Council of State, 2nd - 7th chambers combined, 11/27/2020, 428178

Council of State - 2nd - 7th chambers combined

Reading for Friday, November 27, 2020

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Rapporteur
Mrs. Sophie-Caroline de Margerie

Public Rapporteur
Mr. Guillaume Odinet

Lawyer(s)
SCP SPINOSI, ELDERBERRY

Full text

FRENCH REPUBLIC
IN THE NAME OF THE FRENCH PEOPLE

Having regard to the following procedure:

By a request and a supplementary brief, registered on 18 February and 21 May 2019 at the litigation secretariat of the Council of State, the Inter-movement Committee for Evacuees (CIMADE), the Association for the Recognition of the Rights of Homosexual and Transsexual Persons to Immigration and Residence (ARDHIS), the Federation of Associations in Solidarity with All Immigrants (FASTI), the Action of Christians for the Abolition of Torture-France (ACAT-France), the Reception and Solidarity Group (GAS), the Association of Lawyers for the Defense of the Rights of Foreigners, Dom'Asile, the Jesuit Refugee Service (JRS), the National Association for Border Assistance for Foreigners, the Federation of Solidarity Actors (FAS), the French Lawyers' Union and the Magistrates' Union ask the Council of State:

1°) to annul for excess of power decree no. 2018-1159 of 14 December 2018 adopted for the application of Law No. 2018-778 of 10 September 2018 for controlled immigration, an effective right to asylum and successful integration and containing various provisions relating to the fight against illegal immigration and the processing of asylum applications;

2°) to charge the State with the payment of a sum of 5,000 euros under Article L. 761-1 of the Code of Administrative Justice.

Having regard to the other documents in the file;

Having regard to:
- the Geneva Convention of 28 July 1951 and the Protocol signed in New York on 31 January 1967;
- Regulation (EU) 604/2013 of the European Parliament and of the Council of 26 June 2013;
- Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016;
- Directive No. 2008/115/EC of the European Parliament and of the Council of 16 December 2008;
- Directive No. 2011/95/EU of the European Parliament and of the Council of 13 December 2011;
- Directive No. 2013/32/EU of the European Parliament and of the Council of 26 June 2013;
- Directive No. 2013/33/EU of 26 June 2013 of the European Parliament and of the Council;
- the Code on the Entry and Residence of Foreigners and the Right to Asylum;
- the Social Action and Families Code;
- the judgment of the Court of Justice of the European Union of 19 March 2019, Arib ea (C-444/17);
- the judgment of the Court of Justice of the European Union of 14 May 2019, M ea (C-391/16, C77/17 and C-78/17);

- the code of administrative justice;

After having heard in public session:

- the report of Ms. Sophie-Caroline de Margerie, State Councilor,

- the conclusions of Mr. Guillaume Odinet, public rapporteur;

The floor having been given, before and after the conclusions, to SCP Spinosi, Sureau, lawyer for the Inter-Movement Committee for Evacuees (CIMADE) and others;

Having regard to the note under deliberation, registered on November 17, 2020, presented by Cimade and others;

Considering the following:

1. The law of September 10, 2018 for controlled immigration, an effective right to asylum and successful integration amended various provisions of the code on the entry and residence of foreigners and the right to asylum. The decree of December 14, 2018 was issued for the application of certain provisions of this law. The Inter-Movement Committee for Evacuees (CIMADE) and the other applicants request its annulment for abuse of power.

On the external legality of the contested decree:

2. If it follows from II of Article L. 312-1 of the Social Action and Families Code that the minimum technical conditions for the organization and operation of social and medico-social establishments and services, the category to which reception centers for asylum seekers belong, are defined by decree after consultation with the social section of the National Committee for Health and Social Organization, none of the provisions of the contested decree relates to the technical conditions for the organization and operation of these reception centers. Consequently, the argument that the contested decree is tainted by a procedural defect, due to the lack of prior consultation with the National Committee for Health and Social Organization, can only be dismissed.

