

**DECISION 99-410 DC OF 15 MARCH 1999**  
**Institutional Act concerning New Caledonia**

On 16 February 1999, 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 concerning New Caledonia;

**THE CONSTITUTIONAL COUNCIL,**

Having regard to the Constitution, and in particular Articles 76 and 77 as amended by Constitutional Act 98-610 of 20 July 1998 concerning New Caledonia;

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 Agreement on New Caledonia signed in Nouméa on 5 May 1998;

Having regard to Act 85-98 of 25 January 1985 concerning the recovery and judicial winding-up of the companies, as amended;

Having regard to the opinion of the Congress of the territory of New Caledonia, given on 12 November 1998;

Having heard the rapporteur;

On the following grounds:

1. On 5 May 1998, in Nouméa, the Government of the French Republic and the representatives of the principal political parties in New Caledonia, signed an “Agreement on New Caledonia” consisting of a “Preamble”, an “Orientation Document” relating, in point 1, to the “Kanak identity”, in point 2 to the “institutions”, in point 3 to “powers”, in point 4 to “economic and social development” and in point 5 to the “development of the political organisation of New Caledonia”; as envisaged by point 6 of this document, concerning the “implementation of the Agreement”, a Constitutional Act was adopted by the Parliament assembled in Congress on 6 July 1998, restoring a title XIII in the Constitution now entitled: “Transitional provisions relating to New Caledonia”, containing two Articles – 76 and 77, worded as follows:

Article 76. “The population of New Caledonia is called upon to vote by 31 December 1998 on the provisions of the Agreement signed at Nouméa on 5 May 1998, which was published in the *Journal officiel de la République française* on 27 May 1998. Persons satisfying the requirements laid down in Article 2 of Act No. 88-1028 of 9 November 1988 shall be eligible to take part in the vote. The measures required to organise the ballot shall be taken by decree adopted after consultation with the Council of State and discussion in the Council of Ministers.”

Article 77. “After approval of the Agreement by the vote provided for in Article 76, the institutional Act passed after consultation with the deliberative Assembly of New Caledonia shall determine, in order to ensure the development of New Caledonia in accordance with the guidelines set out in that Agreement and as required for its implementation:

– the powers of the State which are to be transferred definitively to the institutions of New Caledonia, at what time and in what manner such transfers are to be made, and how the costs incurred thereby are to be apportioned;

– the rules for the organisation and operation of the institutions of New Caledonia, notably the circumstances in which certain kinds of instrument passed by the deliberative Assembly may be referred to the Constitutional Council for review before publication;

- the rules concerning citizenship, the electoral system, employment, and personal status as laid down by customary law;
- the circumstances and the time limits within which the population concerned in New Caledonia is to vote on the attainment of full sovereignty.

Any other measures required to give effect to the Agreement referred to in Article 76 shall be determined by statute.”;

2. On 16 February 1999 Parliament, pursuant to Article 77, adopted the Institutional Act concerning New Caledonia now referred to the Constitutional Council;

### **ON THE PARAMETERS FOR REVIEW AND THE SCOPE OF THE REVIEW BY THE CONSTITUTIONAL COUNCIL OF THE INSTITUTIONAL ACT PROVIDED FOR BY ARTICLE 77 OF THE CONSTITUTION:**

3. Firstly, subject to Articles 7, 16 and 89 of the Constitution, there is nothing to preclude the constituent authority from introducing new provisions in the text of the Constitution which, in the situations to which they refer, derogate from constitutional rules or principles, even if the derogations are purely implicit; that is not the case here; it follows from the first paragraph of Article 77 of the Constitution that the Constitutional Council’s review of the Institutional Act relating to New Caledonia must proceed on the basis not only of the Constitution but also of the guidelines set out in the Nouméa Agreement, which derogates from certain rules and principles of constitutional status; but such derogations can be accepted only to the extent that they are strictly necessary for the implementation of the Agreement;

4. Secondly, given this change in the legal situation, the Constitutional Council must review all the provisions of the Institutional Act, even if certain of them are drafted in the same terms or have the same legal effect as provisions earlier declared constitutional by the Constitutional Council or contained in Act 88-1028 of 9 November 1988 laying down statutory provisions in preparation for the self-determination of New Caledonia in 1998, adopted by the French people at a referendum;

