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# COMPARATIVE LEGAL ANALYSIS OF THE INSTITUTION OF THE PRIORITY QUESTION OF CONSTITUTIONALITY IN FRENCH PRACTICE

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## **Abstract**

This article analyzes the content and significance of the legal nature of the Question prioritaire de constitutionnalité (QPC) institution operating within the French Constitutional Council. The QPC institution represents an important form of constitutional review in the French legal system, allowing parties involved in judicial proceedings to challenge the constitutionality of an applicable normative legal act. The article examines the constitutional and legal foundations of the QPC, its mechanism of application, and the procedure through which cases are referred to the Constitutional Council via a special system. It also identifies the distinctive features and advantages of this institution. The research findings demonstrate that the QPC institution serves as an effective mechanism for protecting the constitutional rights and freedoms of citizens. The author attempts to discuss the necessity of this institution based on scientific and theoretical foundations and to conduct an in-depth study of the issue.

**Keywords:** Constitutional review, Question prioritaire de constitutionnalité (QPC), human rights, Constitutional Council, legal analysis, normative legal act, constitutional court.



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**СРАВНИТЕЛЬНО-ПРАВОВОЙ АНАЛИЗ ИНСТИТУТА  
ПРИОРИТЕТНОГО ВОПРОСА О КОНСТИТУЦИОННОСТИ ВО  
ФРАНЦУЗСКОЙ ПРАКТИКЕ**

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**АННОТАЦИЯ**

В данной статье анализируется содержание и значение правовой природы института Question prioritaire de constitutionnalité (QPC), действующего во Французском Конституционном совете. Институт QPC выступает важной формой конституционного контроля во французской правовой системе и предоставляет участникам судебного процесса возможность поставить под сомнение соответствие Конституции применяемого нормативно-правового акта. В статье освещаются конституционно-правовые основы QPC, механизм его применения, а также порядок передачи вопроса в Конституционный совет через специальную процедуру. Кроме того, выявляются особенности и преимущества данного института. Результаты исследования показывают, что институт QPC является эффективным механизмом защиты конституционных прав и свобод граждан. Автор стремится обсудить необходимость данного института на основе научно-теоретических положений и провести его углублённое изучение.

**Ключевые слова:** конституционный контроль, Question prioritaire de constitutionnalité (QPC), права человека, Конституционный совет, правовой анализ, нормативно-правовой акт, конституционный суд.

**INTRODUCTION**

In the modern world, the protection and full realization of human rights have become one of the primary responsibilities of legal states. Many countries have introduced diverse and innovative institutional mechanisms aimed at safeguarding human rights and freedoms. Among such mechanisms, the system of constitutional review of state authority occupies a central place.



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The Italian legal scholar and one of the founders of comparative constitutional and procedural law, Mauro Cappelletti, defines constitutional review as the activity of courts in annulling legislation that violates fundamental rights closely linked to social development.[1]

Similarly, A.M. Hoshimxonov describes constitutional review as a purely legal examination carried out to ensure the protection of the Constitution as the supreme legal document, whereby normative legal acts (and in some cases judicial decisions or the activities of high-ranking officials) are assessed for their conformity with the Constitution.[2]

According to the prominent legal scholar M. Abdullayeva, constitutional review is a continuous supervisory activity conducted by authorized bodies to verify the constitutionality of acts adopted by the legislative and executive branches, preserve the constitutional separation of powers, and guarantee the rights and freedoms enshrined in the Constitution. In a democratic legal state, it functions as an essential mechanism of checks and balances, ensuring equilibrium among competing interests. Through constitutional review, legal acts adopted in violation of the Constitution are identified, and appropriate measures are taken to address such violations. Moreover, it not only ensures the supremacy of the Constitution but also prevents the adoption of unconstitutional legislation.[3]

Recognizing the significance of constitutional review, this study examines the institution as developed in France. In the French legal system, the introduction of the Question prioritaire de constitutionnalité (QPC) marked a new stage in the evolution of constitutional review. For a long time, constitutional review in France was predominantly a priori, meaning that laws were reviewed by the Constitutional Council only before their entry into force. However, such a model could not fully eliminate the risk that applicable legal norms might violate citizens' constitutional rights.

Following the constitutional reform of 2008, individuals were granted the right to challenge the constitutionality of legal provisions applied in judicial proceedings. The QPC mechanism, by directly linking the protection of constitutional rights with judicial practice, reshaped the balance between the legislative and judicial branches. It significantly strengthened the role of the



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Constitutional Council, transforming it from a primarily political-legal oversight body into an effective instrument of legal protection.

