



Convention on the Rights of the Child

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Committee on the Rights of the Child

Views adopted by the Committee under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, concerning communication No. 130/2020* **

<i>Communication submitted by:</i>	S.E.M.A. (represented by counsel, Sandrine Rodrigues)
<i>Alleged victim:</i>	The author
<i>State party:</i>	France
<i>Date of communication:</i>	9 December 2020 (initial submission)
<i>Date of adoption of Views:</i>	25 January 2023
<i>Subject matter:</i>	Lack of access by an unaccompanied migrant child in a street situation to the child protection system because he was considered an adult by the French authorities; determination of the age of a migrant child
<i>Procedural issue:</i>	Exhaustion of domestic remedies
<i>Substantive issues:</i>	Best interests of the child; right of the child to be heard; protection of a child deprived of his family environment; inhuman or degrading treatment
<i>Articles of the Convention:</i>	3, 8, 12, 20 (1) and 37 (a)
<i>Article of the Optional Protocol:</i>	7 (e)

1.1 The author of the communication is S.E.M.A., a national of Pakistan born on 31 December 2002. He claims that the State party violated his rights under articles 3, 8, 12 and 20 of the Convention, since the French authorities did not recognize him as an unaccompanied migrant child in a street situation. As a result, he has not been given access to social services, education or adequate housing. The author is represented by counsel. The Optional Protocol entered into force for the State party on 7 April 2016.

1.2 On 10 December 2020, pursuant to article 6 of the Optional Protocol, the working group on communications, acting on behalf of the Committee, requested the State party to

* Adopted by the Committee at its ninety-second session (16 January–3 February 2023).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho, Aïssatou Alassane Moulaye, Hynd Ayoubi Idrissi, Bragi Gudbrandsson, Philip Jaffé, Sopia Kiladze, Gehad Madi, Benyam Dawit Mezmur, Otani Mikiko, Luis Ernesto Pedernera Reyna, José Ángel Rodríguez Reyes, Ann Skelton, Velina Todorova, Benoit Van Keirsbilck and Ratou Zara.



place the author in a children's home until 31 December 2020, at which time he would reach the age of 18, and to refrain from returning him to Pakistan until that date.

Facts as submitted by the author¹

2.1 On 25 August 2019, the author entered the territory of France. On 27 August 2019, he went to the association Forum Réfugiés Cosi, an association mandated by the metropolitan authorities of Lyon to assess the age and unaccompanied status of minors claiming to be deprived of family protection. The author, who had a copy of his birth certificate, claimed to be an "unaccompanied minor". However, the author maintains that he was not provided with temporary emergency accommodation in accordance with articles L.223-2 and R.221-11 of the Social Welfare and Family Code.²

2.2 On 28 August 2019, the association Forum Réfugiés Cosi carried out an assessment of the author's age and unaccompanied status by means of an interview that lasted only one hour, with the assistance of an Urdu interpreter by telephone, even though the author's home language is Punjabi. In its assessment report, the association concluded that the author could not be recognized as a minor: "the age stated by the young person matches the date of birth mentioned. However, neither his attitude nor his physical appearance, though youthful, is such as to reliably corroborate the age claimed. The document includes all the usual elements, including the young person's first name, family name and date of birth. Nevertheless, the manner in which the document was obtained is not clear. The young person's narrative is full of contradictions ... Thus, the few details given by the young person do not provide a basis for confirming the age claimed. In addition, his story is often incoherent and does not appear to be consistent with the age claimed. Consequently, doubts remain as to the civil status of [S.E.M.A.]". The author notes that the assessment report contains numerous inaccuracies which he was unable to have corrected, as he was not assisted by a lawyer during the interview and was not able to review the report or request corrections.

2.3 On the same date, on the basis of this assessment report, the author was notified of a decision to deny him access to the child welfare system of the Metropolis of Lyon. The decision states that "the evidence provided during the assessment was insufficient to establish your status as a minor. You have presented identity documents (copies). The evidence given during the interview did not provide a basis for determining that the age claimed is accurate or for establishing your identity. Furthermore, your story is not convincing or coherent. Your physical appearance does not seem to be consistent with that of a minor." The author states that the Lyon metropolitan authorities did not take the copy of his birth certificate into account and did not contact the Pakistani consular authorities to verify its authenticity.

2.4 On 30 September 2019, the author petitioned the juvenile court judge of the Lyon Judicial Court to grant a protection measure pursuant to articles 375 et seq. of the Civil Code and to place him with the child welfare services.³ At the hearing before the juvenile court judge, the author presented the originals of his birth certificate and his Pakistani identity card. The author states that the juvenile court judge disregarded these materials without even requesting an analysis of the documents or verification of their authenticity with the Pakistani authorities. On 4 December 2019, the juvenile court judge dismissed the petition for support services on the ground that the author could not be considered a minor. The judge found that

¹ Information on the asylum procedure in France has been supplemented with data provided by the State party.

² Article L.223-2 of the Social Welfare and Family Code: "In case of emergency and when the minor's legal representative is unable to give consent, the child shall be taken in temporarily by the service, which shall so notify the public prosecutor without delay". Article R.221-11 of the Social Welfare and Family Code: "I.-The president of the departmental council of the place where a person claiming to be a minor temporarily or permanently deprived of family protection is found shall arrange for temporary emergency accommodation for a period of five days as from the date on which such support begins ...".

³ Civil Code, art. 375: "If the health, safety or morals of an unemancipated minor are in jeopardy, or if the conditions of his or her education or physical, emotional, intellectual and social development are seriously compromised, support measures may be ordered by a court on application by the father and mother jointly or by one of them, by the person or service entrusted with the minor's care or by the minor's guardian, the minor himself or herself or the public prosecutor's office ...".

the author's appearance raised "questions, firstly in view of his physical appearance, though youthful, and secondly in view of the photograph on the Pakistani identity card presented at the hearing, which does not seem to be a photograph of him".

