

DECISION 96-373 DC OF 9 APRIL 1996

Institutional Act laying down rules governing the autonomous status of French Polynesia

On 15 March 1996 the Prime Minister referred to the Constitutional Council, pursuant to Article 46 and the first paragraph of Article 61 of the Constitution, the Institutional Act laying down rules governing the autonomous status of French Polynesia;

THE CONSTITUTIONAL COUNCIL,

Having regard to the Constitution;

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 the Association Contract Act of 1 July 1901, as amended;

Having regard to Act 84-820 of 6 September 1984 laying down rules governing the status of the territory of French Polynesia;

Having regard to Act 85-1405 of 30 December 1985 to limit the cumulation of electoral mandates and elective offices by members of Parliament;

Having regard to Act 87-556 of 16 July 1987 transferring powers in respect of the second cycle of secondary education to the Territory of French Polynesia;

Having regard to Act 88-227 of 11 March 1988 concerning Financial transparency of political life, as amended;

Having regard to Act 90-612 of 12 July 1990 amending Act 84-820 of 6 September 1984 laying down rules governing the status of the territory of French Polynesia;

Having regard to Institutional Act 94-499 of 21 June 1994 concerning the transfer to the State of the powers of the Territory of French Polynesia in penitentiary matters;

Having regard to Institutional Act 94-1132 of 27 December 1994 concerning certain legislative provisions of Books I and II of the Code of Financial Courts;

Having regard to Institutional Act 95-173 of 20 February 1995 amending Act 88-1028 of 9 November 1988 on statutory provisions to prepare New Caledonia for self-determination in 1998 and miscellaneous provisions concerning the overseas territories;

Having regard to Decision 84-177 DC of 30 August 1984;

Having regard to Decision 94-340 DC of 14 June 1994;

Having regard to Decision 94-349 DC of 20 December 1994;

Having regard to Decision 95-364 DC of 8 February 1995;

Having heard the rapporteur;

On the following grounds:

1. The Act referred to the Constitutional Council comprises eight titles containing 123 sections;

ON THE PROCEDURE FOR ENACTING THE ACT:

2. The Institutional Act referred to the Constitutional Council was enacted in full compliance with the procedure laid down by Articles 46 and 74 of the Constitution;

ON THE INSTITUTIONAL NATURE OF THE PROVISIONS OF THE ACT:

3. By the second and third paragraphs of Article 74 of the Constitution, “the status of the overseas territories are determined by Institutional Acts which define, in particular, the powers of their own institutions, and amended in the same manner after consultation with the relevant territorial Assembly. The other methods of their individual organisation are determined and amended by statute after consultation with the relevant territorial assembly”; provisions governing the powers of overseas territories’ institutions, the basic rules for their organisation and operation, and detailed rules for State supervision of them, are accordingly institutional, as are provisions inseverable from them;

ON PREVIOUS DECISIONS OF THE CONSTITUTIONAL COUNCIL CONCERNING THE STATUS OF FRENCH POLYNESIA:

4. By Article 2 of Decision 84-177 DC of 30 August 1984, the Constitutional Council held Act 84-820 of 6 September 1984 laying down rules governing the status of the territory of French Polynesia to be constitutional;

by Decision 94-340 DC of 14 June 1994 it held Institutional Act of 21 June 1994 concerning the transfer to the State of the powers of the territory of French Polynesia in penitentiary matters to be constitutional; by Decision 94-349 DC of 20 December 1994, it held Institutional Act of 27 December 1994 concerning certain legislative provisions of Books I and II of the Code of Financial Courts to be constitutional; by Decision 95-364 DC of 8 February 1995 it held Institutional Act of 20 February 1995 amending Act of 9 November 1988 on statutory provisions to prepare New Caledonia for self-determination in 1998 and miscellaneous provisions concerning the overseas territories to be constitutional;

5. Subject to the determination of the institutional nature of the Act, there is no need to proceed to constitutional review of the provisions of the Institutional Act laying down rules governing the autonomous status of French Polynesia, referred to the Constitutional Council pursuant to Article 46 of the Constitution, as it is identical in tenor or wording with provisions declared constitutional in earlier proceedings;

ON SECTIONS 1 TO 4:

6. Section 1, after specifying the territorial configuration of French Polynesia, declares the general principles applicable to the overseas territory that it constitutes; section 2 provides: “the central Government and the Territory shall be responsible for the development of French Polynesia and cooperate with the communes for the exercise of the powers conferred on them”; section 4 recalls that French Polynesia is represented in Parliament and in the Economic and Social Committee; these provisions, which are institutional, are in conformity with the Constitution, and in particular Article 74;

7. Section 3 provides: “The High Commissioner of the Republic, being the Government’s delegate, shall be responsible for national interests, for compliance with statutes and international commitments applicable to French Polynesia, for law and order and for administrative control”; this section, which is institutional, is identical to the corresponding provisions of the Act of 6 September 1984 referred to above, which was declared constitutional;

ON TITLE 1, ENTITLED “AUTONOMY”:

8. This Title comprises three sections; sections 5 and 6 define the distribution of powers between the State authorities and the authorities of the Territory; section 5 confers jurisdiction of general law on the authorities of French Polynesia, the central Government having

jurisdiction *ratione materiae* only in the matters listed in section 6; these are institutional provisions;

9. By section 6(1) the authorities of the central Government have powers in matters of foreign affairs, with some exceptions and without prejudice to sections 40 and 41;

10. The first paragraph of section 40 empowers the authorities of the Republic to empower the President of the Government of French Polynesia to negotiate and sign agreements in matters within the jurisdiction of the central Government or the territory with one or more States, territories or regional organisations of the Pacific and with regional bodies coming under the authority of United Nations specialised agencies; Articles 52 and 53 of the Constitution are applicable to these agreements;

11. It was legitimate for the legislature, without violating either the exercise of national sovereignty or the prerogatives reserved for the central Government by the third paragraph of Article 72 of the Constitution, to authorise the President of the Government of the territory of French Polynesia to negotiate and sign agreements on matters within the scope of the State's or territory's powers, provided however that the President of the Government must always have received the requisite powers from the authorities of the Republic and that such agreements remain subject to Articles 52 and 53 of the Constitution;

12. The second and fourth paragraphs of section 40, enabling the President of the Government or his representative to be associated with the negotiation of certain agreements concerning matters within the jurisdiction of the State and the territory and to represent the authorities of the Republic within the regional bodies referred to above, are not unconstitutional;

13. The first paragraph of section 41 of the Act authorises the President of the Government of the Territory to negotiate and sign "administrative agreements" conforming to treaty obligations on matters within the scope of the territory's powers with the administrations of States or regional organisations in the Pacific; according to these provisions, the agreements concerned are those which are limited or technical in scope and needed for the implementation of other international agreements; the procedural rules laid down or recalled by section 40 are applicable; subject to these conditions, it is not unconstitutional;

14. The other paragraphs of section 41 authorise the President of the Government to negotiate and sign for French Polynesia decentralised cooperation agreements on matters within the scope of the territory's powers with one or more French or foreign territorial units and associations thereof as well as public establishments, provided always that the entry into force of such agreements must be subordinated to transmission to the State's representative so that he can without delay exercise the functions entrusted to him by Article 72 of the Constitution; these provisions are likewise not unconstitutional;

15. It follows that section 6(1) of the Act, insofar as it refers to sections 40 and 41, is constitutional;

16. Section 6(2), (5), (9) and (12), conferring jurisdiction on the State as regards control of aliens, defence and strategic raw materials, the civil service and audio-visual communication are identical to the corresponding provisions of the Act of 6 September 1984 referred to above, which was declared constitutional by the Constitutional Council;

17. Section 6(3), (4), (6), (10) and (11) determine the powers of the State as regards communication, currency, credit, exchange and Treasury, law and order, local authorities, higher education and scientific research; they are contrary to no principles or rules of constitutional status;

18. Section 6(7) states in particular that the State has jurisdiction in matters of nationality, the legislative organisation of marital status, fundamental principles of commercial obligations and the general principles of employment law; it contains provisions corresponding to those of the Act of 6 September 1984 referred to above, which was declared constitutional;

19. The same paragraph also confers jurisdiction on the State in the matter of civil law, except questions of civil procedure and the regulation of cooperation and mutual interests “subject to section 28(13) and (14)”;

