

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

SECOND SECTION

CASE OF CAMARA v. BELGIUM

(Application no. 49255/22)

JUDGMENT

Art 6 (civil) • Right to a court • National authorities' refusal to enforce immediately enforceable decision requiring State to provide accommodation and material support to applicant for international protection • Art 6 applicable • Applicant accommodated only after interim measure indicated by Court • Difficult situation for respondent State in view of increase in number of applications for international protection and insufficient capacity to receive asylum-seekers • Operation of national court and of Court heavily overburdened on account of systemic failure of national authorities to enforce final judicial decisions concerning reception of asylum-seekers
Art 46 • General measures • Respondent State required to address systemic problem affecting national authorities' ability to comply with domestic law on asylum-seekers' right to accommodation, including final court decisions ordering such compliance

STRASBOURG

18 July 2023

FINAL

18/10/2023

This judgment became final in the circumstances set out in Article 44 § 2 of the Convention. It may be subject to editorial revision.



In the case of Camara v. Belgium,

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

Arnfinn Bårdsen*, President*,
Jovan Ilievski,
Pauliine Koskelo,
Saadet Yüksel,
Lorraine Schembri Orland,
Frédéric Krenc,
Davor Derenčinović*, judges*,
and Hasan Bakırcı, *Section Registrar,*

Having regard to:

the application (no. 49255/22) against the Kingdom of Belgium lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Guinean national, Mr Abdoulaye Camara ("the applicant"), on 20 October 2022;

the decision to give notice to the Belgian Government ("the Government") of the complaints concerning Articles 3, 6 § 1, 8 and 13 and to declare inadmissible the remainder of the application;

the observations submitted by the respondent Government and the observations in reply submitted by the applicant;

the comments submitted by the French-speaking Bar Council of Brussels, who were granted leave to intervene by the President of the Section;

Having deliberated in private on 20 June 2023,

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

INTRODUCTION

1. The case concerns an applicant for international protection who had no material support or accommodation at the relevant time. At his request, the Brussels French-Language Employment Tribunal (hereinafter also referred to as "the Brussels Employment Tribunal" or "the Employment Tribunal") ordered the Belgian State to grant him material support and provide him with accommodation in accordance with its legal obligations. The applicant complained that he had been forced to live in the street for several months in inhuman and degrading conditions that were inconsistent with Article 3 of the Convention. Relying on Article 6 § 1 of the Convention, he complained that the decision delivered by the Employment Tribunal had not been enforced. Under Article 8, read in conjunction with Article 13 of the Convention, he further complained that his right to respect for his private life had been infringed and that no effective remedy had been available to him in respect of that complaint.

THE FACTS

2. The applicant was born in 2001 and lives in Koekerlberg. He was represented by Mr M. Lys, a lawyer practising in Saint-Gilles.

3. The Government were represented by their Agent, Ms I. Niedlispacher, of the Federal Justice Department.

I. INTERNATIONAL PROTECTION PROCEEDINGS

4. The applicant arrived in Belgium on 12 July 2022.

5. On 15 July 2022 he went to the initial processing centre for applicants for international protection in Belgium (see paragraph 57 below), where he filed an application for international protection. He was issued with a certificate that indicated that he was to go to the Aliens Office on 2 September 2022 (see paragraph 25 below).

6. Following the interview with the Aliens Office, the applicant's file was forwarded to the Office of the Commissioner General for Refugees and Stateless Persons (see paragraph 25 below), which interviewed him on 20 March 2023.

7. The applicant is awaiting a decision concerning his application.

II. RECEPTION AND RELATED PROCEEDINGS

8. On 15 July 2022, in connection with his asylum application, the applicant went to the Federal Agency for the Reception of Asylum-Seekers ("Fedasil") with a view to obtaining a place in the reception network (see paragraph 29 below). He was informed that he could not be accommodated as the network had reached saturation point.

9. The Government submitted that Fedasil delivered an information document to applicants upon registration which was drafted in several languages. This document, which the Government added to the case file, explained that the network had reached saturation point and that priority was being given to the most vulnerable groups. The applicant claimed that he had received no such a document.

10. The applicant's representative sent a letter to Fedasil on 19 July 2022, stating as follows:

> "This refusal to accommodate my client despite the fact that his status as an applicant for international protection is undeniable and that Belgium never delivered an Annex 26*quater* to him is completely unlawful and is in breach of the Reception Act of 12 January 2007 and of Belgium's international undertakings. My client has no network to rely on in Belgium, such that he is currently reduced to living in the street. Needless to say, this situation is unbearable for him. As there is no doubt as to my client's status as an applicant for international protection, kindly schedule a meeting as soon as possible in order to grant him access to the reception network – access to which he is entitled, in particular, under Article 3 of the [aforementioned] Act. Should you fail to

> reply to this email within 24 hours, I will have no choice but to lodge an *ex parte* application with the Brussels Employment Tribunal."

11. The Government submitted that Fedasil had placed the applicant on a waiting list. In support of this submission, they provided an excerpt from a waiting list mentioning two unnamed Guinean nationals born in 2001 and the fact that an email had been sent on 19 July 2022. The applicant claimed that he had not been informed of his placement on a waiting list.

12. On 20 July 2022 the applicant applied *ex parte* to the President of the Brussels Employment Tribunal (see paragraphs 37-38 below) alleging the imminent risk of serious and irreparable harm to his human dignity on account of the fact that he was without accommodation and utterly destitute. He asked that Fedasil be ordered to fulfil its obligations pursuant to the Law of 12 January 2007 on the reception of asylum-seekers and other categories of foreign nationals ("the Reception Act") (see paragraphs 27-31 below).

13. On 22 July 2022 the President of the Employment Tribunal ordered Fedasil to secure accommodation for the applicant in a reception centre, or even a hotel or any other appropriate establishment if there was no room available, and to provide him with material support as set out in the Reception Act, on pain of a fine of 1000 euros (EUR) for each night he was forced to spend outside the reception network or any other form of emergency accommodation. The operative part of the decision clarified that it was immediately enforceable and would remain so until the end of the asylum proceedings. Moreover, the decision was not conditional on the initiation of any proceedings on the merits. The decision also granted the applicant legal aid (*assistance judiciaire*) such that a bailiff was to provide his or her services free of charge with a view to its service and enforcement.

14. Fedasil was notified of the decision by a bailiff on 29 July 2022.

15. Fedasil did not lodge a third-party appeal. The applicant and the Government agreed that under Belgian law (see paragraph 41 below) the decision had become final on 29 August 2022.

16. On 12 October 2022 the applicant's representative had the decision served, with an order to comply with the writ of execution and a final notice to pay.

17. On 20 October 2022 the applicant applied to the Court for an interim measure under Rule 39 of its Rules of Court indicating to the Belgian Government to provide him urgently with accommodation and support to meet his basic needs, and thus that the decision delivered by the Employment Tribunal should be enforced.

18. On 31 October 2022 the Court granted the measure for the duration of the proceedings before it.

19. On 3 November 2022 Fedasil invited the applicant to go to the initial processing centre for applicants for international protection so that a place might be assigned to him. On 4 November 2022 the Evere Red Cross centre was designated as the applicant's reception facility. He took up residence

there that same day. He was subsequently transferred to the Koekelberg Samusocial Reception Centre, where he currently resides.

20. On 25 November 2022 the applicant sent the Court his application form in accordance with Rule 47 of its Rules of Court.

III. THE APPLICANT'S LIVING CONDITIONS FROM 15 JULY 2022 TO 4 NOVEMBER 2022

21. The applicant explained that, during the 112 days between the filing of his asylum application on 15 July 2022 and his being assigned a place in a reception centre on 4 November 2022, he had slept on a makeshift mattress provided by associations or on cardboard boxes after the mattress had disappeared from the spot where he had left it. He recounted having slept at the Nord and Midi railway stations, or in the vicinity when police had not allowed the homeless to remain in the station at night. He had also slept in parks the names of which he did not know. He explained that he had always tried to stay with a group to avoid being alone. While he slept, his bag had been stolen, which contained documents from Guinea that he had intended to use as part of his application for international protection.

22. The applicant submitted that he had had access to a shower on average once a week via the Hub Humanitaire (see paragraph 75 below). As to toilets, he said he had been able to use public toilets in the railway stations from time to time. He recounted that the security guards at the stations had often blocked access to them.

23. The applicant explained that he had been able to feed himself thanks to the actions of associations. His meals had most often been delivered by associations of the Hub Humanitaire (see paragraphs 64-67 below). He stated that he had been able to receive a meal once a day, on average, but not every day. He recounted that some days the queue had been too long to obtain such meals and he had had to eat what he could find in dust bins. He submitted that he had always remained hungry.

24. The applicant claimed to have suffered from the rain and cold because the weather conditions in Brussels had deteriorated in October. That month had been very wet and the temperature had regularly dropped below 10 degrees at night.

