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

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The State's failure to enforce orders by the urgent-applications judge of the Administrative Court for the provision of emergency accommodation to a number of homeless and particularly vulnerable individuals breached Article 6 § 1 of the Convention

In today's **Chamber** judgment[1] in the case of M.K. and Others v. France (applications nos. 34349/18, 34638/18 and 35047/18) the European Court of Human Rights held, unanimously, that there had been:

a violation of Article 6 § 1 (right of access to a court) of the European Convention on Human Rights.

The cases concerned asylum-seekers who were without accommodation at the time of the events because they had not been given access to the specialist reception facilities or to emergency accommodation. The urgent-applications judge of the Administrative Court, to whom they applied, ordered the State to find emergency accommodation for them. The applicants complained that, despite the orders granting their requests and the proceedings brought by them at domestic level to that end, the State had failed to enforce the judicial decisions in their favour. They alleged a breach of Article 6 § 1 of the Convention.

The Court considered that in the present case the decision to grant or refuse emergency accommodation constituted a civil right, and held that Article 6 § 1 of the Convention was applicable.

The Court noted that the Government, who maintained that the reception facilities in the Haute-Garonne *département* had been at saturation point, especially in July 2018, and that there had been insufficient funds to cover the cost of hotel accommodation, had not demonstrated before the Court the complexity of the proceedings to enforce the orders in the applicants' favour. It further observed that the applicants had been especially diligent in their efforts to secure enforcement of the orders. Furthermore, the prefect, who represented the State within the *département*, had not furnished the explanations sought by the Administrative Court at the administrative stage of the enforcement process and had not responded to the applicants' requests, nor had he enforced the orders in question until the Court had indicated interim measures. Only then had the applicants been provided with accommodation.

The Court, after noting the passive attitude of the competent administrative authorities when it came to enforcing the decisions of the Administrative Court, especially in the context of disputes concerning protection of the human dignity of individuals in a particularly vulnerable situation, held that there had been a violation of Article 6 § 1 of the Convention.

A legal summary of this case will be available in the Court's database HUDOC (link).

Principal facts

Application no. 34349/18 (M.K. and Others)

1. Under Articles 43 and 44 of the Convention, this Chamber judgment is not final. During the three-month period following its delivery, any party may request that the case be referred to the Grand Chamber of the Court. If such a request is made, a panel of five judges considers whether the case deserves further examination. In that event, the Grand Chamber will hear the case and deliver a final judgment. If the referral request is refused, the Chamber judgment will become final on that day.
Once a judgment becomes final, it is transmitted to the Committee of Ministers of the Council of Europe for supervision of its execution. Further information about the execution process can be found here: www.coe.int/t/dghl/monitoring/execution.

The first applicant, M.K., is a Congolese national who was born in 1983. She stated that she had fled her country of origin accompanied by her three daughters, aged 3, 5 and 14 at the time (the other three applicants). They entered France on 29 May 2018.

On 1 June 2018 M.K. lodged an asylum application with the Haute-Garonne prefecture, which issued her with an asylum application certificate under the "Dublin procedure".

Between 2 and 21 June 2018 M.K. contacted the social welfare helpline (emergency number 115) in Toulouse on fourteen occasions in an attempt to secure accommodation for herself and her three daughters. Her requests were refused. On 25 June 2018 M.K. lodged an urgent application for protection of a fundamental freedom (*référé liberté*) with the Toulouse Administrative Court seeking an order for the administrative authorities to find accommodation for her and her daughters.

By an order of 27 June 2018 the urgent-applications judge of the Toulouse Administrative Court ordered the prefect of Haute-Garonne, who had not filed any pleadings and had not attended or been represented at the hearing, to allocate places to the applicants in an emergency accommodation facility without delay as soon as the order was served.

On 5 July 2018 M.K. requested the opening of proceedings to enforce the order of 27 June 2018, under Articles L. 911-4 et seq. of the Administrative Courts Code. On the same day the Toulouse Administrative Court asked the prefecture of Haute-Garonne to provide details of the nature and date of the measures taken to implement the order of 27 June 2018. The prefecture did not respond.

On 13 July 2018 M.K. lodged a fresh urgent application for protection of a fundamental freedom, asking the judge to find that the prefect had refused enforcement of the order. In an order of 18 July 2018 the urgent-applications judge of the Toulouse Administrative Court found that the order of 27 June 2018 remained unenforced.

The State did not appeal against any of the Administrative Court orders.

On 23 July 2018 M.K. asked the Court to indicate an interim measure under Rule 39 of the Rules of Court. On 24 July 2018 the Court granted an interim measure indicating to the French Government that they should take charge of the applicants, in particular by providing them with emergency accommodation.

On that date the family was provided with hotel accommodation. On 26 July 2018 the authorities took charge of the family under the programme for the reception and accommodation of asylum-seekers.

Application no. 34638/18 (A.D. and Others)

The applicants, a couple born in 1978 and 1982 respectively, and their daughter, born in 2015, are Congolese nationals who, having fled their country, arrived in France in June 2018.

