

DECISION 2001-445 DC OF 19 JUNE 2001

Institutional Act concerning the status of the judiciary and the High Council of the Judiciary

(Extracts)

On 31 May 2001 the Constitutional Council received a referral from the Prime Minister, in accordance with Article 46 and the first paragraph of Article 61 of the Constitution, concerning the Institutional Act concerning the status of the judiciary and the High Council of the Judiciary.

THE CONSTITUTIONAL COUNCIL,

Having regard to the Constitution;

Having regard to Ordinance 58-1067 of 7 November 1958 enacting the Institutional Act on the Constitutional Council, as amended;

Having regard to Ordinance 58-1270 of 22 December 1958 enacting the Institutional Act governing the status of the judiciary, as amended;

Having regard to Ordinance 59-2 of 2 January 1959 enacting the Institutional Act concerning Finance Acts, as amended;

Having regard to Ordinance 94-100 of 5 February 1994 relating to the High Council of the Judiciary;

Having regard to the Act of 29 July 1881 on the freedom of the press;

Having regard to the Act of 30 December 1921 bringing closer civil servants who do not serve in a department but are bound by marriage either to civil servants serving in the department or to people who reside there;

Having regard to the Code of Judicial Organisation;

Having regard to the Code of Criminal Procedure;

Having regard to Act 95-125 of 8 February 1995 relating to the organisation of the courts and to criminal, civil and administrative procedure;

Having heard the rapporteur;

On the following grounds:

1. The Institutional Act referred to the Constitutional Council consists of thirty-five sections grouped in four chapters;
2. The Institutional Act was enacted on the basis of the third paragraph of Article 64 of the Constitution and in the compliance with the rules of procedure determined by Article 46;
3. In specifying that a matter that Article 34 classifies among those to be regulated by statute is to be governed by an institutional act, the constituent authority intended to strengthen the statutory guarantees enjoyed by judges in the judicial order; the Institutional Act on the status of the judiciary must accordingly itself determine the statutory rules applicable to judges, subject only to the possibility of leaving it for the authority empowered to make regulations to determine certain measures implementing the rules that it enacts;
4. Moreover, in the exercise of its powers, the institutional legislature must comply with constitutional rules and principles; in particular, it must respect not only the principle of the independence of the judicial authority and the rule that judges may not be removed from office by virtue of Article 64 of the Constitution, but also the principle declared by Article 6 of the Declaration of Human and Civic Rights that all citizens, being equal in the eyes of the law, "shall be equally eligible to all high offices, public positions and employments,

according to their ability, and without other distinction than that of their virtues and talents”; it follows from these provisions, with regard to the recruitment of judges, that account must be taken not only of candidates’ abilities, virtues and talents but also that the only abilities, virtues and talents to be taken into account are those that are relevant to the judicial function and guarantee the equality of all citizens before the law; finally, magistrates must be treated equally in their career;

(...)

ON CHAPTER IV:

55. Chapter IV entitled “provisions concerning the High Council of the Judiciary” consists of sections 33 to 35;

Regarding the organisation of elections to the High Council of the Judiciary:

56. Section 33, which amends section 3 of the Institutional Act of 5 February 1994 concerning the High Council of the Judiciary, modifies the polling techniques for the election to the High Council of the Judiciary of representatives of judges not exercising the function of President of a court; it introduces proportional representation at the two stages of the election and lays down rules to secure equal rights for candidates of both sexes; section 34 makes section 33 applicable at the time of the next election to replace the High Council of the Judiciary;

57. The fifth paragraph of Article 3 of the Constitution, as amended by Constitutional Act 99-569 of 8 July 1999, provides that “Status shall promote equal access by women and men to electoral mandates and elective offices”, but it is clear both from the legislative history and from its position in that Article that this provision applies only to elections to political mandates and offices;

58. The rules enacted to govern the drawing up of lists of candidates for election to high offices, public positions and employments other than those of a political nature may not, with respect to the principle of equal access stated by Article 6 of the Declaration of 1789, involve any distinction between candidates on the basis of their sex; consequently, the provisions of section 33 of the Institutional Act which introduce a distinction according to the sex in the composition of the lists of candidates for election to the High Council of the Judiciary, are unconstitutional;

59. The other provisions of section 33 are severable from the foregoing provisions and do not call for criticism regarding their conformity to the Constitution;

(...)

Has decided as follows:

Article 1

The following are declared unconstitutional:

- in the third paragraph of section 33(I) of the Institutional Act concerning the statute of the judiciary and the High Council of the Judiciary, the words “the name of a candidate of a given sex, which must be followed on this list by the name of a candidate of the other sex within the limits of the number of names appearing on it”;
- in the fourth paragraph of section 33(II), words “both sexes must be represented”;
- in the third paragraph of section 33(III), the words “among candidates of the same sex as the member whose position has fallen vacant”.

Article 2

Subject to the foregoing reservations as to interpretation, the other provisions of the Institutional Act under review are declared constitutional.

Article 3

This decision shall be published in the *Journal officiel de la République française*.

Deliberated by the Constitutional Council at its sitting of 19 June 2001, attended by Mr Yves GUÉNA, President, and Mr Michel AMELLER, Mr Jean-Claude COLLIARD, Mr Olivier DUTHEILLET de LAMOTHE, Mr Pierre JOXE, Mr Pierre MAZEAUD, Ms Monique PELLETIER, Ms Dominique SCHNAPPER and Ms Simone VEIL.