ANALYTICAL SYNOPSIS 1999

PREFACE

The decisions of the Constitutional Council are presented in the usual form in this edition of the *Recueil* : the contents and the list of decisions classified by type of review are followed by the full text of all decisions handed down in the course of the year, including decisions relating to the composition and operation of the Council. Analytical synopses are given in French, English and Spanish. The English and Spanish translations do not, of course, have official standing : only the French original is authentic. At the end of the volume, readers will find an index and a list of notes and comments in law reviews.

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 **Senate** — 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 the 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

ECJ – Judgment given 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 exits. These are elucidated in the Glossary.

CONTENTS

PARLIAMENTARY ASSEMBLIES

RULES APPLYING TO MEMBERS

General

Although deputies and senators are elected by universal suffrage, direct for the former and indirect for the latter, each of them in Parliament represents the entire Nation and not just the people of his own constituency. The third paragraph of section 2 of the Institutional Act relating to New Caledonia must therefore be interpreted as a mere reminder that, as already provided by the institutional legislation, legislative and Senate elections are to be held in New Caledonia.
(99-410 DC, 15 March 1999, para. 9, p. 51)

Membership of Parliamentary assemblies

Special rules applying to the Senate

Senate electoral college

Section LO 274 of the Electoral Code, which provides: "Three hundred and four senators shall be elected in the departments", does not preclude the legislative provisions relating to Senate electoral rules from organising the membership of delegates from territorial units other than those elected in the department in the Senate electoral college.
(98-407 DC, 14 January 1999, para. 15, p. 21; cf. 91-290 DC, 9 May 1991, paras 28 and 29, Rec. p. 58)

Incompatibilities

Substantive rules

National public establishments

By establishing a rule of incompatibility between membership of Parliament and the function of president or director of "national public establishments", the legislature's purpose was to prohibit Members of Parliament, except in the cases mentioned in the second paragraph of section LO 145 of the Electoral Code, from exercising senior functions in public establishments controlled by the State.

The reference to the Chairman of the Board of Directors or Governors of national public establishments in section LO 145 of the Electoral Code is to the chairman of such establishments' decision-making bodies, however they are termed in the decrees establishing them.
(98-17 I, 28 January 1999, paras 4 and 7, p. 40; comp. 95-12 I, 14 September 1995, Rec. p. 221)

Chair of a chamber of commerce and industry

It is clear from the legislative and subordinate instruments applicable to them that chambers of commerce and industry are State public establishments.

By establishing a rule of incompatibility between membership of Parliament and the function of president or director of "national public establishments", the legislature's purpose was to prohibit Members of Parliament, except in the cases mentioned in the second paragraph of section LO 145 of the Electoral Code, from exercising senior functions in public establish-

ments controlled by the State. Incompatibility between the chair of a chamber of commerce and industry and membership of Parliament.

(98-17 I, 28 January 1999, paras 4 to 9, p. 40)

Exercise of Parliamentary mandate

Immunity

Application to Members of Parliament of the Statute of the International Criminal Court

Article 27(1) of the Statute provides: "This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or Parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence"; article 27(2) further provides that "Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person."

By the first paragraph of article 26 of the Constitution, Members of Parliament enjoy immunity in respect of the opinions expressed and the votes cast in the exercise of their duties; by the second paragraph, they may not be arrested for a serious crime or other major offence, nor be subjected to any other custodial or semi-custodial measure, without the authorisation of the bureau of the Assembly of which they are a member; such authorisation is not required in the case of a serious crime or other major offence committed *flagrante delicto* or a final sentence.

Article 27 of the Statute is accordingly unconstitutional.

(98-408 DC, 22 January 1999, paras 15 to 17, p. 29)

PARLIAMENTARY PROCEEDINGS

Agenda — proceedings

Sitting reserved for business determined by the Assembly

In the absence of a decision to the contrary by the *Conférence des Présidents*, a provision of the Rules of Procedure reserves the Tuesday morning sitting for oral questions without debate or for business determined at Parliament's own initiative in accordance with the third paragraph of article 48 of the Constitution, which provides that at one sitting a month precedence shall be given to the agenda determined by each Assembly. Constitutional, as the option provided by this provision cannot have the effect of reserving more than one sitting a month for business determined by Parliament.

(99-417 DC, 8 July 1999, paras 1 to 3, p. 96)

Weekly oral question time

It is clear from article 48 of the Constitution that, while each Assembly is required to organise at least one sitting a week at which precedence is given to questions by Members of Parliament and Government answers, the authors of the Constitution did not intend the entire sitting to be reserved to such business.

(99-417 DC, 8 July 1999, para. 3, p. 96; cf. 95-368 DC, 15 December 1995, para. 26, Rec. p. 246)

Exercise of voting rights — voting techniques

Personal vote. Constitution, article 27

Adoption of Constitutional Act by Congress

The provisions of the Rules of Procedure of Congress empowering the Bureau of Congress, where the Constitution requires a qualified majority, to opt for calling for a public ballot at the rostrum or empowering it to determine the conditions in which an ordinary public ballot may be called, on the understanding that voting may be by means of ballot papers or of any other procedure offering similar assurances, were adopted in compliance with articles 27 and 89 of the Constitution and violate no other rules of constitutional status.
(99-415 DC, 28 June 1999, paras 1 to 4, p. 86)

LEGISLATIVE PROCEDURE

Legislative initiative — Review of admissibility

Legislative initiative

Government bills

Since the initiative for the presentation of bills lies jointly with the Prime Minister and Members of Parliament, Members of Parliament may, upon the expiry of the time allowed the Government by the first paragraph of Article 38 of the Constitution, present bills to amend ordinances governing matters that are reserved for statute.
(99-421 DC, 16 December 1999, para. 20, p. 136)

Right to amend

Rules of admissibility and discussion

Parliament's right to amend

Article 44 of the Constitution confers the right to amend on Members of Parliament. They may exercise that right, in particular, during the legislative procedure for the adoption of bills ratifying the ordinances provided for by section 2 of the Act referred.
(99-421 DC, 16 December 1999, para. 19, p. 136)

Whether amendments are within the instrument being debated

Applications

Relation to the instrument being debated

The Universal Sickness Insurance (Creation) Act was presented to the National Assembly on 3 March 1999, after deliberation by the Council of Ministers on the same date, the opinion of the *Conseil d'Etat* having been given on 1 March 1999. Title IV of the original bill, subsequently title V, entitled "Modernisation of health and social facilities", grouped a series of provisions on health and social matters. Several provisions were inserted in this title by way of amendments introduced in the course of the legislative procedure, but this was before the joint

committee met, the new provisions are not unrelated to the instrument being debated and their purpose and object do not exceed the intrinsic limits of the right to amend.
(99-416 DC, 23 July 1999, para. 54, p. 100)

