

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

DECISION ON MERITS

Adoption: 24 January 2018

Notification: 14 February 2018

Publicity: 15 June 2018

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

Complaint No. 114/2015

The European Committee of Social Rights, a committee of independent experts established under Article 25 of the European Social Charter (“the Committee”), during its 297th session, in the following composition:

Giuseppe PALMISANO, President
Monika SCHLACHTER, Vice-President
Karin LUKAS, Vice-President
Eliane CHEMLA, General Rapporteur
Birgitta NYSTRÖM
Petros STANGOS
József HAJDU
Marcin WUJCZYK
Krassimira SREDKOVA
Raul CANOSA USERA
Marit FROGNER
François VANDAMME
Barbara KRESAL
Kristine DUPATE
Aoife NOLAN

Assisted by Henrik KRISTENSEN, Deputy Executive Secretary

Having deliberated on 17 October, 5 December 2017 and 24 January 2018,

On the basis of the report presented by Karin LUKAS,

Delivers the following decision adopted on this latter date:

PROCEDURE

1. The complaint presented by the European Committee for Home-Based Priority Action for the Child and the Family (EUROCEF) was registered on 27 February 2015.
2. EUROCEF alleges that France does not respect the rights to legal, social and economic protection, social and medical assistance and protection against poverty of unaccompanied foreign minors, in breach of Articles 7§10, 11, 13, 14, 17, 30 and 31§2, as well as Article E in conjunction with each of these provisions of the Revised European Social Charter (“the Charter”).
3. On 30 June 2015, the Committee declared the complaint admissible, in accordance with Article 6 of the Additional Protocol to the European Social Charter providing for a system of collective complaints (“the Protocol”) and Rule 29§4 of the Rules of the Committee (“the Rules”).
4. On 5 July 2015, the admissibility decision was communicated to the parties, the Government was simultaneously invited to make written submissions on the merits of the complaint by 30 September 2015.
5. On 5 July 2015, pursuant to Article 7§1 of the Protocol and Rule 30§4 of its Rules, the Committee invited the States Parties to the Protocol and the States having made a declaration in accordance with Article D§2 of the Charter, to notify any observations they may wish to make on the merits of the complaint by 30 September 2015.
6. No such observations were received.
7. The Government’s submissions on the merits of the complaint were registered on 30 September 2015.
8. The deadline set for the response of the complainant organisation to the Government’s submissions on the merits of the complaint was 17 December 2015. At EUROCEF’s request the President of the Committee granted an extension of the time limit until 15 January 2016. The response was registered on 15 January 2016.
9. In accordance with Rule 32A of the Rules, the President of the Committee invited the Defender of Rights to present written observations by 29 February 2016. These observations were registered on 26 February 2016.
10. At the Government’s request, the President of the Committee invited the Government to submit a further response by 12 April 2016. This further response was registered on 12 April 2016.

11. On 12 February 2017, EUROCEF presented the Committee with an additional appendix to the complaint relating to the arrangements for the reception of and support for unaccompanied minors in France, containing witness accounts of the alleged unlawful treatment to which unaccompanied foreign minors are subjected in France.

SUBMISSIONS OF THE PARTIES

A – The complainant organisation

12. EUROCEF invites the Committee to find that France fails to fulfil its obligations under the Charter with regard to the rights of unaccompanied foreign minors to appropriate legal, economic and social protection, in breach of Articles 7§10, 11, 13, 14, 17, 30 and 31§2 of the Charter, read alone or in conjunction with Article E, in particular due to:

- defective initial reception arrangements due to saturation of national arrangements for the provision of shelter, assessment of and guidance for unaccompanied foreign minors;
- detention of unaccompanied foreign minors in waiting areas;
- abusive age assessment;
- lack of access to education;
- lack of access to health and social protection.

13. EUROCEF points out that legal, social, and economic protection constitutes a vital precondition for the preservation of human dignity. Any practice which denies foreigners the right to social, legal and economic protection – or healthcare – even if they are not legally present in the territory, must therefore be deemed incompatible with the Charter.

B – The respondent Government

14. The Government considers that there has been no violation of Articles 7§10, 11, 13, 14, 17, 30 and 31§2 of the Charter, read alone or in conjunction with Article E, concerning the rights of unaccompanied foreign minors to appropriate legal, social and economic protection due to measures taken for constant improvement of the reception and care provided to unaccompanied foreign minors. The Government, referring to paragraph 1 of the Appendix to the Charter, states that a distinction must be made between two categories of persons concerned by the national provisions on unaccompanied foreign minors:

- persons who are found to be of full age and who are thus in the country illegally;
- and
- persons who are found to be unaccompanied foreign minors, and who as such are in the country lawfully.

15. According to the Government, the provisions of the European Social Charter are only applicable to the latter category of persons.

OBSERVATIONS BY THE DEFENDER OF RIGHTS (LE DÉFENSEUR DES DROITS)

16. The Defender of Rights is an independent constitutional authority that ensures respect for the rights and freedoms of all, which has two means of action: on the one hand, through individual claims received in law and, on the other hand, promotion of equality. The Defender of Rights has regularly received complaints 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 various 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.

17. By its observations, the Defender of Rights wishes to provide clarifications to the European Committee of Social Rights 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 Charter.

18. The Defender of Rights considers the reception scheme provided by the circular of 31 May 2013, and concerning the arrangements for receiving and assessing unaccompanied foreign minors issued by the Minister of Justice to be defective. Since early 2015 the implementation of the national allocation strategy has deteriorated. In line with the General Inspectorates and civil society, the Defender of Rights notes that the departments (*les départements*) follow highly disparate practices in their implementation of the relevant circular and in their use of the tools for assessing young persons, a situation which has undermined the overall quality of the arrangements and the equal treatment of these young persons. In some departments, facilities are overcrowded because it is currently impossible to apply the principle of national distribution.

19. In relation with the socio-educational assessment of the minor, 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. Most of these young persons are subject to a bone examination, in order to determine their age, at the request of the public prosecutor along with a police interview, and are then placed in an administrative holding centre, having been found to be adults and considered to be in breach of the immigration rules applicable to foreign nationals in France.

20. The Defender of Rights considers that the use of bone tests to determine the age of unaccompanied foreign minors undermines their dignity and their physical integrity and recommends that the use of such tests should be prohibited.

21. 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, to young minors and/or minors suffering from psychological problems or medical conditions, of cases of complete failure to provide care to young persons pending a decision on their eligibility for child protection following their assessment, and even of refusals to implement decisions concerning their placement taken by the judicial authorities. Through the processing of individual complaints, the Defender of Rights has established that the quality of the care provided to a minor varies from one department to another. In some cases, this care is provided under unsatisfactory conditions.

22. Moreover, the Defender of Rights has noted that numerous young persons are accommodated in hotels even though their personal profile should prohibit this, as an appropriate treatment. This treatment has also been applied to young persons with intellectual disabilities or psychological weaknesses or to young girls.

23. The Defender of Rights notes that the assistance provided to young persons in their legal and administrative dealings is inadequate, often due to a lack of training for social workers.

24. It states that the problem of unaccompanied children who have fallen victim to exploitation remains and it may still be considered today that France has not equipped itself with an effective system for protecting minors who have become victims of human trafficking.

25. In relation to the right to education, the complaints investigated by the Defender of Rights show that schooling of unaccompanied foreign minors is no longer mandatory after age 16 and will depend upon available spaces and offers of training. However, 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, particularly for young persons close to adulthood.

26. The Defender of Rights considers that mental health care must be suitable and qualified psycho-social counsellors must be made available for this group.

27. Concerning, access to protection on the ground of asylum, the Defender of Rights states that the law on asylum was reformed in July 2015 but no specific procedure was put in place for minors. The law provides that the asylum application form must be transmitted to the legal representative or the ad hoc guardian (*administrateur ad hoc* (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 ad hoc guardian 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 ad hoc guardian, refuse to do so, the minor cannot have access to the asylum procedure other than by declaring himself or herself to be an adult. In the rare cases where a minor is permitted to file his or her application with the prefecture without an ad hoc guardian, the French Office for the Protection of Refugees and Stateless Persons (OFPRA) subsequently indicates that it is unable to process the file without the representative.

28. Concerning the situation of minors in waiting areas 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. In addition, there are numerous difficulties such as: the practice whereby the appointment of an ad hoc guardian is rendered conditional upon a medical assessment of these children's status as minors; the arrangements governing the expulsion of these children if they are not admitted to the country; their expulsion 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; and the conditions surrounding applications for asylum at the border and the assessment of the age of minors who declare themselves to be such at the border.

RELEVANT DOMESTIC LAW AND PRACTICE

A – Legislative framework

1. The Social Welfare and Family Code (CASF)

Article L112-3 as amended by Law n° 2016-297 of March 14, 2016 relative to the protection of the child:

"The protection of children is intended to ensure that the basic needs of the child are taken into account, to support their physical, emotional, intellectual and social development and to preserve their health, safety and morals and their education, respecting their rights.
(...)

A National Council for the Protection of Children shall be set up with the Prime Minister, who shall be responsible for proposing to the Government the national guidelines for the child protection policy, to formulate opinions on any question relating thereto, and evaluate its implementation. (...)"

