

## Contribution on the detention of children at French borders

For thirty years, Anafé (the 'National Association for Assistance to Foreigners at Borders') has been defending the rights of persons experiencing difficulties at borders and in waiting zones, notably children<sup>1</sup>.

The United Nations Convention on the Rights of the Child (CRC) states that, in all decisions which concern children, the best interests of the child shall be a primary consideration<sup>2</sup>.

In October 2012, France reassured the United Nations Committee on the Rights of the Child that 'the question of foreign minors and more specifically unaccompanied minors will be treated with responsibility and keeping in mind that the protection of the best interests of the child must prevail'. However, authorities have not put an end to the systematic detention and forced return of children at borders.

By definition, it is contrary to the best interests of a child to be detained for up to 20 days, or even 26 days in some cases, with the constant risk of being sent back at any moment.

In its final observations of 23 February 2016 regarding France's Fifth Periodic Report, your Committee renewed its recommendation to the French State 'to adopt the necessary measures, notably legal measures, to avoid detaining children in waiting zones, by increasing efforts to find adequate solutions as a substitute to deprivation of liberty and to ensure to children proper housing, and fully respect non-refoulement obligations'.

The Council of Europe Human Rights Commissioner recalled on 31 January 2017 that 'there are no circumstances in which the detention of a child on the basis of his immigration status, whether he be isolated or accompanied by his family, can be decided in his best interests. The total suppression of migrant children's detention should be a priority for all States'.

Despite the numerous recommendations of human rights protection instances against the detention of migrant children<sup>3</sup>, the practice of detaining minors in waiting zones continues to this day. According to official data<sup>4</sup>, 233 'proven' isolated minors<sup>5</sup> were detained in 2016, 218 in 2017, 232 in 2018 and 154 during the first semester of 2019.

There is no specific legal status for minors isolated or unaccompanied at the border.

The situation of an accompanied minor is linked to that of the person she accompanies. Therefore, it does not take into account its vulnerability based on her young age.

Unaccompanied foreign children who are detained do not enjoy the same guarantees as those already in France.

Yet the protected status of children should prevail, for France to conform to its commitments, in particular the Convention on the Rights of the Child. In addition, the situation of minors detained in waiting zones is in blatant contradiction with the principle according to which children are shielded from deportation. This is what the ECtHR clearly established for an unaccompanied child (12 October 2006, *Mayeka v Belgium*) by declaring several violations of the European Convention on Human Rights on the sole basis of detention and refoulement.

Anafé wishes once again to share its testimony on the situation of children deprived of liberty at French borders. This report relies on the analysis of relevant legal documents and practices. The information provided was collected through legal assistance, individual follow-up, monitoring visits of waiting zones and presence during hearings before administrative and judiciary courts.

---

<sup>1</sup> *Politique de protection des enfants*, Anafé, March 2018.

<sup>2</sup> Article 3 paragraph 1 of the CRC.

<sup>3</sup> Recommendations for the prohibition of the detention of unaccompanied migrant children have been issued by the UN Human Rights Committee, the UN Committee Against Torture, the National Consultative Human Rights Commission as well as the Defender of Rights.

<sup>4</sup> Figures were provided by the Ministry of the Interior and the Central Direction of the Border Police ('police aux frontières') during an annual meeting on the operation of waiting zones.

<sup>5</sup> The Border Police frequently considers that some individuals who declare themselves to be minors are adults in reality. For more detail on this, see the part on challenges to minority.

<b>Unaccompanied migrant children followed by Anafé in waiting zones</b>	<b>2016</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>
Unaccompanied migrant children	31 (13 of which saw their minority challenged)	24 (7 of which saw their minority challenged)	39 (7 of which saw their minority challenged)	60 (7 of which saw their minority challenged)
Concerned waiting zones	22 Roissy, 5 Orly, 4 others	10 Roissy, 4 Orly, 10 others	24 Roissy, 4 Orly, 11 others	20 Roissy, 12 Orly, 28 others
Asylum seekers	21	11	15	32
Returned	5	6	4	4
Placed in police custody	8	2	1	1

### **Legal framework of border immigration detention**

Since 1992, the detention of children at borders mostly occurs in waiting zones. However, since 2015, unaccompanied minors have also been detained in other sites – the legality of which is challenged – at terrestrial borders and most notably at the French-Italian border.