Need for amendments introduced after the joint committee to be directly related

Principle

Sections 58, 65 and 95 of the Agriculture (Guidance) Act were all enacted following amendments adopted after the failure of the Joint Mixed Committee. They are not directly related to any other provision of the instrument being debated. Nor is their adoption justified by the need for coordination with other instruments being debated in Parliament. They must accordingly be declared unconstitutional as having been enacted by an improper procedure.
(99-414 DC, 8 July 1999, para. 13, p. 92)

Applications

Section 42, on the labelling of prepacked foods, was enacted following an amendment adopted after the failure of the joint committee. It is not directly related to any other provision of the Universal Sickness Insurance (Creation) Act. Nor is its adoption justified by the need for coordination with other instruments being debated in Parliament. It must accordingly be declared unconstitutional as having been enacted by an improper procedure.
(99-416 DC, 23 July 1999, para. 55, p. 100)

Voting on ordinary government and private members' bills

Ordinary bill containing an institutional provision

Section 10(A) of the Act referred inserts section L 121-39-4 in the Code of Communes of New Caledonia, providing for the procedure by which the High Commissioner may refer to the Judicial Division of the *Conseil d'Etat* a decision taken by the authorities of New Caledonia or a province which he believes to be of such a nature as to seriously compromise the operation or integrity of a facility of national defence concern. Such a provision affects the operation of the institutions of New Caledonia. It is an institutional provision within the meaning of article 77 of the Constitution. It follows that it was enacted by an unconstitutional procedure and is declared unconstitutional.
(99-409 DC, 15 March 1999, para. 2, p. 63)

Voting on institutional acts

Reference to an ordinary statute not finally enacted

On the date of final adoption of the institutional act relating to the ineligibility of the children's ombudsman, the Bill to establish the office of ombudsman and determining the regulations applicable to him, his powers and his functions was being deliberated in Parliament and still open to amendment. It was accordingly not possible for the legislature to come to an informed decision and deprive that authority of the right to stand for election enjoyed by all citizens under Article 6 of the Declaration of Human and Civic Rights.
(99-420 DC, 16 December 1999, para. 2, p. 134)

Procedural motions

General

Provisions of the Rules of Procedure of the National Assembly whereby, in the absence of a decision to the contrary by the *Conférence des Présidents*, the time allowed for speeches in

support of a procedural motion is confined to one hour and thirty minutes at first reading, thirty minutes at second reading and fifteen minutes at subsequent readings are constitutional.
(99-417 DC, 8 July 1999, para. 4, p. 96)

Objection of inadmissibility

The applicants submit that on 9 October 1998 the National Assembly rejected an initial bill relating to the Civil Solidarity Pact, by approving an objection of inadmissibility presented pursuant to rule 91 of the Rules of Procedure of the National Assembly, on the ground that the instrument was contrary to one or more provisions of the Constitution. It is therefore for the Constitutional Council to draw the necessary conclusions from the vote as to the constitutionality of the Act referred, which broadly speaking reproduces the provisions of the bill rejected on 9 October 1998.

The National Assembly's approval of an objection of inadmissibility cannot bind the Constitutional Council in the exercise of its jurisdiction pursuant to the second paragraph of article 61 of the Constitution.

The National Assembly's approval of an objection of inadmissibility on 9 October 1998 does not mean that an improper procedure was followed.
(99-419 DC, 9 November 1999, paras 5, 8 and 10, p. 116)

Specific cases

Institutional Act relating to New Caledonia provided for by article 77 of the Constitution

The Constitutional Act of 6 July 1998 reinstated a title XIII in the Constitution now entitled : "Transitional provisions relating to New Caledonia", containing two articles — 76 and 77. The consultation of the people of New Caledonia on the agreement signed at Nouméa on 5 May 1998, provided for by article 76 of the Constitution, took place on 8 November 1998. The people approved the agreement. The bill which preceded the Institutional Act provided for by article 77 of the Constitution and was referred to the Constitutional Council was transmitted to the Congress of the Territory of New Caledonia, which issued its opinion on 12 November 1998. The bill was deliberated by the Council of Ministers and lodged with the office of the President of the National Assembly on 25 November 1998. It was debated and voted on by the National Assembly in the manner prescribed by article 46 of the Constitution. The proceedings in Parliament conformed to the other requirements of the Constitution relating to the legislative procedure. The Institutional Act was enacted in accordance with the Constitution.
(99-410 DC, 15 March 1999, para. 5, p. 51)

PARLIAMENTARY REVIEW

Scrutiny of government action

Motions for resolutions

Motions relating to instruments transmitted pursuant to article 88-4 of the Constitution

If the Delegation for the European Union observes that the Government has not lodged with the Bureau of the Senate an instrument which it believes should have been referred to the Senate, it so informs the President of the Senate, who requests the Government to refer the instrument to his Assembly. This does not have the effect of placing the Government under an obligation to refer to the Senate drafts of or proposals for European Community or Union instruments which in its opinion do not contain measures reserved for the legislative branch

or documents emanating from a European Union institution the referral of which to the Parliamentary assemblies is at its sole discretion, pursuant to article 88-4 of the Constitution.

By virtue of the second paragraph of article 88-4 of the Constitution, the right is conferred on each assembly to issue an opinion on instruments referred to it pursuant to the first paragraph of that article by passing a resolution in the manner prescribed by its Rules of Procedure. It may accordingly determine the conditions in which such Resolutions are to be debated and possibly amended, the constitutional provisions concerning the exercise of the right to amend not necessarily being applicable, as they relate exclusively to Bills. It is accordingly legitimate for the Senate to reserve for senators, committees or the Delegation for the European Union the right to present amendments to motions for European Resolutions.

(99-413 DC, 24 June 1999, paras 2 and 6, p. 83)

Questions

Question time

It is clear from article 48 of the Constitution that, while each assembly is required to organise at least one sitting a week at which precedence is given to questions by Members of Parliament and government answers, the authors of the Constitution did not intend the entire sitting to be reserved to such business.

