



CONSTITUTIONAL COUNCIL



NEWS

January 8, 2024

Greeting ceremony of the President of the Republic to the Constitutional Council

On January 8, 2024, the Council members constitutional were received at the Élysée by the President of the Republic on the occasion of the vows ceremony.

Wishes of the Constitutional Council to

President of the Republic

Paris, Elysée Palace

Monday January 8, 2024

Speech by Mr. Laurent Fabius,

President of the Constitutional Council

Only the statement is authentic

Mr President of the Republic,

Minister,

Dear colleagues,

He is always presumptuous
to anticipate what History, with
a capital H, will remember times
present. However, it is difficult not to
not think that 2023 will remain
especially as "the year of 2
wars", the one that Vladimir
Putin chose to continue
against Ukraine in
appalling conditions, those that
triggered the terrorist attack on
Hamas against Israel with its
bloody response against Gaza. In
this period of wishes, how
not wishing for 2024 to see
first the end of these conflicts
atrocious people who cannot and do not
must leave us indifferent or
inactive?

Mr President of the

Republic, thank you for welcoming this
start of the year 2024 members
of the Constitutional Council for
our traditional exchange of
wishes. Those we train for
yourself, in your functions and
personally, for your loved ones
and for France are multiple and
deep.

Mr President, the Council
constitutional is not a
echo chamber of trends
public opinion, it is not either
plus an appeals chamber
choice of Parliament, he is the judge of
the constitutionality of laws. This
clear definition, it is
probably because she is not
not or not yet integrated by
all that, during the debates
on the laws concerning two
very sensitive questions,
pensions and immigration,
Constitutional Council
found in the middle of passions
contradictory and momentarily
tumultuous. I will come back to this in
a moment but before a
quick table of activities of the
Advice in 2023 and for 2024.

With 525 decisions, 2023 was, by
the total number of decisions that
we took, the second
busiest year for
Constitutional Council since its
creation. We lasted 25
public question hearings
constitutionality priorities,
including 2 outside our walls,
Bordeaux and Douai, and headquartered in
plenary session 39 times for
take our collective

decisions. If, quantitatively, the most of the litigation has concerned the legislative elections of 2022, which we have completed treat from March 2023, then voluminous litigation of campaign accounts completed at the beginning of July, the brand case law of 2023 is mainly to be searched in our constitutionality review laws.

I will only cite here a few examples. By a QPC decision from February 10, 2023, we we have spoken out on the issue placement or retention in provisional detention of minors and identification surveys carried out on them under duress. In terms of right to housing, by a decision of March 24, if we have admitted the power given to the prefect to evacuate by force the illegal occupant of a home, we have clarified that it cannot order such a measure without take the situation into account personal or family the occupant. Seizure of the relative law at the Olympic Games and Paralympics, we have, in May, with several reservations

interpretation of the declaration of conformity of articles allowing the use of analyzes genetics in the context of anti-doping controls as well as algorithmic processing of images collected by video surveillance or drones. The 9th June, we considered that the possibility that a third party donor can be contacted by Data Access Commission non-identifying and to the identity of the third party donor for people born from medical assistance to procreation was not contrary to right to respect for private life, to the extent that the communication of these information was subject to his consent, and under the reserve that, in the event of refusal, the interested party is not subject to repeated requests. October 6 2023, we are pronounced on the question of unworthy conditions of police custody. In the event of an attack on the dignity of a person resulting from the conditions from his custody, the magistrate competent must immediately take all measures to put an end to this infringement or, if

no measure allows it,
 order his release.

Finally, in a decision of 27
 October 2023, we judged in
 new terms, on the
 foundation of the Charter of
 the environment, that the legislator,
 when adopting measures
 likely to cause harm
 serious and sustainable to the environment,
 must “ take care of ^{that} choices
 intended to meet the needs of
 here ^{born} do not compromise ^{there}
 capacity of future generations and
 other peoples to satisfy their
 own needs, ⁱⁿ preserving their
 freedom of choice ^{regard} ”.

After considering there are three
 years as the requirement
 constitutional protection of
 the environment did not know
 border, we thus have
 marked the dimension
 intertemporal nature of this requirement.

