



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

FIFTH SECTION

CASE OF N.H. AND OTHERS v. FRANCE

*(Applications nos. 28820/13 and 2 others –
see appended list)*

JUDGMENT

Art 3 (substantive) • Degrading treatment • Asylum-seekers living rough for several months without resources on account of administrative delays preventing access to reception conditions required by law • Not permitted to work pending decisions on asylum claims • Entirely dependent on in-kind and financial support from State to meet essential needs • Emergency accommodation insufficient and priority given to particularly vulnerable asylum-seekers • No context of humanitarian emergency arising from exceptional migration crisis • No appropriate official response after authorities repeatedly put on notice • Domestic courts consistently denying relief on grounds applicants single young adults in good health with no dependent family members • Severity threshold not reached where asylum-seeker receiving financial support after two months

STRASBOURG

2 July 2020

FINAL

02/10/2020

This judgment has become final under Article 44 § 2 of the Convention.

In the case of N.H. and Others v. France,

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

Síofra O’Leary, *President*,
Gabriele Kucsko-Stadlmayer,
André Potocki,
Mārtiņš Mits,
Lətif Hüseyinov,
Lado Chanturia,
Anja Seibert-Fohr, *Judges*,

and Victor Soloveytschik, *Deputy Section Registrar*,

Having regard to the applications (nos. 28820/13, 75547/13 and 13114/15) against the French Republic lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) by five asylum-seekers (“the applicants”) on the dates stated in the appended table;

Having regard to the decision of the Section President not to disclose the identities of the applicants (Rule 47 § 4 of the Rules of Court);

Having regard to the decision of the Section President to grant legal aid to the applicants;

Noting that the Government were given notice of the applications between 16 January 2014 and 27 May 2015;

Having regard to the observations submitted by the respondent Government, the applicants’ observations in reply and the comments received from the non-governmental organisation Coordination française pour le droit d’asile (French Asylum Coalition – CFDA) concerning application no. 28820/13 and from the *Défenseur des droits* (Rights Ombudsman) regarding applications nos. 28820/13 and 13114/15, both third parties having been granted leave by the Section President to intervene; and

Having deliberated in private on 19 May and 9 June 2020,

Delivers the following judgment, which was adopted on the last-mentioned date:

INTRODUCTION

1. The present cases concern five single adult asylum-seekers in France. They applicants claimed that they had not been afforded access to in-kind and financial support required by national law and as a result had been forced to sleep rough in inhuman and degrading conditions for several months.

2. The applicants relied on Article 3 of the Convention. Those who lodged applications nos. 28820/13 and 13114/15 also alleged an infringement of their right to an effective remedy under Article 13 read in conjunction with Article 3 of the Convention. The applicant behind application no. 28820/13

also complained of a violation of Article 8 read alone and in conjunction with Article 13 of the Convention.

THE FACTS

3. The appended table sets out the particulars relating to the applicants and their representatives. The French Government (“the Government”) were represented by their Agent, Mr F. Alabrune, Director of Legal Affairs at the Ministry of European and Foreign Affairs.

CIRCUMSTANCES OF THE CASE

A. Events leading up to the applications to the Court

1. Application no. 28820/13 (N.H.)

4. The applicant is an Afghan national who was born in 1993 and lives in Paris. By his account he was approached by the Taliban several times in 2010 to fight against the international coalition forces and received death threats for refusing to join them. Out of fear for his safety he decided to leave the country.

5. The applicant arrived in France in March 2013. On 26 March he obtained a mailing address from the association France Terre d’Asile in Paris through a procedure known as *domiciliation postale* or *élection de domicile* whereby any person who lacks a regular or fixed abode may be provided with an address for administrative purposes enabling him or her to receive mail and claim certain entitlements and benefits. On 4 April 2013 he went to the Paris Police Prefecture to lodge an asylum claim. He received a notice to attend an appointment on 9 July 2013 for a decision on whether he was to be granted initial permission to stay in France and for the purposes of lodging his asylum application.

6. On 18 April 2013 he applied to the Paris Administrative Court under Article L. 521-2 of the Administrative Courts Code (the “*référé-liberté*” – urgent applications for interim relief to safeguard a fundamental freedom – see paragraph 89 below), relying in particular on Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum-seekers (the “Reception Directive” – see paragraph 95 below). He sought an order directing that his application for permission to stay pending an asylum claim be considered and that he be issued with a provisional authorisation to stay (*autorisation provisoire de séjour*). He argued *inter alia* that without asylum-seeker status he did not qualify for any in-kind or financial support under national law and, in those circumstances, was forced to live rough.

7. By a decision of 19 April 2013 the interim relief judge denied his application and gave the following reasons:

“It appears from the material on record that [N.H.], an Afghan national, obtained an address for administrative purposes from the association ‘France Terre d’Asile’ on 26 March 2013. He was interviewed at the asylum-seekers’ centre on 4 April 2013, and, under the new appointments system set up by the police prefecture and the association ‘France Terre d’Asile’ to avoid the need for multiple visits to the association before an asylum-seeker was seen by the prefecture, the prefecture staff issued him with a notice to attend an appointment on 9 July 2013 to lodge his complete application for asylum. Between the influx of asylum-seekers to Paris and the actual extent of the public resources available, the authorities have been concretely compelled, together with the associations accredited to provide mailing addresses to asylum-seekers, to institute a standard waiting time of the order of three months for an appointment. Under these circumstances, although it is not in dispute that asylum-seekers face great hardship, the authorities cannot be accused, where the waiting time for an appointment is of the order of three months, of inaction amounting to a serious and manifestly unlawful interference with the right of asylum. In this case the setting of the applicant’s appointment for that date does not represent a serious and manifestly unlawful interference with the fundamental freedom in issue, namely the right of asylum ...”

8. On 23 April 2013 the applicant appealed to the *Conseil d’État*. By a decision of 26 April 2013 the interim relief judge of the *Conseil d’État* dismissed the appeal for the same reasons.

9. On 29 April 2013 the applicant made a request under Rule 39 of the Rules of Court for the Court to direct the French authorities to grant him satisfactory material reception conditions. That day, the Court delivered a decision denying his request.

10. At his appointment at the prefecture on 9 July 2013, an analysis and matching of the applicant’s fingerprints showed, on the basis of a “Eurodac” report of the same day, that they had been registered under a different identity in Denmark on 9 April 2010 (Eurodac is a large-scale information system containing the fingerprints of applicants for asylum or subsidiary protection and illegal immigrants on EU territory). Accordingly, a “Dublin II” procedure was commenced in respect of the applicant (see paragraphs 93-94 below), and he was given an application form for permission to stay pending an asylum claim, to be filled out and submitted on the occasion of a further appointment at the prefecture, which was set for 31 July 2013. On that date, the applicant’s asylum claim was registered. He was provided with a document explaining the readmission procedure, and another appointment at the prefecture was scheduled for 3 October 2013.

11. Pursuant to the Dublin II Regulation (see paragraphs 92-94 below), the French authorities asked the Danish authorities on 31 July 2013 to send any relevant information they had on the applicant for the purpose of determining the member State responsible for examining his asylum claim. On 6 August 2013 the Danish authorities replied that the applicant had entered Denmark on 5 April 2010 and had claimed asylum on 8 April 2010. They also reported that his asylum claim had been rejected on 7 October 2010 on the ground that the medical tests he had undergone had indicated that he was 19 to 23 years of age whereas he had claimed to be a minor. Lastly they

stated that on 13 January 2011 the applicant's appeal had been rejected with final effect and he had accordingly been required to leave the country promptly. According to the Government, the French authorities did not ask the Danish authorities to take the applicant back, as they would have been entitled to do under the Dublin II Regulation, but instead availed themselves of the sovereignty clauses in Article 3 § 2 of the Regulation and the final paragraph of Article L. 741-4 of the Immigration and Asylum Code (*Code de l'entrée et du séjour des étrangers et du droit d'asile* – see paragraph 72 below).

12. On 30 August 2013 the applicant applied for the Temporary Waiting Allowance (*allocation temporaire d'attente*), which was denied. On 11 September 2013, in the Paris Administrative Court, he made an urgent application for interim relief to safeguard a fundamental freedom; he relied in particular on the Reception Directive (see paragraph 95 below) and sought an order that *Pôle emploi* (the public administrative body supporting jobseekers in France) grant him the Temporary Waiting Allowance in accordance with national law (see paragraphs 78-82 below).

13. By a decision of 13 September 2013 the interim relief judge dismissed his application on the following grounds:

“*Pôle emploi*'s refusal to process [N.H.]'s application for the Temporary Waiting Allowance under Article L. 5423-8 of the Labour Code did not represent a serious and manifestly unlawful interference with the fundamental freedom in issue, namely the right of asylum, since the applicant had not been able to provide anything more than the certificate of address issued by the association 'France Terre d'Asile', which cannot be regarded as sufficient either to establish the applicant's identity directly or to require that *Pôle emploi* undertake inquiries to confirm it. That being so, the application must be dismissed ...”

14. At his appointment on 3 October 2013 the applicant was informed by the caseworker at the Paris Police Prefecture that his asylum claim would be considered by the French Office for the Protection of Refugees and Stateless Persons (*Office français de protection des réfugiés et des apatrides* – OFPRA) but that, pursuant to Article L. 741-4 (4°) of the Immigration and Asylum Code (see paragraph 72 below), he had been refused permission to stay pending the asylum claim. Reasoning on the basis that the applicant had entered the Schengen Area on 5 April 2010 through Denmark and had claimed asylum there under another identity (see paragraph 11 above), the prefect had decided that his asylum claim in France was abusive in that it had been made for the sole purpose of frustrating a removal order. The applicant was given a further appointment for 17 October 2013.

15. On 3 October 2013 the applicant went to *Pôle emploi* to apply for the Temporary Waiting Allowance. He was refused it on the ground that he had not presented a letter of notice that OFPRA had registered his asylum claim.

16. According to the applicant, during the time that his administrative case was pending, he was unable to show that he was in France lawfully and

feared that he would be expelled to his country of origin. The Government have disputed that claim on the ground that, although the notice to attend an appointment which had been issued to the applicant on 4 April 2013 (see paragraph 5 above) did not constitute a initial grant of permission to stay, it did allow him to remain in France and thus ruled out any risk of expulsion.

17. Also according to the applicant, although he had asylum-seeker status as of 9 July 2013 (see paragraph 10 above), he was still forced to live rough because he was receiving no in-kind or financial support under national law, and until 3 October 2013 he lived in constant fear of being arrested and sent to a detention centre; nor did he receive a document containing information about his rights and obligations, with details of organisations that might be able to facilitate day-to-day matters, contrary to Article R. 741-2 of the Immigration and Asylum Code (see paragraph 72 below).

18. The authorities, which he had put on notice of his extreme destitution on 6 April, 19 August and 6 September 2013, did not answer any of his letters. As an asylum-seeker he was not permitted to work and was therefore unable to support himself. By his account, for the better part of nine months he lived with some compatriots under the bridges spanning the Canal Saint-Martin, sleeping only two or three hours a night for fear of being assaulted again after his sleeping bag was stolen one night. Also according to the applicant, between March and August 2013 he was picked up once or twice a week by a bus (the “Atlas bus”) which took migrants who had managed to get their names onto a list managed by the Atlas association to a Salvation Army dormitory to spend the night. According to the applicant, the health and safety conditions at this emergency accommodation centre were deplorable.

19. With effect from September 2013, asylum-seekers were required to call the emergency accommodation helpline (by dialling 115) to secure a place on the Atlas bus. From then on, according to the applicant, he was unable to secure a place. According to the Government, from 26 September to 12 December 2013, the *Kiosque Emmaüs Solidarité* (a platform tasked with facilitating migrants’ access to benefits and services) made eight requests to the Integrated Reception and Orientation Service (*Service intégré d’accueil et d’orientation* – SIAO) of the Ile-de-France region for the applicant to be placed in emergency accommodation, but those requests could not be fulfilled because the emergency facilities were at capacity. According to the applicant, his one meal a day came from the Salvation Army in the evening; as there was no meal service on Saturday or Sunday, he went hungry at weekends. Also according to the applicant, demand for the city’s public showers was such that he was able to use them only once a week; he did his laundry there in secret once a month but was unable to dry his clothes properly; he received some clothing, thanks solely to a donation by a volunteer, but it was not what he urgently needed. In the Government’s submission, however, the applicant was eligible for the in-kind relief made available by the city of Paris, including subsidised meal centres and grocery

stores, clothing banks offering free or bargain-price clothes and shoes (*vestiboutiques*), and the public showers. The applicant did not get access to State Medical Aid (*aide médicale d'État* – AME – public health coverage for persons without lawful immigration status) until 25 October 2013, owing to the application processing times. Until then the only places he could go were the Health Access Points (*permanences d'accès aux soins* – PASS – walk-in services for the indigent and uninsured), which by his account were overcrowded. According to the applicant, Health Access Points did provide care and medicine free of charge, but patients still had to cover surgical procedures, and he was unable pay for the dental X-rays and procedure which he had on 17 July 2013 and for which he was charged a total of 86.45 euros (EUR). He also said that he had broken his wrist – an injury which he had reported to the French authorities in his letter of 6 April 2013. The Government observed that he had provided no medical certificate attesting to the injury.

