

DECISION 91-290 DC OF 9 MAY 1991
Act on the statute of the territorial unit of Corsica

The Constitutional Council received a referral on 12 April 1991 from Mr Pierre MAZEAUD, Mr Jacques CHIRAC, Mr Bernard PONS, Mr Robert PANDRAUD, Mr Franck BOROTRA, Mr Henri CUQ, Mr Alain JONEMANN, Mr Jean-Louis GOASDUFF, Mr Lucien GUICHON, Mr Michel TERROT, Mr Roland VUILLAUME, Mr Bernard DEBRE, Mr Emmanuel AUBERT, Mr René COUVEINHES, Mr Etienne PINTE, Mr Georges GORSE, Mr Philippe SEGUIN, Mr Edouard BALLADUR, Mr Claude BARATE, Mr Nicolas SARKOZY, Mr Michel GIRAUD, Mr Jean FALALA, Ms Françoise de PANAFIEU, Mr Robert POUJADE, Mr Dominique PERBEN, Mr Charles PACCOU, Mr Gabriel KASPEREIT, Ms Martine DAUGREILH, Mr Eric RAOULT, Mr Richard CAZENAVE, Mr Jean-Louis MASSON, Ms Lucette MICHAUX-CHEVRY, Mr Michel PERICARD, Mr Antoine RUFENACHT, Mr Jean-Louis DEBRE, Mr Gérard LEONARD, Mr Jacques TOUBON, Mr Jean-Michel COUVE, Mr Patrick OLLIER, Mr Jean VALLEIX, Mr Claude DHINNIN, Mr François FILLON, Mr Patrick DEVEDJIAN, Mr Alain COUSIN, Mr Jean KIFFER, Mr Christian ESTROSI, Mr Jean-Pierre DELALANDE, Mr Pierre-Rémy HOUSSIN, Mr Roland NUNGESSER, Mr Jean-Yves CHAMARD, Mr Jean TIBERI, Mr Georges TRANCHANT, Mr Jean-Paul de ROCCA-SERRA, Mr Jacques MASDEU-ARUS, Mr Jean-Claude MIGNON, Mr Olivier DASSAULT, Mr Guy DRUT, Mr Olivier GUICHARD, Mr Pierre PASQUINI, Mr Arthur DEHAINE, Mr Robert-André VIVIEN, Mr Robert GALLEY, Mr Arnaud LEPERCQ, Mr François GRUSSENMEYER, Mr Henri de GASTINES, Mr René GALY-DEJEAN, Mr Serge CHARLES, Mr Didier JULIA, Mr Charles MILLON, Ms Louise MOREAU, Mr Raymond MARCELLIN, Mr Jean-Marie CARO, Mr Jean BROCARD, Mr Francisque PERRUT, Mr Henri BAYARD, Mr Jean-Luc PREEL, Mr Marc REYMANN, Mr François LEOTARD, Mr Jean-François MATTEI, Mr Jean BEGAULT, Mr Georges MESMIN, Mr Maurice LIGOT, Mr Jean-Guy BRANGER, Mr Jean RIGAUD, Mr Philippe de VILLIERS, Mr Claude GATIGNOL, Mr René GARREC, Mr François DELATTRE, Mr Arthur PAECHT, Mr Georges COLOMBIER, Mr Charles FEVRE, Mr André ROSSINOT, Mr Claude GAILLARD, Mr Jean-Pierre PHILIBERT, Mr Jean-François DENIAU, Ms Yann PIAT, Mr Gilles de ROBIEN, Mr Willy DIMEGLIO, Mr Roland BLUM, Mr Hubert FALCO, Mr Gérard LONGUET, Mr Ladislav PONIATOWSKI, Mr Philippe VASSEUR, Mr Jean DESANLIS, Mr Charles EHRMANN, Mr Jean-Yves HABY, Mr Pierre-André WILTZER, Mr Bernard BOSSON, Mr Jean-Pierre FOUCHER, Mr Francis GENG, Mr Pierre MEHAIGNERIE, Mr Georges CHAVANES, Mr Michel JACQUEMIN, Mr Edouard LANDRAIN, Mr Jean-Paul VIRAPOULLE, Ms Monique PAPON, Mr Jacques BARROT, Deputies, and a referral on 15 April 1991 from Mr Alain POHER, President of the Senate, and Mr François GIACOBBI, Mr Charles ORNANO, Mr Charles PASQUA, Mr Marcel LUCOTTE, Mr Daniel HOEFFEL, Mr Ernest CARTIGNY, Mr Etienne DAILLY, Mr Michel ALLONCLE, Mr Michel AMELIN, Mr Hubert d'ANDIGNE, Mr Honoré BAILET, Mr Henri BELCOUR, Mr Jacques BERARD, Mr Amédée BOUQUEREL, Mr Yvon BOURGES, Mr Jean-Eric BOUSCH, Mr Jacques BRACONNIER, Ms Paulette BRISEPIERRE, Mr Camille CABANA, Mr Michel CALDAGUES, Mr Robert CALMEJANE, Mr Jean-Pierre CAMOIN, Mr Gérard CESAR, Mr Jean CHAMANT, Mr Michel CHAUTY, Mr Jean CHERIOUX, Mr Henri COLLETTE, Mr Maurice COUVE de MURVILLE, Mr Charles de CUTTOLI, Mr Désiré DEBAVELAERE, Mr Luc DEJOIE, Mr Jacques DELONG, Mr Charles DESCOURS, Mr Michel DOUBLET, Mr Alain DUFAUT, Mr Pierre DUMAS, Mr Marcel FORTIER, Mr Philippe FRANCOIS, Mr Philippe de

