

## **Decision n° 2008-566 of July 9<sup>th</sup> 2008**

### **Institutional Act pertaining to the Archives of the Constitutional Council**

A referral was made by the Prime Minister to the Constitutional Council on July 1<sup>st</sup> 2008, pursuant to Articles 46, paragraph 5 and 61, paragraph 1 of the Constitution, with respect to the Institutional Act pertaining to the Archives of the Constitutional Council

#### **THE CONSTITUTIONAL COUNCIL**

Having regard to the Constitution and in particular Article 63 thereof;

Having regard to Ordinance n° 58-1067 of November 7<sup>th</sup> 1958 as amended (Institutional Act on the Constitutional Council);

Having regard to the National Heritage Code;

Having regard to the Act pertaining to the Archives enacted by Parliament on July 1<sup>st</sup> 2008;

Having heard the Rapporteur;

1. The Institutional Act referred for review by the Constitutional Council was passed on the basis of Articles 25 and 13 of the Constitution and in compliance with the rules of procedure laid down in Article 46 thereof;

2. Section 1 of the Institutional Act amends Article 58 of the Ordinance of November 7<sup>th</sup> 1958 referred to hereinabove. It fixes at 25 years from the date of each document the period after the expiry of which the Archives of the Constitutional Council may be consulted. It makes applicable to said Archives the final twelve Articles of the National Heritage Code as worded pursuant to the abovementioned statute pertaining to said Archives which was enacted on the same day. Under Section 2 of said statute said provisions shall come into effect on January 1<sup>st</sup> 2009.

3. Firstly Article 63 of the Constitution provides that : "An Institutional Act shall determine the rules of organisation and operation of the Constitutional Council" The archive system of the Constitutional Council, which is indissociable from the conditions in which the Constitutional Council carries out its tasks, therefore comes under the scope of an Institutional Act

4. Secondly, Parliament is at liberty when enacting Institutional Acts to render normal statutory provisions applicable to matters coming under the scope of the Institutional Act. Said provisions become applicable as worded at the date of the final enactment of this Institutional Act.

5. By Section 1 of the Act, Parliament when enacting the Institutional Act thus made the following provisions of the National Heritage Code, as worded pursuant to the abovementioned Institutional Act pertaining to the Archives, applicable to said Archives : Article 211-3 placing agents in charge of compiling archives under a duty of professional confidentiality ; Article L 212-1 providing that the archives shall conserve their status of public documents indefinitely; Articles L 212-2 and 212-3 specifying the manner in which archives are selected or eliminated; Article L 212-4 concerning the manner of conservation of archives; Article L 213-3 making prior consultation possible; lastly Articles L 214-1, L 214-3n L 214-4, L 214-5, L 214-9 and L 214-10 providing for criminal or administrative penalties, in particular in the event of destruction of archives.

6. Thirdly all the provisions of Title VII of the Constitution show that the constituent power intended to guarantee the independence of the Constitutional Council.

7. By allowing free consultation of the archives of the work of the Constitutional Council after the expiry of a period of 25 years, section 1 of the Institutional Act does not adversely affect the independence of the Constitutional Council.

8. Articles 212-2 and 212-3 of the National Heritage Code require, for the purpose of listing documents to be eliminated, an "agreement" to be reached between the body at the origin of said documents or having received the same and the body administering the Archives. I of Article L 213-3 provides that permission to consult documents in public archives prior to the official expiry date of 25 years shall be granted by the body administering the Archives "after agreement with the body from which said Archives originate". An identical provision is found in II of the same Article as regards prior opening of collections. These provisions, which in each case require the agreement of the Constitutional Council, do not infringe the principle of the separation of powers guaranteed by Article 16 of the Declaration of the Rights of Man and the Citizen of 1789.

9. Lastly, II of Article 212-4 provides that the conservation of documents from the public archives remaining to be selected shall be ensured "under the scientific and technical supervision of the body administering the Archives". This supervision, which does not vest this administrative body with any decision-taking power, is merely designed to assist the Constitutional Council in protecting and safeguarding its archives. It thus does not adversely affect either the independence of said Council not the principle of the separation of powers.

10. Fourthly, under Article 55 of the Ordinance of November 7<sup>th</sup> 1958, which derives from Articles 63 of the Constitution " The means of implementation of this ordinance may be determined by a Decree in the Council of Ministers, after consultation of the Constitutional Council and the Conseil d'Etat".

11 The referral to Decrees of the Conseil d'Etat made by the final paragraph of Article L 212-1 to specify proceedings designed to retrieve public archives in the possession of another, by I of Article 212-4 to determine the conditions governing the deposit of selected public archives, by II of Article 212-4 governing the deposit of unselected public archives and by Article L 214-10 to determine the conditions prohibiting persons committing criminal offences from gaining access to archive premises are means of implementing the new Article 58 of the Ordinance of November 7<sup>th</sup> 1958 referred to above. In accordance with Article 55 of said Ordinance, the Decrees of the Conseil d'Etat applicable to the archives of the Constitutional Council should therefore entail consultation of the Constitutional Council and a deliberation in the Council of Ministers.

12. With the qualification set out in the foregoing paragraph, the Institutional Act referred for review by the Constitutional Council is not unconstitutional.

**HELD :**

Article 1 - With the qualification set out in paragraph 11, the Institutional Act pertaining to the Archives of the Constitutional Council is not unconstitutional.

Article 2 - This decision shall be published in the Journal officiel of the French Republic

Deliberated by the Constitutional Council sitting on July 9<sup>th</sup> 2008 and composed of Messrs Jean-Louis DEBRE, President, Messrs Guy CANIVET, Renaud DENOIX de SAINT MARC, Olivier DUTHEILLET de LAMOTHE, Pierre JOXE and Jean-Louis PEZANT, Mrs Dominique SCHNAPPER and Mr Pierre STEINMETZ.

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