



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FIFTH SECTION

CASE OF KHAN v. FRANCE

(Application no. 12267/16)

JUDGMENT

STRASBOURG

28 February 2019

FINAL

28/05/2019

This judgment has become final under Article 44 § 2 of the Convention. It may be subject to editorial revision.

In the case of Khan v. France,

The European Court of Human Rights (Fifth Section), sitting as a Chamber composed of:

Angelika Nußberger, *President*,

Yonko Grozev,

André Potocki,

Mārtiņš Mits,

Gabriele Kucsko-Stadlmayer,

Lətif Hüseynov,

Lado Chanturia, *judges*,

and Milan Blaško, *Deputy Section Registrar*,

Having deliberated in private on 29 January 2019,

Delivers the following judgment, which was adopted on that date:

PROCEDURE

1. The case originated in an application (no. 12267/16) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by an Afghan national, Mr Jamil Khan (“the applicant”), on 3 March 2016.

2. The applicant was represented by Mr L. Crusoé and Ms O. Boisin, lawyers practising in Paris and Desvres, respectively. The French Government (“the Government”) were represented by their Agent, Mr F. Alabrune, Director of Legal Affairs at the Ministry for Europe and Foreign Affairs.

3. The applicant alleged, in particular, that there had been a violation of Article 3 in his case, on account of, first, the manner in which he had been treated by the French authorities before and after the clearance of the southern zone of the camp on the Calais heath, and secondly, the consequences of that clearance on his situation, in view of his status as an unaccompanied minor and his resulting extreme state of vulnerability.

4. On 2 March 2016, when the clearance operation was underway, fifteen unaccompanied foreign minors, including the applicant, together with two non-governmental organisations, filed a request for the application of Rule 39 of the Rules of Court. Their main requests were that the clearance should be suspended and that the State should set out the measures to be taken for the support and rehousing of the evicted migrants. On 3 March 2016 the Court decided to suspend its examination of Rule 39 pending receipt of further information from the Government and the applicants’ representative. On 9 March 2016, after receiving the parties’ reply, the Court decided not to indicate the requested interim measures to the Government. It took note of the undertaking by the Government that the minors concerned would be taken into the care of the competent authorities

as soon as they were located, in accordance with the interim placement orders issued by the Youth Judge of the Boulogne-sur-Mer *tribunal de grande instance*, and encouraged them to use their best endeavours to ensure the enforcement of those orders.

5. On 6 September 2017 notice of the application was given to the Government. Both the applicant and the Government submitted written observations on the admissibility and merits of the case. Written comments were also received from the following bodies, which were given leave to intervene by the President of the Chamber (Article 36 § 2 of the Convention and Rule 44 § 3): the *Défenseur des droits* (Defender of Rights), the *Commission nationale consultative des droits de l'homme* (National Advisory Commission on Human Rights), the *Groupe d'information et de soutien des immigrés* (Migrant Information and Support Group) and the association *Cabane juridique*.

THE FACTS

I. THE CIRCUMSTANCES OF THE CASE

6. The applicant was born on 1 January 2004 and lives in Birmingham.

A. Background to the case

7. The applicant referred to the report by the *Défenseur des droits* under the title “Displaced persons and fundamental rights: the situation on the territory of Calais”, published on 6 October 2015.

8. The report showed that for several years many individuals wishing to seek the protection of the United Kingdom had congregated in the Calais area.

9. A reception centre had been opened near Calais, at Sangatte, in 1999. It had been closed, however, in 2002 and according to the *Défenseur des droits* this had led to the dispersion of the migrants over a wider area and to the development of makeshift camps which had become known as the “jungle”.

10. A number of operations aimed at clearing and demolishing the makeshift camps had been carried out by the authorities. The *Défenseur des droits* thus noted that, for a long time, the authorities’ wish not to create any focal points around Calais had led to an increase in evictions. However, in March 2015 the authorities had opened a day reception centre, the “Jules Ferry Centre”, outside the town. Under the management of an association commissioned by the authorities, the centre’s main task was to serve about 2,500 meals per day to the migrants and to provide them with facilities to charge their mobile telephones and to wash their laundry, as well as placing sixty shower units and thirty toilets at their disposal. It also allowed them

access to nursing care for two hours per day on weekdays and included a shelter for women and children. A new “jungle” comprising several thousand migrants had quickly emerged near the centre, on a piece of land commonly known as “*la lande*” (the heath), some of which had been made available to the State by the municipality of Calais.

11. The report of the *Défenseur des droits* impugned the living conditions prevailing on the heath and the ensuing violations of fundamental rights, in particular with regard to unaccompanied minors.

12. Describing the heath area as a “shantytown”, he reported that the majority of migrants were forced to live in “inhumane conditions”. He highlighted their “extremely precarious” living conditions: apart from the hundred women and children who took shelter at night in the Jules Ferry Centre, the vast majority of the migrants lived in cramped conditions, sleeping in rudimentary tents and shelters (made of planks or plastic tarpaulins), some without any protection at all. He further noted that the lack of infrastructure contributed to the hostile environment and the squalid living conditions: 2,500 meals were distributed only once a day, even though more than 3,500 people were living on the heath, in poor material conditions (a 500-metre queue outdoors, long waiting times without any guarantee of a meal, police surveillance and insufficient sheltered eating places). Apart from the taps and showers at the Jules Ferry Centre, which was open only from 12 noon to 7 pm, there were just three water taps on the heath; the waste collection facilities were insufficient and represented a major health risk. The report also mentioned the migrants’ state of physical and mental exhaustion, pointing out that, after travelling for several months or years, they were forced to adopt a way of life that was “more like a survival experiment”. They were showing signs of conditions that were characteristic of people in situations of very serious instability, combined with disorders specific to migrants and were suffering from post-traumatic syndromes linked to police violence or pressure. The report added that there was insufficient medical care available to cater for all the health needs.

13. The report of the *Défenseur des droits* pointed out that the many minors present on the heath were thus living in “deplorable material conditions” and were frequently exposed to danger. He criticised the lack of educational facilities and the saturation and inadequacy of the protection offered to minors. In the specific case of unaccompanied foreign minors, he noted that there were four rooms in a children’s home, run as a social facility, for the emergency accommodation of children under fifteen years of age for a maximum of eight days, pending the examination of their situation and their orientation to the most appropriate placement. However, he considered this system to be unsuitable, as the minors concerned often refused to go to other places because of their distance from the heath, whilst they still wanted to reach England. He made the same observation with regard to unaccompanied foreign minors over fifteen years of age, their

accommodation being provided for in a centre catering for thirty, located 45 km away from Calais. The report also pointed out that the unaccompanied foreign minors without supervision were left to their own devices, with the development of risky behaviour among teenagers that was mainly linked to increased alcohol consumption.

B. Decisions of 2 and 23 November 2015

14. In a decision of 2 November 2015 the urgent applications judge of the Lille Administrative Court, hearing a case under Article L. 521-2 of the Code of Administrative Justice (urgent applications for the protection of a fundamental freedom), brought in particular by non-governmental organisations, ordered the prefect of the Pas-de-Calais *département* to proceed, within forty-eight hours, with the enumeration of unaccompanied minors in distress and to arrange with the authorities of that *département* for their placement. The judge also ordered the prefect, together with the municipality of Calais, to set up on the site ten additional water access points and fifty pit or watertight latrines, to introduce a waste collection system with the installation of large-capacity mobile refuse containers or additional rubbish bins, to clean the site and to clear access routes for the emergency services.

