



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. 189/2022^{*}, ^{**}

<i>Communication submitted by:</i>	M.J.K. (represented by counsel, Franck Ozouf)
<i>Alleged victim:</i>	M.J.K.
<i>State Party:</i>	France
<i>Date of communication:</i>	15 July 2022
<i>Date of adoption of Views:</i>	20 January 2026
<i>Subject matter:</i>	Refusal by the French authorities to grant an asylum-seeking unaccompanied migrant child access to the child protection system on the grounds that they considered him to be an adult; 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; right to claim asylum; inhuman or degrading treatment
<i>Articles of the Convention:</i>	3, 8, 12, 20, 22 and 37
<i>Articles of the Optional Protocol:</i>	6 and 7 (e)

1.1 The author of the communication is M.J.K., a national of Pakistan born on 10 October 2004. The author claims that the State Party violated his rights under articles 3, 8, 12, 20 and 22 of the Convention, because he was not recognized as an unaccompanied migrant child for a long period during his time in France and because his application for asylum was not registered. As a result, he was unable to gain access to social services or adequate housing. He is represented by counsel. The Optional Protocol entered into force for the State Party on 7 April 2016.

* Adopted by the Committee at its 100th session (12–30 January 2026).

** The following members of the Committee participated in the examination of the communication: Suzanne Aho, Thuwayba Al Barwani, Hynd Ayoubi Idrissi, Mary Beloff, Rosaria Correa, Timothy Ekesa, Bragi Gudbrandsson, Mariana Ianachevici, Philip Jaffé, Sophie Kiladze, Cephass Lumina, Benyam Dawit Mezmur, Juliana Scerri Ferrante, Aïssatou Alassane Sidikou, Zeinebou Taleb Moussa and Benoit Van Keirsbilck.



1.2 On 22 July 2022, in accordance with article 6 of the Optional Protocol, the working group on communications, acting on behalf of the Committee, requested the State Party to place the author in a children's home. On 18 January 2023, the Committee informed the parties that the interim measures requested were no longer applicable, since these measures are granted only to children and the author had reached the age of majority.

Facts as submitted by the author

2.1 On 6 October 2019, the author arrived in Paris after a difficult six-month migration journey. He had left Pakistan because of fears of persecution linked to serious problems with the Taliban.

2.2 The author applied to the Departmental Council of Paris for protection as an at-risk, unaccompanied child, and he was given accommodation. On 17 October 2019, he underwent an age assessment by the Paris Evaluation Unit for Unaccompanied Foreign Minors. He had no identity papers. The assessment unit estimated that he was 17 years old, and not 15 as he alleged. As part of a national system for allocating minors between departments, which is run by the Ministry of Justice, the author was referred to the Departmental Council of Maine-et-Loire.

2.3 On 28 October 2019, the author filed a petition with the public prosecutor for placement under guardianship.

2.4 On 4 November 2019, the juvenile court judge of the Angers *tribunal de grande instance* (court of major jurisdiction) issued a decision granting the author support services and a protection measure for a period of six months.

2.5 On 29 November 2019, employees of the Departmental Council of Maine-et-Loire carried out a further assessment, noting numerous inconsistencies in the author's account compared with the first assessment, a poorly substantiated story and a physical appearance that made it possible to rule out his being a minor. They therefore concluded that the author could not be recognized as a minor.

2.6 On 16 January 2020, the Departmental Council of Maine-et-Loire requested that the author's petition for placement under guardianship be dismissed.

2.7 On 17 June 2020, support services were extended by six months because the hearing could not be held owing to the coronavirus disease (COVID-19) pandemic. During this period, the author was provided with accommodation and schooling.

2.8 On 17 September 2020, at the hearing with the guardianship judge, the author stated that he had been able to contact his family and was now in a position to obtain his original civil status document; he showed a copy of this document on his phone.

2.9 On 19 October 2020, the juvenile guardianship judge at the Angers judicial court rejected the author's petition for placement under guardianship, finding that the author's minor age had not been established. The judge examined all the elements in the file, including the statements that had been made by the author, with the assistance of his lawyer, before the juvenile court judge at the author's hearing on 17 September 2020. He found that the author had been very imprecise and even completely contradictory about his personal history, that he had not provided any original identity documents and that his statements about his ability to obtain such a document were confused.

2.10 On 2 November 2020, the Departmental Council of Maine-et-Loire notified the author of the termination of the support provided. The author continued to be housed in a hotel under the care system for adults, but without any support services or food assistance.

2.11 On 9 November 2020, the author appealed the juvenile guardianship judge's decision of 19 October 2020 before the Angers Court of Appeal.

2.12 A few weeks later, the author was successfully sent his original family record book, which contained his birth certificate, and copies of his parents' identity cards. The author was also able to obtain an "identity card for Pakistanis living abroad".