When persons manage to reach the Schengen Area at French borders, access to the territory may be denied to them because the police considers that they do not fulfill the entry conditions and/or are suspected of representing a 'migration risk'<sup>6</sup>, or because they request admission on the basis of asylum. They are then detained in the waiting zone and risk being sent back at any moment.

Defined by the law of 6 July 1992<sup>7</sup>, the waiting zone is a physical space which extends 'from the sites where passengers embark and disembark to those where they are controlled. It may include, on the premises of the train station, port or airport, or close to it, or close to the site where passengers disembark, one or several accommodation sites ensuring to foreigners hotel-type services' (article L. 221-2 of the code of entry and residence of foreigners and the right of asylum – CESEDA). In October 2019, according to the Ministry of Interior, there were 95 waiting zones in airports, ports and train stations with international destinations.

Waiting zones are areas characterized by opaque administrative and police practices. Rules regarding refusal of entry, detention in waiting zones and return provide the administration with a wide margin of action, without real guarantees. As a buffer space between the outside and the inside of the national territory, waiting zones reveal the priority given by the authorities to border controls over respect for individual freedoms.

In 2011, the legislator instated an extendible waiting zone which may be created whenever the administration discovers a 'group of at least ten foreigners arriving outside of a border crossing point'<sup>8</sup>. They are temporary waiting zones, also called 'backpack' waiting zones.

While the provision was not applied during most of the decade, in 2018 and 2019, the administration used this mechanism at least eight times in the overseas departments of Guadeloupe, Mayotte and La Réunion. Article L. 221-2 paragraph 2 of CESEDA was not respected in most cases, meaning that these waiting zones were illegal. Therefore, the deprivation of liberty, which also concerned children, was arbitrary and illegal<sup>9</sup>.

Since 2015, with the reintroduction of controls at the internal borders of the Schengen Area, Anafé has observed detention practices, notably at the French-Italian border. The waiting zone of Modane is the only detention site at the French-Italian border which was created by an *arrêté* (administrative decision) and therefore relies on a legal basis. According to the Border Police, only children are detained there, while adults are immediately returned.

<sup>6</sup> The assessment of the *migration risk* is a central element of border controls. There is no real framework for it and it thus leads to discriminating and sometimes arbitrary decisions.

<sup>7</sup> [Law n° 92-625 of 6 July 1992](#) on waiting zones of ports and airports and modifying the *ordonnance n° 45-2658 du 2 novembre 1945 relative aux conditions d'entrée et de séjour des étrangers en France*.

<sup>8</sup> Article L. 221-2 paragraph 2 of CESEDA.

<sup>9</sup> See Anafé's observation report on waiting zones 2018-2019, forthcoming in September 2020.

There are other sites, where persons in migration, including children, are deprived of liberty for varying lengths, between the moment when they are notified the refusal of entry decisions and the moment of their return to Italy. These sites are the first floor of the train station of Menton Garavan, the police station of Menton pont Saint-Louis and the police station of Montgenève. This deprivation of liberty therefore occurs outside of any legal framework.

Whether it be in waiting zones, in temporary waiting zones or at internal borders, because of a lack of systematic access to an interpreter or a lawyer, persons deprived of liberty are often not put in a position to exercise their rights<sup>10</sup>, even when they are informed of them<sup>11</sup>.

### ***Challenges to children's words to set aside guarantees***

The situation of an accompanied minor is tied to that of the person she accompanies.

Although minors are submitted to the same procedure as adults, a few modest adjustments are granted to unaccompanied minors : the right to an automatic one-clear-day period before return, the designation of an ad hoc administrator and return towards the country of origin<sup>12</sup>. However, the Border Police often challenges the minority of children who arrive at the border. As a result, this significantly diminishes their rights.