15. An appeal against this decision by the Ministry of the Interior was dismissed on 23 November 2015 by a decision of the urgent applications judge of the *Conseil d'État*, based on the following reasoning:

“... 6. ... it is not seriously disputed that, despite major actions by the public authorities, the current conditions of accommodation, food, access to water, sanitation and safety of the population living on the heath, which is home to approximately 6,000 people, including 300 women and 50 children, as shown by the investigation and the numerous documents in the file, especially the report of the *Défenseur des droits* drafted in October 2015, reveal a serious emergency situation.

... 10. ... while the investigation has shown that the Jules Ferry Centre organises only one distribution of 2,500 meals per day, between 3 pm and 5.30 pm, when the population on the heath is 6,000, it is not disputed that the meals served are designed to provide the necessary number of daily calories, that many migrants provide for their own food needs either through the on-site associations or by their own means, and it has not been established that the migrants are suffering from malnutrition; thus, it does not appear that a grave and serious deficiency can, on this point, be attributed to the public authorities.

11. ... however, ... the investigation has revealed, first, that the Jules Ferry Centre makes available to the migrants, from 10.30 am to 7.30 pm, only four water access points, sixty showers, fifty toilets, of which ten are for women, and washbasins; ... moreover, on the heath can be found only four water access points, three of which have five taps, and sixty-six latrines, together with twenty-two other latrines that have only recently been added in compliance with the decision under appeal; ... the distance to access these facilities may be up to two kilometres; ... access to drinking water and toilets is, under these conditions, clearly insufficient.

12. ... the investigation has also revealed that no rubbish collection is carried out within the site, that the five rubbish bins installed on the edge of the site are not used because of their distance, that the occupants of the site have created collection points in the form of holes dug one metre deep, in which the waste is burned, releasing fumes and unpleasant odours, that the site is overrun by rats and, finally, that neither waste water nor excrement from 'rudimentary toilets' is removed; and that, even though more rubbish bins have been added and additional collections made since the impugned decision, migrants living on the heath are thus exposed to high risks of poor sanitation.

13. ... it has been established, lastly, that emergency, fire and rescue vehicles cannot circulate within the site in the absence of the development of any roadway, even a basic one, given the haphazard proliferation of tents and various shelters.

14. ... the living conditions described above show that the public authorities' response to the basic needs of migrants living on the site, with regard to their access to sanitation and drinking water, remains manifestly inadequate and reveals a deficiency of such a nature as to expose them, to a severe degree, to inhuman or degrading treatment, thus causing a serious and manifestly unlawful breach of a fundamental freedom. Consequently, the urgent applications judge of the Lille Administrative Court has rightly ordered the State, since the measures to be taken to deal with the massive influx of migrants from the whole of the national territory to the site of the heath exceed the general policing powers vested in the mayor of the municipality, and also – in so far as its intervention is required, in its capacity as owner of some of the buildings concerned and pursuant to its agreements with the State, to enable the implementation of the orders, the municipality of Calais – to set up on the heath ten additional water access points, each comprising five taps, fifty pit or watertight latrines given the sandy nature of the land on which the camp is situated, to introduce a waste collection system with the installation of large-capacity mobile refuse containers inside the site and/or additional rubbish bins, to clean up the site and, lastly, to create one or more access routes inside the camp for the emergency services and, where necessary, the removal of the refuse containers. The measures thus prescribed must start to be implemented within a period of eight days, subject to a penalty of 100 euros per day of delay in respect of each measure ..."

16. The Government stated that the facilities and the health and safety measures ordered by the urgent applications judge had been fully implemented. The applicant pointed out that as a result of the general recommendation of 20 April 2016 by the *Défenseur des droits* (see paragraph 39 below) an enumeration of unaccompanied minors had been carried out from January 2016 onwards, but that it had not been followed by the effective protection of the individuals concerned. The same document showed that the *Conseil général* (local authority for the *département*) had confined itself to organising outreach efforts to make contact with minors, but being conducted by under-trained individuals and without any translators, those efforts had not been sufficient to arrange for placements. He observed that, as a result, the context which had justified the intervention of the administrative judge for urgent applications in November 2015 had not changed in 2016; the number of unaccompanied foreign minors living on the heath in huts or tents had actually increased.

C. Clearance of the Calais heath area

17. On 12 February 2016 the prefect of Pas-de-Calais announced at a press conference that she had decided to order the clearance of the southern part of the heath area. On 19 February 2016, taking the view that “for reasons of security, health and human dignity, there [was] an urgent need to reduce the area of the ‘heath’ camp in order to limit its occupation to the northern zone, around the reception facilities organised by the State”, she issued an order requiring the “undocumented occupants” of the southern part of the heath to “leave and vacate it of all persons and property” by 23 February at 8 p.m. The order specified that, after this period, the eviction would be enforced, if necessary with police assistance.

18. On 18 and 19 February 2016, migrants and non-governmental organisations filed applications with the Lille Administrative Court for the annulment of the above-mentioned decision and order. They also made an application to the urgent applications judge of that court under Article L. 521-1 of the Code of Administrative Justice (application for immediate suspension) for the suspension of the clearance decision. In particular, they argued that this measure infringed their right to housing as guaranteed by Article 8 of the Convention and Article 31 of the European Social Charter, together with their right to respect for their private life and the best interests of the child. They also argued that the measure was disproportionate given the number of people concerned and the lack of appropriate and sufficient social assistance measures, particularly in terms of relocation.

19. In submissions registered on 23 February 2016 (not produced before the Court), the applicant and other occupants of the heath intervened in the proceedings before the urgent applications judge. It appears from the decision of 25 February 2016 (see paragraph 20 below) that they asked the judge to instruct the prefect of Pas-de-Calais to identify the minors present on the heath and to offer them appropriate accommodation, support and information on their rights, commensurate with their vulnerability and needs.

20. On 25 February 2016 the urgent applications judge ordered the suspension of the clearance in so far as it would have resulted in the destruction of libraries, schools and places of worship that had been set up in the area to be vacated, pending a decision on the merits as to the legality of the measure. He dismissed the application for the remainder, together with the submissions from the third-party interveners.

21. On 26 February 2016 the claimants appealed on points of law before the *Conseil d’État*. However, they withdrew their appeal on 13 April 2016, as the *Conseil d’État* had not ruled by that date, whereas the clearance of the southern zone, which had begun on 29 February 2016, had been completed on 16 March 2016.

22. In a decision of 19 April 2016, the *Conseil d'État*, emphasising that the proceedings had been discontinued as a result of this withdrawal, took the view that there was no need to rule on the above-mentioned third-party submissions by the applicant and other occupants of the heath, as they had become devoid of purpose.

23. The parties have not provided any information on the status of the proceedings on the merits before the Lille Administrative Court.

24. The Government pointed out that the vast majority of the shelters and tents removed had already been abandoned. The few migrants who were still living there had been made aware of the clearance beforehand by the outreach efforts of the local Department of Social Cohesion, the French Immigration and Integration Office and two associations, and had gone of their own accord to take up the places available in the temporary reception centre for 1,500 recently opened on another part of the heath, or in one of the reception and orientation centres set up from October 2015 throughout France, or had opted for the tents made available by the civil protection authority. The Government added that the migrants concerned had not been prevented from retrieving personal belongings from their shelters.

