

Decision n°2013-682 DC of the Constitutional Council, December 19, 2013¹

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 2014 to 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 or sixty senators (in this case both) – it was therefore admissible under article 61 of the Constitution (see point 3).

5. LEGALLY RELEVANT FACTUAL SITUATION

On 9 August 2012, the Constitutional Council had authorised the ratification of the Fiscal Compact without amendment of the Constitution, in Decision n°2012-653 DC² (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.

In Decision n° 2012-658 DC of 13 December 2012³ (see above) on the Organic Law

¹ <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2013/2013-682-dc/decision-n-2013-682-dc-du-19-decembre-2013.138972.html> ; (pdf: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2013/2013-682-dc/decision-n-2013-682-dc-du-19-decembre-2013.138972.html>)

² <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>)

³ <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->

on the Programming and Governance of Public Finances (“the Organic Law”)⁴, which implemented the Fiscal Compact, the Constitutional Council reaffirmed its power to control financial Acts on the basis of the principle of faithfulness of public accounts.

The use of this principle of faithfulness had been tested by referring MPs on the Social Security Financing Act for 2013. They were however unsuccessful, in Decision n°2012-659 DC, in having the Constitutional Council declare that the principle of faithfulness had been breached. At the time, the Organic Law had not yet entered into force – but at the time of the new referral, it had.

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 (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 2014, in which case it would have to be declared unconstitutional.

This question could have a different answer than in Decision n°2012-659 DC, now that the provisions of the Organic Law had entered into force and that the High Council of Public Finance (HCPF) had been set up. Indeed, the Constitutional Council had stated in Decision n°2012-653 DC of 9 August 2012 that, in its review of financial Acts on the basis of the principle of faithfulness, it would take into account the works of this institution.

7. ARGUMENTS OF THE PARTIES

The referring MPs considered generally that the Social Security Financing Act for 2014 breached France’s commitments on budgetary balance, especially in the Fiscal Compact. 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.

However, they stressed a publication of the HCPF according to which the forecasts of the government for economic growth were “plausible”, yet showing “weaknesses”. Moreover, the referring MPs argued that the latest measures added by the government to the proposal of Social Security Financing Act (measures evaluated at 0,6 billion

[date/decisions-depuis-1959/2012/2012-658-dc/communiquede-135389.html](http://www.conseil-constitutionnel.fr/decisions/decisions-depuis-1959/2012/2012-658-dc/communiquede-135389.html)

⁴ <http://www.senat.fr/dossier-legislatif/pjl12-043.html>;
http://legifrance.gouv.fr/affichTexte.do?sessionId=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)

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>

euros) had not been transmitted to the HCPF, which impeded its ability to issue a fully informed opinion on the provisions of the government regarding budgetary balance⁶.

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

The decision issued by the Constitutional Council was very similar to the one reached in Decision n°2012-659 DC: it did not appear from the elements put forward that there had been intention on the part of the government to provide a wrong economic and budgetary assessment in the Social Security Financing Act for 2014 (§5). On the point of the new measures not transmitted to the HCPF, the Constitutional Council observed that the government had proceeded to adequate modifications in the documents of information associated with the Social Security Financing Act (§6). Therefore, there was no breach of the principle of faithfulness.

9. LEGAL EFFECTS OF THE JUDGMENT/DECISION

The Social Security Financing Act for 2014 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

This new reference confirmed 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 still did not 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.

⁶ <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2013/2013-682-dc/saisine-par-60-deputes.138979.html> : « (...) se prononçant sur les hypothèses macroéconomiques pour 2014 retenues par le gouvernement, le Haut Conseil a considéré que si « les prévisions de croissance sont plausibles (...) le scénario macroéconomique présente des éléments de fragilité ». Il a, en outre, spécialement noté que « les mesures nouvelles inscrites dans le projet de loi de financement de la sécurité sociale (0,6 Md€) » n'avaient pas été portées à sa connaissance, ne lui permettant ainsi pas de rendre un avis parfaitement éclairé. »