RELEVANT LEGAL FRAMEWORK AND PRACTICE

I. BELGIAN LAW

A. Asylum procedure

25. The recognition of refugee status or of eligibility for subsidiary protection is governed by sections 48 et seq. of the Law of 15 December 1980

on the entry, residence, settlement and removal of aliens. The procedure is divided into two stages. Applications are filed with and registered by the Aliens Office. In practice, filing and registration are carried out in a place designated as an initial processing centre by the Secretary of State for Asylum and Migration (see paragraph 57 below). When the Aliens Office determines that Belgium is responsible for examining an application, it forwards that application to the Office of the Commissioner General for Refugees and Stateless Persons, which verifies its admissibility and merits, subject to subsequent review covering all aspects of the case by the Aliens Appeals Board.

B. Reception of applicants for international protection

26. Article 23, point 3, of the Belgian Constitution secures to everyone "the right to live his or her life in a manner compatible with human dignity", which includes the right to decent accommodation.

27. The reception of applicants for international protection is governed by the Reception Act of 12 January 2007, which transposes Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

1. Material support

28. Section 3 of the Reception Act provides that asylum-seekers have the right to be received in such a way as to be able to live their life in a manner compatible with human dignity.

29. Section 6 of the Reception Act places the burden for providing material support on Fedasil and its partners from the moment the application for international protection is filed. As a rule, such material support is due for the duration of the asylum procedure.

(a) Fedasil

30. Fedasil is a public-interest agency that is financed almost exclusively by a federal grant and is placed under the responsibility of the Secretary of State for Asylum and Migration.

31. In accordance with the Reception Act (section 10), Fedasil is responsible for assigning a place in the reception network ("mandatory registration point") to applicants for international protection. It designates the reception facility in which the applicant for international protection is to be accommodated (see sections 11(1) and 16 of the Reception Act).

(b) Components of material support

32. Material support includes accommodation, meals, clothing, medical, social and psychological assistance and a daily allowance. It also includes access to legal aid, services such as interpreting and training, and a voluntary return programme (see section 2(6) of the Reception Act).

33. Applicants for international protection are authorised to engage in professional activities after a period of four months from the date on which they filed their application for international protection (see Article 18, point 3, of the Royal Decree of 2 September 2018 implementing the Law of 9 May 2018 on the occupation of foreign nationals having a particular residence status).

2. Medical assistance

34. Irrespective of whether they live in a reception facility, applicants for international protection are eligible for medical assistance such that they may "live [their] life in a manner compatible with human dignity" (see sections 23-25 of the Reception Act).

3. Legal aid

35. Applicants for international protection are entitled to legal aid (see Articles 508-508/23 of the Judicial Code). Supplementary legal aid, including representation, is provided exclusively by lawyers.

C. Legal remedies in the event of reception disputes

1. Judicial Code

36. Under Article 580, point 8 (f), of the Judicial Code, challenges to the application of the Reception Act are heard by the employment tribunals. Under Article 628, point 14, of the Judicial Code, jurisdiction falls to the local tribunal for the socially insured person's permanent residence or for the place where he or she was most recently living or, failing that, for the place of his or her most recent occupation in Belgium.

37. There are several ways to apply to the employment tribunal, in particular by way of an urgent application or, if absolutely necessary, by *ex parte* application (see Article 584, paragraph 3, of the Judicial Code), in which case the application is made directly to the president.

38. *Ex parte* proceedings are regulated by Articles 1025 et seq. of the Judicial Code. These are unilateral proceedings, with no respondent, in which the relevant court examines the merits of the application based solely on material provided by the claimant.

39. The president to whom an *ex parte* application has been made rules on an interim basis by delivering a reasoned decision. That decision is

immediately enforceable, notwithstanding any appeal, and without payment of security, unless the judge decides otherwise.

40. The decision is served on the claimant by judicial recorded delivery within three days.

41. Any third party to which the decision is detrimental may challenge it by means of a third-party appeal. A third-party appeal is the remedy available to a third party by which to challenge – in adversarial proceedings – a measure granted *ex parte* and, where appropriate, to have the decision withdrawn. The third-party appeal must be lodged within a month from the notification of the decision to the third party by applying to the court which delivered it (see Article 1034 of the Judicial Code).

2. Case-law

42. In the context of the reception situation at issue in the present case (see paragraphs 50-83 below), the Association of French-speaking and German-speaking Bars and nine associations brought urgent proceedings against the Belgian State and Fedasil on 18 November 2021. In a decision delivered on 19 January 2022 the President of the Brussels French-Language Court of Frist Instance ordered Fedasil to grant any applicant for international protection material support unconditionally and immediately from the moment he or she filed an application. That decision was accompanied by a coercive fine of EUR 5,000 for every day that at least one person having filed his or her application was left without accommodation. In the face of that decision's non-enforcement, the same claimants lodged a second urgent application on 9 February 2022 with a view to reinforcing the decision's binding force. The fresh decision delivered on 25 March 2022 increased the fine to EUR 10,000 per day.

43. The Belgian State and Fedasil lodged an appeal against the two decisions. To justify the situation to the Brussels Court of Appeal they put forward the considerations listed in paragraph 49 below. In a judgment of 31 October 2022 the Court of Appeal, ruling in urgent proceedings, dismissed their appeal because of the obvious and wilful failure to enforce the decision of 19 January 2022.

44. In the meantime, on 13 June 2022, the claimants had initiated a procedure for the attachment of Fedasil's assets as a result of its failure to pay the coercive fines ordered in the decisions of 19 January and 25 March 2022. Fedasil had opposed that procedure. In a judgment of 30 January 2023 the judge dealing with the attachment of assets dismissed Fedasil's opposition to the attachment measure. The judge upheld the amount sought in fines but ordered that the attachment of certain unseizable assets be lifted.

45. Meanwhile, on 19 July 2022, since the decision of 19 January 2022 had been conditional on the initiation of proceedings on the merits within six months, those same claimants had brought substantive proceedings against the Belgian State and Fedasil in the Brussels Court of First Instance,

requesting, in particular, that the defendants be ordered to implement the necessary structural measures.

D. Civil proceedings for damages

46. Article 1382 of the Civil Code provides that any act committed by a person that causes damage to another will render the person through whose fault the damage was caused liable to make reparation for it. It is possible to bring proceedings against the State for compensation on that ground. The State is subject to the ordinary rules on liability in tort. Such proceedings must be brought in the ordinary courts and are conducted in accordance with ordinary civil procedure.

47. The Government produced three decisions by the Liège Employment Tribunal (Namur Division) delivered on 30 March 2023 ordering Fedasil to assign a place in the reception network to applicants for international protection who had filed their applications between 9 November and 9 December 2022. These decisions had also granted the claimants' request that Fedasil and the Belgian State be held jointly and severally liable under Article 1382 of the Civil Code to pay damages equal to the basic living allowance (*revenu d'intégration sociale*) at the individual rate for the period from the time of application for international protection until a place in the reception network had been assigned, and to pay EUR 2,500 as compensation for the non-pecuniary damage sustained, plus costs and expenses. In a fourth judgment of 30 March 2023, also submitted to the Court by the Government, the Liège Employment Tribunal had found that it had become pointless to order Fedasil to provide accommodation since the claimant had been accommodated in the meantime. That same judgment had required the Belgian State and Fedasil to pay damages.

48. The Government produced the Belgian State's appeal against one of these decisions. The State had called into question the jurisdiction *ratione materiae* of the employment tribunals to decide on damages and had submitted that the compensation claim was ill-founded in any event, since the Belgian State – which was dealing with a *force majeure* event – had not committed an act of negligence. Moreover, the applicant had failed to demonstrate that he had sustained any damage that was causally connected to the alleged negligence.

49. In support of its submission, the Belgian State had adduced the following circumstances to explain the saturation of the reception network:

(1) Greater migratory pressure (see paragraphs 51-55 below);

(2) Extraordinary floods in the summer of 2021 having made 1,000 places in the reception network unusable;

(3) Logistical issues affecting the opening of reception facilities and a shortage of specialised reception staff;

(4) A lack of collaboration on the part of local authorities, who had taken measures to restrict the number of people who could be accommodated in the reception centres and to prevent the opening of new centres;

(5) The length of asylum proceedings and, more specifically, the fact that the Office of the Commissioner General for Refugees and Stateless Persons had suspended the examination of asylum applications by Afghan nationals in 2021 (see paragraph 52 below).

II. BACKGROUND ON THE RECEPTION OF APPLICANTS FOR INTERNATIONAL PROTECTION IN BELGIUM

50. The background to the present case stretches back to September 2021, when Fedasil announced that the number of applications for international protection (see paragraphs 51-56 below) had exceeded the capacity of its network's reception facilities (see paragraphs 58-60 below) and that the network had reached saturation point, with a 96 % occupancy rate.