Between 13 and 17 June 2018 the social welfare helpline was contacted on seven occasions by the applicants or by the Haute-Garonne social services, without success, with a view to securing accommodation for the family. On 18 June 2018 the applicants lodged asylum applications with the Haute-Garonne prefecture and were issued with an asylum application certificate. Between 21 June and 1 July 2018 the social welfare helpline was contacted eleven times by the first two applicants or the Haute-Garonne social services seeking to secure accommodation for the family. Their efforts were again unsuccessful.

On 29 June 2018 the first two applicants lodged an urgent application for protection of a fundamental freedom with the Toulouse Administrative Court, seeking an order for the administrative authorities to find accommodation for them and their child. In an order of 2 July 2018 the urgent-applications judge of the Toulouse Administrative Court ordered the prefect of Haute-Garonne, who had not filed any pleadings and had not attended or been represented at the

hearing, to allocate places to the applicants in an emergency accommodation facility. The accommodation was to be made available within twenty-four hours following service of the order.

On 3 July 2018 the first two applicants contacted the prefecture with a view to enforcement of the order issued the previous day. They received no response.

On 6 July 2018 the first two applicants requested the opening of proceedings to enforce the order of 2 July 2018. On 9 July 2018 the Toulouse Administrative Court asked the prefecture of Haute-Garonne to provide details of the nature and date of the measures taken to implement the order of 2 July 2018. The prefecture did not respond.

On 16 July 2018 the second applicant gave birth to the couple's second child, the fourth applicant before the Court.

On 17 July 2018 the first two applicants lodged a fresh urgent application for protection of a fundamental freedom, asking the Toulouse Administrative Court to find that the prefect had refused enforcement of the order and to require the prefect to allocate places to them in an accommodation facility.

In an order of 19 July 2018 the urgent-applications judge of the Toulouse Administrative Court noted that the order of 2 July 2018 remained unenforced. He ordered the prefect to provide the family with emergency accommodation within twenty-four hours following service of the order. From 20 to 24 July 2018 the order remained unenforced.

On 24 July 2018 the applicants asked the Court to indicate an interim measure. On 25 July 2018 the Court granted an interim measure indicating to the French Government that they should take charge of the applicants, in particular by providing them with emergency accommodation. The family were provided with accommodation on the same day.

Application no. 35047/18 (I.K. and Others)

The applicants, a couple born in 1961 and 1983 respectively, and their daughter, born in 2003, are Georgian nationals. They arrived in France in April 2018. I.K. has paraplegia and his condition requires constant nursing care and monitoring by surgeons and doctors specialising in infectious diseases.

The applicants contacted the social welfare helpline repeatedly between 20 and 22 April 2018 with a view to finding accommodation for the family, without success. On 23 April 2018 they lodged asylum applications with the Haute-Garonne prefecture, which issued them with an asylum application certificate under the expedited procedure.

Between 23 April and 13 June 2018 the social welfare helpline was contacted on more than thirty occasions by the applicants, the information and orientation centre and the Toulouse hospital services, with a view to finding accommodation for the family. Their efforts were unsuccessful.

From 10 May to 14 June 2018 I.K. was treated in hospital. The other two applicants had to sleep in the hospital foyer and subsequently outdoors.

On 14 June 2018 the applicants were taken charge of under the emergency accommodation scheme. The provision ended on 5 July 2018.

On 10 July 2018 the first two applicants lodged an urgent application for protection of a fundamental freedom with the Toulouse Administrative Court seeking an order for the administrative authorities to provide them and their daughter with accommodation.

In an order of 12 July 2018 the urgent-applications judge of the Toulouse Administrative Court ordered the prefect of Haute-Garonne, who had not filed any pleadings and had not attended or been represented at the hearing, to allocate places to the applicants in an emergency

accommodation facility without delay. The accommodation was to be made available within forty-eight hours following service of the order.

Between 13 and 17 July 2018 the social welfare helpline was contacted seven times, without success, by the applicants, the Haute-Garonne social services and the Toulouse hospital services with a view to obtaining accommodation for the family. On 17 July 2018 the first two applicants requested the opening of proceedings to enforce the order of 12 July 2018. On the same day the Toulouse Administrative Court asked the prefecture of Haute-Garonne to provide details of the nature and date of the measures taken to implement the order of 12 July 2018. The prefecture did not respond.

On 26 July 2018 the applicants asked the Court to indicate an interim measure under Rule 39 of the Rules of Court. On the same day the Court granted an interim measure indicating to the French Government that they should take charge of the applicants by providing them with emergency accommodation.

The family were provided with accommodation on 27 July 2018.

Complaints, procedure and composition of the Court

Relying on Article 6 § 1 (right to a fair hearing), Article 3 (prohibition of inhuman or degrading treatment) and Article 13 (right to an effective remedy) taken in conjunction with Article 3, the applicants complained of the failure to enforce the orders made by the urgent-applications judge of the Administrative Court requiring the authorities to provide them with emergency accommodation. They also complained of the conditions in which they had to live during the periods when they had no accommodation and of the lack of an effective urgent procedure for the enforcement of orders made by the urgent-applications judge.

