EUROPEAN COMMITTEE OF SOCIAL RIGHTS

1 March 2016

Case Document No. 4

European Committee for Home-based Priority Action for the Child and the Family (EUROCEF) v. France

Complaint no. 114/2015

OBSERVATIONS BY THE DEFENDER OF RIGHTS (DÉFENSEUR DES DROITS)

Registered with the Secretariat on 26 February 2016

French Republic

THE DEFENDER OF RIGHTS (DÉFENSEUR DES DROITS)

Paris, 26 FEB 2016

Decision by the Defender of Rights MDE-MSP 2016-02

The Defender of Rights,

Having regard to Article 71-1 of the Constitution of 4 October 1958;

Having regard to Organic Law No. 2011-333 of 29 March 2011 on the Defender of Rights, including in particular Article 33;

Having regard to Decree No. 2011-904 of 29 July 2011 on the procedure applicable before the Defender of Rights;

Having regard to the European Social Charter, in particular Articles 7 and 17;

Having regard to the European Convention on Human Rights and Fundamental Freedoms;

Having regard to the International Convention on the Rights of the Child;

Acknowledging the collective complaint by the European Committee for Home-based Priority Action for the Child and the Family (EUROCEF) v. France (No. 114/2015), which was ruled admissible on 30 June 2015 by the European Committee of Social Rights concerning the reception of and provision of care to unaccompanied foreign minors in France, and more specifically compliance by the authorities with their obligations under the European Social Charter;

Having received authorisation, on 2 February 2016, from the President of the Committee to file a third party intervention in the proceedings, pursuant to Article 32A of the Committee's Rules of Procedure;

Has decided to submit these observations for consideration by the Committee.

[Signature]

Jacques TOUBOUN

Observations by the Defender of Rights to the European Committee of Social Rights in the case *EUROCEF v. France* (Complaint No. 114/2015)

In its complaint EUROCEF asks the European Committee of Social Rights to rule that France has failed to comply with its obligations under the revised European Social Charter in relation to unaccompanied foreign minors on account of the difficulties associated with the process for assessing their status as minors, shortcomings in initial reception and excessive delays in care provision. According to EUROCEF, the situation in France violates Articles 7, 11, 13, 14, 17, 30, 31 and E of the Charter. These provisions guarantee the right of children and young persons to protection against dangers and to social, legal and economic protection, the right to protection of health, the right to social and medical assistance, the right to protection against poverty and social exclusion, the right to housing and the principle of non-discrimination.

The Defender of Rights is an independent constitutional authority created by Organic Law No. 2011-333 of 29 March 2011. It is charged with the four missions previously vested in the High Authority to Combat Discrimination and Promote Equality (*Haute autorité de lutte contre les discriminations et pour l'égalité*, HALDE), the Children's Defender (*Défenseur des enfants*), the Ombudsman (*Médiateur de la République*) and the National Commission on Security Ethics (*Commission nationale de déontologie de la sécurité*, CNDS):

- Defending rights and freedoms within the ambit of relations with State administrative authorities, local government bodies, public establishments and bodies charged with a public service mission;
- Combating direct or indirect discrimination that is prohibited by law, or under an international commitment duly ratified or approved by France, and promoting equality;
- Defending and promoting the overriding interests and rights of the child, as enshrined in law or in an international commitment ratified or approved by France;
- [Promoting] respect for ethics by individuals engaging in security activity within the territory of the Republic.

On the basis of Rule 32A of the Committee's Rules of Procedure and the aforementioned Organic Law, the Defender of Rights filed a third party intervention with the European Committee of Social Rights in these proceedings, *EUROCEF v. France.* On 2 February 2016, the President of the Committee authorised his office to file observations.

Since being founded, the Defender of Rights (previously the Children's Ombudsman, *Défenseur des enfants*) has regularly received complaints raising questions relating to the reception of and the provision of care and protection to unaccompanied foreign minors in France. The institution intervenes in such cases, on the basis of an adversarial investigation, in different ways: mediation with the competent authorities, the filing of observations with the national courts, the formulation of individual or general recommendations or the submission of an opinion to Parliament.

By these observations, the Defender of Rights wishes to provide clarifications to the European Committee of Social Rights (the Committee) regarding the situation of unaccompanied foreign minors in France and on the applicable legislation and practices in the light of the requirements laid down by the revised European Social Charter – which France ratified in 1999 – and by other international conventions.

I. Preliminary observations

- **The rights of the child under the European Social Charter**

In a number of its decisions, the Committee points out that the European Social Charter (the Charter) guarantees fundamental rights to all children, as fully fledged legal subjects, and that their specific circumstances, which are characterised by vulnerability and limited autonomy, require States to recognise these rights, including in particular: the right to protection against dangers and to social, legal and economic protection, the right to shelter, the right to health and the right to education.[1] The provisions of the Charter supplement the European Convention on Human Rights and reflect the rights laid down in the Convention on the Rights of the Child (CRC). Like the European Court of Human Rights (ECtHR), the Committee considers that these rights must have practical and effective form and must be interpreted in the light of current conditions and other international conventions and also of the interpretations given to them by supervision mechanisms, such as the interpretations of the CRC by the UN Committee on the Rights of the Child.[2]

Paragraph 1 of the Appendix to the Charter sets out the scope of the Charter *ratione personae*. It states that the persons covered by Articles 1 to 17 and 20 to 31 only include "*foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned*". According to this paragraph, numerous unaccompanied foreign minors may be unable to rely on the Charter. This is because, while under French law foreign children are all considered to be lawfully resident in the country,[3] most of them are not nationals of other countries that have signed the Charter. However, according to the now settled case law of the Committee, unaccompanied foreign minors may invoke various provisions of the Charter, including specifically Articles 7, 11, 17 and 31, which are particularly relevant in this case.[4]

The interpretation thus made of the Charter is justified by the vulnerability inherent in the status of unaccompanied foreign minors, which calls for protection by the State. These children must be cared for by the State, and their administrative situation must not under any circumstances deprive them of protection.[5] This case law of the Committee is perfectly in keeping with the requirements of the CRC, including in particular Article 20 on States' obligation to provide protection, which applies to all children who are unaccompanied or separated from their families outside their country of origin and fall within the jurisdiction of the State, without consideration as to their nationality, immigration status or statelessness.[6]

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[1] Articles 7-11, 15-17, 19 and 31.

[2] *Défense des Enfants International (DEI) v. Netherlands, 28 February 2010, §§ 27-28.*

[3] Article L. 311-1 of the Code governing Entry and Residence by Foreign Nationals and the Right to Asylum (CESEDA) stipulates that any foreign national aged over 18 must have a residence permit. A *contrario,* minors are not subject to these provisions.

