



## Reception of unaccompanied minors

The Court found that the French legal framework in principle afforded the requisite minimum procedural safeguards and effective remedies but that, in the present case, there had been a violation of Article 8 where the national authorities had rebutted the presumption of minority in respect of the applicant in such conditions as to deprive him of adequate procedural safeguards

In today's **Chamber judgment**<sup>1</sup> in the case of [A.C. v. France](#) (application no. 15457/20) the European Court of Human Rights held:

by 6 votes to 1, that there had been a **violation of Article 8 (right to respect for private life)** of the European Convention on Human Rights; and

unanimously, that there had been **no violation of Article 13 (right to an effective remedy) in conjunction with Article 8**.

The case concerned a Guinean national who claimed to have been an unaccompanied minor when he arrived in France. He submitted that he had not received the care provided for under French child-protection laws, because the domestic authorities had contested that he was a minor.

The Court first observed that the applicant had been given temporary emergency care throughout the age-assessment process, in line with the presumption of minority. The results of the administrative and medical examinations had led the presumption of minority to be rebutted – and the applicant's protection as an unaccompanied minor to be terminated accordingly – before the courts had finally recognised his minor status. The Court noted the existence of a domestic legal framework which in principle afforded the requisite minimum procedural safeguards. It then considered, however, that on account of the incomplete and imprecise information provided to the applicant in the present case while his minor status was in dispute, the presumption of minority in his respect had been rebutted in such conditions as to deprive him of adequate procedural safeguards. It concluded that, in the circumstances of the case, the relevant authorities had not acted with reasonable diligence and had not complied with their positive obligation to ensure the applicant's right to respect for his private life. There had therefore been a violation of Article 8 of the Convention.

Second, the Court considered that there had been remedies available to the applicant under domestic law in respect of the alleged violation of Article 8 of the Convention. In the light of the circumstances of the case, he had to be regarded as having had effective remedies in practice. The Court thus found that there had been no violation of Article 13 of the Convention in conjunction with Article 8.

A legal summary of this case will be available in the Court's database HUDOC ([link](#)).

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: [www.coe.int/t/dghl/monitoring/execution](http://www.coe.int/t/dghl/monitoring/execution).

## Principal facts

The applicant, A.C., is a Guinean national who claims to have been born on 26 April 2004 and lives in Limoges.

A.C., whose mother died in 2018, left Guinea with his brother before being separated from him in Morocco. On his arrival in France, he stated that he was an unaccompanied minor. He was provisionally taken into care by the child welfare services of the *département* of Haute-Vienne on 23 January 2020.

In February 2020 a forensic medical examination commissioned by the public prosecutor found that the applicant's biological age was over 18 years, although no conclusion could be reached with absolute certainty in the state of scientific knowledge at the time.

On 6 March 2020 the public prosecutor decided that care measures were no longer called for, leading the President of the Haute-Vienne *Département* Council to terminate the temporary emergency care on 9 March 2020. A.C. then left the hotel in which he had been living. According to his submissions, he found himself with no resources, accommodation, contacts or food and had to fend for himself.

On 25 March 2020 A.C. applied to the Youth Court, with the assistance of a lawyer, to be taken into the care of child welfare services until he reached the age of majority. He also requested an interim protection measure from that court. On the same day, he lodged an urgent application for the protection of a fundamental freedom (*référé liberté*) with the Limoges Administrative Court. In particular, he sought to have that court order the President of the Haute-Vienne *Département* Council to take him provisionally into care and to provide for his accommodation, food, clothing and medical needs if necessary, until the later of the Youth Court's delivery of its decision or the lifting of the public-health state of emergency. The urgent-applications judge of the Limoges Administrative Court dismissed the application on 27 March 2020.

On 30 March 2020 the European Court, seized with a request for interim measures, indicated to the French Government under Rule 39 of the Rules of Court that the applicant should be provided with accommodation and food until the end of the lockdown.

A.C. appealed to the *Conseil d'État* against the decision of the Limoges Administrative Court urgent-applications judge of 27 March 2020. The *Conseil d'État* held that it was unnecessary to decide the appeal because the applicant was then in the care of State social services.

On 1 July 2020 the Limoges Youth Court found that the applicant's minority could not be established and decided that care measures were no longer called for. A.C. appealed against the judgment.

On 21 January 2021 the Limoges Court of Appeal overturned the judgment that care measures were no longer called for. Finding that the applicant was in fact a minor, it ordered that he be taken into the care of the Haute-Vienne *Département* Council until he reached the age of majority.

On 29 January 2021 the applicant applied to the urgent-applications judge of the Limoges Administrative Court, asking for the *département* of Haute-Vienne to be ordered to pay him 25,000 euros in provisional compensation for the damage he had sustained as a result of the decision of 9 March 2020. He then lodged an application with the Limoges Administrative Court on 2 June 2021, seeking to have the *département* of Haute-Vienne pay him the sum of 30,000 euros in final compensation for the damage he had sustained as a result of that same decision.

On 9 December 2021 the Limoges Administrative Court joined the application for provisional compensation and the application for final compensation with an application by the applicant to have the decision of 9 March 2020 set aside. It then dismissed all the applications as inadmissible.

