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# Convention on the Rights of the Child

**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. 132/2020 * , **

*Communication submitted by*:U.A. (represented by counsel, Frédérique Chartier)

*Alleged victim*:The author

*State party*:France

*Date of communication*:21 December 2020 (initial submission)

*Date of adoption of Views*:21 May 2024

*Subject matter*: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

*Procedural issue*:Exhaustion of domestic remedies

*Substantive issues*:Best interests of the child; right of the child to be heard; protection of a child deprived of his or her family environment; right to education; inhuman or degrading treatment

*Articles of the Convention*:3, 8, 12, 20, 28 and 37 (a)

*Article of the Optional Protocol*:6 and 7 (e)

1.1The author of the communication is U.A., a national of Pakistan born on 15 October 2003. The author claims that the State party has violated his rights under articles 3, 8, 12 (2), 20 and 28 of the Convention, because the French authorities did not recognize him as an unaccompanied migrant child in a street situation for a long period of his stay in France. As a result, he has not had access to social services, education or adequate housing. He is represented by counsel. The Optional Protocol entered into force for the State party on 7 April 2016.

1.2On 24 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 place the author in a children's home and to provide him with access to medical care. On 14 January 2021, the Committee reiterated its request for interim measures on the basis of information provided by the author. On 4 February 2022, the Committee rejected a new request for interim measures submitted on 31 January 2022, because the author had reached the age of majority.

### Facts as submitted by the author

2.1In March 2019, the author left Pakistan, encouraged by his parents, in the hope of a better life in France. On 23 September 2019, the author arrived in Marseille, after a particularly perilous and traumatic journey from his country. He slept on the streets at first and was later precariously housed by volunteers.

2.2When the author's situation was referred to the children's judge of the Marseille *tribunal de grande instance* (court of major jurisdiction) by the author's counsel on 11 October 2019, the judge issued a provisional order of admission to a child protection facility on 2 December 2019, pending a socioeducational assessment of the author's situation and an expert examination of his original Pakistani birth certificate.

2.3The author states that, despite the provisional order of admission to a child protection facility and the fact that he was in possession of an original Pakistani birth certificate attesting to his date of birth, he was not immediately provided with temporary emergency accommodation in accordance with articles L223-2 and R221-11 of the Social Welfare and Family Code, an obligation incumbent on the Bouches-du-Rhône Departmental Council as soon as an unaccompanied minor requested protection. On 15 December 2019, the author was forced to lodge an application with the Marseille Administrative Court, seeking an injunction to force the departmental council to provide him with accommodation. On 18 December 2019, the administrative judge granted his request and ordered that he be taken into care by the Departmental Council within five days of notification of the order, subject to a fine of €100 per day of delay. The departmental services waited another fortnight before providing protection to the author, who finally received shelter on 2 January 2020, three and a half months after his arrival in France.

2.4On 10 February 2020, the Border Police, in a simplified documentary analysis report, indicated that an expert analysis could not be carried out and that the original birth certificate was inadmissible on the grounds that it was written in a foreign language using an alphabet other than the Latin alphabet and should have been translated into French by a qualified translator and legalized by the French authorities, noting that a request for authentication sent to the competent authorities on 18 December 2019 had gone unanswered.

2.5On 13 March 2020, by order of the children's judge, the author was subjected to a socioeducational assessment by the association Groupe addap13. An interview was conducted with the assistance of an Urdu interpreter but in the absence of counsel. Following the assessment, it was concluded that "the information gathered during the interview of [the author], born on 15 October 2003 … in Pakistan, [did] not appear consistent with the age claimed, minority or a situation of isolation", without the original birth certificate submitted by the author having been taken into account.

2.6On 26 May 2020, the children's judge of the Marseille Court ruled that educational assistance was no longer appropriate, reasoning that, according to the simplified documentary analysis report of 10 February 2020, the Pakistani birth certificate produced by the author had been declared inadmissible for being written in a script other than the Latin alphabet and submitted without translation, and given the absence of a response to the request for authentication sent to the competent authorities on 18 December 2019. The judge held that, in the light of the socioeducational assessment report and the explanations given at the hearing, inconsistencies in the author's account of his migration history, the author's behaviour since being provided with support, which was typical of an older age, and his physical characteristics, including his build, body hair and features, all pointed to the conclusion that he was not a minor. The judge acknowledged, however, that it was not disputed that the author had been respectful of the structure provided and had invested himself in his schooling. Consequently, the author found himself on the street, without the benefit of the protection due to him as a child deprived of his family.

