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Decision No. 2013-353 QPC of 18 October 2013

Mr. Frank M. et al [Celebration of Marriage - No "conscience clause" of the officer of civil status]

The Constitutional Council had before September 18, 2013 by the State Council (Decision No. 369834 of 18 September 2013), in accordance with Article 61-1 of the Constitution, a priority issue of constitutionality raised by MM. M. Franck, Jean-Michel C., Philip B., Xavier L., Jean-Yves C., Michel V. and Mrs. Clotilde L. relating to compliance with the rights and freedoms guaranteed by the Constitution articles 34-1, 74 and 165 of the Civil Code as well as Article L. 2122-18 the general code of local authorities.

THE CONSTITUTIONAL COUNCIL

Given the Constitution;

Having regard to Ordinance 58-1067 of 7 November 1958 on the organic law on the Constitutional Council;

Because of the Civil Code;

Given the general code of local authorities;

Pursuant to Law No. 2013-404 of 17 May 2013 opening marriage to couples of the same sex, all the Constitutional Council decision n ° 2013-669 DC of 17 May 2013;

Having regard to Regulation of 4 February 2010 on the procedure before the Constitutional Council for priority issues of constitutionality;

Given the comments of the Prime Minister, recorded September 30, 2013;

Given the observations of the applicants by Mr Geoffroy de Vries, a lawyer practicing in Paris, registered 30 September and 4 October 2013;

Considering the application to intervene to Claude J. by Santiago De Muzio Place Bar Lyon, registered on 7 October 2013, the application to intervene for MM. Hubert L. and Yves D. by Thomas River Bar of Bordeaux, registered on 7 October 2013, the application to intervene for Mr. Benedict D. by Mr. Cyril Dutheil de la Rochere, a

lawyer practicing in Versailles, recorded on October 8, 2013, the application to intervene for Jean-Pierre Bertrand me by Mr. Lionel-Marie, a lawyer practicing in Paris, recorded on October 8 2013, the application to intervene to Bernard P. by Jean Paillot lawyer in Strasbourg, registered on October 8, 2013 and the application to intervene by Marie-Claude B. by Mr. Sylvain Pelletreau, Bar Reims, recorded on October 8, 2013;

Given the documents produced and appended to the file;

Mr. de Vries for the applicants and Thierry-Xavier Girardot, appointed by the Prime Minister, were heard at the public hearing on 8 October 2013;

Given the deliberate notes produced for applicants registered on October 8, 2013;

Having heard the Rapporteur;

- ON REQUESTS FOR INTERVENTION

1. Whereas, pursuant to Article 6 of the Decision of 4 February 2010 as amended by decisions of 24 June 2010 and 21 June 2011 on rules of procedure before the Constitutional Council "When a person establishing an interest Special address comments to intervene on a priority issue of constitutionality within three weeks of the date of its submission to the Constitutional Council, stated on his website, he decides that all parts of the proceedings shall be addressed and that these observations are sent to the parties and authorities referred to in Article 1 ", the aforementioned intervention requests emanate from mayors of different towns, that the mere fact that they are called in their capacity to implement the impugned provisions does not warrant that each of them is allowed to intervene;

- SUBSTANCE:

2. Whereas under Article 34-1 of the Civil Code: "The acts of civil status are determined by the officers of civil status. They exercise their functions under the control of the prosecutor ";

3. Whereas, pursuant to Article 74: "The wedding will be celebrated at the choice of a spouse, in the town where one of them or one of their parents has his domicile or residence completed by one month at least continuous habitation of the date of publication provided by law ";

4. Whereas, pursuant to Article 165: "The wedding will be celebrated publicly at a ceremony by the Republican registrar state of the commune in which one spouse, or one of their parents, has his domicile or residence on the date of the publication provided for in Article 63 and, in case of exemption from publication, the date of the exemption provided for in Article 169 below ";

5. Whereas, pursuant to Article L. 2122-18 General Local Authorities Code: "The mayor is only responsible for the administration, but it can, under the supervision and responsibility, by order delegate some of its functions to one or more of his assistants,

and the absence or disability of deputies or when they are holding a delegation to council members.