20. On 13 November 2013 OFPRA refused the applicant refugee status but accorded him subsidiary protection in view of the widespread violence taking place in his home province. On 5 December 2013 he received a certificate (*récépissé*) recording the grant of international protection and stating that he was permitted to work.

21. On 17 December 2013 the applicant was offered accommodation at the Corot Entraide d'Auteuil association. According to the Government, the association is 60% State-subsidised.

2. Application no. 75547/13 (S.G., K.T. and G.I.)

(a) S.G.

22. The applicant is a Russian national who was born in 1987 and lives in Carcassonne. He arrived in France on 15 July 2013 and the next day lodged an asylum claim at the prefecture of the Languedoc-Roussillon region, whereupon he received an offer of accommodation, subject to availability, at an Asylum Reception Centre (*centre d'accueil pour demandeurs d'asile* – CADA). The applicant accepted the offer, as he had to do in order to qualify for the Temporary Waiting Allowance. On 17 July 2013 the social services unit of the local branch of the French Immigration and Integration Office (*Office français de l'immigration et de l'intégration* – OFII) informed him that there were no places available and put him on the National Reception Scheme (*dispositif national d'accueil* – DNA) waiting list. It was furthermore suggested that he call 115 every day to obtain accommodation for the night. That service, which was also at capacity, was unable to offer him accommodation; he was therefore forced to live in a one-person tent, lent by private individuals, on the banks of the Aude river. Part of this account has been disputed by the Government. According to them, once informed of the existence of the 115 helpline and how to use it, the applicant secured a place

at the Castelnaudary General-Purpose Emergency Accommodation Centre (*centre d'hébergement d'urgence de droit commun* – HUDC), and although it was possible to stay at a HUDC for up to three months (extensions aside), he voluntarily left the facility. According to the Government's submissions in that connection, after a first unsuccessful call to the 115 helpline on 15 July 2013, S.G. did not contact the service again until 4 November 2013. He was then accommodated from 5 to 9 November 2013, at which point he departed the centre without giving notice. At his request he was readmitted the next day, before being excluded on 22 November 2013 for his behaviour. According to the Government, S.G. disturbed his roommate all night and left the room in a highly unsanitary state. The applicant has said that he availed himself from time to time of the relief services of associations such as the Red Cross and Restos du Cœur.

23. On 2 August 2013 OFPRA registered the applicant's asylum claim. On 13 August 2013 he was issued with a certificate stating that his claim had been lodged and authorising him to stay until 12 February 2014. On 18 September 2013 he was granted the Temporary Waiting Allowance at a rate of EUR 11.20 net per day, payable retroactively with effect from 12 August 2013.

24. According to the applicant, his belongings and the tent he was living in were stolen on 21 September 2013, and a private individual then lent him another tent; following this incident he decided to set up camp in a more remote place along the banks of the Aude.

25. On 7 October 2013, by an application to the interim relief judge of the Montpellier Administrative Court, the applicant sought urgent interim relief to safeguard a fundamental freedom in the form of an order that the State grant him accommodation in his capacity as an asylum-seeker in accordance with national law. By a decision of 8 October 2013 the interim relief judge dismissed his application for the following reasons:

"The applicant has a certificate which gives him provisional authorisation to stay pending an asylum claim. By his own account he is in regular contact with the voluntary sector and is receiving the Temporary Waiting Allowance. As he is a young, unmarried man with no dependants, whose relatively minor health conditions are known and are being medically monitored and treated, and in view of the local circumstances, which are that both the asylum-specific and general-purpose emergency accommodation facilities are continually at capacity (an established fact not seriously in dispute) and that priority is necessarily accorded to families or single parents with children and to the elderly or seriously ill, the State's actions do not represent a serious and manifestly unlawful interference with the fundamental freedom in issue, namely the right of asylum ..."

26. On 23 October 2013 the applicant applied to the Legal Aid Board (*bureau d'aide juridictionnelle*) of the *Conseil d'État* for legal aid to appeal against the decision of 8 October 2013. In his submission, the rejection of his application prevented him from pursuing a remedy in the *Conseil d'État* – a

course of action which he regarded as futile in any event given a line of previous decisions on the subject.

27. According to the applicant's account and the medical certificates adduced by him in support, he was suffering from leg injuries for which he received drug treatment and physical therapy. On 16 June 2014 he had surgery to remove a screw that had been implanted in his left ankle in Russia. He also has chronic hepatitis C. The medical certificate issued by a doctor in the specialist unit at the Carcassonne hospital on 18 June 2014 stated that the applicant was receiving an antiviral drug for his condition and that a reassessment of his treatment was planned for the end of the year. In support of the application for accommodation which he submitted to the OFII social worker on 24 June 2014, the applicant drew attention to his state of health and provided medical certificates.

28. The applicant asked OFPRA to postpone his interview scheduled for 2 July 2014 on account of his mobility issues.

29. OFPRA rejected the applicant's asylum claim by a decision of 13 October 2014, which was upheld by the National Asylum Court (*Cour nationale du droit d'asile* – CNDA) on 23 April 2015. The applicant sought reconsideration of his asylum claim but this was refused by OFPRA on 31 August 2015 and by the National Asylum Court on 20 September 2016.

30. The Hérault prefect issued a series of three orders on 24 June 2015, 31 January 2017 and 5 October 2017 requiring the applicant to leave the country voluntarily or face removal (*obligation de quitter le territoire français* – OQTF). The applicant brought challenges in the Administrative Court and then in the Administrative Court of Appeal to have the three orders quashed. On 24 September 2018 he submitted an application for a "private and family life" residence permit which, according to a decision of 26 November 2018, could not be entertained because of his failure to comply with the three orders to leave France.

(b) G.I.

31. The applicant is a Georgian national who was born in 1988 and lives in Carcassonne. He arrived in France on 25 May 2013. On 28 May 2013 he lodged an asylum claim at the prefecture of the Languedoc-Roussillon region, whereupon he received an offer of accommodation, subject to availability, at an Asylum Reception Centre. The applicant accepted the offer, as he had to do in order to qualify for the Temporary Waiting Allowance. The next day, the social services unit of the local OFII branch informed him that there were no places available and put him on the National Reception Scheme waiting list. It was furthermore suggested that he call the 115 helpline for accommodation on a one-off basis each night. That service, which was also at capacity, was unable to offer him accommodation. According to the applicant, he was forced to live rough and suffered from fevers and intestinal problems brought on by his living conditions.

32. On 27 June 2013 the applicant received a certificate stating that his asylum claim had been lodged and authorising him to stay in the country until 26 October 2013. OFPRA registered his asylum claim on 19 June 2013. On 23 August 2013 the applicant was granted the Temporary Waiting Allowance at a rate of EUR 11.20 net per day, payable retroactively with effect from 1 July 2013.

33. On 7 October 2013 the applicant made the same type of application as S.G. to the interim relief judge of the Montpellier Administrative Court. By a decision of 8 October 2013 the interim relief judge dismissed the application for the same reasons as in S.G.'s case (see paragraph 25 above).

34. On 24 October 2013 the applicant applied to the Legal Aid Board of the *Conseil d'État* for legal aid in order to appeal against the decision of 8 October 2013. According to the applicant, the rejection of his application prevented him from pursuing a remedy in the *Conseil d'État* – a course of action which he regarded as futile given a line of previous decisions on the subject.

35. According to the Government, on 11 April 2014, the applicant withdrew his asylum claim and applied to OFII for assisted voluntary return to his country of origin.

(c) K.T.

36. The applicant is a Russian national who was born in 1990 and lives in Carcassonne. He arrived in France on 7 January 2013 and the next day lodged an asylum claim at the prefecture of the Languedoc-Roussillon region. On 21 May 2013 he obtained a provisional authorisation to stay for one month.

37. OFPRA registered the applicant's asylum claim on 14 June 2013. On 26 June 2013 he was issued with a certificate stating that his claim had been lodged and authorising him to stay until 25 December 2013. He received the Temporary Waiting Allowance at a rate of EUR 11.20 net per day as of 15 July 2013.

38. According to the applicant, he did not receive any offer of accommodation at an Asylum Reception Centre and was forced to live in a one-person tent, lent by private individuals, on the banks of the Aude river. Part of that account has been disputed by the Government. According to them, the applicant was housed as of 7 January 2013 at the Castelnaudary HUDC, and, although it was possible to stay at a HUDC for up to three months (extensions aside), the applicant voluntarily left the facility and was later excluded for his behaviour. Specifically, the applicant absented himself for several days as of 23 January 2013 and lost his place as a result. He did not call 115 again until 23 July 2013. On 21 November 2013 he forced his way into the Castelnaudary HUDC with S.G., who was staying there. According to the Government, this led to his being temporarily excluded by the head of the centre. The applicant has said that he availed himself from time to time of

the relief services of associations such as the Red Cross and Restos du Cœur, and that being forced to walk for three months gave him leg injuries for which he received painkillers and physical therapy. The Government have disputed those allegations, noting that the applicant did not adduce any medical certificate.

39. On 25 July 2013 the applicant wrote to the Head of Social Cohesion and Public Welfare (*directrice de la cohésion sociale et de la protection de la population*) of the Aude *département* to request accommodation that would guarantee him decent living conditions. By a letter of 12 August 2013 she replied that he should continue to direct his requests to the OFII social worker and furthermore suggested that he call the 115 helpline. On 9 September 2013 the applicant reached out to the head of *Aude urgence accueil*. Every Wednesday he went to the OFII social services duty office. However, he received no offer of accommodation.

40. According to the applicant, on 21 September 2013, his belongings and the tent he was living in were stolen. A private individual then lent him another, less comfortable tent. Following this incident he decided to set up camp in a more remote place along the banks of the Aude.

41. On 7 October 2013 the applicant made the same type of application as S.G. (see paragraph 25 above) to the interim relief judge of the Montpellier Administrative Court. By a decision of 8 October 2013 that judge dismissed his application for the same reasons as in S.G.’s case, save for the reference to state of health (see paragraph 25 above).

42. On 23 October 2013 the applicant applied to the Legal Aid Board of the *Conseil d’État* for legal aid in order to appeal against the decision of 8 October 2013. According to the applicant the rejection of his application prevented him from pursuing a remedy in the *Conseil d’État* – a course of action which he regarded as futile given a line of previous decisions on the subject.

43. On 2 May 2014 OFPRA rejected the applicant’s asylum claim; its decision was upheld by the National Asylum Court on 22 December 2014.

44. The applicant subsequently tried several times to obtain a residence permit but was unsuccessful.

3. *Application no. 13114/15 (A.J.)*

45. The applicant is an Iranian national who was born in 1974 and lives in Paris.

(a) **Applicant’s account of events preceding his arrival in France**

46. The applicant was a journalist in Iran. When the publication he ran was banned in 2013 for insulting the Koran, he went on to found a new one. He was then charged with the offence of “promoting Western culture”. He had to issue an apology and destroy all copies of the publication. He was

arrested in the street, detained, tortured and threatened with death if he did not stop his work.

47. He managed to flee Iran and arrived in France on 9 September 2014.

(b) Applicant's account of events since his arrival in France

48. On 14 October 2014 the association France Terre d'Asile provided the applicant with an address for administrative purposes. He went to the Paris Police Prefecture on 23 October 2014 to lodge his asylum claim. His claim was not registered; he received a notice to attend an appointment on 7 January 2015 for a determination as to whether he was permitted to stay in France. According to the applicant, he was not given any other documents. As a result, without asylum-seeker status, he was unable to secure any material support under national law.

49. According to the Government, the applicant was immediately referred to the Social and Administrative Assistance Service (*service d'assistance sociale et administrative* – SASA) run by France Terre d'Asile (the SASA is a reception and support platform for adult asylum-seekers arriving in France for the first time, without children, to make an initial asylum claim), which then steered him towards associations offering clothing and food relief. The applicant has disputed that account, relying on a certificate issued by the deputy head of the SASA on 26 November 2014 from which it appears that no arrangements were made to enable him to meet his fundamental needs while awaiting access to the minimum reception conditions.

50. On 4 November 2014 he made a request to the prefect of the Ile-de-France region to be provided with accommodation in accordance with national law. By a letter of 7 November 2014 the prefect informed him that he was unable to grant his request because the national reception scheme was at capacity, and suggested that he call 115.

51. On 5, 12, 13 and 14 November 2014 the applicant stayed at an emergency accommodation centre in Paris's 18th *arrondissement*. According to him, the centre had 14 toilets for 386 beds located in a single residence hall, and the living conditions there were deplorable, with frequent incidents of theft and violence. It has been alleged by the Government that the applicant made very little use of the 115 helpline.