2.5 On 20 December 2019, the author filed an appeal against the judgment with the Lyon Court of Appeal. During the hearing, on 8 September 2020, the author, with the assistance of an English-language interpreter, presented his original birth certificate, authenticated by the Embassy of Pakistan in Paris on 24 January 2020, and his original Pakistani national identity card. He also presented a photocopy of his passport, which includes the national identification number found on his birth certificate and national identity card.

2.6 On 29 September 2020, the Lyon Court of Appeal ordered an expert analysis of the identity documents presented and postponed the hearing to 12 January 2021 – a date subsequent to the date on which he would reach the age of majority – without protecting him by placing him in the child welfare system, despite the principal request for such placement that the author had made both in writing and orally.⁴

2.7 The author states that since 28 August 2019 he has been without accommodation, without support and without any means of subsistence. He has thus been unable to follow government directives by applying the preventive measures recommended in the context of the coronavirus disease (COVID-19) pandemic.

Complaint

3.1 The author claims that his rights under articles 3, 8, 12 and 20 of the Convention were violated by the State party as a result of the age determination procedure he underwent and the fact that he was not recognized and protected as an unaccompanied migrant child.

3.2 The author considers that the State party did not bear in mind the principle of the best interests of the child, enshrined in article 3 of the Convention, during the age determination procedure.⁵ The State party's authorities did not take account of the documentation submitted by the author: initially, the photocopy of his birth certificate; then, before the juvenile court judge, the originals of his birth certificate and national identity card; and finally, before the Court of Appeal, the original of his birth certificate authenticated by the Embassy of Pakistan in Paris, the original of his Pakistani national identity card and a photocopy of his passport. As a result, he was found to have reached the age of majority, was deprived of the protection to which he was entitled as an unaccompanied migrant child and was placed in a situation of extreme vulnerability. The State party's authorities failed to respect the principle of the presumption of minority and did not give the author the benefit of the doubt during the age determination process, even though he had submitted official identity documents from his country of origin in support of his application for protection. The author alleges that the State party's authorities did not analyse the documents or contact the Pakistani consular authorities in France to verify their authenticity. He points out that the hearing to determine whether he was a minor was scheduled by the Lyon Court of Appeal for 12 January 2021, whereas he would become an adult on 31 December 2020 and thus ran the risk of having his appeal declared moot.

3.3 The author also alleges that his lack of representation before, during and after the age assessment interview violated his rights under article 3, read in conjunction with article 12 (2), of the Convention. For the determination of his age, the State party's authorities relied solely on the author's physical appearance and alleged inconsistencies in the statements he made at the assessment interview, which was conducted with the assistance of an Urdu interpreter by telephone, whereas his home language is Punjabi. He was not accompanied by a lawyer or representative either before or during the interview and did not have the opportunity to review the assessment report or to make corrections. As he had no legal assistance during the age assessment, the inaccuracies were not pointed out until later, when the author's counsel raised them before the juvenile court judge.

⁴ See para. 4.1 below.

⁵ The author refers to the Committee's general comment No. 6 (2005) and to relevant decisions of the Committee, such as *N.B.F. v. Spain* (CRC/C/79/D/11/2017), para. 12.3, and *R.K. v. Spain* (CRC/C/82/D/27/2017), para. 9.9.

3.4 The author also alleges that he was excluded from the child protection system and left living on the street, abandoned and in a situation of extreme vulnerability during the COVID-19 pandemic, in violation of his rights under article 3, read in conjunction with article 20, of the Convention. The author indicates that at the time the assessment interview was conducted he had not been given temporary emergency accommodation, which is mandatory under articles L.223-2 and R.221-11 of the Social Welfare and Family Code, and thus had not had the benefit of shelter and time to rest. He indicates that the judicial authorities scheduled hearings at unreasonably long intervals without ordering his placement in the child welfare system in the meantime.

3.5 The author also alleges that the State party violated his rights under article 8 of the Convention. He cites the Committee's consistent jurisprudence to the effect that age is a fundamental element of identity. A child's date of birth forms part of his or her identity and States parties have an obligation not to undermine any elements of a child's identity or to deprive him or her of any such elements.⁶ He emphasizes that the State party's authorities did not seek to verify whether the information on his birth certificate was accurate or to confirm it with the Pakistani authorities, in contravention of the Convention and national law. The author indicates that, under article 47 of the Civil Code, any civil status record of a foreign national issued by a foreign country and drawn up in the manner prescribed in that country is regarded as genuine unless other records or documents held by such person, extrinsic information or elements drawn from the record itself establish, if necessary upon verification, that the record is irregular or falsified or that the facts asserted therein do not correspond to the actual circumstances. The author also refers to article 1 of Decree No. 2015-1740 of 24 December 2015, which provides that, in case of uncertainty about a civil status document, only verification with the relevant foreign authority can provide information suitable for determining the authenticity of the disputed civil status record. Lastly, the author refers to article R.221-11 of the Social Welfare and Family Code, according to which, "during the period of temporary emergency accommodation, the president of the departmental council shall carry out the necessary investigations in order to assess the person's situation, particularly with regard to his or her claims concerning identity, age, family of origin, nationality and unaccompanied status. ... The president of the departmental council may also request assistance from the departmental prefect and, in Paris, the police prefect to verify the authenticity of the documents in the person's possession."

3.6 The author states that the Defender of Rights has repeatedly noted the failure of the departmental councils to take civil status documents into consideration when assessing age and unaccompanied status,⁷ as well as excessively long intervals before hearings, sometimes before the juvenile court judge and especially before the juvenile division in cases of appeal.⁸

3.7 The author argues that there is a gap in the French system instituted by the law of 14 March 2016,⁹ since a provisional administrative decision of a departmental council is sufficient to exclude a minor from the child protection system, which is the only system authorized to provide such services to minors in France. This means that, pending a final court decision, such a minor has no right to an effective remedy or to be cared for as a minor. Such minors are referred instead to State-run emergency accommodation facilities for adults, which are totally unsuitable, are not authorized to house minors and, in particular, are used for the accommodation of people with very specific problems (extreme exclusion, addiction, street situations, etc.).

