ACTORS OF PROTECTION AND THE APPLICATION OF THE INTERNAL PROTECTION ALTERNATIVE

NATIONAL REPORT

FRANCE

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I. Acknowledgments.

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II. Glossary of acronyms.

AP: Actors of Protection.

CESEDA: Code on the admission and residence of aliens and on the right of asylum (‘*Code de l’entrée et du séjour des étrangers et du droit d’asile’).*

CNDA: the National Court of Asylum (“*Cour nationale du droit d’asile”*).

IPA: Internal Protection Alternative.

OFPRA: French Office for the Protection of Refugees and Stateless Persons (“*Office français de protection des réfugiés et apatrides”*).

QD 2004: Qualification Directive (2004/83/EC).

QD 2011: Recast Qualification Directive (2011/95/EU).

The research on which this report is based was carried out between April and July 2013.

III. Background: the national asylum system.

a. Applicable Law.

The primary Statute governing refugee status determination in France is the Asylum Act n°52-893 of 25 July 1952, which has been amended several times since its adoption and particularly frequently since 2003. The main amendments were introduced on 10 December 2003[1]. This was part of a major reform of asylum and immigration, which transposed by anticipation most of the provisions of the Qualification Directive (QD)[2] and some provisions of the Asylum Procedure Directive (APD).[3] Important new concepts, such as subsidiary protection, the internal protection alternative (“IPA”) and non-State actors of persecution (APs), were introduced in French legislation at that time.[4]

[1] Before its enactment, the bill was referred to the Constitutional Court, which adopted a decision on 4 December 2003 (Décision n° 2003-485 DC du 4 décembre 2003 du Conseil constitutionnel relative à la loi modifiant la loi n°52-893 du 25 juillet 1952 relative au droit d’asile). The Constitutional Court found that the text was constitutional but gave some reservations concerning interpretation, in particular on the issue of internal protection.

[2] Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ 2004 L304/12.

[3] In particular, the concept of safe countries of origin. Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status, OJ L 326/13, 13.12.2015.

[4] The other main change introduced by this law is , the unification of the procedures within a single procedure for qualification under the two forms of protection (1951 Refugee Convention and subsidiary protection, as a new form of protection).

A new bill was presented by the government on 23 July 2014[5], which will *inter alia* transpose the QD 2011.[6]

French asylum legislation is completed by a series of decrees, administrative regulations and circulars, which regulate many important aspects of the asylum procedure[7].

All the legislative and regulatory texts on the admission and residence of aliens in France have been put together in a Code; "Code on the admission and residence of aliens and on the right of asylum" ("*Code de l'entrée et du séjour des étrangers et du droit d'asile",* or **"***Ceseda*"), which came into force on 1 March 2005 and has been updated since then.

The concept of Actors of Protection is partially transposed in Article L. 713-2 (2) Ceseda. Article 7(2) and 7(3) QD 2004 were not transposed. The concept of IPA is transposed in Article L. 713-3 Ceseda. This article adds an explicit reference to "actors of persecution" as an element that needs to be taken into account when assessing the IPA. France did not transpose Article 8(3) QD 2004.

b. Institutional Setup.

OFPRA

In France, the determining authority within the meaning of Article 4(1) of the Asylum Procedures Directive (APD) is the "French Office for the Protection of Refugees and Stateless Persons" ("*Office français de protection des réfugiés et apatrides", OFPRA*). The OFPRA is an administrative body with legal personality and financial as well as administrative autonomy. The examination procedure at first instance is thus an administrative procedure (not judicial).

The OFPRA is responsible for examining all applications for asylum at first instance.

CNDA

Appeals are handled by the "National Asylum Court" ("*Cour nationale du droit d'asile", CNDA*)[8], a special judicial authority under administrative law.

The CNDA is divided into sections, each of them made up of three members[9]: a President[10] and two designated assessors including one appointed by UNHCR. This presence of a judge appointed by UNHCR at the CNDA is a unique feature of the French asylum system.

[5] This bill is not taken into account in this report which was drafted before its introduction.
[6] Directive 2011/95/EU of the European Parliament and of the Council 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 (recast), 20 December 2011, OJ L 337; December 2011, pp 9-26.
[7] For a list of the main decrees, administrative regulations and circulars, please see: AIDA Report France: www.asylumineurope.org
[8] The CNDA was called CRR ("*Commission des recours des réfugiés*") until the Act n°2007-1631 of 20 November 2007.
[9] Some plenary sessions (called "*Sections réunies*" before the decree of 16 August 2013 (« *Décret n°2013-751 du 16 août 2013 relatif à la procédure applicable devant la Cour nationale du droit d'asile* ») which now calls them « *grande formation de la Cour* ») are organised to adjudicate important cases. Under these circumstances, there are nine judges: the three judges from the section which heard the case initially and two other sections, each of them made up of three judges.
[10] Ten judges acting as presidents are now working full time at the CNDA, in addition to part time judges on temporary contracts.

The CNDA hears appeals against decisions granting or refusing refugee status or subsidiary protection, against decisions withdrawing refugee status or subsidiary protection and against decisions refusing subsequent applications.

Conseil d'Etat

CNDA decisions can be challenged before the Council of State ("*Conseil d'Etat*") which is the highest French administrative court. The appeal ("*pourvoi en cassation"*) must be lodged within two months and this procedure is long, costly and has no suspensive effect. CNDA decisions can be overturned by the Council of State for errors of law or procedure.

c. The Procedure.

There are two procedures for the examination of asylum applications: an accelerated procedure and a regular procedure.

Once they are on French territory (through the waiting zone or directly), asylum applicants must go to the Prefectures. On French territory, "*Préfectures*" are in charge of the admission and residence of all aliens, including asylum applicants. Prefectures are thus the entry point in the French asylum procedure. Before applying for asylum, aliens must request a temporary residence permit ("*autorisation provisoire de séjour, APS*") from the Prefectures.

If Prefectures grant a temporary residence permit, applicants for asylum are channelled into the regular procedure. Under this procedure, applicants have access to social security rights, reception conditions and financial allowances.

Since January 2004, applications for asylum are subject to a single procedure where the OFPRA (and the National Asylum Court (CNDA) in case of appeal) decides firstly on the right of the asylum applicant to be granted refugee status, and secondly, if refugee status is not granted, on the right of the applicant to subsidiary protection. After a personal interview[11] with the applicant, with the assistance of an interpreter if necessary, OFPRA decisions are notified to the applicant in writing.

Persons recognised as refugees (as well as, where relevant, the spouse and any minor children) are granted a 10-year residence permit by the Prefectures, which is renewable. Persons who are granted subsidiary protection (as well as, where relevant, the spouse and any minor children) get a temporary one-year residence permit from the Prefectures, which is renewable as long as the reasons for benefiting from subsidiary protection remain.

The CNDA appeal process is adversarial. While the CNDA hearings rely a lot on written documentation, applicants can present oral submissions to the CNDA and may be represented / assisted by a lawyer and an interpreter at the hearing. The CNDA does not rule on the legality of the OFPRA decision *per se*, but rather on whether or not the person has the right to be granted refugee status or subsidiary protection on the basis of all the information

[11] Except in four possible limitative cases stated in the law.

available on the day it adjudicates the case, including information which the OFPRA did not have at the time it made its decision ("*recours de plein contentieux*").

Decisions of the CNDA, which are reasoned and usually short, are notified to the applicant within three weeks of the hearing[12]. Matters in dispute before the CNDA mostly concern the relevant facts, rather than law. While judges aim to follow a coherent line of jurisprudence, there is no rule of precedent.

If the Prefectures refuse to deliver a temporary residence permit[13], applicants are channelled into the accelerated procedure ("*procédure prioritaire"*). An accelerated procedure can be used in three cases defined by law[14] (exhaustive list). Under this procedure, applicants are not entitled to the same reception standards. In addition, this procedure has an overall shorter timescale than the regular procedure[15] and, while the applicant is allowed to remain on the territory until the decision of the OFPRA, when the negative decision is challenged the appeal remedy has no suspensive effect. There is no accelerated procedure at the CNDA level.

There is also a border procedure, which assesses the manifestly unfounded nature of the claim. This procedure does not examine the issue of APs and of the IPA.[16]

d. Representation and Legal aid.

At the administrative stage (OFPRA), free legal assistance can be provided to asylum seekers. [17] This legal assistance covers preparation for the personal interview, but there is no representation during the interview.[18] The modalities and the degree of legal assistance provided to asylum seekers in the first instance depend on the reception conditions they enjoy. Asylum seekers in the most precarious situations, those without reception conditions, are offered fewer services than those housed in reception centres (CADA).

At the appeal stage before the CNDA (National Court of Asylum), asylum seekers in the regular procedure continue to receive free legal assistance by lawyers. This free legal assistance covers legal advice and representation in court.