52. On 13 November 2014, by an application to the interim relief judge of the Paris Administrative Court, the applicant sought urgent interim relief to safeguard a fundamental freedom in the form of an order that the prefect consider his application for permission to stay pending an asylum claim and refer him to a reception or accommodation centre that could take him. By a decision of 14 November 2014 the interim relief judge dismissed his application and gave the following reasons:

“ ... It appears from the case file that the applicant, who is 40 years old and single with no dependants, was referred to the Social and Administrative Assistance Service (and is receiving social and legal support) and to the associations offering food and clothing

relief. The emergency accommodation facilities are full and as at 14 November 2014 there were 5,452 asylum-seekers with addresses in Paris awaiting a place at an Asylum Reception Centre. Facilities for the homeless and persons in distress are also at capacity. However, the applicant was able to call the 115 helpline and (despite not having priority in his situation) secured overnight stays in the 18th *arrondissement* emergency accommodation centre on 5, 12, 13 and 14 November. Although the waiting time of about two and a half months between intake at the asylum-seekers' centre and the appointment at the prefecture may seem long, nonetheless it reflects an effort undertaken by the authorities, which, between the influx of asylum-seekers to Paris and the actual extent of the public resources available, have been concretely compelled to institute a standard waiting time of the order of three months for an appointment. That being so, although the applicant has not yet actually been provided with a form stating that his asylum claim has been lodged, he is not isolated and is receiving support from associations. It follows that the authorities cannot be accused of a lack of care amounting to a serious and manifestly unlawful interference with the applicant's asserted right of asylum ..."

53. On 3 December 2014 the *Conseil d'État* likewise dismissed the applicant's claim, adopting the reasons given by the judge below.

54. By a letter of 23 December 2014 the applicant brought his situation to the attention of the Prefect of Police, reporting that he had been left with no choice but to live rough, under the bridges near the *Gare de l'Est* train station. He stated that he had been assaulted and had had his bags stolen and was living in constant fear that such incidents would reoccur.

55. At his appointment at the prefecture on 7 January 2015, the applicant received an application form for permission to stay pending an asylum claim, which he completed and submitted on 22 January 2015. That day, he obtained a provisional authorisation to stay until 21 February, an asylum claim form and an offer of accommodation, subject to availability, at an Asylum Reception Centre. The applicant accepted the offer, as he had to do in order to qualify for the Temporary Waiting Allowance. The applicant has alleged that from 23 October 2014 to 22 January 2015 he was not in a position to show that he was in France lawfully and so lived in constant fear of having his identity checked by the police and a removal order delivered against him. That allegation is disputed by the Government. According to them, the notice issued to the applicant to attend an appointment at the prefecture on 7 January 2015 operated as a provisional residence permit.

56. On 28 January 2015 the applicant went to *Pôle emploi* to apply for the Temporary Waiting Allowance. *Pôle emploi* refused to register his application on the ground that he was not able to show a certificate stating that his asylum claim had been lodged.

57. On 29 January 2015 he applied to the Paris Administrative Court for an interim order appointing an expert to certify that *Pôle emploi*'s refusal had amounted to a serious and unlawful interference with his right of asylum. By a decision of 30 January 2015 the interim relief judge dismissed his application for the following reasons:

“... on 22 January 2015 the police prefecture ... issued [A.J.] with a provisional authorisation to stay, bearing the words ‘for OFPRA procedure’, and an asylum application to be completed within 21 days. It appears from the case file that [A.J.] has thus far been unable to establish that his asylum claim was lodged with OFPRA. Accordingly, *Pôle emploi*’s refusal on 28 January 2015 to grant him the Temporary Waiting Allowance cannot be regarded, in the circumstances of the case, as having amounted to a serious and manifestly unlawful interference with the right of asylum. It follows that, on the record as it stands, [A.J.]’s application must be dismissed.”

58. On 5 February 2015 OFPRA registered the applicant’s asylum claim.

59. On 6 February 2015 the *Conseil d’État* upheld the decision of 30 January 2015 on appeal, giving the same reasons as the interim relief judge of the Paris Administrative Court (see paragraph 57 above).

60. On 12 February 2015 the applicant was granted the Temporary Waiting Allowance. A first payment of EUR 194.65 was made on 5 March 2015. On 1 April and 4 May respectively he received EUR 354.95 and EUR 343.40.

61. On 23 February 2015 the applicant was issued with a certificate stating that his asylum claim had been lodged with OFPRA. That day, his provisional authorisation to stay was renewed until 22 August 2015.

62. From 14 April 2015 the applicant was housed in a hotel through the SASA’s hotel accommodation scheme for single adult asylum-seekers (see paragraph 49 above).

63. On 23 April 2015 OFPRA recognised the applicant as a refugee. He was given notice of that decision on 5 May 2015. The applicant has stated that as a result he received his final Temporary Waiting Allowance payment, of EUR 354.95, on 1 June 2015.

64. In June 2015 the applicant obtained accommodation in Paris at the Maison des journalistes, for a six-month period, in a single-occupancy room. The Maison des journalistes is an association that welcomes and provides housing to about 30 journalists with refugee status per year, on premises made available by the city of Paris. According to the Government, the applicant also received daily meal vouchers and public transport tickets.

B. Events after the applications were lodged with the Court

65. By a letter of 10 April 2017 the Registry of the Court sent a request to counsel for G.I. (application no. 75547/13) to clarify by 10 May 2017 whether G.I. intended to pursue his application within the meaning of Article 37 § 1 (a) of the Convention.

66. On 5 May 2017 counsel for the applicant informed the Registry that he had been unable to re-establish contact with his client and sought an extension of time.

67. On 9 May 2017 the Registry sent counsel a letter with recorded receipt inviting him to provide it with the information requested in the letter of 10 April 2017 by 10 June 2017 and noting, furthermore, that the Court could

strike out an application if the circumstances indicated that the applicants did not intend to pursue it.

68. On 9 June 2017 counsel replied that despite his attempts to locate G.I. he had not managed to re-establish contact with him but wished to maintain the application on his behalf, which in his view was no less relevant, considering both the asylum reception conditions in France and the ineffectiveness of the remedies available.

69. Counsel also replied that S.G. and K.T., who had remained in contact with him, intended to pursue their applications.

RELEVANT DOMESTIC AND EUROPEAN LEGAL FRAMEWORK AND PRACTICE

I. FRENCH LAW

A. The asylum process

1. *At the material time*

70. The general principles of asylum law in France are outlined in the judgment in *Gebremedhin [Gaberamadhien] v. France*, no. 25389/05, §§ 22-24, ECHR 2007-II.

71. The asylum process and the procedure for obtaining permission to stay pending an asylum claim are summarised in the judgment in *I.M. v. France*, no. 9152/09, §§ 40-45, 2 February 2012.

72. The Immigration and Asylum Code, in particular, provided as follows at the time:

(a) Statutory provisions

Article L. 741-1

“Any alien in France who has not already been granted permission to stay in France by issuance of a residence permit for which provision is made in this Code or in an international treaty and who applies to stay in France pending an asylum claim shall make such application in accordance with the provisions of this Chapter.”

Article L. 741-4

“Subject to the provisions of Article 33 of the Geneva Convention of 28 July 1951 relating to the Status of Refugees, an alien asylum-seeker may be denied admission to France only where:

...

4° The claim for asylum rests upon a deliberate fraud, constitutes an abuse of the asylum process or is made for the sole purpose of frustrating an existing or imminent removal order. Abuse of the asylum process includes, in particular, fraudulently making multiple applications, under different identities, for permission to stay pending an asylum claim. It also includes making an asylum claim in a *collectivité d’outre-mer* if

the same claim is pending in another member State of the European Union. An asylum claim rests upon a deliberate fraud where, in order to mislead the authorities, the alien claimant makes false representations or conceals information about his or her identity, nationality or manner of entry into France.

The provisions of this Article are without prejudice to the State's unfettered right to grant asylum to any person notwithstanding that his or her case falls under subparagraph 1°, 2°, 3° or 4°."

Article L. 742-1

"An alien asylum-seeker who is granted permission to stay in France under Chapter I of this Title shall be issued with a provisional residence document allowing him or her to lodge an asylum claim with the French Office for the Protection of Refugees and Stateless Persons (OFPRA). No such claim may be made until that document has been provided to the claimant. After lodging the asylum claim, the claimant shall be issued with a new provisional residence document which shall be renewed until OFPRA has determined the claim and any appeal to the National Asylum Court has been decided."

(b) Provisions of secondary legislation

Article R. 741-2

"An alien who has not already been granted permission to reside in France and who seeks permission to stay pending an asylum claim under Article L. 741-1 shall provide in support of his or her application:

1° His or her personal information and the personal information of his or her spouse and dependent children, if any.

2° The documents referred to in the order made pursuant to Article R. 211-1 showing that the applicant entered France lawfully, or, failing that, any information concerning the circumstances of his or her entry into France and route of travel from his or her country of origin.

3° Four recent photographs of the applicant's face with head uncovered, which are a true likeness of the applicant and measure 3.5 cm by 4.5 cm.

4° The address at which he or she will be able to receive any correspondence during the period of validity of the provisional authorisation to stay issued pursuant to Article R. 742-1. Where the address chosen is that of an association, the association must be accredited by an order of the prefect. Accreditation shall be granted for a renewable period of three years to an association which has been lawfully registered for at least three years, whose purpose relates to relief or assistance to aliens, and which demonstrates that it has experience of asylum reception or support or the provision of addresses or accommodation to asylum-seekers and is fit to perform the actual task of receiving and passing on mail to asylum-seekers.

An alien making an application under this Article for permission to stay pending an asylum claim shall be informed, by the prefecture, of the documents which he or she is required to provide. The prefecture shall then issue the alien with a document containing information about his or her rights and obligations in relation to the reception conditions for asylum-seekers and about those organisations offering specific legal assistance or from which he or she may obtain help or guidance regarding the reception conditions, including medical care, for which he or she is eligible. Such information shall be given in a language which the asylum-seeker may reasonably be expected to understand."

Article R. 742-1

“Within fifteen days of fulfilling the requirements of Article R. 741-2 an alien shall be provided with a one-month provisional authorisation to stay, which shall bear the words ‘for OFPRA procedure’ ...”

Article R. 742-2

“An asylum-seeker to whom a provisional authorisation to stay has been issued pursuant to Article R. 742-1 shall, upon presentation of a letter from the French Office for the Protection of Refugees and Stateless Persons confirming the registration of, or announcing a decision to reconsider, his or her asylum claim, be provided, no later than three days after expiry of the provisional authorisation to stay referred to in Article R. 742-1, with a certificate of application for asylum, which shall constitute a provisional authorisation to stay.

...

Permission to work may be granted to an asylum-seeker only if, through no fault of his or her own, OFPRA has not determined his or her asylum claim within one year of registration of the claim. In such a case the asylum-seeker shall be subject to the general law applicable to foreign workers for the issuance of provisional work permits. Labour market conditions shall be factored into the determination of his or her eligibility for a work permit ...”

2. Law reform of 2015

73. The European directives making up the “2013 Asylum Package” (Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, OJ L 180, p. 60, and Directive 2013/33/EU laying down standards for the reception of applicants for international protection (recast), OJ L 180, p. 96) were transposed into French law by the Asylum Reform Act (Law no. 2015-925 of 29 July 2015), which thoroughly reformed the asylum regime in France.

74. The permission-to-stay procedure was replaced by one involving the registration of claims at the prefecture under Article L. 741-1 of the Immigration and Asylum Code. The law requires the prefect to ascertain whether France is the State responsible for the asylum claim under EU law (the Dublin II Regulation, since replaced by the Dublin III Regulation applicable to claims for international protection made as of 1 January 2014; see paragraphs 92-94 below). Furthermore the prefect is required to register the asylum claim no later than three days after it is submitted at the prefecture, irrespective of whether the claimant already has an address. That time may be extended to 10 business days should a large number of asylum claims be received concurrently.

75. In a judgment of 28 December 2018 (no. 410347) the *Conseil d’État* held that Article L. 741-1 of the Immigration and Asylum Code imposed on the State an obligation of result regarding the time-limits for registration of asylum claims. It concluded that the competent authorities were therefore

under a duty to take the necessary steps to ensure compliance with those time-limits, and that a refusal to do so was a decision which could be set aside by judicial review.

76. After registering the asylum claim the prefect must issue the asylum-seeker with an asylum claim certificate (*attestation*). If France is responsible for entertaining the claim, the certificate is valid as a provisional authorisation to stay, provided that the asylum application is actually lodged with OFPRA within 21 days. The certificate is renewable until OFPRA has made its decision and the National Asylum Court has disposed of any appeal (Article L. 743-1 of the Immigration and Asylum Code). If France is not responsible for entertaining the asylum claim, the certificate is valid as a provisional authorisation to stay until a determination is reached as to the State responsible and, in that event, until the claimant is actually transferred to that State (Article L. 742-1 of the Immigration and Asylum Code).

B. Reception of asylum-seekers

1. Accommodation scheme and financial support mechanisms in place at the material time

77. A discussion of the accommodation scheme for asylum-seekers may be found at paragraphs 18 and 19 of the judgment in *N.T.P. and Others v. France* (no. 68862/13, 24 May 2018).

78. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (Reception Directive, OJ L 31, p. 18; see paragraph 95 below) imposed a duty on member States of the European Union to provide in-kind or financial support throughout the asylum process. Accordingly, the Temporary Waiting Allowance was created by section 154 of Law no. 2005-1719 of 30 December 2005. The Temporary Waiting Allowance was available to asylum-seekers not staying at an Asylum Reception Centre and was paid by *Pôle emploi*.

79. The Temporary Waiting Allowance was governed by Articles L. 5423-8 et seq. of the Labour Code. The version of Article L. 5423-8 enacted by the Law of 21 January 2008 read:

“... the Temporary Waiting Allowance may be granted to:

1° a foreign national whose residence permit or notice of receipt of an application for a residence permit states that he or she has claimed asylum in France, and who has lodged an application for refugee status, where he or she satisfies an age requirement and a means test ...”

As amended by the Law of 8 August 2014, Article L. 5423-8 read:

“... the Temporary Waiting Allowance may be granted to:

1° a foreign national who has been granted permission to stay in France provisionally pending an asylum claim, or who is entitled to do so, and who has lodged an application

for asylum with the French Office for the Protection of Refugees and Stateless Persons, where he or she satisfies an age requirement and a means test ...”

80. Article L. 5423-11 of the Labour Code read:

“I. – The Temporary Waiting Allowance shall be paid monthly in arrears.

For persons in possession of a residence document referred to in Article L. 742-1 of the Immigration and Asylum Code, payment of the allowance shall cease at the end of the month after that in which notice is given of the decision of the French Office for the Protection of Refugees and Stateless Persons or, in the event of an appeal, the National Asylum Court.”

81. The rate of the Temporary Waiting Allowance was increased by Decree no. 2014-1719 of 30 December 2014 to EUR 11.45 per day as of 1 January 2015. To qualify for the allowance, applicants had to be 18 years of age and pass a means test. A defining feature of the Temporary Waiting Allowance was the irrelevance of the applicant’s family status. The rate was the same for single asylum-seekers as for those accompanied by family, regardless of the number of dependent children.

82. Asylum-seekers staying at an Asylum Reception Centre received the Monthly Subsistence Allowance (*l’allocation mensuelle de subsistance*) in accordance with by the Family and Social Services Code (*code de l’action sociale et des familles*).

83. According to an April 2013 joint report by the Finance Inspectorate, the Social Affairs Inspectorate and the Public Service Inspectorate entitled “Accommodation and financial support for asylum-seekers”, the waiting time for a provisional authorisation to stay, although restricted in theory to fifteen days under Article R. 742-1 of the Immigration and Asylum Code, was in practice much longer. The report stated that single adult asylum-seekers in Paris were waiting four months for a provisional authorisation to stay. During that time they were liable to removal unless they could produce an asylum claim certificate or a notice to attend an interview.

84. The policy evaluation report on the reception of asylum-seekers which was published on 15 April 2014 by the French National Assembly’s Public Policy Evaluation and Control Committee (*Comité d’évaluation et de contrôle des politiques publiques*) spoke of a system “in crisis” and recommended a general reform “combining respect for rights with a performance-driven public services sector”. It also stated that, until they were registered with OFPRA, asylum-seekers in France had no lawful immigration status under the applicable immigration regulations, as they had no document attesting to such status. Nor did they have access to a specific support scheme.

2. *Changes in the accommodation and financial support scheme for asylum-seekers under the Law of 29 July 2015*

85. Article L. 744-1 of the Immigration and Asylum Code provides that the material reception conditions must be offered by OFII to every asylum-seeker after registration of his or her claim by the prefect.

86. French lawmakers have enacted that, as soon an asylum claim is made, OFII must conduct an individual interview of the applicant followed by a vulnerability assessment to determine his or her particular reception needs (Article L. 744-6 of the Immigration and Asylum Code). The information thus obtained is sent to OFPRA.

87. The Law of 29 July 2015, cited above, reformed the accommodation system for asylum-seekers by introducing a national accommodation scheme encompassing the Asylum Reception Centres and all facilities at least partly funded by the government ministry responsible for asylum matters. The aim was to remedy the imbalances observed between regions. In that regard provision was made for a nationwide policy for referring asylum-seekers to those accommodation sites. Furthermore Article L. 744-5 of the Immigration and Asylum Code now set out a procedure for the removal from accommodation of persons whose asylum claims had been finally rejected or who exhibited violent behaviour or committed serious breaches of an accommodation site's rules.

88. The Asylum-Seeker's Allowance (*allocation pour demandeur d'asile*) was created by the above-cited Law of 29 July 2015 and is governed by Articles L. 744-9 et seq. of the Immigration and Asylum Code. As of 1 November 2015, the Asylum-Seeker's Allowance paid by OFII replaced the Temporary Waiting Allowance and Monthly Subsistence Allowance. Asylum-seekers are eligible for the Asylum-Seeker's Allowance if they have reached the age of 18 years and their level of means is less than the level of income support which the State guarantees to the underemployed and unemployed (*revenu de solidarité active*). Article D. 744-26 of the Immigration and Asylum Code provides that the Asylum-Seeker's Allowance is to consist of a fixed sum depending on the size of the asylum-seeker's household. Asylum-seekers who have made known a need for accommodation and have accepted an offer at an Asylum Reception Centre but have not actually been afforded accommodation receive an additional sum. At 1 October 2019 the daily allowance was EUR 6.80 for one person, plus an additional EUR 7.40 as applicable.

C. The *référé-liberté* (jurisdiction of the administrative courts to grant urgent interim relief to safeguard a fundamental freedom)

1. Statutory provisions

89. Articles L. 521-2 and L. 523-1 of the Administrative Courts Code, concerning the jurisdiction to grant urgent interim relief to safeguard a fundamental freedom, read as follows:

Article L. 521-2

“The interim relief judge may, upon an application supported by a showing of urgency, award any relief necessary to safeguard a fundamental freedom with which there has been a serious and manifestly unlawful interference by a public entity, or by a private organisation tasked with the administration of a public service, acting in the exercise of a power vested in it. The decision of the interim relief judge shall be rendered within forty-eight hours.”

Article L. 523-1

“No appeal shall lie from a decision rendered pursuant to Article L. 521-1, L. 521-3, L. 521-4 or L. 522-3, which may only be set aside by application for review on a question of law.

Against a decision rendered pursuant to Article L. 521-2 an appeal may be lodged with the *Conseil d’État* within fifteen days of notification of the decision. Upon such an appeal the President of the Judicial Division of the *Conseil d’État* or a senior judge duly authorised by him or her shall give judgment within forty-eight hours and may exercise the powers set out in Article L. 521-4.”

90. Article L. 522-3 of the Administrative Courts Code reads:

“Where the application is not urgent or where it is plain on the face of the application that it falls outside the jurisdiction of the administrative courts, cannot be entertained or is ill-founded, the interim relief judge may dismiss it by a reasoned decision and may disapply the first two paragraphs of Article L. 522-1.”

2. Decisions of the Conseil d’État

91. In a decision of 10 May 2012 (no. 358828) the *Conseil d’État* ruled as follows:

“It appears from the material on record before the court of first instance that M. A, a national of the Democratic Republic of the Congo, entered France on 10 March 2012 and obtained an address for administrative purposes from the association France Terre d’Asile. On 22 March 2012 he was interviewed at the asylum reception centre and was issued with a notice by the prefecture staff to attend an appointment on 7 June 2012 to lodge his asylum claim.

On this appeal M. A. merely rehearses the submissions which the interim relief judge of the Paris Administrative Court was, on all the material on record, right to reject. It is thus plain, for the reasons stated by the interim relief judge at first instance – and particularly in view of the effort undertaken by the authorities, which have been concretely compelled by the influx of asylum-seekers to Paris, and by the actual extent of the public resources available, to institute a waiting time for asylum appointments –

that his appeal cannot be allowed. Consequently, M. A. does not have a basis on which to contend that the interim relief judge of the Paris Administrative Court fell into error in the impugned decision by dismissing his application ...”

II. EUROPEAN UNION LAW

A. The Dublin Regulation

92. At the time of the events of cases nos. 28820/13 and 75547/13 the Dublin procedure was governed by Council Regulation (EC) No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the member State responsible for examining an asylum application lodged in one of the member States by a third-country national (the Dublin II Regulation, OJ L 50, p. 1). The Dublin III Regulation came into force on 1 Janvier 2014 and therefore applies to the case of applicant A.J. (application no. 13114/15).

93. The relevant core provisions of the Regulation are outlined in the judgment in *M.S.S. v. Belgium and Greece* [GC], no. 30696/09, §§ 65-76, ECHR 2011). Also of note is Article 16 § 1 of the Regulation, which requires the member State responsible for examining an asylum application to take back any applicant whose application is under examination and who is in the territory of another member State without permission (Article 16 § 1 (c)) or any third-country national whose application it has rejected and who is in the territory of another member State without permission (Article 16 § 1 (e)). The obligations laid down by Article 16 § 1 are extinguished when the third-country national has left the territory of the member States for at least three months (Article 16 § 3).

94. The Dublin II Regulation was recast by Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 (the Dublin III Regulation). The main lines along which it was recast are set out in the judgment in *Tarakhel v. Switzerland* [GC], no. 29217/12, §§ 35-36, ECHR 2014 (extracts).

B. The Reception Directive

95. Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers (OJ L 31, p. 18) and its successor 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 (OJ L 180, p. 96) are described in outline at paragraphs 22-25 of the judgment in *N.T.P. and Others v. France*, cited above.

96. Article 3 of the Reception Directive of 27 January 2003 defined the scope of the Directive as follows:

“... This Directive shall apply to all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers, as well as to family members, if they are covered by such application for asylum according to the national law ...”

97. Article 3 of the Reception Directive of 26 June 2013 does so thus:

“This Directive shall apply to all third-country nationals and stateless persons who make an application for international protection on the territory, including at the border, in the territorial waters or in the transit zones of a Member State, as long as they are allowed to remain on the territory as applicants, as well as to family members, if they are covered by such application for international protection according to national law ...”

C. Decisions of the Court of Justice of the European Union (CJEU)

98. At paragraphs 39 and 56 of its judgment in *Cimade and GISTI v. Ministre de l’Intérieur, de l’Outre-mer, des Collectivités territoriales et de l’Immigration* (C-179/11, EU:C:2012:594) of 27 September 2012, the CJEU held:

“... Regarding the period during which the material reception conditions, that is to say, housing, food and clothing plus a daily expenses allowance, must be granted to the applicants, Article 13(1) of Directive 2003/9 provides that that period is to begin when the asylum seeker applies for asylum.

...

In addition, further to the general scheme and purpose of Directive 2003/9 and the observance of fundamental rights, in particular the requirements of Article 1 of the Charter [of Fundamental Rights of the European Union], under which human dignity must be respected and protected, the asylum seeker may not ... be deprived – even for a temporary period of time after the making of the application for asylum and before being actually transferred to the responsible Member State – of the protection of the minimum standards laid down by that directive.”

99. In *Saciri and Others* (judgment of 27 February 2014, C-79/13, EU:C:2014:103) the CJEU reiterated – relying on the language and purpose of the Reception Directive and underscoring the importance of respect for fundamental rights and human dignity in particular – that an asylum-seeker could not be deprived even temporarily of the protection of the minimum standards laid down by the Directive (§ 35). Regarding the standard which the material reception conditions had to attain, it specified that the financial aid given had to be sufficient to ensure a dignified standard of living adequate for the health of the applicants and capable of ensuring their subsistence (§ 40). It went on to say that, as a result, where a member State provided those conditions to applicants in the form of financial allowances, these had to be sufficient to enable them to obtain housing, if necessary, on the private rental market (§ 42), although the Directive did not mean that asylum-seekers were to have their own choice of housing suitable for them (§ 43).

100. On a reference for a preliminary ruling from the Superior Administrative Court of Baden-Württemberg the CJEU was asked to interpret the Dublin III Regulation and the prohibition against inhuman and degrading treatment under Article 4 of the Charter of Fundamental Rights (CJEU, Gr. Ch., 19 March 2019, *Jawo*, C-163/17, EU:C:2019:218). At issue was whether the transfer of an applicant for asylum to the member State normally responsible for processing his application was precluded by that provision where there was a serious risk of inhuman or degrading treatment on account of the living conditions he could be expected to encounter as a beneficiary of international protection in that member State. At paragraphs 91 and 92 of its judgment the CJEU held:

“As regards ... the question of what criteria should guide the competent national authorities in carrying out that assessment, it must be noted that, in order to fall within the scope of Article 4 of the Charter, which corresponds to Article 3 ECHR, and of which the meaning and scope are therefore, in accordance with Article 52(3) of the Charter, the same as those laid down by the ECHR, the deficiencies referred to in the preceding paragraph of the present judgment must attain a particularly high level of severity, which depends on all the circumstances of the case (ECtHR, 21 January 2011, *M.S.S. v. Belgium and Greece* ... paragraph 254).

