



CONSEIL
CONSTITUTIONNEL

ANNUAL REPORT
2017



↑ Proclamation of the results of the election of the President of the Republic, 10 May 2017



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*INTERVIEW***Laurent Fabius**

**President
of the Conseil constitutionnel**

2017, an intense year

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INTERVIEW

Laurent Fabius

President of the Conseil constitutionnel

2017, an intense year

2017 was a very busy year for elections. What impact did this have on the schedule of the Conseil constitutionnel?

Laurent Fabius: For the first time since 1958, the presidential, legislative and senatorial elections were held the same year. For these three elections, the Conseil constitutionnel has important duties. Article 58 of the Constitution states that “The Conseil constitutionnel shall ensure the proper conduct of the election of the President of the Republic”. This mission covers duties to be carried out before, during and after the vote: an opinion on the preparatory texts issued by various authorities in charge of organising and monitoring elections; receipt, validation and publication of candidates’ “sponsorships”; establishment of the official list of candidates; supervision of compliance with election procedures; examination of claims; announcement of the results of the first and second rounds; finally, review of any litigation concerning campaign accounts. We benefitted from the help of assistant rapporteurs from the Conseil d’État (Council of State) and the Cour des comptes (Court of Audit), who provided assistance for litigation concerning the legislative elections – we received nearly 300 petitions – as well as the senatorial elections. In this election year, the Conseil’s greatest challenge was to be both quick and effective: I believe we achieved our goal. These many missions, added to our “usual” tasks, were fully accomplished by the Conseil constitutionnel. **2017 was an intense year for the Conseil constitutionnel.**

For the 2017 presidential election, the rules for sponsorships were partially modified. What were the effects of these modifications?

L.F.: Two main innovations were introduced – not by the Conseil constitutionnel itself, as it was sometimes suggested, but through

the organic law dated 25 April 2016. Firstly, to avoid certain disadvantages of past procedures, sponsorships were to be sent by post only; no hand deliveries to the Conseil headquarters were allowed. Secondly, we had to publish the sponsorships as they arrived, twice weekly. We did this on a dedicated website specifically designed for the election period. The public was very interested: nearly 1.3 million visits were recorded. As we commented in our “observations on the presidential election”, published in mid-July, these organic modifications did not have any significant negative consequences on the total number of sponsorships addressed to the Conseil, as 14,586 sponsorship forms were received – of which, 14,296 were validated –, compared to about 15,000 in 2012. As for the number of candidates, there were about as many as for previous elections: eleven candidates in 2017; ten in 2012; and twelve in 2007. **Overall, the presidential election progressed smoothly.**

What significant jurisprudential decisions have been made by the Conseil constitutionnel since the last annual report?

L.F.: *Ex ante* decisions were made on petitions that arose from the final days of the last administration: the law on transparency, the fight against corruption and the modernisation of the economy; the “21st century Justice” law; the “media” law; the law on equality and citizenship; the law on the extension of the offence of obstruction of access to abortion; the budget law and the law on financing Social Security. We

also ruled on two major laws from the new legislature: the organic law on confidence in political life and the law on authorisation to use Ordonnances¹ to take measures for the strengthening of social dialogue. With regard to priority preliminary rulings on the issue of constitutionality (QPC) – we now review about 80 per year – we rendered several especially important decisions in particular concerning the offence of regularly consulting terrorist Internet sites; administrative searches and seizures in the context of the state of emergency; surveillance and monitoring of wireless transmissions; and conditions for custody. We have a very short period for review – a maximum of three months for a QPC; one month or as little as eight days for an *ex ante* review. These deadlines have been systematically met. **This means that all of my colleagues and our teams under the coordination of the Secretary-General had a considerable workload this year, and I would like to congratulate them.**

One of the main focuses of your term as president concerns the “jurisdictionalisation” of the *Conseil constitutionnel*. How has this manifested itself?

L.F.: This aspect of my work is very important to me. With this in mind, we have tried to improve our writing by making the style of our decisions simpler and giving more depth to their grounds, even if that means letting go of some “immutable” traditions. We have increased the extent of oral arguments in QPC cases, creating a direct dialogue between Council members and the parties. We have also clarified the scope of our *ex ante* review of constitutionality; in all such “DC” decisions (ordinary laws, organic laws, treaties, rules of procedure of the assemblies) we now focus specifically on the exact nature of the articles we are ruling on, in order to dismiss the notion that the Council is writing a blank cheque covering the constitutionality of all of the provisions that we have not examined *ex officio*.

When you arrived at the Council, you also expressed a desire to increase international activities.

L.F.: Yes, a reciprocal opening of jurisdictions, in Europe and internationally, is indispensable. This is our objective, for example, as we develop our relationship with the German Federal Constitutional Court in Karlsruhe, which welcomed the college of the Council in October 2016; they will return the visit in December 2017. In addition to strengthening ties with constitutional courts in French-speaking countries (through the ACCPUF association), we are increasing our contact with the constitutional courts in Italy, Spain and Portugal: the first meeting will be held at the end of October 2017, in Spain. We are deepening the European dialogue with judges from the Court of Luxembourg – where I travelled last March for the 60th anniversary of the Treaty of Rome – and with the court in Strasbourg. We have a special relationship with the Algerian *Conseil constitutionnel*, which has asked us to share our now seven-year experience with QPCs; they plan to set up a similar mechanism in Algeria as of 2019. More generally, in our work methods, we always take into account considerations of “comparative law”.

You have also sought to open the *Conseil* up on the national level. What are the main advances of this past year?

L.F.: Indeed, work to inform and teach the public about the *Conseil constitutionnel* is essential. To this end, we created, with the Ministry of Education, a national competition called “Let’s Discover our Constitution”, which seeks to raise awareness among pupils concerning the great principles of our Republic; it was successfully implemented last year and will be held again in the fall of 2017. Another initiative towards greater openness, and to make the Council a place for meeting and exchanges, will take place next October 4, anniversary



of our Constitution, at Palais-Royal: we are organising the first *Nuit du droit* (“Law Night”), which I hope to extend to all the regions of France in 2018. Several debates are planned for this year with prestigious guests, for a large audience, on four major themes of public interest with serious legal issues at their core – the fight against terrorism and protection of civil liberties; artificial intelligence; environmental protection; labour law. We have also started important work on digital modernisation, which concerns not only our website but also our work methods. The website will be entirely renovated at the beginning of 2018. We already have a “Conseil constitutionnel” app available for free download on mobile phones and tablets. This annual report itself, available free of charge on our

website, is an opportunity to share with the widest public possible our jurisdictional authority, our operations, and our decisions. Ultimately, we would like to make the Conseil constitutionnel a model for a digital Constitutional Court. **The Conseil constitutionnel is opening its door wider every day to accommodate our citizens: this is the goal of all of these actions.** —

¹ Ordonnance: a statutory instrument issued by the Council of Ministers in an area of law normally reserved for primary legislation enacted by the French Parliament.



Présidentielle 2017, the Internet site

The election campaign to the French presidency has an official period during which candidates can be put forward. A list is published and updated twice a week, naming the citizens or “sponsors” who, by virtue of their status as elected representative have proposed a candidate in the proper form.

For this purpose, a dedicated Internet site was developed, and it also included campaign schedules and rules, the organisation of voting, legal texts and so forth.

The list of validated sponsorships was published on the site and updated six times between 1 and 18 March 2017.

These regular bulletins were detailed, so that all citizens could easily remain informed.

The site “Présidentielle 2017” received 1.3 million visitors.

14,296

VALIDATING SPONSORED CANDIDATES FOR THE PRESIDENTIAL ELECTION

Between 24 February and 17 March 2017, the Conseil constitutionnel validated the sponsorships necessary for the establishment of the official list of candidates for the presidential election.

The organic law dated 25 April 2016 introduced two important new features in the system for collecting and processing sponsorship forms, which were sent to elected officials by State services:

- Sponsorships must now be addressed to the Council by post only; no hand deliveries are accepted;
- The names and the titles of office of the officials having filed valid sponsorship forms are published as they are validated.

The Conseil constitutionnel published the list of validated sponsorships twice weekly on the dedicated Internet site.

presidentielle2017.conseil-constitutionnel.fr

10 MAY 2017



On 10 May 2017, the Conseil constitutionnel announced the official results of the second round of the presidential elections. On 14 May, at the Élysée Palace, Laurent Fabius, President of the Council, officially inaugurated the new President of the Republic.

External contributions

The Conseil constitutionnel decided, in the name of transparency, that all of its decisions shall hereafter be published with a list of the associations, businesses, trade unions and other legal entities or individuals which submit “external contributions” (briefs) when the Council is examining a bill prior to its enactment.

These contributions, formerly referred to as *portes étroites* (“narrow doors”), do not, by their very nature, have the status of procedural documents.

10 Assistant rapporteurs

For the purposes of assisting the Council in its mission as judge in the presidential, legislative and senatorial elections, the Conseil constitutionnel names ten assistant rapporteurs. Five are members of the Conseil d’État (Council of State) and five other members of the Cour des comptes (Court of Audit).

For the presidential elections, they began working with the Council teams as soon as the period for the collection of sponsorships began and also participated in examining litigation concerning the election.

For the Parliamentary elections, an assistant rapporteur is designated for each claim; an adversarial procedure follows. The rapporteur submits a proposal to the members of the ruling panel.

7

Decisions concerning the state of emergency

After the state of emergency was declared following the attacks in Paris and Saint-Denis, the Conseil constitutionnel received seven applications for a priority preliminary ruling on the issue of constitutionality between December 2015 and June 2017, concerning legislative provisions taken in this context.

The Conseil constitutionnel examined the balance between prevention of violation of public order and respect for civil liberties with regard to each of the contested provisions. These included house arrest, policing of premises and public meetings, administrative seizures and residence prohibitions. The Council verified that the legislation provided a framework of adequate guarantees for implementation, in particular with regard to the right to legal recourse and the duration of the measures.

2017, ELECTION YEAR

In application of Article 58 of the Constitution, the Conseil constitutionnel is tasked with overseeing the legality of the election of the President of the Republic. The Conseil constitutionnel is also the judge for legislative and senatorial elections. For the first time since 1958, these three electoral sequences took place in the same year.

2017 Summary in 5 key dates

24 February **THE SPONSORSHIP PERIOD OPENS**

On this date, the day following the date of publication in the *Journal officiel* of the writ for elections, the sponsorship forms are sent out to 42,000 elected officials. Those who wish to propose a candidate return the completed form to the Council by post.

18 March **CANDIDATES' NAMES ARE MADE PUBLIC**

The final date for receiving sponsorship forms was set at 17 March. Over three weeks, the Council received nearly 15,000 forms.

On 18 March, the Council President informed the public

of the 11 candidates qualified for the presidential election.

23 April **FIRST ROUND OF VOTING**

The Council has three days to proclaim the results and settle any disputes regarding the voting process. More than 47 million voters are registered in 69,000 polling stations. Election monitoring is carried out with the help of about 2,200 delegates appointed by the Council throughout France.

7 May **SECOND ROUND OF VOTING**

The decisive round of voting is organised in the same way and on the same schedule as the first

round, for the final designation of the President of the Republic. The President of the Council thus proclaimed the election of Emmanuel Macron on 10 May. The transfer of power from the former President to the newly elected President took place at the Élysée Palace on 14 May.

29 June **FILING OF APPEALS AGAINST THE ELECTION OF MEMBERS OF PARLIAMENT**

Voters have 10 days to file an appeal with the Council concerning the election of Members to the National Assembly in any of the 577 electoral districts. After the legislative elections on 11 and 18 June, 296 appeals were filed for 123 electoral districts.

PRESIDENTIAL ELECTIONS

14,586

“sponsorship”
forms received;
14,296 validated.

The main grounds
for invalidation of
sponsorships were:
absence of signature
and seal, absence
of the name of the
candidate.

2,200

About 2,200 delegates from the Conseil constitutionnel and magistrates from the judicial and administrative courts were present throughout metropolitan France and in the Overseas Territories.

Out of 69,242
polling stations

4,691

votes were nullified
in the first round

16,467

votes were nullified in the
second round, representing
0.05% of ballots cast

For each round,
examination of the
results and claims
took less than three
days: the Council
proclaimed the results
of the first round
of the presidential
election on
26 April 2017 and the
second round results
were announced on
10 May 2017.

LEGISLATIVE ELECTIONS 11 AND 18 JUNE 2017

297

appeals filed,
including 80
identical claims
concerning the 1st
electoral district
of French abroad.

245

55

245 claims were examined very quickly between 19 June and 4 August 2017, according to the procedure established by Article 38, paragraph 2 of the Ordonnance dated 7 November 1958, which states, “The Council may, however, without any preliminary investigation into a referral and without hearing the parties involved, dismiss by a reasoned decision those referrals which are inadmissible or contain complaints as to facts which patently cannot have influenced the outcome of an election”.

Only 55 claims were still under examination
as of 1 September 2017.

(In 2012: 108 claims, 53 of which were examined using the fast procedure defined in Article 38, paragraph 2)

IN THEIR OWN WORDS ...

During the period for collecting and processing sponsorship forms, the Conseil constitutionnel's teams adopted a specific work organisation to ensure smooth progress.



Eric Quirchove,
administrative agent

“THE OBLIGATION
TO RELEASE INFORMATION
TWICE WEEKLY FORCES US
TO WORK WITH GREATER
REGULARITY.”



“In a team with a lot of new people, very few of us had experienced previous sponsorship collections and new rules brought about changes in the way we work. The arrival by morning post of the completed forms enabled more fluid processing. Until 2012, the Council used a system of random drawing for publication of the 500 sponsors. That meant that verifications had to be carried out at the end of the collection period. Now the obligation to release the information twice weekly forces us to work with greater regularity.

