

## Legal Policy on the Protection of the Right to Health during the Covid-19 Pandemic in France

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### ABSTRACT

France has regulated the health system in great detail in some laws and regulations, but these regulations are insufficient to face the pandemic of Covid-19. This study aims to describe and analyze legal policies to protect health rights during the COVID-19 pandemic in France. It employs a normative legal research method with data sources such as the Declaration of human and citizen's rights of 1789, the French Constitution of 1958, and laws and decisions of the French Constitutional Council. Since the Covid-19 pandemic erupted, French legislators have implemented adequate measures to prevent its spread. The study results indicate that since the Covid-19 pandemic spread, French legislators have implemented adequate measures to prevent the spread of the virus through the appointment of the French Constitutional Council as the protector and guarantor of the fundamental rights of citizens through a system of judicial review. The control of proportionality in the system of judicial review is essential to strike a balance between the public interest of society and the rights of individuals to implement the adaptations necessary to protect public health, particularly during the Covid-19 pandemic.



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### 1. Introduction

In early 2020, most countries, including France, were impacted by the outbreak of the SARS-nCOV2 virus. This virus was later called Covid-19. The World Health Organization (WHO) officially announced this disease as a global pandemic on 12 March 2020. Many studies have shown that the Covid-19 pandemic has affected France ([Coccia, 2022](#)). These researches also show that the Covid-19 pandemic caused corporate bankruptcies, banking credit bottlenecks, and a high population death rate. Based on the data from the World Health Organization regarding the study of the Covid-19 pandemic in France, from 3 January 2020 to 16 June 2022, there were 29,061,188 cases of Covid-19 and 145,613 deaths from the disease ([Bailhache et al., 2021](#)).

The Covid-19 pandemic has had a tremendous and significant impact on France, thus affecting the health, economy, public institutions, and activities of French citizens and society as a whole ([Ho et al., 2022](#)). Therefore, research on the Covid-19 pandemic in France needs to be followed up with a discussion about how good governance sustains effective policies, risk measurement, and crisis management to overcome the pandemic. In addition, a study is necessary to examine how the French

government regulates health policy and how the health crisis affects the French government (Khat et al., 2022).

In contrast to previous research, this study discusses the role of legislators in dealing with the Covid-19 pandemic to protect citizens' rights to health. Nevertheless, the role of legislators must be accompanied by judicial authorities, especially courts that have constitutional authority, because judges play their role as political actors to examine the conformity of laws with the Constitution (Philippe, 2017). Therefore, this study also discusses the role of the French Constitutional Council in examining draft laws and regulations governing the protection of citizens' rights to health, especially during the Covid-19 pandemic. In this context, the judicial review of laws by the French Constitutional Council aims to prevent parliamentarians from evading the constraints of the Constitution and to prevent possible transgressions of the legislative domain outside its constitutional boundaries (Karakas, 2017).

The discussion of this study begins with a chronological analysis of legal policies implemented by legislators to protect citizens' health during the Covid-19 pandemic. At the beginning of the Covid-19 pandemic, the French Government determines the state of health emergency in the case of a health disaster. However, none of the articles of Law No. 55-385 on 3 April 1955 concerning the state of emergency were considered appropriate to address the Covid-19 pandemic. Therefore, the French legislators have introduced some restrictions in the face of the pandemic. The National Assembly and the Senate have adopted, and President Emmanuel Macron has promulgated the emergency law 2020-290 of 23 March 2020 to deal with the covid-19 epidemic. This law came into force on 24 March 2020 (Stef & Bissieux, 2022).

In order to exercise the constitutional review concerning Covid-19, there are a number of restrictions as part of the public health crisis in response to the Covid-19 pandemic. These restrictions are determined by laws. Article 11 of Law No. 2020-290 on 23 March 2020 regarding the emergency to deal with the covid-19 epidemic stipulate the use of videoconference in Courts to keep the barrier gesture during court hearing sessions at Courts, including the Constitutional Council (Garoupa & Grajzl, 2020). Moreover, Organic Law no. 2020-365 on 30 March 2020 stipule only one article by regulating that the decisions concerning the transmission of constitutional priority question from the Cassation Court and the State Council to the Constitutional Council, as well as the final decisions regarding the constitutional priority question by the Constitutional Council are suspended until 30 June 2020 (Melcarne et al., 2022).

