ANALYTICAL SYNOPSIS 1990

PARLIAMENTARY ASSEMBLIES

STATUS OF PARLIAMENTARY MEMBERS

Qualifications for office

Falls under the exclusive jurisdiction of the *organic law*

Restrictions determining the eligibility of a *député* and the conditions for intervention by the Constitutional Council ruling as judge for national elections are within the purview of the *organic law,* according to articles 25 and 63 of the Constitution, respectively. Thus, articles L. 118-2 and L. 118-3 of the electoral code could under no circumstances apply to the elections of *députés,* although they appear in the electoral code under the heading of "Provisions for the election of *députés, conseil général* and *conseil municipal* members."

(89-271 DC, January 11, 1990, No. 5, p. 21)
(cf. 88-242 DC, March 10, 1988, No. 13 p. 36)

Disqualifications resulting from non-compliance with the rules on the campaign funding for the election of *députés.*

Articles 6 to 9 of the *organic law* relating to the funding of the campaigns for the election of the President of the French Republic and of *députés,* which concern the control of the conformity of electoral procedures to applicable regulations for the designation of *députés* and, in particular, their qualification for office; fall, by their content, within the purview of an *organic law* consistent with the combined provisions of Articles 25, 59, and 63 of the Constitution.

(90-273 DC, May 4, 1990, No. 15, p. 55)

Incompatibilities

Substantive rules

Representation of a *région* within an organ of regional or local interest by a *député* and managerial activities in semi-public firms for regional or local public works projects by a member of Parliament who is not a member of a *conseil régional.*

An *organic law* whose object is, on the one hand, to allow a parliamentary member who is also a member of a *conseil régional* to be appointed by the given council to represent the *région* in an organ of regional or local interest according to conditions defined in the first paragraph of article L.O. 148 of the electoral code and, on the other hand, to determine whether a member of Parliament, even if he is not a member of a *conseil régional,* can exercise the functions mentioned in the second paragraph of article L.O. 148; in conformity with the Constitution.

(89-272 DC, January 22, 1990, No. 3 and 4, p. 33).

Absence of incompatibility between the activity of Chairman and Managing Director of a company that has gone public but whose aim is not exclusively financial and a *député* office.

Although the type of business defined in article 2 of the corporate statutes of "Bernard Tapie Finance" includes financial operations, it is not limited thereto. In addition, from information gathered by the Constitutional Council it appears that the companies in which "Bernard Tapie Finance" is a shareholder are all industrial or commercial in nature, with the exception of one. Under these conditions, "Bernard Tapie Finance" cannot be considered as "having a purely financial object", in the sense of 2° of article L.O. 146 of the electoral code. Therefore Mr. Tapie's functions as Chairman and Managing Director of "Bernard Tapie Finance" do not, in consequence, present any incompatibility with his office of *député.*

(89-9 I, March 6, 1990, No. 4, p. 48).

Procedure

Procedure relative to an incompatibility referred to in *ordonnance* No. 58-998 of October 24, 1958 and ensuing legislation

Neither article L.O. 151 of the electoral code, nor any provisions of *organic law* give the right of referral to the Constitutional Council concerning the status of a parliamentary member regarding restrictions or incompatibilities that may apply to the party concerned, to officials or persons other than those enumerated by the above-mentioned article. Inadmissibility of a petition lodged by a voter in the constituency in which the parliamentary member was elected.

(89-10 I, February 1, 1990, No. 4 and 5, p. 44)
(cf. 87-6 I November 24, 1987, No. 4, p. 56; 76-3 I, December 20, 1976, p. 73)

ORGANIZATION OF PARLIAMENTARY ASSEMBLIES

Special and standing committees

Public hearings

Change in the Senate rules of procedure whose object is, on the one hand, to allow a standing or a special committee to decide whether to make public by whatever means it may choose, part or all of its proceedings; and, on the other hand, to repeal the provision stipulating that, when the legislative calendar of a committee calls for a private hearing, the communication to the press of the proceedings of this committee can be carried out by publication of all or part of the record of the proceedings only with the permission of those parties who testified at the hearing. These changes are not contrary to the Constitution.

(90-278 DC, November 7, 1990, No. 2, p. 79)

Secret Committee

A provision in the Senate rules of procedure allowing a committee to decide to sit as a secret committee at the request of the Prime Minister, its chairman or one tenth of its members, and to decide thereafter to publish the record of the discussions in the *Journal Officiel,* is not contrary to the Constitution.

(90-278 DC, November 7, 1990, No. 3, p. 79)

LEGISLATIVE PROCEDURE

Legislative initiative — Control of admissibility

Legislative initiative

Letter of amendment

According to the Constitution of 1958, a letter of amendment signed by the Prime Minister does not constitute an amendment brought by the government to a bill based on Article 44, paragraph 1 of the Constitution, but rather the implementation of the power to propose laws that the Prime Minister derives from the first paragraph of Article 39 of the Constitution.

In conformity with the requirements of the second paragraph of this article, before being submitted to the office of the assembly, a letter of amendment signed by the Prime Minister must have been referred to the *Conseil d'Etat* for opinion, and deliberated on by the Council of Ministers.

But the fact that a letter of amendment need not be countersigned does not affect its due form, so long as this document includes, in and of itself, all of the provisions necessary to produce legal results, as stipulated in the first paragraph of Article 39 of the Constitution.

(90-285 DC, December 28, 1990, No. 5 and 6, p. 95)

Examination of government and private members' bills

A change in National Assembly rules stipulating that when a government or private members' bill "the application of which is liable to have an effect on the environment", is introduced before the National Assembly, then the reports made on these texts must include an ecological assessment in appendix form comprised of information relevant to the impact "of such proposed legislation particularly on the environment, on natural resources and on energy consumption," is contrary to no provision of the Constitution.

(90-276 DC, 5 July 1990, p. 69)

Abbreviated procedures

Basic rules

Examination of a government or a private member's bill by the committee to which it is referred for report is a step in the legislative process; it is permissible for a parliamentary assembly, in accordance with the provisions of its rules of procedure to increase the preparatory legislative role of a committee referred to for report of a given government or private bill in order to accelerate the overall legislative process.

However, the practical terms and conditions reserved for this purpose must be in conformity with the rules of constitutional value of the legislative process; in particular, they must respect both the prerogatives conferred upon the Government within the framework of this process and the rights of the members of the assembly concerned, and, in particular, the actual exercise of the right to amend, guaranteed by the first paragraph of Article 44 of the Constitution.

(90-278 DC, November 7, 1990, No. 6 and 7, p. 79)

Government prerogatives

Provisions of the Senate rules of procedure stipulating that in the case of recourse to abbreviated procedures, the exception of inadmissability, the dilatory question, interlocutory or incidental motions as well as priority or conditional requests must be presen-

ted during a committee meeting or before the full house whether they come from the committee itself or from the Government; these rules are not contrary to the Constitution provided that, on the one hand, the initiatives to which the provisions refer are not based on texts of constitutional value and, on the other hand, the provisions of the Senate rules of procedure remain unchanged so that the interlocutory or incidental motions cannot be presented during the discussion of the texts that were registered as a priority in the legislative calendar, in conformity with the first paragraph of Article 48 of the Constitution.
(90-278 DC, November 7, 1990, No. 11, p. 79)

Vote without discussion

Government prerogatives during a committee discussion

When a text under discussion by a committee is submitted to a voting procedure without discussion, a provision of the Senate rules of procedure provide that :
— government participation in the committee discussions is unopposable;
— government has the right, based upon Article 41 of the Constitution, to raise an exception of inadmissibility instituted by this article and, in case of disagreement with the Speaker of the Senate, the Constitutional Council will be requested to rule on the matter;
— the Government can apply exclusions based upon Article 40 of the Constitution or upon one of the provisions of *ordonnance* No. 59-2 dated January 2, 1959, of *organic law* value related to financial bills. Conformity with the Constitution.
(90-278 DC, November 7, 1990, No. 10, p. 79)

Right to amend for parliamentary members

Although, in accordance with its rules of procedure, a Parliamentary assembly is free to stipulate that, within the framework of a voting procedure without discussion, the president can submit an entire text to a vote, including amendments adopted by the committee when no others exist. However, prohibiting all members of the assembly to whom a text was referred from resubmitting an amendment related to the latter in the full house because the amendment had been rejected by the committee referred to for report, this infringes upon the right of all *députés* to amend, as guaranteed by the first paragraph of Article 44 of the Constitution.
(90-278 DC, November 7, 1990, No. 12, p. 79)

Vote with limited discussion

Government prerogatives in a public sitting

Provisions for the Senate rules of procedure stipulating that, during a limited discussion, the Government can apply the third paragraph of Article 44 of the Constitution concerning a blocked vote without prohibiting opposition to inadmissibility based on the second paragraph of this same article. Conformity with the Constitution.
(90-278 DC, November 7, 1990, No. 10, p. 79)

Right to amend

Rules of admissibility and discussion

Government's right to amend

Amendments may lead to the restoration of provisions rejected on the first reading of the text by the two assemblies.
(90-274 DC, May 29, 1990, No. 5, p. 61)

Deadline for submission of amendments

Provision of the Senate rules of procedure stipulating that, within the framework of abbreviated procedures, the *conférence des présidents* sets a precise deadline for the submission of amendments in committees. This provision that concerns only the amendments presented by senators, is not in itself contrary to the Constitution, so long as the deadline chosen for the submission of amendments is determined so as not to impede the actual exercise of the right to amend, and so long as the possibility to submit other amendments to amendments at a later date is not forbidden.
(90-278 DC, November 7, 1990, No. 8 and 9, p. 79)

Amendments, whether or not they are within the framework of a text under discussion

Senate rules of procedure

Provision of the Senate rules of procedure in which the amendments proposed in the form of additional articles are declared admissible provided that they are related to the text under discussion. This modification which in itself has no influence over the distinction made by the Constitution between government and private bills, and the amendments that are derived from them, is not contrary to any rule or principle of constitutional value.
(90-278 DC, November 7, 1990, No. 15 and 16, p. 79)

Principle

From a combined reading of Articles 39, 44 and 45 of the Constitution, the right to amend, which is a corollary of a legislative initiative, exists at each stage of the legislative procedure, provided that limitations presented by the third and fourth paragraphs of Article 45 are taken into account; nevertheless, any additions or modifications that are made to the text under discussion in this way must neither be unrelated to the latter nor must they go beyond the inherent limits of the drafting of legal amendments in their aims or scope, as this is determined by a specific procedure.
(89-269 DC, January 22, 1990, No. 11, p. 33) (90-274 DC, May 29, 1990, No. 5, p. 61; 90-277 DC, July 25, 1990, No. 3, p. 70) (cf. 86-221 DC, December 29, 1986, No. 5, p. 179; 86-225 DC, January 23, 1987, No. 8, p.13; 88-251 DC, January 12, 1989, No. 3 and 4, p. 2; 89-256 DC, July 25, 1989, No. 3 and 6, p. 2; 89-268 DC, December 29, 1989, No. 21, p. 110)

Applications

Relation to the text under discussion — Existence

The following are not unrelated to the text under discussion (same decision No. 13) : an amendment that modifies the provisions of the first paragraph of article L. 162-5 of the *Sécurité sociale* code relative to the definition of relations between health insurance budgets and doctors, and thereby draws the consequences from the second paragraph of article L. 162-5 and from articles L. 162-5 to L. 162-8 of the same code; an amendment that subjects medicine used for prescriptions to the same control procedures used for pharmaceutical products; other amendments that only modify and clarify certain specific points of the provisions of law No. 88-1138 enacted December 20, 1988 relative to the protection of individuals who participate in biomedical research (Same decision, No. 12). These provisions have not exceeded the limits inherent to the exercise of the right to amend, neither in terms of their object, which is narrowly defined, nor in terms of their result. (Same decision, No. 13).