“The teamwork required over the three-week collection period may seem repetitive. It requires keen concentration and thorough attention. In order to set things in motion as quickly as possible in the morning as soon as the post is delivered, we had to select the best equipment, adapt our work methods and communicate with the Clerk's Office, the assistant rapporteurs, data-entry partners and the IT service on an on-going basis.

“Lawyers look over the forms and quickly spot those that are non-compliant; but some require further examination, and that can take time. It is also important to ensure that the assistant rapporteurs have all the information necessary to carry out these verifications and to contact elected officials who may need to complete their forms or specify their intentions. In session, the members concentrate on the forms that present special problems; they study the solutions proposed by the assistant rapporteurs, then validate the lists one by one for publication.”

“I have experienced 4 presidential elections, and the thing that strikes me most is the unique and exceptional atmosphere in the Council at sponsorship time, probably because we all feel that we are participating, in our own way, in an historic event that unfolds in the Council. I have this feeling as I exercise my function of recording and verifying each of the sponsorship forms, but also as I support the assistant rapporteurs. The Council is in close contact with the elected officials. How can you validate the form sent in by a mayor if you don't know the name of the merged communes or the new commune? How can you determine at first glance if the councilor who submitted the form is *départemental*, *régional*, *métropolitain*, *provincial* or *territorial*? More generally, how do you respond to a sponsor who has an inquiry about his form? Or who would like to obtain a second one? Or who protests the publication of its contents? And of course, throughout this period the suspense builds: who will be the final beneficiaries of the 500 precious sponsorships?

“The same scenario plays out again during Election Day and the days after the vote. We have to validate the instructions given to the Council's delegates and also monitor the arrival of vote counts received from the *départements*. Processing these documents requires working with the *préfectures* to recover documents that were drawn up locally during voting. On those days, it is useful to have a good working relationship with authorities in the *préfectures*.”



Guy Prunier,
chargé de mission
Elections

“WE HAVE TO VALIDATE THE INSTRUCTIONS
GIVEN TO THE COUNCIL'S DELEGATES
AND ALSO MONITOR THE ARRIVAL OF
THE VOTE COUNTS RECEIVED FROM THE
DÉPARTEMENTS.”

DECISIONS

2016-2017

EX ANTE REVIEW OF CONSTITUTIONALITY

Since its creation in 1958, the Conseil constitutionnel reviews bills passed by Parliament before they are enacted by the President of the Republic. These decisions are recorded as “DC” for *déclaration de conformité*. The review is called *ex ante* because it takes place before the bill becomes law.

On the following pages, you will find a summary of the main DC decisions rendered over the past year.



The Conseil constitutionnel meets in the conference room to vote on its decisions. In particular, it rules on the compliance of laws with the body of constitutional rules. This *ex ante* review is obligatory for organic law and rules of procedure for Assemblies, submitted as of their adoption.

For ordinary law and treaties, the Council is petitioned by the President of the Republic, the Prime Minister, the President of Parliament or the Senate, or more often, by sixty Members of Parliament or Senators.

The petition must be made within the time allotted for promulgation (fifteen days after adoption).

The Council then has one month to render its “DC” decision.



8 December 2016 - Decision no. 2016-741 DC

Anti-corruption law

Law on transparency, the fight against corruption and the modernisation of the economy

THE CONSEIL CONSTITUTIONNEL WAS PETITIONED TO REVIEW THIS LAW, KNOWN AS “SAPIN 2”, WHICH HAD BEEN ADOPTED AT THE END OF THE PREVIOUS LEGISLATIVE SESSION, AND CONTAINS A SERIES OF PROVISIONS RELATED TO STRENGTHENING THE FIGHT AGAINST CORRUPTION AND OTHER ISSUES RELATED TO THE ECONOMY.

The “Sapin 2” Law included a definition of “whistleblower”. The Council ruled that this definition was sufficiently precise and that the three phases of the procedure (notification of employer, then of an administrative or legal authority, and lastly, in the absence of a response, the general public) were in compliance with the Constitution. However, the Council specified that the scope of application of these provisions is limited to whistleblowers who are revealing information about the organisation that employs them or with which they have a professional relationship, and does not cover “outside” whistleblowers.

The Council also declared constitutional the obligation for major companies to set up anti-corruption measures, as well as the creation of a digital directory of lobbyists under the auspices of the High Authority for Transparency in Public Life (*Haute autorité pour la transparence de la vie publique* – HATVP). However, the Council ruled that these provisions would infringe on the separation of powers if they were to impede parliamentary assemblies from determining that certain categories of interest groups should be subject to specific rules, or from taking individual measures in their regard.

The Council declared unconstitutional the article that vested the Public Prosecutor for Financial Matters (*Procureur de la République Financier*) and the Paris investigative and trial courts with exclusive authority to pursue, investigate and rule on offences in the fiscal, economic or financial sphere: in this case, given the seriousness of the offences concerned, in particular with regard to the fight against tax evasion, the legislature must remain involved in order to ensure the objective of sound administration of justice and the pursuit of the fight against tax evasion, through its capacity to adopt interim measures.

With regard to the establishment of “fiscal reporting” on a country-by-country basis, the Council found that ordering certain companies to make their economic and tax indicators public on a country-by-country basis would enable all companies in the same markets, and in particular competitors, to identify essential elements of reporting companies’ industrial and commercial strategy. The Council thus ruled that these provisions were a disproportionate infringement of freedom of enterprise and thus unconstitutional.

A ruling of unconstitutionality was also handed down by the Council in regard to provisions covering certain civil servants who move to employment in the public sector, as well as a new distribution of powers between the HATVP and the Civil Service Ethics Commission (*Commission de déontologie de la fonction publique*). While Parliament may adjust the authorities vested in these bodies, the provisions were found to be contradictory in some cases, because they would establish concurrent jurisdiction. Because of this contradiction, the Council ruled that these provisions, in any event, were unconstitutional. —

23 March 2017 - Decision no. 2017-750 DC

Corporate responsibility

Law on the obligation of oversight for parent companies and principals

THIS LAW AFFECTS FRENCH COMPANIES WITH MORE THAN 5,000 EMPLOYEES IN FRANCE OR 10,000 EMPLOYEES AROUND THE WORLD, INCLUDING SUBSIDIARIES: IT INSTITUTES THE OBLIGATION TO ESTABLISH, PUBLISH AND IMPLEMENT AN “OVERSIGHT” PLAN. THIS PLAN MUST INCLUDE REASONABLE OVERSIGHT PROVISIONS THAT ARE CAPABLE OF IDENTIFYING RISKS AND PREVENTING SERIOUS HARM “TO RIGHTS AND FUNDAMENTAL FREEDOMS” AS A RESULT OF THE OPERATIONS OF THE COMPANY THAT DREW UP THE PLAN, THE COMPANIES THAT IT CONTROLS AND SUB-CONTRACTORS, IN FRANCE AND ABROAD. THE APPLICANTS ARGUED BEFORE THE COUNCIL THAT THESE PROVISIONS ARE IN VIOLATION OF FREEDOM OF ENTERPRISE AS WELL AS THE PRINCIPLE OF LEGALITY OF CRIMINAL OFFENCES AND PENALTIES.



However, given the imprecise nature of the terms used to define the obligations established (“reasonable oversight”, “actions capable of mitigating risks”, “human rights”), the Conseil constitutionnel rejected the constitutionality of the provisions instating a fine, the amount of which could reach ten million euros.

In these conditions, notwithstanding the clear objective of general interest pursued by the law, the Conseil constitutionnel, applying jurisprudence on the principle of the legality of criminal offences, ruled that the legislature had defined the obligation in terms that were not clear and precise enough to allow imposition of sanctions in the case of failure to comply. The Council thus declared the provisions calling for fines unconstitutional. —

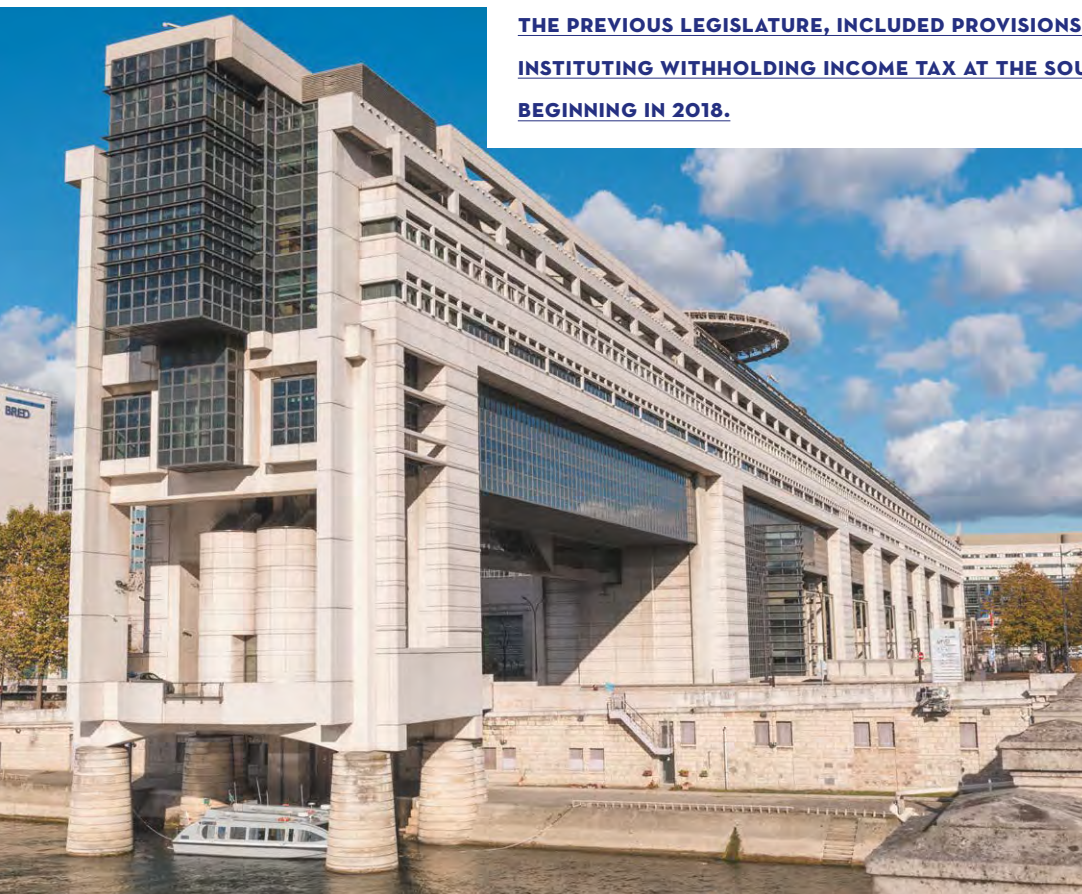
The Conseil constitutionnel ruled that the law’s establishment of an obligation to establish an oversight plan, the mechanism for formal notice of failure to meet the obligation, the possibility for a judge to issue an injunction, and incurred liability in the event that the obligation is not met all comply with the Constitution. These provisions do not constitute any infringement on the freedom of enterprise.

29 December 2016 - Decision no. 2016-744 DC

Finance Act

Finance Act for 2017

THE FINANCE ACT FOR 2017, THE LAST FINANCE ACT OF THE PREVIOUS LEGISLATURE, INCLUDED PROVISIONS FOR INSTITUTING WITHHOLDING INCOME TAX AT THE SOURCE BEGINNING IN 2018.



The Council first of all ruled on the conformity and veracity of the 2017 budget. The Council declared that the hypotheses used for 2016 and 2017 could be considered as optimistic, in particular the 2017 deficit; however, the provisions and information available to the Council do not lead to the conclusion that

these hypotheses are flawed by an intention to falsify the main lines of the budget balance. The Council did nonetheless specify that if changes in spending or resources of a nature to modify the balance were to occur, the Government would have to submit an Amending Finance Act in the course of the year 2017.

With regard to the institution of withholding at the source for purposes of income taxation beginning in 2018, the Council ruled, in the first place, that the contested provisions were not, as the MPs submitting the petition suggested, unintelligible. Furthermore, given that taxpayers would have the option to choose a “default” rate, removing the need to reveal their household taxable income to their employer, there is no infringement of the right to privacy. In addition, specific provisions are provided for company executives to prevent schemes that would attempt to draw benefit from the transition period. Lastly, tax recovery will continue to be the purview of the State, with companies as collection agents only, as they already are for other types of tax, in particular VAT and “CSG” (social contribution). No indemnification is due to the companies with regard to collection. The Council’s decision, which only responds to the complaints filed by the Senators and Members of the Assembly submitting the petition, concerns certain aspects of the reform: any provisions that have not been explicitly ruled as constitutional by the Council may, as needs be, give rise to a QPC.

Another contested article concerned the extension, under certain conditions, of the scope of corporate tax to companies earning profits in France for legal entities established outside of France. The Council observed that the legislature subordinated the application of these new provisions to a decision of the tax authorities to establish a monitoring procedure. While the legislature does have the power to modify the scope of application of corporate tax in order to tax profits earned in France by companies located outside of France, it cannot, without disregard for the limits of its authority,

With regard to the institution of withholding at the source for purposes of income taxation beginning in 2018, the Council’s decision, which only responds to the complaints filed by the Senators and Members of Parliament submitting the petition, concerns certain aspects of the reform: any provisions that have not been explicitly ruled as constitutional by the Council may, as needs be, give rise to a QPC.

allow the tax authorities the power to choose the taxpayers that will or will not be considered as subject to corporate tax.

The Conseil constitutionnel therefore, for this reason, rejected the article in question.