3.8 The author emphasizes that bringing a case before a juvenile court judge and, where applicable, before a court of appeal does not have suspensive effect on the departmental council's decision to deny access to social assistance and that neither the juvenile court judge nor the court of appeal is bound by any time limit within which to consider a minor's

⁶ *A.D. v. Spain* (CRC/C/83/D/21/2017), para. 10.17.

⁷ Defender of Rights, decision No. 2020-209 of 15 October 2020 on the situation of an unaccompanied minor applying for temporary emergency accommodation pending a juvenile court decision, https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=34697&opac_view=-1.

⁸ Defender of Rights, decision No. 2020-148 of 16 July 2020 on the support services procedure, https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=33252.

⁹ Child Protection Act (No. 2016-297) of 14 March 2016.

application and render a decision on support services. At most, the juvenile court judge and, where applicable, the court of appeal have the power, pursuant to article 375-5 of the Civil Code, to order provisional measures pending a decision. Such measures are optional and are taken at the full discretion of the judge. In addition to the risk that the matter will be found moot on appeal if a minor becomes an adult in the course of the proceedings, this lack of a suspensive, and therefore effective, remedy exposes minors to vagrancy, inhuman or degrading treatment, violence, trafficking rings and the risk of being targeted by a removal order. The absence of a suspensive and therefore effective remedy was also noted by the Defender of Rights in that office's 2019 activity report.¹⁰

3.9 The author requests, by way of reparation, that the Committee ask the State party to: (a) give him the opportunity to remain in the country and regularize his administrative status by promptly issuing him a one-year residence permit for purposes of "private and family life"; (b) grant him continued entitlement to support as a vulnerable young adult under the age of 21;¹¹ and (c) ensure that the entire age determination procedure for young persons claiming to be minors is in conformity with the Convention, that they are protected as children by the competent public authorities throughout the procedure and that they are accorded all the rights deriving from their status as children.

State party's observations on admissibility and the merits

4.1 In observations dated 18 October 2021, the State party argues that the communication is inadmissible under article 7 (e) of the Optional Protocol, since the author has failed to exhaust domestic remedies. The State party points out that, at the time the communication was submitted, the author's appeal was pending before the Lyon Court of Appeal. The State party contends that the appeal was an effective means of challenging the 4 December 2019 decision of the juvenile court judge of the Lyon Judicial Court. The hearing was held on 12 January 2021 and the outcome of the deliberations was issued on 12 February 2021. In its decision, the Lyon Court of Appeal set aside the decision of the juvenile court judge of the Lyon Judicial Court, considering in particular that the material authenticity of the documents produced by the author had been demonstrated, that he was presumed to be the legitimate holder thereof and that, in the absence of significant extrinsic information, those documents, which had been presented (before authentication) to the juvenile court judge, must be presumed to be genuine. The Court of Appeal also took the view that the author should have had access to the child welfare system.

4.2 The State party thus maintains that the French authorities did indeed, at the end of the legal proceedings initiated by the author, give full effect to the identity documents he had presented. This shows that the procedure before the Lyon Court of Appeal was a remedy that should have been exhausted before the matter was submitted to the Committee, since it was capable of redressing the violation invoked by the author. The State party also observes that at the hearing before the Lyon Court of Appeal on 8 September 2020, at the end of which a decision on the merits was deferred and an expert analysis of the civil status documents produced by the author was ordered, the author did not request that any interim measures, including a temporary placement, should be taken pending the Court's decision.¹² Had the

¹⁰ Defender of Rights, annual activity report for 2019, June 2020, p. 39: "As an application to the juvenile court judge in response to the department's decision to end temporary emergency accommodation has no suspensive effect, the minor is deprived of an effective remedy. He or she is forced into vagrancy, facing the risk of violence and of being targeted by a removal order. The minor is thus deprived of the shelter to which every child has a right and of the continuous protection to which he or she is entitled through the child welfare system until a final court decision is handed down."

¹¹ Social Welfare and Family Code, art. L.222-5: "The following are provided with support by the child welfare services on the decision of the president of the departmental council: ... 5. Adults under the age of 21 and emancipated minors who do not have sufficient resources or family support, when the child welfare services were entrusted with their care before they reached the age of majority, including when they are no longer under such care at the time of the decision referred to in the first line of the present article."

¹² The State party refers to the provisions of the Civil Code, art. 375.5 (1): "As a provisional measure, albeit subject to appeal, the judge may, during the proceedings, either order the provisional referral of

author requested the Lyon Court of Appeal to take such a measure, he would have been able to benefit from a temporary placement pending the decision.

4.3 Furthermore, the State party argues that the author did not raise his allegations of a violation of article 20 of the Convention before the domestic courts and that this part of the communication must therefore be declared inadmissible for failure to exhaust domestic remedies.

4.4 The State party also maintains, as a subsidiary argument, that there is no violation of the provisions invoked by the author because the authorities have already redressed the alleged violations.

4.5 With regard to the author's allegation of a violation of article 3, read in conjunction with article 12, of the Convention, the State party maintains, contrary to the author's claim, that the authorities respected his right to be heard. The author was heard at all stages of the age assessment procedure, in both administrative and judicial proceedings. The State party indicates that the author was first heard by the association Forum Réfugiés Cosi. The State party notes the author's claim that he was not assisted by counsel during that interview. However, the State party notes that, under article 12 (2) of the Convention, the assistance of "a representative or an appropriate body" must be provided "in a manner consistent with the procedural rules of national law". The State party explains in this regard that the age assessment interview is an administrative procedure during which the presence of a lawyer is not mandatory. It also points out that the presence of a lawyer is not prohibited and that the author has not shown that he requested the presence of counsel during the interview or that such a request was denied. In addition, the State party points out that article 12 (2) provides that the child must be given the opportunity to be heard "either directly, or through a representative or an appropriate body". Article 12 thus offers an alternative that is fully respected when children are heard directly in cases where this is possible in light of their age and capacity to form their own views. The State party notes that, according to the author's identity documents, he was nearly 17 years old at the time of that interview and was thus fully capable of forming his own views and successfully taking part in that process. The State party reports that subsequently, and throughout the judicial proceedings, the author was not only heard directly by the judges considering his application but was also assisted by counsel.

