ANALYTICAL SYNOPSIS 1994

PREFACE

This edition of the *Recueil* presents the reports of cases decided by the Constitutional Council in 1994 on the same pattern as in previous editions since 1986.

All the standard entries are again included – the full text of all decisions handed down in the course of the year in chronological order, lists of decisions, by type of review, an analytical synopsis, a subject index and a list of notes and comments in law reviews.

An Eglish translation of the analytical synopsis and the index is provided to give non French-speakers easier access to French constitutional case law. This does not, of course, have official standing : only the French original is authentic.

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 15 headings. Reference is not necessarily made to each of the headings each year.

Decisions are identified in different ways depending on the nature of the review :

1 - Decisions reviewing presidential elections or referendums bear the date on which they were delivered without any other specific indication.

2 - Decisions on cases arising from parliamentary elections are referred to by chamber – **AN** (*Assemblée Nationale*) or **Sénat** - department and constituency, **e.g. AN, Bouches du Rhône, constituency 2.**

3 - Constitutional review cases are referenced in the following manner : **90-273 DC, 4 May 1990,** where the numbers represent the year of registration (90) and the order of registration on the court docket (273), and the abbreviation designates the type of referral :

DC- Constitutional review ;

FNR or **L** - Decision relating to the separation of powers, i.e. to th executive or to the legislature ;

I or **D** - Decision relating to the situation of a member of Parliament (incompatibility, ineligibility or disqualification)

Other abbreviations occasionally used are :

Ass. CE - Judgement given by the *assemblée du contentieux of the Conseil d'Etat*

Cass - Judgement given by the Court of Cassation

ECR – Judgement made by the Court of Justice of the European Communities

A number of expressions in the abstracts have been left in French and italicized, usually because no suitable English equivalent exists. These are elucidated in the Glossary

CONTENT

PARLIAMENTARY ASSEMBLIES

STATUS OF MEMBERS

Qualifications for office

Disqualification ipso jure

It is for the Constitutional Council, once a reference has been made to it by the Minister of Justice acting under Article LO 136 of the Electoral Code, to determine whether a Member of Parliament is disqualified from sitting by virtue of having lost his right to hold public office upon conviction.
(94-5 D, 3 November 1994, p. 130)

Right to sit

Waiver of immunity

Standing Orders of the National Assembly require that a committee be set up, when Parliament is first elected and every year thereafter, to consider all applications for waiver of a Member's immunity, or for suspension of an action against or of detention of a Member. These provisions give effect to Article 26 of the Constitution and are not contrary to any constitutional provision.
(94-338 DC, 10 March 1994, para. 16, p. 71)

Miscellaneous

The purpose of the standing order prohibiting groups for the defence of local or occupational special interests from being set up or meeting if their members accept instructions purporting to be binding is to ensure respect for the prohibition in Article 27 of the Constitution. The standing order is not contrary to any constitutional provision.
(94-338 DC, 10 March 1994, paras 3 and 15, p. 71)

A standing order provides that except where personal appointments are made to the proportional representation of parliamentary parties and their constitution does not specify how appointments are to be made or candidates presented, it is for the Speaker to instruct one or more standing committees to present candidates, and their power to do so cannot be contested. If there are more candidates than seats to be filled, the Assembly itself must make the appointments by voting. This is not unconstitutional.
(94-338 DC, 10 March 1994, para. 9, p. 71)

ORGANIZATION OF PARLIAMENTARY ASSEMBLIES

Parliamentery Bodies

Bureau

Standing orders which change the procedure (which is internal to the Assembly) for appointing members of the Bureau, which cancel the Bureau's determination of an order for deputizing and which relate (i) to the arrangements governing the financial independence of the National Assembly and the commitment, regulation and supervision of its expenditure

and (ii) to the manner in which the Bureau determines the organization and operation of the Assembly's administrative departments are not unconstitutional.
(94-338 DC, 10 March 1994, para. 2, p. 71)

Special and standing committees

Procedural rules

The Standing Orders of the National Assembly allow any Member to attend meetings of committees of which he is not a member, with no right to speak or vote. It is open to the Assembly, provided the result is consistent with Article 43 of the Constitution, to change the procedural rules for committee meetings as long as committee members alone remain entitled to vote.
(94-338 DC, 10 March 1994, para. 6, p. 71)

Abandonment of the principle that one meeting per week is reserved for committee proceedings does not affect the obligation to refer instruments to committee.
(94-338 DC, 10 March 1994, paras 7 and 11, p. 71)

Removal of the prohibition on ministers' attending votes in committee is not unconstitutional.
(94-338 DC, 10 March 1994, para. 8, p. 71)

Abandonment of the principle that, where the chair of a committee asks for a member of the Government to appear before the committee, the request is passed to the Prime Minister by the Speaker and does not affect the Prime Minister's responsibility under Article 21 of the Constitution to lead the Government.
(94-338 DC, 10 March 1994, para. 10, p. 71)

It is open to either House of Parliament to enhance the preparatory role of committees to which draft legislation is referred, provided rules of constitutional status are complied with – notably the rule governing who is entitled to propose amendments that is contained in the first paragraph of Article 44 of the Constitution.
(94-338 DC, 10 March 1994, para. 19, p. 71)

PARLIAMENTARY PROCEEDINGS

Holding of sittings

A standing order requires an audiovisual account of debates held in public to be produced and broadcast or distributed in manner provided by the Bureau. This is one means of ensuring that debates are properly publicized as required by Section 45-1 of the Act of 30 September 1986 (in the version contained in the Act of 1 February 1994). The standing order is not unconstitutional.
(94-338 DC, 10 March 1994, para. 13, p. 71)

RIGHT TO THE FLOOR

Amendments

A standing order of the Senate entitles the *Conférence des Présidents* to decide not to comply with a rule according to which competing amendments are to be submitted for discussion in the same debate.

No constitutional provision makes impossible for the Senate to choose, either separate debates either a common one, or, as provided in this case, a common debate reserving the possibility for the *Conférence des Présidents* to decide separate debates.
(94-339 DC, 31 May 1994, para. 3, p. 80)

Point of order

Point of order raising is intended to allow any member of the Senate to ask for enforcement of standing order provision and may be adapted to the proceedings. However, the members of the Senate can not be deprived of any possibility to plead for enforcement of constitutional provisions grounded on Standing orders. Provision according to which 'floor can't be given to a member of the Senate to raise a point of order in a debate where the mumber of speakers allowed to take the floor is limited' which excludes the possibility to raise a point of order not only during limited or tacit adoption procedure but also during discussions over amendments which requires a limitation of the number of speakers pursuant to standing order 49, paragraph 6, would make impossible for any member of the Senate to raise inadmissibility grounded on standing orders 45 asking for enforcement of article 40 of the Constitution.

Provision depriving members of the Senate to ask for enforcement of constitutional provisions does not comply with them.
(94-339 DC, 31 May 1994, paras. 5 and 6, p. 80)

LEGISLATIVE PROCEDURE

Right to initiate legislation – Review of admissibility

Right to initiate legislation

Government bills

No violation of the Constitution

No provision or principle of constitutional status precludes the Prime Minister, acting under Article 39 of the Constitution, from including in a 'bill to make miscellaneous economic and financial provisions' laid before both Houses provisions relating to the appointment and removal from office of the general manager of the Caisse des dépôts et consignations.
(94-347 DC, 3 August 1994, para. 4, p. 113)

Private members' bills

Mere failure to comply with the Standing Orders of one of the Houses of Parliament in respect of private members' bills which have not been adopted does not of itself make the legislative procedure relating to a bill distinct from them unconstitutional.
(93-329 DC, 13 January 1994, paras 1, 5 and 6, p. 9)

Review of admissibility in financial matters

Authorities empowered to decide

Acting in accordance with Standing Order 92, the Bureau of the Finance, General Economy and Planning Committee ruled on the admissibility under Article 40 of the Constitution of the conclusions of the report of the committee responsible, which by virtue of Standing Order 91(8) was the only item on the agenda of the National Assembly, and of the private member's bill reported in order, in the terms of its decision, 'to remove any doubt about the procedure followed,.... however superfluously'. The Bureau considered that Article 40 applied neither to the conclusions of the report of the committee responsible nor to the original text of the bill. It is for the Constitutional Council to determine whether the proper procedure has been followed by examining the compatibility with Article 40 of the Constitution of the conclusions of the report of the committee responsible, entered on the agenda, discussion of which resulted in the adoption of the bill. But bills that have not been debated cannot be

referred to the Council ; examination of their admissibility is entirely a matter for the appropriate parliamentary authorities in accordance with their standing orders.
(93-329 DC, 13 January 1994, paras 4 and 7, p. 9)

Admissibility in respect of the jurisdiction of Parliament

Amendments

At the request of the Government, the Speaker of the Senate raised the provisions of Article 41 of the Constitution against certain amendments, and the provisions were held to be applicable. The decision was discussed, but its substance was not contested. The admissibility of the amendments was not questioned during the debate.
(93-329 DC, 13 January 1994, para. 19, p. 9)

Right to amend

Rules of admissibility and discussion

Application of standing orders

Mere failure to comply with the Standing Orders of one of the Houses of Parliament in respect of private members' bills which have not been adopted does not of itself make the legislative procedure relating to a bill distinct from them unconstitutional.
(93-329 DC, 13 January 1994, paras 1, 5 and 6, p. 9)

Standing orders do not have constitutional status ; consequently, mere failure to comply with the Standing Orders of the Senate does not of itself make the legislative procedure unconstitutional as long as the procedure did not conflict with the Constitution by preventing decisions on the inadmissibility of amendments being contested.
(93-329 DC, 13 January 1994, para. 15, p. 9)

Acting under Standing Order 44(2), the Senate passed a resolution declaring 2 870 amendments inadmissible because they would have prevented certain private educational establishments from receiving investment subsidies on the sole ground that they were located in certain communes or departments, which would be contrary to the principle of equality. The matter was referred to the Constitutional Council to determine whether declaring the amendments inadmissible conflicts with the right to put forward amendments conferred on Members of Parliament by Article 44 of the Constitution. The purport of the amendments was to exclude certain local government areas from the legislation, without proper justification, contrary to the principles of equality and the indivisibility of the Republic. The amendments were quite properly set aside.
(93-329 DC, 13 January 1994, paras 20 and 21, p. 9)

The Senate declared 69 amendments inadmissible under Standing Order 44(2). In the case of some of the amendments there was no proper justification for doing so, but this restriction of the right to amend, which must be considered in the light of the content of the amendments in question and the general circumstances of the debate, did not relate to any matter of real substance and therefore cannot be held to invalidate the legislative procedure.
(93-329 DC, 13 January 1994, para. 22, p. 9)

A standing order provides that amendments must be tabled within three sitting days after distribution of the report and that in no case may they be tabled once general discussion of the instrument has begun. These time limits are waived only for amendments tabled by the Government or by the committee responsible, or for amendments which one or the other agrees may be discussed, or for amendments tabled on behalf of a committee asked for its opinion. The time limits do not apply to subamendments, to amendments relating to clauses to which the Government or the committee responsible has tabled one or more amendments after expiry of the time limits or to amendments liable to be discussed together with additional clauses introduced by the Government or by the committee responsible after expiry of the

time limits. These provisions are not unconstitutional provided they do not conflict with the actual exercise of the right to propose amendments.
(94-338 DC, 10 March 1994, paras 22 and 23, p. 71)

Article 44, paragraph 2 of the Constitution

Whereas, as a general rule, Standing order 49-6 gives the possibility to debate on each amendment, the standing order under scrutiny provides that on each amendment only one speaker for, one against, the Committee and the Government may take the floor, as a consequence of the enforcement by the Government of the power it gets from article 44, paragraph 3 of the Constitution.

This provision which can not suppress the righ of statement for voting when voting on all of the provisions subject to *vote bloqué* is not contrary to be Constitution.
(94-339 DC, 31 May 1994, paras 5 and 6, p. 80)

Parliament's right to amend

A standing order provides that a request by the Government, pursuant to the second paragraph of Article 44 of the Constitution, that the Assembly refrain from discussing an amendment not previously submitted for consideration in committee must be made at the time the amendment is called. It does no more, then, than stipulate the time at which the Government must act, being after the debate has been opened. The standing order specifies the procedure whereby the Government is to exercise the power available to it under the second paragraph of Article 44. It is not inconsistent with the provisions of the article and is not unconstitutional.
(94-338 DC, 10 March 1994, paras 24 and 25, p. 71)

The Government's right to amend

Provided there is a link with the measure under discussion, and provided the restrictions inherent in the right to amend are respected, the Government's right to initiate legislation can be exercised, at its discretion, either by introducing a bill or by tabling an amendment to a measure already before one or the other House. Subject to the specific rules applying to finance bills, there is no obligation on the Prime Minister to introduce a bill. Introduction of a provision via a government amendment is not inconsistent with the second paragraph of Article 39 of the Constitution, which requires that bills – but not amendments – be discussed in Cabinet after the *Conseil d'Etat* has been consulted.
(93-329 DC, 13 January 1994, para. 12, p. 9)

Whether amendments are within the instrument being debated

Principles

On a combined reading of Articles 39, 44 and 45 of the Constitution, the right to amend is the corollary to the right to initiate legislation and may, subject to the restrictions imposed by the third and fourth paragraphs of Article 45, be exercised at all stages of the legislative procedure. But, on pain of being found contrary to the first paragraph of Article 39 and the first paragraph of Article 44 of the Constitution, all additions or changes to the instrument being debated must be related to its purpose, and the subject matter and scope must not be such as to exceed the inherent restrictions on the right to amend, as this is determined by a specific procedure.
(93-335 DC, 21 January 1994, para. 20, p. 40)

On a combined reading of Articles 39, 44 and 45 of the Constitution, the right to amend is the corollary to the right to initiate legislation and may, subject to the restrictions imposed by the third and fourth paragraphs of Article 45, be exercised at all stages of the legislative procedure. But, on pain of being found contrary to the first paragraph of Article 39 and the first paragraph of Article 44 of the Constitution, all additions or changes to the instrument being debated must be related to its purpose, and the subject matter and scope must not be such as

to exceed the inherent restrictions on the right to amend, as this is determined by a specific procedure. The Senate, by adopting a motion of inadmissibility, removed from debate on first reading 46 amendments purporting to include additional clauses in Titles IV and V of the bill being debated. The amendments were not unrelated to the subject matter of the bill. However, the infringement of the right to amend must be seen in the light of the content of the amendments in question and the general circumstances of the debate. Given the purpose of the amendments and the issues being debated, this particular infringement was not such as to void the legislative procedure.
(93-334 DC, 20 January 1994, paras 5 and 6, p. 27)

Application

Relation to the instrument being debated

The Members who referred the matter to the Council claim that the sole purpose of the debate on the private member's bill reported by the committee responsible was to enable the Government to bring in an amendment concerning investment subsidies for private educational establishments, and that an amendment of that kind goes beyond the restrictions inherent in the right to amend. Additions or changes made to the bill being debated must not, if they are to be consistent with the first paragraph of Article 39 and the first paragraph of Article 44 of the Constitution, be unrelated to the subject matter of the instrument ; nor must their subject matter or scope be such as to exceed the restrictions inherent in the right to amend qua special procedure. The bill, as appears from its title and its content, is concerned with local authorities' investment subsidies for private educational establishments. The purpose of the Government's amendment was to extend the authorities' power to subsidize investments made under contract. Its subject matter was the same as that of the bill and cannot be held to be unrelated to the bill.
(93-329 DC, 13 January 1994, paras 9 to 12, p. 9)

An amendment relating to the operation of social security offices, having a financial impact on social protection schemes concerning the remuneration of the staff of social security agencies in the Bas-Rhin, Haut-Rhin and Moselle departments (which is levied on contributions to the general scheme), is not unrelated to a Health and Social Protection Bill, Title III of which ('Provisions relating to social protection') contains measures referring to social security schemes and their financial equilibrium.
(93-332 DC, 13 January 1994, paras 10 and 11, p. 21)

