

Decision n° 2010-617 DC of November 9<sup>th</sup> 2010

Act to Reform Retirement Pensions

On November 2<sup>nd</sup> 2010, the Constitutional Council received a referral for review of the Act to Reform Retirement Pensions, pursuant to paragraph 2 of Article 61 of the Constitution, from Mr Jean-Marc AYRAUT et al.... Members of the National Assembly, and the same day from Messrs Jean-Pierre BEL et al, Senators.

**THE CONSTITUTIONAL COUNCIL**

Having regard to the Constitution;

Having regard to Ordinance n° 58-1067 of November 7<sup>th</sup> 1958 as amended (Institutional Act on the Constitutional Council);

Having regard to Institutional Act n° 2009-403 of April 15<sup>th</sup> 2009 pertaining to the application of Articles 34-1, 39 and 44 of the Constitution and decision n° 2009-579 of the Constitutional Council of April 9<sup>th</sup> 2009;

Having regard to the Social Security Code;

Having regard to the Code of Civil and Military Retirement Pensions;

Having regard to the Rural and Maritime Fishing Code;

Having regard to Act n° 83-634 of July 13<sup>th</sup> 1983 on the Rights and Duties of Civil Servants;

Having regard to Act n° 84-834 of September 13<sup>th</sup> 1984 pertaining to age limits in the Civil Service and Public sector;

Having regard to Act n° 2003-775 of August 21<sup>st</sup> 2003 to reform Retirement Pensions;

Having regard to the observations of the Government registered on November 4<sup>th</sup> 2010;

Having heard the Rapporteur;

ON THE FOLLOWING GROUNDS

1. The members of the National Assembly and the Senate have referred for review by the Constitutional Council the Act to Reform Retirement Pensions. They contend that it is unconstitutional insofar as it raises in principle

to 62 years the age at which a person is entitled to a retirement pension and to 67 years the age at which a person is entitled to a full retirement pension. The Members of the National Assembly also contest the constitutionality of the legislative proceedings leading to the enactment of said statute.

- WITH RESPECT TO THE LEGISLATIVE PROCEEDINGS:

2. The Members of the National Assembly making the referral for review contend that the combination of holding "in camera" the meeting of the Committee in charge of examining the merits of the provisions, together with the time allotted to Parliament for debating the same, as defined by Article 49, paragraphs 5 to 15 of the Rules of Procedure of the National Assembly, infringe in an unconstitutional manner the requirements of clarity and accuracy of Parliamentary debate. They add also that the failure to comply with paragraph 13 of Article 49 of said Rules of Procedure whereby : "Each Member of the House may take the floor for a period of five minutes at the end of the vote on the last clause of the Bill under debate in order to give a personal explanation of his vote. The time given over to such explanations of vote shall not be deducted from the overall time allotted to the groups" also runs counter to said requirements.

3. Firstly, the requirements of clarity and accuracy of Parliamentary debate, which also apply to the work of Parliamentary Committees, require the keeping of a precise record of all interventions before the latter, of the grounds for amendments proposed to provisions before said Committees and of the votes cast by members of such Committees. In the case in hand, a clear and precise record has been kept of the work of said Committee.

4. Secondly, the Rules of Procedure of the Houses of Parliament do not *per se* have constitutional status. The alleged failure to comply with the provisions of paragraph 13, Article 49 of said Rules of Procedure cannot in itself render legislative proceedings unconstitutional. In the case in hand the decision taken by the President of the National Assembly to interrupt the giving of personal explanations of Members' votes has not failed to comply with the requirements of clarity and accuracy of Parliamentary debate.

- WITH RESPECT TO THE RAISING TO 62 YEARS OF THE REQUISITE AGE FOR ENTITLEMENT TO A RETIREMENT PENSION:

5. Section 18 of the statute referred for review inserts into the Social Security Code Article L 161-17-2 worded as follows : " The age at which a person shall be entitled to benefit from a retirement pension as referred to in the first paragraph of Article L 351-1 hereof, in Article L 732-18 of the Rural and Maritime Fishing Code, in 1° of I of Article L.24 and 1° of Article L.25 of the Code of Civil and Military Retirement Pensions shall be fixed at age 62 for all insured persons born after January 1<sup>st</sup> 1956. This age shall be fixed by

Decree and shall rise progressively by four months per generation and in the age limits set down in the first paragraph hereof, for insured persons born before January 1<sup>st</sup> 1956."

