

DECISION 82-146 DC OF 18 NOVEMBER 1982

Act amending the Electoral Code and the Code of Municipalities and governing the election of municipal councillors and the conditions for entry of French nationals residing outside France in electoral registers

On 23 October 1982 the Constitutional Council received a referral from Mr Claude LABBÉ, Mr Jacques CHIERAS, Mr Jean-Louis GOASDUFF, Mr Jacques CHABAN-DELMAS, Mr Jean FALALA, Mr Jacques TOUBON, Mr Pierre MAUGER, Mr Pierre MESSMER, Ms Hélène MISSOFFE, Mr Philippe SÉGUIN, Mr Pierre WEISENHORN, Mr Michel NOIR, Mr Henri de GASTINES, Mr Edouard FREDERIC-DUPONT, Mr Jacques GODFRAIN, Mr Robert-André VIVIEN, Mr Marc LAURIOL, Mr Maurice COUVE de MURVILLE, Ms Florence d'HARCOURT, Mr Hyacinthe SANTONI, Mr Jean-Paul CHARIÉ, Mr Claude-Gérard MARCUS, Mr Jean HAMELIN, Mr Pierre-Bernard COUSTÉ, Mr Jean-Charles CAVAILLÉ, Mr Michel DEBRÉ, Mr Didier JULIA, Mr Bernard PONS, Mr Yves LANCIEN, Mr Robert GALLEY, Mr Alain PEYREFITTE, Mr Robert WAGNER, Mr Pierre GASCHER, Mr Camille PETIT, Mr Michel COINTAT, Mr Olivier GUICHARD, Mr Jean FOYER, Mr Georges TRANCHANT, Mr Pierre-Charles KRIEG, Mr Roland NUNGESSER, Mr René La COMBE, Mr Jean VALLEIX, Mr François FILLON, Mr Christian BERGELIN, Ms Nicole DE HAUTECLOCQUE, Mr Jean-Louis MASSON, Mr Jacques FOUCHIER, Mr Maurice LIGOT, Mr Claude BIRRAUX, Mr Albert BROCHARD, Mr Jacques DOMINATI, Mr Gilbert GANTIER, Mr Paul PERNIN, Mr Marcel BIGEARD, Mr Germain GENGENWIN, Mr Francisque PERRUT, Ms Louise MOREAU, Mr Pascal CLÉMENT, Mr Jacques BLANC, Mr Jacques BARROT, Mr Charles MILLON, Mr Edmond ALPHANDERY, Mr Alain MADELIN, Mr Philippe MESTRE, Mr Joseph-Henri MAUJOÛAN DU GASSET, Mr André ROSSINOT, Mr Jean BRIANE, Mr René HABY, Mr Claude WOLFF, Mr Jean PRORIOL, Mr Roger LESTAS, Mr Pierre MICAUX, Mr François d'HARCOURT, Mr Yves SAUTIER, Mr Jean RIGAUD, Mr Jean SEITLINGER, Mr Georges MESMIN, Deputies, pursuant to the second paragraph of Article 61 of the Constitution, concerning the Act amending the Electoral Code and the Code of Municipalities and governing the election of municipal councillors and the conditions for entry of French nationals residing outside France in electoral registers, as adopted by Parliament, and in particular the new Article L. 262 of the Electoral Code as amended by section 4 of the Act; On 23 October 1982 the Constitutional Council also received a referral by letter of Mr Alain TOURET, living in Moulton, Calvados, for constitutional review of other provisions of the Act;

THE CONSTITUTIONAL COUNCIL,

Having regard to the Constitution;

Having regard to the Ordinance of 7 November 1958 laying down the Institutional Act on the Constitutional Council, and in particular the sections contained in Chapter II of Title II thereof;

Having heard the rapporteur;

On the following grounds:

ON THE ADMISSIBILITY OF THE APPLICATION MADE BY MR TOURET:

1. By Article 61 of the Constitution “Acts of Parliament may be referred to the Constitutional Council, before their promulgation, by the President of the Republic, the Prime Minister, the President of the National Assembly, the President of the Senate, or sixty Deputies or sixty Senators”; the effect of this designation of the authorities empowered to refer to the Council the text of an Act of Parliament for review prior to promulgation is that no other person may make such a referral; it follows that the application made by Mr Alain TOURET is inadmissible;