20. Section 28(13) of the Act referred provides that “the authorisation of the territorial Council of Ministers shall be required as a condition of validity of transactions for the transfer between living persons of real property or rights therein, save where the beneficiary is a French national domiciled in French Polynesia or (in the case of a body corporate) registered there”; it further provides that “such authorisation shall also be required for transfers of shares in registered companies where real property or rights therein constitute 75% or more of the assets recorded in their balance sheet”;

21. This provision substantially modifies the arrangements for authorising property transfers introduced by section 26(11) of Act 84-820 of 6 September 1984 laying down rules governing the status of the territory of French Polynesia; it must therefore be examined for conformity to the Constitution;

22. Section 28 (13) organises a discretionary authorisation scheme prior to all property transfer transactions potentially covering multiple categories of rights, but no grounds of the general interest are given on which the Council of Ministers is to base its decisions, subject to judicial review; the authorisations, required as a condition of validity of transactions, impose restrictions on the freedom to dispose of property which is an intrinsic component of property rights; the restrictions are so serious that the resultant violation of property rights alters the nature of the right secured by Article 17 of the Declaration of Human and Civic Rights; section 28(13) is accordingly unconstitutional, as are, consequently, the words “and subject to section 28(13)” in section 6(7);

23. Section 28(14), which enables the Council of Ministers, in the cases provided for in the section 28(13), to exert a right of pre-emption on behalf of the territory on the social housing or rights in question, subject to payment to the beneficiaries of the value of those assets, is inseverable from section 28(13); section 28(14) of the Institutional Act must be declared unconstitutional, as must, consequently, the words “and (14)” in section 6(7);

24. Section 6(7) of the Institutional Act confers powers on the State as regards “fundamental guarantees as to public liberties”;

25. Neither the principle of self-government of territorial units nor the particular form of organisation of overseas territories could have the effect that the essential conditions for giving effect to public liberties and the set of accompanying guarantees should depend on decisions by territorial units with the risk that they might vary in different parts of the Republic;

26. The legislature is therefore acting *ultra vires* when confining the State’s powers to fundamental guarantees as to public liberties; the Constitutional Council is accordingly obliged to declare the word “fundamental” unconstitutional in section 6(7);

27. Section 6(8) gives the State jurisdiction in matters of justice, the organisation of the legal system, the organisation of the legal professions, the costs of criminal courts and the police force, the public prisons service, and criminal procedure except as regards the release of minors on probation; these are identical to matters previously placed within the jurisdiction of the State by the Acts referred to above that were held to be constitutional;

28. However, the procedures for establishing infringements of territorial regulations are also excluded from the State’s jurisdiction as regards criminal procedure;

29. Having due regard to the particular form of organisation of the overseas territories cannot justify the legislature giving the authorities of the territory of French Polynesia the power to determine special rules governing the search for evidence and offenders against territorial rules, as these are matters affecting individual freedom and must be regulated in like fashion

throughout the territory of the Republic; the words “and the procedures for establishing violations of territorial rules” are unconstitutional;

30. The first paragraph of section 7 of the Act confers on the State and the territory of French Polynesia rights of ownership in their public and private capacities; the second paragraph enumerates the types of property which are within the jurisdiction of the territory; the fourth paragraph confers on the territory the power to regulate and exercise rights of exploration and production of biological and other natural resources of the inland waters, the bed and subsoil, and the superjacent waters of the territorial sea and the exclusive economic zone, subject to State powers, notably in relation to strategic materials;

31. The third paragraph of section 7 confers on the territory of French Polynesia a maritime public domain which, subject to prior rights relating to the exercise of the State’s powers valid at the date of publication of the Act and to the rights, if any, of third parties, extends to the seashore, the bed and subsoil of inland waters, including bays and lagoons; this conferment on the territory of French Polynesia of a maritime public domain can have no effect on the exercise of State sovereignty; subject to that reservation, section 7 is not unconstitutional;

ON TITLE II, CONCERNING THE INSTITUTIONS OF THE TERRITORY:

32. Title II consists of sections 8 to 90; all these provisions are institutional;

33. Section 8 provides that “the institutions of the territory are the Government of French Polynesia, the Assembly of French Polynesia and the economic, social and cultural Council”;

