

Ordinance No. 58-1067 Constituting An Institutional Act On The Constitutional Council

(1)

As amended by Ordinance no. 59-223 of 4 February 1959 (2) and Institutional Acts Nos. 74-1101 of 26 December 1974 (3), 90-383 of 10 May 1990 (4), 95-63 of 19 January 1995 (5), 2007-223 of 21 February 2007 (6), 2008-695 of 15 July 2008 (7), 2009-403 of 15 April 2009 (8), 2009-1523 of 10 December 2009 (9), 2010-830 of 22 July 2010 (10), 2011-333 of 29 March 2011 (11) *2011-410 of 14 April 2011 (12), 2013-906 of 11 October 2013 (13) and 2013-1114 of 6 December 2013 (14).

Title 1: Organisation of the Constitutional Council

Section 1

(Subparagraph 1) The members of the Constitutional Council, other than ex officio members, shall be appointed by the President of the Republic, the Presidents of the National Assembly and the Senate.

(Subparagraph 2) The President of the Constitutional Council shall be appointed by the President of the Republic. He shall be selected from among members of the Council, whether appointed or ex officio members.

(Subparagraph 3) The appointments referred to hereinabove shall be published in the *Journal officiel*.

Section 2

The first Constitutional Council shall comprise three members appointed for a term of three years, three members appointed for a term of six years and three members appointed for a term of nine years. The President of the Republic, the Presidents of the National Assembly and the President of the Senate shall each appoint one member of each of these three groups.

Section 3

(Subparagraph 1) Before taking up office, the appointed members of the Constitutional Council shall take the oath before the President of the Republic.

(Subparagraph 2) They shall swear to properly and faithfully carry out their duties, to perform them in an impartial manner in accordance with the Constitution, to preserve confidentiality as to proceedings and voting, to refrain from taking any public stance, from giving any consultation on matters coming under the jurisdiction of the Council. (15)

(Subparagraph 3) A formal record shall be made of the swearing of the oath.

Section 4 (16) and (17)

(Subparagraph 1) The office of a member of the Constitutional Council shall be incompatible with that of a member of the Government or the Economic, Social and Environmental Council, and also that of the Defender of Rights. It is also incompatible with holding any elected office.

(Subparagraph 2) Members of the Government or of the Economic, Social and Environmental Council or holders of an elected office appointed to the Constitutional Council shall be deemed to have opted for the latter office unless they have stated otherwise within eight days of the publication of their appointment.

(Subparagraph 3) Members of the Constitutional Council appointed to Government office or to the office of the Defender of Rights, appointed as members of the Economic, Social and Environmental Council or who take up an elected office shall be replaced.

(Subparagraph 4) Holding the office of a member of the Constitutional Council shall be incompatible with being a civil servant or carrying out any other professional or salaried activity (18).

(Subparagraph 5) The members of the Constitutional Council may however carry out scientific, literary, or artistic endeavours ⁽¹⁹⁾.

(Subparagraph 6) Holding the office of a member of the Constitutional Council shall be incompatible with practising as a lawyer ⁽²⁰⁾.

Section 5

Throughout their term of office members of the Constitutional Council shall not be appointed to any public post nor, if they are civil servants, benefit from any discretionary promotion.

Section 6⁽²¹⁾

The President and the members of the Constitutional Council shall receive respectively an allowance equal to the remuneration applicable to the two highest ranking categories of civil servants classified outside of the scale.

Section 7

A Decree ⁽²²⁾ issued in the Council of Ministers on the recommendation of the Constitutional Council shall specify the obligations of the members of the Constitutional Council in order to guarantee the independence and dignity of their office. These obligations shall include the prohibition on members of the Constitutional Council taking public stances on issues which have been or may be the object of a decision of the Council or giving consultations on such matters ⁽²³⁾.

Section 8

Members of the Constitutional Council shall be replaced no later than eight days before the expiry of their term of office.

Section 9

A member of the Constitutional Council may resign from office by a letter addressed to the Council. The appointment of their replacement shall take place no later than one month from such resignation. Said resignation shall become effective upon the appointment of the replacement member.

Section 10

(Subparagraph 1) The Constitutional Council shall formally record the automatic resignation of a member who carries on a profession or holds a position or elective office incompatible with membership of the Council or who does not enjoy their full civil and political rights.

(Subparagraph 2) Such a member shall be replaced within eight days.

Section 11

The rules set forth in Section 10 shall apply to those members of the Constitutional Council who are definitively prevented from performing their duties by reason of a permanent physical disability.

Section 12

Members of the Constitutional Council appointed to replace members whose term of office has ended before the normal date shall serve the remainder of the unserved term. Upon the expiry of this term, they may be appointed as members of the Constitutional Council if they have served in said capacity for less than three years.

Title II: The operation of the Constitutional Council

Chapter 1: Common provisions

Section 13

The Constitutional Council shall meet when summoned to do so by its President or, in cases of an impediment affecting the latter, by its oldest member.

Section 14

Decisions and opinions of the Constitutional Council shall be given by no fewer than seven members, except in cases of force majeure duly recorded in the minutes.

Section 15

A Decree ⁽²⁴⁾ issued by the Council of Ministers, on the recommendation of the Constitutional Council, shall determine the organisation of the Secretariat General.

Section 16

The appropriations necessary to finance the operation of the Constitutional Council shall be entered in the general budget. The President shall be vested with the power to order expenditure.