(99-417 DC, 8 July 1999, para. 3, p. 96; cf. 95-368 DC, 15 December 1995, para. 26, Rec. p. 246)

JUDICIAL AUTHORITY AND THE COURTS

STATUS OF THE JUDICIARY

Promotion, remuneration and discipline

List of *magistrats* placed outside the hierarchical structure

Section 2 of the Institutional Act, amending section 3 of the Ordinance of 22 December 1958 laying down the Institutional Act relating to the status of the judiciary, amplifies the list of *magistrats* placed outside the hierarchical structure by adding the Presidents of the *tribunaux de grande instance* at Aix-en-Provence, Béthune, Grasse and Mulhouse, and the State Counsel attached to the same courts. This provision is contrary to no constitutional principle or rule.

(99-418 DC, 8 July 1999, para. 3, p. 98)

Administrative status of *magistrats* — cessation of functions

Renewal of functions

Section 1 of the Institutional Act referred to the Constitutional Council amends section 1 of the Institutional Act of 7 January 1988 maintaining the active status of *magistrats* at the courts of appeal and *tribunaux de grande instance*; the effect of the amendment is to maintain, until 31 December 2002, the possibility for *magistrats* at the courts of appeal and *tribunaux de grande instance* who reach the age limit set by section 76 of the Ordinance of 22 December 1958 laying down the Institutional Act relating to the status of the judiciary, or request, to remain in active

status and exercise the functions *of conseiller, substitut général, juge* or *substitut* for a non-renewable period of three years; this provision is contrary to no constitutional principle or rule.
(99-418 DC, 8 July 1999, para. 2, p. 98).

HIGH COURT OF JUSTICE AND COURT OF JUSTICE OF THE REPUBLIC

High Court of Justice

By article 68 of the Constitution, the President of the Republic may not be held liable for acts performed in the exercise of his duties except in the case of high treason; he may be indicted only in the High Court of Justice by the procedure determined by that article.

Article 27 of the Statute of the International Criminal Court, whereby official capacity as a Head of State or Government is in no case to exempt a person from criminal responsibility under the Statute, is accordingly contrary to the Constitution.
(98-408 DC, 22 January 1999, paras 16 y 17, p. 29)

Court of justice of the the Republic

It follows from article 68-1 of the Constitution that Members of the Government may be held liable for acts performed in the exercise of their duties only by the Court of Justice of the Republic.
(98-408 DC, 22 January 1999, para. 16, p. 29)

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

Principle

It is at all times legitimate for the legislature, acting within the areas reserved for it by article 34 of the Constitution, to enact, within its discretion, new rules for the attainment or reconciliation of constitutional objectives. But the exercise of this power must not have the effect of depriving constitutional requirements of their legal guarantees.
(99-416 DC, 23 July 1999, para. 6, p. 100)

Failure to exercise full powers available

No failure

Creation of a public establishment belonging to an existing category

The activity of the Universal Sickness Insurance Additional Cover Fund will be exercised, like that of the Old-Age Solidarity Fund, a public national administrative establishment governed

by sections L 135-1 *et seq.* inserted in the Social Security Code by Act 93-936 of 22 July 1993, subject to state supervision. The task of both these public establishments is to manage financial transfers between the State and social protection bodies. The applicants accordingly fail in their argument that the Fund created by section 27 would constitute a whole new category of public establishment. The submission that the legislature has not exercised its full powers must be rejected.
(99-416 DC, 23 July 1999, para. 33, p. 100)

Civil Solidarity Pact: concept of living together

It follows from articles 515-1 to 515-4 of the Civil Code inserted by section 1 of the Civil Solidarity Pact Act, interpreted in the light of the Parliamentary debates preceding their enactment, that the concept of living together does not cover only shared interests and is not confined to mere cohabitation of two persons. Living together for the purposes of the Act referred involves not only a shared residence but also living as a couple, which is the only reason why the legislature provided for grounds for nullity of the pact, either taking over the impediments to marriage so as to prevent incest or avoiding violation of the obligation of fidelity that flows from marriage. Consequently, without explicitly defining the content of the concept of living together, the legislature has determined the main factors to be taken into account.

Given the nature of the impediments provided for by section 515-2 of the Civil Code, justified on the same grounds as the impediments to marriage, the nullity provided for by that section must be absolute.
(99-419 DC, 9 November 1999, paras 26 and 27, p. 116)

Civil Solidarity Pact: optional or mandatory nature of certain provisions

The purpose of sections 515-1 to 515-7 of the Civil Code is to provide for a specific form of contract between two natural persons, being of full age, for the organisation of their life together. The legislature has defined the contract, its purpose, the conditions for entering into it and terminating it, and the obligations that flow from it. The Act itself provides that the provisions of section 515-5 of the Civil Code, establishing presumptions as to the joint ownership of property acquired by the partners to a Civil Solidarity Pact, may be disapplied by an act of the will of the partners, but the other provisions inserted by section 1 of the Act referred are mandatory and the parties cannot derogate from them. That is the case of the condition relating to living together, the mutual and practical assistance that the partners must give each other, and the conditions for terminating the pact.
(99-419 DC, 9 November 1999, para. 28, p. 116)

Civil Solidarity Pact: applicability of the rules of the ordinary law of contract

The general provisions of the Civil Code relating to contracts and contractual obligations will also tend to be applicable, subject to review by the courts, except as they conflict with this Act. In particular, sections 1109 *et seq.* of the Civil Code, relating to consent, are applicable to the Civil Solidarity Pact.

The establishment of joint and several liability of the partners in relation to third parties for debts contracted by either of them to meet the needs of their daily life and for expenditure relating to their shared accommodation will not prevent the ordinary rules of civil liability from applying in the event of excesses committed by either of the partners.
(99-419 DC, 9 November 1999, paras 28 and 33, p. 116)

Civil Solidarity Pact: general provisions of the Civil Code relating to the law of persons

The Act referred to the Constitutional Council has no effect on the other titles of book I of the Civil Code, in particular those relating to the register of births, marriages and deaths, to affiliation, to adoption and to parental authority; the conditions for the application of all these provisions are unchanged by the Act referred. In particular, a Civil Solidarity Pact will not generate any change to records of births, marriages and deaths as the partners' civil status will not be changed. Nor does the Act have any effect on the implementation of legislative

provisions relating to medical assistance for procreation, which remain in force and are applicable only to couples consisting of a man and a woman. Lastly, by creating a new form of contract for the organisation of the manner in which the partners live together, the legislature was under no obligation to amend the legislation governing these matters.
(99-419 DC, 9 November 1999, para. 29, p. 116)