25. The Government also stated that social outreach campaigns had been conducted to identify minors and find alternative accommodation for them: either in the context of child welfare facilities, in Calais, in the Georges Brassens Hostel for minors under 15 years of age, and in Saint Omer, in the Young Refugees Hostel for minors of 15 and over; or in the temporary reception centre on the heath, where four 48-place containers had been reserved for minors; or in civil protection tents or in reception and orientation centres where specific places had been reserved for them.

26. The northern zone of the Calais heath was cleared at the end of October 2016.

27. In a document entitled “Observation report: clearance of camps and placement of former occupants; Calais – Stalingrad (Paris)”, dated 20 December 2016, the *Défenseur des droits* noted that the authorities welcomed the fact that they had conducted a large-scale humanitarian operation, taking to shelter several thousand people and more than 1,700 unaccompanied minors in Calais and Paris in just a few days, and stepping up calls for the UK authorities to take responsibility for receiving these young people. But he stated that he did not share this satisfaction and that he could not endorse a view of the situation which suggested that anything was better than keeping people in shantytowns, especially in the case of minors. He pointed out that clearance operations had to be anticipated, planned and coordinated in order to prevent them from further violating the fundamental rights of the migrants concerned. In particular, he submitted that the interests of minors had not been of primary concern in the operation. In his view, the solutions implemented by the authorities, even when they were purportedly humanitarian, were more influenced by considerations related

to the control of migration flows than by the need to ensure respect for the fundamental rights of those concerned.

D. The applicant's situation

28. The applicant stated that he had left Afghanistan at the end of August 2015 after his father's disappearance in order to travel to the United Kingdom to seek asylum. In particular, he had crossed Iran, where he claimed to have been physically abused by people smugglers. He added that after arriving in France in September 2015 he had made his way to Calais following other migrants he had met on the journey, hoping to find a means of reaching the United Kingdom. He had settled in a hut in the same month in the southern part of the Calais heath. He pointed out that he had "come into contact" with non-governmental organisations, including the Calais Women and Children's Centre and *Cabane juridique*.

29. On 19 February 2016 *Cabane juridique* had lodged an application with the Youth Judge for his provisional placement. It had also requested the appointment of an *ad hoc* guardian to assist him in applying for asylum application. The same process was put in place for 300 unaccompanied foreign minors.

30. In a decision of 19 February 2016, the Youth Judge of the Boulogne-sur-Mer *tribunal de grande instance*, noting that the applicant had no legal representatives in France, appointed an *ad hoc* guardian "to take any steps in his interest".

31. In a decision of 22 February 2016, the same judge ordered that the applicant, "without family ties in France" should be temporarily placed in the care of the Child and Family Protection Department in Calais from 23 February 2016. Pointing out that his decision was automatically enforceable, on a provisional basis, pursuant to Article 514 of the Code of Civil Procedure, the judge emphasised as follows:

"The minor is not accompanied by family members in France; he has hitherto been living in the Calais 'jungle'; the prefecture has announced the clearance of that camp in the coming days; the minor is thus exposed to an even greater situation of danger; it is appropriate to place him in the care of the child welfare authority in order to take him to shelter with a view to his reunion with family members living in the United Kingdom within a period of one month."

32. The applicant stated that neither the Pas-de-Calais authorities nor the prefecture had acted to take him to shelter. Even though his hut had been demolished when the southern part of the heath was cleared, and he had lived through the operation, which had been particularly brutal, in an anxious and worried state, no alternative accommodation had been offered to him. In particular, the child welfare services had not invited him to go to a children's home. He added that the reception facilities in the northern zone of the heath, for children accompanied by a parent and for women, had not

been accessible to unaccompanied minors; consequently, like many occupants of the southern zone of the heath, he had been forced to take refuge in a “makeshift shelter” located in the northern zone. He pointed out that life in the northern zone was difficult; since the people displaced from the southern zone had gathered there, while others were already settled there, this had accentuated the overcrowding and significantly worsened the sanitary and living conditions.

33. The Government stated that the child welfare services had been unable to implement the placement measure; they had prepared the placement but the applicant had not made contact with them, and neither his lawyer, nor his *ad hoc* guardian, nor the association following his case, had informed them of his whereabouts.

34. During the week of 20 March 2016 the applicant left the heath and reached England by clandestine means. He was taken into care by the British child protection services. He now lives in a children’s home.

35. On 8 April 2016, noting that the applicant “[had] fled and [had] given no further news”, the Youth Judge of the Boulogne-sur-Mer *tribunal de grande instance* lifted the placement measure.

II. RELEVANT DOMESTIC LAW AND PRACTICE

36. Articles L. 112-3 and L. 112-4 of the Code on Social Action and Families read as follows:

Article L. 112-3

“Child protection seeks to guarantee due consideration of the fundamental needs of children, to support their physical, emotional, intellectual and social development and to preserve their health, safety, morality and education, ensuring respect for their rights.

It encompasses preventive actions for the benefit of children and their parents, organising the identification of and response to situations of danger or risk of danger for children and the administrative and judicial decisions taken for their protection. Telephone helplines are to be set up within the relevant services.

The implementation of those decisions must be tailored to each situation and based on objective observation through mandatory visits to the places where the children spend their time, in their presence, working with the family’s resources and the child’s environment. They will take account of any difficulties that the parents may be facing in the fulfilment of their educational responsibilities and will involve tailored support actions, ensuring if need be a partial or total placement of the child. In all cases, children must be associated with the decisions concerning them, according to the child’s degree of maturity.

...

Child protection also seeks to prevent any difficulties that may be encountered by minors who are temporarily or permanently deprived of the protection of their family and to ensure their placement.

...”

Article L. 112-4

“The children’s interest and due regard for their fundamental, physical, intellectual, social and emotional needs, together with respect for their rights, must guide any decisions concerning them.”

37. Article 375 of the Civil Code reads as follows:

“If the health, safety or morality of a dependent minor are at risk, or if the conditions of his education or his physical, emotional, intellectual and social development are seriously endangered, measures of educational assistance may be judicially ordered at the request of the father and mother jointly, or of one of them, of the person or body to whom the child was entrusted or of the guardian, of the minor himself or of the Public Prosecutor’s office. In the cases where the Public Prosecutor’s office has been advised by the President of the *conseil départemental*, it shall verify that the situation of the minor falls within the scope of Article L. 226-4 of the Code on Social Action and Families. Exceptionally, the court may examine the case of its own motion. ...”

III. RELEVANT INTERNATIONAL LAW

38. Articles 2, 3, 20 and 22 of the Convention on the Rights of the Child of 20 November 1989 (ratified by France on 7 August 1990) read as follows:

Article 2

“1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.’

Article 3

“1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.”

Article 20

“1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.”

Article 22

“1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or nongovernmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.”