[4] The Committee considers that the restriction of the scope of the Charter should not be interpreted in such a way as to deprive this category of individuals of protection "*for the most elementary rights*" enshrined by the Charter and violate "*their fundamental rights, such as the right to life or bodily integrity, or again the right to human dignity*".[4] Not to guarantee these rights to these children would "*expose [them] to serious risks for their rights to life, health and psychological and physical integrity, and for the preservation of human dignity*".[4]

[5] *DEI v. Netherlands, § 37.*

[6] UN, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6.

- **The reception of and provision of care to unaccompanied foreign minors: an obligation incumbent upon the State**

Under national law any unaccompanied foreign minor who has been deprived temporarily or definitively of the protection of his or her family may benefit from the provision of care on child protection grounds. Article L. 112-3 of the Social Action and Family Code (CASF) states in particular that "*the provision of protection to children shall also have the aim of preventing the difficulties that may be encountered by minors who have been deprived temporarily or definitively of the protection of their family and of ensuring the provision of care to them*".

Furthermore, Article 375 of the Civil Code provides that the children's court shall have jurisdiction "*if the health, safety or morality of a dependent child is in danger or if the circumstances of his or her education or physical, emotional, intellectual and social development have been seriously compromised".*[7] No young person may thus fall outside the scope of the provisions governing protection for children on the ground of his or her foreign nationality, of the absence of a person with parental authority or of he fact that he or she is close to the age of majority.[8] Finally, according to Articles L. 221-1 et seq CASF, the provision of care to these children on child protection grounds is a matter for the *départements*.

Migrant children who have been temporarily or definitively deprived of family support also enjoy the fundamental rights guaranteed by the Charter, including in particular the right to receive protection and to benefit from measures of educational assistance. Article 17, which is particularly relevant in this case, requires States to take all necessary and appropriate action to ensure protection and special assistance.

According to the Committee, this provision of care must be immediate. It makes it possible to establish the material needs of the child and whether it is necessary to provide medical or psychological care, with the aim of putting in place a support plan for the child.[9] This requirement was recalled by the Committee in the case of *DEI v. Belgium* based on the general UN principles on extreme poverty and human rights.[10] The Committee has already concluded in this regard that a persistent shortcoming in the reception of unaccompanied foreign minors constitutes a failure by the State to comply with its obligations resulting from Articles 7, 11 and 17 of the Charter.[11] In *DEI* v. *Belgium,* the Belgian authorities had failed to take necessary and appropriate action in order to ensure that unaccompanied foreign minors received the care and assistance they required and were protected against negligence, violence or exploitation. The Committee has also objected to the inappropriate accommodation of such minors in hotels. These shortcomings expose children to serious risks to their life and health.

II. Findings and observations of the Defender of Rights concerning the reception of and provision of care to unaccompanied foreign minors

Since being established in 2011, the Defender of Rights has been apprised of numerous situations involving unaccompanied foreign minors living rough throughout the country, who have not been provided with care or granted any measure of protection. In most of these situations, these young persons see their identity, age, history and past circumstances called into question. In other cases they

[7] See also Article L.112-3 CASF.
[8] Defender of Rights, Decision No. 2014-127 of 29 August 2014 referring to Article 388 of the Civil Code after having identified practices seeking to eliminate from child protection arrangements those children who are close to adulthood (annexed).
[9] *DEI v. Belgium,* 11 June 2013, § 81.
[10] Principles presented by the Special Rapporteur on extreme poverty and human rights, 27 September 2012.
[11] This situation may also amount to a breach of Article 3 of the European Convention on Human Rights, which prohibits any inhuman or degrading treatment, ECtHR, *Rahimi v. Greece,* 5 April 2011.

are provided with care by the child welfare services (*services de l'Aide sociale à l'enfance*, ASE); however, this involvement is in some cases limited to reception in a hotel-type facility without any educational support, without any attempt or possibility to enrol the minor in school or vocational training, and without a constructive approach over the long term aimed at developing a life project for the child.

This disturbing finding has led the Defender of Rights to intervene on numerous occasions in proceedings before the national courts, in the capacity of an *amicus curiae,* or with the authorities by making recommendations. This occurred for example in 2012 with a series of fifteen recommendations concerning the reception of and provision of assistance to unaccompanied foreign minors in France.[12]

The Commissioner for Human Rights of the Council of Europe and the UN Committee on the Rights of the Child have made the same findings. In its final observations of 29 January 2016 concerning the implementation of the CRC in France, the Committee on the Rights of the Child voiced its concern at the situation of unaccompanied foreign minors who did not have any access to child protection arrangements and recommended to France that it guarantee sufficient human, technical and financial resources for such arrangements.[13]

The number of unaccompanied foreign minors in the country has not been officially calculated, although is estimated to be between 8,000 and 10,000.[14] The only official figures available are those relating to unaccompanied foreign minors taken into care between 31 May 2013 and 31 December 2014: 6,158 young persons in 96 metropolitan *départements*.[15]

No data are available concerning the number of young persons who claim to be unaccompanied minors but who have not been provided with care by the child welfare services, either because they are considered to be adults or because no request for protection has been made in relation to them.[16]

- **A reception scheme dispersed throughout national territory and under pressure**

As is acknowledged by the General Inspectorates in their report of July 2014,[17] the growing numbers of incoming unaccompanied foreign minors in France have been a source of difficulty for certain *départements* (responsible for child protection) which are significantly affected by the influx of young migrants (Paris region, northern France, Pas-de-Calais, etc.), and this situation made it necessary for the State to intervene in order to harmonise assessment practices for minors and to ensure that care could be provided to them by organising their distribution throughout the country, in view of the saturation of certain reception and care facilities run by the child welfare services.

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[12] Defender of Rights, Decision No. 2012-179 (annexed).

[13] Committee on the Rights of the Child, Concluding Observations, CRC/C/FRA/CO/5, formulated in relation to the examination of the 5th periodic report of France. The Office of the Defender of Rights has filed a report containing its assessment with the Committee along with supplementary observations: http://www.defenseurdesdroits.fr/fr/presse/communiques-de-presse/audition-de-la-france-par-le-comite-des-droits-de-lenfant-de-lonucomite-des-droits-de-lenfant-de-lonu. During his visit in September 2014, the Commissioner was able to establish the presence of unaccompanied minors on the streets without shelter, along with the saturation of accommodation facilities for these children. He considers this situation to be unacceptable in light of Article 31 of the Charter. According to him, each child must be considered as an individual and his or her specific situation and own opinion should be taken into account at every stage of the process, from the age assessment procedure to the provision of care (Commissioner for Human Rights of the Council of Europe, Report by N. Muižnieks following his visit to France from 22 to 26 September 2014, § 90).