4.6 With regard to the alleged violation of article 3, read in conjunction with article 20, of the Convention, the State party notes the author's claim, in his submission to the Committee, that he was not given a placement during the age assessment procedure. The State party refers to the consistent jurisprudence of the Court of Cassation to the effect that, under articles 375 and 375-5 of the Civil Code, "the purpose of child protection is, in particular, to forestall any difficulties that minors who are temporarily or permanently deprived of family protection may encounter and to ensure their care; that if the health, safety or morals of a minor are in jeopardy, support measures may be ordered by a juvenile court judge; that when the situation of a minor who is temporarily or permanently deprived of family protection is brought before such a judge, he or she must decide the matter in strict accordance with the interests of the child".¹³ The State party contends that, in the present case, although the judge at first instance was not in a position to recognize that the author of the communication was a minor, the author was successful on appeal. It notes that the juvenile court judge's 4 December 2019 judgment was issued just two months after the author's case had been submitted to the court. Considering the needs of the investigation and the number of cases handled by that court, such a time frame cannot be regarded as unreasonable. The State party notes that the reasoning on which the judgment was based is undeniably sound, as the judge did not rely solely on the assessment report of 28 August 2019, contrary to the author's assertions, but also relied on the author's statements during the hearing, in which he was assisted by counsel but did not present any civil status document with sufficient probative force to show that he was a minor. The judge noted numerous inconsistencies in the author's statements, both during the assessment interview conducted by Forum Réfugiés Cosi and during the hearing, in which the judge insisted on hearing from the author, given the

the minor to a reception or observation centre or take one of the measures provided for in articles 375-3 and 375-4."

¹³ Court of Cassation, First Civil Division, 16 November 2017, No. 17-24.072.

difficulties alleged by his counsel in relation to the conduct of the assessment interview. In the State party's view, it is clear that the author did not provide the judge with any relevant evidence to show that he was a minor.

4.7 The State party points out that on appeal, when the author provided authenticated civil status documents, the Court of Appeal was able to have them translated and accordingly recognized his status as a minor. Furthermore, the State party reiterates that the author never requested the Lyon Court of Appeal to order any interim measures, including temporary placement. On the contrary, the author declared before the Court of Appeal that he had been living with a friend in Marseille for seven months. The State party considers that the failure to provide a placement for the author pending the final judicial decision is attributable not to the State party, but to the author himself, who did not request such placement before the Court of Appeal and always gave the courts reason to believe that he had accommodation.

4.8 The State party points out that the recognition of his status as a minor on appeal had consequences for the author, even though he had reached the age of majority in the meantime. In December 2020 the Lyon metropolitan authorities took charge of managing the author's case and housed him in a hotel in Décines-Charpieu. Follow-up services were provided under a young adult contract by the Assessment and Guidance of Foreign Unaccompanied Minors Team, as an extension of his care as a minor. The State party explains that, on the basis of article L.112-3 of the Social Welfare and Family Code, the young adult contract allows young people in the care of the child welfare services to continue to enjoy the benefits they receive while they are minors until they reach the age of 21.¹⁴ This assistance can take many forms, such as educational support, accommodation, psychological and social support, financial aid and so forth.

4.9 With regard to the author's claims under article 8 of the Convention, the State party reiterates that the French authorities did indeed, at the end of the legal proceedings initiated by the author, give full effect to the identity documents he presented and that the State party thus did not violate these provisions of the Convention. The State party emphasizes that the domestic courts ruled on the basis of article 47 of the Civil Code, according to which "any civil status record of a French national or foreign national issued by a foreign country and drawn up in the manner prescribed in that country shall be regarded as genuine unless other records or documents held by such person, extrinsic information or elements drawn from the record itself establish, if necessary upon verification, that the record is irregular or falsified or that the facts asserted therein do not correspond to the actual circumstances, as assessed in accordance with French law". Courts must therefore pay close attention to the identity documents presented, in particular to ensure that they are sufficiently reliable under the terms of this article. The State party reiterates that, at first instance, the author presented only a photocopy of his birth certificate, and the judge handed down a ruling in a reasoned decision, taking into account the author's vague and inconsistent statements and noting that the photograph on the Pakistani identity card presented at the hearing did not appear to be a photograph of the author. It also reiterates that not until the hearing of 8 September 2020 before the Court of Appeal did the author present his original authenticated birth certificate, a document which, once translated, enabled the Court of Appeal to recognize that the author was a minor.

Author's comments on the State party's observations

5.1 In comments dated 3 January 2022, the author states that, despite the interim measures granted by the Committee and the repeated requests made by the author on 11, 12 and 14 December 2021, he was not provided with shelter until 31 December 2020, the day of his eighteenth birthday, when the Lyon metropolitan authorities reversed their decision following the publication of a press article concerning his situation in a local newspaper.

5.2 The author considers that the remedy provided for in the Civil Code (arts. 375 et seq.), concerning direct submission of a case to the juvenile court judge followed by submission to

¹⁴ "The purpose of child protection is to ensure that the basic needs of the child are taken into account, to support his or her physical, emotional, intellectual and social development and to preserve his or her health, safety, morals and education, while respecting his or her rights", Social Welfare and Family Code, art. L.112-3.

the court of appeal, cannot be considered an effective remedy because it did not enable the authorities to resolve the dispute over his age within a reasonable time. In fact, this remedy did not allow the author to benefit from the placement to which he was entitled while he was a minor. First, minors are not assisted by counsel at the administrative stage, nor are they informed of available avenues for challenging decisions regarding the assessment of their age. In the present case, it was only when the author met a social worker who knew a lawyer in Lyon specializing in litigation involving unaccompanied foreign minors that he was referred to a lawyer who could file a petition with the juvenile court judge, which took one month. Second, minors are not able to review the assessment report; since the report was not read back to the author by an interpreter, he had no means of having any transcription errors corrected. Third, the length of the proceedings and the non-automaticity of the protection measures available to juvenile court judges and courts of appeal demonstrate the ineffectiveness of the remedy. The author reiterates that for over a year and a half (since 28 August 2019), the French authorities had wrongly dismissed the civil status records he had submitted. The author claims that he was left in a situation of insecurity and degradation for more than a year and a half while the country was in the midst of a public health emergency.