2.13 On 10 March 2021, the author filed an asylum application with the Maine-et-Loire prefecture, in which he stated that he was in the process of having his minor age recognized by the courts.

2.14 On 1 June 2021, the Maine-et-Loire prefecture indicated that it was unable to register the asylum application of the author as a minor in the absence of the appointment of an ad hoc administrator, given that the order of 19 October 2020 was considered *res judicata*. The author sent several further communications to the prefecture, which were disregarded.

2.15 On 25 August 2021, the author applied to the juvenile court judge for care under the child protection system, on the basis of his civil status documents. On 11 October 2021, the author submitted his case anew, this time with the assistance of a lawyer.

2.16 On 11 February 2022, the juvenile court judge, declaring himself incompetent owing to the appeal on guardianship matters pending before the Court of Appeal, rejected the request to grant support services. On 11 October 2022, the author appealed this decision before the Court of Appeal.

2.17 On 15 June 2022, a new application for asylum was submitted to the prefecture and subsequently rejected. A detailed follow-up letter was sent but no response was received. On 4 July 2022, the guardianship hearing was held before the Angers Court of Appeal.

Complaint

3.1 The author claims that his rights under articles 3, 8, 12, 20 and 22 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 asylum-seeking unaccompanied migrant child.

3.2 The author claims that the State Party did not take into consideration the principle of the best interests of the child, enshrined in article 3 of the Convention, during the age determination procedure.¹ The State Party's authorities failed to observe the principle of presumption of minority and did not give the author the benefit of the doubt during the age determination procedure. He claims that his rights under article 3 were violated, on the grounds that he was referred to a department that was not the one that had first conducted an age assessment and that reassessed his age in a way that contradicted the first assessment. This practice of reassessment has since been banned under French law. The Department of Maine-et-Loire asked that no guardianship measures should be instituted, and as a result the author was housed in a hotel intended for adults, without any food assistance. The author did not receive any assistance in re-establishing his civil status. The authorities failed to respect the best interests of the child, even though the author presented official identity and civil status documents from his country of origin: (a) when he was taken into care by the Departmental Council of Maine-et-Loire, to which he provided a photocopy of his birth certificate, and which provided him no help in obtaining the original birth certificate or in taking steps towards re-establishing his civil status; (b) before the guardianship judge, who did not take this document into consideration when making his decision of 19 October 2020; (c) before the juvenile court judge, who did not take into consideration his original family record book, which had been translated and also contained his birth certificate, the copies of his parents' identity cards or his own original identity card; (d) before the Department of Maine-et-Loire, which did not respond to a new request for care submitted in August 2021 on the basis of the aforementioned documents; and (e) during the guardianship appeal, for which the Court of Appeal took almost 21 months to organize a hearing and set a late deliberation date of 22 September 2022, or 20 days before the author turned 18 years old. The author claims that, by failing to take into consideration or analyse his civil status documents, by failing to contact the Pakistani consular authorities in France and by failing to formally contest the authenticity of these documents with the sovereign State that had issued them, the State Party left him without protection for nearly two years.

¹ The author refers to general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin (CRC/GC/2005/6) and to the Committee's decision, *N.B.F. v. Spain* (CRC/C/79/D/11/2017), para. 12.3.

3.3 The author claims a violation of article 3, read in conjunction with article 12, of the Convention. He maintains that he was not assigned a legal representative or lawyer to defend his interests either before or during the interview he was given with a view to assessing his age and status as an unaccompanied child migrant, which was conducted by the Departmental Council of Maine-et-Loire. The author was also not given the opportunity to review the assessment report and identify any inconsistencies or errors and ask for them to be corrected.

3.4 The author also claims a violation of article 3, read in conjunction with article 20, of the Convention. The State Party failed to protect him by denying him care under the French child protection system, despite the fact that he had presented civil status and identity documents, including during legal proceedings, and that he was in a situation of abandonment and great vulnerability as an unaccompanied child migrant. The author has been living in a hotel for nearly 21 months, as part of a State-run scheme intended for adults.

3.5 The author also claims a violation of article 3, read in conjunction with article 22, of the Convention, on the grounds that his asylum application was not registered. He fled Pakistan because of fears of persecution by the Taliban, who wanted to forcibly conscript him. His account was prepared by the social workers who assisted him between November 2019 and October 2020. However, the Department of Maine-et-Loire called his age into question and did not allow him to apply for asylum. After his access to child welfare services was terminated, his situation did not improve, despite the many steps he took to have his asylum application considered.

3.6 Lastly, the author, referring to the Committee's established jurisprudence, claims a violation of article 8 of the Convention.² He emphasizes that the State Party's authorities did not seek to verify whether the information contained in the documents he had submitted was accurate, for example by contacting the Pakistani authorities; this is in violation of the Convention and national law. The author asserts 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.

