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**EUROPEAN COMMITTEE OF  
SOCIAL RIGHTS**

21 April 2016

**Case document No. 5**

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

**FURTHER RESPONSE FROM THE  
GOVERNMENT**

**Registered with the Secretariat on 12 April 2016**



**FURTHER RESPONSE FROM THE GOVERNMENT OF THE  
FRENCH REPUBLIC CONCERNING THE MERITS OF  
COMPLAINT NO. 114/2015,  
EUROCEF v. FRANCE**

1. By decision of 30 June 2015, the European Committee of Social Rights (hereafter the “Committee”) ruled admissible Complaint No. 114/2015 filed against France by the European Committee for Home-based Priority Action for the Child and the Family (hereafter “EUROCEF”) seeking a finding by the Committee that France has not satisfactorily applied Articles 7, 11, 13, 14, 17, 30 and 31 of the revised European Social Charter, read either alone or in conjunction with Article E concerning the rights of children and young persons to appropriate economic, legal and social protection.
  2. On 30 September 2015 the French Government lodged its submissions with the Committee, to which EUROCEF filed a response, which were registered by the Secretariat of the Committee and forwarded to the French Government on 5 February 2016.
  3. In its response, EUROCEF reasserted its request that the Committee ensure that the French Government continue to improve the legislative framework governing the reception of and provision of care to unaccompanied foreign minors and put in place human and financial resources that are sufficient in order to operate a reception policy that respects their rights as defined under the revised European Social Charter.
  4. The French Government has the honour to present to the Committee its further observations in relation to the response from EUROCEF.
  5. As a preliminary remark, the French Government takes note of the fact that “*In the period following preparation (late 2014 to early 2015) and lodging (February 2015) of the collective complaint, EUROCEF has followed with interest the steps taken by France to improve its arrangements for receiving unaccompanied foreign minors*” (our underlining). The Government’s efforts are real and have been made against the backdrop of significant growth in the number of unaccompanied foreign minors.
  6. In its further observations to EUROCEF’s response, the French Government intends to focus on the process for assessing whether unaccompanied foreign minors are actually minors, and more specifically on the verification of the authenticity of civil status documents and the legal framework for bone examinations to determine age (1). Secondly, the French Government will provide clarifications concerning the system for allocating unaccompanied foreign minors throughout the national territory (2). Thirdly, the French Government intends to stress the effectiveness of the provision of shelters for unaccompanied foreign minors (3).
- 1) **The process for assessing whether unaccompanied foreign minors are actually minors**
7. In its response, EUROCEF focuses considerable attention on the process for assessing whether unaccompanied foreign minors are actually minors, and more specifically on the verification of the authenticity of civil status documents and bone examinations to determine age. EUROCEF points out time and again that an examination of bone age may be carried out only as a last resort.
  8. The French Government would like to remind the Committee that this assessment is

intended to establish that the young person is a minor and his/her unaccompanied status within France. It includes a social assessment (sessions with psychologists and/or psycho-educational experts) and a verification of the authenticity of civil status documents. It is only if valid identification documents are not available and where the age alleged by the individual does not appear to be credible that radiological bone examinations for the purpose of determining age may be carried out pursuant to a court order, and with the consent of the interested party.

9. With regard to the verification of the authenticity of civil status documents, it should be pointed out that, according to Article 47 of the French Civil Code, “*Acts of civil status of French citizens or foreign nationals issued in a foreign country that have been drawn up in the customary form used in that country shall be deemed to be genuine, unless other available instruments or documents, external evidence or information drawn from the legal act itself establish, after all necessary verification, that the legal act is irregular or forged or that the information declared therein is not accurate*”.
10. Consequently, in practice, the judicial authorities are committed above all else to determining age on the basis of the civil status documents presented by the young person.
11. In this regard, the circular of the Civil Affairs Directorate of the Ministry of Justice of 1 April 2003 concerning fraud in relation to foreign civil status documents presented to the French authorities (NOR: JUSC0320085C), which was issued to the national courts, states that the probative value of a foreign civil status document must be presumed unless its formal regularity has been disputed, and that it is not necessary to require that it be corroborated by additional information confirming its content.
12. It is only at a later stage, and only if specific information leads the courts to question the authenticity or reliability of the documents presented by the young person, that a procedure for assessing his/her age will be commenced, adopting a multi-disciplinary approach.
13. Accordingly, the circular of 31 May 2013 of the Minister of Justice on the arrangements for providing care to unaccompanied foreign minors: the national shelter, assessment and referral scheme, and the agreement concluded between the state and the *départements* stipulate that the public prosecutor could, as a last resort, order a medical examination to be carried out if any doubt remained following the assessment of age by means of interviews (with psychologists and/or psycho-educational experts) and verification of the authenticity of the civil status documents held by the young person.
14. Consequently, an examination of bone age is only one of the elements taken into account by the courts as a basis for their decisions. Such examinations are by no means exclusive and cannot prevail over a civil status document if the courts consider that no fact external to the document gives reason to question its authenticity, as was held by the Court of Cassation in a judgment of 23 January 2008<sup>1</sup> (exhibit No. 1, appended hereto) in which it held that a birth certificate drawn up in accordance with the formal requirements provided for under the foreign law would establish the age of the child subject to an educational