Civil Solidarity Pact: situation of partners to a pact in relation to certain rules and regulations

The provisions of regulations in different areas referring to "single" status will have to be updated to take account of the situation of persons who have entered into such a pact. Until that is done, the question of the applicability of such regulations to such persons will have to be dealt with in the light of their purpose. The same applies to provisions which refer to "married life".
(99-419 DC, 9 November 1999, para. 30, p. 116)

Civil Solidarity Pact: mutual and material assistance

The first paragraph of the new section 515-4 of the Civil Code provides: "Partners who are bound by a Civil Solidarity Pact shall give each other mutual and material assistance. The terms on which such assistance is given shall be determined by the pact". The second paragraph of the new section 515-3 of the Civil Code requires the parties to present two originals of the agreement between them to the Registrar; otherwise, it will be inadmissible. The mutual and material assistance is accordingly to be analysed as a duty between the partners to the pact. It follows implicitly, and of necessity, that, while the free will of the partners may be expressed through their determination of the terms on which such assistance is to be given, any clause not compatible with the obligatory nature of the assistance would be void. Moreover, if the pact is silent on the subject, it will be for the court hearing a case on the contract to determine the terms on which the assistance is to be given in the light of the respective situations of the partners.
(99-419 DC, 9 November 1999, para. 31, p. 116)

Civil Solidarity Pact: nature of the presumptions of joint ownership

The legislature did not fail to exercise full powers available when leaving the parties free to disapply the joint ownership principle regarding property acquired by them after the conclusion of the pact. It is clear from the very wording of the new section 515-5 of the Civil Code that the presumption of half-and-half joint ownership of furniture acquired for a consideration after the conclusion of the pact can be rebutted only by presentation of the agreement whereby the partners disapply the principle. Likewise, the presumption of half-and-half joint ownership of other property of which the partners acquired ownership for a consideration after the conclusion of the pact can be rebutted only by presentation of a document attesting acquisition or subscription which provides otherwise. Where the presumption of joint ownership cannot be rebutted, sections 815 *et seq.* of the Civil Code, relating to joint ownership, will be applicable. The parties will nevertheless be able to decide, in the initial agreement or an agreement amending it in the case of furniture, or in the document attesting acquisition or subscription in the case of other property, to apply the joint ownership principle provided for by sections 1873-1 *et seq.* of the Civil Code.
(99-419 DC, 9 November 1999, para. 32, p. 116)

Civil Solidarity Pact: publicity

By providing in the new sections 515-3 and 515-7 of the Civil Code for the principle of publicity regarding the conclusion, amendment and termination of the pact, the legislature did not fail to exercise full powers available. But in the decree provided for by section 15 of the Act referred, the authority empowered to make regulations, which has the power to determine rules for the application of the above provisions, may organise the access of third parties to the various registers so as to reconcile the protection of third-party rights and respect for the private life of the parties to a pact.
(99-419 DC, 9 November 1999, paras 34 to 36, p. 116)

Civil Solidarity Pact: conclusion of successive pacts

It was legitimate for the legislature to set no limit on the number of Civil Solidarity Pacts that may be entered into successively by one and the same person and to provide for no minimum period that must elapse between the termination of one pact and the conclusion of another.
(99-419 DC, 9 November 1999, para. 37, p. 116)

Definition of the basis of assessment and rate of a new tax

As regards the general tax on polluting activities, the provision criticised provides that a decree in *Conseil d'Etat* is to determine "a weighting factor of between one and ten for each of the activities exercised at the classified facilities, depending on its nature and volume". The amount of the tax actually charged each year for each establishment and for each of these activities is to be the product of applying the weighting factor to the basic rate. The authority empowered to make regulations, when determining the weighting factor applicable to a given activity, is to have regard to the specific risks which the activity, by reason of both its nature and its volume, generates for the environment. By imposing these requirements, the legislature has laid down rules governing the base, rates and methods of collection of a taxes, in accordance with the sixth paragraph of article 34 of the Constitution. Moreover the rules governing recovery of the tax are also determined with adequate precision.
(99-422 DC, 21 December 1999, para. 19, p. 143)

Conditions for issuance of ministerial approval

Provision determining the conditions for issuance of ministerial approval permitting the application of the suspended capital gains tax scheme in the event of division or partial addition of assets where the conditions for full application of the scheme are not met.

The first condition empowers the administrative authority only to check the reality of the economic grounds for the partial addition of assets, with no power to check the validity of the grounds for it. The condition relating to the absence of fraud would be imposed even if the statute did not provide for it. The third condition can give rise solely to technical verification.

By determining in this way the objective conditions that are necessary and sufficient for the issuance of the approval, the legislature has adequately defined the framework for action by the administrative authority.
(99-424 DC, 29 December 1999, paras 29, 31 and 32, p. 156)

Repeal or amendment of earlier statutes

General rules

The power to codify legislative provisions lies with the legislature. The repeal of legislative provisions predating the codification and falling within its scope is inherent in the codification exercise itself and requires no specific provision in the statute empowering the Government to adopt the legislative part of certain codes by ordinance. The repeal must be the result of the incorporation of the material provisions in the code, of the recognition of their earlier implicit repeal, of the declaration that they are contrary to the Constitution or to France's international commitments, or of a declaration that they fall to be enacted by regulation.

The second paragraph of Article 37 of the Constitution empowers the Government to make a reference to the Constitutional Council for a declaration that legislative instruments enacted after the entry into force of the 1958 Constitution are matters for regulation and that they may accordingly be amended by decree; the legislature may itself, consequently, repeal provisions that are matters for regulation and are enacted in legislative instruments. Moreover, the power conferred on the Government by Article 38 of the Constitution does not require it to follow the procedure of requalification. Objection dismissed.
(99-421 DC, 16 December 1999, paras 8 and 26, p. 136)

Matters to be determined by institutional act or by ordinary statute

Matters to be determined by institutional act

Section 10(A) of the Act referred inserts section L 121-39-4 in the Code of Communes of New Caledonia, providing for the procedure by which the High Commissioner may refer to the Judicial Division of the *Conseil d'Etat* a decision taken by the authorities of New Caledonia or a province which he believes to be of such a nature as to seriously compromise the operation or integrity of a facility of national defence concern. Such a provision affects the operation of the institutions of New Caledonia. It is an institutional provision within the meaning of article 77 of the Constitution. It follows that it was enacted by an unconstitutional procedure and is declared unconstitutional.
(99-409 DC, 15 March 1999, para. 2, p. 63)

