REMEDY FOR ABUSE OF AUTHORITY

Against

The Ministerial Decree of 30 June 2015 laying down the list, the periods and terms of the destruction of animal species classified harmful and Annex (OJ July 4, p. 11 288).

Presented by

Mr. Patrick Janin, [redacted]

Facts

The Ministerial Decree of 30 June 2015 relates to the list, periods and terms of destruction of harmful species of animals classified in the departments for the period 1 July 2015 to 30 June, 2018.

It was enacted under Article R. 427-6 of the Environment Code, in the version amended by Decree No 2012-402 of 23 March 2012 on pest species classified animals (OJ March 25 , p. 5415). This Article R. 427-6 relates to the implementation of Article L. 427-8 of the same Code, which provides: "A decree of the State Council shall designate the competent administrative authority to determine the species of harmful or pests that the owner, possessor or farmer can, at any time, on his land and destroying the conditions for exercising this right. "

Prior to the enactment of the Environmental Code by the order of 18 September 2000 (OJ September 21 p. 14792), the article L. 427-8, as drafted, appeared in Article L. 227 -8 the new Countryside Code (promulgated by Decree No. 89-804 of 27 October 1989, OJ November 4, p. 13719), which reproduced an article 393, paragraph 1, of the old rural code. This is an old law coming of the nineteenth century.

The Ministerial Decree of 30 June 2015 has also been the subject of a "public consultation" (sic) organized on the ministry's website in charge of ecology from May 29 to June 21, 2015, under L. 120-1 Article-II of the Environment Code, which implements Article 7 of the Charter of the environment.

This "consultation" has collected public comments in 1678. We Have ourselves participated regards the department of Saône-et-Loire (Rank species called "harmful" - The department of Saône-et-Loire, Patrick Janin, June 3, 2015 at 8:44). A summary was posted on the ministry's website (http://www.consultations-publiques.developpement-durable.gouv.fr/projet-d-arrete-pris-pour-l-application-de-l-a1023.html?id_rubrique=2).

The illegality of the Ministerial Decree of June 30, 2015 is the fact that it was taken at the conclusion of proceedings which did not allow the public to effectively exercise their right to participate in its development, in accordance with section 7 of the Charter of the Environment 2004. This vice is as a vice of unconstitutionality of the legal system implemented and trained to Article L. 120-1-II of the Code environmental and Article R. 427-6 of the Environment Code, including the Decree of 30 June 2015 is a measure of application. The procedure of "public consultation" followed in this case did not involve the guarantees required by the constitutional principle of public participation in the development of a decision affecting the environment.

Discussion

I - The unconstitutionality of Article L. 120-1-II of the Environment Code: insufficient legislative framework

The Ministerial Decree of 30 June 2015 is illegal as it was enacted following a public participation procedure - appointed by the administration "public consultation" - which does not satisfy the requirements of Article 7 the Constitutional Charter of the environment.

The sanction for that illegality raises a priority issue of constitutionality within the meaning of Article 61-1 of the Constitution, which is the subject, in accordance with Article R * 771-3 of the Administrative Justice Code,

a memory separate and motivated, presented in envelope enclosed with this shipment and marked "priority question of constitutionality".

This priority question of constitutionality is briefly presented here.

a) Article 7 of the Environmental Charter sets out the right of every person, under the conditions and limits defined by law, [access to information on the environment held by public authorities,] " participate in the development of public decisions affecting the environment. " To this end, during the public consultation held from May 29 to June 21, 2015 electronically on the ecology ministry's website, Sustainable Development and Energy for the enactment of Ministerial Order June 30, 2015, two documents were put online: an introductory note and the draft of the order.

