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Decision no. 2012–647 DC of 28 FEBRUARY 2012

Law on the punishment of denials of the existence of genocides recognised by law

In the conditions provided for by Article 61–2 of the Constitution, the Constitutional Council was seized of an application relating to the Law on the punishment of denials of the existence of genocides recognised by law on 31 January 2012 by Mr Jacques MYARD, Mr Michel DIEFENBACHER, Mr Jean AUCLAIR, Mr Jean–Paul BACQUET, Mr Jean BARDET, Mr Christian BATAILLE, Mr Jean–Louis BERNARD, Mr Marc BERNIER, Mr Claude BIRRAUX, Mr Jean–Michel BOUCHERON, Mr Christophe BOUILLON, Mr Bruno BOURG–BROC, Mr Loïc BOUVARD, Mr Pascal BRINDEAU, Mr Yves BUR, Mr Christophe CARESCHE, Mr Gilles CARREZ, Mr Gérard CHARASSE, Mr Jean–Louis CHRIST, Mr Pascal CLÉMENT, Mr François CORNUT–GENTILLE, Mr René COUANAU, Mr Olivier DASSAULT, Mr Jean–Pierre DECOOL, Mr Lucien DEGAUCHY, Ms Sophie DELONG, Mr Jean–Louis DUMONT, Ms Cécile DUMOULIN, Ms Marie–Louise FORT, Mr Yves FROMION, Mr Jean–Paul GARRAUD, Mr Daniel GARRIGUE, Mr Claude GATIGNOL, Mr Hervé GAYMARD, Mr Paul GIACOBBI, Mr Franck GILARD, Mr Jean–Pierre GORGES, Mr François GOULARD, Ms Arlette GROSSKOST, Mr Michel HEINRICH, Mr Antoine HERTH, Ms Françoise HOSTALIER, Mr Denis JACQUAT, Mr Yves JÉGO, Mr Jérôme LAMBERT, Mr Jacques LAMBLIN, Ms Laure de LA RAUDIÈRE, Mr Jacques LE GUEN, Mr Apeleto Albert LIKUVALLU, Mr Jean–François MANCEL, Mr Alain MARTY, Mr Didier MATHUS, Mr Jean–Philippe MAURER, Mr Jean–Claude MIGNON, Mr Pierre MORANGE, Mr Jean–Marc NESME, Mr Michel PIRON, Mr Didier QUENTIN, Mr Michel RAISON, Mr Jean–Luc REITZER, Mr Jean–Marie ROLLAND, Mr Daniel SPAGNOU, Mr Eric STRAUMANN, Mr Lionel TARDY, Mr André WOJCIECHOWSKI, as well as Mr Abdoulatifou ALY, Mr Jean–Paul ANCIAUX, Mr Paul DURIEU, Ms Sylvia PINEL, Ms Chantal ROBIN–RODRIGO, Mr Philippe VIGIER and on 2 February 2012 by Mr Gwendal ROUILLARD, Ms Laurence DUMONT, Mr Jean MICHEL, Mr Jack LANG and Ms Dominique ORLIAC, Members of Parliament;

And on the same day by Mr Jacques MÉZARD, Ms Leila AÏCHI, Mr Nicolas ALFONSI, Mr Alain ANZIANI, Ms Aline ARCHIMBAUD, Mr Bertrand AUBAN, Mr Gilbert BARBIER, Mr Jean–Michel BAYLET, Ms Esther BENBASSA, Mr Michel BILLOUT, Ms Marie–Christine BLANDIN, Ms Corinne BOUCHOUX, Mr Didier BOULAUD, Mr Christian BOURQUIN, Mr Alain CHATILLON, Mr Jean–Pierre CHEVÈNEMENT, Mr Christian COINTAT, Mr Yvon COLLIN, Mr Pierre–Yves COLLOMBAT, Ms Héléne CONWAY–MOURET, Mr Ronan DANTEC, Mr Jean–Pierre DEMERLIAT, Mr Marcel DENEUX, Mr Yves DÉTRAIGNE, Mr Claude DILAIN, Ms Muguette DINI, Mr André DULAIT, Mr Jean–Léonce DUPONT, Ms Josette DURRIEU, Ms Anne–Marie ESCOFFIER, Mr Alain FAUCONNIER, Ms Françoise FÉRAT, Mr François FORTASSIN, Mr Alain FOUCHÉ, Mr Christian–André FRASSA, Mr René GARREC, Mr Patrice GÉLARD, Mr Gaëtan GORCE, Ms Nathalie GOULET, Ms Jacqueline GOURAULT, Ms Sylvie GOY–CHAVENT, Mr François GROSDIDIER, Mr Robert HUE, Mr Jean–Jacques HYEST, Mr Pierre JARLIER, Ms Fabienne KELLER, Ms Bariza KHIARI, Ms Virginie KLÈS, Mr Joël LABBÉ, Ms Françoise LABORDE, Mr Jean–René LECERF, Ms Claudine LEPAGE, Mr Jeanny LORGEUX, Mr Jean–Louis LORRAIN, Mr Roland du LUART, Mr Philippe MADRELLE, Mr Jean–Pierre MICHEL, Ms Catherine MORIN–DESAILLY, Mr Jean–Marc PASTOR, Mr Jean–Claude PEYRONNET, Mr Jean–Jacques PIGNARD, Mr François PILLET, Mr Jean–Vincent PLACÉ, Mr Jean–Pierre PLANCADE, Mr Christian PONCELET, Mr Hugues PORTELLI, Ms Gisèle PRINTZ, Mr Roland RIES, Mr Gilbert ROGER, Mr Yves ROME, Mr Robert TROPEANO, Mr Raymond VALL, Mr Jean–Marie VANLERENBERGHE, Mr François VENDASI, Mr Jean–Pierre VIAL, Mr André VILLIERS, Mr Richard YUNG, as well as Mr Michel BERTSON, on 2 February 2012 by Mr Aymeri de MONTESQUIOU, Mr Jean–Claude MERCERON, Mr Jean–Jacques LASSERRE and on 3 February 2012 by Mr Jean–Jacques LOZACH, Senators.