Lastly, the Council rejected several articles on the grounds that they were not appropriate for inclusion in the Finance Law, in application of jurisprudence on “budget riders”. —

10 November 2016 - Decision no. 2016-738 DC

Protection of sources

Law seeking to promote media freedom, independence and pluralism



**THE COUNCIL CONDUCTED
AN EX ANTE REVIEW OF ONE
OF THE ARTICLES OF THIS
LAW, WHICH MODIFIED THE
CURRENT PROVISIONS FOR THE
PROTECTION OF JOURNALISTS'
CONFIDENTIAL SOURCES.**

The article in question prohibited breach of the confidentiality of a source with regard to punishment for offences, however serious, whatever the circumstances and the interests protected, notwithstanding the overarching imperative of public interest that is associated with punishment.

In these conditions, the Conseil constitutionnel found that the legislature had not ensured a balanced reconciliation between, on the one hand, freedom of expression and communication and, on the other, several requirements of the Constitution, in particular the right to privacy, the confidentiality of correspondence, the safeguard of the Nation's fundamental interests, and the search for offenders.

Furthermore, criminal immunity as instituted by this article was quite broadly defined, both for the persons protected and the offences covered. All of the staff members at media outlets, including some professionals having only an indirect link to the task of informing the public, would be protected by this immunity. In addition, this immunity made it impossible to bring charges for concealment

of a violation of professional confidentiality and infringement of the right to privacy, which offences are usually punishable by five years in prison, with regard to the repression of behaviours that violate the right to privacy and the confidentiality of correspondence. It also made it impossible to bring charges of concealment of a violation of the investigation process, an offence punishable by the same sentence, by virtue of the need to protect the right of presumed innocence and the search for the true offenders.

In these conditions, the Conseil constitutionnel found that the legislature had not ensured a balanced reconciliation between, on the one hand, freedom of expression and communication and, on the other, several requirements of the Constitution, in particular the right to privacy, the confidentiality of correspondence, the safeguard of the Nation's fundamental interests, and the search for offenders. The Conseil constitutionnel thus ruled that this article of the law was unconstitutional.

The protection of journalists' confidential sources will continue to be guaranteed by the French Law dated 4 January 2010 on the protection of confidentiality of sources. This law provides that the right to confidentiality shall only be breached subject to two cumulative conditions: there must be an overriding imperative of public interest at stake; the measures to be taken must be strictly necessary and proportionate to the legitimate objective pursued. —



IN THEIR OWN WORDS ...

What changes have occurred in the *ex ante* reviews since 1958?

The first, of course, occurred in 1971, with the expansion of the corpus of constitutionality, which is to say the body of our rights and freedoms. As of 1974, it is possible for 60 Senators or Members from the opposition party to petition the Conseil constitutionnel. Today, claims are filed against bills that are ever more complex and require a growing level of legal expertise.



Gérald Sutter,
chargé de mission
Legal Department

Has the QPC method had an influence on the number of *ex ante* petitions?

No, the QPC method has not led to the extinction of *ex ante* petitions, as some predicted: since its introduction in 2010, every year just under fifteen ordinary laws are reviewed *ex ante*, which is the same number as before. Rather than a reduction we have seen the appearance of “preventive” *ex ante* petitions brought by the Parliamentary majority, and not the opposition, in order to obtain a stamp of constitutionality and avoid future QPCs. The two paths to petition are therefore more complementary than competitive.

“THE QPC METHOD HAS NOT LED TO THE EXTINCTION OF *EX ANTE* PETITIONS, AS SOME PREDICTED (...). THE TWO PATHS TO PETITION ARE THEREFORE MORE COMPLEMENTARY THAN COMPETITIVE.”

What are “external contributions”?

These are observations that are addressed to the Council spontaneously to contest or defend the constitutionality of a law that has been submitted for *ex ante* review. In the past, people referred to “the narrow doors” (*portes étroites*); these observations are made by associations, businesses, trade unions, etc. In order to make this long-standing practice more transparent, the list of external contributions, since 23 March 2017, is published on the Council’s website along with the decision.

17 november 2016 - Decision no. 2016-739 DC

Modernisation of the justice system

Law on the modernisation of the 21st Century system of justice



THE CONSEIL CONSTITUTIONNEL RENDERED DECISIONS, IN PARTICULAR, ENABLING THE REGISTRATION OF A “CIVIL SOLIDARITY PACT” (A CIVIL UNION OR “PACS”) IN THE TOWN HALL; CREATING A CONVENTIONAL PROCEDURE FOR DIVORCE BY MUTUAL CONSENT; AND MODIFYING THE PROCESS OF REQUESTS FOR RECOGNITION OF A CHANGE OF SEX AT THE CIVIL REGISTRY OFFICE.

The Conseil constitutionnel ruled that mayors, (and no longer the court of first instance), could assume the authority of recording civil unions known as PACS without infringing on the principle of free administration which applies to local authorities. The petitioning Members of Parliament underlined that this transfer of authority would not give rise to any financial compensation to municipalities.

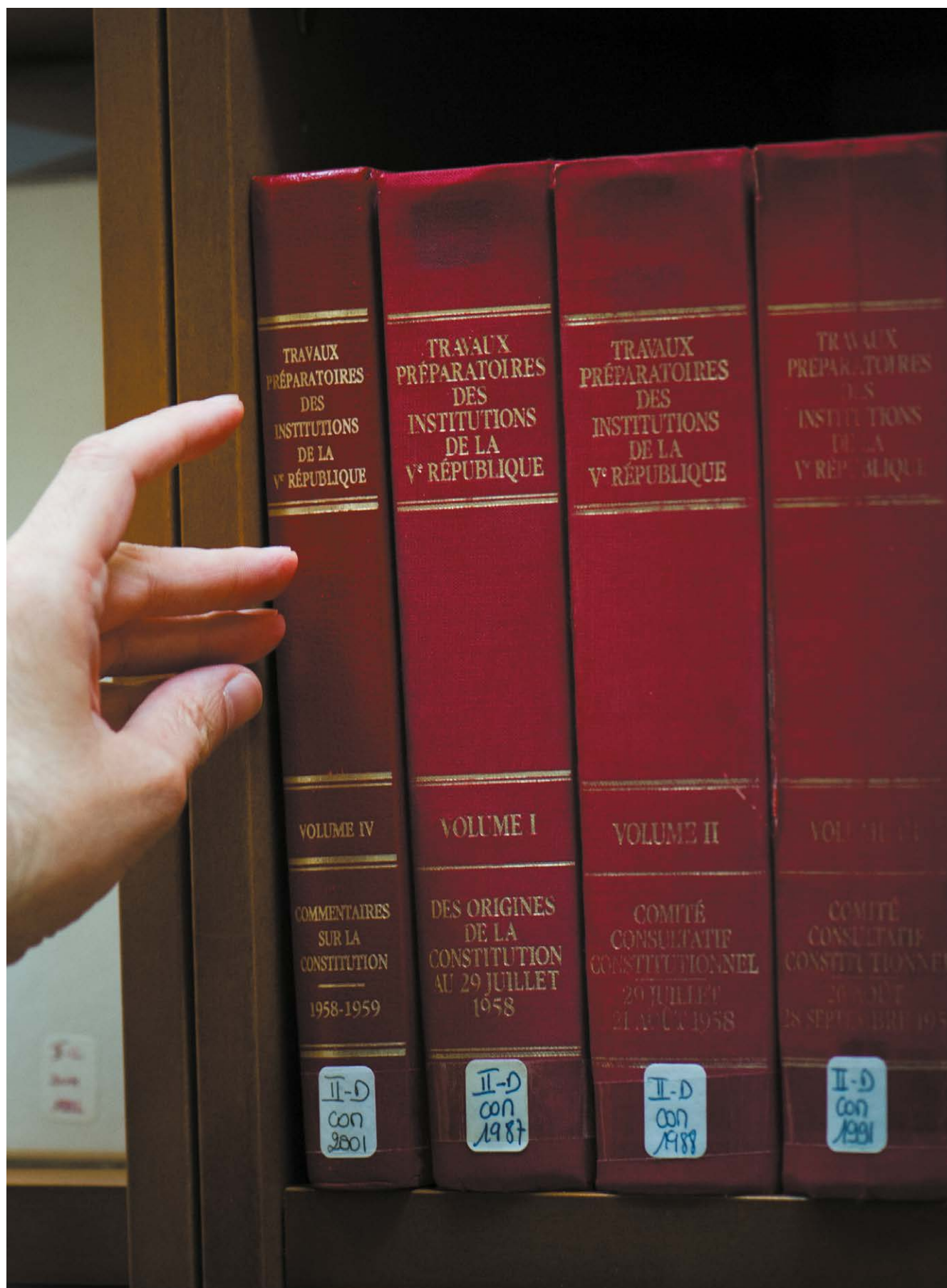
With regard to the new, non-judicial procedure for divorce by mutual consent, the Council ruled, contrary to the petition submitted by MPs, that the procedure did not disregard the principle of equality among children. The contested provisions prohibited recourse to a conventional divorce procedure if one of the minor children of the couple requested an audience with the judge. The Council found that such a provisions would affect the legal protection of children by creating

a difference between minors who request a hearing and other children. However, the Council ruled that this difference was based on the different situation of minors who are mature enough to express themselves with regard to their parents' divorce and other children who are not. This difference has a direct connection to the purpose of the law, and therefore the principle of equality is respected.

With regard to the modification of the sex of an individual as recorded at the registry office, the Conseil constitutionnel dismissed the petitioners' arguments, ruling that the provisions in question disregard neither Article 66 of the Constitution, which states that the judicial authority is guardian of individual liberty, nor the principle of protecting human dignity.

Furthermore, the Council in its Decision rejected several “riders” - provisions introduced in amendments that had no relevance, even indirectly, to the initial bill - as well as provisions that did not comply with the so-called *règle de l'entonnoir* (literally, “funnel rule”) - which requires that any additions or modifications made to the initial bill by MPs or the Government must have a direct link to the measure under debate. —





16 March 2017 - Decision no. 2017-747 DC

Voluntary termination of pregnancy

Law on the extension of the offence of obstruction to access to voluntary termination of pregnancy

THE LAW ON THE EXTENSION OF THE SCOPE OF THE OFFENCE OF OBSTRUCTING ACCESS TO VOLUNTARY TERMINATION OF PREGNANCY (INTERRUPTION VOLONTAIRE DE GROSSESSE - IVG) BROADENS THE DEFINITION OF THE OFFENCE OF OBSTRUCTING OR ATTEMPTING TO OBSTRUCT THE PRACTICE OF OR INFORMATION ON ABORTION. MEMBERS OF PARLIAMENT AND SENATORS WHO CONSIDERED THAT THESE NEW PROVISIONS WERE AN INFRINGEMENT OF FREEDOM OF EXPRESSION AND COMMUNICATION PETITIONED THE CONSEIL CONSTITUTIONNEL.



The contested provisions of the law, which modify the public health code, seek to prevent infringement of the right to obtain an abortion, thus preserving the freedom of women as it is established by Article 2 of the 1789 *Declaration of the Rights of Man and the Citizen*. These provisions, in particular, target moral and psychological pressure, threats and acts of intimidation against any person seeking information on voluntary termination of pregnancy, regardless of the contact person, the site or the support where the information is made available. The Conseil constitutionnel ruled that these provisions – sufficiently precise that they do not disregard the objective of accessibility and comprehensibility of the law – comply with freedom of expression and communication. Nonetheless, the Council expressed two significant reservations.

Firstly, the Council ruled that the sole publication of information for the benefit of a non-specific audience via any communication tool, especially websites, will not be considered as constituting

pressure, threats, or intimidating acts. The contested provisions can therefore only be used to punish acts that obstruct or attempt to obstruct one or more persons who are determined to obtain a voluntary termination of pregnancy or obtain information on the subject.

Secondly, the offence of obstruction, consisting of moral and psychological pressure, threats, or any act of intimidation against persons seeking information on the voluntary termination of pregnancy can only be established if two conditions are met: that the person is seeking information, not soliciting an opinion; that the information concerns the conditions under which the termination is carried out or its consequences and is provided by a person who has or claims to have expertise on the subject. —

26 January 2017 - Decision no. 2016-745 DC

Equality and citizenship

Law on equality and citizenship

THE FRENCH LAW ON EQUALITY AND CITIZENSHIP, WHICH CONTAINED 224 ARTICLES, INCLUDED DIFFERENT PROVISIONS TOUCHING ON SOCIAL AND EDUCATIONAL MATTERS.



The Conseil constitutionnel rejected the law for insufficient details on authorisations accorded to the Government. One of the articles gave the Government the power to use an Ordonnance (statutory instrument issued by the Council of Ministers) to replace, in the education code, the regime of notification prior to opening private educational institutions by a regime of authorisation. The Council ruled that,

because of the potential infringement of freedom of education by establishing a regime of administrative authorisation, the legislature, by granting the Government, without further indication, the right to define “the motives by which the competent authorities may refuse to authorise the opening” of such institutions, has insufficiently described the purpose of the provisions that it proposes to undertake by Ordonnance.

The Council ruled, ex officio, on one of the provisions of the law that punishes denial of certain crimes, including crimes that have not been formally condemned by the judiciary.

The Council also made a statement on “gender identity” as it exists in different criminal provisions, in particular with regard to defamation or discrimination. Up until now, such measures referred to sex, sexual orientation and sexual identity. The legislature maintained the notions of sex and sexual orientation but for “sexual identity” has substituted “gender identity”. The Council took into account the parliamentary reports that demonstrate that this expression is meant to include the gender with which a person identifies, whether or not it corresponds to the gender indicated on the civil registry and disregarding different indicators of male or female identity. The Council also underlined that the notion of gender identity is now present in many international texts. The Council concluded that the term “gender identity” is sufficiently clear and precise to ensure the respect of the principle that offences and penalties must be defined by law.