Article L221-1

"The child welfare service is a non-personal service run by the *département* and charged with the following tasks:

1° Providing material, educational and psychological support both to minors and their families or to anyone holding parental authority over them, faced with difficulties liable to endanger the health, safety or morals of these minors or to seriously compromise their upbringing or their physical emotional, intellectual and social development, and to emancipated minors and adults under the age of 21 faced with family, social or educational problems liable to seriously unsettle their equilibrium;

2° Organising collective action in places where risks of social maladjustment arise to prevent the marginalisation and facilitate the integration or social advancement of young people and families, particularly the specialised prevention measures referred to in sub-paragraph 2° of Article L. 121-2;

3° Taking emergency measures to protect the minors referred to in sub-paragraph 1° of this article;

4° Meeting all the needs of minors entrusted to the service and ensuring that they are given guidance in co-operation with their family or their legal representative;

5° Taking action, particularly during all of these activities, to prevent dangerous situations involving minors and, without prejudice to the powers of the judicial authorities, organising the collection and communication, under the arrangements provided for in Article L. 226-3, of

information raising concerns about minors whose health, safety or morals are in, or liable to be in, danger or whose upbringing or development are, or are liable to be, compromised, and contributing to their protection;

6° Ensuring that the child's emotional ties with persons other than his or her parents are maintained or even strengthened in his or her best interests;

7° Ensuring that the circumstances of any child taken into care are stable and that his or her status is adjusted in the long term;

8° Ensuring that the child's emotional ties with his or her brothers or sisters are maintained in his or her best interests.

2. The Civil Code

Article 375

"If an unemancipated minor's health, safety or morals are under threat or if the prerequisites for his or her physical, emotional, intellectual or social development are seriously compromised, measures of educational assistance may be ordered by a judicial authority at the request of the father and mother jointly, or of one of them, of the person or body to whom the child was entrusted or of the guardian, of the minor himself or of the State Prosecutor's office. In cases where the State Prosecutor's Office has been advised by the president of the department council, he/she ensures that the minor's situation is within the purview of Article L. 226-4 of the Social Welfare and Family Code. Exceptionally, courts may decide of their own motion to examine such cases.

Article 388

As amended by Law No. 2016-297 of 14 March 2016 - Article 43

"A minor is an individual of either sex who has not yet reached the full age of eighteen years.

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

The conclusions of such examinations, which must specify the margin of error, may not be used on their own as a basis for determining whether the person in question is a minor. The person in question shall have the benefit of the doubt. If there is any doubt as to whether the person in question is a child, no assessment of his or her age may be performed on the basis of an examination of the pubertal development of primary and secondary sexual characteristics."

3. The Code of the Judicial Organisation

Article L213-3-1

"The judge of family affairs shall exercise the functions of judge of the guardianship of minors. He has jurisdiction on:

1. Emancipation;
2. Legal administration and guardianship of minors;
3. Guardianship of the wards of the nation."

4. The Code for Entry and Residence of Foreigners in France and the Right of Asylum (CESEDA)

Article L221-2

Modified by law No.2011-672 of 16 June 2011 - art. 10

The waiting area is defined by the competent administrative authority. It extends from embarkation and disembarkation points to those where people's checks are carried out. It may include, on the right-of-way or near the railway station, the port or the airport or near the place of disembarkation, one or more places of accommodation providing the foreigners concerned with hotel-type services.

Article L221-5

Modified by law No.2006-911 du 24 July 2006 - art. 48 Official Journal 25 July 2006

When a foreign minor not accompanied by a legal representative is not authorized to enter France, the public prosecutor, notified immediately by the administrative authority, shall appoint without delay an ad hoc administrator. The latter assists the minor during his stay in the waiting zone and assures his representation in the context of the administrative and jurisdictional procedures relating to this maintenance.

It also ensures the representation of the minor in all the administrative and jurisdictional procedures relating to his entry into France.

The ad hoc administrator is designated by the competent public prosecutor (...).

5. The Code of Administrative Justice

Article 251-2

“On being seized of a request justified by urgency, the judge (*le juge des référés*) hearing the application for interim measures may order any measures necessary to safeguard a fundamental freedom, to which, a legal entity under public law or a body under private law responsible for the management of a public service, in exercising one of its powers, would have brought serious and manifestly unlawful interference. The judge shall give a decision within 48 hours. “

B – Administrative framework

29. The circular and national arrangements for the provision of shelter, assessment and guidance for unaccompanied foreign minors, entered into force on 31 May 2013, clearly identify two different stages, outlining the legal framework for each:

- An administrative stage of shelter and evaluation, during which, after an initial interview, the department council provides accommodation for the young person for the period of emergency shelter of up to five days provided for by Article L.223-2 of the Social Welfare and Family Code (CASF) and evaluates the minor's situation to ensure that he or she is a minor and is unaccompanied as part of the duties assigned to the chair of the department council by Article L.226-4 of the CASF;
- A judicial stage, which begins with referral to the prosecution department after the expiry of the five-day emergency shelter period. At this stage, the prosecutor issues a provisional placement order either allocating the young person concerned to another department or extending the evaluation stage in

the *department* in which he or she arrived for a period of up to eight days. After such extensions, the prosecutor may proceed with the allocation to another *department* or refer the case to the local juvenile court, particularly if the evaluation stage has not yet been completed.

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

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

32. **The Interministerial Circular of 25 January 2016** complements the existing arrangements, specifying the procedures between the departmental councils and the services in their respective fields of competence.

33. **Opinion of the *Commission Nationale Consultative des Droits de l'Homme* (CNCDH) on the situation of unaccompanied foreign minors in France, adopted at the plenary assembly - 26 June 2014.**

34. CNCDH is an Independent Administrative Authority, which advises, in full independence, the Government and the Parliament in the field of human rights. Regarding the situation of unaccompanied foreign minors in France, the CNCDH finds that the age assessment has a margin of error of two to three years and, in practice, this makes it possible, through misuse of the method, to regulate the reception of unaccompanied minors according to the number of free places in the Child Social Assistance (*Aide Sociale à l'Enfance* (ASE) facilities or the policy adopted in this area by the chair of the department council. Several hearings revealed that young people, particularly those over 16, are sometimes subject to several examinations by experts before it is established that they are adults. The CNCDH points out that there is to date no sound medical method of determining age and therefore recommends that all physical examinations to establish whether unaccompanied foreign minors are minors or adults should be stopped.

35. **CNCDH, 26 January 2017, statement on the situation of unaccompanied minors placed in reception and guidance centres for unaccompanied minors (CAOMIs) following the dismantlement of the Calais shanty town.**

36. In its statement on the situation of unaccompanied minors, the CNCDH expresses its extreme concern at the delays in conducting social assessments of unaccompanied foreign minors and repeats its appeal to the local authorities to integrate these minors without delay into the mainstream child protection system and to muster the medical, social, educational and legal resources needed for the full protection of unaccompanied minors' fundamental rights.

C – National case-law

37. The judgment of 30 January 2015, of the Conseil d'État, required to rule on the legality of the Circular of the Minister of Justice of 31 May 2013 on the arrangements for providing care to unaccompanied minors.

38. The Conseil d'Etat held that:

“it is in the interest of the child to take account of the capacity of the receiving département to provide care under satisfactory conditions” (recital 9). In the same decision, the Conseil d'Etat held that “pursuant to Articles 375-3, 375-5 and 375-7 of the Civil Code, the Juvenile Court or, in urgent cases and on a provisional basis, the Public Prosecutor in the area where the unaccompanied foreign minor has come to the attention of the authorities, may order that he or she be placed with a département child welfare service, determining the reception facility which is in the best interests of the minor, and shall not be under any obligation to place him or her with the child welfare service of the département in which he or she was first located” (recital 11).

RELEVANT INTERNATIONAL MATERIALS

A – Council of Europe

1. European Court of Human Rights

39. Case of *Rahimi v Grèce*, Application No. 8687/08, judgment of 5 April 2011, final on 5 July 2011, (§§109 - 110) :

“109. (...)by ordering the detention of the applicant (unaccompanied foreign minor) the national authorities have in no way considered the question of his best interests as a minor. Moreover, they did not inquire whether the applicant's placement in the Pagani detention center was a measure of last resort and whether they could substitute another less drastic measure in order to secure his deportation. These elements raise doubts in the eyes of the Court as to the good faith of the authorities during the implementation of the detention measure.

110. (...) as the Court has already found in the context of Article 3 of the Convention, the conditions of detention in the center of Pagani, in particular as regards Hygiene and infrastructure were so serious that they undermined the very meaning of human dignity. In view of the foregoing, the Court concludes that the applicant's detention was not "lawful" within the meaning of Article 5 § 1 (f) of the Convention and that there has been a violation of this provision”.

40. Case of *Popov v. France* (applications Nos. 39472/07 and 39474/07), judgment of 19 January 2012, final on 19 April 2012 :

“102. ...the conditions in which the children were held, for fifteen days, in an adult environment, faced with a strong police presence, without any activities to keep them occupied, added to the parents' distress, were manifestly ill-adapted to their age. The two children, a small girl of three and a baby, found themselves in a situation of particular vulnerability, accentuated by the confinement. Those living conditions created for them a situation of stress and anxiety, with particularly traumatic consequences.

103. Accordingly, in view of the children's young age, the length of their detention and the conditions of their confinement in a detention centre, the Court is of the view that the authorities failed to take into account the inevitably harmful consequences for the children. ...There has been therefore violation [of Article 3 of the Convention] in respect of the children.”

2. Recommendation 1985(2011) of the Parliamentary Assembly of the Council of Europe (PACE) on the situation of migrant children in the member states.

41. The Parliamentary Assembly of the Council of Europe states that:

“a child should, in principle, never be detained. (...)
– unaccompanied children should, however, never be detained;
– where a doubt exists as to the age of the child, the benefit of the doubt should be given to that child.”

3. The Council of Europe Commissioner for Human Rights

42. The Council of Europe Commissioner for Human Rights’ Report following his visit to France from 22 to 26 September 2014, CommDH(2015)1, published on 17 February 2015 (§§96-98 of the report) states:.

“94. (...)The Commissioner deplores the fact that unaccompanied foreign minors held in waiting zones do not benefit from the system set up by the 2013 circular issued by the Minister of Justice and do not have access to appropriate socioeducational support. He notes that an ad hoc administrator is appointed as the legal representative of minors held in waiting zones and to ensure that the procedures to which they are subject are lawful. Nevertheless, several associations told him of repetitive dysfunctions which prevented certain minors from benefiting from assistance.

