



Failure to provide care for an unaccompanied foreign minor, aged 12, in the “lande de Calais” shanty town was in breach of the Convention

In today’s **Chamber** judgment¹ in the case of [Khan v. France](#) (application no. 12267/16) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 3 (prohibition of inhuman and degrading treatment) of the European Convention on Human Rights.

The case concerned the failure by the French authorities to provide an unaccompanied foreign minor with care before and after the dismantling of the makeshift camps set up in the southern section of the “lande de Calais” (“Calais heath”). Large numbers of people hoping to seek asylum in the United Kingdom had for many years been living there in tents or huts, in overcrowded conditions without even the most basic sanitation.

The Court was not convinced that the authorities had done all that could reasonably be expected of them to fulfil the obligation of protection and care incumbent on the respondent State *vis-à-vis* an unaccompanied foreign minor unlawfully present on French territory, that is to say an individual belonging to the category of the most vulnerable persons in society. For several months the applicant had thus lived in the “lande de Calais” shanty town, in an environment completely unsuited to his status as a child and in a situation of insecurity rendered unacceptable by his young age.

The Court held that the extremely negative circumstances prevailing in the makeshift camps and the failure to enforce the court order intended to secure protection for the applicant amounted to a violation of the respondent State’s obligations, and that the Article 3 severity threshold had been reached. It deduced that on account of the failure of the French authorities to take the requisite action, the applicant had found himself in a situation tantamount to degrading treatment.

Principal facts

The applicant, Jamil Khan, is an Afghan national who was born in 2004 and lives in Birmingham (United Kingdom).

By order of 2 November 2015 the Lille urgent applications judge, at the prompting, in particular, of a number of non-governmental organisations (NGOs), instructed the Pas-de-Calais Prefect to ascertain the number of unaccompanied minors in distress and to co-operate with the Pas-de-Calais Département in placing them in care. The judge also ordered her to install sanitary facilities on the “lande de Calais” site.

The Government submitted that all the amenities and sanitary and security facilities ordered by the urgent applications judge had been installed. The applicant stated that the Ombudsman’s General Recommendation of 20 April 2016 had mentioned that although the numbers of unaccompanied minors had indeed been ascertained as of January 2016, the counting exercise had not led to the actual provision of care for those minors. The Département Council had merely organised patrols by

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.

under-trained individuals, without the assistance of translators to prepare for the details of care provision.

On 12 February 2016 the Pas-de-Calais Prefect announced her decision to order the evacuation of the southern section of the “lande de Calais” site. The evacuation took place between 29 February and 16 March 2016. The northern section was evacuated at the end of October 2016.

The applicant submits that he left Afghanistan at the end of August 2015 for the United Kingdom, and that he reached Calais by following refugees in the hope of finding some way of crossing to England. He therefore settled into a hut in the southern section of the “lande de Calais” and contacted a number of NGOs, including “Cabane juridique” (“the Legal Hut”). On 19 February 2016 that NGO lodged with the Children’s Judge an application for a provisional care order for the applicant. The Children’s Judge appointed a statutory representative and ordered the applicant’s provisional placement at the Calais Department for Children’s and Family Affairs as of 23 February 2016.

The applicant pointed out that neither the Département nor the Prefecture had taken any action to provide for him. The Government observed that the social welfare services had been unable to enforce the placement order because the applicant had failed to attend the welfare offices and his lawyer, his statutory representative and the NGO involved had not informed them of his whereabouts.

During the week of 20 March 2016 the applicant had left the “lande” site and entered Britain illegally, where he had been taken into care by the UK child welfare agencies.

Complaints, procedure and composition of the Court

Relying, in particular, on Article 3 of the Convention (prohibition of inhuman and degrading treatment), the applicant complained of the French authorities’ failure to comply with their duty to protect unaccompanied foreign minors like himself on the “lande de Calais” site. He complained that the order provisionally placing him in the child welfare centre had not been enforced

The application was lodged with the European Court of Human Rights on 3 March 2016.

On 2 March 2016, during the operations to dismantle the southern section of the “lande de Calais”, 15 unaccompanied foreign minors, including the applicant, as well as two NGOs, lodged a request for the application of Rule 39 of the Rules of Court. They requested, in particular, a stay of the evacuation order and an indication to the State to detail the action taken to support and rehouse the persons evacuated. On 9 March 2016, upon receipt of the parties’ replies, the Court decided not to indicate to the Government the interim measures requested. It took note of the fact that the Government was undertaking to provide care for the minors in question as soon as they had been located, pursuant to the provisional placement orders issued by the Children’s Judge.