2.7On 12 June 2020, the author filed an appeal against the judgment of 26 May 2020 before the Aix-en-Provence Court of Appeal and, in support of his appeal, produced new original documents in his possession: his national young person's identity card, complete with photograph, on 9 July 2020; a birth certificate in Urdu, issued by the Ministry of the Interior of Pakistan; a French translation of the birth certificate made by a translator accredited by the Court of Appeal; a birth certificate extract issued in French by the Pakistani Embassy in France on 23 June 2020; and a photocopy of his parents' identity cards.

2.8On 28 October 2020, without ordering an analysis of the new documents submitted and without contacting the Pakistani Embassy in France, the juvenile justice division of the Aix-en-Provence Court of Appeal upheld the judgment of 26 May 2020 and ruled that the author was an adult, on the basis that:

It was noted in the simplified documentary analysis report issued on 10 February 2020 by the Border Police that the Pakistani birth certificate produced by [the author] was written in a language using an alphabet other than the Latin alphabet that was impossible for the services to decipher, and that a request for authentication by the Pakistani authorities had therefore been made on 18 December 2019 but had gone unanswered. … On appeal, the author had produced a French translation of his birth certificate drawn up by an expert translator accredited by the Court of Appeal dated 17 June 2020, a birth certificate extract issued by the Pakistani Embassy in Paris on 23 June 2020 and his Pakistani young person's card, which is a national identity card for minors. It should be noted that the birth certificate initially produced, although translated, had not been legalized by the French authorities, nor had the birth certificate extract issued by the Pakistani Embassy in Paris on 23 June 2020, that the Pakistani authorities did not respond to requests for information from the Border Police and that, without the legalization by the French authorities of the birth certificate initially produced and submitted to the Border Police, the issuance by the Pakistani Embassy of a birth certificate extract and a national identity card for minors to [the author] does not authenticate the aforementioned identity documents or testify to the authenticity of the alleged date of birth. … The socioeducational assessment of [the author] raised doubts about his alleged minority. … The physical maturity of [the author] observed by his assessors, educators, the children's judge and the Court, inconsistent with the appearance of a minor, compounds the lack of probative value of the identity documents produced and the socioeducational assessment ruling out his minority. … [T]he body of evidence constituted by the socioeducational assessment, the lack of probative value of the civil status documents produced and the physical appearance and attitude of [the author] does not allow [for him] to be afforded the benefit of the doubt as to his minority.

2.9On 20 November 2020, the author requested the French Embassy in Islamabad to legalize his civil status documents. On 23 November 2020, the French Embassy replied that it was not competent to legalize documents issued by the Pakistani Embassy in Paris. It explained that the author should send his original documents back to his parents, who should have them stamped by the local government (Union Council) and the Pakistani Ministry of Foreign Affairs, and subsequently have the documents "super-legalized" by the French Embassy in Islamabad. The author indicates that he has decided not to take any further steps in this respect, given the risk of losing the original documents if they were to be sent by mail from France to Pakistan and the considerable costs involved in the process.

2.10On 20 November 2020, the author requested the public prosecutor of the Marseille Court to have a new documentary analysis carried out and, in the meantime, to have him placed in a child welfare facility. In support of this request, the author submitted the complete set of his original documents.

2.11On the same day, the author again contacted the Bouches-du-Rhône Departmental Council, requesting immediate shelter on the basis of article R221-11 of the Social Welfare and Family Code, i.e. emergency temporary child protection, in view of the health emergency caused by the coronavirus pandemic (COVID-19) and the absence of suitable accommodation. The author was forced to seek out accommodation on a daily basis, a precarious situation that was untenable for him as a child. His request remains unanswered.

2.12On an unspecified date, the author lodged an appeal on points of law. On 24 November 2020, he filed a request for legal aid with the Legal Aid Office of the Court of Cassation.