Chapter II: Rulings as to constitutionality

Section 17

(Subparagraph 1) Institutional Acts enacted by Parliament shall be transmitted to the Constitutional Council. The letter transmitting the same shall indicate, if need be, whether the matter is one of urgency.

(Subparagraph 2) Regulations and amendments to them enacted by one or other of the Houses of Parliament shall be transmitted to the Constitutional Council by the President of the relevant House.

Section 18

(Subparagraph 1) When a statute is referred for review by the Constitutional Council on the initiative of members of Parliament, the referral shall be made by one or more letters containing the signatures of no fewer than sixty Members of the National Assembly or sixty Senators.

(Subparagraph 2) When the Constitutional Council receives a referral pursuant to Articles 54 or 61 (paragraph 2) of the Constitution, it shall immediately inform the President of the Republic, the Prime Minister and the Presidents of the National Assembly and the Senate. The latter shall inform the members of their respective Houses ⁽²⁵⁾.

Section 19

Constitutional review shall proceed on the basis of a report from one of the members of the Council within the time allotted in paragraph 3 of Article 61 of the Constitution.

Section 20

The Constitutional Council shall give reasons for its decision.

Section 21

The publication of a decision of the Constitutional Council ruling that a provision is not unconstitutional shall terminate the period of suspension of promulgation of the statute involved.

Section 22

When the Constitutional Council rules that a statute referred to it for review contains a provision which is unconstitutional and unseverable from the statute as a whole, said statute shall not be promulgated.

Section 23

(Subparagraph 1) In the event of the Constitutional Council ruling that a statute referred to it for review contains a provision which is unconstitutional without holding it to be unseverable from the rest of the statute, the President of the Republic may promulgate said statute without the impugned provision or ask the two Houses to proceed to a further reading.

(Subparagraph 2) In cases where the Constitutional Council rules that a Parliamentary regulation referred to it contains a provision which is unconstitutional, this provision shall not be applied by the House which adopted the same.

Chapter II bis: On priority preliminary rulings on the issue of constitutionality (coming into force on 1 March 2010)⁽²⁶⁾

Part 1: Provisions applicable before courts coming under the supervisory jurisdiction of the Conseil d'État or the Court of Cassation

Section 23-1 (coming into force on 1 March 2010)

(Subparagraph 1) Before Courts coming under the supervisory jurisdiction of the Conseil d'État or the Court of Cassation, the argument that a statutory provision infringes the rights and freedoms guaranteed by the Constitution shall, on pain of inadmissibility, be raised in writing and accompanied by a reasoned justification of this argument. Such an argument may be raised for the first time before a Court of Appeal. It cannot be raised by the court proprio motu.

(Subparagraph 2) Before a Court coming under the supervisory jurisdiction of the Court of Cassation, when the Public Prosecutor is not a party to these proceedings, the matter shall be brought to their attention once the argument has been raised so that they may make their opinion known.

(Subparagraph 3) If such an argument is raised during a preliminary investigation into a criminal offence, the matter shall be brought before the relevant appellate court.

(Subparagraph 4) Such an argument may not be raised before a Cour d'assises. In the event of appeal against a decision handed down at first instance by a Cour d'assises, it may be raised in writing in a document accompanying the notice of appeal. This document shall be immediately transmitted to the Court of Cassation

Section 23-2

(Subparagraph 1) The Court shall rule without delay, giving reasons for its ruling, as to the transmission to the Conseil d'État or the Court of Cassation of the application for a priority preliminary ruling on the issue of constitutionality. Such transmission shall require that the following conditions be met:

1° The challenged provision is applicable to the litigation or proceedings underway, or is the grounds for said proceedings; 2° Said provision has not previously been found to be constitutional in the holding of a decision of the Constitutional Council, except in the event of a change of circumstances 3° The matter is of a serious nature

(Subparagraph 5) In all events, the court involved must, when confronted firstly with arguments challenging the conformity of a statutory provision with the rights and freedoms guaranteed by the Constitution and secondly with the international commitments entered into by France, rule in priority on the matter of the transmission of the application for a priority preliminary ruling on the issue of constitutionality to the Conseil d'État or Court of Cassation.

(Subparagraph 6) The decision to transmit the application shall be sent to the Conseil d'État or the Court of Cassation within eight days of the handing down of said decision, together with the submissions of the parties. Refusal to transmit the application may only be challenged upon appeal against the decision settling all or part of the litigation involved.

Section 23-3 (coming into force on 1 March 2010)

(Subparagraph 1) When the application for a priority preliminary ruling is transmitted, the court shall stay its ruling until receipt of the decision of the Conseil d'État or Court of Cassation or of the Constitutional Council, if the matter has been referred to the latter. The preliminary investigation underway shall not be suspended and the court may order any necessary temporary measure or measure of conservation.

(Subparagraph 2) However there shall be no stay of ruling when the person involved is in custody due to the proceedings underway, nor when the purpose of such proceedings is to discharge a custodial measure.

(Subparagraph 3) The court may also rule without waiting for the decision on the application for a priority preliminary ruling on the issue of constitutionality if statute law or regulations provide that it should give its ruling within a specified time or as a matter of urgency. If the court of first instance rules without waiting for said decision on the priority preliminary ruling and its decision is appealed against, the appellate court shall stay its ruling. It may however not stay its ruling if it itself is required to rule on issues which must be dealt with forthwith.