THE CONSTITUTIONAL COUNCIL,



Having regard to the Constitution;

Having regard to Ordinance no. 58–1067 of 7 November 1958 as amended, concerning the basic law on the Constitutional Council;

Having regard to the Law of 29 July 1881 on the freedom of the press;

Having regard to the Criminal Code;

Having regard to the observations of the Government, registered on 15 February 2012;

Having regard to the observations in response presented by the applicant Members of Parliament registered on 21 February 2012;

Having heard the Rapporteur;

1. Considering that the applicant Members of Parliament and Senators have referred to the Constitutional Council the Law on the punishment of denials of the existence of genocides recognised by law;
2. Considering that Article 1 of the Law referred introduces Article 24–ter into the Law of 29 July 1881 on the freedom of the press; that this Article punishes, as the principal offence, those who "have contested or minimised in an excessive manner... the existence of one or more crimes of genocide as defined under Article 211–1 of the Criminal Code which are recognised as such under French law", irrespective of the means of expression or public communication used, to a term of imprisonment of one year and a fine of EUR 45,000; that Article 2 of the law referred amends Article 48–2 of the Law of 29 July 1881; that it extends the right granted to certain associations to join proceedings as a civil claimant, in particular in order to draw the inferences from the establishment of this new offence;
3. Considering that, according to the applicants, the law referred violates the right of freedom of expression and communication proclaimed under Article 11 of the 1789 Declaration of the Rights of Man and the Citizen, as well as the principle of the legality of criminal offences and punishments pursuant to Article 8 of the Declaration; that in punishing solely genocides recognised by French law whilst excluding other crimes against humanity, these provisions also violate the principle of equality; that the applicant Members of Parliament further argue that Parliament has acted in excess of its powers and violated the principle of the separation of powers proclaimed under Article 16 of the 1789 Declaration; that the principle of the necessity of punishments proclaimed under Article 8 of the 1879 Declaration, freedom of research and the principle resulting from Article 4 of the Constitution according to which parties are free to conduct their business have also been violated;
4. Considering, on the one hand, that Article 6 of the Declaration of Man and the Citizen of 1789 provides: "Law is the expression of the general will... "; that according to this Article and to all other provisions of constitutional standing relating to the subject matter of the law that, without prejudice to the special provisions provided for under the Constitution, the Law has the vocation of laying down rules and must accordingly have a normative scope;
5. Considering, on the other hand, that Article 11 of the Declaration of Man and the Citizen of 1789 provides: "The free communication of ideas and opinions is one of the most precious of the rights of man. every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of this freedom as shall be defined by law"; that Article 34 of the Constitution provides: "Statutes shall determine the rules concerning... civic rights and the fundamental guarantees granted to citizens for the exercise of their civil liberties"; that on this basis, Parliament is at liberty to enact rules regulating the exercise of the right of free communication, freedom of speech (including the written word) and freedom of the press; that it is also at liberty on this basis to establish criminal offences punishing the abuse of the exercise of the freedom of expression and communication which cause disruption to public order and



the rights of third parties; that nonetheless, freedom of expression and communication is all the more precious since its exercise is a precondition for democracy and one of the guarantees of respect for other rights and freedoms; that the restrictions imposed on the exercise of this freedom must be necessary, appropriate and proportional having regard to the objective pursued;

6. Considering that a legislative provision having the objective of "recognising" a crime of genocide would not itself have the normative scope which is characteristic of the law; that nonetheless, Article 1 of the law referred punishes the denial or minimisation of the existence of one or more crimes of genocide" recognised as such under French law"; that in thereby punishing the denial of the existence and the legal classification of crimes which Parliament itself has recognised and classified as such, Parliament has imposed an unconstitutional limitation on the exercise of freedom of expression and communication; that accordingly, without any requirement to examine the other grounds for challenge, Article 1 of the law referred must be ruled unconstitutional; that Article 2, which is inseparably linked to it, must also be ruled unconstitutional,

HELD :

Article 1. – The Law on the punishment of denials of the existence of genocides recognised by law is unconstitutional.

Article 2. – This decision shall be published in the *Journal officiel* of the French Republic.

Deliberated by the Constitutional Council in its session of 28 February 2012, sat on by: Mr Jean-Louis DEBRÉ, President, Mr Jacques BARROT, Ms Claire BAZY MALAURIE, Mr Guy CANIVET, Mr Michel CHARASSE, Mr Renaud DENOIX de SAINT MARC, Mr Valéry GISCARD d'ESTAING and Mr Pierre STEINMETZ.