



An applicant who had been detained in conditions incompatible with human dignity was awarded insufficient compensation

In today's Chamber judgment¹ in the case of [Barbotin v. France](#) (application no. 25338/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 13 (right to an effective remedy) of the Convention read in conjunction with Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights

The case concerned the compensation awarded to the applicant by the domestic courts in respect of his conditions of detention in Caen remand prison. The applicant complained of the ineffectiveness of the compensatory remedy of which he had availed himself, in view of the low amount awarded and the fact that he had had to pay the expert's fees incurred to inspect the cells in which he had been held.

The Court ruled that the applicant had benefited from an appropriate remedy affording him compensation for the damage which he had sustained. This was the first time the compensatory remedy exercised before a French administrative court on grounds of inhuman conditions of detention had been acknowledged as being effective under Article 13 of the Convention. In the present case, however, the domestic court had decided to order the applicant to pay the expert's fees on the grounds that the expert assessment ordered at first instance had been cancelled on appeal. On account of the modest amount which had been awarded to the applicant in compensation for the non-pecuniary damage caused by his conditions of detention, which had been incompatible with human dignity, he had thus found himself, after receipt of his compensatory remedy, owing the State 273.57 euros (EUR). The Court considered that the outcome of the proceedings brought by the applicant had deprived the remedy of its effectiveness.

Principal facts

The applicant, Jean-Claude Barbotin, is a French national who was born in 1951 and lives in Saint-Brieuc (France).

Mr Barbotin was detained in Caen remand prison from 28 August to 1 September 2008 and subsequently from 4 November 2008 to 27 July 2010. On 15 June 2010 he requested that the urgent applications judge of the Caen Administrative Court appoint an expert to inspect the state of his cells in the remand prison. By order of 16 June 2010 the urgent applications judge allowed the request and appointed an expert, who submitted a report.

The expert found that four of the six cells occupied by the applicant were in a good overall state, and that the fifth had been completely renovated. The sixth cell, which measured 16 m² and which Mr Barbotin had shared with four other detainees, was in a bad condition, run-down and badly lit, and had insufficient air for five adults.

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.

Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

By order of 6 September 2010 the Administrative Court estimated the cost of the expert assessment at EUR 773.57. That amount was charged to the State, which was declared liable for the advance payment of the legal aid for which the applicant was eligible. Concurrently, the Justice Minister lodged a third-party appeal against the order of 16 June 2010, arguing that the expert report had been unnecessary since an expert report had already been drawn up on the conditions of detention in Caen remand prison. By order of 28 July 2010, the urgent applications judge at Caen Administrative Court dismissed the request. The Justice Minister appealed against that ruling, which was set aside by judgment of the Nantes Administrative Court of Appeal on 27 January 2011. On 26 January 2012 the *Conseil d'État* dismissed the applicant's appeal on points of law.

On 31 August 2012 Mr Barbotin filed an action for damages against the State, seeking compensation for the damage resulting from his conditions of detention at Caen remand prison. By judgment of 28 May 2013, the Caen Administrative Court ruled that during his detention, which had lasted some 24 months, the applicant had, for just over four months, from 27 January 2010 to 2 June 2010, been held in conditions of detention incompatible with respect for human dignity, and ordered the State to pay him 500 euros (EUR) in compensation in respect of non-pecuniary damage.

The Administrative Court also ordered the applicant to defray the costs of the expert assessment, totalling EUR 773.57, on the grounds that the order of 16 June 2010 commissioning the expert report had been cancelled.

On 2 December 2015 the *Conseil d'État* dismissed the main appeal on points of law lodged by the applicant and the cross-appeal lodged by the Ministry of Justice.

Complaints, procedure and composition of the Court

Relying on Article 13 (right to an effective remedy) read in conjunction with Article 3 (prohibition of inhuman and degrading treatment), the applicant complained of the ineffectiveness of the compensatory remedy which he had exercised before the domestic courts, inasmuch as the amount awarded in compensation had been insufficient and the order to defray the costs of the expert report had led to his owing money to the French State.

