



# The Revocation of Huguenot Rights to French Citizenship

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# The Revocation of Huguenot Rights to French Citizenship

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**SUMMARY** The 1685 revocation of the Edict of Nantes deprived French Protestants, otherwise known as the Huguenots, of all religious and civil liberties. This led to the widespread persecution of Huguenots, and over 400,000 emigrated from France as a result. Religious freedom was re-established during the French Revolution, and a 1790 law provided that descendants of French individuals who had fled the country due to religious persecution had a right to settle in France and claim French citizenship. This rule, confirmed in a slightly amended form in 1889, remained applicable until 1945, when the French Citizenship Code abrogated almost all prior legislation on the matter of citizenship, including the laws of 1790 and 1889.

The 1945 French Citizenship Code was adopted by way of an *ordonnance*, which is, in this context, an act of delegated legislation. The French Constitution allows, under certain conditions, the executive branch to legislate in lieu of Parliament. These acts of legislation, which are subject to both prior authorization and later confirmation by Parliament, are called *ordonnances*. Once an *ordonnance* has been ratified or confirmed by Parliament, it becomes the equivalent of a law. An *ordonnance* may amend or entirely abrogate prior legislation.

The concept of delegated legislation has existed in France for a long time, under different names. However, the 1945 *ordonnance* that instituted the then-new French Citizenship Code never authorized by Parliament, because France had no Parliament to speak of between July 1940 and October 1945. It does not appear that the legality and legitimacy of the *ordonnances* of 1945 were ever challenged, and French courts treat them as a valid exercise of legislative authority. The 1945 *ordonnance* which abrogated the right to French citizenship for descendants of Huguenots should therefore be seen as a valid piece of legislation under French law.

This report is in response to a request concerning foreign Huguenot rights to French citizenship and the revocation of France's 1889 Nationality Law.

## I. Huguenot Rights to French Citizenship

In 1685, King Louis XIV revoked the 1598 Edict of Nantes, which had guaranteed a large measure of religious liberty to the Huguenots, France's protestant population.<sup>1</sup> This revocation deprived Protestants of all religious and civil liberties, and led to the persecution and emigration of over 400,000 Huguenots.<sup>2</sup>

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<sup>1</sup> Encyclopaedia Britannica, *Edict of Nantes*, <https://perma.cc/U4JD-4Z65>.

<sup>2</sup> Id.

The French Revolution saw the re-establishment of religious freedom in France. The 1790 Law Regarding the Property of Religious Fugitives sought to redress past persecutions.<sup>3</sup> Among other measures, this law provided that:

All persons born in a foreign country who are descendants, to any degree, of a French man or French woman who was expatriated for religious reasons, are declared French, and shall enjoy the rights [of citizenship] if they return to France, establish their domicile in France and take the civic oath.

Sons shall be able to exercise this right, without the consent of their father, mother, or grandparent, only if they are adults or have all of their rights.<sup>4</sup>

A similar provision was included in the Constitution of 1791.<sup>5</sup> The Constitution of 1791 was short-lived, but the Law of Dec. 15, 1790, remained in force for many decades. It was confirmed, with a slight amendment, by the Law of June 27, 1889, on Nationality. Indeed, this law provided that “the descendants of families proscribed by the revocation of the Edict of Nantes shall continue to benefit from the provisions of the Law of Dec. 15, 1790, but on condition of a special decree for each petitioner.”<sup>6</sup>

The right of the descendants of Huguenots to acquire French citizenship was revoked in 1945, however. Although the 1945 French Citizenship Code did not specifically address the matter of French Huguenots, it abrogated almost all prior legislation on the matter of citizenship, including the above-mentioned laws of 1790 and 1889.<sup>7</sup>

## II. The Legal Status of *Ordonnances*

The French legal term *ordonnance* may refer to one of two things: an act of delegated legislation, or a type of order issued by a judge or court.<sup>8</sup> The latter is not relevant to the present question, so the following discussion will pertain to the legislative act.

