



**RÉPUBLIQUE
FRANÇAISE**

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Le service public de la diffusion du droit

Council of State, 4th - 1st combined chambers, 03/10/2023, 464355

Council of State - 4th - 1st combined chambers

Reading for Friday March 10, 2023

No. 464355

ECLI:FR:CECHR:2023:464355.20230310

Mentioned in the tables of the Lebon collection

Rapporteur
Ms. Thalia Breton

Public rapporteur Mr.
Raphaël Chambon

Lawyer(s)
SCP THOUVENIN, COUDRAY, GREVY

Full Text

FRENCH REPUBLIC IN THE NAME OF THE FRENCH PEOPLE

Given the following procedure:

By a separate brief and two new briefs, recorded on December 14, 2022 and January 13 and February 14, 2023, presented pursuant to article 23-5 of Ordinance No. 58-1067 of November 7, 1958, MB.. requests to the Council of State, in support of its appeal filed against judgment no. 21VE02142 of March 24, 2022 of the administrative court of appeal of Versailles rejecting its appeal filed against the judgment of April 9, 2021 of the administrative court of Montreuil rejecting his request for annulment of the decree of January 30, 2019 by which the vice-president of the Council of State pronounced the transfer of MD.. C... as president of the administrative court of Paris and the decision of the May 15, 2019 by which the Vice-President of the Council of State rejected his appeal against this decision, to refer to the Constitutional Council the question of compliance with the rights and freedoms guaranteed by the Constitution of the provisions of articles L. 232-1 and L. 232-4 of the administrative justice code.

Considering the other documents in the file;

Having regard to: - the Constitution, in particular its Preamble and its article 61-1; - Order No. 58-1067 of November 7, 1958; - Law No. 2016-483 of April 20, 2016; - decision no. 2017-666 QPC of October 20, 2017 of the Constitutional Council; - the administrative justice code;



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After hearing in public session:

- the report of Ms. Thalia Breton, auditor,
- the conclusions of Mr. Raphaël Chambon, public rapporteur;

The floor having been given, after the conclusions, to SCP Thouvenin, Coudray, Grevy, lawyer for MB.;

Considering the following:

1. Under the terms of the first paragraph of article 23-5 of the order of November 7, 1958 relating to the organic law on the Constitutional Council: "The argument based on the fact that a legislative provision infringes the rights and freedoms guaranteed by the Constitution may be raised (...) during proceedings before the Council of State (...)". It follows from the provisions of this same article that the Constitutional Council is seized of the priority question of constitutionality on the three conditions that the contested provision is applicable to the dispute or the procedure, that it has not already been declared in conformity with the Constitution in the reasons and the operative part of a decision of the Constitutional Council, unless circumstances change, and the question is new or presents a serious nature.

2. A priority question of constitutionality, presented by a separate brief and relating to the provisions of an order taken by the Government on the basis of an authorization given by Parliament on the basis of article 38 of the Constitution, is admissible if the authorization period has expired and it concerns the challenge, with regard to the rights and freedoms that the Constitution guarantees, of provisions of the ordinance which fall within the domain of the law. It must then be transmitted to the Constitutional Council if the conditions set by articles 23-2, 23-4 and 23-5 of Order No. 58-1067 of November 7, 1958 are met.

3. Under the terms of article L. 232-1 of the code of administrative justice, in the version applicable to the dispute: "The Superior Council of administrative tribunals and administrative courts of appeal hears individual questions concerning the magistrates of administrative courts and administrative courts of appeal under the conditions provided for by this article or by a decree of the Council of State. / It establishes the advancement tables and the suitability lists provided for in articles L. 234-2-1, L. 234-2-2, L. 234-4 and L. 234-5. / It issues proposals on the appointments, secondments and integrations provided for in articles L. 233-3, L. 233-4 and L. 233-5 and on the designation of magistrates of administrative tribunals and administrative courts of appeal sitting on the jury of the competitions provided for by article L. 233-6 with a view to the direct recruitment of magistrates of administrative tribunals and administrative courts of appeal. / It is requested for assent on the appointment of magistrates of administrative tribunals and administrative courts of appeal as public rapporteur and president of an administrative tribunal. It is contacted for assent to any dismissal of a magistrate for professional inadequacy after observing the procedure provided for in disciplinary matters. / It issues an opinion on the transfers of magistrates of administrative tribunals and administrative courts of appeal, on their request for placement on availability, on the acceptance of their resignation, on their requests for reinstatement at the end of a period deprivation of civil rights, prohibition from exercising public employment or loss of nationality

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French, as well as on their appointment to the ranks of councilor of state and master of requests pronounced on the basis of article L. 133-8 as well as on the proposals for appointment to the functions of president of an administrative court of call. / Magistrates of administrative tribunals and administrative courts of appeal may file an appeal against the assessment provided for in Article L. 234-7 or against a refusal of authorization to perform a service on time. partial or a refusal of honoraria ".

