



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

5 November 2015

Case Document No. 2

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

SUBMISSIONS OF THE GOVERNMENT ON THE MERITS

Registered at the Secretariat on 30 September 2015

Submissions by the French Government on the merits of complaint
no. 114/2015, EUROCEF v.
FRANCE

1. In a letter dated 30 March 2015, the European Committee of Social Rights (hereafter “the Committee”) informed the French Government of the collective complaint presented on 27 February 2015 by the European Committee for Home-Based Priority Action for the Child and the Family (hereafter “EUROCEF”), asking the Committee to find that France is failing to apply satisfactorily Articles 7, 11, 13, 14, 17, 30 and 31 of the revised Social Charter, read alone or in conjunction with Article E, concerning children’s and young persons’ right to social, legal and economic protection.
2. On 2 July 2015, the Committee declared admissible the complaint submitted to it by the complainant organisation on 27 February 2015.
3. The French Government has the honour to present the Committee with the following observations.

❧ ❧ ❧

I. THE COMPLAINTS

4. The complainant organisation, EUROCEF, considers that France is failing to meet its obligations to look after unaccompanied foreign minors, thereby breaching Articles 7, 11, 13, 14, 17, 30 and 31 of the revised Social Charter, read alone or in conjunction with Article E, which provides that:

Article 7 Right of children and young persons to protection (§ 10)

With a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake (...) 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.

Article 11 The right to protection of health

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation 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.

Article 13
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.

Article 14
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.

Article 17
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:

- 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.

Article 31
Right to housing
(§ 2)

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed to prevent and reduce homelessness with a view to its gradual elimination.

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.

* *
*

II. THE MERITS OF THE COMPLAINT

5. The Government wishes to make the following observations on the merits of the complaint.

1) The legal situation of unaccompanied foreign minors in France

a) Definition of unaccompanied foreign minors

6. Although it does not appear in any legislation, there is a generally accepted definition of what constitute unaccompanied foreign minors in France, namely persons aged under 18 at risk or in danger, who are nationals of a country other than France and have no parent or guardian present in France (irrespective of the age of majority in their country of origin, whether or not they are European nationals or whether they have been entrusted to someone's care by customary arrangement), or any family members with sufficient resources to meet their needs, in particular to provide them with accommodation or secure their education and upbringing.
7. There are therefore three criteria for determining whether young persons can be categorised as unaccompanied foreign minors, namely that they are under the age of 18 and thus lacking legal capacity, or in other words "children", within the meaning of Article 1 of the Convention on the Rights of the Child; they are unaccompanied and therefore vulnerable on account of the absence or geographical remoteness of their legal representatives; they are nationals of a country other than France and not entitled to the benefits for which nationals are eligible.
8. Article 1 of Law No. 2007-293 of 5 March 2007 on the reform of child protection, codified in Article L. 112-3 of the Social Action and Family Code, states specifically that "child protection is also intended to prevent difficulties that might be experienced by children and young persons who are temporarily or permanently deprived of their family's protection and to ensure that they are properly looked after".
9. A distinction must therefore be drawn between two categories of persons concerned by the national provisions on unaccompanied foreign minors:
 - persons applying to *département* councils and claiming to be unaccompanied foreign minors, but who, after their age and unaccompanied status have been assessed, are found not to be covered by the provisions governing care and support for this category of young persons. Persons who are found to be of full age and who are thus in the country illegally cannot claim the rights embodied in the European Social Charter. Acknowledging the applicability of the Charter to illegal aliens would actually be in breach of the Charter. The first paragraph of the Appendix to the revised Social Charter establishes a restriction *rationae personae* on its scope by stating that "Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners *only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned*". With regard to foreign nationals, therefore, there is a dual restriction on the scope of the European Social Charter, since it is applicable neither to nationals of states that are not parties to the Charter nor to foreign nationals with no

legal right of residence;

- persons whom *département* councils and/or the courts deem to be genuine unaccompanied foreign minors, and who as such are in the country lawfully, whether or not they are seeking asylum. The provisions of the European Social Charter are applicable to these young persons, who are not required to hold a French residence permit and are entitled to be assisted or cared for by the French authorities.

b) Unaccompanied foreign minors and reform of asylum law

10. Law No. 2015-925 of 29 July 2015 on the right of asylum, published in the Official Journal of 30 July 2015, modified the procedures and reception arrangements for asylum seekers to improve the protection of persons in need of international protection.

11. Under Article 13 of the new legislation, there are only three grounds on which the minister responsible for immigration can refuse entry in response to asylum requests made at the border:

- another State is responsible for examining the asylum request in accordance with Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, or in accordance with the same commitments as those provided for in the Regulation entered into with other states;

- the asylum request is inadmissible;

- the asylum request is manifestly ill-founded. Manifestly ill-founded asylum requests are ones which, based on the statements made by the foreign national concerned and the relevant documentation, are clearly devoid of merit, having regard to the conditions governing the granting of asylum, or totally lacking credibility concerning the risk of persecution or serious harm.