[12] Deliberations are entirely secret.
[13] The decision of the prefectures refusing to deliver a temporary residence permit must be reasoned and indicate that it does not hinder the submission of an asylum application to the OFPRA. Applicants can challenge this decision before the administrative tribunal but this legal remedy has no suspensive effect and, except when the case is referred to the tribunal under summary proceedings ("*référé*"), the judgement can take several months and even years.
[14] See Article L.741-4 *Ceseda:* the applicant comes from a country to which Article 1 C 5 of the 1951 Refugee Convention is applied or from a safe country of origin; - the alien's presence in France constitutes a serious threat to law and order, public safety or security of the State; - the asylum application is considered as deliberately fraudulent or constitutes an abuse of the asylum procedures or is solely lodged in order to prevent a removal order which has been issued or is imminent.
There is in fact a fourth ground for which a temporary residence permit may be refused by the Prefecture: cases to which the Dublin Regulation applies- but in these cases, the OFPRA does not process the case at all.
[15] Under the accelerated procedure, the decision of the OFPRA should in theory be made within 15 calendar days. In 2012, the median period for the examination of first asylum requests in the accelerated procedure was 45 days. Under the regular procedure, the (total) average length for OFPRA to make a decision was of
204 days at the end of December 2013. The average length of the appeal procedure at the Court of Asylum (CNDA) was 8 months and 26 days at the end of December 2013.
[16] For further information on this procedure, see: AIDA Report France: www.asylumineurope.org
[17] Legal assistance is offered to asylum seekers accommodated in reception centres (CADA - Centre d'accueil de demandeurs d'asile) by the NGOs operating those centres. Asylum seekers who are not accommodated in CADA can get legal advice from 'reception platforms' but those are not evenly distributed over the French territory.
[18] Legal representation during the interview should be in place after the coming reform.

IV. Methodology: sample and interviews.

a. Methodology used.

The methodology was based on desk research (mainly national legislation and reports[19]), selection and analysis of case law and interviews/consultations with national stakeholders.

The researcher contacted the French Representation of UNHCR, the OFPRA, the CNDA, NGOs and lawyers in April and May 2013 and had several phone discussions with the OFPRA and the CNDA in May and June 2013. Semi-structured interviews were held with a judge in the premises of the CNDA, and with the legal Department of the OFPRA.

b. Description of the sample.

The sampling methodology had to be adapted to the French context in order to construct a set of asylum decisions from the OFPRA (administrative level) and CNDA (appeal level) that assess and apply the concepts of AP and IPA.

At OFPRA level, no keywords referring to IPA or AP can be used by the staff in the internal database (INEREC) to identify relevant cases/decisions. No relevant cases were found among the cases selected by OFPRA and the cases reviewed by the researcher through direct access to the internal database. According to the interview with the OFPRA, the OFPRA has taken no decision applying the IPA. There is therefore no OFPRA decision in the sample.

At CNDA level, the practice of application of the IPA is very limited. However, the staff endeavoured to select relevant decisions themselves in the internal databases (ArianeArchives and ArianeWeb) using various national keywords and provisions relating to the IPA and AP and/or some countries of origin. The researcher also identified relevant CNDA decisions through various reports and with the help of NGOs and lawyers. This led to a sample of 67 CNDA decisions which were sent to the researcher. 45 decisions refer to an IPA and 23 decisions refer to AP. According to the CNDA, this sample is a (quasi) exhaustive set of CNDA decisions invoking or applying the IPA since this concept was introduced into French law.[20] In addition, the researcher selected one relevant and recent decision from the Council of State, which referred to the IPA.

The sample is therefore not evenly divided between “first instance” decisions and appeals as it contains no OFPRA decision. Selected cases are as recent as possible, mostly decided since 2010. As far as countries of origin are concerned, using a pre-determined set of countries of origin was not relevant and the sample of CNDA decisions shows a variety of countries of origin, even though some countries such as Afghanistan, Somalia, Nigeria and Algeria are more represented than others. Also, whereas some cases from the sample

[19] No statistics illustrating national practice regarding the IPA and AP are available. In addition, the researcher found no recent academic literature on the use of the IPA in France.
[20] This number should be compared to the overall number of CNDA decisions taken each year ; in 2010: 23.916 decisions; in 2011: 34.595 decisions; in 2012: 37.350 decisions (source: CNDA).

happen to concern vulnerable applicants, this could not be a criterion in itself for the selection of the cases.

For technical and time reasons, the researcher did not review the entire contents of each case file.

Country of Origin	Total	Instance			Gender		Outcome	
		OFPRA	CNDA	C.E.	Female	Male	Positive	Negative
Afghanistan	7	0	7	0	0	7	5	2
Albania	2	0	2		1	1	1	1
Algeria	3	0	3	0	2	1	1	3
Colombia	1	0	1	0	0	1	11	0
Côte d'Ivoire	2	0	2	0	0	2	2	0
DRC	3	0	3	0	2	1	2	1
Ecuador	1	0	1	0	0	1	0	1
Georgia	3	0	3	0	2	1	2	1
Ghana	1	0	1	0	0	1	0	1
Guinea	1	0	1	0	1	0	0	1
Haiti	2	0	2	0	0	2	2	0
Iraq	1	0	1	0	0	1	1	0
Kosovo	10	0	10	0	1	9	4	6
Lebanon	1	0	1	0	1		1	0
Mauritania	1	0	1	0	1		1	0
Nigeria	4	0	4	0	2	2	1	3
Pakistan	4	0	4	0	1	3	0	3
Palestinian	1	0	1	0	1	0	1	0
Russian	2	0	2	0	0	2	1	1
Senegal	2	0	2	0	2		1	1
Somalia	7	0	7	0	3	4	7	0
Turkey	2	0	2	0	0	2	1	1
USA	1	0	1	0	0	1	1	0
Western Sahara	1	0	1	0	0	1	1	0
N/A	0	0	0	1			0	1
TOTAL	**64**	**0**	**63**	**1**	**20**	**43**	**37**	**27**

V. National Overview.[21]

a. Actors of Protection.

The concept of Actors of Protection is anchored in Article L 713-2 al.2 Ceseda: "*The authorities that may provide protection can be the State authorities and International and Regional Organisations*".[22] This provision needs to be read together with Article L.713-2 al.1 on actors of persecution: "*The persecutions which are taken into account for the recognition of refugee status and the serious threats which can lead to the benefit of subsidiary protection can originate from the State authorities, parties or organisations controlling the State or a substantial part of the territory of the State, or from non-State actors insofar as the authorities defined below [article L.713-2 al.2] refuse or are unable to provide a protection*".

The main issue in the assessment of applications for international protection in France is not the nature of actors of protection as such but the ability or the inability of these actors to provide protection, in particular in cases of non-State actors of persecution. Therefore, CNDA decisions generally do not mention actors of protection, unless they are non-State authorities. It is also important to note that, generally speaking, the reasoning of the CNDA is not very detailed and factors/criteria which are taken into account are not always mentioned in the decisions.

The rules for assessing an actor of protection do not differ depending on whether refugee status or subsidiary protection is at stake.

i. The Nature of Protection.

French legislation does not detail the criteria to be applied when assessing the adequacy and effectiveness of protection to be provided by actors of protection. Indeed, France has not transposed Article 7(2) QD 2004 in its legislation, and the recast qualification directive (2011) has not yet been transposed. However, CNDA decisions and internal documents provide some, albeit limited, information as to the nature of such protection.

Before the transposition of the 2004 QD into French law (by anticipation in the Asylum Law of 10 December 2003) and therefore before the introduction of the concept of non-State actors of persecution, French eligibility authorities used to consider that persecution could only be of State origin. However, the Refugee Appeals Board[23] (CNDA's predecessor) gradually loosened the criterion of the State origin of persecution and the case law, originally based on the notion of voluntary tolerance or encouragement by the State[24] (which supposed a deliberate intention from the State) became quite elaborate and complex. The criteria of "uselessness of the request for a protection", "effectiveness of the protection", "degree of the protection", "absence of protection" gave rise to quite elaborate interpretation by the Refugee Appeals Board (CNDA's predecessor). The notion of protection based on the inability or

[21] The structure of this report is identical to the one of the other APAIPA national reports in order to facilitate a comparison between the various reports. As a result, the titles of the sections in this report might not always reflect the exact structure of the national approach to the concepts of Actors of Protection or the Internal Protection Alternative. However, the content of the report provides a detailed overview of the use of IPA and AP.
[22] Translation by the author. Original Text of Article L.713-2 al.2: "Les autorités susceptibles d'offrir une protection peuvent être les autorités de l'État et des organisations internationales et régionales".
[23] The Commission des recours des réfugiés.
[24] CE Section, 27/05/1983, Dankha.

refusal of the State to protect its citizens was finally retained in the 2003 Asylum Law.[25] The French legislation, as inspired by the 2004 QD, is however not explicit about the scope of the protection provided by the State and the case law has continued to rely on criteria such as "effectiveness", "uselessness of the request for protection", and "absence" of protection. Those criteria are however not always explicitly mentioned in the reasoning and decisions of the CNDA.

As it will be shown below, and although Article 7(2) QD 2004 is not transposed in domestic law, elements such as the measures taken to prevent persecution, the effectiveness of the judicial system and the access to protection, are taken into account in the case law (sometimes only implicitly).

1. Prevention of persecution or serious harm.

In a precedent-setting decision, the CNDA considered that the actor of protection needs to be willing and able to take necessary steps in order to prevent, in a given part of the territory, any persecution or serious threat to a human being. This was confirmed both with regard to the IPA and in the context of cessation of refugee status. However, the CNDA provides very little additional information regarding the criteria that should be taken into account when assessing the effectiveness of protection. In a decision on cessation of refugee status, the CNDA refers to the Abdulla case,[26] and indicates that the eligibility authorities have to check, in light of the individual situation of the refugee, whether the actors of protection mentioned in Article L.713-2 Ceseda […] have taken reasonable steps in order to prevent persecution and thus have, in particular, an *effective legal system* for the detection, prosecution and punishment of acts constituting persecution, and that the person concerned, in case of cessation of his/her refugee status, will have access to such protection.[27]

An OFPRA internal note indicates that the assessment by the eligibility authorities of the ability of the State to provide protection relies on an extensive knowledge of the judicial system in the country of origin (means, functioning, efficiency), of its security policy (preventive and repressive measures) and of the general effectiveness of the victims' access to this system.