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<sup>1</sup> Court of Cassation, First Civil Division, judgment of 23 January 2008, appeal No. D 06-13.344

assistance measure in the absence of any fact external to the document that would give reason to question the information contained therein.

15. In any case, recourse to bone age examinations is now subject to legal regulation by Law No. 2016-297 of 14 March 2016 on child protection. This new law now imposes strict limits on the use of bone age examinations. In this regard, Article 388 of the Civil Code has been supplemented by three subparagraphs, which provide as follows:

*“Radiological bone examinations for the purpose of determining age, where no valid identity documents are available and where the age asserted is not credible, may only be carried out pursuant to a decision by the judicial authorities and with the consent of the person in question.*

*“The conclusions of such examinations, which must specify the margin of error, may not be used on their own as a basis for determining whether the person in question is a minor. The person in question shall have the benefit of any doubt.*

*“If there is any doubt as to whether the person in question is a child, no assessment of his or her age may be performed on the basis of an examination of the pubertal development of primary and secondary sexual characteristics.”*

## **2) The system for allocating unaccompanied foreign minors**

16. In its observations in response, EUROCEF considers that the system for allocating unaccompanied foreign minors throughout France is detrimental to them.
17. However, the French Government wishes to stress that the interests of unaccompanied foreign minors are in fact at the heart of public policy.
18. In this regard, in a judgment of 30 January 2015<sup>2</sup> in which the Conseil d’État was required to rule on the legality of the circular of the Minister of Justice of 31 May 2013 on the arrangements for providing care to unaccompanied minors (exhibit No. 2, appended hereto), the court held that *“it is in the interest of the child to take account of the capacity of the receiving département to provide care under satisfactory conditions”* (recital 9). In the same decision, the Conseil d’État held that *“pursuant to Articles 375-3, 375-5 and 375-7 of the Civil Code, the Juvenile Court or, in urgent cases and on a provisional basis, the Public Prosecutor in the area where the unaccompanied foreign minor has come to the attention of the authorities, may order that he or she be placed with a département child welfare service, determining the reception facility which is in the best interests of the minor, and shall not be under any obligation to place him or her with the child welfare service of the département in which he or she was first located”* (recital 11).
19. The law accordingly requires public prosecutors to give due consideration to the interests of the child. The Conseil d’État accepted that this criterion authorised the Minister of Justice to instruct public prosecutors to take account of both the reception capacity and the number of minors already present within each *département*, both of which impacted on the ability of the *département* in question to provide care to the minor under satisfactory conditions.

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<sup>2</sup> Conseil d’État, 1st/6th joined sub-divisions, judgment No. 371415 of 30 January 2015.

20. Following the aforementioned decision by the Conseil d'État of 30 January 2015, the Minister of Justice issued a circular on 17 February 2015 for the attention of public prosecutors and juvenile protection department, noting that the essence of the provisions contained in the circular of 31 May 2013 on the arrangements for providing care to unaccompanied minors remained in force. This new circular reminded public prosecutors that, where they decide to place an unaccompanied minor with a *département* child welfare service on a provisional basis in an urgent situation, their choice must take into account the best interests of the child, adding that *“the public prosecutor of the location in which the unaccompanied minor has come to the attention of the authorities may naturally place the child with the child welfare service of that département, if it is deemed to be in the child’s interest to remain there. However, if the interests of the child require him or her to be placed in another département, the public prosecutor may order placement in another département and relinquish responsibility to the public prosecutor at the location where the minor is placed. Over and above the circumstances specific to the situation of each minor, this may be ordered in particular where the child welfare service of another département has more satisfactory capacity for providing care than that of the département of origin”*.
21. Consequently, it must be noted that this system for allocating unaccompanied foreign minors is not in any way detrimental to them, and on the contrary ensures that the interests of the minor prevail. In point of fact, as certain *départements* do not have any further capacity for reception, by providing for a territorial allocation of unaccompanied foreign minors between the different *départements*, this approach makes it possible to improve the provision of care to them and their material conditions.