12. It should be stressed that in the last two cases the French office for the protection of refugees and stateless persons (hereafter “OFPRA”) must be consulted and must take account of the vulnerability of the asylum seeker. “The assessment of vulnerability is particularly concerned with identifying minors, unaccompanied minors, persons with a disability, elderly persons, pregnant women, lone parents accompanied by under-age children, victims of human trafficking, persons with serious illnesses, persons suffering from mental disorders and persons who have suffered torture, rape or other severe forms of psychological, physical or sexual violence, such as female sexual mutilation” (Article L. 744-6 of the Alien’s Entry and Residence Code (hereafter “CESEDA”)).

13. The minister responsible for immigration is bound by the OFPRA's opinion, unless the foreign national's entry into France poses a serious threat to public order.
14. Above all, the Government wishes to stress that if asylum seekers are under age and their asylum requests are not inadmissible or manifestly unfounded, their detention in waiting areas can be terminated. Pursuant to the case-law of the European Court of Human Rights, the law states that unaccompanied minors may only be held in waiting areas in exceptional circumstances. Victims of torture, rape or other severe forms of psychological, physical or sexual violence who require special procedural safeguards that are incompatible with their detention in a waiting area may also be exempted from this requirement. The foreign nationals concerned are then issued with an eight-day visa authorising entry.
15. Although unaccompanied foreign minors may, in exceptional cases, be detained in a waiting area at the border, such measures cannot be applied to children and young persons who have already entered the country.
16. Under Article L. 223-2 of the Social Action and Family Code, when young persons claiming to be unaccompanied foreign minors are identified or refer themselves, the *département* councils concerned are required to provide them with temporary emergency accommodation for five days in order to assess the situation and determine whether they are indeed under age and unaccompanied on French territory.
17. During this period, the foreign minor is not placed in detention but is looked after in a reception facility, generally one run by a voluntary association to which this reception activity has been delegated, where necessary with support from the child welfare services.
18. When asylum requests are submitted by children with no legal representation in France, the state prosecutor must immediately appoint an *ad hoc* guardian to assist the young person concerned and represent him or her in the proceedings relating to the asylum request. In such cases, the administrative authorities must seek to identify members of the child's family, while protecting the child's best interests. This process may be undertaken in confidence, if the life or physical integrity of the child or his or her close relatives might be at risk (Articles L. 741-3 and L. 741-4 of the CESEDA).
19. In the case of aliens from safe countries, the OFPRA may opt to use the expedited procedure instead of the priority procedure for certain situations, such as presentation of forged documents, statements that are inconsistent, contradictory, false or implausible, refusal to allow fingerprints to be taken, unlawful residence in France for more than 120 days without submitting an asylum application, submitting an asylum application to prevent the execution of a deportation order or a serious threat posed by the individual concerned to public order, public safety or national security. However, the expedited procedure may only be applied to unaccompanied foreign minors if they present forged documents or pose a serious threat to public order.
20. Finally, attention should be drawn to Article L. 313-11.2 *bis* of the CESEDA, which states that, unless their presence poses a threat to public order, temporary residence permits labelled "private and family life" shall be issued as of right to foreign nationals who have been in the care of the child welfare services since the age of sixteen or less, on condition that they have pursued their education and training in a genuine and serious manner and subject to the nature of their relationship with their

remaining family in the country of origin and the reception facility's assessment of their integration into French society. Moreover, in accordance with the Law of 16 June 2011, Article L. 313-15 of the CESEDA authorises young foreign nationals admitted to the care of the child welfare services after their sixteenth birthday to apply to be issued, as an exceptional measure, with a residence permit.

2) The proper care of unaccompanied foreign minors in France

21. EUROCEF complains in particular of the malfunctioning of the system for determining whether unaccompanied young foreigners are minors, shortcomings in the initial reception arrangements and 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.

22. The Government will correct the incomplete or erroneous information supplied by EUROCEF in its description of the true situation of unaccompanied foreign minors in France.

a) The circular of 31 May 2013 on the care of unaccompanied foreign minors: national arrangements for the provision of shelter, assessment and guidance

23. National arrangements for the provision of shelter, assessment and guidance for unaccompanied foreign minors were introduced in metropolitan France on 31 May 2013 in the agreement between the State and the Assembly of French *départements*, and the circular (NOR: JUSF1314192C) of 31 May 2013 on the care of unaccompanied foreign minors (document 2 appended). The agreement was signed, on the one hand, by the Ministers of Justice, of the Interior and of Social Affairs and Health and, on the other, by the Association of French *départements*. It has led to the apportioning of newly-arrived young persons across all the country's *départements* and sets out to harmonise the arrangements for looking after unaccompanied foreign minors.

