

Texts relating to the Priority preliminary rulings on the issue of constitutionality

-

Reglementary provisions

▪ Code of Administrative Justice	2
▪ Code of Judicial Organisation	8
▪ Code of Civil Procedure	8
▪ Code of Criminal Procedure	12
▪ Decree n° 2010-149 of february 16th 2010 pertaining to the continuity of legal aid in the event of the examination by the Conseil d'Etat, the Cour de cassation and the Constitutional council of an application for a priority preliminary ruling on the issue of constitutionality	15

▪ Code of Administrative Justice	4
- Book VII: The judgment	4
Title VII: Special Provisions	4
Chapter 1 bis : Priority preliminary rulings on the issue of constitutionality	4
<i>Art R* 771-3</i>	4
<i>Art R* 771-4</i>	4
<i>Art R* 771-5</i>	4
<i>Art R* 771-6</i>	4
<i>Art R* 771-7</i>	4
<i>Art R* 771-8</i>	5
<i>Art R* 771-9</i>	5
<i>Art R* 771-10</i>	5
<i>Art R* 771-11</i>	5
<i>Art R* 771-12</i>	5
<i>Art R* 771-13</i>	6
<i>Art R* 771-14</i>	6
<i>Art R* 771-15</i>	6
<i>Art R* 771-16</i>	6
<i>Art R* 771-17</i>	6
<i>Art R* 771-18</i>	6
<i>Art R* 771-19</i>	6
<i>Art R* 771-20</i>	6
<i>Art R* 771-21</i>	7
▪ Code of Judicial Organisation	8
- Book IV: The Court of cassation	8
Title VI: Priority preliminary rulings on the issue of constitutionality	8
<i>Art. R.* 461-1</i>	8
▪ Code of Civil Procedure	8
- Book V bis : Provisions common to all jurisdictions	8
Title V bis : Priority preliminary rulings on the issue of constitutionality	8
Chapter I : Transmission by the judge to the Cour de cassation of the application for a Priority preliminary ruling on the issue of constitutionality	8
<i>Art 126-1</i>	8
<i>Art 126-2</i>	9
<i>Art 126-3</i>	9
<i>Art 126-4</i>	9
<i>Art 126-5</i>	9
<i>Art 126-6</i>	9
<i>Art 126-7</i>	10
Chapter II : Referral by the Cour de cassation to the Constitutional council of an application for a Priority preliminary ruling on the issue of constitutionality	10
<i>Art. 126-8</i>	10
<i>Art. 126-9</i>	10
<i>Art. 126-10</i>	10
<i>Art. 126-11</i>	10
<i>Art. 126-12</i>	11
<i>Art. 126-13</i>	11
▪ Code of Criminal Procedure	12
- Book IV : Specific procedures	12
Title 1 bis : Priority preliminary rulings on the issue of constitutionality	12

Chapter 1: Provisions applicable before courts of preliminary criminal investigation, trial courts, penalty enforcement courts and courts having jurisdiction over post- sentence preventive detention	12
<i>Art. R* 49-21</i>	12
<i>Art. R* 49-22</i>	12
<i>Art. R* 49-23</i>	12
<i>Art. R* 49-24</i>	12
<i>Art. R* 49-25</i>	12
<i>Art. R* 49-26</i>	13
<i>Art. R* 49-27</i>	13
<i>Art. R* 49-28</i>	13
<i>Art. R* 49-29</i>	13
Chapter II : Provisions applicable before the Cour de cassation	13
<i>Art. R *49-30</i>	13
<i>Art. R. * 49-31</i>	14
<i>Art. R. * 49-32</i>	14
<i>Art. R. * 49-33</i>	14
<i>Art. R. * 49-34</i>	14
▪ Decree n° 2010-149 of february 16th 2010 pertaining to the continuity of legal aid in the event of the examination by the Conseil d'Etat, the Cour de cassation and the Constitutional council of an application for a priority preliminary ruling on the issue of constitutionality	15
- <i>Article 1</i>	15
- <i>Article 2</i>	16
- <i>Article 3</i>	16
- <i>Article 4</i>	16
- <i>Article 5</i>	17
- <i>Article 6</i>	17

Code of Administrative Justice¹

Book VII: The judgment

Title VII: Special Provisions

Chapter 1 bis : Priority preliminary rulings on the issue of constitutionality²

Section 1 :

Provisions applicable before Administrative Courts and Administrative Courts of Appeal

Art R* 771-3

The argument that a statutory provisions infringes the rights and freedoms guaranteed by the Constitution shall, in accordance with the provisions of Section 23-1 of Ordinance n° 58-1067 of November 7th 1958 being an Institutional Act on the Constitutional Council, be raised, on pain on inadmissibility, in writing in a separate memorandum accompanied by a reasoned justification of this argument. This memorandum, together with, if need be, the envelope containing the same shall bear the words "Application for a priority preliminary ruling on the issue of constitutionality".

