is also highlighted by PUCAFREU¹⁶, which cites reports from social workers in particular.
- As soon as they arrive, unaccompanied foreign minors are subjected to a sorting procedure and a selection process which means that they cannot all receive the assistance they need.

Various statements confirm that on initial reception, these people are sorted according to the following criteria:

- Children without civil status documents or suspected of being adults or close to adulthood are refused permission to stay in France. They may also be sent, unaccompanied and without a travel ticket, to another regional office of the Child Welfare Department because the facilities are saturated or in order to share out the workload more effectively.
- Others are housed for four months in hotels or group homes under a “shelter” system pending their transfer to a child welfare facility depending on the places that come free.
- Lastly, the most “vulnerable” children are allocated places more rapidly.

It should be noted that the same vulnerability criteria are applied to all unaccompanied foreign minors even when they have been wandering for many months, already been victims of smugglers, suffered major physical or psychological abuse or have nothing to eat and nowhere to live in a country where most do not speak the language.

- **Often very long delays in care provision, which take no account of the vulnerability of young people and the need to satisfy their basic needs and provide them with social and educational support.**

Some young people can spend several months on the street before gaining access to the shelter system. The PUCAFREU report describes these young people’s often degrading living conditions.¹⁷ During this period they are left entirely to their own devices, having to find their own food and housing. They live in railway stations, squats, shanty towns or Métro stations.

Most of these young people have been homeless for many months and have experienced many psychological traumas, which should be dealt with immediately, just as a review of their state of health should be conducted straight away.

¹⁶ PUCAFREU, *Mineurs isolés étrangers et sans protection en Europe*, a study conducted in France for the PUCAFREU project, page 40

¹⁷ PUCAFREU, *Mineurs isolés étrangers et sans protection en Europe*, a study conducted in France for the PUCAFREU project, page 49

Once they have been admitted to the shelter system, most young people are accommodated in hotels and left for most of the time on their own, without any permanent educational or social support.

In this way the saturation of reception facilities for unaccompanied foreign minors in France, the climate of suspicion surrounding these young people's statements and the lack of specialised training for the social workers tasked with their reception and supervision result in degrading living conditions for these people. However, above all, by failing to deal adequately with the problem of unaccompanied minors, France fails to honour its commitments under the European Social Charter, which it has signed and ratified.

4. The grounds for our complaint

1. The facts

The purpose of this complaint is to highlight the violations by the French state of certain rights guaranteed by the revised European Social Charter against unaccompanied foreign minors residing in the country unlawfully or requesting asylum.

Reports by a number of organisations, observations made on the ground and statements collected from social workers and the minors concerned themselves lead us to the following findings:

Violation of Article 7: Right of children and young persons to protection

Paragraph 10

“to ensure special protection against physical and moral dangers to which children and young persons are exposed, and particularly against those resulting directly or indirectly from their work”

Some unaccompanied foreign minors arriving in France by air are refused access to the country as soon as they step off the plane. 341 unaccompanied minors were in this situation in 2008, or 31.2% of the unaccompanied foreign minors arriving by air (*France Terre d'Asile*, 2010). The latter are taken to “waiting areas”, where they remain for an average of two to three days before being allowed to enter the country or redirected. This waiting period can last up to twenty days. The practice has already been criticised by the Committee on the Rights of the Child and the UN Committee against Torture (*France Terre d'Asile*, 2010). It is in breach of Article 97 of the International Convention on the Rights of the Child but also of the case-law of the European Court, which states that detention must be an exceptional measure and only the ultimate resort.

At Roissy Airport, for example, there is a special accommodation area for the reception of minors. However, it provides only six places. Yet, the central management of the border police states that over 90% of the unaccompanied minors arriving in France by air do so via Roissy Charles de Gaulle Airport and the numbers are growing every year. In addition, the association, Anafé, considers that minors under the age of 13 who are said to be accommodated in hotels are

“kept in unknown places which are often inaccessible to ad hoc administrators”¹⁸, making it difficult to ascertain whether their rights are respected.

