



Unaccompanied Minors according to Case Law of the European Committee of Social Rights

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Abstract

The European Social Charter in both its versions - the original from 1961 and the revised one from 1996, attaches great importance to the protection of children's rights. It sees the fate of unaccompanied minor foreigners in the territories of states - parties to the Charter as a special problem. Three complaints directly address this issue: two by Defense for Children International against the Netherlands in 2008 and against Belgium in 2011, and one by EUROCEF against France in 2015. They were settled by the European Committee of Social Rights in 2009, 2012, and 2018, respectively. The rulings adopted by the Committee provide an important framework for the response of public authorities in Europe to the increasing number of children arriving from other continents. The adopted directions of thinking indicate the need for great sensitivity in applying the applicable legal standards to this category of foreigners. The article indicates the essential elements that should be taken into account when deciding on the legal situation of minor foreigners coming to Europe.

Keywords: European Social Charter; European Committee of Social Affairs; foreigners; minor foreigners

JEL classification: A1, A2

1. Introduction

While preparing the comprehensive body of the European Committee of Social Rights (ECSR) (Jasudowicz, 1988) for publication, I have firstly pointed to the importance of the children's rights that the Committee has assigned to both the original version of the European Social Charter from 1961 (ESC) and the revised version from 1996; secondly to the unique problem of the fate of unaccompanied foreign minors within the territories of Charter States. The second problem concerns mainly three complaints: two filed by the DCI against the Netherlands in 2008 and against Belgium in 2011, and one filed by EUROCEF against France in 2015, resolved by ECSR in 2009, 2012, and 2018 (EUROCEF, 2018).

The catalogue of the rights protected by ESC 1961 contains art. 17: The right of mothers and children for social and economic protection, and art. 7: The right of children and youth to protection. In the revised ESC 1996, the corresponding articles are art. 7 (with minor changes) (Balcerzak, 2007) and the completely changed art. 17: The right of children and

youth to social, legal, and economic protection, whose introduction somewhat forces an enriched look on a protected substance art. 16 of the revised ESC: The right of the family to social, legal, and economic protection. Accounting for and respecting children's rights is naturally not limited to those ESC and revised ESC resolutions, but also self-updates according to other provisions of the Chart, connected to not only the protection of the rights of the family or encompassing the scope of the family, but also basic social rights owed to a *naturaliter*, including a child.

The Dutch case has already shown that the Chart treats children "*as individual rights holders because the innate human dignity gives him/her a claim to all the basic rights guaranteed to adults. Moreover, the unique situation of children, combining the vulnerability, limited autonomy, and prospective adulthood requires the countries to grant them unique rights (...)*". It was also added that "due to its all-encompassing approach, combined with the efficient character of the rights it embodies, the European Social Charter is, on the European level, the most meaningful protection treaty regarding due children's rights" (Ibidem, pt 26.).

Acknowledging the bases of interpretation included in the Vienna Convention on the Law of Treaties, as well as the "*subject and purpose of the Charter*" as a human rights treaty, "*A live instrument dedicated to the values of dignity, equality, and solidarity of all human beings*", the Committee decisively supported the theological interpretation of the Charter, which does not allow for point 1 of the Attachment to be interpreted "in such a way, as to deprive minor foreigners, that stay in the country illegally (either with or without custody) a guarantee of their fundamental rights, including the right to maintain their human dignity".

2. The subject scope of the Charter in relation to unaccompanied illegal minor foreigners

The subject scope of the obligation deriving from ESC is explained in sec. 1 of the Charter Attachment - excluding art. 12 of sec. 4, and art. 13 of sec. 4 and demanding for it to be interpreted in the light of art. 18 and 19 of the Charter – includes as protected individuals "*foreigners, but only if they are citizens of other Agreeing Parties, legally residing and working on the territory of the interested party*". The children and especially the underage unaccompanied minors are not mentioned here.

