

Aviation / ACNUSA – Right to remain silent

In a decision dated October 10, 2025, the Constitutional Council ruled against the ACNUSA investigation procedure, finding that it failed to include the obligation to inform airlines of their right to remain silent.

First of all, it should be recalled that, in its decision No. 2017-675 QPC of November 24, 2017, the Constitutional Council had already declared Article L.6361-14 of the Transport Code unconstitutional on the grounds that the president of the ACNUSA was vested with the right in taking part both in the proceedings and in the vote after which a sanction was imposed, thereby breaching the principle of impartiality.

The regulator was therefore forced to rewrite Article L.6361-14 of the Transport Code in 2018. It is precisely these new provisions of Article L.6361-14 of the Transport Code that have been declared unconstitutional because they do not require the ACNUSA to inform airlines of their right to remain silent both during the investigation of the case and during their hearing before the ACNUSA board.

Constitutional Council, Decision n°2025-1171 dated 10 October 2025

The legal basis of the « right to remain silent »



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The right to remain silent stems from the principle that “no one is obliged to accuse themselves” which is linked to Article 9 of the 1789 Declaration of Human Rights concerning the presumption of innocence.

In a decision dated March 4, 2021 (No. 2020-886 QPC), the Constitutional Council added a procedural safeguard, requiring that any person questioned about alleged misconduct be informed of its right to remain silent.

Consequently, by a decision of March 21, 2025 (No. 2025-1128 QPC), the Constitutional Council extended this guarantee to all sanctions having the character of a punishment, including those likely to be pronounced by administrative authorities not subject to the hierarchical power of the minister (in this case, it was the sanction procedure before the AMF, the Financial Markets Authority).

The absence in article L.6361-14 of the Transport Code of the right to remain silent

Article L.6361-14, in its currently applicable version, provides:

Article 9 of the 1789 Declaration :

« Since every man is presumed innocent until proven guilty, if it is deemed essential to arrest him, any harshness not necessary to secure his person must be severely punished by law. »

Airlines must be informed of their right to remain silent both at the investigation stage (i.e., in the letters of notification of breaches signed by the DGAC) and at the stage of their hearing before the ACNUSA panel (i.e., in the summons letters signed by the ACNUSA).

"The officials and agents mentioned in Article L. 6142-1 shall record any breaches of the measures defined in Article L. 6361-12. These breaches shall be documented in official reports which, along with the amount of the applicable fine, shall be served on the person concerned and communicated to the relevant authority. These reports shall be considered valid until proven otherwise.

No prosecution may be initiated more than two years after the commission of the acts constituting a breach.

The investigation and proceedings before the authority are adversarial.

The investigation is conducted by officials and agents mentioned in Article L. 6142-1, other than those who observed the breach, who may interview any person likely to contribute to the investigation and request all necessary documents.

After ensuring that the investigation file is complete, the permanent rapporteur notifies the person concerned and invites it to submit its written observations within one month, by any means, including electronically. At the end of this adversarial procedure, the permanent rapporteur closes the investigation and may either dismiss the case if at least one of the cases exhaustively listed by decree of the Council of State is verified, or forward the complete investigation file to the authority. This decision is notified to the person concerned.

The authority summons the person concerned and gives it the opportunity to appear before it, or to be represented, at least one month before the deliberation. It may validly deliberate even if the person concerned fails to appear or be represented.

In the performance of his duties, the rapporteur may not receive instructions or orders. Before the body of the authority, his role is to present the issues raised by each case and to independently formulate his conclusions and impartial assessment of the specific factual circumstances and applicable legal rules, as well as his opinion on the appropriate solution.

After hearing the rapporteur and, where applicable, the person concerned or its representative, the authority deliberates in its absence.

Associate members participate in the session. They do not participate in the deliberations and do not vote."

Paragraphs 5 and 8 above do not provide for the right of the person concerned to remain silent, either when invited to submit written observations during the investigation phase (paragraph 5 above), or during the hearing before the ACNUSA when summoned to appear (paragraph 8 above).

The Constitutional Council's assessment

The Constitutional Council held that "by failing to provide that the person concerned must be informed of its right to remain silent when invited to submit written observations and when appearing before the authority, the contested provisions fail to comply with the requirements of Article 9 of the Declaration of 1789. Consequently, they must be declared unconstitutional."

Consequently, the Constitutional Council ruled that the words '*and invites the person concerned to submit its written observations*' appearing in the first sentence of the fifth paragraph of Article L. 6361-14 of the Transport Code, as well as the words '*and, where applicable, the person concerned or its representative*' appearing in the eighth paragraph of the same article, are contrary to the Constitution.

The Constitutional Council also decided:

- Firstly, to postpone the repeal of the unconstitutional provisions until October 1, 2026. Pending this date, the ACNUSA must nevertheless inform the individuals involved of their right to remain silent in ongoing proceedings.
- Secondly, that "*the declaration of unconstitutionality may be invoked in proceedings initiated on the date of publication of this decision and not yet definitively decided.*"

Pending cases that have not yet been definitively judged can be strengthened by the argument of unconstitutionality of article L.6361-14 to justify the annulment of fines imposed... under certain conditions!

Scope of the Constitutional Council's decision

Several consequences deserved attention:

- The unconstitutionality of Article L.6361-14 of the Transport Code can be invoked in pending cases.

Specifically, it is primarily pending cases brought by companies before administrative courts, and not yet definitively decided, that can be strengthened by the argument of the unconstitutionality of Article L.6361-14 to obtain the annulment of the fines imposed. However, regarding cases pending before the ACNUSA that have not yet resulted in a fine or that have recently resulted in a fine, the DGAC has already preemptively corrected the situation since mid-2024 by clearly indicating in the notifications sent to the companies that they can remain silent, and the ACNUSA also mentions this right in the convening notices since November 2025. It therefore seems unlikely that recent fines can still be challenged on this basis.

- If no new legislation is passed to replace the current Article L. 6361-14 before October 1, 2026, the ACNUSA's power to impose sanctions will be suspended. The current parliamentary context offers no visibility on the possible timeline for the vote on such legislation. It is therefore essential to remain vigilant.

Questions remain

For cases pending before the administrative courts, in which airlines were not informed, during the investigation and their hearings, of their right to remain silent, several questions arise:

Will the courts make an assessment of whether the information provided by the airlines was decisive and, if so, how?

- Did these companies raise, in their initial application to the court, any grounds of procedural irregularity against the ACNUSA's decisions (formal defect, procedural defect, lack of jurisdiction)? If not, it is likely that ACNUSA will argue that the claim of unconstitutionality of Article L.6361-14 of the Transport Code is inadmissible;
- Did ACNUSA base its decisions on the evidence presented by the airlines during the investigation or expressed during their hearing? If not, ACNUSA will argue that the failure to notify the airlines of their right to remain silent had no consequence on the imposition of the fines.
- Finally, if it turns out that the ACNUSA relied on information provided by the airlines in its decision, how will the court assess whether this information was decisive or not, and who will bear the burden of proof regarding its decisiveness? Since the airlines have submitted information, the burden should legitimately fall on the ACNUSA to demonstrate that this information had no consequence on the decision to impose a fine.

The first judgements from the Paris Administrative Court and the Paris Administrative Court of Appeal are expected in 2026 and will undoubtedly provide useful clarification on these issues.