Orly Airport, for its part, has arranged for hotel accommodation for unaccompanied foreign minors under the age of 13. “Children over the age of 13 are kept in the same area as adults during the day and are housed in separate rooms at night” (Ministry of the Interior website). However, “this practice seems questionable in the light of the International Convention on the Rights of the Child and the case-law in the Tabitha case. Accommodation in rooms reserved for children over the age of 13 cannot be considered to constitute specific, separate accommodation guaranteeing proper care meeting European requirements”.¹⁹

Violation of Article 11: Right to protection of health

“With a view to ensuring the effective exercise of the right to protection of health, the Contracting Parties undertake, either directly or in co-operation with public or private organisations, to take appropriate measures designed inter alia:

- 1. to remove as far as possible the causes of ill-health;*
- 2. to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health;*
- 3. to prevent as far as possible epidemic, endemic and other diseases, as well as accidents.”*

In the absence of facilities of sufficient quantity and quality to receive unaccompanied foreign minors, there are regular problems with the sanitary conditions of the places in which they are accommodated. In a decision of August 2014 the French ombudsman noted the inadequacy of the Stendhal shelter in Paris in this respect, highlighting “material conditions unworthy of an establishment for minors run by the child welfare services in view of the worrying sanitary conditions (reports of rats, cockroaches and bedbugs) and particularly dilapidated premises unsuited for the accommodation of adolescents”.

While noting that this establishment had been closed in February 2014, the ombudsman recommended that in spite of this, one or more establishments in keeping with Law 2002-2 of 2 January 2002 on social welfare reforms should be set up to reduce the need to accommodate these young people in hotels, in conditions which raised legitimate fears concerning their physical and psychological health.

Similarly, the PUCAFREU report states (on page 60) that some of the young people interviewed have experienced alarming health problems such as extreme fatigue, infections at shelter facilities and hypothermia (when living on the street), even though the rapporteurs state that these young people have relatively easy access to the healthcare system, through campaigning organisations or through public facilities providing state medical assistance. It is still true, however, that “associations working in the field have witnessed an alarming deterioration in the physical and psychological health of these children who live on the streets, fending for themselves and facing a whole series of dangers”.²⁰

¹⁸ <http://conflicts.revues.org/16433#tocto2n3>

¹⁹ Ibid.

²⁰ PUCAFREU, *Mineurs isolés étrangers et sans protection en Europe*, a study conducted in France for the PUCAFREU project, page 60

For its part, the CGT trade union representing the staff of the *département* council of the Hauts-de-Seine reports that “children and young people requiring medical care (such as dental treatment and treatment of urinary infections and leg wounds) sometimes remain untreated for several days or weeks on the pretext that there is no parental authority to authorise treatment. ... In general, young people who are made to wait in hotels are not given a medical check-up”.

This report also outlines all the problems encountered by these young peoples in the areas of ...

Furthermore, “mental health conditions such as post-traumatic stress, which have been reported in a number of unaccompanied minors, are rarely taken into account and rarely monitored” (National Monitoring Centre for Children in Danger (ONED), 2014, p.64).

Clearly, France is not taking all the necessary measures to guarantee the right of unaccompanied foreign minors to protection of their health, as required by Article 11 of the European Social Charter.

Article 13: The right to social and medical assistance

“With a view to ensuring the effective exercise of the right to social and medical assistance, the Parties undertake:

- 1. to ensure that any person who is without adequate resources and who is unable to secure such resources either by his own efforts or from other sources, in particular by benefits under a social security scheme, be granted adequate assistance, and, in case of sickness, the care necessitated by his condition;*
- 2. to ensure that persons receiving such assistance shall not, for that reason, suffer from a diminution of their political or social rights;*
- 3. to provide that everyone may receive by appropriate public or private services such advice and personal help as may be required to prevent, to remove, or to alleviate personal or family want;*
- 4. to apply the provisions referred to in paragraphs 1, 2 and 3 of this article on an equal footing with their nationals to nationals of other Parties lawfully within their territories, in accordance with their obligations under the European Convention on Social and Medical Assistance, signed at Paris on 11 December 1953.”*

Although access to care for unaccompanied foreign minors is properly provided for, notwithstanding the reservations expressed above in our investigation of the application of Article 11, it is still true that the saturation of facilities makes it impossible to find appropriate solutions to every problem, particularly for young people who are refused admission to protection arrangements by reception teams.

