

DECISION 94-345 DC OF 29 JULY 1994
Act concerning the use of the French language

On 1 July 1994 the Constitutional Council received a referral, and on 19 July it received a rejoinder in response to the Government's observations, from Mr Martin MALVY, Mr Henri d'ATTILIO, Mr Jean-Marc AYRAULT, Mr Jean-Pierre BALLIGAND, Mr Gilbert ANNETTE, Mr Claude BARTOLONE, Mr Christian BATAILLE, Mr Jean-Claude BATEUX, Mr Jean-Claude BEAUCHAUD, Mr Michel BERSON, Mr Jean-Claude BOIS, Mr Augustin BONREPAUX, Mr Jean-Michel BOUCHERON, Mr Didier BOULAUD, Mr Jean-Pierre BRAINE, Mr Laurent CATHALA, Mr Camille DARSIERES, Ms Martine DAVID, Mr Bernard DAVOINE, Mr Jean-Pierre DEFONTAINE, Mr Bernard DEROSIER, Mr Michel DESTOT, Mr Julien DRAY, Mr Pierre DUCOUT, Mr Dominique DUPILET, Mr Jean-Paul DURIEUX, Mr Henri EMMANUELLI, Mr Laurent FABIUS, Mr Jacques FLOCH, Mr Michel FROMET, Mr Pierre GARMENDIA, Mr Kamilo GATA, Mr Jean GLAVANY, Mr Jacques GUYARD, Mr Jean-Louis IDIART, Mr Frédéric JALTON, Mr Serge JANQUIN, Mr Charles JOSSELIN, Mr Jean-Pierre KUCHEIDA, Mr André LABARRERE, Mr Jean-Yves Le DEAUT, Mr Louis Le PENSEC, Mr Alain Le VERN, Mr Marius MASSE, Mr Didier MATHUS, Mr Jacques MELLICK, Mr Louis MEXANDEAU, Mr Didier MIGAUD, Ms Véronique NEIERTZ, Mr Paul QUILES, Mr Alain RODET, Ms Ségolène ROYAL, Mr Henri SICRE, Mr Roger-Gérard SCHWARTZENBERG, Mr Daniel VAILLANT, Mr Bernard CHARLES, Mr Régis FAUCHOIT, Mr Jean-Pierre MICHEL, Mr Ernest MOUTOUSSAMY and Mr Emile ZUCCARELLI, Deputies, pursuant to the second paragraph of Article 61 of the Constitution, concerning the constitutionality of the Act concerning the use of the French language;

THE CONSTITUTIONAL COUNCIL,

Having regard to the Constitution;

Having regard to the Declaration of Human and Civic Rights of 26 August 1789;

Having regard to the Preamble to the Constitution of 27 October 1946;

Having regard to the Constitution of 4 October 1958;

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

Having regard to the Criminal Code;

Having regard to the Labour Code;

Having regard to the Consumers Code;

Having regard to the Freedom of Communication Act (No 86-1067 of 30 September 1986) as amended;

Having heard the rapporteur;

On the following grounds:

1. The Act concerning the use of the French language prescribes, subject to certain exceptions, that the use of the French language is compulsory in places open to the public, in business and employment relations, in teaching and in audio-visual communication; its aim is not, however, to prohibit the use of translations where the use of the French language is ensured; it contains provisions intended to guarantee the presence of the French language in events, conferences and congresses organised in France and in publications, reviews and

communications distributed in the national territory; its provisions are accompanied by various penalties;

2. The Deputies making the referral argue that sections 2, 3, 4, 6, 7, 12, 13, 14 and 17 of the Act are unconstitutional; they submit that the Act affects the principle of freedom to communicate ideas and opinions, freedom of enterprise, freedom of trade and industry, and freedom of education; they state moreover that the Act violates the principle of equality and the principle of proportionality of penalties; they argue that the legislature has violated its powers under Article 34 of the Constitution by leaving for regulation the determination of rules concerning the guarantees needed to secure the above-mentioned freedoms; and they argue that Article 40 of the Constitution is violated;

ON THE OBJECTION THAT THE ACT IS UNCONSTITUTIONAL SINCE IT PROVIDES FOR THE COMPULSORY USE OF CERTAIN TERMS OR EXPRESSIONS DEFINED BY REGULATION:

