

France, Council of State, Halifa, No. 370515, 4 June 2014

Deciding bodies and decisions

- Council of State, Halifa, No. 370515, 4 June 2014
- CJEU, C-249/13, Boudjlida, 11 December 2014, ECLI:EU:C:2014:2431
- CJEU, C-277/11, M.M., 22 November 2012, ECLI:EU:C:2012:744

Area of law

EU asylum law

Subject matter

Asylum - application for a residence permit - Right to good administration

Summary Facts Of The Case

The issue was to determine if administrative authorities could issue a return decision associated to a decision rejecting an application for a residence permit. In this particular case, the applicant was facing a return decision without being in a position to be invited to make specific observations.

The reasoning of the Council of State is based on C-383/13 (explicitly referred to by the Rapporteur public in his opinion) : *“38 - As regards the questions raised by the referring court, it must be noted that, according to European Union law, an infringement of the rights of the defence, in particular the right to be heard, results in annulment only if, had it not been for such an irregularity, the outcome of the procedure might have been different (see, to that effect, inter alia, Case C-301/87 France v Commission [1990] ECR I-307, paragraph 31; Case C-288/96 Germany v Commission [2000] ECR I-8237, paragraph 101; Case C-141/08 Foshan Shunde Yongjian Housewares & Hardware v Council [2009] ECR I-9147, paragraph 94; Case C-96/11 P Storck v OHIM [2012] ECR I-0000, paragraph 80).”*

It is considered that by applying for a residence permit, the applicant should know that a potential consequence of a refusal is that the authorities may take a return decision.

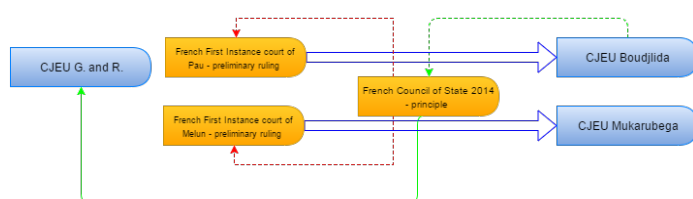
The case was linked with the right to be heard in administrative proceedings. This right is expressed in Article 41 of the Charter. However, Article 41 of the Charter does not apply to administrative decisions taken by national administrations even if they act in the context of EU law (point 44 of Case C-166/13). But the right to be heard is also a General principle of EU law. Therefore, there is no practical difference between invocation of Article 41 or (see C-166/13

Relation to the scope of the Charter

- Art 41 EU Charter

The case was linked to the right to be heard in administrative proceedings. This right is expressed in Article 41 of the Charter. However, Article 41 of the Charter does not apply to administrative decisions taken by national administrations, even if they act in the context of EU law. But the Council of State recalls that the right to be heard is also a General principle of EU law. Therefore, there is no practical difference between invocation of Article 41 CFR or the right to be heard as a general principle.

Diagram



Vertical (French Council of State - CJEU)
Vertical (French First Instance courts - CJEU)
Horizontal (Council of State - First instance)

courts)

Impact on Jurisprudence

This decision is the landmark decision applied by administrative judges. It was explicitly mentioned as a “A” decision by the Council of State which means that it was adopted for guidance of all French administrative Courts.

Sources - EU and national law

National law:

- Article L. 511-1 of the Code de l'entrée et du séjour des étrangers et du droit d'asile (Code on the Entry and Stay of Foreign Nationals and the Right of Asylum), as amended by Law No 2011-672 of 16 June 2011, on immigration, integration and nationality (JORF of 17 June 2011, p. 10290; 'Ceseda').
 - Article L. 512-1 of Code on the Entry and Stay of Foreign Nationals and the Right of Asylum
 - Article L. 742-7 of Code on the Entry and Stay of Foreign Nationals and the Right of Asylum
-

Sources - CJEU Case Law

- CJEU Case C-383/13, M. G. and N. R. v Staatssecretaris van Veiligheid en Justitie.10 September 2013
- CJEU Case C-166/13 Mukarubega, 5 November 2014
- CJEU Case C-249/13, Boudjlida, 11 December 2014

The CJEU cases C-166/13 and C-249/13 were pending cases at the time of the decision. Both preliminary questions were addressed by First instance administrative Courts. However, without waiting for the outcome of these questions, le French Council of State decided the case, assuming that enough indications where given in previous case-law of CJEU.
