

Rules of procedure as to proceedings before the Constitutional council on applications for a priority preliminary ruling on the issue of constitutionality

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Rules of procedure as to proceedings before the Constitutional council on applications for a priority preliminary ruling on the issue of constitutionality¹.

The Constitutional Council

Having regard to the Constitution, in particular Article 61-1 thereof;

Having regard to Ordinance n° 58-1067 of November 7th 1958 being an Institutional Act on the Constitutional Council, and in particular Section 56 thereof;

Having regard to Institutional Act n° 2009-1523 of December 10th 2009 pertaining to the application of Article 61-1 of the Constitution together with decision n° 2009-595 of December 3rd 2009;

Having regard to Decree n° 59-1292 of November 13th 1959 pertaining to the duties of the members of the Constitutional Council;

Having regard to Decree n° 59-1293 of November 13th 1959 pertaining to the organisation of the General Secretariat of the Constitutional Council.

Holds as follows:

Article 1

The decision of the Conseil d'État or the Court of Cassation referring an application for a priority preliminary ruling on the issue of constitutionality to the Constitutional Council shall be registered at the General Secretariat. The latter shall notify the parties to the proceedings or, as the case maybe, their representatives.

The President of the Republic, the Prime Minister, the Presidents of the National Assembly and the Senate shall also be notified, together with, if need be, the President of the Government of New Caledonia, the President of the Congress and the Presidents of Provincial Assemblies.

The notice shall specify the date before which the abovementioned parties or Authorities may send the Constitutional Council their comments on the application made and, if need be, adduce evidence in support of said application. These comments and evidence shall be addressed to the General Secretariat of the Constitutional Council in the conditions laid down in Article 2 hereof. Comments and evidence addressed after the expiry of the allotted time, which cannot be extended, shall not be added to the case file.

A copy of the first comments and, as the case may be, evidence adduced in support of the same, shall be notified to the parties and Authorities referred to above and the same may, in the same conditions, put forward their comments before the stipulated deadline. The sole purpose of this second set of comments is to reply to the first set of comments. A copy shall also be notified to the parties and Authorities referred to above.

Article 2

All procedural acts and the receipt of all documents and evidence shall be duly recorded in the Register of the General Secretariat of the Constitutional Council.

Article 3

During the examination of the application, all procedural acts and documents together with notices or summons to appear shall be notified by electronic means. They shall be the object of acknowledgments of receipt also sent by electronic means. Each party shall, for such purposes,

¹ Decision of February 4th 2010.

inform the General Secretariat of the Council of the e-mail address to which such notice shall be validly given and sent.

As and when necessary and in order to guarantee the confidential nature of proceedings, the General Secretariat of the Council may have recourse to another means of communication.

In the event of one party instructing a person to represent it, said notices shall be given to said representative.

Article 4

Each member of the Constitutional Council who feels that he/she should refrain from sitting when an application for a priority preliminary ruling on the issue of constitutionality is heard shall inform the President of this decision.

A party or the representative of said party duly vested for such purposes with a special power of attorney may challenge the presence at the hearing of an application of a member of the Constitutional Council. This shall be done by a document in writing giving reasons for said challenge accompanied by evidence to justify the same. Such a challenge shall only be admissible if it is registered with the General Secretariat of the Constitutional Council prior to the date fixed for receipt of first comments on the application for a priority preliminary ruling.

The challenge shall be communicated to the member of the Constitutional Council against whom it is directed. Said member shall state whether or not he/she shall bow to said challenge. In the event of refusal to bow to said challenge the latter shall be examined by the Council without the attendance of the member whose presence is the object of the challenge.

The mere fact that a member of the Constitutional Council participated in the drafting of the statutory provision which is the object of the application shall not per se constitute grounds for challenging the presence of said member.

Article 5

The President shall enter the application on the agenda of the Constitutional Council and fix the date of the hearing. He shall inform the parties and Authorities referred to in Article 1 hereinabove.

The President shall appoint a Rapporteur from among the members of the Constitutional Council.

Article 6²

When, for the purposes of examining an application, the Council decides to proceed to a hearing, the parties and Authorities referred to in Article 1 shall be invited to attend said hearing. Time shall then be allotted for them to put forward their observations.