### **Challenges to minority**

At the border, minority is declarative. Therefore, when a person declares herself to be a minor, she must be considered as such (unless it can be proven that it is not to be the case). Yet as early as in 2006, then Council of Europe Human Rights Commissioner Gil Robles asserted that unaccompanied minors were 'almost systematically considered as fraudulent individuals'. Their minority is frequently challenged by the administration.

The interministerial circular of 14 April 2005 states that when a minor arrives at the border, the services of the Border Police must proceed to all 'necessary investigations so as to clearly establish her minority'<sup>13</sup>. Proof of age may result *inter alia* from 'the possession of a civil status record which appears to be regular, unless other elements (exterior or taken from the record itself) establish that it is irregular, falsified or does not match reality'<sup>14</sup>.

Often times, a bone age test is performed, sometimes even on minors in possession of a civil status record attesting to their minority. This is despite several decisions of appeals courts which have recalled that when no proof of the irregularity of a foreign civil status record can be provided, the validity of this document may not be challenged by bone testing expertise<sup>15</sup>. There are also cases in which minors travelling with false documents of adults are considered adults by the police based on the birth date listed on the document, despite the police deeming this same document to be falsified<sup>16</sup>.

In 2016, in its final observations regarding France's fifth periodic report, your Committee reiterated its recommendation to the French state 'to put an end to bone testing as the main method of assessing children's age and to favor other methods which have turned out to be more precise'. To this day, no such shift has occurred.

In March 2019, the Constitutional Council validated the practice of bone testing and detailed the necessary guarantees which must be provided, while recognizing that such tests may have a *significant* margin of error<sup>17</sup>. This practice has been under serious criticism, not only from NGOs, but also from eminent scientific

---

<sup>10</sup> [Aux frontières des vulnérabilités - Rapport d'observations dans les zones d'attente 2016-2017](#), Anafé, March 2018.

[Persona non grata - Conséquences des politiques sécuritaires et migratoires à la frontière franco-italienne, Rapport d'observations 2017-2018](#), Anafé, February 2019.

<sup>11</sup> Article L. 221-4 of CESEDA.

<sup>12</sup> [Le contrôle des frontières et l'enfermement en zone d'attente - Support de formation pour la défense des personnes migrantes](#), Anafé, September 2019.

<sup>13</sup> Circ. CIV/01/05, 14 February 2005.

<sup>14</sup> Article 47 paragraph 1 of the civil code.

<sup>15</sup> CA Paris, 13 November 2001, decision n° 441; CA Lyon, 18 November 2002, decision n° 02/252.

<sup>16</sup> [Voyage au centre des zones d'attente - Rapport d'observations dans les zones d'attente 2015](#), Anafé, November 2016, p. 58. [Aux frontières des vulnérabilités - Rapport d'observations dans les zones d'attente 2016-2017](#), Anafé, March 2018, p. 23.

<sup>17</sup> Constitutional Council, n° 2018-768 QPC, 21 March 2019.

and medical organizations as well as the Defender of Rights. They point to abusive uses of these exams outside of any health-related consideration<sup>18</sup>.

At the French-Italian border, challenges to minority have been observed on a regular basis during observation missions<sup>19</sup>. The police has conserved or even destroyed documents attesting to minority, and modified birth dates so as to deceive the Italian police, which performs a second check after return and sometimes sends individuals back to France upon retrieving them in their files registering unaccompanied minors. This leads to 'ping-pong' practices between Italian and French authorities.

The consequences of challenges to minority are far-reaching. Concerned children lose all the guarantees reserved to unaccompanied minors and see their vulnerability exacerbated. They experience detention in waiting zones in the same way as adults. They are provided no lawyer at the beginning of the procedure. They are not assisted during their asylum interview (with OFPRA). They are not separated from adults. They may be sent back to the country from which they arrived (not necessarily their country of origin). Alternatively, they may be placed in police custody.

