

CONSEIL D'ÉTAT
ruling as the
Supreme
Administrative Court

Nos 508947, 508948

FRENCH REPUBLIC

ON BEHALF OF THE FRENCH PEOPLE

GROUPE D'INFORMATION ET DE
SOUTIEN DES IMMIGRÉ.E.S
ASSOCIATION and others

Ms Amélie Fort-Besnard
Reporting Judge (Rapporteure)

The Conseil d'État, ruling as the Supreme Administrative
Court
(Litigation Section, 2nd and 7th Chambers combined)

Mr Clément Malverti
Consultant Judge (Rapporteur public)

Based on the report of the 2nd Chamber
of the Litigation Section

Session of 10 December 2025
Decision of 30 December 2025

Having regard to the following proceedings:

I – Under no 508947, by an application and five new statements of case, registered on 10, 13, 14 and 15 October and on 2 and 8 December 2025 with the Litigation Secretariat of the Conseil d'État, the Groupe d'information et de soutien des immigré.e.s (GISTI, Immigrant Information and Support Group), the Association nationale d'assistance aux frontières pour les personnes étrangères (Anafé, National Association for Border Assistance for Foreign Nationals), the Syndicat des avocats de France (French Lawyers' Union), the Association pour la reconnaissance des droits des personnes homosexuelles et trans à l'immigration et au séjour (Ardhis, Association for the Recognition of the Rights of Homosexual and Trans People in Immigration and Residence), the Auberge des migrants (Migrants' Hostel) association, the Salam association, the Dom'Asile association, the Human Rights Observers association, the Accueil Demandeurs d'asile association (ADA, Association for the Reception of Asylum Seekers), the "JRS France – Service Jésuite des Réfugiés" (Jesuit Refugee Service) association, the Ligue des droits de l'Homme (LDH, Human Rights League), La Cimade, the Utopia 56 association, the Médecins du Monde (Doctors of the World) association, the Fédération des associations de solidarité avec tou-te-s les immigré-e-s (FASTI, Federation of Associations of Solidarity with All Immigrants) and the Groupe Accueil et Solidarité (GAS, Welcome and Solidarity Group) association, requested that the Conseil d'État:

1°) quash as ultra vires Decree no 2025-798 of 11 August 2025 publishing the agreement between the Government of the French Republic and the Government of the United

Kingdom of Great Britain and Northern Ireland concerning the prevention of dangerous crossings, signed in London on 29 July 2025 and in Paris on 30 July 2025;

2°) order the State to pay the sum of €5,000 under Article L. 761-1 of the French Code of Administrative Justice.

.....

II – Under no 508948, by an application and five new statements of case, registered on 10 and 14 October 2025, 15 October 2025 at 5.56 p.m. and 10.54 p.m., and on 2 and 8 December 2025 with the Litigation Secretariat of the Conseil d'État, the Groupe d'information et de soutien des immigré.e.s, the Association nationale d'assistance aux frontières pour les personnes étrangères (Anafé), the Syndicat des avocats de France, the Association pour la reconnaissance des droits des personnes homosexuelles et trans à l'immigration et au séjour (Ardhis), the Auberge des migrants association, the Salam association, the Dom'Asile association, the Human Rights Observers association, the Accueil Demandeurs d'asile association (ADA), the "JRS France – Service Jésuite des Réfugiés" association, the Ligue des droits de l'Homme (LDH), La Cimade, the Utopia 56 association, the Médecins du Monde association, the Fédération des associations de solidarité avec tou-te-s les immigré-e-s (FASTI) and the Groupe Accueil et Solidarité (GAS) association requested that the Conseil d'État, ruling under the provisions of Article L. 521-1 of the French Code of Administrative Justice:

1°) suspend the execution of Decree no 2025-798 of 11 August 2025 publishing the agreement between the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland concerning the prevention of dangerous crossings, signed in London on 29 July 2025 and in Paris on 30 July 2025;

2°) order the State to pay the sum of €5,000 under Article L. 761-1 of the French Code of Administrative Justice.

.....

Having regard to the other evidence adduced;

Having regard to:

- the French Constitution;
- Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders;
- the French Code on the Entry and Stay of Aliens and the Right to Asylum;

- the French Code of Administrative Justice;

Having heard, in open court:

- the report by Ms Amélie Fort-Besnard, Master of Petitions,

- the legal opinion of Mr Clément Malverti, Consultant Judge;

Whereas:

1. The Groupe d'information et de soutien des immigré.e.s (GISTI) and others have requested that the Conseil d'État, by two applications which should be joined in order to be ruled upon by a single decision, firstly, quash as ultra vires the Decree of 11 August 2025 publishing the agreement between the Government of the French Republic and the Government of the United Kingdom of Great Britain and Northern Ireland on the prevention of dangerous crossings, signed in London on 29 July 2025 and in Paris on 30 July 2025 and, secondly, ruling pursuant to Article L. 521-1 of the French Code of Administrative Justice, suspend the execution of that decree.