96. The Commissioner calls on the authorities to guarantee in particular that all age assessment procedures are multidisciplinary. The use of bone age tests must cease to be automatic and effectively only be a last resort, within a legal framework. Their results must in no circumstances be the sole factor in age determination. If the minor status of the person concerned remains uncertain, he or she should always be given the benefit of the doubt.

97. The Commissioner encourages the central authorities and *Conseils généraux* to continue and strengthen their joint efforts to provide, in metropolitan and overseas France alike, reception for UFM which guarantees them decent living conditions and the possibility of constructing a life project. He urges them to take without delay measures to guarantee that no UFM is left without an accommodation solution and to avoid placing minors in accommodation without any socio-educational and medical support.

98. Finally, 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 (...).”

B – United Nations

1. United Nations Convention on the Rights of the Child

43. Article 3 provides that:

“in all actions concerning children, (...) the best interests of the child shall be a primary consideration.”

44. Article 20 guarantees that:

“a child temporarily or permanently deprived of his or her family environment ... shall be entitled to special protection and assistance provided by the State”, regardless of his or her nationality.”

45. Articles 27 and 37 read:

Article 27

“1. 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.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions necessary for the child’s development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programs, particularly with regard to nutrition, clothing and housing.”

Article 37

States Parties shall ensure that:

(...)

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. 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;”

2. The Committee on the Rights of the Child (CRC)

Observations at its 2104th meeting (CRC/C/SR.2104), held on 29 January 2016 on the fifth periodic report of France (CRC/C/FRA/5)

46. The Committee states:

“The Committee is concerned about the situation of unaccompanied migrant children in the State party who cannot access special protection and assistance measures. It is concerned that the State party does not sufficiently consider the best interests of the child as a guiding principle in all initial assessment processes and subsequent arrangements. The Committee notes with concern the difficulties faced with regard to accessing child protection structures and legal representation, psychological support, social assistance and education, especially for 17-year-olds. The Committee is also concerned that the procedure set out in the circular of 31 May 2013, on the equitable distribution of services provided to unaccompanied migrant children, has been partially annulled by the Council of State (Conseil d’Etat) decision of January 2015, resulting in insufficient quality of care and protection of children and refusals by certain municipalities to provide such protection. It notes with concern the number of children subjected to administrative detention in 2014, most of them in Mayotte, in degrading conditions and without access to a judge.” The Committee is also concerned about:

(a) The situation of unaccompanied migrant children automatically placed in waiting zones of airports or hotels, and other administrative detention facilities (locaux de rétention administrative), sometimes detained with adults, and reports of their removal, even before they speak to an ad hoc administrator;

(b) The overreliance on bone tests to determine the age of children, and cases in which the child's consent was, in practice, not sought.

The Committee recommends that the State party guarantee sufficient human, technical and financial resources throughout its jurisdiction to specialist and child specific support, protection, legal representation, social assistance, and educational and vocational training of unaccompanied migrant children and build the capacities of law enforcement officials in this regard. It also recommends that the State party:

(a) Adopt the necessary measures, including those of a legal nature, to avoid the detention of children in waiting zones through increased efforts to find suitable alternatives to deprivation of liberty and place children in appropriate accommodation, and to fully respect non-refoulement obligations;

(b) Put an end to the use of bone tests as the main method to determine the age of children, using instead other methods that are proven to be more accurate.

General Comments by the Committee on the Rights of the Child:

- No. 12 (2009) on the right of the child to be heard;
- No. 13 (2011) on the right of the child to freedom from all forms of violence;
- No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration;
- No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health,
- No. 20 (2016) on the implementation of the rights of the child during adolescence,
- No. 21 (2017) on children in street situations,
- Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration
- Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.

3. The Office of the United Nations High Commissioner for Refugees (UNHCR)

47. The UNHCR report for France of July 2017 states:

"France received 8,054 persons who were declared "Unaccompanied Minors", against 5,990 in 2015, 5,033 in 2014 and 2,555 in 2013, which results in an increase of 215% in 3 years. UNHCR noted that the arrivals of unaccompanied children are increasing steadily and that the already overcrowded capacities of the current system of child welfare in some areas of the country do not allow for adequate care, and children are increasingly left on their own, without possibility of shelter and without protection."

4. UNICEF France

48. UNICEF France, in its Statement of 23 October 2017, states:

“One year after the demolition of the "Jungle" of Calais, the living conditions of hundreds of unaccompanied minors (MNA) in the Pas-de-Calais remain catastrophic. In the Pas-de-Calais, living conditions have worsened in one year for hundreds of children, who too often do not have access to a safe shelter, or even to drinking water and are subject to the exploitation, as recently recalled by the United Nations Commission on Human Rights. Since the dismantling of the camp, about 1,000 people, including about 100 unaccompanied foreign minors, are wandering daily in Calais and its surroundings, including the nearby ports. The child protection system is completely saturated in the department: as of October 15, 2017, France Terre d'Asile had already received 1,887 unaccompanied foreign minors since the beginning of the year, against 1,422 in 2016. No road legal and safe being offered to join the UK, these children take insane risks to try to join their family.”

THE LAW

PRELIMINARY CONSIDERATIONS

Applicability of Articles 7§10, 11, 13, 14, 17, 30, 31§2 and E of the Revised European Social Charter to the persons concerned by the complaint

49. Paragraph 1 of the Appendix to the Charter reads:

“1 Without prejudice to Article 12, paragraph 4, and Article 13, paragraph 4, the persons covered by Articles 1 to 17 and 20 to 31 include foreigners only in so far as they are nationals of other Parties lawfully resident or working regularly within the territory of the Party concerned, subject to the understanding that these articles are to be interpreted in the light of the provisions of Articles 18 and 19.

This interpretation would not prejudice the extension of similar facilities to other persons by any of the Parties.”

50. The Committee notes that the Government, referring to paragraph 1 of the Appendix to the Charter, states that the provisions of the European Social Charter are only applicable to persons who are found to be unaccompanied foreign minors, and who as such are in the country lawfully, whereas they do not apply to persons who are found to be of full age and who are thus in the country illegally.

51. In the following paragraphs, the Committee refers to its previous decision, *Defence for Children International (DCI) v. Belgium*, Complaint No. 69/2011, decision on the merits of 23 October 2012, §§28-39, and recalls that, the restriction of the personal scope included in the Appendix should not be read in such a way as to deprive foreigners coming within the category of unlawfully present migrants of the protection of the most basic rights enshrined in the Charter or to impair their fundamental rights such as the right to life or to physical integrity or the right to human dignity.

52. The Committee considers that, beyond the letter of paragraph 1 of the Appendix, the restriction on personal scope contained therein should be interpreted – as is generally the case for any provision of an international treaty – in the light of the object and purpose of the treaty concerned and in harmony with other relevant and

applicable rules of international law (Vienna Convention on the Law of Treaties, 23 May 1969, Article 31, paragraphs 1 and 3), including first and foremost the peremptory norms of general international law (*jus cogens*), which take precedence over all other international norms and from which no derogation is permitted (Vienna Convention on the Law of Treaties, 23 May 1969, Article 53).

53. Concerning the object and purpose of the Charter, the Committee reiterates that it is a human rights treaty which aims to implement at a European level, as a complement to the European Convention on Human Rights, the rights guaranteed to all human beings by the Universal Declaration of Human Rights of 1948. As the Committee already found (*International Federation of Human Rights Leagues v. France*, Complaint No. 14/2003, decision on the merits of 8 September 2004, §§ 27 and 29), the purpose of the Charter, as a living instrument dedicated to the values of dignity, equality and solidarity, is to give life and meaning in Europe to the fundamental social rights of all human beings. It is precisely in the light of that finding that the Committee considers – as the Government pointed out in its submissions – that a teleological approach should be adopted when interpreting the Charter, i.e. it is necessary to seek the interpretation of the treaty that is most appropriate in order to realise the aim and achieve the object of this treaty, not that which would restrict the Parties' obligations to the greatest possible degree (*World Organisation against Torture v. Ireland*, Complaint No. 18/2003, decision on the merits of 7 December 2004, § 60). It is in point of fact this teleological approach that leads the Committee not to interpret paragraph 1 of the Appendix in such a way as to deny foreign minors unlawfully present in a country (whether accompanied or unaccompanied) the guarantee of their fundamental rights, including the right to preservation of their human dignity. Each State is required to respect and safeguard each individual's right to life and physical integrity. A strict interpretation of paragraph 1 of the Appendix, which would result in the non-recognition of the States Parties' obligation to guarantee foreign minors unlawfully present in their territory the enjoyment of these fundamental rights, would be incompatible with international *jus cogens* (*DCI v. Belgium*, Complaint No. 69/2011, op.cit., §33).

54. In addition, such a restrictive interpretation of the Appendix, which would deprive foreign minors unlawfully present in a country of the guarantee of their fundamental rights, would not be in harmony with the United Nations Convention on the Rights of the Child, which all member states of the Council of Europe have ratified. It is therefore justified for the Committee to have regard to this convention and its interpretation by the United Nations Committee on the Rights of the Child, when it rules on an alleged violation of any right conferred on children by the Charter (see *World Organisation against Torture v. Ireland*, Complaint No. 18/2003, decision on the merits of 7 December 2004, § 61).

55. In light of the latter observations and of the mandatory, universally recognised requirement to protect all children, the Committee considers that paragraph 1 of the Appendix should not be interpreted in such a way as to expose foreign minors

unlawfully present in a country to serious impairments of their fundamental rights due to failure to guarantee the social rights enshrined in the Charter.