### **3) The provision of effective shelter to unaccompanied foreign minors**

22. As regards the implementation in practice of the system of shelter for unaccompanied foreign minors, EUROCEF bases its position on statements gathered, in particular from an association and the head of an educational service, in order to demonstrate that these unaccompanied foreign minors do not automatically benefit from the provision of shelters.
23. The Government is not unaware of the Committee’s decision in complaint No. 69/2011 - DEI v. Belgium, which held in particular that *“the Belgian reception facilities’ lasting incapacity to care for a significant proportion of the unlawfully present minors (whether or not accompanied by their families) has the effect of exposing the children and young persons in question to very serious physical and moral hazards, resulting from the lack of reception homes and from life on the street, which can even consist in trafficking, exploitation of begging and sexual exploitation (Conclusions 2006, Article 7§10, Moldova). The important and persistent failure to care for foreign minors unlawfully present in the country therefore shows that the Government has not taken the necessary measures to guarantee these minors the special protection against physical and moral hazards required by Article 7§10, thereby causing a serious threat to their enjoyment of the most basic rights, such as the right to life, to psychological and physical integrity and to respect for human dignity” (our underlining).*

24. However, the French Government wishes to reiterate that the circular of 31 May 2013 on the arrangements for providing care to unaccompanied foreign minors – the national shelter, assessment and referral scheme – specifies that provisional reception must be provided without distinction to any “*young person who declares that he/she is an unaccompanied foreign minor*”.
25. In this regard, as the Government indicated in paragraphs 29 et seq. of its submissions on the merits, no fewer than 10,960 unaccompanied foreign minors have been allocated to the various metropolitan *départements* since the circular of 31 May 2013 was issued. The provision of care to unaccompanied foreign minors in France is fully effective.
26. Moreover, the Government wishes to add that the administrative courts monitor compliance with the administration’s obligation to provide accommodation to unaccompanied foreign minors.
27. Accordingly, the urgent applications judge [*juge du référé-liberté*], to whom a case may be referred pursuant to Article L. 521-2 of the Code of Administrative Justice (hereafter the “CAJ”), regularly reminds the state authorities that it is incumbent upon them to enforce the statutory right to urgent accommodation to any homeless person who is in a situation of medical, psychological or social distress.
28. The urgent applications judge also highlights the special obligation applicable in this area to the authorities of the *département* to assist any minor whose health, safety or morality is in jeopardy. Any shortcoming ascertained in the fulfilment of these obligations will constitute a serious and manifestly illegal breach of a fundamental freedom where it results in serious consequences for the person in question.
29. In each case, the urgent applications judge assesses “*the level of diligence exercised by the administration, taking account of the means available to it along with the age, state of health and family circumstances of the person in question*”.<sup>3</sup>
30. Although the urgent applications judge must rule within a time limit of 48 hours (Article L. 521-2 CAJ), it may be the case that the administration complies with its legal obligations after the matter has been referred to the judge but before he or she has ruled. In such cases, the urgent applications judge will verify whether there has been a genuine provision of accommodation which complies with the law. If this is the case, he/she will decide not to pursue the matter further.<sup>4</sup>
31. If on the other hand the urgent applications judge finds that a serious and manifestly illegal breach has been committed of a fundamental freedom of the applicant, he/she may order the authorities to take suitable steps in order to put an end to it, in particular by ensuring the provision of accommodation.

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<sup>3</sup> Nantes Administrative Court (AC), order of 21 August 2015, Mr Oumar Balde, No. 1506933 and Mr Helal Khan, No. 1506930 – Nantes AC, order of 14 August 2015, Mr Médiba Gassama, No. 1506777 – Nantes AC, order of 11 August 2015, Mr Isidor Balima, No. 1506691 – Lille AC, order of 22 May 2015, Mr Antonio Eduardo, No. 1504046.

<sup>4</sup> Lille AC, 1 December 2015, No. 1509620; Lille AC, 15 December 2015, No. 1510138; Lille AC, 7 January 2016, No. 160030.