2.13On 25 November 2020, a lawyer from the Court of Cassation told the author that his case would not be heard for another 12 to 13 months, i.e. not until after he had reached adulthood, during which time the author would not benefit from any protection.

2.14The author argues that this lack of care jeopardized his schooling, which he had started with the help of associations, because he had to work in exchange for accommodation provided by the Pakistani community in Marseille in order to stay of the street.

## Complaint

3.1The author claims that his rights under articles 3, 8, 12 (2), 20 and 28 of the Convention were violated by the State party as a result of the age determination procedure to which he was subjected and the fact that he was not recognized and granted protection as an unaccompanied migrant child.

3.2The 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 process. 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 the following official identity documents from his country of origin in support of his application for protection: an original birth certificate, during the assessment interview and to the children's judge; and a translation of his original birth certificate from Urdu, an extract of his birth certificate issued in French by the Pakistani Embassy in Paris, an original national identity card for minors issued by the Pakistani Embassy in Paris and a photocopy of his parent' identity cards to the Court of Appeal. The author claims that the State party's authorities neither analysed the documents nor contacted the Pakistani consular authorities in France to verify their authenticity, nor did it officially contest their authenticity.

3.3The author also claims that the fact that he was not accompanied by a representative during the age assessment interview was a violation of his rights under article 3 read in conjunction with article 12 (2) of the Convention. To determine the author's age, the State party's authorities relied solely on an assessment interview, following which it was decided that author's physical appearance and his attitude during the interview were inconsistent with his alleged age, that there were doubts about his account of the final part of his migration journey and that his behaviour in both a group and an individual setting were typical of an older age. No lawyer or representative was present either before or during the interview and the author did not have the opportunity to review the resulting report and make corrections to it. As the author had no legal assistance during the age assessment process, inaccuracies in the report were not pointed out until later, when the author's counsel raised them before the children's judge.

3.4The author further claims 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. He indicates that the judicial authorities left unreasonably long intervals between hearings and failed to have him admitted to the child welfare system in the meantime.

3.5The author also alleges that the State party violated his rights under article 8 of the Convention. The author refers to the Committee's settled jurisprudence that a child's date of birth forms part of his or her identity and that States parties have an obligation to respect a child's identity without depriving him or her of any elements of it. He emphasizes that the State party's authorities did not seek to verify whether the information contained in the documents submitted was accurate or to have them reviewed by the Pakistani authorities, in violation of the Convention and national law. The author notes that the State party has not produced any evidence to support its claim that the Border Police sent a request for the authentication of his birth certificate to the competent authorities on 18 December 2019. He indicates that, according to article 47 of the Civil Code, the civil status record of a foreign national issued by a foreign country and drawn up in the manner prescribed in that country should be regarded as genuine unless other records or documents held by the person concerned, 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 truth. The author also refers to article 1 of Decree No. 2015-1740 of 24 December 2015 on the verification of foreign civil status records, which provides that, in the event of uncertainty about a civil status document, only verification by the relevant foreign authority can provide information that may be used to determine its authenticity.

3.6Lastly, the author claims to have suffered a violation of his rights under article 28 of the Convention. Having been able to enrol in and attend school with the help of volunteers, he was then forced to drop out when he found himself on the street, destitute and excluded from the child protection system. The author had to work in exchange for accommodation provided by the Pakistani community in Marseille for several nights, in order to stay off the streets.

3.7By way of reparation, the author asks the Committee to request the State party to: (a) allow him to remain in the country and regularize his administrative status by promptly issuing him with a one-year "private and family life" residence permit; (b) grant him continued support as a vulnerable young adult under the age of 21; and (c) ensure that every stage of the age determination process for young persons claiming to be minors is in conformity with the Convention, that such persons are protected as children by the competent public authorities throughout the process and that all of their rights as children are respected.

## State party's observations on admissibility and the merits

4.1In its observations dated 18 October 2021, the State party submits 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, when the communication was submitted, an appeal was pending before the Court of Cassation. This appeal constitutes an effective challenge against the 28 October 2020 decision of the juvenile justice division of the Aix-en-Provence Court of Appeal. The State party explains that the Court of Cassation carefully verifies the reasoning behind decisions justifying the continuation of child placement. With regard in particular to the time frame for the examination of appeals before the Court of Cassation, it is possible to request that the applicable deadlines be shortened. The State party argues that the author has not demonstrated that he made such a request or that such a request went unanswered.