Likewise, we have already noted that social workers say that they do not have sufficient training to deal with the very specific situation of these young people, that they are often overwhelmed by the scale of the tasks assigned to them and that they regret the lack or insufficient numbers of interpreters to enable them to *give personal advice and help or to prevent, remove or alleviate personal or family want.*

The lack of any explanation about all the stages of the complex procedure which applies to unaccompanied foreign minors clearly constitutes a violation of Article 13 of the revised Charter.

Article 14: The right to benefit from social welfare services

"With a view to ensuring the effective exercise of the right to benefit from social welfare services, the Parties undertake:

- 1. to promote or provide services which, by using methods of social work, would contribute to the welfare and development of both individuals and groups in the community, and to their adjustment to the social environment;*
- 2. to encourage the participation of individuals and voluntary or other organisations in the establishment and maintenance of such services."*

Leaving minors on the streets is a de facto violation of their right of access to high quality welfare services and their right to social and psychological support. Here again, the inadequacy of reception facilities, the lack of specialised training for staff and the sporadic support provided for young people accommodated in hotels effectively infringes the right of these young people to benefit from social welfare services.

The International Convention on the Rights of the Child states that "a child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State" (Article 20). Therefore, just like French minors, unaccompanied foreign minors must be able to access protection measures. Nonetheless, some unaccompanied foreign minors are excluded from the child protection system while others decide themselves to leave it.

Caught as they are between two spheres of legislation, namely that of child protection and that of immigration, their status as minors and as unaccompanied persons is almost systematically disputed. In Paris, "minors who are not considered to be 'isolated' (because they have contacts in France) or who are capable of travelling elsewhere (regarded as being in transit) are not entitled to institutional protection" (ONED, 2014, p. 66). In connection with their age, unaccompanied foreign minors are ordered to undergo medical examinations (wrist x-rays, measurements, pubertal maturity, dental development) even if they have an identity document: "in practice, the Prosecutor's office bases its decision on the results of this examination, without considering the civil status documents that are in doubt, or the child's statements" (Delbos, 2010, p.89). However, these tests are not scientifically valid as there is a margin of error of 18 months (AIFRISS). Furthermore, "under Article 47 of the Civil Code, any civil status document held by a French or a foreign national must be deemed authentic if it has been prepared in accordance with the common practice in the country concerned" (judgment of the Lyon Court of Appeal of 18 November 2002). Despite this, some *départements* go further, requiring a bone density analysis after several months of care and do not hesitate to throw young people out onto the streets if the examination shows that they are adults, sometimes even if they are at school (Becquemin, 2005).

There is also another category of unaccompanied minors who are excluded from the protection system, namely minors placed in airport waiting areas as these areas are exempt

from child protection rules and the minors in them are regarded first and foremost as foreigners (Bouquet & Jaeger, 2001). This is despite the Court of Cassation's finding that "the waiting area, which is under national administrative and jurisdictional control, is in fact within the national territory and that the educational assistance measures are therefore applicable to unaccompanied minors who have been detained" (Delbos, 2010).

As to the unaccompanied foreign minors who succeed in benefiting from a protection measure under the child protection scheme, some will eventually leave the system as it is incompatible with their need to earn money quickly to send to their family. This concerns young people who are acting under their family's instructions and also those who have developed a sense of responsibility towards them. However, there may be other reasons for them to leave, such as difficulties in adapting to protection measures (accommodation, regulations, etc.), the lack of any prospect of regularisation and what their family has told them about the French authorities (ONED, 2014).

Article 17: The right of children and young persons to social, legal and economic protection

"With a view to ensuring the effective exercise of the right of children and young persons to grow up in an environment which encourages the full development of their personality and of their physical and mental capacities, the Parties undertake, either directly or in co-operation with public and private organisations, to take all appropriate and necessary measures designed:

- 1. a. to ensure that children and young persons, taking account of the rights and duties of their parents, have the care, the assistance, the education and the training they need, in particular by providing for the establishment or maintenance of institutions and services sufficient and adequate for this purpose;*
- b. to protect children and young persons against negligence, violence or exploitation;*
- c. to provide protection and special aid from the state for children and young persons temporarily or definitively deprived of their family's support;*
- 2. to provide to children and young persons a free primary and secondary education as well as to encourage regular attendance at schools."*

"Children who are victims of persecution are protected in all the European Union member states under the UN's Refugee Convention, which covers any person who has 'a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion' " (France Terre d'Asile, 2010, p.17). As part of this procedure, France provides for an "ad hoc administrator" to be appointed for every minor without a legal representative on French territory. Such professionals then have the task of supporting and representing minors in their official dealings.