Relation to the text under discussion: breadth and scope

Amendments to the law designed to implement the right to housing; the provisions in question are not unrelated to the text under discussion: neither by their subject matter, which is narrowly defined, nor by their scope, have they exceeded the limits of constitutional value relative to the exercise of the right to amend.
(90-274 DC, May 29, 1990, No. 6 and 7, p. 61)

Provisions that replace those of article 79 of the Finance Act for 1990, and propose to institute a departmental income tax as well as a specific income tax levied on those incomes which are subject to a withholding tax. These forms of taxation which benefit all the *départements* for departmental income tax and half of them for the specific tax levied on those incomes subject to a withholding tax, are intended, in the future, to replace, in part, the residence tax. They cannot be considered as unrelated to the project submitted for deliberation to the parliamentary assemblies which, by its content, deals with direct local taxation. Moreover, neither in terms of their object, which is narrowly defined, nor in terms of their result which, under different terms and conditions, repeats the provision contained in article 79 of the Finance Act for 1990, have they exceeded the limits inherent to the exercise of the right to amend.

(90-277 DC, July 25, 1990, No. 4 and 5, p. 70)

Relation to the text under discussion — Absence

The provisions of the first paragraph of article L. 145-5 notwithstanding, a parliamentary amendment intended to modify the fourth paragraph of this article of the urban code for the purpose of authorizing the delimitation not only for new villages, but also for "new tourist resorts". Such provisions were unrelated to the text under discussion; they thus exceeded the limits inherent to the exercise of the right to amend; it is therefore necessary to declare that they were adopted according to an improper procedure, without the need to question conformity with the Constitution in terms of the content of the provisions involved.

(90-277 DC, July 25, 1990, No. 23 and 24, p. 70)

Procedure applicable to letters of amendment

According to the Constitution of 1958, a letter of amendment signed by the Prime Minister does not constitute an amendment brought by the government to a bill based on Article 44, paragraph 1 of the Constitution, but rather the implementation of the power to propose laws that the Prime Minister derives from the first paragraph of Article 39 of the Constitution.

In conformity with the requirements of the second paragraph of this article, before being submitted to the office of the assembly, a letter of amendment signed by the Prime Minister must have been referred to the *Conseil d'Etat* for opinion, and deliberated on by the Council of Ministers.

But the fact that a letter of amendment need not be countersigned does not affect its due form, so long as this document includes, in and of itself, all of the provisions necessary to produce legal results, as stipulated in the first paragraph of Article 39 of the Constitution.

(90-285 DC, December 28, 1990, No. 5 and 6, p. 95)

Vote on government and private members' bills

Conditions for the implementation of paragraph 3 of Article 49 of the Constitution

The exercise of the prerogative conferred upon the Prime Minister by the third paragraph of Article 49 is submitted to no other condition apart from those resulting from this constitutional text. To the extent that the Council of Ministers had deliberated, in the course of their meeting on October 4, 1989, the engagement of government responsibility on a bill relative to the programming of military equipment, the conditions required by the Constitution for the adoption of this former text, were met for the implementation of Article 49 paragraph 3 of the Constitution.

(89-264 DC, January 9, 1990, No. 3 and 4, p. 9; 89-269 DC, January 22, 1990, No. 4 and 5, p. 33; 89-268 DC, December 29, 1989, No. 6 and 7, p. 110)

Engagement of the Government's responsibility by an interim Prime Minister during the Prime Minister's absence

The minister assigned by the President of the Republic to replace the Prime Minister in his absence is temporarily vested with all powers and authority applicable to the Prime Minister during the latter's absence. Consequently, he can represent the Government in voting on the adoption of a text according to Article 49, third paragraph of the Constitution.

(89-264 DC, January 9, 1990, No. 5, p. 9; 89-269 DC, January 22, 1990, No. 6, p. 33)
(cf. 89-268 DC, December 29, 1989, No. 8, p. 110)

Organic laws

General rules of procedure

To the extent that the new provisions of the electoral code relative to campaign funding for the election of the President of the Republic or the *députés* are designed to regulate matters that fall within the purview of *organic law,* they can only be made applicable to these matters when they are in accordance with the rules of legislative procedure governing *organic law.* To the extent that they do not concern the Senate, the different provisions of the *organic law* examined by the Constitutional Council were subjected to the rules and regulations of the third paragraph, rather than the fourth paragraph, of Article 46 of the Constitution.

(89-263 DC, January 11, 1990, No. 3 and 4, p. 18)

Referral to provisions of a bill

The text of the *organic law* relative to campaign funding for the elections of the President of the Republic and of the *députés* was adopted definitively following a discussion before the National Assembly during the second reading; nevertheless, during the same session the assembly had previously adopted at a second reading a bill related to limiting electoral expenditure and clarifying the funding of political activities in a text that differed on several points from that voted by the Senate during a first reading. The differences concerned both the numbering of the articles referred to and the bill's content. This was notably the case for eleven articles to which the first and fourth articles of the *organic law* refer. When the National Assembly and the Senate failed to agree on the content of the legislative provisions, articles 1 and 4 of the organic law would become operative and the National Assembly's decision would only prevail over that of the Senate should its provisions of the law be passed at the final reading, at the request of the government, provided that this be in conformity with the fourth paragraph of Article 45 of the Constitution and passed by vote of an absolute majority of its members as required by the third paragraph of Article 46. This last formality, which assumes substantial importance, was disregarded. Consequently, articles 1 and 4 of the *organic law* submitted to the Constitutional Council, should, due to the procedure followed for their adoption, be declared unconstitutional without the Council's examination of the content of this *organic law.*

(89-263 DC, January 11, 1990, No. 5 and 7, p. 18)

Referral to the provisions of an ordinary law definitively adopted

It is within the power of the body making an *organic law* to render certain provisions having the value of an ordinary law already included in the electoral code, applicable to matters falling within the purview of an *organic law,* so long as these provisions have been adopted prior to the voting of the *organic law.*

(90-273 DC, May 4, 1990, No. 19, p. 55)

PARLIAMENTARY CONTROL

Control and orientation of government action

Fact-finding nature of the committees

Fact-finding missions

Provision of the National Assembly rules stipulating that the standing committees may entrust one or more of their members with a temporary fact-finding mission particularly concerned with the conditions for the application of a set of laws and that these missions may be carried out in joint committee. This provision is in no way contrary to any rule or principle of constitutional value provided that the fact-finding mission is temporary and is limited to the gathering of information required to enable the National Assembly to exercise its control over government policy during the ordinary and extraordinary sessions under the conditions laid down by the Constitution.
(90-275 DC, June 6, 1990, No. 1 and 2, p. 67)

JUDICIAL AUTHORITY AND JURISDICTIONS

JURISDICTIONS

Independence of jurisdictions

The Constitutional Council as judge of the election of *députés.*

The provisions of articles 6 to 9 of the *organic law* on the funding of the campaign for the election of the President of the French Republic and of *députés* which concern the election of *députés* are not in contradiction with the Constitution so long as it may be concluded from the terms of these provisions, as well as those of the debate preceding their adoption, that the position taken by the National Commission on Campaign and Political Funding, in due exercise of its functions, do not act in prejudice of the decision of the Constitutional Council.
(90-273 DC, May 4, 1990, No. 16, p. 55)

Administrative jurisdiction

According to the provisions of Article 64 of the Constitution concerning judicial authority and the *Principes fondamentaux reconnus par les lois de la République* in respect to administrative jurisdiction, as established by the law of May 24, 1872, the independence of the jurisdictions is guaranteed just as is the specific character of their functions which cannot be infringed upon either by the legislature, the Government or any other administrative authority.
(cf. 89-271 DC, January 11, 1990, No. 6, p. 21)
(cf. 80-119 DC, July 22, 1980, No. 6 and 7, p. 46)

Powers

Administrative powers

The National Commission on Campaign and Political Funding is an administrative authority rather than an administrative court. As a result, the position that this Com-

mission will adopt upon examination of a candidate's expenditure will not be imposed upon the *juge administratif;* the latter retains full liberty to appraise, if necessary by way of exception, whether the Commission has been well founded in assessing that a candidate has exceeded the limits of electoral expenditure set by law and, if the occasion should arrise, draw every legal inferences, in particular concerning the enforcement of the rules of ineligibility as set in article L. 118-3 of the electoral code. On the other hand, the failure of the Commission to respect the deadline set forth by article L. 118-2 of the electoral code, permits the *juge administratif* to continue the proceedings. Any other interpretation would be unconstitutional.
(89-271 DC, January 11, 1990, No. 7, p. 21)

LEGISLATIVE AND REGULATORY POWERS

GENERALITIES

Scope and limits of the legislative powers

Failure to exercise full powers available

Instance in which there is no failure to exercise full powers

Considering both the subject matter and the effects of a plan of action for the housing of underprivileged persons, the lawmaking body did not fail to exercise its powers drawn from Article 34 of the Constitution when it did not require that the plan be determined by central authority and by a decree of the *Conseil d'Etat* in the event of disagreement at the local level.
(90-274 DC, May 29, 1990, No. 13, p. 61)

Repeal or modification of former laws

General rules

The principle of national sovereignty in no way prevents the lawmaking body, ruling within the scope of Article 34 of the Constitution, from modifying, completing or repealing former legislative provisions; it matters little in this respect whether the provisions modified, completed or repealed come from a law voted in Parliament or a law adopted by referendum.
(89-265 DC, January 9, 1990, No. 8, p. 12)

Repeal — General principles

When exercising its right to repeal a law, it is the lawmaking body's responsibility not to deny legal guarantees of constitutional principles.
(89-265) DC, January 9, 1990, No. 8, p. 12)

Referral by the lawmaking body to measures of application

Referral not contrary to the Constitution

Referral by the lawmaking body to a decree designed especially to establish conditions under which civil servants are duly authorized to carry out controls on professional premises to ensure that the functioning of electronic transmission equipment is in conformity with the law must be understood as the mere application of the rules for control established by the law.
(90-286 DC, December 28, 1990, No. 17 and 18, p. 107)

Jurisdiction of *organic law* and of the law

Provisions of *organic law*

Provisions of *organic law* related to campaign funding in view of the elections of the President of the Republic fall within the purview of *organic law* by virtue of the second paragraph of Article 6 of the Constitution. Provisions concerning the ineligibility of certain *députés* also stem from *organic law* through the application of the provisions of the first paragraph of Article 25 of the Constitution.

(89-263 DC, January 11, 1990, No. 1, p. 18) (cf. 88-242 DC, March 10, 1988, No. 5 and 13, p. 36)

Election of *députés*

Articles 6 to 9 of the *organic law* relating to campaign funding for the election of the President of the French Republic and of *députés,* which concern the control of the conformity of electoral procedures to applicable regulations for the designation of *députés* and, in particular, their qualification for office, fall, by their content, within the purview of an *organic law* consistent with the combined provisions of Articles 25, 59, and 63 of the Constitution.

(90-273 DC, May 4, 1990, No. 15, p. 55)

Presidential election

The various provisions of the *organic law* on the funding of the campaign for the election of the President of the French Republic and of *députés* which concern the election of the President of the French Republic and the conditions in which the Constitutional Council controls the conformity of electoral procedures with applicable regulations, fall within the purview of an *organic law* according to Articles 6, paragraph 2, 58 and 63 of the Constitution.