### **Adjustments granted to unaccompanied minors**

#### *Ad hoc administrators*

Since they find themselves without legal representation, unaccompanied minors are designated an ad hoc administrator (AHA) who is in charge of assisting them during their detention in the waiting zone and of ensuring their legal representation in all administrative and judicial procedures related to detention<sup>20</sup>.

In practice, the designation of an AHA may be delayed, even though the Court of Cassation considers that any delay in the implementation of this obligation, unless justified by particular circumstances, 'necessarily harms the interests of the child'<sup>21</sup>. It is impossible for the AHA to be present during the first phase of the procedure when the police notify the decisions of refusal of entry and detention, which the minor must sign herself as a result, despite her legal incapacity. The AHA can only review the signed documents afterwards. Some minors therefore find themselves without any assistance at crucial steps of the procedure.

Minors whose minority is challenged are not designated any AHA and are therefore without any assistance. If an administrator was designated but minority is challenged later, the AHA is removed and the minor is left on her own to deal with administrative and judicial procedures.

The very position of AHAs may vary enormously, depending on each AHA's beliefs. Some are in favor of keeping children in waiting zones (notably when they are victims of trafficking) or of returning them, sometimes even when they wish to request asylum.

At the French-Italian border, the Defender of Rights has denounced on several occasions the violation of unaccompanied minors' rights. They are often returned expeditiously, without any AHA being even designated. Anafé has observed since the spring of 2019 that the Border Police operating at the police station of Montgenèvre tends to turn to institutions which may host minors in France. This practice remains rare in Menton where challenges to minority and return prevail. Cases where children are hosted in France often occur after they are sent back to the Border Police by the Italian police after verifying their files.

#### *The right to one clear day*

The right to one clear day entitles individuals to be shielded from return for a 24-hour period. The law of 7 March 2016 reinstated the right to an automatic one-clear-day period for 'proven' unaccompanied minors, i.e. those whose minority has not been challenged by the administration. Consequently, in practice, if minority is challenged, the right to one clear day is not automatically applied and return may occur at any moment.

---

<sup>18</sup> *Les examens osseux déclarés conformes à la Constitution : nos organisations continueront d'exiger leur interdiction*, press release of a group of NGOs, 21 March 2019.

<sup>19</sup> *Persona non grata - Conséquences des politiques sécuritaires et migratoires à la frontière franco-italienne, Rapport d'observations 2017-2018*, Anafé, February 2019, p. 63 et s.

<sup>20</sup> Article L. 221-5 of CESEDA.

<sup>21</sup> Cass. 1e civ., 22 May 2007, n° 06-17.238.

This guarantee does not concern accompanied minors, whose situation follows that of their parents. Yet they are often not informed of this right, especially since the administration delivers pre-filled refusal of entry forms.

At the French-Italian border, the benefit of an automatic one-clear-day period was eliminated by the law of 10 September 2018<sup>22</sup>, which regularizes hitherto illegal practices. Between 2015 and 2018, Anafé had observed that the right to one clear day was not respected. Refusal of entry documents were often pre-filled. In some cases, these documents were not even given to unaccompanied minors who were returned immediately after their arrival. This is despite birth dates appearing on refusal of entry documents, which indicated the individuals' minority<sup>23</sup>.

### *Return to the country of origin*

The Ministry of Interior has committed to returning children to their country of origin instead of the country from which they arrived, upon the condition that the minor will be taken care of upon arrival (by relatives or a hosting institution). In practice, this commitment is not always respected. In addition, only a judge, not the police, may appreciate whether return conditions are 'good' or not for the minor. Anafé has observed situations where minors are sent back in less than 24 hours, sometimes even to their country of transit. In other cases, minors were sent back to their country of origin even though they were threatened of being persecuted there.

These modest guarantees are not respected at the French-Italian border where the return objective prevails over all other considerations. Minors are often returned without any individual assessment of their situation or any actual notification of the procedure. In 2018, the Defender of Rights declared such practices contrary to the Convention on the Rights of the Child<sup>24</sup>. Yet prefectures and the Border Police remain comfortable with pursuing them<sup>25</sup>.