This study analyzes the advantages and limitations of the QPC mechanism and evaluates its role in the development of modern constitutional law through a comparative approach.

### **METHODOLOGY**

The objective of this study is to gain a deeper understanding of the concept and essence of the Question prioritaire de constitutionnalité (QPC) as implemented in the French legal system, as well as to analyze its advantages. This institution is examined in close connection with mechanisms for the protection of human rights and their stabilization within societal processes.

To achieve these objectives, the research employs legal analysis and content analysis. Legal analysis is used to examine the normative foundations of the QPC mechanism and the procedures governing its practical application. Content analysis facilitates the systematization of factual data derived from existing academic sources and allows for the clarification of their substantive meaning. This approach contributes to expanding knowledge in the field and enables the effective use of international experience. Most importantly, the study identifies and evaluates the strengths of the constitutional review system. As a result, the chosen methodological framework allows for a more accessible analysis of the system and an assessment of its overall effectiveness.

### **RESEARCH FINDINGS**

The findings of this study demonstrate that the Question prioritaire de constitutionnalité (QPC) occupies a significant place within the modern system of constitutional review in France.

First, it is necessary to clarify the legal meaning of the QPC mechanism. According to the official definition provided by the Constitutional Council of France, the priority question of constitutionality (QPC) refers to the right of any individual involved in judicial proceedings to claim that a legislative provision infringes the rights and freedoms guaranteed by the Constitution.



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If all admissibility criteria are satisfied, the matter is referred either to the Council of State (France) (the highest administrative court) or to the Court of Cassation (France) (the highest court for civil and criminal matters), which may then forward the question to the Constitutional Council. The Constitutional Council subsequently renders a decision and, where necessary, annuls the contested legal provision.

The QPC procedure was introduced as part of the constitutional reform of 23 July 2008. Prior to this reform, it was not possible to challenge the constitutionality of laws that had already entered into force. Today, participants in judicial proceedings may invoke this right under Article 61-1 of the French Constitution.[4]

Chapter VII of the Constitution of the French Republic is specifically devoted to the status, powers, and functioning of the Constitutional Council. The composition of the Council is regulated by Article 56, according to which it consists of nine members appointed for a non-renewable term of nine years. Every three years, one-third of the members are replaced, ensuring institutional continuity.

The members are appointed as follows:

- three by the President of the Republic;
- three by the President of the National Assembly;
- three by the President of the Senate.

In addition, former Presidents of France serve as life members of the Constitutional Council. The President of the Council is appointed by the President of the Republic and holds a casting vote in the event of a tie.

According to Article 57, members of the Constitutional Council may not simultaneously serve as members of the government or as members of parliament. Additional restrictions may be established by organic law. This provision is aimed at ensuring the independence of the Council.

One of the most prominent representatives of contemporary French legal scholarship, Béatrice Parance, notes that prior to 2010, the absence of a posteriori constitutional review led to a situation in which judicial scrutiny was largely limited to assessing the conformity of laws with international treaty obligations. As a consequence, the Constitution was effectively relegated to a



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secondary role. However, the introduction of post-enactment constitutional review has reaffirmed the Constitution's primary status within the legal system.[5]

Another distinguished scholar in the field of modern French constitutional law, Xavier Magnon, characterizes this development as follows: the new mechanism enables both claimants and defendants in judicial proceedings to raise preliminary questions concerning the constitutionality of legislative provisions that may infringe upon the fundamental rights and freedoms guaranteed by the Constitution.

According to the newly introduced Article 61-1 of the 1958 Constitution, if, during judicial proceedings, it is alleged that a statutory provision violates rights and freedoms guaranteed by the Constitution, the matter may be referred, within a prescribed time frame, by either the Council of State (France) or the Court of Cassation (France) to the Constitutional Council of France. The conditions governing the application of this provision are determined by an organic law.

In summary, the Question prioritaire de constitutionnalité (QPC) may be defined as the right of any individual involved in judicial proceedings to claim that a legislative provision infringes upon constitutionally guaranteed rights and freedoms.

For a QPC claim to be admissible, four essential conditions must be satisfied: First, the contested legal provision must be relevant to the ongoing judicial proceedings. This requirement ensures a direct connection between the QPC and a конкрет case. Despite the distinction between the substance of the case and the abstract constitutional question, the mechanism is grounded in the existence of a real dispute initiated by one of the parties.

