



European
Social
Charter

Charte
sociale
européenne



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

24 February 2016

Case Document No. 3

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

**RESPONSE OF EUROCEF
TO THE GOVERNMENT'S SUBMISSIONS ON THE MERITS**

Registered with the Secretariat on 15 January 2016



Address for correspondence:
39, route de Montesson
78110 Le Vésinet,
France

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

RESPONSE

Contents

CHRONOLOGY OF THE COMPLAINT	7
<i>ABBREVIATIONS AND ACRONYMS</i>	9
INTRODUCTION: PRELIMINARY COMMENTS.....	11
1. The legislation on the reception and treatment of foreign minors in France and current practices...12	
Holding unaccompanied foreign minors in waiting areas	12
Temporary emergency reception facilities	13
Systematic questioning of their status as minors	16
Civil status documents whose authenticity is contested	16
Almost systematic forensic medical examinations	17
Administrative decisions against the interests of the child	19
Appointment of an ad hoc guardian	21
2. Rights protected under the European Social Charter which are not being observed	22
ARTICLE 7 § 10 – Right of children and young persons to protection (§ 10)	22
ARTICLE 11: The right to protection of health	39
ARTICLE 13 The right to social and medical assistance	49
ARTICLE 14 The right to benefit from social welfare services	55
ARTICLE 17 The right of children and young persons to social, legal and economic protection – paragraph 1	56
ARTICLE 30: The right to protection against poverty and social exclusion.....	62
ARTICLE 31: The right to housing (§ 2)	63
ARTICLE E	72
CONCLUSION.....	77
APPENDICES	79

CHRONOLOGY OF THE COMPLAINT

In February 2015, the INGO EUROCEF (European Committee for Home-Based Priority Action for the Child and the Family) lodged a collective complaint against France concerning the treatment of unaccompanied foreign minors, alleging that this signatory State to the European Social Charter was failing to meet its obligations arising from the right of the children concerned to appropriate economic, legal and social protection.

The complaint was registered by the Secretariat of the European Committee of Social Rights (ECSR) on 27 February 2015.

The European Committee of Social Rights declared the complaint admissible on 30 June 2015 and invited the French Government to submit a memorial on the merits of the complaint by 30 September.

The Committee forwarded the Government's memorial to EUROCEF on 30 October 2015, and invited it to reply by 17 December 2015.

Following a request from EUROCEF, transmitted on 5 November, the Committee agreed to defer the final date for EUROCEF's reply to the Government memorial to 15 January 2016.

That is the subject of this document.

ABBREVIATIONS AND ACRONYMS

ADJIE	Accompagnement et Défense des Jeunes Isolés Etrangers (voluntary association)
AME	Aide Médicale d'Etat (State Medical Assistance)
ANAFE	Association Nationale d'Assistance aux Frontières pour les Etrangers
ASE	Aide sociale à l'enfance (child welfare services)
CASNAV	Centre Académique pour la Scolarisation des enfants allophones Nouvellement Arrivés et des enfants issus de familles itinérantes et de Voyageurs
CDEF	Centre <i>départemental</i> enfance et famille
CDRIP	Cellule <i>départementale</i> de recueil des informations préoccupantes
CESEDA	Alien's Entry and Residence Code
CGT	Confédération Générale du Travail (trade union)
CIO	Centre d'information et d'orientation (information and guidance centre)
CMU	Couverture maladie universelle (universal health coverage)
CNCDH	Commission Nationale Consultative des Droits de l'Homme
CRF	Croix Rouge Française
DEI	Défense des Enfants International (INGO)
DSS	Direction de la Sécurité Sociale
ECHR	European Convention on Human Rights
EctHR	European Court of Human Rights
EU	European Union
EUROCEF	Comité européen d'action spécialisée pour l'enfant et la famille dans leur milieu de vie
FEANTSA	Fédération des Associations nationales Travaillant avec les Sans-Abri
FIDH	Fédération Internationale des Droits de l'Homme
FNARS	Fédération Nationale des Associations d'Accueil et de Réinsertion Sociale
LDH	Ligue des Droits de l'Homme
MMIE44	Unaccompanied foreign minors and over 18s in Loire-Atlantique (voluntary association)
OFPRA	French office for the protection of refugees and stateless persons
INGO	International Non-governmental Organisation
OMM	Observatoire sur la Migration des Mineurs
OEE	Observatoire de l'Enfermement des Etrangers
ONED	Observatoire National de l'Enfance en Danger
PAOMIE	Permanence d'accueil et d'orientation des mineurs isolés étrangers
PASS	Permanence d'accès soins santé
PUCAFREU	Promoting Unaccompanied Children's Access to Fundamental Rights in the European Union Projet européen: promouvoir l'accès aux droits fondamentaux des mineurs non accompagnés en Europe
RESF	Réseau Education Sans Frontières
SAMU	Service d'aide médicale d'urgence
SIAO	Service intégré d'accueil et d'orientation
UNHCR	Office of the UN High Commissioner for Refugees
ZAPI	Zone d'attente pour personnes en instance (waiting area)

INTRODUCTION: PRELIMINARY COMMENTS

EUROCEF has taken careful note of the French Government's memorial in reply.

In the period following the 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.

These efforts, both local and national, concern not just changes to the relevant legislation but also improvements to practice. We would cite, as examples:

- The April 2015 report by Ms Dominique Versini, Deputy Mayor of Paris, on “the reception and treatment of unaccompanied foreign minors in Paris”, which contains a plan for improving their treatment, including fifteen proposed measures for achieving this objective (Appendix 32).
- Law No. 2015-925 on the reform of asylum law, in so far as it improves asylum seekers' procedural rights.
- The draft child protection legislation currently under consideration by a cross-party parliamentary committee.

EUROCEF asks the European Committee of Social Rights to take account of the following:

- EUROCEF's collective complaint is based on its assessment of the situation prior to the adoption of the various laws and regulations referred to here. It therefore takes account of the legislation and practices applicable before February 2015.
- However worthwhile they may be, most of the legal advances and improvements in practices described in the aforementioned documents have not yet been reflected in progress on the ground. This applies naturally to the draft child protection legislation, which has still not been finally enacted. It also applies to Law No. 2015-925 on the reform of asylum law, the majority of whose implementing instruments are scheduled to take effect on 1 November 2015.
- Notwithstanding the potential improvements expected from the application of these new laws and regulations, EUROCEF will use this report to highlight recent failures to take account of young foreign asylum seekers' social rights and practices that are incompatible with the relevant legislation.
- Despite the French Government's claims, EUROCEF has not confined its investigations solely to Ile de France (greater Paris). However, this area is the most important point of entry to France for unaccompanied foreign minors, which explains why the focus has been on this region. Nevertheless, EUROCEF will include in this memorial references to observations made in many other regions of France.
- The sheer volume of testimonies¹ prevents us from featuring them all in the body of our submission. They are therefore included as appendices. Some of them, such as documents containing names or addresses or accounts whose author has asked for

¹ Of the 69 documents appended, including newspaper articles and tracts, 32 are the testimonies of persons directly involved, in various capacities, with unaccompanied foreign minors, for which we offer them our sincere thanks.

guarantees that they will not be published, must remain confidential and will be sent directly by post to the Committee secretariat. However, we invite the members of the European Committee of Social Rights to take account of them in their totality, since their sheer volume offers clear evidence of the scale of the problems raised by the reception and treatment of unaccompanied foreign minors in France.

1. The legislation on the reception and treatment of foreign minors in France and current practices

Early in its memorial in reply, the French Government draws a distinction (§9)² between “two categories of persons concerned by the national provisions on unaccompanied foreign minors”:

- persons claiming to be minors who are in fact over 18, and
- foreign minors to whom the Charter provisions are applicable.

EUROCEF does not dispute the need to ensure that persons claiming to be minors are in fact under the age of 18. Nevertheless, expressed in this way, this precondition shows that unaccompanied foreign minors are treated with suspicion from their very first contact with the French authorities. It needs to be clearly stated from the outset that young persons over 18 are concerned by the relevant national arrangements, but that newly arrived young persons who have difficulties establishing their status as minors must be given the benefit of the doubt. From the numerous personal testimonies recorded, this appears not to be the case.

As noted in the introduction, the French Government invokes Law No. 2015-925 of 29 July 2015 on reform of the right of asylum (§10), not all of whose implementing instruments have even yet appeared.

Holding unaccompanied foreign minors in waiting areas

We do not consider the legislation in its final form to be sufficiently clear about the principle that under-age asylum seekers must not be held in waiting areas (§14). In practice, it only offers one option for ending such detention, which depends on how the situation is interpreted by the OFPRA (the French Office for the Protection of Refugees and Stateless Persons). According to Article 13 of the legislation, which amends Article L.221-1 of the Alien’s Entry and Residence Code (CESEDA), when, as part of its examinations to determine whether asylum requests are not inadmissible or manifestly unfounded, the OFPRA considers³ that asylum seekers are minors or have suffered torture, rape or other severe forms of psychological, physical or sexual violence necessitating special procedural safeguards that are incompatible with their detention in a waiting area, the detention shall be terminated.

EUROCEF believes that granting the OFPRA this margin of appreciation is not compatible with the principle embodied in the recommendation made by Mr Niels Muiznieks, the Council of Europe’s Commissioner for Human Rights, in his report of 17 February 2015 following his visit to France from 22 to 26 September 2014:

² The numbering system used here is the one used by the French Government in its memorial in reply.

³ Our underlining – in French “*considère*”

“the authorities are invited to put an end to the holding of unaccompanied foreign minors in waiting zones. The Commissioner particularly encourages the French authorities to prepare and implement programmes as alternatives to the holding of migrants in waiting zones and to their placement in detention, particularly for children and their families.”

Current practice clearly illustrates the existing gap between good intentions and reality. It is merely necessary to refer to what the French Government says in its memorial (§61) about what happens in the Roissy-Charles de Gaulle airport waiting area: “When the six places set aside for unaccompanied foreign minors in [the] airport are full, those aged under 13 are given priority, while the rest are placed on the adults’ floor”.

Minors are thus being held in the waiting area, and those aged over 13 may be placed on the adults’ floor, which is no guarantee of their protection.

In addition, young persons whose status as minors is disputed, sometimes systematically and against all the evidence, may also be placed in a detention centre pending their expulsion. This is what happened to Cynthia and several other young persons in the Lyon administrative detention centre (Appendix 22).

It is also the case with Francis, a young Congolese aged 16, who was only removed from the Metz administrative detention centre when he had to be admitted as an emergency to a children’s hospital, because of his serious medical condition (Appendix 21).

Temporary emergency reception facilities

“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...” (§16)

Under Article L. 223-2 of the Social Action and Family Code, five days is the maximum period for which temporary emergency accommodation can be provided. We know that this deadline is rarely respected and can extend to several weeks or even months (see Appendix 35), particularly on account of the failure of *département* councils to arrange the necessary resources to carry out such assessments. This is confirmed by the testimony of J. (Appendix 62), in a *département* which nevertheless appears to be well in advance of many others:

“Although these young persons are indeed placed in safety and accommodated during the assessment period, it is currently impossible to comply with the five-day limit. Thus, whereas only fifteen or so young persons were previously given shelter by the CDRIP pending an assessment, the number increased dramatically in the summer of 2015 and is now around the fifty mark. ... Until 1 October 2015 only one assessor was available to carry out this duty, which increased the average length of stay in the hotel to an average of three weeks before the assessment (instead of the maximum of five days stipulated in Article L223.2 of the Social Action Code”.

According to Ms Dominique Versini's April 2015 report⁴ (Appendix 32), in the *département* of Paris meeting the five-day deadline is still an objective. However, referral to the state prosecutor is not always possible within this deadline, which means that for too long a period unaccompanied foreign minors remain uncertain about their administrative situation.

In connection with this period of residence, the French Government states (§17) that “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”.

We have received many reports that, in practice, children are left on the street or accommodated in hotel rooms. According to J. (Appendix 62), “such periods spent in hotels when young persons are being assessed may extend to several weeks, or even months. The state prosecutor is then asked to place them in the care of the *département* of Val d’Oise but the deadlines are once again extended because of bottlenecks in the departments concerned.”

The effect of this shortage of resources for the assessment stage is to extend the time it takes, sometimes by several months (Appendix 63), which leaves the children concerned in a state of great uncertainty. These are sometimes very young, as can be seen from L.’s testimony (Appendix 62):

“Prolonging the time spent in short-term shelter condemns children, some of whom may be aged under 13, to a period of insecurity which can sometimes have a traumatising effect. This is the case with the C. brothers, aged 15 and 12, who spent a week in a hotel before a place was found in a reception and guidance centre for unaccompanied foreign minors, since there were no places available in an ordinary children’s home.”

In her report (Appendix 32),⁵ Ms Versini refers to between 1000 and 1500 young persons referred each year to the initial reception centre for unaccompanied foreign minors, compared with just 19 places in residential accommodation and 191 in hotels (including 76 in winter as part of the “cold weather plan”). Even though the *département* of Paris plans to establish 25 additional places in residential accommodation for the most vulnerable (measure 4 of the Versini action plan), this is a clear indication of the size of the gap between existing needs and available resources, since by their nature, hotel places are not calculated to offer young persons the necessary physical and psychological security.

EUROCEF confirms the finding of the Commissioner for Human Rights⁶ that the resources devoted to placements in safety are inadequate and that a majority of such young persons are accommodated in hotels while others lack any form of shelter. This is backed up by numerous testimonies (Marseille: Appendices 1, 2 and 3; Lille: 19; Calais: 20, etc.).

In Nantes, there have even been court proceedings against the *département* council of Loire-Atlantique for failure to provide shelter for unaccompanied foreign minors and the *département* has been ordered to pay a penalty fine of €100 for each day that it fails to

⁴ Report of Ms Dominique Versini, Deputy Mayor of Paris, April 2015: “Reception and treatment of unaccompanied foreign minors in Paris”, page 30

⁵ Op. cit., Appendix 2 page 45

⁶ Report of 17 February 2015 by Mr Niels Muiznieks, Commissioner for Human Rights of the Council of Europe, following his visit to France from 22 to 26 September 2014, page 22, paragraphs 89 to 91.

accommodate the young persons concerned.

This is totally incompatible with the Ministry of Justice circular of 31 May 2013,⁷ according to which all unaccompanied foreign minors without exception are entitled to a placement in safety (§24).

We would add that only the French Government appears not to be aware that persons who state that they are over 17 are excluded from the relevant facilities (§40). This is confirmed by numerous testimonies. EUROCEF would refer, among others, to a report by the voluntary association ADJIE (which provides support for and defends unaccompanied foreign minors, 49ter avenue de Flandre, 75019 PARIS),⁸ which cites extracts from individual assessments carried out in 2013 by staff of the PAOMIE (initial reception and guidance centre for unaccompanied foreign minors). These tell us a great deal about the refusal to offer protection, even when those concerned are acknowledged to be minors and are at risk (see Appendix 59).

Similarly, the open letter from the CGT trade union representing staff of the Hauts de Seine *département* council to the Chair of the council highlights numerous practices designed to deny protection to a certain number of applicants claiming the status of minor (see Appendix 60). Several extracts illustrate this point:

- “Young persons who lack the necessary papers are often immediately rejected by the head of department, without being seen.
- Some children and young persons are interviewed by the head of the child welfare department alone and are then “sent away”, with no contact with social workers and no social assessment. In such cases, there is generally no written record of their case histories.
- Some are sent to an embassy, with no attempt to assess their ability to find their way and no bus or train ticket, to “get their papers certified”, even though they might need to make an asylum application and visiting the embassy could put them at risk.
- Other young persons are directed to the police, unaccompanied and with no prior counselling, on various grounds. Some have been referred by the police themselves, who argue that the child welfare services are responsible for dealing with minors. We do not know what has become of the rest, and we think that some have been too afraid to risk going to the police.”

Young persons themselves have testified that they were not placed in safety when they first made themselves known; often they are left to fend for themselves. This is clear from young persons’ accounts of their interviews with the PAOMIE, as recounted to members of a Paris-based voluntary association for the protection of unaccompanied foreign minors (Appendix 24), or Z’s account of his first encounter with a child welfare reception unit in the Paris region (Appendix 34): “I’ll tell my story. I knew no one in France, no family, no friends. I showed them my birth certificate, they took a photocopy of it and gave me an appointment. I told them I had nowhere to eat or sleep. They told me to make do until the date of the

⁷ Circular of 31 May 2013 on the arrangements for dealing with unaccompanied foreign minors: national arrangements for the provision of shelter, assessment and guidance.

⁸ Initial reception and guidance centre for unaccompanied foreign minors (PAOMIE): a Parisian vegetable mill for foreign minors.

appointment, I stayed where I was but they told me to leave the office. I started to cry and thought about my family. They gave me an address in Paris where I could eat. I said that I did not know Paris, that I would get lost. And I had no money to get there. I went back to the underground station, where I spent two days, asking people for food.”

Systematic questioning of their status as minors

The following is cited in the PUCAFREU (Promoting Unaccompanied Children’s Access to Fundamental Rights in the European Union) report:⁹

“Young persons who ask for protection on grounds of their age are often disbelieved. For example, our team accompanied a young Guinean aged 17 with no form of shelter in mid-winter to the police station of the 20th arrondissement of Paris. He was immediately suspected of lying about his age, with no consideration for his physical or psychological state.”

It emerges from the testimonies we have received that questioning young persons’ status as minors has become a basic principle, thus enabling them to be excluded from the scope of child protection services.

Assessment interviews seem less concerned with understanding young persons’ situations than with identifying inconsistencies in their accounts (see, inter alia, appendices 24, 36 and 59), and in any case necessarily suffer from the absence of interpretation. Difficulties in reconstructing the journeys that brought them to France and hesitations or errors concerning their parents’ dates of birth are sufficient to deny young persons the protection they are entitled to as minors. Physical appearance and closeness to the age of majority are also criteria for their exclusion. Young persons who find accommodation with adults from their community may also be deemed not to be unaccompanied, even though unaccompanied status should be seen in terms of separation from the father or mother or any other legal representative.

Unaccompanied foreign minors are being effectively placed on trial, as is reported by the members of a Paris voluntary association concerned with the protection of unaccompanied foreign minors and young persons aged over 18 (Appendix 63): “Many young persons have told us that they were mistreated by the PAOMIE, and suspected of lying at their interviews about either their age, despite their civil documentation, or their unaccompanied status. B. for example, was accused of lying on the grounds that his clothes were relatively clean. The young persons to whom we have spoken find it difficult and traumatic to discuss their treatment by the PAOMIE.”