On the internal legality of the contested decree:

With regard to Article 2 relating to decisions refusing entry taken with regard to foreigners who have just entered the territory directly from a State party to the Schengen Convention:

3. The provisions of Article 2 of the contested decree inserted into the Code on the Entry and Residence of Foreigners and the Right to Asylum an Article R. 213-1-1, taken for the application of Article L. 213-3-1 of the same Code, which provides: "In the event of temporary reintroduction of internal border control provided for in Chapter II of Title III of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), the decisions referred to in Article L. 213-2 may be taken with regard to a foreigner who, coming directly from the territory of a State party to the Convention signed in Schengen on 19 June 1990, has entered mainland France by crossing an internal land border without authorisation and has been checked in an area between that border and a line drawn ten kilometers below. The modalities of these controls are defined by decree in the Council of State ".

4. Paragraph (a) of paragraph 2 of Article 2 of Directive 2008/115/EC of 16 December 2008 of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals allows Member States not to apply the provisions of this Directive to third-country nationals who are the subject of a decision refusing entry in accordance with Article 13 of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code), or who are arrested or intercepted in connection with the irregular crossing of the external border of a Member State. As interpreted by the judgment of the Court of Justice of the European Union of 19 March 2019, Arib ea (C-444/17), these provisions are not applicable to crossings of the internal borders of a Member State where the latter has reintroduced border controls under Article 25 of the Schengen Borders Code. It follows from this that the applicant associations are justified in arguing that, insofar as it allows for refusal of entry to a foreign national who has entered metropolitan France by crossing an internal land border when the provisions relating to the return of illegally staying third-country nationals adopted for the transposition of Directive 2008/115/EC of 16 December 2008 apply to him, the provisions of Article L.213-3-1 of the Code of Entry and Residence of Foreigners and the Right to Asylum are incompatible with the objectives thereof and to request the annulment of Article 2 of the contested decree, taken for the application of these legislative provisions.

With regard to Article 6, which specifies the procedure before the judicial judge in matters of administrative detention:

5. Firstly, Article R. 552-20-1, inserted into the Code of Entry and Residence of Foreigners and the Right to Asylum by Article 6 of the contested decree, provides that: "When an appeal is brought against a decision rendered by the judge of liberties and detention outside the hearings provided for in Article R. 552-9, the first president of the court of appeal may reject the declaration of appeal without first summoning the parties if it appears that no new circumstance of fact or law has arisen since the placement in administrative detention or its renewal, or that the elements provided in support of the request clearly do not justify ending the detention. / In this case, the first president shall collect by any means the observations of the parties on the absence of new circumstance of fact or law since the placement in administrative detention or its renewal. renewal, or on the ineffective nature of the elements provided by the foreigner (...) ". If the applicants maintain that this article disregards, by extending its scope, the provisions of the second paragraph of Article L. 552-9 of the Code of Entry and Residence of Foreigners and the Right to Asylum which provided for the possibility of dismissing without a hearing appeals against orders of the judge of liberties and detention in matters of extension of detention, the regulatory authority was able, without disregarding these provisions, nor exceeding its competence, to adopt the disputed provisions of Article R. 552-20-1, since, on the one hand, they fall within the scope of civil procedure and, on the other hand, they are limited to exempting the judge from the obligation to hold a hearing under the conditions he sets for ruling on appeals against orders of continued detention, which do not fall within the scope of Article L 552-9.

6. Secondly, contrary to what is argued, the right granted to a foreigner to contact a lawyer and a third party, to meet a doctor and to eat, during the ten-hour period during which he is kept at the disposal of the courts after an order has ended his detention or placed him under house arrest, provided for by the provisions of Articles L. 552-6 and L. 552-10 of the Code on the Entry and Residence of Foreigners and the Right to Asylum, does not require clarification from the regulatory authority on the procedures for informing the foreigner or the procedures for exercising the right that they confer.

With regard to Article 10 as it specifies the contentious procedure applicable to requests for suspension of the execution of a removal measure taken against certain asylum seekers:

7. The provisions of 1° of I of Article 10 of the contested decree amend Article R. 512-2 of the Code of Entry and Residence of Foreigners and the Right to Asylum, which refers to the provisions of Articles R. 776-1 et seq. of the Code of Administrative Justice for the examination of appeals against the decisions mentioned in Article L. 512-1 of the same Code, in order to add to this reference the examination of requests for suspension of the execution of measures for the removal of asylum seekers, which may be introduced under the provisions of Articles L. 743-3, L. 743-4 and L. 571-4 of the Code of Entry and Residence of Foreigners and the Right to Asylum.