3. The authors of the referral argue that sections 2, 3, 12 and 14 of the Act impose not only the use of the French language but also the use of official terms or expressions approved by ministerial decrees adopted on proposals from terminology committees attached to State administrations; they challenge the provisions prohibiting “the use of any foreign term or expression... when there is a French expression or a term bearing the same meaning approved in manner provided by regulations concerning the enrichment of the French language”; they argue that these provisions, as applied to private individuals and radio or television broadcasting bodies and services, affect the freedom of communication guaranteed by Article 11 of the Declaration of Human and Civic Rights; the prohibitions affecting business relations also affect freedom of enterprise and the freedom, which they see as a constitutional freedom, of trade and industry; they further argue that the legislature has violated its powers under Article 34 of the Constitution by leaving for regulation the definition of terms that private individuals are allowed or forbidden to use, even where they are not providing a public service; the same applies to the obligation imposed on radio or television broadcasting bodies and services to use this official terminology, subject to review by the *Conseil Supérieur de l’Audiovisuel*; they plead breaches of the principle of equality between “French-speaking” and other companies and, in their rejoinder, between sectors of activity depending whether or not they are affected by terminology decrees, and moreover between the press and publishing on the one hand and audio-visual communication on the other;

4. Article 11 of the Declaration of Human and Civic Rights declares: “The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law”;

5. Parliament, being empowered by Article 34 of the Constitution to lay down “rules concerning the civic rights and the fundamental guarantees granted to citizens for the exercise of their public liberties”, is entitled to enact rules concerning the exercise of freedom to express ideas and opinions and of freedom to speak, write and print, but since this is a fundamental freedom, all the more precious for being one of the essential safeguards of other rights and freedoms, Parliament should do so only in order to make the exercise of these liberties more effective or to reconcile it with other rules or principles of constitutional status;

6. These rules include the provision in Article 2 of the Constitution that “The language of the Republic shall be French”; it is thus for the legislature to reconcile these constitutional provisions with the freedom of communication and of expression declared by Article 11 of the Declaration of Human and Civic Rights; freedom of expression entails that all have the right to express their thoughts in the terms they consider the most appropriate; the French

language develops, as does any living language, by incorporating terms and expressions from various sources into the regular vocabulary, whether they come from regional languages, from common parlance or from foreign languages;

7. It was legitimate for the legislature to impose the use of the French language in the circumstances and conditions it specified, which does not exclude the use of translations;

8. With regard to the content of language, it was also legitimate for it to prescribe, as it did, the compulsory use of an official terminology by bodies constituted under public law and by persons governed by private law exercising a public service function;

9. Given the fundamental freedom of opinion and expression secured by Article 11 of the Declaration of Human and Civic Rights, the legislature has no power to impose the obligation to use a specific official terminology on public – or private-sector radio or television broadcasting companies, under threat of penalties;

10. The legislature cannot, without infringing Article 11 of the 1789 Declaration, require private persons, other than in performance of a public service, to use words or expressions specified by regulation as official terminology under threat of penalties;

11. It follows from the foregoing that the second paragraph of section 2 concerning commercial practices and the second sentence of the first paragraph of section 3 concerning public highways, places open to the public and public transport, as they apply to persons other than bodies constituted under public law and persons governed by private law exercising a public service function, are unconstitutional;

12. Moreover, for the same reasons and within the same limits, with regard to provisions concerning work relations, the second sentence of the second paragraph of section 8, the second sentence of the second paragraph and the second sentence of the fourth paragraph of section 9, and in the eighth paragraph of this section the words “... or containing a foreign expression or term when there is a French expression or term bearing the same meaning approved in manner prescribed by the regulations concerning the enrichment of French language...”, and in the second sentence of the second paragraph of section 10 the same words “... or containing a foreign expression or term when there is a French expression or term bearing the same meaning approved in manner prescribed by the regulations concerning the enrichment of French language...” are unconstitutional;

13. The above provisions of sections 2, 3, 8, 9 and 10 make no distinction between bodies constituted under public law and private individuals exercising a public service function on the one hand and other private individuals on the other; consequently, since they are drafted in inseparable terms, they must be declared unconstitutional in their entirety;

14. It also follows from the foregoing that the fifth paragraph of section 12 of the Act must be declared unconstitutional;

15. However, the objection to section 14 concerning trademarks relating to goods and services must be dismissed since it applies only to bodies constituted under public law and private individuals exercising a public service function in the performance of that function;

ON THE OBJECTIONS TO SECTION 4 OF THE ACT:

16. The Deputies making the referral challenge the possibility allegedly offered by the Act for exceptions from the obligations it imposes in relation to frontier regions and transport, submitting that “transport could not be dealt with without discrimination in a general manner” that failed to take account of the specific character of international transport; contrary to what they state, the Act merely lays down exemptions for the sole benefit of international transport companies; the argument is not supported by the facts;

ON THE OBJECTIONS TO SECTIONS 6 AND 7 OF THE ACT:

Regarding section 6:

17. The Deputies making the referral submit that by demanding the use of French for the programmes of conferences or congresses organised in French territory, even by private persons of French nationality exercising no public service function, section 6 of the Act affects freedom of communication; in their rejoinder, they further argue a violation of the freedom of education and violation of Article 40 of the Constitution, since the Act as drafted following a parliamentary amendment places an obligation on bodies constituted under public law and private individuals exercising a public service function who organise events specified in the section to provide translation facilities;