Civil status documents whose authenticity is contested

The authenticity of civil status documents is often contested, resulting in an immediate refusal to recognise minority status, and thus the right to any protection on these grounds, without allowing the necessary time to elapse to receive the official documents from the country of

⁹ Unaccompanied children lacking protection in Europe; research conducted in France as part of the PUCAFREU (Promoting Unaccompanied Children's Access to Fundamental Rights in the European Union) project, 2013

origin.

Sometimes, people smugglers confiscate young persons' civil status documents certifying their age. These are replaced by false passports showing them to be over 18, for the simple purpose of enabling them to travel without their parents and unaccompanied. This practice appears to be particularly common with Congolese children, who are given Angolan passports! These young persons are then prosecuted by the French judicial authorities for possession of forged documents. They receive heavy fines, or even terms of imprisonment, and are then placed in detention centres for deportation to their country of origin Angola!¹⁰ (Appendix 22). This has been corroborated by numerous other sources (appendices 21, 33, 46, 52).

Civil status documents are often seized for an expert opinion. "They are increasingly seized on arrival by the police for authentication, even before the young persons concerned are placed in the hands of the child protection services, with no form of receipt or information on how the expert examination is progressing. It is almost impossible to recover these documents without expending considerable effort or securing the assistance of a lawyer." (Appendix 47: collectif MMIE 44).

Although examining civil status documents should take priority over bone tests (which according to the law should be a last resort), the reverse is often the case. See, for example, this incredible letter of 6 October 2014 from a prefect to a young migrant (Appendix 48), who however had the good fortune to be assisted by a lawyer: "In a letter sent by fax on 10 October 2014, your lawyer, Mr X., enclosed a copy of a passport issued to you by the consulate of the Congo in France on 3 June 2014, to certify your date of birth in 1996. However, in the light of the conclusions of the forensic medical examination of 2012, this document does not constitute sufficient evidence."

Almost systematic forensic medical examinations

Although numerous medical, scientific and ethical bodies have expressed doubts or reservations about or opposition to the use of bone tests to determine young persons' age (see appendices 56 and 57), such tests appear to be used systematically, and in certain cases even abused, in numerous *départements* (Appendix 35).

There are those who hoped that the procedure would be abandoned (see Appendix 58). Yet, it now appears to be on its way to the statute book, as part of draft legislation on child protection. Despite the opposition of a number of members of parliament it appears that this provision will be included in the bill submitted for consideration by the relevant parliamentary committee.

At the same time, certain members of parliament are strongly in favour of this procedure. A representative from Alpes-Maritimes even recommends, in contravention of the current legislation, that such tests be carried out on all young migrants arriving at the Italian border during the first four hours of their detention (Appendix 61). Moreover, as the organisation MMIE44 notes (Appendix 42), the existing legislation is regularly flouted by *départements*:

¹⁰ Source: press release November 2015, from the Education Without Borders network (Rhône branch)

absence of consent to the procedure, indication of precise age whereas only an approximate estimate is possible, its use at the outset or to challenge a civil status document, whereas bone tests to assess age should only be a last resort, and so on.

There is one testimony to show that one *département*, Val d'Oise, makes little use of bone tests (Appendix 40), but there are many others highlighting the improper use of this procedure (appendices 3, 47, 55, 56), including cases where the civil status documents have already been validated (appendices 8, 36, 48).

Let us quote the testimony of one director of a social welfare establishment (Appendix 68):

“W. was born in Senegal in 1997. He was brought up in a rural environment by his grandmother and all that he knew about his parents was that both had left for Ivory Coast when he was still very young. He has a sister who is a year and a half older than him.

His grandmother died in 2010 when he was 13. W. and his elder sister were placed in the care of their paternal uncle. They can list the abuses they suffered at this uncle's hands: physical violence and sexual violence towards his sister. Both were kept out of school and W. was forced to beg.

In 2011 one of the uncle's neighbours helped the two young persons, then aged 15 and 14, to run away. A few months later, in July 2012, they arrived in France.

They were taken into the care of the Paris child welfare service and then placed in a residential establishment run by the association France Terre d'Asile. A few months later the Paris child welfare department asked for bone tests to be carried out on the two young persons. According to the results, they were not under 18. Their period of care in the department was suspended and they had to leave the Terre d'Asile facility. The sister tried to commit suicide. She was admitted to a hospital for children and young persons. W., who was very worried about his sister, was admitted to a shelter for the homeless, following an emergency telephone call.

Their situation necessitated the assistance of a social worker, who had supported them up to this point. She called on the services of a lawyer, who secured a hearing of the Bobigny court.

At this hearing, in October 2013, a children's judge authenticated the birth certificates. Their status as minors was duly recognised. The two young persons were then placed in the care of the Seine-Saint-Denis child welfare department.”

The medical examinations in question are usually carried out without requesting the agreement of the young person concerned. And when they are asked, the young persons are told that their refusal will be taken to mean that they are over 18 (Appendix 34). It was on the pretext of such a refusal (Appendix 4) that D. was denied child welfare assistance on the orders of the Chair of the Côtes-d'Armor *département* council: “Note has been taken of your refusal to attend the medical examination scheduled for 19 January 2015 at the surgery of Dr X. This may be interpreted as an acknowledgement that you are over 18.”

These examinations are not normally accompanied by any interviews (see Appendix 10).

Sometimes, the same young person may undergo two successive examinations whose results may be conflicting, an indication of their relative unreliability. For example, N. was

considered to be over 18 after a medical examination in St Brieuc on 27 January 2014 (Appendix 11) but acknowledged to be a minor in Lannion on 7 May (Appendix 14). The State claims to be powerless to respond, citing *département* autonomy, but this can nevertheless be considered to represent a form of complicity. Thus the argument put forward by the unaccompanied foreign minor unit of the Ministry of Justice is, to say the least, somewhat surprising (Appendix 7): “This ‘verification’ practice established by receiving *départements* is certainly debateable but it is a legitimate right of receiving local authorities to use their own technical resources to ensure that those who are genuinely unaccompanied foreign minors receive proper, or even better, treatment.”

Administrative decisions against the interests of the child

After travelling thousands of miles across continents, unaccompanied foreign minors assume France will offer them the security and stability that have long been missing from their lives. In reality, the system for distributing unaccompanied foreign minors across the country, however justified it might be, means the youngsters are shunted from one *département* to another, and just as they are starting to get their bearings and form ties, they have to move again.

Not only are the youngsters sent from one *département* to another (Exhibit 35), but even within the same *département*, they may be transferred from one agency to another if the local branch of an assessment unit or the facility housing them so decides, or if their status is contested.

As explained by J. (Exhibit 62), “*the circular of 31 May 2013 on procedures for the support of unaccompanied foreign minors*” – a national shelter, assessment and referral scheme under which *départements* are required to help one another – can itself be a major source of disruption and affect the child’s emotional development.”

J. cites the example of M.: “*M. is a teenager who left Guinea after his mother and father died. After working for a while for a man who ill-treated him, he managed to flee the country with the help of a friend of his mother. He arrived in France in May 2015 in the département of Yvelines (78). Initially he was put up in a hotel and then moved to a local children’s home, pending an assessment. Just as he was starting to become attached to the place, he was placed in the care of the Val d’Oise local authorities which moved him to a children’s home in Cergy. After spending a month and a half there, he was referred to an LAO facility. M., who is described as a very pleasant and cheerful youngster, started crying a lot and did not want to uproot himself (again) from the children’s home where he had made friends and become attached to the staff. He came to the LAO in July 2015 when we explained to him that, once again, he was in a referral system and would therefore be moved within 6 months. He is becoming very withdrawn and does not trust adults anymore [...]*”

Another notable example involves a youngster who, after spending 44 days in Val d’Oise, while his case was being considered, was told he was being assigned to the care of the child welfare services in Corsica (!). Concerned about his psychological state, the social workers in Val d’Oise asked that he be allowed to remain there when they learnt that, because there was not enough room in Ajaccio, the Corsican authorities had already made plans to send him to

Amiens in Picardie... (Exhibit 62).

Inter-agency transfers within the same *département* are also common, as the following comment about the situation in Hauts de Seine (Exhibit 60) shows: *“More and more, children and youngsters are being “dispatched” to a different local branch of child welfare services in order to spread the workload. Usually with no preliminary interview, no one to accompany them and no tickets.”*

Similar problems have been reported in Yvelines. RESF 78 talks (Exhibit 69) about unaccompanied foreign minors having to negotiate a *“veritable obstacle course”* and criticises the hasty manner in which they are transferred to other facilities, threatening to undo any progress made on the social and educational front. *“Since 9 December, however, an offensive has been under way to get unaccompanied foreign minors out of the children’s homes where they have been staying (i.e. the ones who have been receiving genuine support), so as to free up rooms; a letter was sent to each children’s home, containing a list of youngsters and giving them a date the following week by which they must be packed and ready to leave – to the consternation of the social workers who cannot understand the sudden urgency.”*

The long waiting times due to reception facilities having reached saturation point are being compounded by delays in implementing procedures for checking and contesting the youngsters’ age (questioning the authenticity of civil status records, referring cases to the prosecutor, bone testing, etc.). As a result, some youngsters are left waiting in limbo until they reach the age of 18. Consider the case of N. (see Exhibit 9) who arrived in France in October 2013 with no civil status records. In January 2014, X-ray checks showed that he was over the age of 18. In June 2014, he received a duplicate birth certificate confirming that he was in fact a minor. Even though the prefecture of the *département* where he was living confirmed, in August 2014, that the document was authentic, the local council refused to review his case. Based on a second expert opinion confirming that N. was a minor, on 14 September the regional court appointed a welfare agency to act as guardian but the *département* council appealed against the decision. In September 2015, the court ruled in favour of the council but by that time, N. had turned 18. The youngster thus spent two years in limbo and, in the end, despite everything, the welfare authorities supported his application for assistance as a young adult, on the ground that his particular circumstances called for *“support from a variety of agencies (Family Allowance Fund, tax authorities, social security, etc.) as well as the means to access them.”*

The reply (Exhibit 17) received from the *département* council is telling: *“Given that you are now enrolled as an apprentice and able to support yourself, I hereby inform you that as of 15 August 2015, the presumed date of your 18th birthday, you will no longer be in the care of the département council.”*

The frequently harsh nature of the administrative decisions and the way they are implemented demonstrates a clear lack of regard for the child’s interests, whether the decisions concern youngsters who turn 18 or others who have been excluded from the child welfare system because of doubts about their age. Consider the case of C. (Exhibit 5) who on 30 January 2015 received a letter informing him that he was no longer entitled to assistance

from the child welfare services. The letter continued: *“As of Monday 2 February 2015, you will no longer be covered by the unaccompanied foreign minors scheme. You are kindly requested to return your room key to the hotel owner and to seek assistance under the arrangements for adult migrants.”*

Other witness accounts confirm the peremptory nature of these withdrawals of support, and the fact that there is usually no accompanying interview or preparation, with the result that the youngsters end up sleeping rough or in squats (Exhibits 36, 44, 52, 63). CGT staff from Hauts de Seine council explain (Exhibit 60):

“...Where a medical examination is used as a basis for withdrawing care, it happens very fast, regardless of whether the youngster is staying in a hotel or children’s home, or with a host family, and regardless of whether he or she is already enrolled in a programme or attending school. So even though it is approximate and inaccurate and has no legal force, the medical examination alone overrides the socio-educational assessment. Arrangements are routinely terminated against the advice of social workers from the child welfare department, the fostering service, carers and, in some cases too, their respective managers. Including even in cases where they have warned that once back on the streets, the youngsters will be at risk and have no one to look after them. And including even in cases where all the evidence from the socio-educational assessment indicates that the youngster is in fact a minor, as he or she claims and as stated in his or her papers”.

Likewise, even when a person is officially declared to be a minor, there is no guarantee that he or she will be granted protection. Extracts from the assessment reports drawn up by the PAOMIE cited by ADJIE (Exhibit 59) show that care can be denied on a number of grounds: minors too close to their 18th birthday, not from the Paris area, not sufficiently isolated, etc.

Appointment of an ad hoc guardian

“Where the application for asylum is made by a minor without a legal representative in France, the public prosecutor must immediately appoint an ad hoc guardian to assist the minor and represent him or her in the proceedings relating to the application for asylum”...(18)

We have received many reports (Exhibits 40, 63) indicating that such appointments seldom take place, thereby denying the minors their right to be assisted in proceedings concerning them. The presence of an ad hoc guardian would enable, for example, a lawyer to be appointed, or a case to be referred to the guardianship court and/or, where appropriate, the administrative court or juvenile court.

The law is currently changing, therefore, but clearly still suffers from numerous shortcomings when it comes to protecting the rights of unaccompanied foreign minors.

While there have been some improvements in practice and others have been announced under various action plans, whose authors are to be commended, there are still wide gaps between stated intentions and actual practice, just as there are noticeable differences in practice between one *département* and another.

The result is differences in treatment depending on where the youngsters are, and a failure to

observe some of their basic rights and to consider their best interests.

Current practices, indeed, have led to violations of a number of rights set out in the European Social Charter, and which are considered fundamental for unaccompanied foreign minors arriving in France.

2. Rights protected under the European Social Charter which are not being observed

ARTICLE 7 § 10 – 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.”

In its decision on the merits of complaint No. 69/2011, lodged by the international NGO DCI against Belgium, the European Committee of Social Rights pointed out that Article 7, paragraph 10 “*guarantees children and young persons special protection against the physical and moral hazards to which they are exposed. Above all regarding protection against physical hazards, this is clearly a very important requirement to States Parties so as to ensure that certain fundamental rights are effectively guaranteed, in particular the right to life and to physical integrity. For this reason the Committee deems that not considering States Parties to be bound to comply with this obligation in the case of foreign minors who are in a country unlawfully would therefore mean not guaranteeing their fundamental rights and exposing the children and young persons in question to serious impairments of their rights to life, health and psychological and physical integrity.*”¹¹

EUROCEF

In its collective complaint, EUROCEF contended that the French Government was in breach of paragraph 10 of Article 7 of the European Social Charter, concerning unaccompanied foreign minors arriving by air and who were being refused access to the country as soon as they stepped off the plane, whereupon they were taken to “waiting areas”. In EUROCEF’s opinion, not only were such practices in breach of Article 97 CRPD and European case-law, but also the conditions in which these unaccompanied foreign minors were being housed in the “waiting areas” failed to ensure “special protection against physical and moral dangers to which children and young persons are exposed”. Some of them were being kept in the same area as adults, and others were in hotel rooms, sometimes in distant locations, thereby preventing the minors in question from exercising their rights.

The French Government

In its observations in reply, the French Government countered that there had been no violation of Article 7 of the European Social Charter, pointing, for example, to the fact that at Roissy airport, there were six places for unaccompanied foreign minors, with priority being given to

¹¹ ECSR decision on the merits of Complaint No. 69/2011, lodged by DCI against Belgium, §85.

those under the age of 13, while “the rest are placed on the adults’ floor” (§61). In the case of Orly airport, “there is indeed provision at Orly for hotel accommodation to be made available” (§61). The French Government further states that the unaccompanied foreign minors unit, however, “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” (§62). It ends by pointing out that at “Roissy airport, an *ad hoc* guardian is appointed for each person in the waiting area claiming to be an unaccompanied foreign minor” (§63).

Based on the various exhibits, EUROCEF considers that the French Government is in breach of paragraph 10 of Article 7 of the European Social Charter as regards:

- Group 1: Unaccompanied foreign minors in the care of the child welfare services and who are staying in welfare hotels
- Group 2: Young foreigners undergoing assessment to determine their age and unaccompanied status under the Taubira circular and who have not been provided with shelter
- Group 3: Unaccompanied foreign minors who have been assessed and found to be adults and who are appealing
- Group 4: Unaccompanied foreign minors denied access to child protection measures by court order because they have been declared adults, but who cannot claim assistance under the arrangements for adults.
- Group 5: Unaccompanied foreign minors not yet in the care of the child welfare services
- Group 6: Unaccompanied foreign minors being kept in waiting areas

Target group 1: Unaccompanied foreign minors in the care of the child welfare services and who are staying in welfare hotels

Various reports indicate that many unaccompanied foreign minors formally recognised as being at risk are being housed in welfare hotels, without proper support, in some cases for several months.

Examples and exhibits

Département of Côtes d’Armor

N. arrived in France at the age of 16, was taken into the care of the local authorities in Côtes d’Armor in October 2013 and put up in a hotel until the end of February 2014.

“During his five months in the hotel, N. received no schooling and participated in no activities of any kind, even though he repeatedly asked to be allowed to attend school. He slept at the hotel and took his meals at a hostel for young workers. That was all his life consisted of. N. still has nightmares every night, in which he relives again and again the scene

where his family was murdered. When staying at the hotel, he would wake up shouting, and rock in his bed; his roommates would hit him to make him stop. During the five months that he spent in the hotel, nothing was done to address this either.” (Exhibit 9).

Département of Hauts de Seine

Z. arrived in Paris on 23 August 2013. After being interviewed by Evry child welfare services, telling his story and producing his birth certificate, he was put up in a hostel for two weeks. According to Z., at the end of this period *“they told me there was no room for me, and I was taken by car to another département, Hauts-de-Seine”*. *“I was taken to the child welfare services in P., and put up in a hotel in V. Sometimes there were as many as 30 others from child welfare services staying at the hotel. We were given full board and lodging.*

I didn’t see my social worker again. I had a friend who was very young like me, and who, like me, was very keen to go to school. He was supposed to go to the information and guidance centre in B. on 1 October but he thought that was too late, so three of us went to the centre together on 24 September, to ask to sit the tests. We sat all the tests.

Then I waited. I received no answer about school. Then I had a few problems at the hotel so I moved. Now I’m in a hotel in M. Sometimes I chat to another youngster in the corridor but we’re not allowed to be in each other’s room and there’s no lounge where you can talk. I receive €70 per week, but that has to cover everything, including food and travel. Because I’ve no tickets, I’ve stopped going to ASTI – the immigrant workers’ support group – in Issy, where the others go. For French and maths classes. When I was living in Issy, I used to walk there, because ASTI was very close.” (Exhibit 34).

RESF 92 has conducted a survey of 8 unaccompanied foreign minors, concerning their access to schooling. It appears that all 8 have been in the care of Hauts de Seine child welfare services for periods ranging from 3 months to 1 year and all are being put up in hotels. (Exhibit 35)

RESF tells the story of L., an unaccompanied foreign minor who arrived in France at the age of sixteen and a half. On 30 April 2015, L. received a letter informing him that he was no longer eligible for assistance from Hauts de Seine child welfare services, as he was now 18 years old, the age above which local authorities are no longer required to provide care for young persons “at risk”. L. spent the whole one and half years that he was in care in a hotel. (Exhibit 36).