8. Article L. 743-1 of the Code on the Entry and Residence of Foreigners and the Right to Asylum, as amended by the law of 10 September 2018, establishes the principle of the right of asylum seekers to remain on French territory in the following terms: "An asylum seeker whose application is examined under the jurisdiction of France and who has submitted their application to the French Office for the Protection of Refugees and Stateless Persons shall have the right to remain on French territory until notification of the office's decision or, if an appeal has been lodged, within the time limit provided for in Article L. 731-2 against a decision rejecting the office, or until the date of the reading in public hearing of the decision of the National Court of Asylum, or, if it is ruled by order, until the date of notification thereof. (...)".

9. This principle is subject to exceptions listed in Article L. 743-2 of the same code, in its wording resulting from the same law. In this respect, the right to remain in the territory ends in particular, according to 4° bis of this article, when the Office, having received a request for re-examination, has taken a decision of inadmissibility on the grounds that it does not present new elements significantly increasing the probability that the applicant meets the conditions required to claim protection. The right to remain on the territory also ends, according to the 7th of Article L. 743-2, "in the cases provided for in I and 5th of III of Article L. 723-2", that is to say when the Office, ruling under an accelerated procedure, has rejected an application submitted by a foreigner who is a national of a country considered to be a "safe country of origin" under Article L. 722-1, an unfounded request for re-examination or an application from an applicant whose presence on French territory has been considered by the competent authority of the State as constituting a serious threat to public order, public security or the security of the State. Furthermore, the right to remain in the territory ends, according to the 8th of this article, "under the conditions provided for in Article L. 571-4", that is to say when the Office has taken a decision to reject or inadmissibly declare an asylum application submitted by a foreigner who is subject to an expulsion measure, a ban on entering the territory or an administrative ban and who is under house arrest or placed in detention while his asylum application is being examined.

10. Finally, Article L. 743-3 of the same code, in its wording resulting from the same law, provides that: " (...) In the case where the right to remain in the territory has ended pursuant to 4° bis or 7° of Article L. 743-2, the foreigner may request the president of the administrative court or the designated magistrate ruling on the appeal brought pursuant to Article L. 512-1 against the obligation to leave French territory to suspend the execution of the removal measure until the expiry of the time limit for appeal to the National Court of Asylum Law or, if the matter is referred to the latter, either until the date of the reading in public hearing of the court's decision, or, if it is ruled by order, until the date of notification thereof. The president of the administrative court or the magistrate designated for this purpose shall grant the foreigner's request when the latter presents serious evidence capable of justifying, in respect of his application asylum, his continued presence in the territory during the examination of his appeal by the court. ". Article L. 743-4 of the same code opens the same possibility to asylum seekers in the case where they have been subject, after the negative decision of the Office, to a house arrest or placement in detention with a view to the execution of an obligation to leave French territory prior to this decision. Finally, according to III. of Article L. 571-4 of the same code, the same option is open to persons whose right to remain has ended pursuant to Article L. 743-2, 8°, mentioned in point 9.

11. In all the cases mentioned in point 10, a foreigner who is the subject of a removal measure which, pursuant to Article L. 512-1 of the Code on the Entry and Residence of Foreigners and the Right to Asylum, forms an appeal against it may, pursuant to the aforementioned articles, refer to the administrative court for conclusions for the purpose of suspending this measure. In support of his conclusions, he may rely on elements which appeared and facts which occurred after the decision to reject or declare inadmissible his application for protection or the obligation to leave French territory, or which became known to him subsequently. The removal measure may not be implemented during the examination by the judge of the application for suspension.

