

## WHAT IS THE RIGHT OF ASYLUM ?

The Preamble of the French Constitution of the 27<sup>th</sup> of October 1946 states that “any man persecuted in virtue of his actions in favour of liberty may claim the right of asylum upon the territories of the Republic”.

In its decision of the 13<sup>th</sup> of August 1993, the French Constitutional Council stated the constitutional value of the right of asylum :

*“Considering that the respect of the right of asylum, principle of constitutional value, implies in a general matter that the alien claiming this right is authorised to temporarily stay on the territory until his/her demand is ruled”.*

In France, the right of asylum is governed by Book VII of the Code of Entry and Residence of Aliens and the Right of Asylum (from the french acronym **CESEDA**), strongly modified by the law of the 29<sup>th</sup> of July 2015 regarding the right of asylum's reform.

The right of asylum also results from international commitments France has taken, particularly the Geneva Convention on refugees of the 28<sup>th</sup> of July 1951 and Community law.

### ➤ **What is an application for asylum ?**

The application for asylum is a legal proceeding allowing the asylum-seeker to obtain the subsidiary protection or the refugee status, in order to be authorised to stay in France.

### ➤ **Who can ask for it ?**

According to article L.711-1 of the CESEDA : “the refugee status is recognised to any person persecuted in virtue of his actions in favour of liberty and to any person on whom the United Nations High Commissioner for Refugees exercises its mandate according to articles 6 and 7 of its Statute as adopted by the United Nations General Assembly the 14<sup>th</sup> of December 1950 or responding to the definitions of article 1 of the Geneva Convention of the 28<sup>th</sup> of July 1951 regarding the refugees statuses.”

### - **About the conditions, the procedure and the claims in relation to the right of asylum**

#### **1. The different forms of protection**

Two types of protection exist for the asylum-seekers in France : *the refugee status and the subsidiary protection*. At the time the application is dropped, the applicant does not have to choose between both levels of protection, s/he carries out a unique application. It is then, the French office of immigration and integration (from the French acronym OFPRA) and eventually the National Court of asylum (in French CNDA) that have to make this choice.

### **1.1. The refugee status**

The refugee status is given to a person who has well-founded fear of persecution because of his/her race, religion, nationality, belonging to a certain social group, or political views, and who is outside his/her national country and who can not, or do not want to because of the fear, ask for the protection of his/her home country (Geneva Convention regarding the refugees status of the 28<sup>th</sup> of July 1951).

However, the persons now benefitting from a protection or an assistance from a United Nations organism or institution other than the United Nations High Commissioner for Refugees can not ask for the refugee status (Section D, Geneva Convention of the 28<sup>th</sup> of July 1951).

Moreover, a person considered by the country's competent authorities in which s/he established his/her residency as a person owning rights and obligations attached to the possession of the nationality of this country can see himself/herself denied his/her refugee status (Section E, Geneva Convention of the 28<sup>th</sup> of July 1951).

Furthermore, the refugee status can not be given to instigators or accomplices of crimes against peace, war crimes, crimes against humanity, common law offences outside the host country, or to the persons who have been found guilty of actions contrary to the aims and principles of the United Nations (Section F, Geneva Convention of the 28<sup>th</sup> of July 1951).

### **1.2 The subsidiary protection**

The subsidiary protection is a protection given to a person whose situation does not correspond to the definition of refugee given by the Geneva Convention of the 28<sup>th</sup> of July 1951 but who still requires a protection because s/he is exposed to :

- death penalty,
- torture or inhuman and degrading treatments or punishments,
- (if it is a civilian) a severe threat, direct and individual, against his/her life or person because of a generalised violence resulting from an internal or international situation of armed conflict (article L.712-1 CESEDA).

Similarly to the refugee status, the subsidiary protection can not be given to a person if it exists serious reasons to think that the person committed a crime against peace, a war crime or a crime against humanity, a common law offence, that the person has been found guilty of actions contrary to the aims and principles of the United Nations, or that his/her activity on the territory constitutes a severe threat to public order, public security or the State safety (article L.712-2 CESEDA).