18. On the one hand, the Constitutional Council may not be asked to rule whether the procedure followed was in accordance with the provisions restricting the right of amendment under Article 40 of the Constitution unless the matter of the admissibility of the amendment in question was raised in the relevant House of Parliament; it is clear from the legislative history that it was not; this plea must accordingly be dismissed;

19. On the other hand, this section of the Act referred confers on “all participants in an event, conference or congress organised in France by natural or legal persons of French nationality ... the right to express themselves in French”, and also requires a French translation of the programme distributed to participants to be made available and at least a summary in French to be provided of all other material relating to such gatherings; however these requirements, including the obligation to provide translation facilities, do not impose such restrictions to undermine Article 11 of the Declaration of Human and Civic Rights or any other principle or rule of constitutional status;

Regarding section 7:

20. The Deputies making the referral challenge the first paragraph of this section, which requires a summary in French of contributions in a foreign language in certain publications, reviews and papers; they further submit that the second paragraph of this section, which subordinates the grant by a public person of assistance for teaching or research to a commitment by the recipients to publish or distribute their work in French or to translate foreign language publications into French, unless an exemption is given by the Minister for Research, is unconstitutional;

they argue that these provisions of section 7 affect the freedom of expression and communication of those concerned and cause a break in equality by imposing the need for criteria for the grant of subsidies that are not related to the quality of the work; they add in their rejoinder that they affect the freedom of education and violate Article 40 of the Constitution;

21. Not having been raised before the relevant House of Parliament, the plea of violation of Article 40 of the Constitution must in any event be dismissed;

22. The provisions referred to above of Article 11 of the Declaration of Human and Civic Rights mean that the freedom of expression and communication in teaching and research must be guaranteed; however, this freedom must be reconciled with other rights and principles of constitutional status;

23. The first paragraph of section 7 does not impose on the principles declared by Article 11 of the Declaration of 1789 any restrictions likely to violate their scope;

24. However, even considering the provisions of Article 2 of the Constitution referred to above, the legislature, by enacting the second paragraph of section 7, has imposed on teachers and research workers, be they French or foreign, constraints likely to undermine the exercise

of the freedom of expression and communication in teaching and research; the power conferred on the Minister of Research to allow an exemption, which is subject to no restrictions regarding assessment of the scientific and educational value of the work, does not offer an adequate means of securing that freedom; the second paragraph of section 7 of the Act must accordingly be considered unconstitutional;

ON SECTION 13 OF THE ACT:

25. This section merely guarantees that provisions will be made under the responsibility of the *Conseil Supérieur de l'Audiovisuel* determining or applying measures to ensure “respect for the French language and the dissemination of French culture” in the operation of radio and television broadcasting services; since, in view of the foregoing, this cannot entail the compulsory use of certain terms prescribed by regulation, such provisions are not in themselves likely to undermine the freedom of communication which the *Conseil Supérieur de l'Audiovisuel* is to secure subject to judicial review; nor do they violate the powers conferred on the legislature by Article 34 of the Constitution;

ON SECTION 17 OF THE ACT:

26. This section creates an offence of obstructing officers responsible for detecting and recording infringements of the Act and attaches to it the penalties provided for by the second paragraph of section 433-5 of the Criminal Code, i.e. a fine of 50 000 francs and imprisonment for six months; the authors of the referral argue that these punishments are excessively severe and that section 17 violates the principle of proportionality of penalties;

27. Article 8 of the Declaration of Human and Civic Rights states that “The Law must prescribe only the punishments that are strictly and evidently necessary”; it is not in order for the Constitutional Council to substitute its judgment for that of the legislature in deciding what penalties are appropriate for what offences, provided there is no manifest disproportion between the offences and the penalties;

28. The penalties provided for by this section, which can be ordered in a lower amount or for a shorter duration by the court hearing the case, are not manifestly excessive;

29. It is not necessary for the Constitutional Council of its own motion to consider other questions of the constitutionality of the Act referred;

Has decided as follows:

Article 1

The following are declared unconstitutional:

- the second paragraph of section 2;
- the second sentence of the first paragraph of section 3;
- the second paragraph of section 7;
- the second sentence of the second paragraph of section 8;
- the second sentence of the second paragraph and the second sentence of the fourth paragraph of section 9, and in the eighth paragraph of this section the words “... or containing a foreign expression or term when there is a French expression or term bearing the same meaning approved in manner prescribed by the regulations concerning the enrichment of French language...”;
- the words “... or containing a foreign expression or term when there is a French expression or term bearing the same meaning approved in manner prescribed by the regulations concerning the enrichment of French language” in the second paragraph of section 10;
- the fifth paragraph of section 12.

Article 2

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

Deliberated by the Constitutional Council at its sitting of 29 July 1994.