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Workshop on Appointments to Constitutional Courts
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The French Constitutional Council

1. Constitutional Review Jurisdiction.

The Constitutional Council exercises abstract, a priori constitutional review of statutes, according to Arts. 61 and 62:

Article 61 (as revised by the constitutional law of October 30, 1974):

"Organic laws, before their promulgation, and the standing orders of the parliamentary assemblies, before their entry into application, must be submitted to the Constitutional Council, which will rule on their conformity to the Constitution.

To the same ends, ordinary laws 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, or 60 deputies or 60 senators.

In these cases, the Constitutional Council must decide within 1 month. At the demand of the Government, after a declaration of urgency, this time limit is reduced to 8 days.

A referral of any law to the Constitutional Council suspends its promulgation."

Article 62: "A provision declared unconstitutional may not be promulgation nor may it enter into force.

The decisions of the Constitutional Council may not be appealed. They bind all public powers and all administrative and jurisdictional authorities."

The Council also reviews the constitutionality of international agreements upon referral by the President of the Republic, the Prime Minister, or the Presidents of either chamber of parliament.

2. Constitutional Review activity (Article 61).

Table 3: The Constitutional Review Activity of the Council: 1958-2001*

	<u>1959-73</u>	<u>1974-80</u>	<u>1981-87</u>	<u>1988-94</u>	<u>1995-01</u>
<u>Referrals</u>	9	66	136	115	82
- President	0	0	0	0	0
- Prime Minister	6	2	0	7	2
- President, National Assembly	0	2	0	1	0
- President, Senate	3	0	2	3	0
- 60 deputies, or 60 senators	-	62	134	104	80
<u>Decisions*</u>	9	46	92	87	65
- Censuring Text	7	14	49	47	39
- Favorable to Text	2	32	43	40	26**

* Due to multiple referrals, the number of referrals since 1974 is larger than the number of decisions. Referrals and decisions are coded by their date of referral, not the date of the Council's decision.

** This count includes one decision (1997) in which the Council ruled that it did not have the competence to respond to the referral.

Source: Compiled by Alec Stone Sweet, from the *Recueil des décisions du Conseil constitutionnel*.

3. Provisions relevant to recruitment and composition are contained in Arts. 56 and 57:

Art. 56: "The Constitutional Council is composed of 9 members who serve 9 year, non-renewable terms. One-third of the Constitutional Council is appointed every three years. Three of its members are named by the President of the Republic, three by the President of the National Assembly, three by the President of the Senate.

In addition to the 9 members mentioned above, former Presidents of the Republic are members of the Constitutional Council for life."

Art. 57: "The functions of membership in the Constitutional Council are incompatible with those of minister or member of parliament. Other incompatibilities are fixed by an organic law."

Qualifications. Members must be 18 years of age or older and in possession of their civil rights. There exist no other formal prerequisites for membership, no nomination or confirmation procedures, and no means to block appointments.

Presidents of the Republic as members *ex officio*. Only two members have taken their seats on the Council: Vincent Auriol and Rény Coty, during the 1959-62 period. In July 1960, Auriol walked out in protest of what he called the Council's excessive deference to de Gaulle, which he attributed to the institution's mode of recruitment.

3. Backgrounds of the 60 Members Appointed, 1959-2001. **Note:** there is overlap between categories.

a. Professional politicians (ministers, deputies, senators): 62% (37/60).

b. Advisors or staff of elected politicians: 23% (14/60).

c. Law professors: 15% (9/60).

Including Marcel Waline (1962-71), Francois Luchaire (1965-74), Francois Goguel (1971-80), Georges Vedel(1980-89), Jacques Robert (1989-98).

d. Career judges: 18.3% (11/60).

Including Noelle Lenoir (1992-01, Council of State), Jean Cabannes (1989-98, Cassation), Olivier Dutheillet de Lamothe (2001-, Council of State).

e. Women: 7% (4/60).

The first woman was appointed in 1992 (then 1998, 2000, 2001).

4. Age. Average age of members: 1958-86: 68; 1970-86: 73; 1988: 75; 2003: 70.

Robert Badinter was the first member to be named under the age of 60 (1986, age 54). Since, there have been three others: Lenoir (1992, age 44), Colliard (1998, age 52), and Olivier Dutheillet de Lamothe (2001, age 52).

7. "Partisan" make-up.

The "Left" appointed its first member in 1983, and achieved its first "majority" in 1989, five of nine members having been appointed by Socialists.

	<u>1980</u>	<u>1983</u>	<u>1986</u>	<u>1989</u>	<u>1992</u>	<u>1995</u>	<u>1998</u>	<u>2001</u>
Left	0	2	4	5	6	5	4	2
Right	9	7	5	4	3	4	5	7