A. The number of applications for international protection

51. According to official data from the Office of the Commissioner General for Refugees and Stateless Persons, between 2015 and 2022, the number of applications for international protection registered in Belgium every year, all applications combined, ranged anywhere from 44,760 in 2015, during the war in Syria, to 16,910 in 2020, during the pandemic. Over the previous ten years (2012-2022), the average number of applications for international protection registered in Belgium each year was 26,047.

52. There were 25,971 applications for international protection in 2021, 30% of which were made by Afghan nationals. In August 2021 the Office of the Commissioner General for Refugees and Stateless Persons suspended the processing of applications filed by these applicants until March 2022. The result of this suspension was to prolong the time needed to process the affected applicants' eligibility for reception support.

53. In 2022 the number of applications for international protection registered in Belgium was 36,871, including 32,141 first-time applications. These figures – which were more than 18% lower than during the 2015 crisis – were up more than 42% on 2021.

54. An average of 3,073 applicants per month was recorded in 2022, compared to 2,164 in 2021. More than 4,000 applicants were registered in September and again in October 2022. That number had fallen back down to some 2,500 to 3,000 applicants by the start of 2023.

55. In 2022 the Office of the Commissioner General for Refugees and Stateless Persons took 20,514 asylum decisions, which represented an increase of 10.8% compared to 2021. On 31 December 2022 there was a backlog of 16,415 files for which the Commissioner General's Office had yet

to take a decision. In July/August 2022 the average time taken to examine an asylum application was one year. As a result of special measures taken to increase productivity, in particular recruitment measures, the number of decisions taken from September to December 2022 rose by 25%.

56. From 10 March 2022 to 31 December 2022 Belgium took in 65,000 Ukrainian nationals, including 762 who applied for international protection. Almost all of them were granted temporary protection as soon as they arrived in Belgium and were given temporary protection certificates which entitled them to residence and work permits, welfare assistance from the social welfare offices (*centres publics d'action sociale*) equal to the basic living allowance and health and disability insurance. Since these Ukrainian nationals were not applicants for international protection, they did not receive material support in the form of accommodation in the network managed at the federal level by Fedasil. They received support from the social welfare offices (welfare assistance) and the regional authorities (accommodation).

B. The Fedasil reception network

57. The initial processing centre for applicants for international protection is located in Brussels and is managed directly by Fedasil. This is a single reception point where applications for international protection are registered by the Aliens Office. Under normal circumstances, once the application for international protection has been registered, the applicant meets with Fedasil, which assigns him or her a place in the reception network (see paragraph 31 above).

58. The reception network is made up of 97 collective facilities, 35 of which are managed by Fedasil, while the others are managed by partner organisations that receive special public subsidies (the Red Cross, Samusocial, Caritas International and private operators).

59. Fedasil and its partners could accommodate a total of 28,180 people on 1 January 2021; 29,446 on 1 January 2022; and 33,884 on 1 January 2023. From 31 August 2021 to 30 January 2023, 6,665 places were created. By the latter date, the reception network had grown to 34,199 places.

60. As at 31 January 2023 Fedasil had 2,729 staff members, which was double the staff it had had on 1 January 2019.

C. Fedasil's placement policy

61. On 15 September 2021 Fedasil announced that its reception network had reached saturation point, with a 96% occupancy rate, and capped the number of people authorised to enter the initial processing centre.

62. When registering their applications, applicants for international protection were given a document explaining that the network had reached saturation point and that priority was being given to the most vulnerable

groups, namely unaccompanied minors, families and the sick. The Government added a copy of this document to the file.

63. From January 2022 Fedasil implemented a waiting list for unaccompanied men who were not deemed vulnerable. Initially, the first to be cleared from the list were applicants for international protection who could produce a decision delivered by the Employment Tribunal (see paragraph 80 below). By June 2022 Fedasil was reduced to accommodating only those applicants for international protection who had had Fedasil notified of the decision concerning them. From September 2022 Fedasil appeared to have further restricted its assignment of places by giving priority to applicants who had sought an interim measure from the Court (see paragraph 85 below). It can be inferred from the applicant's observations that, from 31 October 2022, only those applicants in respect of whom an interim measure had been granted by the Court could be cleared from the waiting list. In their observations, the Government submitted that, in February 2023, there was a waiting time of at least three weeks between the indication of an interim measure by the Court and actually being assigned a place in the reception network.

D. Associative support schemes

1. The Hub Humanitaire

64. Since 2018 there has been a structure, the Hub Humanitaire, which has its premises in Brussels and is run by several associations that provide free basic services for the homeless, except accommodation for men. The consortium of associations includes Médecins du Monde, Médecins sans Frontières, the Belgian Red Cross, SOS Jeunes-Quartier Libre AMO and Plateforme Citoyenne BelRefugees. These associations handle operations on the Hub's premises with their volunteer staff, to the extent of the means at their disposal.

65. The management, operating and human-resources expenses (for sixty employees) of the Hub Humanitaire building are subsidised by the Brussels-Capital Region and the Brussels-Capital Common Community Commission.

66. The services provided at the Hub Humanitaire include free meal distribution, registration on the waiting list for men in urgent need of accommodation, medical consultations, distribution of free clothing and hygiene products and welfare and legal advice.

67. Once Fedasil was no longer able to cater for new arrivals, applicants for international protection increasingly came to rely on the Hub Humanitaire. In 2022, 66% of those who had recourse to the Hub Humanitaire reported that they were migrants.

68. The Hub Humanitaire found itself overwhelmed by the demand for support from applicants for international protection and, in September 2022, was forced to close down several days a week for want of means and staff.

2. Other support schemes

69. Samusocial provides emergency assistance for the homeless (accommodation, mobile support teams, medical care and psycho-social assistance). They are mainly financed by public funds. Like the Hub Humanitaire, Samusocial were relied on by applicants for international protection once Fedasil was no longer able to assume all of its reception responsibilities.

70. The Plateforme Citoyenne BelRefugees, which is subsidised by public funds and private donations, coordinates citizen-led initiatives to support applicants for international protection (reception, information, training and integration).

E. Living conditions in practice

71. In reply to the Court's question on this point when the case was communicated, the parties to the present case and the third-party intervener, the French-speaking Bar Council of Brussels, described the situation. In support of their accounts, they produced numerous newspaper articles published throughout 2022 that described the material living conditions of applicants for international protection lacking accommodation. That information was corroborated by the descriptions and evidence given by applicants, the respondent Government and associations on the ground in the context of requests for interim measures (see paragraphs 85-92 below).

1. Accommodation

72. The vast majority of applicants for international protection to whom Fedasil refused material support, mainly unaccompanied men – but also unaccompanied minors and families as of October 2022 – were unable to find accommodation through the associative support schemes mentioned above (see paragraphs 64 and 69-70 above). They therefore unlawfully occupied public areas and set up makeshift encampments using tents, cardboard boxes and mattresses provided by citizens or associations, in particular in the parks along the Brussels canal and in the Midi and Nord railway stations. When the rain and the cold came in October, they also squatted in disused public buildings.

2. Food distribution

73. Food distribution in Brussels is mainly managed by the Belgium Red Cross through the Hub Humanitaire (see paragraphs 64 and 66 above). Meals are brought directly by associations and citizen groups. One thousand meals were distributed per day from January to August 2022, and 1,300 from September to December.

74. Drinking water fountains have been installed in various places in Brussels.

3. Sanitary facilities

75. One-euro shower tickets are available at the Hub Humanitaire (see paragraphs 64 and 66 above). This enabled 850 showers to be taken from July to September 2022, and 600 from September to November 2022.

76. The DoucheFLUX system is also in place, which provides the homeless with access to showers (20 shower-stalls open six days a week), washing machines, psycho-social activities, etc.

77. The Court has not been provided with specific information on the arrangements for access to toilets. Statements from applicants requesting interim measures and from the applicant in the present case only showed that they attempted, more or less successfully, to use public toilets in railway stations and that in certain places where makeshift encampments had formed public toilets or urinals were installed by associations.

4. Medical assistance

78. The most wide-spread health issue among applicants for international protection who lacked accommodation, in addition to diphtheria and tuberculosis, was a scabies epidemic that broke out as of the summer of 2022.

79. Thanks to the intervention, in particular, of Médecins sans frontières and Médecins du Monde, medical consultations were organised at the Hub Humanitaire (see paragraphs 64 and 66 above) in October 2022. Médecins sans frontières also opened a temporary medical service to ensure that the homeless received medical treatment. Since January 2023 that service has been funded by the public authorities.

F. Judgments of the employment tribunals

80. In addition to the aforementioned collective proceedings (see paragraphs 42-43 above), thousands of unaccommodated applicants for international protection, like the applicant, applied *ex parte* to the President of the Brussels French-Language Employment Tribunal to have Fedasil ordered to fulfil its legal obligations to them (see paragraphs 37-41 above). Over 90% of those applications were declared well-founded.