Art R* 771-4

Inadmissibility based on the failure to put forward in a separate reasoned memorandum the argument referred to in the foregoing Article may be asserted without any need for the application of Article R 611-7 and R.612-1.

Art R* 771-5

Unless it appears clearly from a reading of the separate memorandum that there are no grounds for transmitting the application for a priority preliminary ruling on the issue of constitutionality, the other parties involved shall receive notification of said memorandum. They shall be allowed a short period of time within which to present their comments on the same.

Art R* 771-6

A court shall not be required to transmit an application for a priority preliminary ruling on the issue of constitutionality challenging, on the same grounds, a statutory provision on which the Constitutional Council has already been asked to rule. In the event of non transmission for such reasons, said court shall stay its ruling on the merits until such time as it is informed of the decision of the Conseil d'Etat or, if need be, of the Constitutional Council.

Art R* 771-7

¹ Article 2 of Decree no. 2010-148 of 16 February 2010: *For the purposes of Article 61-1 of the Constitution, the provisions of Articles R.* 771-5 and R.* 771-6, the second and third paragraphs of Article R.* 771-9 and Articles R.* 771-10 and R.* 771-12 of the Code of Administrative Justice are applicable before the courts coming under the supervisory jurisdiction of the Conseil d'État which are not governed are either by the Code of Administrative Justice or by the Code of Financial Jurisdictions.*

The party that, in proceedings before one of these courts, argues that a statutory provision infringes the rights and liberties guaranteed by the Constitution shall submit his/her/its comments in a separate memorandum with reasons, on pain of it being ruled inadmissible ex officio."

² Chapter inserted by Decree no. 2010-148 of 16 February 2010, Art. 1. Applicable from 1st March 2010 (Art. 7) over the entire Republic (Art. 6).

The Presidents of the Administrative Court or the Administrative Court of Appeal, the Vice-President of the Administrative Court of Paris, the Presidents of Trial Courts or Judges appointed for said purpose by the Chief Judge of a court may, by way of a court decision, rule on the transmission of the application for a priority preliminary ruling on the issue of constitutionality.

Art R* 771-8

The application of the provisions hereof shall not preclude the exercising of the powers vested in Presidents of Administrative Courts and Administrative Courts of Appeal, the Vice-President of the Administrative Court of Paris and the Presidents of Trial Courts by the provisions of Article R 222-1.

Art R* 771-9

The decision ruling on the transmission of the application for a priority preliminary ruling on the issue of constitutionality shall be notified to the parties in the manner provided for by Articles R 751-2 to R 751-4 and R 751-8.

Notice of a decision to transmit an application shall indicate that comments made be made before the Conseil d'Etat within a period of one month. It shall indicate the manner in which said comments may be presented.

Notice of a decision of refusal to transmit an application shall indicate that this refusal may only be challenged in the framework of an appeal against the decision settling all or part of the litigation. It shall also indicate that this challenge shall be made in a separate written reasoned memorandum, accompanied by a copy of the decision of refusal to transmit the application.

Art R* 771-10

Refusal to transmit an application for a priority preliminary ruling on the issue of constitutionality terminates said application as regards the court involved. The decision which settles the litigation shall refer to the refusal.

The trial court may however state its refusal to comply with the decision not to transmit the application for a priority preliminary ruling on the issue of constitutionality when the sole ground for said refusal is the finding that the condition provided for by 1° of section 23-2 of Ordinance n° 58-1067 of November 7th 1958 being an Institutional Act on the Constitutional Council was not met, if said court intends to base its decision on the statutory provision which was challenged in the application for a priority preliminary ruling on the issue of constitutionality which was not transmitted.

Art R* 771-11

An application for a priority preliminary ruling on the issue of constitutionality made for the first time before an Administrative Court of Appeal shall be governed by the same rules as those applicable at first instance.

Art R* 771-12

When, pursuant to the final paragraph of section 23-2 of Ordinance n° 58-1067 of November 7th 1958 being an Institutional Act on the Constitutional Council, one of the parties intends to challenge, as part of an appeal lodged against the decision settling all or part of litigation, the refusal to transmit an application for a priority preliminary ruling on the issue of constitutionality made by the judge first required to rule thereon, said party shall, on pain of inadmissibility, make said challenge before the expiry of the allotted time in a separate written reasoned memorandum, accompanied by a copy of the decision of refusal to transmit the application.

The challenging of a refusal to transmit an application by a cross appeal must also be done by a separate written reasoned memorandum accompanied by a copy of the decision of refusal to transmit the application.