4.2The State party indicates that, on 19 February 2021, the Marseille Juvenile Court ordered that the author be admitted to a child protection facility and thereby acceded to his requests. In its decision, the Court ruled that, by means of the hearing, it had been established that there was a sufficient body of evidence, notably the author's physical appearance and his young person's identity documents, including a national identity card complete with a photograph, to establish that the author was a minor. Accordingly, the State party maintains that,at the end of the legal proceedings initiated by the author, the authorities gave full effect to the identity documents he had submitted. This shows that there existed domestic remedies before the national courts that should have been exhausted before the matter was submitted to the Committee, since those remedies were capable of redressing the violation alleged by the author.

4.3The State party further maintains that the rights protected by article 8 of the Convention have not been invoked, either explicitly or in substance, before the domestic courts; the available domestic remedies have therefore not been exhausted in this respect.

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

4.5With 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 that, contrary to the author's claims, 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. The State party indicates that the author was first heard by the association Groupe addap13. It notes the author's claim that he was not assisted by counsel during that interview. The State party observes, however, that, according to 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, but that the author has not demonstrated 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) also 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 the light of their age and capacity for discernment. 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 the process. The State party also 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.

4.6With regard to the alleged violation of article 3 read in conjunction with articles 20 and 28 of the Convention, the State party notes the author's claim, in his submission to the Committee, that he was not admitted to a child protection facility during the age assessment procedure and was unable to continue his schooling or receive health care. The State party refers to the settled jurisprudence of the Court of Cassation that, in accordance with 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 the children's judge; and 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.

The State party maintains that, in the present case, the author clearly won the first-instance judge's judgment of 19 February 2021, at the outcome of the proceedings before the national courts.

4.7Furthermore, the State party notes that the children's judge's judgment of 2 December 2019 was handed down barely two months after the author brought the case before the court and that, pending the assessment and evaluation of the civil status records produced, the author was placed in provisional care. Subsequently, on 26 May 2020, the children's judge issued an order revoking the author's admission to the child protection facility. In view of the requirements of the investigation and the number of cases handled by the 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 simplified documentary analysis report and the socioeducational assessment report of 10 February 2020, contrary to the author's assertions, but also on the statements made by the author during the hearing, during which he was assisted by counsel but did not present any civil status document with sufficient probative force to demonstrate that he was a minor. The judge noted numerous inconsistencies in the author's statements, including those made during the assessment interview conducted by the association Groupe addap13 and during the hearing, at which the judge insisted on hearing the author. In the State party's view, the author clearly failed to submit any convincing evidence of his status as a minor, and it was for this reason that the French authorities did not pursue the examination of his application in accordance with the principle of the best interests of the child.

4.8Furthermore, the State party reiterates that the author never requested the Aix-en-Provence Court of Appeal to take interim measures, such as temporary admission to a child protection facility. According to the State party, the author failed to make use of this procedural avenue, even though it would have remedied the violations of the Convention that he alleges. On the contrary, it maintains that the author made clear his desire to leave the hotel in which he had been placed.

4.9The State party emphasizes that the fact that the children's judge recognized the author's minority on 19 February 2021 had concrete consequences for the author. He was placed in the care of the Directorate-General for Social Cohesion, which upheld every right associated with his status as a minor, including the rights to schooling, education, health care, to open a bank account and to carry out any activity that was in his best interests. The State party therefore concludes that there has been no violation of articles 3, 20 or 28 of the Convention.

4.10With 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 submitted and thus did not violate this article of the Convention. It points out that the domestic courts ruled on the basis of the provisions of article 47 of the Civil Code. Courts must pay close attention to identity documents submitted, in particular to ensure that they are sufficiently reliable under the terms of this article. The State party reiterates that the author provided partial, untranslated identity documents to the children's judge and then to the Court of Appeal, which could not be authenticated and could not be used as evidence of the authenticity of his alleged date of birth. The authorities also had to take into account the confused and incoherent statements made by the author, both to social services and at the hearing, in their reasoned decisions.