With the exception of sections 58, 61 and 207, the provisions of the Institutional Act relating to New Caledonia are institutional provisions within the meaning of article 77 of the Constitution.
(99-410 DC, 15 March 1999, para. 57, p. 51)

Provisions of an ordinary statute included in an institutional act

Section 58, relating to the secondment and reinstatement of civil servants of New Caledonia in the Central public service and in the territorial public service governed by Act 84-53 of 26 January 1984, section 61, relating to the establishment in the Central public service of non-established Central servants, and section 207, relating to the presidency of the territorial Chambers of Auditors of New Caledonia and French Polynesia, do not govern matters reserved by article 77 of the Constitution for enactment in the form of an institutional act. These provisions are declared constitutional.
(99-410 DC, 15 March 1999, para. 57, p. 51)

Clarity of legislation and constitutionality

The applicants submitted that the thresholds that must be passed if a list was to be eligible for the second ballot at a regional election or for merger with another list were incompatible with the need for a clear choice and accordingly violated the constitutional objective of clarity to be met by the legislature. The provisions contested determine unambiguous rules relating to the new mode of regional balloting, and the legislature, in enacting them, did not fail to exercise to the full the powers conferred by articles 34 and 72 of the Constitution regarding self-government of territorial units.
(98-407 DC, 14 January 1999, paras 2, 3 and 5, p. 21)

Legislative Validations

Principles

The legislature may validate an administrative instrument where there is an adequate consideration of the general interest, but subject to respect for enforceable judicial decisions and for the principle that punishments and penalties may not have retroactive effect. The instrument that is validated must violate no constitutional rule or principle, and the purpose of general interest must itself have constitutional status. Moreover the scope of the validation must be strictly defined; otherwise, article 16 of the Declaration of Human and Civic Rights of 1789 would be violated. The constitutionality of the provisions referred to the Constitutional Council must be reviewed in the light of these principles.
(99-425 DC, 29 December 1999, para. 8, p. 168)

Considerations of general interest

Adequate general interest

The provision criticised validates, "subject to enforceable judicial decisions, recovery notices issued before 1 January 2000 and contested on the ground that the issuing officer had no

power to act in the relevant territory, on condition that they were prepared either by the public accounting officer for the place where the taxpayer makes his returns or pays his tax or, where that place has been or should have been changed, by the accounting officer having power to act following the change, even if the sums due relate to a period prior to the change".

The legislative purpose of this validation was to avoid the presentation of objections, potentially damaging for the central government, based on the territorial powers of the authority issuing the recovery notice. The general interest in such a validation prevails over the rights of the individual taxpayers deriving from the purely formal irregularity rectified by the validation. This general interest lies both in the amounts at stake and in the prevention of disruptions in the continuity of the relevant public tax and judicial authorities from the proliferation of complaints which, under the Code of Tax Procedures, may be presented over a period of several years. In the absence of validation, tax refunds on the basis of the rules of the Finance Act could constitute an unjust enrichment of the taxpayers concerned. Objection dismissed.
(99-425 DC, 29 December 1999, para. 11, p. 168)

The provision criticised validates, "subject to enforceable judicial decisions, recovery notices issued before 1 January 2000 and contested on the ground that they refer only to the recovery notice for the information mentioned in section R. 256-1 of the Code of Tax Procedures". That section requires that recovery notices must specify "in particular the components of the calculation and the amount of duties and penalties, charges or interest for late payment that together constitute the tax debt"; but these components may be replaced by reference to a document containing them if it has been notified to the taxpayers earlier.

The reference by the recovery notice solely to the information given in the earlier back-tax demand, even where charges and penalties have been reduced in the course of the adversarial procedure, has become a widespread practice in recent years. The practice was in accordance with the interpretation by the courts of section R. 256-1 of the Code of Tax Procedures prior to the decision of the *Conseil d'Etat* of 28 July 1999, which decided otherwise. It follows that the validation is justified both by the very large sums which might be demanded by the taxpayers concerned and by the disruptions in the continuity of the relevant public tax and judicial authorities from the proliferation of complaints which, under the Code of Tax Procedures, may be presented over a period of several years. Objection dismissed.
(99-425 DC, 29 December 1999, paras 14 and 15, p. 168)

No violation of a constitutional principle

The formal defect in the recovery notices validated by the provision criticised did not affect the defence rights of the relevant taxpayers since, where the components of the calculation were revised downwards, the taxpayers were duly informed by the authorities of the amounts of the duties and penalties maintained and of the reasons for them in the course of the adversarial procedure preceding the recovery notices. If it is planned to revise the amounts of the duties and penalties mentioned in the recovery notices upwards, the authorities resume the procedure by sending the taxpayer a fresh recovery notice, giving reasons, in accordance with section L. 48 of the Code of Tax Procedures. The validation measure accordingly violates no constitutional principle.
(99-425 DC, 29 December 1999, para. 14, p. 168)

Scope of validation

The legislature may, where there are adequate grounds of general interest, validate an instrument referred to an administrative court in order to avert the difficulties that might flow from its annulment, but only on condition that the scope of the validation is strictly defined, given the impact on the review by the relevant court. The effect of validation may not be to preclude all judicial review of the instrument validated irrespective of the grounds pleaded by the applicants for declaring it illegal, for that would violate the principle of the separation of powers and the right to redress in the courts conferred by article 16 of the Declaration of Human and Civic Rights.

One of the purposes of the order of 28 April 1999, contested in the *Conseil d'Etat*, was to reduce the prices charged by private health establishments for 1999, in the absence of an agreement.