56. The Committee reiterates that the risk of impairing fundamental rights is all the more likely where children – *a fortiori* migrant children unlawfully present in a country – are concerned. This is due to their condition as "children" and to their specific situation as "unlawful" migrants, combining vulnerability and limited autonomy. Where children are unaccompanied, their situation becomes even more vulnerable and should be managed entirely by the State, which has a duty to care for children living within its territory and not to deprive them of the most basic protection on account of their "unlawful" migration status. The Committee adds that the status of an unaccompanied foreign minor must be determined objectively and not through complex, uncertain and disputed national proceedings.

57. In light of the above observations, the Committee, referring specifically to Articles 7§10, 11, 13, 17, 30, 31§2 of the Charter and recalling its decisions (DCI v. Belgium, Complaint No. 69/2011 op.cit., International Federation of Human Rights Leagues v. France, Complaint No. 14/2003, op. cit., §§30-32; DCI v. the Netherlands, Complaint No. 47/2008, op. cit., §§34-38), considers that these provisions are applicable to the persons concerned by this complaint. These articles require States Parties to fulfil positive obligations relating to the accommodation, basic care and protection of children and young persons. Not considering that States Parties are bound to comply with these obligations 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 threats to their rights to life, health and psychological and physical integrity and to the preservation of their human dignity.

58. Under Article 14, the Committee reviews the overall organisation and general functioning of social services. Given the general nature of this provision, and having regard to the circumstances of the case, the Committee considers that this provision of the Charter is not applicable to the instant case.

59. Furthermore, the Committee recalls that the prohibition of discrimination, which is enshrined in Article E of the Charter, establishes an obligation to ensure that any individual or group, who fall within the scope *ratione personae* of the Charter, equally enjoy the rights of the Charter. With regard to the unaccompanied foreign minors concerned by this complaint, what is at issue is not the principle of equal treatment but whether or not these persons fall within the scope of the Charter and whether their most fundamental rights are actually respected. That is not the object of Article E of the Charter (*mutatis mutandis* DCI v. the Netherlands, Complaint No. 47/2008, op. cit., §§ 72-75 and DCI v. Belgium, Complaint No. 69/2011, op. cit., §§148-151).

60. Therefore, having regard to the circumstances of the case, the Committee holds that Article E of the Charter is not applicable to the instant case.

I. ALLEGED VIOLATION OF ARTICLE 17 OF THE CHARTER

61. Article 17 of the Charter reads:

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

Part I: “Children and young persons have the right to appropriate social, legal and economic protection.”

Part II: “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:

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

A – Arguments of the parties

1. The complainant organisation

62. EUROCEF alleges that there are serious shortcomings of reception arrangements of unaccompanied foreign minors and in particular, lack of a life project serving the child best interest, lack of financial resources, scarce co-ordination between departments and institutions responsible for coordinating and monitoring the quality of the care provided for minors; and insufficient specialised training for professionals dealing with these minors.

63. It alleges that, as soon as they arrive, unaccompanied foreign minors are subjected to a selection process which means that they cannot all receive the assistance they need and the assistance of an ad hoc guardian. Various statements confirm that on initial reception, these persons are categorized according to the following criteria: minors without civil status documents or suspected of being adults or close to adulthood are refused permission to stay in France. Others are housed for four months in hotels or group homes under a “shelter” system pending their transfer to a child welfare facility depending on the places that come free. The most

vulnerable individuals are allocated more rapidly. There are many reports indicating that foreign minors are not clearly informed of their rights and accessible procedures due to a complete lack or insufficient numbers of interpreters to explain. According to EUROCEF, not all social workers tasked with the initial reception have had the specialised training required to be able to deal appropriately with unaccompanied foreign minors.

64. The complainant organisation alleges that the assessment of unaccompanied foreign minors' civil status documents is not carried out in accordance with the law. In some departments, identity documents can be directly contested by the social workers in charge of assessments without any reference to legal expertise. Moreover, EUROCEF condemns abusive practices when determining a person's age through analysis of bone density.

65. EUROCEF alleges that there are often very long delays in care provision, which take no account of the vulnerability of young persons and the need to satisfy their basic needs and provide them with social and educational support. Once foreign unaccompanied minors have been admitted to the shelter system, most of them are accommodated in hotels and left for most of the time on their own, without any permanent educational or social support. Due to delays relating to the judicial treatment of unaccompanied foreign minors, the complainant organisation, asks for the responsibility for decisions, on where minors are to be placed, to devolve on juvenile courts, not the prosecution department.

66. Furthermore, unaccompanied foreign minors arriving by air, are refused access to the country as soon as they get off the plane and are taken to "waiting areas". Some minors are forced to live with adults and others are accommodated in hotel rooms, which can be in remote places, preventing these minors from enjoying their rights.

67. EUROCEF alleges that unaccompanied foreign minors arriving in France who are aged between 16 and 18 encounter many problems when attempting to access education. As school attendance is no longer mandatory after age 16, unaccompanied foreign minors are only admitted to establishments if places are available. In addition, the requirements that are imposed on these young people as regards their economic and social integration and their low level of education force them to seek out vocationally-oriented training through which they can gain rapid access to the labour market. However, they are not allowed to choose freely what area they will work in as the institutions in charge of processing applications for work permits approve applications more readily if the young person concerned is inclined towards a so-called "problem" sector which is finding it difficult to recruit, rather than one in which demand and supply already match up. Problems also arise for unaccompanied minors who do not have identity papers. They may be asked for an identity document when enrolling for a course but above all they will be required to have one in order to receive their diploma.

2. The respondent Government

68. The Government maintains that the circular and national arrangements of 31 May 2013 offer clear evidence of the State's commitment to securing a constant improvement to the reception and care of unaccompanied foreign minors. The national arrangements established by the circular of 31 May 2013 offer a legal basis for distribution between departments, and ensure that overburdened local authorities benefit from the solidarity of other departments concerned with unaccompanied foreign minors.

69. The Government indicates that 10,960 unaccompanied foreign minors have been allocated to the various metropolitan departments since the circular of 31 May 2013 was issued. The provision of care to unaccompanied foreign minors in France is fully effective. Moreover, the Government adds that the administrative courts monitor compliance with the administration's obligation to provide accommodation to unaccompanied foreign minors.

70. Accordingly, the urgent applications judge (*juge du référé-liberté*), to whom a case may be referred pursuant to Article L. 521-2 of the Code of Administrative Justice (hereafter the "CAJ"), regularly reminds the state authorities that it is incumbent upon them to enforce the statutory right to urgent accommodation to any homeless person who is in a situation of medical, psychological or social distress.

71. In 2015, nearly 3 258 persons have been registered as unaccompanied foreign minors, after subtracting 286 persons who ceased to receive child welfare assistance for various reasons, such as the lifting of their unaccompanied status, reaching the age of majority or absconding. This represents 81% of the forecast annual figure based on the previous year.

72. The Government indicates that age assessments are based on a range of indicators: the young persons concerned are interviewed by trained staff using a multidisciplinary approach and their civil status documentation is checked for authenticity in accordance with Article 47 of the Civil Code. Only if there are continuing doubts may a medical examination be ordered, at the request of the prosecution service, to establish a young person's age. Until the department council caring for that young person has been granted guardianship it cannot legally request such an examination. The conclusions of the examination are sent simultaneously to the chair of the department council and the prosecution service. The medical examination must include several items, including bone and dental X-rays and clinical and psychological examinations. The practitioners concerned then produce an estimated age range, but never a precise age, since in the current state of medical knowledge there are no available methods or biological tests for determining a person's exact age. The use of bone testing has been incorporated in Article 388 of the Civil Code by Law No. 2016-297 of 14 March 2016 on child protection.

73. Regarding the delays relating to the judicial treatment regarding socio-educational assistance of unaccompanied foreign minors, the Governments indicates that under the second paragraph of Article 375-5 of the Civil Code, in matters of urgency only, the state prosecutor of the place where the minor concerned was first identified, can order his or her temporary placement, but must refer the case within

eight days to the children's judge, who can confirm, modify or revoke the measure. As a result, once the prosecution service has issued a temporary placement order, the placement must, by law, be automatically scrutinised by the children's judge who, pursuant to Article 375-5 paragraph 2 of the Civil Code, has full jurisdiction, *inter alia*, to revoke the placement measure or maintain it, but at the same time change the placement location if this is in the child's best interests.

74. Law No. 2015-925 of 29 July 2015 on the right of asylum modified the procedures and reception arrangements for asylum seekers to improve the protection of persons in need of international protection. Above all, the Government stresses that if asylum seekers are under age and their asylum requests are not inadmissible or manifestly unfounded, their detention in waiting areas can be terminated.

75. Concerning admission to school, the first paragraph of Article L. 131-1 of the Education Code states that schooling is obligatory for children - French and foreign - of both sexes between the ages of six and sixteen. The education of minors aged over 16 is dependent on the availability of places, and this equally applies to any young person wishing to start school for the first time or to continue with schooling after the age of sixteen. As with all pupils of French middle and upper schools, vocational guidance is subject to the constraints imposed by the labour market. Lastly, 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. It is also possible in France to reconstitute such young persons' civil status through a specific court judgment when documents cannot be obtained from persons remaining in the young person's country of origin or from the relevant consular authorities.

B – Assessment of the Committee

76. The Committee recalls that the purpose and aim of the Charter is to protect rights not merely theoretically, but also in fact (International Commission of Jurists (ICJ) v. Portugal, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32; European Federation of National Organisations Working with the Homeless (FEANTSA) v. Slovenia, Complaint No. 53/2008, decision on the merits of 8 September 2009, §28). It considers that the satisfactory application of the Charter cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised.

77. As to the means of achieving the aims set out in the Charter, the Committee stresses that for the application of the Charter, it is incumbent on States Parties not only to take legal initiatives but also to provide for the requisite resources and procedures to facilitate full exercise of the rights guaranteed by the Charter (International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007, §61).