4.11The State party points out that, in its judgment of 28 October 2020, the Aix-en-Provence Court of Appeal found that: "The assessment of the plausibility of the alleged age is based on an in concreto assessment of the elements put forward by the person claiming to be a minor. In the present case, the body of evidence constituted by the socioeducational assessment, the lack of probative value of the civil status documents produced and the physical appearance and attitude of [the author] does not allow [for him] to be afforded the benefit of the doubt as to his minority."

4.12The State party indicates that the author presented valid civil status documents only at the hearing of 19 February 2021, although he indicated to the Court of Appeal that he had received them in January 2020. The State party observes that the author has not explained why he waited to produce these documents before the children's judge.

## Author's comments on the State party's observations

5.1In his comments of 31 January 2022, the author states that, despite the interim measures requested by the Committee, his repeated requests to the prosecutor's office of 24 December 2020 and 4, 8 and 12 January 2021 and to the departmental council of 24 December 2020 and 4 January 2021 went unanswered.

5.2The author states that, following a new enquiry on 14 January 2021, the departmental council refused to give effect to the Committee's request for interim measures, claiming that it had never received any such requests from the Committee.

5.3On 5 February 2021, of the view that the expert appraisal of the documents under way and the Committee's decision constituted new elements justifying the reopening of his case, the author again referred the matter to the children's judge of the Marseille Court on the basis of article 375-6 of the Civil Code in the hope of receiving a decision on his provisional admission to a child protection facility pending the outcome of the proceedings before the Committee or an order to be provided with educational assistance, in view of the evidence that he was a minor.

5.4On 19 February 2021, after a hearing in the children's judge's chambers, the judge ordered, in a reasoned judgment, that the author be placed under the protection of the Bouches-du-Rhône child welfare services until he reached adulthood, on the grounds that it had been established in the hearing that there was a sufficient body of evidence, notably the author's physical appearance and his young person's identity documents, including a national identity card complete with a photograph, which were not examined by the Border Police, as to establish that he was a minor.

5.5On the same day, the author sought the enforcement of the judgment of the children's judge and notified Groupe addap13 by email. On 24 February 2021, as no housing assistance had been provided, the author sent another email to Groupe addap13, indicating that they alone were competent to help him to find accommodation.

5.6On 4 March 2021, the author submitted a second appeal to the Administrative Court, asking the Court to order the Departmental Council to provide him with accommodation.

5.7On 8 March 2021, the administrative judge upheld the author's claim and ordered the Council to take him into care within five days of notification of the order, subject to a penalty of €100 per day of delay. On the same day, the author was taken into care.

5.8On 4 June 2021, the Border Police issued a new expert report, ordered by the public prosecutor's office in November 2020. This report contained the following conclusions: (a) that the identity card was authentic; and (b) that while the birth certificate was fully compliant, it had not been legalized in accordance with the Decree of 10 November 2020, which had come into force on 1 January 2021, and therefore could not be accepted.

5.9The author then requested the super-legalization of his birth certificate by the Pakistani consular authorities, who acceded to that request on 24 June 2021.

5.10On an unspecified date, the Departmental Council and the public prosecutor's office filed an appeal against the decision to provide the author with education assistance services.

5.11On 1 September 2021, the Aix-en-Provence Court of Appeal overturned the judgment of 19 February 2021, on the ground that the final judgment handed down by the Aix-en-Provence Court of Appeal on 28 October 2020 declaring that there were no grounds for developmental assistance was res judicata against the author. The educational assistance order was therefore lifted.

5.12On 14 September 2021, the author petitioned the guardianship judge to exercise his power to take up any matter falling within his jurisdiction and place him under guardianship. In accordance with article 390 of the French Civil Code: "Guardianship may be accorded when the father and mother are both deceased or deprived of the exercise of parental authority. It may also be accorded to children whose parentage has not been legally established. There may be no derogation from the specific laws governing child welfare services." This request was primarily based on the author's exceptional situation and on the interim measures requested by the Committee, which had not been applied.

5.13On 30 September 2021, the guardianship judge ordered that the author, as a child, be placed in guardianship until he reached adulthood on 15 October 2021. The public prosecutor immediately filed an appeal against this order.