Provisions applicable before the Conseil d'Etat

Art R* 771-13

The separate memorandum provided for by section 23-5 of Ordinance n° 58-1067 of November 7th 1958 being an Institutional Act on the Constitutional Council together with, if need be, the envelope containing the same shall bear the words "Application for a priority preliminary ruling on the issue of constitutionality".

Art R* 771-14

Inadmissibility based on failure to present in a separate written reasoned memorandum the argument that a challenged statutory provision infringes rights and freedoms guaranteed by the Constitution may be asserted without application of Article R.611-7 and R. 612-1.

Art R* 771-15

The separate memorandum by which a party raises before the Conseil d'Etat the argument that a statutory provision infringes rights and freedoms guaranteed by the Constitution shall be notified to the other parties, the competent Minister and the Prime Minister. A short period of time shall be allotted for the latter to present their comments.

When it appears clearly from a reading of the separate memorandum that the conditions provided for in section 23-4 of Ordinance n° 58-1067 of November 7th 1958 being an Institutional Act on the Constitutional Council have not been met, there shall be no communication of said memorandum.

Art R* 771-16

When one of the parties intends to challenge before the Conseil d'Etat, in support of an appeal against the decision settling all or part of the litigation, said party shall, on pain of inadmissibility, present this challenge before the expiry of the allotted time in a separate written reasoned memorandum, accompanied by a copy of the decision of refusal to transmit the application.

The challenging of a refusal to transmit an application by a cross appeal must also be done by a separate written reasoned memorandum accompanied by a copy of the decision of refusal to transmit the application.

Art R* 771-17

When an application for a priority preliminary ruling on the issue of constitutionality is made in support of an appeal, the Conseil d'Etat shall rule on the referral of said application to the Constitutional Council without being required to rule beforehand on the admissibility of said appeal.

Art R* 771-18

The Conseil d'Etat shall not be required to refer to the Constitutional Council an application for a priority preliminary ruling on the issue of constitutionality challenging on the same grounds a statutory provision already referred for review by the Council. In the event of non transmission for such reasons, it shall postpone its decision until such time as the Constitutional Council has given its ruling.

Art R* 771-19

The application of the provisions of this section shall not preclude the exercising by the Presidents of Sub-sections of the powers vested in them by Article R 122-12 and R 822-5.

Art R* 771-20

When an application for a priority preliminary ruling on the issue of constitutionality has been transmitted to the Conseil d'Etat by an Administrative Court or an Administrative Court of Appeal, the parties, the competent Minister and the Prime Minister may make their comments within one month as from the notice given to them of the decision to transmit said application or, as the case

may be, within the time allotted by the President of the Litigation section or the President of the Sub-section in charge of carrying out pre-trial investigations.

If the petition addressed to the court which has decided to refer the application does not require the presence of an Attorney before said court, this same measure shall apply as regards the producing of comments before the Conseil d'Etat. If this is not the case, and unless they are made by the Prime Minister or another Minister, comments must be presented to the court by an Attorney qualified to plead before the Conseil d'Etat or the Cour de cassation.

Art R* 771-21

The decision which rules as to the referral to the Constitutional Council of an application for a priority preliminary ruling on an issue of constitutionality shall be notified to the parties, the competent Minister and the Prime Minister in the manner provided for by Articles R 751-2 to R 751-4.

Code of Judicial Organisation

Book IV: The Court of cassation

*Title VI: Priority preliminary rulings on the issue of constitutionality*³

Art. R.* 461-1⁴

From receipt of an application for a priority preliminary ruling on the issue of constitutionality transferred by a court, the case shall be allocated to the chamber which hears appeals on a point of law on the matter in question.

The issue can be examined by the Bench stated in the first paragraph of Article L. 431-1 of this Code or in Article 567-1-1 of the Code of Criminal Procedure when the solution is self-evident.

Code of Civil Procedure

Book V bis : Provisions common to all jurisdictions

*Title V bis : Priority preliminary rulings on the issue of constitutionality*⁵

Chapter I : Transmission by the judge to the Cour de cassation of the application for a Priority preliminary ruling on the issue of constitutionality