The applications were lodged with the European Court of Human Rights on 23, 24 and 26 July 2018.

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

Georges **Ravarani** (Luxembourg), *President*,
Carlo **Ranzoni** (Liechtenstein),
Mārtiņš **Mits** (Latvia),
Stéphanie **Mourou-Vikström** (Monaco),
María **Elósegui** (Spain),
Mattias **Guyomar** (France),
Mykola **Gnatovskyy** (Ukraine),

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

Decision of the Court

Article 6 § 1

In view of the similar subject matter of the applications, the Court found it appropriate to examine them jointly in a single judgment

The Court observed that a right to emergency accommodation existed in France for individuals in the situations contemplated in the legislation. It emphasised that this right could be asserted in urgent proceedings for protection of a fundamental freedom, within the limits set by the *Conseil d'État*. In the present case the urgent-applications judge had acknowledged that the applicants satisfied the criteria for the granting of emergency accommodation, and went on to find that the State's failure to fulfil its duty was established, giving rise to a serious and manifestly unlawful breach of the

fundamental freedom constituted by the right to emergency accommodation. The Court therefore concluded that the applicants enjoyed a right for the purposes of Article 6 § 1 of the Convention.

The Court considered that the right to emergency accommodation, owing to its social nature and purpose, was akin to the rights recognised in the context of the legally enforceable right to housing or of social welfare benefits for the purposes of the Court's case-law. Consequently, the decision to grant or refuse emergency accommodation constituted, in the present case, a civil right that did not equate to a decision regarding immigration or the entry, stay or deportation of aliens.

Article 6 § 1 of the Convention was therefore applicable to the present case.

The Court noted the Government's argument that the reception facilities in the Haute-Garonne *département* had been at saturation point, especially in July 2018, and that there had been insufficient funds to cover the cost of hotel accommodation.

The Government did not indicate whether it might have been possible to accommodate the applicants in other *départements*. They did not refer to any positive steps taken by the Haute-Garonne prefecture to alert the central administrative authorities to the difficulties in providing emergency accommodation to homeless persons, particularly in the context of the enforcement of orders made by the urgent-applications judge of the Toulouse Administrative Court.

The Court therefore found that the Government had not demonstrated the complexity of the proceedings to enforce the orders made by the urgent-applications judge in the applicants' favour.

Regarding the applicants' conduct, the Court noted that they had been especially diligent in their efforts to secure enforcement of the orders made by the urgent-applications judge. They could not be said to have been in any way negligent, whereas the binding nature of the orders implied their automatic enforcement by the State, both under domestic law and in order to comply with Article 6 of the Convention.

As to the conduct of the competent authorities, the Court observed that following the initial orders requiring the authorities to provide the applicants with accommodation, the prefect, who represented the State within the *département*, had not furnished the explanations sought by the Administrative Court at the administrative stage of the enforcement process, nor had he submitted any defence pleadings in the context of the urgent application for enforcement of the original orders. Likewise, he had not responded to the applicants' requests and had not enforced the orders in question until the Court had indicated interim measures. Lastly, the State had at no stage lodged an appeal against the orders in question.

The Court deplored the wholly passive attitude of the competent administrative authorities when it came to enforcing the decisions of the Administrative Court within whose area of jurisdiction they were based, especially in the context of disputes concerning the protection of human dignity.

The Court also observed that the Government had not provided sufficient evidence that they had been unable to fund the cost of accommodation.

In sum, while mindful of the fact that the actual length of time for which the original orders of the urgent-applications judge had remained unenforced might not appear excessive, the Court emphasised that the State administrative authorities had not merely delayed in complying with the orders of the domestic court, but had refused outright to do so, and that the orders had not been enforced on the authorities' own initiative, but only after the Court had indicated interim measures.

There had therefore been a violation of Article 6 § 1 of the Convention.

Article 3

In the present case the continuous violation of which the applicants complained had ceased when they were provided with accommodation (on 24 July 2018 in the case of *M.K. and Others*, 25 July 2018 in the case of *A.D. and Others* and 27 July 2018 in the case of *I.K. and Others*).

The Court inferred from this that the applicants should have lodged an action for damages against the State in the administrative courts in order to claim compensation for the damage they had allegedly suffered on account of the period during which they had been homeless, even if that remedy would only have been effective after they had lodged their respective applications with the Court.

The Court therefore held that the complaint under Article 3 of the Convention should be rejected for failure to exhaust domestic remedies.

Rule 39 of the Rules of Court

The Court considered that the applicants' situation had changed since the interim measures had been indicated and that they did not appear to be asking that the measures be maintained. It therefore decide to lift the interim measures.

Just satisfaction (Article 41)

The Court held that France was to pay an overall amount of 5,000 euros (EUR) to M.K. and her daughters S.K., E.N. and S.N. (application no. 34349/18), an overall amount of EUR 5,000 to A.D., E.D. and their children S.D. and J.D. (application no. 34638/18), and an overall amount of EUR 5,000 to I.K., T.L. and their daughter V.K. (application no. 35047/18). It also awarded EUR 7,150 to the applicants jointly in respect of costs and expenses.

The judgment is available only in French.

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