IV. DOCUMENTS CONCERNING THE SITUATION IN THE CALAIS HEATH AREA AT THE MATERIAL TIME

39. The situation of migrants in general and of unaccompanied minors in particular, in the Calais heath area, before, during and after the clearance of the southern zone, is described in a number of documents including the following:

- the reports of the *Défenseur des droits* entitled “Displaced persons and fundamental rights: the situation on the territory of Calais” (6 October 2015, cited above) and “Observation report: clearance of camps and placement of former occupants; Calais – Stalingrad (Paris)” (20 December 2016, cited above), and his general recommendation under section 25 of the Law of 29 March 2011 (20 April 2016, cited above);
- the opinion of the *Commission nationale consultative des droits de l'homme* (“CNCDH” – National Advisory Commission on Human Rights) “on the situation of migrants in Calais and its surroundings” (2 July 2015), its follow-up opinion “on the situation of migrants in Calais and its

surroundings” (7 July 2016) and its statements on “the clearance of the Calais shantytown and its consequences: the case of minors” (8 November 2016) and “on the situation of unaccompanied minors placed in a CAOMI following the clearance of the shantytown in Calais” (26 July 2017);

- the “Report of the fact-finding mission on the situation of migrants and refugees in Calais and Grande-Synthe, France” of the Special Representative of the Secretary General on migration and refugees (12 October 2016);
- the report of the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA) “concerning the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings by France, Second Evaluation Round” (adopted 31 March 2017);
- the document published by UNICEF entitled “Neither safe nor sound: investigation into unaccompanied minors in northern France” (June 2016).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

40. The applicant complained that the French authorities had failed to fulfil their obligation to protect foreign unaccompanied minors who, like him, were living in the Calais heath area. He complained more specifically about the fact that the decision of the Youth Judge of the Boulogne-sur-Mer *tribunal de grande instance* of 22 February 2016, ordering his temporary placement in facilities of the child welfare service had not been implemented. He relied on Article 3, Article 6 § 1 and Article 13 of the Convention, the first of which reads as follows:

Article 3

“No one shall be subjected to torture or to inhuman or degrading treatment or punishment.”

41. Reiterating that it is master of the characterisation to be given in law to the facts of the case, and finding that these complaints converge, the Court finds it appropriate to examine the applicant’s allegations under Article 3 of the Convention alone (see, for example, *Bouyid v. Belgium* [GC], no. 23380/09, § 55, ECHR 2015, and *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 145, 19 December 2017; see also *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018). It will thus seek to ascertain whether the respondent State has failed in its obligations under that Article by not implementing the necessary means to enforce the decision of the Youth Judge of the Boulogne-sur-Mer *tribunal de grande instance* of 22 February 2016 ordering the applicant’s temporary placement and thus failing to take him into shelter when he had spent several months in the Calais heath area.

A. Admissibility

42. The Government argued that the applicant had not exhausted domestic remedies. In their view he should have lodged an urgent application for the protection of a fundamental freedom (*référé-liberté* under Article L. 251-2 of the Code of Administrative Justice) asking the judge to order the local authority (*conseil départemental*) to take him into shelter on the basis of his right to emergency accommodation.

43. The applicant pointed out that the obligation to exhaust domestic remedies was confined to a normal use of effective remedies, merely to penalise the failure to make use of any essential course of action. He added, in particular, that he had availed himself of the “genuinely appropriate procedure” by applying to the Youth Judge to decide on his placement, emphasising that such a decision was in itself immediately enforceable.

44. The Court notes that the States, such as the respondent State, which are parties to the Convention on the Rights of the Child, are required by Article 20 thereof to “ensure alternative care”, “in accordance with their national laws”, for any child who, within their jurisdiction, is “temporarily or permanently deprived of his or her family environment”; while Article 2 states that this obligation is irrespective of the child’s national origin (see paragraph 38 above). Moreover, it can be seen from the Court’s case-law that, as part of their positive obligations under Article 3 of the Convention, the States Parties are required to protect and take care of unaccompanied foreign minors (see paragraphs 70-71 below).

45. The provision of protection and care to the applicant could thus be regarded as an automatic obligation imposed on the domestic authorities.

46. Owing to the particularly difficult conditions in which he found himself, the applicant, through the non-governmental organisation *Cabane juridique*, lodged an application with the Youth Judge under Article 375 of the Civil Code seeking to be taken into care by the child welfare services. This provision authorises the judge to order educational assistance measures if the health, safety or morals of an unemancipated minor are in danger, or if the conditions of his or her education or physical, emotional, intellectual and social development are seriously compromised. The judge may in particular receive an application from the youth himself or from the public prosecutor’s office; he may also examine the matter of his own motion on an exceptional basis (see paragraph 37 above). Taking into account the applicant’s situation of danger and the need to take him into shelter, the Youth Judge granted the request by a decision of 22 February 2016, which was automatically enforceable on a provisional basis and against which no appeal was lodged (see paragraph 31 above). The authorities were required to enforce this decision, without any further proceedings being required under domestic law for this purpose. They could also be required to protect and take care of the applicant from the moment they became aware of his

situation. In accordance with the principle of subsidiarity, the application to the Youth Judge gave the respondent State the opportunity to prevent or remedy the breach of the positive obligations that Article 3 of the Convention could impose on it on account of the minor's situation. Thus, in the very particular circumstances of his case, the applicant did what could reasonably be expected of him for the purposes of Article 35 § 1 of the Convention.

47. Accordingly, the objection is rejected.

48. The Court notes, moreover, that this part of the application is not manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention and that it is not inadmissible on any other grounds. It must therefore be declared admissible.

B. Merits

1. Parties' observations

(a) The applicant

49. The applicant pointed out that, in the *Rahimi v. Greece* judgment (no. 8687/08, 5 April 2011), the Court found that the failure of the national authorities to take care of an unaccompanied foreign minor constituted a breach of Article 3 of the Convention in so far as they had left him to fend for himself and in general he had been taken care of solely by local non-governmental organisations. He further emphasised that the authorities were required to take account of the extreme vulnerability of such minors. He complained that the decision on his provisional placement of 22 February 2016 had not been enforced, stressing that he had never opposed its enforcement and had absolutely no objection to being taken into shelter. He considered more generally that the authorities should have gone to the "jungle" to provide him with basic material support and initiate welfare formalities that would enable him to be directed to facilities where he could be taken into shelter, such as the child welfare service's accommodation. He pointed out that *départements* and the State had a particular obligation to protect unaccompanied minors and minors in situations of danger. He observed that the Government had not adduced any evidence to show that steps had been taken to trace him. He also rejected the Government's argument that his lawyer or the associations following his case should have taken physical steps, in particular by taking him and the other minors concerned to the child welfare services. Pointing out that only the prefect and the local authority (*conseil départemental*) were responsible for the organisation of the reception and placement of unaccompanied foreign minors, he took the view that it would be legally erroneous and unacceptable to shift this burden to others, adding that his lawyer would not have had the material resources to take such action. The *Rahimi* judgment,

cited above, showed that the obligation to take care of unaccompanied foreign minors did not fall on third parties but on the authorities, and on the latter alone.

50. The applicant also criticised the State for proceeding with the demolition of the southern part of the “jungle” without having first taken into shelter the unaccompanied minors who had been living there. He had thus been deprived of shelter, when he was only twelve years old and the operation had taken place in mid-winter.

51. The applicant adduced, *inter alia*, a report broadcast on the France 3 television news on 8 April 2016, showing that unaccompanied minors had seen their shelters demolished during the clearance of the southern part of the heath area without being informed of an alternative solution, and that several of them had been forced to settle in the northern part of the heath where many other people were already living and where they were confronted with particularly difficult living conditions. The report also showed that, in the aftermath of the clearance of the southern zone, in spite of the decisions of the urgent applications judge of November 2015 ordering the prefect to enumerate the unaccompanied foreign minors present on the site with a view to their placement (see paragraphs 14 and 15 above), the deputy prefect, who was interviewed in the report, did not have a list of their names. This showed, in the applicant’s submission, that no steps had been taken by the authorities to identify the unaccompanied minors who were the subject of a placement decision.

