

## Presentation of InfoMIE

InfoMIE [*Informations mineurs isolés étrangers*] is a French national information platform on unaccompanied foreign minors<sup>1</sup>, which aims to promote access to the rights and protection of unaccompanied minors and young foreign adults, while respecting the best interests of the child.

The association operates throughout France, gaining a global vision of the difficulties encountered by this subject group by working through a multidisciplinary and multi-actor network, as well as empowering and coordinating a network of specialized lawyers.

### Scope of this note

It should be remembered that, in France, unaccompanied foreign minors are placed under the responsibility of by the general child welfare system (“*Aide sociale à l’Enfance*” hereinafter “ASE”), which is a service provided at the “Department” administrative level<sup>2</sup>.

The law provides that any person declaring themselves an unaccompanied minor must be admitted to an emergency temporary care framework. During this period, the service carries out an assessment of their minority and isolation<sup>3</sup>.

#### Two hypotheses arise at the end of this evaluation:

1. If the Department considers that the person is an unaccompanied minor, it refers the matter to the Public Prosecutor<sup>4</sup>, who issues a provisional placement order and hands the matter on to the Children's Judge<sup>5</sup>. The Children’s Judge may order additional investigative measures. If the Judge considers that the person is an unaccompanied minor, the child is entrusted to the ASE<sup>6</sup>. The Department then becomes responsible for the minor (but without full legal guardianship).

Obtaining legal guardianship requires referral to a child guardianship judge (part of the family court), who resolves the absence of any legal guardian by appointing the President of the departmental council as guardian. This is far from being systematic in practice.

2. If the Department considers that the person is not a minor and/or unaccompanied, the emergency temporary care is terminated without referral to the judicial authorities and a decision to this effect is notified to the person<sup>7</sup>.

In order to contest this decision, a young person may file a direct request to the Children's Judge to obtain placement with the ASE<sup>8</sup>. They can double this filing by a request for

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<sup>1</sup> Online ressources : [www.infomie.net](http://www.infomie.net)

<sup>2</sup> Article L. 222-5 of the Code of social and family action (*Code de l’action sociale et des familles* - CASF)

<sup>3</sup> Article L. 221-2-4 CASF.

<sup>4</sup> Article R. 221-11 CASF.

<sup>5</sup> Article 375-5 of the Civil Code.

<sup>6</sup> Article 375-3 of the Civil Code.

<sup>7</sup> Article R. 221-11 CASF.

<sup>8</sup> Article 375 of the Civil Code.

provisional placement, in order to obtain temporary protection until a final decision is made by the Judge<sup>9</sup>.

If the Children's Judge does not issue a provisional placement order, the minor can petition the administrative tribunal for an injunction through interim proceedings for the protection of fundamental freedoms (“*référé liberté*”). If the administrative tribunal considers that the assessment made by the Department concerning the minor is manifestly erroneous, it can order the Department to prolong the emergency provisional care until the children's judge has handed down the final decision<sup>10</sup>.

The Children's Judge can order additional investigative measures, regardless of whether the young person is provisionally protected or not.

If the Children's Judge does not grant a young person's request for placement with the ASE, s/he can appeal to the civil Court of Appeal<sup>11</sup>. The appellant is not protected for the duration of the appeal.

**Our focus here is on entry into child protection and execution of the placement decision.**

## **What are the main legal barriers encountered by unaccompanied minors?<sup>12</sup>**

- The lack of systematic legal assistance for entry into child protection

The law does not currently provide for the assistance of a lawyer or a qualified legal guardian during the administrative evaluation phase.

Although temporary protection should be immediate, in some Departments the delays are excessively long before a young person receives any assistance. In such cases, in the absence of a designated lawyer and without information on their legal rights, minors cannot take legal action to force the Department to provide temporary protection.

During the evaluation stage, the Department may request an expertise of the identity documents provided by the minor. The analysis, provided by the border police, is essential to the evaluation process. Although such analysis is often open to question, the minor has no assistance or legal representation to contest it.

Nor is he assisted in reconstituting or establishing his identity documents, even though this is an essential element for the recognition of minority.

As regards the judicial phase, the assistance of a lawyer is not compulsory<sup>13</sup>.

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<sup>9</sup> Article 375-5 of the Civil Code.

<sup>10</sup> French Council of State (*Conseil d'Etat*), 4 June 2020, Ordonnance n°440686.