[14] Eurostat 2014. 8,000 according to the Ministry of Justice circular of 31 May 2013.

[15] http://www.justice.gouv.fr/art_pix/mie effectifs.pdf.

[16] This is the position for numerous unaccompanied minors living in shanty towns such as those in Calais or Grande-Synthe.

[17] IGPJ, IGAS, IGA, Report, Assessment of the arrangements applicable to unaccompanied foreign minors put in place by the protocol and circular of 3 May 2013, July 2014.

On 31 May 2013 the Minister of Justice therefore issued a circular concerning the arrangements for receiving and assessing unaccompanied foreign minors in order to offset these difficulties.[18] This document represents a step forward in dealing with situations involving unaccompanied foreign minors. However, in addition to the fact that the circular is not applicable to the overseas territories, even though they are affected by this issue, significant budgetary constraints and numerous difficulties subsist.

This circular states that any unaccompanied foreign young person who states that he or she is a minor must benefit from "shelter" for the period of his or her assessment, based on the presumption that the individual is a child. This provision of shelter for five days falls under the responsibility of the *départements* in accordance with the ordinary law on child protection, which provides that, in urgent situations, the *département* may provisionally accommodate a child in danger if the legal representative of the child is unable to give his/her approval. However, the cost of such accommodation is reimbursed by the State on a lump-sum basis. If the young person is assessed as a minor prior to expiry of the five-day period, the *département* will refer the case to the public prosecutor, who will issue a provisional placement order in a *département* designated by the Ministry of Justice. The dispatch of the minor to the *département* of destination is a matter for the initial *département* of arrival.

If the assessment cannot be completed within the five-day period, the *département* must refer the case to the public prosecutor, who will provisionally place the young person within the territory in which he or she came forward, for the time necessary in order to complete the assessment. After eight days have passed, the public prosecutor must apply to the children's court. If the young person is assessed as a minor, the public prosecutor is required to turn to the children's court concerning the issue of placement in accordance with the principle stated above. If status as a minor is confirmed, the decision on allocation is a matter for the children's court.

Since 2013, the implementation of the circular has been a source of significant tension between the government and various *départements*. A number of *départements* have taken decisions imposing a time limit on the accommodation of unaccompanied minors, which have in the end been withdrawn or annulled. In parallel, following an appeal filed by nine *départements* against this circular, the *Conseil d'Etat* partly annulled it on 31 May 2013.[19] This decision again opened up a period of uncertainty, even though the government put the arrangements on a legal footing, in order to safeguard them over the longer term, by including them in draft legislation currently being debated in Parliament.[20]

Since early 2015 the implementation of the national allocation strategy has broken down. In line with the General Inspectorates and civil society, the Defender of Rights has noted that the *départements* follow highly disparate practices in their implementation of the circular and in their use of the tools for assessing young persons provided for in this text, a situation which has undermined the overall quality of the arrangements and the equal treatment of these young persons.[21] Some public prosecutors no longer seek instructions from the national unit established at the Directorate for Legal Protection of Young Persons, which is responsible for keeping up-to-date data concerning placements made in each *département*; this has resulted in a very unclear situation at national level. It is now apparent that certain *départements'* facilities have no free capacity due to the fact that it is at present impossible to apply the principle of national distribution, even though there has not been a significant increase in the number of unaccompanied foreign minors.

[18] Circular of 31 May 2013 concerning the arrangements for receiving and assessing unaccompanied foreign minors: national system for shelter, evaluation and allocation, NOR: JUSF1314192C.
[19] *Conseil d'Etat*, decisions Nos. 371415, 371730 and 373356 of 30 January 2015.
[20] Draft bill on child protection – Article 22-*quater*, soon to be brought before the National Assembly for final reading.
[21] IGPJ, IGAS, IGA, Assessment of the arrangements applicable to unaccompanied foreign minors put in place by the protocol and circular of 31 May 2013, July 2014.

Finally, contrary to the requirements of the circular, in certain *départements* the provision of shelter does not take place at the time when the young person comes forward and claims to be a minor, but only from the time when the young person is assessed by the authorities to be a minor. In addition, as will be pointed out below, the conditions under which shelter is provided to young persons pending a definitive decision on their request for protection may fall far short of minimum standards of socio-educational care or even constitute a cause for concern.

- **Inadequate access to rights and justice**

The 2013 circular and the protocol say nothing about the provision of information to young persons in relation to their rights.[22] The General Inspectorates made the same observation, noting that most decisions taken by *départements* to terminate provisional accommodation without reporting the young person to the public prosecutor are neither supported by reasons nor notified.[23] They also note that decisions to drop a case based on a decision that educational assistance need not be given to a young person who is considered to be adult are not systematically formalised in writing and submitted to the *département* with a view to their notification to the young person concerned, whereas these young persons are able to apply directly to the children's court to request that they be placed under judicial protection.

Yet, unaccompanied foreign minors must be informed of their rights, of the legal remedies available to them and of the decisions taken in relation to them in a language they understand and in a manner that is suited to their level of maturity and their degree of comprehension, possibly with the assistance of an interpreter throughout all stages of the procedure. They must also receive legal assistance from a person who is empowered to defend their interests and is able to duly contest any decisions that are detrimental to them.[24] The General Inspectorates rightly note that the notification of a decision concerning non-eligibility has significant consequences, in particular in relation to access to emergency accommodation for adults, regarding which a young person must prove that he or she is not a minor.

In a decision of 29 August 2014 the Defender of Rights recommended that any young person who is assessed to be an adult should be provided with a copy of his or her assessment along with a decision of non-eligibility to benefit from child welfare services, which should mention the remedies available, along with an explanatory document on access to rights.[25] In this regard, the inter-ministerial circular of 25 January 2016 on the mobilisation of State services to assist *département* councils in relation to minors who have been temporarily or definitively deprived of the protection of their family or of persons acting as such,[26] which reiterates and clarifies the contents of the circular of 31 May 2013, indicates that the young person must be provided with a document certifying the assessment in the event that he or she is found to be an adult. However, it says nothing about the information that must be provided to them regarding their access to rights.