5.14On 21 October 2021, the Court of Appeal noted that the author had reached adulthood on 15 October 2021 and declared the appeal moot.

5.15On 15 October 2021, the author applied for care as a young adult. The Departmental Council refused to give effect to the guardianship judge's decision and again violated the author's right to respect for his identity by rejecting his application for protection.

5.16In addition, the author argues that, in the present case, an appeal on points of law is not an effective remedy, for the following reasons: (a) the time taken by the Court of Cassation to process an appeal is on average 15 months; (b) the appeal is not suspensive in effect and the young person cannot benefit from provisional admission to a child protection facility during its examination; and (c) in such cases, the Court of Cassation rules only on points of law and not on points of fact, and, according to established jurisprudence, if the minor reaches adulthood before the Court examines his or her appeal, the appeal is declared moot. The author notes that the appeal he lodged was still being processed more than 14 months after his application for legal aid had been submitted to the Legal Aid Office of the Court of Cassation and more than 3 months after he reached the adulthood.

5.17The author explains that, when asked about the possibility of requesting a shortened processing time on the basis of article 1009 of the Code of Civil Procedure, a lawyer specializing in proceedings before the Court of Cassation informed him that this article provides for the shortening of deadlines for filing pleadings and exhibits, not of the deadline for passing judgment. The specialist lawyer explained that "gaining one month for the claim and 15 days for the defence is not a significant gain compared with the average time taken to decide civil cases, especially when a party has applied for legal aid, which has the effect of interrupting the legal time limit for investigation".

5.18With regard to the State party's allegations that the author failed to invoke article 8 of the Convention in the proceedings before the domestic courts, the author points out that all the proceedings instituted since his arrival in France clearly show that he tried in vain to establish his identity, submitting in support of his numerous applications several documents aimed at establishing his date of birth, both before and after referring his case to the Committee. The author therefore considers that the rights protected by article 8 have been invoked before the domestic courts in substance and on numerous occasions.

5.19As to the State party's allegations that the presence of a lawyer is not mandatory during assessment interviews because such interviews are administrative in nature and that the author has failed to demonstrate that he requested the presence of counsel, the author is of the view that, in order to be effective, protected rights must not be illusory and must be accompanied by guarantees allowing for their exercise, such as, in his case: (a) free assistance; and (b) clear information about the possibility of receiving assistance from a lawyer.

5.20With regard to the State party's argument that the author indicated that he wished to leave the hotel in which he was accommodated, the author maintains that an objective and careful reading of the decision of 2 December 2019 makes it clear that it was because his educators did not believe him when he told them that his birth certificate was original that he declared that he wished to change his place of accommodation, not because he intended to renounce care suited to his status as a minor.

5.21The author states that although his academic level was assessed as early as 28 November 2019 with a view to his orientation, he has hardly ever attended school since his arrival in France. He points out that on 16 January 2020, the Schools Inspectorate enrolled him in an intensive language class. However, the 26 May 2020 ruling that there were "no longer grounds for educational assistance" interrupted this schooling. After his second stay in a child protection facility, on 8 March 2021, the author had no access to education, since the school year was already well under way. On 31 August 2021, he was sent to a welfare home in Gap, in a neighbouring department. On 1 September 2021, his care and schooling were terminated.

5.22The author also claims that the State party violated the Convention and the Optional Protocol by refusing to give effect to the interim measures requested by the Committee on 24 December 2020.

## Third-party intervention

6.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.

## Issues and proceedings before the Committee

## Consideration of admissibility

7.1Before 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.