52. The applicant also referred to a decision of the Immigration and Asylum Chamber of the Upper Tribunal of 29 January 2016, which noted the dangers that prevailed on the heath, including the exploitation of unaccompanied children. He further relied on the concluding observations of 23 February 2016 of the UN Committee on the Rights of the Child and on a report of 12 October 2016 of the Special Representative of the Council of Europe Secretary General on migration and refugees, which showed that the mechanisms for identifying, and for providing care and support to, unaccompanied foreign minors in Calais were inadequate. He also noted that the non-governmental organisations present on the heath had not been contacted by the authorities to seek a global solution for the unaccompanied minors.

(b) The Government

53. The Government submitted that the failure to comply with the protection measure ordered by the Youth Judge on 22 February 2016 could be attributed to the applicant’s conduct, which had allegedly prevented its implementation. Although the decision had been requested by the applicant, he had not appeared at the hearing. They emphasised that the child welfare service of the *département* had taken the necessary action. In that connection, the service had prepared a placement for the applicant (and for

the other eleven minors concerned by a similar measure on the same day) but he had not turned up; and neither his *ad hoc* guardian, nor the associations that supported him, nor his lawyer, had taken him to that location or informed the service of his whereabouts. The child welfare service had then taken steps to trace the applicant on the heath. It had contacted the association which provided emergency shelter there on behalf of the *département* and to which the State had entrusted the task of enumerating unaccompanied minors (*France Terre d'Asile*), but it replied that it did not know the applicant.

54. According to the Government, the fact that the applicant had not appeared at the hearing before the Youth Judge, that he had not kept in touch with his *ad hoc* guardian, his lawyer or the association following his case, that he had not appeared at the home designated for his placement, and that he had entered the United Kingdom in the week of 20 March – less than a month after his request for care – showed that he was not seeking long-term shelter and care from the French authorities but had above all wished to travel to the United Kingdom.

2. Observations of third-party interveners

(a) Défenseur des droits

55. The *Défenseur des droits* (Defender of rights) pointed out that this case was an illustration of the dramatic humanitarian situation in which displaced people found themselves in the Calais and Grande Synthe areas, caused in particular by the Franco-British agreements and the pitfalls of European migration policy. He stated that, following an in-depth investigation, on-site inspections and meetings with all stakeholders and his British counterpart, he had issued reports and decisions, and had made recommendations to the competent authorities specifically concerning the situation of unaccompanied minors, their reception and care – in particular the establishment of an unconditional shelter scheme on the heath – also monitoring their implementation. He added that to date their situation still remained a major concern for him.

56. The *Défenseur des droits* referred to his report of October 2015, in which he had described the alarming living conditions of unaccompanied minors on the Calais heath and had taken the view that they substantiated a situation of danger which automatically imposed an obligation of protection on the authorities; he had also described the dangers to which these minors were exposed (violence, risk of trafficking and prostitution, risky behaviour such as alcohol abuse, and trauma related to living conditions and risky attempts to cross the sea to England), aggravated by the lack of regular and adequate medical follow-up. He pointed out that the French authorities were bound by both domestic and international law to shelter and take care of them (he referred in particular to Article 20 of the International Convention

on the Rights of the Child, General Comment No. 6 of the UN Committee on the Rights of the Child, the *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (no. 13178/03, ECHR 2006-XI) and *Abdullahi Elmi and Aweys Abubakar v. Malta* (nos. 25794/13 and 28151/13, 22 November 2016) judgments, Article 375 of the Civil Code and Article L. 112-3 of the Social Action and Family Code). Above all, the authorities had been required to enumerate the minors concerned and offer them appropriate protection, as indeed the Administrative Court had ordered them to do on 2 November 2015. Having been informed that 316 unaccompanied minors had been identified on the heath as of 5 January 2016, the *Défenseur des droits* expressed concern about the lack of information regarding the identification and monitoring of 77 of them. He added that, on 23 February 2016, the United Nations Committee on the Rights of the Child had expressed concern about the precarious situation of children, the authorities' refusal to register them and the insufficient resources allocated to infrastructure and services. He also emphasised that, when an unaccompanied minor was entrusted to the child protection services by judicial decision, the failure of the authorities to implement that decision deprived the right to protection of its substance.

57. The *Défenseur des droits* further noted that the right to education of unaccompanied minors living on the Calais heath was far from being guaranteed, that few of them had been informed of their rights or supported in their efforts to be reunited with their families, efforts which were complicated by the fact that before they could submit asylum applications it was necessary in practice for them first to have been taken into the care of the child welfare service or even to have been placed under guardianship.

58. The *Défenseur des droits* indicated that following the clearance of the southern part of the heath in February 2016, associations had deplored the disappearance of around 100 unaccompanied minors. The living conditions of those who were still there remained worrying: as the authorities had not sufficiently anticipated the consequences of this operation for the situation of unaccompanied minors, many of them, being homeless, had been forced to live in even more extreme squalor. On 20 April 2016 he had recommended the implementation of regular and intensive socio-educational outreach by specially trained social workers, with a view to establishing a relationship of trust and allowing the stabilisation of unaccompanied minors on the site and effective care, stressing that the minor's acceptance of the protection measure should be sought but should not constitute a precondition for any attempt to find a solution. In his view, the fact that some did not request child protection and did not support the proposed measures could not justify the inaction on the part of the public authorities, which had an obligation to ensure their protection and to consider how to achieve it, taking into account the specific circumstances of the group concerned.

59. The *Défenseur des droits* additionally observed that, in spite of insisting that the authorities should act on this matter, the unconditional and adapted sheltering of unaccompanied minors that he had advocated had never taken place, as the facilities provided by the authorities – among them a reception centre 45 km from Calais – were ineffective. He pointed out that the specificity of these minors – their wish to go to England and refusal to settle in France – should have been taken into account before any considerations about their care. In this connection he had, in particular, recommended that an accommodation centre and a daytime reception facility be opened near the heath.

(b) *Commission nationale consultative des droits de l'homme*

60. The *Commission nationale consultative des droits de l'homme* (“CNCDH” – National Advisory Commission on Human Rights), which stated that it had conducted three fact-finding missions to Calais in 2015 and 2016, referred to the opinions and statements that it had issued: opinion “on the situation of unaccompanied foreign minors in France; taking stock one year after the circular of 31 May 2013 on the arrangements for taking care of unaccompanied foreign youths (national system for taking to shelter, assessment and orientation)” (26 June 2014); opinion “on the situation of migrants in Calais and its surroundings” (2 July 2015); opinion on the situation of migrants in Grande-Synthe (26 May 2016); opinion “on the situation of migrants in Calais and its surroundings” (7 July 2016); statements on “the clearance of the Calais shantytown and its consequences: the case of minors” (adopted 8 November 2016); statement “on the situation of unaccompanied minors placed in migrant reception and orientation centres” (26 January 2017); and a declaration on the treatment of migrants (17 October 2017).

61. The CNCDH highlighted the worrying situation in which many unaccompanied foreign minors found themselves during the period when the applicant was in the Calais area. It observed that in France child protection fell within the remit of the *départements*, while the State was responsible for migration matters, and that, in the case of unaccompanied foreign minors, who did not have a specific status, this led to an “institutional ping-pong”, preventing a coherent understanding of their specificity and particular vulnerability, and neglecting the best interests of the child, whereas they were above all to be seen as children rather than aliens. Their access to rights and justice was limited, in particular as regards their access to the asylum procedure: an *ad hoc* guardian could only be appointed to represent them once they had taken steps to benefit from protection, while some steps (including withdrawal of the asylum application) could only be taken after such appointment. This procedure, in addition to the steps to be taken under the head of child protection, was complex and slow. According to the CNCDH, the difficulties encountered

by unaccompanied foreign minors in the context of asylum applications or their administrative situation revealed a security logic that led to the minor being regarded first and foremost as a foreigner, while a child in danger had been covered by a protection measure regardless of his or her personal status and situation in terms of the rules on entry and residence.