(Subparagraph 4) Furthermore, if staying the ruling would lead to irremediable or patently excessive consequences as regards the rights of one of the parties, the court deciding to transmit the application for a priority preliminary ruling as to constitutionality may rule on those issues which need to be dealt with forthwith.

(Subparagraph 5) If an appeal on a point of law has been made to the Court of Cassation and the trial judges have handed down their decision without waiting for the decision of the Conseil d'État or the Court of Cassation or of the Constitutional Council, if the matter has been referred to the latter, the Court of Cassation shall stay its ruling on said appeal pending a ruling on the application for a priority preliminary ruling on the issue of constitutionality. This shall not however be the case when the applicant is deprived of their freedom because of the proceedings underway and statute law provides that the Court of Cassation shall give its ruling within a specified time⁽²⁷⁾."

Part 2: Provisions applicable before the Conseil d'État and the Court of Cassation

Section 23-4 (coming into force on 1 March 2010)

Within three months of receipt of the transmission provided for in Section 23-2 or in the final paragraph of Section 23-1, the Conseil d'État or the Court of Cassation shall rule on the referral of the application made to the Constitutional Council for a priority preliminary ruling on the issue of constitutionality. This referral shall be made when the conditions provided for in 1° and 2° of Section 23-2 have been met and the issue raised is new or of a serious nature.

Section 23-5 (coming into force on 1 March 2010)

(Subparagraph 1) The argument based on the infringement by a statutory provision of the rights and freedoms guaranteed by the Constitution may be raised, including for the first time before the Court of Cassation, when a case is being heard before the Conseil d'État or Court of Cassation. Said argument shall be presented, on pain of being inadmissible, in a separate and reasoned submission. It cannot be raised by the court proprio motu.

(Subparagraph 2) In all events the Conseil d'État or Court of Cassation must, when asked to rule on arguments claiming firstly that a provision infringes the rights and freedoms guaranteed by the Constitution, and secondly that it runs counter to the international commitments entered into by France, rule in priority on the transmitting to the Constitutional Council of the application for a priority preliminary ruling on the issue of constitutionality.

(Subparagraph 3) The Conseil d'État or the Court of Cassation shall have a period of three months as from the formal raising of the argument to hand down its decision. The Constitutional Council shall be asked to rule on the application for a priority preliminary ruling on the issue of constitutionality once the conditions provided for in 1° and 2° of Section 23-2 have been met and the issue raised is new and of a serious nature.

(Subparagraph 4) When the matter has been referred to the Constitutional Council, the Conseil d'État or the Court of Cassation shall stay their ruling until the Constitutional Council has given its decision. This shall not however be the case when the applicant is deprived of their freedom because of the proceedings underway and statute law provides that the Court of Cassation shall give its ruling within a specified time. If the Conseil d'État or the Court of Cassation is required to rule in a matter of urgency, there can be no stay of ruling⁽²⁸⁾.

Section 23-6 (coming into force on 1 March 2010)

Repealed⁽²⁹⁾.

Section 23-7 (coming into force on 1 March 2010)

(Subparagraph 1) The reasoned decision of the Conseil d'État or the Court of Cassation to refer the matter to the Constitutional Council, accompanied by the submissions of the parties, shall be transmitted to the Council. The Constitutional Council shall be provided with a copy of the reasoned decision at the basis of the refusal of the Conseil d'État or Court of Cassation to refer the application for a priority preliminary ruling to it. In the event of failure by the Conseil d'État or the Court of Cassation to rule within the time allotted by Sections 23-4 and 23-5, the application shall be transmitted to the Constitutional Council.

(Subparagraph 2) The decision of the Conseil d'État or the Court of Cassation shall be communicated to the court which transmitted the application for a priority preliminary ruling and shall be notified to the parties within eight days of the making of said ruling.

Part 3: Provisions applicable before the Constitutional Council

Section 23-8 (coming into force on 1 March 2010)

(Subparagraph 1) When the Constitutional Council has been asked to make a priority preliminary ruling under the provisions hereof, it shall immediately inform the President of the Republic, the Prime Minister and the Presidents of the National Assembly and the Senate. Said persons may send the Constitutional Council their remarks on the application for a priority preliminary ruling on the issue of constitutionality made to the Council.

(Subparagraph 2) When a provision of a law of the land of New Caledonia is the object of such an application, the Constitutional Council shall also inform the President of the Government of New Caledonia, the President of the Congress and the Presidents of Provincial Assemblies.

Section 23-9 (coming into force on 1 March 2010)

When the Constitutional Council has been asked to rule on an application for a priority preliminary ruling on the issue of constitutionality, the termination for any reason whatsoever of the proceedings in which this issue was raised shall have no effect on the examination of this issue.

Section 23-10 (coming into force on 1 March 2010)

The Constitutional Council shall give its ruling within three months of the referral being made to it. The parties shall be given a full hearing and invited to address their arguments to the Council. The hearing shall be held in public except for exceptional cases specified by the internal rules of procedure⁽³⁰⁾ of the Constitutional Council.

Section 23-11 (coming into force on 1 March 2010)

(Subparagraph 1) The Constitutional Council shall give reasons for its decision. The parties shall be notified of this decision, and the same shall be communicated either to the Conseil d'État or the Court of Cassation and, if need be, to the court before which the application for a priority preliminary ruling on the issue of constitutionality was first made.

