



## **European network of legal experts in gender equality and non-discrimination**

### **NEWS REPORT**

<b>Country:</b>	<b>France</b>
<b>Title:</b>	Constitutional Council Decision n° 2016-606/607 QPC of 24 January 2017
<b>Date:</b>	6 February 2017
<b>Expert:</b>	Sophie Latraverse
<b>Context</b>	
<b>Issue at stake:</b>	The Conformity to the prohibition of discrimination based on origin of the constitution of police controls based on orders of the public prosecutor to control illegal immigrants
<b>Ground of discrimination:</b>	Race/ethnic origin
<b>Source:</b>	National court decision
<b>Field:</b>	Other
<b>Applicable law:</b>	Article 78-2 and article 78-2-2 of the Code of penal procedure (CPP) Articles L. 611-1 and L. 611-1-1 of the Code of Entrance and Residence of Foreigners and of Asylum Law (code de l'entrée et du séjour des étrangers et du droit d'asile (CESEDA)

### **Content**

#### **Decision of the Court:**

The Constitutional Council received a referral by the Court of cassation regarding the conformity to rights and freedoms protected by the Constitution of Article 78-2 paragraph 6 of the Code of Penal Procedure (CPP) and of Articles L. 611-1 et L. 611-1-1 of the Code of Entrance and Residence of Foreigners and of Asylum Law (hereafter CESEDA).

The challenged provisions of the CPP authorize the public prosecutor to issue orders requiring police identity controls in order to investigate possible perpetration of criminal offences, indicating designated areas and specified periods during which the police can proceed to these controls.

The challenged provisions of the CESEDA allow the police to control, when enforcing an order of the public prosecutor issued pursuant to Article 78-2, para 6 of the CPP, the legality of the presence on the territory of foreigners and to arrest them for the duration necessary to verify the legality of their presence on the territory.

On 24 January 2017, the Constitutional Council decided that the challenged provisions conformed to the Constitution while setting out some precisions (reservations of interpretation) regarding the proper interpretation of the purview of the controls they authorize:

- The enforcement of police controls by the police must be exclusively based on grounds that exclude all discriminations between persons.

- The Public prosecutor cannot identify places and periods of time that have no relation with the investigation relating to the possible perpetration of criminal offences mentioned in the order.
- In addition, the public prosecutor cannot, by accumulating orders designating different places and time frames authorize a constant and generalized use of police controls over time and space.

It is the responsibility of the judiciary to control the legality of police controls by condemning and sanctioning illegality that would be committed and the damages they provoke.

Regarding the provisions of the CESEDA they were deemed to conform to the constitution but the Council stressed that they cannot be interpreted to authorize police controls for the sole purpose of controlling the regularity of the presence on the French territory of the persons controlled.

### **Key points of analysis:**

Public prosecutors have developed a practice of constantly issuing very wide orders for a number of areas that in fact succeed each other in time and space and create a situation of constant authorizations of police control on any basis.

This decision follows the same reasoning as the decisions of the Court of cassation of 9 November 2016 that concluded that the control of the legality of the presence on the territory could not be interpreted to authorize discriminatory controls based on exterior signs of foreign origin. It also concluded that the fact that the controls were authorized by the law and an order of the public prosecutor did not entail a license to proceed to discretionary and discriminatory controls that cannot otherwise be justified, the police being accountable of its enforcement of the order to proceed to said controls.

### **Internet link source:**

<http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2017/2016-606/607-qpc/decision-n-2016-606-607-qpc-du-24-janvier-2017.148526.html>.