Loire-Atlantique département

ZA., now 17 years’ old, looks back to May 2015: *“From the time I arrived at the hotel until the time I left, i.e. for 4 weeks, I had no way to wash my clothes and keep myself clean. I had to wash my underpants and socks in the bathroom sink, using hand soap. It was the same for the other boys who were staying there.*

The man on reception refused to let me come down when there were other guests around because he said I stank. That I was dirty.

So I would go up to my room and skip lunch. I was too ashamed to go out.

I felt like an animal.

I told the social workers I used to see at lunchtime in a hostel in Beaulieu. The girls said there was nowhere to wash clothes in the hotel.

The man on reception wanted to hit me. He threatened me because I was washing clothes in the bathroom sink.

He told me that if I did that, he would kick me out. That I was only supposed to sleep at the hotel, not wash my clothes. He told me to shut up. He said, "I can kick out all the blacks who are staying here. I don't like blacks".

It was around 9 a.m. I told the social workers who said I had to stay out of trouble.

The man at the hotel was always threatening us, however. Me and the other youngsters. He'd raise his fist at us, and bang on the door of my room. I was too scared to stay in the hotel so I would go to the park and return only to sleep. I stopped having lunch at the hotel because I was frightened. I told the girls and they wrote a report for the CDEF but they said we needed this hotel.

I used to spend my days either in bed or outside on the street.

I could see that my life was going nowhere. I had suicidal thoughts. I'm tired of living like an animal.

I had nothing to wash my hair with. A lady called Jeannine gave me a toothbrush and toothpaste. I had no soap. Nothing. No towel. Nothing. And my skin broke out because I had no cream.

I wanted to go to school but I realised that nobody had enrolled me.

A guy called Louis from RESF tried, but it was impossible because the Département council hadn't decided yet whether I was a child or not. And yet they'd had all my papers from day one.

I'm tired of doing nothing except eating and sleeping, tired of seeing nobody and being on the street.

I want to go to school. I need to be treated like a child and allowed to go to classes. Back in my own country, I was studying at a vocational college in Watanga. I was in the machine tool engineering section. I was a good student, I liked school. My father was well educated, he wanted me to go to school. I used to get up every morning at 5 am and even though I have nothing to do here, I still wake up early.

Ever since I arrived, too, I've been suffering from toothache. I didn't have any medication. The social workers told me it wasn't their responsibility.

Joseph, from the Human Rights League, brought me some Doliprane. But I was in too much pain. On my third day in the hotel, I had an appointment with the Département council for my papers. I couldn't even speak. My check was very swollen. They told me to go to the CDEF.

I was there from 9 am until 4 pm, without any medication. Then they gave me permission to go to hospital.

I didn't know where to go because I had only just arrived in the town. They acted as though I'd been there for ages. I couldn't find the address on my own. I felt really ill and was crying in the street. Finally, an Arab man showed me where the hospital was. Once there, they told me they would operate in two weeks. The doctor said I needed to have four teeth extracted, and gave me a prescription. He told me to show it to the social workers.

I asked the girls who used to eat at the hotel and they said it wasn't their responsibility. I didn't know what to do and was feeling worse and worse.

That went on for two days and then on the third day, a girl told me to go to the CDEF to get the medication.

I couldn't eat for four days. Many of the meals included rice, which the doctor had told me to avoid.

Then a friend, Glody, bought me a kebab and some Fanta.

I asked the youth workers to come with me to the hospital for the operation but they issued me with a pass and told me to go by myself.

On being discharged, I was met by a man from Senegal who accompanied me back to the hotel as I couldn't walk because of the anaesthetic. My vision was blurred and my legs were shaking.

The man on reception got angry and said nobody was allowed in my room. The doctor had given me another prescription but there was no one to go and fetch the medication.

I stayed in my room for four days and in all that time, no one came to see me. I was in a great deal of pain and I cried. I was so lonely I wanted to kill myself.

Joseph from the League brought me some pasta and fruit juice because I didn't have the strength to go to the hotel for meals.

I also want to say that there was a man at the hotel who used to come and talk to me and who frightened me.

He told me I was good-looking and that, if I went to his room, he would give me money and buy me clothes. I was afraid of him so I used to either lock myself in my room or go out. I think he was a faggot.

I left the hotel because I was afraid.

I couldn't live there anymore.

Then one Tuesday lunchtime, the youth workers told me someone was coming to take me to the police station and that I would have to undergo bone tests.

I'm too scared to go to the police, however, after what they did to me back in my own country.

Then Louis who was there took me to see a lawyer and I put it in writing that I refused to take the bone tests. I have papers from my country, confirming my age.

When Jeannine called me, I said I wanted to leave the hotel because I was scared, so she said she would come and fetch me.” (Exhibit 38)

Val d’Oise département

J., head of the socio-education department, describes the plight of unaccompanied foreign minors left to fend for themselves in hotels: *“young persons claiming to be minors are in fact put up in hotels, in single or double rooms.” He goes on to say, however, that “during this time, meals are the only form of support they receive. Until they have been assessed and a place found for them in a suitable facility, everything is put on hold. The youngsters are left to their own devices and in September, for example, we came across a 15-year-old Pakistani boy who had spent 4 months in a hotel and who told us that, during that time, he would help the hotel owner with everyday chores just to have company and something to do. Given the number of youngsters staying in hotels until places are found for them elsewhere, dozens of minors [...] are not participating in any activities or receiving any educational support, thus delaying any possibility of them making a life in France”.* (Exhibit 62)

France as a whole

In its newsletter dated 10 September 2015, under the heading *“Unaccompanied foreign minors and young adults discriminated against on two fronts”*, RESF criticised the treatment of unaccompanied foreign minors who are found, following an assessment, to be under age: *“the youngest, the lucky ones, can look forward to a place in a hostel and school; the older ones, however, can expect only basic shelter, with no opportunities for socialisation or learning French and no real social or educational support. Crammed into hotels, they are fed and clothed but that is all.”* (Exhibit 33)

Such practices, as these examples demonstrate, run counter not only to paragraph 10 of Article 7 of the Revised European Social Charter, but also to Article 3 of the UNCRC, paragraph 1 of which states that *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”*, and paragraph 2 of which reads: *“States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.”* Such practices are also contrary to Article 27 of the UNCRC, paragraph 1 of which states that *“States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.”*

That is why, too, minors of French origin and French nationality who are taken into the care of the child welfare services are looked after in licensed, specially designed facilities or, if the situation so requires, in hotels, with professional staff on hand to care for them.

On 12 July 2007, moreover, the Committee of Ministers adopted Recommendation CM/REC(2007)9 to member states on life projects for unaccompanied migrant minors. In paragraph 17, the Recommendation states that *“The competent authorities should undertake*

to ensure that the life project comprises measures to protect the minors in order to help them achieve the aforementioned objectives. These measures should include access to:

- appropriate accommodation;*
- specialised support provided by properly trained personnel;*
- appointment of specially trained guardians and/or legal representatives;*
- clear and full information about his or her situation in a language that he or she understands;*
- basic services, including food, medical care and education.”*

The practice of accommodating unaccompanied foreign minors in welfare hotels for weeks and sometimes months can hardly be said to ensure access to either “appropriate accommodation” or “specialised support provided by properly trained personnel”, or even for that matter to “basic services”, as the witness accounts show. This “protection” called for by the Committee of Ministers and Articles 3, 2 and 27 of the UNCRC thus help to provide clarification as to the intended application of paragraph 10 of Article 7 of the European Social Charter.

That is why, too, in its decision on the merits of complaint No. 69/2011, lodged by DCI against Belgium, the ECSR pointed out that DCI “*stresses that Article 7 para. 10 protects children and young persons not only from risks linked to work but also in all cases of real or potential physical and moral dangers, as highlighted in the case-law of the Committee. Article 7§10 implies that in the case of other forms of exploitation, the States Parties must prohibit children from being subjected to other forms of exploitation, such as domestic exploitation or servitude, including trafficking for the purposes of servitude, begging or the removal of organs (Conclusions 2004, Bulgaria). The States Parties must also take measures to prevent and assist street children (Conclusions XV-2, Statement of interpretation of Article 7§10; Conclusions 2004, Romania). The States Parties must ensure not only that their legislation prevents the exploitation of and protects children and young persons, but also that it is effective in practice (Conclusions 2006, Albania and Bulgaria).*” Leaving minors alone in welfare hotels, however, renders them vulnerable to physical and moral dangers and to all manner of exploitation.

Group 2: Young foreigners undergoing assessment to determine their age and unaccompanied status under the Taubira circular and who have not been provided with shelter

As we have seen, the French Government has pointed out “*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*” (§83). It has been shown, however, that no assessments are carried out regarding living conditions and that these “other options” are popular with local authorities purely for financial reasons, and not because they are in the minors’ best interests, as required under Article 3 of the UNCRC. Such arrangements also allow the authorities to claim that the young persons concerned are not in the country unaccompanied. It is clear from the witness accounts and in particular Exhibit 63,

moreover, that not all of these unaccompanied foreign minors who are not automatically provided with shelter have other options, as the French Government claims.

All young persons claiming to be unaccompanied foreign minors and seeking help should be eligible for immediate shelter as they are deemed to be “at risk”, having no legal representative (in the legal or customary sense) in France. That, indeed, is the approach taken in Val d’Oise, as Exhibit 62 shows.

The French Government cannot simply state therefore that “*young persons undergoing assessment of their age and unaccompanied status [...] will be given shelter almost automatically*” (§108). EUROCEF acknowledges the French Government’s good intentions but feels it is still not doing enough. Especially in the light of the ECSR decision on the merits of Complaint No. 69/2011, lodged by DCI against Belgium, which states 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.*” Unaccompanied foreign minors living on the streets of France are also more vulnerable to various physical and moral hazards and to the risk of exploitation, from which states are required to protect them.

Examples and exhibits

Département of Val d’Oise

J., head of the socio-education department, cites one of the few examples of unaccompanied foreign minors being given shelter while undergoing assessment: “*young persons claiming to be minors are in fact put up in hotels, in single or double rooms.*” (Exhibit 62)

Département of Paris

On 31 December 2015, two activists from *Le Collectif Parisien de Protection*, which looks after foreign minors, criticised the fact that unaccompanied foreign minors were not being given shelter straightaway: “*We noticed that many youngsters had to wait weeks or even months for their assessment interview, without any accommodation being provided. That was the experience of B. a young Moroccan boy who waited more than two months for his interview and was suffering from itching. We took him to see a dermatologist who diagnosed scabies, a condition commonly associated with sleeping rough.*” (Exhibit 63)

Group 3: Unaccompanied foreign minors who have been assessed and found to be adults and who are appealing

Where an unaccompanied foreign young person is assessed and found to be of full age, he or she is discharged from the care of the child welfare services. A decision to this effect may be taken by the Chair of the *département* council or the juvenile court. In both instances, the individual concerned may appeal against the decision.

If the decision refusing to take someone into care or discharging them from care is taken by the Chair of the *département* council, it is an administrative decision. The young person concerned then has the option of lodging an appeal with the Chair of the *département* council or with the Administrative Court. *“Any young person who has been discharged from the care of the child welfare services following an assessment of his or her circumstances by the département services (or an institution to which this task has been delegated) must be able to obtain a copy of his or her assessment. If a copy is not issued automatically, he or she should first request one by sending a registered letter with acknowledgement of receipt signed by the young person concerned to the department which conducted the assessment. If the department refuses to issue a copy, the young person should apply to the Commission on Access to Administrative Documents”*.¹²

As regards court appeals, because they lack legal capacity, minors cannot actually exercise this right of appeal to the Administrative Court, unless an ad hoc guardian has been appointed to represent them. This despite Recommendation No. 10 of the National Consultative Human Rights Commission which, in its opinion dated 26 June 2014, on the situation of unaccompanied foreign minors present in the country, stated that *“unaccompanied foreign minors should all, without distinction, be entitled to lodge an appeal and be represented by an ad hoc guardian before the administrative courts for the purpose of challenging the legality of any refusal to take them into care.”*

On 12 March 2014 the *Conseil d’Etat* went a step further when it granted unaccompanied foreign minors the right to make urgent applications before the administrative judge *“where special circumstances require that, having regard to his or her office, the latter order an urgent measure under Article L. 521-2 of the Code of Administrative Justice; that this is particularly true in cases where, as in this instance, the unaccompanied foreign minor requests emergency accommodation which he is then refused by the département in whose care he was placed by the court”*.

If the decision is made by the juvenile court, the young person concerned can contest it. Article 1193 of the French Code of Civil Procedure stipulates that *“The court shall rule on the appeal [...] within three months from the notice of appeal”*. It is important to note, however, that *“where the order issued by the juvenile court for release from care is immediately enforceable, the appeal does not stay the execution of the decision. In that case, it may be worth lodging, alongside the appeal, an urgent application with the first president of the Court of Appeal under Article 524 of the Code of Civil Procedure which states that “Where immediate enforcement has been ordered, it may be stopped, in the event of an*

¹² InfoMIE

appeal, only by the first president [of the court of appeal] ruling in summary proceedings and in the following cases: [...] 2° if it [i.e. immediate enforcement] is likely to result in clearly excessive consequences; in the latter case, the first president may also take the measures referred to under Articles 517 to 522.”¹³ Hence, on 28 November 2013, the Nancy Court of Appeal issued an interim injunction “staying enforcement of an order for release from the care of the child welfare services issued by the juvenile court. This stay was ordered owing to the impossibility of reversing the harmful consequences for the young person (who is unaccompanied and homeless) in the event that the decision handed down by the juvenile court should be overturned on appeal.”¹⁴

In practice, however, for unaccompanied foreign minors who are declared by the juvenile court to be adults, based on an assessment, and who have not been provided with shelter under a court order, staying the juvenile court’s decision will have no effect on their accommodation situation during the appeal proceedings. They will thus end up on the streets, totally destitute, while their appeal is being considered by the court.

Examples and exhibits

Département of Paris

Médecins du Monde reports having come across unaccompanied foreign minors who have appeals pending and are receiving no protection of any kind (Exhibit 28).

Loire-Atlantique

Ms U, from the Human Rights League, describes the case of one young man (Exhibit 52): *“He was initially registered as a minor and placed in the care of the child welfare services. A month later, questions were raised about his identity by the département council and he was disqualified from receiving all forms of welfare support because the various tests showed that he was over the age of 18. And this despite the initial guardianship order, and despite the fact that he had a passport, confirming that he was a minor.*

So no more accommodation or access to education.

He was enrolled in a technical college via the RESF.

I put him up for the night myself, on more than one occasion.”

Group 4: Unaccompanied foreign minors denied access to child protection measures by court order because they have been declared adults, but who cannot claim assistance under the arrangements for adults

As we mentioned in the first section (page 10 of this report), disputes over the under-age status of minors and the frequent challenging of the authenticity of civil status documents put the young people concerned in a situation where they cannot access the protection measures that are available to minors. However, they are also unable to receive the assistance that adults

¹³ InfoMIE

¹⁴ Ibid.

are eligible for (emergency accommodation, accommodation and social reintegration centre, etc.) as they do not have any civil status documents which identify them as minors. Since they are not classed either as minors or as adults, they are rejected everywhere and forbidden access to any protection whatsoever.

Examples and accounts

Côtes d'Armor

An activist from the undocumented migrant support group in Lannion gave an account of the situation of N., a young person: *“With regard to his legal status, N. is at a complete dead end: because he is not a minor in the eyes of the département council or an adult in view of his civil status, due to his age, he cannot do anything about this without a legal representative. So he cannot apply for asylum. Because of this, he cannot achieve his goal of starting an apprenticeship either”*. (Appendix 10)

Nord

A press article quotes a lawyer's account about young people who are living “out in the open” in a district of Lille: *“They cannot be housed by the département because it does not recognise them as minors. But if they call 115, they won't be eligible for help from the 115 service because they say they are minors. So the question is who should look after them in that situation.”* (Appendix 19)

Département of Paris

The *Collectif parisien pour la protection des jeunes et mineurs isolés étrangers* [Parisian Group for the Protection of Unaccompanied Foreign Young People and Minors] has also given an account (Appendix 23) of its numerous efforts, which are often unsuccessful, and underlines the contradiction whereby young people are denied accommodation in centres for adults on the grounds that they are minors even when the fact that they are minors is disputed by the *département* authorities.

In a letter to the Prefect of 10 October 2015 (Appendix 25), this group expresses its grievances in this regard:

- **“A young person cannot be regarded as both a “minor” and an “adult” at one and the same time.** Sometimes, a young person's alleged adulthood is used as a reason for a denial of care by the social welfare authorities; at other times, it is the fact that the same young person is a minor that is used to justify the non-application of the Social Action and Families Code. This manifest contradiction deprives him of a set of rights to which he could lay claim. He is, in effect, excluded from the benefit of the recent child protection law and does not benefit in any way from the essential provisions of the Social Action and Families Code. [...]
- **The fact that a young person is an adult does not preclude his protection.** In this regard, lawmakers have expanded the concept of minority where there is a proven need for these people to be protected: *“Emancipated minors and adults under the age of twenty-one who*

experience difficulties with regard to social integration due to a lack of sufficient resources or family support can also be cared for on a temporary basis by the child welfare department.” Social Action and Families Code, Article L. 222-5.

- *Finally, the irregularity of a person’s presence in the country cannot preclude a request for emergency accommodation. The principle of the unconditionality of emergency accommodation is separate from people’s administrative status.”*

Loire-Atlantique

Carine Rolland, an activist for Médecins du Monde, gave an identical account in an article in *La Dépêche du Midi* on 7 December 2015 (Appendix 55) on the situation of these young people who are not recognised as minors: “*Unlike children who have been recognised as minors, these young people are simply pushed onto the street with no support*”. “*They are not enrolled in school and have no roof over their head, no clothing, no protection and no entitlement to healthcare.*” “*However, they are not regarded as adults either, because their identity documents often state that they are under the age of 18.*” “*The social SAMU on 115 does not accept them. Nor do the Restaurants du Cœur. So they find themselves in a legal no-man’s land. They are neither-nors. Neither minors nor adults*”, says Carine Rolland. [...] In total, “*a third of the foreign unaccompanied minors who arrive in Nantes are not recognised as minors.*”

Group 5: Unaccompanied foreign minors not yet in the care of the child welfare services

In its collective complaint, EUROCEF referred to the PUCAFREU report which stated that “*organisations on the front line are witnessing an alarming deterioration in health and psychological conditions for these street-dwelling children, who are left to their own devices and exposed to multiple dangers*”.¹⁵ The National Monitoring Centre for Children in Danger (*Observatoire National de l’Enfance en Danger – ONED*) also mentioned in its 2014 report that there were street children who were having difficulty attending school. The Minor Migration Monitoring Centre (*Observatoire sur la Migration des Mineurs – OMM*) made the same observation in the same year.

