



Summary

# Exiles and fundamental rights, three years after the Calais report

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Face au droit, nous sommes tous égaux

**F**or the Defender of Rights, the respect of the rights of non-EU nationals is a key indicator of the level of protection and effectiveness of the rights and freedoms in a state.

In this respect, he made a point, for several years now, of observing the treatment given to exiles on the national territory, in particular in makeshift camps and in close proximity, and, of denouncing violations made to fundamental rights through this treatment.

The Defender of Rights published on 6 October 2015 a report entitled “Exiles and fundamental rights: the situation on Calais’ territory”, in which he outlined the preoccupying violations made to fundamental rights of exiles children, women and men on the border between France and Great-Britain, who were forced to live in unworthy conditions in a slum.

Since that date, the context has significantly evolved. While ameliorations could be imposed, notably by the administrative jurisdiction, the situation is, in fact, considerably degraded.

Three years after his 2015 report, the Defender of Rights deems appropriate to draw up a new overview by englobing other territories in his observations, such as Grande-Synthe, Quistreham or Paris.

Over three years, the Defender of Rights intervened on multiples occasions through decisions - observations before jurisdictions or recommendations-, opinions to the Parliament or by taking a public stand on several issues.

His interventions fall within his powers conferred by the organic law n°2011-333 of 29 March 2011, and in conformity with the adversarial (*audita altera parte*) principle:

- Exchanges of correspondence with public authorities throughout the adversarial examination of individual claims submitted to the institution (prefectures, city councils, regional councils, law enforcement forces);
- Site visits and observer missions – nearly fifteen – on living conditions and dismantling of living premises, during which as many meetings occurred with local authorities, state representatives, exiles and associations assisting them.

The Defender of Rights, **tasked by Article 71 of the Constitution with the mission of ensuring the respect of rights and freedoms**, draws from these exchanges and observations preoccupying conclusions and issues recommendations to public authorities.

## Unprecedented breaches of fundamental rights of exiles

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Notwithstanding jurisprudential solutions authorizing derogations from the law, the Defender of Rights wishes **to remind the unconditional nature of the right to an adequate housing**.

Public authorities present evacuation operations as sheltering operations aiming to offer to exiles living in unsanitary camps and subject to the pressure of the networks of smugglers, worthy living conditions. Yet, since **these sheltering operations are often not sustainable** and since a control of the administrative situation of exiles can be achieved within this context, these operations actually contribute to the creation of new camps.

While not being able to fully fulfill their obligations in respect of housing, public authorities must at least guarantee decent material living conditions, including to occupants without right nor title. Yet, exiles met by the services of the Defender of Rights in various places find themselves in a state of **extreme deprivation**, lacking basic shelters,, their primary concern being providing for their own vital needs: drinking, feeding themselves, washing themselves. These difficulties have been qualified by the Conseil d’Etat (Council of State, highest court in the French administrative legal system) in 2016 and 2017 as **inhuman or degrading treatments**.



The Defender of Rights reminds to public authorities their obligations in respect of exiles' housing and recommends guaranteeing to asylum seekers an effective access to the national reception scheme, in accordance with the commitments made by France. Pending a solution of long-term accommodation, the Defender of Rights recommends the guarantee of access to food, water and sanitation.

Such living conditions lead to an unprecedented deterioration of the health of exiles. In addition to the persistence of pathologies specific to social precariousness, the Defender of Rights notes a **worrying development of mental disorders** related to the particularly harsh journey of exile and to the treatment given to exiles on arrival on the national territory.

The Defender of Rights notably recommends the establishment of a real public policy taking care of exiles confronted to psychological and mental disorders.

## Serious concerns for the respect of children's rights

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While the generalization and aggravation of breaches of fundamental rights concern indistinctively all exiles, they affect in an even harder way **the most vulnerable among them,, the children, regardless of whether they are with their family or unaccompanied.**

According to the last information, the Defender of rights had access to, these minors are becoming more numerous, younger and more weakened, burdened by long courses abroad - sometimes through Libya - and on the French territory.

After meeting a lot of these minors, of NGOs assisting them and public authorities in charge of their protection, the Defender of Rights considers that his recommendations issued in the past are still relevant: these young people are left to their own devices because of the largely unsuitable and undersized mechanisms provided to support them , would it be regarding their sheltering, their evaluation or their lasting care. Asylum and family reunification procedures are still too complex to be effective.