(90-273 DC, May 4, 1990, No. 8, p. 55)

Repeal

In view of Article 25 of the Constitution, articles L.O. 163-1 and L.O. 179-1 of the electoral code are within the purview of an *organic law* in that the misapplication of their stipulations led to the disqualification of *députés;* their repeal is subject to the same rules of jurisdiction.

(90-273 DC, May 4, 1990, No. 18, p. 55)

Injunctions issued against the government

Provisions having for effect to prescribe the Government to introduce a bill.

Reference made by provisions of a law for a legislative reform "which will be presented in Parliament prior to December 31, 1990" resembles an injunction addressed to the Government to introduce a bill. Such a provision has no legal justification, neither in Article 34 nor in any other provisions of the Constitution. Not in conformity with the Constitution.

(89-269 DC, January 22, 1990, No. 38, p. 33)
(compare 78-102 DC, January 17, 1979, p. 26)

Conditions for the implementation and the enforcement of laws

Jurisdiction of the lawmaking body

Within the scope of its jurisdiction, it is within the power of the lawmaking body, provided that less repressive measures be immediately implemented, to determine the laws for the enforcement of the provisions that it enacts; although the lawmaking body is free to allow the Government to determine the date on which these provisions are to be enforced, it cannot exercise unlimited power on this point without disregarding the

power it derives from Article 34 of the Constitution; for this reason, the provisions that refer to a decree issued by the *Conseil d'Etat* enabling it to determine the date for the enforcement of the provisions in the overseas *départements* relative to the departmental income tax and to the allocation of national aid fund for *départements* are contrary to the Constitution.

(90-277 DC, July 25, 1990, No. 26, p. 70; cf. 89-260 DC, July 28, 1989, No. 40, p. 71)

Legislative schemes for *départements* and overseas territories

Extension of legislative provisions to overseas *départements*

Within the scope of its jurisdiction, it is within the power of the lawmaking body, provided that less repressive measures be immediately implemented, to determine the laws for the enforcement of the provisions it enacts; although the lawmaking body is free to allow the government to determine the date on which these provisions are to be enforced, it cannot exercise unlimited power on this point without disregarding the power it derives from Article 34 of the Constitution; for this reason, the provisions that refer to a decree issued by the *Conseil d'Etat* enabling it to determine the date for the enforcement of the provisions in the overseas *départements* relative to the departmental income tax and to the allocation of the national aid fund to *départements* are contrary to the Constitution.

(90-277 DC, July 25, 1990, No. 26, p. 70; cf. 89-260 DC, July 28, 1989, No. 40, p. 71)

However, in as much as they refer to a decree issued by the *Conseil d'Etat,* which determines the conditions for the implementation of the provisions in overseas departments, they are not contrary to the Constitution; in fact, as this involves mere measures implementing legislative provisions, even if they require a certain adaptation to the status of overseas *départements,* it is the regulatory authorities' responsibility, with the supervision of the appropriate jurisdiction, to verify its legality.

(90-277 DC, July 25, 1990, No. 27, p. 70; cf. 82-152 DC, January 14, 1983, No. 13, p. 31)

Procedural guidelines for the regulatory power of the executive branch

Measures for implementing laws

Intervention of regulatory power

The provisions of Articles 21 and 13 of the Constitution do not impede the right of the lawmaking body to confer the responsibility for fixing standards that allow for the implementation of principles laid down by law to a public official other than the Prime Minister, on condition that this entitlement concerns only measures limited both in scope and content.

(89-269 DC, January 22, 1990, No. 22, p. 33)
(compare 86-217 DC, September 18, 1986, No. 58, p. 141; 88-248 DC, January 17, 1989, No. 14 to 16, p. 18; 89-260 DC, July 28, 1989, No. 31, p. 71)

Opinions and composition of advisory bodies

The permanent Commission on agricultural finances has strictly advisory capacities; the opinions it is called upon to give do not ensure the respect of the fundamental principles and the rules that Article 34 of the Constitution places within the purview of the law; henceforth, the provision submitted to the Constitutional Council relative to the composition of this Commission is of a regulatory nature.

(90-164 L, May 4, 1990, No. 3, p. 59)

ATTRIBUTION OF SUBJECT MATTER TO THE APPROPRIATE AUTHORITIES

Criminal law: crimes and misdemeanours, penal procedure, amnesty

Amnesty

Based on the provisions of Article 34 of the Constitution, the lawmaking body henceforth has the power to remove all indictable character from certain criminally reprehensible acts by prohibiting legal proceedings or annulling sentences pronounced against them. It must determine, in accordance with an objective standard, the nature of the offence and, if necessary, the individuals who should benefit from the amnesty. The first article of the law submitted complies with these requirements. The lawmaking body could not be accused of disregarding the provisions of Article 34 of the Constitution that determines the scope of its jurisdiction.
(89-265 DC, January 9, 1990, No. 6, p. 12)

Under the article of the law submitted whose objective is to enlarge the scope of jurisdiction in amnesty for offences committed during disruptive political, social or economic events related to the determination of the statute of New Caledonia or the territory's land restrictions, compared with the text of the law promulgated as a consequence of the referendum held on November 6, 1988; the lawmaking body has acted within the framework of its jurisdiction in conformity with Article 34 of the Constitution. The modification of the former law does not violate legal guarantees of constitutional principles.
(89-265 DC, January 9, 1990, No. 9, p. 12)

Local collectivities

Self-administration of local collectivities

Respective powers of the State and of the local collectivities

According to Articles 72 and 34 of the Constitution, it is the responsibility of the lawmaking body to define the respective powers of the State and of the local collectivities concerning the measures to be taken to promote housing for underprivileged persons, which meet needs of national interest.
(90-274 DC, May 29, 1990, No. 12 and 13, p. 61)

Compulsory expenditure

According to Articles 72 and 34 of the Constitution, the lawmaking body may define which categories of expenditure are compulsory for local collectivities; however, the obligations thus placed under the responsibility of the local collectivities must be clearly defined as to their subject matter and as to their scope and should not disregard the specific powers of the local collectivities nor should they hinder their self-administration.
(90-274, May 29, 1990, No. 16, p. 61)

Right of pre-emption

Article 34 of the Constitution confers to the law the determination of the fundamental principles for the self-administration of local collectivities, their powers and their financial means as well as the determination of the fundamental principles of property law; from these provisions it falls to the lawmaking body to determine the cases in which the right of pre-emption is likely to be exercised and the cases in which it is not, the categories of persons and in particular the local collectivities that may be entitled to exercise this right; on the other hand, the establishment of procedures for the implementation of the principles laid down by the law is included within the regulatory powers.
(90-274 DC, May 29, 1990, No. 24, p. 61)

Sécurité sociale — Fundamental principles

Miscellaneous provisions

Agreements determining rates for medical fees

One of the fundamental principles falling within the jurisdiction of the lawmaking body is that fees for medical treatment attributed to citizens qualifying for national health benefits are determined either by contracts entered into with doctors or their representative organisations or, in default thereof, by recourse to authoritative channels. On the other hand, it is within the purview of regulatory power to determine the measures for implementation of the fundamental principles established by the lawmaking body.
(89-269 DC, January 22, 1990, No. 20, p. 33)
(cf. CE Ass., July 13, 1962, Conseil national de l'ordre des médecins, p. 479)

Approval of medical contracts

The adoption of one of the agreements provided for in article L. 162-5 of the *Sécurité sociale* code is subject to ministerial approval; the purpose of this approval is to confer a regulatory character to the provisions of the agreement which fall within the scope of article L. 162-5 of the *Sécurité sociale* code. This process for implementing principles laid down by the law, for which the sphere and the scope of application are narrowly drawn, is not contrary to Article 21 of the Constitution.
(89-269 DC, January 22, 1990, No. 23, p. 33)

Financial allowances for the elderly

There is good reason to include in the number of fundamental principles of the *Sécurité sociale,* which as such is included in the scope of the law, the actual existence of a regime of special financial allowance for the elderly; as well as the fundamental principles of such a regime; among them are the different categories of benefits included in the regime. On the other hand, regulatory authorities must determine the rules for paying these allowances and recuperating arrears.
(90-163 L, March 6 1990, No. 4, p. 48)

THE CONSTITUTIONAL COUNCIL AND THE CONTROL OF THE CONSTITUTIONALITY OF THE LAW

RULES OF REFERENCE FOR CONSTITUTIONAL REVIEW

Rules of reference retained

Principes fondamentaux reconnus par les lois de la République

Influence in the field of tax collection

No *Principes fondamentaux reconnus par les lois de la République* requires tax collection to be done exclusively by the State. Nonetheless, the collection of taxes for national expenditure, in conformity with Article 13 of the Declaration of the Rights of Man and of Citizens, can only be done by State services or organisations or by those placed under its supervision.
(90-285 DC, December 28, 1990, No. 45, p. 95)

Non-retained rules of reference

Ruling of an assembly

The rulings of parliamentary assemblies do not in themselves have constitutional value, the mere fact of disregarding regulatory provision invoked does not in itself render the legislative procedure contrary to the Constitution.
(90-274 DC, May 29, 1990, No. 4, p. 61)

Reserved questions

The freedom to choose one's doctor

Where grounds for action were lacking in fact, the Constitutional Council did not need to determine whether the freedom of choosing a doctor accorded a patient and the freedom accorded the doctor to prescribe medicine were held constitutional.
(89-269 DC, January 22, 1990, No. 28, p. 33)

PROCEDURES AND SCOPE FOR CONTROL

Conditions under which provisions extrinsic to the law may be considered

Enforcement of a law subject to the intervention of a subsequent law

Provision for the implementation of an article of the law submitted on January 1, 1992 "will be subject to Parliamentary approval." The implementation of the above-mentioned article is thus subject to the intervention of a subsequent law. This situation could not in any way impede the Constitutional Council from exercising control over conformity with the Constitution in regard to the provisions of the text of the law submitted.
(90-277 DC, July 25, 1990, No. 10, p. 70)

Enforcement of a law facilitated by the adoption of a later law.

Even if the adoption of new legislative provisions could facilitate the practical implementation of simultaneous elections for the renewal of the general and regional councils, this would in no way impede the Constitutional Council from exercising its control over conformity of the text of the law referred to it with the Constitution.
(90-280 DC, December 6, 1990, No. 3, p. 84)

Scope of control

Power of review invested in the Constitutional Council

The Constitution does not invest the Constitutional Council with the same powers of review and decision making as those invested in Parliament; hence, it is not the role of the Constitutional Council to determine whether the objective that the lawmaking body has granted itself, i.e. to encourage greater voter participation by holding the general and regional council elections on the same date, could not have been achieved by other means, so long as the terms and conditions required by the law are not manifestly inappropriate to the intended objective.
(90-280 DC, December 6, 1990, No. 26, p. 84) (cf 75-54 DC, January 15, No. 1, p. 19; 80-172 DC, January 19, 1981, No. 12, p. 15; 86-218 DC, November 18, No. 10, p. 167)

MEANING AND SCOPE OF THE DECISION

Examples of *interprétation neutralisante*

Voting rights

The jurisdiction of the National Commission on Campaign and Political Funding, and of the administrative judge, ruling as an electoral judge.

The National Commission on Campaign and Political Funding is an administrative authority rather than an administrative court. As a result, the position adopted by the commission, upon examination of a candidate's campaign expenditures, can in no way be forced upon the *juge administratif;* the latter retains full liberty to appraise, if necessary by way of exception, whether the Commission has been well founded in assessing that a candidate has exceeded the limits of electoral expenditure set by law and, if the occasion should arrise, draw every legal inferences, in particular concerning the enforcement of the rules of ineligibility as set in article L. 118-3 of the electoral code. In addition, the failure of the Commission to respect the deadline set forth by article L. 118-2 of the electoral code, mandatorily nullifies the obligation for the *juge administratif* to stay the proceedings, by virtue of this article. Any other interpretation would be contrary to the Constitution.
(89-271 DC, January 11, 1990, No. 7, p. 21)

The severability of provisions that do not conform with the Constitution

Non-severability of provisions that do not conform with the Constitution from the whole or part of the rest of the law.