81. By 1 March 2023 Fedasil had thus been ordered more than 7,000 times to secure accommodation for that many applicants for international protection. The decisions ordered Fedasil to accommodate the individuals concerned in a reception centre, or even a hotel or any other appropriate establishment if there was no room available, and to give them material support, on pain of a coercive fine for each night they were forced to spend outside the reception network or any other form of emergency

accommodation. Fedasil had almost never challenged the orders delivered by the tribunal by way of a third-party appeal. To date, those fines have yet to be paid.

82. On 24 May 2022 the Brussels Employment Tribunal published a press release pointing out that, under normal circumstances, such cases were limited to a few dozen applications per year.

83. On 27 October 2022 the urgent-applications division of the Brussels French-Language Employment Tribunal handed down five decisions against Fedasil. In a judgment of 28 March 2023 the Brussels Employment Appeal Tribunal upheld those decisions, holding, in particular:

> "1. Fedasil never disputed the merits of the respondent's claim under [the Reception Act]. It did not in any way challenge the urgent application to the President of the Employment Tribunal and did not appeal against the decision ordering it to provide the respondent with accommodation and support in accordance with that Act. Even in its statement of appeal, Fedasil continues to acknowledge the respondent's entitlement to material support.
>
> Fedasil has nevertheless refrained from granting the respondent the accommodation and support that it does not dispute he is due, thereby forcing him to take legal action to have Fedasil ordered, on pain of a coercive fine, to grant them to him in fact.
>
> In so doing, Fedasil has forced the respondent to take legal action despite there being no serious or reasonable grounds to justify court proceedings, since the right claimed before the courts is not disputed.
>
> 2. In accordance with the principles set forth above, it must now be ascertained whether Fedasil's conduct was manifestly negligent.
>
> The conduct of an administrative authority that breaches a legal rule requiring it to act in a particular manner constitutes negligence, subject to grounds of justification.
>
> In the present case, Fedasil manifestly breached [the Reception Act], which requires it to act in a particular manner. Fedasil does not dispute this.
>
> Fedasil explains its conduct by referring to the impossibility of providing accommodation for all applicants for international protection as a result of the saturation of the reception network since January 2022. Fedasil alleges that this saturation is linked to the growing number of applications for international protection and to the length of asylum proceedings. It points to its own and to the Government's efforts to resolve this situation.
>
> While claiming it is unable to discharge its statutory mandate, Fedasil has nevertheless failed to rely on *force majeure* or any other ground of justification.
>
> Fedasil's unjustified breach of a legal rule requiring it to act in a particular manner constitutes negligence.
>
> For the purposes of applying Article 780*bis* of the Judicial Code, this act of negligence must be characterised as manifest abuse in that it vexatiously forced the respondent to make an urgent application to the President of the Employment Tribunal.
>
> 3. The seriousness of such conduct on the part of Fedasil and the proportionality of the civil fine imposed must be assessed in the light of the circumstances of the case as a whole.

Fedasil's negligence is aggravated by its status as the public authority responsible for the reception of applicants for international protection, since it has failed to discharge the mandate for which it was created. To be sure, this is not an easy mandate and Fedasil is faced with certain problems, but these have nothing to do with *force majeure* or any other ground of justification. Accordingly, it is unacceptable that Fedasil, as a public authority, should fail to apply the law.

The respondent's particular vulnerability as an applicant for international protection in urgent need of the accommodation and support provided for by law to enable him to maintain his human dignity aggravates Fedasil's negligence in forcing him to take legal action in the hope of securing effective respect for his fundamental rights.

Lastly, the fact that the claim the respondent was forced to bring against Fedasil is one of thousands of similar claims (currently some 7,000 uncontested claims since January 2022) must be taken into consideration in assessing the disruption of the functioning of the public service provided by the justice system, a disruption which the legislative branch sought to punish by way of Article 780*bis* of the Judicial Code. This disruption has been substantial given the number of cases and the urgency with which they must be dealt, which is profoundly detrimental to the functioning of the Brussels French-Language Employment Tribunal and, ultimately, to all applicants thereto. The disruption is now spreading to the Brussels Employment Appeal Tribunal, with which a growing number of appeals are being lodged, as in the present case.

4. Having regard to Fedasil's manifest abuse of procedure in that it vexatiously forced the respondent to take legal action, and to the circumstances noted, it is with good reason and in a proportionate manner that the decision appealed against imposed on Fedasil a civil fine in the maximum amount, namely EUR 2,500.

That sanction is upheld."

III. GRANTING OF INTERIM MEASURES BY THE COURT

84. On 31 October 2022, pursuant to Rule 39 § 1 of the Rules of Court, the Court decided for the first time to indicate to the Belgian State that an applicant for international protection – the applicant in the present case (see paragraph 18 above) – should be provided with accommodation and material support to meet his basic needs.

85. In the following period, and up to 30 May 2023, the Court granted interim measures to 1,710 applicants who had secured a final domestic decision from the Brussels Employment Tribunal, in each case for the duration of the proceedings before the Court. It rejected the requests of 263 applicants, who were adults or unaccompanied minors who had not secured final domestic decisions. On 24 May 2023 the Court lifted the interim measures it had granted in 1,350 applications and struck those cases out of its list.

IV. COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS

86. On 13 December 2022 the Council of Europe's Commissioner for Human Rights sent a letter to the Belgian Secretary of State for Asylum and Migration to express her concerns as to the situation of persons seeking

international protection in Belgium. In that letter, the Commissioner pointed out that the lack of available accommodation in reception facilities and the reported delays in registering and processing asylum applications had serious consequences for the human rights of applicants for international protection, in particular their right to health and their access to shelter and other basic needs. While welcoming the Government's decision to open additional reception facilities and to increase human resources, the Commissioner observed that these measures were not sufficient to address the complexity and magnitude of the existing needs. She therefore asked what steps the Belgian authorities envisaged taking in order to provide accommodation and material assistance to applicants for international protection and to address structural shortcomings in the asylum system in Belgium.

87. In their reply, the Belgian Government acknowledged the structural shortcomings in the reception network for applicants for international protection in Belgium and the delay in implementing the decisions of the Employment Tribunal. They explained this by referring to the massive influx of Ukrainians in 2022 (see paragraph 56 above). They also set out the emergency and structural measures they had taken to address the saturation of the reception network (see paragraphs 59-60 above).

THE LAW

I. ALLEGED VIOLATION OF ARTICLE 6 OF THE CONVENTION

88. The applicant complained of the failure to enforce the decision delivered by the Brussels French-Language Employment Tribunal on 22 July 2022 ordering that Fedasil provide him with support. In his application form, he alleged a violation of Article 6 § 1 and Article 13 of the Convention.

89. The Court reiterates that the safeguards of Article 6 § 1, implying the full panoply of safeguards in any judicial procedure, are in principle stricter than those of Article 13 and absorb the latter (see *Kudła v. Poland* [GC], no. 30210/96, § 146, ECHR 2000-XI). It will therefore examine these complaints under Article 6 § 1, which provides:

> "In the determination of his civil rights and obligations ... everyone is entitled to a fair ... hearing ... by [a] ... tribunal ..."

A. Admissibility

90. The parties agreed that Article 6 was applicable to the dispute and relied in this regard on the *M.K. and Others v. France* judgment (nos. 34349/18 and 2 others, §§ 104-18, 8 December 2022).

91. The Court notes that applicants for international protection in Belgium have the right to material support and accommodation (see paragraphs 32-37 above) and that the applicant's right thereto was recognised by the Brussels

French-Language Employment Tribunal in its decision of 22 July 2022, a fact which the Government did not dispute.

92. Accordingly, the Court concludes that the applicant enjoyed a right within the meaning of Article 6 § 1 of the Convention.

93. Secondly, the parties did not dispute that this right to accommodation and material support was of a "civil" character, within the autonomous meaning of that concept in the Court's case-law (see, *mutatis mutandis*, *M.K. and Others*, cited above, §§ 104-18).

94. Lastly, the Court notes that the decision of 22 July 2022 aimed to secure accommodation and material support and therefore to determine the same right as that which would have been at stake in proceedings on the merits. Moreover, the decision was immediately enforceable. The Court also notes that at the time when the application was lodged, no proceedings had been brought on the merits. Article 6 is therefore applicable (see *Micallef v. Malta* [GC], no. 17056/06, §§ 83-89, 15 October 2009, and *RTBF v. Belgium*, no. 50084/06, § 65, 29 March 2011).

95. The Court notes that this complaint is neither manifestly ill-founded nor inadmissible on any other grounds listed in Article 35 of the Convention. It must therefore be declared admissible.

B. Merits

1. The parties' submissions

(a) The applicant

96. The applicant submitted that he had asserted his right to reception in the national courts and that the immediately enforceable decision he had secured from the Employment Tribunal had become final. No other remedy had been available to him since the problem had stemmed from deliberate intent on the part of the Belgian State not to comply with the Employment Tribunal's order and not to pay the coercive fines. In breach of Article 6 of the Convention, the Belgian State had deliberately refused to ensure the immediate enforcement of thousands of court decisions, all of them binding and enforceable. The Brussels Employment Tribunal had found that Fedasil was jeopardising the administration of justice by "causing disruption to a court of law" (see paragraph 83 above). In the applicant's case, without ever disputing his right to support, Fedasil had taken more than 100 days to enforce the Employment Tribunal's decision. It had ultimately granted him a place in the reception network only because of the interim measure indicated by the Court.