62. The CNCDH also took the view that the State's shortcomings in the care of unaccompanied foreign minors in Calais had been numerous and systematic. First, court decisions had not been enforced, in particular placement decisions. Secondly, the reception facilities were inadequate, so that between 2014 and the end of 2016 several hundred unaccompanied foreign minors had been living in appalling conditions in the Calais shantytown, characterised by squalor, deprivation and insecurity. Thirdly, their protection against the risks of trafficking and exploitation was inadequate. Fourthly, their rights to education and health were insufficiently guaranteed: even in cases of emergency temporary shelter, schooling or training had rarely been put in place; extreme and inhumane living conditions on the heath were triggering or aggravating disease, as well as traumas linked to their chaotic migration history, conditions of anxiety and depression and impaired mental health due to exhaustion and survival needs. On this last point, the CNCDH added that the significant increase in population density in the northern part of the camp caused by the clearance of the southern zone in February 2015 had considerably increased the risk of contagion of infectious diseases. The State's shortcomings and failures were all the more unjustifiable as it had been more than twenty years since the Calais area had first been confronted with a large number of migrants wishing to travel to the United Kingdom, and therefore the situation was not exceptional.

(c) *Groupe d'information et de soutien des immigrés*

63. The non-governmental organisation *Groupe d'information et de soutien des immigrés* ("GISTI" – Migrant Information and Support Group) submitted that the material living conditions of unaccompanied minors in the heath area of Calais had led to systematic violations of Article 3 of the Convention, given their particular vulnerability. The chronic failure to provide them with care, before, during and after the clearance of the southern zone had increased their vulnerability, and the authorities had not enforced decisions in their favour, whereas particular attention should have been paid to them because of their age and their particularly insecure situation. It referred to the observations by the *Défenseur des droits* since 2015 and by UNICEF in 2016 regarding the poor living conditions of unaccompanied minors on the heath, the dangers to which they were exposed, the State's failure in its duty to protect and take care of them, the lack of legal assistance and the ineffectiveness of the procedures initiated

for family reunion. It further pointed out that in law, the fact that an individual was a minor took precedence over his or her status as an alien.

64. GISTI denounced the shortcomings of the French asylum procedure and the failure to provide information to minors in this connection, noting that this had been observed by the Immigration and Asylum Chamber of the UK's Upper Tribunal in its decision of 29 January 2016 (cited above) and by the Lille Administrative Court which, on 11 February 2016, had compelled the authorities to register applications from minors who had been refused by officials in charge of the relevant service.

65. It further noted that, as a result of the clearance of the Calais heath area, a large number of unaccompanied foreign minors had been left homeless or had been inadequately or inappropriately provided for, their number having been estimated at 1,932 in October 2016.

66. GISTI referred to the December 2016 report of the *Défenseur des droits* on the dismantling of the camps and the provision made for the displaced migrants. The report stated that the authorities had failed to take the necessary measures to protect unaccompanied minors, had allowed them to live in inhumane conditions and in situations of danger, and had not taken them to shelter or found placements for them prior to the clearance operation. The third party also noted that, in a decision of 26 June 2017, the urgent applications judge at the Lille Administrative Court had found that unaccompanied minors still present in the Calais area were very often exposed to inhuman and degrading treatment on account of the ineffectiveness of the identification and orientation measures put in place.

(d) *Cabane juridique*

67. The non-governmental organisation *Cabane juridique*, present in the heath area of Calais before and during the clearance operation, observed that in the years 2015 and 2016 the authorities had unduly decided not to introduce any arrangements in Calais for the care of unaccompanied foreign minors, in order to avoid a "pull factor", or set up any shelters, so that minors would be encouraged to move away from the city rather than remaining in contact with the people smugglers.

68. First of all, *Cabane juridique* deplored the inadequacies of the provisions for unaccompanied foreign minors from a quantitative standpoint. No accommodation had been provided in Calais and the facility set up to receive and support them was located in Saint-Omer, some 50 kilometres away, and as noted by the *Défenseur des droits* the outreach efforts in Calais were insufficient. While a temporary reception centre of 1,500 places had been set up in the northern part of the heath after the clearance of the southern part, it was not open to unaccompanied minors. According to the third party, during the entire existence of the shantytown, no specific reception and care facilities for unaccompanied minors had existed in Calais, with the result that they had been forced to remain in

makeshift shelters unless they pretended to be adults in order to be admitted to the temporary reception centre.

69. *Cabane juridique* further denounced the insufficient provision for unaccompanied foreign minors in Calais from a qualitative standpoint, observing in particular that inadequate consideration had been given to their migration plans. It noted, for example, that until the end of February 2016, it had been very difficult for those wishing to join a family member in the United Kingdom to obtain even the registration of an asylum application for the purpose of implementing the family reunion procedure under the Dublin III Regulation; while applications could subsequently be lodged, they had been processed very slowly. Moreover, throughout the shantytown's existence, the unaccompanied minors concerned had received very little information on how to travel legally to the United Kingdom. It was also because the authorities had not sufficiently taken into account the migration plans of unaccompanied minors that the accommodation system put in place had been shunned and misunderstood by the minors concerned and had thus been a failure.

70. *Cabane juridique* further pointed out that, without an accommodation solution, unaccompanied foreign minors on the heath had been exposed to violence. About twenty of them had reported to it that they had been victims of violence. Referring to the above-mentioned UNICEF report, it alluded to mental health problems, sexual abuse, physical violence and cases of prostitution, trafficking and exploitation. It also referred to a police report which showed that between 1 and 21 February 2016, 103 tear gas grenades had been thrown in Calais against the migrants during particularly violent police operations, giving rise to almost daily clashes.

71. The third party took the view that the State engaged its responsibility under Article 3 of the Convention whenever an unaccompanied minor was left homeless and exposed to risks of inhuman and degrading treatment as a result of the inadequacy of the protection system. It noted that, in its decision of 23 November 2015 (see paragraph 15 above), the *Conseil d'État* had found that the shortcomings of the authorities in the handling of minors in the Calais shantytown characterised a disregard for the principle of the dignity of the human person. It added that, even at the present time when the shantytown no longer existed, nothing was being done in the Calais area to guarantee prompt protection measures for unaccompanied foreign minors.

3. *The Court's assessment*

(a) **General considerations and principles**

72. Ill-treatment must attain a minimum level of severity if it is to fall within the scope of Article 3. The assessment of that severity is relative; it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age

and state of health of the victim. The Court has previously deemed treatment to be “degrading” because it was such as to arouse in the victims feelings of fear, anguish and inferiority capable of humiliating and debasing them (see, among many other authorities, *Rahimi*, cited above, § 59, and the judgments cited therein).

73. The obligation on High Contracting Parties under Article 1 of the Convention to secure to everyone within their jurisdiction the rights and freedoms defined in the Convention, taken in conjunction with Article 3, requires States to take measures designed to ensure that individuals within their jurisdiction are not subjected to torture or inhuman or degrading treatment. Those Articles, taken together, should enable effective protection to be provided, particularly to children and other vulnerable members of society, including reasonable measures to prevent ill-treatment of which the authorities have or ought to have knowledge (see, among many other authorities, *Rahimi*, cited above, §§ 60 and 62, and the judgments cited therein).