Furthermore, the current case law is not sufficiently clear regarding the legal standing of young persons and the forms of appeal available to them in the event that their status as a child is disputed by the authorities. While the child welfare services may consider a young person to be an adult, the latter may

[22] See also Defender of Rights, Decision No. 2014-127 (annexed).
[23] IGPJ, IGAS, IGA, Report of July 2014, cited above, p.46.
[24] CRC, European Union Directives, United Nations Guidelines for the Alternative Care of Children, Council of Europe Convention on Action against Trafficking in Human Beings; UN, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, § 25; see also Commissioner for Human Rights of the Council of Europe, Report by N. Muižnieks following his visit to France from 22 to 26 September 2014.
[25] Defender of Rights, Decision No. 2014-127 (annexed).
[26] Inter-ministerial circular No. NOR: JUSF1602101C.

be considered not to have standing to bring a court action.[27] Whereas the administrative courts may rule that they lack competence to examine a *département's* decision to refuse access to the child welfare services on the ground that the minor has the option of applying to the children's court,[28] the latter court may also rule that it lacks jurisdiction.[29] Such a lack of legal certainty, in addition to the length of the proceedings, is incompatible with the requirements laid down by the CRC and is detrimental to the interests of the child, whose exposure to danger calls for an urgent response.

In view of these extremely disturbing findings, the Defender of Rights has recently issued general recommendations concerning access to rights and to justice for unaccompanied foreign minors, setting out a number of principles and guarantees that apply to all parties to proceedings, irrespective of their circumstances in terms of their right of residence and irrespective of the age ultimately established by the courts seized.[30]

- **Difficulties encountered by unaccompanied foreign minors at different stages in the process**

Socio-educational assessment of the minor

Where status as a minor and the existence of a danger for the child have been established, the State is under an obligation to provide care on child protection grounds. The socio-educational assessment of the minor prior to the provision of care is thus decisive. It cannot be limited to an assessment of his or her age; it must also enable establishment of his or her needs in terms of protection and the urgency of care provision. This assessment must lead to determination of the degree of isolation of a young foreign national and the specific aspects of vulnerability that call for particular health-related, psycho-social, material or other protection, including issues relating to domestic violence, trafficking or any trauma suffered. This assessment process must be informed by the child's best interests – as enshrined in Article 3(1) of the CRC[31] – and must be conducted in a caring manner by qualified professionals, social workers or specialist educators who have received supplementary training regarding issues related to unaccompanied foreign minors and who have a command of the interview techniques that are appropriate to the age and sex of the child, in the presence where appropriate of an interpreter.[32] The Committee on the Rights of the Child also made recommendations along these lines on 29 January.[33]

Although, today, the unaccompanied status of a child is not sufficient in order to justify a child protection measure, it is one of the at-risk criteria that must trigger a supplementary assessment of the young person's circumstances and his or her vulnerability. The Defender of Rights has, however, noted on various occasions that the absence of unaccompanied status broadly construed will result in the conclusion of the assessment, without any examination of the young person's living conditions within the territory, the quality of the bonds with the person or persons with whom a "relationship" exists or the possibility of securing his or her status within the country in relation to this person by placing him or her, for example, with a trusted third party or by ordering the transfer of parental authority.[34]

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[27] *Conseil d'Etat*, decision No. 350458 of 30 December 2011.
[28] *Conseil d'Etat*, decision No. 386769 of 1 July 2015.
[29] See regarding this matter, Dalloz, AJ pénal, les mineurs isolés étrangers devant le Tribunal pour enfants de Paris, January 2016.
[30] Defender of Rights, decision No. 2016-052 of 25 February 2016 (annexed).
[31] UN, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, § 31.
[32] *Ibid*; see also Defender of Rights, Decision 2014-127.
[33] UN, Committee on the Rights of the Child, Concluding Observations, CRC/C/FRA/CO/5, formulated in relation to the examination of the 5th periodic report of France.
[34] See Defender of Rights, Decision No. 2014-127.

*The Inspectorates General make the same finding in their report: "*The assessment indeed has the objective of assessing the situation of danger or the risk of danger to the young person, in which unaccompanied status, considered as the lack of a legal representative in the country, is only one contributing element. Moreover, the lack of a legal representative may without doubt render the young person vulnerable, but does not necessarily imply a situation of danger". *Since the 2013 circular does not at any point refer to an assessment of a situation of danger for the young person, but only to status as a minor and unaccompanied status,*[35] *it creates "c*onfusion between unaccompanied status, understood as the lack of a legal representative in the country, and danger or the risk of danger, which must be assessed in an immediate and definite manner. This leads to a presumption of danger as a result of the sole fact of being unaccompanied. However, the danger lies in the individual circumstances of the young person, and results from a variety of indicators, of which unaccompanied status is part, in the same way as the lack of a fixed abode and the provision of educational assistance.*"*

The Defender of Rights has noted that in several *départements* unaccompanied foreign minors are referred to the police prior to any socio-educational assessment.[36] The emphasis is then often placed on their administrative situation before taking any account of their vulnerability. An interview with the police may also prove to be particularly destabilising.

A full assessment by the socio-educational services of the circumstances of a foreign minor who declares that he or she is a child must take place prior to any referral to the police in order to establish the individual's identity and status as a minor.[37]

In some cases, this assessment, which is required under the 2013 circular and also by the inter-ministerial circular of 25 January 2016, is not even carried out. Young persons questioned on the streets or who voluntarily present themselves at a police station to request assistance are not subject to any socio-educational assessment. This is borne out by the referrals made by associations present in the administrative holding centres (*centres de rétention administrative*, CRA). Indeed, most of these young persons are subject to a bone examination at the request of the public prosecutor along with a police interview and are thereafter placed in a CRA, having been found to be adults and considered to be in breach of the immigration rules applicable to foreign nationals in France.

Assessment of status as a minor

In the event of doubt regarding status as a minor, the 2013 circular, whose terms are reproduced in this regard by the inter-ministerial circular of 25 January 2016, provides for a procedure to verify the declarations made by the minor. The assessment of status as a minor must be based on a body of evidence: interviews conducted with the child by a qualified staff member within the context of a multi-disciplinary approach and verification of the authenticity of the civil status documents produced on the basis of Article 47 of the Civil Code.[38] The 2013 circular underlined that, where their authenticity was not disputed, the fact that these documents belonged to the minor could not be called into question. However, the circular of 25 January 2016 now states "*where the person concerned presents a*

[35] See for example Annex 1 to the circular: assessment protocol.
[36] In particular to the Airport and Border Police.
[37] Defender of Rights, Decision No. 2012-179. In a decision setting out observations to an administrative court, the Defender of Rights pointed out that police questioning cannot replace a socio-educational assessment (Decision 2015-157).
[38] *Pursuant to Article 47, "Any civil status record for a French national or a foreign national issued in a foreign country that has been drawn up in the ordinary manner used in that country shall be deemed to be genuine, unless other available instruments or documents, external data or information obtained from the record itself show, possibly after all appropriate checks, that the document is unlawful or forged or that the information declared therein is not accurate."*

civil status document, for the document to be deemed valid it must be possible to attribute it to him/her without objection". Since this provision relates to civil status documents which, by definition, do not carry a photograph in most countries from around the world, including France, it constitutes a retrograde step by the French authorities, which is particularly disturbing.