<sup>11</sup> Article 1191 of the Civil Procedure Code – “CPC”

<sup>12</sup> Isolated foreign minors are currently described administratively as “*mineurs non-accompagnés – MNA*”

<sup>13</sup> In child assistance matters, the right to be represented is a simple right granted to any minor capable of discernment (article 1186 of the CPC). The appointment of a lawyer can be ordered by the children's judge, but this is not systematic (article 375-1 of the civil code).

It is therefore common for minors not to be assisted by a lawyer before the Judge. This affects the quality of the defense of the minor's interests, the account taken of his explanations, as well as the minor's understanding of the procedure.

This is even more harmful in cases in which the Department contests the person's minority as a party to the proceedings. In certain cases, the minor is not assisted by a lawyer even though the Department challenges his minority (often with the assistance of a lawyer) after having been ordered to place the young person in its care.

The person may thus be given notice of the end of protection – leading to a return to the streets – without having had any access to a lawyer.

- The lack of suspensive proceeding in case of refusal of child protection

The lack of any presumption of minority in France means that petitions filed to the children's judge, following refusal of protection by the Department, do not suspend the refusal decision.

In such cases, minors do not receive any protection during the judicial proceedings and, in the vast majority of cases, find themselves back on the street, in extremely precarious conditions<sup>14</sup>. This prevents them from preparing the request correctly and fully exercising their rights. In particular, they are not able to obtain or reconstitute their identity documents, despite the need to provide proof before the judge. They cannot easily access a lawyer. The associations and lawyers who aid them frequently lose all contact with minors at this stage.

They risk falling into the hands of human trafficking networks.

As minors, they cannot benefit from emergency accommodation reserved for adults.

- Burden of proof

There is a clear imbalance in the burden of proof between the weaker party (the minor) and the stronger party (the administrative authority) in the context of judicial proceedings aimed at obtaining child protection.

The burden of proof rests on the minors (often living in the streets), who must produce identity documents and, in some cases, take steps to obtain these documents from home if they do not already have them, despite having much fewer resources than the administration.

If a minor requests the Children's Judge to order investigative action aimed at collecting evidence, the judge is under no obligation to respond and there is no avenue of appeal to contest any lack of response.

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<sup>14</sup> At least 3,477 minors could be affected (low estimate). See : *“Mineur-es non accompagné-es refusé-es ou en recours de minorité : recensement national du 20/03/2024”*, *Coordination Nationale Jeunes Exilé-es En Danger* “Unaccompanied minors refused or in minority appeal: national census of 03/20/2024”, National Coordination of Exiled Youth in Danger.

As part of a survey of young people undergoing minority recognition procedures in Paris, it was noted that: 95.3% of them were on the street or in a camp; 92% in a situation of severe or moderate hunger; 64% reported suffering from a health problem. See : [“Enquête auprès des jeunes en procédure de minorité à Paris - Octobre/Novembre 2023”](#), *Action contre la Faim - Armée du Salut - Coucou Crew - Utopia 56*. “Survey of young people undergoing minority procedures in Paris - October/November 2023”, Action Against Hunger - Salvation Army - Coucou Crew - Utopia 56.

- Unreasonably long delays

The law does not subject the children's judge to any judgment deadlines. Cases generally take from 2 to 6 months, or as long as a year in certain areas.

If the young person does not obtain protection at first instance and files an appeal, the appellate proceedings last from 3 to 12 months.

The young person sometimes becomes an adult during the proceedings, in which case the Court of Appeals (or the Court of Cassation) refuses to rule on the case. In such cases, certain questions will never be resolved, causing the young person to permanently lose access to his or her rights.

The lengthy periods at every judicial level present a real obstacle to due process, in particular when the case is not heard before the person's majority. During this period, the minor does not benefit from any support since the petition before the children's judge is not suspensive.

- Complexity of legal remedies

As regards initial entry into child protection, the remedies available to minors are complex.

The common law remedy for young people who contest their refusal to receive child protection is to refer the matter to the children's judge, in order to request placement with the ASE.

The young person can accompany the referral with a request for a temporary placement order. However, nothing in the civil procedure code requires the children's judge to respond to this request, and there is no avenue of civil appeal to challenge this lack of response.

In the vast majority of cases, no response is ever provided to such provisional requests. The young person thus remains without any support pending placement by the children's judge.