(Subparagraph 2) The Constitutional Council shall also communicate its decision to the President of the Republic, the Prime Minister and the Presidents of the National Assembly and the Senate together with, in the case provided for in the final paragraph of Section 23-8, the authorities mentioned therein.

(Subparagraph 3) The decision of the Constitutional Council shall be published in the *Journal officiel* and, if need be, in the *Journal officiel* of New Caledonia.

Section 23-12

When the Constitutional Council is asked to make a priority preliminary ruling on the issue of constitutionality, the State contribution to the remuneration under the system of legal aid of those judicial auxiliaries assisting in the making of the application shall be increased in the manner provided for by regulations.

Chapter III: Review of statutory provisions

Section 24

In the cases provided for in paragraph 2 of Article 37 of the Constitution, referral to the Constitutional Council shall be made by the Prime Minister.

Section 25

The Constitutional Council shall give its decision within one month. When the Government declares the matter to be one of urgency the time allotted shall be eight days.

Section 26

The Constitutional Council shall, by a reasoned decision, rule that the provisions referred to it are of a statutory or regulatory nature.

Chapter III bis: Review of the manner in which Bills are tabled⁽³¹⁾

Section 26-1⁽³²⁾

(Subparagraph 1) When referral is made to it in accordance with paragraph 4 of Article 39 of the Constitution, the Constitutional Council shall immediately inform the Prime Minister and the Presidents of the National Assembly and the Senate.

(Subparagraph 2) The reasoned decision of the Constitutional Council shall be notified to the Prime Minister and the Presidents of the National Assembly and the Senate. It shall be published in the *Journal officiel*.

Chapter IV: Review of decisions of inadmissibility⁽³³⁾

Section 27

(Subparagraph 1) In the cases provided for by paragraph 2 of Article 41 of the Constitution, debate on a Private Member's Bill or an amendment which is held to be inadmissible by the Government shall be immediately adjourned.

(Subparagraph 2) The Authority making the referral to the Constitutional Council shall immediately inform the Authority which is also empowered to act under Article 41 of the Constitution.

Section 28

The Constitutional Council shall give a reasoned decision within eight days.

Section 29

This reasoned decision shall be notified to the House involved and to the Prime Minister.

Chapter V: The exercising of the powers of the Constitutional Council as regards the election of the President of the Republic⁽³⁴⁾

Section 30

The powers of the Constitutional Council as regards the election of the President of the Republic shall be determined by the Institutional Act pertaining to this election⁽³⁵⁾.

Section 31

When a referral is made by the Government in the cases provided for in Article 7 of the Constitution for a ruling that an impediment prevents the President of the Republic from performing his or her duties, the Constitutional Council shall give said ruling by an absolute majority of its members.

Chapter VI: Litigation as to the election of Members of the National Assembly and Senators

Section 32⁽³⁶⁾

(Subparagraph 1) The Minister of the Interior shall, without delay, notify the House involved of the names of the persons proclaimed elected.

(Subparagraph 2) The formal records of the Vote Counting Committees, to which the representative of the State shall append a certified copy of the birth certificate and form no 2 of the Criminal Record of the persons elected and their substitutes, shall be made available for a period of ten days to persons registered on the electoral roll or the consular electoral roll and persons having declared their intention to stand in said election.

(Subparagraph 3) Upon the expiry of this allotted period of time, the formal records and their appendices shall be filed with the relevant Departmental or Territorial Archive Service. They shall only be communicated to the Constitutional Council at the request of the latter.

Section 33⁽³⁷⁾

(Subparagraph 1) The election of a Member of the National Assembly or a Senator may be challenged before the Constitutional Council up to six p.m. on the tenth day following the proclamation of the election results.

(Subparagraph 2) All persons registered on the electoral roll or the consular electoral roll and all persons standing for election shall be entitled

to challenge an election held in their constituency.

Section 34⁽³⁸⁾

(Subparagraph 1) Referral to the Constitutional Council shall only be made in writing and addressed to the Secretary General of the Constitutional Council or the representative of the State.

(Subparagraph 2) The representative of the State shall inform the Secretary General by electronic means of the referral and transmit the same.

(Subparagraph 3) The Secretary General of the Council shall, without delay, inform the House involved of the referrals of which they have been notified.

Section 35

(Subparagraph 1) Referrals shall contain the surname, forename(s) and status of the applicant, the names of the elected candidates whose election is challenged and the arguments raised in support of this challenge.

(Subparagraph 2) The applicant shall append to the referral the documents produced in support of their challenge. The Council may exceptionally grant an extension of time for the production of some of the supporting documents.

(Subparagraph 3) Such referral shall not have any suspensive effect. It shall not require payment of any duties or registration fees.

Section 36

(Subparagraph 1) The Constitutional Council shall constitute three Sections each comprising three members drawn by lot. Separate lots shall be drawn between members appointed by the President of the Republic, the President of the National Assembly and the President of the Senate.

(Subparagraph 2) Each year during the first fortnight of October, the Constitutional Council shall draw up a list of ten assistant Rapporteurs chosen from among the Maîtres des requêtes of the Conseil d'État and the Conseillers référendaires of the Court of Audit. Said assistant Rapporteurs shall not participate in voting by the Council.