78. The Committee recalls that even if, under domestic law, local or regional authorities are responsible for exercising a particular function, States Parties to the Charter are still responsible, under their international obligations to ensure that such responsibilities are properly exercised (European Roma Rights Centre v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004, §29).

79. Furthermore, the Committee points out that the States Parties must pay particular attention to the impact of their choices on the most vulnerable groups (mutatis mutandis, International Association Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, §53).

80. It refers to the wording of Article 17, which concerns the aid to be provided by the state where the minor is unaccompanied or if the parents are unable to provide such aid. The Committee also highlights the importance of paragraph 1 (b) of Article 17, because a failure to apply it would obviously expose a number of children and young persons to serious risks to their lives or physical integrity (DCI v. Belgium, Complaint No. 69/2011, op. cit., §73).

81. The Committee notes that in French administrative practice the term “*mineur isolé étranger*” (isolated foreign minor) is often used to designate an unaccompanied foreign minor, who is defined in practice as a “person aged under 18 who is outside his or her country of origin but not accompanied by a person holding or exercising parental authority, i.e. without anyone to protect him or her and to take important decisions concerning him or her”. There are therefore three conditions which must apply for a young person to be considered an unaccompanied foreign minor: he or she must be a minor, lacking legal capacity, in other words a “child” within the meaning of Article 1 of the Convention on the Rights of the Child; he or she must be “isolated” or unaccompanied and hence vulnerable owing to the absence or physical distance of his or her legal representatives; and he or she must be a foreigner not enjoying the benefits granted exclusively to nationals.

82. The Defender of Rights indicates that the number of unaccompanied minors in France has not been officially established and is merely estimated to be between 8 000 and 10 000. No data are provided on the number of young people who claim to be unaccompanied minors but are not admitted to the child protection system either because they have been assessed to be adults or because they have not applied for protection.

83. The Committee notes that the complaint of EUROCEF relates to the implementation of national shelter, assessment and allocation system of unaccompanied foreign minors, which is rendering ineffective access to accommodation and all other measures needed to provide legal, economic, medical and social protection.

The system for the reception of unaccompanied foreign minors entering France

84. The circular of 31 May 2013 on the arrangements for the care of unaccompanied foreign minors (national shelter, assessment and allocation system) states that all young persons declaring themselves to be unaccompanied foreign

minors are entitled to provisional accommodation. However, in practice, according to the Defender of Rights significant budgetary constraints and numerous difficulties subsist in its implementation. Several witness statements provided by EUROCEF highlight the shortcomings of the system.

85. The Committee also notes from the Government's submissions that it is important to single out persons who present themselves as unaccompanied foreign minors to the child protection services who can be "given shelter" pending the outcome of the assessment of their age and unaccompanied status. The Government argues that, given the number of young persons concerned, it is impossible to offer shelter to all of them.

86. The Committee notes that the Defender of Rights is regularly informed of a lack of care provision for young people waiting for a decision on whether they are entitled to child protection following their assessment or even of refusals to carry out placement decisions ordered by the judicial authorities. These situations are often the result of overcrowded facilities resulting in particular from refusals by departments to receive young people referred to them under the 2013 Circular.

87. In addition, the Committee notes from the Defender of Rights observations that in several departments, unaccompanied foreign minors are presented to the police before any social or educational assessment is made. The emphasis is then often placed on their administrative situation before taking any account of their vulnerability. Sometimes this assessment is not even made at all, despite the fact that this is a requirement of the Circular of 2013, reiterated in the Circular of 2016. 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, as indicated by the referrals of associations present in the administrative holding centres. 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 then placed in an administrative holding centre, having been found to be adults and considered to be in breach of the immigration rules applicable to foreign nationals in France. A full assessment by the socio-educational services of the circumstances of a foreign minor who declares that he or she is a minor does not systematically take place prior to any referral to the police in order to establish the individual's identity and status as a minor.

88. Moreover, the Committee notes that upon the admission of a minor to the Social Protection Assistance (ASE), the General Council is the institution having custody of the minor but it is not a legal representative. The law provides that proceedings must be initiated before a competent judge in order to appoint a legal representative to a foreign minor. For the Committee, unaccompanied children, as well as age-disputed individuals, should have a guardian appointed as soon as possible. Without a guardian such children may be exposed to serious protection risks.

89. In addition, the Committee refers to a recent situation, where since spring 2017, many associations have expressed concern about the situation of unaccompanied foreign minors living on the streets in Rouen (Seine-Maritime). Bearing in mind that all foreign unaccompanied minors must be received and given

shelter by the department offices of the child welfare services, on 18 July 2017, *Médecins du Monde* lodged a summary application with the Rouen Administrative Court to defend six unaccompanied minors “whose status as minors had been recognised by the judicial authorities but who had since been forced to sleep on the streets and remain without any protection” (information from InfoMIE). The Rouen Administrative Court ordered the Department of Seine Maritime to take the six migrant minors, who had been forced to sleep on the streets, into care. The order remained non-executed during a period of 15 days following the date it was issued.

90. The statements collected by EUROCEF indicate that practices in the *departments* vary considerably when implementing the circular and this undermines the quality of the system as a whole and leads to unequal treatment of the young persons concerned. Contrary to the requirements of the circular, in some departments, shelter is not provided when young persons claiming to be minors present themselves but only when they are assessed to be minors by the authorities, leaving them on their own, without possibility of shelter and protection. In addition, the conditions in which young persons who are given shelter are kept pending a final decision can sometimes fall short of the minimum standards of social and educational care.

91. The Committee also notes from the observations by the Defender of Rights that 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 department; this has resulted in a very unclear situation at national level. According to the Defender of Rights, certain *departments'* 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.

92. Moreover, according to the statements collected by EUROCEF, some unaccompanied foreign minors dealt with by the child welfare services under the child protection system are accommodated in hotels. This is not contested by the Government. The Committee recalls that the situation of minors accommodated in such hotels for weeks or even months does not make for “appropriate accommodation”, “support provided by properly trained personnel” or even access to “basic services”, as is shown by the statements collected by EUROCEF. Unlike other family-friendly accommodation centers, hotels do not provide any educational or social services. The hotel is a temporary environment, not designed to accommodate children - but an assistance designed as a simple shelter.

93. Lastly, the Committee notes from the latest UNHCR and UNICEF reports, that the arrivals of unaccompanied children are increasing steadily and that the already overcrowded capacities of the current system of child welfare in some areas of the country do not allow for adequate care.

94. For the above reasons, the Committee concludes that the situation is in violation of Article 17§1 of the Charter due to shortcomings identified in the national shelter, assessment and allocation system.

Unaccompanied foreign minors in waiting areas when arriving by air

95. The Committee notes that the CESEDA makes no distinction between minors and adults as regards their detention in waiting areas, except for Article L221-5, which also provides for the immediate appointment by the public prosecutor of an ad hoc guardian. Deprivation of liberty is provided for in French legislation for any alien not having in his or her possession the necessary documents to enter France or holding documents assessed to be false.

96. With regard to the provision of care to unaccompanied foreign minors in waiting areas, the Government itself acknowledges 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 places are not always guaranteed for minors older than 13. Therefore, such minors are accommodated on the “adult floor”. The Government also confirms that at Orly Airport, hotel accommodation is indeed used for minors.

97. The Committee considers that accommodating minors with adults or in hotels is contrary to the European Social Charter. Article 17 of the Charter stipulates 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 adequately for minors’ specific needs.

98. The Committee notes that a number of reports (see latest observations of the Committee on the Rights of the Child and the Commissioner on Human Rights) indicate that appointments of an ad hoc guardian is rarely effective, thereby denying unaccompanied minors their right to be assisted in proceedings concerning them. The Committee points out that 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.

99. Various Council of Europe bodies, such as the Parliamentary Assembly, and the Committee for the Prevention against Torture have stated that unaccompanied children should not be detained. Their detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof. It also refers to the 2016 conclusions of the Committee on the Rights of the Child on the fifth periodic report of France about the situation of unaccompanied migrant children automatically placed in waiting zones of airports or hotels, and other administrative detention facilities (locaux de rétention administrative), sometimes detained with adults, and reports of their removal, even before they speak to an ad hoc guardian, and its recommendation that France “adopts the necessary measures, including those of a legal nature, to avoid the

detention of children in waiting zones through increased efforts to find suitable alternatives to deprivation of liberty and place children in appropriate accommodation, and to fully respect non-refoulement obligations” (see §43).

100. The Committee considers that detention of a minor in waiting areas, together with adults, and/or accommodated in hotels, deprived by the assistance of a guardian cannot be in the best interest of the child.

101. In the light of the foregoing, the Committee holds that there is a violation of Article 17§1 due to :

- the delays in appointing an ad hoc guardian;
- the detention of unaccompanied foreign minors in waiting areas and in hotels.

Age assessments

102. The national arrangements for the provision of shelter, assessment and guidance for unaccompanied foreign minors lay down legal safeguards to ensure that if there are doubts about the veracity of young persons’ claims regarding their age, further checks will be carried out. According to the Government, age assessments are based on a range of measures:

- the young persons concerned are interviewed by trained staff using a multidisciplinary approach;
- their civil status documentation is checked for authenticity in accordance with Article 47 of the Civil Code;
- if there are continuing doubts after this stage, a medical examination may be ordered, at the request of the prosecution service, to establish a young person’s age.

103. According to the Government, as stipulated in the circular of 31 May 2013, the prosecution service will only request such medical examinations as a last resort if doubts remain about young persons’ age after the social assessment and, if appropriate, after consideration of the relevant civil status or identity documents. The medical examination must include several items, including bone and dental X-rays and clinical and psychological examinations. The recourse to bone age examinations is now subject to legal regulation by Law No. 2016-297 of 14 March 2016 on child protection (Article 388 of the Civil Code).