The Council ruled, *ex officio*, on one of the provisions of the law that punishes denial of certain crimes, including crimes that have not been formally condemned by the judiciary. The Council observed that, first of all, these provisions are not necessary to effectively contain incitement to hatred or violence, which is already covered by the French Law dated 29 July 1881 regarding freedom of the press. The decision is based, secondly, on the fact that the contested article would allow speech to be subject to a criminal complaint on the grounds that it denies facts, even if these facts have not been recognised legally as criminal in nature at the time the speech was uttered. The Council considered that the result would be uncertainty with regard to the lawfulness of acts or statements that could be the subject of historical debates. It thus rejected these provisions, on the grounds that they placed unnecessary and disproportionate restrictions on the freedom of expression.

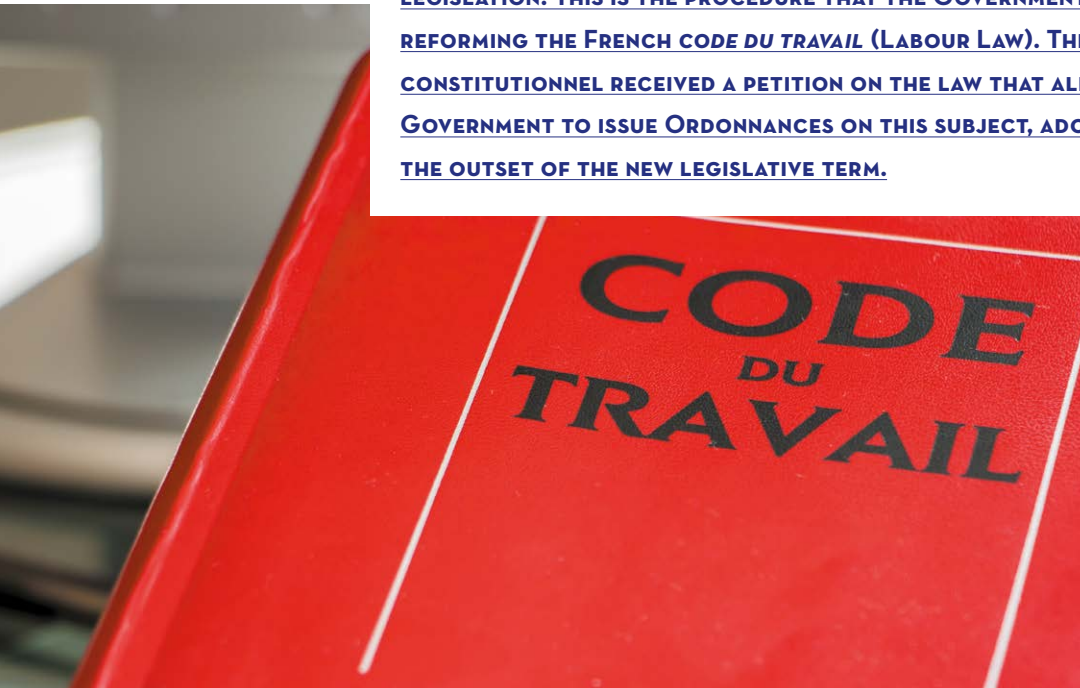
Beyond this article and those that were rejected *ex officio* for irregularity of procedure (legislative “riders” or “funnels”), the Council did not find any other issues of constitutional compliance and therefore did not rule on the constitutionality of any provisions other than those addressed in the Decision; the other provisions may, if the case arises, be subject to a QPC. —

7 september 2017 - Decision no. 2017-751 DC

Reform of Labour Law (*code du travail*)

Law authorising the use of Ordonnances to establish provisions for strengthening social dialogue

ARTICLE 38 OF THE CONSTITUTION ENABLES THE GOVERNMENT TO USE ORDONNANCES FOR TAKING MEASURES THAT ARE USUALLY SUBJECT TO LEGISLATION. THIS IS THE PROCEDURE THAT THE GOVERNMENT USED FOR REFORMING THE FRENCH CODE DU TRAVAIL (LABOUR LAW). THE CONSEIL CONSTITUTIONNEL RECEIVED A PETITION ON THE LAW THAT ALLOWS THE GOVERNMENT TO ISSUE ORDONNANCES ON THIS SUBJECT, ADOPTED AT THE OUTSET OF THE NEW LEGISLATIVE TERM.



In reviewing Enabling Acts, the Conseil constitutionnel uses well-established jurisprudence to ensure that the Government precisely informs Parliament of “the purpose of the provisions it proposes to set in motion as well as the scope of application”, with no obligation “to inform Parliament of the

content of the Ordonnances to be decreed by virtue of the Enabling Act”. In this case, the Council found the Enabling Act sufficiently precise.

The Council also ensures that the enabling provisions are not, “either in and of themselves or by their necessary consequences”, “contrary

to constitutional rules and principles".

The Council thus reviewed each of the provisions submitted with regard to questions of constitutionality that may be invoked.

Thus, some provisions of the Enabling Act authorise the Government, as it seeks to strengthen collective bargaining, to harmonise and simplify, by way of Ordonnance, competitiveness agreements and the legal rules for termination of a contract in the event that a salaried employee refuses modifications to his contract following a collective agreement. The Council ruled that these provisions complied with the constitutional requirement of the right to work and the principle of equality before the law – while reiterating that these provisions in no way relieve the Government of the obligation to respect these same requirements when the Ordonnance is adopted.

Other provisions in the law submitted authorise the Government to facilitate recourse to the consultation of employees in order to validate an agreement that has already been reached, on the initiative of a representative trade union within the company, of the employer, or following a proposal from both. The Council indicated in its decision that, while the 1946 Preamble confers upon trade unions the natural role of defending the rights and interests of workers, in particular through collective bargaining, it does not provide these organisations with a monopoly on employee representation in regard to collective bargaining. The contested provisions therefore do not violate the requirements of the Constitution.

Lastly, the Council rejected the complaint against the provisions that enable the Government,

The Council ensures that the enabling provisions are not contrary to constitutional rules and principles.

in order to improve predictability and thus provide greater security in workplace relations and the effects of termination for both employers and workers, to modify the rules for financial compensation for irregularities in dismissal procedures, in particular by establishing an obligatory framework of reference for compensation for damages following an unfair dismissal. The Council ruled that neither the principle of responsibility nor that of the separation of powers prevents the legislature from setting an obligatory scale for compensation arising from a civil wrong. The simple fact of establishing a scale for compensation of damages due to an unfair dismissal does not, in itself, constitute an infringement of the right to equal treatment under law.

The Conseil constitutionnel therefore did not reject the Enabling Law. It may, as necessary, be petitioned with regard to legal provisions for the ratification of Ordonnances or, in the context of QPC, receive petitions on the ratified provisions of the Ordonnances. —

8 September 2017 - Decisions nos. 2017-752 DC and 2017-753 DC

Transparency in political life

Organic law and ordinary law on confidence in political life

THESE TWO LAWS, ADOPTED AT THE OUTSET OF THE NEW LEGISLATIVE TERM, INCLUDE SEVERAL SERIES OF PROVISIONS AIMING TO INCREASE THE TRANSPARENCY OF PUBLIC LIFE, ENSURE PROBITY AND EXEMPLARITY OF ELECTED AUTHORITIES, ENSURE THE CONFIDENCE OF VOTERS IN THEIR REPRESENTATIVES, AND MODERNISE POLITICAL FINANCING.

With regard to the organic law, the Conseil constitutionnel ruled that the provisions obliging candidates for presidential election to submit a declaration of their interests and business activities, to be made public at least fifteen days before the first round of the presidential election, is constitutional. The same is true for the provisions that call for the public declaration of assets to be made by the President of the Republic before the end of his term, accompanied by a statement from the *Haute autorité pour la transparence de la vie publique* (HATVP – authority on transparency in public life) evaluating the changes in the President's patrimonial and financial situation during his term of office.

The Conseil constitutionnel ruled that the organic provisions creating a procedure for monitoring the legitimacy of the tax status of Members of Parliament is constitutional; in some cases, an MP who has neglected to meet his obligations may be disqualified for election for a period of three years and required to vacate his office.

The Council ruled that the organic legislation could, without any disproportionate infringement of the

right to privacy, add direct or indirect financial holdings that constitute control of a business that mainly provides consulting services to the list of items that must be included on the inventory of interests and business activities of Members of Parliament.

The Council ruled that the need to protect the freedom of choice of voters and the independence of elected officials against the risk of confusion or conflicts of interest justifies, with regard to the specific risks of conflict of interest associated with these business activities, the provision prohibiting Members of Parliament from exercising the profession of lobbyist and limiting the scope of consulting activity they may exercise.

While declaring constitutional the organic provisions bearing on the suppression of *la réserve parlementaire* (reserved funds available to MPs for discretionary spending), the Conseil constitutionnel ruled that this could not be interpreted as limiting the Government's right of amendment in financial matters. However, the Council rejected, in particular on the grounds of breach of the separation of powers, Article 15 of the organic law on the practice of the so-called *réserve ministérielle* (reserved funds available to ministries for discretionary spending), which remains a Government prerogative.

With regard to ordinary law, the Conseil constitutionnel ruled that Article 1 of the ordinary law, which establishes an obligatory additional penalty of ineligibility for any person found guilty of one of the crimes or misdemeanours specified in the Article, is not an infringement of the principle of the legality of criminal offences and penalties, nor of the principle of individualisation of penalties.



The Council accepts that this provision is necessary with regard to the objective of greater probity and exemplarity of elected officials and greater voter confidence. However, it ruled that these provisions should not be interpreted, in matters of tort, as automatically leading to a ban or proscription on the exercise of a position in civil service. Furthermore, it rejected, on the grounds of a disproportionate infringement of freedom of speech, the provisions in this Article that would make ineligibility obligatory for certain press offences that are subject to imprisonment.

With regard to conditions for hiring and appointing staff to serve the President of the Republic, members of the Government, Members of Parliament and local officials in executive positions, the Conseil constitutionnel ruled as constitutional provisions found in Articles 11, 14, 15, 16 et 17 of the ordinary law that prohibit public officials from employing persons with whom they have a family relationship, or that require a declaration either to the *Haute autorité* cited above or to the bureau and body in charge of parliamentary ethics (for Members of Parliament), of the names of any staff members recruited from their family circles.

However, applying the jurisprudence that resulted in the “interpretive reservation” regarding the laws dated 11 October 2013 on transparency in public life, the Conseil constitutionnel rejected, as a

breach of the separation of powers, the provisions authorising the *Haute autorité* to issue a public injunction to the individuals in question, which would terminate their service in the event of a conflict of interest.

With regard to political financing, the Conseil constitutionnel ruled that Article 30 of the ordinary law complies with Article 38 of the Constitution; this law authorises the Government to use Ordonnances to adopt the necessary provisions so that candidates, political parties and groups may, as of 1 November 2018, and in the case of confirmed failure of the banking market, obtain loans, advances or guarantees as needed to finance national or European election campaigns, once the legislature has precisely defined the purpose and the scope of the planned provisions.

However, the Conseil constitutionnel rejected, as a breach of the separation of powers, Article 23 of the law requiring that the Prime Minister issue a *décret* (decree) on bearing the cost of entertainment and representation expenses incurred by members of the Government.

It also rejected provisions in the organic law and the ordinary law that confer upon the *Haute autorité pour la transparence de la vie publique* the right to communicate certain documents or information previously accorded to the tax authorities, on the grounds that revealing personal connection data, as would be permitted by these provisions, is an infringement of the individual's right to privacy, in as much as sufficient safeguards are not in provided.

Lastly, the Council rejected several articles as “legislative riders”, on the grounds that they had no connection, even indirect, with the provisions in the original bill. —

DECISIONS

2016-2017

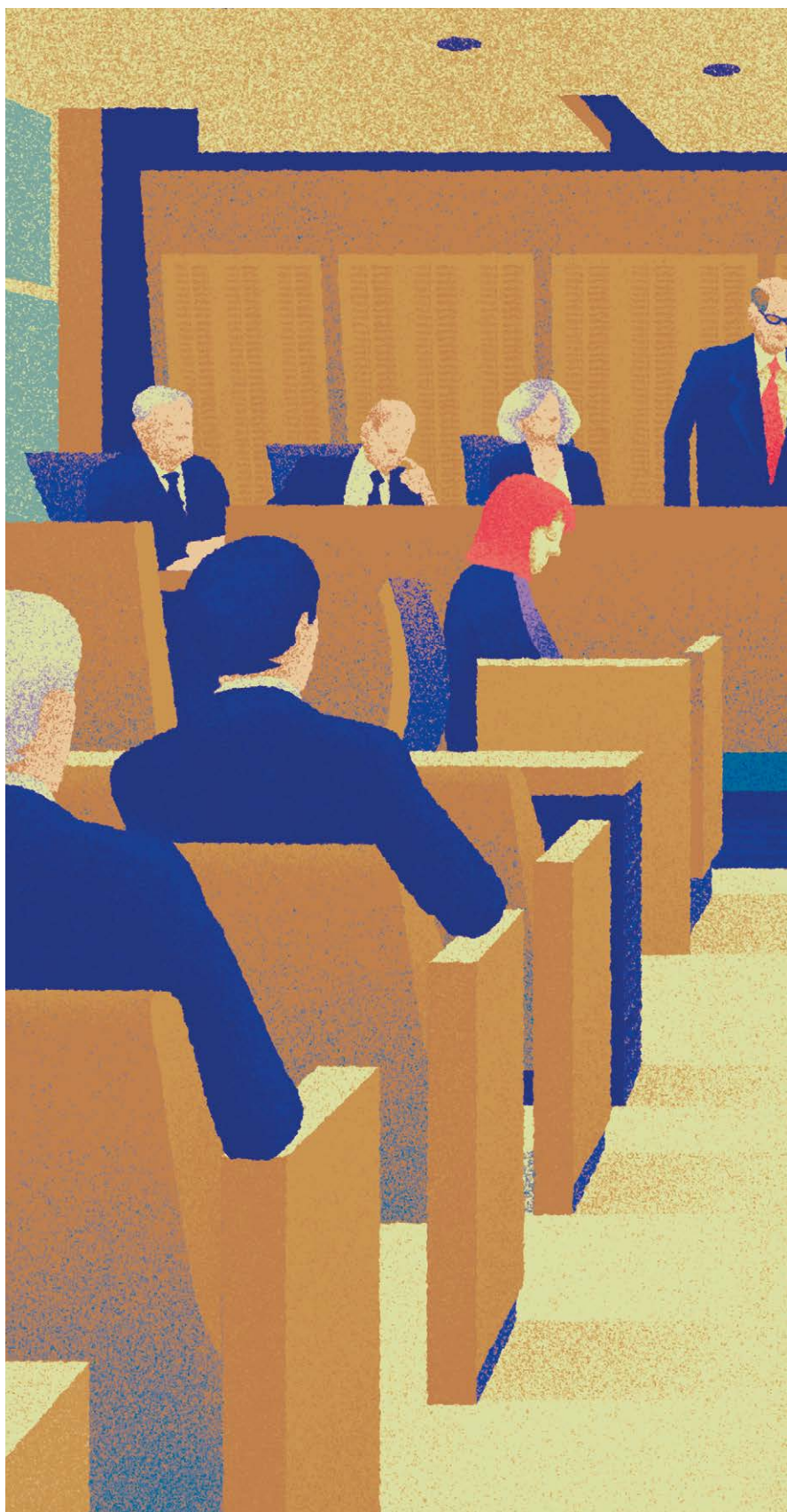
PRIORITY PRELIMINARY RULINGS ON THE ISSUE OF CONSTITUTIONALITY

The *Question Prioritaire de Constitutionnalité* (QPC) or “application for a priority preliminary ruling on the issue of constitutionality” is the right for any person who is involved in legal proceedings before a court to argue that a statutory provision infringes rights and freedoms guaranteed by the Constitution. This review is referred to as *ex post* because the Conseil constitutionnel examines a law that is already in force. The following pages give a summary of the main QPC decisions of the previous year.