On 31 May 2021, the legislator enacted the Law No. 2021-689 concerning the health crisis management. Article 1 of this law regulates certain essential issues that from 2 June 2021 until 30 September 2021. The regulation regulates, firstly, the Prime Minister may prohibit the movement of persons and vehicles as well as access to means of public transport and the conditions of their use and, for air and sea transport only, to prohibit or restrict the movement of persons and means of transport, subject to movements strictly essential to family, professional and health needs. Second, the Prime Minister regulates the opening to the public, including the conditions of access and presence, of one or more categories of establishments receiving the public as well as places of assembly, with the exception of premises for residential use, by guaranteeing the access of persons to goods and services of primary necessity (Waggoner & Lyerly, 2022).

The temporary closure of one or more categories of establishments open to the public as well as places of assembly may, in this context, be ordered when they host activities that, by their very nature, do not allow the implementation of measures to prevent the risk of propagation of the virus or when they are located in certain parts of the territory in which active circulation of the virus has been observed (Greer et al., 2022). Third, the Prime Minister requires persons wishing to travel to or from France, Corsica, or one of the communities mentioned in Article 72-3 of the Constitution. This regulation is applied taking into account a density adapted to the characteristics of the places, establishments, or events concerned, including outdoors, to ensure the implementation of measures to prevent the risk of the virus spreading (Jollant et al., 2021).

A decree shall determine, following the opinion of the scientific committee mentioned in Article L. 3131-19 of the Public Health Code, the elements that make it possible to establish the result of a virological screening examination that does not conclude that a person has been contaminated by covid-19, the proof of vaccination status concerning covid-19 or the certificate of recovery

following a contamination by covid-19. The submission of the result of a virological screening test that does not indicate covid-19 infection, proof of covid-19 vaccination status or a certificate of recovery from covid-19 infection may be submitted on paper or in digital format (Russell & Middleton, 2021). These provisions have the sole purpose of combating the spread of the covid-19 epidemic. After two months, on 5 August 2021, the Law No. 2021-689 had been modified by the Law No. 2021-1040 regarding the health crisis management. Article 1 of the last law revises Article 1 of the Law No. 2021-689 by extending the actions of the Prime Minister for combating the spread of Covid-19 epidemic until 15 November 2021 (Lasco & Yu, 2022).

The circulation of Covid-19 in France accelerates sharply and admission to critical care was accentuated. At national level, the incidence rate was 193 cases per 100,000 inhabitants. Therefore, the legislator has adopted a new law on 10 November 2021, namely Law No. 2021-1465 regarding various health vigilance provisions (Ladoire et al., 2022). This new law modifies Law No. 2020-290 of 23 March 2020 on the emergency response to the covid-19 epidemic and Law No. 2021-689 of 31 May 2021 relating to the management of the end of the health crisis. Based on Law No. 2021-1465 of 10 November 2021, the Prime Minister has authorities to take actions in order to combat the spread of Covid-19 epidemic until 31 July 2022 (Mohapatra et al., 2022). Legal policy concerning Covid-19 has been contested by public authorities and French citizens. This issue will be discussed precisely in the explanation below that French Constitutional Council has also taken certain measures to exercise its authority during the Covid-19 pandemic. Departing from this matter, the author would like to explore how France examines constitutional review regarding the Pandemic of Covid-19.

