

France - Council of State, 21 December 2012, No. 332491

Country of Decision:

France

Country of Applicant:

Unknown

Date of Decision:

21-12-2012

Citation:

CE, 21 décembre 2012, n° 332491

Court Name:

Council of State

Keywords:

Assessment of facts and circumstances

Female genital mutilation

Internal protection

Membership of a particular social group

Personal circumstances of applicant

Protection

Refugee Status

Relevant Legislative Provisions:International Law > [1951 Refugee Convention](#) [1] > [Art 1A \(2\)](#) [2]

International Law

International Law > [1951 Refugee Convention](#) [1]

Headnote:

Membership of a social group is an objective social fact not dependent on members of the group or, if they are not in a position to do so, their next of kin, expressing their membership of that group.

Facts:

The Applicant requested the Council of State to set aside the decision of the National Asylum

Court (CNDA) refusing refugee status for her minor daughter born in France, and to recognise the latter's refugee status due to the risk of excision in the event of a return to her country of origin.

Decision & Reasoning:

The Council of State reiterated the terms of Article 1A2 of the 1951 Refugee Convention and the provisions of the Qualification Directive relating to the social group, adding that *'membership of a [social group] is an objective social fact not dependent on members of the group or, if they are not in a position to do so, their next of kin, expressing their membership of that group?'*.

The Council of State deduced from this that, in a population in which female sexual mutilation is widely practised to the point of constituting a social norm, children and adolescents who are not mutilated constitute a social group.

However, in order to establish the merits of the application for protection, the Council of State required the party concerned to supply detailed information, specifically in relation to family, geography and sociology, concerning the risks that she personally faced.

The Council of State added that refugee status could be refused where the party concerned was able to access protection in part of the territory of her country of origin, which she was able to access in total safety, in order to settle and live a normal family life.

The Council of State furthermore affirmed that the 1951 Refugee Convention only requires the recognition of refugee status if it is impossible for the person to claim protection from his/her country of nationality. Consequently, the fact that the person for whom refugee status is sought was born outside that country is not in itself an obstacle to the granting of protection under the Convention.

Finally, the Council of State held that, in making recognition of refugee status as a member of a social group dependent on the person expressing their membership of that group, the CNDA had made a decision that was void for error of law in relation both to the definition of the social group and to the establishment of a proven link between that person and the group.

Outcome:

The decision of the CNDA was quashed.

The case was referred back to the CNDA.

Observations/Comments:

On the same date, the Council of State, meeting in Assembly, examined two other cases concerning the protection to be granted to parents of young girls born in France and threatened with excision in the event of a return to their country of origin.

In case n°332492 (CE, 21 December 2012, n°332492), the applicant, the mother of a daughter born in France and threatened with excision if she returned, applied to the Council of State to quash the decision of the CNDA refusing her refugee status. The Council of State held that the CNDA had been right to reject her appeal, finding no evidence that she might be regarded as belonging to a social group, due to her opposition to the sexual mutilation which her daughter, born in France, would risk were she to return with her to Ivory Coast, and therefore likely to be personally at risk of persecution pursuant to Article 1A2 of the 1951 Refugee Convention. The


Council of State therefore dismissed the Applicant's appeal.

In case n°332607 (CE, 21 December 2012, n°332607), the Ofpra requested the Council of State to quash a decision of the CNDA granting subsidiary protection to an Applicant, the mother of a daughter born in France and threatened with excision in the event of a return to Ivory Coast. The CE considered that the CNDA had made a mistake of law in holding that the Applicant could, solely through her opposition to the practices of female sexual mutilation, be regarded as being at risk of inhuman or degrading treatment, without considering whether she might seriously fear being directly and personally at risk of such treatment if she were to return. The Council of State therefore quashed the decision of the CNDA and referred the case back to the CNDA.

The Council of State therefore refused any form of international protection ? refugee status or subsidiary protection ? to the parents. No extension of the child's protection to its parents was contemplated. They therefore found themselves in a legal vacuum.

The Council of State did not have to rule on the extension of international protection (refugee status or subsidiary protection) to the parents. That question therefore remained pending.

Attachment(s):

 [CE 332491.doc](#)[3]

National / Other Legislative Provisions:

[France - Ceseda \(Code of the Entry and Stay of Foreigners and Asylum Law\)](#) [4]

Links:

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

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

[3] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/CE%20332491.doc>

[4] <https://www.asylumlawdatabase.eu/en/taxonomy/term/1035>