12. Thus, the asylum seeker has an effective legal remedy, in accordance with the requirements of paragraph 6 of Article 46 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection, which allows Member States, in a series of cases corresponding to those provided for by the aforementioned provisions, to derogate from the principle of the suspensive nature of the appeal, provided that a court, seized of its own motion or by the applicant, can rule on the latter's right to remain in the territory until the decision of the court competent to rule on the asylum application. Consequently, the argument that the provisions of Articles L. 743-3 and L. 743-4 and III of Article L. 571-4 of the Code on the Entry and Residence of Foreigners and the Right to Asylum are incompatible with the objectives and provisions of Directive 2013/32/EU of 26 June 2013 can only be dismissed.

With regard to Article 10 insofar as it relates to detention and house arrest:

13. Under paragraph 3 of Article 8 of Directive 2013/33/EU of 26 June 2013: "An applicant may only be detained: (...) (b) to determine the elements on which the application for international protection is based which could not be obtained without detention, in particular where there is a risk that the applicant will abscond (...); (d) where the applicant is detained in the context of a return procedure under Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, to prepare for return and/or carry out removal, and where the Member State concerned can justify on the basis of objective criteria, such as the fact that the applicant has already had the opportunity to access the asylum procedure, that there are reasonable grounds to believe that the applicant has presented the application for international protection for the sole purpose of delaying or preventing the execution of the return decision; (e) when the protection of national security or public order so requires (...). The grounds for detention shall be defined by national law." When his right to remain on French territory has ended pursuant to 4° bis or 7° of Article L. 743-2 of the Code on the Entry and Residence of Foreigners and the Right to Asylum and an obligation to leave French territory has been imposed on him, the foreigner may only be detained, under the terms of I of Article L. 744-9-1 of this Code, "when this is necessary to determine the elements on which his request is based, in particular to prevent the risk mentioned in 3° of II of Article L. 511-1 or when the protection of national security or public order requires it." The risk mentioned in 3° of II of Article L. 511-1 of this Code is the risk that the foreigner will evade his obligations, which, according to these provisions, may be considered as established in the various cases it lists. I of Article L. 571-4 makes possible, under certain conditions, the house arrest or detention of an asylum seeker who is subject to an expulsion measure, a ban on entry to the territory or an administrative ban on entry to the territory.

14. II, III and IV of Article 10 are intended to extend the scope of Articles R. 553-13 and R. 561-1 to R. 561-5 of the Code on the Entry and Residence of Foreigners and the Right to Asylum, relating respectively to the rights of detained foreigners and the legal regime of house arrest,to the hypotheses of detention and house arrest provided for in I of article L. 744-9-1 and in I of article L. 571-4.

15. Firstly, the applicant associations argue that paragraph I of Article L. 744-9-1 infringes paragraph 3 of Article 8 of Directive 2013/33/EU. However, and in any event, the mere circumstance that I of Article L. 744-9-1 refers, for the definition of the risk of absconding, to the provisions of Article L. 511-1, adopted for the transposition of Directive 2008/115 of 16 December 2008, and not to a definition of the risk of absconding specific to foreigners who have submitted an asylum application, cannot lead to these legislative provisions being regarded as adopted in disregard of the objectives of Directive 2013/33/EU of 26 June 2013.

16. Secondly, it is clear from the provisions of I of Article L. 571-4 and I of Article L. 744-9-1 that detention may not be ordered, in addition to the case mentioned in the previous point with regard to foreigners whose right to remain in the territory has ended, except for compelling reasons of protection of public order or national security. This reason corresponds to the hypothesis set out in e) of paragraph 3 of Article 8 of Directive No. 2013/33/EU of 26 June 2013. Consequently, the argument based on the fact that these legislative provisions, as well as those of the provisions of Article 10 of the contested decree relating to the conditions and modalities of placement in detention and house arrest of certain asylum seekers and taken on its basis, would be contrary to the objectives of this directive can only be dismissed.

With regard to Article 11, which specifies the conditions for carrying out the interview conducted at the border by the French Office for the Protection of Refugees and Stateless Persons:

17. Under the last paragraph of Article L. 723-6 of the Code on the Entry and Residence of Foreigners and the Right to Asylum: "A decree in the Council of State shall determine the cases and conditions in which the interview may take place by audiovisual means for reasons relating to geographical distance or the particular situation of the applicant."