The purpose of the provisions challenged in Section 7 of the Act referred, which supplement Article L 145-5 of the Town Planning Code, is to facilitate planning operations. They cannot therefore be regarded as being unrelated to the original bill, whose purpose was to adjust planning regulations in such a way as to help boost the construction industry.
(93-335 DC, 21 January 1994, paras 13 and 17, p. 40)

One of the factors affecting the building of rent-controlled premises is the collection of rent. Parliament's intention in adopting the provisions challenged with retrospective effect was to prevent disputes arising whose outcome might be prejudicial to the building of such premises. The provisions challenged cannot therefore be held to be unrelated to the bill.
(93-335 DC, 21 January 1994, para. 32, p. 40)

Relation to the instrument being debated lacking

Section 10 of the Act referred, whose scope is not confined to litigation concerning town planning, shifts the general balance on which rests the lawfulness of acts by local authorities which the representative of central government is required to ensure by the third paragraph of Article 72 of the Constitution. Because of its scope and its purpose, Section 10 (introduced by an amendment) cannot be held to be related to the bill being debated. It was therefore irregularly adopted and is consequently unconstitutional.
(93-335 DC, 21 January 1994, para. 21, p. 40)

The powers of the new conurbation authorities include town planning. But the provision challenged is concerned solely with the appointment of members of the authorities' deliberative bodies. It has no connection with the original bill's provisions concerning town planning

and building, so it cannot be held to be related to the bill. It was therefore irregularly adopted and is consequently unconstitutional.
(93-335 DC, 21 January 1994, para. 33, p. 40)

Extent and scope

The Members who referred the matter to the Council claim that the sole purpose of the debate on the private member's bill reported by the committee responsible was to enable the Government to bring in an amendment concerning investment subsidies for private educational establishments, and that an amendment of that kind goes beyond the restrictions inherent in the right to amend. Additions or changes made to the bill being debated must not, if they are to be consistent with the first paragraph of Article 39 and the first paragraph of Article 44 of the Constitution, be unrelated to the subject matter of the instrument ; nor must their subject matter or scope be such as to exceed the restrictions inherent in the right to amend qua special procedure. The bill, as appears from its title and its content, is concerned with local authorities' investment subsidies for private educational establishments. The purpose of the Government's amendment was to extend the authorities' power to subsidize investments made under contract. Its subject matter was the same as that of the bill and cannot be held to be unrelated to the bill.
(93-329 DC, 13 January 1994, paras 9 to 12, p. 9)

Reconsideration

Reconsideration is to be regarded as part of the process of considering an instrument. A standing order concerning provisions to be reconsidered is not unconstitutional provided it does not conflict with the actual exercise of the right to propose amendments.
(94-338 DC, 10 March 1994, para. 26, p. 71)

PARLIAMENTARY CONTROL

Scrutiny of government action

Motions for resolutions

Motions concerning proposals for Community instruments

Where the Government or the leader of a parliamentary party so requests, or where a motion for a resolution is tabled by the rapporteur of the National Assembly's Delegation for the European Communities, the committee responsible is required to report within one month after the request has been made or the motion distributed. As the Constitutional Council held in a decision delivered on 17 December 1992, the Government is entitled to ask either House of Parliament to decide on such a motion before the month allowed has elapsed. The provision referred is accordingly not unconstitutional.
(94-338 DC, 10 March 1994, para. 29, p. 71)

The rapporteur of a delegation who has tabled a motion for a resolution concerning a Community instrument may take part in the proceedings of the committee responsible. This is not to be understood as entitling the rapporteur to vote.
(94-338 DC, 10 March 1994, para. 30, p. 71)

A standing order regulating the distribution of information provided by the Government on action taken in response to resolutions passed by the Assembly pursuant to Article 88-4 of the Constitution is not unconstitutional.
(94-338 DC, 10 March 1994, paras 30 and 31, p. 71)

JUDICIAL AUTHORITY AND THE COURTS

STATUS OF THE JUDICIARY

Constitutional safeguards

Irremovability of *magistrats du siège*

Nominations for membership of the *Cour de Cassation*, for the presidency of the Court of Appeal or for the presidency of a *tribunal de grande instance* are made to the President of the Republic by the appropriate section of the Conseil supérieur de la magistrature. Nominations for other judicial offices are made by the Minister of Justice on the advice of the appropriate section of the Conseil supérieur. In the light of Article 65 of the Constitution, the 'advice' of the Conseil supérieur must be taken to mean its assent.
(93-337 DC, 27 January 1994, para. 13, p. 55)

Authority of an institutional act

By specifying that the rules regulating the judiciary (a matter which Article 34 includes among the powers of the legislature) fall within the competence of a statute of the nature of an institutional act, the authors of the Constitution intended to increase the regulatory safeguards afforded the judiciary. The institutional act containing the rules regulating the judiciary must therefore itself determine those rules, save only that it may authorize certain implementing measures to be determined by government regulation.
(93-336 DC, 27 January 1994, para. 3, p. 47)

Provisions determining all the rules essential to the appointment of members of the *Conseil supérieur de la magistrature* are matters for an institutional act ; measures to give effect to them may be referred to the power to make regulations.
(93-337 DC, 27 January 1994, paras 4, 5 and 6, p. 55)

Rules concerning recruitment

Conseil supérieur de la magistrature

The institutional act provides that a selection board grades the legal trainees whom it considers fit, at the end of their studies, to hold judicial office and appends to each trainee's certificate a recommendation as to the functions the trainee seems best capable of exercising on first being appointed. It is for the selection board, taking account of objective criteria emerging from the trainee's schooling, to make recommendations as to the various functions it thinks the trainee may be fit to exercise. These recommendations, which are transmitted to the person concerned, to the Minister of Justice and to the *Conseil supérieur de la magistrature*, are to be referred to only on the trainee's first appointment. They are not binding upon the *Conseil supérieur de la magistrature* : it is for the Conseil to deliver a wholly independent opinion on the appointments of legal trainees. The provisions of the act are therefore contrary neither to the principle of equality nor to that of the independence of the judiciary nor to Article 65 of the Constitution.
(93-336 DC, 27 January 1994, paras 15 and 16, p. 47)

The institutional act provides that legal trainees, depending on their grading and the list put to them, inform the Minister which post they wish to be appointed to. If a trainee makes no choice, an appointment is proposed by the Minister. A trainee who does not accept the proposed appointment is deemed to have withdrawn. The Minister, having regard to the preferences expressed, asks the appropriate section of the *Conseil supérieur de la magistrature* for its opinion. If a proposed appointment to the judiciary is not endorsed, another proposal is made after the appointee has been consulted, and the appropriate section of the Conseil

supérieur is again asked for its opinion. If a proposed appointment to the State Counsel's Office is not endorsed, the Minister can either make the appointment regardless or make another proposal, after consulting the appointee, and the appropriate section of the Conseil supérieur is again asked for its opinion. If the trainee rejects the second proposal, he is deemed to have withdrawn. These provisions relate to the assignment of legal trainees within the national legal service and do not call in question the principle in Article 6 of the 1789 Declaration that public offices are open on an equal basis to all. The arrangements for assigning trainees must take account of the independence of the judicial authorities and of the principle of equality, given the trainees' ranking, subject to the consequences attaching to the scope of the opinion or assent of the *Conseil supérieur de la magistrature* provided by Article 65 of the Constitution. In exercising its advisory powers the Conseil has administrative jurisdiction.
(93-336 DC, 27 January 1994, paras 16 and 18, p. 47)

First assignment

The institutional act provides that a selection board grades the legal trainees whom it considers fit, at the end of their studies, to hold judicial office and appends to each trainee's certificate a recommendation as to the functions the trainee seem best capable of exercising on first being appointed. It is for the selection board, taking account of objective criteria emerging from the trainee's schooling, to make recommendations as to the various functions it thinks the trainee may be fit to exercise. These recommendations, which are transmitted to the person concerned, to the Minister of Justice and to the *Conseil supérieur de la magistrature*, are to be referred to only on the trainee's first appointment. They are not binding upon the *Conseil supérieur de la magistrature*: it is for the Conseil to deliver a wholly independent opinion on the appointments of legal trainees. The provisions of the act are therefore contrary neither to the principle of equality nor to that of the independence of the judiciary nor to Article 65 of the Constitution.
(93-336 DC, 27 January 1994, paras 15 and 16, p. 47)

Rules governing functions of *magistrats*

Incompatibilities

Incompatibility provisions apply to membership of a regional, departmental, municipal or *arrondissement* council, the Paris Council, the Corsican Assembly, a New Caledonian provincial assembly, the Territorial Assembly of French Polynesia or of the Wallis and Futuna Islands. Incompatibility of membership of a provincial assembly in New Caledonia entails incompatibility of membership of the Territorial Congress, which is made up of the provincial assemblies.
(93-336 DC, 27 January 1994, para. 7, p. 47)

Magistrats and former *magistrats* may not carry on the profession of barrister, solicitor, court bailiff, commercial court registrar, administrator appointed by the court or agent-liquidator, or work for a member of any of these professions within the jurisdiction of a court in which they have exercised their functions in the last five years. This does not apply to judges of the *Cour de Cassation* – an exception that should be taken as referring to former judges of that Court who were sitting there at the time when they retired. The legislation takes due account of the specific nature of the function of judge of the *Cour de Cassation*. The prohibition applies to those judges who have sat on another court within the last five years. The institutional act referred has not therefore disregarded the principle of equality.
(93-336 DC, 27 January 1994, para. 8, p. 47)

A magistrat who is or applies to be seconded, is required to inform the Minister of Justice if he intends to carry on a private occupation. A magistrat who has definitely retired is subject to the same requirement for five years. The Minister may object to a magistrat carrying on such an occupation if he considers it dishonourable or incompatible with the integrity of the magistrat, or if he considers that the activity, by its nature or the way in which it is carried on, would jeopardize the operation of the judicial system or discredit the function of magistrat. A magistrat on half pay who ignores the Minister's prohibition is liable to disciplinary measures,

and a retired magistrat may have his honorary title withdrawn and, possibly, his pension reduced. The legislature may have the application of these rules determined by decree.
(93-336 DC, 27 January 1994, paras 9 and 10, p. 47)

Incompatibility of membership of the *Conseil supérieur de la magistrature* with various occupations and with any elective office. Not unconstitutional.
(93-337 DC, 27 January 1994, para. 7, p. 55)

Promotion, remuneration and discipline

The institutional act makes a distinction taking account of the new powers of the *Conseil supérieur de la magistrature* under Article 65 of the Constitution : appointment to the office of president of a *tribunal de grande instance* or auxiliary judge of the *Cour de Cassation* is made by the President of the Republic on the nomination of the appropriate section of the Conseil supérieur. Promotion to a higher grade or appointment to other judicial offices is effected by the President of the Republic with the assent of the appropriate section of the Conseil supérieur in the case of the judiciary and on the advice of the appropriate section in the case of members of the State Counsel's Office and of the central administration of the Ministry of Justice.
(93-336 DC, 27 January 1994, para. 22, p. 47)

The institutional act provides that, as far as is consistent with the exigencies of the service and the specific features of the administration of justice, family circumstances are to be taken into account in the appointment of *magistrats*. This does not detract from the principle of the independence of the judiciary nor from the principle of equality.
(93-336 DC, 27 January 1994, para. 23, p. 47)

Disciplinary powers in respect of *magistrats* who are on secondment or on half pay or have definitively retired are exercised by the section of the *Conseil supérieur de la magistrature* which is competent for the judiciary or by the Minister of Justice, depending on whether the *magistrats*' last judicial office was on the bench or in the State Counsel's Office or the central administration of the Ministry of Justice. In the last two cases the Minister of Justice adjudicates, in accordance with the civil service regulations, after obtaining the opinion of the appropriate section of the Conseil supérieur. The distinction thus made is based on objective criteria inherent in a difference of situation relating to the last judicial office held. It does not detract from the principle of equality.
(93-336 DC, 27 January 1994, paras 28 and 29, p. 47)

An honorary title may not be withdrawn except by disciplinary procedure.
(93-336 DC, 27 January 1994, para. 37, p. 47)

The prohibition of any promotion from one grade to another or of any transfer of judges while they are members of the *Conseil supérieur de la magistrature*, their secondment or partial release, their entitlement to any allowance for extra duties or to any travelling and subsistence allowance and the requirement of confidentiality are not unconstitutional.
(93-337 DC, 27 January 1994, para. 7, p. 55)

POWER TO ENACT LAWS AND POWER TO MAKE REGULATIONS

GENERAL

Scope and limits of power to enact laws

Power to determine what is appropriate subject only to constitutionality

Electoral rules

Parliament is empowered by Articles 72, 24 and 3 of the Constitution to determine rules governing the election of local councils. It is free to amend them as long as its respects

provisions and principles of constitutional status. It is not for the Constitutional Council to try to ascertain whether Parliament's objectives could have been attained by other means, provided the means employed by the Act referred are not manifestly unsuited to its objectives.
(94-341 DC, 6 July 1994, para. 5, p. 88)

Repeal and amendment of pre-existing provisions

Amendment

Amendment of ordinary statutes

Parliament, which is competent to determine the rules governing the election of local councils, is free to amend them as long as it respects provisions and principles of constitutional status.
(93-331 DC, 13 January 1994, para. 4, p. 17)

When Parliament amends provisions relating to public property, it must not deprive of statutory safeguards the constitutional requirements which derive from the existence and continuity of the public services which the property is intended to serve.
(94-346 DC, 21 July 1994, para. 2, p. 96)

The section challenged provides that an employee-owned cooperative may be wound up notwithstanding the provisions of the second paragraph of Section 77 of the 1867 Companies Act, as amended by the Act of 26 April 1917, whereby any modification of the rights attaching to employee-held shares must be ratified by a general meeting of the cooperative. Parliament is entitled to enact new provisions whereby in specified circumstances earlier provisions may not be enforced, provided it does not deprive constitutional requirements of statutory safeguards.
(94-347 DC, 3 August 1994, para. 7, p. 113)

By Article 34 of the Constitution it is for Parliament to determine rules governing the nationalization and privatization of businesses, and to lay down guiding principles covering the right of ownership, rights in rem and civil and commercial obligations. Parliament is therefore not acting ultra vires when it enacts new provisions conferring on a company's extraordinary general meeting the right to provide for compensation in the form of allotment of shares and if necessary the management of the shares by a collective investment fund provided the general meeting has decided, on conditions defined by statute, to wind up the cooperative.
(94-347 DC, 3 August 1994, para. 8, p. 113)

By Article 34 of the Constitution it is for Parliament to lay down guiding principles concerning labour law, trade-union law and social security. Parliament is entitled, within the areas where it has jurisdiction, to amend, add to or repeal pre-existing provisions. The sole proviso is that it must not deprive constitutional principles of statutory safeguards.
(94-348 DC, 3 August 1994, para. 4, p. 117)

Matters to be determined by institutional act or by ordinary statute

Matters to be determined by institutional act

The tribunaux de grande instance to which certain judges are appointed *hors hiérarchie* are to be determined by institutional act.
(93-336 DC, 27 January 1994, para. 5, p. 47)

Incompatibility provisions applying to *magistrats* are to be determined by institutional act.
(93-336 DC, 27 January 1994, paras 6 and 7, p. 47)

The assignment of legal trainees is to be determined by institutional act.
(93-336 DC, 27 January 1994, paras 14 to 17, p. 47)

Communication of promotion tables to each section of the *Conseil supérieur de la magistrature* is to be effected by institutional act.
(93-336 DC, 27 January 1994, para. 24, p. 47)

Rules for the assessment of *magistrats* are a matter for an institutional act.
(93-336 DC, 27 January 1994, para. 27, p. 47)

Rules concerning the conferment of honorary titles upon *magistrats* on retirement are a matter for an institutional act.
(93-336 DC, 27 January 1994, paras 34 to 37, p. 47)

Provisions laying down all essential rules for the designation of *magistrats* to sit on the *Conseil supérieur de la magistrature* are a matter for an institutional act ; implementing provisions may be made by regulation.
(93-337 DC, 27 January 1994, para. 4, 5 and 6, p. 55)