104. The Committee also notes that an examination of bone age is only one of the elements taken into account by the courts as a basis for their decisions. Such examinations are by no means exclusive and cannot prevail over a civil status document if the courts consider that no fact external to the document gives reason to question its authenticity, as was found by the Court of Cassation in a judgment of 23 January 2008 (Court of Cassation, First Civil Division, judgment of 23 January 2008, appeal No. D 06-13.344) in which it held that a birth certificate drawn up in accordance with the formal requirements provided for under the law of the country of origin would establish the age of the child subject to an educational assistance measure in the absence of any fact that would give reason to question its accuracy of that document.

105. Furthermore, Article 25.5 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection authorises European Union member States to “use medical examinations to determine the age of unaccompanied minors within the framework of the examination of an application for international protection”.

106. However, the Committee considers that such age assessments based on bone examination can have serious consequences for minors. The Committee notes from the observations submitted by the Defender of Rights that practices vary throughout the country, in breach of the requirements laid down by the circulars mentioned above and Article 47 of the Civil Code.

107. The Defender of Rights has been able to establish that numerous unaccompanied foreign minors are 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 system on the basis of bone age examinations without any prior consideration of the civil status documents produced or of any dispute as to their validity. 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.

108. The Committee notes that both in France and at international level, the use of such medical tests is highly contested because they are unreliable and because they undermine children’s dignity and physical integrity.

109. In 2009, in its observations on France’s periodical report on the rights of the child, the United Nations Committee on the Rights of the Child expressed its concern “that despite the negative assessment of the National Consultative Committee on Ethics for Health and Life Sciences on the use of bone tests to determine the age of the person, the State party continues to use this method”.

110. The National Medical Academy, the National Public Health Board (HCSP) and the medical profession as a whole have noted more specifically that bone testing is prone to error as it does not enable a clear distinction to be made between the ages of 16 and 18. This is especially problematic in view of the fact that most of the unaccompanied foreign minors currently in France are 16 or over.

111. The National Consultative Commission for Human Rights (CNCDH) has already contested the use of bone testing, taking the view that it is based on outdated morphological criteria established in the 30s and 40s whose scientific worth has been called into question for years, including by the medical profession. According to the CNCDH, the age assessment has a margin of error of two to three years and, in practice, this makes it possible, to regulate the reception of unaccompanied minors according to the number of free places in the ASE’s facilities or the policy adopted in this area by the chair of the department council. Several hearings revealed that young people, particularly those over 16, are sometimes subject to several examinations by experts before it is established that they are adults. When the allocation system established by the circular and the protocol is implemented, persons who are declared a minor and at risk in the department in which they arrived

are frequently subject to a further bone test in the department to which they are allocated and found to be adults and hence ineligible for educational assistance. Consequently, the CNCDH strongly recommends a ban on bone testing, pointing out that some regional courts and several European states no longer use these methods.

112. Moreover, the Committee on the Rights of the Child, in its 2016 conclusions on the fifth periodic report of France, expressed concern about the overreliance on bone tests to determine the age of children, (..) and recommended that the French Government to “put an end to the use of bone tests as the main method to determine the age of children, using instead other methods that are proven to be more accurate”.

113. In conclusion, the Committee considers that medical age assessments as currently applied can have serious consequences for minors and that the use of bone testing to determine the age of unaccompanied foreign minors is inappropriate and unreliable. The use of such testing therefore violates Article 17§1 of the Charter.

The right of unaccompanied foreign minors to an effective remedy

114. The Committee notes that where an unaccompanied foreign minor 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 department council or the juvenile court. In both instances, the individual concerned may appeal against the decision.

115. The Committee refers to the Defender of Rights' decision (recommendation) of 29 August 2014, in which he 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. In this regard, the Committee notes that the Interministerial Circular of 2016 on the mobilisation of state services to assist department councils in relation to minors who have been temporarily or definitively deprived of the protection of their family or of persons acting as such, 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. There is no provision in the text of the circulars about the information that must be provided to them regarding their access to rights. This can amount to a substantive barrier to access legal remedies.

116. The Committee also refers to its previous findings on delays in appointing a guardian to represent a minor in legal proceedings. Moreover, evidence provided by EUROCEF indicates serious difficulties to access available remedies for this group.

117. The Committee considers that such a lack of clarity to access remedy is incompatible with the requirements of Article 17§1 and detrimental to the interests of the child, whose exposure to danger calls for an urgent response. Therefore, the situation amounts to a violation of Article 17§1 of the Charter.

Unaccompanied foreign minors' access to education

118. The Committee notes that paragraph 1 of Article L. 131-1 of the Education Code provides that “education is compulsory for French and foreign children of both sexes between the ages of six and sixteen”.

119. The Committee also notes that the requirement to present an identity document in order to register for training or sit an examination is provided for by Circular No. 2011-072 of 3 May 2011, according to which “young persons must be able to prove their identity, by means of a currently valid identity document with photograph. If the identity document has been lost or stolen, the candidate shall present an acknowledgement of the reported loss or theft from the police or gendarmerie station concerned, together with any official documents, with photographs, to establish their identity”.

120. According to the Government, it is also 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.

121. According to EUROCEF, unaccompanied foreign minors arriving in France who are aged between 16 and 18 encounter many problems when attempting to access education. As school attendance is no longer mandatory after age 16, unaccompanied foreign minors are only admitted to schools if spaces are available. The Committee also notes from the Defender of Rights' observations that the child welfare services do not see access to education and vocational training as an imperative for these young persons close to adulthood. Complaints investigated by the Defender of Rights showed the problems that unaccompanied foreign minors approaching adulthood had in being admitted to school. Schooling was no longer mandatory after the age of 16 and depended on available spaces and offers of training. The Committee also notes the concerns expressed by the UN Committee on the Rights of the Child on the difficulties of this age group of unaccompanied foreign minors to access educational and training services.

122. With regard to the schooling of unaccompanied foreign minors, as it is asserted by the Government, unaccompanied foreign minors aged over 16 are by no means prioritised in terms of access to education. The Government explains that under national law, the obligation to attend school does not extend beyond the age of 16.

123. The Committee points out that Article 17§2 of the Charter requires that equal access to education must be guaranteed for all children, with a particular focus on vulnerable groups, such as children from minorities and children seeking asylum. Where necessary special measures should be taken to ensure equal access to education for these children (Conclusions 2011, Turkey).

124. The Committee notes that the majority of unaccompanied foreign minors arriving in France are between 16 and 18 years. Consequently, unaccompanied foreign minors aged over 16 who ask to be enrolled in a school after taking tests to determine their education level may not be assigned to a school. Their right to schooling, education and training is therefore undermined, eliminating their chances of achieving social and professional integration in France and regularising their status. Access to education is crucial for every child's life and development, in particular in a situation of vulnerability (see Statement of Interpretation on Article 17§2, 2011).

125. Therefore, taking into account the exceptional nature of the instant case, and the fundamental importance of the right to education for unaccompanied foreign minors, the Committee holds that there is a violation of Article 17§2 of the Charter.

II. ALLEGED VIOLATION OF ARTICLE 7§10 OF THE CHARTER

126. Article 7§10 of the Charter reads:

Article 7 – Right of children and young persons to protection

Part I: "Children and young persons have the right to a special protection against the physical and moral hazards to which they are exposed."

Part II: "with a view to ensuring the effective exercise of the right of children and young persons to protection, the Parties undertake:

...

10. to ensure special protection against physical and moral dangers to which children and young persons are exposed, ...".

A – Arguments of the parties

1. The complainant organisation

127. EUROCEF alleges that some unaccompanied foreign minors arriving in France by air are refused access to the country as soon as they step off the plane in violation with Article 7§10 of the Charter. The latter are taken to "waiting areas", where they remain for an average of two to three days before being allowed to enter the country or redirected. This waiting period can last up to twenty days. The practice has already been criticised by the Committee on the Rights of the Child and the UN Committee against Torture. It is in breach of the case-law of the European Court of Human Rights (the "Tabitha case"), which states that detention must be an exceptional measure and only the ultimate resort.

128. At Roissy-Charles de Gaulles Airport, for example, there is a special accommodation area for the reception of minors. However, it provides only six places. Yet, the central management of the border police states that over 90% of the unaccompanied minors arriving in France by air do so via Roissy-Charles de Gaulle Airport and the numbers are growing every year.

129. Orly Airport, for its part, has arranged for hotel accommodation for unaccompanied foreign minors under the age of 13. "Children over the age of 13 are kept in the same area as adults during the day and are housed in separate rooms at night" (Ministry of the Interior website). Accommodation in rooms reserved for children over the age of 13 cannot be considered to constitute specific, separate accommodation guaranteeing proper care meeting European requirements and constitutes a violation of Article 7§10.

130. Some young people spend several months on the street before gaining access to the shelter system. During this period they are left entirely to their own devices, they live in railway stations, squats, shanty towns or Métro stations.

2. The respondent Government

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

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

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

134. The Government concedes that given the number of young persons applying for child protection services as unaccompanied foreign minors it is impossible to offer all of them shelter. These young persons often find accommodation within community networks before applying to the child protection services.

B – Assessment of the Committee

135. The Committee notes that the organisation's allegations regarding Article 7§10 also fall under Article 17 of the Charter, however it recalls that the following issues specifically fall under the scope of Article 7§10 (DCI v. Belgium, Complaint No. 69/2011, op. cit.):

- Protection of children against moral dangers at work and outside work;
- Involvement of children in the sex industry and in begging.

136. The Committee refers to its findings under Article 17§1 that accommodating minors in common areas with adults and/or in hotels, or in so-called waiting areas is contrary to the Charter and contrary to the principle of the best interest of the child. The care arrangements which are offered at Roissy-Charles de Gaulle Airport and Orly Airport do not make it possible to cater for minors' specific needs. The

Committee has previously objected to the inappropriate accommodation of such minors in hotels as children are exposed to serious risks to their life and health.