In the earliest Dutch case examined, the ECPS simply noted that "*since all children are vulnerable, growing up in the streets puts a child in a completely hopeless situation*". In the next Belgian case, the Committee thoroughly examined that problem. Siding with the defendant country that the criteria of legal residency or legal occupation are significant, ECPS still emphasised that "*the limit of the subject scope found in the Attachment cannot be interpreted in such a way, as to deprive foreigners classified as illegal migrants of the most basic rights present in the Charter, or to undermine their fundamental rights, such as the right to live or the right of physical integrity or the right for human dignity*".

Moreover, based on the Convention on the Rights of the Child and the viewpoint of the Committee on the Rights of the Child, ECPS decides to determine the subject scope of the

Charter “according to the rule of a child’s best interest” and concludes that “*the strict interpretation of art. 1 of the Attachment that would result in the non-recognition of the obligation of States Parties to guarantee the fulfillment of these fundamental rights to minors illegally present on their territory, would be incompatible with international jus cogens*”.

The Committee stresses the complete uniqueness of such implementation of the Charter that “*would be justified only in case of depriving illegal foreigners of protections guaranteed by the Charter would lead to severe harmful effects for their fundamental rights (such as the right to live, the right to maintain human dignity, physical and mental integrity and to health) and consequently would put those foreigners in an unacceptable, from the viewpoint of exercising these rights as compared to the situation of citizens and legal foreigners*”.

Thus, said category of foreigners, including unaccompanied minors that are in the country illegally “is not literally included in the Charter” and “is not covered by all the provisions of the Charter, but only those whose basic purpose is strictly connected with the requirement of providing the most fundamental human rights and securing people interested in specific provisions against serious threats to the exercise of these rights”.

That position and the reasoning of the Committee remain valid, as indicated by the ECPS's decision regarding the EUROCEF France case passed in 2018 (EUROCEF, 2018).

What is worth emphasizing is that the Committee – resolving the problem of establishing the legal status of unaccompanied underage foreigners and their due protection – readily adopts the conclusions of the European Convention on Human Rights, simultaneously referencing the Universal Declaration of Human Rights (EUROCEF, 2018), specifically – as mentioned before – the Convention on the Rights of the Child and the position of its treaty body, that is the Committee on the Rights of the Child (EUROCEF, 2018). Unfortunately, the Committee did not refer to the document most directly devoted to the issue under examination here. I shall draw on the indications of said document.

To sum up that part of the research, one can determine that – formally speaking – underage unaccompanied minors that are illegally residing in a given European country, are not covered by the personal scope of the Charter, however, regardless of that they cannot be deprived of elementary care and protection, and the countries where they reside are under serious positive obligations by the virtue of selected specific rights protected by the Charter. As if a substantial humanitarian amendment exceeded said formal scope of the Charter and gave it a deeper humanitarian aspect.

3. The concept and status of unaccompanied minors from the perspective of the Party-States' obligations to the ESC

It would, in turn, be necessary to examine how the ECPS understands and defines the concept of 'unaccompanied foreign minors' illegally present in a particular country, a state party to the ESC/revised ESC, and how it assesses the applicability to these children of the particular right alleged to have been violated, bearing in mind its duty to respect the principle of the best interests of the child”.

In the Dutch case the Committee rejected interpreting the Charter in a kind of legal vacuum, and from the need to interpret it “*as far as it is possible... in a harmony with other norms of international law*” made a requirement to “guarantee adequate protection for every person in need, regardless whether they reside in the country legally or not”.

Only in the French case and because of the usage of the term *minor isole etranger* (an isolated foreign minor) in French administrative practise to mean “*a person under 18, who resides outside his or her country of origin and is not accompanied by a person holding or exercising parental responsibility, i.e. without anyone to protect him or her and to take important decisions concerning him or her*”, the Committee specified “*three conditions that must be applied to a young person, so that they can be viewed as an unaccompanied foreign minor: he or she must be underage, cannot have legal capacity, i.e. be a <child> as defined in art. 1 of Convention on the Rights of the Child*”; *he or she must be ‘isolated, that is unaccompanied and thus vulnerable due to the lack of or distance between his or her legal representatives’; also, he or she must be “a foreigner not entitled to any benefits awarded only to citizens”*.