5.3 Contrary to the State party's claims, the author maintains that he requested the juvenile court judge and the Lyon Court of Appeal to grant him a temporary placement. Nevertheless, the juvenile court judge, to whom the case was submitted on 30 September 2019, scheduled the hearing for a date more than two months later without ordering such temporary placement, even though he had the power, and had been expressly requested, to do so.

5.4 With regard to the alleged violation of article 20 of the Convention, the author submits that this claim was raised in substance before the domestic authorities. The author's counsel constantly reminded the judicial authorities of the author's status as an unaccompanied foreign minor, i.e. a child deprived of his family environment. The 30 September 2019 submission to the juvenile court judge expressly noted that the author "had left Pakistan in January 2018", that his parents "live in Pakistan", that he was "homeless" and that he "had lived on the street since arriving in France". The author's need for protection was also explicitly stated through the request for placement. These same points were made in the submissions filed with the Court of Appeal in March 2020, requesting that the child welfare services be entrusted with his care. On 31 May 2021, the author's counsel also alerted the special division for minors of the Court of Appeal to the author's precarious situation while awaiting the appeal hearing: "Following the 20 December 2019 notice of appeal against the 4 December 2019 decision of the juvenile court judge, I sent you my pleadings and exhibits by letters dated 2 and 16 March 2020, requesting [a hearing] of this case as soon as possible, as the minor is in possession inter alia of an identity document and authenticated records. The youth S.E.M.A., whose mental and psychological health is deteriorating, was left to his own devices during the lockdown and is in a highly precarious situation; he has repeatedly contacted my office to find out when the court is likely to rule on his status."

5.5 The author reiterates the arguments made in his initial complaint, maintaining that the State party violated his rights under articles 3, 8, 12 and 20 of the Convention. In his view, the fact that the Lyon Court of Appeal finally recognized his real age does not change the fact that his rights as an unaccompanied minor have been violated for the entire time he has been in France.

5.6 In addition, the author claims that the State party has further infringed his future rights: (a) after having already lost a year of schooling, he did not, upon reaching the age of 18, receive support under the young adult programme, to which he was entitled by law, nor did he receive support for enrolling in school for the 2020/21 academic year;¹⁵ and (b) he will not be able to benefit from the provisions of article L.435-3 of the Code on the Entry and Stay of Aliens and the Right to Asylum, under which "a foreign national who was in the care of the child welfare services ... when he or she was between the ages of 16 and 18 and who can show that he or she has, for at least six months, been taking a training course leading to a vocational qualification may exceptionally, in the year following his or her eighteenth

¹⁵ The author refers to article L.222-5 of the Social Welfare and Family Code and article 18 of the Act of 23 March 2020, under which support services cannot be ended when a child reaches the age of majority after having received such services as a minor through the child welfare system.

birthday, be issued a temporary residence permit in the ‘employee’ or ‘temporary worker’ category, provided that such training has been undertaken in a genuine and serious manner, and depending on the nature of the person’s ties with his or her family in the country of origin and on the opinion of the care facility regarding the foreign national’s integration into French society.”

Third-party intervention¹⁶

6.1 On 15 March 2022, the Defender of Rights submitted a third-party intervention concerning her findings and analyses on the difficulties encountered by unaccompanied migrant children in gaining access to the child protection system in France, respect for their rights and guarantees during the age determination process, the effectiveness of the right to a remedy and compliance with the interim measures decided upon by the Committee.¹⁷

6.2 The Defender of Rights regularly receives complaints about unaccompanied migrant children who are unable to access services under the child protection system. Notwithstanding the principle of presumption of minority, the Defender of Rights notes that, in practice, individuals claiming to be minors and producing proof to that effect are not afforded this presumption and are thus not considered eligible for protection pending the completion of the age determination process by a final court decision. The Defender of Rights has been alerted to practices of “initial screening” through which some minors are given immediate shelter before assessment while others have to remain on the streets while awaiting their assessment interview, without being given temporary emergency accommodation.¹⁸ Such individuals are denied care and assessment without justification, whether or not they have an identity document. These are often cases of denial at first contact based on their “appearance”.

6.3 The Defender of Rights highlights wide disparities in the practice and the means used to assess the age and unaccompanied status of young persons seeking protection. The national authorities, including the courts, cannot find a civil status document to be inauthentic without officially challenging it and carrying out the necessary verification. However, as shown by the present communication, these safeguards are not always respected in practice. The Defender of Rights observes that foreign authorities are very rarely asked to confirm the veracity of the information contained in the documents presented and that the police are almost routinely requested to analyse the documents, even though this procedure is intended only for cases in which the age claimed by the minor is in doubt. The Defender of Rights also notes disparities in the drafting of documentary analysis reports in different parts of the country and cases where unfavourable opinions are issued on the basis of an erroneous reading of the applicable foreign law on the part of the border police. However, the Defender of Rights notes that the Court of Cassation has recalled that judges have the power to exercise sovereign discretion regarding documentary analysis.¹⁹

6.4 With regard to the observance of the child’s right to his or her identity, the Defender of Rights notes that the child welfare authorities very rarely decide to re-establish the civil status of minors entrusted to them, even though this is an obligation under article 8. On the contrary, the Defender of Rights has regularly observed that the issue of civil status documents is often dealt with in a cursory manner during the assessment interview. As the present communication shows, it is sometimes the case that even when a young person produces additional civil status documents before the authorities, including the judge, he or she is not protected despite being in a situation of abandonment and extreme vulnerability. In the course of processing complaints, the Defender of Rights has become aware that a large

¹⁶ This submission also concerns communications No. 132/2020, No. 149/2021, No. 152/2021 and No. 154/2021.

