

Decision n° 2015-470 QPC of 29 May 2015

(SAUR SAS Society)

The Constitutional Council was seized on 25 March 2015 by the Court of Cassation (first civil chamber, judgment n°446, on the same day), within the conditions provided by article 61-1 of the Constitution, for a priority question of constitutionality submitted for the SAUR SAS society, by Christophe Cabanes, attorney at the Paris bar, relative to the conformity of rights and freedoms guaranteed by the Constitution in the last sentence of the third paragraph of article L. 115-3 of the Social Action and Family Code, registered with the general secretary of the Constitutional Council under number 2015-470 QPC.

THE CONSTITUTIONAL COUNCIL,

Considering the Constitution;

Considering the modified decree n°58-1067 of 7 November 1958 establishing an organic law on the Constitutional Council;

Considering the Social Action and Family Code;

Considering Law n°2007-290 of 5 March 2007 establishing an enforceable right to housing and different measures in favour of social cohesion;

Considering Law n°2013-312 of 15 April 2013 aimed at preparing the transition towards a low energy system and establishing different provisions on the pricing of water and on wind turbines;

Considering the regulation of 4 February 2010 on the procedure to be followed before the Constitutional Council in cases of priority questions of constitutionality;

Considering the observations produced for the claimant company by Mr. Cabanes, registered on 14 April and 4 May 2015;

Considering the observations produced by the Prime Minister, registered on 16 April 2015;

Considering the observations produced for the *Fondation France Libertés* and Mr. Arnaud C., defence parties, by Mr. Alexandre Faro, attorney at the Paris bar, registered on 16 and 29 April 2015;

Considering the documents submitted and attached to the case;

Mr. Cabanes for the claimant company, Mr. Faro for the defence parties and Mr. Xavier Pottier, designated by the Prime Minister, having been heard at the public audience of 19 May 2015;

The rapporteur having been heard;

1. Considering that as provided by the first sentence of the third paragraph of article L. 115-4 of the Social Action and Family Code, in its form emanating from the Law of 15 April 2013 aforementioned, it is prohibited, from 1 November of each year to 15 March of the following year, for the electricity, heating and gas providers to interrupt, in a main residence, for reasons of non-payment of bills, the provision of electricity, heating or gas; that pursuant to the last sentence of the third paragraph of article L. 115-3, in its form emanating from the Law of 5 March 2007 aforementioned: “These provisions apply to water providers for the provision of water all year long”;

2. Considering that, according to the claimant company, the provisions of the last sentence of the third paragraph of article L. 115-3 of the Social Action and Family Code infringe excessively, on the one part, on contractual freedom and entrepreneurial freedom and, on the other part, on equality before the law and public spending principles; that furthermore, they disregard the law’s objectives of accessibility and intelligibility;

- ON THE GRIEVANCES EMANATING FROM THE INFRINGEMENT OF CONTRACTUAL FREEDOM AND ENTREPRENEURIAL FREEDOM:

3. Considering that the claimant company contends that the contested provisions, which prohibit water providers from interrupting the provision of service for reasons of default of payments, even outside of the winter period, without providing for compensation and without this general and absolute prohibition being justified by the instability of users, are not justified by a general interest motive and as such, misinterpret contractual freedom and entrepreneurial freedom;

4. Considering that the legislator is free to add to entrepreneurial freedom and contractual freedom, ensuing from article 4 of the 1789 Declaration on the Rights of Man and Citizens, limitations related to constitutional requirements or justified by general interest, on the condition that it does not result in disproportionate infringements with regard to the pursued objective;

5. Considering that the legislator cannot violate legally contracted contracts except if justified by a general interest motive, without misinterpreting the obligations ensuing from articles 4 and 15 of the Declaration of 1789;

6. Considering that it results from the first, tenth and eleventh paragraphs of the Preamble of the 27 October 1946 Constitution that the possibility for any person to benefit from adequate housing is an objective of constitutional value;