It is not possible to determine whether the assessment of the effectiveness of protection generally takes into account the vulnerabilities of the applicant. Indeed, there are no specific provisions for vulnerable migrants in French legislation so far, and no specific OFPRA or CNDA internal notes on this issue. Furthermore, there are very few relevant cases from the CNDA.[28]

[25] The Asylum Act (or Law) of 10 December 2003.
[26] CJEU, C-175/08, *Salahadin Abdulla & Ors v Bundesrepublik Deutschland.*
[27] CNDA, 25.11.2011 (KOS31M).
[28] See for example: CNDA, 31.05.2012 (USA64FSPVUL): this case concerned an applicant who suffered severe violence from her husband which did not stop in spite of judicial proceedings and decisions, their separation, her move and her new marriage. The CNDA referred in particular to a 2011 UN Report on violence against women which urged the US government to reevaluate the mechanisms for the protection of victims, punish the authors and adopt standards for the enforcement of orders of protection. This report observed that the legislation for the protection of victims of domestic violence in the USA as well as the implementation of some laws, programmes and policies were insufficient. Even though legislation existed on violence against women, the report noted that there were very few compelling provisions at Federal level providing for the prevention and protection against domestic violence. The CNDA also referred to the Inter-American Commission of Human Rights which considered that the absence of State action in case of domestic violence created an environment of impunity. The CNDA

2. Access of the applicant to protection

French legislation currently does not require that the applicant has access to protection. This is however required in the context of the IPA (Article L.713-3 Ceseda): "*The asylum application of a person who would have access to protection in one part of the territory of her/his country of origin if this person has no well-founded fear of being persecuted or of suffering serious harm there and if it is reasonable to consider that she/he can stay in that part of the country may be rejected*" (see below).

According to a CNDA internal note on IPA, the notion of "access to protection" refers to both the "accessibility" of the protection region and the enjoyment of the protection itself. This implies that the material conditions for access must be defined, the area for relocation must be circumscribed, the protection itself must be defined, as well as the actors of protection.

ii. Actors of Protection.

According to the law, the authorities that may provide protection can only be the "*State authorities and International and Regional Organisations*" (Article L.713.2 al.2 Ceseda). This definition differs from the QD 2004 in two respects. First of all, "parties" are so far excluded from the French law list of actors of protection. Secondly, actors of protection under French law are not required to control the State or substantial part of the territory of the state, while this is required from actors of persecution (Article L.713-2 al. 1 Ceseda). There is therefore no symmetry between actors of persecution and actors of protection in French law.

1. General criteria.

As mentioned above, the notion of protection based on the inability or refusal of the State to protect its citizens was finally retained in the 2003 Asylum Law.[29]

The CNDA, in a precedent-setting decision, considered that the protection referred to in Article L.713-3 Ceseda (IPA) had to come from State authorities, international organisations or regional organisations which are *willing and able to take necessary steps* in order to prevent, in a given part of the territory, any persecution or serious threat to a human being.[30] The same formulation was reiterated in some other CNDA decisions[31].

The CNDA considers that it is not sufficient that an actor of protection is willing to provide protection; it also needs to be able to provide such protection. In the decision giving rise to this conclusion, the CNDA granted refugee status and referred to the worsening security situation in Iraq for members of Christian communities, including in the autonomous region of

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therefore found that the applicant could not avail herself of a sufficient and adequate protection from the authorities of her country of origin.

[29] See: L713.2. al.1: "*The persecutions which are taken into account for the recognition of refugee status and the serious threats which can lead to the benefit of subsidiary protection can originate from the State authorities, parties or organisations controlling the State or a substantial part of the territory of the State, or from non-State actors insofar as the authorities defined below [article L.713-2 al.2] refuse or are unable to provide a protection*".

[30] CNDA, 16.02.2007 (CI55MRS).

[31] See: CNDA, 6.02.2013 (PK23M); CNDA, 7.03.2011 (AFG15M); CNDA, 8.02.2011 (AFG16M); NIG18M.

Kurdistan and *in spite of the will expressed* by regional authorities to offer their protection to members of these communities.[32]

2. State actors of protection.

Due to the focus by French legislation and case law on the ability of actors of protection to provide protection and not on the nature of such actors, CNDA decisions generally do not mention actors of protection, unless they are non-State authorities.

According to French eligibility authorities, there is a presumption that States are able to protect their nationals. According to an OFPRA internal Note, the ability of State authorities to protect their nationals is an obligation as far as the means (not the results) are concerned. It cannot be required from States to be totally efficient and eliminate any potential risk, even in a system where the rule of law prevails.

According to both an OFPRA and a CNDA internal Note, States will be considered as unable to protect their nationals in cases where the State system collapsed, in particular in situations of civil war (e.g. Somalia).

In addition, when certain areas of the territory of the State are controlled by dissident/separatist groups, State authorities are unable to protect their nationals who live in these areas since they do not control them.

The CNDA decisions do not systematically mention and detail their reasoning with regard to the inability of actors of protection to provide protection. However, in the sample of decisions used in this research, State authorities were considered as unable to provide protection in several cases: “the inability to exercise effectively an organised power within the territory” (Somalia)[33] or “doubts about the efficiency of the police and justice” (Haiti).[34] In the case of an Albanian applicant who was raped by unknown persons, the CNDA considered that in spite of the progress made by Albanian authorities in the fight against violence against women, such acts still take place and victims have difficulties obtaining the protection of the authorities or of their family. In the present case, the Court found that the applicant could not obtain the protection of the authorities or of her family because of her having been raped.[35]

3. Non-State Actors of protection.

According to the law (Article L.713-2 al.2 Ceseda), actors of protection are limited to « *State authorities and international and regional organisations* ». The criteria that are assessed to determine if they can provide protection are not mentioned in detail in CNDA decisions from the sample. There is not much guidance from the decisions in the sample.

[32] CNDA, 29.06.2012 (IRK43MRS)
[33] CNDA, 30.08.2012 (SOM42FRSVUL).
[34] Further references were made to the Congo DRC (Ituri and South Kivu): CNDA, 30.11.2006 (DRC46FSPVUL), and CNDA 27.03.2012 (DRC38FSPVUL), to the Ivory Coast: CNDA 27.01.2011 (CI37MSP) and to the United States: CNDA, 31.05.2012 (USA64FSPVUL).
[35] CNDA, 24.11.2011 (ALB41FSPVUL).

i. International Organisations.

In the context of an IPA, the Constitutional Court clarified, in its decision of 4 December 2003, that "*in cases where the law foresees that protection may be provided by international or regional organizations [...] [present in this part of the territory], it is up to the OFPRA and, where applicable, the [CNDA], to assess whether those organisations ensure the effective protection of the applicant*" (para.16).

According to an OFPRA internal Note, contrary to the protection provided by a State, the protection provided by an international organisation cannot be presumed.

In the sample of CNDA decisions, several decisions refer to international organisations but the factors which are assessed to determine if they can provide protection are not mentioned in detail. Several decisions have been taken in the context of Kosovo, in which, due to a "*close network of national and international actors of protection (incl. MINUK, KFOR and EULEX*),[36] it was not proven that the applicant would be unable to avail effectively of the protection of such actors. No decision within our sample refers to protection that would be provided only by international organisations. International organisations are always mentioned alongside national actors of protection. In other decisions, the Minustah,[37] the UN Special Mission in Ituri[38] and the UNRWA[39] were considered not to be able to offer protection.

ii. Multinational forces.

Multinational forces are not explicitly mentioned in the law as actors of protection. Nevertheless, in one decision from the sample, in the context of cessation from refugee status for an applicant originating from Kosovo, the Court quoted one paragraph from the CJEU judgment of *Abdulla v Germany*[40]. In particular, the Court stated that, in a case of cessation of refugee status according to Article 1C of the 1951 Geneva Convention and Article 11 of the QD 2004, the eligibility authorities have to check, in the light of the individual situation of the refugee, whether the actors of protection mentioned in Article L.713-2 Ceseda, which can include international organizations controlling the State or a substantial part of the territory of the State, *including through the presence of a multinational force on this territory*, have taken reasonable steps in order to prevent persecution and thus have in particular an effective legal system for the detection, prosecution and punishment of acts constituting persecution and that the person concerned, in case of cessation of his/her refugee status, will have access to such protection.[41]

iii. Other Parties or organisations.