Section 11 provides that a magistrat appointed by decree of the President of the Republic is to act as administrative secretary of the *Conseil supérieur de la magistrature* and that one or more deputies may be appointed in like manner. Other provisions for the operation of the Conseil supérieur and the organization of its secretariat are to be determined by decree of the *Conseil d'Etat.*
(93-337 DC, 27 January 1994, para. 8, p. 55)

In accordance with Article 74 of the Constitution, it is for an institutional act to determine the transfer to central government of responsibility for the prison service (including the relevant rules and regulations) and the effective date of the transfer. The same applies to a provision whereby determination of the conditions of transfer in respect of movable and immovable property assigned to the prison service and staff and running expenses and central government's acceptance of liability for staff and running expenses – to be effected gradually and completed within five years – is subject to an agreement between the Territory of Polynesia and central government.
(94-340 DC, 14 June 1994, paras 1 and 2, p. 55)

A provision relating to documents drafted by the *Cour des comptes* and appended to the Finance (Implementation and Control) Act is, by virtue of Articles 34 and 47 of the Constitution and Article 2 of the Institutional Act Ordinance of 2 January 1959, to be determined by institutional act.
(94-349 DC, 20 December 1994, para. 3, p. 132)

A provision to determine disqualifications as between members of regional audit boards and members of Parliament or of the Economic and Social Council is a matter for an institutional act by virtue of Articles 25 and 71 of the Constitution.
(94-349 DC, 20 December 1994, para. 5, p. 132)

Procedural provisions in the territory of French Polynesia or in the territory and the provinces of New Caledonia which regulate budget or management control or audit by territorial or provincial audit boards or public corporations, and control by accountants of payments, determine essential organizational or operational rules whereby the powers of institutions specific to these overseas territories are exercised. By the second paragraph of Article 74 of the Constitution, these provisions are of institutional status.
(94-349 DC, 20 December 1994, paras 4, 6 and 7, p. 132)

A reference in an institutional act to articles of the Tax Courts Code should be regarded as applying only to the institutional provisions of the Code.
(94-349 DC, 20 December 1994, para. 9, p. 132)

Miscellaneous

The applicants claim that the procedure was defective in that the Territorial Assembly of French Polynesia was not consulted until after the instrument was adopted by the first House before which it was laid. The Act referred deals with matters within the jurisdiction of central government and does not alter any of the conditions or provisos attaching to its jurisdiction by virtue of the Act determining the status of the territory. The Act referred neither introduces nor amends nor repeals any provision specific to French Polynesia that affects the organization

of the territory. It could therefore be made applicable to the territory without consultation of the Territorial Assembly as provided by Article 74 of the Constitution.

(94-342 DC, 7 July 1994, para. 5, p. 92)

Statutory validation

The purpose of Section 67 of the Act referred is to validate, without prejudice to court decisions that have become final, individual decisions of regional health-insurance funds determining, in manner provided by Article L 242-5 of the Social Security Code, the rates for industrial accidents and occupational diseases for 1989, as based on orders made on 20 and 26 December 1988. This follows a decision by the *Conseil d'Etat* setting aside two interdepartmental orders determining the rates of contribution for 1989 in respect of industrial accidents and occupational diseases to be paid by firms for their plants. The *Conseil d'Etat* decided that the orders were vitiated by manifest errors of assessment, since the rates of contribution were such as to generate an overall surplus over funding requirements. The Government acknowledges that it is regrettable that industrial-accident and occupational-disease contributions were collected that put the scheme in surplus and submits that the reimbursement to be made in respect of the 1989 contributions cannot be confined on grounds of equity to firms that have had recourse to the courts. The cost of reimbursement would be high and could only be covered by increasing employers' contributions. Section 67 therefore has a purpose which is in the public interest and is defined by the legislature and does not infringe any principle or rule of constitutional status.

(93-332 DC, 13 January 1994, paras 2 to 5, p. 21)

The provisions of point I B of Section 6 of the Act referred validate planning permissions granted before publication of the decree to give effect to the sixth paragraph of Article L 421-2 of the Town Planning Code, the architect's plans accompanying the applications for planning permission failing to satisfy the environmental requirements of the paragraph. The provisions of point III B of Section 6 validate regulations and other instruments dealing with planning activities and operations effected, under environmental enhancement procedures, before the Act came into force, on the basis of Article L 300-5 of the Town Planning Code, the instruments having been adopted without the reference programme referred to in that article having been drawn up. There is nothing in the wording of the Act to warrant an inference that the object or effect of the provisions in issue was to validate instruments set aside by court decisions that had become final. The claim is therefore dismissed.

(93-335 DC, 21 January 1994, paras 8 and 10, p. 40)

Parliament was entitled to adapt planning regulations applying in a mountainous area so as to enable the administrative authorities to authorize, by way of exception, an operation on the shores of artificial stretches of water. The provisions challenged do not validate planning permission set aside by a court decision that has become final. The claims are therefore dismissed.

(93-335 DC, 21 January 1994, para. 18, p. 40)

Conditions under which statutes are enforced and brought into effect

Powers of the legislature

Section 21 of the Institutional Act on the *Conseil supérieur de la magistrature* repeals the Institutional Ordinance of 22 December 1958, but provides that until its two sections are constituted the Conseil supérieur will continue to operate in accordance with the Ordinance. The provisions of Article 93 of the Constitution whereby Article 65, relating to the *Conseil supérieur de la magistrature*, is to have effect from the date of publication of the institutional act implementing it must be read in conjunction with the constitutional principle of continuity in the public service, which requires that an institution essential to the operation of the judicial system must not cease to exist before its successor is capable of functioning.

(93-337 DC, 27 January 1994, paras 19 and 20, p. 55)

Extent of the principle of non-retroactivity

The purpose of Section 85 of the Act referred, without prejudice to court decisions that have become final, is to specify with effect from 1 December 1983 the amount of the 'special difficulties allowance' introduced by the agreement of 28 March 1953 for staff of social security agencies in the Bas-Rhin, Haut-Rhin and Moselle departments. The amount was set at 3.95 times the factor resulting from application of the wage agreements concluded on 8 February 1957 in accordance with the national collective bargaining agreement for staff of social security agencies. In setting the amount of the allowance, retroactively to 1 December 1983, at 3.95 times the factor resulting from the application of wage agreements concluded in 1957, the legislature wished to draw a line under divergences in the courts and prevent disputes arising that might have had financial consequences harmful to the equilibrium of the schemes involved. It reserved the situation of persons in respect of whom court decisions had become final. There is nothing in the statute from which it can be inferred that the legislature departed from the principle that criminal legislation is not to be retroactive. It was open to the legislature, provided it observed the principles referred to above, to exercise as it alone could in the case in point its power to make retroactive provision to regulate in the general interest the situations arising from divergences in court decisions.

(93-332 DC, 13 January 1994, para. 12, p. 21)

DISTRIBUTION OF POWERS IN SPECIFIC MATTERS

Types of court – Status of *magistrats*

Status of *magistrats*

The essential rules concerning the appointment of *magistrats* to the *Conseil supérieur de la magistrature* are a matter for an institutional act. Measures to give effect to them may be deferred to those entitled to make regulations.

(93-337 DC, 27 January 1994, paras 4, 5 and 6, p. 55)

Public finance – taxation

Central government expenditure, budgetary control

A provision that gives an option of entitlement to central government funds for restoration of the rural environment, implementation being subject to financial authorization as provided by the Ordinance of 2 January 1959 constituting an Institutional Act relating to Finance Acts, is not contrary to any of the basic principles or other rules which Article 34 of the Constitution reserves to the legislative branch.

(94-176 L, 10 March 1994, para. 2, p. 67)

The provision to the effect that the wine section of the national agricultural solidarity fund is supplied by 'a grant entered in the Ministry of Agriculture budget' is not contrary to any of the basic principles or other rules which the Constitution reserves to the legislative branch, provided implementation of the provision is subject to financial authorization as provided by the Ordinance of 2 January 1959 constituting an Institutional Act relating to Finance Acts.

(94-176 L, 10 March 1994, para. 5, p. 67)

An interest-rate rebate on a loan for the purchase of farmland is central government financial assistance the terms of which come under the power to make regulations.

(94-176 L, 10 March 1994, paras 11 and 12, p. 67)

Election of parliamentary assemblies and local councils

Local councils

Parliament is empowered by Articles 72, 24 and 3 of the Constitution to determine rules governing the election of local councils. It is free to amend them as long as it respects provisions and principles of constitutional status. It is not for the Constitutional Council to try to ascertain whether Parliament's objectives could have been attained by other means, provided the means employed by the Act referred are not manifestly unsuited to its objectives.
(94-341 DC, 6 July 1994, para. 5, p. 88)

Ownership, rights in rem, civil and commercial obligations

Fundamental principles of property law

A provision to the effect that loans by agricultural savings banks are also to be used for the purchase of holdings by farmers exercising their right of pre-emption is related to one of the purposes of long-term individual loans that may be granted by agricultural savings banks concerning farmers exercising their right of pre-emption is not contrary to any of the basic principles or other rules which the Constitution reserves to the legislative branch.
(94-176 L, 10 March 1994, paras 3 to 6, p. 67)

CONSTITUTIONAL COUNCIL AND CONSTITUTIONAL REVIEW

SPHERE OF APPLICATION FOR CONSTITUTIONAL REVIEW

Scope of review

Case of statutes enacted

The constitutionality of statutory provisions in force can be effectively challenged only when statutory provisions seeking to amend them, add to them or affect their scope are being considered. In providing that statutes and regulations are 'maintained', Parliament had no intention of re-enacting provisions already repealed or of precluding the legislature or the executive from subsequently amending or repealing provisions in areas where they have jurisdiction. The Constitutional Council's powers of review do not extend to provisions thus 'maintained'. The provisions referred do not amend, add to or affect the scope of existing statutory provisions.
(94-350 DC, 30 December 1994, paras 3, 4 and 5, p. 134)

REFERENCES TO CONSTITUTIONAL COUNCIL – ADMISSIBILITY – PLEAS TO BE DISREGARDED

Nature of instrument referred

Form of reference

Reference by one or more applications

Reference was made to the Constitutional Council by the Speaker of the National Assembly on 29 June 1994 and separately by sixty-eight deputies on the same day – followed by an

amended reference on 11 July. The references are both concerned with the same statutes – the Respect for the Human Body Act and the Donation and Use of Parts and Products of the Human Body, Medically Assisted Reproduction and Prenatal Diagnosis Act. They should therefore be joined and a single decision given.
(94-343/344 DC, 27 July 1994, para. 1, p. 100)

Admissibility of pleas

Inadmissibility under Article 40 of the Constitution

Acting in accordance with Standing Order 92, the Bureau of the Finance, General Economy and Planning Committee ruled on the admissibility under Article 40 of the Constitution of the conclusions of the report of the committee responsible, which by virtue of Standing Order 91(8) was the only item on the agenda of the National Assembly, and of the private member's bill reported in order, in the terms of its decision, 'to remove any doubt about the procedure followed,.... however superfluously'. The Bureau considered that Article 40 applied neither to the conclusions of the report of the committee responsible nor to the original text of the bill. It is for the Constitutional Council to determine whether the proper procedure has been followed by examining the compatibility with Article 40 of the Constitution of the conclusions of the report of the committee responsible, entered on the agenda, discussion of which resulted in the adoption of the bill. But bills that have not been debated cannot be referred to the Council ; examination of their admissibility is entirely a matter for the appropriate parliamentary authorities in accordance with their standing orders.
(93-329 DC, 13 January 1994, paras 4 and 7, p. 9)

The Constitutional Council may not be asked to rule whether the procedure followed was in accordance with the provisions restricting the right of amendment under Article 40 of the Constitution unless the matter of the admissibility of the amendment in question was raised in the relevant House of Parliament.
(94-345 DC, 27 July 1994, paras 18 and 21, p. 106)

Inadmissibility under Article 41 of the Constitution

At the request of the Government, the Speaker of the Senate raised the provisions of Article 41 of the Constitution against certain amendments, and the provisions were held to be applicable. The decision was discussed, but its substance was not contested. The admissibility of the amendments was not questioned during the debate.
(93-329 DC, 13 January 1994, para. 19, p. 9)

INSTRUMENTS OF REVIEW

Parameters followed

Declaration of Human and Civic Rights

Equality (Article 6)

The institutional act provides that legal trainees, depending on their grading and the list put to them, inform the Minister which post they wish to be appointed to. If a trainee makes no choice, an appointment is proposed by the Minister. A trainee who does not accept the proposed appointment is deemed to have withdrawn. The Minister, having regard to the preferences expressed, asks the appropriate section of the *Conseil supérieur de la magistrature* for its opinion. If a proposed appointment to the judiciary is not endorsed, another proposal is made after the appointee has been consulted, and the appropriate section of the Conseil supérieur is again asked for its opinion. If a proposed appointment to the State Counsel's

Office is not endorsed, the Minister can either make the appointment regardless or make another proposal, after consulting the appointee, and the appropriate section of the Conseil supérieur is again asked for its opinion. If the trainee rejects the second proposal, he is deemed to have withdrawn. These provisions relate to the assignment of legal trainees within the national legal service and do not call in question the principle in Article 6 of the 1789 Declaration that public offices are open on an equal basis to all.
(93-336 DC, 27 January 1994, paras 16 and 18, p. 47)

Necessary penalties (Article 8)

Article 8 of the Declaration of Human and Civic Rights states : 'Only penalties which are strictly and clearly necessary may be provided for by law, and no one shall be penalized otherwise than by virtue of an Act of Parliament passed and promulgated prior to the offence, which has been applied in due legal form.' These principles do not only apply to penalties determined by the criminal courts : they apply also to the rules governing associated restrictive measures imposed for the protection of the public. Absent a manifest lack of proportion with the offending infringement, it is not for the Constitutional Council to substitute its own judgment for that of the legislature. Provision is made whereby, if the assize court decides that remission of sentence will not be granted, the judge responsible for the execution of sentences may, after the thirty-year period of unconditional imprisonment, initiate the procedure that can terminate these special arrangements in the light of the conduct of the person convicted and the development of his or her personality. This provision is to be understood as giving the prosecution and the person convicted the right to refer to the judge responsible for the execution of sentences. Such a procedure may be repeated if necessary. These provisions are not manifestly contrary to the principle set out in Article 8 that penalties have to be necessary.
(93-334 DC, 20 January 1994, paras 9, 10 and 13, p. 27)

Presumption of innocence (Article 9)

Article 9 of the 1789 Declaration of Human and Civic Rights states : 'A person is presumed innocent until declared guilty ; therefore, force used in making unavoidable arrests which exceeds that needed to overpower the person shall be severely punished by law.' The legislature may enact measures whereby children under thirteen years of age but above a specified minimum age may be detained for the purposes of an investigation, but only in exceptional circumstances involving serious offences. Special safeguards are needed for measures of this kind : they may be implemented only by decision of a juvenile court and under its supervision. A provision which prohibits a thirteen-year-old minor from being placed in police custody and sets out an exceptional procedure for the detention of ten to thirteen-year-olds stipulates that the procedure's implementation is dependent on the seriousness of offences that may be committed by minors of that age and requires the prior agreement and supervision of a judge, specifies which judges have jurisdiction in this respect (They must be specialists in child welfare) and sets a maximum period of detention of ten hours (which may, in exceptional circumstances only, be extended by a further ten hours) including safeguards, notably representation by counsel from the start, is not contrary to the above requirements.
(93-334 DC, 20 January 1994, paras 22 to 25, p. 27)

Freedom to express ideas and opinions (Article 11)

Article 11 of the Declaration of Human and Civic Rights states : 'Freedom to express ideas and opinions is one of the most precious of human rights ; citizens may therefore speak, write and print freely, though in cases determined by law they may be made to answer for their abuse of this freedom.'
(93-333 DC, 21 January 1994, para. 2, p. 32)

Parliament, being empowered by Article 34 of the Constitution to lay down 'rules concerning the civic rights and fundamental guarantees accorded citizens for the exercise of their public liberties', is entitled to enact rules concerning the exercise of freedom to express ideas and opinions and of freedom to speak, write and print, but since this is a fundamental freedom, all the more precious for being one of the essential safeguards of other rights and freedoms,

Parliament should do so only in order to make the exercise of these liberties more effective or to reconcile it with other rules or principles of constitutional status.

