

Act prohibiting the concealing of the face in public.

On September 14th 2010 the Constitutional Council received a referral, pursuant to paragraph 2 of Article 61 of the Constitution, from the President of the National Assembly and the President of the Senate, pertaining to the Act prohibiting the concealing of the face in public

THE CONSTITUTIONAL COUNCIL

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

Having heard the Rapporteur;

ON THE FOLLOWING GROUNDS:

1. The President of the National Assembly and the President of the Senate have referred for review by the Constitutional Council the Act prohibiting the concealing of the face in public. They have not raised any particular contention regarding this statute.

2. Section 1 of the statute referred for review provides : " No one shall, in any public space, wear clothing designed to conceal the face". Section 2 of the same statute provides : " I. For the purposes of the application of the foregoing section, the public space shall be composed of the public highway and all premises open to the public or used for the provision of a public service. – II The prohibition set forth in section 1 hereinabove shall not apply if such clothing is prescribed by law or regulations, is justified on medical or professional grounds or is worn in the context of sporting practices, festivities, or artistic or traditional events." Section 3 of the same statute provides that failure to comply with the prohibition set forth in section 1 of the statute shall be punishable by a fine imposed for offences of the second category.

3. Article 4 of the Declaration of the Rights of Man and the Citizen of 1789 proclaims : " Liberty consists in being able to do anything which does not harm others: thus the exercise of the natural rights of every man has no bounds other than those which ensure to other members of society the enjoyment of these same rights. These bounds shall be determined solely by the law". Article 5 of the same Declaration proclaims: " The Law shall prohibit solely those actions which are harmful to society. Nothing which is not prohibited by law shall be impeded and no-one shall be compelled to do that which the law does not prescribe". Article 10 proclaims : "No one shall be harassed on account of his opinions and beliefs, even religious, on condition that the same do not disturb public order as determined by law". Lastly, paragraph 3 of the Preamble to the Constitution of 1946 provides : The law shall guarantee women equal rights to those of men in all spheres".

4. Sections 1 and 2 of the statute referred for review are intended to respond to practices, which until recently were of an exceptional nature, consisting in concealing the face in the public space. Parliament has felt that such practices are dangerous for public safety and security and fail to comply with the minimum requirements of life in society. It also felt that those women who conceal their face, voluntarily or otherwise, are placed in a situation of exclusion and inferiority patently incompatible with constitutional principles of liberty and equality. When enacting the provisions referred for review Parliament has completed and generalized rules which previously were reserved for ad hoc situations for the purpose of protecting public order.

5. In view of the purposes which it is sought to achieve and taking into account the penalty introduced for non-compliance with the rule laid down by law, Parliament has enacted provisions which ensure a conciliation which is not disproportionate between safeguarding public order and guaranteeing constitutionally protected rights. However, prohibiting the concealing of the face in public cannot, without adversely affecting Article 10 of the Declaration, result in restricting the exercising of religious freedom in places of worship open to the public. With this qualification, sections 1 to 3 of the statute referred for review are not unconstitutional.

6. Section 4 of the statute referred for review, which punishes by a term of one year's imprisonment and a fine of € 30 000 any person forcing another person to conceal the face, and sections 5 to 7 thereof concerning the coming into effect of said statute and the application thereof, are not unconstitutional.

HELD

Article 1 : With the qualification set forth in paragraph 5 hereinabove, the Act prohibiting the concealing of the face in public is constitutional.

Article 2 : This decision shall be published in the Journal officiel of the French Republic. Deliberated by the Constitutional Council sitting on October 7th 2010 and composed of Mr Jean-Louis DEBRE, President, Mr 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 and Mr Pierre STEINMETZ