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## Decision No. 2023-1060 QPC of September 14, 2023

NOR: CSCX2324879S

JORE n°0214 of September 15, 2023

Text No. 71

### Initial version

(MRS HELENE C.)

The Constitutional Council was seized on June 15, 2023 by the Court of Cassation (third civil chamber, judgment no. 552 of the same day), under the conditions provided for in article 61-1 of the Constitution, of a priority question of constitutionality.

This question was asked for Ms. Hélène C. by Me Jérôme Depondt, lawyer at the Paris bar. It was registered at the general secretariat of the Constitutional Council under number 2023-1060 QPC. It relates to compliance with the rights and freedoms that the Constitution guarantees in the second paragraph of article L. 600-8 of the town planning code, in its wording resulting from ordinance no. 2013-638 of July 18, 2013 relating to town planning litigation.

In view of the following texts:

- the Constitution ; -

Ordinance No. 58-1067 of November 7, 1958 relating to the organic law on the Constitutional Council; - the town planning code ;

- Ordinance No. 2013-638 of

July 18, 2013 relating to town planning litigation, ratified by article 172 of Law No. 2014-366 of March 24, 2014 for access to housing and renovated town planning; - the regulation of February 4, 2010 on the procedure followed before the Constitutional

Council for priority questions of constitutionality;

In view of the following documents:

- the observations presented for the company HDV landrace, party to the dispute in which the priority question of constitutionality was raised, by SAS Bouilloche, Colin, Stoclet and associates, lawyer at the Council of State and at the Court of Cassation , registered on June 29, 2023; - the observations presented for the applicant by Me Depondt, recorded

on June 30, 2023; - the observations presented by the Prime Minister, recorded on the same day; - the observations in

intervention presented for the order of lawyers at the Paris bar by the SCP Piwnica and Molinié, lawyer at

the Council of State and at the Court of Cassation, recorded on the same day; - the observations in intervention presented for Mr. Yves S. and others by SCP Boutet - Hourdeaux, lawyer at the Council of State and at the Court of Cassation, recorded on the

same day; - the observations in intervention presented for the international investment company by Messrs Florence Cherel and Pierre-Édouard Vino, lawyers at the Hauts-de-Seine bar, recorded on the same day; - the second

observations presented for the applicant by Me Depondt, recorded on July 17, 2023; - the second observations presented by the Prime Minister, recorded

on the same day; - the second observations presented for the company HDV landrace by SAS Bouilloche, Colin,

Stoclet and associates, recorded on the same day; - the second observations in intervention presented for the order of lawyers at the Paris bar by the SCP Piwnica and

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Molinié, recorded the same day; -  
other documents produced and attached to the file;

MM. Jacques Mézard and François Pillet having considered it necessary to abstain from sitting; After having heard Mr. Depondt, for the applicant, Mr. Clémence Hourdeaux, lawyer at the Council of State and at the Court of Cassation, for Mr. Yves S. and others, Mr. Henri-Charles Croisier, lawyer at the Council of State and at the Court of Cassation, for the Paris Bar Association, and Mr. Benoît Camguilhem, designated by the Prime Minister, at the public hearing on July 28, 2023; And after hearing the rapporteur; The Constitutional Council based itself on the following: 1. The second paragraph of article L. 600-8 of the town planning code, in its wording resulting from the order of July 18, 2013 mentioned above, provides: "The consideration provided for by an unregistered transaction is deemed without cause and the sums paid or those which correspond to the cost of the advantages granted are subject to repetition. The action for recovery is prescribed five years from the last payment or from obtaining the benefit in kind."

2. The applicant, joined by one of the intervening parties, criticizes these provisions for providing that, when a settlement is concluded between the parties to the proceedings in the context of an appeal against certain planning authorizations, the failure to register this transaction allows the beneficiary of the authorization to request restitution of the consideration he had agreed to, without however calling into question the applicant's withdrawal. In doing so, they would establish an unjustified difference in treatment between the parties to the transaction, in disregard of the principles of equality before the law and before justice.

3. It also argues that, by depriving the applicant, even in good faith, of the consideration provided for in the transaction, including the sole fact of its late registration, while leaving the benefit of withdrawal definitively acquired by the holder of the planning permission, these provisions would excessively undermine the right to an effective legal remedy.