"A member of the City Council who resigned as mayor under section LO 141 of the Electoral Code, L. 3122-3 and L. 4133-3 of this Code may not receive delegation to the end of his term as councilor or until the termination of the mandate or function having placed in a position incompatible.

"When the mayor withdrew the delegations he had given to a deputy, the council must decide on keeping it in his duties";

6. Whereas, according to the applicants, the opening of marriage to couples of the same sex encounters personal beliefs many mayors and deputies, that by failing to provide a "conscience clause" allowing mayors and deputies, officers Vital to refrain from a marriage between persons of the same sex, these provisions would affect at once with Article 34 of the Constitution and freedom of conscience that would also ignored the right not not be injured in his business or his job because of his opinions or beliefs, the principle of pluralism of currents of ideas and opinions, and the principle of free administration of local communities;

7. Whereas under Article 10 of the Universal Declaration of Human Rights and the Citizen of 1789: "No one shall be disquieted on account of his opinions, even religious, provided their manifestation does not disturb the public order established by law ", the fifth paragraph of the Preamble of the Constitution of 1946 recalls," No one can be injured in his business or his job, because of its origins, opinions or beliefs ", that freedom of consciousness, which results from these provisions, is among the rights and freedoms guaranteed by the Constitution;

8. Whereas, on the one hand, Article 165 of the Civil Code provides in part that the marriage is celebrated in a public ceremony by the Republican registrar of the common state, by virtue of Article L. 2122-32 General Local Authorities Code, the mayor and deputy registrars are reported in the commune in this capacity, they perform their duties on behalf of the State that, under these powers under Article L. 2122-27 of the Code, the mayor is responsible for the enforcement of laws and regulations;

9. Whereas, on the other hand, the Civil Code defines the conditions for marriage and formalities for its celebration, in particular, Article 75 provides: "The day designated by the parties, after the time of publication , the officer of civil status, the Town Hall, in the presence of at least two witnesses, or at most four, parents or not the parties will read the future husband of sections 212 and 213, the first paragraph of Articles 214 and 215 and Article 371-1 of this Code. . .

"The state registrar will challenge future husband, and if they are minors, their ancestors at the celebration and permitting marriage, having to declare if it was made a marriage contract and in the case of so, the date of the contract and the name and place of residence of the notary who has received.

"If the documents produced by one of the spouses do not match developed between them as the first or last on the spelling of names, it will challenge that they relate, and if a minor, his closest ancestors to present celebration, having to declare that the mismatch is due to an omission or error.

"It will of each party, one after another, the statement they want to be the spouse: he will deliver, on behalf of the law, they are united by marriage, and he will draw on act

the spot ";

10. Considering that not allowing the officers of civil status to take advantage of their disagreement with the provisions of the Act of 17 May 2013 to avoid the fulfillment of the duties entrusted to them by law for the celebration of marriage, the legislature intended to ensure the application of the law relating to marriage and thus ensure the proper functioning and the neutrality of the public service of Vital, having regard to the functions of the registrar state the marriage, it does not interfere with the freedom of conscience;

11. Considering that the contested provisions, which pervert or the principle of pluralism of currents of ideas and opinions, or the principle of the free administration of local authorities, or any other right or freedom guaranteed by the Constitution, shall be reported in accordance the Constitution,

D HELD:

Article 1 -. Interventions MM. Claude J., Hubert L., Yves D., D. Benoit, Jean-Pierre M. Bernard P. and Marie-Claude B. are not allowed.

Article 2 -. Sections 34-1, 74 and 165 of the Civil Code as well as Article L. 2122-18 General Local Authorities Code are consistent with the Constitution.

Article 3 -. This Decision shall be published in the Official Journal of the French Republic and notified in accordance with Article 23-11 of the Ordinance of 7 November 1958 referred to above.

Deliberated by the Constitutional Council at its meeting of 17 October 2013, attended by: Mr. Jean-Louis DEBRÉ, President Jacques Barrot, Mrs Claire BAZY MALAURIE, Nicole Belloubet, MM. Guy Canivet, CHARASSE Michel Renaud DENOIX SAINT MARC, Hubert Haenel and Nicole MAESTRACCI.

Made public on 18 October 2013.

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