



General Overview

The Constitutional Council was established by the Constitution of the Fifth Republic adopted on 4 October 1958.

It is a court vested with various powers, including in particular the review of the constitutionality of legislation. The Constitutional Council is not a supreme court that is hierarchically superior to the Conseil d'État or the Cour de Cassation.

Procedure

The Constitutional Council is a court, the hearings and sessions are determined by the applications it receives.

When it is seized of proceedings concerning the constitutionality of a law prior to enactment, the Council must rule within one month, or eight days in urgent cases.

If it is seized of an application for a priority preliminary ruling on the issue of constitutionality, the Council has three months to deliver its decision. During that period, the parties are granted the opportunity to present their observations and to file responses.

The Council sits and rules in plenary form at all times. Its decisions and opinions are delivered by at least seven members (quorum requirement). In the event of a tie, the President has the casting vote. No dissenting opinions may be issued. Unlike public hearings, deliberations and votes are not made public.

The investigation of cases is allocated to a member of the Council who is appointed as the rapporteur by the president, except in electoral disputes. In such disputes, the investigation is allocated to one of the three sections comprised of three members chosen at random, each of whom must have been appointed by a different authority.

Proceedings are conducted in writing and the parties are granted the right to make representations. In cases involving electoral disputes, the parties may request that they be heard and in cases involving an application for a priority preliminary ruling on the issue of constitutionality a public hearing is held.

Powers

The powers of the Constitutional Council, which are set out in the Constitution, are specified and completed by organic laws. The powers vested in it by this legislation may be subdivided into two categories:

Judicial powers

Normative litigation

- As the court responsible for assessing the constitutionality of legislation, the Constitutional Council exercises both *ex ante* and *ex post* reviews.

Ex ante review:

The Constitutional Council is seized on a mandatory basis with organic laws and the regulations of the Houses of Parliament prior to promulgation of the former and prior to the entry into force of the latter. It may also be seized of an international commitment prior to its ratification or approval. For ordinary legislation, the Council may be seized of a law prior to its promulgation. In these last two cases, the Council may be seized in different ways depending upon the act under review, either by a political authority (the President of the Republic, the

Prime Minister or the president of the National Assembly or the Senate), or by at least 60 delegates to the National Assembly or 60 Senators.

Since 1999, the Constitutional Council may also examine the constitutionality of dependent territory laws adopted by the Congress of New Caledonia.

Ex post review:

Since 1 March 2010 and following the constitutional amendment of 23 July 2008, the Constitutional Council may consider whether a legislative provision which is already in force violates the rights and freedoms guaranteed under the Constitution, acting on a referral by the Conseil d'État or the Cour de Cassation. In such cases, constitutional review is conducted on the initiative of an applicant, since the question was raised by application filed during proceedings before a court. Such cases involve applications for a priority preliminary ruling on the issue of constitutionality [*question prioritaire de constitutionnalité*, QPC].

- As the court responsible for delineating jurisdiction between the statutory and the regulatory fields, the Constitutional Council may also be seized on the one hand during discussions before Parliament by the president of the relevant House or by the Prime Minister, or on the other hand *ex post* by the Prime Minister in order to reclassify a legislative provision, that is to amend by decree a legislative provision the contents of which are regulatory in nature.
- Following the amendment of 23 July 2008, the Constitutional Council may be called upon to verify whether the terms under which bills are tabled comply with the conditions laid down by an organic law (Organic Law No. 2009-403 of 15 April 2009).
- Finally, the Constitutional Council rules on the division of powers between the State and certain overseas territories (to date: French Polynesia, Saint-Barthélemy and Saint-Martin).

Electoral disputes and referenda

The Constitutional Council oversees the regularity of the election of the President of the Republic and referenda, the results of which it proclaims. It rules on the regularity of elections of Members of Parliament, and hence their eligibility; it also takes action where a Member of Parliament is in a situation of incompatibility, or is likely to be so.

Easily accessible to voters, applications to the Council relating to elections have increased considerably following the approval of legislation organising and controlling the financing of electoral expenses which the Council oversees for candidates in parliamentary and presidential elections (on appeal). Accordingly, as at 4 October 2012, the Council had issued 2871 rulings in relation to elections and 889 rulings in disputes relating to legislation (of which 650 were conformity rulings).

Consultative powers

The Constitutional Council issues an opinion if consulted by the Head of State regarding the implementation of Article 16 of the Constitution, and also in relation to decisions taken within this framework. It assesses whether the conditions for implementation continue to be met either upon request by the president of one of the Houses of Parliament or by 60 Members of Parliament or 60 Senators after 30 days, or automatically after 60 days and at any time thereafter.

Moreover, the Government consults the Council on texts relating to the organisation of counts for elections of the President of the Republic and referenda. The Council also provides observations on past parliamentary and presidential elections as well as on upcoming elections with the goal of recommending to the public authorities all measures capable of improving the conduct of these elections.