Regarding Chapter 1, relating to the Government of French Polynesia and its President:

34. The content of sections 9 and 10, relating to the election of the President of the Government of French Polynesia, is identical to provisions of the Act of 6 September 1984 referred to, already declared constitutional; there is accordingly no need to review them for constitutionality;

35. Section 11 lays down rules governing the formation of the Government of French Polynesia; it requires the President of the Government of the territory to notify the High-Commissioner and the Assembly of the territory of the order appointing the Vice-President and ministers, the appointments taking effect from the notification of that order; section 12 relates to the requirements for membership of the Government of French Polynesia; these provisions are constitutional;

36. Sections 13 to 19 and 21 govern incompatibilities, the periods of time in which the President of the Government of French Polynesia must be elected, the duration of his term of office and his resignation; they include provisions identical to those which the Constitutional Council has already declared constitutional;

37. Section 20 deals with the resignation of ministers and changes in the composition of the Government of French Polynesia; it is constitutional;

38. Rules for the operation of the Government of French Polynesia are laid down by sections 22 to 25; they relate in particular to the sittings of the Council of Ministers and its agenda; they include provisions identical to those which the Constitutional Council has already declared constitutional;

39. The powers of the Government of French Polynesia are specified in sections 26 to 36;

40. Section 26 defines the role conferred on the Council of Ministers of the Government of French Polynesia;

the third paragraph provides that “measures adopted by the Council of Ministers shall be signed by the President of the Government and counter-signed by the ministers responsible

for their implementation”; this provision violates no constitutional requirement; the other paragraphs are identical to provisions declared constitutional by the Constitutional Council;

41. Sections 27 and 28 list the matters in which the Council of Ministers of French Polynesia has jurisdiction; section 27(1) to (9), and section 28(1) to (3), (5) to (7), (9) to (11) and (17) are identical to provisions of the Act of 6 September 1984 and the Institutional Act of 20 February 1995 referred to above, held to be constitutional by the Constitutional Council; in addition to the powers conferred by these paragraphs, jurisdiction is further given by section 27(10) and (11) and section 28(4), (8), (12), (15), (16) and (18) to (24) in matters of competitions for access to public employment in the territory and its public establishments, safety of navigation and inland waterway traffic, the conclusion of agreements with territorial public service managers, approval of programmes for the operation of certain international flights, the codification of territorial rules and regulations, adoption of orders declaring public utility and transferability in the event of compulsory purchases by the territory, the creation of public functions and the appointment of court and State officials, the approval of rates and fees applied by the posts and telecommunications office, the investment of cash assets in securities issued or guaranteed by the State, the authorisation of direct foreign investments, the authorisation to open clubs and casinos, concessions of rights of user and exploration of natural maritime resources, and the determination of administrative constraints for the benefit of publicly-owned assets; these provisions violate no principles or rules of constitutional status;

42. Section 28(25) of the Act referred empowers the Council of Ministers for the territory of French Polynesia to determine what authorities may receive declarations of association;

43. The effect of the Associations Act of 1 July 1901, and in particular sections 5 and 6 thereof, is that declarations of association confer the capacity to proceed in the courts, to receive donations, to receive subscriptions from members, and to acquire, possess and administer buildings for the association’s purposes; the declaration of association is therefore an essential condition for the application of a statute governing the exercise of a public liberty and cannot be regulated by a territorial authority; section 28(25) must accordingly be declared unconstitutional;

44. Section 29, which confers on the Council of Ministers powers of appointment and dismissal in relation to public posts in the territory, is constitutional;

45. Section 30 concerning the law relating to direct and indirect taxation, merely takes over provisions of the Act of 6 September 1984 referred to above, already declared constitutional;

46. Section 31 of the Act referred empowers the Council of Ministers to append to penalising provisions further provisions for administrative or criminal-law fines in amounts not exceeding the maximum allowed for comparable offences by statutes and regulations in criminal-law matters; this must be interpreted as a reference to instruments applicable in metropolitan France; the section is not unconstitutional;