The assessment of status as a minor may have major consequences for the minor. The Defender of Rights notes that different practices are followed throughout the country, in breach of the requirements laid down by the circulars mentioned above and of Article 47 of the Civil Code.

As stated in the circulars dating from 2013 and 2016, Article 47 establishes the presumption that the civil status documents produced by the minor are authentic. If there is any doubt concerning the authenticity of these documents, it may only be rebutted by proving that they are unlawful, forged or that the information stated in the document is not true. In order to do so, the authorities must carry out a check with the foreign authority in accordance with the conditions provided for by law and with certain safeguards:[39] informing the minor by any possible means of the activation of this procedure and enabling him or her – according to the adversarial principle – to provide any supplementary information in support of his or her declarations.[40]

The Defender of Rights has thus been able to observe that numerous unaccompanied foreign minors have been declared to be adults even though they are in possession of civil status documents certifying them to be minors. Others have been excluded from the child protection arrangements after having been subject to bone age examinations without giving prior consideration to the civil status documents produced or without their validity having been disputed. On several occasions, the Defender of Rights has been informed of situations in which the courts have determined the date of birth of a young person with reference to the medical examination carried out, even if an authentic civil status document has been presented.

In addition, the case law concerning Article 47 cited above is not sufficiently clear and creates legal uncertainty: differences can be noted in its application within the same court, between different courts (children's courts, guardianship courts), between courts dealing with the merits of a case and between the administrative and judicial systems. The same finding has been made by the General Inspectorates; the examples cited in this regard are instructive.[41]

The Defender of Rights notes that, in numerous situations, unaccompanied foreign minors are subject to medical examinations in order to determine their age. These examinations most often involve bone X-rays, which may be supplemented by dental panoramic X-rays, or even by collarbone scans and examinations of external genital organs, which may be highly traumatic. The Defender of Rights has identified three problems associated with such medical examinations: the very principle of recourse to medical examinations, the manner of implementation of these examinations and the use made of the results.

Pursuant to the 2013 circular and the protocol concluded between the State and the *départements*, the assessment of the minor status of young migrants must be based on a "*body of evidence*", a concept which is reiterated in the circular of 25 January 2016: on the results of the socio-educational assessment of the person concerned and the verification of the authenticity of the civil status documents presented. It is only in the event that there is persistent doubt that a medical examination to

[39] Law No. 2000-321 of 12 April 2000.
[40] Amiens Court of Appeal, judgment No. 14/03740 of 5 February 2015. See also Defender of Rights, decision No. 2014-127.
[41] IGPJ, IGAS, IGA, Assessment of the arrangements applicable to unaccompanied foreign minors put in place by the protocol and circular of 31 May 2013, report from July 2014, p. 60.

determine age may be carried out. This must therefore only be a last resort. This requirement is justified firstly by the need to use instruments for assessing age that are the least invasive possible for a minor in a situation of extreme fragility and vulnerability, and secondly by the proven unreliability of such a medical examination.

Both in France and internationally, recourse to this kind of medical examination is at present highly controversial due to its unreliability and the violation of the child's dignity and physical integrity.[42] In this regard, the Committee on the Rights of the Child has requested that this assessment of minor status be conducted, out of concern for the security of the child, in a manner that is appropriate for his or her status and sex and fairly, in order to avoid any risk of harm to his or her physical integrity; this assessment must in addition be conducted with full respect for human dignity and, in the event of persistent uncertainty, the person concerned must be allowed the benefit of the doubt.[43]

The Defender of Rights has recently become aware of highly questionable practices, whereby minors are subject to several bone examinations within the *départements* where they are received and subsequently oriented, and with conflicting results, as age gaps as high as 13/14 years can be noted. The Defender of Rights has also noted that it is not always practical to conduct these examinations within a forensic unit, and that hospitals or radiology clinics that do not apply a multi-disciplinary approach may be used. Sometimes no interpreter is present. These practices thus give rise to considerable reservations.

The Defender of Rights considers that the use of bone tests to determine the age of unaccompanied foreign minors is unsuitable, ineffective and violates their dignity and their physical integrity. Recourse to this type of examination should therefore be prohibited. The Defender of Rights regrets that the draft bill on child protection currently pending adoption in Parliament will provide a legal basis for such examinations, which has hitherto been lacking. This bill moreover leaves considerable scope for subjective assessment and cannot in any way constitute an improvement from the viewpoint of respect for the children's dignity.[44]

Finally, it must be stressed, as noted by the General Inspectorates, that in several situations that have come to the attention of the Defender of Rights, the circumstances of unaccompanied minors allocated to a *département* pursuant to the 2013 circular have been reassessed by the *département* of destination, often to their detriment. Although these practices appear to be marginal, the General Inspectorates have been unable to gauge their scale, given the lack of available data at a national level. In any case these reassessments are not provided for under the 2013 circular and, according to the 2016 circular, are expressly limited "*to situations in which the quality of the first assessment is manifestly inadequate and does not enable it to be used as the basis for a decision*".

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[42] Commissioner for Human Rights of the Council of Europe, "*Methods for assessing the age of migrant children must be improved*", 2011; UN, Special Rapporteur on the sale of children, child prostitution and child pornography, Mission in France, A/HRC/19/63/Add.2; European Union, Action Plan for unaccompanied minors (2010-2014). See also Opinion No. 88 of 23 June 2005 of the National Advisory Committee on Ethics; 2007 report of the National Academy of Medicine; Opinion of the Supreme Council for Public Health (HCSP) on the assessment of the status as a child of a young unaccompanied foreign national of 23 January 2014 (extracts: "*the determination of bone age cannot enable the exact age of the young person to be determined where he or she is close to the age of majority"; "a dental examination does not enable the adulthood of an individual to be determined"; "the determination of developmental age with an examination of secondary sexual characteristics, breasts and genital organs, is not ethically acceptable".* See also Concluding Observations of the Committee on the Rights of the Child of 29 January 2016, CRC/C/FRA/CO/5.

[43] UN, General Comment No. 31 on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, § 31.

[44] Draft bill on child protection (cited above), Article 21-*ter.*

Conditions of provisional accommodation and the time-scale for assessments

The Defender of Rights has been informed of difficulties relating to the accommodation conditions offered to young persons pending a definitive decision on their request for protection. In some cases, worrying material conditions of care have been noted.[45] The socio-educational assessments have not been designed in order to seek and reveal signs of vulnerability. It is necessary to provide immediate shelter to young girls along with younger minors and/or those suffering from psychological problems or medical conditions who have undergone particularly long and/or painful migratory journeys.

