

DECISION 98-400 DC OF 20 MAY 1998

Institutional Act on the conditions for the application of Article 88-3 of the Constitution relating to the exercise by citizens of the European Union residing in France, not being French nationals, of the right to vote and stand as candidates at municipal elections and transposing Directive 94/80/EC of 19 December 1994

On 23 April 1998 the Constitutional Council received a referral from the Prime Minister, pursuant to Articles 46 et 61(1) of the Constitution, for review of the Institutional Act on the conditions for the application of Article 88-3 of the Constitution relating to the exercise by citizens of the European Union residing in France, not being French nationals, of the right to vote and stand as candidates at municipal elections and transposing Directive 94/80/EC of 19 December 1994;

THE CONSTITUTIONAL COUNCIL,

Having regard to the Constitution, as last amended by Constitutional Act 92-554 of 25 June 1992; 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 Treaty establishing the European Community, and in particular Article 8b(1) thereof;

Having regard to Directive 94/80/EC of 19 December 1994 of the Council of the European Union laying down rules governing the exercise of the right to vote and stand as candidates at municipal elections for citizens of the European Union in a Member State of which they are not nationals;

Having regard to the Electoral Code;

Having regard to the General Code of Territorial Units;

Having heard the rapporteur;

On the following grounds:

1. The Institutional Act referred to the Constitutional Council was enacted in compliance with the procedure provided for by Articles 46 and 88-3 of the Constitution;

ON THE PARAMETERS FOR REVIEW BY THE CONSTITUTIONAL COUNCIL OF THE INSTITUTIONAL ACT PROVIDED FOR BY ARTICLE 88-3 OF THE CONSTITUTION:

2. Article 88-3 of the Constitution provides: "Subject to reciprocity and in accordance with the terms of the Treaty on European Union signed on 7 February 1992, the right to vote and stand as a candidate in municipal elections shall be granted only to citizens of the Union residing in France. Such citizens shall neither exercise the office of mayor or deputy mayor nor participate in the designation of Senate electors or in the election of senators. An institutional Act passed in identical terms by the two houses shall determine the manner of implementation of this Article";

3. The first paragraph of Article 8b, inserted in the Treaty establishing the European Community by Article G of the Treaty on European Union, reads: "Any citizen of the Union resident in a Member State of which he is not a national shall have the right to vote and stand in local elections in his Member State where he resides under the same conditions as nationals of that Member

State. This right shall be exercised subject to detailed arrangements to be adopted before 31 December 1994 by the Council, acting unanimously on a proposal from the Commission after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State”; the Council of the European Union, by the Directive of 19 December 1994, has accordingly laid down the rules governing the exercise of the right to vote and stand as candidate at municipal elections for citizens of the European Union in a Member State of which they are not nationals;

4. By providing that the right to vote and stand as a candidate at municipal elections for European citizens is granted “according to the terms and conditions laid down in the Treaty on European Union”, Article 88-3 of the Constitution expressly subordinates the constitutionality of the institutional act to conformity with community rules; consequently it follows from the intentions of the constituent authority that it is for the Constitutional Council to ensure that the institutional act provided in Article 88-3 of the Constitution is in accordance with both the first paragraph of Article 8b of the Treaty instituting the European Community regarding the right to vote and stand as candidates at municipal elections for citizens of the European Union, and the Directive of 19 December 1994 enacted by the Council for the implementation of this right; among the principles set out in the first paragraph of Article 8b is the principle that citizens of the European Union may exercise their right to vote and stand as candidates at municipal elections in their Member State of residence “under the same conditions as nationals of that State”;

ON THE DEMAND FOR RECIPROCITY MADE IN ARTICLE 88-3 OF THE CONSTITUTION:

5. Following the deposit of the final ratification of the Treaty on European Union of 7 February 1992 which gave rise to Article 8b of the Treaty instituting the European Community on 13 October 1993, the demand for reciprocity set out in Article 88-3 of the Constitution and by the fifteenth paragraph of the 1946 Preamble has been met; should a Member State fail to conform to the obligations arising from the first paragraph of Article 8b, France could refer a case to the Court of Justice on the basis of Article 170 of the Treaty instituting the European Community;