Art 126-1

³ Title inserted by Decree no. 2010-148 of 16 February 2010, Art. 5. Applicable from 1st March 2010 (Art. 7) over the entire Republic (Art. 6). Amended by Decree no. 2010-1216 of 15 October 2010 on the procedure for examining applications for priority preliminary rulings on the issue of constitutionality before the Court of Cassation, Art.1; previous wording: "**Art. R.* 461-1.** - The Bench ruling on the referral of an application for a priority preliminary ruling on the issue of constitutionality shall be composed in accordance with the provisions of Article 23-6 of Ordinance no. 58-1067 of 7 November 1958 concerning Organic Law on the Constitutional Council and the provisions of this Title. **Art. R.* 461-2.** - The First President shall, pursuant to Article R 413-3, on the recommendation of each of the Presidents of the Chambers, appoint from the Judges of said Chambers, the Judge called upon to sit on the Bench ruling on the referral of an application for a priority preliminary ruling on the issue of constitutionality under Article 23-6 of Ordinance no. 58-1067 of 7 November 1958. **Art. R.* 461-3.** - For each case, the First President shall decide which Chamber is especially concerned by the application for a priority preliminary ruling on the issue of constitutionality. **Art. R.* 461-4.** - When the Bench ruling on the referral of an application for a priority preliminary ruling on the issue of constitutionality is composed of two Judges from each Chamber especially concerned by said application, the First President shall appoint, in addition to the Judge appointed under Article R*461-2, on the recommendation of each President of Chamber concerned, a Judge chosen from those sitting in the competent section of the Chamber concerned. However, when a Judge has been appointed a Rapporteur for an appeal on a point of law during which an application for a priority preliminary ruling on the issue of constitutionality has been transferred, said Judge shall be appointed to sit on said Bench. **Art. R.* 461-5.** - When a Judge appointed hereunder is absent or prevented from sitting, the First President, on the recommendation of the President of the Chamber especially concerned, shall appoint another Judge from said Chamber to replace the same. "

⁴ Amended by Decree no. 2010-1216 of 15 October 2010 on the procedure for examining applications for priority preliminary rulings on the issue of constitutionality before the Court of Cassation, Art.1.

⁵ Title inserted by Decree no. 2010-148 of 16 February 2010, Art. 3. Applicable from 1st March 2010 (Art. 7) over the entire Republic (Art. 6).

Transmission of an application for a priority preliminary ruling on the issue of constitutionality to the Cour de cassation shall be governed by the rules set out in sections 23-1 to 23-3 of Ordinance n° 58-1067 of November 7th 1958 being an Institutional Act on the Constitutional Council and by the provisions provided for herein.

Art 126-2

On pain of inadmissibility, a party contending that a statutory provision infringes rights and freedoms guaranteed by the Constitution shall present this argument in a separate written reasoned memorandum, including when appealing against a decision settling all or part of litigation in proceedings having given rise to a refusal to transmit an application for a priority preliminary ruling on the issue of constitutionality.

The Judge shall *proprio motu* find that an argument of such a nature shall be inadmissible if said argument is not presented in a separate written reasoned memorandum.

Other comments put forward by the parties on the application for a priority preliminary ruling on the issue of constitutionality, if they are made in writing, shall also be made in a separate written reasoned memorandum. In the event of non-compliance with this requirement, they shall not be appended to the decision transmitting the application to the Cour de cassation.

Art 126-3

The Judge ruling on the transmission of the application for a priority preliminary ruling on the issue of constitutionality shall be the Judge hearing the proceedings during which this issue was raised, subject to the provisions of the following paragraphs.

The Judge responsible for declaring the case ready for trial, and the Judge of the Court of Appeal responsible for preparing the case for hearing by the Court, shall rule by a court order on the transmission of the application for a priority preliminary ruling on the issue of constitutionality. When the application so warrants, the case may also be referred to the Trial court, if need be without the closure of the pre-trial proceedings, in order for said Trial court to rule on the transmission involved. This decision of referral is a measure of judicial administration.

The President of the Rural Lease Tribunal, of the Social Security Tribunal, of the Incapacity Litigation Tribunal, the National Incapacity and Tarification of Occupational Injuries Court shall rule on transmission of an application for a priority preliminary ruling on the issue of constitutionality.

Art 126-4

The Judge shall rule without delay, under the applicable rules of procedure, on the transmission of the application for a priority preliminary ruling on the issue of constitutionality, after having duly informed the Public Prosecutor's Office and the parties heard or involved in the appeal.

The above shall be informed by all means of the date on which the decision will be handed down. The parties shall also be informed, if need be, of the requirement of compliance with the provisions of Article 126-9.

Art 126-5

The Judge shall not be required to transmit an application for a priority preliminary ruling on the issue of constitutionality challenging, on the same grounds, a statutory provision on which the Constitutional Council has already been asked to rule. In the event of non transmission for such reasons, the Judge shall stay his ruling on the merits until such time as he is informed of the decision of the Cour de cassation or, if need be, of the Constitutional Council

Art 126-6

Refusal to transmit an application for a priority preliminary ruling on the issue of constitutionality terminates said application as regards the Court involved.

However when the sole ground for said refusal is that the challenged statutory provision was not applicable to the litigation or proceedings underway, the Court may, if it intends when examining

the case in hand to apply said provision, withdraw its refusal and transmit the application for a priority preliminary ruling on the issue of constitutionality.