Other parties or organisations are, at the present time, not mentioned in the law as actors of protection. In this regard, Article 713-2 al.2 Ceseda differs from Article 7 QD 2004. Nevertheless, in the sample of CNDA decisions, some decisions refer to ***de facto***

[36] CNDA, 26.03.2012 (KOS32F).
[37] CNDA, 7.01.2013, (HT61MRS) and CNDA, 28.02.2006 (HT47MRS).
[38] CNDA, 30.11.2006 (DRC46FSPVUL).
[39] CNDA, 5.03.2012 (PAL40FRS).
[40] CJEU, C-175/08, *Salahadin Abdulla & Ors v Bundesrepublik Deutschland.*
[41] CNDA, 25.11.2011 (KOS31M).

authorities as actors of protection, such as South Ossetia, Abkhazia, the authorities administering Abidjan and the Palestinian authority.[42]

Furthermore, according to the law (Article L.713-2 al.2 Ceseda), ***regional organisations*** may also be actors of protection. In the context of an IPA, the Constitutional Court clarified, in its decision of 4 December 2003, that "*in cases where the law foresees that protection may be provided by [...] regional organisations [present in this part of the territory], it is up to the OFPRA and, where applicable, the [CNDA], to assess whether [...] regional organisations ensure the effective protection of the applicant*" (para.16).[43]

Finally, an *a contrario* reading of some decisions in the sample could be interpreted as considering than, in certain circumstances, actors such as 'armed militia', 'family' or 'NGOs' could be considered as actors of protection. For example, in one case, the CNDA stated that minority groups and low casts in Somalia, to which Toumals belong, do not benefit from the protection of armed militias[44]. Clans or tribes are not mentioned in the law as possible actors of protection and no references to such actors were found in the sample of CNDA decisions.

b. The Internal Protection Alternative.

The IPA is detailed in article L.713-3 Ceseda. Like in the qualification directive (2004 & 2011), this article only sets an option to use the IPA, not an obligation.

According to Article L.713-3 Ceseda, the asylum application can be rejected if the applicant is "*a person who would have access to protection in one part of the territory of her/his country of origin if this person has no well-founded fear of being persecuted or of suffering serious harm there and if it is reasonable to consider that she/he can stay in that part of the country*".
Eligibility authorities shall, "*at the time of taking the decision on the asylum application, have regard to the general circumstances prevailing in that part of the territory, to the personal circumstances of the applicant, as well as to the actor of persecution*"[45].

i. Assessment of the Internal Protection Alternative.

The Constitutional Court requires that "*the substance of each application will be examined on an individual basis, having regard to [general and personal circumstances as noted above], at the date when the OFPRA takes its decision*"; that "*the OFPRA, under the supervision of the [CNDA] can only reject an application under [article L.713-3 Ceseda] after having ascertained that the applicant can, in safe conditions, have access to a substantial part of her/his country of origin, settle there and lead a normal life*". The decision of the Constitutional Court adds some elements to take into account as part of the IPA assessment that are not present explicitly in Article L-713-3 Ceseda. In particular, the judgment requires

[42] CNDA, 18.07.2012 (GEO44FRS); CNDA, 23.07.2012 (GEO36MFRS); CNDA 27.01.2011 (CI37MSP); CNDA, 20.04.2012 (PAL39FRS).
[43] Constitutional Court (Conseil Constitutionel), 4 December 2004 (Decision n° 2003-485 DC), Official Journal (Journal official) of 11 décembre 2003, p. 21085.
[44] CNDA, 7.11.2011 (SOM49MFRSVUL).
[45] Translation by the author. Original text (Article L-713-3 Ceseda): "Peut être rejetée la demande d'asile d'une personne qui aurait accès à une protection sur une partie du territoire de son pays d'origine si cette personne n'a aucune raison de craindre d'y être persécutée ou d'y être exposée à une atteinte grave et s'il est raisonnable d'estimer qu'elle peut rester dans cette partie du pays. Il est tenu compte des conditions générales prévalant dans cette partie du territoire, de la situation personnelle du demandeur ainsi que de l'auteur de la persécution au moment où il est statué sur la demande d'asile".

that the applicant can have access to the protection region "*in safe conditions*" and that he/she could "*lead a normal life*" there. The Constitutional Court also clarifies the burden of proof which should be borne by the OFPRA and the CNDA (*see below*).

1. Safety in the region.

In principle, eligibility authorities should identify the specific area for relocation. According to an OFPRA internal Note, a negative decision based on the application of the IPA should, in its reasoning, clearly identify the specific area for relocation. This area should be circumscribed in a sufficiently detailed manner and constitute a "*substantial part of the country of origin*" as stated in the decision of the Constitutional Court.

In practice, according to the sample of CNDA decisions, a specific protection region is often not identified even when the IPA is applied.[46] The IPA assessment is often short and theoretical and far from an analysis *in concreto*. It can be concluded that the analysis of the CNDA does generally not follow the requirements of the law as interpreted by the Constitutional Court. When the CNDA identifies a protection location, it can look at the fact that the applicant has already lived in another location different to where he/she fears persecution. For example, in the case of a Pakistani applicant, the CNDA noted that the applicant was able to live for two years in Karachi "without any problem".[47] Moreover, even though the Constitutional Court requires that the region of relocation must be a substantial part of the country, in several cases cities have been identified as the region of relocation.[48]

According to the research sample of decisions, the CNDA does not systematically verify that there is no risk of persecution or serious harm in another region when it applies the IPA to reject an application for international protection.

In some cases, the CNDA simply mentioned the absence of fear of persecution or serious threat in another region.[49] For example, the Court considered that the conflict in North Kivu was circumscribed to a very specific region in the Democratic Republic of the Congo and that the applicant, who could speak fluently Swahili and French, could reasonably settle in another part of the country, where he could benefit from effective protection, without any fear of persecution or serious threat, and that, at the date of the decision, there was no indication that the applicant would run the risk of being returned to his region of origin[50].

In a similar line of reasoning, the CNDA has considered that the fear of persecution is very local, and hence *a contrario* the rest of the country would be considered safe, without further assessment of the well-founded fear of persecution or the risk of serious harm and without further assessment of the reasonableness. For instance, in one case, the CNDA considered that the applicant could settle in any other region of Turkey as this would prevent persecution since his collaboration with the authorities would be of interest for the authorities only in his home town because he knows the place. Furthermore the Court considered that the threats

[46] Among the sample, 19 CNDA decisions applied the IPA. A protection region was identified in only 7 decisions.
[47] CNDA, 6.02.2013 (PK23M).
[48] See for example: Karachi: CNDA, 6.02.2013 (PK23M); Kabul (AFG15M); Lagos (NIG20M)
[49] See for example, CNDA, 7.04.2005 (EQUA58M); CNDA, 17.12.2012 (DRC04M); CNDA, 17.06.2013 (ALG60FVUL); CNDA, 3.10.2011 (NIG18M).
[50] CNDA, 17.12.2012 (DRC04M).

from the PKK were only linked to this local collaboration and that if he left his native town he would not be under pressure from the authorities and the PKK.[51]

In some cases, the CNDA would leave it to the applicant to prove that he/she would not enjoy protection in another part of the territory. For example, in one case,[52] the CNDA considered that the applicant did not prove that he would not have protection in Kumasi, his native town where he partly used to work. The Court considered that he could have settled again in this town where his political party predominates and where the situation is under control.[53]

On the other hand, in some cases where the CNDA considered that there was no IPA, the Court sometimes mentioned the risk of persecution or serious threat in another region. For example, in two cases of Somali applicants, the CNDA considered that an IPA could not be considered since, according to a 2009 report from Asylum Aid, Somali women who flee the violence in the Southern and Central regions of the country suffer from abuse or abductions when they find refuge in IDP camps.[54]

2. Securing human and social rights.

As mentioned above, French legislation requires that eligibility authorities, at the time of taking the decision on the asylum application, have regard to the general circumstances prevailing in the part of the territory where access to protection is possible, to the personal circumstances of the applicant, as well as to the actor of persecution. French legislation adds here an explicit reference to actors of persecution, which is not explicitly present in the QD 2004.

Both the OFPRA and CNDA have produced internal notes that provide some additional information on the type of circumstances that should be taken into account when assessing the IPA. The OFPRA indicates that the applicant should enjoy human rights, including economic and social rights, and fundamental freedoms in the proposed region. It also considers that the situation of the applicant has to be basically equivalent to that of the inhabitants of this area. Moreover, the living conditions must enable the applicant to “lead a normal life”, which needs to be assessed by comparison with the general living conditions of the population in the country of origin. The CNDA, in its internal note, highlights the importance of carrying a case-by-case assessment of the IPA, which takes into account both general circumstances related to the country of origin (conflicts; State structure; rule of law etc.) and personal circumstances (age, family connections, social and cultural ties, ethnic group etc.).

The criteria mentioned in these internal notes are often not assessed nor mentioned in detail in the CNDA decisions from the research sample.

[51] CNDA, 29.07.2010 (TR25M).
[52] CNDA, 17.05.2011 (GHA26M).
[53] See also: CNDA, 19.07.2010 (GUI27FVUL): the CNDA considered that the applicant did not prove that she could not find protection in any other region of her country of origin; and CNDA, 27.04.2010 (RUS30F): the CNDA also considered that the applicant did not prove that she could not avail herself of the protection of the Russian authorities in another part of the Russian Federation territory than in the Republic of Dagestan. In this regard, the Court noted that her brother and her mother settled in another Russian town, outside Dagestan, and that the applicant was able to travel within the federal territory without any problem.[53]
[54] CNDA, 24.07.2012 (SOM08FSPVUL) and CNDA, 08.12.2011 (SOM09FSPVUL).

i. General circumstances.

The CNDA internal note refers to general circumstances such as “conflicts”, “state structure” and “rule of law”. In the sample of decisions, it appears that the CNDA takes into account conflicts (situations or history of armed conflict or widespread violence, especially with relation to Somalia[55] and Afghanistan[56]) and population (population density and ethnic composition[57]). As also mentioned in article 7 Ceseda, the power of the actor of persecution is also assessed by the CNDA. For example, in the case of an applicant from Ghana who alleged political problems with a political party in Tamale, the CNDA considered that the applicant could have settled again in his native town where his political party predominates and where the situation is under control.[58]

ii. Personal circumstances.