That particularly high level of severity is attained where the indifference of the authorities of a Member State would result in a person wholly dependent on State support finding himself, irrespective of his wishes and personal choices, in a situation of extreme material poverty that does not allow him to meet his most basic needs, such as, inter alia, food, personal hygiene and a place to live, and that undermines his physical or mental health or puts him in a state of degradation incompatible with human dignity (see, to that effect, ECtHR, 21 January 2011, *M.S.S. v. Belgium and Greece* ... paragraphs 252 to 263).”

THE LAW

I. PRELIMINARY REMARKS

A. Joinder of the applications

101. Given the similarity of the issues arising on these applications, which were dealt with concurrently under Rule 42 § 1 of the Rules of Court, the Court finds it appropriate to examine them jointly in a single judgment.

B. Striking-out of application no. 75547/13 in so far as it concerns G.I.

102. The Court notes that it was informed by counsel for the applicant that he had been unable to contact his client after several attempts and that efforts to track him down had been unsuccessful.

103. As the Court has said before, it is important that contact between an applicant and his or her representative be maintained throughout the proceedings. Such contact is essential both to learning more about the

applicant's particular situation and to confirming the applicant's continuing interest in pursuing the examination of his or her application (see *V.M. and Others v. Belgium* (striking out) [GC], no. 60125/11, § 35, 17 November 2016).

104. In this case the Court observes that the applicant did not maintain contact with his lawyer and failed to keep him informed of his place of residence or to provide any other means of reaching him. In its view those circumstances lead to the conclusion that the applicant has lost interest in the proceedings and does not intend to pursue his application within the meaning of Article 37 § 1 (a) of the Convention (see *V.M. and Others v. Belgium*, cited above, § 36).

105. Regarding counsel's submission that the Court should nonetheless continue its examination of the application in respect of the applicant, the Court would point out that this application places before it complaints from other applicants which are similar to those of G.I.

106. In the light of the foregoing the Court concludes that the applicant does not intend to pursue his application within the meaning of Article 37 § 1 (a) of the Convention. As there are no particular circumstances going to respect for human rights as defined in the Convention and the Protocols thereto, the Court considers that continued examination of the application in so far as it concerns the applicant is no longer justified within the meaning of the last sentence of Article 37 § 1 of the Convention.

107. The case in respect of applicant G.I. will therefore be struck out.

II. ALLEGED VIOLATION OF ARTICLE 3 OF THE CONVENTION

108. The applicants, all four of whom had wished to lodge asylum claims and had done so, complained under Article 3 that they had not been afforded material conditions prescribed by national law, in particular accommodation and the Temporary Waiting Allowance, with the result that they had been forced to sleep rough for several months in inhuman and degrading conditions. N.H. and A.J. (applications nos. 28820/13 and 1314/15) also alleged that the French courts had invariably failed to take into account the circumstances of first-time asylum-seekers who did not have a provisional authorisation to stay pending an asylum claim and were effectively shut out of the asylum reception scheme. The result, in their view, was a violation of Article 13 read in conjunction with Article 3 of the Convention. Article 3 reads:

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

109. Noting that it has the power to decide on the legal characterisation to be given to the facts, and observing that the complaints in this case overlap, the Court considers it appropriate to examine the applicants' allegations under Article 3 of the Convention alone (see, for example, *Bouyid v. Belgium* [GC],

no. 23380/09, § 55, ECHR 2015, and *Lopes de Sousa Fernandes v. Portugal* [GC], no. 56080/13, § 145, 19 December 2017; see also *Radomilja and Others v. Croatia* [GC], nos. 37685/10 and 22768/12, §§ 114 and 126, 20 March 2018, and *Khan v. France*, no. 12267/16, §§ 40-41, 28 February 2019). It will accordingly endeavour to ascertain whether the respondent State breached its obligations arising out of that provision by not affording in-kind and financial support to the applicants as prescribed by domestic law.

A. Admissibility

110. The Court finds that the complaint is neither manifestly ill-founded within the meaning of Article 35 § 3 (a) of the Convention nor inadmissible on any other ground. The complaint must therefore be declared admissible.

B. Merits

1. Submissions of the parties

(a) The applicants

111. The applicants argued that their situation was comparable to that considered in the judgment in *M.S.S. v. Belgium and Greece*, cited above, in that the French authorities were under a duty to provide them with material reception conditions. They argued that by virtue of that duty, originating in national legislation and the law of the European Union, they had been entitled to the material reception conditions upon making known their intention to claim asylum and until such time as a final decision on their asylum claims had been reached.

112. The applicants pointed out that the large number of migrants seeking to enter France could not absolve the State of its treaty obligations (they referred to *De Souza Ribeiro v. France* [GC], no. 22689/07, § 97, ECHR 2012).

113. Furthermore, according to N.H. and A.J. (applications nos. 28820/13 and 13114/15), the *Conseil d'État* had consistently held that anything less than three months was a reasonable time to wait for permission to stay pending an asylum claim in the Paris region and that, accordingly, the Paris Prefect of Police had infringed neither the right of asylum nor the right to the material reception conditions. In the applicants' view, that state of affairs, which was specific to the Paris region, led to what amounted under the Reception Directive (see paragraph 95 above) to unequal treatment of asylum-seekers at the national level.

114. Moreover, the applicants (applications nos. 28820/13 and 13114/15) submitted that the CJEU had specified in *Cimade and GISTI*, cited above at paragraph 98, that the Reception Directive and respect for fundamental rights precluded a member State in which an asylum claim had been made from depriving the asylum-seeker even temporarily of the protection of the

minimum standards laid down by the Directive. Therefore, to make asylum-seekers' access to the material reception conditions contingent on age, health or family situation was contrary to the letter and spirit of EU law (see paragraph 95 above).

115. Lastly, the applicants (applications nos. 28820/13 and 73114/15) asserted that, unlike this Court (they referred to *M.S.S. v. Belgium and Greece*, cited above, § 251), the French authorities, courts included, apparently did not consider asylum-seekers to be a particularly underprivileged and vulnerable population group in need of protection.

116. In response to the Government's submissions the applicants referred to the modalities, as clarified in the CJEU's judgment of 27 February 2014, by which States were required to discharge their duty to meet the essential, basic needs of asylum-seekers (see paragraph 99 above).

117. The applicants (applications nos. 28820/13 and 73114/15) submitted that since a decision of 10 May 2012 (see paragraph 91 above) the *Conseil d'État*, acting pursuant to Article L. 522-3 of the Administrative Courts Code (see paragraph 90 above), had invariably rejected applications for interim relief to safeguard a fundamental freedom, where the relief sought was registration of an asylum claim, on the ground that the registration waiting time was due to the influx of asylum-seekers.

118. N.H. (application no. 28820/13) denied that he had acted in bad faith or had concealed facts when making his application to the Court and pointed to the circumstances in which the application had been lodged with it. He also specified that he had explained at his OFPRA interview why he had given a different identity during the asylum process in Denmark. He underscored that he had been living rough, with no resources whatsoever; despite the many steps he had taken, he had nonetheless been unable to secure a grant of the Temporary Waiting Allowance, and he did not see what other steps he could have taken or what appeals he could have lodged.

119. In application no. 75547/13, S.G. and K.T. disputed the picture that had been presented of their legal and factual situation. They maintained that the circumstances in which OFPRA had denied K.T.'s asylum claim were immaterial. They also rejected the Government's description of the asylum reception facilities. According to the applicants, OFII was open to visitors only three hours a week, and the inadequacy and deficiencies of that service were not offset by the Asylum Reception Centre accommodation scheme. This was because the offers that were made to asylum-seekers who were granted permission to stay did not provide a sure prospect of accommodation.

120. S.G. and K.T. also disputed the Government's claims that they had made very little use of the emergency accommodation helpline (115) and had lost their places in accommodation because of their behaviour or absence.

121. A.J. (application no. 13114/15) submitted that, contrary to the Government's claims and as established by the certificate from the deputy head of the social and administrative assistance service of the association

France Terre d’Asile, he had not been referred to associations offering food and clothing relief pending his access to the material reception conditions prescribed by the Reception Directive.

122. The applicant submitted that he had applied unsuccessfully to the authorities for accommodation and a grant of the Temporary Waiting Allowance. He pointed out that he had not received the allowance until 5 March 2015 and as a result had been without resources for 133 days. The sums he had received by way of the allowance, totalling EUR 893.10 from that date to 5 May 2015, when notice had been given of the OFPRA decision, had been far from sufficient to afford him a standard of living capable of ensuring his health and subsistence. In accordance with Article L. 5423-11 of the Labour Code (see paragraph 80 above), he had received his final payment of the Temporary Waiting Allowance on 1 June 2015. He also noted that from 23 October 2014 to 14 April 2015, the date on which he had been granted accommodation, he had lived rough for 170 days and had spent only four nights (5, 12, 13 and 14 November 2014) in an emergency accommodation centre. Lastly, from 23 October 2014 to 22 January 2015, he had lived in fear of having his identity checked by the police and a removal order delivered against him. He referred in this connection to the report on “Accommodation and financial support for asylum-seekers” (see paragraph 83 above).

(b) The Government

(i) General remarks

123. The Government stated, first, that in *M.S.S. v. Belgium and Greece* (cited above) the Court had based its finding of a violation on three criteria: the inaction of the national authorities, the deplorable conditions experienced by the applicant while living rough and the existence of a feeling of anxiety compounded by the lack of any prospect of improvement in his situation. In the Government’s opinion the situation of the applicants in the present case was not comparable to that considered in the judgment in *M.S.S. v. Belgium and Greece* (ibid.).

124. The Government began by setting out the situational challenges which they had been facing at the time, pointing out that from 2007 to 2014 the number of asylum-seekers registered by OFPRA had increased by 80%.

125. The steep and sustained increase in asylum claims had pushed the National Reception Scheme to capacity nationwide despite growth in financial and human resources. For instance, the period from 2012 to 2014 had seen the addition of 3,065 beds in Asylum Reception Centres, an increase of 14%. A similar effort had been made to increase the number of emergency accommodation places available to asylum-seekers. Since 2009, 4,000 places had been added, bringing the total to 24,600 in 2013. There were plans to continue these efforts going forward.

126. Furthermore, since 2011, OFPRA and the National Asylum Court had been recruiting on a regular basis so as to shorten case processing times. For instance, at 31 December 2013, OFPRA's average case processing time had been 7 months and at the National Asylum Court it was 8 months, 26 days.

127. The increase in the number of asylum-seekers was especially noticeable in the Ile-de-France region, particularly Paris, and in the Languedoc-Roussillon region and specifically the Aude *département*.

128. The number of asylum claims registered at the Paris prefecture had jumped from 4,588 in 2007 to 7,827 in 2012. In December 2013 there had been 430 beds in the city's Asylum Reception Centres and 3,656 such beds across the Ile-de-France region as a whole, 125 more than at the end of 2012. Furthermore, the fact that the National Reception Scheme had temporarily reached capacity had prompted the introduction of a new asylum reception scheme in Paris in April 2011. The new scheme had eliminated the queues outside the police prefecture and the inhumane camps that had been appearing around it at night and during weekends. The Government added that since the introduction of the new scheme the standard waiting time for an appointment to lodge an asylum claim at the police prefecture had fallen to three months. Likewise, provisional authorisations to stay pending an asylum claim were being issued within four months.

129. The region of Languedoc-Roussillon and the Aude *département* in particular had seen a 38.8% rise in the number of asylum-seekers in 2013 as compared to 2012. Meanwhile, in the space of those two years, capacity at Asylum Reception Centres had been boosted by 51% and the number of beds in emergency accommodation for asylum-seekers (*hébergement d'urgence des demandeurs d'asile* – HUDA) had increased from 35 to 117.

130. Lastly the Government noted that, in order to respond better in future should the National Reception Scheme temporarily reach capacity in a particular geographical area, the cabinet had approved an asylum reform bill on 23 July 2014 which formed part of the EU-wide process of harmonising asylum laws. On 26 June 2013 the Council of the European Union and the European Parliament had adopted the revised texts of: Directives 2013/32/EU (common procedures for granting and withdrawing international protection (recast)) and 2013/33/EU (laying down standards for the reception of applicants for international protection), both of which had been due for transposition into domestic law by July 2015; the Dublin III Regulation, which was directly applicable with effect from January 2014; and the Eurodac Regulation, which was directly applicable with effect from July 2015. The Asylum Reform Act had been signed into law on 29 July 2015 and had come into force on 2 November 2015. It provided *inter alia* for the registration of asylum claims within three days and for the issuance of documentary proof of registration to asylum-seekers regardless of whether they were on the ordinary or priority track. A vulnerability assessment of

every applicant was also to be conducted to determine his or her specific reception needs, and appeals to the National Asylum Court now had suspensive effect.

131. The Government pointed out that the applicants in the present case were young, unmarried and in good health. They submitted that the applicants had been unable to secure admission to a facility for asylum-seekers because the accommodation facilities were temporarily full. That situation had led the national authorities to give priority to asylum-seekers who could demonstrate that they were particularly vulnerable on account of their age, state of health or family situation.

(ii) Application no. 28820/13 (N.H.)

132. The Government accused the applicant of having acted in bad faith by omitting from his application that he had been to Denmark and had claimed asylum there under another identity.

