



Inhuman and degrading living conditions of homeless asylum-seekers without any means of subsistence: violation of Convention

In today's **Chamber judgment**¹ in the case of **N.H. and Others v. France** (application nos. 28820/13, 75547/13 and 13114/15) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of torture and inhuman or degrading treatment) of the European Convention on Human Rights in respect of the applicants N.H. (no. 28820/13), K.T. (no. 75547/13) and A.J. (no. 13114/15), and

no violation of Article 3, in respect of the applicant S.G. (no. 75547/13).

The applications concerned five asylum-seekers, single men, living in France. They complained that they had been unable to receive the material and financial support to which they were entitled under French law and had thus been forced to sleep rough in inhuman and degrading conditions for several months.

The Court observed that the applicant N.H. had been living in the street without any resources; this was also the case for K.T. and A.J. who had only received the Temporary Allowance after 185 and 133 days respectively. In addition, before being able to register as asylum-seekers, N.H., K.T. and A.J. had been forced to survive for a certain period without any evidence of that status.

The French authorities had failed in their duties under domestic law. They were found responsible for the conditions in which the applicants had been living for several months: sleeping rough, without access to sanitary facilities, having no means of subsistence and constantly in fear of being attacked or robbed. The applicants had thus been victims of degrading treatment, showing a lack of respect for their dignity.

The Court found that such living conditions, combined with the lack of an appropriate response from the French authorities and the fact that the domestic courts had systematically objected that the competent bodies lacked resources in the light of their status as single young men, had exceeded the threshold of severity for the purposes of Article 3 of the Convention. The three applicants N.H., K.T. and A.J. had thus found themselves, through the fault of the French authorities, in a situation that was incompatible with Article 3 of the Convention.

Principal facts

Application no. 28820/13 – N.H.

The applicant N.H., who was born in 1993, is an Afghan national who lives in Paris. Having arrived in France in March 2013 he obtained a postal address with the association France Terre d'Asile. On 4 April 2013 he filed an asylum application at the Paris Police Prefecture and was given an appointment for 9 July 2013. On 18 April 2013 he lodged an urgent application with the Administrative Court of Paris seeking an order obliging the authorities to examine his asylum

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.

application and to issue him with a provisional residence permit. The urgent applications judge rejected his request. N.H. appealed against this decision before the *Conseil d'État* (highest administrative court). The urgent applications judge of that court rejected his application. On 3 October 2013 N.H. was informed that his asylum application would be examined by the French Office for the Protection of Refugees and Stateless Persons (OFPRA), but that he was not allowed to reside in France with asylum-seeker status as he had already lodged an asylum application in Denmark. On the same day N.H. went to the job centre to apply for the Temporary Allowance due to asylum-seekers. This allowance was refused on the grounds that he had not submitted the letter informing him that OFPRA had registered his asylum application. The applicant was forced to live rough, without any material or financial support. On 13 November 2013 OFPRA refused to grant him refugee status, but granted him subsidiary protection because of the violence prevalent in his province of origin. On 17 December 2013 the association Corot Entraide Auteuil, 60% subsidised by the State, found him accommodation.

Application no. 75547/13 – S.G., K.T. and G.I.

The applicant S.G., who was born in 1987, is a Russian national who lives in Carcassonne. He arrived in France on 15 July 2013 and the next day lodged an asylum application at the Prefecture. He was offered accommodation in a reception centre for asylum seekers (CADA), acceptance of this offer being a condition for receiving the Temporary Allowance. But as there was no space available, he had to live in a tent lent by private individuals on the banks of the Aude. On 2 August 2013 the OFPRA registered his asylum application. On 18 September 2013 he was granted the Temporary Allowance. On 7 October 2013 he applied to the urgent applications judge of Montpellier Administrative Court for an order instructing the State to find him accommodation as an asylum seeker. The judge rejected his request. On 13 October 2014 OFPRA rejected his application. The Prefect of the Hérault *département* issued him with three successive orders to leave France. S.G. appealed, seeking to have them annulled.

The applicant G.I., who was born in 1988, is a Georgian national who lives in Carcassonne. He arrived in France on 25 May 2013 and on 28 May filed an asylum application with the Prefecture of the Languedoc-Roussillon region. He was sleeping rough.

The OFPRA registered his asylum application on 19 June 2013 and he was granted the Temporary Allowance on 23 August 2013. On 7 October 2013 G.I. applied to the urgent applications judge of Montpellier Administrative Court for an order similar to that sought by S.G., but the judge rejected the application on the same grounds.

On 11 April 2014 G.I. withdrew his asylum application and sought assistance for his voluntary return to his country of origin.

The applicant K.T., who was born in 1990, is a Russian national who lives in Carcassonne. He arrived in France on 7 January 2013 and filed an asylum application with the Prefecture. His application was registered on 14 June 2013 by the OFPRA and he received the Temporary Allowance from 15 July 2013. He had to live in a tent on the banks of the Aude. On 7 October 2013 K.T. applied to the urgent applications judge of Montpellier Administrative Court for an order similar to that sought by S.G., but the judge rejected the application.