24. According to Article 20 of the Convention on the Rights of the Child, "A child temporarily or permanently deprived of his or her family environment shall be entitled to special protection and assistance provided by the State". The circular of 31 May 2013 adds that all young persons who claim to be unaccompanied foreign minors must benefit, without distinction, from this temporary care.

25. This provision is intended to ensure that:

- all those claiming to be unaccompanied foreign minors in France are entitled to the same procedure to assess the truth of their claim;
- all the young persons identified as unaccompanied minors receive appropriate care by distributing them across all the country's *départements*, in order to ease congestion in the existing facilities.

26. The Government has therefore established an initial procedure for accommodating and assessing the circumstances of persons claiming to be unaccompanied foreign minors, who are spread geographically across the various *départements*.

27. The national arrangements for the provision of shelter, assessment and guidance for unaccompanied foreign minors are a response to the shortage of child protection facilities in certain *départements* such as Seine-Saint-Denis. The Minister of Justice considered that there was a need for a national guidance system for these young persons to improve their material reception conditions. Before these arrangements were put in place, the authorities were unaware of the number of such unaccompanied minors, and their clandestine nature precluded any form of effective intervention.
28. Since June 2013, the national arrangements established by the circular of 31 May 2013 have had the following results:
- they have provided an initial solution to a problem that has weighed heavily on certain *départements*;
 - they offer a legal basis for apportionment between *départements* that has been partially validated by the country's *Conseil d'Etat* (CE 30 January 2015, nos 371415, 371730, 373356 *département* of Alpes Maritimes),
 - they ensure that overburdened local authorities benefit from the solidarity of other *départements* concerned with unaccompanied foreign minors ;
 - they help to clarify the number and situation of such young persons by means of statistical monitoring ;
 - between June 2013 and December 2014 more than 2 800 young persons have been redirected to *départements* better equipped to receive them.
29. The Government wishes to stress that these arrangements apply to all the *département* councils and prosecution services of metropolitan France, and not just the Ile de France (greater Paris region), the only area considered by EUROCEF in its complaint. According to the "unaccompanied foreign minors" unit, based in the Directorate for the Judicial Protection of Young Persons, in just over two years from 31 May 2013, 2 267 unaccompanied foreign minors were assigned to the *départements* of Ile de France, out of a total of 10 960 assigned to all the metropolitan French *départements*.
30. Between 1 June 2013 and 31 December 2014, nearly 7 600 persons were registered as unaccompanied foreign minors. Of these 7 600 young persons, 1 400 ceased to receive child welfare assistance during the same period.

31. In 2015 and up to the present date, nearly 3 258 persons have been registered as unaccompanied foreign minors, after subtracting 286 persons who ceased to receive child welfare assistance for various reasons, such as the lifting of their unaccompanied status, reaching the age of majority or absconding. This represents 81% of the forecast annual figure based on the previous year).
32. The *département* of Seine-Saint-Denis informed the State that on 31 August 2011 it was caring for 864 unaccompanied foreign minors, which meant that its reception facilities had reached saturation point. The introduction of the national arrangements by the justice ministry has significantly reduced the pressure on the *département's* child welfare provision, thereby improving the quality of its reception facilities. Between 1 June 2013 and 31 December 2014, 411 unaccompanied foreign minors were identified in this *département*, of whom 241 were placed locally and 170 were allocated to other *départements* better equipped to receive them.
33. Between 1 June 2013 and 31 December 2014, 723 unaccompanied foreign minors were identified in Paris, of whom 232 remained in that city and 491 were allocated to other *départements* better equipped to receive them. Between 1 January and 21 August 2015, 255 unaccompanied foreign minors were identified, of whom 125 remained in Paris and 130 were allocated to more suitable *départements* elsewhere.
34. On 31 July 2014, the child welfare services were providing assistance to 873 unaccompanied foreign minors and 942 young adults. On 30 April 2015, they were caring for 1 462 unaccompanied young foreigners, of whom 639 were minors and 823 were over 18.
35. The circular and national arrangements of 31 May 2013 offer clear evidence of the State's commitment to securing a constant improvement to the reception and care of unaccompanied foreign minors.

b) Assessing the age of unaccompanied young persons

36. The purpose of the assessment is to ensure that the young persons concerned are minors and are in France unaccompanied. The process includes a social assessment, authentication of civil status and, if doubts remain about whether an individual is a minor, a medical examination.
37. Under the assessment agreement of 31 May 2013, the first step is to check the documents presented by persons claiming to be unaccompanied foreign minors.
38. Firstly, identity documents are checked either by the police at the country's borders or by the authorities responsible for countering documentary fraud. The next stage, to determine whether a young person is a minor and unaccompanied, is optional.
39. The Government wishes to stress that it is in no sense obligatory for young persons to present civil status or identity documents in order to be eligible for an assessment of their age and their unaccompanied status, or for any subsequent child welfare support or assistance.
40. As to the allegation that young persons who state that they are aged 17 or over are refused entry or returned, the Government is unaware of any such practices.