Social workers must be able to perform their role under acceptable circumstances and to swiftly identify any indications of vulnerability. The provision of suitable accommodation is even more important, as this initial reception phase requires the young person's confidence to be gained in order to be able to carry out a quality socio-educational assessment.

The Defender of Rights is frequently informed of cases of complete failure to provide care to young persons pending a decision on their eligibility for child protection following their assessment,[46] or even of refusals to implement decisions concerning their placement taken by the judicial authorities. These situations are often a result of overcrowding of the facilities due in particular to refusals by *départements* to receive young persons allocated in accordance with the 2013 circular.

It should lastly be pointed out that, on a number of occasions, the Defender of Rights has been informed of criminal proceedings resulting from procedures for assessing foreign minors, who have been prosecuted for fraudulent possession of forged administrative documents or for having made false or incomplete declarations in order to induce a public person to award benefits or provide a service, payment or undue advantage. Some young persons have been sentenced to pay significant fines or to serve prison sentences. Others have been released on the ground that proof of their status as an adult has not been established.

The quality of the care provided to unaccompanied foreign minors

Through the processing of individual complaints, the Defender of Rights has established that the quality of the care provided to a child varies from one *département* to another. In some cases, this care is provided under unsatisfactory conditions.

Several types of assistance appear to be proposed to children, depending upon the *département*, the age, the profile and history of the minor concerned, or even in some cases the child welfare case officer designated. Some children are entrusted to a foster family, a socio-educational establishment or a vocational training centre. A majority of them benefit from socio-educational training and support.

However, the Defender of Rights has noted that numerous young persons are accommodated in hotels even though their profile should prohibit this; this applies to young persons with mental problems or psychological weaknesses or to young girls.[47] The provision of such accommodation is inappropriate. This finding is also made by the General Inspectorates, in particular in *départements* where reception capacity is saturated.[48] However, as stressed by the Committee, the provision of shelter must be immediate, in particular for young girls and the youngest children and/or those suffering from psychological problems or medical conditions, and reception and the provision of care must be suited to and respectful of the children's dignity. Accordingly, recourse to hotel accommodation should be

[45] See in this regard Defender of Rights decision No. 2014-127.
[46] See for example Defender of Rights decision 2014-127.
[47] *Ibid.*
[48] IGPJ, IGAS, IGA, Assessment of the arrangements applicable to unaccompanied foreign minors put in place by the protocol and circular of 31 May 2013, report from July 2014, p. 25.

excluded. In *DEI v. Belgium,* the Committee found that this type of care provision was inappropriate and that the Belgian Government had not taken sufficient steps to ensure that minors received the care and assistance which they required.[49] This is also the position of the Commissioner for Human Rights of the Council of Europe.[50]

Some young persons may benefit from daytime care and socio-educational support provided by specialist associations, which offer global assistance to minors, encompassing administrative and socio-educational support and an assessment of aptitude, language knowledge, schooling and professional skills, while also recommending a suitable socio-educational placement; however, other young persons only benefit from administrative support without educational assistance, which is often the case for older minors (aged 17). For a number of them, educational support proves to be very brief and limited. They may also be supported by associations which help them to find a school or vocational training place and attempt to fill the socio-educational gap. However, this assistance in some cases creates conflicting loyalties for the young persons vis-à-vis the child welfare services.

In some cases, the placement decided on by the child welfare services is unsuitable. The young persons are not sufficiently listened to and supported, which puts the professionals who are in daily contact with them in a difficult educational position.

Finally, the Defender of Rights notes that the assistance provided to young persons in relation to legal and administrative issues is inadequate, often due to a lack of training for social workers.[51]

The provision of care by child protection authorities must nonetheless enable the child to construct a life project that can guarantee him or her a better future. As the Committee of Ministers of the Council of Europe has recommended, this project must be based on a global, integrated and multi-disciplinary approach and must take account of the specific circumstances of the child, including in particular aspects such as his or her profile, migratory journey, family environment and expectations.[52] Within the context of this life project, States are charged with offering a protective framework that can enable the objectives pursued to be realised and guarantee access to appropriate accommodation; specific mentoring by duly trained staff; a guardian and/or legal representative with specific training; clear and complete information concerning his or her situation in a language that he or she understands; basic services, including in particular food, necessary medical care and education.

However, although French law has introduced a "*project for children*", provided for by the Law of 5 March 2007, which must be drawn up by the services responsible for providing educational assistance, the *départements* tend to take the view that since the project cannot be worked out with the parents (due to their absence or death), it need not be drawn up for unaccompanied foreign minors.

Finally, the problem of unaccompanied children who have fallen victim to exploitation for criminal purposes has become so widespread that the Defender of Rights notes that the dimension "*trafficking and exploitation*", and hence the protection of victims, has largely given way to a repressive approach regarding these young persons. This makes it essential to devise suitable arrangements, taking account of the strength of "networks" and of membership of a given community, in terms of both child protection and a sentencing adjustment and management strategy. However, it may still be considered today that France has not equipped itself with an effective system for protecting minors who have fallen victim to human trafficking, even though a considerable decrease in the age of the victims can be noted.

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[49] *DEI v. Belgium,* 69/2001, 23 October 2012, § 82.
[50] Commissioner for Human Rights of the Council of Europe, Report by N. Muižnieks following his visit to France from 22 to 26 September 2014, § 91.
[51] UN, General Comment No. 6, cited above, §§ 95-97.
[52] Recommendation CM/Rec(2007)9 of the Committee of Ministers to member States on life projects for unaccompanied migrant minors.

- **Access to education and vocational training**

The right to education and equality of access to schooling for unaccompanied foreign minors are fundamental rights guaranteed under both national law and international law.[53] Pursuant to Article 17 of the Charter, France has committed itself to taking all appropriate and necessary measures designed to ensure that children and adolescents receive free primary and secondary schooling and to promote regular school attendance. The Committee takes the view that access to education is of crucial importance for the life and development of every child, irrespective of his or her administrative status. To refuse this access to him or her will render the child even more vulnerable.[54] Accordingly, like other States, France must ensure that all migrant children have effective access to education in the same manner as any other child. Although this article does not entail an obligation to ensure mandatory schooling up to age 18, the Committee nevertheless considers that schooling must be mandatory for a reasonable period, generally until the minimum age of eligibility for employment.