18. It follows from these provisions that the legislator, competent to provide for the principle of a personal interview between the asylum seeker and the OFPRA services and the guarantees attached to it, intended to allow that, in cases relating to geographical distance or the particular situation of the applicant and as an exception to the principle they establish, the personal interview with the applicant can take place by videoconference means, according to the procedures laid down by decree in the Council of State. Consequently, the applicant associations are justified in arguing that Article 11 of the contested decree, which amends the provisions of Article R. 213-4 of the Code on the Entry and Residence of Foreigners and the Right to Asylum in order to allow the personal interview of an asylum seeker appearing at the border to be conducted by the French Office for the Protection of Refugees and Stateless Persons using only a telephone means of communication, is contrary to the provisions of Article L. 723-6 of the same code and in requesting its annulment.

With regard to Article 12, which sets out the list of States in which the pronouncement of conviction decisions requires, under certain conditions, the French Office for the Protection of Refugees and Stateless Persons to terminate the refugee status of the person who was the subject of that status:

19. Under Article 14 of Directive 2011/95/EU of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection and for the content of the protection granted: " (...) 4. Member States may revoke, terminate or refuse to renew the status granted to a refugee by a governmental, administrative, judicial or quasi-judicial authority, / (a) where there are reasonable grounds for regarding him or her as a threat to the security of the Member State in which he or she is present; / (b) where, having been convicted at last instance of a particularly serious crime, he or she constitutes a threat to the society of that Member State. / 5. In the situations described in paragraph 4, Member States may decide not to grant refugee status, where such a decision has not yet been taken. taken. / 6. Persons to whom paragraphs 4 and 5 apply shall be entitled to enjoy the rights provided for in Articles 3, 4, 16, 22, 31, 32 and 33 of the Geneva Convention or analogous rights, provided that they are in the Member State. " It follows from paragraphs 4 and 5 of Article 14 of that directive, as interpreted by the judgment of the Court of Justice of the European Union of 14 May 2019, M ea (C-391/16, C77/17 and C-78/17), that the "revocation" of refugee status or the refusal to grant that status cannot have the effect of depriving the third-country national or stateless person concerned who meets the conditions for being granted that status within the meaning of A of Article 1 of the Geneva Convention of refugee status. Furthermore, paragraph 6 of Article 14 of that directive must be interpreted as meaning that a Member State which makes use of the options provided for in Article 14(4) and (5) of that directive must grant a refugee falling within one of the situations referred to in those provisions and who is in the territory of that Member State at least the benefit of the rights and protections enshrined in the Geneva Convention to which Article 14(6) expressly refers, in particular protection against refoulement to a country where his life or freedom would be threatened, and the rights provided for in that convention the enjoyment of which does not require legal residence.

20. Article L. 711-6 of the Code on the Entry and Residence of Foreigners and the Right to Asylum, adopted for the transposition of the aforementioned provisions of paragraph 4 of Article 14 of Directive 2011/95/EU of 13 December 2011, provides, in its wording resulting from the law of 10 September 2018, that: "Refugee status shall be refused or this status shall be terminated when: / 1° There are serious reasons to consider that the presence in France of the person concerned constitutes a serious threat to the security of the State; / 2° The person concerned has been sentenced as a last resort in France, in a Member State of the European Union or in a third State appearing on the list, established by decree in the Council of State, of States whose criminal legislation and jurisdictions France recognises in view of the application of the law within the framework of a democratic regime and the general political circumstances either for a crime, either for an offense constituting an act of terrorism or punishable by ten years of imprisonment, and its presence constitutes a serious threat to French society." The list of these third States was set out in Article R. 711-2, inserted into the same code by Article 12 of the contested decree.

21. The provisions of Article L. 711-6 of the Code on the Entry and Residence of Foreigners and the Right to Asylum only provide that refugee status is refused or terminated, within the limits provided for by Article 33, paragraph 1, of the Geneva Convention of 28 July 1951 and paragraph 6 of Article 14 of the Directive of 13 December 2011, when there are serious reasons to consider that the presence in France of the person concerned constitutes a serious threat to the security of the State or when the person concerned has been convicted in the last instance in France, in a Member State of the European Union or in certain third States for a crime or for certain offences and that his presence constitutes a serious threat to society. The loss of refugee status resulting from the application of Article L. 711-6 cannot have any impact on the refugee status that the person concerned is deemed to have retained in the event that the French Office for Refugees and Stateless Persons and, where applicable, the asylum judge, apply Article L. 711-6.