The French Constitution allows, under certain conditions, the executive branch to issue *ordonnances* to legislate in lieu of Parliament.<sup>9</sup> For this to happen, the Parliament must give prior authorization to the executive to legislate on the topic in question, and the Parliament must also

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<sup>3</sup> Loi du 15 décembre 1790 relative aux biens des Religioneux fugitifs, in *Lois et Actes du Gouvernement*, Vol. 2, October 1790 - February 1791 (1806), p. 242, <https://perma.cc/BRY8-37R7>.

<sup>4</sup> Id. art. 22.

<sup>5</sup> La Constitution du 3 septembre 1791, art. 2, <https://perma.cc/SS4S-SCF6>.

<sup>6</sup> Loi du 27 juin 1889 sur la nationalité, art. 4, *Journal Officiel de la République Française* [J.O.] [Official Gazette of France], No. 172, June 28, 1889, pp. 2977-78, <https://perma.cc/B95D-PPES>.

<sup>7</sup> Ordonnance n° 45-2441 du 19 octobre 1945 portant code de la nationalité française, Oct. 19, 1945, art. 152, <https://perma.cc/582C-R43X>.

<sup>8</sup> Serge Braudo, Dictionnaire de Droit Privé, *Définition de: Ordonnance*, <https://perma.cc/2C9J-HCHS>

<sup>9</sup> Constitution du 4 octobre 1958, version consolidée au 01 octobre 2019, art. 38, <https://perma.cc/CB33-BJPH>.

ratify the *ordonnance* after it has been issued.<sup>10</sup> An *ordonnance* comes into force as soon as it has been published, but it will lapse if it is not ratified by the Parliament within the time frame specified in the initial authorization law.<sup>11</sup> Once an ordinance has been ratified by Parliament, it becomes the equivalent of a law.<sup>12</sup> During the time between its publication and its ratification, an *ordonnance* is technically considered to be a regulation (*règlement*).<sup>13</sup> However, the authorization law may exempt an *ordonnance* from some general legal principles that ordinarily apply to regulations, such as subordination to prior legislation.<sup>14</sup> Therefore, an *ordonnance* may amend or entirely abrogate prior legislation.

The current concept of *ordonnance* is founded on the Constitution of 1958, but it appears that similar systems of delegation of legislative power were common before 1958 as well. Under the Third Republic (1870 – 1940), the parliament would allow the executive to legislate on specific matters and for limited periods through the use of decrees-laws (*décrets-lois*).<sup>15</sup> In theory, the 1946 Constitution prohibited Parliament from delegating legislative power.<sup>16</sup> However, from 1948 onwards, the practice of delegating legislative power was resurrected through the use of framework laws (*lois-cadres*), by which the Parliament would define general policy principles on a certain matter, and leave it to the executive to determine the details by decrees.<sup>17</sup>

### III. The *Ordonnances* of 1945

The *ordonnances* of 1945, including Ordonnance n° 45-2441 du 19 octobre 1945 portant code de la nationalité française, were clearly meant to have the force of law. Indeed, article 164 of Ordonnance n° 45-2441 du 19 octobre 1945 states that it shall be “executed as law.”<sup>18</sup> But while there appears to be a long tradition of the French Parliament delegating legislative power to the executive, the *ordonnances* of 1945 are unusual cases. These *ordonnances* were issued by the Provisional Government of the French Republic (*Gouvernement provisoire de la République française*) shortly after the end of World War II and were not founded on a delegation of power from Parliament.

The prewar Parliament had essentially dissolved itself when it delegated all powers to Marshal Philippe Pétain in 1940, and the first postwar parliamentary elections occurred on October 21,

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<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.; *Qu'est-ce qu'une ordonnance?* Vie-publique.fr (June 30, 2018), <https://perma.cc/S546-3J67>.

<sup>13</sup> Sénat, *Les ordonnances prises sur le fondement l'article 38 de la Constitution* (Feb. 2014), p. 43, <https://perma.cc/5P6L-CCEH>.

<sup>14</sup> Id. at 49.

<sup>15</sup> Martin Rogoff, *French Constitutional Law* (2011), p. 100; Dominique Chagnollaude, *Droit constitutionnel contemporain* (2013), vol. 2, p. 71.

<sup>16</sup> Constitution de 1946, art. 13, <https://perma.cc/7DUZ-TG39>.