What is owed to those unaccompanied alien children is supposed to be, according to the Committee – viewed through the lens of the principle of a child’s best interest, alongside respecting fundamental European values: dignity, autonomy, equality, and solidarity, as well as securing their most fundamental rights, including the right to life, physical and mental integrity, and maintaining their human dignity.

If one were to look at the problem of the State’s responsibility under the obligations of the European Social Charter in two layers, which I am in favour of, one can differentiate positive responsibility, understood as the duty to fulfil those requirements in good faith, and negative responsibility, defined as being responsible for the failure to fulfil positive responsibility (*facere*) or violating negative responsibility (*pati, non-facere*). The responsibility is borne regardless of whether the breach stems from legislation being inconsistent with the Charter, or from its implementation; from action or inaction of central authority or regional or local power; from action or inaction of public or private authority, including companies. Whereas the State is responsible for everything, for it is the party of the Charter, the entity responsible for implementing its standards.

4. Study of fundamental social rights of unaccompanied minor foreigners

Each of the studied cases addressed the violation of more than one right guaranteed in the Charter. As such, in the Dutch case, the suing organization alleged the violation of the first row of art. 31 of the revised ESC, taken separately or in conjunction with art. E of revised ESC, in addition to art. 11, 13, 16, 17, and 30 of revised ESC, also taken separately or in conjunction with art. E of the revised Charter. It is worth noting that ECSR included a substantive examination of art.31 and art. 17 of the Charter, separately and in connection with art. E, however, in its Conclusion negated the applicability of the case art.31 sec. 1, as well as art. E of the Charter, but found a violation of art. 31, sec. 2, and art. 17 sec. 1 of the Charter.

Even more broadly in the Belgian case, the DCI alleged a violation of art. 7, 11, 13, 16, 17, and 30, read separately or in conjunction with art. E of the revised Charter. The Committee again negated the applicability of art. E and art, 30 of the revised ESC, however, found a

violation of: unanimously – art. 17 and art. 7 of sec. 10 of the Charter; with the majority of the votes – art. 11 sec. 1 and 3 (13:1) and art. 13 (11:3).

To complete the picture, let us point to the newest French EUROCEF case, in which the violation of art. 7, sec. 10, 11, 13, 14, 17, 30, and art. 31 of the revised ESC Charter is alleged, taken separately or in conjunction with art. E (EUROCEF, 2018).

In the verdict, ECSR stated that the provisions indicated – apart from art. E - apply to the persons concerned by the complaint, simultaneously emphasizing that "those articles require from the State parties to fulfill the positive responsibilities regarding accommodation, essential custody and the protection of children and youth. Failure to recognise that States parties are obliged to comply with these obligations towards foreign minors who are unlawfully in the country would mean failing to guarantee their fundamental rights and exposing the children and adolescents in question to serious threats to their right to life, health, mental and physical integrity and to the preservation of their human dignity". With the majority of the votes (11:4), the Committee negated the applicability of the case of art. E, and found no violation of art. 30 of the Charter (10:5); however, the Committee unanimously found the violation of art. 17 sec. 1, art. 7 sec. 10, and art. 11 sec. 1; by the majority of votes – art. 17 sec. 2 (8:7), art. 13 sec. 1 (14:1), and art.31 sec. 2 (14:1).

As seen above, in all three cases the Committee negated the applicability of art. E of the revised ESC. ECSR had already stated in the Dutch case that the issues discussed in the complaint "do not concern the equal treatment of children illegally present in the Netherlands, as compared to children legally present there"; "the issue is whether such a category of persons can claim a title to rights based on the Charter and under what conditions"; "Art. E of the revised Charter does not serve that purpose". In the French case, the explanation was: "Regarding minor unaccompanied foreigners interested in said complaint, what is taken into consideration here is not the principle of equal treatment, but whether those persons are or are not included in the scope of the Charter, as well as the question whether their most fundamental rights are respected. It is not the subject of art. E of the Charter".

The Committee's position is more nuanced against the backdrop of allegations of violation of art. 30 of the revised ESC. In the Belgian case, ECSR emphasized that a "*comprehensive and coordinated approach as provided for in the art. 30, covers the adoption of the positive measures regarding the economic, social and cultural promotion that is required from the State – parties, based on several requirements of the Charter, most of which cannot be considered to apply to persons who are not listed in paragraph 1 of the Attachment, such as illegal minor aliens*"; according to the Committee, the means based on art. 30 "*cannot be perceived as an obligation of State parties, applicable to foreign minors who are unlawfully in the country*".