41. In contrast, the Government has in the past noted with regret that certain associations have told persons claiming to be unaccompanied foreign minors what to say to ensure that they were treated as minors.
42. The national arrangements for the provision of shelter, assessment and guidance for unaccompanied foreign minors lay down legal safeguards to ensure that if there are doubts about the veracity of young persons' claims regarding their age further checks will be carried out. Age assessments are based on a range of indicators:
- the young persons concerned are interviewed by trained staff using a multidisciplinary approach;
 - their civil status documentation is checked for authenticity in accordance with Article 47 of the Civil Code, though it should be noted that while the prosecution service is responsible for referring cases to the documentary fraud office of the Central Directorate of the Border Police, there is nothing to prevent *département* councils themselves from contacting the "documentary fraud" network of reference persons in government departments. It is unnecessary to question young persons' ownership of documents that they present and whose authenticity is not challenged;
 - only if there are continuing doubts after this stage may a medical examination be ordered, at the request of the prosecution service, to establish a young person's age. Until the *département* council caring for that young person has been granted guardianship it cannot legally request such an examination. The conclusions of the examination are sent simultaneously to the chair of the *département* council and the prosecution service.
43. It should be emphasised that, as stipulated in the circular of 31 May 2013, the prosecution service will only request such medical examinations as a last resort, if doubts remain about a young person's age after the social assessment and, if appropriate, consideration of the relevant civil status or identity documents. The medical examination must include several items, including bone and dental X-rays and clinical and psychological examinations.
44. Article 25.5 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection authorises European Union member States to "use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection".
45. According to the July 2014 report of the IGAS, IGA and IGSJ inspectorates,¹ these examinations comprise a whole series of medical tests, including bone, dental and physiological examinations, and interviews with doctors.

¹ IGAS (General Inspectorate of Social Affairs); IGA (General Inspectorate of Administration); IGSJ (General Inspectorate of Judicial Services)

46. Medical forensic units do not carry out bone density tests, as referred to by the complainant organisation, in a standard manner. Several types of X-ray may be used – on the wrist, collarbone or hips for example – supplemented by other tests to increase the reliability of the overall medical examination. The practitioners concerned then produce an estimated age range, but never a precise age, since in the current state of medical knowledge there are no available methods or biological tests for determining a person’s exact age. Moreover, young persons must be given the benefit of any doubt.
47. The Directorate General of Health has asked the Advisory Council on Public Health for an expert report on the medical aspects of examinations to establish the age of persons claiming to be unaccompanied foreign minors. The Advisory Council’s opinion, submitted on 23 January 2014, contained eight recommendations. The first recommendation reaffirmed the principle that such medical examinations must only be a last resort. The consent of the young person concerned must be sought and no examination can be conducted if this is refused.
48. Work has been under way since April 2015 on a proposed amendment to be incorporated into the draft law on child protection, which would regulate the use of bone testing and place strict limits on its application.
49. The following article has been incorporated into the draft legislation that passed its first reading in the Assembly on 12 May 2015:

Article 21 *ter* (new)

The following three paragraphs shall be added to Article 388 of the Civil Code:

“Bone x-rays for the purpose of determining age, in the absence of credible identity documents and when the age claimed is implausible, may only be carried out on the orders of the judicial authorities and with the agreement of the person concerned.

The findings of such examinations, which must specify the margin of error, are not sufficient by themselves to determine whether the person concerned is a minor. The person concerned must have the benefit of the doubt.

In the event of doubts about the age of the person concerned, it is not permitted to assess his or her age on the basis of an examination of the pubertal development of his or her primary or secondary sexual characteristics.”

50. Finally, a joint ministerial instruction is currently being drafted to encourage the involvement of government departments, in conjunction with the relevant *département* services, in assessing young persons’ age and unaccompanied status, and their care and support.

c) The initial reception arrangements for unaccompanied foreign minors

51. Under the national arrangements for the provision of shelter, assessment and guidance for unaccompanied foreign minors of 31 May 2013, anyone claiming this status will be assessed, entailing at least a social assessment.
52. Admittedly, in certain *départements* where there are agreements between the *département*, the prefecture and the judicial authorities, documentary checks may be requested and carried out before completion of the social assessment. However, prosecutors consider all the relevant information before taking a decision and not just the report of the documentary fraud office.
53. The Government would also add that to facilitate the social assessment of unaccompanied foreign minors, certain *départements* have recruited staff who speak the most representative languages.
54. The training of assessment staff is currently under joint consideration by the “unaccompanied foreign minors” unit of the Directorate for the Judicial Protection of Young Persons, the National School for the Judicial Protection of Young Persons and the National Centre for the Local and Regional Public Service. A project could be in operation before the end of 2015. Such a development was recommended by the inspectorates in their report, to which EUROCEF makes several references in its complaint. In addition, certain associations working with migrants, including unaccompanied foreign minors, already organise training – and in some cases have done so for several years - concerned with the care of such young persons and assessments of their age and unaccompanied status.