### **ON THE PROCEDURE FOLLOWED:**

5. The consultation provided for by Article 76 of the Constitution took place on 8 November 1998; the people consulted approved the Agreement signed in Nouméa on 5 May 1998; the Bill which became the Act now referred to the Constitutional Council was laid before the Congress of the territory of New Caledonia, which gave its opinion on 12 November 1998; this Bill was discussed in the Council of Ministers and was registered by the presidency of the National Assembly on 25 November 1998; it was deliberated and voted on by the National Assembly in manner provided by Article 46 of the Constitution; its examination by Parliament complied with the other constitutional requirements as to legislative procedure; the Institutional Act referred to the Constitutional Council was adopted in accordance with the Constitution;

### **ON SECTIONS 1 TO 6:**

6. The Act referred comprises six sections preceding Title I;

7. Section 1 delimits the three provinces of New Caledonia and the conditions in which the limits may be modified; it also draws up the list of customary areas; the first paragraph of section 2 designates the institutions of New Caledonia – the Congress, the government, the customary senate, the Economic and Social Committee and the customary councils; by the second paragraph, the High Commissioner of the Republic is to exercise the powers of the

Republic and represent the Government's; the third paragraph provides "New Caledonia shall be represented in Parliament and in the Economic and Social Committee of the Republic in the manner provided by institutional acts"; section 3 provides that the provinces and the communes of New Caledonia are to be territorial units of the Republic and to administer themselves freely by assemblies elected by direct universal suffrage, as provided for by title IV with regard to the provinces; section 4 defines citizenship of New Caledonia; section 5 provides that New Caledonia is to freely determine the "identity symbols marking its personality alongside the national emblem and the signs of the Republic" and "may decide to change its name"; section 6 provides that, in New Caledonia, in land matters rights of ownership are to be exerted in the form of private property, public property and customary land-holding;

8. Firstly, the first paragraph of section 2 does not mention the Provincial Assemblies among the institutions of New Caledonia, although point 2 of the Nouméa Agreement mentions these Assemblies among the institutions, but this does not mean that the Institutional Act violates the obligation imposed by Article 77 of the Constitution to determine the organisation and operation of the institutions of New Caledonia "in compliance with the guidelines laid down by this Agreement and the procedures needed for its implementation", since all its provisions, in particular title IV, relating to the provinces, implicitly but necessarily confer on the Provincial Assemblies the characteristics of an institution of New Caledonia; the first paragraph of Article 2 is accordingly not unconstitutional;

9. Secondly, although Deputies and Senators are elected by universal suffrage, direct for the former and indirect for the latter, each of them in Parliament represents the entire Nation and not just the people of his own constituency; the third paragraph of section 2 of the Institutional Act relating to New Caledonia must therefore be interpreted as a mere reminder that, as already provided by the institutional legislation, legislative and Senate elections are to be held in New Caledonia; subject to this reservation, the third paragraph of Article 2 is not unconstitutional;

10. The other provisions of sections 1 to 6 are constitutional;

#### **ON TITLE 1:**

11. This title, which comprises sections 7 to 19, relates to customary civil status and customary property; in accordance with Article 77 of the Constitution, it gives effect to points 1.1 and 1.4 of the Nouméa Agreement;

12. Sections 10 to 13 determine the methods of acquisition of customary civil statute; section 10 provides: "A legitimate, natural or adopted child whose father or mother has customary civil status shall have customary civil status"; this provision must be interpreted as also conferring customary civil status on a child whose filiation is established only in relation to one parent having that status; if the child's filiation was subsequently established in relation to the other parent, he would retain customary civil status only if that parent also had customary civil status;

13. Subject to this reservation, section 10 cannot be held to be unconstitutional; the same applies for the other provisions of title I;

#### **ON TITLE II:**

14. This title relates to powers; it comprises sections 20 to 61;

15. Section 24 is worded as follows: "For the purposes of supporting and promoting local employment, New Caledonia shall take measures for the benefit of citizens of New Caledonia and persons who provide evidence of residence for a sufficient duration to encourage the

exercise of paid employment, provided they not affect the individual and collective benefits available to other employed persons at the time of their publication. Such measures shall be applied on the same terms to the public service of New Caledonia and to the public service of local authorities. New Caledonia may also take measures to restrict access to the exercise of a liberal profession to persons who cannot provide evidence of residence for a sufficient duration. The duration of these measures and the rules for applying them shall be determined by statutes of the country”;