ON CHAPTER I OF THE ACT ON THE EXERCISE OF THE RIGHT TO VOTE IN MUNICIPAL ELECTIONS FOR CITIZENS OF THE EUROPEAN UNION WHO ARE NOT FRENCH NATIONALS:

6. Chapter 1 of the Act referred to the Constitutional Council comprises a single section which inserts in Chapter I of Title IV of Book I of the Electoral Code a new Section 1(a) entitled: “Special rules governing the exercise of the right to vote and stand as candidates in elections for municipal councillors and members of the Paris Council for citizens of the European Union who are not French nationals”; this new section consists of five sections numbered LO 227-1 to LO 227-5;

7. By the first paragraph of section LO 227-1: “Citizens of the European Union residing in France who are not French nationals may participate in the election of municipal councillors under the same conditions as the French electors subject to the provisions of this section”; all provisions in the Electoral Code regarding the exercise of the right to vote in municipal elections are thus applicable to citizens of the European Union resident in France, the only restrictions being those laid down in the Institutional Act;

8. By the second paragraph of the same section, these persons “are considered to be resident in France if they have their main residence there or have been residing there on a continuous basis”; since the Directive does not define what is meant by residence in a Member State, it fell to the domestic legislature to do so, without confining the scope of the first paragraph of Article 8b of the Treaty; by providing that citizens of the European Union shall be considered to be resident in France if they have their “main residence” there or “have been residing there on a continuous basis”, the legislature has discharged this obligation as the definition must be interpreted as covering the case of persons normally resident in France and whose normal centre of interests is in France; moreover, regarding the conditions of enrolment for these persons on the supplementary list of a specific commune, the reference made by section LO 227-3 of the Electoral Code to the conditions laid down in section L.11 of the same code for the enrolment of French electors on the electoral list of the commune, ensures that the principle of non-discrimination in the exercise of the right to vote is respected, as laid down in the first paragraph of Article 8b of the Treaty;

9. For the purposes of the new section 1bis of the Electoral Code, the last paragraph of section LO 227-1 treats the election of municipal councillors in the same way as the election of members of the Council of Paris; the Council of Paris constitutes a “basic local authority” for the purposes of Article 2a) and b) of the abovementioned Directive and treating the two categories in the same way is in conformity with the said Article;

10. Section LO 227-2 lays down the conditions under which citizens of the European Union resident in France may, at their request, be enrolled on a supplementary electoral register in a French commune; it is stated that they must be eligible for election in their own Member State of origin and also fulfil the legal conditions, other than that of French nationality, in order to be enrolled on an electoral register in France; these conditions are in conformity with those laid down by Article 8 of the Directive in order to guarantee that enrolment on the electoral lists respects the requirement for equal treatment for French nationals and nationals of other European Union Member States residing in France;

11. Section LO 227-3 provides that sections L.10 and L.11, L.15 to L.17, L.18 to L.41 and L.43 (establishing and reviewing electoral registers) are applicable to the supplementary lists as last amended at the date of publication of the Institutional Act; the conditions for an appeal according to section L.25 of the same code are strictly defined; the domestic legislature is at liberty to apply to matters within the scope of an Institutional Act measures belonging to ordinary legislation which have been added to the Electoral Code, providing they were adopted prior to the passing of the Act referred; these measures are not contrary to the Directive;

12. Moreover, while it is provided that the supplementary electoral registers shall state the nationality of those enrolled on them, this cannot be regarded as discriminatory, given the general system;

13. In conformity with Article 8(2) of the abovementioned Directive, section LO 227-4 states that, in addition to the documents which may be demanded of French nationals, citizens of a European Union Member State who are not French nationals shall produce, in support of their application for enrolment on a supplementary electoral register, evidence of identity and a written declaration of their nationality and their address in France; in order to comply with the principle of non-discrimination, the section provides that they shall declare that they have not forfeited their right to vote in their own Member State;

14. Section LO 227-5 sets out the penalties which may be incurred by those found guilty of fraudulent declarations when enrolling on the supplementary electoral register; the offences in question, and the nature and severity of penalty applicable, are required to respect the principle of

non-discrimination between French nationals and nationals of another Member State of the European Union residing in France;