These decisions, even important,
 were largely eclipsed by the
 stormy debates which surrounded
 the decision of April 14, 2023 by
 which, seized of the law of
 corrective financing of the
 social security for 2023, the
 Council dismissed the criticisms drawn
 of the irregularity of the procedure

followed for its adoption, but
censored six series of "horsemen
social". On the same date then
a few weeks later, we
we also ruled together
taken up on initiatives
referendums relating to the regime
pensions, brought before us
as part of the procedure of
shared initiative referendum,
to see that they did not enter
not within the scope of article 11 of
the Constitution. Fifteen years later
its introduction into our
Constitution, the RIP procedure,
supposed to promote democracy
more participatory, remains to be
the unfinished "pilot" state, which
should at the very least arouse
reflection.

During this same year
2023, the Council continued its
double approach of
jurisdictionalization and openness.
In terms of jurisdiction,
we have deepened the
previous advances, including
by a new practice
regarding information relating to
processing of deportation and
challenge of a member of our
college, so that transparency
on these subjects is fully

effective. Our dialogue with the
doctrine has continued both under the
form of joint work for the
publication of our magazine
digital Title VII by
the organization of conferences in
our walls. Regarding the QPCs, the
QPC 360° information site
works since January 1^{er}
2023. He is appreciated by his
users, even if progress
remain to be accomplished in the
feedback from the
various jurisdictions. A letter
of the QPC” also saw the light of day.
I myself went to
Bordeaux at the School
National Judiciary for
detail for future
magistrates the mechanisms of
QPC. In the same spirit, after
having gathered twice
the QPC Observatory which
brings together senior representatives
of the two levels of jurisdiction,
lawyers and the University. I have
designated by my side as
ambassador of the QPC
Mrs Patricia POMONTI,
Honorary Advisor to the Court of
cassation, which I charged to us
help to remedy the difficulties that
can meet practitioners

of this procedure. Then I
sent by letter last month
to the 74,000 lawyers in France.

Finally, as part of our action to
the dissemination of culture
constitutional, I emphasize
also the opening of the site “

discoverourconstitution.fr »

which is addressed, in the form
informative and fun, for students
of different levels.

The year 2024 also promises,
to be loaded. On the plan
litigation, we will begin it in
pronouncing us on January 25
next on 4 referrals concerning
immigration law, including yours,
Mister President. We
will continue throughout
the year our litigation activities,
as well as our national opening
and international. From
demonstrations which
will mobilize, I will quote, without being there
no longer exhaustive, in January a
conference on “control of
constitutionality of laws
“financial”, in February a
international meeting of judges
judicial, administrative and
constitutional documents dedicated to “ there
justice, the environment and

future generations », in March one
audience relocated to Toulouse,
in June hosting the Congress of
Constitutional courts
French-speaking people, in September
annual meeting of the Courts
Latin with Spain, Italy and
Portugal, in October the 50th
anniversary of the referral of
Advice by parliamentarians, a
audience relocated to Rennes and
a new edition of The Night of
Right . Regarding the Council
constitutional, in this year when
half of the world's citizens
are called to vote and some
days before the crucial
American presidential election, our
manifestation could be
devoted to the theme of "The
democracy and law. We
we will continue the basic work
carried out to better train and
inform about QPCs,
very useful procedure but which fails
in number. We will ensure
inform the public more
specialized and the general public on the
Council, on the Constitution, on our
institutions. We will put
available to young people, directly
and if he considers it useful with the minister
of National Education, several

modules promoting education
moral and civic, as it
appears essential to
develop civic culture,
culture of law. And we
look forward to the publication
Editions Glénat, in January, of a
comic strip titled “ In THE
corridors of Advice
constitutional ».

Mr President, I emphasized
at the beginning of my remarks that the
Constitutional Council was neither
an echo chamber of trends
of opinion nor an appeal chamber
of the choices of Parliament, but the
judge of the constitutionality of
laws, and I added that this
simple definition was not
probably not or not yet
integrated by all. I'll come back to it.