In an order of 2 June 2022 the Bordeaux Administrative Court of Appeal transferred an appeal by the applicant against the judgment of 9 December 2021 to the *Conseil d'État*, on the ground that no

appeal lay against the first-instance judgment. The *Conseil d'État* declined to accept the appeal under Article L. 822-1 of the Administrative Courts Code.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman and degrading treatment) and on Article 13 (right to an effective remedy) in conjunction with Article 3, the applicant complained, first, of his living conditions while he was not in the care of the domestic authorities yet was still a minor and, second, of the lack of an effective remedy available to him in respect of his grievances under Article 3 of the Convention.

He also relied on Article 8 (right to respect for private and family life) to argue that the lack of protection resulting from the domestic authorities' refusal to recognise him as an unaccompanied minor should be regarded as a violation of his right to respect for his private life.

Lastly, relying on Article 6 § 1 (right to a fair hearing) and on Article 13 in conjunction with Article 8, he submitted that he had had no effective remedy in respect of the decision to refuse him care as a child. That, he claimed, was notably owing to the lack of an avenue of redress with suspensive effect and to the assessment of the evidence he had provided in support of his minor status.

The application was lodged with the European Court of Human Rights on 30 March 2020.

Judgment was given by a Chamber of seven judges, composed as follows:

María Elósegui (Spain), *President*,  
Mattias Guyomar (France),  
Armen Harutyunyan (Armenia),  
Stéphanie Mourou-Vikström (Monaco),  
Gilberto Felici (San Marino),  
Andreas Zünd (Switzerland),  
Diana Sârcu (the Republic of Moldova),

and also Victor Soloveytschik, *Section Registrar*.

## Decision of the Court

### Article 3 and Article 13 in conjunction with Article 3

The Court pointed out that it required a sufficiently solid factual basis to find that the threshold of severity under Article 3 of the Convention had been reached. It could not infer such a violation from a probable sequence of events. While acknowledging the difficulties which the applicant had faced, the Court considered, on the basis solely of the evidence adduced before it, that the threshold of severity required to establish the existence of treatment in breach of Article 3 of the Convention could not be regarded as attained.

Given that the complaint under Article 3 of the Convention could not be said to be arguable in the present case, the Court concluded that the complaint under Article 13 in conjunction with Article 3 was incompatible with the provisions of the Convention. It therefore had to be rejected.

### Article 8

The Court noted that the French legal framework in principle afforded unaccompanied foreign minors procedural safeguards that satisfied the requirements of Article 8 of the Convention.

In the present case, since the applicant had not provided a civil-status document during the age-assessment interview, the administrative authority had relied on a body of circumstantial evidence,

comprising the applicant's answers and physical appearance. It had concluded that "it [could] not be guaranteed that he [was] a minor". In the absence of a decisive outcome, the public prosecutor had requested that the applicant undergo a biological examination. The findings stated that the applicant's biological age was over 18 years, although no conclusion could be reached with certainty based on the state of scientific knowledge at the time.

The Court observed that the applicant had been given temporary emergency care throughout the age-assessment process, in line with the presumption of minority. The results of the administrative and medical examinations had led the presumption of minority to be rebutted, and the applicant's protection as an unaccompanied minor to be terminated accordingly.

It did not appear from the documents in the case file, however, that the findings of the administrative assessment had been given to the applicant by the *département* social services or that he had been informed that he could obtain a copy.

The Court further noted that there was nothing to show that the applicant had actually received a copy of the findings of the biological examination either. Moreover, as the domestic courts had pointed out, those findings contained no mention of the margin of error inherent in such examinations in the state of scientific knowledge at the time.

In addition, the public prosecutor's decision of 6 March 2020 finding that care measures were no longer called for did not contain any reasoning. The decision of the President of the *Département* Council of 9 March 2020, for its part, merely referred schematically to the age assessment carried out by the *département* social services, on the one hand, and to the public prosecutor's decision of 6 March 2020, on the other. It did not provide any personalised reasoning that could have informed the applicant as to why his minor status had been rebutted. Lastly, the decision of 9 March 2020 refusing care contained only incomplete and imprecise indications of the avenues and time-limits for seeking redress. No mention was made of the possibility of applying to the Youth Court. Nor was there anything stipulating that any action brought before the administrative courts would be admissible only in the context of an urgent application for the protection of a fundamental freedom (*référé liberté*).

This accumulation of incomplete and imprecise information was provided to the applicant while his minor status was in dispute and he should have been regarded as particularly vulnerable for that reason. The Court thus concluded that the presumption of minority in his respect had been rebutted in such specific conditions as to deprive him of adequate procedural safeguards.

Despite the existence of a domestic legal framework which in principle afforded the requisite minimum procedural safeguards, the relevant authorities had not acted with reasonable diligence and had not complied with their positive obligation to ensure the applicant's right to respect for his private life.

There had therefore been a violation of Article 8 of the Convention.

#### Article 13 in conjunction with Article 8

The Court considered that there had been remedies available to the applicant under domestic law in respect of the alleged violation of Article 8 of the Convention. In the light of the circumstances of the case, he had to be regarded as having had effective remedies in practice.

It thus found that there had been no violation of Article 13 of the Convention in conjunction with Article 8.

### Rule 39 of the Rules of Court

The Court noted that the interim measure indicated to the Government on 30 March 2020 under Rule 39 of the Rules of Court had become devoid of purpose, given that the lockdown had been lifted.

### Just satisfaction (Article 41)

The Court held that France was to pay the applicant 5,000 euros in respect of non-pecuniary damage.

### Separate opinion

Judge **Mourou-Vikström** expressed a separate opinion, which is annexed to the judgment.

*The judgment is available only in French.*

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**The European Court of Human Rights** was set up in Strasbourg by the Council of Europe member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.