## 2. Research Method

This study is normative legal research which demonstrates a process for legal rules, legal principles and doctrines of the law to answer legal issues at hand, and this research conforms to the case law which has character as applied science (Rohmat Rohmat et al., 2022). The legal basis of this research lies in the Declaration of human and citizen's rights of 1789, the French Constitution of 1958, the Law No. 55-385 on 3 April 1955 concerning state of emergency, the Law No. 2020-290 on 23 March 2020 regarding the emergency, the Organic Law No.365 on 30 March 2020 regarding the emergency to deal with the epidemic of Covid-19, the Law No. 2021-689 on 31 May 2021 concerning the health crisis management, the Law No. 2021-1040 on 5 August 2021 regarding the health crisis management, and the Law No. 2021-1465 on 10 November 2021 regarding various health vigilance provisions. Finally, this study reviews decisions of the French Constitutional Council to understand how this institution implemented those legal instruments into its decisions, in particular when facing the pandemic of Covid-19 (Van Es Et Al., 2020).

## 3. Results and Discussion

### 3.1. The system of Constitutional Preview concerning the Pandemic of Covid-19

The founders of the Fifth Republic established the system of constitutional review to prevent parliamentarians from evading the constraints imposed by the Constitution and to prevent the legislative domain from overstepping its constitutional boundaries (Fayyad & Al-Sinnawi, 2021). In order to exercise the constitutional preview of laws, according to Article 61 of the Constitution of 1958 and Article 17 of the Ordinance no. 58-1967 of November 7, 1958 regarding the organic law on the Constitutional Council, the interest of the petitioners to act in the constitutional preview a priori/judicial preview is dedicated only to the President of the Republic, to the Prime Minister, to the President of the National Assembly and to the President of the Senate. Within this framework, they can apply organic laws before their promulgation. The regulations of the parliamentary assemblies prior to their implementation on their conformity with the Constitution to the Constitutional Council. Based on Article 54 of the Constitution of 1958 and Article 18 of the Ordinance no. 58-1967, they can also refer to the Constitutional Council about the conformity of an international treaty with the Constitution (Spigno, 2017).

Sixteen years after the entry into force of the French Constitution of 1958, there was a fundamental revision concerning the interest of petitioners in the constitutionality review a priori. In

this respect, not only the President of the Republic, the Prime Minister, the President of the National Assembly and the President of the Senate can apply to the Constitutional Council, but also the sixty deputies or the sixty senators. This is stipulated in the constitutional law n° 74-904 of 29 October 1974 regarding the revision of Article 61 of the Constitution of 1958 (Nunoo-Mensah et al., 2020). In fact, the sixty deputies or the sixty senators are the parliamentary oppositions, which introduce an appeal of constitutional review a priori to the Constitutional Council, as the instance of appeal against the legislation composed by the majority and transmitting the political battle on the ground of the right. Therefore, with the adoption of the law no. 74-904 of 29 October 1974, which modifies Article 61 of the Constitution of 1958, the profitable exercise of the constitutional review a priori is not monopolized by the three presidencies, the Republic, the National Assembly, the Senate and the Prime Minister, but as well the minority of the parliament has an opportunity to challenge a draft law considered contrary to the Constitution (Merks et al., 2021).

The constitutional preview takes place in a political context, "ruling while the clamor of parliamentary debate has not yet died down, the constitutional judge intervenes on the still burning ground of political passions". It places two opposing camps (majority and opposition, or central and federated authorities) face to face. By deciding between two opposing claims, the constitutional court necessarily "vindicates" one of the two opposing camps, thereby exposing itself to criticism of the political nature of its decision. Moreover, by ruling before the promulgation of the law, the constitutional court is supposed to participate in the drafting of the law. The system of constitutional preview is in essence an abstract control, detached from any factual data. It concerns a statement that has not yet been interpreted or applied. It can only be concrete when the judge focuses his control on the legislative facts, such as on the respect of the procedure of adoption of the text. Usually, the constitutional preview is considered as a preventive mechanism to avoid forming unconstitutional laws. It is the examination of abstract norm on common issues because these are aimed at a norm that is still of general nature. Also, they are other matters equivalent to a bill that has not been passed by the parliament (Pezzano, 2015).