The French Government states in paragraph 82 of its reply that “*no unaccompanied foreign minor taken into the care of the child welfare services is left on the streets.*” This appears to be correct, because many foreign unaccompanied minors who are on the streets are young people whom French *départements* have refused to take into care even before determining whether they are minors and unaccompanied. Numerous accounts and press articles attest to this. As for Group 2 of foreign unaccompanied minors who are undergoing assessment to determine their age and unaccompanied status and who have not been provided with shelter, the ECSR refers to the “*observations of the UNHCR according to which unaccompanied foreign minors must be placed as quickly as possible in an appropriate reception structure and their needs must be meticulously assessed in order to keep any changes to a minimum. This period is crucial, because it is when the first links are forged between the minor and the*

¹⁵ PUCAFREU, *Mineurs isolés étrangers et sans protection en Europe*, research conducted in France for the PUCAFREU project, page 60.

social actors involved. If unaccompanied foreign minors are not properly provided for, they are simultaneously deprived of any chance of exercising the right of asylum.” (§80). Accordingly, “the Committee considers that immediate assistance is essential and allows assessing material needs of young people, the need for medical or psychological care in order to set up a child support plan” (§81).¹⁶

Examples and accounts

Département of Bouches-du-Rhône

In a statement of Friday 11 December which was posted on its Facebook page on 12 December 2015, the Migrant 13 support group criticises *“the voluntary abandonment of foreign minors, who are left on the streets despite the reports made to the departments of the département Council 13”*. It seems that *“these children, who are excluded from child welfare arrangements for many weeks or even months, have no solution other than to sleep rough during their interminable wait for a decision to place them in a hostel.”* The group also points out that the *département* of Loire-Atlantique *“has been convicted for these same failings”*. (Account 3)

On 18 December 2015, the newspaper *La Marseillaise* published an article entitled *“Etat d’urgence pour les mineurs étrangers”* (Emergency for foreign minors) which criticised this situation and mentioned the mobilisation of the Migrant 13 support group. The article criticised not only the fact that the *département* refuses to accommodate and protect unaccompanied foreign minors, but also *“the non-provision of accommodation during the five-day assessment period, when the departments of the Département must assess the age of adolescents and at the same time deprive them of housing”*. (Account 1)

On 20 November 2015, the newspaper *La Provence.com* published an article entitled *Marseille: mineurs, migrants et à la rue* (Marseille: minors, migrants and living on the streets). In it, the journalist Delphine Tanguy writes about the situation of foreign unaccompanied minors who find *“makeshift shelter in underground car parks”* at the Saint-Charles railway station, or who *“lie on squares, or in large stairwells”*. She wrote: *“these young illegal migrants, who are Afghan, Ghanaian, and especially, over the past few months, Guinean, Malian, Eritrean, Syrian and Sudanese, are under the age of 15.”* The *département*, which has been overwhelmed by the influx of these young people, cannot provide care to all of these minors. Valérie Foulon, the director of the Children and Families Department, speaks of the *“shortage of places in hostels”*. One social worker states: *“Sometimes, the police, who bring young people to us with real kindness, are stunned when we have to tell them that we have no solution, that they will go back to the streets.”* Osmane, a 17-year-old Sudanese, has already spent three months on the streets while waiting for accommodation. *“Every day, I am told that there is nothing”, he mutters.”* (Account 2)

¹⁶ Decision of the ECSR on the well-foundedness of complaint No. 69/2011 made by DCI against Belgium, §85.

Département of Haute-Garonne

On 1 December 2015, the newspaper *L'Humanité.fr* published an article entitled *A Toulouse, le manque de places persiste* (Shortage of places continues in Toulouse). The article explains that social workers can no longer bear to see minors on the streets without being able to offer them shelter.

Département of Pas-de-Calais

According to one estimate, there are approximately 150-200 minors living in the Calais “jungle”. This situation was criticised by the newspaper *leplus.nouvelobs.com* in its article entitled *150 à 200 mineurs vivent dans la “jungle” de Calais: leurs conditions de vie sont indignes* (150 to 200 minors are living in the Calais “jungle”: their living conditions are undignified), which was published on 22 December 2015 (Appendix 20). “*Most of them support their parents while they are travelling along their migration route, some are unaccompanied minors.*” However, “*despite the order, which was upheld on appeal, that the state must adapt the Calais “jungle”, unaccompanied minors are not always given shelter due to the shortage of places in accommodation centres.*”

Among other things, the “*greatly reduced access to care*” and “*lamentable hygiene*” are criticised. The example of an unaccompanied minor aged 10 is given: “*an Afghan adolescent aged 10, who is an unaccompanied minor, was placed there without a youth worker [in a reception tent] until the tents were damaged by a storm. Since then, this child has once again been in the camp without any protection.*”

Département of Nord

The newspaper *La Voix du Nord* describes the lives of unaccompanied foreign minors at the Jardin des Olieux in wintry weather conditions in an article entitled “*Lille: jardin des Olieux, c’est la crève hivernale pour les mineurs isolés*” which was published on 22 November 2015. “*He came from Congo “for safety reasons”. Like so many others mentioned in these columns, he was left at Lille railway station by a people-smuggler before encountering an Ivorian student who gave him some advice. The worst of it is that the Jardin des Olieux is turning into a base camp for children in distress.*” Everyone confirms the “*extreme conditions. We can’t sleep because of the damp. We’re afraid that it will get worse when the snow comes...*”.

Group 6: Unaccompanied foreign minors being kept in waiting areas

As has already been stated, the Social Charter mirrors Article 37 of the CRC, which provides that “*The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time [...] Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child’s best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in*

exceptional circumstances.” Article 3 of the CRC provides that *“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”*

EUROCEF firstly notes that contrary to Articles 3 and 37 of the CRC and Article 7 of the revised European Social Charter, the Code on the Entry and Residence of Foreigners and the Right to Asylum made no distinction between minors and adults in terms of detention in waiting areas, except in Article L221-5, which makes provision for the immediate appointment of an ad hoc guardian by the state prosecutor.¹⁷ So deprivation of the liberty of minors is not a “measure of last resort”; on the contrary, French law systematically requires it for all foreign nationals who do not possess the documents necessary to enter French territory, or who have documents which are deemed to be “fake”.

As the French government states (§10), Law No. 2015-725 of 29 July 2015 introduces provisions which are more favourable to minors in Article 13:

“Where the French Office for the Protection of Refugees and Stateless Persons, while ascertaining whether an asylum claim is inadmissible or manifestly unfounded, considers that the asylum applicant, due to his being a minor [...] requires special procedural guarantees which are not compatible with detention in a waiting area, this detention shall be ended.

...The detention of an unaccompanied minor in a waiting area only for the time that is strictly necessary to determine whether his application is inadmissible or manifestly unfounded is only possible in exceptional circumstances and solely in the situations specified in parts 1° and 2° of section I, part 1° of section II and part 5° of section III of Article L. 723-2.”¹⁸

It could be objected that these improvements remain subject to the opinion of the French Office for the Protection of Refugees and Stateless Persons, which must “consider” that the age of an asylum applicant who is a minor requires special procedural guarantees, and this judgement can always be questioned due to the frequent suspicion that surrounds the age of asylum applicants who are minors. The response of the French government also confirms that this is merely a possibility which is discretionary (§14).

Furthermore, while the vigilance with regard to *“serious threats to public order, public safety or national security”* is understandable, one could call into question the somewhat excessively broad and interpretive nature of these concepts, and also whether the other

¹⁷ This provision is mentioned by the French Government in its reply (18). In practice, “immediate” appointment of an ad hoc guardian is rare.

¹⁸ Article L.723-2 of the Code on the Entry and Residence of Foreign Nationals and the Right to Asylum (CESEDA): I. – The Office shall take a decision by way of the accelerated procedure where:

1° The applicant is from a country which is regarded as a safe country of origin in accordance with [Article L. 722-1](#); 2° The applicant has submitted a request for reconsideration which is not inadmissible.

II. – The Office can, at its own initiative, take a decision by way of the accelerated procedure where:

1° The applicant has submitted fake identity or travel documents, made false statements or withheld information or documents concerning his identity, nationality or the means by which he entered France in order to mislead, or has made multiple applications for asylum under different identities;

III. – The Office shall also take a decision by way of the accelerated procedure where the administrative authority that is responsible for registering the asylum application decides that:

5° The applicant’s presence in France poses a threat to public order, public safety or national security.

situations referred to in Article L. 723-2 are justified.

We therefore consider that although the legislation that was passed in July 2015 represents a step forwards from the previous legislation, it does not provide an entirely satisfactory response in relation to the undertakings to comply with Article 7 of the revised European Social Charter.

We also point out that our complaint was made on 17 February 2015, i.e. prior to the legislation that was passed in July 2015, and that it was motivated in particular by forms of treatment of children which were highly questionable.

It was in accordance with this French legislation that a six-year-old little girl from Cameroon who was a French national was detained for four days in a detention facility (*zone d'attente pour personne en instance* – ZAPI) at Roissy Charles de Gaulle Airport in June 2015 after being accused of being in possession of an identity document that belonged to someone else. At around the same time, another girl who was 3 years old and an Ivorian national was also placed in a ZAPI at Roissy Charles de Gaulle Airport for five days after her father had presented a fake passport. Following these events, an investigation was initiated by the French Defender of Rights (www.europe1.fr of 12 June 2015).

With regard to the provision of care to unaccompanied foreign minors in waiting areas, EUROCEF notes that the French government itself acknowledges (§61) that at Roissy Charles de Gaulle Airport, minors under the age of 13 are prioritised for places which are intended for minors, which implies that such places are only allocated to older minors after that, if the number of places allows it. If it does not, other minors are accommodated on the “adult floor”.

EUROCEF also notes that the French government confirms that at Orly Airport, hotel accommodation is indeed available for minors (§61).

EUROCEF considers that accommodating minors together with adults and accommodating minors in hotels are contrary to the European Social Charter and also the CRC. Article 7 of the Charter provides that minors must be able to receive protection which is appropriate to their age and the dangers to which they are exposed because of it. These two care arrangements which are offered at Roissy Charles de Gaulle Airport and Orly Airport do not make it possible to cater to the special needs of minors. As the National Association for the Provision of Assistance to Foreigners at Borders (*Association nationale d'assistance aux frontières pour les étrangers* – ANAFE), the Monitoring Centre for the Imprisonment of Foreign Nationals (*Observatoire de l'enfermement des étrangers* – OEE), the Education Without Borders Network (*Réseau éducation sans frontières* – RESF) and the *Journal du droit des jeunes* state in their open letter to the French government:

*“In its judgment on the case of Popov v. France, the European Court of Human Rights notes that “the lack of privacy, stress, insecurity and hostile environment in such [detention] centres have harmful consequences for minors, at odds with the international principles on the protection of children”. This decision is fully transposable to the situation in waiting areas.”*¹⁹

¹⁹ <http://www.anafe.org/spip.php?article303>

In its report of December 2011 entitled *Regards sur le parcours des mineurs étrangers maintenus en zone d'attente à l'aéroport de Roissy CDG en 2010 à travers la mission d'administrateur ad hoc* (Analysis of the process gone through by foreign minors who were detained at Roissy Charles de Gaulle Airport in 2010 conducted by way of the ad hoc guardian role), the Red Cross states:

“With regard to waiting areas, the effects of the deprivation of liberty on a child’s mental health are undeniable. Besides having to cope with the sometimes sudden wrench of leaving their normal environment, or the immediate threats and dangers from which they had to flee with all of the traumatic episodes that this can entail, minors have to learn to live in detention straight away. It is not uncommon for children to refuse to eat in ZAPIs, to have difficulty sleeping and/or to be unable to think about anything other than their detention and the risk that they will be sent elsewhere. And the effects are long-term. The French Red Cross believes that children who are taken in by the Reception and Orientation Centre (lieu d’accueil et d’orientation – LAO), for example, are greatly affected for months afterwards by this experience. A British report has highlighted the problems faced by children who are deprived of their liberty for illegal immigration reasons. According to this report, for which a panel of detained children was interviewed, 78% of them said they were worried, 37.5% had had sleep disorders, 53% had suffered decreases in their attention span, 25% said they felt angry, and 94% said they felt sad and depressed.”²⁰

Examples and accounts

Département of Val d’Oise

The press article of 12 June 2015 in Le Monde (Appendix 66), *Deux fillettes retenues plusieurs jours en zone d'attente à Roissy* (Two little girls detained for several days in a waiting area in Roissy), describes the situation of these two minors aged 3 and 6 who were each detained for four days in a detention facility (ZAPI).

On 12 June 2015, the Defender of Rights issued a press release which gave details of the situation of these two girls (Appendix 67).

All of these examples appear to confirm that the French government is not complying with paragraph 10 of Article 7 of the European Social Charter with regard to accommodation and care for unaccompanied foreign minors.

²⁰ http://saluteinternazionale.info/wp-content/uploads/2011/02/State_Sponsored_Cruelty.pdf

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 possible epidemic, endemic and other diseases, as well as accidents.”*

EUROCEF

EUROCEF stated in its collective complaint that *“due to the shortage of institutions which are adequate in terms of numbers and quality to receive unaccompanied foreign minors, the sanitary conditions in which these young people are accommodated are frequently problematic”* (p. 15). While the Defender of Rights took note of the closure of an institution with worrying sanitary conditions, he nonetheless recommended the creation of one or more institutions in accordance with Law 2002-2 of 2 January 2002 which reforms social action in national law, in particular in order to reduce the accommodation of young people in hotels, in conditions which gave cause for concern for their sanitary and mental health. EUROCEF also raised the issue of the living conditions of unaccompanied foreign minors living on the streets.

It also appeared that professionals working for the *département* council of Hauts-de-Seine criticised the fact that children and unaccompanied foreign minors *“who need medical care [...] are sometimes deprived of care for several days, or even weeks...”* (Appendix 60).

Finally, EUROCEF quoted the report by the National Monitoring Centre for Children in Danger (*Observatoire national de l'enfance en danger*), which stated in its 2014 report that mental health pathologies were seldom taken into account by institutions.

It was in the light of all of these factors that EUROCEF judged that France is not developing all of the means necessary to guarantee the right of unaccompanied foreign minors to protection of their health in accordance with Article 11 of the European Social Charter.

The French government

In its response, the French government explains that it is aware 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”* (§65), but states that *“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.”* (§66). This suggests that since then, these difficulties should no longer have existed.

The French government also states 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”* (§67) and adds: *“In any event, it must be acknowledged that most unaccompanied foreign minors have experienced physical health problems before being given shelter in France”* (§68). However, *“long waiting times for medical appointments confined to unaccompanied foreign minors”* (§69), and for *“[mental health] consultations [...] As with other juvenile patients, whether they can be seen depends on the availability of places in the queue.”* (§72).

The French government argues that unaccompanied foreign minors usually have physical health problems before the period for which they are provided with shelter in France, suggesting that it is not responsible for them. But the very fact that these health problems exist ought to lead to efforts to provide better treatment for them as soon as these young people are housed. To state (69) that the waiting times for medical appointments are not unique to unaccompanied foreign minors is not, in this case, an adequate response to France’s commitments under Article 11 of the Charter. The same applies to mental pathologies (72), as many studies demonstrate the particular vulnerability of unaccompanied foreign minors due to the problems that they have had to overcome in their countries of origin and during their journey before arriving in France; this would justify special arrangements to treat the mental pathologies suffered by these young people.

In the light of the various accounts gathered, EUROCEF believes that the French government is in breach of Article 11 of the European Social Charter in relation to:

Group 1: Unaccompanied foreign minors in the care of the child welfare services and who are staying in welfare hotels

Group 2: Young persons undergoing assessment to determine their age and unaccompanied status under the Taubira circular and who have not been provided with shelter

Group 3: Unaccompanied foreign minors who have been assessed and found to be adults and who are appealing

Group 4: Unaccompanied foreign minors denied access to child protection measures by court order because they have been declared adults, but who cannot claim assistance under the arrangements for adults

Group 5: Unaccompanied foreign minors not yet in the care of the child welfare services

Group 6: Unaccompanied foreign minors being kept in waiting areas

Article 11 of the European Social Charter mirrors the CRC, which provides in paragraph 1 of Article 24 that *“States Parties recognise the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.”* Article 39 provides that *“States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health,*

self-respect and dignity of the child.” Article 3 provides that “*the best interests of the child shall be a primary consideration*” (§1) and that “*States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being.*” Finally, paragraph 1 of Article 26 provides that “*States Parties shall recognise for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realisation of this right in accordance with their national law.*”

In addition, in its opinion of 26 June 2014, the National Human Rights Advisory Committee on the Situation of Unaccompanied Foreign Minors in France (*Commission Nationale Consultative des Droits de l’Homme sur la situation des mineurs isolés étrangers présents sur le territoire national – CNCDH*) refers to Recommendation No. 19 of the CNCDH, which “*recommends that no restriction be placed on access for unaccompanied foreign minors to medical care of any kind whatsoever. To this end, it is essential to boost and improve access for unaccompanied foreign minors to prevention and guarantee continuity of care.*”

Article 11 of the European Social Charter also mirrors the Universal Declaration of Human Rights. Paragraph 1 of Article 25 provides that “*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.*” The right to “protection of health” is also enshrined in Articles 9, 10 and 11 of the **Convention for the Protection of Human Rights and Fundamental Freedoms, and also in Articles 34 and 35 of the Charter of Fundamental Rights of the European Union.**

Group 1: Unaccompanied foreign minors in the care of the child welfare services and who are staying in welfare hotels

While EUROCEF agrees that the access to care for unaccompanied foreign minors who are cared for by *départements* on the grounds that they are “children in danger” under national law is satisfactory, it clarifies and qualifies what it has said. A distinction must be made between unaccompanied foreign minors who are cared for in child welfare facilities which are accredited and which therefore comply with standards and a specification in relation to tutoring and support, and those who are accommodated in welfare hotels, with no educational or social support. As such, EUROCEF clarifies that in relation to the latter, the French government is in breach of Article 11 of the European Social Charter.

Unaccompanied foreign minors who are in the care of child welfare services have access to universal healthcare cover for unaccompanied minors who are European Community nationals ([Circular DSS/2A/2011/351 of 8 September 2011](#)) or for accompanied minors from third countries ([Circular DSS/2A/2011/351 of 8 September 2011](#)). These unaccompanied foreign minors then have access to the French healthcare system under general law. However, it should be pointed out that for unaccompanied foreign minors who are cared for by child welfare services, only institutions which are responsible for them are competent to make requests for social security enrolment for these young people, and staff at these institutions are responsible for ensuring that their health is monitored.