d) The delays relating to the judicial treatment (socio-educational assistance) of unaccompanied foreign minors

55. The complainant organisation, EUROCEF, asks for responsibility for decisions on where minors are to be placed to devolve on juvenile courts, not the prosecution department.
56. In answer, the Government wishes to clarify French law on socio-educational assistance.
57. Under the second paragraph of Article 375-5 of the Civil Code, in matters of urgency only, the state prosecutor of the place where the minor concerned was first identified can order his or her temporary placement, but must refer the case within eight days to the children’s judge, who can confirm, modify or revoke the measure.
58. As a result, once the prosecution service has issued a temporary placement order, the placement must, by law, be automatically scrutinised by the children’s judge who, pursuant to Article 375-5 paragraph 2 of the Civil Code, has full jurisdiction, *inter alia*, to revoke the placement measure or maintain it but at the same time change the placement location if this is in the child’s or young person’s best interests. In connection with this last point, attention should be drawn to a Government amendment to the draft child protection legislation, shortly due to be examined on second reading

in the Senate. This would grant the children's judge access to information on the percentage distribution – from a demographic standpoint – between *départements* of children and young persons temporarily or permanently deprived of family protection, thus offering them an additional means of deciding on the most appropriate placement locations to meet these persons' interests.

59. To conclude, it is clear that the treatment of unaccompanied foreign minors in France has improved markedly since the introduction of the national arrangements for the provision of shelter, assessment and guidance for unaccompanied foreign minors of 31 May 2013. This area of activity has been the focus of increased participation and solidarity of all the *départements* of metropolitan France in recent years. Draft legislation is currently before Parliament, following the decision of the *Conseil d'Etat* of 30 January 2015. Finally, since July 2015 there has been a significant increase in co-operation between ministries on the subject of unaccompanied foreign minors.

3) Replies to the complaints raised

a) No violation of Article 7 of the European Social Charter

60. The complainant organisation maintains that the fact that young persons are still systematically detained in waiting areas, in what are not always suitable conditions, constitutes a violation of Article 7 of the European Social Charter.

61. However, the Government notes that when the six places set aside for unaccompanied foreign minors in Roissy-Charles de Gaulle airport are full, those aged under 13 are given priority while the rest are placed on the adults' floor. There is indeed provision at Orly for hotel accommodation to be made available.

62. The unaccompanied foreign minors unit is contacted by the Bobigny prosecution office when such young persons are identified in the Roissy-Charles de Gaulle airport waiting area. However, it has no information on young persons claiming this status in the other French waiting areas, of which there are several dozen in the country, in various ports, stations and airports.

63. At Roissy-Charles de Gaulle airport, an *ad hoc* guardian is appointed for each person in the waiting area claiming to be an unaccompanied foreign minor.

b) No violation of Article 11 of the European Social Charter

64. The complainant, EUROCEF, states that the insecure nature of unaccompanied foreign minors' accommodation and the difficulties they experience in getting access to care are in breach of Article 11 of the Social Charter.

65. The Government acknowledges that the “unaccompanied foreign minors” unit of the Ministry of Justice Directorate for the Judicial Protection of Young Persons has noted from its discussions with *département* authorities that health problems could arise from time to time in relation to the provision of shelter where the influx of persons claiming to be unaccompanied foreign minors suddenly becomes very large.
66. However, since the introduction of the national arrangements for the provision of shelter, assessment and guidance for unaccompanied foreign minors on 31 May 2013 the State has been reimbursing *départements* for the time needed to assess the age and unaccompanied status of all those concerned, at a rate of €250 per day for up to five days. Part of the cost of providing shelter in connection with assessments may also be reimbursed.
67. It is also of relevance that those claiming to be unaccompanied foreign minors often suffer from infectious diseases, such as hepatitis, HIV or tuberculosis, contracted in their country of origin or during the course of their migration. In the case of the Ebola virus, while no cases have been detected in France the Ministry of Justice's Directorate for the Judicial Protection of Young Persons has nevertheless collaborated with the Department of Health and the regional health agencies to ensure that safety notices are sent to all *département* councils and prosecution offices dealing with young persons who might have transited through the countries concerned and could be in an incubation period.
68. In any event, it must be acknowledged that most unaccompanied foreign minors have experienced physical health problems before being given shelter in France.
69. Nor are long waiting times for medical appointments confined to unaccompanied foreign minors. Young persons claiming this status are eligible for:
- the special hospital-based clinics operating under the *PASS* scheme, which are free of charge,
 - State medical assistance, under the *AME* scheme, if after assessment they are found to be over 18, subject to three months' residence in France, or,
 - universal medical coverage (CMU), if they are identified as unaccompanied foreign minors and are in the care of a child welfare department.
70. Emergency treatment is provided free of charge, as is the case with any life-threatening emergency when the patient has no medical insurance cover.
71. The Government wishes to point out in this context that EUROCEF itself acknowledges that “access to care for unaccompanied foreign minors is properly provided for”.