GAULLE, Mr Alain GERARD, Mr François GERBAUD, Mr Charles GINESY, Ms Marie-Fanny GOURNAY, Mr Adrien GOUTEYRON, Mr Georges GRUILLOT, Mr Yves GUENA, Mr Hubert HAENEL, Mr Emmanuel HAMEL, Ms Nicole de HAUTECLOCQUE, Mr Bernard HUGO, Mr Roger HUSSON, Mr André JARROT, Mr André JOURDAIN, Mr Paul KAUSS, Mr Christian de LA MALENE, Mr Lucien LANIER, Mr Gérard LARCHER, Mr René-Georges LAURIN, Mr Marc LAURIOL, Mr Jean-François Le GRAND, Mr Maurice LOMBARD, Mr Paul MASSON, Mr Michel MAURICE-BOKANOWSKI, Mr Jacques de MENOU, Ms Hélène MISSOFFE, Mr Geoffroy de MONTALEMBERT, Mr Paul MOREAU, Mr Arthur MOULIN, Mr Lucien NEUWIRTH, Mr Paul d'ORNANO, Mr Jacques OUDIN, Mr Soséfo Makapé PAPILIO, Mr Alain PLUCHET, Mr Christian PONCELET, Mr Claude PROUVOYEUR, Mr Jean-Jacques ROBERT, Ms Nelly RODI, Mr Josselin de ROHAN, Mr Michel RUFIN, Mr Maurice SCHUMANN, Mr Jean SIMONIN, Mr Jacques SOURDILLE, Mr Martial TAUGOURDEAU, Mr Jacques VALADE, Mr Serge VINCON, Mr André-Georges VOISIN, Mr Philippe de BOURGOING, Mr Christian BONNET, Mr André BETTENCOURT, Mr Michel MIROUDOT, Mr Henri de RAINCOURT, Mr Serge MATHIEU, Mr Jacques LARCHE, Mr Michel PONIATOWSKI, Mr Jean-Claude GAUDIN, Mr Guy CABANEL, Mr Pierre-Christian TAITTINGER, Mr Ambroise DUPONT, Mr Louis BOYER, Mr Bernard SEILLIER, Mr Jean PUECH, Mr Michel d'AILLIERES, Mr Richard POUILLE, Mr Roger CHINAUD, Mr Jean-Pierre TIZON, Mr Jean-Paul CHAMBRIARD, Mr Jean DUMONT, Mr Roland du LUART, Mr Henri REVOL, Mr Jean-Paul BATAILLE, Mr Charles-Henri de COSSE BRISSAC, Mr Hubert MARTIN, Mr Pierre CROZE, Mr François TRUCY, Mr Jean DELANEAU, Mr Jean BOYER, Mr Maurice ARRECKX, Mr Michel CRUCIS, Mr Jean CLOUET, Mr René TRAVERT, Mr Albert VOILQUIN, Mr André POURNY, Mr Jean-Paul EMIN, Mr Yves GOUSSEBAIRE-DUPIN, Mr Pierre LOUVOT, Mr Roger BOILEAU, Mr Paul CARON, Mr Auguste CHUPIN, Mr Marcel DAUNAY, Mr André DAUGNAC, Mr André EGU, Mr Jean FAURE, Mr Bernard GUYOMARD, Mr Rémi HERMENT, Mr Jean HUCHON, Mr Jean LECANUET, Mr Edouard LE JEUNE, Mr François MATHIEU, Mr Jacques MOUTET, Mr Roger POUDONSON, Mr Guy ROBERT, Mr Paul SERAMY, Mr Michel SOUPLET, Mr Albert VECTEN, Mr Xavier de VILLEPIN, Mr Pierre LAFFITTE, Mr Max LEJEUNE, Mr Jacques BIMBENET, Mr Georges BERCHET, Mr Paul GIROD, Mr Raymond SOUCARET, Mr Jean ROGER, Mr Bernard LEGRAND, Mr François ABADIE, Mr François LESEIN, Mr Henri COLLARD, Mr Yvon COLLIN, Mr André BOYER, Mr Charles-Edmond LENGLET, Mr Louis BRIVES, Mr Jean FRANCOIS-PONCET, Mr Hubert DURAND-CHASTEL, Mr François DELGA, Mr Jacques HABERT, Mr Philippe ADNOT, Mr Jean GRANDON, Senators, pursuant to the second paragraph of Article 61 of the Constitution, for constitutional review of the Act on the statute of the territorial unit of Corsica;