¹⁷ See Defender of Rights, “Les mineurs non accompagnés au regard du droit” (Unaccompanied minors in the eyes of the law), report dated 15 February 2022, <https://www.defenseurdesdroits.fr/fr/rapports/2022/02/rapport-les-mineurs-non-accompagnes-au-regard-du-droit>.

¹⁸ See Defender of Rights, *ibid.*, p. 45, and decision No. 2020-140 of 16 July 2020 on the assessment system for unaccompanied minors in the department of X.

¹⁹ Court of Cassation, First Civil Division, appeals No. 00-15.734 and No. 02-14.686, 28 June 2005.

number of assessment reports leave room for subjective considerations that are often not substantiated or justified by objective reasons or findings (illiteracy, fatigue, psychological or somatic disorders, poor health, lack of spatial and temporal bearings, etc.).

6.5 The Defender of Rights notes that French law does not provide that a legal representative or lawyer must be present during the assessment carried out by the departments, as the present communication illustrates.

6.6 With regard to the lack of effective remedies, the Defender of Rights notes that the submission of a case by an unaccompanied minor to a juvenile court judge has no suspensive effect on the departmental decision to deny access to child welfare services. The same is true of submissions to courts of appeal and the Court of Cassation. Such minors are thus excluded from the child protection system and referred instead to emergency accommodation for adults. The Defender of Rights also notes that appeals by unaccompanied minors are not considered with due dispatch. Juvenile courts are not bound by any time limit for considering a minor's application for support services.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 20 of the rules of procedure under the Optional Protocol, whether the communication is admissible under the Optional Protocol.

7.2 The Committee takes note of the State party's argument that the author has not exhausted available domestic remedies, given that: (a) as at the date of submission of the communication to the Committee, the appeal against the 4 December 2019 decision of the juvenile court judge of the Lyon Judicial Court was still pending before the Lyon Court of Appeal; and (b) the Lyon Court of Appeal, in its decision of 12 February 2021, finally overturned the decision of the juvenile court judge and recognized the authenticity of the documents produced by the author, which showed that he was a minor. The Committee notes, however, the author's contention that the remedy provided for in the State party's legislation cannot be considered effective because it did not allow for a determination of his status as a minor within a reasonable time, while he was still a child. In this connection, the Committee notes that it was not until February 2021, some 18 months after S.E.M.A. had applied for protection and presented identity documents and when he had already become an adult, that the Court of Appeal recognized the authenticity of the documents. The Committee also notes the author's argument, which is not challenged by the State party, that the submission of cases to juvenile court judges and courts of appeal has no suspensive effect on decisions by departmental councils to deny access to social assistance. The Committee is of the opinion that, in view of the unreasonable time frames for the adjudication of appeals by the State party's judicial authorities, particularly the Lyon Court of Appeal, the non-suspensive nature of the appeal procedure and the failure to take interim measures of protection in respect of the author while his application was under consideration, the remedy available in the State party in relation to the procedure for deciding on the author's age and his application for protection cannot be regarded as effective within the meaning of article 7 (e) of the Optional Protocol.²⁰

7.3 Furthermore, the Committee notes the State party's contention that the author did not raise his allegations of a violation of article 20 of the Convention before the domestic courts and that this part of the communication must therefore be declared inadmissible for failure to exhaust domestic remedies. However, the Committee notes the author's allegations that he has consistently raised these claims in substance before the State party's authorities by highlighting his status as an unaccompanied foreign minor in a street situation who, being a child, was in need of protection. As a result, the Committee concludes that article 7 (e) of the Optional Protocol does not constitute an obstacle to the admissibility of the communication.

7.4 The Committee is of the view that the author has sufficiently substantiated his claims under articles 3, 8, 12 and 20 (1) of the Convention, given that the best interests of the child

²⁰ *N.B.F. v. Spain*, para. 11.3.

were not taken into account during the age determination procedure and the author was not afforded protection as an unaccompanied migrant child. The Committee therefore concludes that article 7 (f) of the Optional Protocol does not constitute an obstacle to the admissibility of the communication.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 10 (1) of the Optional Protocol.

8.2 One of the issues before the Committee is whether, in the circumstances of the present case, the age determination procedure undergone by the author, who stated that he was a minor and produced several identity documents in support of his statement – first a photocopy of his birth certificate; then, before the juvenile court judge, the originals of his birth certificate and national identity card; and finally, before the Court of Appeal, the original of his birth certificate authenticated by the Embassy of Pakistan in Paris, the original of his Pakistani national identity card and a photocopy of his passport – resulted in the violation of his rights under the Convention. The author claims, *inter alia*, that the best interests of the child were not taken into consideration in this procedure, that neither his right to be heard nor his right to preserve his identity was respected and that he was not provided with protection measures even though he was an unaccompanied migrant child in a street situation.

8.3 The Committee recalls that the determination of the age of a young person who claims to be a minor is of fundamental importance, as the outcome determines whether that person will be entitled to protection by the State as a child. Similarly, and this point is of vital importance to the Committee, the enjoyment of the rights set out in the Convention flows from that determination. It is therefore imperative that there be due process to determine a person's age, as well as the opportunity to challenge the outcome through an appeals process. While that process is under way, the person should be given the benefit of the doubt and treated as a child. Accordingly, the Committee considers that the best interests of the child should be a primary consideration throughout the age determination process.²¹

8.4 In the present case, the Committee notes that the State party's authorities initially considered the author to be an adult because: (a) the author did not produce an identity document "with sufficient probative force to show that he was a minor"; (b) neither his attitude nor his physical appearance, though youthful, was such as to corroborate the age claimed and the photograph on the Pakistani identity card presented at the hearing before the juvenile court judge did not seem to be a photograph of him; and (c) numerous inconsistencies were noted during the initial assessment interview and the hearing before the juvenile court judge. The Committee also notes the State party's argument that the author's rights were ultimately respected, since the Court of Appeal finally recognized the authenticity of the documents submitted by the author and the fact that, being a child, he should have had access to the child welfare system.