3.7 The author requests, by way of reparation, that the Committee ask the State Party to: (a) allow him to apply for asylum as soon as possible; (b) provide him with care as a minor under the child protection system; 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.

Author's additional comments

4.1 On 18 and 19 August 2022, 9 September 2022 and 29 November 2022, the author submitted additional comments. He states that, despite several reminders, the interim measures requested by the Committee were not implemented. It was only following his appeal to the Nantes administrative court on 4 September 2022, which handed down a decision on 7 September 2022, that he was approved to receive care from the child protection authorities. However, the accommodation he was given was in a hotel in Angers. The author received some money for toiletries, but was not offered any support services.

4.2 On 7 September 2022, the Nantes administrative court ordered the prefecture to register the author's asylum application within 48 hours. The prefecture abided by the decision. However, since an ad hoc administrator had not been appointed to represent him as a minor, the author was unable to finalize his application. He had to wait until he came of age to apply for asylum with the French Office for the Protection of Refugees and Stateless

² *A.D. v. Spain* (CRC/C/83/D/21/2017), para. 10.17.

Persons. On 15 November 2022, he was issued a certification of submission of an asylum application.

4.3 The author maintains that, on 20 October 2022, the Angers Court of Appeal rejected the author's claim and confirmed that he had reached the age of majority (see paras. 5.15–5.20 above). The author also provides the Committee with information about his social situation after turning 18 years old.

State Party's observations on admissibility and the merits

5.1 In its observations dated 24 January 2023, the State Party argues that the communication is inadmissible under article 7 (e) of the Optional Protocol, since the author failed to exhaust domestic remedies. It points out that, at the date of submission of the communication, two appeals were pending before the Angers Court of Appeal, one of these having been reserved (see paras. 2.11 and 2.16).

5.2 The State Party maintains that these remedies were fully effective and able to remedy the violations alleged before the Committee. The requirement to exhaust domestic remedies must have been met at the time the communication is submitted. In this case, the author does not explain why his applications to the Court of Appeal would have been ineffective.

5.3 With regard to the interim measures, the State Party recalls that such measures are not binding. Article 6 of the Optional Protocol makes it clear that the Committee is transmitting a request to, rather than imposing a binding measure on, the State Party. In addition, on the date that the request for interim measures was transmitted to the Government, the court rulings establishing that the author was not a minor had the force of *res judicata* and were therefore binding on the Government, which was not entitled to call into question the facts established by the rulings, in observance of the principle of the separation of powers.

5.4 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 process, during both administrative and judicial proceedings. He was heard first by the Departmental Council of Paris and then by the Departmental Council of Maine-et-Loire, which assessed his age and unaccompanied status.

5.5 The State Party notes the author's claim that he was not assisted by counsel during these interviews. 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 points out that the presence of a lawyer is not prohibited and that the author has not shown that he requested the presence of a lawyer during the interview or that such a request was denied. In addition, the State Party points out that article 12 (2) also provides that the child must be provided the opportunity to be heard "either directly or through a representative or an appropriate body". The alternative provided for under article 12 is thus fully respected when children are heard directly in cases where this is possible taking into account their age and capacity to form their own views. The State Party notes that, according to the date of birth declared by the author, he was fully capable of forming his own views and successfully taking part in that process. It adds 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 a lawyer.

5.6 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 that he was left unprotected during the age assessment procedure. The State Party contests this presentation of the facts. As soon as he entered French territory, the author was given temporary emergency accommodation while his age and status as an unaccompanied minor on French territory were assessed. On 21 October 2019, the Departmental Council of Paris declared him to be a minor and referred the matter to the public prosecutor so that a protection measure could be granted. The author was taken into care under the child welfare scheme and granted all related rights, including schooling. On 4 November 2019, the juvenile court judge of the Angers *tribunal de grande instance* granted the author temporary support services and a protection measure for a period

of six months, which was subsequently extended by six months. Pursuant to this decision, the author was given accommodation, food assistance, financial aid and schooling.

5.7 This arrangement continued until 19 October 2020, when the juvenile guardianship judge at the Angers judicial court ruled that the author's minor age had not been established. This judge's order was enforced on 2 November 2020.

5.8 The State Party states that, since 4 November 2020, the author has been provided with emergency hotel accommodation. He was also supported by Secours Catholique in Angers in his efforts to gain access to residency and food assistance. In September 2021, he was enrolled in a *certificat d'aptitude professionnelle* (certificate of professional competence) in electricity at the Lycée Ludovic Ménard (secondary school) in Angers. The State Party maintains that it has taken all the necessary measures to provide support to the author, bearing in mind his age of majority as established by a court decision.

