

## Decision n° 2012-658 DC of the Constitutional Council, December 13, 2012<sup>1</sup>

### 1. NAME OF THE COURT

Constitutional Council of the French Republic (*Conseil Constitutionnel de la République Française*)

### 2. PARTIES

N/A

### 3. TYPE OF ACTION/PROCEDURE

Obligatory review of conformity with the Constitution of an organic law (“Institutional Act”), triggered by the Prime Minister under articles 46 and 61 of the Constitution.

Article 46: “*Acts of Parliament which are defined by the Constitution as being Institutional Acts shall be enacted and amended as provided for hereinafter [...]. Institutional Acts shall not be promulgated until the Constitutional Council has declared their conformity with the Constitution*”.

Article 61: “*Institutional Acts, before their promulgation, Private Members' Bills mentioned in article 11 before they are submitted to referendum, and the rules of procedure of the Houses of Parliament shall, before coming into force, be referred to the Constitutional Council, which shall rule on their conformity with the Constitution.*

*To the same end, Acts of Parliament may be referred to the Constitutional Council, before their promulgation, by the President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate, sixty Members of the National Assembly or sixty Senators.*

*In the cases provided for in the two foregoing paragraphs, the Constitutional Council must deliver its ruling within one month. However, at the request of the Government, in cases of urgency, this period shall be reduced to eight days.*

*In these same cases, referral to the Constitutional Council shall suspend the time allotted for promulgation.”<sup>2</sup>*

### 4. ADMISSIBILITY ISSUES

Organic laws are to be reviewed by the Constitutional Council before promulgation,

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<sup>1</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-658-dc/decision-n-2012-658-dc-du-13-decembre-2012.135388.html> (pdf: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/pdf/conseil-constitutionnel-135388.pdf>).

<sup>2</sup> <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/constitution/constitution-of-4-october-1958.25742.html>

under articles 46 and 61 of the Constitution (see point 3 above).

#### 5. LEGALLY RELEVANT FACTUAL SITUATION

The Organic Law on the Programming and Governance of Public Finances followed the ratification by France of the Fiscal Compact. It was meant to implement in French law most of its requirements (see also questions IX.4 and IX.5).

#### 6. LEGAL QUESTIONS

The Constitutional Council had to determine whether the Organic Law was compatible with the Constitution.

#### 7. ARGUMENTS OF THE PARTIES

N/A.

#### 8. ANSWER BY THE COURT TO THE LEGAL QUESTIONS AND LEGAL REASONING OF THE COURT

The Constitutional Council essentially validated the Organic Law, except for three of its provisions that were ruled unconstitutional, and two others on which the Constitutional Council issued a reservation of interpretation<sup>3</sup>.

The core of the decision consisted arguably in its reaffirmation of the prerogatives of the Government and of Parliament in budgetary matters. Therefore, the pluri-annual orientations for public finances defined in Programming Acts – as defined themselves according to the Organic Law – shall not impair the “*freedom of appreciation and adaptation [of the Government...] in the determination and conduct of the policy of the Nation*”, nor “*the prerogatives of Parliament when it examines and votes the proposals of Budget Acts and the proposals of Social Security Financing Acts [...]*”<sup>4</sup>.

Another particularly important aspect of the decision pertained to the respect of the principle of “faithfulness” in public accounts. The Constitutional Council reaffirmed its power to control whether financial Acts comply with this principle of faithfulness, and declared that in this control it would take into account the works of the newly created High Council of Public Finance. However, the High Council would be but one of the sources used by the Constitutional Council as the basis for this control<sup>5</sup>. The

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<sup>3</sup> See also Romain Bourrel, “La validation par le Conseil constitutionnel de la « nouvelle Constitution financière » de la France”, *AJDA* 2013, p.478

<sup>4</sup> Decision n°2012-658 DC, §12 : « *Considérant que les orientations pluriannuelles ainsi définies par la loi de programmation des finances publiques n’ont pas pour effet de porter atteinte à la liberté d’appréciation et d’adaptation que le Gouvernement tient de l’article 20 de la Constitution dans la détermination et la conduite de la politique de la Nation ; qu’elles n’ont pas davantage pour effet de porter atteinte aux prérogatives du Parlement lors de l’examen et du vote des projets de loi de finances et des projets de loi de financement de la sécurité sociale ou de tout autre projet ou proposition de loi [...]* ».

<sup>5</sup> *Ibid*, §19 : « *Considérant que l’article 6 de la loi organique énonce le principe de sincérité des lois de*

doctrine noted that the principle of faithfulness had never led the Constitutional Council to declare a proposal of financial Act unconstitutional so far<sup>6</sup>; it remains to be seen if the new Organic Law and the Constitutional Council Decision will change this practice.

Two of the provisions ruled unconstitutional in Decision n°2012-658 DC regarded the process of nomination of the members of the High Council of Public Finance, the independence of which had to be reinforced in respect to the executive and legislative branches of the State. The third provision ruled unconstitutional pertained to the order in which the advice of the High Council of Public Finance was to be issued, in respect of the moment of issuance of advice by the Council of State, and in respect of the beginning of Parliamentary examination of proposals of financial Acts. The first reservation of interpretation expressed by the Constitutional Council also deals with this last point. The second reservation of interpretation made clear that Parliament would be able to start discussing the texts of the proposals of financial Acts, even when elements of the information required of these proposals by the new Organic Law would be missing. Thus, refusal to put a proposal of financial Act on the agenda of the Parliament, on the sole motive that it does not fulfil such a requirement of the Organic Law, would not be admissible.

#### 9. LEGAL EFFECTS OF THE JUDGMENT/DECISION

The decision allowed the Organic Law to be promulgated – except for the parts ruled unconstitutional, and under reservation of interpretation for two provisions.

#### 10. SHORTLY DESCRIBE THE MAIN OUTCOME OF THE JUDGMENT/DECISION AND ITS BROADER POLITICAL IMPLICATIONS.

The decision stood in the continuity of Decision n° 2012-653 DC of 9 August 2012 on the Fiscal Compact, and accepted the changes introduced by the Organic Law in the budgetary process, while reaffirming the prerogatives of the Government and Parliament in budgetary matters.

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*programmation des finances publiques, en précisant : « Sa sincérité s'apprécie compte tenu des informations disponibles et des prévisions qui peuvent raisonnablement en découler » ; qu'il est notamment prévu à l'article 13 que le Haut Conseil des finances publiques rend un avis sur les prévisions macroéconomiques sur lesquelles repose le projet de loi de programmation des finances publiques ; que la sincérité de la loi de programmation devra être appréciée **notamment** en prenant en compte cet avis » (emphasis by us).*

<sup>6</sup> Romain Bourrel, *op. cit.*