7.2The Committee takes note of the State party's argument that the author has failed to exhaust all available domestic remedies, based on the fact that, as at the date of submission of the communication to the Committee, an appeal on points of law against the 28 October 2020 decision of the juvenile justice division of the Aix-en-Provence Court of Appeal was pending before the Court of Cassation. The Committee notes, however, the author's contention that this appeal on points of law cannot be considered effective because it does not have a suspensive effect and did not allow for a determination of his status as a minor within a reasonable time, while he was still a child. The Committee also takes note of the State party's argument that the author could have requested an expedited consideration of his appeal. However, it also notes the author's claim, which was not challenged by the State party, that a request for expedited proceedings may be made only in respect of the filing of pleadings and exhibits and not in respect of the time frame for the judgment, which could not be changed significantly. The Committee further notes the State party's claim that, at the author's second request, the children's judge of the Marseille Court, in his decision of 19 February 2021, ultimately recognized the authenticity of the documents produced by the author, which demonstrated his minority. In this respect, the Committee notes that on 1 September 2021, the Aix-en-Provence Court of Appeal overturned this judgment on the grounds that res judicata should be applied against the author and consequently lifted an educational assistance order. 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 Court of Cassation, 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 the determination of the author's age and his application for protection cannot be regarded as effective.

7.3Furthermore, the Committee notes the State party's argument that the author did not raise allegations of a violation of article 8 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 assertion 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 in need of child protection. Accordingly, the Committee concludes that article 7 (e) of the Optional Protocol does not constitute an obstacle to the admissibility of the communication.

7.4The Committee is of the view that the author has sufficiently substantiated his claims under articles 3, 8, 12 (2), 20 and 28 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 identity was not respected and he was not afforded protection as an 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

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

8.2One of the issues before the Committee is whether, in the circumstances of the present case, the age determination process undergone by the author, who stated that he was a minor and produced several identity documents in support of this claim – first, during the assessment interview and before the children's judge, an original birth certificate in Urdu; then before the Court of Appeal and the Court of Cassation, as well as in a second application to the children's judge, the translation of that original birth certificate, a birth certificate issued in French by the Pakistani Embassy in Paris, an original national identity card for minors issued by the Pakistani Embassy in Paris and a photocopy of his parents' identity cards – resulted in a violation of his rights under the Convention.

8.3The 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 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.

8.4In the present case, the Committee notes that the State party's authorities considered the author to be an adult because: (a) he did not produce an 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 and the hearing before the children's judge. The Committee also notes the State party's claim that the author benefitted from provisional protection during the age assessment process.

8.5The Committee notes the author's claim that no value was attributed to the identity documents he produced, which were original documents that had been issued by competent authorities in his country of origin. He also notes that while his identity card was recognized as authentic by the Border Police, the judicial authorities ultimately dismissed it. The Committee recalls that any available documents should be considered genuine unless there is evidence to the contrary. 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 always have equal access to the evidence and that frequently the State party alone has access to the relevant information. In the present case, the Committee takes note of the author's argument that, if the State party had any doubts about the validity of the documents submitted, it should have formally challenged their validity. 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 the validity of that document.

8.6The Committee also notes the author's claim that the initial age assessment by the association Groupe addap13 consisted of a summary interview conducted without a lawyer present. It 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 and should include interviews with the child in a language he or she understands. 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.

8.7In the present case, the Committee observes that the author underwent an initial summary assessment, during which his original birth certificate was not taken into consideration. It also observes that this assessment seems to have been conducted by a single evaluator and that no account was taken of the author's difficult migration history or other factors that could explain inconsistencies in his story, and that no legal representative was present. The Committee also notes the fact that the judicial appeal against the administrative decision concerning the determination of the author's age was not suspensive in effect. In this regard, it 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.

8.8The Committee also notes the author's allegations that the fact that no lawyer or representative was present before or during the initial age assessment constitutes a violation of his rights under article 3 read in conjunction with article 12 (2) of the Convention. It 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 to it. It also takes note of the fact that the author was not able to provide clarifications in relation to the report until later, before the juvenile court judge, when he was represented by counsel. The Committee further notes the State party's arguments 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 demonstrated that he requested the presence of counsel during the hearing or that such a request was denied; and (c) article 12 of the Convention 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 for discernment, as was the case with the 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. Failure to do so amounts to a violation of articles 3 and 12 of the Convention, as the age determination process is the starting point for the application of the Convention. The absence of timely representation can result in a substantial injustice.

8.9In the light of the foregoing, the Committee considers that the age determination process 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 initial summary assessment used to determine the author's age, the failure to appoint a representative during the administrative process, the lack of suspensive effect of the appeals process and the fact that the State party deemed the documentation 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 process undergone by the author, in violation of articles 3 and 12 of the Convention.