### **The exceptional detention of asylum-seeking minors**

The law of 29 July 2015<sup>26</sup> introduced provisions which aim at ensuring that asylum-seeking minors are detained on an exceptional basis only. Article L. 221-1 of CESEDA now lists three exceptions when such minors may still be detained: those who come from a 'safe country of origin'; those whom the administration deems to represent a threat to public order; those who 'display false identity or travel documents'.

In practice, these exceptions cover almost all unaccompanied asylum-seeking minors. Asylum seekers often travel with false documents to reach French borders. There is enormous doubt as to the effective implementation of this guarantee provided for by the legislator.

In addition to difficulties in lodging asylum claims with the Border Police, asylum interview conditions vary from one waiting zone to another and they do not always guarantee the confidentiality of exchanges. Most interviews occur by telephone or videoconference (except in Roissy airport where OFPRA is present). There are interpreting issues. Interviews are expedited...<sup>27</sup> Moreover, while the interview is merely aimed at determining whether the asylum claim is *manifestly unfounded* or not, the Ministry of Interior often looks into substantial aspects of the asylum claim. It thus operates as a filter at the border, without any effective review by administrative judges<sup>28</sup>.

---

<sup>22</sup> [Law n° 2018-778 of 10 September 2018](#) 'pour une immigration maîtrisée, un droit d'asile effectif et une intégration réussie'.

<sup>23</sup> [Persona non grata - Conséquences des politiques sécuritaires et migratoires à la frontière franco-italienne. Rapport d'observations 2017-2018](#), Anafé, February 2019, p. 66.

<sup>24</sup> Defender of Rights, [Décision n° 2018-100 relative à la situation des mineurs non accompagnés interceptés aux points de passage autorisés vers l'Italie](#), 25 April 2018.

<sup>25</sup> [Persona non grata - Conséquences des politiques sécuritaires et migratoires à la frontière franco-italienne. Rapport d'observations 2017-2018](#), Anafé, February 2019, p. 82 et s.

<sup>26</sup> [Law n° 2015-925 of 29 July 2015](#) relative à la réforme du droit d'asile'.

<sup>27</sup> [Aux frontières des vulnérabilités - Rapport d'observations dans les zones d'attente 2016-2017](#), Anafé, March 2018, p. 16 et s.

<sup>28</sup> [Voyage au centre des zones d'attente - Rapport d'observations dans les zones d'attente 2015](#), Anafé, November 2016, p. 49 et s.



## ***Undignified detention conditions***

In waiting zones, detention conditions vary from one site to another, creating disparities in how foreign persons are treated depending on the waiting zone in which they are detained. Detention facilities are different from one zone to another. Some rooms have no windows. Some rooms are underground without daylight or in front of runways. Some are hotel rooms. Some are in a dedicated part of an administrative detention center. Some are at the end of an airport hall<sup>29</sup>.

Unaccompanied minors detained in waiting zones must theoretically benefit from a distinct area as that of adults.

In Roissy, in the accommodation site of the waiting zone (ZAPI), there is a separate area with 4 rooms (for 6 minors), an inside game area and an outside area, all handled by the Red Cross. When children's minority is challenged or when the dedicated zone is full, unaccompanied minors are placed in the adult zone without any separation. Accompanied minors are held with other persons. One hall is dedicated to families.

In Orly, the only separation is a screen placed behind the police's desk, with a few benches and games. Anafé has observed that the minor zone tends to become a stocking area. Regardless of their age and whether they are alone or accompanied by relatives, they are thus mixed with adults. Flight attendants, without any specific child protection training, are sometimes mobilized to stay with the child.

In other waiting zones, there is no separation between minors and adults. Detention conditions vary from one site to another<sup>30</sup>.