Section 37

Upon receipt of a referral, the President of the Council shall assign the same to one of the abovementioned Sections and appoint a Rapporteur who may be chosen from among the assistant Rapporteurs.

Section 38

(Subparagraph 1) The Sections shall examine the cases referred to them prior to the bringing of the same before the full Council.

(Subparagraph 2) 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. The House involved shall be immediately notified of the decision.

Section 39

In all other cases, the member of Parliament whose election is disputed shall be notified of the referral, as shall his substitute. The Section shall grant the Council secretariat a period of time to take cognizance of the referral and the supporting documents, and to produce their written observations.

Section 40

Once this written response has been received or upon expiry of the time allotted for the putting forward of the same, the report on the case shall be given to the Council which shall rule by a reasoned decision. Said decision shall be immediately notified to the House involved.

Section 41

When the Council upholds a challenge, it may, if need be, declare the election results to be void or modify the proclamation of the results made

by the Vote Counting Committee and proclaim the new elected candidate.

Section 41-1⁽³⁹⁾

If the preliminary investigation into a complaint reveals that a candidate is in one of the situations referred to under Article LO 136-1 ⁽⁴⁰⁾ of the Electoral Code, the Council may proclaim the ineligibility of said candidate in accordance with said provision and, in the event of the latter having been elected, hold this election to be void.

Section 42

(Subparagraph 1) The Council and the Sections thereof may, if need be, order an enquiry and cause to be transmitted to it/them all documents and reports connected with the election, in particular campaign accounts drawn up by the candidates involved, together with all documents, reports or decisions as may have been collected or drawn up by the Committee set up under Article L 52-14 of the Electoral Code ⁽⁴¹⁾.

(Subparagraph 2) The Rapporteur shall be vested with due authority to take evidence from witnesses under oath. He shall make a formal record thereof and communicate the same to the candidates involved, who shall have three days to respond in writing.

Section 43

The Council and the Sections thereof may appoint one of its/their members or an assistant Rapporteur to carry out further on-the-spot investigations.

Section 44

When hearing cases referred to it the Constitutional Council shall have jurisdiction over all matters and arguments raised on the making of the referral. In such cases, its decision shall be effective solely with respect to the election referred to it.

Section 45

Subject to any subsequent ineligibility of the candidate and the substitute thereof, the Constitutional Council shall rule on the lawfulness of the election of both the candidate and the substitute thereof.

Chapter VI bis: Review of a Private Member's Bill tabled according to the third paragraph of Article 11 of the Constitution (Articles 45-1 to 45-6)⁽⁴²⁾

Section 45-1

When a Private Member's Bill is sent by the president of an assembly for review as provided for in paragraph 4 of Article 11 of the Constitution, the Constitutional Council shall immediately inform the President of the Republic, the Prime Minister, and the president of the other assembly.

Section 45-2

(Subparagraph 1) Within one month of it being presented with the Private Member's Bill, the Constitutional Council verifies that: 1° The Private Member's Bill is presented by at least one fifth of the Members of Parliament, this fifth being calculated using the actual number of seats provided at the date of registration of receipt by the Constitutional Council, rounded up to the nearest whole number in case of any fractions present; 2° Its subject respects the conditions provided for in paragraphs 3 and 6 of Article 11 of the Constitution, said delays being calculated as of the date of registration of receipt by the Constitutional Council; 3° And that no provision of the Private Member's Bill is unconstitutional.

Section 45-3

(Subparagraph 1) The Constitutional Council shall rule with a reasoned decision, which is published in the Journal officiel.

(Subparagraph 2) If it declares that the Private Member's Bill fulfils the provisions of Article 45-2, the publication of its decision is accompanied with the number of votes from electors required.

Section 45-4

(Subparagraph 1) The Constitutional Council monitors the progress of collecting votes for the support of a Private Member's Bill.

(Subparagraph 2) It shall examine and definitively settle all complaints. It can receive a referral from any elector during the voting period or within the period of ten days following the close of voting.

(Subparagraph 3) The complaints are reviewed by a committee composed of three members appointed for a period of five years by the Constitutional Council, on proposal of its president, from judges from the Courts of Law or Administrative Courts, including those with honorary titles.

(Subparagraph 4) Within a delay of ten days following the publication of the decision forming the committee, the author of the complaint may oppose the decision before the assembled Council.

(Subparagraph 5) When the Constitutional Council receives a complaint mentioned in the penultimate paragraph or receives an appeal of a committee that was formed, it notes the existence of irregularities occurring during the operations, it shall decide whether, in view of the nature and seriousness of such irregularities, the operations should be maintained or held to be partially or entirely void.

Section 45-5

(Subparagraph 1) The Constitutional Council can order any enquiry and request any document that is related to collecting votes to support a Private Member's Bill. The Minister of the Interior shall communicate the list of supporting votes collected to the Constitutional Council when it requests it.

(Subparagraph 2) The Constitutional Council shall call on the competent services of the State to carry out its functions.

(Subparagraph 3) It can appoint assistant Rapporteurs chosen from the Maîtres des requêtes of the Conseil d'État and the Conseillers référendaires of the Court of Audit. Said assistant Rapporteurs shall not participate in voting by the Council.

(Subparagraph 4) It can appoint delegates from the judges of the Courts of Law or Administrative Courts, including those with honorary titles, as well as experts, in order to assist in its functions.