133. The Government acknowledged that the time between the applicant's first visit to the prefecture and the date on which he had been afforded the opportunity to lodge an application for permission to stay pending an asylum claim had not been satisfactory.

134. The Government submitted that, once a determination had been made as to the State responsible for the applicant's asylum claim, he had been able to lodge his application, and that as of 26 March 2013 he had received ongoing administrative support. They further stated that as of 4 April 2013 the applicant had been protected against expulsion to Afghanistan as long as his asylum claim was pending with OFPRA. Lastly, the time between arrival in France and the grant of international protection had been nine months. The applicant could not therefore complain of prolonged uncertainty or a lack of any prospect of his situation improving.

135. In conclusion the Government submitted that, although the applicant had been afforded neither a place in an Asylum Reception Centre nor emergency accommodation, he had been eligible, on account of his indigence, for universal welfare schemes to which he could have been referred by asylum support associations. For instance, if it was true that the applicant had been suffering from a broken wrist, he could have been treated free of charge. He could also have used general-purpose emergency accommodation and could have received food relief from public sources or the voluntary sector, clothing relief and access to showers and toilets. Furthermore, the applicant had received legal support from associations and had invariably been granted legal aid.

(iii) Application no. 75547/13 (S.G., K.T. and G.I.)

136. The Government maintained that as soon as the applicants had lodged their asylum claims the authorities had begun taking steps not only to

provide them with accommodation – by registering them with the 115 helpline and placing their names on the Asylum Reception Centre waiting list – but also to ensure that they received the Temporary Waiting Allowance and were enrolled for Universal Health Coverage (*couverture maladie universelle* – CMU) and State Medical Aid.

137. The Government submitted that, after being advised of the existence of the 115 helpline and how to use it, the applicants had secured places at the Castelnaudary General-Purpose Emergency Accommodation Centre. Although it was possible to stay at such a facility for up to three months (extensions aside), the applicants had voluntarily left the centre or had been excluded for their behaviour (see paragraphs 22 and 38 above).

138. The Government added that in order to provide for their vital needs the applicants had had the benefit of the Temporary Waiting Allowance and the services of the asylum intake and reception facility, which had referred them to the accredited associations for food and clothing. The Government noted that the applicants had not adduced any medical certificates attesting to their state of health or particular vulnerability. Moreover, the medical records tendered by K.T., all of which post-dated the lodging of the application, showed that he had received all the necessary treatment and full coverage upon applying for medical aid.

(iv) *Application no. 13114/15 (A.J.)*

139. The Government stated that the time elapsed between the applicant's first prefecture appointment and his being granted refugee status by OFPRA had been six months. That was the time-limit laid down by Article 31 of Directive 2013/32/EU of 26 June 2013.

140. The Government submitted that, in practical terms, the applicant had been protected from removal by the notice issued to him on 23 October 2014 to attend an appointment at the prefecture on 7 January 2015. They claimed that the notice had operated as a provisional residence document.

141. The Government noted that it was true that the applicant had not been placed in permanent accommodation or in emergency accommodation for asylum-seekers, since those facilities had been full. But he had called 115 and received accommodation on the nights of 5, 12, 13 and 14 November 2014. Also, he had received the Temporary Waiting Allowance from 12 February 2015 to 1 July 2015, a period of four and a half months, whereas OFPRA's decision of 23 April 2015 granting him refugee status had been notified to him on 5 May 2015. Article L. 5423-11 of the Labour Code provided that Temporary Waiting Allowance payments were to cease at the end of the month following that in which notice of the decision was given (see paragraph 80 above).

142. The Government were keen to underscore that the applicant had been accommodated at a hotel in Paris's 19th *arrondissement* as of 14 April 2015 pursuant to a hotel accommodation scheme for single adult asylum-seekers.

Subsequently, in June 2015, he had stayed in the 15th *arrondissement* at the Maison des journalistes, an association that welcomes and provides housing to about thirty journalists with refugee status per year on premises made available by the city of Paris. While there, he had had his own room in a secure building and had received daily meal vouchers and public transport tickets.

143. In response to the third-party interveners the Government observed that in order to meet the goal of registering asylum claims within the three-day time-limit laid down by the Law of 29 July 2015 (see paragraph 74 above), one-stop asylum reception desks had been created at the prefecture and at OFII.

2. Observations of the third-party interveners (regarding applications nos. 28820/13 and 13114/15)

(a) Application no. 28820/13 (N.H.)

144. The CFDA is an NGO that works in particular at the national, regional and European levels in cooperation with the United Nations High Commissioner for Refugees (UNHCR) to monitor and warn about issues relating to asylum and refugee status and engage in dialogue with the bodies responsible for the reception and protection of asylum-seekers and refugees. The CFDA's observations concerned the reception conditions for asylum-seekers.

145. The CFDA stated that the fact that the asylum reception scheme had reached capacity was immediately obvious from the claim registration stage. It observed that first-time asylum-seekers awaiting their initial appointment at the police prefecture did not have a document which they could produce, if confronted by police, to avoid being placed in a detention centre.

146. The CFDA underscored that initial appointments at the prefecture should have been an opportunity for asylum-seekers to apply for permission to stay pending an asylum claim, get their fingerprints taken pursuant to Council Regulation No 2725/2000 of 11 December 2000 concerning the establishment of Eurodac for the comparison of fingerprints for the effective application of the Dublin Convention (the Eurodac Regulation, OJ L 316, p. 1) and, unless they fell into one of the four cases in which permission to stay could be refused pursuant to Article L. 741-4 of the Immigration and Asylum Code (see paragraph 72 above), receive a provisional authorisation to stay for one month pending their asylum claim. The actual practice, however, was for the prefecture employee to check that the asylum-seeker had an address (see paragraph 5 above) and, after entering some information into the database of electronic immigration records, issue a mere notice requiring the person to attend an appointment three months later and specifying the documents to be provided – documents which nearly all asylum-seekers already had. Asylum-seekers were not assisted by an

interpreter and were not given any other guidance pending registration of their claims, in violation of the applicable law. In the three months preceding a grant of permission to stay, asylum-seekers were not able to show that they had made a claim for international protection and hence did not have access to the minimum reception conditions for which they should have been eligible under national law. The CFDA went on to set out the content of the subsequent interview stages and concluded that the scheme put in place by the Paris Prefect of Police had led to an artificial increase in the time taken to register and determine asylum claims and was placing asylum-seekers in conditions of extreme hardship.

147. The CFDA further pointed out that the city and *département* of Paris had 430 beds in Asylum Reception Centres, a number which, despite the increase in demand, had not changed since 2010. The 115 service was likewise at capacity; according to reporting on it by the National Federation of Support and Social Reintegration Associations (*Fédération nationale des associations d'accueil et de réinsertion Sociale* – FNARS), 47% of requests had gone unmet in November 2013. Calls to 115 had to be placed very early in the morning, as the service often ran out of beds by 8 a.m. What was more, the language barrier and long hold times prevented some asylum-seekers from calling.

148. Lastly the CFDA pointed out that in order to receive the Temporary Waiting Allowance it was necessary to show a provisional authorisation to stay, a letter of registration from OFPRA or a notice to attend an appointment under the Dublin procedure. Being undocumented could also affect access to healthcare.

(b) Applications nos. 28820/13 (N.H.) and 13114/15 (A.J.)

149. Regarding these two applications, the observations of the *Défenseur des droits* concerned the French authorities' discharge of their obligations under the Directive on the material reception conditions owed to all asylum-seekers and under the case-law of this Court.

150. The *Défenseur des droits* noted that the asylum reception scheme in France did not ensure effective access to the material reception conditions. The first stumbling block was the prefecture's failure promptly to issue a provisional authorisation to stay pending an asylum claim. The time-limit for it to do so under the Immigration and Asylum Code was fifteen days. In practice it took three to five times that long, depending on the region. Furthermore the *Défenseur des droits* called attention to the European Commission's observation, in its 2007 report on the application of the Reception Directive, that Article 6 of the Directive had fixed a time-limit of three days which was binding on States.

151. The *Défenseur des droits* observed that since a decision of 10 May 2012 the *Conseil d'État* had consistently held that in the circumstances of a mass influx of asylum-seekers a waiting time of three months for the

registration of a claim was reasonable when viewed in the light of the authorities' limited resources, and therefore the right of asylum was not infringed (see paragraph 91 above). In the view of the *Défenseur des droits*, that line of decisions was conducive neither to lifting asylum-seekers out of their situation of great hardship nor to ensuring that they had effective access to the material reception conditions in regions experiencing a high rate of asylum claims.

152. Accordingly, the *Défenseur des droits* pointed out that obtaining a provisional authorisation to stay pending an asylum claim was a prerequisite to gaining access to the asylum process, remaining lawfully in France to await an asylum decision and enjoying the material reception conditions. For the three to five months preceding the grant of an authorisation to stay pending an asylum claim, asylum-seekers were therefore forced to live in conditions of extreme hardship. They had no choice but to live rough and were unable to meet their essential needs. In addition, because they had no lawful immigration status, they were liable to arrest and enforced return to their countries of origin.

153. The *Défenseur des droits* observed that the general-purpose emergency accommodation scheme (via the 115 helpline) was at capacity and that priority was given to families with minor children and to the elderly and/or ill. The *Défenseur des droits* added that while asylum-seekers were entitled to apply for general-purpose accommodation even if they had not made an application for accommodation at an asylum reception centre, it was of no avail to do so. In this regard the *Défenseur des droits* drew attention both to the fact that the accommodation scheme was at capacity and to the fact that the authorities with responsibility for general-purpose accommodation had considerable discretion to determine whether a request was urgent and should take priority. Lastly the *Défenseur des droits* noted that asylum-seekers with nothing but a notice to attend an appointment at the prefecture could not claim the Temporary Waiting Allowance.

154. Furthermore the *Défenseur des droits* made the same observations as the CFDA in respect of application no. 28820/13. The *Défenseur des droits* added that lawmakers had amended the Immigration and Asylum Code on 29 July 2015 to provide that an asylum claim was to be registered, regardless of whether the claimant already had an address, within three business days of being made to the competent authority. Moreover, the certificate issued thereupon was to operate as a provisional authorisation to stay, renewable until OFPRA decided the claim and the National Asylum Court disposed of any appeal.

3. *The Court's assessment*

(a) **General principles**

155. The Court reiterates that neither the Convention nor the Protocols thereto enshrine the right to political asylum (see *N.D. and N.T. v. Spain* [GC], nos. 8675/15 and 8697/15, § 188, 13 February 2020) and that the Contracting States are entitled – subject to their treaty obligations, including those arising from the Convention – to control the entry, residence and removal of aliens (see, among many other authorities, *N.D. and N.T. v. Spain*, cited above, § 167).

156. Nonetheless States must, in particular, have regard to Article 3 of the Convention, which enshrines one of the fundamental values of any democratic society by placing an absolute prohibition on torture and inhuman or degrading treatment or punishment irrespective of the circumstances and the victim's conduct (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 119, ECHR 2000-IV). The prohibition of inhuman or degrading treatment enshrined in Article 3 of the Convention is a civilisational value closely bound up with respect for human dignity – part of the very essence of the Convention (see *Khlaifia and Others v. Italy* [GC], no. 16483/12, § 158, 15 December 2016).

157. Furthermore, the Court must reiterate its well-established view that, given the absolute nature of Article 3 of the Convention, factors arising from an increasing influx of migrants cannot absolve the Contracting States of their obligations under that provision (see *M.S.S. v. Belgium and Greece*, cited above, § 223, and *Khlaifia and Others*, cited above, § 184). However, while the constraints inherent in a migration crisis cannot by themselves justify a breach of Article 3, the Court is of the view that it would be artificial, to say the least, to examine the events of the cases now before it without considering the general context in which they occurred (see *Khlaifia and Others*, cited above, § 184).

158. The Court has held on numerous occasions that inhuman or degrading treatment must attain a minimum level of severity if it is to fall within the scope of the prohibition in Article 3. The assessment of this minimum level is relative; it depends on all the circumstances of the case, including the duration of the treatment, its physical or mental effects and, in some instances, the sex, age and state of health of the victim (see *M.S.S. v. Belgium and Greece*, cited above, § 219; *Khlaifia and Others*, cited above, § 159; and *Tarakhel*, cited above, § 94).

159. Treatment may be characterised as “degrading” within the meaning of Article 3 where it humiliates or debases an individual, shows a lack of respect for or diminishes his or her dignity or arouses feelings of fear, anguish or inferiority capable of breaking his or her moral and physical resistance (see *M.S.S. v. Belgium and Greece*, cited above, § 220; *Khlaifia and Others*, cited

above, § 159; and *Svinarenko and Slyadnev v. Russia* [GC], nos. 32541/08 and 43441/08, § 115, ECHR 2014 (extracts)).