Art 126-7

The Court office shall inform the parties and the Office of the Public Prosecutor by all means and without delay of the decision ruling on the transmission of the application for a priority preliminary ruling on the issue of constitutionality.

In the event of a decision to transmit the application, the notice given to the parties shall specify that said decision cannot be appealed against and that the parties intending to present their comments to the Cour de cassation are required to comply with the provisions of Article 126-9, set out in said notice, and the first paragraph of Article 126-11 hereof. Notice shall be sent by registered letter return receipt requested to the parties which have not appeared in court.

In the event of a decision of refusal to transmit an application, the notice addressed to the parties shall specify that said decision may only be challenged in the framework of an appeal against the decision settling all or part of the litigation involved.

Chapter II : Referral by the Cour de cassation to the Constitutional council of an application for a Priority preliminary ruling on the issue of constitutionality.

Art. 126-8

Referral to the Constitutional Council by the Cour de cassation of an application for a priority preliminary ruling on the issue of constitutionality shall comply with the rules set out in sections 23-4 to 23-7 of Ordinance n° 58-1067 of November 7th 1958 referred to above and with the provisions of the present Chapter.

Art. 126-9

The parties shall have a period of one month from the date of the decision to transmit an application within which to put forward their comments. The latter shall be signed by an Attorney qualified to plead before the Conseil d'Etat or the Cour de cassation in matters where representation before the Cour de cassation is mandatory.

Art. 126-10⁶

When the application for a priority preliminary ruling on the issue of constitutionality is made during an appeal on a point of law, the separate memorandum provided for in Section 23-5 of Ordinance no. 58-1067 of 7 November 1958 shall bear the words "application for a priority preliminary ruling on the issue of constitutionality".

The other parties to said appeal shall have a period of one month within which to file a memorandum in reply to the application for a priority preliminary ruling on the issue of constitutionality. Said memorandum shall be drawn up, delivered and communicated in accordance with the rules governing the appeal.

Art. 126-11⁷

The President of the Bench to which the case is allocated or his/her delegate can, at the request of one of the parties or ex officio, reduce the time allotted by Articles 126-9 and 126-10 in cases of urgency.

He/She shall fix the date of the hearing during which the application for a priority preliminary ruling on the issue of constitutionality will be examined.

The Chief Public Prosecutor shall be informed thereof in order for him to make his opinion known.

⁶ Amended by Decree no. 2010-1216 of 15 October 2010 on the procedure for examining applications for priority preliminary rulings on the issue of constitutionality before the Court of Cassation, Art. 2, 1° (the words "Application for a priority preliminary ruling on the issue of constitutionality").

⁷ Amended by Decree no. 2010-1216 of 15 October 2010 on the procedure for examining applications for priority preliminary rulings on the issue of constitutionality before the Court of Cassation, Art. 2, 2°.

Art. 126-12⁸

The Court of Cassation shall not be obliged to refer to the Constitutional Council an application for a priority preliminary ruling on the issue of constitutionality challenging, for the same reasons, a statutory provision which has already been referred to the Constitutional Council. If there is no transfer for this reason, it shall stay its decision until the Constitutional Council has reached its decision.

Art. 126-13⁹

The Court Office shall notify the parties of the decision taken by the First President or his delegate under the first paragraph of Article R*49-32, together with the date fixed for the hearing.

⁸ Amended by Decree no. 2010-1216 of 15 October 2010 on the procedure for examining applications for priority preliminary rulings on the issue of constitutionality before the Court of Cassation, Art. 2, 3°.

⁹ Previous Article 126-12 amended by Decree no. 2010-1216 of 15 October 2010 on the procedure for examining applications for priority preliminary rulings on the issue of constitutionality before the Court of Cassation, Art. 2, 4°.

Code of Criminal Procedure

Book IV : Specific procedures

Title 1 bis : Priority preliminary rulings on the issue of constitutionality¹⁰

Chapter 1: Provisions applicable before courts of preliminary criminal investigation, trial courts, penalty enforcement courts and courts having jurisdiction over post-sentence preventive detention

Art. R* 49-21

Pursuant to the provisions of Section 23-1 of Ordinance n° 58-1067 of November 7th 1958 being an Institutional Act on the Constitutional Council, a party claiming, in support of an application filed in accordance with the rules of the present Code, before a Court of Preliminary Criminal Investigation, a Trial court, a Penalty Enforcement Court or a Court having jurisdiction over post-sentence preventive detention, that a statutory provision infringes rights and freedoms guaranteed by the Constitution, shall, on pain of inadmissibility, raise this argument in a separate written reasoned memorandum.

The Court shall *proprio motu* hold to be inadmissible any such argument which is not raised in a separate written reasonable memorandum.