THE CONSTITUTIONAL COUNCIL,

Having regard to the Constitution of 4 October 1958;

Having regard to the Constitution of 27 October 1946;

Having regard to Ordinance 58-1067 of 7 November 1958 laying down the Institutional Act on the Constitutional Council, as amended, and in particular Chapter II of Title II thereof;

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

Having regard to Act 72-619 of 5 July 1972 on the creation and organisation of the regions, as amended;

Having regard to Act 75-536 of 15 May 1975 on reorganisation of Corsica;
Having regard to Act 82-213 of 2 March 1982 concerning the rights and freedoms of the communes, departments and regions, as amended;
Having regard to Act 82-1153 of 30 December 1982 on general policy on inland transport;
Having regard to Act 83-8 of 7 January 1983 concerning distribution of powers between the communes, departments, regions and the State, as amended in particular by Act 83-663 of 22 July 1983;
Having regard to Act 87-10 of 3 January 1987 concerning the regional organisation of tourism;
Having regard to Act 90-449 of 31 May 1990 implementing the right to housing;
Having regard to the supplementary pleading presented by the Deputies making the first referral, registered at the Secretariat-General of the Constitutional Council on 15 April 1991;
Having heard the rapporteur;

On the following grounds:

1. The Act on the statute of the territorial unit of Corsica is referred to the Constitutional Council; the authors of the first referral contest the procedure followed for its enactment; the Deputies and Senators making the first and third referrals criticise the constitutionality of several sections of the Act on other grounds;

ON THE LEGISLATIVE PROCEDURE:

2. The authors of the first referral submit that the Act was adopted contrary to the first paragraph of Article 44 of the Constitution, relating to the right to amend; they argue that the exercise of this right allowed the Deputies, when the National Assembly was called on to vote definitively on the Bill, to enter amendments that the Senate had approved at first reading; the argument that similar amendments were inadmissible proceeds from a false application of Article 45 of the Constitution;

3. The first paragraph of Article 45 provides: "Every government or Member's bill shall be considered successively in the two Houses of Parliament with a view to the adoption of an identical text"; the second and third paragraphs of that Article determine the legislative procedure that is applicable, depending whether a Joint Committee is or is not set up and a text drafted by it is then up for debate and enactment; in the latter hypothesis, amendments are admissible only with the Government's agreement; by the fourth paragraph of Article 45, the Government may, after a new reading by each House of Parliament, ask the National Assembly to enact definitively either the text drafted by the Joint Committee or the last text voted on by it, incorporating as the case may be one or more of the amendments adopted by the Senate;

4. The right to amend, which is the corollary of the legislative initiative, can be exercised at each stage of the procedure, but it is subject to certain limitations when the text drafted by the Joint Committee is up for debate or when the Government invites the National Assembly, on the base of the fourth paragraph of Article 45 of the Constitution, to rule definitively; if the National Assembly is called on to enact the last text passed by it, only the amendments voted by the Senate at its last reading of the text can be adopted;

5. Following the failure of the Joint Committee procedure, the Senate, when called on to proceed to a new reading of the Bill on the statute of the territorial unit of Corsica, put the prior question; it thus waived its right to amend at this stage of the procedure; the Government then asked the National Assembly to decide definitively; in these circumstances, it was within the four corners

of the fourth paragraph of Article 45 of the Constitution to declare inadmissible, at the final reading of the text by the National Assembly, those amendments which took over those adopted at first reading by the Senate;

6. It follows from the foregoing that the plea of the irregularity of the legislative procedure must be ruled out;

ON THE OTHER GROUNDS RELIED ON IN SUPPORT THE PLEA OF UNCONSTITUTIONALITY:

7. The authors of both the first and the third referrals submit that the Constitutional Council should declare section 1 of the Act unconstitutional in that it recognises the “Corsican people”; the authors of the first referral argue that the unconstitutionality of section 1 renders the entire Act unconstitutional since it is the very basis for the specific character of the statute of the territorial unit of Corsica; the first and third referrals criticise the provisions of the Act which confer on the territorial unit of Corsica an “individual organisation” and section 85 concerning the re-shaping of the electoral roll for each commune of Corsica;

8. The authors of the first referral further argue that the procedures enshrined in sections 10 to 14 of the Act for the representation of the territorial unit of Corsica in the Senate are unconstitutional; the same applies to the provisions which define the powers of this territorial unit because they deprive the two departments of Corsica of the bulk of their powers;

9. The authors of the third referral also dispute section 7, enacting a specific form of incompatibility for the elected representatives of Corsica, and section 53, providing for Corsican language and culture teaching in the curriculum of establishments in the territorial unit of Corsica;

Regarding section 1:

10. Section 1 of the Act provides:

“The French Republic guarantees to the Corsican people, a living historical and cultural community and part of the French people, the rights to the preservation of its cultural identity and the defence of its economic and social specific interests. These rights that flow from its island status shall be exercised in respect for national unity within the framework of the Constitution, the laws of the Republic and this statute”;

11. This section is criticised as giving legal expression to the concept of the “Corsican people” as a component of the French people; the authors of the first referral submit that this recognition is in conformity neither with the preamble to the Constitution of 1958, which postulates the “unity of the French people”, nor with Article 2, which enshrines the indivisibility of the Republic, nor with Article 3, which designates the people as the sole possessor of national sovereignty; moreover, Article 53 of the Constitution refers to the “the population concerned” in a territory and not to the concept of the people; the Senators making the third referral argue that the effect of the provisions of the 1789 Declaration of Rights, of several paragraphs of the Preamble to the 1946 Constitution, of the Constitutional Act of 3 June 1958, of the preamble to the 1958 Constitution and of Articles 2, 3 and 91 of that Constitution, is that the expression “people”, when it applies to French people, must be regarded as referring to a unit incapable of any subdivision by statute;

12. The first paragraph of the preamble to the Constitution of 1958 declares that “The French people solemnly proclaim their attachment to the Rights of Man and the principles of national

sovereignty as defined by the Declaration of 1789, confirmed and complemented by the Preamble to the Constitution of 1946”; the Declaration of Human and Civic Rights to which it refers emanated from the representatives “of the French people”; the Preamble to the 1946 Constitution, reaffirmed by the preamble to the 1958 Constitution, states that “the people of France proclaim anew that each human being, without distinction of race, religion or creed, possesses sacred and inalienable rights”; the 1958 Constitution distinguishes the French people from the overseas people, whose right to free determination is recognised; the referral to “the French people” has appeared in numerous constitutional instruments for two centuries; the legal concept of “the French people” is accordingly of constitutional status;

13. France is, as Article 2 of the 1958 Constitution declares, “an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion”; the referral by the legislature to “the Corsican people, a component of the French people”, is accordingly unconstitutional, as the Constitution recognises only the French people, made up of all French citizens regardless of origin, race or religion;

14. Section 1 of the Act is accordingly unconstitutional; however, it does not follow from this section, as drafted and adopted, that its provisions are inseverable from the general text of the Act referred to the Constitutional Council;

Regarding the plea that the territorial unit of Corsica is given an “individual organisation” contrary to Articles 72 and 74 of the Constitution:

15. The first paragraph of section 2 of the Act provides that Corsica constitutes a territorial unit of the Republic within the meaning of Article 72 of the Constitution, which governs itself as provided by the Act now referred to the Constitutional Council and by such provisions of Acts 72-619 of 5 July 1972 and 82-213 of 2 March 1982 as do not conflict with it; the second paragraph of section 2 provides that “the bodies of the territorial unit of Corsica include the Corsican Assembly and its President, the Executive Council of Corsica and its President, assisted by the Economic, Social and Cultural Council of Corsica”; pursuant to section 7, the councillors in the Corsican Assembly are to be elected in a single constituency following a one – or two-ballot list system; section 28 provides that the Executive Council of Corsica is to direct the action of the territorial unit of Corsica, within the conditions and limits laid down by law; section 36 empowers the President of the Executive Council, by decree debated by that Council, to take any requisite measure to specify the detailed rules for proceedings in the Assembly or to determine the rules of organisation and operation of the services of the territorial unit of Corsica; section 38 empowers the Corsican Assembly to consider motions of no confidence in the Executive Council;