On several occasions K.T. tried, in vain, to obtain a residence permit.

Application no. 13114/15 – A.J.

The applicant A.J., an Iranian national, was born in 1974 and lives in Paris. He managed to flee Iran, where he had worked as a journalist, and reached France on 9 September 2014. He was given a postal address on 14 October 2014 by the association France Terre d'Asile. A.J. went to the Paris Police Prefecture on 23 October 2014 to file his asylum application, which was not registered, and he was given an appointment for 7 January 2015. On 4 November 2014 he applied for accommodation

to the Prefect of the Ile-de-France region, who replied that he could not grant his request due to the lack of capacity in the national asylum-seeker reception system. On 13 November 2014 A.J. lodged an application with the urgent applications judge of the Paris Administrative Court for an order instructing the Prefect to examine his application for residency under asylum law and to direct him to a reception or accommodation centre. The judge rejected his request. The *Conseil d'Etat* also rejected the application. At a meeting at the Prefecture on 7 January 2015, A.J. received an application form for residency under asylum law, which he completed on 22 January 2015, the date on which he was granted a temporary residence permit to remain in France. On 28 January 2015 A.J. went to the job centre to claim his entitlement to the Temporary Allowance, but it refused to register his application as he was unable to present an acknowledgment of receipt of his asylum application.

OFPRO registered his asylum application on 5 February 2015. On 12 February 2015 A.J. was granted the Temporary Allowance. From 14 April 2015 he was accommodated in a hotel as part of the hotel accommodation scheme for single adults. On 23 April 2015 OFPRO granted him refugee status and in June 2015 he found accommodation in Paris in the "House of Journalists" in a single room. He also received daily restaurant and transport tickets.

Complaints, procedure and composition of the Court

The applicants all complained of inhuman and degrading treatment relying on Article 3 of the Convention. N.H. and A.J. also complained of an infringement of their right to an effective remedy (Article 13 in conjunction with Article 3 of the Convention). N.H. further complained under Article 8 (right to respect for private and family life), taken alone and in conjunction with Article 13 of the Convention.

The application was lodged with the European Court of Human Rights on 29 April 2013.

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

Síofra O'Leary (Ireland), *President*,
 Gabriele Kucsko-Stadlmayer (Austria),
 André Potocki (France),
 Mārtiņš Mits (Latvia),
 Lətif Hüseynov (Azerbaijan),
 Lado Chanturia (Georgia),
 Anja Seibert-Fohr (Germany),

and also Victor Soloveytschik, *Deputy Section Registrar*.

Decision of the Court

Article 3

The Court considered it appropriate to examine the applicants' allegations under Article 3 of the Convention taken alone.

G.I.'s lawyer (application no. 75547/13) had informed the Court that he had been unable to contact his client, despite several attempts and unsuccessful searches. It concluded that the applicant no longer intended to pursue his application and that the case should therefore be struck out of the list as far as he was concerned.

The Court noted that the applicants had criticised the French authorities, first, for not enabling them to benefit in practice from the material and financial support due to them under domestic law, in order to meet their basic subsistence needs and, secondly, for showing indifference towards them.

The Court had to determine whether the applicants had been faced with a situation of extreme material deprivation which could engage Article 3.

The applicants, who were single men in France, had found themselves in a situation of material deprivation. In order to meet their basic needs, they relied entirely on the material and financial support which was due to them under domestic law for as long as they were authorised to remain in France as asylum-seekers. Under the French system in force at the time, unlawful migrants who wished to seek asylum in France had to apply for an asylum-seeker's residence permit. Article R 742-1 of the Code on the Entry and Residence of Aliens and the Right of Asylum set a time-limit of 15 days, from the time the would-be asylum-seeker presented the requisite documents at the Prefecture, for the authorities to register the asylum application and authorise the person to reside legally. At the relevant time, in practice, this period averaged between 3 and 5 months, depending on the Prefecture.

The Court noted that between the time when N.H. and K.T. had gone to the Prefecture to apply for asylum and the date on which their asylum application was registered by the Prefecture, 95 days had elapsed for N.H. and 131 days for K.T.; A.J. had been given an asylum-seeker's provisional residence permit 90 days after he had applied for asylum at the Prefecture; and, lastly, S.G. had obtained an acknowledgement of his asylum application 28 days after his first appointment at the Prefecture.

N.H., K.T. and A.J. had thus argued that, during those periods, they had not been granted status as asylum-seekers and that, consequently, they could not claim either accommodation or the Temporary Allowance, remaining unlawful residents in France.

The Court found that, prior to the registration of their asylum applications, the applicants had not been able to prove their status as asylum-seekers. For this reason, N.H. and A.J. had appealed to the urgent applications judge of the Administrative Court to order the Prefect to examine their applications for residence on the basis of asylum and to issue them with a provisional residence permit. Those procedures had been unsuccessful. Moreover, the Court noted that under domestic law, receipt of the Temporary Allowance was conditional on the presentation to the job centre of an asylum-seeker's residence permit and proof that the relevant application had been lodged with OFPRA.