7. Considering, firstly, that by prohibiting the water providers to interrupt the provision of water in any main residence at any time of the year for reasons of non-payment of bills, the legislator wished to guarantee access to water to any person

occupying such residences; that by not limiting this prohibition to a certain period of the year, the legislator wished to guarantee this access throughout the year; that by providing for this prohibition to be imposed whatever the situation of the contract holder may be, it wished, as documented by the *travaux préparatoires* of the Law of 15 April 2013 aforementioned, to ensure that no person in an unstable situation would be deprived of water; that the legislator, by guaranteeing under these circumstances access to water, which is an essential human need, has thus pursued the constitutionally valued objective of the possibility for all to benefit from adequate housing;

8. Considering, secondly, on one part, that results from the provisions of section 2 of chapter IV, title II, book II of the second part of the general code of territorial collectivities, that the distribution of drinking water is an industrial and commercial public service within the municipality's jurisdiction; that this public service is operated directly, is leased or is conceded to companies in the context of delegations of a public service; that the user of this public service does not choose its provider; that the water provider cannot refuse to contract with a user connected to the network it operates; that when a public service is ensured by a subcontractor, the contract between him and the user is compliant with the delegation agreement; that the pricing rules for the provision of drinking water are governed by law; that thus, the water providers operate in a regulated market; that furthermore, the contested provision is a derogation of the non-execution exception of the water provision contract which does not prevent the provider from recovering the debts incurred by the unpaid bills; that as a result of the aforementioned, the infringement upon contractual freedom and entrepreneurial freedom resulting from the prohibition of interrupting the provision of water is not patently disproportionate to the objective pursued by the legislator;

9. Considering, on the other part, that to implement this constitutionally valued objective, the legislator could, without excessively infringing upon the legally concluded contracts, modify, including for ongoing agreements, the legal framework applicable to water provision contracts;

10. Considering that it results from the foregoing that the grievances alleged from a misinterpretation of contractual freedom and entrepreneurial freedom must be dismissed;

- ON THE GRIEVANCES EMANATING FROM THE INFRINGEMENT OF THE PRINCIPLES OF EQUALITY BEFORE THE LAW AND PUBLIC SPENDING:

11. Considering, firstly, that the claimant company contends that by imposing a prohibition to interrupt the provision of water all year long, although the electricity, heating and gas providers are not under such a prohibition, the contested provisions misinterpret the principle of equality before the law;

12. Considering that as provided by article 6 of the 1789 Declaration, the law "must be the same for all, in the cases where it protects and in the cases where it punishes"; that the equality principle does not prevent the legislator from settling differently different situations, provided the resulting difference in treatment is directly related to the object of the law which establishes it;

13. Considering that the water providers are not placed in the same situation as of the electricity, gas or heating providers; that the applicable regulation for the provision of water in main residences is in direct relation to the objective pursued by the legislator to ensure the continuity of the provision of this resource; that the grievance emanating from the misinterpretation of the principle of equality before the law must be dismissed;

14. Considering, secondly, that the claimant company contends that by prohibiting the water provider from interrupting the execution of the service, including by contract termination, when the user does not pay his bills, the contested provisions force the water providers to impose on all users the extra cost resulting from the non-payment of bills by some of them; that would result from this an infringement upon the principle of equality before public spending among the water provision users;

15. Considering that as provided by article 13 of the 1789 Declaration, common contributions to the Nation's expenses "must be equally distributed between all citizens, as a result of their faculties";

16. Considering that the contested provisions which prohibit the water provider from interrupting the execution of the service are without effect on the debts of water providers on the users; that, as such, the claim that the grievance emanating from the contested provisions would infringe upon the principle of equality before public spending lacks in facts;

17. Considering that the contested provisions, which are not in any event unintelligible, are not contrary to any other right or freedom guaranteed by the Constitution and must be declared to conform to the Constitution;

DECIDED:

Article 1 – The last sentence of the third paragraph of article L. 115-3 of the Social Action and Family Code is compliant with the Constitution.

Article 2 – This decision will be published in the *Official Journal* of the French Republic and notified according to the conditions provided by article 23-11 or the aforementioned order of 7 November 1958.

Deliberated by the Constitutional Council at its 28 May 2015 session, where sat: Mr. Jean-Louis DEBRÉ, President, Mrs. Claire BAZY MALAURIE, Nicole BELLOUBET, Mr. Guy CANIVET, Michel CHARASSE, Renaud DENOIX de SAINT MARC, Lionel JOSPIN and Mrs. Nicole MAESTRACCI.

Published on 29 May 2015.