The application was lodged with the European Court of Human Rights on 2 May 2016.

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

Síofra **O'Leary** (Ireland), *President*,
Mārtiņš **Mits** (Latvia),
Ganna **Yudkivska** (Ukraine),
Latif **Hüseynov** (Azerbaijan),
Jovan **Ilievski** (North Macedonia),
Ivana **Jelić** (Montenegro),
Mattias **Guyomar** (France),

and also Victor **Soloveytschik**, *Section Registrar*.

Decision of the Court

[Article 13 read in conjunction with Article 3](#)

The Court was called upon to examine the liability rules in place and to adjudicate, for the first time, on the effectiveness of the compensatory remedy under Article 13, as well as to consider whether the applicant had obtained appropriate redress.

In the first place, the Court noted that the administrative courts had determined the case in compliance with the general principles set out in the case-law of the *Conseil d'État*. It was incumbent on the Court to ascertain whether those principles were consistent with the requirements set out in its own case-law. The Court noted that the administrative court had relied on the requirement reiterated in the Prison Law of 22 November 2009 to respect the human dignity of detainees. The administrative court had noted the “unworthiness” of the applicant’s conditions of detention, with reference to the overcrowding in the remand prison and the problems arising from the bad conditions of the 16 m² cell in which he had been held for four months with three or four other persons. The court had engaged the responsibility of the State for negligence and ordered it to pay compensation for the non-pecuniary damage sustained by the applicant.

The *Conseil d'État*, examining an appeal on points of law, had exercised the powers of a cassation court in accordance with the main lines of its case-law. Under Article 3 of the Convention it had ruled that those criteria had been properly applied to the present case. The *Conseil d'État* had also confirmed the approach adopted by the lower courts, considering that the applicant had for some four months been detained in conditions incompatible with human dignity. It had reiterated that the “unworthy” conditions of detention suffered by the applicant had pointed to negligence on the part of the State, and had given rise *per se* to a right to compensation for non-pecuniary damage. The Court noted that in so doing the domestic courts had adjudicated on the basis of standards which coincided with its own as regards conditions of detention, having proper regard to the fact that prisoners and detainees were completely dependent on the prison authorities.

Secondly, the Court noted that the applicant had benefited from an appropriate remedy affording him compensation for the damage he had sustained. However, it noted that the domestic courts had decided to order the applicant to pay the expert’s fees on the grounds that the expert assessment ordered at first instance had, after being implemented, been cancelled on appeal. In the present case, the sum of EUR 773.57 payable by the applicant in respect of costs had to be subtracted from his award of EUR 500. After having exercised his compensatory remedy, therefore, the applicant had found himself owing the State a total of EUR 273.57.

The Court also noted the extremely modest sum awarded to the applicant, which amounted to a very low percentage of what might have been payable in similar circumstances.

The Court considered that the outcome of the proceedings brought by the applicant – a situation of owing the State EUR 273.57 after a finding of non-pecuniary damage caused by conditions of detention which had infringed his human dignity – had deprived the remedy of its effectiveness.

The Court was mindful that the development of the administrative court’s case-law on the compensatory remedy was part of a reform drive which the respondent State had to initiate in order to deal with the problem of prison overcrowding and to settle a large number of individual cases stemming from that problem, with an eye to the effectiveness of the subsidiarity principle underpinning the Convention system.

The Court found that in the present case there had been a violation of Article 13 of the Convention read in conjunction with Article 3.

Just satisfaction (Article 41)

The Court held that France was to pay the applicant 2,000 euros (EUR) in respect of non-pecuniary damage and EUR 1,500 in respect of costs and expenses.

The judgment is available only in French.

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Press contacts

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

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

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

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

The European Court of Human Rights was set up in Strasbourg by the Council of Europe Member States in 1959 to deal with alleged violations of the 1950 European Convention on Human Rights.