72. Regarding mental health conditions, which are allegedly rarely monitored, unaccompanied foreign minors receive neither more nor less attention than any other young person in the care of the child welfare service. As with other juvenile patients, whether they can be seen depends on the availability of places in the queue.

c) No violation of Article 13 of the European Social Charter

73. The complainant organisation considers that the saturation of reception facilities and the absence of appropriate solutions to the problems of young persons “who are refused admission to protection arrangements” is in breach of Article 13 of the Charter.

74. In response, the Government notes that most of the persons “who are refused admission to protection arrangements” are in the country unlawfully – because they are over 18 – and are therefore not entitled to the rights embodied in the European Social Charter. The solutions that these persons might be offered are those associated with the remedies and opportunities offered by the law in general, such as the *Samu social* (emergency assistance service for the homeless); in certain cases, requests for asylum or residence permits for the purposes of receiving treatment; or voluntary return to the country of origin. It should be pointed out that when *département* councils notify such persons of their refusal to provide support most of them also include information on these legal options.

75. The “unaccompanied foreign minors” unit of the Directorate for the Judicial Protection of Young Persons, the National School for the Judicial Protection of Young Persons and the National Centre for the Local and Regional Public Service are currently organising training for assessment staff. Certain *départements* have delegated assessments of young persons’ age and unaccompanied status to voluntary associations, which often have greater experience in this area than local authority staff. Finally, most *départements* have appointed one or more managers or social workers from their child welfare departments to act as resource persons for unaccompanied foreign minors, thus helping to professionalise assessments of age and unaccompanied status.

76. It is also of relevance that the *department* council staff working in this field have usually had general or specialist social work training, which means that they are trained to organise and carry out assessment interviews.

77. The purpose of the training sponsored by the National Centre for the Local and Regional Public Service and the Directorate for the Judicial Protection of Young Persons is to supplement their initial training to enable them to improve their approach to this specific target group.

78. Shortage of interpreters is a feature of many other areas of activity, concerning all the social services, prefectures and hospitals, and is not confined to unaccompanied foreign minors.

d) No violation of Article 14 of the European Social Charter

79. EUROCEF considers that 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, and as such is in breach of Article 14 of the European Social Charter.
80. However, as the Government has indicated in paragraphs 9 ff. of these observations, the introduction of the national arrangements for the provision of shelter, assessment and guidance in the circular of 31 May 2013 is evidence of an active policy commitment in this area.
81. Under Article L. 112-3 of the Social Action and Family Code, unaccompanied foreign minors are looked after in general child protection establishments, with specialised assistance and support, or in the special child protection establishments that certain *départements* have introduced and that only take in unaccompanied minors.
82. No unaccompanied foreign minor taken into the care of the child welfare services is left on the streets. There have, however, been a few examples of absconding minors who, after being placed in care, apparently felt unable to comply with the “family mandate”.
83. It should also be noted that the provision of shelter is not obligatory. Certain persons claiming to be unaccompanied foreign minors have other accommodation options, such as living with a compatriot, a friend or a distant family member, and make this clear at the time of initial reception.
84. Unaccompanied foreign minors who have been identified as such and are in a waiting area may benefit from the national arrangements for the provision of shelter, assessment and guidance. This is the case in the *département* of Seine-Saint-Denis. When the unaccompanied foreign minors unit is contacted by the Bobigny prosecution office about a minor leaving the Roissy-Charles de Gaulle airport waiting area, the young person concerned may then be made the responsibility of any child welfare department in metropolitan France.
85. As to the lack of any prospect of regularisation, reference should be made to Article L. 313-15 of the CESEDA, which deals with the regularisation of young foreign nationals who enter the care of the child welfare service between the ages of 16 and 18 and have followed a training course leading to an occupational qualification for at least six months.
86. Paragraph 2.1.3 of the circular of 28 November 2012 on the conditions governing examination of requests for leave to remain in the country lodged by foreign nationals unlawfully residing there authorises the extension of the scope of this article to unaccompanied foreign minors seeking continued residence as students in a secondary or university establishment.

e) *No violation of Article 17 of the European Social Charter*

87. EUROCEF maintains that certain provisions concerning unaccompanied foreign minors who request asylum or concerning access to education are not complied with, in violation of Article 17 of the European Social Charter.

i) The treatment of asylum requests from unaccompanied foreign minors

88. As the Government has stated in paragraph 18 of these observations, the principle of appointing *ad hoc* guardians for all persons claiming to be unaccompanied foreign minors in waiting areas, whether on not they are seeking asylum, is respected, as is that of appointing local *ad hoc* guardians for those claiming that status in prefectures, in order to seek asylum.