97. The applicant alleged that the material impossibility of enforcement had impaired the very essence of his and thousands of others' rights under Article 6 § 1 of the Convention. That being said, while there was indeed an ongoing humanitarian emergency in Belgium, this was not, as the

Government had submitted, the result of an extraordinary migratory crisis. First of all, it had been foreseeable. While it was true that there had been an increase in the number of applications for international protection in Belgium in 2022 compared to 2020 and 2021 – years which had been marked by the health crisis – that increase had been the result of delays caused by those two years during which it had been next to impossible to cross borders and of the suspension of the decision-making process in virtually all Afghan applications between August 2021 and March 2022 as a result of major socio-political changes precipitated by the Taliban's seizure of power. Secondly, the current crisis was the result of a deliberate political choice to avoid resorting to the emergency solutions that the associations on the ground had been proposing for months.

(b) The Government

98. The Government submitted that there had been no deliberate intent on the part of the Belgian State or Fedasil not to enforce the court decisions. Their belated enforcement had been the result of the migratory crisis, the circumstances of which had made it materially impossible to comply with the decisions despite the measures taken to that end. In this connection, the Government put forward the same circumstances as those that had been adduced in the domestic courts (see paragraph 43 above), arguing that they served to explain the changes in Fedasil's placement policy up to and including the priority now given to those who had been granted interim measures by the Court (see paragraph 63 above).

99. Those circumstances notwithstanding, numerous budgetary and logistical measures had been taken by the public authorities to address the situation urgently, but also structurally (see paragraphs 55 and 59-60 above). The Government explained that this determination derived from the political commitment to build a flexible and satisfactory reception network, as set out in the 2020 Government Agreement.

100. Given the scale of the situation, the Government submitted that the three and a half months it had taken to enforce the decision delivered in the applicant's favour had to be put into perspective and could not be regarded as having entailed a violation of Article 6 of the Convention.

101. Lastly, the Government explained that in view of the exponential increase in proceedings and findings against Fedasil, the agency had stopped lodging third-party appeals, opting instead to focus its efforts on extending the network and recruiting staff to that end.

(c) The French-speaking Bar Council of Brussels (third-party intervener)

102. The French-speaking Bar Council of Brussels emphasised that the Belgian State had doubly failed to enforce court decisions. Not only had applicants for international protection not been provided with

accommodation within the time allotted by the relevant decisions, but Fedasil had also refused to pay the coercive fines that had been systematically imposed on it. Such persistent non-compliance on the part of the Belgian State – and on such a scale – was unprecedented in Belgium. In the third-party intervener's view, this situation undermined the very principle of the rule of law. It also raised existential questions for the judicial sphere as to its function, utility and instrumentalisation.

2. The Court's assessment

(a) General principles

103. The Court has on many occasions emphasised the special role in society of the judiciary, which, as the guarantor of justice, a fundamental value in a law-governed State, must enjoy public confidence if it is to be successful in carrying out its duties (see *Guðmundur Andri Ástráðsson v. Iceland* [GC], no. 26374/18, § 283, 1 December 2020, and the authorities cited therein).

104. The Court reiterates its established case-law to the effect that the right to a court guaranteed by Article 6 § 1 of the Convention would be illusory if a Contracting State's domestic legal system allowed a final, binding judicial decision to remain inoperative to the detriment of one party. Execution of a judgment given by any court must be regarded as an integral part of the "trial" for the purposes of Article 6 of the Convention. Otherwise, the provisions of Article 6 § 1 would be deprived of all useful effect (see, among other authorities, *Hornsby v. Greece*, 19 March 1997, § 40, *Reports of Judgments and Decisions* 1997-II; *Scordino v. Italy (no. 1)* [GC], no. 36813/97, § 196, ECHR 2006-V; and *Burdov v. Russia (no. 2)*, no. 33509/04, § 65, ECHR 2009).

105. The same logic is inherent in the implementation of judicial decisions on interim measures that remain in force until a final decision determining the case before a court has been given (see *Sharxhi and Others v. Albania*, no. 10613/16, §§ 92-96, 11 January 2018). To hold otherwise would mean rendering a binding, albeit transitional, judicial decision that is devoid of purpose and meaning (see *Dolińska-Ficek and Ozimek v. Poland*, nos. 49868/19 and 57511/19, § 328, 8 November 2021).

106. The Court considers that the burden of ensuring compliance with a judgment against the State lies primarily with the State authorities starting from the date on which the judgment becomes binding and enforceable (see *Burdov*, cited above, § 69). A person who has obtained a judgment against the State may not be expected to bring separate enforcement proceedings (see *Sharxhi and Others*, cited above, § 93; *Burdov*, cited above, § 68; and *Nikoloudakis v. Greece*, no. 35322/12, § 35, 26 March 2020). In such cases, the defendant State authority must be duly notified of the judgment and is thus well placed to take all necessary initiatives to comply with it or to

transmit it to another competent State authority responsible for execution (see *Burdov*, cited above, § 68).

107. The above principles are of even greater importance in the context of administrative proceedings. The Court observes in this connection that the administrative authorities form one element of a State subject to the rule of law and their interests accordingly coincide with the need for the proper administration of justice. Where administrative authorities refuse or fail to comply, or even delay doing so, the guarantees under Article 6 enjoyed by a litigant during the judicial phase of the proceedings are rendered devoid of purpose (see *Hornsby*, cited above, § 41).

108. In cases where the principle of legal certainty is at issue, the Court has emphasised that respect for the principle of *res judicata* is imperative in that, by safeguarding the finality of judgments and the rights of the parties to the proceedings, it serves to ensure the stability of the judicial system and contributes to public confidence in the courts (see *Guðmundur Andri Ástráðsson*, cited above, § 238). Moreover, the Court reiterates its settled case-law to the effect that it is not open to a State authority to cite lack of funds or other resources as an excuse for not honouring a judgment debt (see, among other authorities, *Burdov*, cited above, § 35; *Prodan v. Moldova*, no. 49806/99, § 53, ECHR 2004-III (extracts); *Cocchiarella v. Italy* [GC], no. 64886/01, § 90, ECHR 2006-V; *Tchokontio Happi v. France*, no. 65829/12, § 50, 9 April 2015; *Casa di Cura Valle Fiorita S.r.l. v. Italy*, no. 67944/13, § 54, 13 December 2018; and *M.K. and Others*, cited above, § 153).

109. Lastly, the Court takes the view that an unreasonably long delay in the enforcement of a binding judgment may breach the Convention, where the reasonableness of such delay is to be determined having regard in particular to the complexity of the enforcement proceedings, the applicant's own conduct and that of the competent authorities, and the amount and nature of the court award. Some delay may be justified in particular circumstances but it may not, in any event, be such as to impair the essence of the right protected under Article 6 § 1 (see *Burdov*, cited above, §§ 66-67).

(b) Application to the present case

110. In the present case, the applicant lodged an *ex parte* application with the President of the Brussels Employment Tribunal (see paragraph 12 above). He obtained a decision on 22 July 2022 ordering the Belgian State to provide him with accommodation and material support (see paragraph 13 above). The President ruled on an interim basis, issuing an immediately enforceable decision, notwithstanding any appeal. That decision, notification of which was served by a bailiff on 29 July 2022, became final on 29 August 2022 (see paragraph 15 above). It was enforced on 4 November 2022 when the applicant was assigned a place in a reception centre (see paragraph 19 above), after the Court had indicated to the Belgian Government, under Rule 39 of its

Rules of Court, that the applicant should urgently be provided with accommodation and support to meet his basic needs, and thus that the the decision delivered by the Employment Tribunal should be enforced (see paragraphs 17-18 above).

111. The Court observes that, under domestic law, the decision's enforceability entailed that the State was to enforce it of its own motion (see paragraphs 13 and 39 above).

112. In order to assess the delay in enforcement with regard to the requirements of Article 6 of the Convention as set out above (see paragraph 109 above), the Court must take into account the conduct of the competent authorities, the complexity of the proceedings and the applicant's own conduct.

113. First, as to the conduct of the Belgian authorities, the Court notes that Fedasil and the Belgian State did not dispute before the Employment Tribunal the existence of the right to reception asserted by the applicant. Following the decision ordering it to provide him with support, Fedasil did not lodge a third-party appeal and failed to enforce the decision until the interim measure was granted by the Court. It follows, as submitted by the applicant, that he was left with no choice but to take legal action and then apply to the Court to obtain recognition of a right that had never been disputed. Moreover, contrary to the Government's submissions, the order's enforcement was not spontaneous and only took place as the result of an interim measure granted by the Court (see, *mutatis mutandis*, *M.K. and Others*, cited above, § 163).

