

## **Decision n° 2009-576 of March 3<sup>rd</sup> 2009**

Institutional Act pertaining to the appointment of the Presidents of the companies France Télévisions and Radio France and of the company in charge of France's external audiovisual services.

A referral was made by the Prime Minister to the Constitutional Council on February 6<sup>th</sup> 2009, pursuant to Articles 46, paragraph 5 and 61, paragraph 1 of the Constitution, with respect to the Institutional Act pertaining to the appointment of the Presidents of the companies France Télévisions and Radio France and of the company in charge of France's external audiovisual services.

### **THE CONSTITUTIONAL COUNCIL**

Having regard to the Constitution as worded pursuant to Constitutional Act n° 2008-724 of July 23<sup>rd</sup> 2008 pertaining to the modernisation of the institutions of the 5<sup>th</sup> Republic;

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 Act pertaining to audiovisual communication and the new public television service enacted by Parliament on February 4<sup>th</sup> 2009 and decision n° 2009-577 DC of the Constitutional Council dated March 3<sup>rd</sup> 2009

Having heard the Rapporteur;

1. The Institutional Act referred for review by the Constitutional Council was passed on the basis of Article 13 of the Constitution. This statute, which is not an Institutional Act concerning the Senate, was passed in compliance with the rules of procedure laid down in the first three paragraphs of Article 46 of the Constitution ;

2. The final paragraph of Article 13 of the Constitution provides: "An Institutional Act shall determine the posts or offices, other than those referred to in paragraph 3 hereof, for which, in view of their importance in guaranteeing rights and freedoms or the economic and social life of the Nation, the power of appointment vested in the President of the Republic shall be exercised after public consultation of the relevant standing committee of each House. The President of the Republic shall not proceed to make any appointment when the total of negative votes cast in each committee shall represent not less than three fifths of the votes cast by these two committees. Statutes shall determine the relevant standing committees taking into account the posts or offices involved".

3. The sole section of the Institutional Act submits for the opinion of the relevant standing committee in each House the appointment by the President of the republic of the Presidents of the companies France Télévisions and Radio

France and of the company in charge of France's external audiovisual services. In view of the importance of said posts in guaranteeing rights and freedoms and in the economic and social life of the Nation, these posts come under the scope of the final paragraph of Article 13 of the Constitution;

4. Parliament was at liberty to provide, in order to guarantee the independence of national broadcasting companies and implement the principle of freedom of communication, that "in each House of Parliament, the relevant standing committee shall give its opinion after a public hearing of the person whose appointment has been proposed". By so doing Parliament has however laid down a rule which does not come under the scope of the Institutional Act defined in the final paragraph of Article 13 of the Constitution;

5. The text referred for review by the Constitutional Council is not unconstitutional as regards either its provisions of an institutional nature or those of a statutory nature.

#### **HELD**

Article 1 - The Institutional Act pertaining to the appointment of the Presidents of the companies France Télévisions and Radio France and of the company in charge of France's external audiovisual services is not unconstitutional.

Article 2 - In the sole section of the same statute, the words " in each House of Parliament, the relevant standing committee shall give its opinion after a public hearing of the person whose appointment has been proposed" are not of an institutional nature.

Article 3 - This decision shall be published in the Journal officiel of the French Republic

Deliberated by the Constitutional Council sitting on March 3<sup>rd</sup> 2009 and composed of Messrs Jean-Louis DEBRE, President, Guy CANIVET, Jacques CHIRAC, Renaud DENOIX de SAINT MARC and Olivier DUTHEILLET de LAMOTHE, Mrs Jacqueline de GUILLENCHMIDT, Mr Jean-Louis PEZANT, Mrs Dominique SCHNAPPER and Mr Pierre STEINMETZ.