4. Under the terms of article L. 232-4 of the administrative justice code, in its version resulting from order no. 2016-1366 of October 13, 2016 establishing statutory provisions concerning magistrates of administrative tribunals and administrative courts of appeal, taken on the basis of article 86 of law no. 2016-483 of April 20, 2016 relating to ethics and the rights and obligations of civil servants, which article set an authorization period which has expired to date: "The Higher Council of administrative tribunals and administrative courts of appeal is chaired by the vice-president of the Council of State and also includes: / 1° The State Councilor, president of the inspection mission of administrative jurisdictions; / 2° The Secretary General of the Council of State; / 3° The director responsible for judicial services at the Ministry of Justice; / 4° A head of court and a substitute elected by their peers; / 5° Five representatives of the magistrates of the administrative courts and administrative courts of appeal with the exception of those seconded to the body for less than two years, elected by proportional list voting based on: a) A titular representative and a substitute for the rank of advisor; / b) Two titular representatives and two substitutes for the rank of first advisor; / c) Two titular representatives and two substitutes for the rank of president; / 6° Three personalities chosen for their skills in the field of law apart from members of the Council of State and magistrates of administrative tribunals and administrative courts of appeal and who do not exercise a parliamentary mandate appointed respectively by the President of the Republic, the President of the National Assembly and the President of the Senate. / (...) ". This article further provides that the mandate of the head of court and representatives of magistrates of administrative tribunals and administrative courts of appeal is for a period of three years, renewable only once, that of qualified personalities being for a non-renewable duration of three years.

5. In support of his appeal against the judgment of March 24, 2022 by which the administrative court of appeal of Versailles rejected his appeal against the judgment of April 9, 2021 by which the administrative court of Montreuil rejected his request of annulment for excess of power, on the one hand, of the decree of January 30, 2019 by which the vice-president of the Council of State pronounced, after assent of the Superior Council of administrative tribunals and administrative courts of appeal (CSTACAA), the transfer of MD.. C... as president of the administrative court of Paris, on the other hand, of the decision of May 15, 2019 by which the vice-president of the Council of State rejected his appeal against this decision, MB.. asks the Council of State to refer to the Constitutional Council the question of compliance with the rights and freedoms guaranteed by the Constitution of the provisions cited in points 3 and 4.

6. Firstly, the powers and composition of the Superior Council of Administrative Tribunals and Administrative Courts of Appeal (CSTACAA), resulting from the provisions of Articles L. 232-1 and L. 232-4 of the Code of Administrative Justice, cited in points 3 and 4, help to guarantee the independence and impartiality of the administrative jurisdiction.

The circumstance that Article L. 232-4, relating to the composition of the CSTACAA, provides that it includes, among its thirteen members, the vice-president of the Council of State, as president, the State Councilor, president of the inspection mission of administrative courts and the secretary general of the Council of State, while they have prerogatives over the management of the body of magistrates of administrative courts and administrative courts of appeal, is not in nothing likely to undermine the independence of members of the body of advisers to administrative tribunals and administrative courts of appeal. Moreover, as the Council has also judged



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constitutional in its decision no. 2017-666 QPC of October 20, 2017, whatever the prerogatives of the vice-president of the Council of State on the appointment or career of the members of the administrative jurisdiction, the statutory guarantees recognized to the latter in the third titles of the first and second books of the code of administrative justice ensure their independence, in particular with regard to it. Consequently, the argument that these provisions disregard the principles of independence and impartiality inseparable from the exercise of judicial functions enshrined in Article 16 of the Declaration of the Rights of Man and of the Citizen of August 26 1789 does not raise a serious question. Furthermore, Mr. conditions likely to undermine these same principles, since the operation of the CSTACAA is governed by article L. 232-6 of the same code, which is not contested in the context of this priority question of constitutionality.

7. Secondly, having regard to the purpose of the provisions of Articles L. 232-1 and L. 232-4 of the Code of Administrative Justice, which do not relate to legal remedies against decisions appointing magistrates administrative, MB.. cannot usefully maintain that they disregard the right to an effective remedy before an independent and impartial jurisdiction, guaranteed by article 16 of the Declaration of the Rights of Man and of the Citizen of August 26, 1789.

8. Third and last, MB.. can in any event seriously support only the provisions of articles L. 232-1 and L. 232-4 of the code of administrative justice which, as has been said in the previous point, do not relate to the legal remedies against the decisions of appointment of administrative magistrates, would disregard the principle of equality before justice, guaranteed by articles 6 and 16 of the Declaration of August 26, 1789, in that the administrative magistrate who contests the appointment of the president of an administrative jurisdiction must, depending on whether this appointment is made by decree of the President of the Republic or by order of the vice-president of the Council of State, refer the matter directly to the Council of State or seize the administrative court in the first instance.

9. It follows from all of the above that the question, raised by MB.., of compliance with the rights and freedoms guaranteed by the Constitution of the provisions of articles L. 232-1 and L. 232-4 of the administrative justice code, which is not new, does not present a serious character. There is, therefore, no reason to refer it to the Constitutional Council.

DECIDED :

Article 1: There is no need to refer to the Constitutional Council the priority question of constitutionality raised by MB...

Article 2: This decision will be notified to MA.. B..., the Keeper of the Seals, Minister of Justice and to MD..
VS....

A copy will be sent to the Constitutional Council, the Prime Minister and the Secretary General of the Council of State.

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Analysis

ÿ **Abstrates**

ÿ **Summary**