15. The measures analysed above are not contrary to any constitutional principle or rule;

ON CHAPTER II OF THE ACT ON THE SPECIFIC RULES OF ELIGIBILITY FOR MEMBERS OF A EUROPEAN UNION MEMBER STATE WHO ARE NOT FRENCH NATIONALS:

16. This Chapter contains five sections numbered from 2 to 6 which insert, sections LO 228-1, LO 230-2, LO 236-1, LO 265-1 and LO 247-1 in the Electoral Code;

17. Section LO 228-1 states that, in order to be able to stand as a candidate for a municipal council or the Council of Paris, nationals of Member States of the European Union shall either be enrolled on the commune's supplementary electoral register or fulfil all the legal conditions required to be electors, apart from holding French nationality, be enrolled as taxpayers for direct taxes in the commune or provide proof that they will be so enrolled on 1 January of the year of the election; thus, in conformity with the measures set out in Article 3b) of the Directive, the Institutional Act subjects the right of eligibility of citizens of the European Union to the same conditions as apply to French nationals;

18. As authorised by Article 5(1) of the Directive, section LO 230-2 states that nationals of another Member State may not stand as municipal councillors or members of the Council of Paris if they have forfeited their right to eligibility in their Member State of origin; section LO 236-1 has been amplified to provide that where the ground for ineligibility arises following the election, the party concerned shall be removed from office by the representative of the State in the department;

19. While no clause in the Act referred expressly states that all the grounds for ineligibility applicable to nationals, such as removal of the right of eligibility by a French court, are also applicable to other citizens of the European Union resident in France, this rule flows directly from Article 88-3 of the Constitution; by referring to the first paragraph of Article 8b of the Treaty, Article 88-3 of the Constitution imposes that the right to stand as candidates in municipal elections shall be exercised "under the same conditions" and with the sole reservations analysed below for French nationals and citizens of other European Union Member States resident in France; thus it was legitimate for the domestic legislator, without exceeding its authority, to refrain from enacting explicit provisions on this point; it will be for the administrative authorities and the Courts to enforce the non-discrimination rule set out in the first paragraph of Article 8b of the Treaty by applying, if need be, the rules of ineligibility to which citizens of the European Union who are not French nationals may be subject;

20. Section LO 265-1 states that each time that a list of candidates includes a national of a Member State of the European Union other than France, the candidate's nationality shall be included on the list together with his/her name, first names and date and place of birth; this information is necessary for the electors since municipal councillors who are not French nationals may not, according to the new section LO 2122-4-1 of the General Code of Territorial Units, carry out executive communal duties nor may they, according to the new section LO 286-1 of the Electoral Code, participate in the election of senators; therefore this is not discriminatory;

21. The requirements of Article LO 265-1 regarding the content of the formal declaration required of candidates who are not French nationals follows directly from Articles 9(1) and (2)(a) and (b) of the Directive;

22. Section LO 247-1 provides that it shall be a condition of validity of the printed ballot papers distributed to voters in communes of 2,500 inhabitants or more that in the case of a national of a European Union Member State other than France the nationality be stated; this cannot be considered as discriminatory for the reasons given above;
23. The provisions analysed above are constitutional;

ON CHAPTER III OF THE ACT ON THE ELECTORAL COLLEGE FOR THE SENATE:

24. This chapter contains sections 7 and 8, which insert two new sections in the Electoral Code, namely sections LO 286-1 and LO 286-2;
25. By section LO 286-1: “Municipal councillors and members of the Council of Paris who are not French nationals may not be members in any capacity of the electoral college for the Senate nor may they participate in the election to this college of delegates, additional delegates or alternates”; section LO 286-2 provides for a system of replacement of these councillors at the electoral college for the Senate in those communes where all the municipal councillors are ex officio delegates; these provisions, which make use of the possibility offered by Article 5(4) of the Directive, apply Article 88-3 of the Constitution;

ON CHAPTER IV OF THE ACT ON THE OFFICES OF MAYOR AND DEPUTY MAYOR:

26. This chapter contains sections 9 and 10, which insert section LO 2122-4-1 in the General Code of Territorial Units and section LO 238-1 in the Electoral Code;
27. The new section LO 2122-4-1 of the General Code of Territorial Units reads: “Municipal councillors who are not French nationals may not be elected to the office of mayor or deputy mayor nor take on these duties even as a temporary measure”; this ban, which is in conformity with Article 88-3 of the Constitution and Article 5(3) of the Directive, precludes a municipal councillor who is a national of another Member State of the European Union from replacing the mayor in any of his capacities, should the mayor be unable to fulfil these, under the conditions set out in Article L. 2122-17 of the General Code of Territorial Units, and also precludes the mayor from delegating any of his duties to the foreign national in accordance with Article L. 2122-18 of the same code; these restrictions on the right of eligibility are considered to be “appropriate, necessary and proportionate to the aim intended” as required by the final paragraph of Article 5(3) of the Directive;
28. By preventing citizens of a Member State of the European Union other than France being, at the same time, members of a municipal council in France and members, in another Member State of the European Union of the governing assembly of a “basic local authority”, and by stating that, should the party concerned not have resigned from one of the incompatible offices within a ten day period he shall be immediately removed from office by the Prefect, the new Article LO 238-1 of the Electoral Code merely makes use of the possibility offered by Article 6(2) of the Directive;

ON CHAPTER V OF THE ACT CONTAINING VARIOUS AND FINAL PROVISIONS:

29. Chapter V of the Act consists of five sections;
30. Sections 11 and 12 add section LO 271-1 to the Electoral Code and section LO 2411-3-1 to the General Code of Territorial Units respectively which provides that citizens of the Union

enrolled on the supplementary commune list may participate in the election of local *arrondissement* councillors and in the election of the decision-making body for a section of the commune under the same conditions as French nationals; the local *arrondissements* of the cities of Paris, Lyon and Marseille and the commune sections are mentioned, in the annex referred to in Article 2(1)(a) of the Directive, as being among the “basic local authorities” to which the Act applies;

31. Section 13 inserts section LO 334-1-1 in the Electoral Code which allows municipal councillors from the local authority communes of Saint-Pierre and Miquelon to be eligible for election according to the institutional provisions of Title IV of Book 1 of the said Code; the institutional legislature is not in violation of any constitutional requirement;

32. Section 14 states that the Overseas Territories and the local authority of Mayotte are covered by all the provisions of the Institutional Act; it is for the institutional legislature to enforce the Act referred in the Overseas Territories and the local authority of Mayotte, the implementing rules being adapted if need be, these territories, according to Article 72 of the Constitution, being an integral part of the French Republic; given that the legislature applies these provisions without providing specific adaptations related to the specific way in which the Overseas Territories are organised, the consultation procedure for the local assemblies concerned, as set out in the third paragraph of Article 74 of the Constitution, was not compulsory; since the Act referred does not affect either the authorities or the institutions of the Overseas Territories, the consultation provided for by the second paragraph of Article 74 of the Constitution was not required either;

33. Finally, section 15 provides that, as a transitional measure and up until 1 March 1999, European Union nationals of other Member States residing in France may request enrolment on the supplementary electoral register of a French commune as provided by sections L. 31 to L.35 of the Electoral Code as last amended at the date of publication of the Institutional Act; this provision is not contrary either to Article 88-3 of the Constitution or to the Directive of 19 December 1994;

34. It follows that the Act referred is not contrary to any constitutional principle or rule nor to any of the Community standards used as a reference and applicable in this matter;

Has decided as follows:

Article 1

The Institutional Act determining the conditions for application of Article 88-3 of the Constitution relating to the exercising of the right to vote and to be eligible to stand in municipal elections for nationals of other European Union Member States residing in France and transposing Directive 94/80/EC of 19 December 1994, is declared constitutional.

Article 2

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

Deliberated by the Constitutional Council at its sitting of 20 May 1998 attended by: Mr Roland DUMAS, President, Mr Michel AMELLER, Mr Jean-Claude COLLIARD, Mr Yves GUÉNA, Mr Alain LANCELOT, Ms Noëlle LENOIR, Mr Pierre MAZEAUD and Ms Simone VEIL.