2023 has indeed hit us, my
colleagues and I, by a certain
confusion among some between the
law and politics. So I want
repeat it here clearly: we can
have diverse opinions on
relevance of a law referred to, we
can estimate it more or less
timely, more or less justified,
but that is not the role of the Council

constitutional. The task of
Advice is, regardless of the text
of which it is seized, to pronounce in
right. My predecessor and friend
Robert Badinter willingly used
a formula : “ a law
unconstitutional is
necessarily bad, but
a bad law is not

necessarily unconstitutional ». This
formula, I make it mine because it
clearly defines the impartial office of
advice and I express the hope that
everyone keeps this in mind
2024.

More broadly, at the beginning
of year, it would be desirable,
it seems, that we agree to
the essential, that is to say of what
what our Constitution requires, including
you wanted to celebrate in
the Council premises, October 4
last, the sixty-fifth
birthday, on the occasion of which
longevity exceeded that of all
its predecessors. Unless you take the
risks exposing our democracy
at great peril, let us keep in mind
that, in a democratic regime
advanced like ours, we can
always modify the state of the law
but that, to do this, it is necessary

always ensure that you respect the State of right, which is defined by a set of cardinal principles like the separation of powers, the principle of legality and the independence of judges. There is almost fifty years since Council case law constitutional weapon in these terms: it is in compliance with the Constitution that the law expresses the general will.

Let's take it one step further. He's good sure, entirely possible to consider to revise the Constitution, but it In this case it is imperative respect what the Constitution herself prescribed for her revision, namely the procedure provided for by article 89, which involves finding first an agreement between the two parliamentary assemblies on a same text.

This debate also finds its resonance in the one concerning the question of the relationship of French law with European law. do not forget that the notion of the rule of law is the very cement of the approach European, whether on the scale of the continent, excluding Russia

now, as part of the
European Convention of
safeguarding human rights
and fundamental freedoms, or
the scale of the 27 Member States which
form the European Union. This
notion of rule of law is
today the ultimate marker of the
reality of the accession of States
members to the values of the Union
European, some borrowing,
how happy it is, the path of
Poland to return there while
others distance themselves from it by
claiming practices
cultivated elsewhere.

In this regard, how can we not be
hit by the rise – and not
only in France -
disputes over what we call
the European legal order? The one-
this must obviously neither ignore nor
a fortiori seek to erase the
national sovereignties. In the
case of France, it results from our
Constitution – as well as treaties
that we missed - a
requirement of fair transposition and
in accordance with European directives,
with the flexibility of using
the valuable legal concept
of “national identity
constitutional”, that is to say

national provisions which, without
be against the rules
European, recognize the
French specificity. Instead of
engage in battle
harmful against legislation
European, it seems desirable,
while being firm on our
national skills and
promoting dialogue between
national authorities and
European - including
dialogue of the judges -, to keep
the mind two common sense data.
On the one hand, there cannot be
of an effective European Union without
a European legal order, the
law of each Member State
therefore cannot be "à la carte".
On the other hand, let's not lose sight
stability, credibility and
the influence that brings to our nations
the European dimension. That can
believe for example that, without a
common European foundation, our
economy and our currency
would present the same stability?

And yet, a fallacy is made
hear that we should
free from the rule of law, either at
national plan, or at the national plan
European, or both, for
fulfill the general will.

Let's be careful. A lot of course remains to be done to answer fully meets the expectations of French citizens and citizens Europeans within the framework democratic which is ours; but pretend that we should go out of the legal framework that I have just call back to answer these expectations is nothing other than call into question our pact democratic to engage in a Faustian pact. In others terms, the so-called solution to our problems that would reside in a sort of "martingale of refusals" - refusal of the legitimacy of judges, refusal of several of our European commitments, refusal to the rule of law -, this martingale not only would it not guarantee anything, but it would make us break up with Europe and would call into question our democracy itself.

Mr President, respect major principles of law will largely depend on time to come the capacity of our societies to stay united. This is what what is the Council's focus constitutional while serving daily the Constitution,

the very one who,
etymologically, according to its root
Latin, "holds us together". HAS
through our wishes, be therefore
assured, Mr. President of the
Republic, of our determination
to watch over, throughout the year 2024
who will show France in the eyes of
world, as far as anyone knows
no eclipse respect for
Constitution and the rule of law.