

No. 392550

FRENCH REPUBLIC

IN THE NAME OF THE FRENCH PEOPLE

Mr Patrick JANIN

Ms Marie-Françoise Guilhemsans
Rapporteur

The Conseil d'Etat, acting in a judicial capacity
(the 6th Subsection [Chamber] of the Litigation Section)

Ms Suzanne von Coester
Rapporteur public

Session of 15 October 2015
Reading of 23 October 2015

Considering the following proceedings:

By a petition registered on 11 August 2015 with the Litigation Secretariat of the Conseil d'Etat, Mr Patrick Janin requests the Conseil d'Etat to annul for ultra vires the Order of 30 June 2015 by the Minister of Ecology, Sustainable Development and Energy implementing Article R. 427-6 of the Environmental Code and establishing the list of species of animals classified as pests, the periods stipulated for their destruction and the methods of destruction to be used;

He submits that:

- this Order was made as a result of a procedure which did not allow effective exercise of the right of public participation in conditions complying with Article 7 of the Charter for the Environment and failed to include in the accompanying Note a summary, broken down by *département*, of the current populations of the species of animals concerned, the damage recorded and the objectives to be achieved;

- and that Article R. 427-6 of the Environmental Code, which the contested Order intends to implement, is insufficiently precise, in that it fails to provide the safeguards required for effective exercise of the right of public participation in the decisions for which it provides, and in that it fails to comply with Article 7 of the Charter for the Environment;

By two statements of the case, registered on 11 August and 13 October 2015, Mr Janin requests the Conseil d'Etat, in accordance with Article 23-5 of Ordinance No. 58-1067 of 7 November 1958, to refer to the Constitutional Council the question of whether Part II of Article L. 120-1 of the Environmental Code is consistent with the rights and freedoms guaranteed by the Constitution. He submits that the issue raised is new; that these provisions, applicable to this case, and which have not been declared compatible with the Constitution, are marred by failure to exercise the necessary powers, since they do not provide for publication of information that would enable the public to assess whether draft decisions which are subject to public participation are desirable and appropriate for the legal and factual circumstances, what effects they would have on the environment and whether there may be alternative solutions; that, in addition, the type of consultation

organized under these provisions relates to a draft decision – which is rarely amended as a result of consultation – and not to any pre-draft elements; and that this means they merely provide for public consultation on draft decisions likely to affect the environment, and not for effective participation in the process of preparing such decisions, thus depriving the constitutional requirement provided for in Article 7 of the Charter for the Environment of any legal safeguards.

Under the provisions of Article R. 611-7 of the Code of Administrative Justice, the parties were informed that the Conseil d'Etat might base its Decision on a point of its own motion [an argument raised *ex officio*], to the effect that the petitioner could not demonstrate an interest giving him standing to request annulment of the contested Order.

By a statement of the case registered on 7 September 2015, Mr Patrick Janin submits that he has an interest in requesting annulment of the contested Order since, first, Article 7 of the Charter for the Environment and Article 9 of the Aarhus Convention mean that everyone has the right to initiate proceedings against decisions that affect the environment; secondly, that he was involved in the public participation that took place when this Order was being prepared; and finally, that he has a long-standing personal interest in wildlife and its preservation, has held responsible posts in several associations engaged in this area and has published numerous articles on the subject.

By a statement of the case registered on 6 October 2015, the Minister of Ecology, Sustainable Development and Energy pleads, as her principal argument, that the petition is inadmissible because Mr Janin has failed to demonstrate a personal interest in contesting the Order and, in the alternative, that there is no issue of constitutionality to be submitted for a priority preliminary ruling [a procedure for checking the constitutionality of laws already promulgated], since the issue is neither new nor serious;

Considering the other evidence in the case;

Considering:

- the Constitution, particularly the Preamble thereto;
- the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, done at Aarhus on 25 June 1998;

- Ordinance No. 58-1067 of 7 November 1958;
- the Environmental Code;
- the Code of Administrative Justice;

Having heard in open court:

- the report by Ms Marie-Françoise Guilhemsans, *Conseiller d'État* [State Councillor],
- the submissions of Ms Suzanne von Coester, *Rapporteur public* [consultant judge];

1. Whereas Mr Janin requests annulment for *ultra vires* of the Order of 30 June 2015 by the Minister of Ecology, Sustainable Development and Energy implementing Article R. 427-6 of the Environmental Code and establishing the list of species of animals classified as pests, the periods

stipulated for their destruction and the methods of destruction to be used;

2. Whereas, in support of his legal interest in bringing proceedings, Mr Janin invokes, in the first place, his interest in wildlife and its preservation, which is reflected in his publication of numerous articles in specialized journals, his involvement, over a period of several years, as a founding member or administrator of environmental protection associations, and the fact that he was involved in the public participation procedure on the draft of the contested Order, which took place under Article L. 120-1 of the Environmental Code; whereas, however, these circumstances cannot in themselves be regarded as giving him a definite, direct personal interest in the annulment of the contested Order; whereas Mr Janin states, in the second place, that Article 7 of the Charter for the Environment provides that everyone has the right to participate in the process of making decisions likely to affect the environment; whereas, however, contrary to what is maintained, these provisions have neither the aim nor the effect of altering the conditions for an administrative court's assessment of an interest giving standing to bring proceedings against decisions likely to affect the environment; whereas, similarly, the requirements of article 9 of the Aarhus Convention do not on any view have either the aim or the effect of giving everyone a right to review of any decision likely to affect the environment;

3. Whereas it follows from the foregoing that Mr Janin's petition is inadmissible; whereas it should accordingly be dismissed, without there being any need to take a view on his request for the Conseil d'Etat to refer to the Constitutional Council the question of whether Article L. 120-1 of the Environmental Code is consistent with the rights and freedoms guaranteed by the Constitution;

DISPOSITION:

Article 1: Mr Janin's petition is dismissed.

Article 2: This Decision shall be notified to Mr Patrick Janin and to the Minister of Ecology, Sustainable Development and Energy.

Copies of the Decision will be sent to the Constitutional Council and to the Prime Minister.

Deliberation at the session of 15 October 2015, with Ms Isabelle de Silva, President of the Chamber, presiding, and Ms Marie-Françoise Guilhemsans, *Conseiller d'Etat* and Rapporteur, and Mr François Deliou, *Conseiller d'Etat*, sitting.

Read in open court on 23 October 2015.

President:
Signed: Ms Isabelle de Silva

Rapporteur
Signed: Ms Marie-Françoise Guilhemsans

Secretary:
Signed: Ms Pélagie Taty

The Republic requires and orders the Minister of Ecology, Sustainable Development and Energy in so far as it concerns her, or all judicial officers required for present purposes, with respect to the channels of ordinary law against private parties, to ensure that this Decision is enforced,

Certified as a true copy

[Round seal of the Litigation Secretariat of the Conseil d'Etat]

Secretary