22. It follows that the argument that the provisions of Article L. 711-6 of the Code on the Entry and Residence of Foreigners and the Right to Asylum are incompatible with the objectives and provisions of Directive 2011/95/EU of 13 December 2011 and that, for this reason, Article 12 of the decree adopted on the basis of 2) of that article is illegal can only be dismissed.

With regard to Article 15 relating to the registration of asylum applications:

23. The amendment made by Article 15 of the contested decree to Article R. 741-2 of the Code on the Entry and Residence of Foreigners and the Right to Asylum has the sole purpose of specifying that, in order for a foreigner who submits his or her asylum application to the French Office for Immigration and Integration, the police and gendarmerie services or the prison administration to be directed to the competent authority for the registration of his or her application, he or she must appear in person before these administrations. It is not intended, nor could it legally have the effect of disregarding the maximum period of six working days for the registration of an asylum application provided for in Article 6 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection. Contrary to what is argued, Article 15 of the contested decree is not illegal solely because it does not recall this maximum period.

With regard to Articles 16 and 17 relating to the concept of stable domicile of asylum seekers:

24. Under Article R.744-1 of the Code on the Entry and Residence of Foreigners and the Right to Asylum, in its wording resulting from Article 17 of the contested decree: "... the places mentioned in 2° of Article L. 744-3 other than hotel establishments are considered to be stable domiciles. / The place where the person is accommodated without having a permit to establish their domicile there is not considered to be a stable domicile." The definition, resulting from this provision, of the stable domicile where an asylum seeker is accommodated has neither the purpose nor the effect of undermining the right to remain on the territory granted to the asylum seeker under the conditions provided for by this code. Consequently, the argument that the provisions of Article R. 744-1 and those of Article R. 743-2, in their wording resulting from Article 16 of the contested decree, which ensure their coordination, are illegal for this reason can only be dismissed.

With regard to Article 18 which specifies the conditions for the care of asylum seekers in accommodation places:

25. It follows from the seventh paragraph of Article L. 744-3 of the Code on the Entry and Residence of Foreigners and the Right to Asylum that the minimum standards for social and administrative support in places of accommodation for asylum seekers are defined by decree of the Council of State. Adopted for the application of these provisions, Article R. 744-6-1 of the same Code, introduced by I of Article 18 of the contested decree, lists the services in terms of administrative, legal, health and social support which must be provided to asylum seekers during their stay in these places, among which are, in 3°, support for the asylum seeker in the procedures relating to the submission of his application and, where appropriate, the preparation of the appeal against the decision taken, and in 7° the "establishment of social, voluntary and recreational activities".

26. Firstly, it does not follow from any legislative provision or principle that the support provided to asylum seekers in legal matters should concern steps other than those mentioned in Article R. 744-6-1, paragraph 3. Secondly, contrary to what is argued, the social support that must be implemented under Article L. 744-3 of the Code does not imply that non-voluntary, i.e. paid, activities are offered to the applicant. The argument that Article 18, paragraph I, of the contested decree is illegal for these reasons must be dismissed.

With regard to Article 19 relating to the orientation of asylum seekers in accommodation facilities:

27. Article 7 of Directive 2013/33/EU of 26 June 2013 provides that: "1. Applicants may move freely within the territory of the host Member State or within an area allocated to them by that Member State. The area allocated shall not affect the inalienable sphere of private life and shall provide sufficient latitude to ensure access to all the benefits provided for in this Directive. / 2. Member States may decide on the applicant's place of residence for reasons of public interest or public policy or, where appropriate, for the purposes of the rapid processing and effective monitoring of his or her application for international protection. / 3. Member States may provide that, in order to benefit from material reception conditions, applicants must actually reside in a specific place determined by the Member States. Such decisions, which may be of a general nature, shall be taken on a case-by-case basis and based on national law. (...)". Article 20 of the same Directive provides that: "1. Member States may