5.9 As to the alleged violation of article 3 resulting from the author's referral to a department other than the one that had initially established that he was a minor, in contravention of article 39 of the "Taquet" Act of 7 February 2022, the State Party states that the Act in question did not enter into force until February 2022 and cannot be applied retroactively.

5.10 With regard to the alleged violation of article 22 of the Convention, the State Party contends that the author has not demonstrated that he sought to apply for asylum while in the care of the child welfare authorities, nor that he was refused assistance in that context.

5.11 The State Party observes that it was only on 10 March 2021 that the author went to the reception centre for asylum-seekers in order to submit an asylum application and that he failed to mention the order of 19 October 2020 in which the juvenile guardianship judge had found that his status as a minor had not been established. The public prosecutor was unable to appoint him an ad hoc administrator as an unaccompanied child, given the *res judicata* effect of the order of 19 October 2020. On 7 February 2022, the author resubmitted his asylum application to the judicial authorities in the hope that an ad hoc administrator would be appointed. These authorities maintained their refusal to appoint such an administrator, given the *res judicata* effect of the 19 October 2020 order. On 19 August 2022, the author again applied for asylum as a minor. On 24 August 2022, the administrative authorities informed him that they could not register his application, in view of the guardianship judge's order and in the absence of an ad hoc administrator appointed by the public prosecutor. In an order dated 7 September 2022, the interim relief judge ordered the Prefect of Maine-et-Loire to register the author's asylum application. On 23 September 2022, the author submitted his application for asylum, which was registered in the information system for the administration of foreigners in France. At the same time, he was given a summons to appear with his legal representative, guardian or ad hoc administrator, once appointed, in order to complete the registration of his asylum application. On 29 September 2022, the judicial authority informed the Prefect of Maine-et-Loire that, pending the decision of the Court of Appeal regarding the status of the author as a minor, the public prosecutor's office was unable to appoint an ad hoc administrator, given the *res judicata* effect of the order of 19 October 2020.

5.12 The State Party maintains that there was no violation of article 3, read in conjunction with article 22, of the Convention, since the Prefect of Maine-et-Loire was unable to register the author's asylum application as that of a minor because his age of majority had been established by a court decision with the force of *res judicata* and was binding on the authorities.

5.13 With regard to the alleged violation of article 3, read in conjunction with article 8, of the Convention, the State Party notes that the author complains that the French authorities failed to take into account his original civil status and identity documents. It states that the author had no identity papers when he arrived in France and during the social assessments. The State Party adds that it is clear from the ruling of 20 October 2022 of the Angers Court of Appeal that the author routinely transmitted the disputed documents late, preventing the judges from ruling on the conformity of the documents he presented, and that he never made any request to have the authenticity of the documents in his possession verified. At the hearing on 17 September 2020, the author produced only a digital copy, on his phone, of his civil status document. The guardianship judge cannot be reproached for ruling that the author

had not produced documentary evidence of his status as a minor or for not waiting until the author had received his civil status documents.

5.14 The author subsequently obtained new identity documents and produced them before the courts and authorities. However, the State Party claims that the documents did not meet the standard requirements and could not be used to certify the author's status as a minor.

5.15 On 20 September 2022, the day before the Court of Appeal was due to deliberate, the author submitted various documents, only two of which were submitted as originals for the first time: his identity card, issued on 15 March 2021, and a document dated 3 December 2020, written in Arabic and translated as a "certificate of a person less than 18 years old". The court nevertheless ordered a technical examination of the documents, and deliberations were consequently postponed. The document fraud unit of the Nantes border police deemed the documents inadmissible. The documents submitted had not been printed using secure methods, did not bear a government stamp, a usual security feature of this type of document, and were not accompanied by a certificate of authenticity issued by the Pakistani authorities or an additional certificate of authenticity ("super-legalization") required by the French authorities.

5.16 Lastly, the Court of Appeal examined the other elements in the file, in particular the social assessment reports drawn up less than three months apart on 21 October 2019 and 13 January 2020, and found that they were such as to call into question the accuracy of the facts set out in the documents produced by the author, and hence his status as a minor. The Court of Appeal in particular noted that the Paris assessor, in a tersely worded report, had clearly expressed doubts about the author's real age, in line with the conclusions of the Maine-et-Loire assessor, who had unreservedly ruled out the author's status as a minor at the end of a particularly thorough and well-documented interview, which had revealed obvious inconsistencies in the author's story, and unsubstantiated or confused statements regarding key points. The Court of Appeal also pointed out that these elements, which led to the conclusion that the author was an adult, were reinforced by the author's statement at his hearing, which was very imprecise and even completely contradictory regarding his personal history.