Non-severability of the *organic law* and other articles

Articles 2 and 3 of the law, on the one hand, and 5 and 6, on the other, are non-severable from articles 1 and 4, respectively, and are therefore not in conformity with the Constitution; therefore, the whole *organic law* cannot be enacted.
(89-263 DC, January 11, 1990, No. 8, p. 18)

Non-severability within the same article

If paragraphs 3 and 6 of article L. 40 of the Post Office and Telecommunications code are not, in themselves, contrary to the Constitution, they are, however, not severable from the first two paragraphs of this article, which are declared contrary to the constitutional text.
(90-281 DC, December 27, 1990, No. 16 and 17, p. 91)

ECONOMIC AND SOCIAL COUNCIL

ORGANISATION

Organic law whose aim, on the one hand, is to increase the number of seats for representation of economic and social activities for overseas territories from eight to nine and, on

the other, to include in this representation, in addition to the overseas departments and territories, "the overseas territorial collectivities with special status." Conformity with the Constitution.
(90-279 DC, November 7, 1990, p. 77)

RIGHTS AND FREEDOMS

CITIZENS' RIGHTS — GENERALITIES

Foreigners

The lawmaking body can take specific measures regarding foreigners provided that international obligations signed by France and the freedoms and fundamental constitutional rights recognized by everyone living within the territory of the French Republic be respected.
(89-269 DC, January 22, 1990, No. 33, p. 33)

CIVIL RIGHTS

Exercise of right to vote

Simultaneous elections of *Conseil général* and *Conseil régional* members

The lawmaking body, empowered to establish the rules concerning the organisation of local assembly elections may, by virtue of this power, determine the duration of the term of offices of those elected to the decision making body of a local collectivity; however in the exercise of this power, the lawmaking body must conform to principles of constitutional order, in particular this implies that the voters be called upon to exercise their right to vote at reasonable intervals of time.
(90-280 DC, December 6, 1990, No. 8, p. 84)

The lawmaking body chose to hold the *conseil général* and *régional* elections on the same date and to extend by one year the terms of office of those members of the *conseils généraux* re-elected in 1985; this falls within the purview of a reform whose aim is in no way contrary to any principle or rule of constitutional value; the terms and conditions defined by the lawmaking body to implement this reform are both exceptional and temporary. In this case, the articles of the law relative to these terms and conditions are neither contrary to Article 3 of the Constitution guaranteeing the right to vote nor to the principle of self-administration of the local collectivities.
(90-280 DC, December 6, 1990, No. 10, p. 84)

Legislative provisions aimed at ensuring greater voter participation for the elections of members of *Conseil général* and *Conseil municipal* may not be considered as infringing upon the right to vote guaranteed by Article 3 of the Constitution; that the candidates for each of these combined elections would find themselves in the position of having to conduct two electoral campaigns simultaneously, is contrary to no rule or principle of constitutional value.
(90-280 DC, December 6, 1990, No. 12, p. 84)

Equal voting rights

Campaign funding for the election of *députés*

Principles

According to the terms of Article 2, first paragraph of the Constitution, the French Republic "guarantees equality before the law for all citizens, regardless of their national origin, race or religion". The first paragraph of Article 3 of the Constitution states that "national sovereignty is a right to be exercised by the people through their representatives and by way of referenda"; and in the third paragraph, it states that "voting is always universal, equal and secret". Lastly, Article 4 of the Constitution provides that "political parties and groups play a part in the exercise of the right to vote. They organize and pursue their activities freely. They must respect the principles of national sovereignty and democracy." These provisions do not impede the State from granting financial assistance to political parties and groups that participate in the voting procedure. The financial assistance granted, in order to conform to the principles of equality and freedom, must comply with objective standards. In addition, the form of financial assistance used must not encourage the dependence of a political party on the State, nor must it jeopardize the democratic expression of the free flow of ideas and opinions. Although granting assistance to parties or groups simply because they are backing candidates for elections at the National Assembly can be subordinated to the conditions that they represent a minimum percentage of the voters, the standards used by the lawmaking body should not cause it to disregard the requirements of pluralism in the free flow of ideas and opinions that constitute the basic tenets of democracy.

(89-271 DC, January 11, 1990, No. 11 and 12, p. 21) (cf. 88-242 DC, March 10, 1988, No. 25 and 26, p. 36)

General standards for proportionnal allocation of financial allowances

The articles of the law submitted satisfy the constitutional requirements to the extent that they provide that State aid is granted not only to parties and political groups represented in the Parliament, but also to parties and political groups "in terms of their results in the elections at the National Assembly". Therefore, it is not contrary to the Constitution to state that in this last case, funds will be allocated "in proportion to the number of votes obtained in the first round by each of the parties and groups", which, without prejudice to the specific provisions of overseas *départements* and territories, presented candidates in "at least 75 constituencies during the latest election for the National Assembly."

(89-271 DC, January 11, 1990, No. 13, p. 21)

Exclusion of political parties in terms of their electoral results.

With respect to the determination of state assistance granted to parties in terms of their electoral results, the fact that only those results equal or superior to 5 % of the actual votes in each constituency is taken into consideration, tends, on account of the threshold chosen, to hinder the free flow of ideas and opinions. Thus, article 11 of the law submitted, to the extent that it imposes this condition, must be declared contrary to the joint provisions of Articles 2 and 4 of the Constitution.

(89-271 DC, January 11, 1990, No. 14, p. 21)

The participation of political parties in the exercise of the right to vote

Associations for political party funding

The provisions that require political parties to raise funds through an authorized agent, either through an official financial association or a natural person, are not contrary to Article 4 of the Constitution, nor any other fundamental rules or principles of constitutional value, provided that a political party is not required to form a financial association and thus maintains the right to have recourse to a financial agent instead, and that the certification requirement for a financial association only confers to the National Commission on Campaign and Political Funding the power to verify that the financial association satisfies the conditions enumerated in article 11-1 which were added to the law enacted March 11, 1988.

(89-271 DC, January 11, 1990, No. 17, p. 21)

GUARANTEE OF INDIVIDUAL FREEDOM

Verification of the proper functioning of electronic transmission equipment

Provisions organising the conditions for the "verification that the functioning of electronic transmission equipment is in conformity with the law by agents of the fiscal administration." These verifications are not judicial police operations with the purpose of seeking out offences, but constitute a procedure of administrative control:

— only the access to the "professional premises" of transmitting and receiving companies and, where applicable, to subcontractors in the television distribution business, is authorized;

— though the administrative agents can operate "at random", it is necessary that official notice be given to the taxpayer or his representative before the beginning of such operations. This implies that no control may be undertaken in the absence of the person concerned or of his representative. At the end of such an operation, a written report is made as to the conformity or non-conformity of the system concerned;

— the obstruction of technical verification has no other consequence than the suspension of the authorisation of the electronic transmission system;

— this decision to suspend the authorisation can only be taken after thirty days from the date of official notification. During this period, the taxpayer may make relevant statements or observations and make any changes necessary to ensure legal conformity.

These provisions, which ensure at the same time the respect for individual rights and freedoms and meet the need for combating both computerized and fiscal fraud, are contrary to no principle of Constitutional value.

(90-286 DC, December 28, 1990, No. 13 and 14, p. 107)

GUARANTEE OF INDIVIDUAL FREEDOM BY JUDICIAL POWER

Administrative inquiries

Control of the National Commission on Campaign and Political Funding

The National Commission on Campaign and Political Funding exercises control of an administrative nature; within the framework of this control, it can only request that judicial police officers gather the information necessary for the exercise of its administrative functions concerning the origin of electoral campaign funds, as well as their use. Referral by the Commission to the Department of Prosecution implies that recourse to coercive powers authorized by the code of criminal procedure is only possible within the framework of judicial proceedings; the provision authorizing the Commis-

sion to request judicial police officers to proceed with any investigation it judges necessary for the exercise of its administrative functions, would not be sufficient in itself to justify the right of the judicial police force to use coercive powers; any other interpretation would be contrary to the provisions of the Constitution guaranteeing individual freedom.

(89-271 DC, January 11, 1990, No. 3, p. 21)

Individual freedom and property rights

Guidelines

The following are included among the rules concerning the criminal procedure established by the lawmaking body:
— the determination of the categories of persons competent to ascertain infractions of provisions that are criminally sanctioned, to gather evidence and to locate the guilty parties;
— the terms and conditions according to which they accomplish their mission.

In the exercise of its power, the lawmaking body must guarantee the rights and freedoms of constitutional value; it is notably its responsibility to protect the exercise of the rights of defence, to guarantee respect of property rights and, in conformity with Article 66 of the Constitution, to refer any measure affecting individual freedom, in accordance with the meaning of the aforesaid article, to the supervision of a judicial authority; in particular, the protection of this freedom necessitates the intervention of the judicial authority when the inviolability of the home of all persons living on the territory of the French Republic is brought into question.

(90-281 DC, December 27, 1990, No. 7 and 8, p. 91)

Visits of companies

Powers of personnel from the telecommunication agency

Provisions of the Post Office and Telecommunications code authorizing, independently from judicial police officers and agents, the personnel from the telecommunication agency, who are empowered and sworn in for this purpose, to exercise broad powers regarding individuals and corporations that are normally within the jurisdiction of judicial police, but not of an administrative nature. These provisions not only enable the latter to "ascertain" infractions regarding telecommunications legislation by taking down the particulars in an official report to this effect, but also "to locate" them by having access for this purpose, to all premises, grounds or means of transportation for professional uses, and to "call for the production of all professional documents, to take a copy, to gather information and proof by summons or first hand."

These powers are attributed in the aim of looking for offences that, for the most part, constitute misdemeanors subject to imprisonment; these powers are not subject to any procedural requirement other than the obligation made to judicial police officers and agents, as well as personnel empowered and sworn in for this purpose to hand over the official report addressed to the *Procureur de la République* within a five day period; it is not necessary to provide this official with information in advance, nor is it necessary to transmit a copy of the official report to the party concerned; no reference is made regarding a time limit for access to the premises for professional use; nor is consideration given to the case in which the premises visited are being used, in part, as a personal residence by the interested parties.

These provisions, which lack sufficient respect for rights and freedoms of constitutional value, are not in conformity with the Constitution.