limit or, in exceptional and duly justified cases, withdraw the benefit of material reception conditions where an applicant: (a) abandons the place of residence determined by the competent authority without having informed that authority or, if authorisation is required for this purpose, without having obtained it; or (b) fails to comply with the obligation to present himself to the authorities, does not reply to requests for information or does not attend personal interviews concerning the asylum procedure within a reasonable period laid down by national law; or (c) has made a subsequent application as defined in Article 2(q) of Directive 2013/32/EU. / As regards the cases referred to in points (a) and (b), where the applicant is found or presents himself voluntarily to the competent authorities, a duly reasoned decision, based on the reasons for his disappearance, shall be taken on the reinstatement of the benefit of some or all of the material reception conditions withdrawn or reduced (...). / 5. Decisions limiting or withdrawing the benefit of material reception conditions or the sanctions referred to in paragraphs 1, 2, 3 and 4 of this Article shall be taken on a case-by-case basis, objectively and impartially and shall be reasoned. They shall be based on the particular situation of the person concerned, in particular in the case of persons referred to in Article 21, taking into account the principle of proportionality. Member States shall ensure in all circumstances access to medical care in accordance with Article 19 and guarantee a decent standard of living for all applicants. / 6.Member States shall ensure that material reception conditions are not withdrawn or reduced before a decision is taken in accordance with paragraph 5.

28. According to Article L. 744-7 of the Code on the Entry and Residence of Foreigners and the Right to Asylum in its wording resulting from the law of September 10, 2018: "The benefit of the material reception conditions provided for in Article L. 744-1 is subject to: 1° Acceptance by the applicant of the accommodation proposal or, where applicable, of the region of orientation determined in application of Article L. 744-2. (...); / 2° Compliance with the requirements of the asylum authorities, in particular by attending interviews, presenting themselves to the authorities and providing useful information in order to facilitate the processing of applications. / The applicant is informed in advance, in a language that he understands or which it is reasonable to believe that he understands, that refusing or leaving the proposed place of accommodation or the region of orientation mentioned in 1° of this article as well as non-compliance with the requirements of the asylum authorities provided for in 2° automatically results in the refusal or, where applicable, the withdrawal of the benefit of the material reception conditions." Article L. 744-8 of the same code provides that: "In addition to the cases mentioned in Article L. 744-7, in which the benefit of material reception conditions is immediately terminated by operation of law, the benefit of these may be: 1° Withdrawn if the asylum seeker has concealed his financial resources, provided false information relating to his family situation or submitted several asylum applications under different identities, or in the event of violent behavior or serious breach of the regulations of the place of accommodation; 2° Refused if the applicant submits a request for re-examination of his asylum application or if he has not applied for asylum, without legitimate reason, within the time limit provided for in 3° of III of Article L. 723-2. (...) The decision to withdraw material reception conditions taken pursuant to this article shall be written and reasoned. It shall take into account the vulnerability of the applicant. It shall be taken after the person concerned has been enabled to present its written observations in accordance with the procedures defined by decree.

29. Article 19 of the contested decree inserted into the Code on the Entry and Residence of Foreigners and the Right to Asylum an Article R. 744-13-1 providing that the distribution of asylum seekers and refugees carried out by the national reception plan takes into account the demographic, economic and social characteristics as well as the reception capacities of each region. The same article also inserted into the Code an Article R. 744-13-3 providing that if the asylum seeker fails to appear, within five days, at the place of accommodation or at the approved body indicated to him, the benefit of the material conditions of asylum shall be terminated pursuant to Article L. 744-7 of that Code. The same article finally inserted into the code an article R. 744-13-4 which provides that the benefit of material reception conditions ceases if the applicant temporarily leaves the region where he is domiciled without authorization from the French Office for Immigration and Integration, except in the case of a compelling reason or a summons by the authorities or the courts.