32. Accordingly, in two orders issued on 21 August 2015,<sup>5</sup> the urgent applications judge of the Nantes Administrative Court held that, by refusing to take the necessary steps in order to ensure that the persons in question could, under the terms of a provisional placement order, be provided with accommodation and care as unaccompanied minors on the grounds that the children's reception services of the *département* did not have any more available spaces or budgetary resources and that no priority had been given to the persons in question compared with the other minors under its care, the *Département* of Loire-Atlantique had committed a serious and manifestly illegal violation of a fundamental freedom:

*“[T]he department cannot in particular challenge the reality and seriousness of that violation by invoking the saturation of the child welfare facilities it provided as part of the ‘Département Centre for Children and Families’ as it has not shown that it does not have the power to use other housing facilities temporarily and to provide care to unaccompanied foreign minors provisionally placed under its responsibility by a decision of the judicial authorities; nor can it legitimately invoke the difficulties encountered in assessing the actual age and social circumstances of the unaccompanied foreign minors allocated to it under the terms of the administrative programme known as the national shelter, assessment and referral scheme established by the circular of 31 May 2013 on the arrangements for providing care to unaccompanied foreign minors, since these difficulties do not under any circumstances affect the department’s obligation to provide care and accommodation to an individual whom the judicial authorities have recognised, pending more precise information relating to his or her circumstances, as an unaccompanied minor” (our underlining).*

33. In these cases, the urgent applications judge ordered the president of the *département* council of Loire-Atlantique to ensure the provision of accommodation to these minors within 24 hours. Having regard to the need to eliminate as soon as possible the risks facing the persons in question owing to their unaccompanied status and the failure to provide them with care, and in view of the importance of promptly enforcing the orders issued, he further fined them €100 for each day of delay, with effect from expiry of the time limit laid down of 24 hours.
34. These two orders issued by the urgent applications judge of the Nantes Administrative Court were complied with.
35. The urgent applications judge of the Conseil d’État held in his order of 22 September 2015<sup>6</sup> that, if a decision has been made ordering the placement with the welfare authorities of an unaccompanied foreign minor, a claim seeking an order by the ordinary courts obliging the *département* to provide him or her with housing and to make arrangements to provide care is not manifestly inadmissible in connection with a dispute falling under the jurisdiction of the administrative courts. The administrative courts accordingly accepted, in this specific case, to order the administrative authorities to implement a judicial ruling.

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<sup>5</sup> Nantes AC, order of 21 August 2015, Mr Oumar Balde, No. 1506933 and Mr Helal Khan, No. 1506930.

<sup>6</sup> Conseil d’État, urgent applications judge, judgment No. 393321 of 22 September 2015, *Département du Nord*.

36. Lastly, the Government wishes to refer to an order of 6 October 2015<sup>7</sup> in which the urgent applications judge of the Caen Administrative Court, to whom the matter had been referred pursuant to Article L. 521-1 CAJ, ordered a suspension of the enforcement of a decision in which the *Préfet* of Calvados had refused to allocate urgent accommodation to the applicant. This individual, an unaccompanied foreign minor, had been unable to file a request for asylum due to the failure by the public prosecutor to designate an ad hoc administrator. He could not therefore be accommodated at a reception centre for asylum seekers. Since he was a minor, he could not benefit from 115 emergency services in order to obtain urgent accommodation. Nor could he be taken into care by the child welfare service. Accordingly, the urgent applications judge annulled the refusal to provide accommodation and ordered the authorities to re-examine his case.
37. Consequently, the administrative courts oversee the proper compliance by the administrative authorities with their obligations in relation to the right to urgent accommodation of unaccompanied foreign minors.

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38. With regard to the remaining issues, the Government refers to its submissions on the merits of 30 September 2015.
39. Taking account of all of the above, the Government considers that there has been no violation of Articles 7, 11, 13, 14, 17, 30 and 31 of the revised European Social Charter, read either alone or in conjunction with Article E on the rights of children and young persons to appropriate economic, legal and social protection.
40. Consequently, the Government reiterates its request that the Committee reject in its entirety the complaint filed by EUROCEF.

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<sup>7</sup> Caen AC, 6 October 2015, *Mr Abdasalam Ibrahim Sidi*, No. 1501901.

**APPENDIX**

- **Document no. 1:** Judgment of the Court of Cassation of 23 January 2008 (appeal No. D 06-13.344).
- **Document no. 2:** Judgment of the Conseil d'État of 30 January 2015 (No. 371415).