16. Firstly, the principle of measures encouraging persons durably established in New Caledonia, for access to paid employment, to self-employed occupations or to employment in the public service of New Caledonia or the public service of the local authorities has a constitutional basis in the Nouméa Agreement; its preamble stipulates that “to take account of the limits of the labour market, provisions will be enacted to encourage the access to local employment of persons durably established in New Caledonia”; under point 2 of the Agreement, citizenship of New Caledonia, which is the basis for the restrictions on the electorate that is to designate the “institutions of the country”, also serves as “a reference for the drafting of provisions to preserve local employment”; by point 3.1.1 of the Nouméa Agreement, “New Caledonia shall, in conjunction with the State, establish measures to secure its inhabitants’ right to employment on an individual basis. The rules and regulations governing the entry of persons not established in New Caledonia shall be confirmed. The right of establishment for the purposes of self-employed activity may be restricted for persons not established in New Caledonia. For persons employed in the private sector and the regional civil service, local regulations shall be adopted to give priority to inhabitants’ access to employment”;

17. Secondly, the rules for supporting local employment, as provided for in section 24, do also respect the power to enact an institutional Act conferred by Article 77 of the Constitution; it will be for “statutes of the country” enacted pursuant to section 24, and reviewable by the Constitutional Council, to determine, for each type of occupation and each industry the “sufficient duration of residence” mentioned in the first and second paragraphs of that section on the basis of objective and rational criteria in direct relation with the promotion of local employment, without imposing restrictions beyond those which are strictly necessary for the implementation of the Nouméa Agreement; in any event, that duration may not exceed that which is determined by the combined provisions of sections 4 and 188 of the same Act for the purpose of acquiring New Caledonia citizenship;

18. Subject to this reservation, section 24 is not unconstitutional; the same applies to the other provisions of title II;

### **ON TITLE III:**

19. This title relates to the institutions of New Caledonia; it consists of sections 62 to 156;

20. Chapter II, which consists of sections 99 to 107, relates to the “statutes of the country”, decisions of the Congress having statutory force; section 99 defines the material areas within which they may be taken; sections 100, 101 and 102 determine the conditions for their adoption; section 103 establishes a procedure for re-deliberation of all or part of these statutes; sections 104 and 105 lay down the conditions in which they may be referred to the Constitutional Council for a decision as to their validity; section 106 relates to their promulgation; section 107 fixes their legal status;

21. Section 103 entitles the High Commissioner, the government, the president of Congress, the president of a Provincial Assemblies or eleven Congress members to ask for a fresh deliberation of a “statute of the country” or of some of its provisions within fifteen days following its adoption;

22. Section 104 provides that a “statute of the country” on which there has been fresh deliberation pursuant to section 103 may be submitted to the Constitutional Council by a referral stating of points of fact and law on which it is based, by the High Commissioner, the government, the president of Congress, the president of a Provincial Assembly or eighteen Congress members, within ten days following the fresh deliberation;

23. Article 77 of the Constitution provides: “ ... an institutional Act ... shall determine: ... the rules for the organisation and operation of the institutions of New Caledonia, notably the circumstances in which certain kinds of instrument passed by the deliberative Assembly may be referred to the Constitutional Council for review before publication ...”;

24. Section 104 of the Institutional Act provides that a “statute of the country” must have undergone fresh deliberation if it is to be referred to the Constitutional Council and thereby makes admissibility of a referral subject to the contested provisions of a “statute of the country” having undergone fresh deliberation; the procedure thus established, which gives effect to the above provisions of Article 77 of the Constitution, violates no rules or principles of constitutional status;

25. Section 107 gives a legal definition of “statutes of the country” and the procedure whereby the Council of State may confirm that a provision of a “statute of the country” has been enacted in a matter not mentioned in section 99; the legality of such provision can then be contested before the relevant administrative court;

26. Sections 99 to 107 are constitutional; the same applies to the other provisions of Title III;

#### **ON TITLE IV:**

27. This title is devoted to the provinces; it includes sections 157 to 184; it is not open to criticism for unconstitutionality;

#### **ON TITLE V:**

28. This title, which comprises sections 185 to 199, relates to elections to the Congress and the Provincial Assemblies;

#### ***Regarding Chapter II:***

29. This chapter is devoted to the electorate and electoral rolls for elections to the Congress and the Provincial Assemblies; it includes sections 188 and 189;