2. Article 53 of the French Constitution provides that: *“Peace treaties, trade treaties, treaties or agreements relating to international organisation, those which commit the finances of the State, those which amend provisions of a legislative nature, those relating to the status of persons, and those involving the cession, exchange or addition of territory may be ratified or approved only by an Act of Parliament. / They shall take effect only after having been ratified or approved. (...)”* Article 55 provides that: *“Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, with respect to each agreement or treaty, to its application by the other party.”*

3. It follows from the combined effect of these provisions that treaties or agreements falling within Article 53 of the Constitution, which have been ratified or approved without having been authorised by legislation, cannot be regarded as having been duly ratified or approved within the meaning of the aforementioned Article 55. It is incumbent upon the Conseil d'État, ruling as the Supreme Administrative Court, in the event of an application to quash as ultra vires a decree publishing a treaty or an agreement, to consider pleas alleging, firstly, defects specific to that decree, and secondly, that, pursuant to Article 53 of the Constitution, the ratification or approval of the international commitment in question should have been authorised by legislation. For the purposes of that article, a treaty or an agreement “amending provisions of a legislative nature” is an international commitment whose stipulations concern matters reserved for legislation by the Constitution or lay down rules differing from those laid down by provisions of legislative form. However, it is beyond the remit of the Conseil d'État, ruling as the Supreme Administrative Court, to rule whether the treaty or the agreement complies with the French Constitution. Nor is it within its remit to rule whether a treaty or an agreement complies with other international commitments entered into by France.

Regarding the pleas alleging that the ratification of the treaty should have been authorised by legislation:

4. The agreement published by the challenged decree establishes, in Chapter II, a procedure for the readmission to France of nationals of third countries outside the European Economic Area who have landed directly in the United Kingdom or who have been intercepted or rescued at sea and brought ashore whilst crossing the Channel and who do not meet, or no longer meet, the conditions for entry, presence or residence in the territory of the United Kingdom. Chapter III of the agreement also provides for the possibility for nationals of third countries present in France to submit an application for a visa to the United Kingdom on a voluntary basis. The number of persons actually readmitted to France and the number of persons actually admitted to the United Kingdom under either of these procedures must be balanced during the implementation period of the agreement.

Concerning the pleas alleging that the stipulations of the agreement lay down rules differing from those laid down by provisions of legislative form:

5. Firstly, Article L. 311-1 of the French Code on the Entry and Stay of Aliens and the Right to Asylum provides that: *“For entry into France, any foreign national must possess: / 1° Unless exempt from this obligation, the visas required by international conventions and by Article 6(1)(a) and (b) of Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code); / 2° Subject to international conventions and Article 6(1)(c) of the Schengen Borders Code, proof of accommodation provided for in Article L.313-1, where required, and other documents provided for by decree of the Conseil d’État relating to the purpose and conditions of stay and to means of subsistence, to the coverage by an approved insurance operator of medical and hospital expenses, including social assistance, which might be incurred in France, as well as guarantees of repatriation; / (...).”* Article L. 332-1 of this same Code provides that: *“A foreign national who does not meet the conditions for admission set out in Title I may be subject to a decision refusing entry. (...)”* These provisions must be regarded as reserving to the regulatory authority the power to derogate from the conditions which they lay down in order to authorise the entry of foreign nationals into France. Consequently, by permitting the entry into France of foreign nationals who do not possess the documents referred to in Article L. 311-1, the stipulations of Article 4 of the agreement do not lay down rules differing from those established by provisions of legislative form.

6. Secondly, although the applicants submit that the agreement published by the challenged Decree provides for the checks referred to in Article L.331-2 of the French Code on the Entry and Stay of Aliens and the Right of Asylum to be carried out solely on United Kingdom territory, thereby laying down a rule differing from that contained in that article, it follows from Article 9(3) of the agreement that it provides for those checks to be carried out upon arrival in France. Accordingly, that plea must be dismissed.

7. Thirdly, the plea alleging that the stipulations of the agreement would lead to the adoption, with regard to minors present in France, of decisions or measures differing from those resulting from Article L.112-4 of the French Code of Social Action and Families, under which: *“The best interests of the child, consideration of his or her fundamental needs — physical, intellectual, social and emotional — as well as respect for his or her rights must guide all decisions concerning him or her”*, is not accompanied by sufficient details to enable the assessment of its merits.