137. Due to overcrowded reception facilities and to the lack of reception homes, a certain number of minors live on the street where their physical and moral integrity is threatened. It exposes young persons in question to very serious physical and moral hazards, resulting from life on the street which may even lead to trafficking, exploitation of begging and sexual exploitation (Conclusions 2006, Article 7§10, Moldova).

138. The failure to care for unaccompanied foreign minors 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.

139. Therefore, the Committee holds that there is a violation of Article 7§10 of the Charter due to the inappropriate accommodation of minors or their exposure to life on the street.

III. ALLEGED VIOLATION OF ARTICLE 11 OF THE CHARTER

140. Article 11 of the Charter reads:

Article 11 – The right to protection of health

Part I: "Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable."

Part II: "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;"

A – Arguments of the parties

1. The complainant organisation

141. EUROCEF alleges that in the absence of facilities of sufficient quantity and quality to receive unaccompanied foreign minors, there are regular problems with the sanitary conditions of the places in which they are accommodated. In a decision of August 2014 the Defender of Rights noted the inadequacy of the Stendhal shelter in Paris in this respect, highlighting "material conditions unworthy of an establishment

for minors run by the child welfare services in view of the worrying sanitary conditions (reports of rats, cockroaches and bedbugs) and particularly dilapidated premises unsuited for the accommodation of adolescents”.

142. While noting that this establishment had been closed in February 2014, the Defender of Rights recommended that in spite of this, one or more establishments in keeping with Law No. 2002-2 of 2 January 2002 on social welfare reforms should be set up to reduce the need to accommodate these young people in hotels, in conditions which raise legitimate fears concerning their physical and psychological health.

143. Similarly, the PUCAFREU (project “Promoting unaccompanied children’s access to their fundamental rights in Europe”) report states that some of the young people interviewed have experienced alarming health problems such as extreme fatigue, infections at shelter facilities and hypothermia (when living on the street), even though the rapporteurs state that these young people have relatively easy access to the healthcare system, through campaigning organisations or through public facilities providing state medical assistance. It is still true, however, that “associations working in the field have witnessed an alarming deterioration in the physical and psychological health of these children who live on the streets”.

144. For its part, the CGT trade union representing the staff of the department council of the Hauts-de-Seine reports that “children and young people requiring medical care (such as dental treatment and treatment of urinary infections and leg wounds) sometimes remain untreated for several days or weeks on the pretext that there is no parental authority to authorise treatment. ... In general, young people who are made to wait in hotels are not given a medical checkup”. Furthermore, “mental health conditions such as post-traumatic stress, which have been reported in a number of unaccompanied minors, are rarely taken into account and rarely monitored”.

145. EUROCEF concludes that France is not taking all necessary measures to guarantee the right of unaccompanied foreign minors to protection of their health, as required by Article 11 of the Charter.

2. The respondent Government

146. The Government 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 the departments 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. This means that funding is available for part of the cost of providing shelter during assessments.

147. It is also of relevance that those claiming to be unaccompanied foreign minors often suffer from infectious diseases, such as hepatitis, HIV or tuberculosis, contracted in their country of origin or during the course of their migration. In the case of the Ebola virus, while no cases have been detected in France, the Ministry of Justice's Directorate for the Judicial Protection of Young Persons has nevertheless collaborated with the Department of Health and the regional health agencies to

ensure that safety notices are sent to all department councils and prosecution offices dealing with young persons who might have transited through the countries concerned and could be in an incubation period.

148. In any event, it must be acknowledged that most unaccompanied foreign minors have experienced physical health problems before being given shelter in France.

149. Nor are long waiting times for medical appointments confined to unaccompanied foreign minors. Young persons claiming this status are eligible for the special hospital-based clinics operating under the PASS scheme, which are free of charge, State medical assistance, under the AME scheme, if after assessment they are found to be over 18, subject to three months' residence in France, or universal medical coverage (CMU), if they are identified as unaccompanied foreign minors and are in the care of a child welfare department.

150. Emergency treatment is provided free of charge, as is the case with any life-threatening emergency when the patient has no medical insurance cover.

151. The Government wishes to point out in this context that EUROCEF itself acknowledges that "access to care for unaccompanied foreign minors is properly provided for".

B – Assessment of the Committee

152. In its decision *DCI v. Belgium*, Complaint No. 69/2011 *op. cit.*, the Committee considered that the continuing incapacity of the reception facilities and the fact that, consequently, a significant number of the minors in question have been 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 regard, the Committee considers that providing unaccompanied foreign minors with shelter is a minimum prerequisite for attempting to remove the causes of ill health among these minors and that the state therefore has failed to meet its obligations as far as the adoption of this minimum prerequisite is concerned.

153. The Committee notes that several health services are provided to minors throughout the country such as special hospital-based clinics that operate free of charge, State medical assistance, under the AME scheme, if after assessment they are found to be over 18, subject to three months' residence in France, or universal healthcare coverage (PUMa), (replacing the CMU scheme since 1 January 2016), if they are identified as unaccompanied foreign minors and are in the care of a child welfare department. Emergency treatment is provided free of charge, as is the case with any life-threatening emergency when the patient has no medical insurance cover.

154. However, the Committee, referring to its findings under Article 17, reiterates that due to overcrowded reception facilities a certain number of minors live on the street where their physical and moral integrity is threatened with no access to health services. The Committee is concerned by the fact that a certain number of unaccompanied foreign minors, declared to be "adult" by the authorities and not

complying with the condition of three months' residence on the territory, do not have access neither to universal healthcare coverage (PUMa), nor to the State medical assistance (AME). Therefore, it finds that the specific needs in terms of health protection of unaccompanied foreign minors are not taken into account and the legislation currently in force is not effectively implemented.

155. For these reasons, the Committee holds that there is a violation of Article 11§1 of the Charter.

IV. ALLEGED VIOLATION OF ARTICLE 13§1 OF THE CHARTER

156. Article 13§1 of the Charter reads:

Article 13 – The right to social and medical assistance

Part I: "Anyone without adequate resources has the right to social and medical assistance."

Part II: "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; ..."

A – Arguments of the parties

1. The complainant organisation

157. EUROCEF alleges that the overcrowded facilities make it impossible to find appropriate solutions to every problem, particularly for young people who are refused admission to protection arrangements by reception teams.

158. EUROCEF also refers to statements by social workers who complain of insufficient training to deal with the very specific situation of unaccompanied young minors, that they are often overwhelmed by the scale of the tasks assigned to them and that they regret the lack or insufficient numbers of interpreters to enable them to give personal advice and help in accordance with Article 13 of the Charter.

2. The respondent Government

159. The Government states that the "unaccompanied foreign minors" unit of the Directorate for the Judicial Protection of Young Persons, the National School for the Judicial Protection of Young Persons and the National Centre for the Local and Regional Public Service are currently organising training for assessment staff. Certain departments have delegated assessments of young persons' age and unaccompanied status to voluntary associations, which often have greater experience in this area than local authority staff. Finally, most departments have appointed one or more managers or social workers from their child welfare

departments to act as resource persons for unaccompanied foreign minors, thus helping to professionalise assessments of age and unaccompanied status.

160. The department council staff working in this field have usually had general or specialist social work training, which means that they are trained to organise and carry out assessment interviews.

161. 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.

162. 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.

B – Assessment of the Committee

163. The Committee recalls that Article 13§1 requires that States Parties must ensure to anyone without adequate resources the right to social and medical assistance. Referring to its findings under Article 17, it recalls that the obligation to provide emergency social and medical assistance is not respected in cases when minors are left in a situation of wandering and living on the streets.

164. It also notes that according to the Defender of Rights the quality of the care provided to a minor varies from one department to another and in some cases, this care is provided under unsatisfactory conditions. The Defender of Rights has also pointed out that social workers have not sufficient training to deal with the very specific situation of unaccompanied young minors.

165. The Committee refers to the 2017 CNCDH statement, on the situation of unaccompanied foreign minors, finding delays in conducting social assessments of unaccompanied foreign minors and it requests to the local authorities to integrate these minors without delay into the mainstream child protection system and to muster the medical, social, educational and legal resources needed for the full protection of unaccompanied minors' fundamental rights.

166. For these reasons, the Committee holds that there is a violation of Article 13§1 of the Charter.

V. ALLEGED VIOLATION OF ARTICLE 31§2 OF THE CHARTER

167. Article 31§2 of the Charter reads:

Article 31 – The right to housing

Part I: "Everyone has the right to housing."

Part II: "With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

...

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

..."

A – Arguments of the parties

1. The complainant organisation

168. EUROCEF alleges that leaving minors on the street is in fact a violation of their right to shelter.

2. The respondent Government

169. The Government notes in this context that the *Conseil d'Etat* has found that the Social Action and Family Code establishes a genuine right to emergency accommodation. 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 wellbeing 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 *ordonnance de référé*, 12 March 2014, No. 375956). Attention should also be drawn to persons applying to the child protection services as unaccompanied foreign minors who may be "given shelter" pending the outcome of the assessment of their age and unaccompanied status.

170. However, 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, persons claiming to be unaccompanied foreign minors may remain for some time in hostels for immigrant workers, or in the homes of distant family members, pending recognition that they are under 18 and at risk. These young persons often find accommodation within these community networks before applying to the child protection services.

171. Turning more specifically to Paris itself, additional places in shelters are to be made available in the first quarter of 2015, which means that young persons

undergoing assessment of their age and unaccompanied status by the *France Terre d'Asile* Association, the child welfare authorities and the Paris Regional Court will be given shelter almost automatically.

172. 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 (*Service d'aide médicale urgente* (municipal humanitarian emergency service) 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 department council concerned.

B – Assessment of the Committee

173. The Committee notes that the complainant organisation's allegations regarding Article 31§2 also fall under Article 17 of the Charter. Therefore, it recalls that as the scope of Articles 31§2 and 17 overlap to a large extent, and it will address the issue of the right to a shelter of unaccompanied foreign minors under the scope of Article 31§2.