Through the abstract system of norm control, the review can be used for all articles contained in a law. It focuses on the level of constitutionality of a law in general as a control revitalisation. However, if we compare to Spain, the decision rendered under the constitutional preview has less force than the decision rendered under the a posteriori control or constitutional review. This situation echoes the solution that was adopted in Spain under the preventive control of organic laws. The system of constitutional preview has the advantage of preserving legal certainty, since the unconstitutional norm, whether it originates in a treaty, a law or any other text, will never come into force. The unconstitutional provision will not pollute the legal order; it is neutralized *ab initio* without having produced the slightest effect (De Caterina, 2021).

In the context of Covid-19, draft laws of this subject had been reviewed several times because these provisions infringe citizen's fundamental rights guaranteed by the Declaration of human and citizen's rights of 1789, the French Constitution of 1958. In the case of emergency organic law to address the covid-19 epidemic No. 2020-799 DC, the Constitutional Council was of the opinion that the organic law mentioned does not violate article 46 of the French Constitution, also the suspension of constitutional priority question decisions until 30 June 2020 does not prohibit the ruling of this case. In this case, the Constitutional Council has verified the legislative procedure of the concerned law and examined in public session. An inspection of this procedure is important because a proper process is necessary to thoroughly discuss the content of the bill, so the bill should pass the proper procedure according to the Constitution (Bertholon et al., 2021).

Another case, on 7 November 2020, sixty deputies and sixty senators also apply a constitutional preview case of a draft law on authorizing the extension of the state of health emergency and taking various measures to manage the health crisis. By the case No. 2020-808 DC, they argued that the transitional regime organizing the end of the state of health emergency without further intervention by Parliament infringe the principle of separation powers. For examining this case, the Constitutional Council was of the opinion that the measures that may be taken under the transitional regime may only be taken in the interest of public health and for the sole purpose of fighting the spread of the covid-19 epidemic and the legislator may extend the aforementioned transitional regime until 1 April 2021 (Berardi et al., 2020).

In order to examine cases of the Covid-19 pandemic, judges are responsible for ensuring that their decisions are appropriate and proportionate to their objectives. This is a proportionality control function which is a means of action for judges to increase the efficiency of the supervisory authority. The proportionality control is needed to strike a balance between the public interest of society and the rights of individuals in order to implement the adaptations necessary to protect the health of citizens, particularly during the Covid-19 pandemic. However, in this case, it seems that the French Constitutional Council leaves it entirely to legislators to authorize the extension of the health emergency in carrying out various actions and managing health crises (Guellich et al., 2021).

In another case, on 26 July 2021, the Prime Minister, sixty deputies, and sixty senators lodged a case of constitutional preview under the second paragraph of Article 61 of the Constitution of 1958. In case no. 2021-824 DC, they applied a case concerning paragraph II of Article 1 of the draft law on health crisis management. Paragraph II of Article 1 stipulates that the Prime Minister may make access to certain places, establishments, services, or events contingent upon the presentation of a "health pass," which may be in the form of either a virological screening result that does not conclude that a person is infected with Covid-19, proof of vaccination status, or a certificate of recovery from infection. Related to this provision, the applicants argued that access to the shopping malls by presenting a health pass would not be adequate to combat the pandemic of Covid-19. Also, the disputed provision infringes the freedom of movement. It creates an unjustified difference in treatment between individuals depending on whether or not they had been able to receive a vaccine. In examining this case, the Constitutional Council declared an important decision that affected all French citizens. By its decision No. 2021-824 DC on 5 August 2021, the Constitutional Council thought that legislators require health passes to limit the spread of the Covid-19 pandemic because, based on scientific research, the risk of spreading Covid-19 is significantly reduced for people who are vaccinated or take a screening test that results are negative. Therefore, the French Constitutional Council decide that paragraph II of Article 1 of the draft law on health crisis management is consistent with the Constitution of 1958 (Vivanti et al., 2020).