The Asylum Procedure Directive provides that "specific procedural guarantees for unaccompanied minors should be laid down on account of their vulnerability" but also that the officials processing applications and taking decisions should "have the necessary knowledge of the special needs of minors" (Council Directive 2005/85/EC of 1 December 2005, note 42, §14). Yet, in France, the

French Agency for the Protection of Refugees and Stateless Persons (OFPRA) does not have any officials at its disposal who are specialised in asylum applications for minors.

In conclusion, the so-called “Dublin II” Regulation lays down criteria which help to determine which European state is responsible for each application. Consequently, “the first state into which the applicant has entered is required to process the asylum application” (France Terre d’Asile, 2010, p.26). A survey conducted by France Terre d’Asile on the arrangements for the reception and care of unaccompanied minors in eight countries of the European Union revealed that France was the only one of these countries not to apply the regulation.

As to education, in French law, “legal access to education, including professional and cultural courses, is guaranteed” through the 1958 Constitution (PICUM, 2013, p.18). Express reference is made in the circulars of 6 June 1991 and 20 March 2002 to “non-discrimination regarding foreign children” (PICUM, 2013, p.18). The right to education is also enshrined in international and European texts such as the Universal Declaration of Human Rights, the Convention on the Rights of the Child and the Charter of Fundamental Rights of the European Union (PICUM, 2013). However, “despite the considerable efforts of the EU, it is an unfortunate reality that educational inequality and discrimination in European education systems continue to be widespread, with the educational attainment of migrants and minorities lagging behind that of majority groups” (PICUM, 2013, p.22).

Unaccompanied foreign minors arriving in France who are aged between 16 and 18 encounter many problems when attempting to access education. “As school attendance is no longer mandatory after age 16, unaccompanied foreign minors are only admitted to establishments if spaces are available ” (Delbos, 2001, p.120). In addition, the requirements that are imposed on these young people as regards their economic and social integration and their low level of education force them to seek out vocationally-oriented training through which they can gain rapid access to the labour market. However, they are not allowed to choose freely what area they will work in as the institutions in charge of processing applications for work permits approve applications more readily if the young person concerned is inclined towards a so-called “problem” sector which is finding it difficult to recruit, rather than one in which demand and supply already match up.

Problems also arise in this area for unaccompanied minors who do not have identity papers. They may be asked for an identity document when enrolling for a course but above all they will be required to have one in order to receive their diploma: “In many of the countries investigated, NGOs have reported that even where there has been no problem in access to education, there has been a problem receiving a diploma at the end of the scholastic career. This is because residence permission or an identification document is required for the diploma to be granted” (PICUM, 2013, p.35).

Article 30: The right to protection against poverty and social exclusion

“With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a. to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;*

b. to review these measures with a view to their adaptation if necessary."

The living conditions of unaccompanied minors living on the streets without protection poses a threat to their schooling. "To go to school, it is necessary to be able to buy food, clothing and books and this is not within the means of the minors we met during our survey" (ONED, 2014, p.63). "When they live on the street, these young people have great difficulty attending school regularly. We found that sometimes they didn't have enough money to buy school equipment or clothes. When they live in hostels, it takes a long time to get to school and transport is expensive" (Observatory on the Migration of Minors (OMM), 2014, p.10). This creates a vicious circle as the regularisation of unaccompanied foreign minors in France is subject to regular school attendance (ONED, 2014).

Article 31: **The right to housing
 Paragraph 2**

" 2. to prevent and reduce homelessness with a view to its gradual elimination;"

Daniel Senovilla-Hernandez, a researcher at the French National Centre for Scientific Research (CNRS), has looked into the situation of unaccompanied foreign minors without protection in four European countries: France, Belgium, Spain and Italy. In Paris, the research team met several young people from Asian and west African countries who had nowhere to live and were mostly waiting for protection. Some of these people succeed in activating community links to find housing solutions which are often temporary in nature, whereas others sleep on the streets. In Paris, unaccompanied minors must all pass through the PAOMIE, which is an office run by the association, France Terre d'Asile, in order for it to be ascertained whether they are unaccompanied and, above all, whether they are truly minors. However, this procedure has reached saturation point. Young people must sometimes wait several weeks to get an appointment and during this period, only the most vulnerable of them are granted shelter, "causing certain categories of minor to be excluded from any social assistance, including the possibility of adequate and decent housing" (ONED, 2014, p.62). As a result, "unprotected minors live their lives on the streets (in sleeping bags and tents), squats or abandoned houses or factories" (ONED, 2014, p.62).

