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PRESS RELEASE

[Legal decision]

The rule on incompatibility between the office of deputy and minister does not affect the exercise of ministerial functions

Two associations and a parliamentary group asked the Conseil d'État to annul a decree dated 19 July 2024, arguing that the outgoing Prime Minister was no longer eligible to sign it due to his participation the previous day – as a member of parliament – in the election of the President of the French National Assembly. The Conseil d'État pointed out that although the French Constitution states that the duties of a minister are incompatible with holding office as a member of parliament, this incompatibility rule does not in itself affect an individual exercising their ministerial duties.

Two associations and a parliamentary group asked the Conseil d'État to annul the decree of 19 July 2024 relating to the processing of operational cybersecurity data, which was signed by the outgoing Prime Minister. They argued that the Prime Minister was no longer eligible to sign the decree since the day before, as a newly elected member of the French Parliament, he had participated in the election of the President of the National Assembly, thereby taking up his parliamentary mandate.

The Conseil d'État pointed out that, although article 23 of the French Constitution states that the duties of a minister are incompatible with the exercise of a parliamentary mandate, it follows from this text that, in the event of an individual combining ministerial duties with a parliamentary mandate, that individual must consequently be replaced in their parliamentary mandate, without affecting the exercise of government duties. The Constitution does not provide for a situation of incompatibility preventing a minister from continuing to perform their duties. For this reason, the associations could not invoke article 23 of the Constitution to seek the annulment of a decree.

The applicants also asked the Conseil d'État to refer a QPC (*Question Prioritaire de Constitutionnalité* [priority preliminary ruling]) to the Constitutional Council in relation to the organic law of 1958 specifying the conditions for replacing members of parliament who become ministers. The Conseil d'État ruled that, given the purpose of the organic law of 1958, that law was unrelated to this dispute, which petitioned for the annulment of a decree. It, therefore, refused the referral.

Decision Nos. 496362 and 496532 – 18 October 2024

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