(94-345 DC, 27 July 1994, para. 5, p. 106)

Freedom of expression entails that all have the right to express their thoughts in the terms they consider the most appropriate.

(94-345 DC, 27 July 1994, para. 6, p. 106)

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

(94-345 DC, 27 July 1994, para. 9, p. 106)

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

(94-345 DC, 27 July 1994, para. 10, p. 106)

A section of the Act referred confers on 'all participants in a conference, symposium or like gathering in France organized by natural or legal persons of French nationality... the right to express themselves in French' and also requires a French translation of the programme distributed to participants to be made available and at least a summary in French to be provided of all other material relating to such gatherings. These requirements, including the obligation to provide translation facilities, are not such as to undermine Article 11 of the Declaration of Human and Civic Rights.

(94-345 DC, 27 July 1994, para. 19, p. 106)

A provision whereby the grant by a public body of an award for teaching or research work is subject to a commitment by the recipient to publish or distribute the results in French, or a French translation if the work was done in a foreign language, save where the Minister of Research allows an exception, is contrary to Article 11 of the Declaration of Human and Civic Rights, which secures freedom of expression and communication in education and research. The power conferred on the Minister of Research to allow an exception, which is subject to no restrictions regarding assessment of the scientific or educational value of the work, does not offer an adequate means of securing that freedom.

(94-345 DC, 27 July 1994, paras 20 to 25, p. 106)

Right of redress (Article 16)

The relevant section of the Act referred inserts in the Town Planning Code a new Article L 600-1 whereby the applicants are deprived of the power to bring annulment proceedings in the administrative courts, on grounds of procedural or substantive defects, against development schemes, land-use plans or the like or instruments prescribing the preparation or amendment of a planning document or setting up a special planning area, six months after the effective date of any such document or instrument. It is provided, however, that the restrictions do not apply where development schemes have not been made available to the public, or where there has been a substantial breach of the rules governing public inquiries into land-use plans, or where the proper maps and drawings have not been presented. The restriction imposed by the Act applies only to a limited number of planning instruments. They are based on the frequency of objections raised and seek to deal with the resultant uncertainty as to the law, which is particularly serious in matters of town-planning decisions and property decisions taken in response to them. They are applicable only if there are defects of form or procedure capable of treatment as serious, and the six-month time-limit is to be observed. They have neither the object nor the effect of confining the general right of redress against void or voidable administrative decisions or of precluding actions in respect of ultra vires decisions expressly or impliedly refusing redress. There is accordingly no constraint on the right of individual redress. The plea that Article 16 of the Declaration of Human and Civic Rights is breached is accordingly unsupported in point of fact.

(93-335 DC, 21 January 1994, paras 2 and 4, p. 40)

Individual freedom (Articles 1, 2 and 4)

Individual freedom is guaranteed by Articles 1, 2 and 4 of the Declaration of Human and Civic Rights. But it has to be reconciled with the other principles of constitutional status.
(94-343/344 DC, 27 July 1994, para. 3, p. 100)

Right to property (Article 2)

It follows from the right to property guaranteed by Article 2 of the Declaration of Human and Civic Rights that Parliament must not impose transfer of shares on terms which do not ensure that their real value is maintained.
(94-347 DC, 3 August 1994, para. 11, p. 113)

Fundamental principles recognized by the laws of the Republic

Principles recognized

Freedom of education

Freedom of education is one of the fundamental principles recognized by the laws of the Republic, reaffirmed by the Preamble to the 1946 Constitution, to which the Preamble to the 1958 Constitution refers.
(93-329 DC, 13 January 1994, para. 26, p. 9)

Principles not recognized

Relationship

The deputies making the reference challenge the anonymity of gamete donors vis-à-vis the unborn child in the light of the principle of personal liability contained in Article 1382 of the Civil Code. They also submit that there is a fundamental principle recognized by the laws of the Republic arising from the provisions of the Act of 16 November 1912 which permit a child to seek to establish paternity outside marriage in certain circumstances. But the Respect for the Human Body Act has neither the object nor the effect of regulating issues of paternity in cases of medically assisted reproduction. No provision or principle of constitutional status forbids the prohibitions laid down by Parliament on establishing a relationship between child and donor and on bringing actions for remedies against donors. The applicants' claims must therefore be dismissed.
(94-343/344 DC, 27 July 1994, paras 16 and 17, p. 100)

Preamble to the Constitution of 27 October 1946 – Principles

Principles – Application and implementation

Human dignity (first paragraph)

The Preamble to the 1946 Constitution reaffirmed and proclaimed constitutional rights, freedoms and principles, notably in its very first sentence : 'On the morrow of the victory won by free peoples over regimes which sought to enslave and degrade humankind, the French people once again proclaim that all human beings, without distinction as to race, religion or creed, possess inalienable and sacred rights.' It follows that safeguarding human dignity from any form of enslavement or degradation is a principle of constitutional status.
(94-343/344 DC, 27 July 1994, para. 2, p. 100)

Workers' participation (eighth paragraph)

The eighth paragraph of the Preamble to the 1946 Constitution, confirmed by the Preamble to the 1958 Constitution, states that 'every worker shall, through his delegates, participate in the collective determination of working conditions and in the management of the firm.' But Article 34 of the 1958 Constitution ranks the determination of fundamental principles of labour law, trade-union law and social security among the matters to be regulated by statute. It is accordingly for Parliament to determine how effect will be given to this constitutional provision in full compliance with its status as such.
(94-348 DC, 3 August 1994, para. 10, p. 117)

Principles of constitutional status stated in articles of the Constitution

Independence of the judiciary

Recognition of its constitutional character.
(93-336 DC, 27 January 1994, para. 4, p. 47)

Irremovability of judges of the ordinary courts

Recognition of its constitutional character.
(93-336 DC, 27 January 1994, para. 4, p. 47)

French language

Among the rules which Parliament has to reconcile with freedom of opinion and expression is that contained in Article 2 of the Constitution : 'The language of the Republic shall be French.' As regards the content of the language, Parliament was entitled to require – and had in fact required – public-law corporations and private-law corporations in the performance of a public service to use officially prescribed terminology. But it was not entitled to impose such an obligation on private persons not performing a public service nor on sound or television broadcasting organizations, whether public or private.
(94-345 DC, 27 July 1994, paras 6, 8, 9 and 10, p. 106)

Objectives of constitutional status

Objectives recognized

Preservation of pluralism

The preservation of pluralism in social and cultural expression is itself a constitutional objective. It is one of the preconditions for democracy. The freedom to express ideas and opinions secured by Article 11 of the 1789 Declaration would be nugatory if the public addressed by the audiovisual media was not in a position to receive programmes from public- and private-sector sources guaranteeing the expression of differing views provided information is fairly presented. The ultimate aim is that listeners and viewers, who are clearly among those to whom the freedom proclaimed by Article 11 essentially applies, should be able to exercise freedom of choice without public or private interests being able to subvert this by their own decisions and that freedom should not be marketable.
(93-333 DC, 21 January 1994, para. 3, p. 32)

Objectives not recognized

Protection of human genetic inheritance

Contrary to what is asserted by the applicants, there are no provisions or principles of constitutional status applicable to embryo selection that are directed to the protection of the

human genetic inheritance. There is nothing in the Preamble to the 1946 Constitution that precludes the development of the human family via gamete or embryo donations on the terms provided by the Act. The ban imposed by the Act on any means whereby a child might ascertain the donor's identity cannot be regarded as an attack on health protection as secured by the Preamble. As regards individual decisions concerning research for medical purposes, it was not ultra vires for the legislature to impose the requirement for assent by an administrative board operating in accordance with rules determined by the new Article L 184-3 of the Public Health Code to ensure that the embryo's interests are not jeopardized.

(94-343/344 DC, 27 July 1994, para. 11, p. 100)

Principles deriving from more than one provision

Section 21 of the Institutional Act on the *Conseil supérieur de la magistrature* repeals the Institutional Ordinance of 22 December 1958, but provides that until its two sections are constituted the Conseil supérieur will continue to operate in accordance with the Ordinance. The provisions of Article 93 of the Constitution whereby Article 65, relating to the *Conseil supérieur de la magistrature*, is to have effect from the date of publication of the institutional act implementing it must be read in conjunction with the constitutional principle of continuity in the public service, which requires that an institution essential to the operation of the judicial system must not cease to exist before its successor is capable of functioning.

(93-337 DC, 27 January 1994, paras 19 and 20, p. 55)

Rules of constitutional status in the legislative procedure

Review by the Constitutional Council

The Senate declared 69 amendments inadmissible under Standing Order 44(2). In the case of some of the amendments there was no proper justification for doing so, but this restriction of the right to amend, which must be considered in the light of the content of the amendments in question and the general circumstances of the debate, did not relate to any matter of real substance and therefore cannot be held to invalidate the legislative procedure.

(93-329 DC, 13 January 1994, para. 22, p. 9)

Parameters not followed and factors disregarded

Parameters not followed

Treaties and international agreements

The constitutionality of provisions enacted by the legislature does not depend on the statute's consistency with a treaty or an international agreement: it is to be determined solely by considering the statute in the light of constitutional requirements.

(93-335 DC, 21 January 1994, para. 6, p. 40)

Standing orders of an assembly

Mere failure to comply with the Standing Orders of one of the Houses of Parliament in respect of private members' bills which have not been adopted does not of itself make the legislative procedure relating to a bill distinct from them unconstitutional.

(93-329 DC, 13 January 1994, paras 1, 5 and 6, p. 9)

Questions reserved

Inalienability of public property

These rules and safeguards are such as to secure the operation of public services and the protection of public property in accordance with provisions and principles of constitutional status. The deputies making the reference plead against Section 1 of the Act the principle (which they claim is of constitutional status) of the inalienability of public property, but none of the provisions of Section 1 has the object of permitting or organizing the transfer of public property. The claim is accordingly unsupported in point of fact.
(94-346 DC, 21 July 1994, para. 14, p. 96)

Question must first have been raised in Parliament

Application of Article 40 of the Constitution

The conformity of legislative procedure with Article 40 of the Constitution cannot be referred to the Constitutional Council unless the question of the admissibility of the bill or amendment in issue has already been raised in the House concerned. This decision was contested during the debate by a number of Members who considered that Article 40 was applicable to both these texts and to the four bills previously tabled. The question of the admissibility of the bill, then, was in fact raised.
(93-329 DC, 13 January 1994, paras 5 and 7, p. 9)

The conformity of legislative procedure with Article 40 of the Constitution cannot be referred to the Constitutional Council unless the question of the admissibility of the bill or amendment in issue has already been raised in the House concerned. In the course of the Senate sitting, at the Government's request, Article 40 was held to be applicable to amendments. The decision was discussed, but its substance was not contested. The question of the admissibility of these amendments, then, was not raised in debate.
(93-329 DC, 13 January 1994, paras 5 and 1, p. 9)

Application of Article 41 of the Constitution

The conformity of legislative procedure with provisions limiting the right to propose amendments under Article 41 of the Constitution cannot be referred to the Constitutional Council unless the question of the admissibility of the amendment in issue has already been raised in the House concerned. At the request of the Government, the Speaker of the Senate raised the provisions of Article 41 of the Constitution against certain amendments, and the provisions were held to be applicable. The decision was discussed, but its substance was not contested. The admissibility of the amendments was not questioned during the debate.
(93-329 DC, 13 January 1994, paras 18 and 19, p. 9)

Rules specific to standing orders

Standing orders not of constitutional status

Mere failure to comply with the Standing Orders of one of the Houses of Parliament in respect of private members' bills which have not been adopted does not of itself make the legislative procedure relating to a bill distinct from them unconstitutional.
(93-329 DC, 13 January 1994, paras 1, 5 and 6, p. 9)

The standing orders of the two Houses do not have constitutional status ; consequently, mere failure to comply with the Standing Orders of the Senate does not of itself make the legislative procedure unconstitutional as long as the procedure did not conflict with the Constitution by preventing decisions on the inadmissibility of amendments being contested.
(93-329 DC, 13 January 1994, para. 15, p. 9)

Parliamentary standing orders are not themselves of constitutional status, so infringement of the Senate's Standing Orders is not sufficient to make the procedure unconstitutional provided the procedure was not at the same time contrary to the Constitution in preventing inadmissibility decisions from being challenged.
(93-334 DC, 20 January 1994, para. 3, p. 27)

Norms of references for constitutional review of parliamentary standing orders

Constitutionality of Standing Orders must be evaluated not only with reference to the Constitution itself but also with reference to the *Institutional Acts* provided for by the Constitution and the legislative measures taken in accordance with the first paragraphe of Article 92 of the Constitution for the setting up of the institutions ; *ordonnance* 58-1100 dated November 17, 1958, which deals with the functioning of parliamentary assemblies, falls within the latter category ; any statuary changes or additions to this *ordonnance,* after February 4, 1959, also apply to parliamentary assemblies when modifying or supplementing their Standing Orders.
(94-339 DC, 31 may 1994, para. 1, p. 80)

PROCEDURES AND EXTENT OF REVIEW

Extent of review

Power of review vested in the Constitutional Council

The Constitution does not vest the Constitutional Council with the same general powers of review and decision-making as are vested in Parliament. Hence, it is not for the Council to determine whether Parliament's objectives could have been achieved by other means, as long as the measures provided in the Act referred are not manifestly inappropriate to the objectives.
(93-331 DC, 13 January 1994, para. 4, p. 17)

It is not for the Constitutional Council, which does not have the same powers of review and decision-making as are vested in Parliament, to challenge, having regard to the state of the art, Sections 8 and 9 of the Donation and Use of Parts and Products of the Human Body, Medically Assisted Reproduction and Prenatal Diagnosis Act.
(94-343/344 DC, 27 July 1994, para. 10, p. 100)

MEANING AND SCOPE OF THE DECISION

Ineffective statutory provisions

Section 26 of the Institutional Act relates to the Act's entry into force. It specifies that, except for a number of sections unconnected with the amendment of Article 65 of the Constitution, the Act will have effect from the date on which the two sections of the *Conseil supérieur de la magistrature* are constituted, that Section 8 of the Act will have effect from 1 January 1996 and that disciplinary proceedings pending before the disciplinary committee of the State Counsel's Office upon the entry into force of the Act are to be transferred to the section of the Conseil supérieur responsible for discipline in respect of members of the State Counsel's Office. The provisions of Article 93 of the Constitution whereby Article 65, relating to the *Conseil supérieur de la magistrature,* is to have effect from the date of publication of the institutional act implementing it must be read in conjunction with the constitutional principle of continuity in the public service, which requires that an institution essential to the operation of the public service must not cease to exist before its successor is capable of functioning.
(93-336 DC, 27 January 1994, paras 40 and 41, p. 47)

Section 21 of the Institutional Act on the *Conseil supérieur de la magistrature* repeals the Institutional Ordinance of 22 December 1958, but provides that until its two sections are constituted the Conseil supérieur will continue to operate in accordance with the Ordinance. The provisions of Article 93 of the Constitution whereby Article 65, relating to the *Conseil supérieur de la magistrature*, is to have effect from the date of publication of the institutional act implementing it must be read in conjunction with the constitutional principle of continuity in the public service, which requires that an institution essential to the operation of the judicial system must not cease to exist before its successor is capable of functioning.
(93-337 DC, 27 January 1994, paras 19 and 20, p. 55)

The provisions relating to the factors whereby the amount of the grant to be entered in the Ministry of Agriculture budget for the wine section of the national agricultural solidarity fund can be calculated by addition must be regarded as having been repealed by implication by virtue of the repeal of the instruments serving as reference for the calculation of the grant. There is therefore no need for the Constitutional Council to rule on the legal nature of these provisions.
(94-176 L, 10 March 1994, paras 3 to 6, p. 67)