4. One of the intervening parties also maintains that, by allowing the holder of the planning authorization to obtain restitution of consideration to which he had consented, these provisions disregard the right to property.

- On the intervention:

5. Under the terms of the second paragraph of article 6 of the internal regulations of February 4, 2010 mentioned above: "When a person justifying a special interest sends observations in intervention relating to a priority question of constitutionality before the date established in application of the third paragraph of Article 1 and mentioned on the website of the Constitutional Council, the latter decides that all the documents of the procedure are sent to it and that these observations are transmitted to the parties and authorities mentioned in Article 1. They are given a time limit to respond. In the event of an emergency, the President of the Constitutional Council orders this transmission."

6. The observations presented by the order of lawyers to the Paris bar before the date mentioned above do not include any complaint against the provisions subject to this priority question of constitutionality and postpone the demonstration of their unconstitutionality to future writings. Consequently, since the intervention does not meet the requirements set out in the aforementioned Article 6, it is not permitted.

- On the background :

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7. Firstly, according to article 6 of the Declaration of the Rights of Man and of the Citizen of 1789, the law “must be the same for all, whether it protects or punishes”. The principle of equality does not prevent the legislator from regulating different situations differently, nor from deviating from equality for reasons of general interest, provided that, in one and in the other case, the resulting difference in treatment is directly related to the object of the law which establishes it.

8. Pursuant to article L. 600-8 of the town planning code, the transaction by which a person undertakes to withdraw from his appeal for annulment against a town planning authorization, in return for a sum of money or a benefit in kind, must be registered with the tax administration within one month.

9. It follows from the contested provisions that, in the event of failure to comply with this formality, the consideration which was granted to the applicant is deemed without cause and subject to an action for recovery, whereas the holder of the planning authorization who was the subject of the appeal retains the benefit of withdrawal. In doing so, these provisions establish a difference in treatment between the parties to the transaction.

10. By penalizing the lack of registration intended to ensure the publicity of transactions, the legislator wished to dissuade the conclusion of those putting an end to proceedings introduced with the sole aim of unduly obtaining financial gain. It thus intended to limit the particular risks of legal uncertainty which weigh on town planning decisions and to fight against abusive appeals.

11. With regard to this subject, the author of the appeal against the planning authorization is in a different situation from that of the beneficiary of this authorization.

12. Therefore, the difference in treatment resulting from the contested provisions, which is based on a difference in situation, is directly related to the object of the law. The complaint based on disregard for the principle of equality before the law must therefore be dismissed.

13. Secondly, under the terms of article 16 of the Declaration of 1789: “Any society in which the guarantee of rights is not assured, nor the separation of powers determined, has no Constitution”. It follows from this provision that there must be no substantial infringement of the right of interested persons to exercise an effective remedy before a court.

14. The contested provisions have, in themselves, neither the purpose nor the effect of prohibiting interested persons from filing an appeal against a planning authorization. They are limited to sanctioning failure to comply with the obligation to register the transaction by which the author of the appeal has undertaken to withdraw.

15. Therefore, the complaint based on failure to recognize the right to an effective legal remedy can only be dismissed.

16. Consequently, the contested provisions, which also do not disregard the principle of equality before justice, the right to property, nor any other right or freedom guaranteed by the Constitution, must be declared in conformity with the Constitution.

The Constitutional Council decides:

### Article 1

The second paragraph of article L. 600-8 of the town planning code, in its wording resulting from ordinance no. 2013-638 of July 18, 2013 relating to town planning litigation, is consistent with the Constitution.

### Article 2

This decision will be published in the Official Journal of the French Republic and notified under the conditions provided for in article 23-11 of the aforementioned order of November 7, 1958.



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## **Decision No. 2023-1060 QPC of September 14, 2023**

Judged by the Constitutional Council in its session of September 14, 2023, where sat: Mr. Laurent FABIUS, President, Ms. Jacqueline GOURAULT, Mr. Alain JUPPÉ, Ms. Corinne LUQUIENS, Véronique MALBEC, MM. Michel PINAULT and François SÉNERS.

Made public on September 14, 2023.