(90-281 DC, December 27, 1990, No. 10 and 12, p. 91)

Seizure of equipment

Provisions of the Post Office and Telecommunications code authorizing judicial police officers and agents as well as personnel from the telecommunication agency, empowered and sworn in for this purpose, to enter onto premises, grounds or means of transportation for professional uses and upon judicial authorization to seize equipment, mentioned in article L. 34-9 of the same code; in the carrying out of such a mission, the personnel exercise the functions of judicial police and, moreover, act under the supervision of the judicial authority. Their intervention in no way disregards the principle of the separation of powers; in addition, the law clearly provides for the terms and conditions for its application in the eventuality of a seizure which guarantees the safeguard of both the rights of defence and property rights; conformity with the Constitution.
(90-281 DC, December 27, 1990, No. 15 and 16, p. 91)

PRINCIPLES OF CRIMINAL LAW

Principle of legality of offences and penalties

Area of application

Protective measures of the Customs and excise code

The protective measures administered by the Customs and excise code are not of the nature of the "penalties" which enter in the field of the provisions of Article 8 of the Declaration of the Rights of Man and of Citizens according to which "the law ought to impose no other penalties but such as are absolutely and evidently necessary."
(90-286 DC, December 28, 1990, No. 22, p. 107)

Amnesty

Definition of offences that have been amnestied

On the basis of the provisions found in Article 34 of the Constitution, it is up to the lawmaking body to determine, in accordance with objective standards, what offences and, when necessary, which individuals should be amnestied.
(89-265 DC, January 9, 1990, No. 6, p. 12)

In accordance with the jurisdiction recognized in Article 34 of the Constitution, and in order to ensure political or civil appeasement, the lawmaking body henceforth has the power to remove all indictable character from certain criminally reprehensible acts by prohibiting legal proceedings or annulling sentences pronounced against them.
(89-271 DC, January 11, 1990, No. 21, p. 21) (cf. 88- 244 DC, July 20, 1988, No. 44, p. 119)

Definition of persons to be amnestied.

Distinctions

In order to be amnestied in accordance with article 19 of the law submitted to the Constitutional Council, the offences must have been committed prior to June 15, 1989 and be "directly or indirectly related to the funding of electoral campaigns, parties or political groups" and not have resulted in "the personal enrichment of those involved." The following offences or individuals may not be amnestied: offences relating to counterfeit money, as defined in articles 132 to 138 of the Criminal code, as well as crimes involving misuse of political influence or corruption, punishable under articles 175 to 178 of the same code and the members of the French parliament. According to the lawmaking body, this last exception is justified by the fact that the aim of the law to

ensure political and civil appeasement would not be achieved if parliamentary members exercised, in their own favour, their Constitutional right to vote an amnesty concerning offences relating to electoral campaigns or political party funding.

The taking into account of these criteria on the part of the lawmaking body, in order to determine the scope of the amnesty, is not a principle which is contrary to the Constitution. Nevertheless, the application of these criteria could not exclude members of the French Parliament from being amnestied, if they were members of the French Parliament on June 15, 1989 and were, thereby, called upon to exercise the powers concerning amnesty conferred to Parliament as set forth in Article 34 of the Constitution. However, in equal consideration of the status of those concerned on the date of the offences, though they had ceased to be parliamentary members as of June 15, 1989, the lawmaking body introduced a distinction between the authors of identical acts with respect to the amnesty, which is not justified by the aim of achieving political and civil appeasement for which the law was devised. It thus follows that the text stating the words "ou à celle des faits" (or at the time of the facts) in the text of article 19 in the submitted law should be declared contrary to the Constitution.
(89-271 DC, January 11, 1990, No. 22 and 23, p. 21)

Effects of amnesty

On the basis of the provisions of Article 34 of the Constitution, the lawmaking body has the power to remove all indictable character from certain criminally reprehensible acts by prohibiting legal proceedings or annulling sentences pronounced against them.
(89-265 DC, January 9, 1990, No. 6, p. 12)

FREEDOM OF ASSOCIATION

Authorized *associations syndicales*

A combined reading of the provisions of the law enacted June 21, 1865, provides that *associations syndicales* are not governed by private law, but are public associations of an administrative nature. Therefore, the legal grounds for arguing that the conditions for their creation would be contrary to the freedom of association are nonsense.
(89-267 DC, January 22, 1990, No. 13, p. 27)

Political Party Funding Associations

Authorisation

Requirements for the authorization of Political Campaign Funding Associations must be construed as only limiting the power of the National Commission for Campaign and Political Party Funding so as to make sure that the funding association satisfies the conditions enumerated in article 11-1, as added to the law of March 11, 1988.
(89-271 DC, January 11, 1990, No.17, p. 21)

FREE ENTERPRISE AND FREEDOM OF COMMERCE AND INDUSTRY

Free choice by the patient of a doctor

By foreseeing the possibility of organising under separate agreements between local branches of the *CNAM* and medical specialists, on the one hand, and generalists on the other, article 17 of the law submitted to the Constitutional Council affects in itself neither the free choice by the patient of a doctor, nor the doctor's right to prescribe medication; nonetheless, these principles inherent to the medical profession are mentioned in the provisions of article L. 162-2 of the *Sécurité sociale* code, which remain unchanged. Whatsoever compromises the free exercise of the medical profession must by all means be repudiated.

(89-269 DC, January 22, 1990, No. 28 to 30, p. 33)

THE ADVERSARY NATURE OF CERTAIN PROCEDURES

Respect for the rights of defence with the exclusion of criminal law

Associations for political party funding

Withdrawal of authorization

Although article 11-6 as added to the law of March 11, 1988 provides that authorization will be withdrawn from all associations which do not respect the regulations provided for by articles 11-1 and 11-4, these provisions should not be interpreted as excusing the administrative authority, when it intends to withdraw authorization from respecting the rights of defence.

(89-271 DC, January 11, 1990, No. 18, p. 21)

Pronouncement of protective measures.

Pronouncement of protective measures on the property of the perpetrators of offences mentioned in article 387 section 1 of the Customs and excise code is, by the overall provisions of this article, subject to regulations that ensure the protection of property rights as well as the rights of defence.

(90-286 DC, December 28 1990, No. 23, p. 107)

Essential guarantees for the rights of defence in certain procedures

Procedures for collection of taxes

In accordance with Article 8 of the Declaration of the Rights of Man and of Citizens as well as with the *Principes fondamentaux reconnus par les lois de la République,* that a penalty can not be inflicted unless the principle of the rights of defence are respected. This requirement not only concerns penalties pronounced by repressive jurisdictions, but also covers all sanctions having a punitive nature, even 024the lawmaking body has authorized a non-jurisdictional entity to make the decision.

Article of the finance act stating that the additional tax it institutes is collected in accordance with the same sanctions as is the stamp tax on parimutual tickets. This type of collection in no way obliges the administration to respect the rights of defence prior to being sentenced to pay a fine based on article 1840-I of the General Tax code or on provisions mentioned in the given article.

(90-285 DC, December 28, 1990, No. 57, p. 95)

Applicable texts — The scope of application of Article 17 of the Declaration of the Rights of Man and of Citizens for purchase made by an agricultural cooperative

Compulsory purchase for agricultural cooperatives

Exercising the right of relinquishment provided for the benefit of landowners whose lots are included within the periphery of an agricultural cooperative constitutes a requisition for purchase made at the initiative of a landowner who does not intend to join an authorized agricultural cooperative; consequently, the conditions for exercising this right are not included within the scope of Article 17 of the Declaration of 1789.
(89-267 DC, January 22, 1990, No. 17, p. 27)

Cases where property rights remain unaffected

Preliminary saveguard required for the creation of an authorized agricultural cooperative

The provisions of article 17 of the law submitted create a protective measure responding to the concern to avoid compromising individual initiatives and rendering more expensive the establishment of an authorized agricultural cooperative or the undertaking either by or for it of public works or public interest programs; it is up to the administrative organ to determine the use and the duration of the powers provided for in the text; all measures limiting the exercise of the property rights must set forth the considerations of law and of fact which constitute the grounds for these limitations and must be submitted to or reviewed by a judge for abuse of discretion; the provisions of article 17 do not exclude, either by their object or their terms, the bringing into play of the responsibility of public power, in the case where a decision legally grounded would cause damages subject to compensation; under these conditions, the provisions of article 17 are not contrary to property rights, as stipulated in the Constitution.
(89-267 DC, January 22, 1990, No. 5, p. 27)

The creation of authorized agricultural cooperatives

The law submitted to the Constitutional Council defines the conditions required for creating an authorized agricultural cooperative; in particular, the association must propose its intention to ensure or to have ensured either agricultural, pastureland or forest public works projects, or projects of a different nature so long as they promote rural development; an agricultural cooperative can only be authorized following an administrative inquiry; in addition, every landowner whose lots are included within the periphery of the cooperative has the option of exercising the right of abandonment; the provisions relative to the establishment of agricultural cooperatives do not extend property rights to limits contrary to the Constitution.
(89-267 DC, January 22, 1990, No. 10, p. 27)

Pronouncement of protective measures

The pronouncement of protective measures on the property of the perpetrators of offences mentioned in article 387 section 1 of the Customs and excise code is, by the overall provisions of this article, subject to regulations that ensure the protection of both the property rights and the rights of defence.
(90-286 DC, December 28, 1990, No. 23, p. 107)

Determination of the value of abandoned property

According to property rights as guaranteed by Article 2 of the Declaration of the Rights of Man and of Citizens, as well as the principle of equality in public expenditures flowing from Article 13, the price of property relinquished to an authorized agricultural association cannot be less than the real value of the property; the article of the law holding that disagreement over the amount of compensation is to be determined as in the case of expropriation meets this requirement.
(89-267 DC, January 22, 1990, No. 18 and 19, p. 27)

EQUALITY

EQUALITY BEFORE THE LAW

Violation of the principle of equality

Foreigners

Non-contributive social benefits

A provision conferring a new version of article L. 815-5 of the *Sécurité sociale* code according to which the "supplementary allowances should be only granted to foreigners in application of European Community regulations or of reciprocal international conventions."

The lawmaking body can pass specific provisions with respect to foreigners, provided that it respects international agreements entered into by France and the liberties and fundamental rights of constitutional value accorded to those who reside on the territory of the French Republic.

A supplementary allowance to the national solidarity fund is granted to the elderly, those who can no longer work, and, in particular, in the case where they do not have sufficient funds at their disposal, from whatever source, to ensure them a minimum living wage; the right to receive this allowance is subordinated to a residency requirement. The exclusion of foreigners regularly residing in France from benefiting from the supplementary allowance, when they cannot take advantage of an international agreement or of statutes grounded thereon, disregards the principle of constitutional equality.
(89-259 DC, January 22, 1990, No. 32 to 35, p. 33)

Guarantee of the principle of equality: absence of discrimination

Elections

Simultaneous candidacy for *conseil général* and *conseil régional* elections

Should candidates run for both the *conseil général* and *conseil régional* in elections held on the same date by the lawmaking body, although this could influence the choice of the voters, the principle of equality is unaffected, as long as organisation of the voting facilities for these simultaneous elections is set up in such a way as to avoid all confusion in the voters' minds and maintain their freedom of choice.
(90-280 DC, December 6, 1990, No. 18, p. 84)

Taxation

Increase on rates of taxation — Criteria for determining the assessment of taxes

A provision putting a 0.4 % increase on taxes to cover the cost of assessment and collection of taxes, as determined in subdivision II of article 1641 of the general fiscal code. By criticizing this increase, the plaintiffs tend to question the tax levied. It is up to the lawmaking body, when it prescribes the rate, to freely determine the tax assessment, provided that it respects the principles and regulations of constitutional value; in particular, in order to guarantee the principle of equality, the lawmaking body should base its appraisal on objective and reasonable criteria.
(90-277 DC, July 25, 1990, No. 19 and 20, p. 70)

Assessment and objective of government taxes

Taxation received by the French State in order to cover expenses incurred by its services for the prescription of tax assessments and the collection of taxes for territorial collectivities, the bases and rates of which vary from one collectivity to another. The lawmaking body has been founded, without disregarding the principle of equality, to choose as the basis for governmental assessment, the amount of direct local taxes paid by those involved.