(Subparagraph 5) It may appoint one of its members or a delegate to receive sworn declarations from witnesses or provide for other investigative measures on site.

Section 45-6

The Constitutional Council shall declare if the Private Member's Bill has obtained the support of at least one tenth of the electors on the electoral registers. Its decision shall be published in the *Journal officiel*.

Chapter VII: Monitoring the holding of Referenda and proclaiming the results thereof

Section 46

The Constitutional Council shall be consulted by the Government on the holding of referenda. It shall immediately be informed of all measures taken for that purpose.

Section 47

The Constitutional Council may put forward its remarks on the list of organisations authorised to use official publicising facilities.

Section 48

The Constitutional Council may appoint one or more delegates chosen, with the agreement of the relevant Ministers, from judges from the Courts of Law or Administrative Courts, for the purpose of monitoring the operations involved in holding a referendum.

Section 49

The Constitutional Council shall directly monitor the taking of a general census.

Section 50

(Subparagraph 1) The Constitutional Council shall examine and definitively settle all complaints.

(Subparagraph 2) When the Constitutional Council ascertains the existence of irregularities occurring during the holding of the referendum, it shall decide whether, in view of the nature and seriousness of such irregularities, the holding of the referendum should be maintained or held to be partially or entirely void.

Section 51

The Constitutional Council shall proclaim the results of a referendum. Said proclamation shall be included in the Decree promulgating the statute in favour of which the people have voted.

Chapter VIII: Consultation of the Constitutional Council in exceptional circumstances

Section 52

When consulted by the President of the Republic in the cases provided for in paragraph 1 of Article 16 of the Constitution, the Constitutional Council shall meet immediately.

Section 53

It shall give its opinion on compliance with the requirements set forth in the provision referred to in the foregoing paragraph. This opinion shall be reasoned and made public.

Section 54

(Subparagraph 1) The President of the Republic shall inform the Constitutional Council of measures which he or she contemplates taking.

(Subparagraph 2) The Constitutional Council shall give its opinion without delay.

Title III: Miscellaneous and temporary provisions

Section 55

The manner of application of this Ordinance may be specified by a Decree ⁽⁴⁴⁾, ⁽⁴⁵⁾, ⁽⁴⁶⁾ in the Council of Ministers after consultation with the Constitutional Council and seeking the opinion of the Conseil d'État.

Section 56

The Constitutional Council shall complete by its internal rules of procedure those rules of procedure ⁽⁴⁷⁾, ⁽⁴⁸⁾, ⁽⁴⁹⁾, ⁽⁵⁰⁾ "applicable before it" ⁽⁵¹⁾ laid down by Title II hereof. It shall in particular specify the conditions governing enquiries and investigations provided for in Articles 42, 43, and 45-5 ⁽⁵²⁾ under the supervision of a Rapporteur.

Section 57

(obsolete)

Section 58 ⁽⁵³⁾ and ⁽⁵⁴⁾

Articles L 211-3, L 212-1, L 212-2, L 212-3, L 212-4, L 213-3, L 214-1, L 214-3, L 214-4, L 214-5, L 214-9 and L 214-10 of the National Heritage Code ⁽⁵⁵⁾ shall apply to the Archives of the activity of the Constitutional Council. These archives may be freely consulted upon the expiry of the period of time fixed in 1° of I of Article L 213-2 of said Code ⁽⁵⁶⁾.

Section 59

(obsolete)

Section 60

(obsolete)

Section 61

This Ordinance shall be published in the *Journal officiel* of the French Republic and implemented as an Institutional Act.

- (1): *Journal officiel* of 9 November 1958, p. 10129.
- (2): Ordinance No 59-223 of 4 February 1959 amending the Ordinance of 7 November 1958 constituting an institutional act on the Constitutional Council, *Journal officiel* of 7 February 1959, p. 1683.
- (3): Institutional Act No 74-1101 of 26 December 1974 amending the Ordinance of 7 November 1958 constituting an institutional act on the Constitutional Council, *Journal officiel* of 27 December 1974, p. 13068.
- (4): Institutional Act No 90-383 of 10 May 1990 on the funding of the campaign for the election of the President of the Republic and the Members of the National Assembly, *Journal officiel* of 11 May 1990, p. 5615.
- (5): Institutional Act No 95-63 of 19 January 1995 on the declaration of wealth of the Members of Parliament and the incompatibilities applicable to the Members of Parliament and the members of the Constitutional Council, *Journal officiel* of 20 January 1995, p. 1041.
- (6): Institutional Act No 2007-223 of 21 February 2007 concerning statutory and institutional provisions relating to overseas territories, *Journal officiel* of 22 February 2007, p. 3121, @ no 1.
- (7): Institutional Act No 2008-695 of 15 July 2008 on the archives of the Constitutional Council, *Journal officiel* of 16 July 2008, p. 11322, @ no 1.
- (8): Institutional Act No 2009-403 of 15 April 2009 on the application of Articles 34-1, 39 and 44 of the Constitution, *Journal officiel* of 16 April 2009, p. 6528, @ no 1.
- (9): Institutional Act No 2009-1523 of 10 December 2009 on the application of Article 61-1 of the Constitution, *Journal officiel* of 11 December 2009, p. 21379, @ no 1.
- (10): Institutional Act No 2010-830 of 22 July 2010 on the application of Article 65 of the Constitution, *Journal officiel* of 23 July 2010, p. 13562, @ no 1.
- (11): Institutional Act No 2011-333 of 29 March 2011 on the Defender of Rights, *Journal officiel* of 30 March 2011, p. 5504, @ no 1.
- (12): Institutional Act No 2011-410 of 14 April 2011 on the election of Members of the National Assembly and Senators, *Journal officiel* of 19 April 2011, p. 6826, @ no 1.
- (13): Institutional Act No 2013-906 of 11 October 2013 on the transparency of public life, *Journal officiel* of 12 October 2013, p. 16824, @ no 1.
- (14): Institutional Act No 2013-1114 of 6 December 2013 on the application of Article 11 of the Constitution, *Journal officiel* of 7 December 2013, p. 19937, @ no 1.
- (15): The prohibition of providing legal advisory services was introduced by Institutional Act No 59-223 of 4 February 1959.
- (16): The formulation of this article resulting from Article 7 of Institutional Act No 95-63 of 19 January 1995 (incompatibility of holding any elected office as well as professional incompatibility).
- (17): References to the Defender of Rights were inserted by Article 40 of Institutional Act No 2011-333 of 29 March 2011 on the Defender of Rights.
- (18): Subparagraphs 4 and 5 result from Institutional Act No 2013-906 of 11 October 2013, Article 3, 1°. Previous wording (Institutional Act No 95-63): "*Professional incompatibility requirements for Members of Parliament are also applicable to members of the Constitutional Council.*"
- (19): Subparagraphs 4 and 5 result from Institutional Act No 2013-906 of 11 October 2013, Article 3, 1°. Previous wording (Institutional Act No 95-63): "*Professional incompatibility requirements for Members of Parliament are also applicable to members of the Constitutional Council.*"