The decision of the Constitutional Council No. 2021-824 DC is a milestone decision that affects all French citizens. Therefore, all French citizens must present a health pass to access department stores, shopping centers, and public transportation. In addition, it should be understood that in order to examine a norm of draft laws as well as laws, the norms being verified are assessed to determine whether they follow the basic norms of French law known as *bloc de constitutionnalité* or constitutional block, which means fundamental human rights guaranteed by the Declaration of human and citizen's rights of 1789, the Preamble of the Constitution of 1946, and the Constitution of 1958. These basic norms guarantee the fundamental rights and freedoms of French citizens. Concerning decision No. 2021-824 DC dated August 5, 2021, it appears that the Constitutional Council obliges all French citizens to submit to the rights and freedoms established by law to ensure the protection of the public interest in the broadest sense. In this case, the limitation of individual rights is necessary to safeguard public health and prevent the spread of Covid 19 on a large scale. It seems this Constitutional Council's decision is in line with Article 29 paragraph (2) of the Universal Declaration of Human Rights, which stipulates that in exercising his/her rights and freedoms, everyone must be subject to the restrictions prescribed by law to respect the rights and freedoms of others, although the French Constitutional Council did not mention this Declaration in its decision (Diakonoff & Moreau, 2022).

However, the Constitutional Council states differently regarding submitting a health pass to allow the person responsible for organizing a political meeting. The Constitutional Council considered that the presentation of health passes is not a subject of such measures by the organizer of the political meeting on the condition that they are taken in the interest of public health and for the sole purpose of combating the Covid-19 epidemic. In this context, a health pass is not required to attend a political activity even during the Covid-19 pandemic because the right to express opinions freely is a fundamental right guaranteed by Article 11 of the Declaration of human and citizen's rights of 1789 as the basic norm in French law (Suarez Castillo et al., 2022).

### 3.2. The System of Constitutional Review concerning the Pandemic of Covid-19

Considering the reform of 1974 expanded the possibility to challenge the drafts of unfair laws, but citizens had no such opportunity for this. Having the will to modernize public institutions, including examining the conditions under which the Constitutional Council could be brought to rule, at the request of citizens, on the constitutionality of existing laws, Nicolas Sarkozy created the decree n°2007-1108 of 18 July 2007 on the creation of a committee of reflection and proposal on the modernization and rebalancing of the institutions of the Fifth Republic (Fovet et al., 2020).

The debate was lively on the fundamental choice between diffuse or concentrated control. Finally, the committee agreed to apply concentrated control with a filter that is entrusted to the two supreme jurisdictions. In this regard, Article 29 of the Constitutional Law No. 2008-724 of 23 July 2008, regarding the modernization of the institutions of the Fifth Republic, was adopted to amend the Constitution of 1958 by adding Article 61-1, which stipulates that “when, in proceedings pending before a court, it is claimed that a legislative provision infringes upon the rights and freedoms guaranteed by the Constitution, the Constitutional Council may be seized of this question on referral from the Council of State or the Court of Cassation, which shall give a ruling within a specified period of time.” Under this Article, the Constitutional Council has the authority to review the constitutionality of laws after their promulgation; this is the priority question of constitutionality (la question prioritaire de constitutionnalité/QPC) (Karakas, 2017).

The reform in 2008 institutes a preliminary question of constitutionality and provides a constitutionality review from two points of view: firstly, it balances the constitutionality review a priori, whose mesh is too wide and which allows unconstitutional legislative provisions to leak out without any real possibility of correction; secondly, it finally brings the citizen into the constitutionality debate, a constitution of which he or she can now be proud by returning it to the heart of the debate on public and individual liberties (Arimany-Manso & Martin-Fumadó, 2020). Unlike the system of constitutional preview, not only public authorities, but also French citizens can apply constitutional review cases to Constitutional Council after the enactment of laws. However, litigants cannot lodge an appeal directly because they have to go through the selection of cases made by the "double filter jurisdictions" in order to lodge the priority question of constitutionality; first by the trial judge, second by the Court of Cassation or the Council of State. It is stipulated in Article 23-1 of the organic Law No. 2009-1523 on 10 December 2009 concerning the application of Article 61-1 of the French Constitution of 1958 (Garoupa & Grajzl, 2020).