Second, the mechanism may only be invoked where there exists a serious (i.e., genuine) constitutional question relating to the substantive or procedural aspects of the case. Merely raising a constitutional issue is insufficient; the challenge must be supported by valid constitutional grounds. This also implies that the issue must not have been previously examined by the Constitutional Council or must present a novel question. Therefore, the right to challenge the constitutionality of laws is not unlimited.



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Third, not every constitutional issue may be raised within this procedure. The admissibility of such claims is subject to additional legal criteria, ensuring that the mechanism is not misused or applied arbitrarily.

The contested legal provision must violate “fundamental rights or freedoms guaranteed by the Constitution.” What does this mean? It undoubtedly includes not only the rights and freedoms explicitly enshrined in the constitutional text, but also those contained in other instruments recognized as having constitutional status. These include the 1789 Declaration of the Rights of Man and of the Citizen, the Preamble to the 1946 Constitution, which is devoted to the protection of socio-economic rights, and the 2004 Environmental Charter. These texts have been granted constitutional value either by the Constitutional Council of France or through constitutional amendments.

At the same time, this requirement excludes all other constitutional provisions that are not directly related to fundamental rights and freedoms.

Fourth, as briefly mentioned above, the issue must not have been previously examined by the Constitutional Council. This is a logical requirement. Since the new procedure is intended to allow individuals to challenge the constitutionality of a legal provision within the framework of judicial proceedings, the referring judges must first ensure that the provision has not already been declared constitutional by the Constitutional Council. If this is the case, the court a quo (i.e., the court before which the case is brought) may consider the constitutional issue resolved and proceed to decide the case.

However, there are two important exceptions to this general rule.

The first exception allows an ordinary court to refer the matter again to the Constitutional Council even if a prior decision has declared the provision constitutional, provided that the legal context has changed. For instance, new constitutional norms may have been adopted, or the earlier decision may have been based on different legal grounds. A notable example can be found in cases concerning bioethics legislation, where the evolving legal framework justified reconsideration. In such situations, the organic law permits the reopening of the constitutional question due to changes in the legal environment.

The second exception is closely related but concerns changes in factual circumstances. This can be illustrated by a practical example. In 2003, the



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Constitutional Council ruled on the constitutionality of legal provisions concerning safeguards for individuals in detention. At that time, it held that the provisions were not contrary to the Constitution. Under the QPC mechanism, when the issue was later brought before the Council again, it could have refused to examine the case on the grounds that the matter had already been settled.

However, the Council determined that the circumstances had significantly changed since its initial review. In particular, the number of detainees had increased dramatically, and the situation could no longer be considered comparable to the earlier context. Consequently, the Council acknowledged that the change in circumstances justified a renewed examination of the provision, despite its prior validation.

This approach effectively grants the Constitutional Council broader discretionary powers, allowing it to reassess previously reviewed legislation in light of evolving legal and factual conditions.[6]

To evaluate the effectiveness of this mechanism and its role in ensuring justice in society, it is useful to consider a practical case examined under the QPC procedure.

Case on Gender Equality and Civil Rights (Decision No. 2024-1086 QPC, 25 April 2024).

The case concerned a challenge brought by Ms. E against Article 84 of the 1945 Civil Code. The provision in question imposed no conditions on fathers for granting nationality to a minor child, while requiring mothers to meet the additional condition of being widowed.

On 31 January 2024, the Court of Cassation (France) found that the provision in question involved a serious form of discrimination and referred the case to the Constitutional Council of France. As a result, the Constitutional Council declared the phrase “if she is widowed” unconstitutional and annulled it. This decision ensured that, regardless of a mother’s marital status, nationality could be transmitted to her children on the basis of equality.[7]

The legal consequences of unconstitutionality are set out in Article 62 of the French Constitution, according to which a provision declared unconstitutional shall not be promulgated or applied. If a provision is annulled under the QPC procedure, it loses its legal force from the date determined by the Constitutional



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Council. Decisions of the Constitutional Council are final and binding, and they are not subject to appeal.

This case clearly demonstrates the effectiveness of the QPC mechanism: even legal provisions adopted nearly 80 years ago, which no longer correspond to contemporary societal values—such as gender equality—can be challenged and invalidated through citizen initiative, thereby restoring justice.