16. The authors of the first referral argue that, by creating a territorial unit of Corsica managed by specific bodies and by establishing a specific electoral procedure, the legislature has violated Articles 72 and 74 of the Constitution; the Senators making the third referral develop a similar argument, emphasising in particular that the institutional organisation provided for by the Act confers on Corsica a status unrelated to that of the metropolitan local authorities but more closely akin to the “particular form of organisation” that Article 74 of the Constitution reserves for the overseas territories;

17. Article 34 of the Constitution provides that statutes shall determine “the rules concerning the electoral systems of local assemblies” and “the fundamental principles of the self-government of territorial units, their powers and their resources”; the first paragraph of Article 72 of the Constitution provides that “The territorial units of the Republic shall be the communes, the departments and the overseas territories. Any other territorial unit shall be established by statute”;

the second paragraph of that Article provides that “These units shall be self-governing through elected councils and in the manner provided by statute”; and the third paragraph provides that “In the departments and the territories, the delegate of the Government shall be responsible for national interests, administrative supervision and the observance of the law”;

18. The confirmation by Articles 74 and 76 of the Constitution of the special situation of the overseas territories has the effect of confining to these territories the possibility for the legislature of derogating from the rules governing the distribution of powers between matters reserved for statute and for regulation, but it does not preclude the legislature, acting on the basis of Articles 34 and 72 of the Constitution cited above, from establishing a new category of territorial community, even including only a single unit, and giving it a specific status;

19. However, in the exercise of its power, the legislature must abide by constitutional rules and principles, and in particular the principle of the self-government of territorial units provided for by the second paragraph of Article 72; it must also ensure respect for the prerogatives of the State, as required by the third paragraph of that Article;

20. The Corsican Assembly, elected by direct universal suffrage, has the power conferred on it to regulate the business of the territorial unit of Corsica; if the Act referred establishes an Executive Council enjoying its own powers, this Council is elected by the Corsican Assembly from among its members and answerable to it; the representative of the State in the territorial unit of Corsica remains responsible for national interests, the observance of the law and administrative supervision; neither the Corsican Assembly nor the Executive Council is given responsibilities for matters falling to be regulated by statute; this specific administrative organisation of the territorial unit of Corsica is not contrary to Article 72 of the Constitution;

Regarding the section 7 of the Act, declaring a specific form of incompatibility for elected representatives of Corsica:

21. One of the purposes of section 7 of the Act is to insert a new section L 369 bis in the Electoral Code; the first paragraph of this section provides that “no-one may be at the same time a councillor in the Corsican Assembly and a general councillor”; the second paragraph determines detailed rules for this incompatibility;

22. The authors of the third referral submit that such an incompatibility, which is without equivalent in any other territorial unit of the Republic, is contrary to the principle of the equality of citizens before the electoral law; representatives holding an office comparable to that of regional councillor and councillor in the Corsican Assembly are subject to a discriminatory arrangement regarding the possibility of exercising the function of general councillor;

23. Section L 46-1 inserted in the Electoral Code by Act 85-1406 of 30 December 1985 limits the possibility for the same person of cumulating more than two of the elective offices or functions that it lists; the functions taken into account for the purposes of this legislation of general scope include the functions of general councillor and regional councillor; section 8 of the Act referred to the Constitutional Council treats the functions of councillor in the Corsican Assembly and regional councillor as being of equal status; in providing for such an assimilation, the legislature could not prohibit councillors in the Corsican Assembly from combining that function with the function of general councillor without violating the principle of equality, given that such combination is permitted throughout the Republic and that there is no justification based on the specific character of the territorial unit of Corsica to warrant such a prohibition;

24. The Constitutional Council must accordingly declare unconstitutional section L 369 bis inserted in the Electoral Code by section 7 of the Act referred;

Regarding representation of the territorial unit of Corsica in the Senate:

25. Section 10 of the Act provides that in both departments of Corsica the councillors in the Corsican Assembly designated as provided by sections 11 to 14 are substituted for the regional councillors as members of the Senate electoral college; it is provided for this purpose that the Corsican Assembly, once its members have been distributed in proportion to the population of each of the two Corsican departments, is to designate those of its members who are to represent it within the electoral college for the more populous department; the councillors not thus designated are to be part of the electoral college for the less populous department;

26. The authors of the first referral formulate two objections against these provisions; on the one hand, it is submitted that their entry into force should have been subordinated to the preliminary enactment of an institutional act amending the provisions concerning the number of Senators and the territorial base of their seats; on the other hand, these provisions discriminate between Senators because those of them elected in Corsica would represent not only a territorial unit but at the same time the department and the newly created territorial unit;