(20): Subparagraph 6 (incompatibility with the practice of law) results from Institutional Act No 2013-906 of 11 October 2013, Article 6, I. Previous wording (Institutional Act No 95-63): "*Professional incompatibility requirements for Members of Parliament are also applicable to members of the Constitutional Council*"

(21): Subparagraph 2 is deleted by Institutional Act No 2013-906 of 11 October 2013, Article 3, 2°. Previous wording: "*(subparagraph 2) Compensation is reduced by half for members of the Council that continue to carry out a professional activity that is compatible with their duties.*"

(22): Decree No 59-1292 of 13 November 1959 on the obligations of members of the Constitutional Council.

(23): The formulation of this article results from Article 2 of Ordinance No 59-223 of 4 February 1959.

(24): Decree No 59-1293 of 13 November 1959 on the organisation of the Secretary General of the Constitutional Council.

(25): The formulation of this article results from Institutional Act No 74-1101 of 26 December 1974.

(26): Chapter inserted by Institutional Act No 2009-1523 of 10 December 2009, Article 1. Applicable from 1 March 2010 (Article 5 of Institutional Act: "*First day of the third month following the date of its being enacted*")

(27): See Decision No 2009-595 DC, recital 18: "*However, the last phrase of the last paragraph of section 23-3 may lead to a final decision being handed down in a case concerning which an application has been made to the Constitutional Council for a preliminary ruling as to constitutionality before the latter has in fact ruled on this application. In such a case, neither this provision nor the principle of res judicata should be allowed to preclude the person involved in these proceedings from bringing fresh proceedings in order for the decision of the Constitutional Court to be taken into account. With this qualification, section 23-3 is not unconstitutional.*"

(28): See Decision No 2009-595 DC, recital 23: "*Thirdly, the two last phrases of the final paragraph of section 23-5 make it possible for a final decision to be handed down in proceedings where the Constitutional Council has been petitioned to make a preliminary ruling as to constitutionality without waiting for the ruling of the latter. With the same qualifications as those set forth in paragraph 18 hereinabove, these provisions are not unconstitutional, which is to say that "neither this provision nor the principle of res judicata should be allowed to preclude the person involved in these proceedings from bringing fresh proceedings in order for the decision of the Constitutional Court to be taken into account."*

(29): Article repealed by Article 12 of Institutional Act No 2010-830 of 22 July 2010 concerning the application of Article 65 of the Constitution.

Previous wording: "*(subparagraph 1) the First President of the Court of Cassation is the party receiving referrals to the Court of Cassation provided for in Article 23-2 and in the last subparagraph of Article 23-1. The submission mentioned in Article 23-5, presented in the case of a proceeding before the Court of Cassation, is also presented to the First President. (subparagraph 2) The First President immediately advises the chief public prosecutor.*

(subparagraph 3) The ruling of the Court of Cassation is delivered by a formation chaired by the First President and composed of the presidents of the chambers and two members belonging to each specifically concerned chamber. (subparagraph 4) However, the First President may, if the solution is deemed necessary, refer the issue to a formation presided by that same First President, and composed of the specifically concerned chamber and a member of that chamber. (subparagraph 5) In order to apply the two preceding subparagraphs, the First President may be supplanted by a delegate that the First President designates from the presidents of the chambers of the Court of Cassation. The presidents of the chambers may be supplanted by delegates that they designate from the members of the chamber.

(30): Article 8 of the internal regulation on applications for priority preliminary rulings on the issue of constitutionality (*questions prioritaires de constitutionnalité, QPCs*).

(31): Amended by Institutional Act No 2009-403 of 15 April 2009, Article 10.