8.5 However, the Committee notes the author's argument that, for almost a year and a half (from the time of his arrival in France until the date of the Court of Appeal decision), no weight was accorded to the identity documents he had presented. The Committee recalls that any available documents should be considered genuine unless there is proof to the contrary.²² The Committee recalls that the burden of proof does not rest solely with the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information.²³ In the present case, the Committee notes the author's argument that if the State party had doubts as to the validity of the documents submitted, it should have had them analysed and should have contacted the consular authorities of Pakistan in France to verify their authenticity, which it did not do. The Committee also notes that the State party's

²¹ *N.B.F. v. Spain*, para. 12.3.

²² 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, para. 4.

²³ See, *inter alia*, *A.L. v. Spain* (CRC/C/81/D/16/2017), para. 11.2.

authorities have never challenged the validity of the documents produced by the author. The Committee recalls that States parties may not act in a manner contrary to the facts established by an original and official identity document issued by a sovereign country unless they have formally challenged its validity.²⁴ In the present case, verification with the consular authorities, with the author's consent, would have sufficed to confirm his age.

8.6 The Committee also notes the author's contention that the initial age assessment carried out by the association Forum Réfugiés Cosi lasted only one hour and took place without the presence of a lawyer and with the assistance of an Urdu interpreter by telephone, even though the author's home language is Punjabi. The Committee recalls that it is only when identity documents or other appropriate evidence is lacking, which is not the case in relation to the present communication, that, "to make an informed estimate of age, States should undertake a comprehensive assessment of the child's physical and psychological development, conducted by specialist paediatricians or other professionals who are skilled in combining different aspects of development. Such assessments should be carried out in a prompt, child-friendly, gender-sensitive and culturally appropriate manner, including interviews of children ... in a language the child understands."²⁵ The benefit of the doubt should be given to the individual being assessed.²⁶ The Committee also recalls its general comment No. 6 (2005), which states that age assessment should not only take into account the physical appearance of the individual, but also his or her psychological maturity, should be conducted in a scientific, safe, child- and gender-sensitive and fair manner and, in the event of remaining uncertainty, should accord the individual the benefit of the doubt such that if there is a possibility that the individual is a child, she or he should be treated as such.²⁷

8.7 In the present case, the Committee observes that the author underwent a summary initial assessment in which the copy of his birth certificate was not taken into consideration. It also observes that this assessment seems to have been conducted by a single evaluator, who did not take account of the author's migration history or other factors that could explain inconsistencies in his statements, and that no interpretation in the author's home language was provided and no legal representative of the author was present. The Committee notes that the administrative decision on the determination of his age indicates that the decision was open to immediate challenge before the juvenile court judge of the Lyon Judicial Court. However, the Committee observes that this decision does not seem to have been translated into the author's home language and does not mention the specific remedies available or the possibility of requesting the assistance of counsel. The Committee also takes account of the author's allegation, which the State party has not challenged, that he was not informed of available remedies against this decision, that it was only through a social worker that he was put in touch with a lawyer who could bring the matter before the juvenile court judge, and that this appeal did not in any case have suspensive effect on the decision. In this regard, the Committee recalls that in the context of best interest assessments and best interest determination procedures, children must be guaranteed the right to appeal the decision to a higher court or an independent authority, with suspensive effect.²⁸

8.8 The Committee also notes the author's allegations that the absence of a lawyer or representative before, during and after the initial age assessment violated his rights under article 3, read in conjunction with article 12 (2). The Committee notes in particular that, in the absence of a representative, the author did not have the opportunity to review the assessment report and make corrections. The Committee also notes that the author was not able to clarify the report until afterwards, before the juvenile court judge, when he was represented by counsel. The Committee takes account of the State party's argument that: (a) the age assessment interview is an administrative procedure during which the presence of a lawyer is not mandatory; (b) the author has not shown that he requested the presence of counsel during the interview or that such a request was denied; and (c) article 12 offers an alternative that is fully respected when children are heard directly in cases where this is possible in light of their age and capacity to form their own views, as was the case with the

²⁴ *M.B. v. Spain* (CRC/C/85/D/28/2017), para. 9.13.

²⁵ Joint general comment No. 4/No. 23 (2017), para. 4.

²⁶ *N.B.F. v. Spain*, para. 12.4.

²⁷ General comment No. 6 (2005), para. 31 (i).

²⁸ Joint general comment No. 4/No. 23 (2017), para. 17.

author. The Committee recalls, however, that States parties are obliged to appoint a qualified legal representative, and an interpreter where necessary, for all young migrants claiming to be minors, as soon as possible on arrival and free of charge. The Committee is of the view that the appointment of a representative for such young persons during the age determination process is essential for safeguarding their best interests and their right to be heard.²⁹ Failure to do so amounts to a violation of articles 3 and 12 of the Convention, as the age determination procedure is the starting point for the application of the Convention. The absence of timely representation can result in a substantial injustice.

8.9 In the light of the foregoing, the Committee considers that the age determination procedure undergone by the author, who claimed to be a minor and provided evidence to support that claim, was not accompanied by the safeguards needed to protect his rights under the Convention. In the circumstances of the present case, in particular the fact that: (a) the initial assessment used to determine the author's age was a summary procedure; (b) the author was not accompanied by a representative or provided with interpretation in his home language during the administrative procedure; (c) the appeals process did not have suspensive effect; and (d) the State party deemed the documentation he presented to have no probative value without undertaking a proper examination of the information contained therein and, in the event of uncertainty, requesting confirmation of its validity by the consular authorities of Pakistan in France, which was not done until the Court of Appeal handed down its decision one and a half years after the author's arrival in France, at which point he had already reached the age of majority, the Committee is of the view that the best interests of the child were not a primary consideration in the age determination procedure undergone by the author, in breach of articles 3 and 12 of the Convention.