Independently from material detention conditions, waiting zones are not a place for children. There is police presence, orders are given on loud speakers, some facilities are dirty, windows are blocked, adults are in distress and the police makes forceful attempts to embark individuals on deportation flights. Children detained in waiting zones are often victims of anxiety, insomnia as well as eating disorders. These observations are also true for accompanied children, who feel the stress experienced by their parents.

The European Court of Human Rights has recognized that the detention of minors in administrative detention centers, even when they are accompanied by their relatives, is incompatible with articles 3, 5 and 8 of the European Convention on Human Rights<sup>31</sup>. These decisions are perfectly transposable to the situation in waiting zones.

In 'temporary waiting zones', whether it be in Guadeloupe, La Réunion or Mayotte, persons who experienced these new detention practices were detained in inhuman conditions<sup>32</sup>. In most cases, there is no separation between men and women and between children and adults.

In Mayotte, while some minors have been considered as adults, others have been arbitrarily considered as accompanying complete strangers<sup>33</sup>.

At the French-Italian border, in Modane, where only minors are held, conditions are very Spartan and wholly inadequate. In other sites, detention conditions are generally degrading<sup>34</sup>. Whether they are accompanied or not, children may be detained in a separate room of the Menton police station. When their minority is challenged, they are detained with adults in modular buildings adjacent to the Border Police's facilities in Menton and Montgenèvre. Each building measures fifteen square meters and contains only metal benches<sup>35</sup>.

---

<sup>29</sup> [Voyage au centre des zones d'attente - Rapport d'observations dans les zones d'attente 2015](#), Anafé, November 2016, p. 13 et s. [Aux frontières des vulnérabilités - Rapport d'observations dans les zones d'attente 2016-2017](#), Anafé, March 2018, p. 34 et s.

<sup>30</sup> See Anafé's observation report on waiting zones 2018-2019, forthcoming in September 2020.

<sup>31</sup> ECtHR, 12 July 2016, *A.B. and others v France* (n° 11593/12), *A.M. and others v France* (n° 24587/12), *R.C. and V.C. v France* (n° 76491/14) and *R.K. and others v France* (n° 68264/14). **RAJOUTER DECISION RECENTE SUR MAYOTTE – et en parler en dessous peut-être ?**

<sup>32</sup> See Anafé's observation report on waiting zones 2018-2019, forthcoming in September 2020.

<sup>33</sup> [976 : Au-delà des frontières de la légalité, Rapport de mission à Mayotte et La Réunion](#), Anafé, March 2017.

<sup>34</sup> In its [report to the Government on the visit undertaken in November 2018](#), the European Committee for the Prevention of Torture (CPT) considered that the material conditions of residence in these facilities could damage the dignity of individuals.

<sup>35</sup> [Persona non grata - Conséquences des politiques sécuritaires et migratoires à la frontière franco-italienne, Rapport d'observations 2017-2018](#), Anafé, February 2019, p. 73 et s.

## ***Judicial review often sidelined***

### ***The children's judge (CJ)***

According to articles 375 et seq. of the civil code, which pertain to educational assistance, the children's judge is competent when the health, safety or morality of a minor is threatened or when the conditions of her education are gravely compromised. The children's judge may be referred a case by the AHA, the child herself, her lawyer or any other physical or moral person who has observed a situation where child protection is not ensured.

In 2019, Anafé referred to CJs 12 times the presence of children in danger who were detained in waiting zones. These referrals did not receive any response. In several cases, it was the children's prosecutor, to whom the case was also referred, who took the decision to free detained children.

A child who arrives alone and is detained in a waiting zone is nevertheless, without any possible doubt, in danger. This can result from detention conditions where, for instance, she is detained in the same facilities as adults, or where she faces persecution upon return to her country of origin. Young individuals may be victims of networks which exploit them, or they may be trying to escape from abuse by relatives.

The CJ's role is not limited geographically. It would be erroneous to believe that since the child is not considered as having entered France, the CJ's competence stops at the entrance of the waiting zone. This competence extends to all children submitted to French law, which is the case of children detained in waiting zones.