(32): Chapter and article introduced by Institutional Act No 2009-403 of 15 April 2009, Article 10; applicable to bills submitted from 1 September 2009 (Institutional Act No 2009-403 of 15 April 2009, Article 20).

(33): No decision issued since Decision No 79-11 FNR (inadmissibility) of 23 May 1979.

(34): Institutional Act: Act No 62-1292 of 6 November 1962, as amended, regarding the election of the President of the Republic by universal suffrage.

(35): The provisions of Articles 32, 33, 34, 35, of the second subparagraph of Article 38, Articles 39, 40, 41, 42, 44, and 45 were used for the election of Members of Parliament in Chapter X of Title II of Book 1 of the Electoral Code (Institutional Acts 179 to 189), also applicable to the election of Senators based on Institutional Act 325 of the same code.

(36): Amended by Institutional Act Nos 2007-223 of 21 February 2007, Article 12, I, 1° ("representative of the State") and 2011-410 of 14 April 2011, Article 14, I, 1°.

(37): Amended by Institutional Act No. 2011-333 of 14 April 2011, Article 14, I, 2°. Previous wording: " *during the ten days that follow the announcement of the vote count results*".

(38): Amended by Institutional Act No. 2007-223 of 21 February 2007, Article 12, I, 2° ("representative of the State" and introduction of electronic voting).

(39): Article was added by Article 8-I of Institutional Act No 90-383 of 10 May 1990.

(40): Reference amended by Institutional Act No. 2011-333 of 14 April 2011, Article 14, I, 3°. Previous wording: " *second subparagraph of LO 128*"

(41): This subparagraph was amended by paragraph I of Article 9 of Institutional Act No 90-383 of 10 May 1990.

(42): Chapter inserted by Institutional Act No 2013-1114 of 6 December 2013, Article 2, f. Applicable as of 1 January 2015 (Article 10: "*the first day of the thirteenth month following the date of its being enacted*")

(43): Decisions Nos 2014-132 ORGA of 27 November 2014 and 2014-130 of 6 August 2014 [Jean MASSOT (president), Edwige BELLARD, Michel ARNOULD].

(44): See Decree No 2011-573 of 24 May 2011 concerning the regulatory portion of the National Heritage Code (Articles R* 212-38 to R* 212-48). Its Article 3 repeals Decree No 2009-1123 of 17 September 2009 concerning the archives of the Constitutional Council.

(45): See Decree No 2010-148 of 16 February 2010 constituting the application of Institutional Act No 2009-1523 of 10 December 2009 concerning the application of Article 61-1 of the Constitution and Decree No 2010-1216 of 15 October 2010 concerning the procedure for reviewing applications for a priority preliminary ruling on the issue of constitutionality before the Court of Cassation. The provisions are in the Code of Administrative Justice (Articles R.* 771-3 to Article R.* 771-21), Code of Judicial Organisation (Article R.* 461-1), Code of Civil Procedure (Article 126-1 to 126-13) and the Code of Criminal Procedure (Article R.* 49-21 to R.* 49-34).

(46): See Decree No 2010-149 of 16 February 2010 concerning the continuity of legal aid in cases of review of applications for a priority preliminary ruling on the issue of constitutionality by the Conseil d'État, the Court of Cassation and the Constitutional Council.

(47): Regulation applicable to the procedure followed before the Constitutional Council for disputes concerning election of Members of Parliament and Senators (published in the *Journal officiel* of 31 May 1959, and modified in March, 1986, November 1987, July 1991, and 28 June 1995)

(48): Regulation applicable to the procedure followed before the Constitutional Council for claims concerning the carrying out of referendums (5 October 1988).

(49): Internal regulation on the procedure followed before the Constitutional Council for application for a priority preliminary ruling on the issue of constitutionality (Decision of 4 February 2010 as amended; published in the *Journal officiel* of 18 February 2010 and amended on 24 June 2010 and 21 June 2011).

(50): Internal regulation on the archives of the Constitutional Council (Decision of 27 June 2001).

(51): "applicable before it" inserted by Institutional Act No 2009-1523 of 10 December 2009, Article 4.

(52): The reference to Article 45-5 was inserted by Institutional Act No 2013-1114 of 6 December 2013, Article 2, 2°.

(53): Amended by Institutional Act No. 2008-695 of 15 July 2008, Article 1 (applicable as of 1 January 2009).

Previous wording:

"(subparagraph 1) This commission will review the claims concerning the election of Senators elected on 8 June 1958, as well as the Senators elected after that date that will be sent to it by the bureau of the Senate within ten days following the publication of this ordinance.

It will rule on said claims according to the applicable legislation as of the date of the election and under the conditions provided for in this text.

(subparagraph 2) The commission will itself institute its secretariat and can call on reporting judges chosen from senior civil servants."

(54): See also Decision No 2001-92 ORGA of 27 June 2001 constituting the internal regulation of the archives of the Constitutional Council.

(55): Articles in their formulation fixed by Act No 2008-696 of 15 July 2008. See Decision No 2008-566 DC, section 2: "Considering that Article 1 of the Institutional Act (...) makes 12 (twelve) articles of the National Heritage Code applicable, as results from the aforementioned law concerning archives, adopted on the same date (...);"

(56): I.e., "Twenty-five years from the date of the document or from the most recent document included in the file".