The constitutional reform of 23 July 2008, which came into force on 1 March 2010, introduced the *Question Prioritaire de Constitutionnalité* (QPC). This new right allows any person involved in legal proceedings to file a claim that the legislative provision applied to his case is non-compliant with the rights and freedoms that the Constitution guarantees. In such a case, the Conseil d'État or the Cour de Cassation refer the petition to the Conseil constitutionnel. The Council has three months to rule on the issue, during which time a public hearing is held where lawyers and the representative of the Secretary-General of the Government (defending the law) speak. Members of the Conseil constitutionnel may address the parties during oral arguments. Videos of the QPC hearings are available, live and on record, on the Conseil constitutionnel website.

www.conseil-constitutionnel.fr

This *ex post* review may lead to the repeal of the legislative provision.





23 September 2016 - Decision no. 2016-567/568 QPC

Administrative searches

Mr Georges F. et al. [Administrative search and seizure in the context of the state of emergency II]

IN A PREVIOUS QPC DECISION DATED 19 FEBRUARY 2016, THE CONSEIL CONSTITUTIONNEL RULED THAT THE PROVISIONS ARISING FROM THE FRENCH LAW 20 NOVEMBER 2015 ALLOWING ADMINISTRATIVE AUTHORITIES TO ORDER SEARCH AND SEIZURE PROCEDURES UNDER THE STATE OF EMERGENCY WERE IN COMPLIANCE WITH THE CONSTITUTION. THE COUNCIL WAS LATER PETITIONED WITH TWO QPC APPLICATIONS FROM THE COURT OF APPEALS (COUR DE CASSATION), REGARDING THE PROVISIONS OF THE LAW ON THE STATE OF EMERGENCY ENABLING ADMINISTRATIVE SEARCH AND SEIZURE ORDERS IN ITS VERSION PRIOR TO 20 NOVEMBER 2015 – I.E. ARISING FROM THE FRENCH LAW 3 APRIL 1955 ON THE STATE OF EMERGENCY, ITSELF ARISING FROM THE ORDONNANCE DATED 15 APRIL 1960.

In the recent times, these provisions were put into application between 14 November 2015, the date of the declaration of the state of emergency following the 13 November terrorist attacks in Paris and Saint-Denis, and the entry into force of the French Law 20 November 2015.

After ruling that the contested provisions were legislative in nature, the Conseil constitutionnel found that because the application for appeal of the search and seizure procedure without establishing any conditions or providing any guarantees with regard to execution, the legislation did not provide a balanced reconciliation between the objective of upholding the constitutional value of maintaining public order and the right to privacy. The Council therefore ruled that these provisions were unconstitutional.

However, the Council ruled that calling into question acts of criminal procedure consecutive to a search and seizure order made on the basis of provisions found to be unconstitutional would be in disregard of the constitutional value of maintaining public order and would have consequences that

would clearly be excessive. The Council thus specified that the provisions taken on the basis of procedures declared unconstitutional cannot, in the context of all the criminal procedures that were established as a result, be contested on the grounds of this unconstitutionality. —



2 December 2016 - Decision no. 2016-600 QPC

Administrative searches

Mr Raïme A. [Administrative search and seizure in the context of the state of emergency III]

IN A QPC DECISION DATED 19 FEBRUARY 2016, THE CONSEIL CONSTITUTIONNEL HAD DECLARED UNCONSTITUTIONAL THE PROVISIONS ESTABLISHED PRIOR TO THE LAW ON THE STATE OF EMERGENCY THAT AUTHORISED COPYING DATA STORED ON AN IT SYSTEM ACCESSED ON THE STRENGTH OF AN ADMINISTRATIVE ORDER. AT THAT TIME, THE COUNCIL FOUND THAT THE PROVISION WAS NOT ASSOCIATED WITH SUFFICIENT LEGAL GUARANTEES. THE QUESTION RAISED WAS: ARE THE NEW PROVISIONS ON THE SUBJECT, AS ESTABLISHED BY THE FRENCH LAW 21 JULY 2016, COMPLIANT WITH THE CONSTITUTION?

Concerning the seizure and processing of electronic data, the Council found, first of all, that the contested provisions defined the grounds that could justify the seizure: the search operation must reveal the existence of data relevant to the threat. Secondly, these same provisions determine the conditions for execution: the seizure takes place in the presence of an officer from the Judicial Police (*police judiciaire*); a written report (*procès-verbal*) must be made, stating the grounds for seizure, and a copy of this report is given to the Public Prosecutor (*procureur de la République*) and another to the occupant of the premises, his representative or two witnesses. Lastly, the contested provisions require prior authorisation from a judge for the processing of data collected, from which must be excluded any data not linked to the threat. While the judge's ruling is pending, the data are placed under the responsibility of the chief of the service that carried out the search and seizure, who

ensures that no access is granted to the data. The Conseil constitutionnel ruled that these various legal guarantees provided by the legislation ensure a reconciliation that is clearly not imbalanced between the right to privacy and the objective enshrined in the Constitution of maintaining public order. The Council also ruled that the legislation did not disregard the right to effective legal remedy.

Concerning the conservation of electronic data, the Council found that the legislation set conditions for keeping data other than data that relate to the threat that served as grounds for the seizure and defined a time frame, at the end of which the data should be destroyed. In the same way, when the processing of the data leads to the identification of an offence, the law provides that the data should be kept according to applicable rules of criminal procedure. However, the Council observed that when the copied data represented a threat without leading to the observation of an offence, there is no provision in the legislation for a time limit, after the end of the state of emergency, for the destruction of the data. The Council thus ruled that the legislation did not, as regards the conservation of data, provide legal guarantees that would serve to ensure balanced reconciliation between the right to privacy and the constitutional value of maintaining public order. The Council thus rejected this item.

Lastly, given the legal guarantees provided, the Council ruled that by allowing the seizure of electronic media without the prior authorisation of a judge during an administrative search in the context of the state of emergency, the legislation ensures the reconciliation, in a manner that is clearly not imbalanced, of the right of ownership with the constitutional value of maintaining public order. —

16 March 2017 - Decision no. 2017-624 QPC

House arrest

Mr Sofiyan I. [House arrests in the context of the state of emergency II]

THE COUNCIL RECEIVED A QPC PETITION ON THE PROVISIONS THROUGH WHICH FRENCH LAW DATED 19 DECEMBER 2016 EXTENDING THE APPLICATION OF THE STATE OF EMERGENCY DEFINED THE CONDITIONS UNDER WHICH THE HOUSE ARRESTS EXECUTED UNDER THE STATE OF EMERGENCY COULD BE RENEWED BEYOND A TOTAL DURATION OF TWELVE MONTHS.



The Council first of all ruled on the provisions which made the extension of a house arrest beyond twelve months subordinate to a prior authorisation from the Conseil d'État on the expedited application for interim measures

These provisions in fact attribute to the Conseil d'État the authority to authorise, by a definitive decision on the merits of the case, a house arrest; it may later be called upon to rule on the legality of the provision as the judge in the last instance. The Council ruled that this prior authorisation from the Conseil d'État did not disregard the principle of impartiality and the right to seek effective legal remedy. A partial rejection of the item was declared.

The Council then ruled on the remaining contested provision, according to which the duration of a house arrest may not in principle exceed twelve months; beyond that period, the provision may be renewed for only three months at a time.

The Council expressed a three-fold reservation of interpretation with regard to renewal of house arrest beyond twelve months for periods of three months at a time, considering the excessive restriction of the right to freedom of movement.

First of all, the behaviour of the person in question must represent an especially serious threat for safety and public order.

Secondly, the administration must be able to produce new or additional evidence that that justifies the extension of the provision of house arrest.

Lastly, when considering the situation of the individual in question, account must be taken of the total duration of the house arrest provision, the conditions of the house arrest and any other obligations associated with it.

The declaration of unconstitutionality issued by the Council enters into force as of the date of the decision. It is now incumbent upon the Ministry of the Interior to adjudicate on any extension of house arrest provisions surpassing a total duration of twelve months. The Ministry's decision, which must take account of the reservations of interpretation expressed by the Conseil constitutionnel, may be subjected, in summary proceedings if necessary, to review by an administrative judge. —

9 June 2017 - Decision no. 2017-635 QPC

Refusal of entry or stay

Mr Émile L. [Refusing entry into or a stay in France in the context of the state of emergency]

A QPC APPLICATION WAS TRANSMITTED BY THE CONSEIL D'ÉTAT, AND THE CONSEIL CONSTITUTIONNEL RULED ON PROVISIONS OF THE FRENCH LAW DATED 3 APRIL 1955 REGARDING THE STATE OF EMERGENCY THAT HAD NOT BEEN MODIFIED SINCE THEIR ADOPTION; THESE PROVISIONS CONFER UPON THE PREFECT, IN THE CASE OF A DECLARED STATE OF EMERGENCY AND ONLY FOR THE GEOGRAPHIC ZONE SUBJECT TO HIS AUTHORITY, THE POWER TO "DENY THE RESIDENCE IN ALL OR A PART OF THE DÉPARTEMENT TO ANY PERSON SEEKING TO OBSTRUCT, IN ANY MANNER WHATSOEVER, THE ACTION OF THE PUBLIC AUTHORITIES".

The Conseil constitutionnel ruled that these provisions did not ensure a balanced reconciliation between, on the one hand, the constitutional objective of maintaining public order, and on the other, the freedom of movement and the right to a normal family life.

Indeed, the contested provisions provided that refusal of residence could be imposed on "any person seeking to obstruct the action of the public authorities". The law's scope of application was thus not restricted to disruptions of public order having consequences on the maintenance of public order and security in the context of the state of emergency.

Furthermore, the latitude given the Prefect is not circumscribed: the prohibition of residence may include the domicile or the place of work of the person concerned, and may even cover the entire administrative district (*département*), and this for an unlimited duration. The Conseil constitutionnel found that the law needed to include more guarantees.



Le Conseil constitutionnel found that the law needed to include more guarantees.

The Conseil constitutionnel therefore, on these grounds, declared unconstitutional these provisions in the French Law 3 April 1955. However, in accordance with powers granted by Article 62 of the Constitution, it postponed the repeal to 15 July 2017. —

10 February 2017 - Decision no. 2016-611 QPC

Internet sites and terrorism

Mr David P. [Crime of frequenting websites that promote terrorism]

FRENCH LAW DATED 3 JUNE 2016 ON REINFORCING THE FIGHT AGAINST ORGANISED CRIME, TERRORISM AND THE FINANCING THEREOF, WITH THE OBJECTIVE OF IMPROVING THE EFFECTIVENESS AND GUARANTEES OF THE CRIMINAL PROCEDURE, INTRODUCED AN ARTICLE IN THE CRIMINAL CODE, AS ESTABLISHED IN AN AMENDMENT IN PARLIAMENT, SETTING A SENTENCE OF TWO YEARS IMPRISONMENT AND A FINE OF 30,000 EURO FOR THE REGULAR CONSULTATION OF AN INTERNET SITE OF A TERRORIST NATURE. THE COUNCIL RECEIVED A QPC PETITION AND EXAMINED THESE PROVISIONS IN LIGHT OF ITS OWN STRINGENT JURISPRUDENCE ON FREEDOM OF COMMUNICATION.

In application of its own jurisprudence, the Council cannot accept any infringement on the freedom of communication unless it is at once necessary, adapted and proportionate.

As for the requirement of necessity, the Council found in this case that preventive and repressive laws already in existence included a specific set of criminal offences and criminal procedures targeting the prevention of terrorist acts. The Council thus concluded that the administrative and judicial authorities already have at their disposal, without the addition of the contested provisions, many instruments for oversight of

terrorist sites and also for the surveillance of an individual frequenting these sites, with the capacity to detain and punish the person if the activity is associated with behaviours that reveal terrorist intent, even if such a project has not yet entered the phase of execution.