114. Second, as to the complexity of the enforcement procedure, the Government alleged logistical impediments to any increase in reception-centre capacity and a lack of collaboration – resistance, even – on the part of the local authorities (see paragraph 98 above). In particular, the Government submitted that the reception network managed by Fedasil had reached saturation point since the summer of 2021. They explained that the network had proven to have insufficient accommodation capacity to deal with the increase in the number of applicants for international protection. Since the enforcement of decisions like the one delivered in the applicant's case depended on the places available in the reception centres, it had been materially impossible for the Belgian State to comply with those decisions.

115. The Court cannot but note a significant increase in the number of applications for international protection in Belgium in 2022. That number was 36,871, an increase of more than 42% compared to 2021 (see paragraph 53 above). In addition to this migratory pressure, Belgium took in 65,000 Ukrainian nationals between 10 March and 31 December 2022 (see paragraph 56 above).

116. These figures sufficiently illustrate the scale of the challenges the Belgian State had to confront. Moreover, the Court can hardly criticise the Belgian authorities' decision to focus the network's reception capacity on the most vulnerable individuals, thereby delaying the accommodation of

applicants for international protection with the same profile as the applicant's. That was a prioritisation decision that made it possible to provide accommodation and assistance to the vast majority of families with children, unaccompanied minors and persons suffering from specific health conditions throughout the period required to examine their asylum requests. Lastly, the Court cannot fail to note the substantial efforts deployed by the Belgian authorities to contribute to the financing of associative schemes, create additional accommodation, recruit staff and shorten processing times for asylum applications (see paragraphs 55 and 59-60 above).

117. The Court finds, however, that it is necessary to reiterate that the right protected by Article 6 § 1 of the Convention must be interpreted in the light of the Preamble to the Convention, which declares the rule of law to be part of the common heritage of the States Parties. One of the fundamental aspects of the rule of law is the principle of legal certainty, which requires, *inter alia*, that where the courts have finally determined an issue, their ruling should not be called into question (see *Brumărescu v. Romania* [GC], no. 28342/95, § 61, ECHR 1999-VII, and *Casa di Cura Valle Fiorita S.r.l.*, cited above, § 54).

118. The Court is mindful that the circumstances of the present case are not unusual and that they reveal a systemic failure on the part of the Belgian authorities to enforce final judicial decisions concerning the reception of applicants for international protection (see paragraphs 81 and 83 above).

119. While it is aware of the difficult situation the Belgian State was facing (see paragraphs 114-116 above), the Court cannot accept that the time taken by the Belgian authorities in the present case to enforce a court order aimed at protecting human dignity was reasonable (see, *mutatis mutandis*, *M.K. and Others*, cited above, § 161). It can only add that this systemic failure has heavily overburdened the operation of a national court and that of the Court itself.

120. Third, as to the applicant's own conduct, the Court cannot discern any lack of diligence on his part that contributed to a delay in the enforcement of the decision of 22 July 2022.

121. Having regard to the foregoing considerations, the Court finds that there was not "merely" a delay on the part of the Belgian authorities, but rather a clear refusal to comply with the order issued by the domestic court, thereby impairing the very essence of the right protected by Article 6 § 1 of the Convention (see, *mutatis mutandis*, *M.K. and Others*, cited above, § 163).

122. These considerations are sufficient for the Court to conclude that there has been a violation of Article 6 § 1 of the Convention.

II. ALLEGED VIOLATIONS OF ARTICLES 3 AND 8 OF THE CONVENTION

123. The applicant complained that he had been forced to live rough for several months in inhuman and degrading conditions that were contrary to Article 3 of the Convention. He also alleged that this had infringed his right to respect for his private life under Article 8 of the Convention.

124. Those provisions provide as follows:

Article 3

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

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."

1. The parties' submissions

125. The Government objected that the applicant had failed to exhaust domestic remedies in respect of these complaints and pointed out that his situation was in all respects comparable to that of the applicant in the *M.K. and Others v. France* case (cited above).

126. It had been open to the applicant to use a compensatory remedy to establish the State's liability for the damage he alleged he had sustained in breach of Article 3 of the Convention during the time he had spent outside the reception network. In support of this submission, the Government, in their observations in reply, produced three decisions delivered by the Liège Employment Tribunal on 30 March 2023 (see paragraphs 47-49 above) which had granted the claimants' request that Fedasil be ordered, under Article 1382 of the Civil Code, to pay damages in respect of a lack of accommodation and the resulting non-pecuniary damage sustained. They also provided evidence showing that an appeal had been lodged against one of these decisions on the grounds, in particular, that jurisdiction lay with the ordinary civil courts, and not with the employment tribunals, and that in any event the claims were ill-founded.

127. The Government further pointed out that the complaint under Article 8 of the Convention had not been raised, even in substance, in the domestic courts.

128. The applicant submitted that he had pursued the only remedy under Belgian law – a preventive one – that enabled him to obtain accommodation and the material support required to meet his basic needs (see paragraph 38 above). In so doing, he had brought the substance of his complaint under Article 3 of the Convention to the attention of the domestic courts and had sought to have his situation addressed, in accordance with the requirements of Article 35 § 1 of the Convention. The applicant argued that, in any event, the success of a compensatory remedy would be dependent on the speed of the proceedings in the Belgian courts and that such proceedings were notorious for their excessive length. To require that he make use of such a remedy would be to disregard the fact that the Belgian State was not enforcing the judicial decisions delivered against it in the context of the reception crisis affecting applicants for international protection.

129. The applicant submitted that the decisions the Government had produced were specific: they concerned actions brought before the Liège Employment Tribunal to obtain accommodation, but the claimants had not sought the imposition of coercive fines. In this regard, they differed from the present case, in which such fines had been requested and ordered, but had never been paid. Given that the Belgian State had never paid the coercive fines it had been ordered to pay in thousands of domestic judgments, the applicant considered that he had legitimate reasons to doubt that things would be any different in the case of judgments ordering the Belgian State to accommodate asylum-seekers on pain not of coercive fines but of damages equal to the basic living allowance until such time as accommodation was provided.

2. The Court's assessment

130. The Court reiterates that under Article 35 § 1 of the Convention it may only deal with a matter after all domestic remedies have been exhausted and that, once the continuous violation complained of has ceased, an effective remedy must seek no more than recognition of and redress for the alleged violation, assuming it has been established (see *M.K. and Others*, cited above, §§ 166-170).

131. In the present case, the Court finds that there is a clear legal basis in domestic law for claims of State liability (see paragraph 46 above). As to determining whether such a remedy was available in this case, the Court notes, as did the applicant, that Fedasil, and therefore the State, had a duty to give effect to the legally recognised right of any applicant for international protection to accommodation and material support. State liability would be incurred by any negligent failure to fulfil this duty on the part of the authorities. The Court further notes that the Government were able to demonstrate the existence of a relevant practice with regard to the State's non-contractual liability under Article 1382 of the Civil Code, although there appears to be some uncertainty as to the specific procedure for this remedy

under Belgian law with regard to the attribution of jurisdiction between the employment tribunal and the ordinary civil courts (see paragraph 47 above). In this connection, the Court reiterates that mere doubts as to the effectiveness of a particular remedy do not exempt an applicant from the obligation to make use of it (see, *inter alia*, *Vučković and Others v. Serbia* (Preliminary Objection) [GC], nos. 17153/11 and 29 others, § 74, 25 March 2014).

132. It follows that it was open to the applicant to bring an action to establish State liability in the Belgian courts in order to seek compensation for the damage he alleged he had sustained on account of the time he had spent without accommodation or support, which is to say from 15 July 2022, when his application for international protection was filed, to 4 November 2022, when he was assigned a place in the reception network, most of which concerns the period following the decision of the President of the Brussels Employment Tribunal. Accordingly, the Court takes the view that he ought to have availed himself of that remedy, notwithstanding the fact that, in view of its purely compensatory nature, it would have been effective only after his application had been lodged with the Court (see, to similar effect, *M.K. and Others*, cited above, §§ 166-170). In this connection, the Court would note the following.

133. To be sure, as the Court has noted on many occasions (see, among other authorities, *O'Keeffe v. Ireland* [GC], no. 35810/09, §§ 110-111, ECHR 2014), in the event of there being a number of domestic remedies which an individual can pursue, that person is entitled to choose a remedy which addresses his or her essential grievance. In other words, when a remedy has been pursued, use of another remedy which has essentially the same objective is not required. However, in the present case, the Court would point out that the only question before the Brussels French-Language Employment Tribunal when it delivered its decision of 22 July 2022 ordering Fedasil to secure accommodation for the applicant in a reception centre, or even a hotel or any other appropriate establishment should available space be wanting, was to determine whether the applicant – in his capacity as an applicant for international protection and from that time onwards – was entitled to accommodation under section 6 of the Reception Act. At no time did the domestic courts assess as a whole, in the context of adversarial proceedings, the circumstances of the applicant's situation during the three and a half months between his arrival in Belgium on 15 July 2022 and Fedasil's proposal to accommodate him on 4 November 2022, or the general context surrounding the saturation of Fedasil's network.