Art. R* 49-22

During a preliminary criminal investigation, the argument that a statutory provision infringes rights and freedoms guaranteed by the Constitution, shall be raised in a separate written reasoned memorandum filed with the Court Office of the Court of Preliminary Criminal Investigation, and shall be duly recorded by the Clerk to the Court together with the date of the filing thereof.

Said written memorandum may also be filed with the Court Office of the Investigating Magistrate, the Judge of Liberties and Detention, or the Children's Judge. The Clerk to the Court shall then without delay send the same to the Court of Preliminary Investigation.

Art. R* 49-23

When the argument that a statutory provision infringes rights and freedoms guaranteed by the Constitution is raised by a person under a preliminary criminal investigation before the President of the Court of Preliminary Criminal Investigation pursuant to the provisions of Article 187-1 in the framework of an appeal against an order remanding said person in custody pending trial, it shall be examined by this Judge. The latter may however refer said examination to the Court of Preliminary Criminal Investigation if the application warrants said referral.

Art. R* 49-24

When the argument that a statutory provision infringes rights and freedoms guaranteed by the Constitution is raised by a person in custody in the framework of an application which may be made by delivery of the same to the Head of the Prison, the separate written reasoned memorandum in support of the application may also be delivered to the Head of the Prison. The latter shall record receipt thereof together with the date of the filing thereof and said application shall be sent without delay, either in its original form or as a copy thereof, to the Court office of the Court to which this matter is referred.

Art. R* 49-25

The Court to which this matter is referred shall rule without delay, in accordance with applicable rules of procedure, on the transmission of the application for a priority preliminary ruling on the

¹⁰ Title inserted by Decree no. 2010-148 of 16 February 2010, art. 4, 2°. Applicable from 1st March 2010 (Art. 7) over the entire Republic (Art. 6).

issue of constitutionality after the Office of the Public Prosecutor and the parties heard or called to appear, have presented their comments on said application.

The Court may however, when it appears clearly from a reading of the separate written memorandum that there are no grounds for transmitting the application for a priority preliminary ruling on the issue of constitutionality, rule without soliciting the comments of the Office of the Public Prosecutor or the parties.

Once they have been presented in writing, the comments of the Office of the Public Prosecutor and the other parties shall be set out in a separate written reasoned memorandum. In the event of non compliance with this requirement, they shall not be appended to the decision transmitting the application for a priority preliminary ruling on the issue of constitutionality to the Cour de cassation.

Art. R* 49-26

A Court shall not be required to transmit an application for a priority preliminary ruling on the issue of constitutionality challenging, on the same grounds, a statutory provision on which the Cour de cassation or the Constitutional Council has already been asked to rule. In the event of non transmission for such reasons, it shall stay its ruling on the merits until such time as it is informed of the decision of the Cour de cassation or, if need be, the Constitutional Council.

Art. R* 49-27

Refusal to transmit an application for a priority preliminary ruling on the issue of constitutionality terminates said application as regards the court involved.

However when the sole ground for said refusal is that the challenged statutory provision was not applicable to the litigation or was not the grounds for the proceedings underway, the court may, if it intends when examining the case in hand to apply said provision, withdraw its refusal and transmit the application for a priority preliminary ruling on the issue of constitutionality.

Art. R* 49-28

The Court office shall inform the parties and the Office of the Public Prosecutor by all means and without delay of the decision ruling on the transmission to the Cour de cassation of the application for a priority preliminary ruling on the issue of constitutionality.

In the event of a decision to transmit the application, the notice given to the parties shall specify that said decision cannot be appealed against and that the parties intending to present their comments to the Cour de cassation are required to comply with the provisions of Article R* 49-30, set out in said notice, and the first paragraph of Article R*49-32 hereof. Notice shall be sent by registered letter return receipt requested to the parties which have not appeared in court.

In the event of a decision of refusal to transmit an application, the notice addressed to the parties shall specify that said decision may only be challenged in the framework of an appeal against the decision handed down in the case in hand.

Art. R* 49-29

When it is raised for the first time in appellate proceedings, the argument that a statutory provision infringes rights and freedoms guaranteed by the Constitution shall be presented in a separate written reasoned memorandum.

When the decision of refusal to transmit an application for a priority preliminary ruling on the issue of constitutionality is challenged in the framework of an appeal against the decision ruling on the merits of the case in which said application as made, the argument that a statutory provision infringes rights and freedoms guaranteed by the Constitution shall also be presented in a separate written reasoned memorandum.