On the basis of the accounts gathered, EUROCEF finds that unaccompanied foreign minors who are accommodated in hotels are not informed of their rights and that not all of them are enrolled in the social security system. So these young people do not benefit from medical assistance. Furthermore, without educational and social support, no professionals can assess the state of these young people's health and refer them to healthcare professionals if necessary.

In addition, Article R. 412 7 -42 of the Public Health Code provides that *“subject to the provisions of Article L. 1111-5, a doctor who is called upon to provide care to a protected minor or adult must endeavour to notify his parents or legal guardian and obtain their consent.”* So in principle, no medical services can be provided to minors without the consent of their legal guardians. This makes guardianship or delegation of parental authority necessary. Medical care can then be provided only if it *“is necessary to protect the health of a minor”* (Article L. 1111-5 paragraph 1 of the Public Health Code). Without a responsible adult, unaccompanied foreign minors who are accommodated in hotels cannot – without support, in any case – access the care that they may need, unless their lives depend on it.

The French 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.”* It also states that since the system for the nationwide dispersal of unaccompanied foreign minors was implemented 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”*, which suggests that the health problems that were observed should no longer occur. However, it appears to EUROCEF that unaccompanied foreign minors who are accommodated in welfare hotels are still in a problematic health situation as these hotels are very often in poor condition in terms of safety and hygiene.

In relation to access to medical assistance, the French government explains that *“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.”* Nevertheless, *“the legislation requires Member States to provide vulnerable migrant children with access to sufficient healthcare support”* (Handbook, p. 155-156). In the light of the journeys made by unaccompanied foreign minors and the lives that they lead, and the resulting vulnerabilities in terms of their physical and mental health, EUROCEF strongly questions the psychological consequences of being accommodated in hotels. Grappe²¹ states that *“when an individual sees horrific and life-threatening things, this can have an impact on their psyche, this suffering will be combined with other ordeals: losses and emotional separations, destruction of property, exodus. Young people who have reached full maturity have to deal with multiple traumas; their future and survival depend on their ability to contain and adapt to this excess of stimuli.”*

²¹ Grappe, 2001, *Adolescents et préadolescents exposés à la guerre: les conséquences psychosociales*, p. 705

All unaccompanied foreign minors should therefore receive psychological support immediately. This is certainly not the case for young people who are accommodated in welfare hotels, whose living conditions can add to the traumas suffered by these young people.

Examples and accounts

Département of Côtes-d'Armor

C. arrived in France at the end of August 2014 at the age of fifteen and a half. He was taken into care by a *département* which declared that the photocopies of his identity documents were true copies and decided that he was a minor. Through the national distribution system, he was then sent to a second *département*, where he was placed by way of a court decision. This second *département* made him undergo another assessment. C. refused to undergo a bone age assessment and the *département* stated that this refusal “*can be interpreted as an admission that he is an adult*”. The *département* council therefore stopped providing care to this young person on 2 February 2015. During the five months for which he received care and protection, no steps were taken to enable him to obtain entitlement to social security. It turns out that C., who was from Cameroon, reached Europe via Morocco, where he was shot while attempting to enter Europe. “*This episode also left him with pieces of lead shot in different parts of his body. He complains of headaches and pain in his arm. He also walks with a limp*”, according to a volunteer from a group (Account 6).

In April 2014, a volunteer notified his local *département* council of the situation of N., a young person from sub-Saharan Africa. N., who was 16 years old and arrived in France in October 2013 after passing through eight other countries. He left his home country after his family was murdered. He was taken into the care of the child welfare services of the local *département* and was accommodated in a hotel for five months. In February 2014, this young person was declared an adult following the medical examinations that he underwent. During these five months of care, his medical and psychological health were not assessed and he was not enrolled in the social security system. Yet while he was receiving care, and to this day, N. had and is still having “*nightmares every night which constantly bring back memories of the scene of the crime. In the hotel, he woke up screaming at night and rocked back and forth on his bed; [in the hotel], his roommates hit him to make him stop*” (Account 10).

Département of Loire-Atlantique

ZA, who is now aged 17, told his story in May 2015. After being taken into care by the child welfare services of the local *département*, he spent four weeks in a hotel. At the end of the four weeks, ZA was asked to undergo a bone age assessment, which he refused to do, saying: “*I have documents from my home country which say how old I am.*” ZA explains that he suffered dental pain during this period and describes the difficulties that he had in accessing the necessary healthcare: “*I would also like to say that since I arrived, I have had problems with my teeth. I had no medicines. The tutors said it wasn't their job to deal with this.*”

Father J. from the Ligue des droits de l'homme brought me some Doliprane. But I was in too much pain. On the third day when I was at the hotel, I had an appointment at the council about my documents. I couldn't even speak. My cheek was really swollen. They told me to go to the département centre for children and families (Centre départemental de l'enfance et des familles – CDEF). Once I had got there, I didn't receive any medicines from 9am to 4pm.

Then they gave me permission to go to hospital. I didn't know where it was because I still didn't know my way around the town. They acted as if I had been there for a long time. But I couldn't find the address on my own. I was really in pain and I was crying in the street. Then an Arab man brought me to the hospital. When I got there, I was told that I would be operated on two weeks later. The doctor told me that four teeth needed to be extracted, he gave a prescription. He said: look at that with your youth workers.

I asked the girls who were eating in the hostel and they told me it wasn't their job to do that. I didn't know what to do and my pain was getting worse and worse. I was in that situation for two days and on the third day, a girl told me to go to the CDEF to get the medicines.

I went for four days without being able to eat. There was often rice, and the doctor had forbidden me to eat that. So a friend, G., bought me a kebab and some Fanta. I asked the tutors to come with me to the hospital for the operation, but they gave me permission to go there on my own.

A Senegalese man was waiting for me at the exit to take me back to the hotel because I couldn't walk due to the anaesthetic. My vision was blurred and my legs were shaking. But the man on reception got angry and told me that no one was supposed to come into my room. The doctor had given me another prescription and there was no one to go and pick up my medicines.

I stayed in my room for four days and no one came to see me during that time. I was really suffering and I was crying. I wanted to kill myself because I was on my own.

Father Joseph from the Ligue brought me some pasta and fruit juice because I didn't have the strength to go to the hostel to eat” (Account 38).

The branch of the *Ligue des droits de l'homme* in the département reported the situation: “This young person has anxiety attacks and is scared of everything. We believe that this is an urgent case for the social services, whose role it is to intervene in a humane fashion. Proper care for a minor should not consist solely of accommodation and food in a hotel room. We believe that the département council will be wholly to blame for any physical and psychological consequences that ensue for this child” (Account 41).

In a pamphlet, the MMIE 44 group also criticised this lack of access to care (Account 46).

Département of Val d'Oise

J., who is in charge of an education service, describes (Appendix 62) the situation of unaccompanied foreign minors who are left to their own devices in hotels and in particular their access to care: “For some time, unaccompanied foreign minors have not been receiving any care while being provided with shelter. []

While they are receiving shelter, young people who are accommodated in hotels have little access to care as they have no educational support. Only hotel employees and care workers [...] see them every day to give them food. Accompanying them to facilities which provide continuous access to healthcare takes some time, as the waiting period is relatively lengthy. At the moment, there are no funded staff to accompany these young people to this type of facility. Since November 2015, by agreement with the département council, some young people awaiting their assessments have received care from the LAO, which is allowed where a paediatrician, a nurse and a psychiatrist are present.

In addition, although it is true that unaccompanied foreign minors have access to universal medical coverage when they are placed in the care of a département, the lengthy assessment procedure means that entitlement to universal medical coverage can begin very late (up to two months later). Access to emergency hospital care is available to unaccompanied foreign minors on the same basis as for any other individual, but when children arrive in a country they do not know and where they do not speak the language or know the system, going to emergency departments can be a harrowing experience and can cause them to be silent as they are frightened of services that they cannot clearly identify (police, fire brigade).

Example: at the end of November, a hotel employee alerted the care worker [...] to the situation of a young person who was in terrible pain and whose ear was bleeding. The care worker was allowed to go and see the young person, who did not want the fire brigade to be called as he was scared of persons in uniform and being taken away by strangers. It should be noted that hotel employees have no interpreting service and use the young people who speak the best French to translate. So the young person explained that he wanted an adult whom he knew to go with him. Because no one could go with him, he preferred to spend the night crying because of the pain and wait for the care worker, who came back the next day [...]. The young person then agreed to follow the firefighters to the emergency department. He had a perforated eardrum which had become infected. We then offered to provide the young person with shelter so that he could be provided with the necessary care and would not have to return to the hotel.”

Group 2: Young persons undergoing assessment to determine their age and unaccompanied status under the Taubira circular and who have not been provided with shelter

Not all unaccompanied foreign minors who are undergoing an assessment are provided with shelter during the assessment, because the French government believes that such shelter is not compulsory for young people who have alternative solutions available to them. However, a “hostel where people from the same country live”, a “friend’s flat” or a “member of their distant family” (§83) will not enable an unaccompanied foreign minor to exercise his right to protection of health. In order to receive care, unaccompanied foreign minors must register for social security cover. However, in order to do this, they must provide proof of their address and an identity document so that they can be registered. In addition, health protection arrangements vary according to their situation and nationality.

In its Recommendation No. 20, the CNCDH recommends that *“in order to ensure that protection of health is effective, [...] all unaccompanied foreign minors, without distinction, can be enrolled in the general health insurance system and receive supplementary universal health coverage. They must also be informed of all of their entitlements. It also recommends that the administrative procedures be simplified: access to an address to which documents may be sent to unaccompanied foreign minors must be fully guaranteed...”* EUROCEF also points out that *“the Committee considers that immediate provision of care is essential and makes it possible to identify the young person’s material needs and whether or not medical or psychological care needs to be provided in order to implement a support plan for the child”* (§81).²² If no care is provided, this assessment cannot take place.

In addition, as the above account demonstrates, all young people who are not provided with shelter during their assessment lack any alternative solutions.

Examples and accounts

Département of Paris

Through an account given by two of its activists on 31 December 2015, the *Collectif parisien pour la protection des jeunes et mineurs isolés étrangers* criticised the fact that unaccompanied foreign minors are not provided with shelter immediately. Of the eight young people who are currently being monitored by this group, *“we note that these young people are not receiving any social, educational or psychological support from the social services of the département, or the state, despite our successive warnings. Some of these young people have illnesses due to the violence that they suffered in their home countries or from smugglers at borders. One young person, D., has abscesses in his ears and also suffers from intercostal and psychological pain. The doctors confirmed to us that the illnesses were linked to physical maltreatment. An application for emergency support from the integrated accommodation and orientation service was made for this young person by a social worker in June, but nothing has been offered to him to date”* (Account 63).

Group 3: Unaccompanied foreign minors who have been assessed and found to be adults and who are appealing

Like unaccompanied foreign minors who are not provided with shelter while their age and unaccompanied status are being assessed, unaccompanied foreign minors who exercise their right of appeal very often find themselves homeless while they are waiting for a decision from the Court of Appeal, which can take three months according to French law. While they are waiting, not only does their homelessness have a direct impact on the health of these young people, but also, while they are waiting to be granted status, they cannot access care unless their lives are in danger.

²² Decision of the ECSR on the merits of complaint No. 69/2011 made by DCI against Belgium, §85.

Group 4: Unaccompanied foreign minors denied access to child protection measures by court order because they have been declared adults, but who cannot claim assistance under the arrangements for adults

Examples and accounts

Département of Paris

The account given by a senior unaccompanied foreign minors worker at Médecins du Monde (Appendix 28) very clearly shows the reality in terms of access to care for these young people, both minors and adults.

“The people who are now accepted under the Unprotected Unaccompanied Foreign Minors programme of Médecins du Monde therefore comprise the various categories of unaccompanied minors whose administrative status is or will remain unclear:

- *newly-arrived unaccompanied foreign minors (who have not yet been assessed or who are undergoing an assessment by the Housing and Orientation Office for Unaccompanied Foreign Minors (Permanence d’Accueil et d’Orientation des Mineurs Isolés Etrangers – PAOMIE): these young people do not benefit from a presumption that they are minors at this stage),*
- *unaccompanied foreign minors who are denied support by way of an administrative decision after being assessed by the PAOMIE office,*
- *unaccompanied foreign minors who are exercising their right to lodge an administrative or judicial appeal (awaiting a hearing or a decision by the children’s judge or the Court of Appeal) following a refusal or termination of care*
- *unaccompanied foreign minors whose requests for protection are finally dismissed or who are no longer receiving support.*

All of these young people are trapped in an administrative “grey area”: they are neither minors (as their age or unaccompanied status are disputed) nor adults (due to their declared age or civil status documents stating that they are minors).

The unprotected unaccompanied foreign minors programme team notes that most of the young people who receive a special medical, psychological and social consultation from Médecins du Monde have still not had any contact with the French healthcare system, even though some of them have been in France for several months.

Either no information about their rights to healthcare (health coverage) and care (actors operating in accordance with general law, including PASS facilities) has been given to them, or where this is not the case, they have encountered the problem of not having any persons with parental authority who can authorise care (except in particularly serious situations).

More seriously than that, in addition to the lack of definite responses to the medical requests made by young people, Médecins du Monde also notes that no efforts are made initially to assess the physical and mental health of young people, despite the prevalence of certain illnesses among them (tuberculosis, hepatitis B, VIH, etc.) and the extremely traumatic journeys that they have made.

The same applies to prevention, and unaccompanied foreign minors are particularly vulnerable and exposed young people.

With regard to health coverage, it should be noted that a circular of 8 September 2011 gives rights to Aide médicale d'Etat (State Medical Assistance – AME) to unaccompanied foreign minors who are not eligible for support from the child welfare services (universal health coverage for those who are eligible for support from the child welfare services).

However, in order to receive this, they must be informed of these rights, obtain an address and receive assistance so that they can obtain this support (financial aid to pay for identity photographs and the photocopies necessary for the application, social worker's certificate where the young person does not possess any civil status documents, etc.). Once entitlement to AME has been established, the care pathway is opened up, although this does not fully resolve the obstacles that young people face, including that of the parental permission that is required by medical service providers under general law for certain forms of care, such as extraction of teeth or endoscopies.”

In addition to the difficulties with access to care, there is also the harsh reality of life on the streets and its consequences in terms of physical and mental health. As we shall see in the section concerning Article 31 of the European Social Charter, young people who are denied child protection measures have no solutions open to them in terms of accommodation. Once they have been declared adults, they cannot benefit from child protection measures and must then seek the assistance that is available under general law: the 115 service. However, because they say they are minors and have no documents which prove that they are adults, 115 refuses to accommodate them. And in any case, this support system is saturated.

Group 5: Unaccompanied foreign minors not yet in the care of the child welfare services

In relation to collective complaint No. 69/2011 which was made by Defence for Children International against Belgium, the ECSR “*found that causes of ill-health can only be removed to the extent that children are provided with housing and foster homes*” (Handbook on European law relating to the rights of the child, p. 153). As EUROCEF demonstrated in the section concerning the previous article of the European Social Charter, many unaccompanied foreign minors do not receive any protection from *départements* and hence the state. These minors are thus without protection and live on the streets while waiting for their rights to be recognised.

These unaccompanied foreign minors do not have access to the arrangements available under general law due to a lack of support and protection, but they can claim *Aide médicale d'Etat* (AME). In order to receive AME, unaccompanied foreign minors no longer have to satisfy the requirement of a minimum period of residence in France, since the Council of State indicated in June 2006 that a required minimum period of residence in the country was contrary to Article 3§1 of the CRC (Council of State, 7 June 2006, No. 285576). The European Committee of Social Rights reached the same conclusion with regard to Article 17 of the European Social Charter (European Committee of Social Rights, FIDH v. France, 8 September 2004, Complaint No. 14/2003). However, access to this information is necessary.

In its decision on the well-foundedness of complaint No. 69/2011 made by DCI against Belgium, the ECSR stated that *“the lasting incapacity of the reception facilities and the fact that, consequently, a number of the minors in question (particularly those accompanied by their families) have been consistently forced into life on the streets exposes these minors to increased threats to their health and their physical integrity, which are the result in particular of a lack of housing or foster homes. In this connection, the Committee considers that providing foreign minors with housing and foster homes is a minimum prerequisite for attempting to remove the causes of ill health among these minors (including epidemic, endemic or other diseases) and that the State therefore has felt to meet its obligations as far as the adoption of this minimum prerequisite is concerned.”*

Examples and accounts

See the accounts that are quoted in the section concerning Article 7 of the European Social Charter in relation to Group 5: Unaccompanied foreign minors not yet in the care of the child welfare services.

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.”*

EUROCEF

In its collective complaint, EUROCEF stated that aside from the difficulties referred to in the previous articles, access to care for unaccompanied foreign minors who are provided with child welfare support was properly thought through, although EUROCEF pointed out that the excessive strain on facilities left unaccompanied foreign minors on the streets with no protection. This situation is contrary to paragraph 1 of Article 13 of the European Social Charter.

With regard to Article 3 of this same article, EUROCEF highlighted the fact that professionals say they have not received adequate training to be able to deal with the special situation of unaccompanied foreign minors. EUROCEF also stated that the lack of a sufficient number of interpreters prevents unaccompanied foreign minors from accessing the advice and help that are guaranteed by Article 13 of the Charter, or even access to competent departments.

The French government

In its response, the French government states 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*” (§74) and that therefore, “*the solutions that these persons might be offered are those associated with the remedies and opportunities offered by the law in general*” (§74). The French government also states: “*when département councils notify such persons of their refusal to provide support most of them also include information on these legal options*” (§74).

With regard to training for professionals who work with unaccompanied foreign minors, the French government states that this issue is currently being worked on and that the training provided by “*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*” (§77). In addition, some départements designate NGOs which have experience in this field to carry out “*assessments of young persons’ age and unaccompanied status*” (§75). Nonetheless, the French government points out that the professionals who work for départements are social workers who are qualified and who are therefore trained.

Finally, the French government states that “*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*” (§78).

In the light of the various accounts gathered, EUROCEF confirms that the French government is in breach of paragraphs 1 and 3 of Article 13 of the European Social Charter in relation to:

- Group 1: Unaccompanied foreign minors in the care of the child welfare services and who are staying in welfare hotels
- Group 2: Young persons undergoing assessment to determine their age and unaccompanied status under the Taubira circular and who have not been provided with shelter
- Group 3: Unaccompanied foreign minors who have been assessed and found to be adults and who are appealing
- Group 4: Unaccompanied foreign minors denied access to child protection measures by court order because they have been declared adults, but who cannot claim assistance under the arrangements for adults
- Group 5: Unaccompanied foreign minors not yet in the care of the child welfare services
- Group 6 Unaccompanied foreign minors being kept in waiting areas

First of all, from a cross-cutting point of view, EUROCEF considers that this right *to 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*, as provided in Article 13, entails that the following must be given to young people:

- The option of being represented by an ad hoc guardian who is able to defend their interests.
- opportunities to make themselves understood and to understand what is happening to them and what will happen throughout their accommodation and care.