It is clear from the Act referred, in the light of its legislative history, that Parliament, in referring to Corsican tax rules, was doing no more than make the point that specific tax provisions apply to Corsica whose general economy it considered justified by the island's geographic and economic peculiarities. In providing also that statutes and regulations are 'maintained', Parliament had no intention of re-enacting provisions already repealed or of precluding the legislature or the executive from subsequently amending or repealing provisions in areas where they have jurisdiction. So the provisions challenged are devoid of legislative effect.
(94-350 DC, 20 December 1994, para. 4, p. 134)

Qualified interpretations

Examples of *interprétations neutralisantes*

Assistance to private educational establishments

One section of the Act referred to the Council requires an agreement to be made determining how local authorities' assistance to private educational establishments is to be allocated and how amounts not used are to be reimbursed if educational activities are stopped or the contract is terminated. The agreement must be framed in such terms as to ensure that the beneficiary has no unjustifiable advantage and that constitutional rules are respected. Subject to these reservations, the provision in issue is not contrary to the Constitution.
(93-329 DC, 13 January 1994, para. 33, p. 9)

Public service law

The first paragraph of Article L 34-1 of the Public Property Code provides that the holder of a licence for temporary occupation of public property, save as otherwise provided in the title deed, has a right in rem over building works and facilities carried out in performance of activities authorized by the deed. This provision, which applies under the first paragraph of Article L 34-5 to agreements of any kind whose effect is to authorize occupation of public property, must be construed as excluding any authorization of activities which are not compatible with the specified utilization of the property concerned.
(94-346 DC, 21 July 1994, para. 5, p. 96)

The first paragraph of Article L 34-2 of the Public Property Code authorizes the assignment of rights in rem for the remaining validity of the instruments creating them, but only to persons accepted by the relevant authorities for purposes compatible with the specified utilization of the property occupied. By the second paragraph, these rights may likewise be transferred to a surviving spouse or heirs provided that the beneficiary, determined by agreement between them, is presented for approval to the relevant authorities within six months. Where the operation of a public service is involved, the six months allowed may not encroach upon the

right of the authorities to ensure that the service is in fact provided. By the third paragraph of the article, rights and works may be mortgaged only to secure loans contracted to fund the completion, modification or extension of such works. By the fourth paragraph, unsecured creditors whose claim arises from the execution of such works can seek protective or enforcement measures in respect of the rights or property in question, but neither such measures nor any other restrictive measure can have the effect of disrupting the operation of a public service.

(94-346 DC, 21 July 1994, paras 8 and 9, p. 96)

It is still possible under Article L 34-3 of the Public Property Code to withdraw authorization before its expiry either for failure to comply with the terms of the authorization or on other grounds provided compensation is made for any direct damage of an ascertained value arising from early dispossession. The purpose of the provision that proving creditors must be informed of the authorities' intentions two months before notification of withdrawal for failure to comply is to facilitate substitution of a third party for the person in default. In no case must it prevent the authorities from exercising the powers needed to ensure that a public service continues to be provided.

(94-346 DC, 21 July 1994, para. 11, p. 96)

Statutory validation

Validation under the provision challenged cannot be applied to instruments set aside by the courts in final judgments.

(93-335 DC, 21 January 1994, para. 28, p. 40)

RIGHTS AND FREEDOMS

CIVIC RIGHTS

Equal voting rights

Election of municipal councillors

Legislation extending the term of office of elected municipal councillors declares that the reason is the difficulty of organizing the presidential election due to be held in 1995. The extension of outgoing councillors' terms of office and the corresponding reduction of incoming councillors' terms is by only three months and is an exceptional decision ; it is accordingly not disproportionate to the objective pursued. Neither the principle of the decision nor its practicalities generate any risk that the electorate will confuse one election with the other. Section 1 of the relevant Act is therefore not contrary either to the right to vote secured by Article 3 of the Constitution, or to the principle of freedom of organization of local authorities, or to the principle of equality.

(94-341 DC, 6 July 1994, para. 7, p. 88)

Cantonal elections

Voters must be called upon to exercise their right to elect members of local authority councils at reasonable intervals. The particular arrangements for the term of general (departmental) councillors to be elected in 1994 are exceptional and transitional within the general provisions enacted by Parliament.

(93-331 DC, 13 January 1994, paras 7 and 8, p. 17)

PROTECTION OF INDIVIDUAL LIBERTIES BY THE COURTS

Police custody

Provision is made whereby counsel may intervene only after seventy-two hours if police custody is subject to special rules of extension, as in the case of drug and terrorist offences. The right to consult a lawyer while held in police custody is a right of defence to be exercised during the investigation phase of a criminal proceeding.
(93-334 DC, 20 January 1994, paras 16 to 19, p. 27)

Police custody of minors

The legislature may enact measures whereby children under thirteen years of age but above a specified minimum age may be detained for the purposes of an investigation, but only in exceptional circumstances involving serious offences. Special safeguards are needed for measures of this kind : they may be implemented only by decision of a juvenile court and under its supervision. A provision which prohibits a thirteen-year-old minor from being placed in police custody and sets out an exceptional procedure for the detention of ten to thirteen-year-olds stipulates that the procedure's implementation is dependent on the seriousness of offences that may be committed by minors of that age and requires the prior agreement and supervision of a judge, specifies which judges have jurisdiction in this respect (They must be specialists in child welfare) and sets a maximum period of detention of ten hours (which may, in exceptional circumstances only, be extended by a further ten hours) including safeguards, notably representation by counsel from the start, is not contrary to the above requirements.
(93-334 DC, 20 January 1994, paras 22 to 25, p. 27)

PRINCIPLES OF CRIMINAL LAW

Principle that offences and penalties must be defined by statute

Proportionality of penalties

Limited review by Constitutional Council

Article 8 of the Declaration of Human and Civic Rights states : 'Only penalties which are strictly and clearly necessary may be provided for by law, and no one shall be penalized otherwise than by virtue of an Act of Parliament passed and promulgated prior to the offence, which has been applied in due legal form.' These principles do not only apply to penalties determined by the criminal courts : they apply also to the rules governing associated restrictive measures imposed for the protection of the public. Absent a manifest lack of proportion with the offending infringement, it is not for the Constitutional Council to substitute its own judgment for that of the legislature. Provision is made whereby, if the assize court decides that remission of sentence will not be granted, the judge responsible for the execution of sentences may, after the thirty-year period of unconditional imprisonment, initiate the procedure that can terminate these special arrangements in the light of the conduct of the person convicted and the development of his or her personality. This provision is to be understood as giving the prosecution and the person convicted the right to refer to the judge responsible for the execution of sentences. Such a procedure may be repeated if necessary. These provisions are not manifestly contrary to the principle set out in Article 8 that penalties have to be necessary.
(93-334 DC, 20 January 1994, paras 9, 10 and 13, p. 27)

Article 8 of the Declaration of Human and Civic Rights states that 'Only penalties which are strictly and clearly necessary may be provided for by law' ; it is not in order for the Constitutional Council to substitute its judgment for that of the legislature in deciding what penalties are appropriate for what offences, provided there is no manifest disproportion between the

offences and the penalties. Combined penalties of 50 000 francs plus six months for offences of preventing detection of offences against the Act on the use of the French language are not manifestly excessive.
(94-345 DC, 27 July 1994, para. 27, p. 106)

Non-retroactivity

Scope of principle

Provision is made whereby, if the assize court decides that remission of sentence will not be granted, the judge responsible for the execution of sentences may, after the thirty-year period of unconditional imprisonment, initiate the procedure that can terminate these special arrangements in the light of the conduct of the person convicted and the development of his or her personality. This provision is to be understood as giving the prosecution and the person convicted the right to refer to the judge responsible for the execution of sentences. Such a procedure may be repeated if necessary.
(93-334 DC, 20 January 1994, paras 9, 10 and 13, p. 27)

In determining that this provision was to have effect from 1 March 1994, the date relating to the facts to which criminal penalties applied, the legislature conformed to the principle of non-retroactivity of criminal legislation imposing heavier penalties.
(93-334 DC, 20 January 1994, paras 11, 12 and 14, p. 27)

RIGHT OF REDRESS

Administrative procedure

Section 3 of the Act referred inserts in the Town Planning Code a new Article L600-1 whereby the applicants are deprived of the power to bring annulment proceedings in the administrative courts, on grounds of procedural or substantive defects, against development schemes, land-use plans or the like effect or instruments prescribing the preparation or amendment of a planning document or setting up a special planning area, six months after the effective date of any such document or instrument. It is provided, however, that the restrictions do not apply where development schemes have not been made available to the public, or where there has been a substantial breach of the rules governing public inquiries into land-use plans, or where the proper maps and drawings have not been presented. The restrictions imposed by the Act apply only to a limited number of planning instruments. They are based on the frequency of objections raised and seek to deal with the resultant uncertainty as to the law, which is particularly serious in matters of planning decisions and property decisions taken in response to them. They are applicable only if there are defects of form or procedure capable of treatment as serious, and the six-month time-limit is to be observed. They have neither the object nor the effect of confining the general right of redress against void or voidable administrative decisions or of precluding actions in respect of ultra vires decisions expressly or impliedly refusing redress. There is accordingly no constraint on the right of individual redress. The plea that Article 16 of the Declaration of Human and Civic Rights is breached is accordingly unsupported in point of fact.
(93-335 DC, 21 January 1994, paras 2 and 4, p. 40)

RIGHT TO LIFE AND PHYSICAL HEALTH AND SAFETY

Termination of pregnancy

Article L162-16 of the Public Health Code (in utero prenatal diagnosis) offers no grounds to justify termination of pregnancy. Article L162-17 applies solely to diagnoses performed on cells taken from in vitro embryos. The plea presented by certain Members of Parliament that

voluntary termination of pregnancy and attacks on human life are thereby facilitated are accordingly unsupported in point of fact.
(94-343/344 DC, 27 July 1994, paras 13 and 14, p. 100)

Health protection

Constitutional principle of health protection

By the tenth paragraph of the Preamble to the Constitution of 1946, 'The Nation shall assure to every individual and family the conditions necessary for their development' ; by the eleventh paragraph, 'The Nation shall guarantee to all, notably children [and] mothers... health care...'
(94-343/344 DC, 27 July 1994, para. 4, p. 100)

Applications

Bioethics

Contrary to what is asserted by the applicants, there are no provisions or principles of constitutional status applicable to embryo selection that are directed to the protection of the human genetic inheritance. There is nothing in the Preamble to the 1946 Constitution that precludes the development of the human family via gamete or embryo donations on the terms provided by the Act. The ban imposed by the Act on any means whereby a child might ascertain the donor's identity cannot be regarded as an attack on health protection as secured by the Preamble. As regards individual decisions concerning research for medical purposes, it was not ultra vires for the legislature to impose the requirement for assent by an administrative board operating in accordance with rules determined by the new Article L184-3 of the Public Health Code to ensure that the embryo's interests are not jeopardized.
(94-343/344 DC, 27 July 1994, para. 11, p. 100)

Embryos' right to life

The newly enacted Articles L152-1 and L152-10 of the Public Health Code secure various forms of protection in the event of the conception, implantation and conservation of embryos fertilized in vitro. But the legislature did not see the need to provide for the conservation of all embryos once formed for all time and in all circumstances, considering that the principle of respect for human life from its inception is not applicable to them and that the principle of equality is accordingly likewise inapplicable. It is not for the Constitutional Council, which does not have the same decision-making powers as Parliament, to question provisions enacted by Parliament in the light of developments in knowledge and techniques.
(94-343/344 DC, 27 July 1994, paras 6, 7, 9 and 10, p. 100)

FREEDOM OF EXPRESSION AND INFORMATION

General

Article 11 of the Declaration of Human and Civic Rights states : 'Freedom to express ideas and opinions is one of the most precious of human rights ; citizens may therefore speak, write and print freely, though in cases determined by law they may be made to answer for their abuse of this freedom.'
(93-333 DC, 21 January 1994, para. 2, p. 32)

A provision whereby the grant by a public body of an award for teaching or research work is subject to a commitment by the recipient to publish or distribute the results in French, or a French translation if the work was done in a foreign language, save where the Minister of

Research allows an exception, is contrary to Article 11 of the Declaration of Human and Civic Rights, which secures freedom of expression and communication in education and research. The power conferred on the Minister of Research to allow an exception, which is subject to no restrictions regarding assessment of the scientific or educational value of the work, does not offer an adequate means of securing that freedom.
(94-345 DC, 29 July 1994, paras 20 to 25, p. 106)

Audiovisual media

Powers of legislature

It is for the legislature, which is empowered by Article 34 of the Constitution to determine rules securing the fundamental freedoms enjoyed by the citizen, to reconcile the exercise of the freedom of communication secured by Article 11 of the 1789 Declaration both with the constraints inherent in broadcasting media and with the constitutional objectives of safeguarding public order, respect for the freedoms of others and the preservation of pluralism in social and cultural expression which such media are by their very nature likely to jeopardize.
(93-333 DC, 21 January 1994, para. 4, p. 32)

Given the fundamental freedom of opinion and expression secured by Article 11 of the Declaration of Human and Civic Rights, Parliament has no power to impose the obligation to use a specific official terminology on public or private-sector radio or television broadcasting companies, with penalties to enforce it.
(94-345 DC, 29 July 1994, para. 9, p. 106)

Regulatory powers delegated to an independent administrative authority

Parliament, which is empowered by Article 34 of the Constitution to determine rules securing the fundamental freedoms enjoyed by the citizen, has power to entrust to an independent administrative authority the task of assessing compliance with the conditions it has determined for the attainment of an objective of constitutional status. But where it entrusts such tasks, it must do so subject to measures that will guarantee the rights and freedoms secured by the Constitution. In the instant case Parliament has imposed rules and guarantees surrounding renewals of licences without calls for new applications. It is one of the specific tasks of the *Conseil supérieur de l'audiovisuel* to assess the conduct of licensees who have been penalized in the past. It is for the administrative courts to enforce these rules and guarantees on application from the Government or from individual litigants. Parliament has not acted ultra vires in conferring on the *Conseil supérieur de l'audiovisuel* the powers conferred by section 8 of the Act
(93-333 DC, 21 January 1994, paras 19 and 20, p. 32)

Preservation of pluralism

Objective

The preservation of pluralism in social and cultural expression is itself a constitutional objective. It is one of the preconditions for democracy. The freedom to express ideas and opinions secured by Article 11 of the 1789 Declaration, would be nugatory if the public addressed by the audiovisual media was not in a position to receive programmes from public- and private-sector sources guaranteeing the expression of differing views provided information is fairly presented. The ultimate aim is that listeners and viewers, who are clearly among those to whom the freedom proclaimed by Article 11 essentially applies, should be able to exercise freedom of choice without public or private interests being able to subvert this by their own decisions and that freedom should not be marketable.
(93-333 DC, 21 January 1994, para. 3, p. 32)

The objective of pluralism must be analysed as a means of ensuring that the public at large can receive programmes from public- and private-sector sources guaranteeing the expression of differing views provided information is fairly presented.
(93-333 DC, 21 January 1994, para. 26, p. 32)

Non-violation of objective

Section 7 of the Act referred imposed the conditions prescribed by Section 28 on the possibilities for television broadcasting companies enjoying a national licence to make local programme slots. The licence presupposed an agreement between the *Conseil supérieur de l'audiovisuel* on behalf of the Government and the broadcasting company. The provisions of the Act, in particular Sections 1 and 27, imposed on the Conseil supérieur the task of securing fairness and pluralism in information and programmes by means of rules complying with the need to ensure equal treatment and fair competition between broadcasters. Section 7 did not depart from the rules prohibiting or limiting the cumulative grant of licences (Sections 41, 41-1 and 41-2 of the Act of 30 September 1986). The local slots must remain subject to the sole editorial responsibility of the broadcasting company. They may not exceed three hours per day, unless an exception is authorized by the *Conseil supérieur de l'audiovisuel*, which, subject to judicial review, must meet all the obligations incumbent on it. Section 7 further prohibits advertising and sponsorship so as not to jeopardize pluralism in the exercise of freedom of communication by the regional press and local radio. It cannot, therefore, be regarded as contrary to the constitutional objective of pluralism.
(93-333 DC, 21 January 1994, para. 7, p. 32)

