



NEWS REPORT

Date: 1 November 2011
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Title: Constitutional Council finds discrimination against conscientious objectors on the ground of opinions, 2011-181 QPC, 13 October 2011
Country: France

Context

Issue at stake: Value attributed for seniority rights and retirement rights of civil servants to time served by conscientious objectors
Ground of discrimination: Religion/belief
Source: National court decision, Constitutional Council 2011-181 QPC
Field: Employment and social advantages
Legislative provisions: Articles L41 and L63 of the National Service Code resulting from the Law no 71-424 of 10 June 1971

Content

Case: Whereas the time served in mandatory national service in the army counts as employment giving rise to seniority and retirement rights for civil servants, article L63 of the National Service Code resulting from the Law no 71-424 of 10 June 1971 provides that the time served in the civil service by conscientious objectors does not so qualify for those rights.

The HALDE adopted '*deliberations*' nos 2010-186, 187, 188 and 189 dated 11 October 2010 concluding that the State presented no objective and reasonable argument to justify such a discrimination on the ground of the beliefs of conscientious objectors and concluded to unjustified unfavourable treatment pursuant to Directive 2000/78 and article 14 of the ECHR as well as article 1 of its 1st Protocol. When the case was argued before the *Conseil d'Etat* (Administrative Supreme Court), the plaintiff's counsel raised in addition that the provision was contrary to the Constitution on the ground

of opinions, which covers philosophical and religious beliefs, and therefore requested a referral to the Constitutional Court.

Decision of the Court: Article L41 of the Code of National Service recognizes the right to conscientious objection on the ground of freedom of religion and conviction.

Considering the purpose of the legislation, which aims at recognizing time served for seniority rights for career advancement and retirement rights, the Constitutional Council decided that the legislator has created an unjustified difference in treatment as regards conscientious objectors contrary to the principle of equal protection of the law provided by article 6 of the Declaration of the rights man and the citizen of 1789, and declares these provisions unconstitutional.

Internet link source and additional information: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2011/2011-181-qpc/decision-n-2011-181-qpc-du-13-octobre-2011.100253.html>