27. The third paragraph of Article 24 of the Constitution provides that “The Senate shall be elected by indirect suffrage. The representation of the territorial units of the Republic shall be ensured in the Senate. French nationals settled outside France shall be represented in the Senate”; by the first paragraph of Article 25 of the Constitution, an institutional Act shall determine the number of the members of each assembly; the creation of a new category of territorial unit is a matter for statute, as the first paragraph of Article 72 of the Constitution prescribes; by Article 34 of the Constitution, the electoral systems of parliamentary assemblies are also a matter for statute;

28. It follows from these provisions that the entry into force of a statute creating a new category of territorial units is not subordinated to the preliminary enactment of an institutional act; although Article 24 of the Constitution requires that the various territorial units to be represented in the Senate, it does not require that each category of territorial units be represented specifically; section L.O. 274 of the Electoral Code, as amended by section 3 of Institutional Act 86-957 of 13 August 1986, stipulating that “the number of Senators elected in the departments shall be 304”, means only that, subject to exceptions provided for by other instruments having institutional status, senators are to be elected from the departments; this does not preclude statutory provisions concerning the rules governing elections to the Senate from organising the participation in the Senate electoral college of delegates of territorial units other than the department;

29. It follows that sections 10 to 14 of the Act, by providing that councillors in the Corsican Assembly are substituted for regional councillors in the senate electoral colleges in both Corsican departments neither encroaches on the powers to be exercised according to the Constitution solely in the form of an institutional act nor introduces unconstitutional difference of treatment between senators elected in the Corsican departments and other Senators;

Regarding the plea of violation of the powers of the two Corsican departments:

30. The authors of the first referral argue that the Act referred has the effect of taking away a substantial number of powers from the two Corsican departments, in particular as regards education, transport and the habitat; they conclude that it violates the requirements of the Constitution that any territorial unit must exercise effective powers;

31. Under Article 34 of the Constitution it is for a statute to determine “the self-government of territorial units, their powers and their resources”; the determination of the transfer of powers

between the State and the territorial units and the distribution of powers between several categories of territorial units are accordingly matters for statute;

32. By the first paragraph of Article 72 of the Constitution, the territorial units of the Republic shall be the communes, the departments and the overseas territories and any other territorial unit shall be established by statute; the second paragraph of that Article provides that these units shall be self-governing through elected councils exercising effective powers;

33. By setting up Corsica as a territorial unit with special status and substituting it for the region of Corsica, without affecting the existence of the two departments created by Act 75-356 of 15 May 1975 on the territory of Corsica, the legislature intended to take into account the specific character of the territory of Corsica; to this end, Title III of the Act, entitled “The Corsican cultural identity”, and Title IV, entitled “The economic development of Corsica”, confer on the territorial unit of Corsica wider powers than those conferred on the regions in general pursuant to section 59 of Act 82-213 of 2 March 1982 and subsequent legislation; the new territorial unit is given powers, over and above those of the region of Corsica, that are transferred to it by the State;

34. The legislature’s definition of the powers of the territorial unit of Corsica does not substantially affect the powers of the two Corsican departments; it follows that the definition of the powers of the territorial unit of Corsica does not violate Article 72 of the Constitution;

Regarding the second paragraph of section 53, concerning the insertion of the Corsican language and culture in the school curriculum:

35. The second paragraph of section 53 of the Act empowers the Corsican Assembly, acting on a proposal of the Executive Council, which must first seek the opinion of the Economic, Social and Cultural Council of Corsica, to enact “a plan for the development of the teaching of the Corsican language and culture, providing in particular for detailed rules governing the manner in which this subject is to be inserted in the school curriculum”; it is specified that “an agreement shall be concluded between the territorial unit of Corsica and the State concerning these detailed rules”;

36. The authors of the third referral submit that inserting the teaching of a regional language, whatever it is, in the school curriculum of establishments located on the territory of the territorial unit concerned and there alone without reasons based on the general interest is contrary to the principle of equality;

37. Section 53 provides for teaching of the Corsican language and culture to be inserted in the school curriculum; this teaching is not contrary to the principle of equality since it is not compulsory; nor is its aim to release pupils educated in the establishments of the territorial unit of Corsica from the rights and obligations applicable to all users of establishments providing public education or associated with it; consequently, the fact that the legislature has permitted the territorial unit of Corsica to promote the teaching of the Corsican language and culture cannot be regarded as violating any principle of constitutional status;

Regarding section 85, concerning the recasting of electoral rolls:

38. Section 85 of the Act comprises four paragraphs; the first paragraph provides that in each Corsican commune the electoral roll is to be fully recast before the first election of the Corsican Assembly and that, to be registered on this list, electors meeting the conditions provided for by sections L 11 to L 14 of the Electoral Code must submit their application between the date of publication of the Act and 31 December 1991; the second paragraph of section 85 makes

applicable to these operations the provisions of the Electoral Code governing the establishment and revision of electoral rolls; it further provides that the list replaces the previous list on 1 March 1992; the third and fourth paragraphs of section 85 provide that the recasting operations are to be checked by a committee composed of equal numbers of members of the Council of State and of judges of the ordinary courts;

39. The authors of the first and third referrals argue that confining the recasting of the electoral rolls to the Corsican communes alone is contrary the principle of the equality of all citizens before the law; the authors of the first referral add that the implementation of section 85 could have the effect of temporarily depriving a citizen of the right to vote;

• *The plea of the breach of the principle of equality:*

40. The constitutional principle of equality precludes the legislature neither from treating different situations differently nor from departing from equality for reasons of the general interest, provided in both cases that the resultant difference of treatment is in relation to the object of the Act establishing it;

41. The electoral legislation does not confer on citizens total freedom of choice of their place of registration on the electoral rolls; subject to the provisions governing the individual situation of French nationals residing outside France and military and naval personnel, entry in the electoral roll of a commune is subject either to actual or legal domicile or residence or to entry for the fifth consecutive time in the one of the local direct tax registers; in accordance with the constitutional principle of equal voting rights, section L 10 of the Electoral Code states that “nobody may be registered on more than one electoral roll”;

42. The situation of the electoral rolls of the Corsican communes, as described at the time of the parliamentary debates, is such as to give the legislature good grounds, when proceeding to the administrative reorganisation of Corsica, for adopting specific measures for the recasting of the electoral rolls without violating the principle of equality before the law;

• *The plea of the deprivation of voting rights:*

43. The recasting of the electoral rolls for the communes of the Corsican departments will have full effect only from 1 March 1992; irrespective of this recasting, the electoral rolls are to be reviewed annually in the other communes of France; in the course of this review, persons who do not satisfy on the conditions of sections L 11 to L 14 of the Electoral Code in communes in the Corsican departments may apply to be registered in another commune; it follows that, while section 85 of the Act may affect the place where voting rights are exercised, it does not affect the actual exercise of those rights;

44. It results from the foregoing that the submissions contesting section 85 of the Act cannot be entertained;

ON SECTION 26 OF THE ACT, CONCERNING THE CONSULTATION OF THE ASSEMBLY OF CORSICA, DEVOLUTION TO IT OF A RIGHT OF INITIATIVE AND THE ESTABLISHMENT OF AN INJUNCTION PROCEDURE:

45. The first paragraph of section 26 provides that “the Corsican Assembly shall be consulted on bills and draft decrees containing provisions specific to Corsica”; the second paragraph provides that “members of Parliament elected in the Corsican departments shall be informed accordingly

and shall be notified of Government drafts and of the opinions of the Corsican Assembly”; the third paragraph determines the time allowed for opinions of the Assembly, a distinction being made between urgent and non-urgent matters;

46. The fourth paragraph of section 26 confers on the Corsican Assembly the power to make proposals for legislative and regulatory instruments in matters concerning the administrative organisation or the economic, social or cultural development of Corsica; the fifth paragraph specifies that proposals are to be sent to the President of the Executive Council, which is to transmit them to the Prime Minister; the sixth paragraph of section 26 provides that “the members of Parliament elected in the Corsican departments shall be informed accordingly and shall be notified of proposals sent to the Prime Minister”; the seventh paragraph of section 26 provides that “when the Prime Minister receives a notification pursuant to the fifth paragraph, he shall acknowledge receipt within fifteen days and set the period in which he will respond, which shall be no later than the beginning of the next following ordinary session of the Assembly”;

47. The purpose of section 26 of the Act is accordingly to provide for the consultation of the Corsican Assembly on certain instruments, to confer on it the power to make proposals to the Prime Minister and to require him to respond to them; within the framework of these procedures it confers prerogatives on members of Parliament elected in the Corsican departments;

Regarding devolution to the Corsican Assembly of advisory powers in legislative matters:

48. The fact that provision is made for consulting the Corsican Assembly on bills containing provisions specific to Corsica cannot be taken to affect the lawfulness of the legislative procedure, which is governed by the Constitution and the institutional acts for its application; the consultation provided for by the first paragraph of section 26 of the Act by no means restricts the right of the Government to take legislative initiatives;

Regarding devolution to the Corsican Assembly of a power to make proposals and the obligation for the Prime Minister to respond:

49. The fourth and fifth paragraphs of section 26 of the Act, which confer on the Corsican Assembly a power to make proposals in matters which are not unrelated to its own powers, are not unconstitutional;

