



## Case 2009-584 DC

C. C., n°2009-584 DC, 16 July 2009

**Country:** France

**Region:** Europe

**Year:** 2009

**Court:** Conseil constitutionnel [Constitutional Council]

**Health Topics:** Health care and health services, Health information, Health systems and financing, Hospitals, Medicines, Mental health

**Human Rights:** Right to health

### Facts

This case concerned a constitutional challenge to Articles 1, 10, 23, 84, 91 and 133 of law no. 2009-879 of July 21 2009, Loi portant réforme de l'hôpital et relative aux patients, à la santé et aux territoires (Law reforming hospitals and relating to patients, health and the territories) (the Law) in the Conseil Constitutionnel. The challenge was initiated before the proposed laws came into force.

The challenged provisions related to the following:

Participation of private health institutions in the public health system: The public health code allowed both public and private health institutions to be called upon to carry out any of the 14 roles of health services.

Placing public health centers under the control of regional health agencies: Article L 6143-7-2 of the public health code and article 3 of the law of January 9 1986 gave the director general of a regional health agency the power to name the directors of public health centers. Furthermore, article L 6131-2 of the public health code permitted the director general of the regional health agency to punish public health institutions with reduced funding if they did not participate in coordinated activities.

Restrictions on nominations to directorships of public health institutions: Article 1 of the Law established that those who were not qualified to work as public servants were not eligible for employment as directors of public health institutions or social/socio-medical institutions.

Permitting the pharmaceutical industry to participate in therapeutic education programs for patients.

Increased education requirement for psychotherapist licensing: Article 91 of the Law was modified to require that a person gain a medical doctorate or masters degree in psychology or psychotherapy in order to be registered as a psychotherapist or have access to training programs.

&nbsp;

### Decision and Reasoning

The Council held that the participation of private health institutions in the public health system was not a violation of the right to equality (article 6, Declaration of the Rights of Man and the Citizen). In carrying out those roles, both categories of health services providers were required to provide equal and continuous access to quality health care and services and to use minimum standardized service fees for all patients. It was held that any integration of private health service providers into the public health system would not prevent equal access to health care simply because private health service providers could choose what services they provided. Nowhere did the Constitution require that private health institutions within the public health sector provide every health service that should be offered to the public. Notably, where private health providers could not provide necessary services, they were required to arrange for continued care at another institution. Accordingly, the participation of private health establishments in the public health sector did not violate the 11th paragraph of the Preamble to the 1946 Constitution relating to the protection of health, nor did it violate the principle of continued service to the public.

The Council held that the power given to regional health agencies over public health institutions did not limit autonomy or violate the constitutional principle of freedom of contract. It was found that no constitutional exigency guaranteed autonomy of management of public health institutions. In addition, the powers of regional health agencies did not pose a threat to the freedom to contract.

The Council held that the restrictions on nominations for the position of public health center director did not

violate the principle of equal access to employment. Article 6 of the Declaration of the Rights of Man and the Citizen states that all citizens must be afforded the opportunity to work at all places of employment based solely on their virtues and talents. It was held that the principle of equal access to public employment did not prohibit the legislature barring those lacking the qualifications to work as civil servants from nomination for the position of director of a public health institution.

The Council held that permitting the pharmaceutical industry to engage in therapeutic education programs for patients did not violate the right to the protection of health. The legislature had limited the use of the direct and indirect contribution of private enterprise in the financing of therapeutic education programs by subjecting those funds to conditions created by articles L 1161-1 to L 1161-4 of the Public Health Code.

The Council held that the restriction on psychotherapist licensing did not limit freedom of enterprise or violate the principle of equality before the law. It was permissible for the legislature to limit the freedom of enterprise required where the interests of the general population justified their actions and where such measures were not disproportionate relative to the issues involved. In addition, the principle of equality did not require the legislature to treat different situations in the same manner when the difference in treatment was in the interest of society. In reserving access to training and the right to use the title of psychotherapist to those who had a doctorate in medicine or a masters in psychology, the legislature struck an appropriate balance between freedom of enterprise, the principle of equality and the requirements of the 11th paragraph of the preamble to the constitution of 1946 relating to the protection of health.

### Decision Excerpts

« 4. Considérant, en premier lieu, qu'aucune exigence constitutionnelle n'impose aux établissements de santé privés exerçant des missions de service public d'assurer toutes les missions de service public susceptibles d'être confiées à un établissement de santé ; »

« 9. Considérant qu'aucune exigence constitutionnelle ne garantit l'autonomie de gestion des établissements publics de santé ; qu'en outre, les pouvoirs de l'agence régionale de santé ne portent, par eux-mêmes, aucune atteinte à la liberté de contracter de ces établissements ; que, dès lors, les griefs invoqués manquent en fait ; »

« 27. Considérant que les personnels exerçant leurs fonctions dans des services dont l'activité est transférée aux agences régionales de santé à la date de ce transfert sont dans une situation différente de celle des autres personnels ; que le législateur a donc pu, sans méconnaître le principe d'égalité, prévoir leur affectation dans ces agences sans modifier leur situation statutaire ou contractuelle antérieure ; »