

France ? Council of State, 21 April 2017, n° 399780

Country of Decision:

France

Country of Applicant:

Bangladesh

Date of Decision:

21-04-2017

Court Name:

Council of State, 2nd chamber

Keywords:

Country of origin information

Membership of a particular social group

Refugee Status

Sexual orientation

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1]European Union Law > [EN - Qualification Directive, Directive 2004/83/EC of 29 April 2004](#) [2]

Headnote:

The fact that the membership of a particular social group is not subject to specific repressive criminal provisions has no incidence on the granting of refugee status.

Facts:

The Applicant, M.B?A?, a gay man of Bangladeshi nationality, requests the Council of State to quash the decision of the National Asylum Court which denied his request to annul the decision n°13-08-0287 of 30 March 2015 which rejected his application for refugee status.

Decision & Reasoning:

Article 10(1)(d) of the Qualification Directive 2004/83/EC of 29 April 2004 provides that a group shall be considered to form a particular social group depending on the circumstances in the

country of origin. A particular social group might include a group based on a common characteristic of sexual orientation, as mentioned in article 1 of the 1951 Refugee Convention. The assessment of the reality of the persecutions on the basis of the membership of a particular social group can be reliant on abusively applied common law provisions to that particular social group, or on the behaviour of the country of origin authorities, encouraged or favoured by these authorities or even simply tolerated by these authorities.

In its decision, the National Asylum Court had correctly noted, on the one hand, that homosexual people in Bangladesh are assimilated to a particular social group and, on the other hand, that statements of M. A established his sexual orientation. The National Asylum Court erred by denying refugee status to M. A because he belongs to a particular social group on the basis of a common characteristic of sexual orientation perceived as being different by the Bangladeshi society. The decision n°13-08-0287 of 30 March 2015 is quashed and the case is sent back to the National Asylum Court.

Outcome:

Application granted.

Subsequent Proceedings :

Constant position of the Court: example: Council of State, No. 349824: ?Considering, that refusing to grant refugee status to M.B? on the grounds that, on the hand, the person concerned did not establish that he had manifested his sexual orientation and, on the other hand, that homosexuality is not punishable under the Criminal Code of the Democratic Republic of Congo, the National Asylum Court has erred twice; that, consequently, and without it being necessary to examine the other grounds of the appeal, its decision must be quashed.?

Italy, 14 November 2017: case which concerned a gay man from Nigeria, whose appeal against the negative decision of the Territorial Commission on his asylum claim had been rejected by the Court of Appeal of Ancona. The Court of Cassation quashed this decision on four points. The last one was that it had not paid sufficient attention to the fact that same-sex acts are criminalised in Nigeria and, consequently, gay men are at risk and may be in need of international protection. The Court of Cassation reiterated the need for a shared burden in the case of an applicant fleeing persecution due to his sexual orientation.

Observations/Comments:

This case summary was written by Clara Gautrais, LPC student at BPP University.

Attachment(s):

[Conseil d'État 2ème chambre 21_04_2017_399780_PSG sexual orientation.docx](#)[3]

National / Other Legislative Provisions:

[France ? Code of Entry and Residence of Foreigners and of the Right of Asylum](#) [4]

[France ? Law 91-647 of 10 July 1991 on Legal Aid](#) [5]

[France ? Code of Administrative Justice](#) [6]

Links:

[1] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[2] <http://www.asylumlawdatabase.eu/en/content/qualification-directive>

[3]

https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Conseil_d_%C3%89tat_2%C3%A8me_cham

[4] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-%E2%80%93-code-entry-and-residence-foreigners-and-right-asylum>

[5] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-%E2%80%93-law-91-647-10-july-1991-legal-aid>

[6] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-%E2%80%93-code-administrative-justice>