The disputed provisions of Section 8 of the Act referred (renewal of broadcasting licences) must be interpreted and implemented in the light of the principles established by Section 1 of the Freedom of Communication Act of 30 September 1986. It is, in particular, for the *Conseil supérieur de l'audiovisuel* to ensure equal treatment, promote free competition and secure diversity and quality in programmes. When deciding whether to renew a licence without calling for substitute applications, the Conseil supérieur must use all the information and review resources at its disposal to check that the principle of pluralism is complied with nationally, regionally and locally. The decision to renew a licence without calling for substitute applications must be taken no less than one year before it expires and must be announced in the *Journal Officiel* (rs). The *Conseil supérieur de l'audiovisuel* may then of its own motion, with the licensee's agreement, amend the agreement provided for by Section 28 of the 1986 Act. The disputed section provides that, absent an agreement six months prior to expiry of the licence, the licence may not be renewed without a call for substitute applications. The new decision must also be announced in the *Journal officiel*. A new licence to use frequencies may not be issued by the *Conseil supérieur de l'audiovisuel* except as provided by Sections 29 and 30 of the 1986 Act. It will be for the *Conseil supérieur de l'audiovisuel* to assess the original licensee's track record and to ensure in the course of the new negotiation, which may be all-embracing, that it will comply with all the obligations inherent in the function of securing freedom of expression and pluralism of ideas and opinions. It is only if it is in agreement on these points that the *Conseil supérieur de l'audiovisuel*, as the independent authority responsible for guaranteeing the freedom of communication, may renew a licence without calling for substitute applications. In the exercise of its powers the Conseil supérieur, like any other administrative authority, is subject to judicial review on application from the Government or from a private individual. The administrative courts will thus ultimately have to secure pluralism. It follows that the disputed provisions are not contrary to the constitutional objective of pluralism.
(93-333 DC, 21 January 1994, paras 10 to 15, p. 32)

When enacting the disputed provisions of Section 11 of the Act referred, Parliament was proceeding from the assumption that the procedure for calling for applications under Sections 29 and 30 of the 1986 Act was too cumbersome to be used for occasional or seasonal operations. There was no intention of departing from the principles of Section 1 of the 1986 Act, or from Section 28, which imposes an agreement between the Conseil supérieur on behalf of the Government and the licence applicant, or from the rules governing transparency and merger control (Sections 35 to 41-3 of the 1986 Act). And a temporary licence must be regarded as not eligible for immediate renewal, given the rules laid down by Sections 29 and 30 governing calls for substitute applications. Subject to this interpretation, Section 11 of the Act referred is not contrary to any constitutional rule or principle.
(93-333 DC, 21 January 1994, para. 23, p. 32)

The higher maximum value of radio broadcasting services provided for by the disputed section must be evaluated by reference to the amendment made to Section 41-3 of the Act of 1986. The reference is not to a national definition of radio broadcasting alone, based on a census population of areas with a population of at least 30 million, but to networks consisting

of services or sets of services broadcasting the same programme for a majority period of time for each service. This change of definition should make it possible to reflect the effect of combined coverage by substantially identical programmes. Given the coverage attained by most radio broadcasters, especially in the private sector, it was acceptable for the legislature to raise to 150 million the requisite population level in the areas covered without running counter to the constitutional objective of pluralism.
(93-333 DC, 21 January 1994, para. 32, p. 32)

Financial transparency

Section 14 of the Act referred raises the maximum authorized capital holding or voting rights in licensees for nationwide land-based broadcasters; it also strengthens merger-control powers by bringing combined holdings in concert within the definition. Moreover, there is no exception from the rules set forth in sections 1, 17, 38 and 41 of the 1986 Act. And the disputed provisions are not contrary to the second paragraph of Section 39 of the 1986 Act, whereby no person or firm may hold more than 15% of the capital or voting rights in another firm that already holds more than 15% of the capital of a national broadcasting licensee. Nor can they breach the third paragraph of Section 39, which forbids holdings of more than 5% in a firm when a person or firm already holds more than 5% of two other licensees. All these rules apply subject to Ordinance 86-1243 (1.12.1986) on freedom of price-setting and competition, and in particular Titles IV and V thereof (Transparency and industrial concentration respectively). It follows from all the foregoing that Section 14 is in breach of no rules or principles of constitutional status.
(93-333 DC, 21 January 1994, paras 28 and 29, p. 32)

Principle of equality

One of the Act's objectives is to promote private-sector investment in audiovisual media so as to form groups capable of competing internationally, keeping up with technological progress and promoting French cultural interests. Section 8 of the Act (renewal of broadcasting licences) was enacted to assure private-sector radio and television broadcasters of the operational continuity that would enable them to plan their investments and development; the procedure provided for by Section 8 is accordingly not contrary to the principle of equality.
(93-333 DC, 21 January 1994, para. 17, p. 32)

EDUCATION

Freedom of education

Organization – Financial assistance from local authorities

Parliament may provide for assistance to be granted by public authorities to private educational establishments according to the nature and importance of their contribution to education. Although the principle of the autonomy of local authorities is of constitutional status, measures enacted by Parliament must not be such that the essential conditions for giving effect to an Act relating to exercise of the freedom of education are dependent upon decisions by local authorities and might therefore not be the same throughout the country.

Assistance granted by local authorities must satisfy objective tests if it is to conform to the principles of equality and liberty. Article 34 of the Constitution requires Parliament to determine how these provisions and principles of constitutional status are to be implemented. Parliament must, for instance, provide the necessary guarantees to protect public educational establishments against infringements of equality detrimental to them in the light of the specific obligations incumbent on these establishments.
(93-329 DC, 13 January 1994, para. 27, p. 9)

The conditions governing the grant of assistance by the various local authorities and the determination of the amount of assistance in Section 2 of the Act referred are not such as to

provide the necessary guarantees that the principle of equality between private educational establishments under contract which are in comparable situations is respected. These differences in treatment are not warranted by the object of the Act.
(93-329 DC, 13 January 1994, para. 28, p. 9)

Section 2 of the Act referred does not provide sufficient guarantees that private educational establishments will not be placed in a more favourable situation than public educational establishments, regard being had to the latter's responsibilities and obligations.
(93-329 DC, 13 January 1994, para. 29, p. 9)

FREEDOM OF ENTERPRISE AND FREEDOM OF TRADE AND INDUSTRY

Freedom of enterprise

Applications

Retirement pension schemes

The provisions enacted to determine the legal framework within which supplementary pension schemes may be established or maintained are without impact on freedom of enterprise, given the nature and object of the schemes.
(94-348 DC, 3 August 1994, para. 8, p. 117)

Freedom of contract

There is no rule of constitutional status that secures the principle of freedom of contract.
(94-348 DC, 3 August 1994, para. 9, p. 117)

RIGHT TO WORK

Right to retirement benefits

There is no rule or principle of constitutional status that secures the inviolability of retirement cash benefits.
(94-348 DC, 3 August 1994, para. 14, p. 117)

WORKER PARTICIPATION IN COLLECTIVE DETERMINATION OF WORKING CONDITIONS AND MANAGEMENT OF BUSINESSES

Retirement pension schemes

The eighth paragraph of the Preamble to the Constitution of 27 October 1946, confirmed by the Constitution of 4 October 1958, reads: « Every worker shall, through his delegates, participate in the collective determination of working conditions and in the management of the firm », but Article 34 of the 1958 Constitution ranks the determination of fundamental principles of labour law, trade-union law and social security among the matters to be regulated by statute. It is accordingly for Parliament to determine how effect will be given to this constitutional provision in full compliance with its status as such.
(94-348 DC, 3 August 1994, para. 10, p. 117)

One of the purposes of the Act is to simplify and coordinate the legal forms taken by the joint (labour/management) institutions governed by the Social Security Code, distinguishing

between complementary retirement schemes, provident schemes and supplementary retirement schemes. Although the legislation proceeded from the assumption that it was in the best interests of employed persons that supplementary retirement schemes should no longer be set up except in the cases determined by it, provision was made for labour and management to subscribe to group insurance policies with provident societies or to set up provident schemes specific to individual firms or groups of firms. By the new Article L931-1 inserted by the Act, provident institutions were to be administered jointly by the two sides and to be established « on the basis of a collective agreement, a draft agreement put forward by the head of the firm and ratified by a majority of all concerned or an agreement of participating and joining members meeting in general meeting for the purpose ». By Article L941-3 these provisions are made applicable to supplementary retirement schemes that still are to be established. It follows that the Act does not violate the principle set out in the eighth paragraph of the Preamble to the 1946 Constitution but implements it within the powers allocated by Article 34 of the 1958 Constitution.

(94-348 DC, 3 August 1994, para. 11, p. 117)

HUMAN DIGNITY

Principle

The Preamble to the 1946 Constitution reaffirmed and proclaimed constitutional rights, freedoms and principles, notably in its very first sentence : 'On the morrow of the victory won by free peoples over regimes which sought to enslave and degrade humankind, the French people once again proclaim that all human beings, without distinction as to race, religion or creed, possess inalienable and sacred rights.' It follows that safeguarding human dignity from any form of enslavement or degradation is a principle of constitutional status.

(94-343/344 DC, 27 July 1994, para. 2, p. 100)

Application

The legislation relating to respect for the human body and to the use of parts and products of the human body, to medically assisted reproduction and to prenatal diagnosis set out a series of principles including the primacy of the human being, respect for the human being from the inception of his life, the inviolability, integrity and non-marketability of the human body and the integrity of the human race. These principles help to secure the constitutional principle of the protection of human dignity. All the provisions referred reconcile and implement constitutional rules without distorting their scope.

(94-343/344 DC, 27 July 1994, paras 18 and 19, p. 100)

FAMILY RIGHTS

Principle

Development of the family

Contrary to what is asserted by the applicants, there are no provisions or principles of constitutional status applicable to embryo selection that are directed to the protection of the human genetic inheritance. There is nothing in the Preamble to the 1946 Constitution that precludes the development of the human family via gamete or embryo donations on the terms provided by the Act. The ban imposed by the Act on any means whereby a child might ascertain the donor's identity cannot be regarded as an attack on health protection as secured by the Preamble. As regards individual decisions concerning research for medical purposes, it was not ultra vires for the legislature to impose the requirement for assent by an administrative

board operating in accordance with rules determined by the new Article L184-3 of the Public Health Code to ensure that the embryo's interests are not jeopardized.

(94-343/344 DC, 27 July 1994, para. 11, p. 100)

The deputies making the reference challenge the anonymity of gamete donors vis-à-vis the unborn child in the light of the principle of personal liability contained in Article 1382 of the Civil Code. They also submit that there is a fundamental principle recognized by the laws of the Republic arising from the provisions of the Act of 16 November 1912 which permit a child to seek to establish paternity outside marriage in certain circumstances. But the Respect for the Human Body Act has neither the object nor the effect of regulating issues of paternity in cases of medically assisted reproduction. N° provision or principle of constitutional status forbids the prohibitions laid down by Parliament on establishing a relationship between child and donor and on bringing actions for remedies against donors. The applicants' claims must therefore be dismissed.

(94-343/344 DC, 27 July 1994, paras 16 and 17, p. 100)

PROPERTY RIGHTS

Applicable legislation – Scope of Article 17 of the Declaration of Human and Civic Rights

Scope of principle

Article 17 of the 1789 Declaration (Property rights and the protection they properly enjoy) does not apply solely to private property but also, in equal manner, to the property of the State and other public bodies. Real rights may accordingly not durably encumber public property without due consideration for them, having regard to its real value and to the public service functions which it is intended to serve. It is for the legislature, within the limits of its powers under Article 34 of the Constitution, to determine rules governing transfers of ownership in firms from the public to the private sector and the fundamental principles of ownership rules and real rights.

(94-346 DC, 21 July 1994, para. 3, p. 96)

The Act referred amends the rules governing the distribution and transfer of shares in companies to which Title VI of the Companies Act of 24 July 1867 as amended applies. Such rules are not within the scope of Article 17 of the 1789 Declaration.

(94-347 DC, 3 August 1994, paras 9 and 10, p. 113)

Violation of property rights

The second sentence of the third paragraph of Article L34-1 of the State Property Code provides that the relevant authority may grant a party occupying State property who has already enjoyed a title to it for a combined period not exceeding seventy years a new title permitting occupation of the property generating real rights in buildings, fixtures and fittings whose preservation has been agreed upon on the sole condition that the authority should decide to do so expressly on the basis of new works and constructions that substantially improve, extend or alter such buildings. Such new title, which entails recognition of real rights not only in newly constructed buildings but also in older buildings that are restored or altered, precludes the operation of the public property protection provisions in Article L34-3, whereby buildings revert to the State as of right and without compensation on expiry of the occupation period. This option is liable to jeopardize the protection due to public property, being exercised after a lengthy period and by a procedure that can be repeated without any limit being placed on the duration by the legislation. The second sentence of the third paragraph of Article L34-1 is accordingly unconstitutional.

(94-346 DC, 21 July 1994, para. 16, p. 96)

No violation of property rights

Restrictions on the exercise of property rights

It follows from the right to property guaranteed by Article 2 of the Declaration of Human and Civic Rights that Parliament must not impose transfer of shares on terms which do not ensure that their real value is maintained.

(94-347 DC, 3 August 1994, para. 11, p. 113)

On the terms established by Section 79-1 of the Companies Act of 24 July 1867, as amended by Section 18 of the Act referred, and even if the compensation payable is potentially in the form of allocation of shares that cannot be transferred for three years, the rules established by the Act meet the requirements of Article of the 1789 Declaration.

(94-347 DC, 3 August 1994, para. 14, p. 113)

Public property

The rules and safeguards contained in the Act supplementing the State Property Code and constituting real rights over public property are such as to secure the operation of public services and the protection of public property in accordance with provisions and principles of constitutional status. The deputies making the reference plead against Section 1 of the Act the principle (which they claim is of constitutional status) of the inalienability of public property, but none of the provisions of Section 1 has the object of permitting or organizing the transfer of public property. The claim is accordingly unsupported in point of fact.

(94-346 DC, 21 July 1994, para. 14, p. 96)

EQUALITY

EQUALITY BEFORE THE LAW

Principle

The principle of equality does not preclude legislation regulating different situations in different fashions or providing for exception from the principle in the general interest, but in all such circumstances the resultant differences in treatment must be in proportion to the purpose of the Act creating them.

(94-348 DC, 3 August 1994, para. 5, p. 117)

Principle of equality : exclusion

The new provisions inserted at Articles L152-1 to L152-10 of the Public Health Code secure various forms of protection in the event of the conception, implantation and conservation of embryos fertilized in vitro. But the legislature did not see the need to provide for the conservation of all embryos once formed for all time and in all circumstances, considering that the principle of respect for human life from its inception is not applicable to them and that the principle of equality is accordingly likewise inapplicable. It is not for the Constitutional Council, which does not have the same decision-making powers as Parliament, to question provisions enacted by Parliament in the light of developments in knowledge and techniques.

(94-343/344 DC, 27 July 1994, paras 6, 7, 9 and 10, p. 100)

Respect for the principle of equality : absence of discrimination

Audiovisual media

The new procedure for renewing broadcasting licences expiring after 28 February 1995 applies to all television and radio broadcasting companies already licensed. The plea that the principle of equality is breached is not supported in point of fact.

(93-333 DC, 21 January 1994, para. 18, p. 32)

Social law

Retirement pension schemes

Given the legislature's declared purpose of gradually reducing the coverage of supplementary pension schemes, the new provisions taking effect at the date of the Act's promulgation do not constitute a breach in the principle of equality as between firms that have and those do not have supplementary pension schemes at that date. By making provision for exceptions whereby new schemes may be established, the legislature intended to promote the application of the ordinary law to employed persons previously covered by special schemes. The purpose is to enable employed persons now covered by complementary pension schemes funded on an interprofessional basis to continue to acquire entitlements to portions not covered by the official public schemes. It follows that the transitional provisions do not constitute a breach of the principle of equality.