The CNDA takes into account the personal circumstances of the applicant. In the sample of decisions analyzed, the CNDA refers mostly to the economic status of the applicant (education, profession, and employment possibilities), language and the presence of family members. There is overall little reference to the vulnerability of protection applicants. In a precedent-setting decision, the CNDA considered that “in order to assess whether the applicant can reasonably stay in [a given] part of the territory, his/her personal situation has to be assessed in the context of the general living conditions of the population in this area”.[59]

The CNDA takes into account circumstances related to the ***language***[60] and to the ***economic status of the applicant***, such as education, professional background, and employment possibilities. This was illustrated in a precedent-setting decision[61] which concerned an applicant who alleged threats from Islamist groups in his region of origin, the CNDA noted that the applicant was able to reside twice in Algiers without any fear of being persecuted or suffering serious harm. However, the CNDA considered that, “given the conditions in which he lived, in particular the impossibility to find a job and the constant fear of being forcibly returned to his area of origin, it would not be reasonable to consider that he could stay in that part of the country”.

[55] In CNDA, 30.08.2012 (SOM29MSP), the CNDA examined the context prevailing in Somalia and concluded that in some geographical areas, in particular in Southern and Central regions, there was a climate of generalized violence. Among other COI, the Court referred to the ECtHR Sufi and Elmi case of 28 June 2011, in particular the doubts expressed by the ECtHR on the opportunities of resettlement in Somalia for a person who, landing in Mogadishu, should go across an area controlled by Al Chabaab and who has no family links. […] and the appalling conditions in camps. See also: In CNDA, 24/07/2012 (SOM08FSPVUL) and CNDA, 8.12.2011 (SOM09FSPVUL).

[56] The CNDA refered, in three cases, to the “degradation of the security situation in Afghanistan”.

[57] In CNDA, 19.11.2012 (COL50MRSVUL), the Court considered on the basis of COI that the stigmatization of the displaced population prevented them from accessing to an effective protection even in big urban centres in the country. Other COI also confirmed that it was not certain that the authorities would be able to provide an effective protection to the applicant.

[58] CNDA, 17.05.2011 (GHA26M).

[59] CNDA, 16.02.2007 (CI55MRS). See also, in CNDA, 7.03.2011 (AFG15M), the CNDA considered that it was not proven that the applicant, who was threatened by the Talibans in his region of origin, could not find refuge in other parts of the Afghan territory controlled by the legal authorities of the country, in particular in Kabul where he has already lived and where it is reasonable to consider that his living conditions would be similar to those of the Afghan population which does not live in areas where there is generalized violence. The Court concluded that the applicant could not refer to the situation of generalized violence prevailing in a region that he left more than 6 years ago whereas he has family links in Afghanistan, in particular in Kabul.

[60] In CNDA, 17.12.2012 (DRC04M), the CNDA considered that the conflict in North Kivu was circumscribed to a very specific region in DRC and that the applicant, who could speak fluently Swahili and French, could reasonably settle in another part of the territory of DRC […].

[61] CNDA, 25.06.2004 (ALG59MRS).

The CNDA also takes into account ***family connections*** when assessing the personal circumstances of the applicant. In one case, the CNDA acknowledged that a girl had lived for 3 months in Dakar before departing to France, without any threat. However the Court found that she would be unable to settle there and to lead a normal family life, since she did not have any relative or any support in the Senegalese capital and in the rest of the country.[62] In another case, the CNDA considered that the applicant, who had married again and had other children, could reasonably settle in another part of the Algerian territory without any fear of persecution or serious threat[63]. According to an OFPRA internal Note, whereas the absence of relatives in the relocation area is not in itself an obstacle to applying the IPA, the presence of family members is a determinative aspect. However, there is currently no practice of application of the IPA at OFPRA level.

There is no specific provision or guidelines concerning ***vulnerable applicants.*** In the sample of CNDA decisions, no decision concerned ***unaccompanied minors***. Some decisions concerned children or teenagers who feared to be genitally mutilated in case of return. For example, the CNDA, in a case of a young girl who feared to be genitally mutilated in case of return to Mauritania, the Court considered that "*given her young age, the applicant could not have access to a protection in another part of her country of origin nor protect herself against the influence of her family*". [64]

The issue whether it is reasonable for ***women applicants*** to remain in the proposed region is generally not assessed in detail in the decisions. In several Somali cases, the CNDA considered that there was no IPA for women since "according to a 2009 report from Asylum Aid, Somali women who flee the violence in the Southern and Central regions of the country suffer from abuse or abductions when they find refuge in IDP camps".[65] In a case concerning a woman and her daughter of Chechen origin, living in Dagestan, who were victims of severe abuse after the disappearance of the father/husband, the CNDA considered that the applicants were isolated and particularly vulnerable to violence and abuse given their geographical origin and the situation prevailing in Dagestan. In the very particular circumstances of the case, the Court concluded that the mother and daughter could not avail themselves of the protection of the authorities or settle in another part of the Russian territory.[66] However, in another case, the CNDA applied the IPA without considering the vulnerability of a victim of domestic violence inflicted by her former husband who was mentally ill and whose father was a former member of the Algerian army.[67] The Court in this case considered that "*the applicant, who married again and had other children, could*

[62] CNDA, 26.02.2013 (SEN02FRSFGM).
[63] See also other examples: In CNDA, 20.06.2012 (AFG54MSP), the CNDA noted that the applicant had no link with his region of origin anymore since all his family members left it and that he would be forced, in order to reach it, to go across several provinces, including the province of Kabul, which have a high level of insecurity. It therefore considered that an IPA was excluded.
In CNDA, 8.02.2011 (AFG16M), the CNDA concluded that the applicant could not refer to the situation of generalized violence prevailing in a region that he left more than 20 years ago and in which he does not have any strong personal links any more. In this case, the CNDA considered that there was an IPA.
In CNDA, 27.04.2010 (RUS30F), the CNDA considered that the applicant did not prove that she could not avail herself of the protection of the Russian authorities in another part of the Russian Federation territory than in the Republic of Dagestan. In this regard, the Court noted that her brother and her mother settled in another Russian town, outside Dagestan, and that the applicant was able to travel within the federal territory without any problem. Cf fn 49, repeated
[64] See also, CNDA, 26.02.2013 (SEN02FRSFGM), which concerned a girl who feared to be excised, the CNDA acknowledged that the girl could live during 3 months in Dakar before departing to France, without any threat. In the core text however the Court found that she was unable to settle there and to lead a normal family life, since she did not have any relative or any support in the Senegalese capital and in the rest of the country.
[65] CNDA, 24/07/2012 (SOM08FSPVUL) and CNDA, 8.12.2011 (SOM09FSPVUL),
[66] CNDA, 8.04.2011 (RUS51FSPVUL).
[67] CNDA, 17.06.2013 (ALG60FVUL).

reasonably settle in another part of the Algerian territory without any fear of persecution or serious threat". In another case, the CNDA refers to the impossibility of the woman applicant to find another person to marry against the will of her parents in concluding that the applicant would not be able to lead a normal life in another part of the country (Nigeria)[68].

In the sample of decisions analyzed, there was no information identified on ***people suffering rape/torture*** or ***LGBT people***.

iii. "Stay/settle"

Art. L. 713-3 Ceseda requests that, as part of the IPA assessment, it must be reasonable to consider that the applicant can "stay" in the proposed region of the country of origin. However, it is unclear whether this requirement must be interpreted with reference to a long term or even permanent residence. The Constitutional Court, in its decision of 4 December 2003, refers both to "stay" and to "settle", which implies a permanent residence. The Council of State, in its recent precedent-setting decision relating to female genital mutilation, indicates that "*refugee status can be denied when the person concerned can have access to a protection in one part of her country of origin where she can have safe access in order to settle there and lead a normal family life*".[69] The Constitutional Court also refers to "a normal life", and references to the possibility of leading "a normal life" or "a normal family life" have also been found in CNDA decisions.[70] This reference to "a normal life" supports the interpretation that "stay" or "settle" would require a permanent or at least long term residence.

Such interpretation is also supported by further CNDA decisions, which require a durable stay. For example, in one decision, the CNDA considered that the applicant could settle *durably* and peacefully in Quito or in any other substantial part of the Ecuadorian territory far from the Colombian border, without any fear of persecution, and could lead a normal life there, in particular with the protection of the Ecuadorian authorities.[71] The use of the word "durably" seems to refer to a permanent or long term residence. An OFPRA internal Note also mentions that the applicant should be able to settle *durably* in the relocation area, which excludes for example IDP or refugee camps.

3. Access.

i. Access to protection.