The lack of clarity and information in the note has made the irregular procedure against the requirements of section 7 of the Charter of the environment.

b) Article R. 427-6 of the Environmental code prescribing an internal consultation process with the administration, public participation in the preparation of the decree of June 30, 2015 was conducted application of Article L. 120-1 of only the Environmental Code, which provides:

"I. - This Article defines the conditions and limits within which the public participation principle, under section 7 of the Charter of the environment, is applicable to decisions other than individual decisions, public authorities have affect the environment when they are not subject by the laws that apply to them, in a particular procedure organizing public participation in their development.
II. - Subject to the provisions of Article L. 120-2, the draft decision mentioned in I, accompanied by an introductory note specifying in particular the context and objectives of this project is provided by the public electronically and on application under conditions prescribed by decree, for consultation paper in the prefectures and sub-prefectures regarding the decisions of the state authorities, including independent administrative authorities, and public institutions of the State, or the seat of authority regarding the decisions of other authorities. When the volume or characteristics of the draft decision does not allow its provision electronically submitting note specifies the locations and times where the entire project can be found. "

c) The conditions under which it was organized on the ecology ministry's website, Sustainable Development and Energy did not allow public participation in the preparation of the decision is real and effective. The public did not have all the elements necessary for full participation, and knowingly, to the development of the decision. This follows from the wording of Article L. 120-1-II as it lays down the conditions and limitations under which exercised the public's right to participate in the development of public decisions affecting the environment.

The Section II of Article L. 120-1 of the Environmental Code is limited to "an introductory note specifying the particular context and objectives" of the draft decision. Because of its brevity, such legislation does not provide the guarantees required by respect for the right of everyone to participate in the development of public decisions affecting the environment.

d) 1678 people have certainly expressed by posting observations and comments on the pages of the ministry's website dedicated to the "public consultation", but that does not mean that they were able to actually participate effectively in the development of the ministerial decree because:
- Failure to have no information on the situation in each department, be it the status of populations of animal species (presence, distribution, density, dynamic), and recognized the damage occurred or objectives prosecuted by the administrative authorities, significantly reduces the possibility for the public to form an opinion on the adequacy of projected rankings and discuss;
- The introductory note does not know what (s) reason (s) warrant (s) that each of the species concerned in each department or each common list, contained in the draft order;
- Should have been, year minimum, a synthesis of the situation of each department regarding the status of the populations of animal species concerned, the damage observed and the objectives pursued by the administrative authority;
- The absence of any information or explanation located and referenced put the public in the impossibility of knowing the precise reasons for the projected rankings. These rankings are pronounced at the departmental level, it is at this level that the public participation should have been designed in the introductory note, and in all

cases, permitted. Contrary to this requirement, the administration has globalized the presentation of the draft order nationwide, making it impossible otherwise difficult to focus on the scale of a department;
- The introductory note does not allow the public to better appreciate the environmental impact of the draft decision: no information is given about the consequences on wildlife destruction measures that the draft decree provides for authorize for a period of three years; no element of discretion is available to the public that might enable it to assess the ecological impact of the draft decision and to make observations and proposals knowingly;
- The presentation of note presents no alternative solution that can be considered, no alternative modality to the destruction taking into account the impact of predation of the species concerned on human activities.

By not developing not and does not specify sufficiently the modalities for public participation, in particular by not requiring that the draft decision should be accompanied, in the introductory note or in a separate document for each department, the indication of the main reasons for it, the same summary presentation of its main environmental impacts and possible alternatives, the legislature has not laid down the necessary legal guarantees for the effective exercise of the public's right to participate the development of public decisions affecting the environment.

The legislative package, by its brevity and its shortcomings, leading to confused in practice public participation in the development of public decision under Article 7 of the Charter of the environment and public consultation within the meaning of simple administrative formality.

The legislature has disregarded its jurisdiction. For this reason, it is necessary to transmit the priority question of constitutionality to the Constitutional Council.

II - The objection of unconstitutionality of Article R. 427-6-II of the Environmental Code: the unsuitability of the regulatory framework

The Ministerial Order of 30 June 2015 has its legal basis in Article R. 427-6 of the environment code which it is an implementing measure. This article is flawed unconstitutional, the Ministerial Decree, as it constitutes an implementing measure, must be canceled.

Nor those of Article L. 120-1-II, the provisions of Article R. 427-6 of the Environment Code are not guaranteed an effective exercise of the public's right to participate in the development of the Ministerial Order of 30 June 2015, which however has a strong impact on the environment.