Appointment of an ad hoc guardian

“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.”... (18)

We have many accounts (Appendices 40, 63) indicating that this appointment rarely happens in practice, which deprives minors of their right to be assisted during proceedings which concern them. The presence of an ad hoc guardian would make it possible to appoint a lawyer and refer to the case to the guardianship judge, and where applicable, the administrative judge or children’s judge.

Young people, who are rarely assisted by an ad hoc guardian, are not always clearly informed of their rights or developments in their situation (Appendix 40).

According to a survey carried out by the Education Without Borders network (Appendix 35), none of the 15 young people who were interviewed had been informed of the steps they needed to take to obtain asylum or regularise their situation.

The CGT staff of Hauts-de-Seine *département* council state as follows (Appendix 60):

...“In all of the aforementioned cases, they are not clearly informed of their rights (to be protected, to receive care, to seek asylum, to refuse to undergo a bone age assessment, to be informed of the results, to appeal decisions, to refer matters themselves to a judge directly, etc.). Where they do not speak French, they usually have no access to an interpreter either to be informed of their rights or to translate their own statements.”

Absence or shortage of interpreters

As we stated in our complaint (page 12) and as is confirmed by numerous accounts (Appendices 36, 40), there is firstly an issue of the absence or shortage of interpreters. The remark that shortages of interpreters exist in many other fields and affect all social services, prefects’ offices, courts and hospitals and are not unique to unaccompanied foreign minors (§78) appears to us to be an argument which is wholly unacceptable in the light of France’s obligations under the Charter.

There is also an issue concerning support for young people throughout the period for which they are provided with shelter. Mrs VERSINI herself acknowledges in the aforementioned report the *low standard of educational support and personalised support for young people in hotels*.

We also welcome the measures that she envisages, namely:

- The provision of information about available remedies (measure 3)
- The provision of an information booklet which outlines the arrangements for the provision of care to young people who have just been provided with accommodation (measure 6)
- The provision of personalised support for young people after judicial decisions to provide them with care have been taken (measure 8)
- The introduction of a notice period between the notice of termination of care and the actual termination of care, in order to prevent the termination of care from being excessively abrupt (measure 8)

These measures are a step in the right direction. EUROCEF does not know whether they are currently being implemented, but would like these measures adopted by the *département* of Paris to be implemented by other *département* councils and enacted accordingly.

The government refers (§20) to Article L. 313-11, 2° bis of the Code on the Entry and Residence of Foreigners and the Right to Asylum, which provides that “*a temporary residence card which states “private and family life” is issued automatically, unless his presence poses a danger to public order, to the foreigner who has been placed, since he reached the age of no more than sixteen, in the care of the child welfare service, subject to his attendance of training being genuine and conscientious, subject to the nature of his ties with the family who have stayed in the country of origin and subject to the opinion of the accommodation facility with regard to the integration of this foreigner into French society. In addition, since the Law of 16 June 2011 was passed, Article L. 313-15 of the Code on the Entry and Residence of Foreigners and the Right to Asylum has provided that foreign minors who are taken into care by child welfare services after their sixteenth birthday can request exceptional leave to remain.*”

It is clear that a young person who is not represented by an ad hoc guardian will have some difficulty in accessing this kind of information and will be unable to take the steps necessary to obtain a temporary residence card or exceptional leave to remain on his own. In EUROCEF’s view, this provision of information and guidance through the associated procedures should be enshrined in regulations.

With regard to practice in this field, one may also note the many obstacles that young people must overcome in order to exercise their rights. The account given by the young person R. (Appendix 64) with regard to his many fruitless efforts to obtain a residence permit is eloquent in this regard.

Group 1: Unaccompanied foreign minors in the care of the child welfare services and who are staying in welfare hotels

With regard to the “*effective exercise of the right to social and medical assistance*” (Article 13 of the Charter), EUROCEF finds that unaccompanied foreign minors, as vulnerable minors, do not have “*adequate resources*” (§1) and are unable to “*secure such resources either by [their] own efforts or from other sources*” (§1). Consequently, the French

government must be able to offer provide them with “*adequate assistance and, in case of sickness, the care necessitated by [their] condition*” (§1).

As stated previously, the living conditions for unaccompanied foreign minors who are accommodated in hotels are highly questionable from the point of view of the protection of these minors, their access to care and their access to assistance, which must be “appropriate” (§1) in accordance with the European Social Charter.

In its argument concerning Article 11 of the European Social Charter, EUROCEF stated that from the accounts that had been gathered, it was found that unaccompanied foreign minors who are accommodated in hotels are not informed of their rights and that not all of them are registered in the social security system. These young people therefore do not receive medical assistance.

The absence of socio-educational support for these young people also breaches paragraph 3 of this same article.

Examples and accounts

See the accounts quoted in the arguments concerning Articles 7 and 11 of the European Social Charter.

Group 2: Young persons undergoing assessment to determine their age and unaccompanied status under the Taubira circular and who have not been provided with shelter

The French government states “*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*” (§83). However, the accounts that were gathered, and especially Account 63, demonstrate that these unaccompanied foreign minors are not provided with shelter as a matter of routine and do not all have alternative solutions available to them, as the French government claims. These young people are then homeless, on the streets, and exposed to physical risks, psychological risks, the risk of exploitation, and so on. Without shelter, these young people do not receive “*assistance*” (§1) which is appropriate to their age and vulnerable situation. Like Group 1, these young people cannot access their “*right to social and medical assistance*” on their own.

They are also not informed of their rights. The interviews that they are called to attend for the purposes of their assessment focus on assessing their age, and neglect their right to assistance due to suspicion.

Examples and accounts

See the accounts that are quoted in the argument concerning Articles 7 and 11 of the European Social Charter.

Group 3: Unaccompanied foreign minors who have been assessed and found to be adults and who are appealing

As stated in relation to Article 7 of the Charter, the majority of young people who appeal against decisions to terminate their care or to refuse to provide them with care do not receive any protection during the proceedings. Like Group 2, these young people are homeless and live on the streets.

Their right to social and medical assistance cannot then be effective. Furthermore, since they are not classed either as minors or as adults, they do not have access to any protection measures, either child protection or assistance for adults in difficulty.

Examples and accounts

See the accounts that are quoted in the argument concerning Articles 7 and 11 of the European Social Charter.

Group 4: Unaccompanied foreign minors denied access to child protection measures by court order because they have been declared adults, but who cannot claim assistance under the arrangements for adults

As stated in our argument concerning Article 7, unaccompanied foreign minors who are declared to be adults should be able to resort to the measures available under general law so that, despite their illegal status in the country, they can receive a minimal level of assistance which can protect their human dignity. However, these young people maintain that they are minors and very often show identity documents which support this claim. As a result, aside from the problem of the excessive demand for the arrangements available under general law such as the 115 service, they are very often unable to provide care to minors. These unaccompanied foreign minors then find themselves in a legal vacuum where their right to social and medical assistance is not effective.

Examples and accounts

See the accounts that are quoted in the argument concerning Articles 7 and 11 of the European Social Charter.

Group 5: Unaccompanied foreign minors not yet in the care of the child welfare services

As we explained in relation to Article 7, the French government states in paragraph 82 of its response that “*no unaccompanied foreign minor who is taken into the care of the child welfare services is left on the streets*”. This appears to be correct, because the many foreign unaccompanied minors who are on the streets are young people whom French *départements* have refused to take into care even before determining whether they are minors and unaccompanied. Many accounts and press articles attest to this. Like Groups 2 and 3 who are homeless and exposed to physical and psychological risks, they have no access to the right to social and medical assistance which they claim as vulnerable minors.

Examples and accounts

See the accounts that are quoted in the argument concerning Articles 7 and 11 of the European Social Charter.

Group 6: Unaccompanied foreign minors being kept in waiting areas

With regard to unaccompanied foreign minors who are in waiting areas, the assistance that is provided does not appear to be appropriate to the age and vulnerability of these minors in transit. Not only “*the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time*” (Article 37 of the CRC), but also the housing of minors together with adults and the housing of minors in hotels appears to us to be contrary to the European Social Charter and also the CRC. This is why EUROCEF refers to assistance which is not appropriate, contrary to the commitment made by the French government under the European Social Charter.

Examples and accounts

See the accounts that are quoted in the argument concerning Article 7 of the European Social Charter.

ARTICLE 14 The right to benefit from social welfare services

All of the accounts that we obtained reveal the deficiencies in relation to access to social welfare services. Of course, this is true of all unaccompanied foreign minors on the streets, for whom the only possible source of help is humanitarian and charitable organisations which provide support to the young persons who are fortunate enough to come across them.

As the *Collectif parisien pour la protection des jeunes et mineurs étrangers* states in a letter to the Prefect of Paris (Appendix 25), “*we simply cannot accept that these young people are doomed to wander the streets of Paris and deprived of all forms of protection from all public authorities. The daily lives of these adolescents are now entirely dependent on volunteers, activists or local residents who bring them food, clothes and personal hygiene products. Some go with them to hospitals. NGOs run French or computer classes, and sometimes day shelters as reception centres. The situation of these young people is beginning to come to light. This is a matter of public interest which concerns us all. It raises the question of the role and responsibility of the public authorities in relation to these young people, adolescents and minors.*”

An activist from the *Ligue des droits de l’homme* also states (Appendix 41): “*We believe that now, even if this young person is temporarily accommodated in a hotel room, even if he has managed to find a place where he can eat, he is still isolated and left to his own devices all day long. This situation leaves him in a state of dejection which we find worrying. He is alone and the only people he sees are volunteers who work for our organisation, which cannot make up for the complete absence of educational support for a minor.*”

An MMIE pamphlet (Appendix 46) also criticises the “*absence of real educational support and access to care.*”

According to another account given by an activist in Brittany (Appendix 52): “*Accommodated in a hotel, without any protection or educational support, this child fell ill. He needed dental surgery. No one went with him. No one came to collect him. He was brought back to the hotel by a passer-by who found him in the street in a state where he was close to fainting.*”

Social workers themselves lament the lack of resources, which prevents them from doing high-quality work (Appendix 60): “*Administrative agents of Regional Child Welfare Services (Services territoriaux de l’Aide sociale à l’enfance – STASE), social workers and front-line managers are upset about their inability to fulfil their protection role properly. To accommodate these child migrants in a way which respects their rights, it is necessary to implement a clear and consistent system, organisation, and sufficient resources to enable child protection services and facilities to fulfil their roles.*”

A social worker makes an identical observation (Appendix 62): “*During the period for which they are provided with shelter, young people who are accommodated in hotels have little access to care as they receive no educational support. Only hotel employees and life assistants [...] see them on a daily basis to give them food.*”

“*We find that these young people do not receive any social, educational or psychological support from the social services of the département, or the state, despite our successive warnings*”, say two civil society activists (Appendix 63).

The right to benefit from social welfare services is therefore far from guaranteed for unaccompanied foreign minors, whether they are denied protection measures or whether they are granted them at a minimal level which does not guarantee them the right to effective educational support. **1**

ARTICLE 17 The right of children and young persons to social, legal and economic protection – paragraph 1

“*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 or 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;

Article 2 of Protocol No. 1 to the ECHR also guarantees “the right to education. The ECtHR clarifies that this article does not oblige states to make education available; it provides “a right of access to educational institutions existing at a given time”. In addition, the right to education also includes “the possibility of drawing profit from the education received, that is to say, the right to obtain, in conformity with the rules in force in each state, and in one form or another, official recognition of the studies completed” (Handbook on European law relating to the rights of the child, p. 141).

With regard to the provisions of Article 17, paragraph 2 of the revised European Social Charter, the ECSR also judges that “contracting states should ensure that children unlawfully present in their territory also have access to education” (Handbook on European law relating to the rights of the child, p. 143).

EUROCEF

In its collective complaint, EUROCEF explains that contrary to the provisions of the “Procedure” directive, the French Office for the Protection of Refugees and Stateless Persons (*Office français de protection des réfugiés et apatrides* – OFPRA), does not have any staff who are specially trained to deal with asylum applications from minors. It also states that France is not implementing the “Dublin II” regulation, which lays down criteria making it possible to identify which European state is responsible for each application.

With regard to access to education for unaccompanied foreign minors, despite external law and French national law, all unaccompanied foreign minors who are recognised as such lack access to education. EUROCEF notes that since school education “*is no longer compulsory after the age of 16, unaccompanied foreign minors are only admitted to schools to the extent that places are available*” (Delbos, 2001, p. 121). EUROCEF also mentioned the difficulty that unaccompanied foreign minors who have no identity documents have in attending examinations for qualifications.

The French government

In its response, the French government states “*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*” (§88).

With regard to special training for OFPRA workers so that they can process minors’ asylum claims, the French government explains that the OFPRA “*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*” (§89). In addition, additional training will be offered to officers “*by the beginning of 2016*” (§90), and there will also be “*efforts to make interpreters more familiar with the examination of asylum requests from unaccompanied foreign minors*” (§91). The government also states that “*awareness-raising sessions*” can also be run for child

welfare services at the latter's request (§92).

It is also stated that “*discussions are also under way on the techniques for interviewing minors and methods of determining their age*” (§94).

With regard to access to education for unaccompanied foreign minors, the French government states that in domestic law, “*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*” (§96). Unaccompanied foreign minors are thus enrolled in schools to the extent that places are available, “*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*” (§96).

“*As with all pupils of French middle and upper schools, vocational guidance is subject to the constraints imposed by the labour market. [...] 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*” (§96-97).

With regard to the “*requirement to present an identity document in order to register for training or sit an examination [...] National Education Circular No. 2011-072 of 3 May 2011, [...] states that “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*” (§98). The government also states that it is possible “*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*” (§99).

In the light of the various accounts gathered, EUROCEF believes that the French government is in breach of paragraph 1 of Article 17 of the European Social Charter in relation to:

- **Group 1:** Unaccompanied foreign minors in the care of the child welfare services and who are staying in welfare hotels
- **Group 2:** Young persons undergoing assessment to determine their age and unaccompanied status under the Taubira circular and who have not been provided with shelter
- **Group 3:** Unaccompanied foreign minors who have been assessed and found to be adults and who are appealing
- **Group 5:** Unaccompanied foreign minors not yet in the care of the child welfare services

Group 1: Unaccompanied foreign minors in the care of the child welfare services and who are staying in welfare hotels

Firstly, EUROCEF believes that the French government is in breach of paragraph 1 of Article 17 of the revised European Social Charter in relation to minors who are accommodated in welfare hotels and do not receive social support. As several accounts show,

these young people do not receive any social support or any help to enrol in schools or receive care. As a result, some of these young people will not receive any schooling for several months, and others will not be able to attend their French classes due to a lack of money to travel to them. In terms of access to healthcare, they are not helped to access their entitlements or taken to see healthcare professionals so that they can have check-ups or receive healthcare.

In addition, Article 17 states that institutions and services which are adequate and sufficient must be established or maintained in order to ensure that minors' rights to care, assistance, education and training are guaranteed. In view of the number of unaccompanied foreign minors who are accommodated in hotels, sometimes for several months or years, EUROCEF believes that the number of institutions which protect and assist unaccompanied foreign minors is inadequate, and that hotel accommodation should not be a response because it is not appropriate to the vulnerability and age of this group.

With regard to the schooling of unaccompanied foreign minors more generally, it also appears, and is asserted and argued by the French government, that unaccompanied foreign minors aged over 16 are by no means prioritised in terms of access to training. The French government explains that under national law, the obligation to attend school does not extend beyond the age of 16. Consequently, unaccompanied foreign minors aged over 16 who ask to be enrolled in a school after taking tests to determine their levels may not be assigned to a school. Their right to schooling, education and training is then flouted, scuppering their chances of achieving social and professional integration in France and regularising their status.

Examples and exhibits

Département of Côtes d'Armor

N. arrived in France at the age of 16, was taken into the care of the local authorities in Côtes d'Armor in October 2013 and put up in a hotel until the end of February 2014.

“During his five months in the hotel, N. received no schooling and participated in no activities of any kind, even though he repeatedly asked to be allowed to attend school”. (Exhibit 9)

Département of Paris

On 9 September 2015, the online journal, Médiapart, published an article stating that *“Paris rejects ‘schooling for all’”*. The new head of CASNAV Paris explained that *“schooling is ‘not a solution’ in all cases for unaccompanied foreign minors, i.e. those cut off from their families. It first has to be shown that they really are unaccompanied minors, which is not always the case”*. (Exhibit 31)

Département of Hauts de Seine

RESF 92 surveyed eight unaccompanied foreign minors concerning their access to schooling.

With regard to these eight minors, who had all been being cared for by Hauts-de-Seine child welfare service for three months to a year and were all living in hotels, RESF observed the following:

- *“Non-French-speaking unaccompanied foreign minors who had not been attending school in their own countries are not offered any type of education or training (neither information and counselling or schooling). At most, they receive a few hours of literacy and citizenship courses a week. Their futures are mapped out: when they turn 18, they are turned out onto the streets without any training, official documents or school. (Situations A and G)*
- *Those under 16, who are entitled to schooling, only started school three months after the school year began, in December in one case and possibly in January in another, following (perhaps) some degree of pressure being exerted on the relevant departments. Some of those who had attended school in their countries of origin and could more or less speak French and were aged between 16 and 17 when taken in to care by the child welfare service managed to get into school.*
- *For those aged 17 and over, getting into school was exceptional; they only just managed to do so when they had people to help them with the admission process.”*
(Exhibit 35)

Département of Val-d’Oise

J., head of an educational service, spoke of the difficulties encountered in getting unaccompanied foreign minors into school: *“At present, most of the young people concerned [...] do not receive any schooling apart from French as a foreign language classes provided in-house, even when they are aged 13 or 14. The facility education head always has them take the CASNAV tests, but their assignment to schools can take several months.*

For instance, M. is a teenager who left Guinea after his mother and father died. After working for a while for a man who ill-treated him, he managed to flee the country with the help of a friend of his mother. He arrived in France in May 2015 in the département of Yvelines (78). Initially, he was put up in a hotel and then moved to a local children’s home, pending an assessment. Just as he was starting to become attached to the place, he was placed in the care of the Val d’Oise local authorities who moved him to a children’s home in Cergy. After spending a month and a half there, he was referred to an LAO facility. M., who is described as a very pleasant and cheerful youngster, started crying a lot and did not want to uproot himself (again) from the children’s home where he had made friends and become attached to the staff. He came to the LAO in July 2015 when we explained to him that, once again, he was in a referral system and would therefore be moved within 6 months. He is becoming very withdrawn and does not trust adults anymore. A few weeks after moving to the centre, he took the CASNAV tests. M. speaks French, even though he had never been to school before.