When a person with a proven special interest forwards observations in intervention relating to a preliminary ruling on the issue of constitutionality within three weeks of the date of it being transferred to the Constitutional Council, mentioned on its internet site, the Council shall decide that all of the documents for the proceedings shall be forward to that person and that those observations be sent to the parties and Authorities referred to in Article 1. Time shall then be allotted for them to respond to them. In urgent cases, the President of the Constitutional Council shall order the observations to be sent.

The three-week time limit is not binding on a party that has filed before a court coming under the supervisory jurisdiction of the Conseil d'État or the Court of Cassation, before the Conseil d'État or before the Court of Cassation an application for a priority preliminary ruling on the issue of constitutionality challenging a statutory provision which has already been referred to the Constitutional Council when, for that reason, said issue has not been referred or transferred.

If these observations in intervention include new grounds for complaint, the sending thereof shall act as the communication within the meaning of Article 7 of these regulations.

When observations in intervention are not accepted by the Constitutional Council, it shall advise the interested party of this.

² Paragraphs 2 to 5 are applicable to QPCs referred from 1 July 2011

Article 7

Grounds for complaint likely to be raised as a matter of course shall be communicated to the parties and Authorities referred to in Article 1 hereinabove in order for them to make their comments within the time allotted

Article 8

The President shall ensure that hearings before the Council proceed smoothly and in an orderly manner and shall direct proceedings.

Hearings shall be directly transmitted by audiovisual means in a room open to the public inside the building in which the Constitutional Council sits.

The President may, either at the request of a party or on his own initiative, limit the publicity of the hearing in the interests of public policy or when the interests of minors or the protection of the privacy of persons so warrants. He may only order that proceedings be held exceptionally in camera on the sole grounds specified herein.

Article 9

As from the beginning of the hearing, the use of any device making it possible to record, fix or transmit images or oral interventions, other than those necessary for the retransmission referred to in the foregoing Article, shall be prohibited in the courtroom and in the room open to the public.

The President may however, after having consulted the parties present, order that the hearing be made available on the Internet site of the Constitutional Council.

He may also order the conservation of the recording of the hearing if the latter is of interest for the Archives of the Constitutional Council

Article 10

At the hearing, the Court will hear the reading of the application for a priority preliminary ruling on the issue of constitutionality, together with a reminder of the various stages of the proceedings.

The representatives of the parties and persons whose observations in intervention have been accepted, if they are Attorneys at the Conseil d'État and the Court of Cassation or Attorneys, and, if need be, agents appointed by the Authorities referred to in Article 1, shall then be invited to put forward any verbal comments which they might wish to make³.

Article 11

Solely those members of the Constitutional Council present at the hearing may take part in deliberations.

Without prejudice to the application of Section 58 of the Ordinance of November 7th 1958 referred to hereinabove, said deliberations shall not be public

Article 12

The decisions of the Constitutional Council shall contain the name of the parties and their representatives, references to applicable provisions and comments communicated, the grounds for the latter and the holding. They shall indicate the name of those members present at the sitting of the Council when such decisions were reached.

The decisions shall be signed by the President, the Secretary General and the Rapporteur and shall be communicated, notified and published in accordance with Article 23-11 of the Ordinance of November 7th 1958 referred to hereinabove.

³ Provisions on observations in intervention are applicable to QPCs referred from 1 July 2011

Article 13

If the Constitutional Council finds that one of its decisions is flawed by a material error, it may automatically rectify the same, after having requested explanations from the parties and the Authorities referred to in Article 1 hereinabove. Said parties and Authorities may, within twenty days of the publication of the decision in the Journal officiel, petition the Constitutional Council to rectify a material error in one of its decisions

Article 14

This decision shall be published in the Journal officiel of the French Republic

Deliberated by the Constitutional Council sitting on February 4th 2010 and composed of Messrs Jean-Louis DEBRE, President, Guy CANIVET, Jacques CHIRAC, Renaud DENOIX de SAINT MARC, Olivier DUTHEILLET de LAMOTHE and Valéry GISCARD D'ESTAING, Mrs Jacqueline de GUILLENCHMIDT, Mr Jean-Louis PEZANT, Mrs Dominique SCHNAPPER and Mr Pierre STEINMETZ.