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FIFTEENTH LEGISLATURE

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REPORT

DO

ON BEHALF OF THE INVESTIGATION COMMISSION (1)

on obstacles to the independence of the judiciary

President

Mr. Ugo BERNALICIS,

Rapporteur

Mr. Didier PARIS,

MPs.

(1) The composition of this commission of inquiry appears on the back of this page.

IB A strengthened jurisdictional organization of Justice

~~✎~~We must establish a real Constitutional Court, protected from policy influences

The commission of inquiry did not address or very little addressed this question of judicial architecture by examining constitutional jurisprudence and the dual French jurisdictional order. However, this is a major challenge for the construction of a legitimate and intelligible independent judicial power.

Since 1958, the Constitutional Council has largely emancipated itself thanks to its own case law and successive revisions of the Constitution. In particular, the latest constitutional reforms have allowed the jurisdictionalization of the constitutionality control of laws by the Constitutional Council, notably through the establishment in 2008 of the priority question of constitutionality (QPC).

However, the status of its members and their method of appointment has not been reviewed in order to strengthen their independence and impartiality. The Constitutional Council is thus particularly exposed to suspicion of political bias. It is imperative to thoroughly review its composition and its designation process. Proposals exist and the constitutional revision abandoned in 2018 following the Benalla affair reflects this: it

This involves removing, on the one hand, the discretionary power of appointment of the nine members of the Council, which are shared by the President of the Republic and the Presidents of the Senate and the National Assembly, and on the other hand removing the category of member of right enjoyed by former Presidents of the Republic.

We must be much more ambitious so that the Constitutional Council acquires a status consistent with its jurisdictional role. Such a reform cannot be done without convening a new constituent in order to review the overall architecture of Justice.

FI Proposal No. 6: Remove the category of ex officio member of the Constitutional Council.

FI Proposal No. 7: Reform the procedure for appointing members of the Constitutional Council in order to entrust it to legislative power by involving the Superior Council of the Judiciary.

~~✎~~It is necessary to establish a renovated Superior Council of the Judiciary equipped with central role in judicial organization

The organization of Justice requires the establishment of a High Council of Justice, responsible to Parliament to which it will report at least once a year. However, such a revolution cannot be carried out without reflection on its democratic legitimacy and in any case without recourse to the people via the convening of a constituent assembly. However, certain elements can constitute the political basis for a reform of the institution, which would have as its central structure a renovated Superior Council of the Judiciary (CSM).

Currently, the Superior Council of the Judiciary is the body charged by the Constitution to assist the Head of State in his function as guarantor of the independence of the judicial authority and, as such, it is primarily his responsibility to manage the careers of the