

## Conseil d'État

**N° 412462**

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Mentioned in the tables of the Lebon reports

**2d - 7th chambers assembled**

Mr Francois Weil, reporter [*rapporteur*]

Mr Xavier Domino, public reporter [*rapporteur public*]

**Reading of Wednesday 11 April 2018**

FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

### Integral Text

Given the following procedure:

By way of a motion and a brief in reply, registered on 16 July 2017 and 2 January 2018 at the secretariat of the litigation section of the Conseil d'Etat, Mrs B...A... asks the Conseil d'Etat:

1°) to annul for abuse of power the decree of 20 April 2017 refusing her the acquisition of the French nationality;

2°) to charge to the State the sum of 1 500 euros pursuant to article L. 761-1 of the code of administrative justice.

Given the other documents in the file;

Given:

- the European convention on human rights and fundamental freedoms;
- the civil code;
- the statute of 9 December 1905 concerning the separation of the Churches and of the State;
- the code of administrative justice;

After having heard in a public session:

- the report of Mr François Weil, councillor of State [*conseiller d'Etat*],
- the arguments [*conclusions*] of Mr Xavier Domino, public reporter,

1. Considering that according to the terms of article 21-2 of the civil code: “The foreigner or stateless person who contracts into marriage with a spouse of French nationality may, after a delay of four years starting from the marriage, acquire the French nationality by means of declaration on condition that on the date of this declaration the commonality of life [*communauté de vie*] both affective and material has not ceased between the spouses since the marriage and that the French spouse has maintained his or her nationality”; that according to the terms of article 21-4 of the same code: “The Government may object by way of decree in the Conseil d’État, for indignity or failure of assimilation, other than linguistic, to the acquisition of the French nationality by the foreign spouse within a delay of two years starting from the date of the receipt contemplated in the second paragraph of article 26 (...)”;

2. Considering that it emerges from the documents in the file that Mrs B...A..., Algerian citizen, has married a French citizen on 27 May 2010 in Nedrona (Algeria); that, on 30 July 2015, she has entered a declaration of acquisition of the French nationality by reason of this marriage; that, on 24 June 2016, during the welcoming ceremony into the French nationality organized at the administrative headquarters [*préfecture*] of the Isère, Mrs A... has refused to shake the hand of the secretary-general of the administrative headquarters and that of an elected official from a municipality [*commune*] of the department who had come to welcome her; that she, thereafter, indicated that this refusal was motivated by her religious convictions; that, under these circumstances, the Prime minister objected to the acquisition of the French nationality by way of a decree of 20 April 2017, for the motive that the behaviour of the concerned party precluded that she could be regarded as assimilated to the French community; that Mrs A... asks the annulment for abuse of power of this decree;

3. Considering, in the first place, that it emerges from the documents in the file that the contested decree was taken before the expiry of the delay of two years allowed by the provisions of article 21-4 of the civil code; that it could not, therefore, be regarded as carrying forfeiture of nationality;<sup>1</sup> that Mrs A... cannot consequently usefully assert that the provisions that it applies and the facts on which it rests are not of a nature as to permit to pronounce such a forfeiture;

4. Considering, in the second place, that just as has been said, during the welcoming ceremony into the French nationality organized at the administrative headquarters of the Isère, Mrs A... has expressly refused to shake the hand of the secretary-general of the administrative headquarters and that of an elected official from a municipality of the department having come to welcome her; that by assessing that such a behaviour, in a place and at moment symbolic, revealed a failure of assimilation, the Prime minister has not made an inexact application of the provisions of article 21-4 of the civil code;

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<sup>1</sup> According to Article 21-4, §3 of the French Civil Code the Government’s objection entails that the party concerned is deemed never to have acquired the French nationality.

5. Considering, in the third place, that the contested decree has neither for object nor for effect to encroach upon the religious freedom of the person concerned; that, therefore, it ignores neither article 1 of the statute of 9 December 1905 concerning the separation of the Churches and of the State nor the terms of article 9 of the European convention on human rights;

6. Considering that it results from what precedes that Mrs A... is not well-founded to ask for the annulment of the decree that she contests; that the arguments that she submits pursuant to article L. 761-1 of the code of administrative justice can only, consequently, be rejected;

D E C I D E S:

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Article 1st: The motion of Mrs A... is rejected;

Article 2: The present decision shall be notified to Mrs B...A... and to the minister of State, minister of the interior.