174. The Committee recalls that Article 31§2 requires that homeless persons must be offered shelter as an emergency solution. Moreover, to ensure that the dignity of the persons sheltered is respected, shelters must meet adequate health, safety and hygiene standards. Moreover, in its decision *DCI v. the Netherlands*, Complaint No. 47/2008, op. cit., §64, the Committee concluded that States Parties are required, under Article 31§2 of the Charter, to provide adequate shelter to children unlawfully present in their territory for as long as they are in their jurisdiction.

175. Referring to its findings under Article 17§1, it recalls that the arrival of unaccompanied children is steadily increasing and that the current protection system provided by the Circulars of 2013 and 2016 does not allow adequate care, as minors are increasingly left on their own, without shelter and protection. As the specific needs of this vulnerable group are not adequately met, they are prone to be exposed to various risks undermining their human dignity.

176. Moreover, the Government does not show how it intends to guarantee the right to shelter for these minors, and in particular by what means it intends to prevent and reduce the state of the homelessness of foreign unaccompanied minors in view of its elimination.

177. For these reasons, the Committee holds that there is a violation of article 31§2 of the Charter.

VI. ALLEGED VIOLATION OF ARTICLE 30 OF THE CHARTER

178. Article 30 of the Charter reads:

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

Part I: “Everyone has the right to protection against poverty and social exclusion.”

Part II: “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.”

A – Arguments of the parties

1. The complainant organisation

179. EUROCEF alleges that the conditions of existence of unaccompanied young minors living on the streets “without protection” pose a threat to their schooling, and by extension their regularisation, and are therefore in breach of Article 30 of the Charter.

2. The respondent Government

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

B – Assessment of the Committee

181. The Committee recalls that Article 30 of the Charter requires States Parties to give effect to the right to protection against poverty and social exclusion by adopting measures, within the framework of a co-ordinated approach, aimed at preventing and removing obstacles to access to fundamental social rights, in particular employment, housing, training, education, culture and social and medical assistance (Statement of interpretation on Article 30, Conclusions 2003).

182. The Committee reiterates that such a co-ordinated approach should consist of an analytical framework, as well as of a set of priorities and measures to prevent and remove obstacles to access to fundamental social rights. Monitoring mechanisms should be put in place, involving all relevant actors, including civil society and

persons affected by exclusion and poverty. Policies should moreover be linked and integrated in a consistent way, that is in a manner reaching beyond a sectorial or a targeted group approach (International Movement ATD Fourth World v. France, §134).

183. To this extent the Committee reiterates the very close link between the effectiveness of the right recognised by Article 30 and the enjoyment of the rights recognised by other provisions of the Charter which relate to a number of different social needs (such as Articles 1, 9, 10, 12, 13, 14 and 31 Statement of interpretation on Article 30, Conclusions 2013), including the right to family housing under Article 16.

184. For this reason, when assessing Article 30, the Committee takes into consideration the national measures or practices which fall within the scope of other substantive provisions of the Charter in the framework of both monitoring systems (the reporting procedure and the collective complaint procedure). The Committee recalls that this approach does not mean that a conclusion of non-conformity or a decision of violation of one or several of these provisions automatically or necessarily lead to a violation of Article 30 (EUROCEF v. France, Complaint No. 82/2012, decision on the merits of 19 March 2013, §59); but such a conclusion or decision may, depending on the circumstances, be relevant in assessing conformity with Article 30.

185. Regarding the allegations in the complaint under consideration, the Committee acknowledges that the situation of certain minors could expose them to poverty and social exclusion. In its Conclusions 2017, the Committee finds the situation to be in conformity with Article 30 due in particular to the numerous measures that have been undertaken both on the poverty prevention side and on accompanying people living in poverty in France. It further notes the commitment of the Government to continue the comprehensive monitoring of the initiated measures which are intended to complement the multi-annual plan against poverty and social exclusion through a series of new actions, drawn up in consultation with the relevant actors. It also notes that the Government has adopted several measures to improve in particular the unaccompanied foreign minors' situation (law on the protection of childhood of 14 March 2016; circulars on national arrangements for the provision of shelter, assessment and guidance of 2013 and 2016). The Committee considers therefore that there are elements indicating efforts by France towards a coordinated approach to protect minors from poverty and combat their social exclusion. In addition the Committee notes that the complaint does not provide information on lack of measures or coordinated approach on the part of the Government to overcome such obstacles.

186. For the above reasons, the Committee holds that there is no violation of Article 30 of the Charter.

CONCLUSION

For these reasons, the Committee concludes:

- unanimously, that there is a violation of Article 17§1 of the Charter due to :
 - shortcomings identified in the national shelter, assessment and allocation system of unaccompanied foreign minors;
 - the delays in appointing an ad hoc guardian for unaccompanied foreign minors;
 - the detention of unaccompanied foreign minors in waiting areas and in hotels;
 - the use of bone testing to determine the age of unaccompanied foreign minors considered as inappropriate and unreliable;
 - a lack of clarity to access an effective remedy for unaccompanied foreign minors;
- by 8 votes to 7, that there is a violation of Article 17§2 of the Charter due to lack of access to education for unaccompanied foreign minors aged between 16 and 18 years;
- unanimously, that there is a violation of Article 7§10 of the Charter due to the inappropriate accommodation of minors and their exposure to life on the street;
- unanimously, that there is a violation of Article 11§1 of the Charter due to lack of access to health of unaccompanied foreign minors;
- by 14 votes to 1, that there is a violation of Article 13§1 of the Charter due to lack of access to social and medical assistance of unaccompanied foreign minors;
- by 14 votes to 1, that there is a violation of Article 31§2 of the Charter due to lack of provision of a shelter to unaccompanied foreign minors;

- by 10 votes to 5, that there is no violation of Article 30 of the Charter;
- by 11 votes to 4, that Article E of the Charter is not applicable to the instant case.

Karin LUKAS
Rapporteur

Giuseppe PALMISANO
President

Henrik KRISTENSEN
Deputy Executive Secretary

In accordance with Rule 35§1 of the Rules of the Committee, a separate dissenting opinion of Petros STANGOS is appended to this decision.

SEPARATE DISSENTING OPINION OF PETROS STANGOS

I agreed neither with the decision taken by the majority of the Committee members that there was no violation of Article 30 of the Charter nor with the majority decision that Article E does not apply to this complaint.

As to Article 30 of the Charter, I consider that the French system for reception and accommodation fails to offer unaccompanied minors sufficient protection from poverty and social exclusion. The accommodation of minors in hotels or their detention in waiting areas for weeks or months bars them from access to social or education services (see, in the decision, the assessment under Articles 17§1 and 13 of the Charter). In addition the resultant lack of foster homes, which could take minors in, and the fact that they are abandoned on the street, exposes them to great physical and moral hazards (human trafficking, exploitation through begging and sexual exploitation). An even more serious problem in my view is that unaccompanied foreign minors do not have sufficient access to education, which is a vital prerequisite to avoid poverty and social exclusion (see, in the decision, the assessment under Article 17§2 of the Charter).

As a result of all this, I believe, while acknowledging some of the efforts of the French Government to improve the situation of unaccompanied foreign minors (Law of 14 March 2016 on child protection and Circulars of 2013 and 2016 on the national system for shelter, assessment and allocation), that this particularly vulnerable group residing on French territory is still exposed to poverty and social exclusion and hence that there has been a violation of Article 30 of the Charter.

As to the majority decision not to apply Article E of the Charter, I did not agree with this, asserting both that Article E of the Charter was applicable to unaccompanied foreign minors albeit solely within the ambit of Article 17§2 and that it could be found that there had been a violation of Article E of the Charter read in conjunction with Article 17§2.

It is true that under French legislation, schooling is not compulsory beyond the age of 16. This means that a uniform group of people, residing in one way or another on French territory and aged over 16, is singled out and the national legislation does not establish an obligation to attend school in respect of them. If such an obligation were to be established, it could be combined with an obligation for the state to set up appropriate arrangements and/or penalties in the event of non-compliance. Yet, facing this group of people is another group of people, which is also made up of persons over 16 years of age and also resides in one way or another on French territory but is distinct from the preceding group in that it has an obligation under national legislation to attend school. This group is made up of unaccompanied foreign minors. According to the Defender of Rights, by whose statements the Committee rightly sets much store, Appendix 6 of the Interministerial Circular of 25 January 2016 points to the “obligation to attend school” of minors between 16 and 18 who are “temporarily or permanently deprived of their families’ protection” (see the Defender of Rights’ annual report for 2016 on children’s rights (in French) “*Droit fondamental à l’éducation : une école pour tous, un droit pour chacun*”, pp. 61 and 140).

In my opinion, the existence of these two different groups of minors over the age of 16, one of which is not subject to compulsory schooling while the other is, should have been used as justification for the application of Article E. Once it had been established that Article E was applicable, the Committee should have ascertained whether different treatment was afforded to the group of minors who should attend school, who, in this case, were unaccompanied foreign minors. The fact is that the Committee has repeatedly held that the principle of equality, which results from the prohibition of discrimination, means treating equals equally and unequals unequally (*Autism-Europe v. France*, Complaint No. 13/2002, decision on the merits of 4 November 2003, §52). With regard to the application of the established case-law in this case, the failure of the French authorities to provide special educational facilities for unaccompanied foreign minors should have been thoroughly investigated. I would simply point out here that in the document referred to above, the Defender of Rights notes with regard to this group of persons (identified, in terminology which is peculiar to the Defender of Rights' report, as "non-native speaker" minors), that although the regulation cited above acknowledges that these people are under an obligation to attend school, it "makes no specific provision for those who do not have a sufficient level of schooling for the classroom, making it difficult for them to be assisted by child welfare in their area of schooling" (*ibid.*, p. 61).