5.17 In a particularly well-reasoned decision, taking into account all the information in the file, the Court of Appeal upheld the order denying the author's placement under guardianship because he had reached the age of majority. The author does not demonstrate in what sense the courts failed to examine the civil status documents, but merely states that the principle of the child's best interests was ignored, even though the domestic courts gave ample reason for excluding the identity documents presented.

5.18 The State Party states that the persistent doubts and irregularities regarding the civil status and identity documents submitted, as well as the differing accounts given before the assessors in each department and before the courts, and, in addition, the lack of consistency between the author's alleged age and his physical appearance, formed the basis of the judges' arguments on the merits. Therefore, the rejection of the guardianship and support services requested was justified.

5.19 As early as the first assessment interview conducted by the Departmental Council of Paris on 17 October 2019, the assessor took pains to point out that the author's overall demeanour, manner of expression and behaviour during the interview were those of a 17-year-old and not of a 15-year-old. These doubts as to the author's age grew during the second assessment interview – a particularly thorough and well-documented interview that revealed obvious inconsistencies in the author's story, which was unsubstantiated or confused on key points such as his daily life with his family, the conditions of his departure from Pakistan and his migration journey – at the end of which the Maine-et-Loire assessor unreservedly ruled out his status as a minor. Moreover, physical appearance was taken into account only as a secondary consideration, for the purpose of corroborating the lack of consistency between the age claimed and the author's actual age.

5.20 The State Party emphasizes the fact that, once the documents had been transmitted to the Court of Appeal, the Court postponed its deliberations in order to carry out a scrupulous examination of the documents. It is clear that the author did not fulfil the conditions for

placement with the child welfare services, since he was considered an adult and the documents he had submitted – very belatedly – did not serve to establish his status as a minor.

5.21 The State Party notes that the author believes that the State Party should have taken additional steps, such as contacting the Pakistani Embassy in France. However, such steps could have been taken only once the originals had been received and transmitted to the Court of Appeal, that is, after the communication had been submitted to the Committee. What is more, such a request is completely incompatible with the author's claim to asylum-seeker status, which prohibits any communication with the authorities in his country of origin.

5.22 The State Party states that the Court of Appeal noted that the author had submitted two new documents two days before the decision was to be handed down. The Court excluded these documents from the deliberations owing to their late submission. It considered that a new documentary check would require the proceedings to be reopened, with a postponement to a date when the appeal would have become moot. The State Party concludes that there has been no violation of article 8, read in conjunction with article 3, of the Convention.

Third-party intervention

6. On 11 July 2023, the Defender of Rights submitted a third-party intervention on her findings and analysis of the difficulties that unaccompanied migrant children face in gaining access to the child protection system in France. The Defender of Rights reiterates the observations she made in previous interventions before the Committee concerning the state of law and practice, as well as her analysis of the situation of unaccompanied minors in France. She reiterates her concerns about the inadequacy of the safeguards surrounding the age determination procedure, which the Committee has already noted in its Views, in particular, the failure to respect the principle of presumption of minor age throughout the age determination procedure; the failure to appoint a legal representative or a lawyer during the procedure, as required under articles 3 and 12 of the Convention; and the failure to uphold the right of unaccompanied children to respect for their identity, owing to the failure to apply rules relating to the principle of presumption of authenticity of civil status documents and the sharing of the burden of proof. The Defender of Rights invites the Committee to take this worrying context into account when examining the present communication. She further submits that the Department's reassessment of the age of unaccompanied children is contrary to the best interests of the child, to article 20 of the Convention, to the presumption of minor age and to the right to respect for identity established in article 8 of the Convention. The Defender maintains that the State Party must guarantee unaccompanied children seeking asylum access to the asylum procedure from the moment they request it, notwithstanding ongoing proceedings that contest their claimed status as a minor. She also stresses the fact that unaccompanied minors do not benefit from an effective remedy, owing to the lack of suspensive effect of referrals to the juvenile court and the Court of Appeal, as well as waiting times for hearings that are sometimes excessive. Lastly, the Defender of Rights states that failure to accede to a request for interim measures is contrary to article 6 of the Optional Protocol.

State Party's observations on the third-party intervention

7. In its observations of 20 December 2023, the State Party submits that the Defender of Rights does not refer specifically to the author's personal situation and presents some general information relating to the reception of unaccompanied minors or, in some cases, refers to situations that are in no way connected to the present communication. It recalls that the author of the communication was presumed to be a minor and was taken into care as such during the age assessment phase. The State Party maintains that, during the age determination process, it observed the relevant safeguards with regard to respect for the child's right to an identity, age assessment and the effectiveness of remedies.