74. In cases concerning foreign minors, whether accompanied or unaccompanied, the child’s situation of extreme vulnerability is the decisive factor and it takes precedence over considerations relating to his or her status as an irregular migrant (see, for example, *N.T.P. and Others v. France*, no. 68862/13, § 44, 24 May 2018, and the judgments cited therein, and *Rahimi*, cited above, § 87). The Court thus emphasised in *Rahimi* (ibid.) that as an unaccompanied foreign minor without leave to remain the applicant fell into “the category of the most vulnerable individuals in society”, and that it had been incumbent on Greece to protect him and provide for him by taking appropriate measures in accordance with its positive obligations under Article 3.

75. The *Rahimi* case concerned the situation in Greece of an unaccompanied minor, an Afghan national aged 15. Having arrived alone on the island of Lesbos, he had been arrested and held there for two days. He had been released after being notified of a removal measure. Having reached Athens, the day after his release, he remained there for about a day, left to his own devices, until he was picked up by a non-governmental organisation. He had not yet filed an asylum application. The Court found a violation of Article 3 of the Convention, taking the view that, particularly on account of the authorities’ failure to monitor and provide for the applicant, the threshold of severity required for that Article to be engaged had been attained. It observed that the applicant had been left to his own devices after being released by the Greek authorities, basing its finding on reports about the lack of provision for unaccompanied foreign minors in Greece by the Council of Europe Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees (UNHCR), the Greek Ombudsman and the non-governmental organisations Amnesty International and Human Rights Watch, together with the testimony of non-

governmental organisations which had followed the applicant's case on Lesbos and in Athens. It noted in particular that his accommodation and his protection more generally had been provided for solely by local non-governmental organisations. It found that on account of the conduct of the authorities, which had been indifferent towards him, the applicant must have felt extremely anxious and worried, especially from the time of his release until he was looked after in Athens by a non-governmental organisation, which indicated that when he was admitted to the accommodation centre for minors he had trouble going to sleep without leaving the light on, had difficulty speaking and was very under-nourished.

(b) The present case

76. The Court notes the applicant's young age at the material time. He was 11 years old when he arrived in France in September 2015. He was 12 when the southern zone of the Calais heath was cleared (in February 2016) and when he left France (in the week of 20 March 2016).

77. The Court further observes that, in the applicant's submission, he settled on the Calais heath in September 2015. Moreover, his presence on the site is established by a video-recording of 21 February 2016, produced by him in support of his observations, and by the decisions of 19 and 22 February 2016 (see paragraphs 30-31 above). Further noting that the Government neither disputed the applicant's presence on the heath nor claimed that he arrived there later or left before 20 March 2016, the Court finds that he lived there for about six months.

78. The applicant has not described in detail the material conditions of his life on that site. He merely stated that, as he was not under the care of the authorities, he lived in a "hut" in the southern zone of the heath, and that after the demolition of this hut during the clearance operations he had moved to a "makeshift shelter" in the northern zone. He also stated that he had received support from non-governmental organisations.

79. That being said, the Court finds that the Government did not dispute the applicant's claim that he had not received any care from the authorities. This is borne out by the decision of the Youth Judge of the Boulogne-sur-Mer *tribunal de grande instance* of 22 February 2016 (see paragraph 31 above), and several of the documents mentioned in paragraph 39 above show that this was the case for the majority of unaccompanied foreign minors in the Calais area (see, for example, the "Follow-up opinion on the situation of migrants in Calais and its surroundings" by the CNCDH, § 95).

80. As to the living conditions on the heath, they are described by the urgent applications judge of the *Conseil d'État* in his decision of 23 November 2015 (see paragraph 15 above) and also by national and international bodies (paragraphs 7-13 and 39 above) and by non-governmental organisations.

81. It can be seen from those documents that the authorities only distributed 2,500 meals, once a day, whereas, according to the above-mentioned decision, 6,000 people were living on the heath in November 2015. They also show that most of those people lived in cramped conditions, in tents or makeshift shelters made of wooden boards and tarpaulins, and in very poor conditions of hygiene due to inadequate sanitation, drainage and waste collection facilities, and that they had limited access to safe drinking water and healthcare. The *Défenseur des droits* described the heath in particular as a “shantytown” and the living conditions of the majority of its occupants as “inhumane” (see paragraph 12 above). The urgent applications judge of the *Conseil d’État*, who used the term “shantytown” in his decision of 23 November 2015, found that provision for the basic needs of those concerned with regard to their hygiene and drinking water was “manifestly inadequate” and that this revealed “a deficiency of such a nature as to expose them, to a severe degree, to inhuman or degrading treatment, thus causing a serious and manifestly unlawful breach of a fundamental freedom” (see paragraph 15 above).

82. The Government indicated that, pursuant to the decision of the urgent applications judge, the heath site had been tidied up, ten additional water access points and fifty toilets had been installed, together with a roadway for emergency access and a waste collection system. The Court would observe, however, that having regard in particular to the number of people present on the heath, these measures could only bring about a relative improvement of the occupants’ living conditions (see, in particular, the above-cited “Follow-up opinion on the situation of migrants in Calais and its surroundings” by the CNCDH, § 36). The prefect’s order of 19 February 2016 for the clearance of the southern zone was indeed based on considerations relating to public health and human dignity (see paragraph 17 above).

83. Following the clearance of the southern zone many of its occupants settled in the northern zone of the heath, thus exacerbating the cramped living conditions there. The CNCDH thus reported in April 2016 that, in spite of the measures taken by the authorities “between 2,000 and 3,500 individuals continue[d] to live in the shantytown in dangerous and unhealthy makeshift shelters, in a state of total squalor”, and that “many of those makeshift installations [were] becoming permanent, in the absence of any alternative accommodation provided by the State” (document cited above, § 37).

84. In that context, unaccompanied foreign minors were, being left to their own devices, also exposed to various dangers such as the risk of physical violence, including sexual abuse (see, for example, the UNICEF report “Neither safe nor sound; investigation into unaccompanied children in northern France”; see also paragraphs 13, 55-56, 61, 63 and 69 above).

85. Accordingly, in the absence of protection by the authorities and in spite of the support he was able to find from non-governmental organisations on the heath, the applicant spent six months in an environment that was manifestly unsuited to his status as a child, characterised in particular by unhealthy, precarious and unsafe conditions. It was precisely on the grounds of the danger in which he found himself, and the fact that the danger had been exacerbated by the clearance of the southern zone of the heath, that the Youth Judge of the Boulogne-sur-Mer *tribunal de grande instance* ordered on 22 February 2016 that he be placed in the care of the child welfare services (see paragraph 31 above).

86. In the Court's view, while already extremely problematic before the clearance of the southern zone, the failure to provide the applicant with care was even more so in the aftermath of that operation, owing to the demolition of the hut in which he had been living and the general deterioration of living conditions on the site that the operation had caused. The applicant's statements on the latter point (see paragraph 32 above) are consistent in particular with the information reported by the *Défenseur des droits* (see paragraph 58 above), by the CNCDH (see paragraph 62 above) and by the non-governmental organisation GISTI (see paragraph 65 above).

87. The Government submitted that every effort had been made by the authorities to take charge of the applicant in accordance with the decision of 22 February 2016, but that the applicant had not turned up at the home designated to receive him. They added that neither his *ad hoc* guardian, nor the associations that had supported him, nor his lawyer, had taken him there. They indicated that the child welfare service had then tried unsuccessfully to trace him by contacting the association to which the State had entrusted the enumeration of unaccompanied minors. In their submission, this showed that the applicant was not seeking long-term shelter and care in France (see paragraphs 53-54 above).