Chapter II : Provisions applicable before the Cour de cassation

Art. R *49-30

The parties shall have a period of one month from the decision to transmit an application for a priority preliminary ruling on the issue of constitutionality to the Cour de cassation within which to put their comments to said Court. Said comments shall be signed by an Attorney qualified to plead before the Conseil d'Etat and the Cour de cassation, in accordance with the rules provided for by Article 585, except when they are made by a convicted person, a civil plaintiff suing for damages in a case involving the Press or an appellant before the Cour de cassation when the Criminal Division of the latter has been asked to rule on an appeal on a point of law pursuant to Articles 567-2, 574-1 and 574-2.

Art. R.* 49-31¹¹

When the application for a priority preliminary ruling on the issue of constitutionality is made during an appeal on a point of law, the separate memorandum provided for in Article 23-5 of Ordinance no. 58-1067 of 7 November 1958 shall bear the words: "priority preliminary rulings on the issue of constitutionality".

The other parties to said appeal shall have a period of one month within which to file a memorandum in reply to the application for a priority preliminary ruling on the issue of constitutionality. Said memorandum shall be drawn up, delivered and communicated in accordance with the rules governing the appeal.

Art. R.* 49-32¹²

The President of the Bench to which the case is allocated or his/her delegate can, at the request of one of the parties or ex officio, reduce the time allotted by Articles 49-30 and 49-31 in cases of urgency.

He/She shall fix the date of the hearing during which the application for a priority preliminary ruling on the issue of constitutionality will be examined.

Art. R.* 49-33¹³

The Court of Cassation shall not be obliged to refer to the Constitutional Council an application for a priority preliminary ruling on the issue of constitutionality challenging, for the same reasons, a statutory provision which has already been referred to the Constitutional Council. If there is no transfer for this reason, it shall stay its decision until the Constitutional Council has reached its decision.

Art. R.* 49-34¹⁴

The Court Office shall notify the parties of the decision taken by the First President or his delegate under the first paragraph of Article R*49-32, together with the date fixed for the hearing.

¹¹ Amended by Decree no. 2010-1216 of 15 October 2010 on the procedure for examining applications for priority preliminary rulings on the issue of constitutionality before the Court of Cassation, Art. 3, 1°.

¹² Amended by Decree no. 2010-1216 of 15 October 2010 on the procedure for examining applications for priority preliminary rulings on the issue of constitutionality before the Court of Cassation, Art. 3, 2°.

¹³ Amended by Decree no. 2010-1216 of 15 October 2010 on the procedure for examining applications for priority preliminary rulings on the issue of constitutionality before the Court of Cassation, Art. 3, 3°.

¹⁴ Previous Article R* 49-33 amended by Decree no. 2010-1216 of 15 October 2010 on the procedure for examining applications for priority preliminary rulings on the issue of constitutionality before the Court of Cassation, Art. 3, 4°.

**Decree n° 2010-149 of february 16th 2010 pertaining to
the continuity of legal aid in the event of the examination by
the Conseil d'Etat, the Cour de cassation and the
Constitutional council of an application for a priority
preliminary ruling on the issue of constitutionality**

The president of the Republic

Having taken cognizance of the report of the Prime minister and the minister of justice and liberties, keeper of the seals

Having regard to the Constitution, and 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 as amended in particular by institutional act n° 2009-1523 of december 10th 2009 pertaining to the application of article 61-1 of the Constitution, and in particular section 23-12 thereof;

Having regard to act n° 91-647 of july 1991 as amended pertaining to legal aid;

Having regard to ordinance n° 92-1143 of october 12th 1992 as amended pertaining to legal aid in Mayotte;

Having regard to ordinance n° 92-1147 of october 12th 1992 as amended pertaining to legal aid in criminal matters in New Caledonia and the Wallis and Futuna islands;

Having regard to decree n° 91-1266 of december 19th 1991 as amended for the application of act n° 91-647 of july 10th 1991 pertaining to legal aid;

Having regard to decree n° 91-1369 of december 30th 1991 as amended providing for special methods of application in overseas départements, Saint-Barthélemy, Saint-Martin and Saint-Pierre et Miquelon, and French Polynesia of act n° 91-647 of july 10th 1991 pertaining to legal aid;

Having regard to decree n° 93-1425 of december 31st 1993 as amended pertaining to legal aid in New Caledonia and the Wallis and Futuna islands;

Having regard to decree n° 96-292 of april 2nd 1996 as amended for the application of ordinance n° 92-1143 of october 12th 1992 pertaining to legal aid in Mayotte;

Having regard to the opinion of the national legal aid board dated january 29th 2010;

Having regard to the consultation of the government of New Caledonia dated january 19th 2010;

Having regard to the consultation of the general council of Mayotte dated january 19th 2010;

After due consultation of the Constitutional council

Having heard the Conseil d'Etat (special committee)

Having heard the Council of ministers

Hereby decrees :

- Article 1

The Decree of December 19th 1991 referred to hereinabove shall be amended as follows :

1° Article 53-1 worded as follows shall be inserted into said Decree :

"Art 53-1. - A Beneficiary of legal aid shall continue to receive legal aid in the event of the examination by the Conseil d'Etat, Cour de cassation or Constitutional Council of an application for a priority preliminary ruling on the issue of Constitutionality.