[68] In CNDA, 23.04.2008 (NIG19FRSFGM), which concerned an applicant who refused a forced marriage and excision in the Nigerian State of Rivers, the CNDA considered that the applicant, due to her social rank, her educational degree and her ties to several cities in Nigeria, had the financial capacity to resettle in another part of the Nigerian Federation without any fear of being persecuted. However, given the importance of the consent given by the parents for a marriage, it would be extremely difficult for her to find another person who would marry her against the will of her parents. The CNDA therefore considered that she would not be able to lead a normal life in another part of the Federation.
[69] Council of State, 21.12.2012 (01FRSFGM). See also CE, Ass., 21 décembre 2012, Mme F., n°332491 (exclusion de la mère du statut de réfugié). See comments of this case (in French): Guillaume Cholet, « Droit d'asile : Le Conseil d'Etat aux prises avec les mutilations génitales féminines » [PDF] in Lettre « Actualités Droits-Libertés » du CREDOF, 18 février 2013.
[70] CNDA, 27.01.2011 (KOS12M); CNDA, 7.04.2005 (EQUA58M); CNDA, 26.02.2013 (SEN02FRSFGM).
[71] CNDA, 7.04.2005 (EQUA58M).

French legislation (article L.713-3 al.1 Ceseda) indicates that the asylum application of a person who would have "*access to protection in one part of the territory of her/his country of origin"* might be rejected "*if this person has no well-founded fear of being persecuted or of suffering serious harm there and if it is reasonable to consider that she/he can stay in that part of the country*".

In the sample of decisions, there are several cases where the CNDA explicitly assesses the possibility of the applicant to access protection, albeit with little details. When assessing the access to protection, the vulnerability of the applicant is a key factor to take into account. Despite the lack of specific provisions or guidelines related to vulnerable groups, the CNDA has taken into account the vulnerability of applicants in a few positive decisions from the research sample. For example, in one case concerning a young girl who feared genital mutilation in case of return to Mauritania, the Court considered that "*given her young age, the applicant could not have access to a protection in another part of her country of origin nor protect herself against the influence of her family*".[72] In another case, about an applicant who alleged fears of persecution from paramilitary forces and who was recognized by the authorities as a displaced person in Bogota, the CNDA considered on the basis of COI that "*the stigmatization of the displaced population prevented them from accessing effective protection even in big urban centres in the country"* and that *"it was not certain that the authorities would be able to provide effective protection to the applicant*"[73].

ii. Safe and legal travel.

The Constitutional Court, in its decision of 4 December 2003, indicated that "[...] *the OFPRA, under the supervision of the [CNDA] can only reject an application under [article L.713-3 Ceseda] after having ascertained that the applicant can, in safe conditions, have access to a substantial part of her/his country of origin, settle there and lead a normal life*"[74]. The Council of State, in a recent precedent-setting decision relating to female genital mutilation stated that "*refugee status can be denied when the person concerned can have access to protection in one part of her country of origin where she can have safe access in order to settle there and lead a normal family life*".[75] The CNDA has further indicated that "*the effective nature of the potential protection implies that the applicant is able to have access to the given area without going through areas where his/her life or freedom would be threatened*".[76]

According to an OFPRA internal Note, whereas the question of access to a relocation area is fundamental in the assessment of the IPA, purely material and temporary obstacles should not necessarily prevent the rejection of an application on the basis of an IPA.

In the sample of CNDA decisions, the accessibility of the protection region is rarely assessed. Indeed, most CNDA decisions analysed do not mention the protection location,

[72] CNDA, 04.04.2013 (MRT24FRSFGM).
[73] CNDA, 19.11.2012 (COL50MRSVUL). See also, CNDA, 8.04.2011 (RUS51FSPVUL), which concerned a woman and her daughter of Chechen origin, living in Dagestan, who were victims of severe abuse after the disappearance of the father/husband, the CNDA considered, "in the very particular circumstances of the case", that they "could not avail themselves of the protection of the authorities or settle in another part of the Russian territory".
[74] Decision of 4 December 2003, para. 17. This was also confirmed in the recent precedent-setting decision relating to FGM (Council of State, 21.12.2012 (01FRSFGM): "access to a protection in one part of her country of origin where [the applicant] can have *safe access* in order to settle there and lead a normal family life."
[75] Council of State, 21.12.2012 (01FRSFGM).
[76] CNDA, 21.06.2011 (GEO28F).

which makes the assessment of the safety and legality of travel impossible. The CNDA also even reverses the burden of proving that the applicant has access to a protection. For example, in one case about a Nigerian applicant, the Court considered that the applicant did not prove that he could not stay in his region of origin or the threats he faced in this region. He did not prove either that he could not have access to protection in another part of the country (within the meaning of Article L.713-3 *Ceseda*").[77]

However, in some decisions from the research sample, the CNDA has looked at the accessibility of the protection region in order to rule out the application of the IPA and to grant international protection. For example, in the context of Somalia, the CNDA assessed the claim in the context prevailing in Somalia, in particular in Mogadishu where the applicant used to live and in Bud Bud from where he originates. The Court considered the possibility of an IPA in Bud Bud, which is a region controlled by the Federal Government of Transition. Due to the fact that the applicant would need to go across areas which are controlled by the Islamists, and thus be exposed to direct armed fighting, in order to return to his region of origin, the Court concluded that this exposes him to a serious, direct and individual threat against his life or person, without being able to avail himself of any protection.[78]

ii. The Application of the IPA.

The application of the Internal Protection Alternative in France is very difficult to assess due to the very limited use of this concept in practice. According to the interview with the OFPRA and the research results, there is no practice of application of the IPA at the OFPRA level, but some guidelines are available. At CNDA level, there is an emerging – still limited and uncertain - practice of application of the IPA but criteria and conditions provided by French legislation and by the binding decision of the Constitutional Court are not always properly applied.

1. Procedure.

i. In which procedure is the IPA applied?

According to the interview with the OFPRA, the IPA can only be considered in a refugee status determination procedure where the applicant is heard by a protection officer on the substance of his/her case. This excludes in principle cases where no interviews are held with the asylum applicants (manifestly unfounded applications). In any case no OFPRA decision has ever applied the IPA.

The same should be true at CNDA level, i.e. the IPA should not be considered when the applicant is not heard at a hearing. However, in the sample of decisions, one CNDA negative

[77] CNDA, 18.01.2011 (NIG20M).
[78] CNDA, 24.10.2012 (SOM07MSP). See also: CNDA, 30.08.2012 (SOM29MSP), the CNDA examined the context prevailing in Somalia and concluded that in some geographical areas, in particular in Southern and Central regions, there was a climate of generalized violence. Among other COI, the Court referred to the ECtHR Sufi and Elmi case of 28 June 2011, in particular the doubts expressed by the ECtHR on the opportunities of resettlement in Somalia for a person who, landing in Mogadishu, should go across an area controlled by Al Chabaab and who has no family links; CNDA, 20.06.2012 (AFG54MSP): in the context of Afghanistan, in a case of an applicant originating from the province of Djzodjann, who used to live in Kabul since 2003, the CNDA examined the degree of indiscriminate violence and considered that it was high in Kabul. On the other hand, the Court stated that, according to the Afghanistan NGO Security Office (ANSO), the province of Djzodjan was considered as having a low level of insecurity compared to other provinces of Afghanistan. The Court however noted that the applicant had no link with this region anymore since all his family members left it and that he would be forced, in order to reach it, to go across several provinces, including the province of Kabul, which have a high level of insecurity.

decision applied *inter alia* an IPA to reject the application in the framework of a procedure where the case was decided by only one judge without hearing the applicant (by order ('ordonnance')).[79]

In theory, nothing would prevent the IPA being applied in accelerated procedures at OFPRA level, but this is not so at CNDA level, where there are so far no accelerated procedures.

ii. At what point in the procedure is the IPA applied?

According to the interviews with the OFPRA and the CNDA, the availability of an IPA should only be considered as the last ground for denying protection, after it has been determined that the applicant would otherwise be entitled to international protection.[80] The CNDA further acknowledged that in principle the same sequential reasoning should be used for applying the IPA and the exclusion clauses.

However, in the sample of CNDA decisions, this is not generally the case and the practice of the judges is not harmonized in this regard. Since the reasoning of the CNDA is often short and not always clearly sequential, it is sometimes difficult to know whether the availability of an IPA is used as a threshold argument to deny a protection claim (e.g. one perceived as unlikely to succeed, without fully assessing the applicant's risk of persecution or serious harm) or as part of the assessment of the protection claim (i.e. together with or following the analysis of the well-founded fear of persecution). Some CNDA decisions consider that an IPA is available just after recalling the facts of the case, without always establishing these facts and without analysing the risk of persecution.[81] Other decisions consider whether an IPA is available as part of the assessment of the risk of persecution.[82] And some CNDA decisions consider whether an IPA is available after it has been determined that the applicant would otherwise be entitled to international protection.[83]

iii. Procedural safeguards

According to the interview with the OFPRA, at first instance the issue of IPA could be raised during the interview as part of the examination of the claim. If the IPA was to be applied, the OFPRA would proceed as for exclusion cases, which means that there would be a second interview on this issue. However, this has never happened in practice since the IPA has never been applied by the OFPRA.