(94-348 DC, 3 August 1994, paras 6 and 7, p. 117)

The legislation requires firms which elect to enter reserves in their balance sheets to secure the risks flowing from insolvency in manner to be provided by decree. This must be regarded as providing for security for the interests of employed persons. The administrative authority is under an obligation to make the requisite provisions. It follows that the plea that the principle of equality is breached must be dismissed.

(94-348 DC, 3 August 1994, para. 15, p. 117)

Elections

Legislation extending the term of office of elected municipal councillors declares that it does so to obviate difficulties with organizing the presidential election due to be held in 1995. The extension of outgoing councillors' terms of office and the corresponding reduction of incoming councillors' terms is by only three months and is an exceptional decision ; it is accordingly not disproportionate to the objective pursued. Neither the principle of the decision nor its practicalities generate any risk that the electorate will confuse one election with the other. Section 1 of the relevant Act is therefore not contrary either to the right to vote secured by Article 3 of the Constitution, or to the principle of freedom of organization of local authorities, or to the principle of equality.

(94-341 DC, 6 July 1994, para. 7, p. 88)

The purpose of legislation extending by three months the period during which candidates for election as municipal councillors may gather campaign funds is to reflect the fact that associations were formed and agents appointed between 1 March and 1 June 1994 and had lawfully pursued that object in accordance with the legislation then in force. But the decision had been taken, given that the maximum amount provided for by Article L52-11 of the Electoral Code was maintained in force, to leave unchanged the period during which sums committed or expended as campaign expenditure should be taken into account. Consequently, potential differences of situation reflect the legislature's concern to secure its declared objectives, and the plea that the principle of equality is breached must be dismissed.

(94-341 DC, 6 July 1994, para. 12, p. 88)

Respect for the principle of equality : difference of treatment justified by different situations

The institutional act provides that, as far as is consistent with the exigencies of the service and the specific features of the administration of justice, family circumstances are to be taken into account in the appointment of *magistrats*. This does not detract from the principle of the independence of the judiciary nor from the principle of equality.
(93-336 DC, 27 January 1994, para. 23. p. 47)

Disciplinary powers in respect of *magistrats* who are on secondment or on half pay or have definitively retired are exercised by the section of the *Conseil supérieur de la magistrature* which is competent for the judiciary or by the Minister of Justice, depending on whether the *magistrats*' last judicial office was on the bench or in the State Counsel's Office or the central administration of the Ministry of Justice. In the last two cases the Minister of Justice adjudicates, in accordance with the civil service regulations, after obtaining the opinion of the appropriate section of the Conseil supérieur. The distinction thus made is based on objective criteria inherent in a difference of situation relating to the last judicial office held. It does not detract from the principle of equality.
(93-336 DC, 27 January 1994, paras 28 and 29, p. 47)

Considerations of public interest justifying difference of treatment

Applications

Audiovisual media

The principle of equality does not preclude Parliament from departing from the principle for reasons of public interest provided that the resulting differences of treatment are in accordance with the purposes of the Act which establishes them. The combining of municipal and cantonal elections provided by the Act referred is organized in such a way as to obviate any confusion in the minds of voters. The different situations created by the Act are simply the consequence of a reform intended by Parliament to further the objectives it had set itself. Claims that the Act is in breach of the principle of equality are dismissed.
(93-331 DC, 13 January 1994, paras 10 and 11, p. 17)

One of the Act's objectives is to promote private-sector investment in audiovisual media so as to form groups capable of competing internationally, keeping up with technological progress and promoting French cultural interests. Section 8 of the Act (renewal of broadcasting licences) was enacted to assure private-sector radio and television broadcasters of the operational continuity that would enable them to plan their investments and development ; the procedure provided for by Section 8 is accordingly not contrary to the principle of equality.
(93-333 DC, 21 January 1994, para. 17, p. 32)

Breach of the principle of equality

Private educational establishments

Measures enacted by Parliament must not be such that the essential conditions for giving effect to an Act relating to exercise of the freedom of education might not be the same throughout the country.
(93-329 DC, 13 January 1994, para. 27, p. 9)

Section 2 of the Act lays down the principle whereby local authorities may decide to grant investment subsidies to private educational establishments under contract at their discretion, by whatever arrangements they think fit, at any level of education. Local authorities have the same opportunities, irrespective of whether the establishments are under ordinary contract or association contract. There is an upper limit on the aggregate amount of assistance that may be given, but in certain cases individual grants of assistance may cover the total investment

involved. Section 2 does not provide the necessary guarantees that the principle of equality between private establishments under contract which are in comparable situations is respected.

(93-329 DC, 13 January 1994, paras 28 and 29, p. 9)

Section 2 of the Act lays down the principle whereby local authorities may decide to grant investment subsidies to private educational establishments under contract at their discretion, by whatever arrangements they think fit, at any level of education. Local authorities have the same opportunities, irrespective of whether the establishments are under ordinary contract or association contract. There is an upper limit on the aggregate amount of assistance that may be given, but in certain cases individual grants of assistance may cover the total investment involved. Section 2 does not provide sufficient guarantees that private establishments will not be placed in a more favourable situation than public educational establishments, regard being had to the latter's responsibilities and obligations.

(93-329 DC, 13 January 1994, paras 28 and 30, p. 9)

Reserves to be created to secure welfare commitments

Given the obligation established by the legislation to create reserves to cover commitments arising after promulgation of the Act referred, the provision of the Act permitting exceptions therefrom in specified circumstances is warranted neither by the specific status of the supplementary retirement pension schemes to which Section L941-2 applies, nor by the nature of the activity in which they engage, nor by foreseeable difficulties in the application of the Act that are such as to impede attainment of the general obligation to maintain reserves imposed by the legislature. The provision referred is accordingly contrary to the principle of equality

(94-348 DC, 3 August 1994, para. 17, p. 117)

EQUALITY BEFORE THE COURTS

Judiciary

Litigants

Equal guarantees for litigants

Due process

The legislature, which has jurisdiction to determine the rules of criminal procedure by Article 34 of the Constitution, is entitled to make rules which vary with the facts, the circumstances and the persons to which or to whom they apply, provided always that any variations made do not derive from unwarranted discriminations and that litigants are afforded equal guarantees, notably as regards due process. The difference of treatment consisting in the time by which counsel may intervene while a person is in police custody during an inquiry into certain offences corresponds to differences in circumstances connected with the nature of the offence. It does not therefore derive from an unwarranted discrimination.

(93-334 DC, 20 January 1994, paras 17 to 19, p. 27)

ELECTIONS

CAMPAIGN ADVERTISING

Advertising techniques

Circulars

Policy statements

There is nothing in the Electoral Code that prohibits printing circulars in red, white and blue.

(94-2047/2048, 21 December 1994, AN, Haute-Garonne, Constituency 1, para. 10, p. 136)

Pamphlets

Irregularities without influence on the outcome of the ballot

Content and scope of pamphlets

An industrialist cast aspersions on the integrity of the candidate defeated in the second round. These defamatory statements were repeated often, by different people and in the press, during the election campaign. However, given the date on which the accusations were first made, the candidate had enough time to reply before the ballot – and did in fact do so. Despite the slight difference in votes and the fact that the complaint for defamation made by the candidate against the perpetrator and the journalist who circulated his remarks resulted in their conviction, by a judgment that was appealed, only after the election, the circulation of these remarks was not such as to influence the outcome of the ballot.

(93-1679 to 1684, AN, Loire-Atlantique, Constituency 8, para. 2, p. 83)(cf. CE, Elections municipales de Cannes, 22 December 1989, Rec. p. 269)

ELECTORAL OPERATIONS

Sorting and counting

Counting procedures

Validity of ballot papers

Nothing prohibits mentioning on ballot papers the fact that an election is a by-election.

(94-2047/2048, AN, Haute-Garonne, Constituency 1, para. 2, p. 136)

The words 'élections législatives de...' cannot be held to constitute an emblem.

(94-2047/2048, 21 December 1994, AN, Haute-Garonne, Constituency 1, para. 13, p. 136)

LITIGATION

Jurisdiction of the Constitutional Council

Matters outside the jurisdiction of the Constitutional Council

Actions for damages

Actions for damages do not lie to the Constitutional Council.
(94-2047/2048, 21 December 1994, AN, Haute-Garonne, Constituency 1, para. 19, p. 136)

Grounds and arguments

Arguments

New arguments

The applicant pleads that the candidate exceeded the authorized maximum expenditure. It is not admissible, for all that, to challenge the lawfulness of receipts after the ten-day time limit.
(94-2047/2048, 21 December 1994, AN, Haute-Garonne, Constituency 1, para. 17, p. 136 ; cf. CC, 2 December 1993, AN, Bouches-du-Rhône, Constituency 10, para. 14, p. 516 and C.E. Hoarau, 7 January 1994)

Redress procedure

Application to reopen proceedings

An application to reconsider a decision declaring a successful candidate ineligible and annulling the election in the constituency in question is not admissible by virtue of the second paragraph of Article 62 of the Constitution.
(21 July 1994, M. Estrosi, p. 95)

Application for rectification

An application to have a factual error rectified cannot contest the findings of fact, their legal impact or the formal and procedural conditions underlying the Constitutional Council's decision. As the date on which a payment was made by a political party to an association supporting the candidate was wrong, the error must be rectified, but the rectification does not invalidate the finding that the candidate was ineligible.
(93-1213, 13 January 1994, AN, Alpes-Maritimes, Constituency 2, para. 1 to 4, p. 25)

The applicant alleges that the Constitutional Council failed to respond to a number of claims or arguments concerning the regularity of the election campaign and the assessment of the electoral expenses incurred by the successful candidate and that it mistakenly refused to classify expenditure relating to the opening of a market as election expenses or to consider an association as a second funding association. An application to have a factual error rectified cannot contest the findings of fact, their legal impact or the formal and procedural conditions underlying the decision. These allegations have nothing to do with factual errors.
(93-1209, 10 March 1994, p. 62)

The errors alleged by the applicant as regards the date of registration of his application, the date of the ordinance laying down the institutional act on the Constitutional Council and the persons to whom the notification of the decision was addressed are not such as to have influenced the judgment of the case or to have adversely affected the applicant.
(10 March 1994, M. Meyet, p. 60)

CAMPAIGN ACCOUNTS

Depositing

Time allowed for depositing

Ineligibility

A candidate whose campaign accounts have not been deposited at the prefecture before the date on which the two months allowed by Article L 52-12 of the Electoral Code have elapsed is ineligible.
(94-2049, 11 October 1994, M. Marquis, p. 122 ; 94-2051, 11 October 1994, M. Thoumieux, p. 126)

A candidate is ineligible only for the length of time for which he was declared ineligible.
(94-2047/2048, 21 December 1994, AN, Haute-Garonne, Constituency 1, para. 6, p. 136)

Conditions of deposit

Account not certified

A candidate whose campaign account has not been presented by a chartered accountant is ineligible ; the formality is a substantive requirement.
(94-2050, 11 October 1994, M. Folch, p. 124)

No supporting vouchers

No vouchers in support of an invoice. The candidate is ineligible.
(94-2052, 11 October 1994, M. Ducher, para. 5, p. 128)

Donations

Period for raising funds

It follows from Articles L 52-4, L 52-5, L 52-6 and L 52-12 of the Electoral Code, taken together, that payments may be made after the election provided they had been pledged before, but the candidate must show that the payments had been made before the campaign account was deposited.
(94-2052, 11 October 1994, M. Ducher, para. 6, p. 128)

Expenses in excess of receipts

Expenses are in excess of receipts supported by vouchers. The candidate is ineligible.
(94-2052, 11 October 1994, M. Ducher, para. 7, p. 128)

Campaign Accounts and Political Funding Committee

Principles

The Campaign Accounts and Political Funding Committee is an administrative authority, not a court. Consequently, any view it comes to when examining a candidate's campaign account is without prejudice to the decision of the Constitutional Council, which has jurisdiction by virtue of Article 59 of the Constitution to rule upon the regularity of an election.
(93-2002, 10 March 1994, M. Rousseau, p. 64 ; 93-1919, 15 March 1994, M. Prevot, p. 77)

Contents of the account

Expenses

Expenses required to be recorded in the account

The election was held on 21 and 28 March 1993. Expenses incurred in publishing pamphlets and handbills totalling 41 343.96 francs, as shown by a printer's invoice dated 30 March 1993, and various receptions during the election campaign totalling 47 010 francs, corresponding to three invoices issued by the firm providing services dated 16 February and 17 and 31 March 1993, should be incorporated into the campaign account of the (defeated) candidate. These expenses, totalling 88 353.96 francs, were directly incurred by the candidate, who does not dispute the facts. They should be incorporated in the campaign account, which comes to 587 638.96 francs – 87 638.96 francs in excess of the maximum permissible. The candidate is ineligible.

(93-2002, 10 March 1994, M. Rousseau, p. 64)

The supplement to a March 1993 newspaper, consisting of a single sheet with, on the back, a full-page exhortation to 'Vote for... [name of the candidate whose account is referred]' is campaign advertising. Half of the cost, inclusive of tax, comes to 10 114 francs according to the printer's invoice dated 24 March 1993. That sum should therefore be incorporated in the candidate's account (The newspaper having supported two candidates). Other sums also to be incorporated. The candidate is ineligible.

(93-1919, 15 March 1994, M. Prevot, p. 77)

A newspaper contains a number of articles and boxed features closely relating to the candidate's campaign in the constituency. These items amount to four pages in all, corresponding to a cost of 17 401 francs on the basis of vouchers supplied by the publisher. That sum should accordingly be incorporated as expenditure in the candidate's account. Other sums also to be incorporated. The candidate is ineligible.

(93-1919, 15 March 1994, M. Prevot, p. 77)

Examination of the vouchers appended to the account reveals virtually no expenditure on the operation of the candidate's campaign headquarters. When he was asked to explain the discrepancy, the candidate provided no further information capable of challenging the finding of the Campaign Accounts and Political Funding Committee concerning this manifestly underassessed item. A lump sum of 5 000 francs assessed by the Committee to be incorporated in the account. Other sums also to be incorporated. The candidate is ineligible.

(93-1919, 15 March 1994, M. Prevot, p. 77)

Expenses not required to be recorded in the account

The campaign account deposited at the prefecture shows expenses totalling 498 726 francs. These include 3 481 francs in court fees and 3 000 francs in experts' fees, which cannot be regarded as having been incurred for election purposes within the meaning of Article L 52-12 of the Electoral Code. An amount corresponding to these fees should therefore be deducted from the candidate's account.

(93-1919, 15 March 1994, M. Prevot, p. 77)

The travel and accommodation costs of representatives of a political party visiting a constituency are not campaign expenditure incurred by the candidate supported by them and do not need to be recorded in his campaign account.

(93-1679 to 1684, AN, Loire-Atlantique, Constituency 8, para. 3, p. 83)

Expenses incurred by the outgoing Member solely for the election of MEPs (The successful candidate in the by-election being his replacement) do not need to be included in his campaign account.