National law provides that academic centres for schooling recently arrived non-native speakers and children born to itinerant and traveller families (CASNAV) shall be responsible for the provision of educational support, firstly to pupils who have recently arrived in France and do not have a sufficient command of the French language or academic subjects and secondly to children born to travellers. The CASNAV and the centres for information and guidance receive young persons with the aim of assessing their level and proposing a place for them in upper and lower secondary schools.

The complaints investigated by the Defender of Rights bear testament to the will of young migrants to commit themselves to schooling or vocational training. However, their schooling may prove difficult.[55] This is because it is no longer mandatory after age 16 and will depend upon available spaces and offers of training. However, the schooling of young persons over the age of 16 is an essential aspect of work on their life project. Their future in the country and their right to stay as adults will depend upon their schooling or their skills training.[56]

The child protection services must regard access to education and vocational training as an imperative for these young persons, although they currently appear little inclined to do so, in particular for adolescents close to adulthood. However, innovative and particularly interesting initiatives have in some cases been developed at the initiative of associations or certain particularly proactive *départements*, which have put in place strategies of integration through apprenticeships in particular, creating partner networks (child welfare services/prefecture/apprentices training centres) under ordinary law, which engage the young persons in a process of vocational integration.

[53] See, in this connection, Article 13 of the Preamble to the Constitution, the Education Code (L.111-1, 122-1, 131-1), the circulars issued in order to guarantee the registration and schooling of pupils of foreign nationality at primary and secondary levels, without distinction, and Article 28 CRC (General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6), Article 2 of Protocol No. 1 to the European Convention on Human Rights (*Timichev v. Russia,* nos. 55762/00 and 55974/00, ECtHR 2005-XII).
[54] *DEI v. Netherlands,* 20 October 2009; conclusions, Turkey, 2011.
[55] In a decision of 29 August 2014 (No. 2014-127), the Defender of Rights noted that numerous young persons over the age of sixteen under the care of the child welfare services had not received schooling even though they had been allocated to a secondary school. These situations were apparently due to a refusal by the child welfare services to enrol the young persons.
[56] See in this regard Article 313-15 CESEDA.

- **Access to healthcare**

According to Article 11 of the Charter, states must guarantee unaccompanied foreign minors the right to access healthcare. This right is also guaranteed under Articles 24 and 39 CRC.

The Defender of Rights is seldom asked to deal with the issue of access to healthcare by unaccompanied foreign minors. The General Inspectorates examined this question in their report of July 2014, several extracts of which can usefully be transcribed here:

"Most young persons received in the département *councils do not present with particular health problems, even though serious illnesses have in some cases been identified. (...) The data collected by COMEDE*[57] *or in certain healthcare centres receiving UFM reveal specific health problems in this population group, such as psycho-traumas and infectious diseases contracted in the country of origin or during the migratory journey.*

As regards the specific healthcare requirements of UFM, the care and assistance provided to this population group are one of the constituent elements of their reception and care, which is governed by a multi-disciplinary approach requiring satisfactory conditions of communication (interpreter). The protocol annexed to the circular of 31 May 2013 stipulates that questions concerning the health of young persons should be raised with them during their assessment, without however specifying the nature of these questions (...).

Once the young person has been transferred to the child welfare services, more long-term initiatives should be put in place: screening and treatment of infectious diseases (HIV, tuberculosis, viral hepatitis,...), up-to-date vaccination, screening and treatment of non-infectious diseases not diagnosed in the country of origin (diabetes..,) or contracted during the migratory journey (psycho-traumatic syndromes). Particular attention should also be paid to young persons not admitted to the child welfare services who have health problems (access to care). These arrangements have already been put in place in the départements *that are used to hosting this population group. In any case, to take on board the specific healthcare requirements of UFM there is a need for awareness-raising among the individuals who are responsible for assessing and providing care to them (identification, appropriate conducts, access to care...) and for partnerships with treatment and prevention facilities, along with links with the healthcare authorities (regional healthcare agencies – ARS)".*

In this connection, based on the findings made by the General Inspectorates, the circular of 25 January 2016 stresses the importance of health check-ups for these children and states that they "*must be covered by an approach that intervenes as early as possible and covers their health to the fullest extent possible, taking account both of the specific circumstances of their migratory journey (physical and psychological trauma, abuse, human trafficking...) and of their particular needs attendant to their status as children".*

Based on individual complaints and exchanges with associations, the Defender of Rights in effect notes that the minors taken into care are subject to socio-educational requirements involving time-limits for completion and success, which affect their continuing residence within France. This situation can give rise to psychological suffering, which is not sufficiently taken into account by social workers, who are focused on other issues. This suffering is in addition to the traumas caused by exile, separation from family members, the situation in their country of origin (family drama, war, extreme poverty, ...), events

[57] Medical Committee for Exiles.

occurring during the journey (violence, anxiety, ...), isolation in a country that is foreign to them, the loss of their bearings and cultural differences. The traumas suffered by many child migrants call for careful consideration and special attention in relation to their care and re-adaptation. Mental health care must be suitable and qualified psycho-social counsellors must be made available.[58]

- **Access to protection on the ground of asylum**

The law on asylum was reformed in July 2015 although no specific procedure was put in place for minors.[59]

The Defender of Rights notes that unaccompanied foreign minors encounter difficulties in applying for asylum. When an application is made, the procedure provides for referral to the public prosecutor, who must ensure that the applicant is a minor with no legal representative in the country and must designate an *ad hoc* guardian (*administrateur ad hoc*, AAH)[60] in order to assist him/her with the formalities.[61] In the opinion concerning the reform of asylum law submitted to Parliament, the Defender of Rights pointed to certain shortcomings which may arise when appointing guardians, including in particular their lack of knowledge of the procedures and the slow pace of the process.[62]

The law provides that the asylum application form must be transmitted to the legal representative or the AAH, as soon as the latter has been appointed. Many prefectures interpret this as prohibiting them from providing the form to the child unless the AAH or the legal representative is present. However, if his or her status as a minor is disputed by the judicial authorities and if these authorities, which are responsible for appointing an AAH, refuse to do so, the minor cannot have access to the asylum procedure other than by declaring himself or herself to be an adult, which many of them are understandably little inclined to do. In the rare cases where a minor is permitted to file his or her application with the prefecture without an AAH, the French Office for the Protection of Refugees and Stateless Persons (*Office français de protection des réfugiés et apatrides*, OFPRA) subsequently indicates that it is unable to process the file without this representative.