According to the interview with the CNDA, there are no clear guidelines on dealing with IPA on appeal. Depending on the case, the question could be raised during the hearing, in particular if the rapporteur raised the issue in his/her report. The question of whether the

[79] CNDA, 25.05.2011 (ALG48F).
[80] A CNDA internal note also explicitly mentions that the availability of an IPA should only be considered when well-founded fears of persecution or serious threats are established beforehand.
[81] See for example: CNDA, 23.07.2012 (PK13M); CNDA, 1.06.2011 (PK22M); CNDA, 6.02.2013 (PK23M), CNDA, 3.10.2011 (NIG18M), CNDA, 18.01.2011 (NIG20M); CNDA, 2.09.2010 (NIG21F); CNDA, 19.07.2010 (GUI27FVUL), CNDA, 27.04.2010 (RUS30F).
[82] See for example: CNDA, 09.01.2013 (ALG05M), CNDA, 27.01.2011 (KOS12M); CNDA, 29.07.2010 (TR25M); CNDA, 17.05.2011 (GHA26M); CNDA, 25.05.2011 (ALG48F); CNDA, 28.02.2012 (SOM10MSP); CNDA, 30.08.2012 (SOM29MSP).
[83] See for example: Council of State, 21.12.2012 (01FRSFGM); CNDA, 26.02.2013 (SEN02FRSFGM); CNDA, 04.04.2013 (MRT24FRSFGM); CNDA, 25.06.2004 (ALG59MRS); CNDA, 7.04.2005 (EQUA58M); CNDA, 17.12.2012 (DRC04M), CNDA, 17.06.2013 (ALG60FVUL), CNDA, 24.07.2012 (SOM08FSPVUL).

applicant had the opportunity to contest or comment on the application of the IPA does not appear from the analysis of CNDA decisions of the sample. It was certainly not the case when the decisions were made without hearing the applicant (i.e. when applicant does not come to the hearing, or when the decision is taken by order ('ordonnance')). *A fortiori*, this would also not be the case when no specific area for relocation is identified, which seems to be a frequent occurrence in cases applying the IPA.

2. Policy.

i. Type of protection claim.

The IPA is applied to both refugee status and subsidiary protection applications. According to the interview with the OFPRA, the IPA could – in theory - be applied in situations of armed conflict (as already mentioned, the OFPRA currently does not apply the IPA). In the sample, several CNDA decisions raise the IPA in situations of armed conflict/generalized violence in the Democratic Republic of Congo, Somalia and Afghanistan. [84]

The law itself does not exclude the application of the IPA in cases where the State is the actor of persecution.[85] In its decision of 4 December 2003, the Constitutional Court recalled, again in the context of the IPA, that "*according to the law, the OFPRA will assess the application having regard to [...] the actor of persecution, depending on whether it belongs to State authorities or not [...]*". According to the interview with the OFPRA, applying the IPA in cases where the State is the actor of persecution would be rather difficult from a practical and legal point of view given the requirements for applying the IPA. In countries which are vast, regional, federal, decentralized or divided into autonomous regions or territories, it could be considered, but with great caution.

According to the CNDA internal note from 2004, if public authorities are the actors of persecution, an IPA could exist only if these authorities do not have the effective control of one part of the country (localized conflict; Federal State). However, within a united State, applying an IPA would be more difficult when the State is the actor of persecution. According to the interview with the CNDA, it would in principle be impossible to apply the IPA in this case.

The CNDA in one case of the sample applied the IPA in a case where the applicant alleged threats from both the State and non-State actors of persecution.[86] No cases were identified where the CNDA explicitly refuses the IPA because the State is the actor of persecution.

ii. Frequency of application

[84] See for example: CNDA, 17.12.2012 (DRC04M), CNDA, 24.10.2012 (SOM07MSP), CNDA, 24.07.2012 (SOM08FSPVUL); CNDA, 08.12.2011 (SOM09FSPVUL); CNDA, 28.02.2012 (SOM10MSP); CNDA, 30.08.2012 (SOM29MSP); CNDA, 7.03.2011 (AFG15M); CNDA, 8.02.2011 (AFG16M), CNDA, 12.10.2011 (AFG57MSP); CNDA, 3.06.2011 (AFG17MSPVUL).

[85] According to the law, when the IPA is assessed by the eligibility authorities, these authorities shall inter alia have regard to the actor of persecution (Article L.713-3 Ceseda)

[86] CNDA, 29.07.2010 (TR25M): In this case, the applicant, Turkish of Kurd origin alleged problems with both the authorities and the PKK who killed his father (who used to collaborate with the State) and one brother in 1990. However, the Court considered inter alia that the applicant could settle in any other region of Turkey as this would prevent persecution since the collaboration with the authorities would be of interest for them only in his native town because he knows the place. Furthermore the Court considered that the threats from the PKK were only linked to this collaboration and that if he leaves his native town he would not be under pressure from the authorities and the PKK. The Court therefore found that he had an IPA in any region of Turkey other than his region of origin.

According to the 2003 Asylum Law the use of IPA is only optional for the authorities. According to the CNDA, the sample of decisions analysed in this research is a (quasi) exhaustive set of CNDA decisions invoking or applying the IPA since this concept has been introduced in French law. Given the very high number of CNDA decisions taken each year (in 2012, the CNDA took 37.350 decisions[87]) the IPA is hardly ever assessed.[88]

According to the interviews with the OFPRA and the CNDA, there is a renewed interest in the issue of the IPA at both instances, in particular since the recent Council of State decision of 21 December 2012 on FGM, which includes an obiter dictum on this issue.[89]

iii. IPA as blanket policy?

The IPA is considered on a case-by-case basis. In the context of the IPA, in its decision of 4 December 2003, the Constitutional Court stated inter alia that "*the substance of each application will be examined on an individual basis, having regard to [...] concrete elements, at the date when the OFPRA takes its decision*". This is clearly written in the CNDA and OFPRA internal notes on the IPA.

iv. Scope of application of IPA.

According to the interview with the OFPRA, the IPA should, in theory, be considered more often in countries of origin where there is a political/geographical division or where there is a situation of generalised violence/armed conflict. In the CNDA case sample, the majority of cases in which IPA was considered were from Somalia, Afghanistan, Algeria, Nigeria, Kosovo and Pakistan. The IPA was never applied in the case of Somalia, rarely applied in the case of Afghanistan and applied in the majority of cases concerning Algeria, Nigeria, Kosovo and Pakistan.

According to the interview with the OFPRA, the IPA should – in theory - be excluded for applicants invoking compelling reasons arising out of previous persecution and for particularly vulnerable applicants. According to an OFPRA internal Note, the IPA should not be used for minor children and if it contributes to ethnic cleansing.

In the sample of CNDA decisions, no decision concerned unaccompanied minors, and only two cases concerned children or teenagers. In both of these cases, where the children feared to be genitally mutilated against their will in case of return, the CNDA granted protection.[90] .

v. Application if technical obstacles to return.

[87] The CNDA took 37.350 decisions in 2012 (8285 decision by order ("ordonnances"), and 29065 collegial decisions ("decisions collégiales") and 38 540 in 2013 (8309 ordonnances and 30231 collegial decisions). For further details, see CNDA, 2013 Annual Report.
[88] The 45 decisions mentioning the IPA that were reviewed for this research are a (quasi) exhaustive set of CNDA decisions invoking or applying the IPA since this concept was introduced into French law.
[89] Council of State, 21.12.2012 (01FRSFGM): The Council of State found that in a population in which FGM are commonly practiced and represent a social norm, children and teenagers who are not mutilated constitute a social group. However the Council of State stated that, in order to qualify for international protection, the person concerned has to establish all the family, geographical, sociological elements regarding the personal risk she runs. The Council of State added that "refugee status can legally be denied, as provided under Article L.713-3 Ceseda, when the person concerned can have access to a protection in one part of her country of origin where she can have safe access in order to settle there and lead a normal family life".
[90] CNDA, 26.02.2013 (SEN02FRSFGM) and CNDA, 04.04.2013 (MRT24FRSFGM).

Article 8(3) QD, which allowed the application of the IPA notwithstanding technical obstacles to return, was not transposed into Article L.713-3 Ceseda and no reference is made in the law to "technical obstacles". As mentioned above, according to an OFPRA internal Note, whereas the question of accessibility of a relocation area is fundamental in the assessment of the IPA, purely material and temporary obstacles should not necessarily prevent the rejection of an application on the basis of an IPA.

According to the interview with the CNDA, the Court does not take into account this kind of technical obstacle but only takes into account the situation in the country of origin to assess whether the applicant has well-founded fears of persecution or serious threats in case of return.

C. Assessment of facts and circumstances.

The burden of proof falls either on the applicant or on the State depending on whether actors of protection or the IPA are at stake.

Concerning actors of protection, the relevant provisions of French law are not only Article L.713-2 al. 2 *Ceseda*, but also Article L.713-2 al. 1 *Ceseda* on actors of persecution (which refers to the refusal or inability of actors of protection to provide protection). In order to be recognized as a refugee or be granted subsidiary protection, an applicant generally bears the burden of proving that actors of protection refuse or are unable to provide them with protection. Generally, it is up to the applicant to have requested protection prior to taking flight.

In the context of the application of the IPA (Article L.713-3 *Ceseda*), the burden of proof should however be borne by the OFPRA and the CNDA. In its decision of 4 December 2003, the Constitutional Court indicated that "*the OFPRA, under the supervision of the [CNDA] can only reject an application under [article L.713.3 Ceseda] after having ascertained that the applicant can, in safe conditions, have access to a substantial part of her/his country of origin, settle there and lead a normal life*" (para.17).[91] This was confirmed by internal notes from of the CNDA and OFPRA.[92] Both authorities, during the interviews, clearly stated that, as it is the case for the application of the exclusion clauses, the burden of proof should be borne by the OFPRA and the CNDA in the context of the application of the IPA.

