

Decision n°2012-659 DC of the Constitutional Council, December 13, 2012¹

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

Prior Reference to the Constitutional Council over the compatibility of the Social Security Financing Act for 2013 with the Constitution, before its promulgation, as provided for under article 61 of the Constitution: “[...] *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.* [...]”

4. ADMISSIBILITY ISSUES

Reference to the Constitutional Council was made by at least sixty deputies and sixty senators – it was therefore admissible under article 61 of the Constitution (see point 3).

5. LEGALLY RELEVANT FACTUAL SITUATION

Decision n°2012-659 DC was adopted a few days after Decision n° 2012-658 DC of 13 December 2012² (see above) on the Organic Law on the Programming and Governance of Public Finances (“the Organic Law”)³, implementing the Fiscal Compact.

On 9 August 2012, the Constitutional Council had authorised the ratification of the

¹ <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-659-dc/decision-n-2012-659-dc-du-13-decembre-2012.135375.html> ; (pdf: www.conseil-constitutionnel.fr/conseil-constitutionnel/root/bank/pdf/conseil-constitutionnel-135375.pdf)

² <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>). See also: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-658-dc/communiquede-presse.135389.html>

³ <http://www.senat.fr/dossier-legislatif/pjl12-043.html>;
http://legifrance.gouv.fr/affichTexte.do;jsessionid=880EA47A857F3711785949A673404337.tpdjo13v_2?cidTexte=JORFTEXT000026785259&dateTexte=&oldAction=rechJO&categorieLien=id (pdf: http://legifrance.gouv.fr/jopdf/common/jo_pdf.jsp?numJO=0&dateJO=20121218&numTexte=1&pageDebut=19816&pageFin=19820)

Fiscal Compact without amendment of the Constitution, in Decision n°2012-653 DC⁴ (see above). One of the elements developed by the Constitutional Council in this Decision was the reaffirmation of its power to review financial Acts on the basis of the principle of faithfulness.

6. LEGAL QUESTIONS

The first point made by the referring (centre and right-wing) deputies pertained to what they considered a breach of the principle of faithfulness in public accounts by the new (centre-left-wing) government⁵. The question was thus to determine whether there had been a breach of the principle of faithfulness in the Social Security Financing Act for 2013, in which case it would have to be declared unconstitutional.

7. ARGUMENTS OF THE PARTIES

The referring deputies contested in particular the macroeconomic assessment and forecast made by the government in the Social Security Financing Act for 2013, and compared it with other assessments, such as that of the IMF or of the French Court of Auditors (*Cour des Comptes*). They also reminded the Constitutional Council of its Decision n°2012-653 DC, as a factor in favour of their interpretation regarding the principle of faithfulness. They contended in particular that Decision n°2012-653 DC should lead to a less restrictive definition of the principle of faithfulness. They however acknowledged the long-standing case-law of the Constitutional Council, according to which it does not review the conformity of French law with international treaties such as the Fiscal Compact.

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

On the question of the principle of faithfulness, the Constitutional Council first noted that the provisions of the Organic Law had not entered into force yet (§3).

Then, the Constitutional Council reaffirmed its definition of the principle of faithfulness, which would only be breached if there had been the intent to give a wrong assessment of its provisions of budgetary balance (§4)⁶.

⁴ <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-653-dc/decision-n-2012-653-dc-du-09-aout-2012.115444.html> ; (english version : <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/english/case-law/decision/decision-no-2012-653-dc-of-9-august-2012.115501.html>)

⁵ <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2012/2012-659-dc/saisine-par-60-deputes.135380.html>

⁶ §4 of the Decision : « *Considérant, en second lieu, qu'aux termes de la première phrase du 2° du C du paragraphe I de l'article L.O. 111-3 du code de la sécurité sociale, la loi de financement de la sécurité sociale « détermine, pour l'année à venir, de manière sincère, les conditions générales de l'équilibre financier de la*

Yet, the elements brought to the Constitutional Council did not show an intent to give such a wrong assessment (§5). There was therefore no violation of the principle of faithfulness.

9. LEGAL EFFECTS OF THE JUDGMENT/DECISION

The Social Security Financing Act did not breach the principle of faithfulness of public accounts.

10. Shortly describe the main outcome of the judgment/decision and its broader political implications.

The reference showed the readiness of a part of the Members of Parliament to use the new instruments and decisions that followed the ratification of the Fiscal Compact, in order to constitutionally constrain the budgetary process. However, the Constitutional Council did not yet show a change in its interpretation of the tools available to it for review of financial acts – in this case, the principle of faithfulness of public accounts (see also Décision n° 2013-682 below for further developments).

sécurité sociale compte tenu notamment des conditions économiques générales et de leur évolution prévisible » ; qu'il en résulte que la sincérité de la loi de financement de la sécurité sociale de l'année se caractérise par l'absence d'intention de fausser les grandes lignes de l'équilibre qu'elle détermine» (we emphasize).