The renewal of the subsidiary protection can be refused by the OFPRA if the reasons that have justified the first authorisation ceased to exist (article L.712-3 CESEDA)<sup>1</sup>.

## **2. The granting conditions of the refugee status**

The competent authorities examine the asylum applications taking in consideration the grounds of persecution (1), and also keeping in mind that certain exclusion clauses exist regarding persons whose actions are so severe that they can not benefit from a protection (2). The competent authorities can as well deny the admission for residency because of those grounds explained below (3).

### **2.1 Examination of the persecution grounds**

Article L.711-2 of the CESEDA states that the actions and the persecution grounds are examined by the competent authorities in order to determinate if the person involved can benefit from the refugee status or from the subsidiary protection.

The persecution grounds are the:

- Race
- Religion
- Nationality
- belonging to a certain social group - any aspects linked to the gender or the sexual orientation are taken into consideration
- political views (Section A of article 1 of the Geneva Convention of the 28<sup>th</sup> of July 1951)

When the competent authority evaluates if an applicant has well-founded fear to be persecuted, it is irrelevant that the applicant effectively owns the characteristics linked to the persecution grounds or that these characteristics are only attributed to him/her by the author of the persecution.

### **2.2 Exclusions clauses**

The law provides grounds of exclusion in relation to the refugee status. Article L.711-3 CESEDA thus states that refugee status is not granted to :

- persons currently benefitting from a protection or an assistance from a United Nations organism or institution other than the United Nations High Commissioner for Refugees ;
- persons considered by the competent authorities of the country in which the persons established their residency as owning rights and obligations attached to the possession of the nationality of this country ;

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<sup>1</sup> See document 3 on the proceedings in front of the OFPRA.

- persons when there are serious reasons to think that :
  - a) they committed a crime against peace, a war crime or a crime against humanity in accordance to the international tools elaborated to foresee provisions in relation to those crimes ;
  - b) they committed a common law offence outside the host country before being admitted there as refugees ;
  - c) they have been found guilty of actions contrary to the aims and principles of the United Nations (Sections D, E and F of article 1 of the Geneva Convention of the 28<sup>th</sup> of July 1951).

Moreover, the law of the 29<sup>th</sup> of July 2015 regarding the right of asylum's reform introduced a new rejection reason of the refugee status.

According to Article L.711-6 of the CESEDA :

*« The refugee status can be refused :*

*when there are serious reasons to think that the presence in France of the person involved constitutes a severe threat to the State safety,*

*or when the person involved has been sentenced in France for acts of terrorism, a crime or for another offense punishable of a ten-year prison sentence, and that his/her presence constitutes a severe threat for the society ».*

### **2.3 The rejection of the admission to reside**

According to **Article L.741-4 of the CEDESA**, the admission of an alien in France can be refused when :

- 1) the examination of the application for asylum falls under the competence of another State pursuant to the Council's Regulation (CE) n° 343/2003 of the 18<sup>th</sup> of February 2003<sup>2</sup>. In this case, France send the person back in the country responsible for the application's examination.
- 2) the person who applied for asylum :
  - has the nationality of a State which implemented article 1 C 5 of the Geneva Convention of the 28<sup>th</sup> of July 1951 (when the circumstances in the home country changed in a way that the refugee status is not recognised anymore, this can also come from a restoration of democracy).
  - comes from a country considered as a safe country.

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<sup>2</sup> Council's Regulation (CE) n° 343/2003 of the 18<sup>th</sup> of February 2003 establishing criteria and determination's mechanisms of a member State responsible for the examination of an application for asylum introduced in one of the member States by a third-country national

- 3) the presence of the alien in France constitutes a severe threat for public order, public safety or the State safety.
- 4) the application for asylum is based on a deliberate fraud (fake identity, altered fingerprints, dissimulation of information in relation to the identity...) or constitutes an abusive claim to the asylum proceedings (multiple applications presented under different identities, submission in the French overseas communities when another application is in progress in another EU country) or is only introduced in order to defeat a pronounced or imminent expulsion measure.

These provisions are not obstacles to the sovereign power of the State to grant asylum to any person who would find itself in one of the cases mentioned in points 1) to 4).