"Access to housing for unaccompanied children should not be an issue of concern since states should have the responsibility for them. However many NGOs have reported that in many cases unaccompanied children are 'de facto' excluded from the social system set up for them, and end up in living situations of social exclusion" (PICUM, 2013, p.87). Furthermore, in 2005, the Parliamentary Assembly of the Council of Europe recommended that unaccompanied minors should be "placed in care and reception structures in keeping with their age and maturity" (Recommendation 1703, 2005, §5), in other words, with foster families, in educational establishments, in special centres for unaccompanied minors or possibly in an accommodation centre for asylum seekers if the young person concerned is over the age of 16 (France Terre d'Asile, 2012). Nonetheless, when care is provided for unaccompanied foreign minors, many of them are temporarily accommodated in hotels and this solution can actually last months. During this time minors are unsupervised and are "not supported by social workers" (OMM, 2014, p.11).

Article E: Non-discrimination

"The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status. "

There is still a great deal of inequality in the way in which unaccompanied foreign minors are treated in France, particularly in comparison with the minors of French origin cared for under the child protection system. In its activity report on the national system for the shelter, evaluation and allocation of isolated foreign minors, the Directorate for the Judicial Protection of Young People notes that "although it has been accepted by most *départements*, the standard assessment procedure has been set up in different ways".

In addition, the right of unaccompanied foreign minors to protection and access to healthcare, housing or social and legal protection depends to a large extent on their age. For instance, if they are declared to be adults or there is still too much doubt as to whether they are minors, these young people are excluded from protection systems and are covered only by immigration law, regardless of their degree of vulnerability.

5. Conclusion

This complaint, submitted by the European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF), must prompt the Committee to find as follows:

That France is in breach of Articles 7, 11, 13, 14, 17, 30 and 31 of the revised European Social Charter read alone or in conjunction with Article E for the various reasons referred to above. EUROCEF is aware that the issue of unaccompanied foreign minors is a delicate subject which it is still complicated for states to deal with. EUROCEF also notes that for several months France has been making efforts to improve its policy in this sphere. However, it is still inadequate.

EUROCEF respectfully requests the European Committee of Social Rights to consider the facts set down in this complaint and declare that France is in breach of the aforementioned articles of the revised Charter.

EUROCEF also requests the European Committee of Social Rights:

- to bring the procedures for the assessment of unaccompanied foreign minors' ages into line with the rights of migrant children governed by the documents cited at the beginning of this complaint and to prohibit the misuse of bone density tests, which are regarded as humiliating for children;
- to guarantee effective and immediate access for all such minors to an ad hoc administrator, who guarantees the immediate protection of the child's interests;
- to allocate sufficient financial resources to *département* councils for residential facilities to be in compliance with the effective rights of unaccompanied foreign minors enshrined in international conventions and the revised Charter and to be as compatible as possible with the recommendations of the Parliamentary Assembly of the Council of Europe;
- to assign responsibility for decisions on where minors are to be placed with juvenile courts, not the prosecution department (see circular of 31 May 2013);
- to make it easier for young adults initially admitted to provisional child protection facilities as unaccompanied foreign minors to stay in France, by offering them access to a "private and family life" or "temporary worker" residence permit;
- to guarantee that all unaccompanied foreign minors, whether covered by child welfare or not, have universal health cover (CMU);
- to ensure that the right to education of all children received is respected.

EUROCEF asks the French state to abandon its purely administrative approach and take the following measures:

- improve co-ordination between departments in the interests of unaccompanied foreign minors through local bodies and the independent national council responsible for co-ordinating and monitoring the quality of the care provided for minors;

- make it compulsory to draw up a life project for all unaccompanied foreign minors. Reference can be made here to the handbook for professionals drawn up by the Council of Europe on “Life Projects for unaccompanied migrant minors”, which guarantees that such minors’ needs will be met;
- set up compulsory specialised training for professionals dealing with these minors.

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