8.10 The Committee also notes the author's allegations that the State party violated his rights insofar as it altered elements of his identity by attributing to him an age and a date of birth that did not match the information on the documents he had produced and that the authorities did not request the consular authorities of Pakistan in France to verify that information. The Committee considers that a child's date of birth forms part of his or her identity and that States parties have an obligation to respect the right of the child to preserve his or her identity without depriving him or her of any elements of it. The Committee observes that in the present case, although the author produced several identity documents before the French authorities, the State party disregarded his right to preserve his identity by considering that these documents had no probative value, even though the information contained therein was not duly examined by a competent authority or verified with the authorities of the author's country of origin until the Court of Appeal handed down its decision on 12 February 2021, after the author had reached the age of majority. Consequently, the Committee finds that the State party violated article 8 of the Convention.

8.11 The Committee also takes note of the author's claims that the State party's authorities failed to protect him despite his situation of abandonment and extreme vulnerability in the context of the COVID-19 pandemic, in violation of article 20 (1) of the Convention. The Committee considers that the author's allegations in this regard also raise, in substance, a violation of article 37 (a) of the Convention. The Committee notes in particular that the author was in a street situation from the time of his arrival in France on 25 August 2019 until the day of his eighteenth birthday, 31 December 2020, and that he was not given temporary emergency accommodation, as required by law, or any measures of protection or support. The Committee notes the State party's argument that the author informed the Court of Appeal that he was living with a friend, and that he never explicitly requested interim measures pending a judicial decision. However, the Committee notes that the author's counsel repeatedly requested the judicial authorities to place the author in the child welfare system, in view of his situation of insecurity and degradation. The Committee also notes that the Defender of Rights has observed that, in practice, individuals claiming to be minors and producing proof to that effect are not afforded the presumption of minority and are thus not considered eligible for protection pending the completion of the age determination process by a final court decision. The Committee recalls that States parties are obliged to ensure the protection of all migrant children deprived of their family environment, by guaranteeing,

²⁹ *A.L. v. Spain*, para. 12.8; and *J.A.B. v. Spain* (CRC/C/81/D/22/2017), para. 13.7.

inter alia, access to social services, education and adequate housing, and to give all young migrants who claim to be children the benefit of the doubt during the age determination procedure and to treat them as children.³⁰ The Committee considers, in any case, that children should not be required to explicitly request interim measures of protection during the age determination procedure, as this is an ex officio obligation of States parties in view of the particular vulnerability of unaccompanied migrant children. Consequently, the Committee considers that these facts constitute a violation of articles 20 (1) and 37 (a) of the Convention.

8.12 Lastly, the Committee takes note of the author's claims concerning the State party's failure to implement the interim measure requested, namely his placement in a children's home until 31 December 2020. The Committee notes that the author was not provided with shelter until 31 December 2020, the day of his eighteenth birthday. The Committee observes that the State party has not provided any explanation as to why the requested interim measure was not implemented. The Committee recalls that, by ratifying the Optional Protocol, States parties undertake an international obligation to comply with any interim measures requested under article 6 of the Optional Protocol in order to prevent irreparable harm while a communication is pending, thereby ensuring the effectiveness of the individual communications procedure.³¹ Consequently, the Committee considers that the failure to implement the requested interim measure in itself constitutes a violation of article 6 of the Optional Protocol.

9. The Committee, acting under article 10 (5) of the Optional Protocol on a communications procedure, finds that the facts before it disclose a violation of articles 3, 8, 12, 20 (1) and 37 (a) of the Convention and article 6 of the Optional Protocol.

10. The State party should therefore provide the author with effective reparation for the violations suffered, including by giving him the opportunity to regularize his administrative status in the State party and to benefit from the protection provided for under domestic law, taking due account of the fact that he was an unaccompanied child upon his arrival in France. The State party is also under an obligation to prevent similar violations in the future. In that regard, the Committee requests the State party to:

(a) Ensure that any procedure for determining the age of young persons claiming to be minors is in conformity with the Convention and, in particular, that: (i) documents submitted by such persons are taken into account and their authenticity is recognized when they have been issued, or their validity has been confirmed, by States or their embassies; (ii) the young persons concerned are assigned a qualified legal representative or other representatives without delay and free of charge, and all legal and other representatives are allowed to assist such persons throughout the procedure; and (iii) initial assessments are conducted in a manner consistent with the Convention and with the Committee's general comment No. 6 (2005) and joint general comment No. 23 (2017);

(b) Ensure that all young persons claiming to be minors are provided with information in a manner that is appropriate to the maturity and level of understanding of each child, in a language and format that he or she understands;

(c) Ensure that the age determination procedure is carried out with due dispatch and adopt measures of protection for young persons claiming to be minors from the moment they enter the territory of the State party and throughout the procedure, treating them as children and recognizing all their rights under the Convention;

(d) Ensure that unaccompanied young persons claiming to be under 18 years of age are assigned a competent guardian as soon as possible, even if the age determination procedure is still ongoing;

(e) Provide, for cases where a child's age is in dispute, an effective and accessible remedy leading to a prompt decision, ensure that children are fully aware of such remedies and the related procedures, and ensure that young persons claiming to be under 18 years of

³⁰ General comment No. 6 (2005), para. 31.

³¹ *N.B.F. v. Spain*, para. 12.11.

age are considered to be children and are afforded the protection to which children are entitled throughout the procedure;

(f) Provide training to immigration officers, police officers, members of the Public Prosecution Service, judges and other relevant professionals on the rights of asylum-seeking and other migrant children and, in particular, on the Committee's general comment No. 6 (2005) and joint general comments No. 22 (2017)³² and No. 23 (2017).

11. In accordance with article 11 of the Optional Protocol, the Committee wishes to receive from the State party, as soon as possible and within 180 days, information about the measures it has taken to give effect to the present Views. The State party is requested to include information about any such measures in its reports to the Committee under article 44 of the Convention. The State party is also requested to publish the present Views and to disseminate them widely.

³² 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.