It is now December, and M. has still not been assigned to any school, in spite of all our efforts. The staff are considering enrolling him in a pre-apprenticeship scheme [...] usually reserved for those aged over 16, for whom it is more difficult to find school places. There are other children in the same situation: we have another teenager aged 13 who arrived in

September 2015 and for whom we are still waiting for a place in school. He speaks French and, given his level of education, could enter the ordinary second year of secondary school, with extra French teaching. The special classes and all the various schemes designed for unaccompanied foreign minors therefore remain wholly inadequate.

Of the thirty young people currently in the LAO centre, only around a dozen are receiving schooling outside the centre. And that is possible either because they are on apprenticeships and have found an employer (enrolment in CFA apprenticeship centres is very easy in that case) or because they are in special classes [...] (educational workshops or pre-apprenticeship). The others are attending workshops in-house, but these are inadequate for their educational needs.” (Exhibit 62)

Group 2: Young foreigners undergoing assessment to determine their age and unaccompanied status under the Taubira circular

Group 3: Unaccompanied young foreigners who have been assessed and found to be adults and who are appealing

Group 5: Unaccompanied foreign minors not yet in the care of the child welfare services

On account of their lack of protection and their exposure to risks to their physical and mental health and also to exploitation, groups 2, 3 and 5 are not able to attend school under proper conditions. The way in which the French Government is withdrawing from its responsibility as regards the existence and future of these young people infringes the three indents of Article 17, paragraph 1, of the Charter.

Examples and exhibits

Département of Paris

On 28 May 2015, the news magazine, *Le Courrier de l’Atlas*, published an article headed “Unaccompanied foreign minors: a legal no man’s land”, condemning the fact that, “as the school year draws to a close, there are unaccompanied foreign minors who have spent it on the streets. This state of affairs is regarded as unacceptable by teachers and pupils in many Paris schools and also by activists and trade unionists, who demonstrated outside the CASNAV and the education department to remind the Paris education authorities of their demands: schooling for all young people, proper provision for unaccompanied minors and legal residence status for high school pupils upon the age of majority.” (Exhibit 30)

Reference should also be made here to the exhibits cited in the submissions concerning Article 7 of the Charter.

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.”

Article 30 ensures the effectiveness of “protection against poverty and social exclusion”, in particular through access to housing, education and healthcare.

EUROCEF

In its collective complaint, EUROCEF condemns the situation of the unaccompanied foreign minors living on the streets. This jeopardises their effective access to training, education, culture, social and medical assistance and also therefore undermines the possibility of their being granted legal residence status.

The French Government

In its memorial, the French Government “*notes that no unaccompanied foreign minor has been left ‘living on the streets without protection’*” (§101). Moreover, “*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.*” (§101).

The Government adds that some of these young people “*continue their schooling, with the aid of départements, beyond the age of eighteen, under the auspices of so-called young adult contracts.*” (§101).

In the light of the various statements received, EUROCEF believes that the French Government is in breach of Article 17, paragraph 1, of the European Social Charter concerning:

- Group 2: Young foreigners undergoing assessment to determine their age and unaccompanied status under the Taubira circular
- Group 3: Unaccompanied young foreigners who have been assessed and found to be adults and who are appealing
- Group 5: Unaccompanied foreign minors not yet in the care of the child welfare services

In the above analysis of failure to comply with the requirements of the said articles of the European Social Charter, EUROCEF has presented many statements testifying that, in the case of groups 2, 3 and 5, the French Government does not provide the minors with effective

access to housing, if only emergency accommodation, or to social and medical assistance or education. The young people concerned are not therefore protected against poverty and social exclusion.

ARTICLE 31: The 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.”

EUROCEF

In its collective complaint, EUROCEF criticises the saturation of the assessment facilities, which prevents some of the unaccompanied foreign minors seeking assistance from receiving shelter. As the ONED indicated in its 2014 report, *“unprotected minors live their lives on the streets (in sleeping bags and tents), squats or abandoned houses or factories”* (ONED, 2014, p. 62).

The French Government

In its memorial, the French 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)”* (§105).

However, the Government indicates that *“given the number of young persons concerned, it is impossible to offer all of them shelter. In Ile-de-France (the greater Paris region) in particular, where some communities are very large, 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.”* (§107). *“Turning more specifically to Paris itself, additional places in shelters were to be made available in the first quarter of 2015, which means that young persons undergoing assessment of their age and unaccompanied status (...) will be given shelter almost automatically* (§108).

“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. 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. (§109-110)

Examples and exhibits

Département of Côtes d'Armor

N. arrived in France at the age of 16, was taken into the care of the local authorities in Côtes d'Armor in October 2013 and put up in a hotel until the end of February 2014.

“During his five months in the hotel, N. received no schooling and participated in no activities of any kind, even though he repeatedly asked to be allowed to attend school”. (Exhibit 9)

Département of Paris

On 9 September 2015, the online journal, *Médiapart*, published an article stating that *“Paris rejects ‘schooling for all’”*. The new head of CASNAV Paris explained that *“schooling is ‘not a solution’ in all cases for unaccompanied foreign minors, i.e. those cut off from their families. It first has to be shown that they really are unaccompanied minors, which is not always the case”*. (Exhibit 31)

Département of Hauts de Seine

RESF 92 surveyed eight unaccompanied foreign minors concerning their access to schooling. With regard to these eight minors, who had all been being cared for by Hauts-de-Seine child welfare service for three months to a year and were all living in hotels, RESF observed the following:

- *“Non-French-speaking unaccompanied foreign minors who had not been attending school in their own countries are not offered any type of education or training (neither information and counselling or schooling). At most, they receive a few hours of literacy and citizenship courses a week. Their futures are mapped out: when they turn 18, they are turned out onto the streets without any training, official documents or school. (Situations A and G)*
- *Those under 16, who are entitled to schooling, only started school three months after the school year began, in December in one case and possibly in January in another, following (perhaps) some degree of pressure being exerted on the relevant departments. Some of those who had attended school in their countries of origin and could more or less speak French and were aged between 16 and 17 when taken in to care by the child welfare service managed to get into school.*
- *For those aged 17 and over, getting into school was exceptional; they only just managed to do so when they had people to help them with the admission process.”* (Exhibit 35)

Département of Val-d'Oise

J., head of an educational service, spoke of the difficulties encountered in getting unaccompanied foreign minors into school: *“At present, most of the young people concerned [...] do not receive any schooling apart from French as a foreign language classes provided*

in-house, even when they are aged 13 or 14. The facility education head always has them take the CASNAV tests, but their assignment to schools can take several months.

For instance, M. is a teenager who left Guinea after his mother and father died. After working for a while for a man who ill-treated him, he managed to flee the country with the help of a friend of his mother. He arrived in France in May 2015 in the département of Yvelines (78). Initially, he was put up in a hotel and then moved to a local children's home, pending an assessment. Just as he was starting to become attached to the place, he was placed in the care of the Val d'Oise local authorities who moved him to a children's home in Cergy. After spending a month and a half there, he was referred to an LAO facility. M., who is described as a very pleasant and cheerful youngster, started crying a lot and did not want to uproot himself (again) from the children's home where he had made friends and become attached to the staff. He came to the LAO in July 2015 when we explained to him that, once again, he was in a referral system and would therefore be moved within 6 months. He is becoming very withdrawn and does not trust adults anymore. A few weeks after moving to the centre, he took the CASNAV tests. M. speaks French, even though he had never been to school before.

It is now December, and M. has still not been assigned to any school, in spite of all our efforts. The staff are considering enrolling him in a pre-apprenticeship scheme [...] usually reserved for those aged over 16, for whom it is more difficult to find school places. There are other children in the same situation: we have another teenager aged 13 who arrived in September 2015 and for whom we are still waiting for a place in school. He speaks French and, given his level of education, could enter the ordinary second year of secondary school, with extra French teaching. The special classes and all the various schemes designed for unaccompanied foreign minors therefore remain wholly inadequate.

Of the thirty young people currently in the LAO centre, only around a dozen are receiving schooling outside the centre. And that is possible either because they are on apprenticeships and have found an employer (enrolment in CFA apprenticeship centres is very easy in that case) or because they are in special classes [...] (educational workshops or pre-apprenticeship). The others are attending workshops in-house, but these are inadequate for their educational needs.” (Exhibit 62)

Group 2: Young foreigners undergoing assessment to determine their age and unaccompanied status under the Taubira circular

Group 3: Unaccompanied young foreigners who have been assessed and found to be adults and who are appealing

Group 5: Unaccompanied foreign minors not yet in the care of the child welfare services

On account of their lack of protection and their exposure to risks to their physical and mental health and also to exploitation, groups 2, 3 and 5 are not able to attend school under proper conditions. The way in which the French Government is withdrawing from its responsibility as regards the existence and future of these young people infringes the three indents of Article 17, paragraph 1, of the Charter.

Examples and exhibits

Département of Paris

On 28 May 2015, the news magazine, *Le Courrier de l'Atlas*, published an article headed “*Unaccompanied foreign minors: a legal no man’s land*”, condemning the fact that, “*as the school year draws to a close, there are unaccompanied foreign minors who have spent it on the streets. This is state of affairs is regarded as unacceptable by teachers and pupils in many Paris schools and also by activists and trade unionists, who demonstrated outside the CASNAV and the education department to remind the Paris education authorities of their demands: schooling for all young people, proper provision for unaccompanied minors and legal residence status for high school pupils upon the age of majority.*” (Exhibit 30)

Reference should also be made here to the exhibits cited in the submissions concerning Article 7 of the Charter.

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.”*

Article 30 ensures the effectiveness of “protection against poverty and social exclusion”, in particular through access to housing, education and healthcare.

EUROCEF

In its collective complaint, EUROCEF condemns the situation of the unaccompanied foreign minors living on the streets. This jeopardises their effective access to training, education, culture, social and medical assistance and also therefore undermines the possibility of their being granted legal residence status.

The French Government

In its memorial, the French Government “*notes that no unaccompanied foreign minor has been left ‘living on the streets without protection’*” (§101). Moreover, “*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.*” (§101).

The Government adds that some of these young people “*continue their schooling, with the aid of départements, beyond the age of eighteen, under the auspices of so-called young adult contracts.*” (§101).

In the light of the various statements received, EUROCEF believes that the French Government is in breach of Article 17, paragraph 1, of the European Social Charter concerning:

Group 2: Young foreigners undergoing assessment to determine their age and unaccompanied status under the Taubira circular

Group 3: Unaccompanied young foreigners who have been assessed and found to be adults and who are appealing

Group 5: Unaccompanied foreign minors not yet in the care of the child welfare services

In the above analysis of failure to comply with the requirements of the said articles of the European Social Charter, EUROCEF has presented many statements testifying that, in the case of groups 2, 3 and 5, the French Government does not provide the minors with effective access to housing, if only emergency accommodation, or to social and medical assistance or education. The young people concerned are not therefore protected against poverty and social exclusion.

ARTICLE 31: The 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.”

EUROCEF

In its collective complaint, EUROCEF criticises the saturation of the assessment facilities, which prevents some of the unaccompanied foreign minors seeking assistance from receiving shelter. As the ONED indicated in its 2014 report, *“unprotected minors live their lives on the streets (in sleeping bags and tents), squats or abandoned houses or factories”* (ONED, 2014, p. 62).

The French Government

In its memorial, the French 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)”* (§105).

However, the Government indicates that *“given the number of young persons concerned, it is impossible to offer all of them shelter. In Ile-de-France (the greater Paris region) in particular, where some communities are very large, 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.” (§107). “Turning more specifically to Paris itself, additional places in shelters were to be made available in the first quarter of 2015, which means that young persons undergoing assessment of their age and unaccompanied status (...) will be given shelter almost automatically (§108).

“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. 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. (§109-110)

➤ **EUROCEF therefore believes that the French Government is in breach of Article 31, paragraph 2, of the European Social Charter concerning:**

- **Group 2:** Young foreigners undergoing assessment to determine their age and unaccompanied status under the Taubira circular and who have not been provided with shelter
- **Group 3:** Unaccompanied young foreigners who have been assessed and found to be adults and who are appealing
- **Group 4:** Unaccompanied young foreigners denied access to child protection measures by court order because they have been declared adults and are therefore in the country illegally
- **Group 5:** Unaccompanied foreign minors not yet in the care of the child welfare services

In its decision on the merits of Complaint No. 86/2012 by the European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands, the Committee states that *“that under the Charter, homeless persons are those who legally do not have at their disposal a dwelling or another form of adequate housing in terms of Article 31§1 (Conclusions 2003, France). Accordingly, “under Article 31§2, the States Parties have undertaken to take measures to reduce homelessness with a view to eliminating it. Reducing homelessness requires the introduction of emergency measures, such as the provision of immediate shelter... (Conclusions 2003, Italy).” “The Committee [therefore] reiterates that according to Article 31§2, shelter is to be offered to the homeless as an emergency solution. Moreover, to ensure that the dignity of the persons sheltered is respected, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting. Another basic requirement is the security of the immediate surroundings (DCI v. the Netherlands, cited above, §62).”*

“However, as regards those irregularly present within the territory of a state party, there is no obligation on States to provide them with alternative accommodation. Eviction from shelter should accordingly be banned, as it would place the persons concerned, particularly

children, in a situation of extreme helplessness that is contrary to the respect for their human dignity (DCI v. the Netherlands, cited above, §63)."

[...]

"Moreover, even if a particular function has been delegated to local or regional authorities under domestic law, the States Parties remain responsible under their international obligations to ensure that their responsibilities are properly exercised (European Roma Rights Centre (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §29)." (§112)

In 2006, the Parliamentary Assembly of the Council of Europe adopted Resolution 1509 (2006) on the human rights of irregular migrants. Paragraph 5 thereof provides that *"international human rights instruments are applicable to all persons regardless of their nationality or status. Irregular migrants, as they are often in a vulnerable situation, have a particular need for the protection of their human rights, including basic civil, political, economic and social rights."*

"In terms of economic and social rights, the Assembly considers that the following minimum rights, inter alia, should apply:

- 13.1. adequate housing and shelter guaranteeing human dignity should be afforded to irregular migrants;*
- 13.2. emergency health care should be available to irregular migrants and states should seek to provide more holistic health care, taking into account, in particular, the specific needs of vulnerable groups such as children, disabled persons, pregnant women and the elderly; (...)."*

Regarding the right to the satisfaction of basic material needs of persons in situations of extreme hardship, the Committee of Ministers of the Council of Europe adopted on 19 January 2000 Recommendation No. R (2000) 3 to member states, which provided that *"the right to the satisfaction of basic human material needs should contain as a minimum the right to food, clothing, shelter and basic medical care" and that "the exercise of this right should be open to all citizens and foreigners, whatever the latter's position under national rules on the status of foreigners, and in the manner determined by national authorities."*

Group 2: Young foreigners undergoing assessment to determine their age and unaccompanied status under the Taubira circular and who have not been provided with shelter

Contrary to the UNHCR's recommendations, i.e. that "unaccompanied foreign minors must be placed as quickly as possible in an appropriate reception structure and their needs must be meticulously assessed in order to keep any changes to a minimum", as indicated in our study of Article 7 of the Charter, not all unaccompanied foreign minors are provided with immediate shelter.

The French Government explains that not all minors concerned have to be provided with shelter. Nevertheless, many unaccompanied minors end up homeless, which is in breach of Article 31 of the European Social Charter. While it is true that states are not required to provide long-term accommodation for individuals whose presence is unlawful, they must

nevertheless offer them emergency accommodation. *“To ensure that the dignity of the persons sheltered is respected, shelters must meet health, safety and hygiene standards and, in particular, be equipped with basic amenities such as access to water and heating and sufficient lighting.”*²³ That is not the case.

It must also be noted that living on the streets has serious consequences for minors. The ECSR pointed this out in its decision on the merits of Complaint No. 69/2011 by DCI v. Belgium: *“Given that most of those living in poverty are children and that poverty in childhood is a root cause of poverty in adulthood, children’s rights must be accorded priority. Even short periods of deprivation and exclusion can dramatically and irreversibly harm a child’s right to survival and development. To eradicate poverty, States must take immediate action to combat childhood poverty.”* (§33). It further stated that *“poverty renders children, in particular girls, vulnerable to exploitation, neglect and abuse. States must respect and promote the rights of children living in poverty, including by strengthening and allocating the necessary resources to child protection strategies and programmes, with a particular focus on marginalised children, such as street children, child soldiers, children with disabilities, victims of trafficking, child heads of households and children living in care institutions, all of whom are at a heightened risk of exploitation and abuse.”* (§34)

Examples and exhibits

Reference should be made here to the sources cited under Article 7, paragraph 10, concerning group 2 (Young foreigners undergoing assessment to determine their age and unaccompanied status under the Taubira circular and who have not been provided with shelter).

Group 3: Unaccompanied young foreigners who have been assessed and found to be adults and who are appealing

As we saw in our study of Article 7 of the Charter, when unaccompanied young foreigners are declared adults following assessment of their status, they are removed from the protection measures for children. The relevant decision may be taken by the chair of the *département* council or a juvenile court. In both instances, the individual concerned may appeal against the decision. However, during the relevant proceedings, which can sometimes last several months or even several years, the unaccompanied young foreigners very often are left on the streets. Although they may seek the suspension of the court decision, for instance through Article 1193 of the Code of Civil Procedure, under domestic law they cannot be provided with shelter unless they had enjoyed such shelter before the court ruling. This produces a vicious cycle because the Government believes that not all young people claiming to be unaccompanied foreign minors must be provided with shelter.

Moreover, in order to be able to appeal against decisions, those concerned must be aware of their rights.