134. Thus, should the Court accept, in a situation like the one at hand, that all domestic remedies have been exhausted in respect of the applicant's complaint under Article 3 of the Convention, it would *de facto* become the first court to rule on the question whether the applicant's living conditions were compatible with Article 3, which would be inconsistent with the

rationale underlying the requirement to exhaust domestic remedies and with the principle of subsidiarity as expressed in the Preamble to the Convention.

135. Accordingly, the Court considers that the complaint under Article 3 of the Convention must be rejected for failure to exhaust domestic remedies pursuant to Article 35 §§ 1 and 4 of the Convention.

136. As to the applicant's complaint under Article 8 of the Convention, the Court finds that he failed to raise this complaint in the domestic courts and that, in consequence, it must also be declared inadmissible on that same ground.

III. ALLEGED VIOLATION OF ARTICLE 13, READ IN CONJUNCTION WITH ARTICLE 8 OF THE CONVENTION

137. Lastly, the applicant complained of a violation of Article 13, read in conjunction with Article 8 of the Convention, on account of the absence of an effective remedy by which to complain about the Belgian State's failure to fulfil its positive obligation to ensure respect for his physical and psychological integrity and of an effective remedy under domestic law by which to put an end to that violation.

138. The Court observes that it has already rejected the applicant's complaint under Article 8 for failure to exhaust domestic remedies (see paragraph 136 above). It follows that, in the absence of an arguable complaint under that provision (see *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, § 288, ECHR 2011), the related complaint under Article 13 of the Convention is manifestly ill-founded and must be dismissed pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

IV. RULE 39 OF THE RULES OF COURT

139. The Court finds that the applicant's situation has changed since the interim measure was granted and that he did not request that this measure be maintained.

140. Consequently, it decides to lift the interim measure in question.

V. APPLICATION OF ARTICLE 41 OF THE CONVENTION

141. 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."

142. The applicant claimed 103,000 euros (EUR) corresponding to the sum of the coercive fines Fedasil had been ordered to pay under the decision

of 22 July 2022, namely EUR 1,000 per day until 4 November 2022, when he was granted accommodation and support.

143. In so far as this claim relates to the violation of Article 6 § 1 of the Convention, the Court takes the view that the finding of a violation of that provision constitutes in itself sufficient just satisfaction.

144. Consequently, the Court rejects the applicant's claim under this head.

145. In any event, the Court notes that the present case is but one of the many similar cases recently brought against Belgium for failure to enforce decisions of the employment tribunals in connection with the reception of applicants for international protection. The evidence before the Court discloses a systemic problem in the respondent State with regard to the authorities' ability to comply with their own domestic legislation on the right of asylum-seekers to accommodation, including with final court decisions ordering such compliance. While being mindful of the difficulties with which the Belgian authorities have been faced, the Court finds that such a practice is incompatible with the principle of the rule of law which underpins the entire Convention system. Pursuant to its obligations under Article 46 of the Convention, the respondent State has a duty to take appropriate measures to put an end to that practice.

FOR THESE REASONS, THE COURT

1. *Declares*, by a majority, the complaint concerning Article 3 of the Convention inadmissible;

2. *Declares*, unanimously, the complaint concerning Article 6 of the Convention admissible;

3. *Holds*, unanimously, that there has been a violation of Article 6 of the Convention;

4. *Decides* to lift the interim measure indicated to the Government under Rule 39 of the Rules of Court on 31 October 2022;

5. *Holds*, unanimously, that the finding of a violation of Article 6 of the Convention constitutes in itself sufficient just satisfaction;

6. *Dismisses*, unanimously, the remainder of the applicant's claim for just satisfaction;

Done in French, and notified in writing on 18 July 2023, pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Hasan Bakırcı	Arnfinn Bårdsen
Registrar	President

In accordance with Article 45 § 2 of the Convention and Rule 74 § 2 of the Rules of Court, the partly concurring, partly dissenting opinion of Judge Krenc, joined by Judge Derenčinović is annexed to this judgment.

A.B.
H.B.

PARTLY CONCURRING, PARTLY DISSENTING OPINION OF JUDGE KRENC, JOINED BY JUDGE DERENČINOVIĆ

(*Translation*)

1. I concur with the findings of the present judgment, except with the finding as to the inadmissibility of the complaint under Article 3 of the Convention.

2. First, regarding the admissibility of the complaint concerning Article 6 of the Convention, it is important to note that the present judgment, in the wake of the judgment in *M.K. and Others v. France* (nos. 34349/18 and 2 others, §§ 104-118, 8 December 2022), confirms the separation of disputes over the accommodation of asylum-seekers from those concerning the entry, residence and removal of aliens, which have traditionally been excluded from the scope of Article 6 § 1 of the Convention (see *Maaouia v. France* [GC], no. 39652/98, § 40, ECHR 2000-X, confirmed by *M.N. and Others v. Belgium* (dec.) [GC], no. 3599/18, §§ 137-140, 5 May 2020).

As to the merits, along with my colleagues, I struggle to understand how it can be that, in a State governed by the rule of law, final court decisions remain unenforced by the very authorities to whom they are addressed.

3. The only point on which I disagree concerns the complaint under Article 3 of the Convention. Basing themselves here again on the *M.K.* judgment (cited above), the majority have taken the view that the applicant failed to exhaust all domestic remedies in respect of this complaint in that he ought to have brought a claim for damages against the State after having been granted accommodation.

This approach appears problematic to me in various respects.

4. Firstly, it seems to me to have significant consequences even beyond the present case and disputes over the accommodation of asylum-seekers. It implies that, once a continuous violation of the Convention has ceased, the applicant is required to bring compensatory proceedings against the State wherever such proceedings are theoretically possible. The problem here, in my view, is that this obligation holds even where the continuous violation has ceased *subsequent to* the lodging of an application with the Court.

With all due respect for my colleagues, I cannot deny that I am deeply perplexed.

Let us take as a random example the case of a political dissident who, having long been deprived of his or her liberty, persecuted and tortured, applies to the Court and is granted an interim measure resulting in his or her release. Would we then declare inadmissible that applicant's application to

the Court (at the time when he or she was deprived of his or her liberty) on the grounds that it remained open to him or her, following his or her release and after having applied to the Court, to bring an action for compensation against the State?

5. In reality, the majority's approach marks a departure from two well-established strands of our case-law.

5.1. The first holds that compliance with the requirement to exhaust domestic remedies is to be assessed, as a rule, with reference to the date on which the application was lodged (see, among many other authorities, *Baumann v. France*, no. 33592/96, § 47, ECHR 2001-V (extracts), and *Selahattin Demirtaş v. Turkey (No. 2)* [GC], no. 14305/17, § 193, 22 December 2020). This follows from the logic of subsidiarity that governs the Court's mandate.

Admittedly, the Court has had occasion, in exceptional circumstances, to depart from this well-established case-law where remedies were specifically introduced in domestic law following the lodging of the application in order to address the problem at issue (see, for example, *Turgut and Others v. Turkey* (dec.), no. 4860/09, §§ 54-56, 26 March 2013, and *Köksal v. Turkey* (dec.), no. 70478/16, §§ 24-30, 6 June 2017). Not so in the present case: no remedy was specially introduced to resolve the systemic issue observed.

In the present case, at the time when he applied to the Court, the applicant was living rough. It is beyond dispute that his situation changed only after his application to the Court and, more specifically, after it had indicated an interim measure under Rule 39 of the Rules of Court. In other words, it was only after he had applied to the Court that the applicant was given accommodation and the alleged violation ceased. This point, which is crucial, appears to me to be obscured in the present judgment.

5.2. The second principle, equally well anchored in our case-law, is that where the applicant has pursued a remedy that is apt to address his or her complaint, use of another remedy, assuming it its appropriate, is not required (see, *inter alia*, *Aquilina v. Malte* [GC], no. 25642/94, § 39, ECHR 1999-III; *Riad and Idiab v. Belgium*, nos. 29787/03 and 29810/03, § 85, 24 January 2008; and *Nicolae Virgiliu Tănase v. Romania* [GC], no. 41720/13, § 177, 25 June 2019).

In the present case, the applicant pursued a remedy (proceedings following an *ex parte* application) which he could legitimately assume was appropriate to address his complaint in a rapid and effective manner. It has not been argued, let alone demonstrated, that the compensatory remedy would have been quicker and more effective for the purpose of restoring the applicant's rights under Article 3 of the Convention.

In any event, the fact remains that Fedasil was notified of the decision by the President of the Brussels French-Language Employment Tribunal in the applicant's favour and that it was never challenged, such that it became final under domestic law.