47. Section 32 provides for the obligatory consultation of the Council of Ministers in a series of specified matters; paragraphs 1, 2 and 5 are identical to provisions already declared constitutional; paragraphs 3 and 6 provide for the consultation of the Council of Ministers on the conditions for the provision of air services between French Polynesia and other places in the national territory, and on the provisions taken by the State regulation within the framework of its jurisdiction regarding the specific organisation of French Polynesia; these provisions are constitutional;

48. Section 32(4) requires the State authorities to consult the Council of Ministers on questions concerning control of the entry and residence of foreigners, including visas issued for a stay in excess of three months; it establishes for this purpose an advisory committee composed of equal numbers of representatives of the State and the territory; given that its opinions are not binding on the competent authorities, this provision is not unconstitutional;

49. Sections 33 and 34 relating to the powers of the Council of Ministers in monetary matters and Section 36 on the arrangements for implementation of the council's decisions contain no new provisions departing from sections of the Act of 6 September 1984 declared by the Constitutional Council to be constitutional;
50. Section 35 concerning the powers that may be delegated to the President of the Government or the relevant minister by the Council of Ministers of French Polynesia is constitutional;
51. Sections 37 to 41 determine the powers of the President of the Government of French Polynesia;
52. By the first two paragraphs of section 37, he represents the territory of French Polynesia and is responsible for the implementation of the decisions of the Assembly and the Standing Committee; such provisions have already been declared constitutional;
53. The third paragraph of section 37 provides that the President of the Government of French Polynesia "shall take by order the individual decisions needed for the application of territorial regulations and shall sign all contracts"; this provision violates no constitutional requirement;
54. The second paragraph of section 38, which empowers the President of the Government of the territory to make appointments to all posts in the administration of the territory, except those which fall within the powers of the Council of Ministers or the President of the Assembly of the territory, is not unconstitutional;
55. The other paragraphs of section 38, whereby the President of the Government is the head of the territorial administration and the staff of the State are available for the exercise of the powers of the territory, the preparation and implementation of the deliberations of the Assembly and the Council of Ministers, have already been declared constitutional;
56. Section 39 which confers on the President of the Government the responsibility for ensuring publication in the *Journal officiel* of French Polynesia of measures within the jurisdiction of the authorities of the territory is not unconstitutional;
57. Sections 40 and 41 were declared above to be constitutional;
58. Sections 42 and 43 determine the functions of members of the Government; they are identical to sections of the Act of 6 September 1984 declared constitutional;

Regarding Chapter II concerning the Assembly of French Polynesia and its President:

59. Sections 44 to 54, the first, third and fourth paragraphs of section 55, the provisions of section 56 relating to the election of the Standing Committee, and sections 57 to 59 merely take over rules governing the composition and operation of the Assembly of French Polynesia in force that the Constitutional Council has already declared constitutional; there is no need to re-examine these provisions;
60. The second paragraph of section 55 contains a new provision permitting the monthly allowance received by territorial councillors to be paid to the same persons as the allowances for members of Parliament; section 56 specifies that sessions of the Standing Committee are open to the public unless it decides otherwise, and leaves the determination of its operation to be determined by rules of procedure; these modifications are not unconstitutional;
61. Sections 60 to 79 relate to the functions of the Assembly of French Polynesia and the Standing Committee;
62. Section 60 provides that all matters which are the responsibility of the territory fall within the powers of the Assembly of French Polynesia, except for those which are allotted to the Council of Ministers or to the President of the Government of French Polynesia; pursuant to section 61, the Assembly of French Polynesia votes on the budget and approves the accounts of the territory; sections 63, 64, 67 and 69 specify the conditions in which the Assembly of the territory may provide for prison sentences for failure to comply with the regulations that it

enacts, regulate the right to out-of-court settlements, establish committees of inquiry and issue opinions; section 72 provides that the Assembly may receive either draft decisions from the Government of the territory or proposals for decisions from the territorial councillors; sections 73, 74 and 75 relate to the methods of priority entry on the agenda, the organisation of sittings and the transmission of measures from the Assembly to the President of the Government of French Polynesia and to the High Commissioner; section 76 specifies the documents that the President of the Government is required to send each year to the Assembly; sections 77 and 78 determine the conditions in which the Assembly may debate a motion of censure against the Government and the consequences of the adoption of such motion; section 79 clarifies the circumstances in which the Assembly of the territory may be dissolved by the Council of Ministers, determines the dissolution procedure and specifies its effects; these provisions were declared constitutional by the Constitutional Council in its decisions referred to above of 30 August 1984 and 8 February 1995;