The posteriori of constitutional review creates a break in terms of the openness and transparency of the constitutional judgment of the law. The positions of the filtering judges are known, the hearing is public and accessible to all, and the adversarial process is even more marked. Moreover, the priority question of constitutionality system allows litigants and lawyers - interlocutors absent from the a priori constitutional review - to act as constitutional entrepreneurs, by proposing interpretations of the Constitution and requesting changes in case law. Several priority question of constitutionality appeals have thus been brought into the social, political and media spotlight, thus creating a new space for the expression of the general will. Martinez says that there are differences between constitutional preview and constitutional review regarding the purpose of review. The purpose of the constitutional preview is to prevent the unconstitutional law from coming into force, while the purpose of the constitutional review is to eliminate the unconstitutional law from the legal order (Karakas, 2017).

In fact, the constitutional review presents an abstract character when a court examine a normative law. On the other hand, this system has a concrete character when the court is seized of a direct appeal for the protection of fundamental rights against the implementation of law, in which the court verifies whether the law on the dispute correctly applied the relevant constitutional rules. The application of constitutional review must fulfil three conditions: 1. the contested provision is applicable to the dispute or to the proceedings, or constitutes the basis for the prosecution; 2. it has not already been declared in conformity with the Constitution in the grounds and the operative part of a decision of the Constitutional Council, unless the circumstances have changed; and 3. the question contains serious matters (See Article 23-1 of the organic Law No. 2009-1523 on 10

December 2009 concerning the application of Article 61-1 of the French Constitution of 1958). If one or more of the three conditions are not fulfilled, the judge of the first instance rejects the application of constitutional review and he does not transmit it to the Council of State or the Court of Cassation, depending on the nature of the jurisdiction before which it was raised. If cases have natures such as civil, criminal, commercial and social, the trial judge transfers constitutional review cases to the Court of Cassation. On the other hand, if cases have administrative natures, the trial judge transfers constitutional review cases to the Council of State. If these three conditions are fulfilled, he transfers this question to two supreme jurisdictions of the order concerned within eight days. The scope of constitutional review is extensive. It concerns laws and international treaties (Philippe, 2017).

The question of constitutionality does have a "priority" character. The court seized of the matter must be the competent court. Moreover, since the question is formulated at the time of a request, the admissibility of the request determines the admissibility of the question. But, for the rest, the question must be considered as a priority before any other. Indeed, in the proceedings, it has its own object. It specifically seeks the repeal of the contrary legislative provision. It gives the litigant the right, previously non-existent, to request the repeal of the law. It is a sort of preliminary action for repeal. However, constitutional review poses risks to legal certainty insofar as it opens up the possibility of permanent questioning of the standards to which it applies. It concerns texts that have sometimes been in force for years and that have generated a multitude of secondary acts. Moreover, no one dares to imagine the chaos that could result, in diplomatic and legal terms, from the annulment of a treaty several years after its entry into force. After having read the explication above, we see that the French Constitutional Council has contributed to bring the system of constitutional review before the promulgation of law and after the enactment of law closer together. At the same time, *a priori* constitutional review has been redeployed in a dynamic manner by entering new fields and reminding each of its advantages (Garoupa & Grajzl, 2020).

On the other hand, the less of speed of the case of *a priori* constitutional review compared with the number of priority question of constitutionality referred to the Constitutional Council, it raises questions and even concerns. We can see from the table below. Decisions QPC shows the number of constitutional review after the promulgation of law, while decisions of DC shows the number of constitutional review before the enactment of law. However, the history rarely follows a strictly linear path and it can be understood through the interaction of ebb and flow. Consequently, the future of the French Constitutional Council does not lie in its past and the undeniable ruptures caused by the priority question constitutionality are not made up for by the search for coherence between *a priori* constitutional review and *a posteriori* constitutional review, which, on the other hand, it obliges us to envisage the future of the priority question constitutionality with a reforming spirit (Karakas, 2017).