More broadly, the QPC institution offers several significant advantages:

- “Cleansing” outdated legislation: It enables the removal of discriminatory provisions, including those adopted decades earlier (such as the 1945 decree), that no longer align with modern values.
- Citizen participation: Constitutional review is no longer confined solely to state institutions; ordinary individuals may initiate constitutional challenges within the framework of their legal disputes.
- Supremacy of the Constitution: It reinforces the principle that no legal norm—whether in labor law, civil law, or other branches—can prevail over constitutional principles, particularly those related to fundamental rights.
- Judicial dialogue: The interaction between the Court of Cassation and the Constitutional Council strengthens the protection of human rights and contributes to addressing legal gaps.

The former First President of the Court of Cassation and member of the Constitutional Council, Guy Canivet, has described the QPC as a “revolution” in the protection of human rights in France. In his view, the mechanism has democratized the judiciary and transformed the Constitution from a “museum artifact” into a “living instrument of law.”[8]

Similarly, Professor Pascal Deumier of the University of Lyon has extensively analyzed the impact of QPC on private law (including civil and labor law). He emphasizes its role in the “constitutionalization of private law” (constitutionnalisation du droit privé). According to him, through ordinary civil and labor disputes, the Constitution becomes directly embedded in everyday legal practice. The case discussed above serves as a clear illustration of this phenomenon.[9]



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Therefore, it is essential to recognize that this mechanism possesses undeniable significance and plays a vital role in ensuring justice within modern legal systems.

## CONCLUSION

This study has been devoted to the theoretical and comparative legal analysis of the role and significance of the Question prioritaire de constitutionnalité (QPC) within the system of constitutional review in France. The findings demonstrate that the QPC mechanism has elevated constitutional review in the French legal system to a qualitatively new stage by complementing the traditional a priori model (review of constitutionality before a law enters into force) with elements of a posteriori review (assessment of constitutionality after a law has been enacted).

The QPC mechanism has provided individuals with a genuine legal instrument for the protection of their constitutional rights within judicial proceedings and has significantly strengthened the role of the Constitutional Council of France in the legal system. Through this institution, the practical application of constitutional norms has been expanded, constitutional dialogue between courts has been enhanced, and an effective control mechanism contributing to the improvement of legislative quality has been established.

The QPC mechanism may therefore be regarded as an important development in modern constitutional review. It holds both theoretical and practical significance from a comparative legal perspective and may serve as a valuable model for other legal systems.

## REFERENCES:

1. H.Eklund. Judicial review and social progress in the work of Mauro Cappelletti and today International Journal of Constitutional Law, Volume 14, Issue 2, April 2016, Pages 486-491 .
2. Ҳошимхонов. А.М. Конституциявий судлов. Ўқув қўлланма. Масул муҳаррир: ю.ф.д., проф. О.Т. Хусанов. - Т.: ТДЮУ нашриёти, 2010. - Б-6.
3. Abdullayeva, M. (2021). Konstitutsiyaviy nazorat va konstitutsiyaviy odil sudlov (darslik). Toshkent: Toshkent davlat yuridik universiteti nashriyoti.



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4. Conseil Constitutionnel. (n.d.). What is a priority preliminary ruling on constitutionality (QPC)? Retrieved May 22, 2024, from <https://qpc360.conseil-constitutionnel.fr/question-prioritaire-constitutionnalite-qpc>
  5. Parance, B. (2011). The contribution of the Question Prioritaire de Constitutionnalité to private law. In M. A. Rogoff, M. Dixon & E. Bither (Eds.), *The Financial Crisis of 2008: French and American Responses* (pp. 67-82).
  6. Magnon, X. (2012). The French Constitutional Reform of 23 July 2008 and the New "Priority Preliminary Ruling on Constitutionality" (QPC). *Annales Universitatis Scientiarum Budapestinensis de Rolando Eötvös Nominatae, Sectio Iuridica*, 53, 53-68. [https://www.ajk.elte.hu/file/annales\\_2012\\_04\\_xavier.pdf](https://www.ajk.elte.hu/file/annales_2012_04_xavier.pdf)
  7. <https://qpc360.conseil-constitutionnel.fr/2024-02-08/decision-2023-1079-qpc-8-fevrier-2024>
  8. Canivet, G. (2010). The Priority Preliminary Ruling on Constitutionality (QPC): A Revolution in the French Legal Order. *Conseil constitutionnel de la République française* <https://www.conseil-constitutionnel.fr/nouveaux-cahiers-du-conseil-constitutionnel/chronique-de-droit-penal-et-procedure-penale-5>
  9. Deumier, P. (2011). La question prioritaire de constitutionnalité et le droit privé. *Revue internationale de droit comparé*, 63(2), 433-453. <https://doi.org/10.3406/ridc.2011.20005>