Such reasoning and conclusion can raise suspicion, if only because of the very close relationship of obligations under art. 30, with ensuring the effective performance of obligations under other fundamental rights protected by the Charter.

It is then understandable that in the latest French case, the Committee - having taken a closer look at the obligations arising from art. 30 – decided that the "*situation of certain*

minors may lead them to poverty and social exclusion”, however, taking into account France’s efforts to ensure a coordinated approach regarding the protection of minors against poverty and the lack of disputing evidence – did not find in the investigated case any violation of art.30 pertaining to underage unaccompanied foreigners. From the humanitarian perspective, the repeal of the gateway to the applicability of Article 30 to unaccompanied minors is significant and has considerable potential for the future.

There are certain uncertainties about ECSR’s decision regarding art. 16, dedicated to the protection of the family, and interpreted by the Committee in close relation to art. 31 of the Charter, as well as its sec. 1, concerning the right to proper accommodation. The allegation of a breach of art. 16 was raised by the applicant organisation in the Dutch and Belgian cases, with the former also accompanied by an allegation of a breach of art. 31 sec. 1. In the first case, the Committee did not refer to the complaint based on art. 16 at all, however, based on art. 31 sec. 1, illustrated that guaranteeing the unaccompanied minor foreigners residing in the state-party illegally *“such permanent housing would be at odds with the objective of the state’s policy towards aliens as to the concern for the return of persons unlawfully on its territory to their country of origin”*; it was related to the conclusion that *“children that are staying on the territory of the party-state illegally do not fall within the personal scope of art. 31, sec. 1, which therefore does not apply in the present case”*. Sadly, the Committee did not take cognisance of a rather obvious issue: regarding children without custody, family, and the protection due is not an option, thus article 16 does not apply.

However, it may be not so obvious, as indicated by the next Belgian case. In it, DCI referenced art. 16 and completely omitting art. 31 of the revised Charter. The Committee pointed to the fsec. that *“the failure to provide reception facilities, forces unaccompanied minors illegally present in the country to live on the streets or in homeless shelters, and these are in fsec. the same allegations as those concerning the violation of art. 17 and 7; they do not concern the protection of the family as a basic unit of society or the rights of minors as family members, but rather the protection of illegally present minors under art. 17 and 7 of the Charter.”*

The Committee has investigated allegations of violations of other rights protected under the revised ESC without much reluctance, and I will take the order of examination of these allegations in the most recent French case as the basis for the order of the following discussion.

5. Article No. 17 of the revised ESC in the context of the protection of unaccompanied foreign minors

In EUROCEF v. France, the Committee – after accepting the importance of *“the subject and purpose of the Charter”* as well as the means to achieve its goals that require from the State – parties to *“not only undertaking legal initiatives but also ensuring the required resources and procedures facilitating the full exercise of the rights guaranteed by the Charter”* – associated the implementation of the relevant obligations by the States with *“the implementation of the state system of refuge, assessment and relocation of unaccompanied foreign minors that guarantees effective access to accommodation and all other means ensuring legal, economic, medical and social protection”*.

Within this framework, the Committee has successively subjected to a very detailed examination: “The system of reception of unaccompanied foreign minors coming to France” (points 84-94), “Unaccompanied foreign minors at the airport lounge” (p. 85-101); “Age assessment” (p.102-113); “The right of unaccompanied foreign minors to the effective measure” (p. 114-117), and “The access of unaccompanied foreign minors to education” (p. 118-125).

Regarding the reception system, The Committee – based on numerous and precise information from Right Defenders, EUROCEF's evidence, and the reports of UNHCR and UNICEF – recognised that the situation present in France constitutes a violation of art.17 sec.1 of the Charter, specifically pointing to the lack of legal representation for children, scarcity of the reception facilities and their unequal distribution in specific French departments, as well as the inappropriate reception of such people in hotels. In the Committee's opinion, the conditions of minors placed in those hotels for weeks or even months do not meet the requirements of “the proper reception”, “support ensured by properly trained personnel” or ensuring access to “basic services”, educational and social.