88. In the Court's view, the fact that it was necessary to wait for the Youth Judge to order the applicant's placement before his case could actually be considered by the competent authorities raises in itself a question as to the respondent State's compliance, in respect of the applicant, with its obligation to protect and take care of unaccompanied foreign minors under Article 3 of the Convention (see paragraph 74 above). It follows that, until that point, the competent authorities had not even identified the applicant for that purpose, even though he had been on the heath for several months and his young age should have particularly attracted their attention.

89. In this connection, it appears that, as complained of by the applicant (see paragraph 51 above) and as noted in particular by the Special Representative of the Council of Europe Secretary General on Migration and Refugees (see the "Report of the fact-finding mission on the situation of migrants and refugees in Calais and Grande-Synthe, France", cited in paragraph 39 above), the steps taken to identify unaccompanied foreign

minors on the heath were insufficient. This shortcoming explains, at least in part, the difficulty encountered by the child welfare service in tracing the applicant in order to enforce the 22 February 2016 decision.

90. With regard to the Government's argument that the failure to comply with that decision could be attributed to the applicant's lack of cooperation, it appears from the file that unaccompanied foreign minors on the heath did not always go along with the proposed care measures (see, for example, the recommendation of the *Défenseur des droits* of 20 April 2016, cited above; see also paragraph 58 above). However, the Court notes that, in the opinion of the *Défenseur des droits* in particular, the reluctance of unaccompanied minors on the heath could be explained by the fact that the shelter system was unsuited to their situation, in particular because of the distance of the facilities; it further observes that, according to the *Défenseur des droits*, their reluctance could not, in any event, justify the inaction of the authorities, which had an obligation to ensure their protection and therefore to find the best means to fulfil it, taking into account the specificities of the minors' situation (*ibid.*). In the present case the applicant stated that he himself was in favour of an alternative accommodation solution. The Court would point out that he was a child of only twelve years old who, moreover, probably had only a limited knowledge of the French language. It is not therefore persuaded by the Government's assertion that it was for the applicant himself to take the necessary steps to ensure that his protection measures were implemented. Nor does it consider that the non-governmental organisations which had provided support to the applicant on a voluntary basis, the lawyer who had represented him in the proceedings leading to the decision of 22 February 2016, and the *ad hoc* guardian who had been appointed on 19 February 2016, could be reproached for not having taken him to the home designated by the authorities for his placement, since this was clearly the responsibility of the State.

91. The Court is aware of the complexity of the task facing the national authorities, in particular with regard to the number of persons present on the heath at the relevant time, together with the difficulty of identifying unaccompanied minors among them and of establishing and implementing arrangements adapted to their situation when they were not always seeking protection. On the latter point, it notes the ambiguity of the applicant's conduct: although he applied to the Youth Judge for his provisional placement, his intention was not to remain in France but to leave the country and travel to the United Kingdom. The Court further notes that the national authorities did not remain totally inactive since they took steps to enforce the decision of 22 February 2016.

92. In view of the foregoing, however, the Court is not persuaded that the authorities, which ultimately failed to implement the decision of the Youth Judge of the Boulogne-sur-Mer *tribunal de grande instance* of 22 February 2016 ordering the applicant's provisional placement, did all

that could reasonably be expected of them to fulfil the obligation to provide care and protection to the applicant, such obligation being imposed on the respondent State as he was an unaccompanied foreign unaccompanied minor and irregular migrant, at the age of twelve, and therefore an individual falling with the category of the most vulnerable individuals in society (see paragraph 74 above).

93. The applicant thus spent several months in the shantytown of the Calais heath, in an environment totally unsuited to his status as a child, whether in terms of safety, housing, hygiene or access to food and care, and in unacceptably precarious conditions in view of his young age.

94. The Court is of the view that these particularly serious circumstances and the failure to enforce the decision of the Youth Judge ordering measures for the applicant's protection, when taken together, constitute a breach of the obligations imposed on the respondent State, thus attaining the threshold of severity required for Article 3 of the Convention to be engaged. It thus concludes that the applicant found himself, as a result of the failings of the French authorities, in a situation which contravened that provision and which it considers to have constituted degrading treatment.

95. Accordingly, there has been a violation of Article 3 of the Convention.

II. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND ARTICLE 1 OF PROTOCOL NO. 1

96. The applicant complained of the destruction of his shelter, which was his home, without sufficient notice or any offer of alternative accommodation and protection, even though he was an unaccompanied minor. He relied on Article 8 of the Convention and Article 1 of Protocol No. 1, which read as follows:

Article 8

“1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.”

Article 1 of Protocol No. 1

“Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.”

97. Having regard to the facts of the case, to the parties’ submissions and to the conclusion it has reached under Article 3 of the Convention, the Court takes the view that it has examined the main legal question raised by the present application and that it does not need to rule separately on the other complaints (see, in particular, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

III. APPLICATION OF ARTICLE 41 OF THE CONVENTION

98. Article 41 of the Convention provides:

“If the Court finds that there has been a violation of the Convention or the Protocols thereto, and if the internal law of the High Contracting Party concerned allows only partial reparation to be made, the Court shall, if necessary, afford just satisfaction to the injured party.”

A. Damage

99. The applicant claimed 29,000 euros (EUR) in respect of the pecuniary and non-pecuniary damage that he alleged to have sustained as a result of the failure to take him into care and the demolition of his shelter.

100. The Government submitted that the applicant’s claim should be rejected. They took the view, first, that the alleged pecuniary damage had not been substantiated and that the non-pecuniary damage claimed had been the result of the applicant’s own conduct, as he had eschewed the alternative accommodation offered to him. They added that, should the Court nevertheless find the pecuniary damage to be substantiated, the finding of a violation of the Convention would in itself constitute sufficient just satisfaction.

101. The Court does not discern any causal link between the violation of Article 3 that it has found and the pecuniary damage alleged; it therefore rejects this claim. However, it finds it appropriate to award the applicant EUR 15,000 in respect of non-pecuniary damage.

B. Costs and expenses

102. The applicant also claimed EUR 1,000 for the costs and expenses incurred in the proceedings before the Court.

103. The Government noted that the applicant had failed to adduce any documents to substantiate the reality and amount of the costs that he was claiming. They inferred that no award should be made to him on this basis.

104. According to the Court's case-law, an applicant is entitled to the reimbursement of costs and expenses only in so far as it has been shown that these have been actually and necessarily incurred and are reasonable as to quantum. In the present case, noting that the applicant did not provide any supporting documents, the Court rejects the entire claim for costs and expenses.

C. Default interest

105. The Court considers it appropriate that the default interest rate should be based on the marginal lending rate of the European Central Bank, to which should be added three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Declares* the application admissible as to the complaint under Article 3 of the Convention;
2. *Holds* that there has been a violation of Article 3 of the Convention;
3. *Holds* that there is no need to examine the admissibility or merits of the complaints under Article 8 of the Convention and Article 1 of Protocol No. 1 to the Convention;
4. *Holds*
 - (a) that the respondent State is to pay the applicant, within three months from the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, EUR 15,000 (fifteen thousand euros), plus any tax that may be chargeable, in respect of non-pecuniary damage;
 - (b) that from the expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amount at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
5. *Dismisses* the remainder of the applicant claim for just satisfaction.

Done in French, and notified in writing on 28 February 2019, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Milan Blaško
Deputy Registrar

Angelika Nußberger
President