ON THE CONSTITUTIONALITY OF THE ACT:

Regarding Article L.262 of the Electoral Code as amended by section 4 of the Act:

2. In communes with 3500 inhabitants or more, municipal councillors are elected by the two-round list system; by section L.262 of the Electoral Code as amended by section 4 of the Act referred: “at the first ballot, a list which receives an absolute majority of the votes cast is allocated a number of seats equal to one half of the seats to be filled, rounded up if necessary to the nearest full number where there are more than four seats to be filled and down to the nearest full number where there are less than four seats to be filled ... If none of the lists receives an absolute majority of the votes cast at the first ballot, a second ballot is held. The list which receives the highest number of votes is allocated a number of seats equal to one half of the seats to be filled, rounded up if necessary to the nearest full number where there are more than four seats to be filled and down to the nearest full number where there are less than four seats to be filled”;

3. The Deputies, authors of the referral, state that the fact that the number of seats given to the leading list is equal to one half of the seats to be filled, rounded down if necessary to the nearest full number where there are less than four seats to be filled and up to the nearest full number where there are more than four seats to be filled is contrary to the principle of equality, as there is no difference of situation justifying the application of different rules;

4. It is for the legislature to determine rules for the allocation of the remaining seat after division by two of the total of seats to be filled where one half is given to the leading list and the other half is allocated proportionally in cases where the total is an odd number; there is no constitutional principle requiring the rule applied to be identical whatever the total number of seats to be filled, the principle of equality merely requires the same rule to be applied wherever the total number of seats to be allocated is the same; the Act referred meets this requirement and is accordingly not contrary to the principle of equality before the law;

Regarding section L.260bis of the Electoral Code as amended by section 4 of the Act:

5. By section 4 of the Act referred, municipal councillors in communes with 3500 inhabitants and more are elected by the list system; voters may change neither the content nor the order of presentation of lists; and by section L.260bis: “lists of candidates may not contain more than 75% of persons of the same sex”;

6. By Article 3 of the Constitution: “National sovereignty shall belong to the people, who shall exercise it through their representatives and by means of referendum. No section of the people nor any individual may arrogate to itself, or to himself, the exercise thereof. Suffrage may be direct or indirect as provided by the Constitution. It shall always be universal, equal and secret. All French citizens of either sex who have reached their majority and are in possession of their civil and political rights may vote as provided by statute” and by Article 6 of the Declaration of

Human and Civic Rights: “All citizens, being equal in its eyes, 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” ;

7. It is clear from a combined reading of these provisions that citizenship confers the right to vote and stand for election on identical terms on all those who are not excluded on grounds of age, incapacity or nationality, or on any ground related to the preservation of the liberty of the voter or the independence of the person elected; these constitutional principles preclude any division of persons entitled to vote or stand for election into separate categories; this applies to all forms of political suffrage, in particular to the election of municipal councillors;

8. It follows that the rule whereby, for the establishment of lists presented to voters, a distinction is made between candidates on grounds of sex, is contrary to the constitutional principles set forth above; section L.260bis of the Electoral Code as amended by section 4 of the Act referred must be declared unconstitutional;

9. The provisions of sections L.265 and L.268 of the Electoral Code, which apply the rule laid down by section L. 260bis, must accordingly be declared unconstitutional;

Regarding the other provisions of the Act referred:

10. There are no grounds on which the Constitutional Council should of its own motion consider other questions as to the constitutionality of the Act referred;

Has decided as follows:

Article 1

The application made by Mr Alain TOURET is inadmissible.

Article 2

The provisions of section 4 of the Act amending the Electoral Code and the Code of Municipalities and governing the election of municipal councillors and the conditions for entry of French nationals residing outside France in electoral registers, inserting a new section L 260bis in the Electoral Code, are unconstitutional.

The insertion of the word “sex” in section L.265 of the Electoral Code and of the words “and L.260bis” in sections L.265 and L.268 are also declared unconstitutional.

Article 3

The other provisions of the Act referred are declared constitutional.

Article 4

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

Deliberated by the Constitutional Council at its sitting of 18 November 1982.