89. A working group established by OFPRA – the office for the protection of refugees and stateless persons – has recently published an asylum guide for unaccompanied foreign minors in France (document 1 appended), which has been sent to every *département* and some twenty voluntary associations. In addition, as part of the asylum procedure reform, protection officers will be appointed in each of the office’s geographical divisions, with special training in interviewing and in processing asylum requests from unaccompanied foreign minors.

90. Training activities have started. The working group’s contact persons have all been trained by a judge and a sociologist. Two protection officers have taken part in the European Asylum Support Office’s “Interviewing Children” module, which will be open to OFPRA staff by the start of 2016 at the latest.

91. The contact persons have also started a programme designed to make interpreters more familiar with the examination of asylum requests from unaccompanied foreign minors.

92. Finally, awareness raising sessions may also be organised for child welfare departments if they so request. A first such session was held in Creil in March 2015 to familiarise those concerned with young unaccompanied asylum applicants’ rights.

93. In view of the sensitive and urgent nature of such cases, there is now a guide to OFPRA procedures for the investigation of asylum requests from unaccompanied foreign minors. It covers the relevant administrative rules governing the notification of interviews and decisions, the need for legal representation at hearings, the time limits for scheduling hearings (up to three months, at the request of associations to allow the necessary time for preparation) and the shorter deadlines for issuing decisions (a maximum of three weeks after the hearing). “Investigating protection officers” specialising in the processing of requests from unaccompanied foreign minors have been identified in the office’s geographical divisions and will be trained in September 2015 to meet this need. These protection officers have volunteered to take part in the processing of asylum requests and become expert in investigating them. The specialised nature of the protection officer’s role offers a procedural safeguard for this particularly vulnerable group.

94. Discussions are also under way on the techniques for interviewing minors and methods of determining their age.

ii) Unaccompanied foreign minors' access to education

95. With regard to individual measures, the administrative courts have no jurisdiction in cases concerning the treatment of unaccompanied foreign minors. Measures relating to admission to school or college, entitlement to child welfare or emergency measures come within the jurisdiction of the children's judge (CE, 1 July 2015, *Département* of Nord, no. 386769).

96. The first paragraph of Article L. 131-1 of the Education Code states that schooling is obligatory for children - French and foreign - of both sexes between the ages of six and sixteen. The education of minors aged over 16 is dependent on the availability of places, and this equally applies to any young person wishing to start school for the first time or to continue with schooling after the age of sixteen. As with all pupils of French middle and upper schools, vocational guidance is subject to the constraints imposed by the labour market.

97. Moreover, guiding unaccompanied foreign minors towards so-called "problem" sectors has a double advantage in that it helps them to find work and offers them grounds for claiming a residence permit.

98. Finally, the requirement to present an identity document in order to register for training or sit an examination has to be qualified in the light of national education circular no. 2011-072 of 3 May 2011, according to which "young persons must be able to prove their identity, by means of a currently valid identity document with photograph. If the identity document has been lost or stolen, the candidate shall present an acknowledgement of the reported loss or theft from the police or gendarmerie station concerned, together with any official documents, with photographs, to establish their identity".

99. It is also possible in France to reconstitute such young persons' civil status through a specific court judgment when documents cannot be obtained from persons remaining in the young person's country of origin or from the relevant consular authorities.

f) *No violation of Article 30 of the European Social Charter*

100. The complainant organisation maintains that the conditions of existence of unaccompanied minors living on the streets "without protection" pose a threat to their schooling, and by extension their regularisation, and are therefore in breach of Article 30 of the European Social Charter.

101. In fact, the Government notes that no unaccompanied foreign minor has been left "living on the streets without protection". Although it may happen that some young persons identified as unaccompanied and foreign are taken into care in less satisfactory conditions, particularly hotels, in overburdened *départements*, the majority take part in vocational training on a regular basis. Moreover, some young persons continue their schooling, with the aid of *départements*, beyond the age of eighteen, under the auspices of so-called young adult contracts. In addition, those concerned receive special allowances for meals, the purchase of school materials and transport from the child welfare services.

102. In any case, for many unaccompanied foreign minors, who are often taken into care at around the age of 17 following a previous migration experience that has reinforced their independence, a good alternative is a form of semi-autonomous care.