As for the requirement of adaptation and proportionality, the Conseil constitutionnel found that the contested provisions did not require that the people regularly viewing the sites in question have the intention of committing terrorist acts. They did not even require the presence of any belief in the ideology expressed on these sites. These provisions would establish a sentence of two years for the sole act of consulting an Internet site more than once, for whatever reason, in the event that the consultation did not take place in the normal exercise of a professional activity related to informing the public, or in the context of scientific research, or for the purpose of providing evidence in a legal matter. While the legislature has also excluded criminal penalties for consultation “in good faith”, the parliamentary report does not clearly define the scope that this exception might be expected to cover.

The Council concluded that the infringement of the exercise of the right to communication was neither necessary, adapted nor proportional. The provisions were thus declared unconstitutional, effective immediately. —

7 April 2017 - Decision no. 2017-625 QPC

Individual terrorist undertaking

Mr Amadou S. [Individual terrorist undertaking]

FRENCH LAW DATED 13 NOVEMBER 2014 REINFORCING MEASURES FOR THE FIGHT AGAINST TERRORISM INTRODUCED A PENALTY OF TEN YEARS IN PRISON AND A 150,000 EURO FINE INTO THE CRIMINAL CODE FOR THE OFFENCE OF AN “INDIVIDUAL TERRORIST UNDERTAKING”. THE QPC SUBMITTED TO THE CONSEIL CONSTITUTIONNEL CONCERNS COMPLIANCE WITH THE THREE PRINCIPLES OF THE LEGALITY AND THE NECESSITY OF CRIMINAL OFFENCES AND PENALTIES, AND THE PROPORTIONALITY OF PENALTIES.



The Council first of all considered that the offence of “individual terrorist undertaking” was sufficiently well defined in the contested legislative provisions. Thus the Council ruled that there was no disregard of the principle of the legality of criminal offences and penalties, as established by Article 8 of the 1789 *Declaration of the Rights of Man and the Citizen*, which requires that legislation defines crimes and penalties in terms that are clear and precise enough to rule out arbitrary effects.

Concerning the principle of necessity regarding offences and penalties, the Conseil constitutionnel specified that legislation cannot punish the sole intent to commit a crime or misdemeanour. After first observing that the contested provisions applied to acts in preparation of a crime against humans as related to terrorist intentions, the Council expressed a reservation with regard to interpretation: it ruled that proof of the suspect’s intent to prepare a crime related to an individual terrorist undertaking could not arise merely from the material facts defined by the language of the

contested provisions as “preparatory acts”. The material facts must corroborate the intent that has been established by other means.

Furthermore, the Council declared a partial rejection: by including the material facts that constitute a preparatory act of “searching” objects or substances that create a danger to others, without defining the acts that constitute such a search within the framework of an individual terrorist undertaking, the legislature allowed punishment for actions that have not materialised, in and of themselves, the desire to prepare for criminal offence.

With regard to the necessity of punishment, the Conseil constitutionnel ruled that the punishment of ten years in prison and a fine of 150,000 euro was not obviously disproportionate to the preparation of acts that would potentially harm a human person in the execution of an individual terrorist undertaking with the goal of seriously disturbing public order by intimidation or terror. —



↑ The conference room

IN THEIR OWN WORDS ...

“The Conseil constitutionnel may not refer cases to itself. Petitions are referred to us from the Conseil d’État or the Cour de cassation. They will have verified three crucial points before sending a QPC to us:

- First of all, the challenged statutory provision must apply to the litigation or proceedings in question, or be the basis of such proceedings;
- Secondly, the challenged statutory provision must not have been previously found to be constitutional by the Conseil constitutionnel;
- Lastly, the issue raised must be a new one or of a serious nature.”

As soon as the Clerk’s Office receives the petition, the items are verified and recorded; “The organic law dated 10 December 2009 provides a very short time for responding to priority questions on the issue of constitutionality: we have three months to answer the QPC. My job is to ensure the smooth running of the written, adversarial and electronic procedures, from start to finish. I pay special attention to respecting deadlines. We are in contact with the parties and lawyers throughout the procedure.”

After the adversarial exchange between the parties, the case is given a public hearing where the lawyers may make oral arguments. The ruling is handed down a few days later. “During the public hearing, the Clerk of the Conseil constitutionnel reviews the procedure. The Clerk also assists in drafting the minutes of the deliberations.”

“Since the QPC was introduced, and the first public hearing was held within these walls on 1 March 2010, we have received 671 petitions, which resulted in 572 decisions.”

(Figures as of 15 September 2017)



**Odile
Carter-Lainé,**
Clerk

“SINCE THE QPC WAS INTRODUCED, AND THE FIRST PUBLIC HEARING WAS HELD WITHIN THESE WALLS ON 1 MARCH 2010, WE HAVE RECEIVED 671 PETITIONS, WHICH RESULTED IN 572 DECISIONS.”

2 June 2017 - Decision no. 2017-632 QPC

End of life

Union nationale des associations de familles de traumatisés crâniens et de cérébro-lésés (“families of patients having suffered head injuries and brain damage”) [Collegiate procedure prior to the decision to restrict or stop treatment for a person who is not able to express his own will]

THE CONSEIL CONSTITUTIONNEL RECEIVED
A QPC PETITION CONCERNING THREE ARTICLES
IN THE PUBLIC HEALTH CODE, AS WRITTEN
PURSUANT TO THE FRENCH LAW 2 FEBRUARY
2016 CREATING NEW RIGHTS FOR PATIENTS
AND INDIVIDUALS AT THE END OF LIFE.
THESE ARTICLES BEAR ON MEDICAL
ASSISTANCE AT THE END OF LIFE.

Each of the three contested articles referred to the establishment of a collegial procedure for determining medical assistance at the end of life. The Conseil constitutionnel ruled that the contested provisions did not, contrary to the argument of the applicant association, disregard the principle of preserving human dignity. The Council based its decision on several factors.

Firstly, the physician must make inquiries as to the patient's presumed will. In this regard, the physician is obliged to respect any advance directives expressed by the patient, unless they are clearly not relevant to or are inappropriate with regard to the must consult the authorised trusted person designated by the patient, or if no such person is available, the patient's family or those close to him.

Firstly, the physician must make inquiries as to the patient's presumed will. In this regard, the physician is obliged to respect any advance directives expressed by the patient, unless they are clearly not relevant to or are inappropriate with regard to the patient's actual medical situation.

Thirdly, the physician's decision may only be reached after a collegial procedure the objective of which is to inform the physician's decision.



Secondly, the Conseil constitutionnel, which does not have the same general discretionary and decision-making power that the Parliament does, cannot substitute its opinion for the terms of legislation regarding the conditions under which, in the absence of an advance directive from the patient, the physician may make the decision, in the event of “unreasonable medical obstinacy”, to stop or pursue treatment. When the patient’s will is uncertain or unknown, however, the physician may not rely on any presumption of the patient’s will as justification for a decision to withdraw treatment.

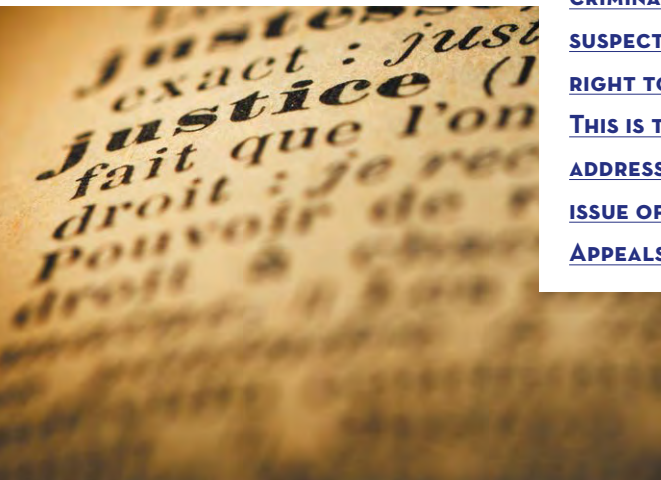
Thirdly, the physician’s decision may only be reached after a collegial procedure the objective of which is to inform the physician’s decision. This procedure enables the patient’s medical care team to ensure the respect of legal and medical conditions for the withdrawal of treatment and, in this event, for the use of deep, continuous sedation, associated with an analgesic.

Lastly, the physician’s decision and his understanding of the patient’s will are subject, as necessary, to a judge’s oversight. —

4 November 2016 - Decision no. 2016-594 QPC

Police custody

Ms Sylvie T. [No invalidity in the case of a statement made under oath while under police custody]



DOES THE OBLIGATION TO SWEAR AN OATH DURING A CRIMINAL INVESTIGATION, WHEN IT IS REQUIRED OF A PERSON SUSPECTED OF WRONGDOING, INFRINGE ON THE INDIVIDUAL'S RIGHT TO REMAIN SILENT AND NOT INCRIMINATE HIMSELF? THIS IS THE QUESTION THAT THE CONSEIL CONSTITUTIONNEL ADDRESSED THROUGH A QPC (PRELIMINARY RULING ON THE ISSUE OF CONSTITUTIONALITY) SUBMITTED BY THE COURT OF APPEALS (COUR DE CASSATION).

The code of criminal procedure stipulates that if a person in police custody in the context of a rogatory commission makes his statement after taking the oath usually administered to witnesses, this is not cause for invalidation of the procedure.

The Conseil constitutionnel first of all ruled that the right to remain silent is protected by the Constitution. This right results from the principle that no one can be forced into self-incrimination, as provided by Article 9 of the 1789 *Declaration of the Rights of Man and the Citizen*.

The Council then found that, on the one hand, only a person who may plausibly be suspected of committing or attempting to commit a criminal offence may held in custody; and on the other hand, the code of criminal procedure provides that any person making a witness statement during a rogatory commission is obliged to swear to “tell the whole truth, nothing but the truth”.

The Conseil constitutionnel considers that the fact of swearing such an oath may lead a person to believe that he does not have the right to remain silent, or may be perceived as contradictory to information received with regard to that right. The Conseil concluded that by creating an obstacle, in all circumstances, to the nullification of a statement made under oath during custody, in the context of a rogatory commission, the contested provisions are an infringement of the suspect's right to remain silent.

The Conseil constitutionnel therefore declared the contested provisions in the code of criminal procedure to be unconstitutional. —

The Conseil constitutionnel ruled that the right to remain silent is protected by the Constitution.

31 May 2017 - Decision no. 2017-651 QPC

Broadcast time

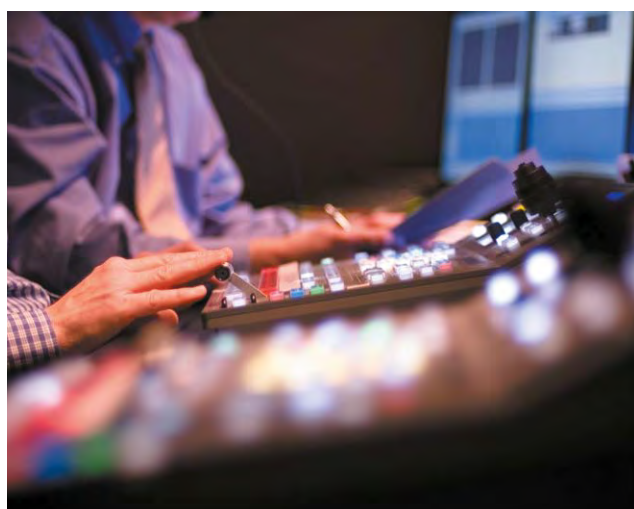
Association En marche ! [Length of election campaign television broadcast time leading up to legislative elections]

IN THE CONTEXT OF THE CAMPAIGN FOR THE FRENCH LEGISLATIVE ELECTIONS HELD ON 11 AND 18 JUNE, “EN MARCHE !” OBJECTED TO THE DISTRIBUTION OF BROADCAST TIME FOR OFFICIAL CAMPAIGN MESSAGES ON PUBLIC AUDIOVISUAL MEDIA – “CAMPAIGN CLIPS”, AS THEY ARE COMMONLY KNOWN.

The election rules reserve a very limited number of broadcast minutes for political groups that are not represented by a Parliamentary group in the National Assembly, compared to those groups that are represented. “En Marche !” submitted a QPC on which the Conseil constitutionnel ruled within two days, given the urgency of the matter.

The Council ruled that the article in question in the election rules was contrary to the constitutional principle of equitable participation of political parties and groups with respect to the democratic life of the Nation, as established by Article 4 of the Constitution, and has a disproportionate effect on equality of suffrage, given that it could lead to granting certain political parties or groups, not represented by a parliamentary group in the Assembly, a broadcast time allowance clearly disproportionate to their representivity.

Furthermore, while awaiting new legislative provisions, the Conseil constitutionnel set up an interim schedule for distribution of broadcast time that the Conseil supérieur de l’audiovisuel



(Superior Audiovisual Council – CSA) implemented for the legislative election campaigns in June 2017, using two criteria: firstly, the number of candidates for election; secondly, the representivity of a given party or group, in particular with regard to the electoral results registered since the previous legislative elections. Thus, in the event of clear disproportionality, the length of broadcast times granted to parties or groups not represented in the Assembly could be increased. However, the Conseil set a limit on the extra time that could be granted to each party or group not represented in the Assembly. —

21 October 2016 - Decision no. 2016-590 QPC

The right to privacy and the confidentiality of correspondence

La Quadrature du Net et al. [Surveillance and monitoring of wireless transmissions]

THE RIGHT TO FREEDOM, STATED IN ARTICLE 2 OF THE 1789 DECLARATION OF THE RIGHTS OF MAN AND THE CITIZEN, IMPLIES THE RIGHT TO PRIVACY AND THE CONFIDENTIALITY OF CORRESPONDENCE. TO COMPLY WITH THE CONSTITUTION, ANY INFRINGEMENT OF THESE RIGHTS MUST BE JUSTIFIED BY THE PUBLIC GOOD AND IMPLEMENTED IN A MANNER THAT IS BOTH ADEQUATE AND PROPORTIONAL TO THAT OBJECTIVE.