50. However, the Constitution confers their specific powers on the Government and Parliament; it was not possible for the legislature, without acting *ultra vires*, to oblige the Prime Minister to respond within a specified time to a draft amendment to a statute or regulation presented by the deliberative body of a territorial unit;

51. The seventh paragraph of section 26 of the Act, which places an obligation on the Prime Minister to give grounds for the action taken on a draft amendment to a statute or regulation presented by the Corsican Assembly, must accordingly be declared unconstitutional;

Regarding the situation of members of Parliament elected in the Corsican departments:

52. The first paragraph of Article 3 of the Constitution provides that “national sovereignty shall belong to the people, who shall exercise it through their representatives and by means of referendum.”; the first paragraph of Article 24 of the Constitution provides that Parliament shall comprise the National Assembly and the Senate, the second paragraph provides that Deputies are to be elected by direct suffrage, and the third paragraph provides that the Senate is to be elected

by indirect suffrage; the first paragraph of Article 27 of the Constitution provides that “Any binding instruction shall be void”; the first paragraph of Article 34 provides that “Statutes shall be passed by Parliament”;

53. It follows from these provisions that members of Parliament have the status of representatives of the people; in this connection they are required to vote on statutes in the manner prescribed by the Constitution and the institutional acts for its application; accordingly, it is not legitimate for the legislature to entitle certain members of Parliament, merely because they were elected in a given constituency, to exercise specific prerogatives in the legislative procedure;

54. These constitutional requirements are violated by paragraphs 2 and 6 of section 26 of the Act in what they organise, for members of Parliament elected in the Corsican departments, a special information procedure concerning the bills presented for the opinion of the Corsican Assembly and the draft amendments to legislation presented by this Assembly;

55. The Constitutional Council must accordingly declare unconstitutional both paragraph 2 and paragraph 6 of section 26 of the Act referred;

ON SECTION 78 OF THE ACT, CONCERNING THE RESOURCES OF THE TERRITORIAL UNIT OF CORSICA AND THE OFFSETTING OF THE FINANCIAL BURDENS GENERATED BY THE POWERS TRANSFERRED TO IT:

56. Section 78(I) of the Act determines the resources of the territorial unit of Corsica, and section 78(II) specifies the way in which the financial burdens generated for this territorial unit by the powers transferred to it pursuant to the Act are to be offset; it is provided that burdens are to be offset by “the transfer of State taxes” and by the allocation of budgetary resources; section 78(III) provides that “a general appropriation for the decentralisation of the territorial community of Corsica shall be created in a single chapter of the State budget to cover the budgetary resources provided for by paragraphs I and II of this section; it shall include the appropriation provided for in paragraph V of this section and the appropriations provided for by the second paragraph of section 68”; the latter provision refers to the subsidy appropriations paid by the State to the office for the agricultural and rural development of Corsica and to the office for hydraulic equipment in Corsica; section 78(IV) refers to the offsetting of burdens incurred by the territorial unit in the exercise of its powers in respect of vocational training; section 78(V) establishes an “appropriation for territorial continuity” within the general appropriation for the decentralisation of the territorial unit of Corsica; section 78(VI) provides that “a document published each year as an annex to the Finance Bill shall record the trend of the amount of the specific resources allotted to the territorial unit of Corsica. This document shall also specify the amount planned under the appropriation mentioned at paragraph III to offset the burdens transferred to the territorial unit of Corsica”;

57. The fifth paragraph of Article 34 of the Constitution provides that “Finance Acts shall determine the resources and obligations of the State in the manner and with the reservations specified in an institutional Act”; the first paragraph of Article 47 of the Constitution provides that “Parliament shall pass finance bills in the manner provided by an institutional Act”;

58. Section 1(2) of Ordinance 59-2 of 2 January 1959 laying down the Institutional Act concerning finance acts reserves for a finance act the enactment of “statutory provisions governing parliamentary information on and review of the management of public finance”; these requirements are violated by the above provisions of section, 78(III) and (VI) of the Act referred, laying down rules governing information for Parliament on the management of public finance;

59. Section 78(III) and (VI) of the Act encroach on matters exclusively reserved for finance acts and must accordingly be declared unconstitutional;

Has decided as follows:

Article 1

The following provisions of the Act on the statute of the territorial unit of Corsica are unconstitutional:

- section 1;
- in section 7, the text of the new section L 369 bis inserted in the Electoral Code;
- in section 26, paragraphs 2, 6 and 7;
- in section 78, paragraphs III and VI.

Article 2

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

Deliberated by the Constitutional Council at its sittings of 7, 8 and 9 May 1991.