103. Finally, it is true to say that scholastic achievement, particularly in vocational training for so-called “problem” sectors, is one of the factors that prefectures take into account when these young persons reach the age of majority and lodge applications for regularisation.

g) No violation of Article 31 of the European Social Charter

104. EUROCEF considers that the fact that certain unaccompanied foreign minors are homeless is in breach of Article 31 of the European Social Charter.

105. The Government notes in this context that the *Conseil d'Etat* has found that the Social Action and Family Code establishes a genuine right to emergency accommodation, which amounts to a fundamental freedom. The *Conseil d'Etat* considers that the State has a duty to apply the right to emergency accommodation to any homeless person in a state of medical, psychological or social distress. *Département* authorities have a particular obligation towards all young persons whose health, safety or moral well-being are at risk, and failure to meet these obligations may result in a serious and manifestly unlawful infringement of a fundamental freedom if it entails serious consequences for the person concerned (*CE provisional order 12 March 2014 no. 375956*).

106. Attention should also be drawn to persons applying to the child protection services as unaccompanied foreign minors who may be “given shelter” pending the outcome of the assessment of their age and unaccompanied status.

107. However, given the number of young persons concerned,² it is impossible to offer all of them shelter. In Ile-de-France (the greater Paris region) in particular, persons claiming to be unaccompanied foreign minors may remain for some time in hostels for immigrant workers, or in the homes of distant family members, pending recognition that they are under 18 and at risk. These young persons often find accommodation within these community networks before applying to the child protection services.

108. Turning more specifically to Paris itself, additional places in shelters are to be made available in the first quarter of 2015, which means that young persons undergoing assessment of their age and unaccompanied status by the *France Terre d'Asile* association, the child welfare authorities and the Paris regional court will be given shelter almost automatically.

² It is estimated that 8 000 persons each year claim to be unaccompanied foreign minors.

109. If an assessment shows that the individual concerned is not a minor, he or she will come within the ambit of the general law and, from the standpoint of housing, can look for assistance to associations such as the *Samu social*, or the so-called accommodation and social integration centres.

110. If the individual is identified as being an unaccompanied foreign minor, and is assigned to the care of a child welfare department by a court, he or she will be treated the same as other children and young persons placed in the care of the child welfare service under the authority of the chair of the *département* council concerned.

h) No violation of Article E of the European Social Charter

111. EUROCEF considers that the discrimination suffered by unaccompanied foreign minors in France is in violation of Article E of the European Social Charter.

112. However, as the Government has stated in paragraphs 9 ff. of these observations, unaccompanied foreign minors who have been placed by the judicial authorities in the care of a *département* council are entitled to the same rights and facilities as other children in the council's care under the auspices of child protection.

113. In this context, France has opted not to deal with the issue of unaccompanied foreign minors from the standpoint of immigration and instead treats them in the same way as all young persons placed in the care of the child welfare services.

114. In practice, it is neither desirable nor feasible to place all unaccompanied foreign minors in the same establishments or to create a new category of facility exclusively for their use.

115. There are a number of specific types of establishment with a social or socio-medical focus, but these can be differentiated according to certain objective features.

116. For example, the so-called medico-educational institutes cater for a disabled clientele while young persons covered by the Order of 2 February 1945 on juvenile delinquency are placed in closed educational institutions.

117. However, there is no justification for drawing a distinction between different groups of minors who are the subject of socio-educational measures ordered by the courts, given the Court of Cassation's ruling that "Articles 375 to 375-8 of the Civil Code on socio-educational assistance are applicable to all minors present in the territory of France, irrespective of their nationality or that of their parents" (Cass Civ 1st, 16 January 1979, no. 78-80.002). As noted above in paragraph 95 of these observations, the traditional methods used to deal with children subject to a socio-educational assistance order must be applicable whatever their nationality. This is why there is no justification for creating a particular category of establishment.

118. Nevertheless, it is clear that, as noted in paragraph 74, persons who turn out not to be minors cannot qualify for the rights and facilities that are intended solely for those aged under 18.

119. Finally, where there is a lack of harmonisation of practice in the judicial districts and *département* councils of metropolitan France, certain geographical inequalities may appear. However, these do not constitute discrimination between persons. Moreover, harmonisation of such practices is one of the objectives of the national arrangements of 31 May 2013. It has been partially achieved, since the majority of *départements* and prosecution departments now comply with the assessment protocol.

* * * * *

120. Having regard to the foregoing, 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 alone or in conjunction with Article E, concerning the right of children and young persons to appropriate economic, legal and social protection.

APPENDIX

- **Document 1:** guide to asylum for unaccompanied foreign minors in France;
- **Document 2:** circular of 31 May 2013 on the care of unaccompanied foreign minors: national arrangements for the provision of shelter, assessment and guidance.