N.H., K.T. and A.J. stated that, as they had been unable to prove their status as asylum-seekers, they had lived for 95 days, 131 days and 90 days, respectively, in fear of being arrested and deported to their country of origin. The Court noted that, prior to obtaining an asylum-seeker's residence permit, they could indeed have been deported. Relying on the observations of the third-party interveners and on official reports from the French authorities, the Court did not question the reality of those applicants' fears of deportation.

The Court noted that throughout the entire asylum procedure, which began with the applicants being given a postal address by an association or with their first appointment at the Prefecture, they had all been living rough, either under bridges in Paris or on the banks of a river (the Aude) in tents lent by private individuals. Moreover, N.H. had never received the Temporary Allowance in spite of the official steps he had taken. He had lived under the bridges of the Saint Martin Canal in an extremely precarious situation from 26 March to 17 December 2013, i.e. for 262 days. A.J. had lived on the street in similar conditions for 170 days, from 23 October 2014 to 14 April 2015. Despite A.J.'s representations and appeals, he had been granted the Temporary Allowance only on 12 February 2015 and he had actually received the allowance from 5 March 2015 onwards. A.J. had therefore remained without resources from 23 October 2014 to 5 March 2015, i.e. 133 days.

Lastly, the Court noted that S.G. and K.T. had lived for at least nine months on the banks of the Aude, each in a single tent. K.T., who had no longer been an unlawful resident in France since 21 May 2013, had begun receiving the Temporary Allowance on 15 July 2013. From the time of his first attendance at the Prefecture, K.T. had thus remained without resources for 185 days. S.G. had

received the Temporary Allowance 63 days after his first attendance at the Prefecture. The Court therefore noted that N.H. had lived rough without any financial resources and that K.T. and A.J., living in the same conditions, had only received the Temporary Allowance after delays of 185 and 133 days respectively.

The Court stressed that it was aware of the constant increase in the number of asylum-seekers since 2007 and of the gradual saturation of the National Reception Service. It noted that the facts of the case were connected with that gradual development, without there being an exceptional humanitarian emergency. It noted the efforts made by the French authorities to create additional accommodation and to reduce the time taken to examine asylum applications. However, those circumstances did not rule out the possibility that the situation of asylum-seekers might have engaged Article 3 of the Convention.

The Court pointed out, first, that before their asylum applications had been registered, N.H., K.T. and A.J. had been unable, as a result of delays, to justify their status as asylum-seekers for long periods. N.H. had been granted subsidiary protection 229 days after his arrival in France; 188 days had elapsed between A.J.'s first appointment at the Prefecture and the recognition of his refugee status by OFPRA; and in the cases of S.G. and K.T., their asylum applications had been rejected by OFPRA after periods of 448 and 472 days respectively.

The Court concluded that the French authorities had failed in their duties towards the applicants under domestic law. They therefore had to be held responsible for the conditions in which the applicants had been living for several months: sleeping rough, without access to sanitary facilities, having no means of subsistence and constantly in fear of being attacked or robbed. The applicants had thus been victims of degrading treatment, showing a lack of respect for their dignity. It had aroused in them feelings of fear, anxiety and inferiority, likely to cause despair. The Court found that such living conditions, combined with the lack of an appropriate response from the French authorities and the fact that the domestic courts had systematically objected that the competent bodies lacked resources for them in the light of their status as single young men, had exceeded the threshold of severity for the purposes of Article 3 of the Convention. The three applicants N.H., K.T. and A.J. had thus found themselves, through the fault of the French authorities, in a situation that was incompatible with Article 3 of the Convention. There had thus been a violation of that Article.

With regard to the applicant S.G., the Court noted that he had obtained an acknowledgment of his asylum application 28 days after his first appointment at the Prefecture and that – although he had in fact been living in a tent – he had received the Temporary Allowance 63 days after that first appointment. As difficult as this period must have been for him, he had at that point been provided with the means to meet his basic needs. The Court therefore took the view that his conditions of subsistence had not reached the threshold of severity required by Article 3 and that there had therefore been no violation of Article 3 in respect of S.G.

[Article 8 and Article 13 in conjunction with Article 8 \(application no. 28820/13\)](#)

Having regard to the facts of the case, to the parties' arguments and to the conclusions already reached under Article 3, the Court found that there was no need to address these complaints separately.

[Just satisfaction \(Article 41\)](#)

The Court held that France was to pay 10,000 euros (EUR) to N.H., EUR 10,000 to K.T. and EUR 12,000 to A.J. in respect of non-pecuniary damage, and EUR 2,396.80 to N.H. in respect of pecuniary damage.

The judgment is available only in French.

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Press contacts

echrpess@echr.coe.int | tel.: +33 3 90 21 42 08

Denis Lambert (tel: + 33 3 90 21 41 09)

Tracey Turner-Tretz (tel: + 33 3 88 41 35 30)

Inci Ertekin (tel: + 33 3 90 21 55 30)

Patrick Lannin (tel: + 33 3 90 21 44 18)

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.