In accordance with the assessments thus applied and considering the objective pursued by this tax, which is to cover the global expenditures incurred by the state administrations for the benefit of local collectivities for the institution and collection of their direct taxes, the fact that the lawmaking body has decided to adopt across-the-board rates for tax increases is not contrary to the principle of equality.
(910-277 DC, July 25, 1990, No. 22 and 23, p. 70)

Absence of discrimination among taxpayers in the collection of and in litigations concerning income taxes

The social levies taxes established by the law constitute distinct forms of taxation. However, when they are instituted at a flat rate, allocated to the same organization and their common objective is national solidarity, the means for collection and applicable litigation procedures must not lead to the creation of disparities among diverse categories of taxpayers, which would disregard the principle of equality before the law and before the courts.

This is not the case here. Those taxpayers paying taxes on estate revenues as well as those paying taxes on financial investments are equally subjected to fiscal rules, as far as collection and litigation procedures are concerned. The resulting guarantees for the taxpayers of the salaried income and retirement and unemployment benefits, both from the law and from the related provisions, are not especially different from those applicable to taxpayers of the other two contributions.
(90-285 DC, December 28, 1990, No. 50 to 52, p. 95)

Diverse applications

Limited and temporary dispensations regarding the status of tenant farming

Dispensations authorized by article 30 of the law, referring to the status of tenant farming, are temporary in nature; the procedure laid down by this article is only applicable to unoccupied rural buildings for rent that measure no more than twice the minimum surface that can be occupied, and its purpose is to promote rural development or to enhance the value of agriculture; once these objectives have been realized and verified by an association for rural development, the status of tenant farming applies once again; taken as a whole, the procedure of article 30, prompted as the concern to enhance the value of agriculture, is not contrary to constitutional principles of equality.
(89-267 DC, January 22, 1990, No. 24, p. 27)

Guarantee of the principle of equality: difference of treatment substantiated by a difference of situation

Creation of agricultural cooperatives

Taking into consideration the object of the law, the principle of equality does not impede the application of different rules in different situations; in determining the conditions to which the authorization of an agricultural cooperative are subject, the law could, therefore, enact different rules depending on whether or not the local collectivity participates in the establishment of agricultural cooperatives.

(89-267 DC, January 22, 1990, No. 12, p. 27)

Social law

Separate medical agreements

The lawmaking body and regulatory power must determine, in view of their respective powers, and with respect to the principles laid down by the eleventh paragraph of the Preamble, the actual terms and conditions required for the application of these principles; it is their responsibility, in particular, to determine the appropriate rules leading to the realization of the objective as defined by the Preamble; in this respect, recourse to an agreement governing the relations between the local branches of the *CNAM* and doctors aims at decreasing the percentage of medical fees that will remain definitively at the expense of *Sécurité sociale* insurants and, in consequence, will permit the implementation of the principle presented by the provisions of the Preamble heretofore mentioned; the possibility of organizing by separate agreements the relations between the local branches of the *CNAM* and the general practitioners and specialists, respectively, has as an objective to facilitate the conclusion of such agreements; under these conditions, there is no way to contest a provision of the law, which provides for separate medical agreements, because it is in compliance with the provisions of the eleventh paragraph of the Preamble of the Constitution of 1946.

(89-269 DC, January 22, 1990, No. 26, p. 33)

Foreigners' status — Deportation of illegal residents

Within the judicial framework defined by the executive order enacted on November 2, 1945 according to which foreigners acquire a different status from that of French nationals, the intention of the law submitted is to ensure the effective execution of a prefectoral order of deportation, while simultaneously safeguarding the rights of those concerned, and has set forth a specific procedure allowing them to contest the legality of the deportation proceedings to which they are subjected before an administrative court; in consideration of both the particular situation in which foreigners find themselves when ordered to leave the country and for reasons of public interest as pursued by the lawmaking body and which are in keeping with the purpose of the first article of the law, the specific rules laid down by this text do not infringe upon the principle of equality.

(89-266 DC, January 9, 1990, No. 7 and 8, p. 15)

Considerations of public interest justifying difference of treatment

Generalities

The principle of equality neither prevents the law making body from ruling in a different manner with different situations, nor from departing from the principle of equality for reasons of public interest, provided that within both cases, the resulting difference of treatment relates to the purpose of the law for which it is established.

(89-266 DC, January 9, 1990, No. 5, p. 15)
(90-280 DC, December 6, 1990, No. 15, p. 84)

Elections

Temporary provisions affecting the situation of voters and those candidates elected

The law providing for the holding of the *conseil général* and *conseil régional* elections at the same time introduces, by its temporary provisions, discrepancies between the elected candidates with respect to their terms of office and between the voters whose votes are valid for different periods. But this differential treatment, (which is) limited and is scheduled to end in the near future, is the consequence of a reform intended to increase voter turnout for the elections concerned. It is justified as being in the public interest with respect to the purpose of the law submitted.
(90-280 DC, December 6, 1990, No. 17, p. 84)

EQUALITY BEFORE THE COURTS

Amnesty

Scope of application

The principle of equality does not prevent the lawmaking body from restricting the scope of application of amnesty so long as the reserved categories, namely the offences and persons who should be granted amnesty, are defined in an objective manner.
(89-271 DC, January 11, 1990, No. 21, p. 21)

Judge for taxation

Social levies on diverse categories of income

The three social levies established by the law constitute distinct forms of taxation. However, when they are instituted at a flat rate, allocated to the same organization and their common objective is national solidarity, the means for collection and applicable litigation procedures must not lead to the creation of disparities among diverse categories of taxpayers, which would disregard the principle of equality before the law and before the courts.

This is not the case here. Those taxpayers paying taxes on estate revenues as well as those paying taxes on financial investments are equally subjected to fiscal rules as far as collection and litigation procedures are concerned. The resulting guarantees for the taxpayers paying taxes on the salaried income and retirement and unemployment benefits, both from the law and from the related provisions, are not especially different from those applicable to taxpayers of the other two contributions.
(90-285 DC, December 28, 1990, No. 50 to 52, p. 95)

Non-conformity of the taxation procedure

The provisions of the tax procedure code concerning the consequences of infractions committed by the tax authorities on tax procedure are not contrary to the principle of equality before the courts. These provisions allow the jurisdiction applied to:
— waiver surcharges and fines when the tax procedure infractions committed are not so serious as to render the application invalid, and on these grounds alone, with the exception of the principal owed and the accumulated interest due to lateness;
— waiver both the principal owed and the penalties when the infraction has infringed on the rights of defence or when it is one of those infringements expressly provided for by the law or by international agreements enterred into by France.

These provisions do not concern the definition of the prerogatives of the tax authorities

but the determination by the lawmaking body of the conditions under which the taxation judge is called upon to evaluate the effect of an infraction on the tax procedure.
(90-286 DC, December 28 1990, No. 7, p. 107)

EQUALITY IN PUBLIC EXPENDITURE

Equality in taxation

Social levies on diverse categories of income

Taxpayers

In application of the principle of equality in taxation, a taxpayer's situation is to be considered individually for purposes of each specific tax; in each case, the lawmaking body must base its assessment on objective and rational criteria. Moreover, should several taxes be imposed, the common goal of which is the implementation of a principle for national solidarity, the determination of different taxes for taxpayers must not lead to a severe breach in equality among all citizens regarding public expenditure.

Institution, in this case, of three social levies, the common goal of which is national solidarity. The non-liability of taxpayers whose taxation on income is below 420 Francs, concerning one of these taxes (the social levy on estate taxes), is justified according to the general rules aimed at avoiding the engagement of expenses of collecting direct taxes which would be excessive when compared to the amounts at stake. This does not lead to a severe breach in equality among citizens with respect to public expenditure.
(90-285 DC, December 28, 1990, No. 27 to 31, p. 95)

Rules for tax assessment

When taxation is imposed by a lawmaking body, it is the latter's responsibility to freely determine the tax base, provided that it respects the principles and rules of constitutional value; it must, in particular, base its assessment on objective and rational criteria.

The choices made in such cases by the lawmaking body have led it, in the determination of the tax base for social levies on salaried income and retirement and unemployment benefits to impose taxes on the non-salaried working population on their net professional income and the salaried working population based on the "gross salary." However, once a global deduction representing professional expenses set at 5% has been applied to the gross total, the aforementioned choices do not create a major disparity between the two categories of persons liable to pay this tax.
(90-285, DC, December 28, 1990, No. 33 to 35, p. 95)

Tax rates

The objective of the three social levies taxes instituted by law is to enable the entire population to participate in the financing of public expenditure for *sécurité sociale;* this amount, deposited at the *Caisse nationale des allocations familiales,* ensures the same contributions as those amounts withheld for the *sécurité sociale,* characterized by a preponderance of taxes that are not subject to a progressive rate; they are not deductible from taxable income, the latter rates of which are progressive. Under these conditions, the lawmaking body's choice of a flat rate for all three levies rather than a progressive one, can not be considered contrary to Article 13 of the Declaration of Man and Citizens' Rights.
(90-285, DC, December 28, 1990, No. 40 and 41, p. 95)

Equality in public expenditure outside the fiscal law

Relinquishment to the benefit of an authorized agricultural association — Compensation

According to property rights as guaranteed by article 2 of the Declaration of Man and Citizens Rights, as well as the principle of equality in public expenditures derived from from Article 13, the price of property relinquished to an authorized agricultural association cannot be less than the real value of the property; the article of the law holding that disagreement over the amount of indemnification is to be determined as in the case of expropriation meets this requirement.

(89-267 DC, January 22, 1990, No. 18 and 19, p. 27)

Compensations

Pensions for war victims and their next of kins

In virtue of Article 34 of the Constitution, the lawmaking body determines the rules whose aim are to guarantee State compensation to those persons who received corporal damage due to war injuries and analagous situations, as well as to their next of kins, for consequences due to their invalidity. However, the State is authorized to set a deadline for the presentation of applications for obtaining the abovementioned benefits; but due to the law's objective, the consistency of the rights of persons suffering from the same infirmities can not depend on the date on which applications are filed, without there being an infringement of the principle of equality so long as no forclosure is opposable in virtue of the law.

The provisions of an article of finance act determining the benefit of a pension increase, as provided by articles L. 14 and L. 16 of the code of military invalidity and war victims pensions, to submit an initial request prior to December 31, 1990, is not in conformity with the Constitution. The provisions of the same article limiting the amounts allocated to widows, when their right to draw a widow's pension occurs after this date in consideration of the rate of the husband's pension.

(90-285 DC, December 28, 1990, No. 63 to 66, p. 95)

ELECTIONS

CONTENTIOUS MATTERS

Powers of the Constitutional Council

Rules concerning the funding for the election of *députés*

Articles 7 and 8 of the *organic law* on campaign funding for the election of the President of the French Republic and of *députés*, which confer to the Constitutional Council the power to sanction disqualifications linked to the non-respect of the rules on the funding of elections of *députés*, fall under the purview of an *organic law* consistent with the combined provisions of Articles 25, 59 and 63 of the Constitution.

(90-273 DC, May 4, 1990, No. 12, 13 and 15, p. 55)

Conclusions and means

Admissibility of the conclusions

The conclusions that do not aim at correcting a material mistake, but instead question the legal assessment made by the Constitutional Council on the admissibility of an inquiry referred to it, are not admissible.

(89-1139, February 1, 1990, Sénat, Gironde, No. 3, p. 46)

Assessment of facts by the Constitutional Council

Principles of control

By virtue of the first article of the law of September 30, 1986, as modified, the exercise of freedom in broadcasting can be limited to the extent necessary with respect to "the pluralistic nature of the flow of different ideas and opinions"; article 16 of the same law enables the Upper Audio-Visual Council, on the one hand, to lay down rules concerning the conditions for production, programming and broadcasting of programs related to electoral campaigns which fall upon the nationally owned companies for programming, on the other hand, to address recommendations to authorized producers for the entire period of the electoral campaigns; in addition, article 62 of the law compels the "TF1" network to respect pluralism in regard to news and programs; lastly, in the second paragraph of article L. 49 of the electoral code : "As of midnight on the eve of election day, it is forbidden to broadcast or to have broadcast by any means of audio-visual transmission any message that could be characterized as electoral propaganda"; it is the Constitutional Council's role, as judge in the election of parliamentary members, to enquire into whether the facts alleged by the plaintiff disregarded these rules, and to determine their effect on the election results.