Author's comments on the State Party's observations on admissibility and the merits

8.1 In his comments of 21 August 2023, the author states that the communication is admissible since the appeals before the Court of Appeal were not effective. He submits that under French law there is no provision for appeals with suspensive effect, with regard either to guardianship or to support services. Referral either to the juvenile court judge or to the

Court of Appeal does not suspend the Department's decision to deny access to child welfare services. The petition he filed with the juvenile court judge for interim care pending the hearing was not granted. Furthermore, the courts that deal with such appeals are bound by time limits for examining them. The waiting times for hearings can thus be excessively long. The author states that the Angers Court of Appeal heard his case almost 21 months after the guardianship judge's decision.

8.2 Concerning the violation of articles 3 and 12 of the Convention, the author notes the State Party's argument that a lawyer could have been requested but mentions the presence of several obstacles in practice. He was never informed of this possibility. If he had been so informed, he would have had to find and pay for a lawyer himself, which would not have been feasible given his lack of resources and situation as an unaccompanied minor. In addition, the child welfare authorities, who are generally opposed to the presence of third parties during interviews, likely would not have agreed to the presence of a lawyer. The author points out that the practice of a second assessment interview, which was clearly contrary to his interests, is currently illegal. Indeed, it was prohibited by Act No. 2022-140 of 7 February 2022, as reflected in article L.221-2-5 of the Social Welfare and Family Code. The author was never referred to a third-party organization that could have provided him with information and support, as the authorities did not wish to provide such support, which would have gone against their own interests, namely to contest his minor age.

8.3 With regard to the violation of article 20 of the Convention, the author recalls that he was not taken into care as an unaccompanied minor following his appeal before the Angers Court of Appeal. He was simply given accommodation in a hotel for adults, with no socioeducational support or financial or material assistance. The only assistance he was given was a court-appointed lawyer and the help of charities such as Secours Catholique, which have very limited resources (no financial assistance and no accommodation, with any support provided mainly by volunteers).

8.4 With regard to article 22 of the Convention, the author states that his application for asylum with the French Office for the Protection of Refugees and Stateless Persons is still under examination. He also refers to the decision of the Nantes Administrative Court of 7 September 2022, which states that the prefect must first register the asylum application of an unaccompanied minor, then request the judicial authority to appoint an ad hoc administrator.

8.5 With regard to the violation of article 8 of the Convention, the author states that he would like to make a few additional points. He explains that he obtained documents either from his parents or from the Pakistani authorities with the help of Secours Catholique. Moreover, even if only copies were submitted to the various courts, the author had always made it clear that the originals were available to them. He adds that these identity documents were translated to the best of his ability and that of the organizations that helped him.

8.6 With regard to the State Party's argument concerning the referral of his case to the Pakistani authorities and its incompatibility with his status as an asylum-seeker, the author maintains that in his case he fled Pakistan not because the Pakistani authorities were persecuting him but because the Taliban, a separate group, were persecuting him. He states that, in this context, it did not seem incompatible to take steps to re-establish his civil status and identity. He claims that he never received official assistance in establishing his civil status.

8.7 The author claims that the fact that he was not recognized as a minor has had repercussions on him as a young adult. He did not qualify for the care provided for under article L.222-5 of the Social Welfare and Family Code for young adults between the ages of 18 and 21, nor did he qualify for the residence permit provided for under article L.435-3 of the Code on the Entry and Stay of Aliens and the Right to Asylum.

Issues and proceedings before the Committee

Consideration of admissibility

9.1 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.

9.2 The Committee takes note of the State Party's argument that the author has not exhausted the available domestic remedies, given that at the date of submission of the communication to the Committee, two appeals – fully effective and likely to remedy the alleged violations – were pending before the Angers Court of Appeal: an appeal against the decision of the juvenile guardianship judge of 19 October 2020 and an appeal against the decision of the juvenile court judge of 11 February 2022. The Committee notes, however, the author's contention that the appeals could not be considered effective because they did not have suspensive effect and there were long waiting times for the hearings. In his case, the Court of Appeal heard his case almost 21 months after he filed the appeal. The Committee is of the view that, on account of the unreasonable time frames for the adjudication of appeals by the State Party's judicial authorities, particularly the Court of Appeal, the non-suspensive nature of the appeal proceedings and the failure to adopt interim measures of protection in respect of the author while his application was under consideration by the Court of Appeal, the remedies in relation to the procedure for the determination of the author's age and his application for protection cannot be regarded as effective.³ 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.

9.3 The Committee is of the view that the author has sufficiently substantiated his claims under articles 3, 8, 12, 20 and 22 of the Convention, namely that his best interests were not taken into account during the age determination procedure, he was not given the opportunity to be heard, his right to an identity was not respected and he was not afforded the protection he was entitled to as an asylum-seeking unaccompanied migrant child. It therefore declares the communication admissible under article 7 (f) of the Optional Protocol and proceeds with its consideration of the merits.