8.10The Committee notes the author's allegations 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 produced 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. It 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 deciding that these documents had no probative value, despite the fact that the validity of the information contained therein was not duly contested. Consequently, the Committee finds that the State party has violated article 8 of the Convention.

8.11The Committee also takes note of the author's claim that the State party's authorities failed to protect him despite his street situation, 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 these allegations also raise, in substance, a violation of article 37 (a) of the Convention. It takes particular note of the fact that the author was living on the streets from the moment of his arrival in France on 23 September 2019 until 2 January 2020, then from 26 May 2020 to 8 March 2021 and from September 1 to 15 October 2021, the date of his eighteenth birthday, and that he did not benefit from any protection measures. The Committee also notes the State party's claim that the author was able to benefit from protection as a child during the periods when he was considered a child by the authorities. It also notes the State party's argument that the author did not explicitly request provisional admission to a child protection facility from the Aix-en-Provence Court of Appeal pending a judicial decision and that, on the contrary, he expressed a desire to leave his accommodation. However, the Committee notes that the author's counsel consistently requested the authorities to place the author in the child welfare system, in view of his situation of insecurity and neglect. The Committee also notes the author's claim that he expressed his wish to leave his accommodation only because his educators did not believe that he was a child, and that he merely wished to change his place of accommodation, not to renounce his protection as a child, as the State party claims. The Committee further 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.

8.12The 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. The Committee considers, in any case, that children should not be required to explicitly request interim measures of protection during the age determination process, 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 the aforementioned facts constitute a violation of articles 20 (1) and 37 (a) of the Convention.

8.13The Committee further notes the author's claim that his right to education was not upheld, in violation of article 28 of the Convention. The Committee observes the author's claim, not refuted by the State party, that he has had virtually no schooling since his arrival in France. It notes that the author had to interrupt his studies in an intensive language class because he was no longer considered a child and had to work to support himself. The Committee recalls that the obligation of States parties to realize the right to education is applicable to all children up to the age of 18 years, irrespective of the age at which compulsory education ends. The Committee observes that, because he was not recognized as an unaccompanied migrant child for a large part of his stay in France, the author was excluded from access to education, which adversely affected his ability to integrate into society. Consequently, and in the absence of further information from the State party, the Committee finds that the author's rights under article 28 of the Convention have been violated.

8.14Lastly, the Committee takes note of the author's claims concerning the State party's failure to implement the interim measures requested, namely his placement in a children's home and his access to medical care. The Committee observes that the author was sheltered from 2 January to 26 May 2020 and from 8 March to 1 September 2021 only. It also observes that the State party has not provided any explanation as to why the requested interim measures were 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. Consequently, the Committee considers that the failure to implement the requested interim measures in itself constitutes a violation of article 6 of the Optional Protocol.

8.15The Committee, acting under article 10 (5) of the Optional Protocol on a communications procedure, finds that the facts before it disclose violations of articles 3, 8, 12, 20, 28 and 37 (a) of the Convention and article 6 of the Optional Protocol.

9.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, and to receive training to make up for the lack of access to education during the procedure. The State party is also under an obligation to prevent similar violations in the future. In that regard, the Committee recommends that the State party:

(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, any private lawyers appointed to represent them are recognized and all legal and other representatives are allowed to assist such persons throughout the procedure; and (iii) that initial assessments are conducted in a manner consistent with the Convention, its general comment No. 6 (2005) and joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 23 (2017) of the Committee on the Rights of the Child;

(b)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, respecting the principle of the presumption of minority, treating them as children and recognizing all their rights under the Convention;

(c)Simplify the procedures available to unaccompanied children, give them suspensive effect with respect to decisions not to recognize minority and ensure that a final decision is taken within a reasonable time;

(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 under way;

(e)Provide training to immigration officers, police officers, officials of the public prosecution service, judges and other relevant professionals on the rights of child asylum-seekers and other migrant children and, in particular, on the Committee's general comment No. 6 and joint general comments No. 3 and No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families/No. 22 and No. 23 (2017) of the Committee on the Rights of the Child on the human rights of children in the context of international migration.

10.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. The State party is also requested to publish the present Views and to disseminate them widely.