### **The judge of liberties and detention (JLD)**

Minors detained in waiting zones find themselves in the same situation as adults, notably in terms of access to a judge. They do not have access to any suspensive and effective judicial remedy to challenge administrative decisions, nor do they have systematic access to a lawyer from the moment the procedure starts. The only existing suspensive remedy (as of right) was created for asylum seekers following a 2007 decision of the European Court of Human Rights which condemned France<sup>36</sup>.

If children are still present after 4 days in the waiting zone, they appear before the JLD who decides whether the detention is extended for an additional 8 days. Yet the JLDs' positions are not always favorable to the child. They sometimes consider that the mere designation of an AHA suffices to ensure respect for the best interests of the child<sup>37</sup>. Between 2016 and 2019, out of 154 unaccompanied children followed by Anafé, only 21 were liberated by JLDs.

Access to a judge is nearly impossible for individuals who are denied entry at the French-Italian border. They are often sent back immediately after an expeditious procedure, with no access to a lawyer. Urgent petitions have been lodged by groups of NGOs before administrative judges ('référé liberté'), but this was possible only after minors had already been deported. Anafé was even informed of situations in which minors in possession of a positive decision of the administrative tribunal (mandating that they be granted access to France) were denied entry. Until 2019, another practice observed was for the Italian police to conserve refusal of entry decisions of individuals who were just returned by France so as to hinder any subsequent attempt at lodging an appeal.

---

<sup>36</sup> ECtHR, 26 April 2007, *Gebremedhin v France*, n° 25389/05.

<sup>37</sup> 'Regarding the argument according to which the JLD must take into account the best interests of the child in conformity to articles 3 and 8 of the Convention on the Rights of the Child, it is appropriate to decide that his rights were respected through the designation of an ad hoc administrator who was able to assist the minor throughout the procedure, notably by lodging an asylum request for him', JLD Toulouse, 23 October 2019, n° RG 19/01853.

## **Recommendations to put an end to the detention of children at French borders**

Anafé took a resolution on 30 June 2005 on unaccompanied foreign children who arrive at French borders<sup>38</sup>. This resolution considers that:

- An end must be put immediately and permanently to the detention of all foreign children, under any form, whether at borders or in the rest of the French territory.
- Any unaccompanied foreign child who arrives at French borders must be admitted without any condition;
- Unaccompanied children must never be targeted by refusal of entry or border detention decisions;
- Due to mere isolation, a situation of danger must be considered to exist as soon as an unaccompanied minor arrives at the border. Legal protection measures must be implemented in such cases;
- Any foreigner who claims to be a minor must be presumed as such until proof can be provided that it is not the case. Only a judicial decision should be able to challenge minority;
- Return of unaccompanied minors should be considered an option only after they have been admitted on French soil and in cases where a decision has been taken by a judge in the best interests of the child.

This position was later extended to minors accompanied by relatives.

Anafé also formulates the following recommendations. Questions could be asked to the French administration regarding to these recommendations.

- The judiciary judge's review of detention decisions should intervene at the earliest, and before any return measure is executed.
- There should be a suspensive appeal against any refusal of entry decision and any detention measure.
- To guarantee the right to a fair trial, all hearings should be held publicly, in a tribunal and in a room easily accessible. An end must be put to hearings moved to rooms inside detention facilities, used for foreigners only.
- Free legal services must be provided by lawyers inside waiting zones to ensure that detained foreigners have access to effective legal assistance at any moment of the procedure.
- A professional interpreter must be able to intervene at every step of the procedure, including during conversations with lawyers and NGOs. The cost must be covered by the State on a systematic basis.
- Based on the principle of indivisibility of the Republic and to ensure the equality of rights on the entire French territory, an end must be put to the derogatory regime of immigration law in overseas territories and departments.
- The children's judge must intervene again in cases regarding the situation of children detained in waiting zones.

---

<sup>38</sup> *Résolution sur les enfants isolés étrangers qui se présentent aux frontières françaises*, Anafé, 30 June 2005.  
*Report presented for the periodic examination of France by the Committee on the Rights of the Child – June 2020*