Thus, in the absence of a provisional placement order, the minor is required to petition the administrative tribunal for interim protection, whereby the court orders the department to prolong the initial temporary care until the children's judge hands down the final decision. However, such requests are only granted where the administrative tribunal considers that the initial assessment made by the Department concerning the young person's situation is manifestly erroneous and that the young person is faced with an immediate risk of danger<sup>15</sup>. The evidentiary burden on the minor in such proceedings is high and the oversight by the administrative judge is limited. The administrative judge does not examine the details of the evaluation in detail. In practice, the minor must provide new identity documents with the petition. This significantly limits the cases where these interim proceedings are pertinent and allow a favorable outcome.

While the different judges involved have varying jurisdiction, for the young person the goal is the same: obtaining protection. The source of this multiplicity of civil and administrative procedures is the lack of a suspensive petition to the children's judge. The resulting proceedings are incomprehensible for the minor.

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<sup>15</sup> Council of State, 4 June 2020, Ordonnance n°440686.

- Lack of effective recourse to ensure execution of the placement

Even when the minor obtains a positive decision from the children's judge, effective protection may not be provided immediately, or may be poorly executed.

However, neither the children's judge (who initially places the minor in custody), nor the minor's guardianship judge (in cases where the Department is named as legal guardian), has any power of injunction with regard to the Department. Both judges belong to the judicial authorities; they have no power to constrain the administration<sup>16</sup>.

The only procedure available to the minor is therefore to apply to the administrative tribunal for interim relief, which requires proof that he or she is in a situation of extreme emergency.

In recent cases, for example, despite having obtained a judicial placement order, a number of minors remained in the streets for several weeks (or even months) before being taken in by the ASE<sup>17</sup>.

In addition, minors are placed in hotels – although this is prohibited – without effective referrals to the administrative tribunal<sup>18</sup>.

## What are the practical barriers encountered by unaccompanied minors ?

- Lack of information

At every stage of the minority determination procedure, the minor rarely has access to relevant information on legal assistance and possible avenues of appeal.

No information is given regarding access to a lawyer during the administrative evaluation phase.

If protection is refused, such information is rarely provided.

In many cases, the avenues of appeal mentioned in decisions refusing protection after the initial assessment are incorrect or incomplete<sup>19</sup>.

Lacking or erroneous information prevents or delays access to justice by minors.

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<sup>16</sup> Principle of the separation of administrative and judicial authorities: law on judicial organization of 16 and 24 August 1790.

<sup>17</sup> See for example: Tribunal Administratif [TA] Lyon, ordonnance n°2400523 and 2400525, January 22, 2024; TA Marseille, order no. 2307900, August 31, 2023; TA Marseille, order no. 2405361, June 4, 2024; TA Nîmes, Order no. 2400517, February 12, 2024 (followed by order no. 2401183 of April 2, 2024).

<sup>18</sup> See for example: TA Marseille - Ordonnance [n°2403075](#), 4 April 2024.

<sup>19</sup> Error regarding the court with jurisdiction or the deadlines for appeal.

- Lack of support for out-of-court interpreting

While mechanisms exist to provide access to an interpreter during evaluations and hearings, there is no provision for a minor to access an interpreter before the hearing, to prepare the appeal or for non-judicial procedures.

In most cases, another young person or a volunteer is called upon to provide interpretation between the young person and the lawyer. This solution does not guarantee the quality or confidentiality of exchanges. This is a real obstacle to effective access to justice, as young people are unable to properly prepare their defense.

- Restricted legal aid

Legal aid is the mechanism allowing state remuneration of the lawyer when the client is unable to do so. However, non-judicial procedures are not covered by legal aid. Minors are therefore not accompanied by lawyers for procedures which could lead to amiable resolution of a dispute with the administration.

## **Which key provisions should be included in legislation to ensure children's right to access to justice and effective remedies ?**

The following reforms should be considered to ensure that unaccompanied minors have effective access to justice and effective remedies:

- Introducing a presumption of minority and suspensive appeals before the children's judge when requesting initial entry into child protection
- Providing for compulsory legal assistance and appointment of a qualified legal guardian from the beginning of the procedure for determining minority and isolation
- Providing financial support for lawyers and interpreters, including outside of court
- Introducing procedures allowing children's judges and guardianship judges to oblige the Department to execute their decisions without recourse to the administrative tribunal.