6. The parties making the referral for review argue that these provisions are patently inappropriate in view of the requirements set forth in paragraph 11 of the Preamble to the Constitution of 1946 and fail to comply with the principle of equality.

-As regards the contention based on failure to comply with paragraph 11 of the Preamble of 1946:

7. Paragraph 11 of the Preamble of 1946 proclaims that "The Nation shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. Any human being who, by reason of his age, physical or mental state or the economic outlook, is unable to work, shall have the right to receive from Society suitable means of existence".

8. The constitutional requirement deriving from the provisions referred to above implies implementing a policy of national solidarity in favour of retired workers. Parliament is however at liberty, in order to comply with this requirement, to chose such concrete means of implementation as it shall see fit. In particular it is always free, when enacting statutes in the field which Article 34 makes the preserve of Parliament, to amend previous statutes or repeal the same by replacing them, if need be, by other provisions. It is also at liberty, in order to attain or conciliate objectives of constitutional status, to introduce new means or methods of which it is free to decide the opportuneness. However the exercising of this power must not lead to depriving requirements of a constitutional nature of statutory guarantees.

9. When enacting the statute referred for review, Parliament wished to preserve the system of a retirement pension regime based on the principle of redistribution, which is confronted with substantial funding difficulties. It took into particular account enhanced life expectancy. One of the measures taken has been to raise the statutory retirement age of workers in both public and private sectors to age 62, with implementation on a progressive basis though to 2018. Parliament has maintained or provided for the possibility of early retirement for persons who have had a long working-life, or have a rate of occupational disability determined by regulations, for persons who have been exposed to "harsh working conditions" and are permanently unable to work, for the disabled or persons exposed to asbestos. When so doing, it has taken measures designed to guarantee the security of elderly workers in accordance with the preamble of 1946. These measures are not inappropriate for the purpose which Parliament has sought to achieve.

- As regards the contention based on failure to comply with the principle of equality:

10. The parties making the referral for review argue that, insofar as those persons who meet the length of contribution requirements to obtain a full rate retirement pension before the age of 62 will have to contribute for a longer period to benefit from a pension, the abovementioned provisions infringe the principle of equality. They also claim that the same holds good for the provisions concerning harsh working conditions, insofar as an employee affected by a disability can only take early retirement if he has been exposed to "harsh working conditions".

11. Firstly, Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 proclaims : "The Law is the expression of the general will. All citizens shall be entitled to participate in its making, either personally or through their representatives. The Law shall be the same for all, whether it protects or punishes". Although in general the principle of equality requires that persons in the same situation be treated in the same manner, nothing requires Parliament to treat differently persons in different situations.

12. In the case in hand Parliament has maintained for persons in both public and private sectors who have had a long working-life the possibility of retiring before age 60. To this extent the contention raised is unsupported by the facts. As for the remainder, where a retirement pension system based on redistribution is concerned, Parliament was at liberty to lay down a minimum retirement age without infringing the principle of equality.

13. Secondly, the principle of equality does not preclude Parliament from treating different situations in different ways, nor from departing from the principle of equality for reasons of general interest provided that, in each case, the resulting difference in treatment is directly connected with the purpose sought to be achieved by the statute which introduces such different treatment.

14. As regards the rules governing the age at which a person is entitled to benefit from a retirement pension, persons who are unfit for work and who have been exposed to "harsh working conditions" during their working life are not in the same situation as persons who have not been exposed to such conditions. There has thus not been any infringement of the principle of equality.

15. Section 18 of the statute referred for review is not unconstitutional.

- WITH RESPECT TO THE RAISING TO 67 YEARS OF THE REQUISITE AGE FOR ENTITLEMENT TO A FULL PENSION:

16. Paragraph II of section 20 of the statute referred for review amends 1° of Article L 351-8 of the Code of Social Security. It provides that "insured

persons who have reached the age provided for in Article L 161-17-2 plus five years" i.e 67 years, shall enjoy a full pension even if they cannot prove they have the requisite number of years of insurance contributions to the general pension regime or other mandatory regimes. Paragraph II of section 21 amends in similar fashion Article L 732-25 and L 762-30 of the Rural and Maritime Fishing Code. The other provisions of sections 20 and 21 determine the cases in which a person may retire at age 65 on a full pension.