The provisions brought before the Council, introduced in the Internal Security Code (*code de la sécurité intérieure*) by way of the French Law 24 July 2015 concerning intelligence, made it possible, “*for the sole purposes of defence of national interests*”, for defence and interior ministers to demand that any natural or legal person operating electronic communications networks, as well as suppliers of electronic



The Conseil constitutionnel ruled that these provisions clearly presented a disproportionate infringement of the right to privacy and the confidentiality of correspondence.

communications services, provide the information or documents that are required to set up and carry out interception as authorised by law.

The Conseil constitutionnel ruled that these provisions clearly presented a disproportionate infringement of the right to privacy and the confidentiality of correspondence.

On the one hand, these provisions enable public authorities to set up surveillance and monitoring of any wireless transmissions, without excluding that the bulk collection of data might allow the unauthorised identification of individual conversations or communications.

On the other hand, by providing that the surveillance can be implemented “for the sole purposes of defence of national interests”, the contested provisions are subject to the constitutional requirements inherent to the protection of the fundamental interests of the Nation. However, the provisions have no safeguards

to prevent their broader use, beyond the scope of what is called for within the Constitution.

Lastly, the nature of the provisions of surveillance and monitoring that the public authorities may carry out is not defined. Recourse to the provisions is neither subject to any condition of substance nor to any required procedure, and there are no guarantees built around the implementation of the provisions.

The Conseil constitutionnel therefore found that these provisions do not comply with the Constitution.

As the immediate repeal of this article would in effect deprive the public authorities of all possible surveillance of wireless transmissions, the Conseil constitutionnel declared that the unconstitutionality of the provision would be considered effective as of 31 December 2017. —

The Conseil constitutionnel therefore found that these provisions do not comply with the Constitution.

21 October 2016 - Decision no. 2016-591 QPC

Fighting fraud and tax evasion

Ms Helen S. [Public registry of trusts]

FRENCH LAW DATED 6 DECEMBER 2013,
BEARING ON THE FIGHT AGAINST TAX FRAUD
AND SERIOUS ECONOMIC AND FINANCIAL
CRIME, INTRODUCED AN ARTICLE IN THE
GENERAL TAX CODE INSTITUTING A “PUBLIC
REGISTRY OF TRUSTS”, TO RECORD ALL
TRUSTS; DECLARATION TO THE REGISTRY
BECAME MANDATORY BY THE ADOPTION
OF THIS SAME ARTICLE.

The trusts covered by this article are those wherein the administrator, the settlor or at least one of the beneficiaries has tax residence in France, as well as trusts including an asset or right located in France. For each trust recorded, the registry was to state the date of creation and the names of the trustee, settlor and beneficiaries.

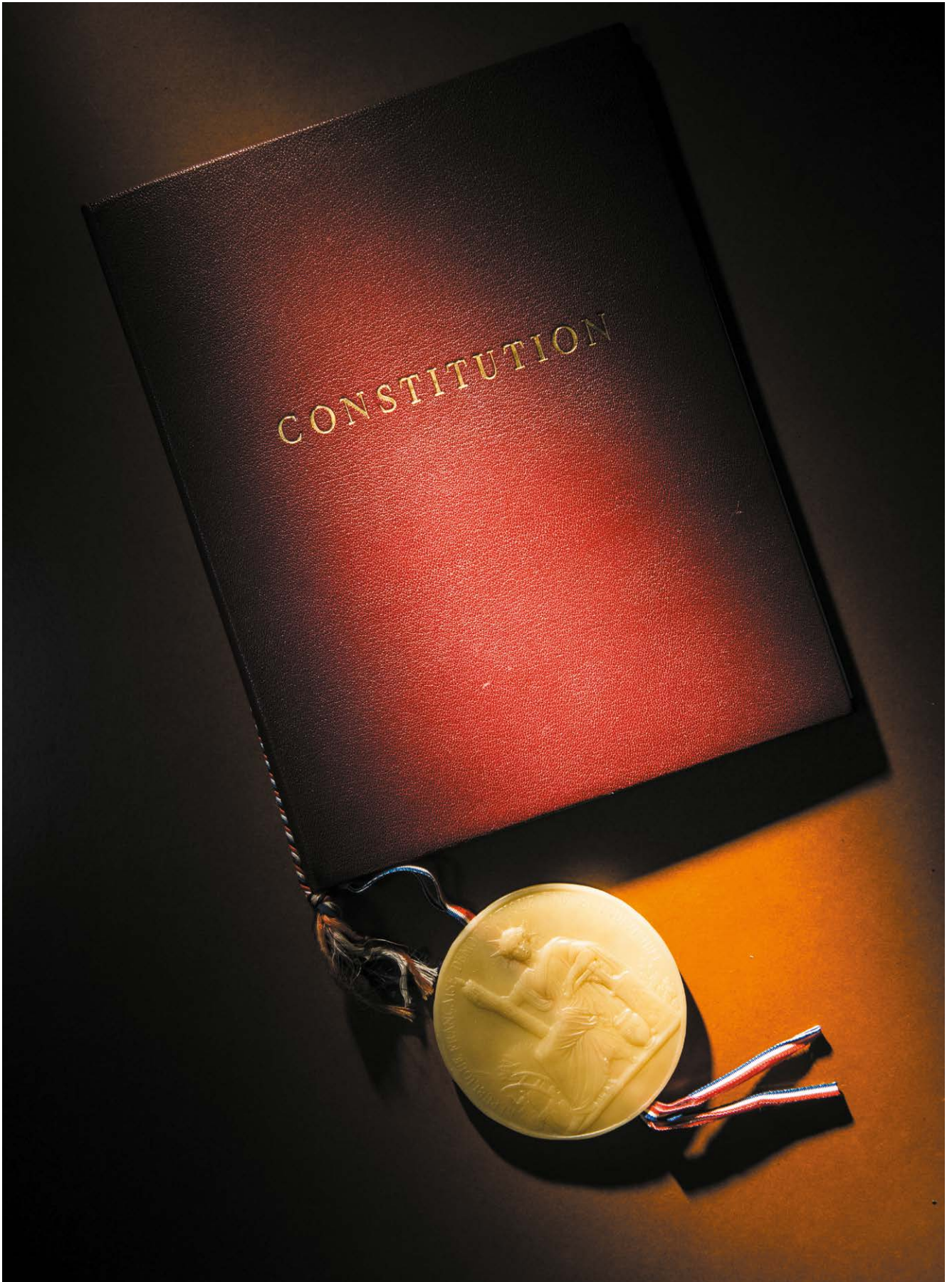
The Conseil constitutionnel found that the contested provisions were meant to foster transparency in trusts and thus that the intent of the legislature was to use the registry to prevent trusts from operating as tax evasion and money laundering instruments. In this way, the law serves the objective enshrined in the Constitution of preventing fraud and tax evasion.

However, the inclusion of the names of the settlor, the beneficiaries and the administrator in a public registry reveals the manner in which a person intends to dispose of his assets. This is an infringement of the right to privacy. The legislature did not specify who might consult the registry,

The Conseil constitutionnel found that the contested provisions were meant to foster transparency in trusts and thus that the intent of the legislature was to use the registry to prevent trusts from operating as tax evasion and money laundering instruments.

for what motives, nor did it define any restriction of access to the registry, placed under the responsibility of the tax authorities.

The Conseil constitutionnel thus ruled that the contested provisions are a disproportionate infringement on the right to privacy, and thus do not comply with the Constitution. —



THE WOMEN AND MEN OF THE CONSEIL CONSTITUTIONNEL

PROCEDURE OF APPOINTMENT

Three members are appointed by the President of the Republic, who also names the President of the Council. Three members are appointed by the President of the National Assembly and three by the President of the Senate.

Any person enjoying the full rights of citizenship may be appointed to the Conseil constitutionnel. In practice, the appointees are recognised experts, especially in the fields of law and policy, whose nomination must be approved by Parliament.

Following the constitutional amendment of 23 July 2008, the procedure stipulated in the final paragraph of Article 13 of the Constitution is applicable to nominations. Thus, nominations made by the President of the Republic are subject to approval by the standing commission of each house of Parliament. Nominations by the Presidents of the two chambers are only subject to approval by the standing commission of the nominating chamber.

In addition, former Presidents of the Republic are lifetime members, *ex officio*.

THE MEMBERS AS OF 15 SEPTEMBER 2017

Laurent Fabius, President
Claire Bazy Malaurie
Michel Charasse
Jean-Jacques Hyest
Lionel Jospin
Corinne Luquiers
Nicole Maestracci
Michel Pinault

MEMBERS *EX OFFICIO*

Amongst the former Presidents of the Republic, only **Valéry Giscard d'Estaing** is currently serving on the Conseil constitutionnel.

Jacques Chirac and Nicolas Sarkozy chose to retire from Council work as of March 2011 and January 2013, respectively. François Hollande did not choose to sit on the Council.

Organisation of the Council

The Conseil constitutionnel is organised around nine members, also known as the “*collège des Sages*”.

Appointed for nine years by the highest authorities of the State, the members serve a non-renewable term of office, which ensures the independence of the institution. This independence is strengthened by the members’ strict obligation to exercise reserve and to refrain from holding any elected office or exercising any other incompatible occupation.

The Conseil constitutional, which only hands down decisions in plenary sessions, must respond to petitions quickly: three months for QPC; one month for a ruling on a law prior to enactment; eight days for an emergency request from the Government.

To support the Council, skilled professionals provide expertise in different areas.

A secretary general directs the four services of the Council:

- A legal service comprised of a magistrate from the ordinary courts, a magistrate from the administrative courts, an administrator from the National Assembly and one from the Senate, a specialist in comparative law, a university lecturer, and a QPC specialist. The Office of the Clerk is annexed to the legal service.
- A documentation service responsible for legal research.
- A public relations service responsible for the Council’s publications, its relations with all other courts, universities and French and international institutions and publications; this service also serves as general secretariat for the Association of Constitutional Courts in French-speaking Countries, the ACCPUF (*Association des Cours constitutionnelles ayant en Partage l’Usage du Français*).
- An administrative and financial service that ensures Council operations, including management of the IT service.

In order to enable the Conseil constitutionnel to fulfil its mission, other public administrations provide agents: these include the Conseil d’État, the Prime Minister’s office, the National Assembly, the Senate and other ministries. Others may be recruited directly by the institution.

As of 1 January 2017, 65 staff members work at the Conseil constitutionnel as their main occupation, which is the equivalent of 57.5 full-time positions. Because of the technical nature of the positions, 42% of staff, the majority, is in civil service category “A”.

The *Garde républicaine* is responsible for security outside the building.

LAURENT VALLÉE, Secretary-General of the Conseil constitutionnel since April 2015, left office in August 2017. Before coming to the Conseil constitutionnel, Laurent Vallée, member



of the Conseil d’État, was the government commissioner on dispute resolution from 2002 to 2008; technical advisor on constitutional issues for the office of the Secretary-General of Government from 2006 to 2008; Director of Civil Affairs and Justice at the Ministry of Justice. He joined a private corporation in August 2017.

JEAN MAÏA replaces Laurent Vallée as Secretary-General.



He was appointed by decree of the President of the Republic on 9 August 2017, acting on the proposal of the President of the Conseil constitutionnel. A graduate of the ENS (*École normale supérieure*), the ENA (*École normale d’administration*) and the Paris IEP (*Institut d’études politiques*), Jean Maïa had been the director of legal affairs at the Ministry of the Economy and Finance since 2013. Prior to that time, he held several position as a legal expert: legal advisor to the Secretary-General of the Inter-ministerial committee on questions of European economic cooperation (SGCI) – later known as the General Secretariat for European Affairs (SGAE) – from 2002 to 2006; advisor on regulatory quality for the Secretary-General of the Government in 2006; head of the legislation and quality of law department for the Secretary-General of the Government from 2006 to 2012; legal counsel to the Ministry of the Economy and Finance from June 2012 to September 2013.

Magali Raugel, legal researcher

“I work in the Documentation Service, which does more than traditional document research, monitoring and provision. A big part of my job as a legal researcher involves working closely with the lawyers on a case. For example, I might be asked to create a table showing the evolution of laws in the context of *ex ante* litigation, or a summary of preparatory work concerning the provisions subject to a petition. Amongst other things, we verify the intent of the legislator. Sometimes this work is akin to ‘legislative archaeology’ when older provisions are concerned. Occasionally, we have to delve into the minutes of the Constituent Assembly of 1789. “For our research, we rely on the library’s wealth of digital resources and many volumes of constitutional law, as well as outside resources available through Internet (institutional sites, professional blogs, social networks, etc.), which have become indispensable.”





The Conseil constitutionnel employs

39 women

26 men

44.48 years old

The average age
of all staff members

48.77
years old

The average age of
female staff members

43.23
years old

The average age of
male staff members

27
years old

The youngest
staff member

63
years old

The oldest
staff member





INTERNATIONAL ACTIVITY

The President and the members of the Conseil constitutionnel participate in bilateral and multilateral meetings with the constitutional courts of other nations. These meetings have grown in number and now enable the Conseil constitutionnel to learn more about jurisprudence at work in other countries and to share our work abroad.

VISITORS



United Kingdom

A delegation from the Supreme Court of the United Kingdom, led by President Neuberger, who left the bench in August 2017, was welcomed to the Conseil constitutionnel on 19 January 2017.

This was the first such meeting since the Supreme Court replaced the *Appellate Committee of the House of Lords* as the highest court in the United Kingdom in 2009. Amongst the topics of discussion were the balance between fighting terrorism and protecting human rights, prompted by presentations by Lionel Jospin, member of the Conseil constitutionnel, and Lord Kerr, U.K. Supreme Court Justice.