²³ Decision on the merits of Complaint No. 86/2012 by the European Federation of National Organisations working with the Homeless (FEANTSA) v. the Netherlands

Examples and exhibits

Département of Loire-Atlantique

“He was initially registered as a minor and placed in the care of the child welfare services. A month later, questions were raised about his identity by the département council and he was disqualified from receiving all forms of welfare support because the various tests showed that he was over the age of 18. And this despite the initial guardianship order, and despite the fact that he had a passport, confirming that he was a minor. So no more accommodation or access to education. [...] I put him up for the night myself, on more than one occasion. An appeal was lodged against the decision declaring him an adult and the proceedings lasted over two years. He did not receive any protection during that period.” (Exhibit 52)

Group 4: Unaccompanied young foreigners denied access to child protection measures by court order because they have been declared adults and are therefore in the country illegally

Unaccompanied young foreigners who are denied access to child protection measures for good because they are declared adults are directed towards the ordinary law provisions for the homeless, i.e. the integrated reception and referral service (SIAO) through the SAMU social helpline. However, the system is completely overloaded. Given the number of places, individuals are asked to call back every day to register their requests and check whether there are places. The National Federation of Reception and Social Integration Associations published a report on the system in October 2015.²⁴ The report stated that *“Almost 23 700 different individuals called the helpline looking for accommodation in October 2015” (p.2). “In October 2015, 13 700 persons never obtained a place following their calls to the helpline in the 45 départements covered by the report, i.e. six out of ten (58%). The situation of the helpline service is deteriorating. In October 2015, 71% of the requests for shelter were unfulfilled, compared to 66% during the same period the year before. The number of requests which led to placements declined (-12%) year-on-year, while the number of cases where requests were unfulfilled because of a lack of solutions rose (+9%). The lack of available places continues to be the main factor in the failure to satisfy requests (82%), and rose (+10%). In 10 départements, the rate of unsatisfied requests was over 80% (in ascending order: Gironde, Var, Aisne, Pyrénées-Atlantiques, Drôme, Marne, Rhône, Haute-Savoie, Loire, Isère). Against this background of managing short supply, the helpline staff have to take decisions every day on prioritising requests which legally should all be satisfied. Families are proportionally harder hit by the lack of offers of accommodation (60%) than individuals (54% for single men and 57% for single women). In terms of nationality, EU citizens are hardest hit (66%), as against 58% for persons of French origin and 56% for non-EU nationals.” (p. 3)*

Moreover, the young persons concerned, who are regarded as adults by child protection services and/or courts are treated as minors by other departments, which do not challenge their claims or their identity documents but accordingly deny them access to the measures intended for adults.

²⁴ http://infomie.net/IMG/pdf/barometre115_2015_10.pdf

Many young foreigners caught between the two statuses are therefore left on the streets with no housing.

Group 5: Unaccompanied foreign minors not yet in the care of the child welfare services

As we demonstrated in the submissions on Article 7 of the Charter, with regard to group 5, many unaccompanied foreign minors are on the streets because they have not been taken into care and placed under protection by the *départements*. In paragraph 82 of its memorial, the French Government states that “*no unaccompanied foreign minor taken into the care of the child welfare services is left on the streets*”. That would actually seem to be true, as many unaccompanied foreign minors who are on the streets are young persons whom French *départements* have refused to take into care without even determining whether they really are unaccompanied minors. This is demonstrated by many witness statements and press articles. Yet just as for the group 2 young foreigners whose age and unaccompanied status are being assessed and who are not provided with shelter, the ECSR notes the “*observations of the UNHCR according to which, unaccompanied foreign minors must be placed as quickly as possible in an appropriate reception structure and their needs must be meticulously assessed in order to keep any changes to a minimum. This period is crucial, because it is when the first links are forged between the minor and the social actors involved. If unaccompanied foreign minors are not properly provided for, they are simultaneously deprived of any chance of exercising the right of asylum*” (§80). Therefore, “*the Committee considers that immediate assistance is essential and allows [assessment of the] material needs of young people, the need for medical or psychological care in order to set up a child support plan*” (§81).²⁵

Examples and exhibits

Reference should be made here to the sources in the submissions on Article 7 of the Charter, concerning group 5 (Unaccompanied foreign minors not yet in the care of the child welfare services).

ARTICLE E

“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.”

EUROCEF

In its collective complaint, EUROCEF indicated that France also violates Article E of the Charter because there is still a great deal of inequality in the way in which unaccompanied foreign minors are treated in the country. There is inequality between French *départements* as well as on account of the young people’s age and in comparison with minors of French origin cared for under the child protection system.

²⁵ Decision of the ECSR on the merits of Complaint No. 69/2011 by DCI v. Belgium, §81.

The French Government

In its memorial (§104 to §119), the French Government indicates that unaccompanied foreign minors placed in the care of a *département* “are entitled to the same rights and facilities as the other children in the council’s care under the auspices of child protection” (§112). It states that “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.” (§114).

The French Government nevertheless acknowledges that “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.” (§119).

Article E of the Revised European Social Charter provides that “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.**”

This article of the Revised Social Charter ties in with Article 14 of the European Convention on Human Rights (*Prohibition of discrimination*), as well as Directive 2000/43/EC (*the Racial Equality Directive*), which applies, in particular, in the area of social protection and education.

Non-discrimination law firstly stipulates that “those individuals who are in similar situations should receive similar treatment and not be treated less favourably simply because of a particular ‘protected’ characteristic that they possess. This is known as ‘direct’ discrimination.”²⁶ Secondly, “non-discrimination law stipulates that those individuals who are in different situations should receive different treatment to the extent that this is needed to allow them to enjoy particular opportunities on the same basis as others. Thus, those same ‘protected grounds’ should be taken into account when carrying out particular practices or creating particular rules. This is known as ‘indirect’ discrimination.”

Article 2(2) of the EU Racial Equality Directive states that direct discrimination is “taken to occur where one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin”.

Article 2(2)(b) of the Racial Equality Directive states that “indirect discrimination shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons”.

²⁶ http://www.echr.coe.int/Documents/Handbook_non_discr_iaw_ENG_01.pdf, p. 21

EUROCEF maintains that France fails to comply with Article E of the European Social Charter, on three separate levels.

Firstly, there is still a great deal of inequality in the way in which unaccompanied foreign minors are treated in France. EUROCEF would point out that, in its activity report on the national shelter, assessment and referral scheme for unaccompanied 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*”. The French Government acknowledges this fact in paragraph 119 of its memorial. The accounts received by EUROCEF from several different *départements* also confirm this.

The French Government also itself states in paragraph 62 that the unaccompanied foreign minors unit “*has no information on young persons claiming this status in the other French waiting areas [apart from those in Orly and Roissy-Charles de Gaulle airports], of which there are several dozen in the country, in various ports, stations and airports.*” EUROCEF is surprised by this admission, as the circular of 31 May 2013 applies to the whole of France and, as indicated by the French government in paragraph 25, it is intended to ensure that “*all those claiming to be unaccompanied foreign minors in France are entitled to the same assessment procedure.*”

Moreover, EUROCEF is of the opinion that the French Government cannot be satisfied with harmonisation being “partially achieved” as stated in paragraph 119. The practices introduced under the Taubira circular are used to assess whether the young persons are actually unaccompanied minors, thereby calling into question their status as “minors at risk” and hence the provision of care for them.

EUROCEF would argue that the French Government is in breach of Article E of the European Social Charter because the uneven implementation of the Taubira circular by the various *départements* in France produces discrimination in access to protection for minors claiming to be unaccompanied foreign minors, depending on the *départements* where they report to the authorities and are “assessed”. On the basis of the case-law of the Revised European Social Charter (*Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52), the European Committee of Social Rights states that Article E prohibits discrimination on the ground of disability even though “disability is not explicitly listed as a prohibited ground of discrimination under Article E” because “it is adequately covered by the reference to ‘other status’” (*Autism Europe v. France*, cited above §51). Drawing on this case-law, EUROCEF maintains that the term ‘other status’ also covers the different places of residence, assessment and referral of the minors when the national legislation is intended to be applied uniformly throughout the country.

Secondly, EUROCEF observes that the French Government refers several times to equality of treatment and provision for unaccompanied foreign minors and for other minors.

In paragraph 112, it indicates that 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 the other children in the council’s care under the auspices of child protection.” In

paragraph 113, the government also indicates its desire not to deal with the issue of unaccompanied foreign minors from the angle of immigration.

In paragraph 69, it states that “long waiting times [are not] confined to unaccompanied foreign minors”.

In paragraph 72, with regard to mental health conditions, it states that “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”.

In paragraph 78, the government states that “Shortage of interpreters is a feature of many other areas of activity, concerning all the social services, prefectures, courts and hospitals, and is not confined to unaccompanied foreign minors”.

In paragraph 96, it indicates that in accordance with French legislation, under which schooling is compulsory only to the age of 16 (Article L.131-1 of the Education Code), 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”.

In paragraph 110, it adds that “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”.

EUROCEF therefore notes from the desire of the French Government, as reiterated in paragraph 113, “*not to deal with the issue of unaccompanied foreign minors from the standpoint of immigration and instead treat them in the same way as all young persons placed in the care of the child welfare services*”, that it refuses to consider that unaccompanied foreign minors’ migration backgrounds, experiences, physical and mental health and lack of command of French mean that they have specific needs different from those of other minors also placed in the care of French *départements*.

Yet “*The Committee [reiterates] that, since the wording of Article E is very similar to that of Article 14 of the European Convention on Human Rights, within the framework of the Charter it has reflected the interpretation given to this provision of the Convention by the European Court of Human Rights in its Thlimmenos v. Greece judgment of 2000 by stipulating that Article E entails that, in a democratic society, not only should persons who are in the same situation be treated equally and persons whose situations differ be treated differently, but all responses should show sufficient discernment to ensure real and effective equality. On the same basis, the Committee considers that Article E also prohibits all forms of indirect discrimination. Such indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages that are open to all are genuinely accessible by and to all (Autism-Europe v. France, cited above, §52)*”.²⁷

²⁷ European Action of the Disabled (AEH) v. France, Complaint No. 81/2012, decision on the merits of 4 October 2013, §133.

In EUROCEF's opinion, it is therefore vital to take account of unaccompanied foreign minors' specific needs in terms of healthcare, psychological counselling and schooling, etc.

Thirdly, EUROCEF also notes discrimination regarding the unaccompanied foreign minors' foreign origins as regards the accommodation they are offered. On several occasions in its memorial, the French Government mentions that unaccompanied foreign minors may be accommodated in hotels, as in the case of minors in the waiting area at Orly airport (point 61) and those in "overburdened *départements*" (paragraph 101), or even be placed in adult waiting areas (paragraph 61). However, there is no mixing of minors and adults in the case of young persons placed in the care of the child welfare services. In addition, minors accommodated in hotels by decision of the child protection services are overrepresented among unaccompanied foreign minors. Only witness statements can prove this, as there are no statistics on the issue at present.

Lastly, EUROCEF notes that while French minors may be accommodated in hotels or in flats under projects to give them independence, they seem to receive much more substantial educational support than is provided for unaccompanied foreign minors accommodated under the same conditions.

A further aspect of discrimination can be seen in discourse and practices which highlight the fact that catering for foreign minors in the context of child protection *deprives* French children of their right to care: *One of the arguments put to Médecins du Monde (MdM) and to the doctors asked by the courts to determine whether individuals are minors is surprising: "These young persons could take the places of other minors in danger or in hardship" (Exhibit 55).*

The arguments put forward by the lawyer for Loire-Atlantique *département* council are also striking here (Exhibit 53): *To back up his position, he referred to the case of a girl nicknamed Jessica, who had just told a leader at a holiday camp that she was being interfered with by her stepfather. And he was due to collect her on Friday.*

"What are we going to tell Jessica? That we have no place for her because the courts oblige us to take in young persons who are perhaps not minors?"

For its part, RESF 78 (Yvelines) criticises the specific way in which unaccompanied foreign minors are treated and moved to separate facilities (Exhibit 69), suggesting that this has the effect of making their integration into French society more difficult: *"At present, in the hostels, the young foreigners learn French and life skills by mixing with other youngsters. Being keen to advance, they are often actually the dependable elements of the community in the hostels. Depriving them of that community by 'parking them among themselves' would be bound to lead to them turning in on themselves and make their integration into society difficult if not impossible."*

And with regard to the transfer of these young people to specific facilities, RESF 78 adds *"This contracting out of care which specifically affects unaccompanied foreign minors actually constitutes discriminatory and unequal treatment between minors entrusted to the child welfare service under protection orders."*

CONCLUSION

The reception of and care for unaccompanied minors show many shortcomings on the part of the various French institutions involved with the relevant measures and schemes.

As a result, the well-being of a number of minors depends on the efforts, commitment and dedication of a whole range of voluntary activists who look out for them, provide them with basic necessities and sometimes even with accommodation, while ensuring that they have access to the services of lawyers so that they can assert their fundamental rights in court.

Should the young people in question actually, however, be regarded as being privileged compared to the larger numbers who live on the streets, are excluded from child protection schemes, suffer constant suspicion about their claims and the identity documents they present and are denied healthcare, housing and educational and social support, etc.?

We wish to praise the work of the activists and volunteers who have given us particularly moving testimonies of the hardship suffered by all these minors, the involvement of social workers and their concern to do high-quality work, which is constantly undermined by the inadequacy of the resources allocated to them.

We wish to thank all those who took the risk of making statements.

We specifically ask the European Committee of Social Rights to ensure that the French Government:

- continues to improve the legislation on the reception of and care for unaccompanied foreign minors,
- guarantees equal treatment throughout the country by means of more specific binding regulations,
- provides adequate human and financial resources for conducting a policy for catering for unaccompanied foreign minors that respects their rights,
- puts an end to practices which constitute infringements of the rights of unaccompanied foreign minors and violations of the European Social Charter.

APPENDICES

All the examples and exhibits mentioned in this memorial are listed below.

For reasons of size and differences in the types of original media, we are not able to append them to this document.

They have therefore been submitted separately by email and by post to the Secretariat of the European Committee of Social Rights.

Some are confidential. In order to preserve the anonymity of individuals, we have deliberately replaced their names with initials, which themselves have been altered.

We sought consent from those individuals who gave us testimonies for EUROCEF to use the latter in Collective Complaint No. 114/2015 lodged against France by EUROCEF on 17 February 2015 concerning unaccompanied foreign minors. Their signed consent forms are enclosed with the documents sent by post so that the European Committee of Social Rights has proof of their authenticity.

The Committee Secretariat has assured us that the confidential testimonies will be brought to the attention of the ECSR experts and no other persons.

1. Article, *La Marseillaise*, 18.12.2015
2. *La Provence*, 20.11. 2015, *Marseille: mineurs, migrants et à la rue*
3. Leaflet of the *Collectif de soutien Migrants Treize* (Bouches-du-Rhône migrant support collective)
4. C. Letter from *département* council, 19.01.2015 (confidential)
5. C. Letter from *département* council, 30.01.2015 (confidential)
6. C. Biography (confidential)
7. C. Reply from Ministry of Justice, Unaccompanied Foreign Minors Unit (confidential)
8. CSSP (Undocumented foreigners support collective), letter on bone tests, 15.11.2015
9. N. Biography (confidential)
10. N. Letter to Youth Protection Directorate (PJJ), 02.04.2014 (confidential)
11. N. Information regarding exclusion from child welfare, 12.02.2014 (confidential)
12. N. Application to Administrative Court to annul decision of *département* council (confidential)
13. N. Letter from CPAM health insurance fund on general health check (confidential)
14. N. Second bone age test and recognition of status as minor (confidential)
15. N. Guardianship order, 16.09.2014 (confidential)
16. N. Social report substantiating application for support for young adult (confidential)
17. N. Termination of *département* council care (confidential)
18. N. Application for young adult's integration contract
19. *Lille Moulins : une trentaine de jeunes migrants, non reconnus comme mineurs, sont sans hébergement* (open letter concerning some 30 homeless young migrants not recognised as minors)

20. *150 à 200 mineurs vivent dans la jungle de Calais: leurs conditions de vie sont indignes* (article concerning living conditions of minors in the “Jungle” in Calais)
21. Sick unaccompanied foreign minor, expelled 09.2015 (confidential)
22. *Cynthia, 17 ans, de la prison au centre de détention* (Médiapart blog)
23. Refusal of care provision for an individual either as a minor or as an adult in Paris (confidential)
24. PAOMIE interviews: young persons’ accounts
25. CPPMIE (Paris unaccompanied foreign minors protection collective), letter to prefect, 10.10. 2015
26. CPPMIE, letter to CASVP (City of Paris Social Welfare Centre)
27. Reply from CASVP to CPPMIE’s letter
28. Interview with unaccompanied foreign minors unit head at *Médecins du Monde*
29. Open letter by FCPE Paris (parents’ association), 09.10.2014
30. Teachers’ demonstration in Paris
31. “MIE: Paris refuse la scolarisation systématique”, *Médiapart*, 09.09.2015
32. Unaccompanied foreign minors, report by Paris City Hall, 13.04.2015
33. RESF newsletter, November 2015
34. Statement by Z. (confidential)
35. Survey of 15 unaccompanied foreign minors in Hauts-de-Seine, RESF, 13.10.2015
36. L., a minor at risk (confidential)
37. “MIE: le 92 remporte la bataille”, *Le Parisien*, 05.02.2015
38. Statement by ZA (confidential)
39. RESF criticises care provision shortcomings for unaccompanied foreign minors
40. Statement by social worker from Val-d’Oise
41. Letter from LDH to *département* council concerning situation of ZA (confidential)
42. Legal aspects relating to bone tests (INFOMIE website)
43. ZA. Termination of child welfare service entitlement as unaccompanied minor (confidential)
44. ZA. Educational support order, 28.10.2015 (confidential)
45. Letter from LDH to ZA’s school (confidential)
46. Leaflet of MMIE 44 (Loire-Atlantique)
47. Letter from MMIE to politicians
48. K. Withdrawal of residence permit by prefecture (confidential)
49. Lodging of complaint for K. (confidential)
50. Letter requesting assistance from the regional council for K (confidential)
51. Letter from K. to OFPRA (confidential)
52. Statement by Ms U from LDH (confidential)
53. “A Nantes, bras de fer autour des ados migrants” (newspaper article)
54. *Nantes, appel à la solidarité par le conseil départemental pour héberger des mineurs étrangers* (call for solidarity by department council concerning housing for unaccompanied foreign minors)
55. “Protection de l’enfance: des examens médicaux pour écarter les MIE” (*La Dépêche*, 07.12.2015)
56. GISTI (migrant information and support group), Arguments against bone age tests

57. Signatories of the call to ban the use of bone age tests
58. RESF: “*Tests d’âge osseux, la procédure Rossignol légalisée*”
59. ADJIE: “*PAOMIE, une moulinette parisienne pour enfants étrangers*” (web article)
60. Open letter by CGT 92 (Hauts-de-Seine)
61. *Alpes-Maritimes: systématisation des tests osseux pour les jeunes migrants* (roll out of bone tests for all unaccompanied foreign minors).
62. **Statement by J., social worker, Val d’Oise (confidential)**
63. **Statement by CPPMIE on minors and young adults (confidential)**
64. **Letter from R. to child welfare service (confidential)**
65. **Letter from facility accommodating R. to child welfare service (confidential)**
66. “*Deux fillettes retenues plusieurs jours en zone d’attente à Roissy*” (press article concerning two girls held in Roissy holding area for several days)
67. Press release by Ombudsman concerning two girls held in Roissy holding area
68. **Statement by the head of a welfare institution (confidential)**
69. “*Le grand déménagement des mineurs isolés étrangers des Yvelines*” (RESF) (web article)