30. Section 188 provides as follows:

“I. The Congress and the Provincial Assemblies shall be elected by an electorate composed of the voters satisfying one of the following conditions:

a) persons who are eligible for entry on the electoral rolls of New Caledonia drawn up for the consultation of 8 November 1998;

b) persons who, at the date of the election, appear in the annexed table and have been domiciled in New Caledonia for at least ten years;

c) persons who reach the age of the majority after 31 October 1998 and either can provide evidence of ten years’ residence in New Caledonia in 1998, or have one of their parents eligible to vote at the consultation of 8 November 1998, or have one of their parents who, at the date of the election, appears in the annexed table and has been domiciled in New Caledonia for at least ten years.

II. Periods spent outside New Caledonia for purposes of performing national service, following studies or receiving training or for family, professional or medical reasons shall not,

in the case of persons previously domiciled there, interrupt the period taken into consideration for purposes of the residence condition.”;

31. Section 189 comprises permanent provisions concerning the maintenance “of the special electoral roll for elections to the Congress and the Provincial Assemblies” and “the annexed table of voters not admitted to take part in the consultation”;

32. Section 189(I) provides: “Voters meeting the conditions laid down at section 188 shall be registered on the special electoral roll for the election of the Congress and of the Provincial Assemblies. This list shall be drawn up on the basis of the electoral roll in force and the annexed table of voters not admitted to take part in the consultation”; section 188(II) and (III) provide for the composition and functions of the special administrative subcommittee instructed, in each polling station, to establish the special electoral roll and the annexed table; by section 188 (IV), (V) and (VI), the special electoral roll and annexed table are to be permanent and to be revised and corrected each year in the specified manner; section 188(VII) provides that “the territorial statistical and economic research Institute shall keep a general file of voters registered in the electoral rolls of New Caledonia for the election of the President of the Republic, Deputies to the National Assembly, town councils and the European Parliament and for referendums; this file shall also record the voters registered on the special electoral roll for the election of the Congress and of the Provincial Assemblies.”; it follows from these provisions that the annexed table at all times records the voters who are registered in the electoral rolls of New Caledonia for the election of the President of the Republic, Deputies to the National Assembly, town councils and the European Parliament and for referendums but are not admitted to take part in the election of Provincial Assemblies and Congress; the annexed table is regularly updated to remove persons becoming eligible for the restricted electorate to elect Provincial Assemblies and the Congress and to add the names of persons newly established there who can take part only in the other elections;

33. The combined effect of sections 188 and 189 of the Institutional Act is that persons are to take part in the elections to the Provincial Assemblies and the Congress who, at the date of the election, appear in the annexed table mentioned in section 189(I) and have been domiciled in New Caledonia for at least ten years, irrespective of the date of their settlement in New Caledonia, even if it was after 8 November 1998; this restricted definition of the electorate is the only one that can be compatible with the will of the constituent authority, as revealed by the Parliamentary debates preceding the enactment of Article 77 of the Constitution, and respects the Nouméa Agreement, whereby the electorate to the Provincial Assemblies and the Congress includes voters who are “entered in the annexed table and meet the requirement of ten years’ domicile at the date of the election”;

34. Sections 188 and 189 are not unconstitutional and do not violate the power to enact an institutional act conferred by Article 77 of the Constitution;

#### ***Regarding Chapter IV:***

35. This chapter, which comprises sections 194 to 197, relates to the conditions of ineligibility and to incompatibilities;

36. Section 195 defines the cases of ineligibility for Congress and Provincial Assemblies;

37. Section 195(I)(5°) declares the following to be ineligible: “Persons declared ineligible pursuant to sections 192, 194 and 195 of Act 85-98 of 25 January 1985 concerning the recovery and winding-up of companies”;

38. Sections 192, 194 and 195 of Act of 25 January 1985 provide as follows:

“Section 192 – In the cases provided for in sections 187 to 190, the court may, in place of personal bankruptcy, order a prohibition to direct, manage, administer or control, directly or indirectly, one or more commercial or craft enterprise, farm or other body corporate.

“The prohibition provided for by the first paragraph may also be ordered against any person mentioned in section 185 acting in bad faith who fails to supply the creditors” representative with a full certified list of his creditors and the amount of his debts within eight days following the judgment opening the proceedings.