Consideration of the merits

10.1 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.

10.2 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 upon arrival and later produced several identity documents in support of this claim (a photocopy of his birth certificate while he was in the care of the Departmental Council of Maine-et-Loire and before the juvenile court judge; his original family record book, which contained his birth certificate and was translated, copies of his parents' identity cards and his own original identity card before the juvenile court judge; and all the aforementioned documents and, in addition, his original identity card and an original "certificate of a person less than 18 years old", written in Arabic, before the Court of Appeal), resulted in a violation of his rights under the Convention.

10.3 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 or excluded from 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 a suspensive 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

³ *S.E.M.A. v. France* (CRC/C/92/D/130/2020), para. 7.2; *N.B.F. v. Spain*, para. 11.3.

best interests of the child should be a primary consideration throughout the age determination process.⁴

10.4 In the present case, the Committee notes that the State Party's authorities considered the author to be an adult because: (a) he produced no identity document with sufficient probative force to demonstrate that he was a minor; (b) neither his attitude nor his physical appearance, which were typical of an older age, was consistent with the age claimed; and (c) numerous inconsistencies were noted during the initial assessment interview in the Maine-et-Loire Department and the court hearings. The Committee also notes the State Party's claim that the author benefited from a temporary protection measure during the age assessment process.

10.5 With regard to the assessment of the author's identity documents, the Committee takes note of the author's assertion that the documents he submitted, including the originals, which had been issued by competent authorities in his country of origin, were completely disregarded. The Committee recalls that any available documents should be considered genuine unless there is evidence to the contrary.⁵ It also 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 have equal access to the evidence and that frequently the State Party alone has access to the relevant information.⁶ The Committee further 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 the validity of that document.⁷ In the present case, the Committee takes note of the State Party's statement that, at the appeals court's request, the document fraud unit of the Nantes border police examined the identity documents presented by the author and deemed them inadmissible. The State Party further maintained that any contact with the Embassy of Pakistan would be incompatible with the author's application for asylum. However, the Committee considers that the State Party has not proven that it requested the authorities of the author's country of origin to verify his identity before he submitted his application for asylum.

10.6 The Committee recalls that it is only when identity documents or other appropriate evidence is lacking, which is not the case in 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".⁸ 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.⁹

10.7 In the present case, the Committee notes that the author, who had no identity documents upon arriving in the State Party, underwent a summary initial assessment, during which it seems that no account was taken of his difficult migration journey or other factors that could explain inconsistencies in his story, and that no legal representative was present.¹⁰

⁴ *N.B.F. v. Spain* (CRC/C/79/D/11/2017), para. 12.3, among others.

⁵ Joint general comment No. 4 of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 of the Committee on the Rights of the Child (2017) 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.

⁶ See, inter alia, Human Rights Committee, *El Hassy v. Libyan Arab Jamahiriya* (CCPR/C/91/D/1422/2005), para. 6.7, and *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3.

⁷ *M.B. v. Spain* (CRC/C/85/D/28/2017), para. 9.13.

⁸ Joint general comment No. 4 (2017) and No. 23 (2017), para. 4.

⁹ General comment No. 6 (2005), para. 31 (i).

¹⁰ *S.E.M.A. v. France*, para. 8.7.

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 further notes 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) in any event, the author has not shown that he requested the presence of counsel during the interview or that such a request was denied; and (c) the alternative provided for under article 12 is fully respected when children are heard directly in cases where this is possible taking into account their age and capacity to form their own views, as was the case with the author. However, the Committee takes note of the author's arguments, which remain unchallenged by the State Party, concerning several obstacles that prevented him from requesting counsel, in particular, the fact that he was not informed of this option, the fact that such a request would likely have been denied, owing to the opposition of the child welfare services to the presence of third parties during age assessment interviews, and the fact that the author would have had to pay for any counsel services himself, which would not have been feasible in view of his situation as an unaccompanied migrant child and lack of resources. The Committee recalls 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.¹¹ It 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. 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.¹²

10.8 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 this 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 summary assessment used to determine the author's age, the fact that an administrator was not appointed to represent him during the administrative proceedings and that the author was not provided with assistance or the information which the situation required, the lack of suspensive effect of the appeals proceedings and the fact that the State Party deemed the documents he submitted to have no probative value without actually contesting the validity of the documents, 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 violation of articles 3 and 12 of the Convention.

10.9 The Committee further notes the author's claims that the State Party violated his rights by altering elements of his identity by attributing to him an age and a date of birth that did not correspond to the information contained in the documents he had presented and that the authorities never officially contested the validity of his identity documents. The Committee recalls 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.¹³ It observes that in the present case, although the author produced several identity documents before the authorities, the State Party did not respect his identity, since they decided that these documents had no probative value, even though it never formally contested their validity. Consequently, the Committee finds that the State Party violated article 8 of the Convention.