Concerning the pleas alleging that the stipulations of the agreement concern matters reserved for legislation by the French Constitution:

8. Firstly, the stipulations of the agreement imposing an obligation of readmission on France merely allow foreign nationals to enter France without governing the conditions for exercising their constitutionally protected rights or freedoms, and notably the right to a normal family life or the right to seek asylum. Accordingly, contrary to what is argued, they do not lay down rules concerning the fundamental guarantees granted for the exercise of public freedoms in France. Consequently, the applicants cannot claim that these stipulations concern, on these grounds, matters reserved for legislation by the French Constitution.

9. Secondly, whilst the applicant associations contend that the stipulations of Chapter II of the agreement published by the challenged Decree, organising the transfer of nationals of third countries outside the European Economic Area from the United Kingdom to France, imply a deprivation of liberty for the persons concerned during the examination of the request for readmission addressed by the United Kingdom to France and, where applicable, during their transfer, this procedure does not entail, in that respect, any infringement of their personal liberty on French territory. Consequently, the plea alleging that, by organising the forced transfer of foreign nationals from the United Kingdom to France, the agreement published by the challenged Decree infringes the personal liberty of the persons concerned and should therefore, in so far as it concerns a matter for legislation by the Constitution, have been approved by Parliament, must be dismissed.

10. Thirdly, whilst the requirement to protect the best interests of the child implies that minors must benefit from the legal protection afforded to their age – which implies that the rules governing the determination of a person’s age must be accompanied by the necessary legal safeguards to ensure that minors are not wrongly considered to be adults – neither the stipulations of Article 4(2) of the agreement, which state that: “*the obligation of readmission set out in paragraph 1 of this article: / (...) / d. shall not apply to unaccompanied minors*”, nor any other provision of that agreement, provide for the assessment of whether persons present on national territory are minors.

11. Fourthly, the stipulations of Article 9(4) of the agreement merely provide that when a court quashes a transfer decision or orders the return of the person concerned, “*the Parties shall cooperate and take all reasonable measures to organise the return of that person to other Party’s territory*”. Contrary to the applicants’ contention, these stipulations do not lay down any rules regarding the procedures for enforcing court decisions and cannot, therefore, in any event, be regarded as falling within the scope of legislation in this respect.

12. Fifthly, under Article 9(2) of the agreement, persons whose readmission has been accepted shall return to France by air and may be accompanied by United Kingdom officials who are not authorised to use force in France. Contrary to what is argued by the applicants, those stipulations neither have the object nor the effect of authorising British officials to exercise physical coercion over the persons readmitted while they are present on French territory and therefore cannot, in any event, fall within the domain of legislation on those grounds.

13. Sixthly, the plea alleging that Article 13(2) of the agreement concerns a matter reserved for legislation by the Constitution is not supported by sufficient details to enable the assessment of its validity.

Regarding the pleas alleging that the agreement published by the challenged Decree infringes the French Constitution, the European Convention for the Protection of Human

Rights and Fundamental Freedoms, the Convention on the Rights of the Child, the Treaty on the Functioning of the European Union and Regulation (EU) 2016/399 of the European Parliament and of the Council of 9 March 2016 establishing a Union Code on the rules governing the movement of persons across borders:

14. As stated in point 3, it is beyond the remit of the Conseil d'État, ruling as the Supreme Administrative Court, to rule whether the agreement published by the challenged Decree complies with the Constitution. Nor is it within its remit to rule whether a treaty or an agreement complies with other international commitments entered into by France. Accordingly, the pleas put forward on those grounds are ineffective and must therefore be dismissed.

15. It follows from all of the foregoing that the applicants are not entitled to request that the decree they are challenging be quashed. Accordingly, their application no 508947 seeking the quashing of the Decree of 11 August 2025 must be dismissed, including the submissions made under Article L.761-1 of the French Code of Administrative Justice, and their application no 508948 seeking suspension of the execution of the same Decree has become devoid of purpose.

OPERATIVE PROVISIONS:

Article 1: Application no 508947 of the association GISTI and others is dismissed.

Article 2: There is no need to rule on application no 508948 of the GISTI association and others.

Article 3: The Groupe d'information et de soutien des immigré.e.s, as the first named applicant, the Prime Minister, the Minister for Europe and Foreign Affairs and the Minister of the Interior shall be notified of this decision.

Decision made following deliberations at the session held on 10 December 2025 at which sat: Mr Pierre Collin, Deputy President of the Litigation Section, presiding; Mr Olivier Japiot and Mr Alain Seban, Chamber Presidents; Mr Gilles Pellissier, Mr Jean-Yves Ollier, Mr Frédéric Gueudar Delahaye and Mr Pascal Trouilly, State Councillors; Mr Jérôme Goldberg, State Councillor in extraordinary service, and Ms Amélie Fort-Besnard, Master of Petitions-Reporting Judge.

Handed down on 30 December 2025.

The Presiding Judge:
Signed: Mr Pierre Collin

The Reporting Judge:
Signed: Ms Amélie Fort-Besnard

The Secretary:
Signed: Ms Sandrine Mendy