63. By opposite, sections 62, 65, 66, 68, 70 and 71 contain new provisions;

64. The first paragraph of section 62, which empowers the Territorial Assembly of French Polynesia to append to penalising provisions further provisions for administrative or criminal-law fines in amounts not exceeding the maximum allowed for comparable offences by statutes and regulations in criminal-law matters, must be interpreted as a reference to instruments applicable in metropolitan France; it takes over provisions of the Institutional Act of 20 February 1995 that the Council declared in conformity with the Constitution; the second paragraph, which permits the meeting to envisage administrative penalties, in particular in tax, customs and economic matters, and the third paragraph, which prescribes the payment of the product of the penalties into the budget of the territory, are constitutional;

65. Section 65 of the Act referred empowers the Territorial Assembly of French Polynesia to determine, "in conformity with statutes applicable in the territory to gaming and lotteries", other rules applicable to gaming and lotteries, including the circumstances in which they might be offered to the public; the need for the Assembly's decisions to be in conformity with "statutes applicable in the territory" must be considered in the light of section 6, conferring on the State the power to enact provisions of criminal law and accordingly precluding the Assembly from acting in that sphere;

66. Section 66, concerning the conditions in which the territory may form mixed investment companies, is constitutional;

67. The procedure for consulting the Assembly of French Polynesia on bills authorising ratification or approval of international agreements dealing with matters falling within the jurisdiction *ratione loci*, provided for by the first paragraph of section 68 have already been declared constitutional, but the second paragraph of the same section establishes a new procedure; it provides that "proposals for Community instruments containing provisions of a legislative nature shall be laid before the Assembly of French Polynesia if they contain provisions falling within the scope of Decision 91/482/EEC of the Council of the European Communities of 25 July 1991 relating to the association of the overseas countries and territories with the European Economic Community and affect matters within the jurisdiction *ratione loci*"; this provision, which provides merely for information to be supplied to the Assembly of French Polynesia on proposals for Community instruments affecting the territory, distinct from the procedure for consulting Parliament provided for by Article 88-4 of the Constitution, is not unconstitutional;

68. The first sentence of section 70, which empowers the Assembly of French Polynesia to express wishes either to extend metropolitan laws and regulations or to repeal, amend or supplement the statutory or regulatory provisions applicable to the territory, has already been declared constitutional, but the second sentence of this section, which extends this possibility

to proposals for Community instruments laid before it, is a new provision, which is constitutional;

69. The first sentence of section 71, whereby between sessions the Standing Committee shall settle matters referred to it by the Assembly or addressed to it direct by the Government of French Polynesia “if the latter has declared them to be urgent”, must be interpreted as requiring grounds to be given for the declaration of urgency, subject in appropriate cases to review by administrative courts; subject to that reservation, the provision is not violating any principle or rule of constitutional status;

70. Section 71 of the Act provides that, between sessions and on matters other than the adoption of the territory’s annual budget, the administrative accounts and motions of censure, the Standing Committee of the Assembly of French Polynesia is to give opinions on matters on which the Assembly is required to be consulted by the State; this cannot apply to the consultation referred to in Article 74 of the Constitution, which is the sole prerogative of the Assembly; subject to that strict interpretation, the section is not unconstitutional;

71. Sections 80 to 83 concern the functions of the President of the Assembly of French Polynesia; the new provisions of these sections, which empower the President to appoint and manage the officials of the Assembly’s departments, to delegate his power of signature and to sign minutes, just like the Chairmen of sittings, are constitutional;

Regarding to Chapter III, concerning the economic, social and cultural Council:

72. Sections 84 to 90 composing Chapter III, which govern the composition and operation of the economic, social and cultural Council and specify its powers, are identical to provisions already referred to the Constitutional Council and declared by it to be constitutional; there is no need to re-examine them;

ON TITLE III, CONCERNING THE DEVELOPMENT OF FRENCH POLYNESIA:

73. Section 91, which is the sole section in Title III, is an institutional provision establishing a Joint Committee for cooperation between the State and the territory, and specifying its composition and procedure; this section is not unconstitutional;

ON TITLE IV, CONCERNING THE GOVERNMENT DELEGATE AND THE ACTION OF THE STATE:

74. Title IV comprises sections 92 to 97, which are institutional provisions;

Regarding Chapter I, relating to the High Commissioner of the Republic:

75. Sections 92 and 93 provide that the High Commissioner is to ensure that the authorities of French Polynesia exercise their powers in proper manner and that the measures they take are lawful, and he is to publish forthwith in the *Journal officiel* of French Polynesia measures within the jurisdiction of the territory which have not been published within fifteen days; the Constitutional Council has already declared these provisions constitutional;

Regarding Chapter II, concerning coordination between the State and the territory:

76. Section 94, which is the sole provision of Chapter II, provides for procedures for coordination between the State and the territory, in particular in the form of agreements; these provisions, which are not new, have already been declared constitutional;

Regarding Chapter III, concerning State support:

77. In addition to the financial and technical support given by the State to the investments of the territory provided for by section 95, declared by the Constitutional Council to be constitutional, section 96 provides for comparable aids to be given by the State or the territory to the communes and their groupings; such provisions are constitutional;

78. The first paragraph of section 97 provides for agreements between the State and the territory relating in particular to the provision of movable and immovable property to the territory and remuneration of personnel to exercise its powers in respect of the second cycle of secondary education; the second paragraph of section 97 provides: “certificates of education at the second cycle of the second degree are national qualifications issued in accordance with the procedures laid down in the agreements provided for by this section”; these provisions are not unconstitutional;

ON TITLE V, CONCERNING BUDGETARY AND ACCOUNTING PROVISIONS:

79. Section 98 confers financial autonomy on the Assembly of French Polynesia and specifies the conditions in which its budget is presented and executed; it declares the President of the Assembly to be the authorising officer for this budget and permits him to delegate his powers to a Quaestor and to requisition the accountant of the territory under certain conditions; it also confers power on a special subcommittee to draw up proposals for the necessary appropriations for the Assembly’s budget and specifies the procedure for scrutinising these proposals; these provisions are constitutional;

80. Sections 99 to 102 and 104, relating to the budget of the territory, have already been declared constitutional by the Constitutional Council; section 103, which specifies the conditions in which the Standing Committee may transfer appropriations from one chapter of the budget to another, is constitutional;

81. Sections 105 to 110 and 112 merely refer to the Institutional Act of 27 December 1994 concerning certain legislative provisions of Books I and II of the Code of Financial Courts declared constitutional by the Constitutional Council in Decision 94-349 DC of 20 December 1994;

82. Section 111, which provides for prior audit of the commitment of expenditure of the Assembly of French Polynesia, the territory and its public administrative establishments, is not unconstitutional;

ON TITLE VI, CONCERNING THE ADMINISTRATIVE COURT OF PAPEETE:

83. Article 16 of the Declaration of Human and Civic Rights reads: “Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution”; it follows that as a matter of principle there may be no substantial constraints on the right of interested persons to bring actions before the courts;

84. The first paragraph of section 113 of the Act referred reads: “Without prejudice to actions for abuse of power against decisions of the Assembly of French Polynesia or of the Standing Committee therein, as regards their admissibility, which is a matter for the ordinary law, actions for abuse of power against measures taken by virtue of such decisions shall not be competent unless brought within four months following publication of the decision complained of where settlement of the dispute entails an assessment of whether the decision respected the proper distribution of powers between the State, the territory and the communes”;

85. The effect of this provision is to deprive any person wishing to dispute the legality of a measure taken by virtue of a decision of the Territorial Assembly of the right to apply to the courts on grounds of abuse of power more than four months following publication of the decision complained of where the question is whether the decision respected the proper distribution of powers between the State, the territory and the communes; given the importance of respect for the proper distribution of powers between these levels, the legislature's concern to improve certainty in the law as regards decisions of the Territorial Assembly is not adequate justification for thus restricting the right to proceed in the courts; the first paragraph of section 113 of the Act is unconstitutional;