Numerous irregularities in the practise of accepting unaccompanied foreign minors arriving in France occur at the airports, Charles de Gaulle's Airport and Orly Airport among others. At the former the waiting zone for minors is too small; children under 13 are given priority and thus, older children are put in the adult zones out of necessity. In turn at the Orly airport children are placed in hotels. Both the solutions are regarded by the Committee as incompatible with ESC requirements because “they prevent the proper care for the unique needs of minors”.

Unaccompanied foreign minors residing in France often do not possess any form of identification or the documents they present do not seem to inspire confidence. That brings into play the need to assess their age, which in France was mostly done through bone examination. EU directive from 2013 on shared procedures of granting and withdrawing international protection, authorised member states to “use medical examinations to determine the age of unaccompanied foreign minors as part of examining international protection requests”. However, the Committee – except for the formal shortcomings in the proceedings – emphasised the contradictory character of such bone examination “because they are not reliable and are a hit to children's dignity and physical integrity”. As such they violate those fundamental rights regarding unaccompanied foreign minors that must absolutely be protected.

The Committee consistently points to - if only because of the implementation of procedural guarantees – the need for legal representation of unaccompanied foreign minors, and thus for the requirement to “appoint the guardian as fast as possible”, the absence of which may expose such children to serious risks to their protection. A respite in appointing such a guardian ad hoc, the Committee found to be a violation of art. 17 sec. 1 of the revised ESC.

In the context of said procedural guarantees, ECSR considered unaccompanied foreign minors' right to effective legal means, emphasising shortcomings regarding the fulfilment of their right to information about the results of the proceedings as well as the appeal measures available to them, also finding in this respect a breach of the guarantee of art. 17 sec. 1 of the Charter.

On the same basis as article 17 of the revised ESC, but this time based on its section 2, the Committee assessed the implementation, concerning unaccompanied foreign minors, of the right to education guaranteed by the French Education Code in the form of an obligation for "French and foreign children of both sexes between the ages of 6 and 16".

This is what has drawn the Committee's particular attention, as access to education above the age of 16 is considerably difficult, and the majority of unaccompanied foreigners involved are children between the ages of 16 and 18. Thus, according to the Committee: "their right to education is undermined which eliminates their chances for social and professional integration, as well as the regulation of their status in France". Therefore, there was a breach of art 17, sec. 2 of the revised ESC.

As seen above, the Committee treats the responsibilities stemming from art. 17 of the revised Charter as crucial and primary in the context of unaccompanied foreign minors, pointing not only to material guarantees but also to institutional and procedural guarantees, indispensable for real and effective protection of relative rights.

6. Article No. 7 section 10 of the ESC or revised ESC regarding the protection of the unaccompanied foreign minors

In the Belgian case ECSR emphasised that protecting children and adolescents against physical and moral threats that they are exposed to is very important for securing an effective guarantee of their fundamental rights, especially the right to life and physical integrity,

and "a failure to see party States as bound by this obligation towards foreign minors illegally in the country would mean failing to guarantee their fundamental rights and exposing these children and adolescents to serious harm to their right to life, health and mental and physical integrity".

The Committee accentuated that the states are obliged to protect children "*against all forms of exploitation*", including "*the exploitation stemming from trafficking or living on the street, such as domestic exploitation, mendicancy, pickpocketing, servitude and organ harvesting, and to take measures in favour of prevention and support the children of the streets*".

It also pointed to the remark from the 2013 assessment that "*sexual exploitation of minors and child trafficking are serious problems in Belgium*", connected to the problem of foreign minors deprived of sufficient protection. Admittedly, the data available to the Committee "do not allow the conclusion that exploitative begging is a widespread phenomenon, nor to demonstrate that there is a strict correlation between mendicancy, trafficking or sexual exploitation in Belgium and an inability of reception facilities to take care of a significant proportion of foreign minors illegally present in the country (...)."