(89-1138, March 6, 1990, A.N., Bouches-du-Rhône 2e, No. 2 and 3, p. 52)

Irregularities which do not modify the results

Contestation by a candidate of a television broadcast during which journalists criticized the party having endorsed the candidate; according to the preliminary investigation, the contested broadcast was in the form of a panel of journalists holding conflicting points of view; the incriminated words were uttered at 37 minutes past midnight on the morning of December 3; moreover, this program reached a very limited audience in the *département* of the Bouches-du-Rhône; under these conditions, this broadcast could have had no influence the electoral results.

(89-1138, March 6, 1990, A.N., Bouches-du-Rhône 2e, No. 4, p. 52)

The plaintiff states that her party was the object of criticism by the Socialist Party's First Secretary during a news presentation on the TF1 network at 24 minutes past midnight on the morning of December 3, 1989; given the context, these statements followed a comment made by the Secretary General of the *Rassemblement pour la République,* they did not reveal any new facts in the electoral debate and were broadcast at a very early hour for a limited television audience; they could not be considered as having much impact on the election results.

(89-1138, March 6, 1990, A.N., Bouches-du-Rhône, No. 5, p. 52)

An accusation made by the Prime Minister on election day, prior to the closing of the polling places, against a political organization engaged in the electoral race, disregarded the rules applicable to broadcasting, for the entire period of the electoral campaign; however, such failure to abide by the rules could not have had any consequential influence on the election results because the broadcast of the Prime Minister's speech occurred three quarters of an hour prior to the closing of the polling places, and due to the wide discrepancy in the results of the two candidates in the second round of the elections.

(89-1138, March 6, 1990, A.N., Bouches-du-Rhône 2e, No. 7 and 8, p. 52)

Way of appeal

Request for rectification of a material mistake

A mistake regarding the date of the recording of a memorandum, as alleged in a plaintiff's request for the rectification of a decision made by the Constitutional Council, is not liable to have influenced the judgment of the case or to have been detrimental to the plaintiff; the request is, therefore, not admissible.

(89-1139, February 1, 1990, Sénat, Gironde, No. 2, p. 46) (comp. 87-1026, October 23, 1987, p. 55)

PUBLIC FINANCE

DIRECT AND INDIRECT TAXES AND OTHER FORMS OF TAXATION

Taxation

Tax rates

The objective of the three social levies instituted by law is to enable the entire population to participate in the financing of public expenditure for *sécurité sociale;* this amount, deposited at the *Caisse nationale des allocations familiales,* is meant to lighten the charges for the same contributions as those amounts withheld for *sécurité sociale,* characterized by a preponderance of levies that are not subject to a progressive rate; they are not deductible from the amount of income tax whose rates are progressive. Under these conditions, the lawmaking body's choice of a flat rate for all three taxes rather than a progressive one, can not be considered contrary to Article13 of the Declaration of Man and Citizens Rights.

(90-285, DC, December 28, 1990, No. 40 and 41, p. 95)

Terms and conditions for collection

It is the lawmaking body's responsibility, in accordance with Article 34 of the Constitution, to determine the rules concerning the terms and conditions for the collection process for all forms of taxes. In the exercise of this power, it must conform to the principles and rules of constitutional value. Should no *principes fondamentaux reconnus par les lois de la République* require a specific type of collection, it remains, nonetheless, that, in conformity with Article13 of the Declaration of the Rights of Man and of Citizens, the collection process for taxation contributing to National expenditure can only be imposed by services or organisations placed under the authority of the State or under its supervision. Conformity with the Constitution, in cases regarding the collection of social levies on salaried income and retirement and unemployment benefits by organisations exercising a mission of public service and placed under the authority of the State or under its supervision.

(90-285 DC, December 28, 1990, No. 45 and 46, p. 95)

FINANCE ACTS

General rules related to the examination of money bills

Time limit for examination

Letters of amendment

The aim of a combined reading of paragraphs 2 and 3 of Article 47 of the Constitution and the provisions of paragraphs 38 and 39 of *ordonnance* No. 59-2 dated January 2, 1959, is to guarantee that measures of a financial nature, which are necessary to ensure the financial ways and means of government are established in due time and, more precisely, prior to the beginning of a fiscal year, and that they also guarantee a time limit for each assembly (40 days for the National Assembly and 15 days for the Senate), to give a money bill its first reading.

So long as the above requirements have been met, the fact that a letter of amendment to an appropriation bill was not submitted to the office of the National Assembly until

Thursday, October 4 instead of Tuesday, October 2, does not in itself affect the regularity of the legislative procedure.
(90-285 DC, December 28, 1990, No. 12 and 13, p. 95)

Supervisory power over finance acts

Supervision over public finance management

General annexes

Free access of parliamentary members to documents annexed to the money bill, prescribed by article 32 of *ordonnance* No. 59-2 dated January 2, 1959, whose aim is to guarantee distribution of the information in due time so that an appropriation bill can be voted within the time limit indicated in Article 47 of the Constitution.

In this case, even if the report describing the social effort of the nation, as prescribed by article 8 of law No. 74-1094 dated December 24, 1974 was not submitted to Parliament, the official reports of the committees referred to for report or for opinion are proof that the assemblies had access to detailed information on the institution of an "across-the-board welfare tax."
(90-285 DC, December 28, 1990, No. 15 and 16, p. 95)

Universality of finance acts

Absence of allocation of revenues

The allocation of a resource to a public institution (in this case the *Caisse Nationale des allocations familiales)* is not subject to the stipulations of Article 18 of *ordonnance* No. 59-2 dated January 2, 1959, which applies strictly to State revenues.
(90-285 DC, December 28, 1990, No. 25 and 26, p. 95)

Content and presentation of money bills

Content of the first and second parts of the money bill, respectively

In virtue of Article 31 of *ordonnance* No. 59-2 dated January 2, 1959, the provisions instituting a tax must figure in the first part of the appropriation bill for the determination of a balanced budget for the following fiscal year, in addition to authorization to levy the existing taxes allocated to public collectivities, should the former be destined to procure State funds at the beginning of the next fiscal year.

The provisions instituting taxation, the revenue of which should not be attributed to the State, and which have no effect in themselves on State resources for the new fiscal year, could consequently figure in the second part of the finance act without disregard for Article 31 or Article 40 of *ordonnance* No. 59-2 dated January 2, 1959.
(90-285 DC, December 28, 1990, No. 17 to 20, p. 95)

Provisions in the finance act

Provisions of a fiscal nature

The legislative provisions that create three welfare taxes that fall under the heading "general taxation", in accordance with Article 34 of the Constitution are among those that can figure in a finance act, in virtue of paragraph three of the first article of *ordonnance* No. 59-2 dated January 2, 1959.
(90-285 DC, December 28, 1990, No. 8 and 9, p. 95).

Information and supervision of the Parliament over public finance management

An article of the finance act providing for the annual presentation to Parliament of the report that covers, in particular, "assessment and revenue from the across-the-board social levy." This presentation constitutes a measure destined to organize the information and supervision of Parliament over the management of public finance, as stipulated by the second paragraph of article 1 of *ordonnance* No. 59-2 dated January 2, 1959. The provision concerned is consequently under the jurisdiction of a finance act.

(90-285 DC, December 28, 1990, No. 10, p. 95).

Provisions which define the judicial framework in which those liable for value added taxmay use electronically transmitted invoices are among those which may occur in an finance act by virtue of the third paragraph of the first article of the *ordonnance* No. 59-2 of January 2, 1959. Indeed, as far as value added tax is concerned, the tax-payer is required by law to issue an invoice; moreover, the drawing up or possession of this document may effect the person liable to the tax and his or her right to deduction.

(90-286 DC, December 28, 1990, No. 12, p. 107)

The customs duties of a fiscal nature — legislative provisions concerning the imposition of protective measures for infringements of certain provisions of the Customs and excise code, designed to identify and punish fraudulent activities — are among those likely to appear in a finance act.

(90-286 DC, December 28 1990, No. 21, p.)

Provisions which cannot figure in a finance act

Supervision by the *Cour des Comptes* of charities and organizations calling for public donations.

Article of fiscal law which adds a paragraph to article 1 of law No. 67-483 dated June 22, 1967, relative to the *Cour des Comptes,* according to which the latter can "supervise charities and organizations calling for donations to back scientific, humanitarian or social causes".

This article does not directly concern the determination of State resources and expenses; its aim is not to organize information and supervision over public management of public finances or to require pecuniary responsibilities from public service; it does not assume either the caracter of fiscal provisions . Therefore it is not included among the provisions which can figure in a text of the finance act, in virtue of article 1 of *ordonnance* No. 59-2 dated January 2, 1959.

(90-285 DC, December 28, 1990, No. 59 and 60, p. 95)

GOVERNMENT

PRIME MINISTER

Legislative initiative

Letter of amendment

According to the Constitution of 1958, a letter of amendment signed by the Prime Minister does not constitute an amendment brought by the government to a bill based on Article 44, paragraph 1 of the Constitution, but rather the implementation of the power to propose laws that the Prime Minister derives from the first paragraph of Article 39 of the Constitution.

In conformity with the requirements of the second paragraph of this article, before being submitted to the office of the assembly office, a letter of amendment signed by the Prime Minister must have been referred to the *Conseil d'Etat* for opinion, and deliberated on by the Council of Ministers.

But the fact that a letter of amendment need not be countersigned does not affect its due form, so long as this document includes, in and of itself, all of the provisions necessary to produce a legal result, as stipulated in the first paragraph of Article 39 of the Constitution.

(90-285 DC, December 28, 1990, No. 5 and 6, p. 95)

Interim

The minister assigned as interim Prime Minister by the President of the Republic is temporarily vested with all powers and authority applicable to the office which is entrusted to him on an interim basis.

(89-264 DC, January 9, 1990, No. 5, p. 9; 89-269 DC, January 22, 1990, No. 6, p. 33)
(cf. 89-268 DC, December 29, 1989, No. 8, p. 110)

PRESIDENT OF THE REPUBLIC

RULES PERTAINING TO THE PRESIDENTIAL ELECTION

The funding of campaigns for the election of the President of the French Republic

Powers of the Constitutional Council

The various provisions of the *organic law* on the funding of the campaign for the election of the President of the French Republic and of *députés* which concern the election of the President of the French Republic and the conditions in which the Constitutional Council controls the conformity of electoral procedures to applicable regulations of the election, fall within the purview of an *organic law* according to Articles 6, paragraph 2, 58 and 63 of the Constitution. They are contrary to no rule or principle of constitutional value as long as the reimbursement by the French State of all campaign expenditures does not lead to the personal enrichment of any natural or legal person.

(90-273 DC, May 4, 1990, No. 8 and 9, p. 55)

CONTINUITY OF GOVERNMENTAL ACTION

Interim Prime Minister

In designating by decree a minister as Interim Prime Minister during the Prime Minister's absence, in accordance with Article 5 of the Constitution, the President of the Republic has taken the necessary measures to guarantee continuity of governmental action; on the same grounds and for the same reasons, the individual decree designating a minister as interim Prime Minister, takes effect immediately, without waiting for its publication in the *Journal Officiel*.