The priority question of constitutionality is not only a right to French citizens, but also to litigants who is on trial. Indeed, Article 61-1 of the French Constitution of 1958 does not specify the persons entitled to submit a concerned question. This article does not mention a "party", or even a "litigant". Nevertheless, the Organic Law No. 2009-1523 of 10 December 2009 on the application of Article 61-1 of the Constitution is more verbose, as it refers to "persons" in Article 23-3 or "parties" in Article 23-11, stressing that "the parties shall be notified of the Constitutional Council's decision." Afterwards, the explanation below address cases of the priority question of constitutionality concerning the pandemic of Covid-19 (Coccia, 2022).

In the domain of civil procedure, the petitioner (the company Getzner France) quibbled with Article 8 of Ordinance No. 2020-304 of 25 March 2020, adopting the rules applicable to the courts of the judicial order adjudicating in non-criminal matters and to condominium manager contracts because the provision allows the judge to impose on the parties a procedure without a hearing in certain civil litigation cases. In its decision, the Constitutional Council considers that the procedure without a hearing applies only to cases for which deliberation was announced during the state of health emergency declared by the law of 23 March 2020 or during the month following its cessation. This provision is intended to prevent a party's opposition to the failure to hold a hearing from

leading to the postponement of the judgment of the case to a later date, pending until better health conditions. Therefore, the courts can examine cases within a timeframe that is consistent with the speed required for the emergency proceedings at issue (Stef & Bissieux, 2022).

However, the Constitutional Council has taken a different opinion on the criminal procedure. In this regard, the petitioner challenged Article 5 of the Ordinance n° 2020–303 of 25 March 2020, adopting the rules of criminal procedure on the basis of the law n° 2020–290 of March 23, 2020 of emergency to face the epidemic of Covid-19, which stipulates that an audio-visual means of telecommunication may be used in all criminal courts without having to obtain the agreement of the parties. He argued, this provision violates the right of defense which is the purpose of the administration of justice. The Constitutional Council was of the opinion that guaranteeing the physical presentation of the person concerned is very important before the criminal court, so that the application of telecommunications facilities in criminal justice cannot be justified even during the Covid-19 pandemic (Melcarne et al., 2022).

In analyzing the two decisions above, it should be realized that the examination of civil and criminal cases cannot be equated. The court can take effective ways to exercise the civil cases. However, it will be necessary to give the defendant the right to defend himself in criminal proceedings. Moreover, it is necessary to consider the use of video conference in judicial practice, especially during the Covid-19 pandemic in order to keep the barrier gesture and health. This practice is effective, but it should not prevent the rights of the citizens defense before the court, especially in criminal case that can limit the rights of citizen freedoms. Sometimes, this requires evidence before the court so that the litigants can support their rights and their arguments. These cannot always be revealed by video conference to see their origins. Therefore, the teleconference sessions cannot be applied to all courts, especially in criminal jurisdictions. In other words, certain restrictions must not violate fundamental rights of the individuals. This is the reason why the French Constitutional Council appears casuist and different within constitutionality control, especially in the implementation of hearings during the Covid-19 pandemic considering the aspects of civil and criminal jurisdictions.

#### **4. Conclusion**

In order to handle the threat of the Covid-19 pandemic that endangers the health, French legislators have enacted laws that regulate the emergency to deal with the epidemic of Covid-19 and health crisis management. However, these laws still infringe on the fundamental rights of citizens. Therefore, the French Constitutional Council's role is necessary for the constitutional review domain. Firstly, the constitutional review is a priori which means a judicial preview whereby the Constitutional Council examines the constitutionality of laws before their promulgation. Secondly, the constitutional review, a priori, presents the question of constitutionality in which the Constitutional Council verifies the constitutionality of laws after their promulgation. In the context of constitutional review, proportionality control is essential to balance society's public interest with individual rights to implement the adaptations needed to protect public health, particularly during the Covid-19 pandemic. During the current pandemic, the court hearing sessions at a distance using video conferences are considered adequate because we must keep the barrier to prevent the spread of Covid-19. However, according to the Constitutional Council, video conferencing should not hinder the protection of the fundamental rights of citizens. In addition, the presentation of a health pass is compulsory to access department stores, shopping centers, and public transportation. However, it is not necessary for political activities because freedom of expression is a part of fundamental rights.



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