These obstacles expose minors, even more than adults, to violence, degrading their health condition.

The Defender of Rights considers it an imperative that public authorities urgently adopt appropriate measures for the situation of these children in order to ensure their protection and allow them to evolve in accordance with their age and their needs, in line with international commitments and domestic law.

## Carers as a substitute for public authorities

In lack of a state policy ensuring a true reception of newcomers and offering lasting solutions for care, two other types of stakeholders are constrained to intervene: local communities on one side, who work in unclear conditions at the expense of great disparities on their territories, and NGOs assisting migrants on the other side. While the latter act more and more frequently as a substitute for public authorities, they are more and more restrained from acting. The prohibition of distributing meals in Calais, cancelled by the judge in order for NGOs to be able to pursue their action, illustrates this significantly. Besides, they have to face a **growing penalization of acts of solidarity**.

The Defender of Rights reiterates his recommendations aiming at enlarging the penal immunity to all acts made following a humanitarian objective, and at solely sanctioning acts accomplished knowingly and on a for-profit basis, in respect of assistance for stay and circulation.

Accordingly, a reflection based on possibilities created by European law should be undertaken so that assistance to illegal entry is not punished if it is achieved on a not-for-profit basis and if it tends to safeguard fundamental rights.

## Deterrence and invisibilization strategies on the national territory

The fight against “fixation points”, explicitly defined as a priority for public authorities, aims at deterring exiles from any stay on the territory. To that end, the **strengthening of police presence** during evacuations of camps, from their very initial installation, is sometimes achieved in a blurred legal framework and with little respect for the goods of exiles. In several decisions, the Defender of Rights has noticed that tear gas can be used for repellent purposes and in an unsuitable or unnecessary manner.

Furthermore, he found that **identity checks were deviated from their original purpose** and used to deter access of exiles to places of assistance or to evacuate living areas, and has recommended for these checks to be framed through a new circular.

At the national level, **persistent impediments to access to asylum procedure** – overload of reception schemes, lack of information – add to a growing number of exiles constrained to live in hiding, enduring particularly unworthy living conditions.

## At the origin of the constitution of camps, the migration policy of the European Union and the “Dublin III” regulation

The externalization of the British border in France remains one of the main causes of the reconstitution of makeshift camps in Calais, Grande-Synthe or Ouistreham, as it inhibits exiles who wish so, to reach Great Britain.

The set of agreements binding the two countries **exacerbates the impact of the migration policy** of the European Union. Established on several pillars – including, notably, the strengthening of the cooperation with third countries –, this policy **contributes to drastically reducing legal channels of immigration in Europe**, in

contradiction with the right to leave any country including one's own, enshrined in the European Convention of Human Rights and the Universal Declaration of Human Rights.

Yet, this willingness of "containment" does not discourage departures insofar as the latter, would it be to flee persecutions or a situation of unbearable economic precariousness, always respond to an absolute necessity. However, it leads foreigners fleeing their countries to use ever more perilous immigration channels, often with the help of smugglers.

When, despite the application of such a policy, exiles can reach the European territory, the Dublin regulation takes over, allowing each state to send back a part of the exiles, asylum seekers, toward another European state, when not discouraging asylum seekers to fill an **asylum request in France**, since they fear not being heard, or being exposed to violence .

Far from making exiles giving their migratory project up, this scheme prompts them to live hidden, sometimes in conditions of extreme deprivation and left to the worst exploitations.

Without prospect, without a real examination of their situation, they are doomed to a **perpetual vagrancy**.

Today, the link between the application of the Dublin regulation and the reconstitution of camps is made by numerous actors, notably by mayors of major cities or the General Director of the OFPRA (French Office for the Protection of Refugees and Stateless Persons).

The Defender of Rights reiterates his 2015 recommendation, tending to suspend the application of the regulation, which proves to be, in addition, ineffective since only 10 to 15% of transfer decisions are effectively carried out.

Repeating the findings made in October 2015 concerning the perverse effects of the externalization of British borders in France and not concealing his concerns within a context in which the United Kingdom is clearly showing its willingness to restrain immigration after the "Brexit", the Defender of Rights recommends to the French government to denounce treaties and agreements of Touquet.

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