<sup>17</sup> Chagnollaude, pp. 84-85.

<sup>18</sup> Ordonnance n° 45-2441 du 19 octobre 1945, art. 164.

1945.<sup>19</sup> France therefore had no Parliament to speak of during that period. Rather, it appears that the Provisional Government, and the French Committee of National Liberation (*Comité français de la Libération nationale*) before it, exercised both executive and legislative powers in the name of Free France during this time period.<sup>20</sup> The Vichy regime (July 10, 1940 – August 20, 1944) was declared illegitimate, and “all the constitutional, legislative and regulatory acts” of the Vichy government were declared null and void.<sup>21</sup>

The *ordonnances* of 1945, and indeed all of the legislative acts of the French Committee of National Liberation and of the Provisional Government of the French Republic, do not appear to rest on any higher constitutional authority. Rather, it appears that these acts derive their legitimacy from the fact that they were issued by General Charles de Gaulle’s Free French government, which was recognized as the legitimate government of France by both the Allied powers and the French resistance groups.

I was unable to find any indication that the legality and legitimacy of the Provisional Government’s *ordonnances* were ever challenged. When discussing them, French courts appear to take it as a given that they constituted a valid exercise of legislative authority. For example, in a 2013 decision, the Cour de cassation (the French supreme court for civil law matters) found that the citizenship rules of the Ordonnance of Oct. 19, 1945, were applicable to a person born in 1946.<sup>22</sup> Additionally, in a decision from October 2018, the Constitutional Court (*Conseil constitutionnel*, the supreme jurisdiction over French constitutional questions) stated that “Article 1 of the Law of Aug. 10, 1927, was abrogated by Article 2 of the Ordonnance of Oct. 19, 1945, mentioned above.”<sup>23</sup> Another decision, from 2014, analyzes a provision of the Ordonnance n° 45-2441 du 19 octobre 1945 and refers to its drafters as legislators: “as it was phrased in the Ordonnance of 19 October 1945, Article 87 of the Nationality Code reprised a rule by which a French adult who voluntarily acquires a foreign nationality would in principle lose his/her French nationality; that by adopting such a rule, the legislator intended to avoid double nationalities . . . .”<sup>24</sup>

In light of the above, one may confidently affirm that Ordonnance n° 45-2441 du 19 octobre 1945 is recognized as a valid piece of legislation under French law, equal in normative status to a law.

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<sup>19</sup> Loi constitutionnelle du 10 juillet 1940, July 10, 1940, <https://perma.cc/K3ZP-79K9>; Ordonnance n° 45-1836 du 17 août 1945, instituant une consultation du peuple français par voie de référendum et fixant le terme des pouvoirs de l'Assemblée consultative provisoire, Aug. 17, 1945, art. 1, <https://perma.cc/6CMB-82BG>

<sup>20</sup> Ordonnance du 3 juin 1943 portant institution du Comité français de la Libération nationale, June 3, 1943, <https://perma.cc/7SZP-Q4N3>; Ordonnance du 3 juin 1944 substituant au nom du Comité français de la Libération nationale celui de Gouvernement provisoire de la République française, June 3, 1944, <https://perma.cc/J7U8-PQKV>.

<sup>21</sup> Ordonnance du 9 août 1944 relative au rétablissement de la légalité républicaine sur le territoire continental, Aug. 9, 1944, <https://perma.cc/7F57-95QG>.

<sup>22</sup> Cass., 1e civ., Dec. 4, 2013, No. 12-30195, <https://perma.cc/S6QQ-C7AR>

<sup>23</sup> *M. Jaime Rodrigo F.*, Conseil constitutionnel [CC] [Constitutional Court], decision No. 2018-737 QPC, Oct. 5, 2018, <https://perma.cc/9WFM-8PL9>.

<sup>24</sup> *Mme Jalila K.*, Conseil constitutionnel [CC] [Constitutional Court], decision No. 2013-360 QPC, Jan. 9, 2014, <https://perma.cc/6JZT-YBVE>

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Consequently, the revocation of the laws of 1790 and 1889 by Ordonnance n° 45-2441 du 19 octobre 1945 should also be recognized as valid under French law.