



Asylum and issues of national security

Florence Malvasio

Vice-president of the French National Asylum Court

March 2021

Asylum law and national security issues (law)

National security issues may arise when an exclusion clause is raised (either on Refugee or Subsidiary protection; either by the administration – OFPRA – or the judge – CNDA) : serious reasons for considering that the person has committed serious crimes (non political if refugee), acts contrary to the purposes & principles of the United Nations or constitutes a danger to the community or the security of the State

It often arises when the administration (OFPRA) revokes international protection (IP) on exclusion grounds for facts anterior to the granting of IP (known later) or for acts posterior to the granting of IP committed in the host country that qualify for exclusion (ex. the person has been convicted of a particular serious crime or of terrorist activities and / or he constitutes a danger to the security of the State or for the society)

Moment of the procedure : in France, the Asylum judge may raise *ex officio* a clause of exclusion or a public order cause of revocation

Facts or information mirroring with national security issues

Facts that mirror with issues of national security may be **revealed by the applicant himself** during his personal interview or, rarely, during the hearing

Types of facts/ crimes : war crimes, serious crimes, terrorist activities, human trafficking, drug trafficking, armed robbery, attacks on property and persons, delinquency etc.

Such facts may be **revealed by pieces of evidence** that are **included in the file** : documents of police or judicial authorities, judgments, either from French authorities or EU Member States authorities etc. (ex. intelligence services file, registration wanted file, extradition request, Schengen or Interpol alert, arrest warrant)

Mention must be made of **notes** established by **French Intelligence services** that may be included in the file or produced in the course of judiciary procedure (*ex officio* by services of the Ministry of Home Affairs or upon request of the Asylum judge) : those documents are not confidential but sometimes they refer to pieces of information that cannot be disclosed for security reasons

The role of the judge : measures of instruction

When there are such elements or information in the file, **the Asylum judge**, who has full powers of instruction, **must use all his powers of instruction to take measures** in case he considers that he needs more information (precisions, up-dating etc.)

If the element is a registration in a wanted people file, the Asylum judge cannot deny probatory value without **requiring more information to the Ministry of Home Affairs** (or his services) according to the jurisprudence of the French Council of State:

CE 30 January 2019 OFPRA v. G. n° 416013 A for a so-called « fact sheet S »

CE 19 February 2019 OFPRA v. M. n° 421212 C for a so-called « white note » (i.e. Intelligence service note)

Other : CE 29 July 2020 OFPRA n° 433645 C : the « white note » in the Court file referred to the danger linked to the psychiatric state of the person, addicted and involved in terrorist activities

French Council of State and CNDA case law

French Council of State adopts CJUE reasoning in judgment CJUE (GC) 14 May 2019 C-391/16, C-77/17 et C-78/17 for issues of revocation of international protection, especially, refugee status, and indicated to the Asylum judge the way to appraise those cases :

CE 19 June 2020 M. K. n° 416032 – 416121 A

CE 19 June 2020 OFPRA c. M. A. n° 422740 C

CE 19 June 2020 M. K. n° 425231 C

CE 19 June 2020 OFPRA c. M. N. n° 428140 B

In particular, « **serious threat** » to the society refers to a fundamental interest of the society taking account of the specific crimes and circumstances, the time elapsed, the behaviour of the person and all relevant circumstances

French Council of State and CNDA case law

Confirmation of CNDA decisions on revocation of refugee status for nationals of Sri Lanka involved in terrorism activities : CE 19 June 2020 M. n° 427471 C ; CE 3 December 2020 M.S. n°433161 C or in drug trafficking CE 10 December 2020 M. A. n° 425040 C

Exclusion of a nigerian that whas condemned for human trafficking (even if she has served her 5 years sentence for aggravated pimping) : CNDA, GF, 25 June 2019 Mrs L. n° 18027385 R

Refering to CJUE (GC) 14 May 2019, CNDA upholds the revocation of refugee status for a chechen with 10 years sentenced and condemned for public apology of terrorism (CNDA 26 July 2019 M.T. n° 17053942 C+)

CNDA upholds the revocation of refugee status for a nigerian condemned in France for human trafficking : CNDA 30 August 2019 M. A. n° 18052314 C+