



## Judgment against France for not providing, at the relevant time, an effective remedy to address inhuman or degrading detention conditions

In today's **Chamber** judgment<sup>1</sup> in the case of **Yengo v. France** (application no. 50494/12) the European Court of Human Rights held, unanimously, that there had been:

**a violation of Article 13** (right to an effective remedy) of the European Convention on Human Rights

The case concerned the conditions of detention of a prisoner, Mr Yengo, in Nouméa prison, New Caledonia.

Mr Yengo complained about those conditions and also about the lack of an effective remedy by which to complain about them to the domestic authorities.

The Court first held that Mr Yengo could no longer claim to be a victim of Article 3 of the Convention prohibiting inhuman and degrading treatment, since the domestic court had awarded him some compensation for the harm sustained as a result of the detention conditions.

However, the Court found that at the relevant time French law had not provided Mr Yengo with any preventive remedy by which he could have promptly obtained the termination of his inhuman and degrading conditions of detention. There had therefore been a violation of Article 13 of the Convention.

### Principal facts

The applicant, Paul Yengo, is a French national who was born in 1951 and lives in Mare (New Caledonia).

In 2011 an investigating judge placed Mr Yengo under judicial investigation on various charges of a serious nature and remanded him in custody at Camp Est Prison in Nouméa. He appealed to the Investigation Division against the decision, also complaining about his conditions of detention. He explained that he was being held with five other cellmates in a cell measuring 3 metres by 5 metres, obliging them to remain lying down on their beds. He emphasised the appallingly unhygienic conditions and the humiliation of having to use a toilet, which was also a shower, in front of his cellmates inside the cell.

The Investigation Division, however, upheld the remand decision without addressing Mr Yengo's conditions of detention. Mr Yengo then submitted an application for release, once again criticising his conditions of detention. His application was dismissed by the liberties and detention judge, and subsequently on appeal by the Investigation Division. Mr Yengo then lodged an appeal on points of law, invoking the "urgent" recommendations issued by the Inspector General of Detention Facilities following his visit to the prison in Nouméa. In those urgent recommendations (the first time this procedure had been used) the Inspector General had informed the authorities that he had found a serious violation of fundamental rights, and had set them a deadline by which the matter should be addressed. Mr Yengo's appeal was nevertheless dismissed by the Court of Cassation on 29 February

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](http://www.coe.int/t/dghl/monitoring/execution).

2012, which found that there were insufficient allegations specific to Mr Yengo's personal situation and nothing serious enough to put his physical or mental health at risk.

On 15 May 2012 Mr Yengo was released by a decision of the investigating judge, who found that his detention was no longer necessary for the establishment of the truth. On 31 July 2012 the urgent applications judge of the New Caledonia Administrative Court, on an application made by Mr Yengo and 29 other detainees during their detention, ordered the State to pay them an advance on compensation for the non-pecuniary damage caused to them by their conditions of detention.

## Complaints, procedure and composition of the Court

Relying on Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy), Mr Yengo complained of the conditions of detention he had endured at the prison in Nouméa, together with the lack of an effective remedy in that connection.

The application was lodged with the European Court of Human Rights on 20 July 2012.

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

Mark Villiger (Liechtenstein), *President*,  
Angelika Nußberger (Germany),  
Boštjan M. Zupančič (Slovenia),  
Ganna Yudkivska (Ukraine),  
Vincent A. de Gaetano (Malta),  
André Potocki (France),  
Helena Jäderblom (Sweden),

and also Claudia Westerdiek, *Section Registrar*.

## Decision of the Court

### Article 3 (prohibition of torture and inhuman or degrading treatment)

The Court observed that Mr Yengo, during his detention, had lodged an urgent application with the Administrative Court for an advance on a sum payable by the State (*référé-provision*). After his release he had obtained from that court an advance on compensation for the damage caused to him by the conditions of his detention, which in the court's view had not ensured respect for human dignity.

The urgent applications judge had thus provided final redress for the alleged violation of Article 3 of the Convention, acknowledging the shameful conditions of detention and awarding an advance on that basis. In those circumstances the Court took the view that Mr Yengo could no longer claim to be a victim of a violation of that Article.

### Article 13 (right to an effective remedy)

As regards the complaint under Article 13, the Court reiterated that in matters of detention conditions, preventive and compensatory remedies co-existed. Whilst Mr Yengo had indeed received some compensation, in the form of an advance payment, the Court nevertheless had to address the alleged absence of any preventive remedy capable of promptly bringing an end to the inhuman and degrading conditions of detention complained of by Mr Yengo. The Court thus found the complaint under Article 13 admissible.

The Court reiterated that a preventive remedy in matters of detention conditions had to enable the complainant to obtain the termination of the alleged violation or an improvement in the physical conditions in question.

In the present case, the Court first found that the request for release submitted by the applicant could not be regarded as an effective remedy within the meaning of Article 13 of the Convention. The Court of Cassation, in its judgment of 29 February 2012, had found that release could be granted only in the event of a serious risk to the physical or mental health of the detainee, this being difficult to prove. In addition, as five months had passed between the request for release and the judgment of the Court of Cassation, the Court found that this procedure did not have the guarantees of promptness required to be effective within the meaning of Article 13.

The Court further found that an administrative complaint followed by an application to the Administrative Court for judicial review could not, contrary to the Government's contention, be regarded as effective within the meaning of Article 13.

Lastly, as regards the urgent administrative procedure for the protection of a fundamental freedom (*référé-liberté*), which had also been put forward by the Government as an effective remedy, the Court noted that since the decision of the *Conseil d'État* on 22 December 2012 concerning the Baumettes prison in Marseille, that remedy had allowed the relevant judge to act promptly to put an end to detention conditions found by the Inspector General to be in breach of Article 3 of the Convention. However, that was a recent case-law development, subsequent to the facts of the present case.

The Court thus found that at the relevant time French law had not provided Mr Yengo with any preventive remedy by which he could have promptly obtained the termination of – or an improvement in – his conditions of detention. There had therefore been a violation of Article 13 of the Convention.

#### Article 41 (just satisfaction)

The Court held that France was to pay Mr Yengo 4,000 euros (EUR) in respect of non-pecuniary damage and EUR 4,500 for costs and expenses.

*The judgment is available only in French.*

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**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.