“Section 194 – A judgment ordering either personal bankruptcy or the prohibition provided for by section 192 shall entail incapacity for elective public office. Incapacity shall also apply to any natural person declared bankrupt. It shall have effect as of right from the date on which it is notified to the person concerned by the competent authority.

“Section 195 – Where the court orders personal bankruptcy or the prohibition provided for by section 192, it shall specify the duration of the measure, which shall be no less than five years. It may order the provisional implementation of its decision. Forfeitures, prohibitions and incapacity to exercise elective public office shall cease to have effect as of right upon expiry of the specified duration, and no judgment to that effect shall be necessary.

“The duration of incapacity for elective public office pursuant to a the bankruptcy judgment shall be five years.

“The judgment closing the procedure for release from liability shall restore all the rights of the head of company or the leaders of the legal entity. It shall exempt or relieve them of all forfeitures, prohibitions and incapacity for elective public office.

“In all cases, the person concerned may apply to the court to release him, in whole or in part, from the forfeitures and prohibitions and incapacity for elective public office if he has made a sufficient contribution to the payment of the liability.

“Where all forfeitures, and prohibitions and incapacity are discharged, the decision of the court shall entail full rehabilitation.”;

39. The constitutionality of a statute already promulgated may be reviewed on the occasion of the review of legislative provisions amending or amplifying it or modifying its scope; section 195(I)(5) of the Act referred to the Constitutional Council extends to elections for the Congress and Provincial Assemblies of New Caledonia the scope of application of sections 192, 194 and 195 of the Act of 25 January 1985 referred to above; it is accordingly for the Constitutional Council to verify that these provisions are constitutional;

40. By Article 8 of the Declaration of Human and Civic Rights: “The Law must prescribe only the punishments that are strictly and evidently necessary; and no one may be punished except by virtue of a Law drawn up and promulgated before the offense is committed, and legally applied”;

41. The principle that penalties must be necessary implies that disqualification from public elective office may be applied only if the court has expressly ordered it, having regard to the circumstances of the specific case; the possibility for the court to release the offender from his disqualification, at his request, if he has made a sufficient contribution to paying off his liability, does not in itself suffice to secure respect for the requirements imposed by the principle of necessity laid down by Article 8 of the Declaration of Human and Civic Rights;

42. By providing for disqualification from public elective office for at least five years in respect of any natural person against whom a personal bankruptcy order, a prohibition pursuant to section 192 of the Act of 25 January 1985 or a judicial winding-up order has been made, without the court making the order having to order the disqualification expressly, section 194 of the Act violates the principle that penalties must be necessary; section 195 of the Act, which refers to disqualification from public elective office, must also be declared unconstitutional as being inseparable from it; section 195(I)(5) of the Institutional Act referred to the Constitutional Council must accordingly be regarded as unconstitutional;

43. The other provisions of title V are contrary to no rule or principle of constitutional status;

## **ON TITLES VI TO VIII:**

44. Titles VI, VII and VIII relate to the High Commissioner of the Republic and the action of the State, to judicial review and financial and budgetary control, to economic, social and cultural rebalancing and development; they are open to no criticism for unconstitutionality;

**ON TITLE IX:**

45. This title is devoted to consultation on attainment of full sovereignty; it includes sections 216 to 221;

***Regarding section 216:***

46. Section 216, which provides for the procedure for convening the meeting of persons required to take part in the consultation and provides that the electorate is to decide by a majority of the votes cast, is not open to criticism for unconstitutionality;

***Regarding section 217:***

47. Section 217 provides as follows: “The consultation shall be organised during the period of office of the Congress which will start in 2014; it shall not, however, take place during the last six months preceding the expiry of this period of office. Its date shall be set by decision of Congress adopted by a majority of three fifths of its members. If at the end of the penultimate year of the period of office of the Congress starting in 2014 it has not set the date of the consultation, it shall be organised on a date set by the Government of the Republic, in manner provided by Article 216(II), in the last year of that period of office. If the majority of the votes cast is for rejection of attainment of full sovereignty, a second consultation on the same question may be organised at the written request of one third of the members of the Congress to the High Commissioner and deposited from the sixth month following the poll. The new consultation shall take place within eighteen months following the referral of the High Commissioner at a date set in manner provided by Article 216(II). No request for a second consultation may be submitted within six months preceding the general re-election of the Congress. Nor may the consultation take place during the same period. If the majority of the votes cast is again for rejection of attainment of full sovereignty, the committee of signatories mentioned in the Agreement signed in Nouméa on 5 May 1998 shall examine the conditions in which implementation of the provisions of the Agreement will continue. In the event of dissolution of the Congress, no consultation under this section shall take place within six months following the re-election of Congress.”;