The *Conseil d'Etat* had not yet ruled on its legality when the Act referred was adopted. By providing for the validation of instruments issued pursuant to the order "in so far as their legality is contested on the basis of an alleged illegality of that order" without specifying the grounds on which such illegality might be pleaded, the legislature has violated article 16 of the Declaration of Human and Civic Rights. Paragraph IX of section 33 of the Act referred must accordingly be declared unconstitutional.
(99-422 DC, 21 December 1999, paras 64 and 65, p. 143)

The recovery notices are validated only in so far as they refer only to the recovery notice for the amount of duties and penalties, charges or interest for late payment, contrary to section R. 256-1 of the Code of Tax Procedures. It follows that the notice may be contested in the relevant courts on any other ground of form or substance. Article 16 of the Declaration of Human and Civic Rights is accordingly not violated by the validation contested.
(99-425 DC, 29 December 1999, para. 16, p. 168; comp. 99-422 DC, 21 December 1999, paras 64 and 65, p. 143)

Exercise of power to make regulations

Commission whose decisions are binding on no public authorities

Membership

The National Commission for Public Debate has the sole function of organising a debate and then surveying the results for publication and for transmission to the inquiry commission and inquiry commissioners. Its decisions are binding on no public authorities. It follows that the membership of the National Commission for Public Debate does not run counter to the fundamental principles of the self-government of territorial units, their powers and their resources, nor any other of the fundamental principles and no other rules that article 34 of the Constitution reserves for determination by statute. The eighth paragraph of section 2 of the Act referred, whereby the special commission which the National Commission for Public Debate sets up for each project must be "chaired by one of its members" is a provision that can be made by regulation.
(99-184 L, 18 March 1999, paras 3 and 4, p. 65) (opposite solution adopted for establishment of the Commission — comp. infra, p. 292)

Governmental and administrative organisation

Distribution of state powers between various bodies

Principle of power to make regulations

Provisions of the Higher Education Act of 26 January 1984 that designate the authorities empowered to certain decisions on behalf of central government are matters to be determined by regulation.
(99-185 L, 18 March 1999, p. 67)

Power of Government to enact by ordinance measures to be determined by statute

Use of Article 38

Exclusion of matters reserved for institutional statutes, finance acts and social security (finance) acts

It is not legitimate for enabling acts to enable the use of ordinances in matters reserved by articles 46, 47, 47-1, 74 and 77 of the Constitution for institutional statutes, finance acts and social security (finance) acts.
(99-421 DC, 16 December 1999, para. 15, p. 136)

Compliance with constitutional principles

An enabling act may have neither the object nor the effect of releasing the Government from compliance with constitutional principles, in the exercise of the powers conferred on it pursuant to article 38 of the Constitution. The enabling act must be interpreted and applied, subject to review by the *Conseil d'Etat*, in strict compliance with these principles.
(99-421 DC, 16 December 1999, para. 24, p. 136)

Power of Government to enact by ordinance measures to be determined by statute — Information for Parliament

Section 1 of the Act referred empowers the Government to enact by ordinance the legislative components of nine codes, each code requiring to be enacted by an ordinance combining and organising the statutory provisions corresponding to the relevant subject-matter. The last paragraph of section 1 provides: "The provisions codified shall be those in force at the time of the publication of the ordinances, subject only to such amendments as shall be necessary to secure compliance with the hierarchy of norms, drafting consistency between the instruments thus codified and the harmonisation of the law. Moreover, the government may extend the application of the codified provisions to New Caledonia, the overseas territories, the territorial unit of Saint-Pierre-et-Miquelon and the territorial unit of Mayotte, subject to such adaptations as may be necessary". Section 2 of the Act prescribes the period within which the ordinances may be issued and the period within which the statute ratifying each of the ordinances must be proposed.

It follows from the very wording of article 38 of the Constitution that the areas in which powers are conferred may embrace all matters falling to be determined by statute pursuant to article 34.

Article 38 of the Constitution requires the Government to give Parliament full particulars of the purposes of the measures which it is minded to take by ordinance and the areas concerned, in support of its request for enabling provisions; but the Government is not required to acquaint Parliament with the content of the ordinances to be issued by virtue of such enabling provisions.

A precise indication is given of the legislative provisions to which the enabling provisions are to apply and of the conditions for their enactment by ordinance. The power conferred on the Government to enact the legislative part of the nine codes mentioned in section 1 of the Act referred is for the codification of legislative provisions at the time of the publication of the ordinances. The Government thus has no power to make amendments of substance to existing legislative provisions. The only exceptions from this principle are of limited scope and strictly defined by the Act referred. The reference to the hierarchy of norms requires the Government to respect the principle that treaties prevail over statutes (article 55 of the Constitution) and the distinction between matters to be determined by statute and regulation respectively (articles 34 and 37). Section 1 of the Act referred, interpreted in the light of the legislative history, makes clear that the amendments needed for the "harmonisation of the law" must be confined to removing possible incompatibilities between the provisions to be codified.

The applicability of the codified provisions to New Caledonia, the overseas territories and special-status overseas territorial units may be ordered only in respect of matters falling to be determined by statute and subject only to such adaptations as are required by the specific manner in which such territorial units are organised.
(99-421 DC, 16 December 1999, paras 7, 8, 12, 14 and 16, p. 136)

Presentation of enabling bill and voting on it

Obligations of the Government — Information for Parliament

Urgent cases are among those in which the Government may make use of article 38 of the Constitution. The Government provided Parliament with the requisite information by referring to the general interest in completing the nine codes mentioned in section 1, this being

impeded by the overload of Parliament's agenda. This consideration satisfies the constitutional principle that the law must be accessible and intelligible.

(99-421 DC, 16 December 1999, para. 13, p. 136)

Purpose of measures to be taken by ordinance

A precise indication is given of the legislative provisions to which the enabling provisions are to apply and of the conditions for their enactment by ordinance. The power conferred on the Government to enact the legislative part of the nine codes mentioned in section 1 of the Act referred is for the codification of legislative provisions at the time of the publication of the ordinances. The Government thus has no power to make amendments of substance to existing legislative provisions. The only exceptions from this principle are of limited scope and strictly defined by the Act referred. The reference to the hierarchy of norms requires the Government to respect the principle that treaties prevail over statutes (article 55 of the Constitution) and the distinction between matters to be determined by statute and regulation respectively (articles 34 and 37). Section 1 of the Act referred, interpreted in the light of the legislative history, makes clear that the amendments needed for the "harmonisation of the law" must be confined to removing possible incompatibilities between the provisions to be codified.

The applicability of the codified provisions to New Caledonia, the overseas territories and special-status overseas territorial units may be ordered only in respect of matters falling to be determined by statute and subject only to such adaptations as are required by the specific manner in which such territorial units are organised.

The principle of codification "without change to the law" imposed by section 1 of the Act referred precludes any substantive amendment to the legislative material codified

(99-421 DC, 16 December 1999, paras 12, 14, 16 and 23, p. 136)

Content of measures to be taken by ordinance

Article 38 of the Constitution requires the Government to give Parliament full particulars of the purposes of the measures which it is minded to take by ordinance and the areas concerned, in support of its request for enabling provisions; but the Government is not required to acquaint Parliament with the content of the ordinances to be issued by virtue of such enabling provisions.