160. The Court considers it necessary to reiterate that Article 3 cannot be read as placing the High Contracting Parties under a duty to guarantee every person within their jurisdiction a right to housing (see *Chapman v. the United Kingdom* [GC], no. 27238/95, § 99, ECHR 2001-I). Nor is it possible to derive from Article 3 a general duty to provide refugees with financial support so as to enable them to maintain a certain standard of living (see *Müslim v. Turkey*, no. 53566/99, § 85, 26 April 2005).

161. However, in a case concerning another EU member State, the Court held that those were not the terms in which to frame the issue for decision where asylum-seekers had complained of being left utterly destitute. As is apparent from the legal framework outlined at paragraph 95 above, the obligation to provide accommodation or decent material conditions to impoverished asylum-seekers has now been laid down in law and is imposed on the authorities of the respondent State by the specific language of the legislation enacted to transpose EU law – the Reception Directive – into national law (see *M.S.S. v. Belgium and Greece*, cited above, § 250).

162. In addition, the Court would point out that asylum-seekers may be regarded as vulnerable on account of everything they have been through during their migration and the traumatic experiences they may have endured previously (see *M.S.S. v. Belgium and Greece*, cited above, § 232, and *Ilias and Ahmed v. Hungary* [GC], no. 47287/15, § 192, 21 November 2019). It notes the existence of a broad international and European consensus as to the need to protect asylum-seekers, as evidenced by the Geneva Convention, the remit and the activities of the UNHCR and the standards set out in the EU Reception Directive (see *M.S.S. v. Belgium and Greece*, cited above, § 251).

163. The Court observes that it has not ruled out a finding of State liability under Article 3 for treatment whereby an applicant who is wholly dependent on State support encounters official indifference while in a situation of deprivation or want so serious as to be incompatible with human dignity (*Budina v. Russia* (dec.), no. 45603/05, 18 June 2009).

164. The Court has previously made a finding of a violation of Article 3 based on the seriousness of the situation of destitution of an applicant asylum-seeker who had spent several months unable to meet his most basic needs (food, hygiene and a place to live), in constant fear of being attacked and robbed and with no prospect of improvement in his situation (see *M.S.S. v. Belgium and Greece*, cited above, § 254), coupled with the inaction of the asylum authorities (*ibid.*, §§ 262-263; for later cases see *Sufi and Elmi v. the United Kingdom*, nos. 8319/07 and 11449/07, § 283, 28 June 2011, and *F.H. v. Greece*, no. 78456/11, §§ 107-111, 31 July 2014).

(b) Application of those principles to the present case

165. The applicants' complaints against the French authorities were, first, that as a result of those authorities' acts or omissions they had been unable, in practice, to receive the in-kind and financial support put in place under national law to address their essential needs and, second, that those authorities had treated them with indifference.

166. The Court would point out that, under the terms of Articles 19 and 32 § 1 of the Convention, it is not competent to apply, or examine alleged violations of, EU rules unless and in so far as they may have infringed rights and freedoms protected by the Convention. More generally, it is primarily for the national authorities, notably the courts, to interpret and apply domestic law, if necessary in conformity with EU law, the Court's role being confined to ascertaining whether the effects of such adjudication are compatible with the Convention (see *Jeunesse v. the Netherlands* [GC], no. 12738/10, § 110, 3 October 2014). In the present case the Court need only determine whether the situation of the applicants, who at the time were 20, 23, 26 and 40 years of age, unmarried and in good health and had no dependent children, was one of extreme material destitution capable of engaging Article 3 (see *M.S.S. v. Belgium and Greece*, cited above, § 252).

167. The Court notes at the outset that under domestic law, as submitted by the applicants, asylum-seekers were not permitted to work while their claims were pending, save within the limitations set out at Article R. 742-2 of the Immigration and Asylum Code (see paragraph 72 above). Furthermore the Court observes that the applicants, who were adults and alone in France, were destitute. It thus infers that for their fundamental needs they were wholly dependent on the in-kind and financial support for which provision was made by national law (see paragraphs 77-82 above) and to which they were entitled for as long as they had permission to remain in the country as asylum-seekers (see paragraphs 95-97 above).

168. The Court further observes that, under the system in place in France at the time (see paragraphs 70-72, 146 and 150 above), aliens without lawful immigration status who wished to claim asylum in France had first to apply for permission to stay pending an asylum claim. It notes that Article R. 742-1 of the Immigration and Asylum Code (see paragraph 72 above) laid down a time-limit of fifteen days, in principle, from the date on which an asylum-seeker went to the prefecture with an address and the requisite documents in hand (paragraph 72 above), for the authorities to register his or her asylum claim and grant him or her permission to stay in the country lawfully.

169. The Court notes that during the material period, the average time taken to do so was, in practice, three to five months, depending on the prefecture concerned (see paragraphs 146 and 150 above). In the present case the Court observes that from the moment that N.H. (application no. 28820/13) and K.T. (application no. 75547/13) went to the prefecture to claim asylum,

it took 95 days and 131 days, respectively, for their claims to be registered by the prefecture. The Court also observes that A.J. (application no. 13114/15) was issued with a provisional authorisation to stay pending an asylum claim ninety days after going to the prefecture to make his claim. The Court notes the Government's acknowledgement that the length of time for which N.H. (application no. 28820/13) had to wait for his asylum claim to be registered "is not satisfactory". Lastly it observes that S.G. (application no. 75547/13) obtained a certificate, stating that his asylum claim had been lodged, twenty-eight days after his first appointment at the prefecture.

170. The Court underscores, however, that it is no part of its task to adjudicate upon those time frames (see paragraph 169 above), but conversely it falls to it to examine their impact on the applicant's situation in order to decide whether the level of severity required for the purposes of Article 3 of the Convention was met. In this connection, N.H. (application no. 28820/13) K.T. (application no. 75547/13) and A.J. (application no. 13114/15) argued that, during the periods referred to at paragraph 169 above, they had not had asylum-seeker status and so had been ineligible for accommodation or the Temporary Waiting Allowance and had been residing in France without lawful immigration status.

171. The Court observes that until their asylum claims were registered (see paragraph 169 above) the applicants were indeed unable to show proof of their status. The Court notes, moreover, that it was on that ground that N.H. (application no. 28820/13) and A.J. (application no. 13114/15) had applied to the administrative court for interim relief to safeguard a fundamental freedom (*référé-liberté*), seeking an order directing the Prefect of Police to consider their applications for permission to stay pending an asylum claim and issue them with provisional authorisations to stay (see paragraphs 7-9 and 53-54 above). Those applications were unsuccessful (*ibid.*). Furthermore the Court notes that domestic law provided that in order to receive the Temporary Waiting Allowance it was necessary to show *Pôle emploi* an authorisation to stay pending an asylum claim and evidence that the claim had actually been lodged with OFPRA (see paragraph 79 above). The Court observes that both *Pôle emploi* and the domestic courts relied on this rule when refusing to grant the relief sought by A.J. (application no. 13114/15) (see paragraphs 56-57 above).

172. N.H. (application no. 28820/13), K.T. (application no. 75547/13) and A.J. (application no. 13114/15) submitted, first, that because they had been unable to show that they were asylum-seekers they had spent 95, 131 and 90 days, respectively, living in fear that they might be arrested and expelled to their countries of origin. Although the Government maintained that they had been protected from removal since first visiting the prefecture by the notice to attend a subsequent appointment, the Court nonetheless observes that, according to the reports released in April 2013 and April 2014 by the Finance Inspectorate, the Social Affairs Inspectorate and the Public

Service Inspectorate and by the National Assembly's Public Policy Evaluation and Control Committee, respectively, asylum-seekers were at risk of expulsion to their countries of origin until they had a provisional authorisation to stay (see paragraphs 83-84 above). The Court notes that while the first of those two reports specifies that showing a notice to attend an interview would have obviated any risk of removal, the second report makes no mention of the domestic authorities' having taken a similar line. Furthermore the Court observes that the CFDA and the *Défenseur des droits* (see paragraphs 145-146 and 152 above), both of whose observations gave a description of the state of affairs in Paris, underscored that first-time asylum-seekers awaiting their initial appointment at the police prefecture did not have a document which they could produce, if confronted by the police, to avoid being placed in a detention centre. The Court, relying on the observations of the third-party interveners and official reports, would not therefore cast doubt on the fears that N.H. (application no. 28820/13), K.T. (application no. 75547/13) and A.J. (application no. 13114/15) had of being expelled to their countries of origin.

173. The Court furthermore observes that the applicants' situations improved somewhat after they obtained asylum-seeker status. Specifically, they were able to show their lawful immigration status and had access to the material reception conditions provided for by national law.

174. The Court nonetheless notes that the Government have not disputed that throughout the asylum process, starting from when they obtained a mailing address from an association (pursuant to Article R. 741-2 of the Immigration and Asylum Code; see paragraph 72 above) or had their initial appointment at the prefecture, all the applicants lived rough, either under the bridges in Paris or on the banks of a river (the Aude), in tents lent by private individuals. In the light of the material in the case files and the fact that in Paris and the Languedoc-Roussillon region (see paragraphs 125 and 128-129 above) the National Reception Scheme was at capacity at the time, the Court sees no reason to question the applicants' accounts. Furthermore the applicants, who at the time were 20, 23, 26 and 40 years of age and unmarried and had no dependent children, cannot readily be criticised for not making more frequent use of the 115 helpline for emergency accommodation. Places were in very short supply, and calling 115 was almost always a futile endeavour, especially for asylum-seekers with profiles like those of the applicants (see paragraphs 147 and 153 above). Moreover, the Government themselves have acknowledged that emergency accommodation was dedicated on a priority basis to asylum-seekers whom the authorities regarded as "particularly vulnerable" on account of their age, health or family situation (families with minor children).

175. The Court also takes note of several defining features of the conditions of rough living experienced by the applicants.

176. It observes, first, that N.H. (application no. 28820/13) never received the Temporary Waiting Allowance despite his requests to the authorities (see paragraphs 12, 13 and 15 above). Furthermore, he lived under the bridges spanning the Canal Saint-Martin in conditions of extreme hardship from 26 March to 17 December 2013, that is to say for 262 days. According to him, he was assaulted and robbed one night and subsequently feared that more such crimes would be committed against him (see paragraph 18 above). Although the applicant stated that he had been picked up once or twice a week by the “Atlas bus” between March and August 2013 (see paragraph 18 above), that accommodation option – which, moreover, was very much temporary and originally intended for the homeless – ceased to exist in September 2013 when the requirement was imposed on asylum-seekers to call 115 in order to use it (see paragraph 19 above). Likewise, A.J. (application no. 13114/15) lived rough in conditions similar to those described by N.H. (application no. 28820/13). He did so for 170 days, from 23 October 2014 to 14 April 2015. In that time he was accommodated only on the nights of 5, 12, 13 and 14 November 2014, at an emergency accommodation centre (see paragraph 51 above). The Court observes that despite the requests and appeals lodged by A.J. (application no. 13114/13) (see paragraphs 55, 56, 57 and 59 above) he was not granted the Temporary Waiting Allowance until 12 February 2015 and actually received it on 5 March 2015. The Court accordingly finds that from the first time he went to the prefecture A.J. remained without resources from 23 October 2014 to 5 March 2015, that is to say 133 days.

177. Next, the Court notes that S.G. and K.T. (application no. 75547/13) lived for at least nine months on the banks of the Aude in one-person tents lent by private individuals. The Court observes that the Government, which has adduced before it only the internal rules and regulations of the emergency accommodation centre, has not established that S.G. was actually accommodated from 5 to 9 November 2013 or that he voluntarily left the accommodation centre on 10 November 2013. What is more, neither his exclusion from the centre, alleged to have occurred on 22 November 2013, nor the reasons for his exclusion are documented. The same observation holds for K.T: nothing in the record establishes that he was afforded emergency accommodation from 7 to 23 January 2013 before leaving the centre that day of his own accord and returning on 21 November 2013 with S.G., only to be excluded two days later for behavioural problems. As there is no evidence on which to determine whether the applicants were in fact accommodated and expelled from the centre, the Court will not reach any conclusions from the parties’ respective allegations on this point.

178. The Court observes that K.T. (application no. 75547/13), who no longer lacked lawful immigration status as of 21 May 2013, actually received the Temporary Waiting Allowance on 15 July 2013. He was therefore without resources for 185 days, as reckoned from his first visit to the prefecture. The

Court notes that S.G. (application no. 75547/13) started receiving the Temporary Waiting Allowance on 18 September 2013 – sixty-three days after his first visit to the prefecture – with his entitlement having effect from 12 August 2013.

179. The Court takes note, therefore, that N.H. (application no. 28820/13) lived rough, with no financial resources, and that K.T. (application no. 75547/13) and A.J. (application no. 13114/15), who experienced the same living conditions, started receiving the Temporary Waiting Allowance only after periods of 185 and 133 days, respectively. Such material conditions lend credence to their fears of being assaulted and robbed and substantiate their allegations of the difficulties they faced obtaining food and a place to wash themselves. By and large, in order to meet their basic needs during the periods when they lived rough with no financial resources, they had no choice but to rely on the generosity of private individuals and help from charitable associations operating on a volunteer basis. N.H. (application no. 28820/13) recounted in this connection that his one meal a day came from the Salvation Army on week-nights and that, at weekends, he went hungry. The Court also notes that it has not been disputed by the Government that N.H. was able to use the public showers only once a week and that he was not able to do his laundry properly or obtain other clothing (see paragraph 19 above).