However, in the research sample, the CNDA often puts the burden of proof on the applicant, stating that "*the applicant did not prove*" that he/she did not have an IPA, whereas nothing in the decision indicates that the applicant was even questioned about the application of the IPA. For example, the CNDA considered that "the applicant did not prove that the authorities

[91] The Court also recalled that the application of an IPA to deny protection was only a possibility and not an obligation. The Constitutional Court added that an application can only be rejected on this ground when two conditions are fulfilled, on the one hand, the applicant "*has no well-founded fear of being persecuted or of suffering serious harm in that part of the country*" and it is "*reasonable to consider that she/he can stay there*". The Constitutional Court also clarified that, "*in cases where the law foresees that protection may be provided by international or regional organizations [present in this part of the territory], it is up to the OFPRA and, where applicable, the [CNDA] to assess whether those organizations ensure the effective protection of the applicant*" (para.16). Most importantly, the Constitutional Court stated that "according to the law, the OFPRA will assess the application having regard to the general circumstances prevailing in that part of the territory of origin and to the personal circumstances of the applicant [...] as well as to the actor of persecution [...]"; that "*the substance of each application will be examined on an individual basis, having regard to these concrete elements, at the date when the OFPRA takes its decision.*"

[92] The OFPRA internal Note also states that a negative decision based on the application of the IPA should, in its reasoning, clearly identify the specific area for relocation.

could not afford him protection, in particular in case of resettlement in another Algerian region outside of the risky regions".[93] The Court considered, in another case, that "the applicant did not prove that she could not settle in another part of Nigeria than in this region and that she could not avail herself of the protection of the authorities in her city of origin or locally".[94] In the case of an applicant from Guinea, the Court considered that "the applicant did not prove that she could not find protection in any other region of her country of origin".[95]

D. Decision quality.

i. Country of origin information.

In the sample of CNDA decisions, the CNDA rarely refers to country of origin information (COI), even when applying the IPA[96], and the decisions are mainly based on the facts related to the personal situation of the applicant.

Domestic legislation does not explicitly require the state to ensure that "precise and up-to-date information is obtained from relevant sources" (as required by Article 8(2)). When COI is used, it is however generally up to date.

In some decisions, the CNDA uses COI to qualify a situation of generalized violence/armed conflict and to consider that an IPA does not exist.[97] On the other hand, in some decisions, the CNDA uses COI to qualify a situation of generalized violence/armed conflict, but does not use any COI to consider that the IPA can be applied.[98] As already mentioned, in the sample of CNDA decisions applying the IPA, a region of protection is not always identified.

At OFPRA level, in theory, if the IPA was to be applied, the applicant would be invited to a second interview (like for exclusion clauses) where he/she could challenge the intention of the OFPRA to apply the IPA, including the COI presented. If OFPRA decisions were to apply the IPA on the basis of COI, the applicant or his/her lawyer could challenge the COI in his/her appeal before the CNDA.

When COI is used in CNDA decisions, it does not appear from the sample decisions that the applicant/lawyer was able to challenge the COI during the hearing. This raises the issue of the due hearing of the parties at CNDA level.

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[93] CNDA, 09.01.2013 (ALG05M).
[94] CNDA, 2.09.2010 (NIG21F).
[95] CNDA, 19.07.2010 (GUI27FVUL).
in CNDA, 7.03.2011 (AFG15M) and in CNDA, 8.02.2011 (AFG16M), the Court considered that "it was not proven that the applicant, who was threatened by the Talibans, could not find refuge in other parts of the Afghan territory controlled by the legal authorities of the country, in particular in Kabul where he has already lived";
in CNDA, 18.01.2011 (NIG20M), the Court considered that "the applicant did not prove that he could not stay in his region of origin nor the threats he faced in this region. He did not prove either that he could not have access to a protection within the meaning of Article L.713-3 Ceseda";
in CNDA, 17.05.2011 (GHA26M), the Court considered that "the applicant did not prove that he would not have a protection in Kumasi, his native town where he partly used to work";
in CNDA, 27.04.2010 (RUS30F), the Court considered that "the applicant did not prove that she could not avail herself of the protection of the Russian authorities in another part of the Russian Federation territory than in the Republic of Daghestan".
[96] Except in CNDA, 17.05.2011 (GHA26M)
[97] CNDA, 24.10.2012 (SOM07MSP); CNDA, 24.07.2012 (SOM08FSPVUL); CNDA, 08.12.2011 (SOM09FSPVUL); CNDA, 28.02.2012 (SOM10MSP); CNDA, 30.08.2012 (SOM29MSP); CNDA, 2.09.2011 (AFG56MSPVUL); CNDA, 20.06.2012 (AFG54MSP); CNDA, 3.06.2011 (AFG17MSPVUL).
[98] CNDA, 17.12.2012 (DRC04M); CNDA, 7.03.2011 (AFG15M); CNDA, 8.02.2011 (AFG16M).

CNDA decisions do not mention whether the applicant had the opportunity to contest or comment on this issue, including the use of COI. At present time and based on the research sample, the applicant or lawyer would not be made aware in advance of the hearing of the application of the IPA, and *a fortiori* the applicant would not know which COI the CNDA would be relying on.

ii. Templates, Guidance and Training.

In the interview ***template*** used by OFPRA caseworkers, there is no specific reference to the IPA. If this issue is raised during the interview, it would be included in Part V. Grounds for the application ('*V. Motifs de la demande'*). At CNDA level, there is no template for the hearing and no transcript or recording of the hearing. Even if the issue of the IPA was raised during the hearing, it would not be systematically mentioned in the CNDA decision.

Guidelines/Trainings: According to the interview with the OFPRA, caseworkers ('*officiers de protection'*, or protection officers) are trained on the notions of actors of protection and IPA as part of their general initial training (including on the basis of EASO training modules), but do not devote particular time to these notions compared to other aspects of international protection. According to the interview with the CNDA, caseworkers ('*rapporteurs'*) are trained on the concepts of actors of protection and IPA as part of their general initial training (one month), but do not devote much time to these notions compared to other issues. OFPRA has internal notes relevant to the IPA.

The lack of methodology on the IPA for CNDA caseworkers and judges is obvious from the sample of CNDA decisions which consider and/or apply the IPA. At a formal level, terminology differs from one decision to the other and referencing the relevant provision is not a systematic practice.[99] The reasoning of the Court is different from one decision to the other and is more or less developed according to the cases/judges.[100]

According to the interview with the OFPRA, ***UNHCR Guidelines*** are well known by the OFPRA. In the sample of CNDA decisions, no decision refers to UNHCR Guidelines on the IPA. One decision refers to UNHCR Guidelines on blood feuds (presumably *UNHCR Position on Claims for Refugee Status Under the 1951 Convention relating to the Status of Refugees Based on a Fear of Persecution Due to an Individual's Membership of a Family or Clan Engaged in a Blood Feud*, as the references are not cited).[101] One decision refers to *UNHCR Eligibility Guidelines for Assessing the International Protection Needs of Asylum-seekers from Colombia* from 27 May 2010.[102]

[99] This also explains why the selection of CNDA decisions by keywords and/or legal provision was difficult. Furthermore, it cannot be totally excluded that some CNDA decisions consider/apply the IPA without quoting any related terms or legal provisions.
[100] The lack of harmonization/uniformity is also due to the great number of judgment groups at the CNDA and the very high number of decisions which are taken each year. Apart from the issue of IPA, efforts to improve the reasoning of the CNDA decisions may however be noted, in particular in the analysis of situations of generalized violence/armed conflict with reference to COI and ECtHR judgments.
[101] CNDA, 27.02.2012 (AFG14MFRS).
[102] CNDA, 19.11.2012 (COL50MRSVUL).

VI. National Recommendations.

These recommendations are considered particularly relevant to the French context and are complementary to the general recommendations provided in the APAIPA comparative report.

- If the State makes use of the concept of Actor of Protection, it must do so with careful regard to international law, and must rigorously follow the guidance provided in Article 7 of the Recast Qualification Directive and in the –forthcomming- French legislation. In particular, the authority should demonstrate that the applicant can effectively be protected by a specific actor of protection and will have access to protection and that the protection is not temporary.

- The French eligibility authorities need not to consider the IPA at all. If they make use of the concept of IPA, they must do so with careful regards to international law, and must rigorously follow the guidance provided in the recast Qualification Directive and in Article L.713-3 Ceseda and relevant case law from the Constitutional Court. Due regard must also be paid to UNHCR guidelines on the Internal Flight Alternative.

- As indicated by the Constitutional Court, the authority conducting the assessment bears the burden of establishing each element of the IPA.[103] While the applicants may be expected to cooperate in this assessment, they should not bear the burden of proving that the IPA is not feasible or that any element required to apply it is missing.

- If the IPA is proposed or applied, the authority conducting the assessment must indicate a specific location within defined boundaries. This location must be a substantial part of the territory of the country of origin,[104] and be easily identifiable by the applicant.

- If the IPA is to be considered, the applicant must be promptly made aware of this possibility, be provided with information explaining the concept and its significance, either in written form or through their legal representative, or both and given the opportunity to present evidence and arguments against it.

- If the IPA is considered, it should only occur once a well-founded fear of persecution or a real risk of serious harm has been established in at least one part of the country of origin.

[103] Consitutional Court, Court (Conseil Constitutionel), 4 December 2004 (Decision n° 2003-485 DC), Official Journal (Journal official) of 11 décembre 2003, p. 21085 ff, para 17.
[104] Consitutional Court (Conseil Constitutionel), 4 December 2004 (Decision n° 2003-485 DC), Official Journal (Journal official) of 11 décembre 2003, p. 21085.

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