According to the Committee, "*crucial and lasting lack of custody of minor foreigners residing in the country illegally, therefore showing that the government had not taken necessary measures to guarantee those minors special protection against physical and moral threats required from art. 7, sec. 10, thereby causing a serious threat to them*

exercising their most fundamental rights, such as the right to life, mental and physical integrity and respect for human dignity.”

In the French case, on the other hand, the Committee noted that the allegations based on art. 17 also fell within the scope of Article 17 of the revised ESC, which had already been examined earlier, and extracted two issues specific to the first of these provisions, namely moral threats at work and outside of work, as well as involvement in sex industry and mendicancy. It referred to its determination based on art. 17, according to which "accepting minors in common areas with adults and/or in hotels is incompatible with the Charter and contradicts the principle of child's best interest". Considering overcrowding of reception facilities and the lack of alternative shelters, many minors are homeless, which threatens their physical and moral integrity, putting them at very serious risks that may lead to trafficking, exploitative begging and sexual exploitation".

It can therefore be concluded that in the work of ensuring the most effective protection of unaccompanied minors, the provisions of art. 17 and art 7, sec. 10 complement and support each other.

7. Article No. 11 and No. 13 of ESC and revised ESC in the context of protecting unaccompanied foreign minors

I choose to jointly present in the following passage an analysis of the conclusions in the light of art.13 alongside the conclusions against art.11: the right to health because, in essence, the issue of the right of the poor to the provision of medical assistance to them was at stake, and therefore a sort of complementary guarantee of the right to health.

In the Belgian case, the Committee determined that "*some of the allegations, namely regarding emergency medical assistance an effective medical assistance in a more appropriate for examination based on art. 13*".

When it comes to access to medical care, according to the Committee, "*a complete lack – since 2009 – of reception facilities for accompanied foreign minors, and a partial shortage of such facilities for unaccompanied foreign minors, leading some of them to homelessness, causes difficulties regarding access to healthcare*" and is a violation of art. 11 sec. 1 of the Charter. Similarly, when it comes to eliminating the causes of diseases and preventing epidemic and endemic diseases, the lack of guaranteed housing and foster homes, as a minimum prerogative for the fulfilment of said requirements violates art. 11 sec. 3 of the Charter.

In turn, in reference to art. 13 of the revised ECSR confirmed that "the right of underage migrants that are in the country illegally to receive healthcare exceeding the emergency medical assistance and covering the protection of the first and second degree, and psychological care". Due to the inconsistencies regarding the statutory definition of "emergency medical assistance", the Committee noted that in practise it encompasses "not only life-threatening medical emergencies but also curative and preventive assistance, as well as basic mental aid". Despite reoccurring practical difficulties, the Committee determined that "considering the existence of legally guaranteed forms of medical assistance which effectively functions in practice, and the lack of precise data

pointing to severe faults in the support system (...), the Committee believes that that situation does not violate art. 13 of the Charter”.

Referencing its own findings in the Belgian case and the detailed findings based on art. 17 of the Charter, also showing parallels to the problems of minor foreigners in France, including the shortage of reception facilities and homelessness, in the French case the Committee also found a violation of art. 11 sec.1. On the other hand, unlike the Belgian case, the Committee found a violation based on art.13 sec. 1 of the Charter, demanding “from the local authorities the immediate inclusion of said minors to the mainstream system of child protection and accumulating medical, social, educational, and legal resources indispensable for the complete protection of the fundamental rights of unaccompanied minors”.

It points to the fact that in all examined cases – regarding art. 17, as well as 11 and 13 - the lack of fulfilment of the basic premise of stable housing or adequate shelter for unaccompanied minors illegally present in the country came to the fore.

8. The right to accommodation/shelter in the context of protection of the unaccompanied foreign minors

The Dutch case already showed that, referencing one of its earliest decisions, ECSR took as a starting point the assumption, that *“residency, similarly to medical assistance is a prerequisite for preserving human dignity and therefore legislation or practises that negate the right of foreigners to accommodation, even if they are on the territory illegally, should be considered as contrary to the revised Charter”*. Therefore, the Committee confirmed that *“the right to shelter is strictly related to the right to life and is crucial for respecting the dignity of each individual”, thus “living in the streets puts a child in the position of complete hopelessness”, “negating the right to shelter” severely undermines it, that “preventing homelessness requires states to provide shelter for as long as children remain under their jurisdiction”, whereas “the best interests of the child” require finding “alternatives to detention”*.