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

Angelika **Nußberger** (Germany), *President*,
Yonko **Grozev** (Bulgaria),
André **Potocki** (France),
Mārtiņš **Mits** (Latvia),
Gabriele **Kucsko-Stadlmayer** (Austria),
Lətif **Hüseynov** (Azerbaijan),
Lado **Chanturia** (Georgia),

and also Milan **Blaško**, *Deputy Section Registrar*.

Decision of the Court

The Court noted the applicant's young age, having arrived in France as an 11-year-old. He had been 12 when the southern section of the "lande de Calais" had been dismantled and he had left the country. The Court observed that he had lived in the "lande de Calais" for some six months.

The Court noted that the Government did not dispute the fact that the applicant had not been provided with care by the authorities.

The Court noted that in its order of 23 November 2015 the *Conseil d'Etat* urgent applications judge had used the word "shanty town" to describe the "lande de Calais" site, had found that the provision for the applicants' basic needs in terms of hygiene and supplies of drinking water had been "manifestly inadequate", and had pointed to "negligence such as to expose them to patently inhuman and degrading treatment, thus seriously, and manifestly unlawfully, infringing a fundamental freedom". Following the evacuation of the southern section of the site, many of the occupants had moved to the northern section, which had exacerbated the overcrowding there.

Owing to the failure of the authorities to protect the applicant, and despite support from various NGOs, he had therefore spent six months living in an environment manifestly unsuitable for children, characterised by insalubrity, precariousness and insecurity. On 22 February 2016, on the grounds of the applicant's perilous situation, the Children's Judge of the Boulogne-sur-Mer Regional Court had ordered his placement with the child welfare department. The Court considered that the failure to provide care, which had already been extremely problematic before the southern section of the site had been dismantled, had become even worse after that operation because of the demolition of the hut in which he had been living and the general deterioration of living conditions on the site.

The very fact that the applicant had had to wait for the Children's Judge to order his placement before his case could actually be considered by the competent authorities raised questions as to the respondent State's compliance with the obligation under Article 3 of the Convention to protect and provide care for unaccompanied foreign minors. It followed that the competent authorities had not even identified the applicant as such, even though he had been present on the "lande de Calais" for several months and, as a young child, should have been very conspicuous. It would therefore appear that the means employed to identify unaccompanied foreign minors present on the site had been inadequate.

The Court observed that the unaccompanied foreign minors present on the site had not always accepted the provision offered to them. Nevertheless, it noted that the Ombudsman, in particular, took the view that the reason for the minors' reluctance to accept the measures was that the system of providing shelter for them was unsuited to their situation and that the reluctance in question could not in any case justify inaction on the part of the authorities, which, being responsible for protecting the children, ought to have carefully considered the means of doing so, with due regard to the specific nature of such cases.

The Court noted that the applicant, for his part, stated that he would have accepted official protection. The Court repeated that he had been a 12-year-old child who, moreover, probably had limited knowledge of the French language. It was therefore not convinced by the Government's argument that it had been incumbent on the applicant in person to take the requisite steps to secure official protection. Nor did it consider that the NGOs, the lawyer who had represented the applicant in the proceedings leading up to the order of 22 February 2016 or his statutory representative could be blamed for not having taken him to the reception centre designated by the authorities, since that task had manifestly been a matter for the authorities themselves.

The Court was aware of the complexity of the task facing the domestic authorities in view of the difficulty of identifying minors among all the persons present on the site and of providing them with appropriate care, given that they did not always want the latter. The Court also noted the ambiguity of the applicant's attitude, in that, although he had applied to the Children's Judge for provisional

placement, he had not intended to remain in France but rather had been planning to reach the United Kingdom. The Court further observed that the domestic authorities had not remained completely inactive since they had taken steps to enforce the Children's Judge's order of 22 February 2016. Nevertheless, the Court was not convinced that the authorities had done all that could reasonably be expected of them to fulfil the obligation of protection and care incumbent on the respondent State *vis-à-vis* an unaccompanied foreign minor who was unlawfully present in French territory, that is to say an individual belonging to the category of the most vulnerable persons in society.

For several months the applicant had thus lived in the "lande de Calais" shanty town, in an environment completely unsuited to his status as a child and in a situation of insecurity rendered unacceptable by his young age.

The Court found that the particularly serious circumstances of the case and the failure to enforce the Children's Judge's order geared to protecting the applicant, taken in conjunction, amounted to a breach of the respondent State's obligations. On account of the failure of the French authorities to take the requisite action, the applicant had found himself in a situation which had amounted to degrading treatment. There had therefore been a violation of Article 3 of the Convention.

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

The Court held that France was to pay the applicant 15,000 euros (EUR) in respect of non-pecuniary damage.

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.