

Treatment of migrants and asylum-seekers in Calais and French overseas territories denounced by national Ombudsman and European Court of Human Rights

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Two recent decisions by the French Ombudsman and the European Court of Human Rights (ECHR) have condemned illegal practices against migrants and asylum-seekers at the periphery of French territory.

Police harassment in Calais

The Ombudsman published a report on 13 November 2012 that condemned the activities of law enforcement authorities in Calais, where migrants hoping to cross the Channel to the UK live in squatted buildings and informal settlements known as 'jungles'. [1]

The report followed a complaint lodged by four activists from the No Borders network and 23 local, national, European and international human rights organisations.

Based on testimony and documentation provided by NGOs, activists and police officers, the Ombudsman found:

- Inappropriate police intervention on sites where food and medical care are provided by humanitarian organisations
- The arrest of asylum-seekers to check their identity, in breach of the right to free circulation for all people legally staying in the country
- The arbitrary eviction of migrants from informal settlements or unoccupied buildings in breach of legal procedures
- Police harassment and violence against migrants and migrant rights activists, especially the inappropriate use of tear gas during operations

The Ombudsman called on the authorities to provide asylum-seekers with decent housing, as required by French law and by European legislation. France was condemned by the Court of Justice of the European Union in September 2012 for denying decent reception standards to asylum-seekers pending their removal to another EU Member State in line with the Dublin II procedure. [2]

One recommendation was for the authorities to halt practices intended to provoke or humiliate migrants, and the Ombudsman noted regret that he was not in a position to identify the officers responsible for abuse. He recommended that police officers, whether from the national police or the police riot units, be identified with a visible ID number.

In a report published in October 2012 on stop and search operations in France, the Ombudsman highlighted the importance of identifying officers and the need for officers to be held accountable for their actions. [3]

The Interior Ministry must reply to the Ombudsman within a period of two months, but the recommendations made in the report are not binding upon the authorities.

Calais ten years after the closure of Sangatte

Many charities and migrant rights organisations have been active in the Calais region since the establishment of the Red Cross centre in Sangatte in 1999. Mobilisation intensified after the closure of Sangatte in 2002 and the growth of 'jungles', where up to 1,000 migrants and asylum-seekers were living in 2008-2009 according to NGO and official estimates.

In September 2009 the 'jungles' were destroyed following an order by Eric Besson, then Interior Minister. [4] This led to a sharp decrease in the number of migrants in the area and their dispersal along the northern coast towards Belgium. Just two months before, the UK and France had agreed

to intensify their cooperation on border control, pledging to make their shared border impervious to illegal immigrants and immigration networks. [5]

For many years, organisations have denounced police violence against migrants and their supporters, constant judicial and police harassment, the arbitrary eviction of settlements and the destruction of personal belongings in breach of the required procedures. A riot police unit is permanently present in the area, and the migrant rights organisation GISTI (Groupe d'Information et de Soutien aux Travailleurs Immigrés) has denounced the imposition of a police state. [6]

Local authorities have so far denied access to decent living conditions for the migrant communities, arguing that an increase in standards would act as a pull factor for other migrants. Migrants - who are predominantly lone males but also unaccompanied minors - are forced to live in destitution and to rely on charity to survive.

Solidarity is rendered extremely difficult due to constant police patrols near the few sites where migrants can access food and medical care, with individuals risking arrest on the basis of the solidarity offence *délit de solidarité* which criminalises those who help migrants to stay in French territory.

The government has promised it will abolish the offence, although it is yet to publish its proposal for reform of the Code on entry and stay of foreigners.

Illegal detention and deportation of migrants in French overseas territories

On 13 December 2012, the European Court of Human Rights unanimously condemned France in a case lodged by a Brazilian national expelled from the French overseas territory of French Guiana in South America. He had lived there legally since the age of thirteen and both his parents had residence permits.

France was found to have breached Articles 8 (right to a family and private life) and 13 (right to an effective remedy) of the European Convention on Human Rights (ECHR); the second time in 2012 that the country has been condemned by the European Court for their treatments of migrants.

The young man was under obligation to stay in the territory after he committed an offence which prevented him from leaving French Guinea for two years. Believing the deportation order to be illegal in view of the above, he challenged the removal order before an administrative tribunal.

However, contrary to the French mainland, in French overseas territories such appeals do not suspend deportation orders. This is justified by the authorities on the grounds that going so would create an unmanageable backlog of tribunals.

Most migrants deported from France are deported from overseas territory (52.3% in 2010 and 51% in 2011). [7] The claimant was deported from French Guiana in January 2007 before the administrative court had examined his appeal, although the deportation order was eventually found to be illegal in October 2007. The claimant managed to enter French territory irregularly and was issued with a residence permit in September 2009.

According to the French government, the claimant had access to an effective remedy since the deportation order was eventually found to be illegal and annulled.

However, the court emphasised that The effectiveness of a remedy within the meaning of Article 13 does not depend on the certainty of a favourable outcome for the applicant.

The claimant argued he was unable to challenge the removal order, which was enforced at 16:00 on the same day an appeal was lodged at 15:00, arguing that his removal had infringed his right to family and private life.

The court found that the haste with which the removal order was executed had meant that the remedies available to him were ineffective in practice and therefore inaccessible. [8] The court also dismissed the government's argument that sought to justify a state of exception in overseas territories. Article 13 of the ECHR obliges signatory states to organise their judicial systems so that they can comply with the relevant obligations.

The 2011 report on immigration detention in France by the five NGOs authorised to enter detention centres dedicated an entire chapter to the reality of detention in French overseas territories, where the majority of detained migrants are held.

The organisations emphasised the state of urgency in all the centres, where detention conditions are appalling and where detention and deportation orders are very rarely subjected to judicial review: [we] deplore the use of particularly questionable practices, at all levels of the removal procedure.

These practices included:

- Detention of persons protected against removal (parents whose child has French nationality, persons arrived in France before the age of 13 and who are entitled to legal residence);
- Standard and non-individual based removal procedures;
- Detention of minors in centres not equipped for families and children;
- Obstacles to communicating with the outside world.;
- No notification to detainees of their rights;

Overcrowded centres and appalling detention conditions, so much so that the Mayotte immigration detention centre was deemed to be a wart on the Republic by a police trade union in 2011.

Sources

[1] Défenseur des Droits, Décision MDS 2011-113, 13 November 2012

[2] Court of Justice of the European Union, *Cimade & Groupe d'information et de soutien des immigrés (GISTI) v Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, Case C-179/11, 27 September 2012

[3] Statewatch News, Human rights organisations say reform of stop and search legislation does not go far enough, 26 October 2012

[4] Collective action, Come to Calais to protest against the destruction of camps and squats of migrants! International solidarity actions in front of all French embassies in Europe! September 2009

[5] Declaration signed by the UK and France following the UK-France Summit 2010 in London on 2 November 2010

[6] GISTI, Lettre ouverte au Premier ministre après la décision du Défenseur des droits sur la situation des migrants du Calais: Un « État policier » au cSur de la République pour une « guerre » aux migrants (Open letter to the French Prime Minister), 29 November 2012

[7] ASSFAM, La Cimade, Forum Réfugiés, France Terre d'Asile, Ordre de Malte, Centres et Locaux de rétention administrative- Rapport 2010, 2011

ASSFAM, La Cimade, Forum Réfugiés, France Terre d'Asile, Ordre de Malte, Centres et Locaux de rétention administrative- Rapport 2011, 2012

[8] European Court of Human Rights, *De Souza Ribeiro v. France*, Application No. 22689/07, 13 décembre 2012