48. Article 77 of the Constitution provides: “After approval of the Agreement by the vote provided for in Article 76, the institutional Act passed after consultation with the deliberative Assembly of New Caledonia shall determine, in order to ensure the development of New Caledonia in accordance with the guidelines set out in that Agreement and as required for its implementation: ... – the circumstances and the time limits within which the population concerned in New Caledonia is to vote on the attainment of full sovereignty”;

49. Point 5 of the Nouméa Agreement, devoted to the development of the political organisation of New Caledonia, states: “During the fourth (five-year) period of office of the Congress, an electoral consultation shall be organised. The date of this consultation shall be determined by a qualified majority of three fifths of Congress, during this period of office. If the Congress has not set this date before the end of the penultimate year of this fourth period of office, the consultation shall be organised on a date set by the State in the last year of the period of office. The consultation shall cover the transfer to New Caledonia of full powers of

legal personality, access to international status of full responsibility and the organisation of citizenship in terms of nationality. If the voters' answer to these proposals is negative, one third of the Congress members shall be able to cause the organisation of a new consultation, which shall take place in the second year following the first consultation. If the answer is again negative, a new consultation may be organised by the same procedure and within the same time. If the answer is still negative, the political partners shall meet to consider the resultant situation”;

50. It is clear from the foregoing provisions of the Nouméa Agreement that, first, in the event of a negative answer to the first consultation, a second consultation must be organised in the second year following the first consultation, if requested by one third of the Members of Congress, and that, second, in the event of a negative answer to the second consultation, a third consultation must be organised by the same procedure and within the same time-limit; lastly, the meeting of the Committee of Signatories to the Nouméa Agreement to consider the situation engendered by the negative answers may be held only after three successive consultations;

51. On the one hand, in the event of a negative answer to the first consultation, the second paragraph of section 217 must be interpreted as imposing the organisation of a second consultation at the written request of one third of the Members of Congress;

52. On the other hand, by providing for a meeting of the signatories to review the situation engendered by successive negative responses, not to a third consultation but to the second, the fourth paragraph of section 217 violates the obligation incumbent on the institutional legislature by virtue of Article 77 of the Constitution to respect the guidelines defined by the Nouméa Agreement and determine the rules needed to give effect to it; the fourth paragraph of section 217 must accordingly be declared unconstitutional;

53. The other provisions of section 217, relating to the two initial consultations, are severable from the fourth paragraph; they are in conformity with the provisions of the Nouméa Agreement applicable to the first two consultations; the institutional legislature is under a constitutional obligation to arrange a third consultation in the event of a negative response to the first two;

***Regarding section 218:***

54. This section defines the electorate for the purposes of the consultation on attainment of full sovereignty in accordance with point 2.2.1 of the Nouméa Agreement; it merely gives effect to Article 77 of the Constitution;

***Regarding the other sections of title IX:***

55. These sections are contrary to no rule or principle of constitutional status;

**ON TITLE X:**

56. This title comprises various transitional provisions; they are constitutional;

**ON THE INSTITUTIONAL CHARACTER OF THE PROVISIONS OF THE ACT:**

57. Section 58, relating to the secondment and reinstatement of civil servants of New Caledonia in the central public service and in the territorial public service governed by Act 84-53 of 26 January 1984, section 61, relating to the establishment in the central public service of non-established central government servants, and section 207, relating to the

presidency of the territorial Chambers of Auditors of New Caledonia and French Polynesia, do not govern matters reserved by Article 77 of the Constitution for enactment in the form of an institutional act; the other provisions of the Act referred to the Constitutional Council are institutional provisions within the meaning of Article 77 of the Constitution;

**Has decided as follows:**

*Article 1*

Section 195(I)(5) and the fourth paragraph of section 217 of the Institutional Act concerning New Caledonia 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 15 March 1999, attended by Mr Roland DUMAS, President, Mr George ABADIE, Mr Michel AMELLER, Mr Jean-Claude COLLIARD, Mr Yves GUÉNA, Mr Alain LANCELOT, Ms Noëlle LENOIR, Mr Pierre MAZEAUD and Ms Simone VEIL.