↑ Laurent Fabius and Lord David Neuberger, President of the Supreme Court of the United Kingdom (2012-2017)



↑ Work seminar with the Israeli Supreme Court



Israel

A delegation from the Israeli Supreme Court, led by President Miriam Naor, was welcomed to the Conseil constitutionnel on the occasion of a Franco-Israeli legal seminar.

These meetings have taken place for several years, jointly organised with the Conseil d'État and the Cour de cassation. The seminar began with a presentation on the jurisdiction and the operation of the Conseil constitutionnel. Working sessions organised by the three French institutions centred on three main themes: the digital world and fundamental rights; the fight against terrorism and human rights; proportionality in the practice of case law.

OTHER BILATERAL MEETINGS

President Laurent Fabius met with several of his foreign counterparts, including the President of the Supreme Court of Iraq, Medhat Al-Mahmoud, and the First President of Iraq's Court of Appeals, Faek Zidan Kalaf; the President of the Supreme Court of Monaco, Didier Linotte; the President of the Constitutional Court of Mali, Manassa Danioko.

The members of the Conseil constitutionnel also have special ties with judges from other nations with whom they engage regularly. Corinne Luquiens welcomed Masayuki Ikegami, Justice of the Japanese Supreme Court, and Kaoru Hirayama, Judge on the Tokyo District Court; Jean-Jacques Hiest met with Senators from the Philippines; Nicole Maestracci received the President of the Electoral Tribunal of the Federal Judicial Power of Mexico, Janine Madeline Otálora Malassis.

TRAVEL



Norway

During a visit to Oslo, Laurent Fabius met with Toril Marie Øie, appointed President of the Supreme Court of Norway in March 2016, to discuss the organisation and operation of their two institutions. They also discussed the ruling by the European Court of Human Rights (Grand Chamber, 15 November 2016, A. and B. v. Norway), where the Court ruled that there was no infringement of the principle of *non bis in idem* (double jeopardy) in the case of a tax fraud that gave rise to an administrative and a criminal procedure, leading to cumulative sentences.



Portugal and Spain

Following an invitation from the President of the Portuguese Constitutional Court, Manuel Da Costa Andrade, President Laurent Fabius travelled to Lisbon in October 2016, in order to discuss the organisation, operation and case law of the French and Portuguese constitutional courts.

Laurent Fabius, Corinne Luquiens and Nicole Belloubet met Francisco

Pérez de los Cobos, President of the Spanish Constitutional Court, in January 2017, along with several of his fellow Justices. The work sessions focused on questions of priority preliminary rulings on the issue of constitutionality and the Spanish equivalent of the QPC, as well as important topics in recent case law in both countries (for France, the state of emergency; for Spain, the exception of unconstitutionality confronted with preliminary rulings by the European Court of Justice).



China

In July 2017, Laurent Fabius made the opening address at the Franco-Chinese symposium on environmental protection in constitutional law, organised by Han Da-yuan, Dean of the Renmin University Law School and President of the Chinese Association of Constitutional Law, with the participation of the French Association of Constitutional Law and the Conseil constitutionnel. President Fabius also met with the President of the Chinese Supreme People's Court, Zhou Qiang.

MULTILATERAL RELATIONS

Laurent Fabius participated in the commemoration of the 60th anniversary of the Treaty of Rome in Luxembourg in March 2017.

Nicole Maestracci travelled to Sofia for the 25th anniversary of the Bulgarian Constitutional Court in September 2016, and to the Supreme Court of Justice of the Nation of Mexico for a seminar in May 2017, where discussions centred on the judicial institutions of the two countries.

Claire Bazy Malaurie participated in plenary sessions of the Venice Commission of the Council of Europe.

Nicole Belloubet and Michel Charasse travelled to Chisinau in Moldova in September 2016 for the Conference of institutional leaders in the *Association des Cours constitutionnelles ayant en partage l'usage du français* (Association of Constitutional Courts in French-speaking countries) and to Rabat for the annual meeting of the Bureau of the Association in February 2017.

Corinne Luquiens participated in the XVII Congress of the Conference of European Constitutional Courts in Batumi, Georgia in 2017.

Strengthen bilateral cooperation



Germany

On several occasions, President Fabius expressed his conviction that the Conseil constitutionnel should enhance dialogue with constitutional authorities in the European Member States, in as much as these countries are confronted with common problems, ranging from taking account of European law to major social issues and the necessary balance between protection of civil liberties and the prevention of terrorism.

The Federal Constitutional Court of Germany holds an important position amongst European constitutional courts, because of the scope of its actions and the extent of its jurisprudence. The strengthening of the ties between the Conseil constitutionnel and the Court in

Karlsruhe has been a priority focus for the Council's cooperative efforts. In October 2016, the members of the Conseil constitutionnel travelled to the Court seat in Karlsruhe for a working visit. Presidents Fabius and Vosskuhle gave parallel press conferences to the newspapers *Le Monde* and *Süddeutsche Zeitung*. This visit initiated a series of regular encounters between the two institutions.

From 24 to 28 April, the comparative law expert at the Conseil

constitutionnel made a study visit to Karlsruhe. On 2 June, a group of Clerks to the Federal Constitutional Court, including President Vosskuhle's Clerk, were welcomed to Paris by the members of the Conseil constitutionnel legal service for a day of work examining a comparison between the approaches adopted by the two institutions on shared issues. In December 2017, the members of the Karlsruhe Court are expected in Paris, in a delegation led by President Andreas Vosskuhle..



↑ Working visit to the Constitutional Court in Karlsruhe



Algeria

Bilateral cooperation between the French Conseil constitutionnel and its Algerian counterpart was established after the Algerian constitutional reform of March 2016. The reform introduced, in particular, the exception of unconstitutionality, which is of much the same scope as the questions of priority preliminary rulings on the issue of constitutionality (QPC) in France. Algerian lawmakers have called for the procedure to become effective in March 2019. The Algerian Conseil constitutionnel is using the period of time until then to study comparable foreign experiences, especially the French experience. With this in mind, President Fabius travelled to Algiers on 2 February on the invitation of the President of the Algerian Conseil constitutionnel, M. Mourad Medelci. The meeting resulted in the definition of a sound road map by the two jurisdictions. After meeting President Medelci, President Fabius spoke to a group of leading national figures on the topic of the French experience with QPC since its implementation on 1 March 2010. On 8 and 9 February 2017, French experts went to Algiers for training workshops on QPC, attended by members and senior officials of the Conseil constitutionnel, the Conseil d'État and the Cour de cassation. On the 27, 28 and 29 June 2017,

a delegation of directors from the Algerian Conseil constitutionnel was welcomed by the French Conseil constitutionnel for further study of the operations and processes involved in priority preliminary rulings on the issue of constitutionality. Regular exchanges of information and documents and the organisation of joint technical meetings between the two institutions will continue in the coming months.



A FEW OF THIS YEAR'S EVENTS

Throughout the year, the Conseil constitutionnel organises events that foster communication with students, academics, legal professionals and many others. These are opportunities for the Conseil constitutionnel to broaden its outreach and promote constitutional justice.



La Nuit du droit ("Law Night") was inaugurated on 4 October 2017, from 8 p.m. to 1 a.m. at the Conseil constitutionnel.

During the event, round tables were organised on major public issues – terrorism, the State of Law, the protection of the environment, labour law, artificial intelligence, etc. –, allowing a confrontation of different points of view from legal experts, intellectuals, public authorities and leaders of civil society.

For each round table, high-level participants exchanged ideas.

For the event, the Delamain bookshop and LGDJ publishers set up a pop-up bookstore with a selection of books by panel participants and other works on the themes discussed.

La Nuit du droit is an exceptional event, stimulating and convivial.

“Let’s Discover our Constitution”

The Conseil constitutionnel and the Minister of Education have organised the **first edition** of a new national competition, “Let’s Discover our Constitution”, encouraging pupils to learn more about the guiding principles of the Republic. The youngsters worked together in groups to produce different projects that their teachers chose with them:

narratives, board games, role plays, etc.

The contestants were first appraised in school districts, then submitted to a national jury made up of members from the Conseil constitutionnel and others appointed by the Ministry of Education. On 7 March 2017, a ceremony was held to award projects from six classes of “cycle III” pupils (years 5, 6 and 7) from five school districts. Class representatives and their teachers were welcomed at the Conseil constitutionnel. The competition will be held again in 2018.



→ Award winners, with Najat Vallaud-Belkacem, Minister of Education, and Laurent Fabius

Legal Book Fair

The *Salon du Livre juridique* (Legal Book Fair) was organised for the 8th consecutive year by the Conseil constitutionnel and the Club des juristes, on 7 October 2017, at the Conseil constitutionnel.

The main legal publishers were present along with many authors who spent the day presenting their work, meeting readers and signing their books.

Every year, the *Prix du livre juridique* is awarded to a work published in the previous 12 months. Another award, the *Prix du livre de la pratique juridique* was created in 2013 to recognise a work, published in the preceding year, which serves as a practical guide.

For 2016, the jury presided by Laurent Fabius, President of the Conseil constitutionnel, chose two books for the *Prix du livre juridique*: *Finances Publiques 2016-2017*, by Martin Collet, LGDJ - Lextenso, and *La prothèse et le droit - Essai sur la fabrication juridique des corps hybrides*, by Christophe Lazaro, IRJS Éditions. The jury awarded the *Prix du livre de la Pratique juridique* to the *Dictionnaire des régulations 2016*, by Michel Bazex, Gabriel Eckert, Régis Lanneau, Christophe Le Berre, Bertrand du Marais & Arnaud Sée, LexisNexis.

↓ Legal Book Fair 2016





THE VEDEL PRIZE

Under the sponsorship of the Conseil constitutionnel, the Lextenso publishing house organised the seventh edition of the Georges Vedel Prize in the hearing room of the Conseil constitutionnel. The award is made to the two best pleadings, one for the defence and one for the plaintiff, on a question of priority preliminary rulings on the issue of constitutionality. This year's practical case concerned Article L. 2121-27-1 of the *Code général des collectivités territoriales* (General Local Authorities Code), bearing on municipal newsletters and the reservation of editorial space for councillors who are not members of the council's political majority.

The team from Évreux-Val-d'Esse University (plaintiff) was opposed to Toulouse 1 Capitole (defendant); Lille 2 University (plaintiff) argued against the University of Paris 1 Panthéon-Sorbonne (defendant).

After deliberation, the jury presided by Ariane Vidal-Naquet, university professor, selected the teams from Lille 2 and Toulouse 1 Capitole for the award.

THESIS PRIZE

On 2 May, the twenty-first jury to convene for the prize recognized the thesis by Samy Benzina, *L'effectivité des décisions QPC du Conseil constitutionnel* ("The Effectiveness of the Conseil constitutionnel's QPC Decisions").

Presided by the President of the Conseil constitutionnel, this year's jury included Professors Michel Verpeaux (Paris I), Pascale Deumier (Lyon III) and Hélène Hoepffner (Toulouse), Conseil members Michel Charasse and Nicole Maestracci and the Secretary-General of the Conseil.

The thesis, defended in December 2016 (Paris II Panthéon-Assas) will therefore be published in the collection *Bibliothèque constitutionnelle et de science politique* published by LGDJLextenso (Volume 148).

"IT IS A GREAT HONOR FOR THE PRIZE RECIPIENT WHO HAS THE OPPORTUNITY TO SEE SEVERAL YEARS OF RESEARCH WORK RECOGNISED BY A PRESTIGIOUS JURY. IT IS ALSO AN EFFECTIVE WAY OF SHARING WORK IN THE FIELDS OF LAW AND CONSTITUTIONAL LITIGATION, IN PARTICULAR THROUGH THE PUBLICATION OF THE THESIS IN A WELL-KNOWN COLLECTION."

Samy Benzina

Meeting between Students / Professionals in training

The Conseil constitutionnel welcomes more and more visitors each year.

They include pupils of all ages, law students, and legal professionals in training, magistrates and lawyers in particular.

For example, in the context of ongoing training for judicial magistrates, the *École Nationale de la Magistrature* (French National School for the Judiciary) organises continuing education programmes every year, one of which takes place in part at the Conseil constitutionnel. In June 2017, 80 magistrates attended a QPC hearing before a discussion with Nicole Maestracci, member of the Conseil constitutionnel, and Samuel Gillis, head of legal services. This meeting was an opportunity for magistrates to seek insight into the issues, subjects and technical aspects that concern them in their work.

For younger visitors who are still pupils, the visit to the Conseil constitutionnel is part of the Civic Education programme in schools that aims to teach youngsters the values of the Republic.

For students in law or political science, attending a hearing and meeting the members of the legal services enable them to deepen their knowledge of constitutional law, learn about the rules of procedure in the context of priority preliminary rulings on the issue of constitutionality and to understand the inner workings of the Conseil constitutionnel.

These visits and discussions contribute to the greater transparency of the Conseil constitutionnel.



Samuel Gillis,
chargé de mission
Legal Department

“THIS TRAINING IS AN OPPORTUNITY FOR JUDICIAL MAGISTRATES TO LEARN ABOUT THE MISSIONS OF THE CONSEIL CONSTITUTIONNEL AND MORE SPECIFICALLY PRIORITY PRELIMINARY RULINGS ON THE ISSUE OF CONSTITUTIONALITY. IT OFFERS MAGISTRATES A VISION OF THE JURISPRUDENCE THAT THEY WILL HAVE TO APPLY WHEN PETITIONED WITH A QPC.”



4 October 2017

LAUNCH OF THE CONSEIL CONSTITUTIONNEL APP

In order to raise awareness of its actions, the Conseil constitutionnel is launching an application that will allow people to follow the Council in real time on all mobile supports.

Free of charge, downloadable on iOS and Android, this application also enables users to consult case law, receive updates when decisions are rendered, and to learn more about the different activities of the Conseil constitutionnel.

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