(94-2047/2048, 21 December 1994, AN, Haute-Garonne, Constituency 1, para. 18, p. 136)

Benefits in kind

Premises were let to the 'Gennevilliers d'Abord !' Association for 10 francs a month by the terms of a lease between the president of the association (who at the material time was also secretary of the candidate's campaign funding association) and the head of the Hauts-de-Seine departmental low-cost housing association. Investigation of the facts – including the electricity and telephone bills supplied -shows that the premises were actually used for the candidate's election campaign in February and March 1993. The rent and relevant charges for premises of this size – taxable at 7 000 francs for two months – should therefore be included as benefits in kind in the candidate's account. This puts expenditure in the campaign account at 531 760 francs – 31 760 francs above the maximum authorized. The candidate is ineligible.
(93-1919, 15 March 1994, para. 9, M. Prevot, p. 77)

Amounts to be incorporated

The election was held on 21 and 28 March. Expenses incurred in publishing pamphlets and handbills totalling 41 343.96 francs, as shown by a printer's invoice dated 30 March 1993, and various receptions during the election campaign totalling 47 010 francs, corresponding to three invoices issued by the firm providing services dated 16 February and 17 and 31 March 1993, should be incorporated into the campaign account of the (defeated) candidate. These expenses, totalling 88 353.96 francs, were directly incurred by the candidate, who does not dispute the facts. They should be incorporated in the campaign account, which comes to 587 638.96 francs – 87 638.96 francs in excess of the maximum permissible. The candidate is ineligible.
(93-2002, 10 March 1994, para. 5 and 6, M. Rousseau, p. 64)

The supplement to a March 1993 newspaper, consisting of a single sheet with, on the back, a full-page exhortation to 'Vote for Roger PREVOT ' is campaign advertising. Half of the cost, inclusive of tax, comes to 10 114 francs according to the printer's invoice dated 24 March 1993. That sum should therefore be incorporated in the candidate's account (The newspaper having supported two candidates). Other sums also to be incorporated. The candidate is ineligible.
(93-1919, 15 March 1994, para. 6, M. Prevot, p. 77)

A newspaper contains a number of articles and boxed features closely relating to the candidate's campaign in the constituency. These items amount to four pages in all, corresponding to a cost of 17 401 francs on the basis of vouchers supplied by the publisher. That sum should accordingly be incorporated as expenditure in the candidate's account. Other sums also to be incorporated. The candidate is ineligible.
(93-1919, 15 March 1994, para 7, M. Prevot, p. 77)

Examination of the vouchers appended to the account reveals virtually no expenditure on the operation of the candidate's campaign headquarters. When he was asked to explain the discrepancy, the candidate provided no further information capable of challenging the finding of the Campaign Accounts and Political Funding Committee concerning this manifestly underassessed item. A lump sum of 5 000 francs assessed by the Committee to be incorporated in the account. Other sums also to be incorporated. The candidate is ineligible.
(93-1919, 15 March 1994, para. 8, M. Prevot, p. 77)

Premises were let to the 'Gennevilliers d'Abord !' Association for 10 francs a month by the terms of a lease between the president of the association (who at the material time was also secretary of the candidate's campaign funding association) and the head of the Hauts-de-Seine departmental low-cost housing association. Investigation of the facts – including the electricity and telephone bills supplied – shows that the premises were actually used for the candidate's election campaign in February and March 1993. The rent and relevant charges for premises of this size – taxable at 7 000 francs for two months -should therefore be included as benefits in kind in the candidate's account. This puts expenditure in the campaign account at 531 760 francs – 31 760 francs above the maximum authorized. The candidate is ineligible.
(93-1919, 15 March 1994, para. 9, M. Prevot, p. 77)

Even if the applicants' claims that items of expenditure totalling 49 063.20 francs had been omitted or insufficiently assessed were well-founded, the successful candidate would still not have exceeded the maximum permissible for his constituency of 380 527 francs. The account, approved by the Campaign Accounts and Political Funding Committee, showed total expen-

diture of 322 565 francs. There is therefore no need to examine the merits of these claims : the allegation that the maximum had been exceeded must in any case be dismissed.
(93-1679 to 1684, AN, Loire-Atlantique, Constituency 8, para. 6, p. 83)

Candidate not elected

Maximum levels exceeded

After rectification, the candidate's expenses total 587 638.96 francs -87 638.96 francs in excess of the maximum permissible. The candidate is ineligible.
(93-2002, 10 March 1994, M. Rousseau, p. 64)

After rectification, the candidate's expenses total 531 760 francs – 31 760 francs in excess of the maximum permissible. The candidate is ineligible.
(93-1919, 15 March 1994, M. Prevot, p. 77)

PUBLIC FINANCE

FINANCE ACT

Respect for economic and financial equilibrium – New expenditure

The Finance Act need not necessarily take account of charges resulting from statutory provisions not yet finally enacted.
(94-351 DC, 29 December 1994, para. 25, p. 140)

Budgetary control

Control of management of public finance

Annual focus of parliamentary control

Central government resources appearing in the Finance Act are forward estimates and must take account of the economic and financial effects of the Government's intended policy. Given the list of businesses whose privatization was authorized by the Act of 19 July 1993, the Government could propose that Parliament enter 55 billion francs as expected revenue for 1995. The fact that revenue above a stated maximum is not allocated to a special purpose account but is paid into the general budget is not contrary to the rules whereby revenue is earmarked for expenditure or to any other rule of constitutional status.
(94-351 DC, 29 December 1994, paras 13, 14 and 15, p. 140 ; cf. 93-320 DC, 21 June 1993, para. 22, p. 146)

Powers of Parliament

The deputies making the reference claim that Parliament lacked the information needed for it to exercise its powers of scrutiny effectively, notably because of the discrepancies they cite between the initial estimates and the revenue actually to be raised, and because of the alleged underestimation of certain items of expenditure. Neither the estimates nor the expenditure referred to nor the circumstances of the debate in Parliament show that Parliament did not have the information needed to exercise its budgetary powers to the full in time.
(94-351 DC, 29 December 1994, para. 26, p. 140)

Assessment of tax and non-tax revenue of central government

Broad outline of budgetary balance not misconstrued

Annulment of a provision transferring to the old-age solidarity fund charges on central government or a subsidiary budget. The provision also offsets the transfer of charges on central government by reducing the amount of a refund from the solidarity fund by an amount corresponding to the charges transferred. Although these provisions are in Part I of the Finance Act, they do not detract from the general data of budgetary balance.
(94-351 DC, 29 December 1994, paras 10 to 12, p. 140)

Universality of Finance Acts

Allocation of revenue

Revenue not appearing in the budget

The universality rule precludes expenditure which, relating to civil servants, is by its very nature permanent from being financed from resources not determined by the budget.
(94-351 DC, 29 December 1994, para. 6, p. 140)

Subsidiary budget

Expenditure

The rules of unity and universality set out in Articles 1, 6, 16 and 18 of the Institutional Act Ordinance of 2 January 1959 apply to subsidiary budgets, whose operating expenditure follows the same rules as ordinary budget expenditure under Article 21 of the Ordinance. By Article 1003-4 of the Rural Code, expenditure in the subsidiary budget for social-security benefits in agriculture includes items for payment by the funds of old-age insurance benefits to self-employed persons ; the provision including in the old-age solidarity fund a permanent item of expenditure falling to the subsidiary budget for social-security benefits in agriculture is contrary to the universality principle.
(94-351 DC, 29 December 1994, paras 7, 8 and 9, p. 140)

Content and presentation of Finance Acts

Provisions that must be made in a Finance Act

The basic rules of unity and universality preclude expenditure which, relating to civil servants, is by its very nature permanent from being covered by the budget or financed from resources not determined by the budget. This applies, for instance, to the financing of increases in pensions, which are statutory social-security benefits payable by central government to retired civil servants.
(94-351 DC, 29 December 1994, para. 6, p. 140)

By Article 1003-4 of the Rural Code, expenditure in the subsidiary budget for social-security benefits in agriculture includes items for payment by the funds of old-age insurance benefits to self-employed persons.
(94-351 DC, 29 December 1994, para. 8, p. 140)

Provisions that must not be made in a Finance Act

A provision to the effect that the consequences of a charge created by the Finance Act on the financial balance of companies holding motorway concessions are covered by a decree in the *Conseil d'Etat* which determines the duration of motorway concessions does not in itself apply

to central government expenditure or resources nor to the basis of assessment, rate or manner of collection of taxation of all kinds. It is therefore alien to the purpose of Finance Acts.
(94-351 DC, 29 December 1994, para. 27, p. 140)

A section of the Finance Act does no more than determine the conditions for payment of benefits under old-age insurance schemes for small business, industry and trade. Its provisions do not relate to central government resources or expenditure but to the payment of assistance by the appropriate social-security schemes. The section is therefore alien to the purpose of Finance Acts.
(94-351 DC, 29 December 1994, para. 28, p. 140)

Provisions relating to expenditure

Permanent central government expenditure

The basic rules of unity and universality preclude expenditure which, relating to civil servants, is by its very nature permanent from being covered by the budget or financed from resources not determined by the budget. This applies, for instance, to the financing of increases in pensions, which are statutory social-security benefits payable by central government to retired civil servants.
(94-351 DC, 29 December 1994, para. 6, p. 140)

Carryover of appropriations

The applicants challenge a carryover of appropriations. The operation is consistent with the Institutional Act Ordinance.
(94-351 DC, 29 December 1994, paras 19 and 22, p. 140)

Creation, elimination and transformation of posts

Miscellaneous

The applicants submit that the posts to be created by the Act are fewer than should result from the enactment of various statutes, which calls in question recruitments in excess of those authorized. Such recruitments do not fall within the Finance Act, which need not necessarily make provision to take account of statutes not definitively enacted.
(94-351 DC, 29 December 1994, paras 19 and 25, p. 140)

Unity of Finance Acts

The basic rules of unity and universality preclude expenditure which, relating to civil servants, is by its very nature permanent from being covered by the budget or financed from resources not determined by the budget. This applies, for instance, to the financing of increases in pensions, which are statutory social-security benefits payable by central government to retired civil servants.
(94-351 DC, 29 December 1994, para. 6, p. 140)

The rules of unity and universality set out in Articles 1, 6, 16 and 18 of the Institutional Act Ordinance of 2 January 1959 apply to subsidiary budgets, whose operating expenditure follows the same rules as ordinary budget expenditure under Article 21 of the Ordinance. By Article 1003-4 of the Rural Code, expenditure in the subsidiary budget for social-security benefits in agriculture includes items for payment by the funds of old-age insurance benefits to self-employed persons ; the provision including in the old-age solidarity fund a permanent item of expenditure falling to the subsidiary budget for social-security benefits in agriculture is contrary to the universality principle.
(94-351 DC, 29 December 1994, paras 7, 8 and 9, p. 140)

GOVERNMENT

POWERS SPECIFIC TO THE GOVERNMENT

That the request for a hearing of a Government member by a Parliamentary Committee is not any more transmitted through the Speaker to the Prime Minister does not infringe on the jurisdiction of this letter or Government, pursuant to Article 21 of the Constitution.
(94-338 DC, 10 mars 1994, cons. 7, 10 et 11, p. 71)

PRIME MINISTER

Right to initiate legislation

Government bill

Provided there is a link with the measure under discussion, and provided the restrictions inherent in the right to amend are respected, the Government's right to initiate legislation can be exercised, at its discretion, either by introducing a bill or by tabling an amendment to a measure already before one or the other House. Subject to the specific rules applying to finance billes, there is no obligation on the Prime minister to introduce a bill. Introduction of a provision via a government amendment is not inconsistent with the second paragraph of Article 39 of the Constitution, which requires that bills – but not amendments – be discussed in Cabinet after the *Conseil d'Etat* has been consulted.
(93-329 DC, 13 January 1994, para. 12, p. 9)

TERRITORY OF THE REPUBLIC – LOCAL AUTHORITIES

AUTONOMY OF LOCAL AUTHORITIES

Central government jurisdiction

Section 3 of the Act referred inserts in the Town Planning Code a new Article L 600-1 whereby the applicants are deprived of the power to bring annulment proceedings in the administrative courts, on grounds of procedural or substantive defects, against development schemes, land-use plans or the like or instruments prescribing the preparation or amendment of a planning document or setting up a special planning area, six months after the effective date of any such document or instrument. It is provided, however, that the restrictions do not apply where development schemes have not been made available to the public, or where there has been a substantial breach of the rules governing public inquiries into land-use plans, or where the proper maps and drawings have not been presented. The restriction imposed by the Act applies only to a limited number of planning instruments. They are based on the frequency of objections raised and seek to deal with the resultant uncertainty as to the law, which is particularly serious in matters of town-planning decisions and property decisions taken in response to them. They are applicable only if there are defects of form or procedure capable of treatment as serious, and the six-month time-limit is to be observed. They have neither the object nor the effect of confining the general right of redress against void or voidable administrative decisions or of precluding actions in respect of ultra vires decisions expressly or impliedly refusing redress. These provisions cannot be regarded as liable to undermine the central government's powers set out in the third paragraph of Article 72 of the Constitution,

whereby : 'In the departments and overseas territories, the representatives of the Government shall be responsible for the national interest, administrative control and enforcement of the law.'
(93-335 DC, 21 January 1994, paras 2, 4 and 5, p. 40)

ORGANIZATION OF LOCAL AUTHORITIES

Overseas territories

Specific institutions

Procedural provisions in the territory of French Polynesia or in the territory and the provinces of New Caledonia which regulate budget or management control or audit by territorial or provincial audit boards or public corporations, and control by accountants of payments, determine essential organizational or operational rules whereby the powers of institutions specific to these overseas territories are exercised. By the second paragraph of Article 74 of the Constitution, these provisions are of institutional status.
(94-349 DC, 20 December 1994, paras 4, 6 and 7, p. 132)

Concept of specific organization

Concept lacking

The applicants claim that the procedure was defective in that the Territorial Assembly of French Polynesia was not consulted until after the instrument was adopted by the first House before which it was laid. The Act referred deals with matters within the jurisdiction of central government and does not alter any of the conditions or provisos attaching to its jurisdiction by virtue of the Act determining the status of the territory. The Act referred neither introduces nor amends nor repeals any provision specific to French Polynesia that affects the organization of the territory. It could therefore be made applicable to the territory without consultation of the Territorial Assembly as provided by Article 74 of the Constitution.
(94-342 DC, 7 July 1994, para. 5, p. 92)

Consultation of territorial assembly

The applicants claim that the procedure was defective in that the Territorial Assembly of French Polynesia was not consulted until after the instrument was adopted by the first House before which it was laid. The Act referred deals with matters within the jurisdiction of central government and does not alter any of the conditions or provisos attaching to its jurisdiction by virtue of the Act determining the status of the territory. The Act referred neither introduces nor amends nor repeals any provision specific to French Polynesia that affects the organization of the territory. It could therefore be made applicable to the territory without consultation of the Territorial Assembly as provided by Article 74 of the Constitution.
(94-342 DC, 7 July 1994, para. 5, p. 92)

ALPHABETICAL TABLE OF ANALYTICAL ENTRIES

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GLOSSARY OF TERMS

Arrondissement (de Paris) : Municipal district of Paris. Paris is divided into twenty districts, each one is run by its own elected council and mayor and has advisory and administrative powers.

Conférence des présidents : Composed (for each chambers) of the Speaker and Deputy-Speakers, the chairpersons of the standing committees, the general rapporteur of the Finance committee and the leaders of the parliamentary parties. Sets the agenda of each chamber. The vote of each party leader is weighted in proportion to the number of members of his parliamentary party.

Conseil d'Etat : Advises the executive branch on legislation and acts as the supreme administrative court.

Conseil supérieur de l'audiovisuel : Independant administrative authority set up by statute in 1989 ; has nine members appointed for six years. Regulates the broadcasting industry and enjoys quasi criminal enforcement powers in some cases.

Conseil supérieur de la magistrature (C.S.M.) : The organ which gives opinions on or makes recommendations for the promotion of the *magistrats du siège* and sits as their disciplinary council.

Cour de Cassation : The national supreme court for the judiciary jurisdictions.

Cour des Comptes – National audit office whose members retain judicial status.

Interprétation Neutralisante : Interpretation by the Constitutional Council that makes the law consistant with the Constitution.

Journal officiel : Official gazette, published daily, containing statutes, decrees, orders and other governmental material and reports of the proceedings of Parliament.

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* or *substitut général* and *parquet,* prosecuting magistrates*) or* investigating criminal cases *(juge d'instruction,* investigating magistrates).

Magistrats hors hiérarchie : The highest *magistrats* (q.v.) in their rank.

Tribunal de Grande Instance (T.G.I.) : First degree judicial court within the jurisdiction of a *cour d'appel.*

Vote bloqué : Procedure whereby the government may require Parliament to decide by a single vote on the whole or part of a Bill under consideration, subject only to the amendments it has itself tabled or accepted (article 44 of the constitution).