(99-421 DC, 16 December 1999, para. 12, p. 136)

CONDITIONS FOR IMPLEMENTATION OF THE SECOND PARAGRAPH OF ARTICLE 37 AND ARTICLE 41 OF THE CONSTITUTION

Conditions for implementation of the second paragraph of article 37

Interpretation of the reference

On a reference by the Prime Minister requesting an assessment of the legal nature of the first paragraph of section 1 of Ordinance 59-151 of 7 January 1959 on the organisation of passenger transport in the Paris Region, the Constitutional Council interprets the request, in view of the draft decree annexed to it, as a request for a ruling on the relevant provision in the light of the fact that it refers to the former departments of Seine and Seine-et-Oise and does not refer to the Ile-de-France Region.

(99-186 L, 31 May 1999, p. 69)

DISTRIBUTION OF POWERS IN SPECIFIC MATTERS

Criminal law: crimes and serious offences, criminal procedure, amnesties

Determination of offences and penalties

The legislature, having regard to its objectives, must enact rules determining offences and the penalties they attract, in compliance with constitutional principles.
(99-411 DC, 16 June 1999, para. 12, p. 75)

Public finance — Taxation

Taxation

Rules relating to the basis of assessment, calculation and recovery

Provision determining the conditions for issuance of ministerial approval permitting the application of the suspended capital gains tax scheme in the event of division or partial addition of assets where the conditions for full application of the scheme are not met.

The first condition empowers the administrative authority only to check the reality of the economic grounds for the partial addition of assets, with no power to check the validity of the grounds for it. The condition relating to the absence of fraud would be imposed even if the statute did not provide for it. The third condition can give rise solely to technical verification.

By determining in this way the objective conditions that are necessary and sufficient for the issuance of the approval, the legislature has adequately defined the framework for action by the administrative authority. Moreover, since the issuance of an approval creates an entitlement for firms meeting the Act's requirements, grounds must be given for refusals.
(99-424 DC, 29 December 1999, paras 29, 31 and 32, p. 156)

Central government expenditure — Budgetary control

Court procedures

Provision in the Code of Tax Procedures for a specific penalty of 80 % where "undeclared activities" are detected. It is for the legislature to reconcile the constitutional objective of fighting tax fraud, which flows of necessity from article 13 of the Declaration of Human and Civic Rights, with the principle declared by article 8, which provides: "Only punishments that are strictly and evidently necessary shall be prescribed"; and no one shall be punished except by virtue of a law passed and promulgated before the offence is committed, and legally applied.

It follows from these provisions, which are applicable to all penatleis of a punitive nature, that no punishment may be imposed unless the principles of the legality of punishments, of the need for penalties and of the non-retroactive application of more severe sriminal statutes are respected.

The concept of undeclared activities is defined with adequate precision by the Code of Tax Procedures. Section L. 169 provides for the period allowed for resumption of administration "where the taxpayer has not deposited the returns required of him within the time allowed by the law and has not conveyed details of his activity to a business formalities centre or to the Registry of the Commercial Court". The penalty prescribed may be imposed only on that dual condition. It will be for the authorities to furnish evidence that undeclared business was engaged in. Defence rights are adequately secured by section L. 80D of the Code of Civil Procedures, whereby the taxpayer, before recovery of the penalty is ordered, must be given thirty days to make his views known following notification of the grounds on which the authorities are minded to impose an increase.
(99-424 DC, 29 December 1999, paras 50, 52 to 54, p. 156)

Miscellaneous

The combined provisions of the fifth paragraph of section 1, section 32 and the second and fourth paragraphs of section 43 of ordinance n° 59-2 of 2 January 1959 laying down the institutional act relating to finance acts does not necessarily require a full table of posts financed from central government budget to be given in the finance act, but when Parliament debates and determines the appropriations for the various government departments it must be given detailed information on the total established and non-established staff employed on permanent posts by the central government and the appropriations available for their remuneration. The authority empowered to make regulations as regards the creation, abolition and conversion of such posts is bound by the information given in the explanatory annexes, given that Parliament votes the corresponding appropriations.
(99-424 DC, 29 December 1999, paras 6 and 7, p. 156)

Rules governing elections to parliamentary assemblies and local assemblies

Rules governing elections to parliamentary assemblies

Article 34 of the Constitution reserves for the legislature the power to determine rules governing elections to parliamentary assemblies. Article 24 of the Constitution provides: "French nationals settled outside France shall be represented in the Senate". By section 13 of the Ordinance of 4 February 1959 relating to the election of senators, as last amended by section 1 of Act 83-390 of 18 May 1983 relating to the election of senators representing French nationals settled outside France: "The senators representing French nationals settled outside France shall be elected by a college of elected Members of the Conseil supérieur des Français de l'étranger". It follows that the rules relating to the membership of this Council and to the election of its members, which include the definition of electoral constituencies, the number of seats allocated to each of them, the balloting technique, voting rights, eligibility, and the procedures for contesting the election, are matters to be determined by statute.

Provisions whose legal nature is to be ascertained here have the sole purpose of determining the headquarters of each of the constituencies for that election. Such determination, which has no impact on the exercise of the right to vote and whose purely practical impact on nominations is restricted, raises no doubts as to any of the abovementioned electoral rules or indeed any of the other rules which the Constitution defines as matters to be governed by statute. These provisions are accordingly matters to be governed by regulation.
(99-187 L, 6 October 1999, paras 1 to 3, p. 114)

Public establishments

Concept of category of public establishments

Universal Sickness Insurance Additional Cover Fund

Establishments whose activities are exercised on a territorial basis subject to review by the same administrative body and which specialise in similar fields must be regarded as being within the same category for the purposes of article 34 of the Constitution.