6. In the light of these circumstances as a whole, requiring the applicant, after applying to the Court, to "go back" to the domestic courts and bring a claim for damages against the State constitutes, in my view, an excessive and disproportionate impediment to the exercise of the right of individual application as enshrined in Article 34 of the Convention.

7. In my opinion, the majority's reasoning is based on a faulty premise. In applying to the Court, the applicant's purpose was to complain about and put an end to a situation he considered to be in breach of Article 3 of the Convention – not to seek redress for it.

The present judgment carries out an *ex post facto* analysis – after the applicant was granted accommodation as a result of the interim measure – whereas the relevant point in time ought to have been the moment when the application was lodged with the Court.

8. In this regard, it appears to me that the present judgment is at odds with previous judgments concerning Belgium where, on the subject of detention conditions, the Court found that a claim of State liability under Article 1382 of the Civil Code was not an effective remedy that had to be used given that, as a compensatory remedy, it would be unable to improve the applicant's living conditions.

I am referring in particular to the *Vasilescu v. Belgium* (no. 64682/12, 25 November 2014) judgment. In that case, the applicant had complained about his detention conditions. He had lodged his application with the Court on 23 July 2012 and had been released three months later. The Court rejected the Government's objection that the applicant had failed to exhaust domestic remedies, stating as follows (emphasis added):

> "75. Next, the Government submitted that the applicant could have brought an action for damages on the basis of Article 1382 of the Civil Code. The Court finds, however, that such a remedy would not have brought about any cell transfer or immediate and tangible improvement in the applicant's living conditions. A favourable decision by the courts would merely have afforded the applicant financial compensation for the damage sustained as a result of negligence on the part of the prison authorities (see paragraphs 38-39 [of the *Vasilescu* judgment (cited above)]). The Court concludes from this that an action for damages does not fulfil the requisite conditions to be regarded as an effective remedy (see *Torreggiani and Others v. Italy*, [nos. 43517/09 and 6 others, § 50, 8 January 2013], referred to in paragraph 68 [of the *Vasilescu* judgment (cited above)]). The Court therefore finds that, *concerning a person in detention at the time of lodging the application with the Court*, the remedy provided for in Article 1382 of the Civil Code was not, in itself, an effective remedy and was therefore not one that had to be used in order to complain about material detention conditions."

The *Clasens v. Belgium* judgment can also be cited to similar effect. It concerned the case of an applicant who had complained of his material conditions of detention during a strike by prison staff from 25 April to 2 June 2016. In its judgment of 28 May 2019 the Court took the view that the applicant had not been required to bring a compensation claim, even though the alleged violation had ceased shortly after the application had been lodged (see *Clasens v. Belgium*, no. 26564/16, § 28, 28 May 2019).

9. In addition to the above considerations, the effectiveness of the compensatory remedy relied upon by the Government in the present case is, in the light of the evidence before the Court, questionable. The majority themselves acknowledge the existence of "some uncertainty" (see paragraph 131 of the judgment). Moreover, it should be kept in mind that the burden of proving effectiveness falls to the Government (see *Vučković and Others v. Serbia* (Preliminary Objection) [GC], nos. 17153/11 and 29 others, § 77, 25 March 2014).

I shall merely point out that the Government produced four decisions delivered on 30 March 2023 by a single Namur court (see paragraph 47 of the judgment; compare *Bouhamla v. France* (dec.), no. 31798/16, § 28, 25 June 2019) and that those four decisions were delivered several months after the applicant had applied to the Court (again, compare *Bouhamla*, cited above, § 33). Moreover, one of them was appealed against by the Belgian State (see paragraph 48 of the judgment).

Furthermore, it was not shown that these court decisions, which were handed down on the basis of Article 1382 of the Civil Code, had been better enforced than the numerous decisions delivered on the basis of *ex parte* applications, which had not been acted upon.

Consequently, on this particular point as to the demonstration of the effectiveness of a claim of State liability in the dispute under consideration, I consider the present case to differ from the case of *M.K. and Others v. France*, in which that effectiveness was not discussed.

10. Accordingly, I cannot endorse paragraph 134 of the judgment when it states:

> "... should the Court accept, in a situation like the one at hand, that all domestic remedies have been exhausted in respect of the applicant's complaint under Article 3 of the Convention, it would *de facto* become the first court to rule on the question whether the applicant's living conditions were compatible with Article 3, which would be inconsistent with the rationale underlying the requirement to exhaust domestic remedies and with the principle of subsidiarity as expressed in the Preamble to the Convention."

The fact remains that the President of the Brussels French-Language Employment Tribunal had already heard the complaint by the applicant, who had expressly indicated, in his *ex parte* application, that he was in a state of

utter destitution, homeless and at imminent risk of serious and irreparable harm to his human dignity. In accordance with the logic of subsidiarity which underpins the Convention, the applicant had thus submitted his complaint to the Belgian authorities, who could have addressed it prior to his application to the Court. However, the decision delivered on 22 July 2022, of which Fedasil was notified on 29 July 2022, was not enforced for more than three months, without ever having been challenged. For his part, the applicant waited twelve weeks before applying to the Court. Despite that substantial period of time, the authorities failed to give effect to the domestic judge's order.

As to the lack of adversarial proceedings, noted in passing in paragraph 133 of the judgment, it resulted from the authorities' decision not to appeal against the decision of 22 July 2022, whereas the applicant's recourse to urgent proceedings was justified by the fact that he was living rough in spite of what domestic law prescribed.

I therefore consider that, before turning to the Court, the applicant first sought to have the Convention applied by the domestic authorities, as required by the principle of subsidiarity. In my view, he therefore exhausted the domestic remedies in respect of his Article 3 complaint.

11. Upon reflection, if one accepts the logic of the majority's reasoning, it is possible to question why the fate of the Article 6 complaint differed so markedly from that reserved for the complaint of an Article 3 violation. To my knowledge, no domestic court was asked by the applicant to determine whether the Belgian State's failure to enforce the court order, between 29 August 2022 (the date on which the decision delivered by the President of the Employment Tribunal became final) and 4 November 2022 (the date on which the applicant was granted accommodation), had entailed a violation of Article 6 of the Convention. Nor did the applicant seek damages in the domestic courts in respect of the Article 6 violation over that same period (compare *Bouhamla*, cited above, §§ 38-45). Yet this by no means prevented the Court from hearing his complaint and finding it well-founded.

It is true that there is a difference between the two complaints: the Government raised an objection for failure to exhaust domestic remedies solely in the case of the Article 3 complaint. One cannot speculate, however, as to the Court's approach should an inadmissibility objection for failure to exhaust domestic remedies have been raised with regard to Article 6.

12. Moreover, I cannot fail to observe that the present judgment leads to a rather clear disjunction between the interim stage and the ordinary merits stage in the Court's international supervision. In the present case, the Court indicated an interim measure under Article 3 of the Convention (as it has done in hundreds of other cases). Notwithstanding its indication of that interim

measure, the Court has now found that the applicant's complaint under Article 3 is inadmissible.

In so doing, the present judgment aggravates the disconnection between interim proceedings and substantive proceedings. In ruling on an interim basis, the Court remedied the applicant's situation (he was demanding accommodation) but in the present judgment it has left open the question as to the merits of his Article 3 complaint.

13. The particularity of this situation no doubt stems from the content of the interim measure indicated by the Court on 31 October 2022, which did not ask the Belgian State to refrain from doing something (not to extradite, expel, etc.) but, on the contrary, sought to provide the applicant with a positive benefit (specifically, accommodation and material support to meet his basic needs, pursuant to the decision taken by the President of the Employment Tribunal on 22 July 2022). Inevitably, when this type of interim measure is enforced and the applicant is granted accommodation, he or she has considerably less interest in pursuing the proceedings, as attested by the 1,350 applications that were struck out of the list on 24 May 2023 owing to the applicants' failure to demonstrate any willingness to pursue them before the Court.

It is thus striking to note that the Belgian authorities' enforcement of the interim measure enabled the Government to raise, successfully, the objection of non-exhaustion of domestic remedies concerning the Article 3 complaint. As paradoxical as this might seem, by indicating an interim measure prior to examining the application, the Court gave the respondent State the opportunity to dodge the substantive issue and, potentially, the finding of a violation of Article 3.

14. In this connection, I should like to point out that the interim measures procedure (which is governed by Rule 39 of the Rules of Court) is reserved for exceptional circumstances and that disputes over the reception of applicants for international protection cannot be transferred to the Court. As an international court, it has neither the power nor the resources to handle such disputes. Here, as elsewhere, the Court cannot substitute its own assessment for that of the relevant national authorities.

15. Lastly, in closing, I would like to clarify that it would be a mistake to underestimate the scale of the problems raised for the Belgian authorities by the saturation of the reception network. It is important, in my view, to look into its causes seriously in order to find appropriate and permanent solutions, in compliance with the Convention, as called for insistently in paragraph 145 of the present judgment.