

The French National Court of Asylum

Edith JAILLARDON

Professor Emeritus of Public Law
Université de Lyon / Université Lumière-Lyon 2

The National Court of Asylum (Cour nationale du droit d'asile, CNDA) in France is a specialized administrative court which is controlled by the supreme administrative court, the Conseil d'Etat. The Court reviews the decisions of the French Office for the Protection of Refugees and Stateless People (OFPRA, a public institution) against which an appeal might be lodged for having denied the refugee status or subsidiary protection to an applicant.

The Court decides based on:

- the Convention Relating to the Status of the Refugees, adopted in Geneva on 28 July 1951, that defines a refugee as a person that “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country” (Article 1.A.2), or
- the Code of the Entry and Stay of Foreigners and Asylum Law (CESEDA), drawn up following the European directives and their transposition into national laws, stating that subsidiary protection shall be awarded “to any person who does not fulfil the requirements to be awarded the refugee status but for whom there exist serious and well-founded reasons to believe that they had the real risk of experiencing any of the following serious threats:
 - a) death penalty or execution
 - b) torture or inhuman or degrading treatment
 - c) for civilians, a serious and individual threat against their life or person due to an act of violence that might extend to other people regardless of their personal situation as a consequence of internal or international armed conflicts” (Article L.712.a.1)

In both cases the Court first determines the existence of a well-founded fear of persecution expressed by the applicant before establishing if this fear is related to any of the threats above.

The Court's jurisdiction has some particularities worth mentioning:

- The Court is composed of a judge of an ordinary or administrative court who shall preside it, a representative of the United Nations High Commissioner for Refugees (that is, a member of an international organization) and a representative of the Conseil d'Etat.
- The Court has unlimited jurisdiction over these procedures, meaning that it considers all the evidence presented before the OFPRA and decides upon the refugee status or subsidiary protection on this basis. The Court's judgments comprise both questions of law and questions of fact, which are closely related.
- Both parts (the applicant and the OFPRA) shall participate in the procedure, and all laws related to the right to an effective remedy, to the rights of the defendant and to the right to a trial within a reasonable time are thus applicable. Trials are usually oral. The applicant is present during the trial, most of the time accompanied by an attorney, and is invited to give all necessary explanations to the Court. 60% of the applicants receive legal aid, aimed at assisting people with low income in asserting their rights in court. The attorney's fees are totally or partially paid by the State.
- The Court receives a considerable amount of appeals and consequently issues a considerable amount of judgments. The reasons are, first, the growing number of applications for asylum (64811 applications registered in 2014 and 77000 in 2015) and, second, the high amount of appeals lodged against the decisions of the OFPRA (more than 86%). The National Court of Asylum is the court that issues the highest amount of judgments in France: 39162 in 2014. Also during that year the refugee status or subsidiary protection were granted to 19% of the applicants. 24.5% of the applicants in 2014 were granted protection by the OFPRA (5978 applicants) or the Court (5450 applicants), which means that a total of 11428 people were given protection in France.