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Country of Decision:

France

Country of Applicant:

France

Date of Decision:

06-07-2018

Citation:

(France) Constitutional Council, N° 2018- 717/718 QPC, 6 July 2018

Court Name:

Constitutional Council

Keywords:

Actors of protection

Humanitarian considerations

Headnote:

The Constitutional Council decided on the criminal exemptions in favour of persons involved in the crime of assisting aliens to irregularly stay in a country. The first sentence of article L. 622-4 of the code of entry and stay of foreigners and the right to asylum (CESEDA) is unconstitutional as it must include not only the assistance to irregular stay in a country but also the assistance to the movement of aliens being in an irregular situation. The Council also specifies, in relation to the third paragraph of the above-mentioned article, that it is to be applied to any act assisting aliens to irregularly stay when motivated by humanitarian purposes. The Council hence enshrines the constitutional value of the fraternity principle.

Facts:

The priority question of constitutionality relates to the words 'irregular stay' found at the first paragraph of Article L. 622-4 of the CESEDA, and at the third paragraph of the same article. It provides several criminal exemptions in favour of persons involved in the crime of assisting aliens to irregularly stay in a country.

Decision & Reasoning:

The applicants and intervening parties argue that the contested provisions disregard the principles of fraternity and equality as they limit the assistance provided to 'irregular stay', without taking into account the assistance regarding the entry and the movement of an alien in an irregular situation on French territory. They also argue, in the light of the principle of fraternity, that the provisions do not provide any immunity for assisting an alien to irregularly stay when it is motivated by humanitarian reasons, without any direct or indirect compensation, hence violating the principles of necessity and proportionality of crimes and penalties.

Moreover, the applicants argue that those provisions violate the principle of legality of crimes and penalties, owing to the vagueness of the terms used at the third paragraph of article L. 622-4 of the CESEDA.

The Constitutional Council first recalled that the constitutional value of the fraternity principle does not provide aliens with general and absolute rights regarding access and stay on the national territory. This principle is to be balanced with the pursued objective of safeguarding public order. In this case, it found that including only the 'assistance to irregular stay' in the first sentence of article L. 622-4, while 'assistance to the movement of an alien in an irregular situation' could be a component of the assistance to the irregular stay and may also be motivated by purely humanitarian reasons, is unconstitutional.

In relation to the third paragraph of article L. 622-4 mentioned above, the Council observes that the limitation of criminal exemption to 'the acts of judicial counsel, catering needs, housing or medical care intended to ensure that the dignity and physical integrity of the alien is preserved' reaches a balanced conciliation with the pursued objective to safeguard public order. It adds that it must not be interpreted differently as to apply to any other assistance motivated by humanitarian reasons.

Moreover, the Constitutional Council decided that the provisions of the third paragraph of article L. 622-4 of the CESEDA are precise enough to guarantee against arbitrariness. Hence, the council rejected the plea related to the principle of legality of crimes and penalties being disregarded. It also rejected the plea related to the principles of necessity and proportionality of crimes and penalties being disregarded, as it previously observed that the third paragraph of article L. 622-4 of the CESEDA applies to any act of assistance to the irregular stay of an alien when motivated by humanitarian reasons. The Council hence decides that the third paragraph of article L. 622-4 mentioned above is constitutional.

Outcome:

Partial unconstitutionality decision

The Constitutional council decides that the phrase 'irregular stay' is unconstitutional and postpones the repeal date to the 1st of December 2018.

It decides that the third paragraph of article L. 622-4 of the CESEDA is constitutional, adding that the criminal exemption is to be applied to acts aiming at facilitating, except from the entry to the

territory, the movement of an alien in an irregular situation in France, as it constitutes the accessory of the stay of this alien, when those acts are made for humanitarian reasons.

Observations/Comments:

[« Finally a good news : le principe of fraternity exists ! » Dominique Rousseau, Gaz. Pal. 17 July 2018, n° GPL329e1, p. 12. \[1\]\(available in French only\)](#)

[Commentary by the Constitutional council \[2\]](#)

[Documentary record by the services of the Constitutional council \[3\]](#)

Attachment(s):



[France Constitutional Council 6 July 2018 No 2018 717 718 QPC.docx\[4\]](#)

National / Other Legislative Provisions:

[France - The French Constitution of 4 October 1958 \(Articles 2 \[5\]](#)

[34 \[6\]](#)

[61-1 \[7\]](#)

[62 \[8\]](#)

[72-3\) \[9\]](#)

[- Regulation of 4 February 2010 on the procedure to follow for priority questions of constitutionality before the Constitutional council \[10\]](#)

[France - Ordinance n° 58-1067 of 7 November 1958 on the legislation governing the Constitutional Council \[11\]](#)

[Law n° 2012-1560 of 31 December 2012 on the withholding for verification of the right to stay and amending the offense of assistance to irregular stay to exclude humanitarian and disinterested actions \[12\]](#)

[Code of entry and stay of foreigners and the right to asylum \(Articles L. 622-1 \[13\]](#)

[L. 622-4\) \[14\]](#)

[France - Declaration of Human Rights \(1789\) - Art. 8 \[15\]](#)

Links:

[1] <https://www.gazette-du-palais.fr/article/GPL329e1/>

[2] https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/decisions/2018717qpc/2018717_718qpc_ccc.pdf

[3] https://www.conseil-constitutionnel.fr/sites/default/files/as/root/bank_mm/decisions/2018717qpc/2018717_718qpc_doc.pdf

[4] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/France%20Constitutional%20Council%206%20July%202018%20717%20718%20QPC.docx>

[5] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-french-constitution-4-october-1958-articles-2>

[6] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/34-0>

[7] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/61-1>

[8] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/62>

[9] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/72-3>

[10] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/regulation-4-february-2010-procedure-follow-priority-questions>

[11] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-ordinance-n%C2%B0-58-1067-7-november-1958-legislation-governing>

[12] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/law-n%C2%B0-2012-1560-31-december-2012-withholding-verification-right-stay>

[13] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/code-entry-and-stay-foreigners-and-right-asylum-articles-l-622-1>

[14] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/l-622-4>

[15] <https://www.asylumlawdatabase.eu/en/national-and-other-legislation/france-declaration-human-rights-1789-art-8>