86. The second paragraph of section 113 requires the administrative court at Papeete to request the opinion of the Council of State when actions for abuse of power referred to it oblige it to rule on questions of distribution of powers between the State, the territory and the communes and specifies the procedure; this provision violates no constitutional principle or provision;

87. Section 114 provides that the President of the Government of French Polynesia or the President of the Assembly may apply to the administrative court at Papeete for an opinion and that, when this request covers the distribution of powers between the State, the territory and the communes, it is to be referred to the Council of State; this provision is constitutional;

ON TITLE VII, CONCERNING CULTURAL IDENTITY:

88. Title VII comprises two sections, the first pertaining in particular to the Tahitian and Polynesian languages, the second to the establishment of a college of experts in land matters;

89. The first paragraph of section 115 of the Act referred reads: "While French is the official language, the Tahitian and other Polynesian languages may also be used";

90. By Article 2 of the Constitution, "The language of the Republic is French";

91. The reference made by the first paragraph of section 115 to French as the "official language" must be interpreted as requiring bodies corporate under public law, persons subject to private law exercising a public-service function and users in their relations with public authorities, in French Polynesia, to use French; any other interpretation would be contrary to Article 2 of the Constitution;

92. The second paragraph of section 115 provided for teaching of the Tahitian language during normal school hours in pre-primary, primary and secondary schools; but such teaching cannot be compulsory as regards pupils without violating the principle of equality; nor can the purpose be to release pupils attending establishments in the territory from the rights and obligations applicable to all users of establishments providing public education or associated with it; subject to those reservations, the section is not contrary to any principle or rule of constitutional status;

93. The third paragraph of section 115 provides that the Tahitian language may be replaced by other Polynesian languages in certain pre-primary, primary and secondary schools; subject to the same reservations as stated above, this provision is constitutional;

94. It was legitimate and not unconstitutional for the legislature to provide in the fourth paragraph of section 115 that the study and teaching of the Tahitian language and culture are to be taught in the teacher training school of French Polynesia;

95. Section 116, establishing a college of experts in land matters and specifying its powers and the manner of consulting it, is constitutional;

96. The foregoing provisions of Title VII of the Act relate neither to the powers of the territory's own institutions nor to the essential rules of organisation and of operation of these institutions; consequently they are out of place in an Institutional Act;

ON TITLE VIII, LAYING DOWN MISCELLANEOUS PROVISIONS:

97. Section 117 requires the President and members of the Government of French Polynesia and the territorial President and councillors to deposit a statement of assets in manner provided by Act 88-227 of 11 March 1988 concerning Financial transparency of political life; section 118 determines the conditions in which French Polynesia is substituted for the State as regards its rights and obligations as to telecommunications concessions; section 119 empowers the President of the Government to pay or order certain expenditure of the territory in individual circumstances; section 120 substitutes for the words “the President of the Government of the territory” the words “the authorising officer” in the first sentence of the first paragraph of section LO 274-5 of the Code of Financial Courts; section 121 merely substitutes the expression “territorial councillor” for “member of the territorial Assembly” in section 4 of the Institutional Act of 30 December 1985; section 122 defers to subsequent legislation the determination of the date of entry into force of section 7 with regard to the lagoons of Mururoa and Fangataufa; section 123 repeals the institutional provisions of Act 84-820 of 6 September 1984 on the Statute of the territory of French Polynesia, except section 48; these institutional provisions are constitutional;

Has decided as follows:

Article 1

The words “and subject to section 28 (13) and (14)” and “fundamental” in section 6(7), section 28(13), (14) and (25), and the words “and procedures for establishing infringements of territorial regulations” in section 6 (8), and the first paragraph of section 113 of the Institutional Act laying down rules governing the autonomous status of French Polynesia are declared unconstitutional.

Article 2

Subject to the foregoing reservations as to interpretation, the other institutional and statutory provisions of the Act 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 9 April 1996, attended by Mr Roland DUMAS, President, Mr Etienne DAILLY, Mr Maurice FAURE, Mr George ABADIE, Mr Jean CABANNES, Mr Michel AMELLER, Mr Jacques ROBERT and Ms Noëlle LENOIR.