30. Firstly, if the obligation imposed on asylum seekers to remain in their region and to request authorization to be able to leave it temporarily, except in the case of a compelling reason or a summons by the authorities or the courts, constitutes a restriction on the freedom of movement of the persons concerned, it is justified by reasons of general interest and does not disregard, contrary to what is argued, the objectives and provisions of Directive 2013/33/EU of 26 June 2013, which itself provides, in its Article 7 cited in point 27, the possibility of restricting the freedom of movement of applicants. Furthermore, the argument based on the failure to comply with the provisions of the Geneva Convention of 28 July 1951 which provide for the free movement of refugees is in any event ineffective against provisions concerning asylum seekers.

31. Secondly, the aforementioned terms of Directive 2013/33/EU of 26 June 2013 do not prevent asylum seekers from benefiting from material reception conditions only on condition that they accept the place of accommodation proposed by the French Office for Immigration and Integration or, where applicable, the region of orientation determined pursuant to Article L. 744-2 of the Code on the Entry and Residence of Foreigners and the Right to Asylum. On the other hand, it follows from Article 20 of the Directive that, although it is possible, in exceptional and duly justified cases, to withdraw the material reception conditions of an asylum seeker, on the one hand this withdrawal can only take place after examination of the particular situation of the person and be justified, on the other hand the person concerned must be able to request the reinstatement of the material reception conditions when the withdrawal was based on abandoning the place of residence without information or authorisation from the competent authority, on failure to comply with the obligation to report to the authorities or to attend appointments set by them or on failure to respond to requests for information. It follows that the applicant associations are justified in arguing that by creating cases of automatic refusal and withdrawal of material reception conditions without assessment of the particular circumstances and by excluding, in the event of withdrawal, any possibility of reinstatement of these conditions, Articles L. 744-7 and L. 744-8 of the Code on the Entry and Residence of Foreigners and the Right to Asylum, in their wording resulting from the law of 10 September 2018, are incompatible with the objectives of Directive 2013/33/EU of 26 June 2013. It follows that the applicant associations are justified in requesting the annulment of I of Article 19 of the contested decree insofar as it introduces into the Code on the Entry and Residence of Foreigners and the Right to Asylum the second paragraph of Article R. 744-13-3 and the last paragraph of Article R. 744-13-4, adopted for the application of these legislative provisions.

32. Finally, while the applicant associations argue that the regulatory authority made a manifest error of assessment in using the demographic, economic and social characteristics and the reception capacities of each region as allocation criteria, this argument is not accompanied by the details necessary to assess its merits.

With regard to the accessibility conditions adapted to the detention facilities:

33. If the last paragraph of Article L. 553-6 of the Code on the Entry and Residence of Foreigners and the Right to Asylum, introduced by the law of 10 September 2018, refers to a decree in the Council of State to specify the accessibility conditions adapted to places of detention, the mere fact that the contested decree does not contain any provision in this regard cannot, contrary to what is argued, taint it with illegality to this extent.

34. It follows from all of the above that the applicant associations are only entitled to request the annulment for abuse of power of Articles 2 and 11 of the contested decree, as well as of I of Article 19 insofar as it introduces into the Code on the Entry and Residence of Foreigners and the Right to Asylum the second paragraph of Article R. 744-13-3 and the last paragraph of Article R. 744-13-4.

With regard to the conclusions of the applicant associations submitted under the provisions of Article L. 761-1 of the Code of Administrative Justice:

35. In the circumstances of the case, it is appropriate to order the State to pay the sum of 200 euros to each of the applicant associations, under the provisions of Article L. 761-1 of the Code of Administrative Justice.

DECIDES:

Article 1: Articles 2 and 11 of Decree No. 2018-1159 of 14 December 2018 are annulled, as well as I of Article 19 of this decree insofar as it introduces into the Code of Entry and Residence of Foreigners and the Right to Asylum the second paragraph of Article R. 744-13-3 and the last paragraph of Article R. 744-13-4.
Article 2: The State will pay the sum of 200 euros to each of the applicant associations under Article L. 761-1 of the Code of Administrative Justice.

Article 3: The remainder of the submissions in the application are dismissed.

Article 4: This decision will be notified to Cimade, the first named, for all the applicant associations, to the Minister of the Interior and to the Prime Minister.

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Analysis

Abstracts

Summary