If need be, for proceedings before the Conseil d'Etat and the Cour de cassation, an Attorney before the Conseil d'Etat or Cour de cassation shall be appointed by the President of the Council of Attorneys before the Conseil d'Etat or Cour de cassation at the request of the Secretary of the

Bureau thereof or the section of the Legal aid Bureau to whom the Beneficiary of legal aid has applied";

2° Article 90-1 worded as follows shall be inserted into said Decree :

"Art 90-1. - Notwithstanding any provision to the contrary, the remuneration paid to Attorneys on the scale applicable to various legal aid assignments shall be increased by a coefficient of sixteen value units in the event of proceedings before the Constitutional Council for a ruling on an application for a priority preliminary ruling on the issue of constitutionality.";

3° Article 93-1 worded as follows shall be inserted into said Decree :

"Art 93-1. - In the event of intervention in the framework of the examination of an application for a priority preliminary ruling on the issue of constitutionality by the Conseil d'Etat or the Cour de cassation, the remuneration paid by the State to Attorneys before the Conseil d'Etat or the Cour de cassation shall be 191€ This amount shall be increased by 382€ in the event of subsequent participation in proceedings before the Constitutional Council".

- Article 2

The Decree of December 30th 1991 referred to above shall be amended as follows :

1° Chapter II bis shall be completed by an Article 17-19 worded as follows:

"Art 17-19 - a) Decree n° 2008-1324 of December 15th 2008 pertaining to the covering by legal aid of expenses not covered by a legal protection system shall apply;

b) Articles 53-1, 90-1 and 93-1 of the Decree of December 19th 1991 as worded pursuant to Decree n° 2010-149 of February 16th 2010 pertaining to the continuity of legal aid in the event of examination of an application for a priority preliminary hearing on the issue of constitutionality by the Conseil d'Etat, the Cour de cassation or the Constitutional Council shall apply".

2° The Decree shall be completed by Article 19-1 worded as follows :

"Art 19-1 - The provisions of Article 17-19, other than those of *b)* adopted for the application of Institutional Act n° 2009-1523 of December 10th 2009 pertaining to the application of Article 61-1 of the Constitution, may be amended by a Decree after consultation with the Conseil d'Etat.

- Article 3

The Decree of April 2nd 1996 referred to hereinabove shall be amended as follows.

1° Article 29-1 worded as follows shall be inserted into said Decree :

"Art 29-1. - In the event of examination by the Conseil d'Etat, the Cour de cassation or the Constitutional Council of an application for a priority preliminary ruling on the issue of constitutionality, the provisions of the Decree of December 19th 1991 referred to hereinabove, and in particular Articles 53-1 and 93-1, shall apply".

2° Article 54-1 worded as follows shall be inserted into said Decree :

"Art 54-1. - The remuneration paid for legal aid assignments on the scale provided for in Article 54 shall be increased by a coefficient of sixteen value units in the event of proceedings before the Constitutional Council for a ruling on an application for a priority preliminary ruling on the issue of constitutionality."

- Article 4

The Decree of December 31st 1993 referred to hereinabove shall be amended as follows:

1° Article 22-1 worded as follows shall be inserted into said Decree

"**Art 22-1.** - In the event of examination by the Conseil d'Etat, the Cour de cassation or the Constitutional Council of an application for a priority preliminary ruling on the issue of constitutionality, the provisions of Decree n° 91-1266 of December 19th 1991 for the application of Act n° 91-647 of July 10th 1991 pertaining to legal aid, and in particular Articles 53-1 and 93-1 thereof, shall apply"

2° Article 39-1 worded as follows shall be inserted into said Decree

"**Art 39-1.** - The remuneration paid for legal aid assignments on the scale provided for in Article 39 shall be increased by a coefficient of sixteen value units in the event of proceedings before the Constitutional Council for a ruling on an application for a priority preliminary ruling on the issue of constitutionality".

- Article 5

This Decree shall come into effect on March 1st 2010

- Article 6

The Prime Minister, The Minister of Justice and Liberties, the Minister of the Interior, Overseas Territories and Territorial Communities and the Minister of the Budget, Public Accounts, the Civil Service and the Reform of the State shall each ensure the application of this Decree, which same shall be published in the Journal officiel of the French Republic.

Signed in Paris, on February 16th, 2010

Signatures :

President of the Republic

Prime Minister

Minister of Justice and Liberties

Minister of the Interior, Overseas Territories and Territorial Communities

Minister of the Budget, Public Accounts, the Civil Service and the Reform of the State