10.10 The Committee also takes note of the author's claim that the State Party's authorities failed to protect him despite his situation of abandonment and extreme vulnerability, in violation of article 20 (1) of the Convention. The Committee considers that these allegations also raise, in substance, the issue of a violation of article 37 (a) of the Convention. The Committee takes note of the State Party's assertion that the author received protection as a child from his arrival on French territory while his situation as an unaccompanied minor on French territory was being assessed. The author was given accommodation, food assistance, financial aid and schooling. The Committee notes, however, that the author was left without

¹¹ *A.L. v. Spain* (CRC/C/81/D/16/2017), para. 12.8, and *J.A.B. v. Spain* (CRC/C/81/D/22/2017), para. 13.7.

¹² *S.E.M.A. v. France*, para. 8.8.

¹³ *Ibid.*, para. 8.10.

protection as a child between 2 November 2020 and 7 September 2022. The Committee further notes that the author was housed in a hotel as part of the assistance provided to adults, but without any support or food assistance. It notes the observation of the Defender of Rights 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.

10.11 The Committee recalls that States Parties are obliged to ensure the protection of every migrant child deprived of his or her family environment, by guaranteeing, *inter alia*, access to social services, education and adequate housing, and that during the age determination process young migrants who claim to be children should be given the benefit of the doubt and treated as such.¹⁴ In the present case, the Committee considers that the aforementioned facts, in particular the insecurity of the author's livelihood, the duration of the proceedings and the failure to appoint a legal representative for the author, constitute acts or omissions attributable to the State Party and amounting to cruel, inhuman or degrading treatment or violation, in violation of articles 20 (1) and 37 (a) of the Convention.

10.12 With regard to the author's claim that he was unable to apply for asylum as a minor because he had not been appointed an *ad hoc* administrator, the Committee notes the State Party's argument that it was not possible to appoint an *ad hoc* administrator for him as an unaccompanied child, given the *res judicata* effect of the order of 19 October 2020 by which the guardianship judge had found that his minor age was not established. In this regard, the Committee highlights general comment No. 6 (2005), in which it notes that States should "appoint a guardian or adviser as soon as the unaccompanied or separated child is identified and maintain such guardianship arrangements until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State, in compliance with the Convention and other international obligations" and that "in cases where children are involved in asylum procedures or administrative or judicial proceedings, they should, in addition to the appointment of a guardian, be provided with legal representation".¹⁵

10.13 The Committee considers that the failure of the authorities to assign a guardian or *ad hoc* administrator to the author so that he could apply for asylum as a minor, despite the fact that he was in possession of official documents attesting to his minor age, resulted in his being deprived of the special protection afforded to unaccompanied minors seeking asylum and exposed him to a risk of irreparable harm if returned to his country of origin, in violation of article 22 of the Convention.

10.14 Lastly, the Committee takes note of the author's claims concerning the State Party's failure to apply the interim measures requested, namely his placement in a children's home. It observes that the author was given accommodation only from 7 September 2022 until he came of age. The Committee notes that the State Party considers interim measures to be non-binding. However, the Committee recalls that, by ratifying the Optional Protocol and thus recognizing the Committee's competence regarding interim measures, States Parties have an international obligation to apply 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.¹⁶ 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.

10.15 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, 22 and 37 (a) of the Convention and article 6 of the Optional Protocol.

11. The State Party is therefore obliged to provide the author with effective reparation for the violations suffered, including by adequately compensating him and 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

¹⁴ General comment No. 6 (2005), para. 31.

¹⁵ *Ibid.*, paras. 33 and 36.

¹⁶ *N.B.F. v. Spain*, para. 12.11.

unaccompanied child upon his arrival in France. The State Party is also under an obligation to prevent such violations in the future. In that regard, the Committee requests it to:

(a) Ensure that any procedure for determining the age of young persons claiming to be minors is in conformity with the Convention and relies on multidisciplinary methods, 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) a qualified legal representative is appointed, without delay and free of charge, and is allowed to assist the young persons concerned throughout the proceedings, including with regard to requests for international protection and residence permits; (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) by qualified multidisciplinary personnel;

(b) Ensure that any person claiming to be a minor is provided with information in a manner that is appropriate to his or her maturity and understanding, 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 and throughout the procedure, and treat them as children, observe the principle of presumption of minority and uphold 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 an accessible, rapid remedy with suspensive effect, ensuring that children are informed of the existence of such remedy and that they enjoy the rights of children throughout the appeals proceedings;

(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 Nos. 22 (2017) and 23 (2017).

12. 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 Committee's 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. It is also requested to publish the present Views and to disseminate them widely.