17. Under paragraph I of section 28 of the statute referred for review : " For those Civil servants coming under Act n° 83-634 of July 13<sup>th</sup> 1983 referred to above, and whose retirement age was fixed at 65 pursuant to statutory and regulatory provisions applicable prior to the coming into force of this statute and born as from January 1<sup>st</sup> 1956, the age limit is raised to 67." Paragraph I of section 29 of the statute referred for review amends the statute of September 13<sup>th</sup> 1984 referred to above and lays down the principle of fixing the retirement age at 67.

18. The parties making the referral for review contend that these provisions fail to comply with the principle of equality between women and men.

19. Parliament has laid down identical rules for women and men. Sections 20,21 and 28 of the statute referred for review maintain the benefit of retirement on a full pension at 65 years, irrespective of the length of time the retiree has paid retirement contributions, for the parent of three or more children who is aged over fifty five and has interrupted his/her career to look after one of said children. Sections 20,21, 23 and 28 do the same for a person who has interrupted his/her professional activity to take care of a handicapped child or a member of his/her family as family helper. Raising the age for benefiting from a full pension to 67 does not infringe the principle of equality between women and men.

20. Sections 20, 21, 28 and 29 of the statute referred for review are not unconstitutional.

- WITH RESPECT TO CERTAIN PROVISIONS OF THE STATUTE REFERRED FOR REVIEW :

21. Under paragraph 1 of Article 45 of the Constitution: "Without prejudice to the application of Articles 40 and 41, any amendment connected, albeit indirectly, with the text tabled or transmitted shall be admissible"

22. The Bill comprised 33 clauses when tabled before the National Assembly, the first House before which it was introduced. Title I contained general provisions pertaining to the piloting of retirement regimes and the length of time required as to payment of contributions or service and bonuses. Title II thereof laid down the provisions applicable to all retirement regimes. Title III

provided for measures for bringing together various retirement regimes. Title IV dealing with harsh working conditions gave statutory value to the medical file, laid down the statutory basis of the definition of exposition "to occupational risk factors", introduced and organized the financing of the taking into account of said harsh working conditions by the regime of retirement pensions. Title V concerned various solidarity measures, while Title VI laid down the conditions for the coming into force of said provisions.

23. Sections 63,65,66,68,69,70,71,72 and 75 of the statute referred for review, inserted into the Bill via amendments passed at first reading by the National Assembly, pertain respectively to the reform of Safety and Health at work services, the administration of Inter-company Safety and Health at work services and the drafting by said services of a long term service project, to departures via collective agreements from the rules governing medical inspections of certain categories of workers, to the monitoring of contracts by the Board of Administration of the Inter-company Health and Safety at work service, to the role of the Director of the Inter-company Health and Safety at work service and to the conditions of organization and operation of the Health and Safety at work service in the field of agriculture. Sections 64,67,73 and 74, inserted into the Bill by amendments passed at first reading by the Senate, are designed respectively to specify the manner in which exchanges of information between the Health and Safety at work doctor and the employer are to be organized, to define the interplay between the Project Committee set up by section 66 and the Medico-technical Committee of the Inter company Health and Safety at work service, to adapt the organization of these services to the farming sector and to proceed to insert into the Employment Code various coordinating drafting measures connected with the enactment of some of these provisions.

24. These provisions are not connected, albeit indirectly, with those which appeared in the Bill to Reform Retirement Pensions. They were passed in proceedings which run counter to Article 45 of the Constitution. Sections 63 to 75 of the statute referred for review must thus be held to be unconstitutional.

25. The Constitutional Council is not required *proprio motu* to review any other question of conformity with the Constitution.

### **HELD**

Article 1 : Sections 63 to 75 of the Act to Reform Retirement Pensions are unconstitutional.

Article 2 : Sections 18, 20,21, 28 and 29 of the same statute are in conformity with the Constitution.

Article 3 - This decision shall be published in the Journal officiel of the French Republic

Deliberated by the Constitutional Council sitting on November 9<sup>th</sup> 2010 and composed of Messrs Jean-Louis DEBRE, President, Jacques BARROT, Mrs Claire BAZY MALAURIE, Messrs Guy CANIVET, Michel CHARASSE, Jacques CHIRAC, Renaud DENOIX de SAINT MARC, Valéry GISCARD-D'ESTAING, Mrs Jacqueline de GUILLENCHMIDT, Messrs Hubert HAENEL and Pierre STEINMETZ.