The Committee added that *“based on art. 31 sec. 2, the life conditions in a shelter (...) should enable living and maintain human dignity”*. According to the Committee *“Since, in the case of illegally present individuals, no alternative accommodation is required from the states, eviction from refuge should be prohibited, as it places the persons concerned, especially children, in a situation of extreme hopelessness, which is incompatible with respect for their human dignity”*.

In the French case – referencing the determinations from the Dutch case and pointing to the detailed decisions made based on art. 17, sec.1 – the Committee stated that *“the current protection system (...) does not provide adequate protection, since increasingly often minors are left on their own, with no shelter or custody, exposed to various risks that undermine their human dignity”, whereas the government “does not show how it intends to provide the minors with shelter, and particularly what by what means does it want to prevent and reduce homelessness among unaccompanied foreign minors, taking into account its elimination”*. Thus, the Committee determined a breach of art. 31, sec. 2.

9. Conclusion

In the last decade “influx to Europe” has increased inconsolably. Hundreds of thousands, or even millions – more or less welcome immigrants – head to Europe by land, water or air. Thus, the Geneva refugee criteria do not apply or are impossible to verify given such numbers. “European social benefits” act as a magnet. It is safe to assume that this indiscriminate nature also includes an incredible increase in the phenomenon of unaccompanied illegal alien minors on the territories of the party States of the ESC/revised ESC. As we observed, despite their efforts, they did not handle the problem well, even before the “influx boom”, not being able to meet the high demands of the judicature of the European Committee of Social Rights.

The problem of basic guardianship of unaccompanied foreign minors, as well as their multifaceted protection, is not covered under the formal scope of the Charter, covering foreigners as indicated in sec. 1 of the Charter Attachment. Taking a formalist approach to the *'humanism of human rights'*, one would have to conclude that this care and protection is not owed to them. However, love takes on the characteristics of mercy; the *'humaneness of humanity'* replaced the *'humanism of human rights'* - after all, it is about people, it is about defenceless children! Humanity calls!

Everything is under the auspices of Human Dignity, that foundation of the edifice of human rights, each and everyone, universal and regional, and we should add - also national. It is a great legal-humanitarian mystery, still unexamined and undiscovered. This mystery – alongside the aforementioned rights: to life, integrity, health, to shelter – mandates and protects said humanitarian protection. That *'mandate'* and *'protection'* require a further thorough, in-depth examination of the closest connection with fundamental values.

True “values”, fundamental for Humans and Humanity must be reintroduced and cannot be substituted with antiquated and having little substance *'European values'*, which – undoubtedly – were established as valuable and were valuable, but which – unfortunately – were deprived, stepped on, ignored, and laughed at. Europe needs saving, needs returning to its roots: natural and universal, not arbitrarily liberal, postmodernist, hedonistic. European *'carpe diem'* does not work; yes, its illusion attracts migrants; rejects its own who are not willing to conform to its pseudo-progress.

The fate of unaccompanied foreign minors in a way restores humanity and reminds us of those values. In the *'flood of mass migration'* may lose its attribute. “Fear makes cowards of us all” – as Europeans, we increasingly fear for the future of Europe. We will open our eyes wider to see the irregularities occurring concerning the problem of unaccompanied foreign minors: do we not have the right to expect fundamentally good intentions from the newcomers (also regarding their identity, their documents, their age)?; do we not have the right to oppose the *"refugee industry"*, and *"migration industry"* which bear ever so stronger resemblance to organised crime?; are these youngsters aged 16 – 18 that the European Committee of Social Rights bestows with such charity always *'defenceless children'*?

May we not, in the deluge of these growing questions, run out of room for Love and Mercy towards the Child! The correct path through the ECSR has been laid. The storm has



approached - let us keep the rudder of mercy firmly in hand, let us not lose the trail of mercy!

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