If articles L. 120-1 and following of the Environment Code determine the conditions and limitations under which the principle set out in Article 7 of the Charter of the environment is called to practice, and if he is acquired jurisprudence that when legislation has been taken to ensure the implementation of the Charter, the legality of administrative decisions is assessed in relation to these provisions (CE, June 19, 2006, Association Water and Rivers of Brittany) particularly as regards the public participation principle (EC, October 26, 2007, Tissot and others. EC, July 13, 2012, Company Volkswind France), the circumstances in the present case must be dismissed because the laws present in the Environmental Code shall not impede a constitutional review of the provisions of Article R. 427-6 and correlatively to censorship of the ministerial decree of June 30, 2015.

a) Article L. 427-8 Neither nor Article R. 427-6 of the Environment Code does care about public participation. Article R. 427-6 has only internal consultation procedure with the administration but contains no provision for public participation. It makes no adaptation action or application of this principle in relation to the nature and scope of the decision he called, namely the destruction of authorization for a period of 3 years on the whole territory National several wildlife species, so as to comply with the requirements of section 7 of the Charter of the environment. It does not therefore overcomes the absences, the shortcomings, the incomplete nature of the laws, whether those of Article L. 120-1 or of article L. 427-8 of. This absence of specific provisions to matter is the vice of unconstitutionality which taints this article, and this vice of unconstitutionality may be sanctioned by the administrative judge.

b) Article R. 427-6 of the Environment Code, the legal basis for the ministerial order of June 30, 2015, the present action, is not a regulation under Article L. 120 -1 of the same code. As has been said, its legal basis is Article L. 427-8.

- Articles L. 120-1 and L. 427-8 of the Environmental Code correspond to two different laws, somehow parallel, applicable to the same subject. One relates to public participation, the other terms of the destruction of animal species "harmful or harmful" (sic). If the enactment of the Ministerial Decree of June 30, 2015 proceeds from a joint implementation of these laws, it is only in consideration of the provisions of Article R. 427-6 that the order is challenged here.

- Article L. 427-8 acknowledges to the regulatory authority a completely discretionary power to determine "the conditions of exercise" of the right owners, owners or farmers to destroy "evil or harmful species of animals" on their land. This broad discretion granted to the regulatory authority sets the stage for a constitutional review of Article R. 427-6 by the administrative judge.

It is indeed acquired jurisprudence that when Parliament - Article L. 427-8 here - merely empower the regulatory authority to intervene without imposing special rules and no form or substance, the administrative judge can control the constitutionality of his speech (EC, May 17, 1991, Quintin). According to A. and G. ROBLOT-Troizier TUSSEAU: "When the administration is in a position of responsibility related, there is no place to review the constitutionality of his actions; when it has a margin of discretion in enforcement, the administrative judge is able to control the use it makes of its discretion. "(Chronicle of jurisprudence, RFDA, 2013 p. 1255). Or, again, Article R. 427-6 does not just "draw the conclusions necessary for the implementation" of Article L. 427-8 (CE, Ass., 12 Jul. 2013, National Federation of Fishing in France) since it does prescribe any particular condition, has no necessary consequence, apart from the intervention of the regulatory authority.

Coming determine the conditions of exercise of the destruction of animal species "evil or harmful," Article R. 427-6 may contribute to the implementation of the public's right to participate in the preparation of decisions of administrative authorities designated by specifying the conditions. In fact, it prescribes the consultation of an administrative proceeding, the Departmental Commission of hunting and wildlife meeting at its specialized training. But redefined by Decree No. 2012-402 of 23 March 2012, cited above, the other conditions it lays down do not include any measure relating to public participation. This absence has resulted in the considered material to the public unable to exercise his right in knowingly and effectively, in full compliance with the requirements of section 7 of the Charter of the environment , as attested by the development of the Ministerial Order of 30 June 2015.

c) species classification system "harmful or harmful" introduced in § II of Article R. 427-6 by the Decree of 23 March 2012 is in fact based on a single decision in the form of a ministerial order to reach National, taken for a period of three years and for each department that prescribes the species concerned as well as possibly the geographical limits and manner of their destruction. The duration of the ranking - three years - and the fact that the order specifically provides for each of the departments make it necessary to put at the disposal of the public elements of knowledge and understanding that melt, for each department, the draft decree submitted the public participation process. However, due to the specificity and complexity of the matter, the general economy of the device registered in II of Article R. 427-6, consisting of a single decision imposing harmful species of rankings in all departments and for a period of three years, does not allow a real public participation in the drafting of the final decision.