The Defender of Rights has recently been informed of the situation of unaccompanied minors in the Calais shanty town, who are faced with administrative obstacles which prevent them from filing an asylum application with a view to seeking the application of the provisions of the Dublin III Regulation (604/2013/EU) on family reunification. This was the case of five children concerned by proceedings before the Lille Administrative Court, for whom the prefecture had refused to request the public prosecutor to appoint an *ad hoc* guardian. They were then forced to continue to live in the shanty town in degrading conditions. The authorities intervened after the request had been registered in order, firstly, to permit access by these children to the asylum procedure and, secondly, to enable them to benefit from child protection arrangements.[63]

On 29 January, the Committee on the Rights of the Child expressed its concern at the precarious nature of the situation of children in Calais and Grande-Synthe, the refusal by the authorities to count the children and the inadequacy of the sites and services available, in order to provide them with suitable and appropriate protection.[64] In a report dating from October 2015, after completing an

[58] See in this regard General Comment No. 6 of the Committee on the Rights of the Child, §§ 46-49.
[59] Law No. 2015-925 of 29 July 2015 on the reform of the right to asylum.
[60] Article L.741-3 CESEDA.
[61] CIV/01/05.
[62] Defender of Rights, Opinion No. 15-05 and 14-03.
[63] Lille Administrative Court, order No. 1600875 of 11 February 2016.
[64] CRC/C/FRA/CO/5, 29 January 2016. See also *Conseil d'Etat*, order No. 394540, 394568 of 23 November 2015 whereby the interim relief judge instructed the prefect of Pas-de-Calais to carry out a census within 48 hours of unaccompanied minors in a situation of distress and to liaise with the *département* of Pas-de-Calais with a view to their placement.

adversarial investigation and visiting the main living areas, the Defender of Rights made various findings and formulated several recommendations, in particular concerning the alarming situation of unaccompanied minors.[65] Following a request by the Defender of Rights, the Children's Ombudsman travelled to Calais on 22 February 2016 in order to take stock at first hand of the circumstances of children in Calais, in the context of an evacuation ordered by the prefecture. She immediately made known her continuing concerns and recommended the establishment of a facility to accommodate minors in Calais itself.

Minors must be supported when considering their life project and, as the case may be, in relation to their asylum application. Once asylum applications are registered, the material reception conditions (namely accommodation, food, clothing and a subsistence allowance) must be provided to the asylum seeker. The authorities conduct an individual interview in order to assess the needs of the asylum seeker, taking particular account of the specific circumstances of vulnerable persons, especially unaccompanied minors.[66] The law stipulates that this examination of vulnerability in no way prejudges the assessment to be made by OFPRA, which will itself also carry out such an examination. The legislation is, however, silent on the question of the allocation of unaccompanied minors and of possible referrals to the *département* and the judicial authorities.

Although the authorities now take vulnerability into account when examining asylum applications, the child may nevertheless be subject to an expedited procedure in three situations: where his or her country of origin is deemed safe; where a review request is admissible; where his or her presence poses a serious threat to public order, public safety or State security. However, no asylum application from a minor should be subject to an expedited procedure, but should conversely be subject to a particularly detailed examination linked with his or her individual circumstances. This is one of the requirements laid down by Article 22 CRC. The Committee on the Rights of the Child indeed requires States to afford special, priority treatment and specific guarantees to child asylum seekers: it recommends in particular that the assessment process involve "*a case-by-case examination of the unique combination of factors characteristic of each child*", such as his or her personal, family and cultural origins and an assessment of his or her protection requirements that is suited to the sensitivity of the child.[67]

Finally, in addition to the difficulties in accessing asylum, the material reception conditions and the time-scales for processing asylum applications, where family reunification is possible and in the best interests of the child it is not sufficiently facilitated for unaccompanied foreign minors.[68] Article 10 CRC nonetheless requires States to examine any application by a child to enter or leave a State party for the purpose of family reunification in a positive, humane and expeditious manner. A London court recently ordered the admission to the United Kingdom of unaccompanied minors present in the Calais shanty town who are seeking to join members of their family resident in that country in order that their request for asylum under the Dublin III Regulation can be examined, even though they have not sought asylum.[69] In reaching this decision, the court took account of various factors, including the delays in the processing of their asylum application in France, the improper application of the Dublin III Regulation, which includes specific clauses concerning minors and the right of family reunification, the age of the children, their health and traumas, along with the need to achieve family reunification swiftly.

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[65] The extracts from this report and the recommendations are appended to these observations.
[66] L. 744-6 CESEDA.
[67] General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6.
[68] See in this regard Article 8 of Regulations (EU) No. 604/2013 of the European Parliament and of the Council of 26 June 2013.
[69] Upper Tribunal (Immigration and Asylum Chamber), Judicial Review Decision Notice, 29 January 2016. See also Lille Administrative Court, order No. 1600875 of 11 February 2016.

In any case, if the necessary conditions for achieving refugee status under the 1951 Convention are not met, an unaccompanied or separated child must benefit from all available forms of complementary protection having regard to his or her own needs.[70]

- **The situation of minors in holding areas**

In connection with the reform of the law on asylum adopted in 2015, the Defender of Rights issued various recommendations calling for the adoption of specific guarantees and enhanced measures of protection in relation to such minors.

It was recommended that a time limit be imposed on custody at the border, breaching Article 37 CRC, for unaccompanied minors who seek asylum, irrespective of their nationality and of their admission to the country, with a view to their placement in order to clarify their individual circumstances. In this regard, on 29 January 2016, the Committee on the Rights of the Child reiterated its concern at the situation of unaccompanied foreign minors who are placed automatically in holding areas. It recommended that France identify appropriate alternative measures to the holding in custody of these children.

As regards the conditions under which children are placed in holding areas, certain improvements have been made to the reception conditions for unaccompanied minors in holding areas (in Roissy for example: systematisation of eligibility for a “clear day” (*jour franc*) and the creation of a specialist reception area). However, no figures or information have as yet been provided regarding the reception conditions and the treatment of unaccompanied minors and protection measures taken in relation to them. There are in addition numerous difficulties such as: the practice whereby the appointment of an *ad hoc* guardian is rendered conditional upon a medial assessment of these children’s status as minors, which remains widespread despite the solemn objections of the Court of Cassation; the arrangements governing the expulsion of these children if they are not admitted to the country; their dispatch to destinations other than their countries of origin; the fact that these children may be expelled at any time if they have not applied for asylum, following expiry of the “clear day”; and also the conditions surrounding applications for asylum at the border and the assessment of the status as minors of children who declare themselves to be such at the border.

These are the observations which the Defender of Rights intends to bring to the attention of and wishes to submit for consideration by the European Committee of Social Rights.

[Signature]

Jacques TOUBOUN

[70] Article 22 CRC, General Comment No. 6 on the treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, § 77.