(89-264 DC, January 9, 1990, No. 5, p. 9; 89-269 DC, January 22, 1990, No. 6, p. 33)
(cf. 89-268 DC, December 29, 1989, No. 8, p. 110)

TERRITORY OF THE REPUBLIC
LOCAL COLLECTIVITIES

SELF GOVERNMENT OF THE LOCAL COLLECTIVITIES

Principle

Respective powers of the state and the local collectivities

According to Articles 72 and 34 of the Constitution, it falls to the lawmaking body to define the respective powers of the State and local collectivities concerning the measures to be taken to promote the housing of underprivileged persons which meets a demand of national interest.

(90-274 DC, May 29, 1990, No. 13, p. 6)

Financial means and expenditure of the local collectivities

According to Articles 34 and 72 of the Constitution, the lawmaking body may define which categories of expenditure are compulsory for the local collectivities; however, the obligations thus placed under the responsibility of the local collectivities must be clearly defined as to their object and as to their scope and should not disregard the specific powers of the local collectivities nor should they hinder their self government.

(90-274 DC, May 29, 1990, No. 16, p. 61)

It follows from the provisions of articles 5 and 6 of the law submitted and especially from the role which devolves upon a *département* in the implementation of the departmental plan of action for the housing of underprivileged persons when it is already party to other housing agreements, that by taking the necessary steps beforehand to ensure that the contribution made by the *département* to the housing solidarity fund should be at least equal to that furnished by the State, the lawmaking body has respected the principle of self government of the local collectivities.

(90-274 DC, May 29, 1990, No. 20, p. 61)

It is within the lawmaking body's power, according to Articles 34 and 72 of the Constitution, to determine the limits according to which a local collectivity can be entitled to determine the tax rate adopted in view of covering its own expenditures; nevertheless, the regulations determined by law could not in effect limit the tax resources of local collectivities to the point of interfering with their self government .

By prescribing that in 1990 the revenues derived from the departmental income tax should not surpass that collected the preceding year by the *département* in residence taxes on permanent residences, even with the 4 % increase, the lawmaking body's objective was to avoid an excessive tax increase for departmental taxpayers should the reform implemented on January 1, 1992; this measure will be in effect for one year; given its temporary character, the ceiling envisioned is not of a nature that might hinder the self government of a departmental collectivity, despite the constraints it might engender for certain *départements.*

(90-277 DC, July 25, 1990, No. 14 and 15, Yearbook, p. 70)

Elections

Simultaneous elections to the *conseil général* and *conseil régional*

The choices made by the lawmaking body to hold the elections to the *conseil général et régional* on the same date and to extend for one year the terms of office of those members of the general councils re-elected in 1985, fall within the purview of a reform whose aim is in no way contrary to any principle or rule of constitutional value; the

terms and conditions defined by the lawmaking body to implement this reform are both exceptional and temporary. In this case, the articles of the law relative to these terms and conditions are neither contradictory to Article 3 of the Constitution guaranteeing the right to vote, nor to the principle of self-administration for local collectivities.
(90-280 DC, December 6, 1990, No. 10, p. 84)

Determination of the term of office for subsequent elections of *conseil général* members

Provisions according to which the term of office of *conseil général* members re-elected in 1994 will expire in March 1998 in no way infringe upon the principle laid down by article Article 72 of the Constitution by virtue of which "the local collectivities are administered independently by elected councils."
(90-280 DC, December 6, 1990, No. 21, p. 84)

Offices of the *conseils généraux*

Provisions concerning the powers of the elected offices after the re-election of the members of certain *conseils généraux* in 1992 shall expire at the end of two years and the elected offices following the re-election of the members of the other *conseils généraux* in 1994 shall last four years in order to coincide with the first complete re-election of the *conseils généraux* in 1998. The only purpose of these provisions is to apply legislative changes to the *conseils généraux* elections calendar. As it is stipulated that the "offices" of the *conseils généraux* are to be elected", the argument that Article 72 of the Constitution has been violated is without foundation in fact.
(90-280 DC, December 6, 1990, No. 23, p. 84)

ORGANISATION OF LOCAL COLLECTIVITIES

OVERSEAS *DEPARTEMENTS*

Adaptation of legislative provisions for overseas departments

Legislative schemes that refer to a decree to be issued by the *Conseil d'Etat* the capacity to determine the conditions for implementation of the provisions concerning the departmental income tax and allocations of the national aid fund are not contrary to the constitution; in fact, as this merely involves the implementation of legislative provisions, even if they require a certain adaptation to the status of overseas *départements,* it is the regulatory authorities' responsibility, with the control of the appropriate jurisdiction, to verify its legality.
(90-277 DC, July 25, 1990, No. 27, p. 70; cf. 82-152 DC, January 14, 1983, No. 13, p. 31)

Overseas territories

Notion of a specific territorial organization

Certain provisions of Livre II bis of the Public Health code, related to the protection of those who participate in biomedical research, which have been modified and completed by the law submitted for examination by the Constitutional Council, involve a specific territorial organization abroad, in the sense of article 74 of the Constitution; consequently, the extension of the above provisions to these territories should have been preceded by a consultation with the territorial assemblies involved; given that such a consultation did not take place, the article added to the Public Health code that renders the "Livre II bis" applicable to territories abroad, disregarded article 74 of the Constitution.
(89-269 DC, January 22, 1990, No. 42, p. 33)

Overseas local collectivities with special status

Organic law whose aim, on the one hand, is to increase the number of seats for representation of economic and social activities for overseas territories from eight to nine and, on the other, to include in this representation, in addition to the overseas *départements* and territories, "the overseas territorial collectivities with special status." Conformity with the Constitution.

(90-279 DC, November 7, 1990, p. 77)

INTERNATIONAL TREATIES AND AGREEMENTS INTERNATIONAL LAW

SCOPE OF TREATIES ONCE INTRODUCED INTO INTERNAL ORDER

The predominance of treaties over the law and administrative rulings

The lawmaking body can take specific measures regarding foreigners provided that international obligations signed by France and the freedoms and fundamental constitutional rights recognized to everyone living in the French Republic be respected.

(89-269 DC, January 22, 1990, No. 33, p. 33)

NOTE TO THE READER

The annual analytical synopsis provides a detailed and indexed overview of the decisions of the French Constitutional Council. The abstracts of the decisions are listed under 14 headings. Reference is not necessarily made to each of the headings each year.

Decisions are assigned three references:

— two numbers representing : — the year of their filing,
— order of their registration on the court docket;

— abbreviations according to the nature of the referral e.g. 90-273 DC, May 4, 1990.

The abbreviations are:

DC. — Constitutional review.

FNR or **L.** — Decisions related to the distribution to the competent authorities, i.e. the government and the law making bodies.

I or **D.** — Decisions related to the situation of a member of Parliament (incompatibility, ineligibility or disqualification).

A.N. (Assemblée nationale) or **S.** (Sénat) — followed by the identification of the constituency, e.g. **A.N.** Bouches-du-Rhône (2^{e} circ.): decisions handed concerning cases arising from parliamentary elections.

C.C.P. — These initials identify decisions of the Provisional Constitutional Commission which served in the function of the Constitutional Council from December 4, 1958 to February 16, 1959 for cases concerning parliamentary elections.

Decisions handed down as a result of the control of elections for the president of the French Republic or of referenda bear the date on which they were delivered without any other specific indications.

Other references can appear in the text:

CE for *Conseil d'État*;

Cass. for *Cour de cassation.*

To facilitate the reading of the decisions translated into English and in order to respect linguistic idioms specific to each cultural tradition of English speaking countries, the following terms have been left in French or/and printed in italics:

— those referring to institutions of procedures which are specific to France,

— those which may not be translated by a single term in English, due to differences according to the English speaking country concerned.

These terms are found as Glossary entries, which provide pertinent explanations or the appropriate translation(s).

GLOSSARY OF TERMS

Association syndicale. — A group of citizens who unite either on their own initiative (a privately held association), or by virtue of a prefectoral order (a licensed association), or by an administrative injunction (an association founded by administrative order), to effectuate certain improvements or maintenance for the general welfare of all citizens concerned.

Canton. — A constituency within the *départements* for the election of the *Conseil général* members.

Commune. — The basic local government unit which may correspond to small villages or large cities. Their inhabitants elect the *conseil municipal.*

CNAF (Caisse nationale d'allocations familiales). — National organ in charge of family prestations within the *Sécurité sociale.*

CNAM (Caisse nationale d'assurance maladie). — National organ in charge of health insurance within the *Sécurité sociale.*

Conférence des présidents. — Composed of the deputy-speakers of the lower house, the national Assembly, the chairmen of the standing committees, the general budget reporter of the Finance committee and the presidents of parliamentary parties. This *conférence* organises the agenda of the Assembly. The vote of each president is weighted in proportion to the number of members of his group.

Conseil d'État. — The function of the *Conseil d'État* is twofold: it serves as the consultative council for the executive branch and also acts as a supreme court for the administrative jurisdictions.

Conseil de préfecture. — Originally an organ with administrative and judicial powers established in each *département.* They became administrative courts in January, 1954.

Conseil général. — An assembly elected by direct universal suffrage by the constituents of each *département* on the basis of one member per district, and in charge of the management of a *département.*

Conseil municipal. — An assembly, elected by the voters of each *commune* and comprised between 9 and 37 *conseillers municipaux* [except for certain major ones, such as Paris (163), Marseille (101), Lyon (73)] in charge with city management.

Conseil régional. — An assembly elected in each *région,* composed of *conseillers régionaux,* it votes the regional budget.

Cour de cassation. — The national supreme court for the judiciary jurisdictions.

Cour des comptes. — The jurisdiction whose functions are rather similar to those of a national audit office but whose members retain judicial status.

Département. — A local government division set up during the French Revolution. It elects the *Conseil général.* In each *département* the *Préfet* represents the central administration.

Député. — Member of the lower house, the National Assembly, elected through universal suffrage.

Interprétation neutralisante. — A judicial interpretation that brings the law in conformity with the Constitution.

Journal officiel. — The official daily bulletin which contains the minutes of all parliamentary proceedings and the publication of all acts of Parliament and executive orders.

Juge administratif. — An administrative tribunal composed of councillors that only deals with litigious lawsuits between private citizens and government administration (as opposed to magistrates of the judicial order).

Magistrats. — Members of the judicial courts who may be in charge of rendering justice (*magistrats du siège),* demanding it in the name of the State (*Procureur* and *Parquet,* prosecuting magistrates) or investigating criminal cases (*juge d'instruction,* investigating magistrates).

Ordonnance. — Are mentioned in four articles (16, 38, 47 and 92) in the French Constitution of 1958. In all four cases, they are executive orders with legislative value.

Police administrative. — Governmental power to act for the health, safety, common convenience and general welfare of the people.

Préfet. — A high ranking official appointed by the government in each *département* and *région* to represent the central administration.

Principes fondamentaux reconnus par les lois de la République. — Phrase used in the Preamble of the Constitution of 1946 which enabled the Constitutional Council to integrate the standards issued from laws concerning the exercise of rights and liberties, e.g. the right of defence, the independence of administrative jurisdictions.

Principes généraux du droit. — Rules generally accepted by case law as being mandatory for the administration, even in the absence of texts, and having a value equal to that of law. Some of its principles have a legislative value in the eyes of the constitutional judge, e.g. the non-retroactivity of administrative regulatory rules, while others can assume a constitutional value such as the separation of powers or the principle of continuity of public service.

Région. — The largest local government unit comprising several *départements.* It elects the *conseil régionaux.*

Sécurité sociale. — French national insurance scheme covering essentially health (CNAM) and old age pensions. It is run and financed jointly by employers and labor.