180. The Court notes that while the applicants reported health issues that they alleged had been occasioned or exacerbated by their living conditions, the undetailed medical certificates adduced in evidence do not, as the Government have pointed out, establish such a causal link.

181. Lastly, the Government placed particular emphasis on the need to distinguish the present cases from the situation described by the Court in its judgment in *M.S.S. v. Belgium and Greece* (cited above) on the ground that the national authorities, despite facing a considerable increase in the number of asylum-seekers between 2007 and 2014 (see paragraphs 124-127 above), had not stood idly by. Moreover, in the Government's view, the applicants were not left without any prospect of improvement in their situations, since their asylum claims were being processed.

182. The Court would first note that it is mindful of the continuous rise in the number of asylum-seekers which began in 2007 and of the fact that this incrementally pushed the National Reception Scheme to capacity. The Court observes that the events in this case were part of a gradual upward trend and hence did not take place against the backdrop of a humanitarian emergency prompted by a major migration crisis describable as exceptional and giving rise to considerable objective difficulties of an organisational, logistical or structural nature (see *Khlaifia and Others*, cited above, §§ 178-185). The Court notes the efforts undertaken by the French authorities to add further accommodation capacity and shorten asylum processing times (see paragraphs 125-126 above). However, those circumstances do not rule out

the possibility that asylum-seekers were placed in a situation capable of engaging Article 3 of the Convention.

183. The Court notes above all that, in order to have their asylum claims registered, N.H. (application no. 28820/13), K.T. (application no. 75547/13) and A.J. (application no. 13114/15) had to endure waiting times during which they were unable to show proof of their asylum-seeker status (see paragraphs 167, 169 and 170 above). The Court further notes that N.H. (application no. 28820/13) was granted subsidiary protection 229 days after arriving in France; that 188 days elapsed between the first appointment which A.J. (application no. 13114/15) had at the police prefecture and the date he was granted refugee status by OFPRA; and that the asylum claims lodged by S.G. and K.T. (application no. 75547/13) were rejected by OFPRA after 448 days and 472 days, respectively.

(c) Conclusion

- (i) *N.H. (application no. 28820/13), K.T. (application no. 75547/13) and A.J. (application no. 13114/15)*

184. The Court observes from the foregoing that the French authorities were in breach of their domestic-law obligations towards the applicants. It therefore concludes that they must be held responsible for the conditions in which the applicants lived for months – on the streets, with no resources or access to sanitary facilities, lacking any means of providing for their essential needs and in constant fear of being attacked and robbed. The Court finds that the applicants were victims of degrading treatment that showed a lack of respect for their dignity and that this state of affairs undoubtedly aroused in them feelings of fear, anguish or inferiority capable of inducing despair. The Court is of the view that the level of severity required for the purposes of Article 3 of the Convention was met by such living conditions, together with the lack of an appropriate response from the French authorities – whom the applicants had repeatedly put on notice of their inability to secure practical enjoyment of their rights and hence to meet their essential needs – and with the reliance which the domestic courts, in denying the applicants the relief they sought, invariably placed on the competent bodies' lack of resources as seen against the fact that the applicants were young, single adults in good health with no dependent family members.

185. The foregoing considerations are sufficient to enable the Court to conclude that the authorities' conduct put N.H. (application no. 28820/13), K.T. (application no. 75547/13) and A.J. (application no. 13114/15) in a situation that was contrary to Article 3 of the Convention.

186. Accordingly, Article 3 of the Convention has been violated in respect of those applicants.

(ii) *S.G. (application no. 75547/13)*

187. The Court notes from the foregoing that S.G. received a certificate of application for asylum twenty-eight days after his first appointment at the prefecture and that, although he did live in a tent, he was granted the Temporary Waiting Allowance sixty-three days after that initial visit. Difficult as that period may have been for the applicant, he thereafter had means to provide for his essential needs. Therefore the Court is of the view that his living conditions did not attain the level of severity required for the purposes of Article 3 of the Convention.

188. Accordingly, there has been no violation of Article 3 of the Convention in respect of this applicant.

III. ALLEGED VIOLATION OF ARTICLE 8 OF THE CONVENTION AND OF ARTICLE 13 READ IN CONJUNCTION WITH ARTICLE 8 (APPLICATION NO. 28820/13)

189. The applicant complained that he had been forced to live rough in conditions of extreme hardship, with no resources or legal status and a broken wrist, and of the lack of an effective remedy in the administrative courts even though they had been put on notice of his situation. He relied on Article 8 of the Convention, read alone and in conjunction with Article 13 of the Convention. Article 8 provides as follows:

Article 8

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

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

190. Having regard to the facts of the case, the submissions of the parties and the conclusion it has reached under Article 3 of the Convention, the Court is of the view that it has examined the main legal issue raised by the application. It therefore concludes that there is no need for a separate ruling on these complaints (see, in particular, *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* [GC], no. 47848/08, § 156, ECHR 2014).

IV. APPLICATION OF ARTICLES 46 AND 41 OF THE CONVENTION

A. Article 46 of the Convention (application no. 75547/13)

191. Article 46 of the Convention provides:

“1. The High Contracting Parties undertake to abide by the final judgment of the Court in any case to which they are parties.

2. The final judgment of the Court shall be transmitted to the Committee of Ministers, which shall supervise its execution.

...”

192. The applicants sought initiation of the pilot-judgment procedure or at least a direction that the French authorities take all legislative and administrative steps necessary in view of the number of asylum-seekers struggling to gain access to the minimum material reception conditions laid down by the Reception Directive (see paragraph 95 above). They moved in particular for a direction that the respondent State bring to bear sufficient material and financial resources to guarantee decent reception conditions for asylum-seekers, and that the French authorities overhaul their asylum reception scheme to solve the structural problem complained of. In addition they sought a direction that the authorities accelerate the registration of asylum claims to ensure that asylum-seekers were not in future deprived, for several months, of the minimum material reception conditions.

193. The Government were silent on these requests.

194. The Court would reiterate that its judgments are essentially declaratory in nature and that, in general, it is primarily for the State concerned to choose, subject to supervision by the Committee of Ministers, the means to be used in its domestic legal order to discharge its obligation under Article 46 of the Convention (see, among other authorities, *Scozzari and Giunta v. Italy* [GC], nos. 39221/98 and 41963/98, § 249, ECHR 2000-VIII; *Brumărescu v. Romania* (just satisfaction) [GC], no. 28342/95, § 20, ECHR 2001-I; and *Öcalan v. Turkey* [GC], no. 46221/99, § 210, ECHR 2005-IV). This discretion as to the manner of execution of a judgment reflects the freedom of choice attaching to the primary obligation of the Contracting States under the Convention to secure the rights and freedoms guaranteed (*Papamichalopoulos and Others v. Greece* (Article 50), 31 October 1995, § 34, Series A no. 330-B).

195. While it is true that some exceptional circumstances may call for the indication of positive measures under Article 46 of the Convention, the Court does not consider this to be such a case (see, conversely, *Gluhaković v. Croatia*, no. 21188/09, §§ 88-89, 12 April 2011). In particular it observes that in the time since the present applications were lodged a number of changes have been made to French law. For instance, the Law of 29 July 2015 requires asylum claims to be registered within three days (paragraph 74 above) and has brought about a thorough reform of the accommodation and financial support scheme for asylum-seekers (see paragraphs 85-88 above).

196. Accordingly, the Court is of the view that the applicants’ requests under Article 46 of the Convention must be dismissed.

B. Article 41 of the Convention

197. 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.”

1. Damage

(a) Application no. 28820/13 (N.H.)

198. The applicant argued that he had been forced to live for nine months in particularly inhumane conditions and that he had been deprived of his right to decent reception conditions. Accordingly he claimed EUR 2,396.80 in respect of pecuniary damage, being the sum he should have received by way of the Temporary Waiting Allowance from 4 April to 4 November 2013. He also claimed EUR 25,000 in respect of non-pecuniary damage.

199. The Government were of the view that a lump sum of EUR 4,000 would be sufficient compensation.

200. The Court considers it just, in view of the nature of the violations found in the case, to grant the applicant's claim; it awards him EUR 2,396.80 in respect of pecuniary damage and EUR 10,000 by way of compensation for non-pecuniary damage.

(b) Application no. 75547/13 (K.T.)

201. The applicant claimed EUR 15,000 in respect of non-pecuniary damage. He pointed out that he had lived rough for many months, a situation made all the more serious by his various health problems.

202. The Government regarded the amount claimed as excessive to the extent that the applicant had been afforded emergency accommodation, the Temporary Waiting Allowance and medical care upon requesting them. That notwithstanding, they submitted that, should the Court conclude that the allegation of non-pecuniary damage was made out, a finding of a violation of the Convention would in itself be sufficient just satisfaction.

203. The Court considers it appropriate to award the applicant EUR 10,000 in respect of non-pecuniary damage.

(c) Application no. 13114/15 (A.J.)

204. The applicant claimed EUR 21,250 (EUR 125 per day) in respect of non-pecuniary damage sustained from 23 October 2014 to 14 April 2015. He argued that during that time he had been forced to live rough for 170 days and had had no resources for 133 days.

205. The Government contended for dismissal of the applicant's claim. In their view, first, the allegation of non-pecuniary damage was not made out,

since the applicant, even without showing himself to be in a situation of particular distress, had been able to secure emergency accommodation. Second, he had been granted the Temporary Waiting Allowance three months after his first interview with the administrative authority. The Government added that, should the Court nonetheless come to the conclusion that the allegation of non-pecuniary damage was made out, a finding of a violation of the Convention would in itself be sufficient just satisfaction.

206. In view of the nature of the violations found in his case, the Court considers it just to grant the applicant's claim and awards him EUR 12,000 in compensation for non-pecuniary damage.

2. Costs and expenses

207. The applicants made no claims for recovery of costs and expenses. Regarding applications nos. 28820/13 and 75547/13, N.H. and K.T. explained that no such claims were being made because of the importance of their cases for the effective protection of fundamental rights. In application no. 75547/13 K.T. also specified that as an indigent claimant he had received assistance from La Cimade (Comité inter-mouvements auprès des évacués – Inter-Movement Committee for Evacuees) in his case before the Montpellier Administrative Court, and that he was being represented *pro bono* in this Court.

208. Accordingly, the Court concludes that no award should be made under this head.

3. Default interest

209. The Court considers it appropriate to set the rate of default interest equal to the marginal lending rate of the European Central Bank plus three percentage points.

FOR THESE REASONS, THE COURT, UNANIMOUSLY,

1. *Decides* to join the applications;
2. *Decides* to strike out application no. 75547/13 in so far as it concerns G.I.;
3. *Declares* the applications admissible as regards the complaint of a violation of Article 3;
4. *Holds* that there has been a violation of Article 3 of the Convention in respect of N.H. (application no. 28820/13), K.T. (application no. 75547/13) and A.J. (application no. 13114/15);

5. *Holds* that there has been no violation of Article 3 of the Convention in respect of S.G. (application no. 75547/13);
6. *Holds* in respect of application no. 28820/13 that there is no need to examine the admissibility or merits of the complaints of a violation of Article 8 of the Convention read alone and in conjunction with Article 13 of the Convention;
7. *Holds*
 - (a) that the respondent State is to pay the applicants, within three months of the date on which the judgment becomes final in accordance with Article 44 § 2 of the Convention, the following sums, plus any tax that may be chargeable to them:
 - (i) in respect of non-pecuniary damage
 - EUR 10,000 (ten thousand euros) to N.H. (application no. 28820/13);
 - EUR 10,000 (ten thousand euros) to K.T. (application no. 75547/13);
 - EUR 12,000 (twelve thousand euros) to A.J. (application no. 13114/15);
 - (ii) in respect of pecuniary damage
 - EUR 2,396.80 (two thousand three hundred and ninety-six euros and eighty cents) to N.H. (application no. 28820/13);
 - (b) that from expiry of the above-mentioned three months until settlement simple interest shall be payable on the above amounts at a rate equal to the marginal lending rate of the European Central Bank during the default period plus three percentage points;
8. *Dismisses*, unanimously, the remainder of the claims for just satisfaction.

Done in French and notified in writing on 2 July 2020 pursuant to Rule 77 §§ 2 and 3 of the Rules of Court.

Victor Soloveytchik
Deputy Registrar

Síofra O’Leary
President

APPENDIX

Application number	Case name	Application date	Legal representative
28820/13	<i>N.H. v. France</i> (anonymity granted)	29/04/2013	Mr Martin Dannaud, lawyer practising in Paris
75547/13	<i>S.G. and Others v. France</i> (anonymity granted)	27/11/2013	Mr Patrice Spinosi, member of the bar of the <i>Conseil d'État</i> and the Court of Cassation
13114/15	<i>A.J. v. France</i> (anonymity granted)	13/03/2015	Mr Martin Dannaud, lawyer practising in Paris