The terms of Article R. 427-6 - the destruction of species of birds and wild mammals - this, with its implications of scientific and ecological nature, but also economic and social specificities that may require adaptation conditions and limits on the exercise of the public's right to participate in decisions that fall. The regulatory domain is traditionally extended in this matter, it would make sense that it belongs to the regulatory authority to establish, in addition to the law, certain safeguards needed to meet the requirements of section 7 of the Charter of the environment.

As it should include provisions adapted to information and public participation, Article R. 427-6 has the same weaknesses, the same deficiencies as those developed in the priority question of constitutionality attached to this shipping, and attracts the same criticism.

Failure to possess any information on the situation in each department, be it the status of populations of animal species (presence, distribution, density, dynamic), and recognized the damage occurred or objectives by the administrative authority, significantly reduces the possibility for the public to form an opinion on the adequacy

of projected rankings and discuss. Article R. 427-6 of the Environment Code sets out four grounds - the only grounds - can justify that animal species is classified harmful, but the introductory note does not know what (s) reason (s) warrant (s) that each of the concerned species in each department listed in the draft order. This is probably one of the reasons why many of the views expressed in 1678 vote in general terms, especially challenging the concept of "pest", devoid of any scientific relevance. It would have taken at least a summary of the situation of each department regarding the status of the populations of animal species concerned, the damage observed and the objectives pursued by the administrative authority.

The absence of any information or explanation located and referenced put the public in the impossibility of knowing the precise reasons for the projected rankings. These rankings are pronounced at the departmental level - and sometimes by common - is at this scale that the public participation should have been designed in the introductory note, and in all cases, permitted. Contrary to this requirement, the administration has globalized the presentation of the draft decree at national level, making impossible any discussion difficult if not on the scale of a department or commune. This circumstance is particularly damaging to public participation that the classification of species is stopped for a period of three years.

The note presentation alone does not enable the public to better appreciate the environmental impact of the draft decision: no information is given about the consequences on wildlife destruction measures that the draft decree plans to allow for a period of three years; no element of discretion is available to the public that might enable it to assess the ecological impact of the draft decision and to make observations and proposals knowingly. The public is not put in a position to participate in the drafting of the decision, that is to say, to assess the real motives and the foreseeable consequences of discuss or propose alternative measures.

Because of these shortcomings, public participation in the preparation of the ministerial order was denatured in a simple consultation for opinion, to the most ordinary sense. Section 7 of the Environmental Charter has lost its meaning and its scope; it sets out the right is devoid of effectiveness.

In developing not only and not sufficiently specifying the modalities of public participation, in particular by not requiring that the draft decision should be accompanied, in the introductory note or in a separate document, the indication of the main reasons which justify and even a summary presentation of its main environmental impacts, as well as the main alternatives to the possible destruction, Article R. 427-6 does not prescribe the necessary guarantees for the effective exercise of public's right to participate in the development of a public decision that has a significant impact on the environment.

Article R. 427-6, regulations of Article L. 427-8 and legal basis of the Ministerial Order of 30 June 2015, ignoring the constitutional requirements inherent in public right enshrined in Article 7 of the Charter of the environment, the Ministerial Order of 30 June 2015 must therefore be annulled.

For the reasons stated above, please the Council of State:

- To forward to the Constitutional Council the priority issue of constitutionality attached;
- Set aside the Ministerial Order of 30 June 2015 laying down the list, the periods and terms of destruction of classified harmful species of animals and its annex.

Made in Lyon on August 10, 2015

Patrick JANIN