The activity of the Universal Sickness Insurance Additional Cover Fund will be exercised, like that of the Old-Age Solidarity Fund, a public national administrative establishment governed by sections L 135-1 *et seq.* inserted in the Social Security Code by Act 93-936 of 22 July 1993, subject to state supervision. The task of both these public establishments is to manage financial transfers between the State and social protection bodies. The applicants accordingly fail in their argument that the Fund created by section 27 would constitute a whole new category of public establishment. The submission that the legislature has not exercised its full powers must be rejected.
(99-416 DC, 23 July 1999, paras 32 and 33, p. 100)

Concept of constituent rules

Paris transport union

Article 34 of the Constitution reserves for statute the determination of rules governing the creation of categories of public establishments. The Paris transport union is a specific category of public establishment, with no national equivalent. The legislature accordingly has sole power to lay down the rules for its creation, which necessarily include its constituent rules. These in turn include the determination of the categories of territorial units constituting the union. The admission of a new category of territorial units in the Paris transport union is therefore within the powers of the legislature. By contrast, replacement of departments that no longer exist in the Paris region by those that have superseded them pursuant to Act 64-707 of 10 July 1964 has no impact on any of the fundamental principles or any of the rules that article 34 of the Constitution reserves for statute and is accordingly a matter to be treated by regulation.
(99-186 L, 31 May 1999, paras 2 and 3, p. 69)

Public establishments pursuing cultural, scientific and vocational objectives

The provisions of the Higher Education Act of 26 January 1984 that empower central government to delegate powers to confer engineering degrees or approve the decisions of establishments pursuing cultural, scientific and vocational objectives relating to subscriptions to loans, acquisitions of financial holdings and the formation of subsidiaries, concern the constituent rules of this particular category of public establishment and are accordingly matters to be governed by statute.
(99-185 L, 18 March 1999, p. 67)

Territorial units

Self-government of territorial units

Participation by a region in a public establishment responsible for organising public transport

The participation of the Ile-de-France Region in the Paris transport union, which will oblige the region to take part in the financial management of this public establishment and to contribute to financing transport services operating costs, affects the fundamental principles of the self-government of territorial units, their powers and their resources, which are matters to be governed by statute pursuant to article 34 of the Constitution. This participation must accordingly be decided on by the legislature.
(99-186 L, 31 May 1999, para. 3, p. 69)

Miscellaneous

The National Commission for Public Debate may be called on to organise a public debate on projects of territorial units or their public establishments; its formation, which affects the "fundamental principles of the self-government of territorial units, their powers and their resources", which are matters to be governed by statute pursuant to article 34 of the Constitution, must accordingly be decided on by the legislature.
(99-184 L, 18 March 1999, para. 2, p. 65; opposite solution regarding its membership, comp. supra p. 287)

Education

Powers of the legislature

The provisions of the Higher Education Act of 26 January 1984 that empower central government to delegate powers to confer engineering degrees or approve the decisions of

establishments pursuing cultural, scientific and vocational objectives relating to subscriptions to loans, acquisitions of financial holdings and the formation of subsidiaries, concern the constituent rules of this particular category of public establishment and are accordingly matters to be governed by statute.
(99-185 L, 18 March 1999, p. 67)

CONSTITUTIONAL COUNCIL AND CONSTITUTIONAL REVIEW

SCOPE OF CONSTITUTIONAL REVIEW

Constitutional Council lacks jurisdiction

Ordinances provided for by article 38 of the Constitution

If the adoption of the legislative part of a code by ordinance has the effect that it is temporarily within the litigation rules applicable to matters falling to be determined by regulation, that is the combined direct result of articles 38 and 61 of the Constitution. Pursuant to article 38 of the Constitution, at the expiry of the duration of the enabling statute, the ordinances may be amended only by statute as regards matters to be determined by statute.
(99-421 DC, 16 December 1999, para. 9, p. 136)

Scope of jurisdiction of the Constitutional Council

Statutes already promulgated

Case-law based on Decision 85-187 DC

The constitutionality of a statute already promulgated may be reviewed on the occasion of the review of legislative provisions amending or amplifying it or modifying its scope. Section 195 (I) (5) of the Act referred to the Constitutional Council extends to elections for the congress and provincial assemblies of New Caledonia the scope of application of sections 192, 194 and 195 of the Act of 25 January 1985 relating to recovery and judicial winding-up of companies. It is accordingly for the Constitutional Council to verify that these provisions are constitutional.

By article 8 of the Declaration of Human and Civic Rights: "Only punishments that are strictly and evidently necessary shall be prescribed; and no one shall be punished except by virtue of a law passed and promulgated before the offence is committed, and legally applied".

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

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

being inseparable from it. Section 195(I)(5) of the Institutional Act referred to the Constitutional Council must accordingly be regarded as contrary to Constitution.
(99-410 DC, 15 March 1999, paras 36 to 43, p. 51)

The constitutionality of a statute already promulgated may be reviewed on the occasion of the review of legislative provisions amending or amplifying it, even if it does not modify its scope.
(99-414 DC, 8 July 1999, para. 2, p. 92, and 99-416 DC, 23 July 1999, para. 37, p. 100)

Approval of an objection of inadmissibility

The National Assembly's approval of an objection of inadmissibility cannot bind the Constitutional Council in the exercise of its jurisdiction pursuant to the second paragraph of article 61 of the Constitution.
(99-419 DC, 9 November 1999, para. 8, p. 116)

REFERENCES TO CONSTITUTIONAL COUNCIL — ADMISSIBILITY — WITHDRAWAL OF CASE — INOPERATIVE PLEA AND PLEA NOT SUPPORTED BY THE FACTS

Status of author or authors of reference

Inadmissibility of supplementary pleading by a deputy

The second paragraph of article 61 of the Constitution provides that a statute may be referred to the Constitutional Council by Members of Parliament, but it reserves the right to do so to sixty deputies or sixty senators.

By letter dated 4 November 1999, Mr C.G., a deputy who signed the original reference, sent the Constitutional Council a pleading stating that he wished to add further objections to the provisions contested, which he alone signed. It follows from the second paragraph of article 61 that his pleading must be declared inadmissible.
(99-419 DC, 9 November 1999, paras 2 and 3, p. 116)

Authentication of references

Effect of reference

By letter to the Constitutional Council, a deputy asked that he be not included among the signatories to the reference on grounds of "the confusion regarding the signing of the reference".

It follows from article 61 of the Constitution and section 18 of the ordinance of 7 November 1958 that a reference to the Constitutional Council by members of Parliament is made collectively by one or more letters signed by at least sixty deputies or sixty senators. The effect of such reference is to trigger a review by the Constitutional Council of the provisions of the Act referred before the completion of the legislative procedure. No provision of the Constitution or of the institutional act relating to the Constitutional Council empowers the authorities or members of Parliament who are authorised to refer a statute to the Constitutional Council to withdraw the reference and thus to preclude the constitutional review thereby commenced. In the absence of material error, fraud or lack of consent, the Constitutional Council cannot act on requests for such withdrawals.

The documents in the case do not reveal that the relevant deputy's consent was vitiated or that he made a material error in making the reference to the Constitutional Council. The hand-written signature on the reference has been authenticated. The deputy must accordingly be included among the signatories to the reference.
(99-421 DC, 16 December 1999, paras 2 to 4, p. 136)

Nature of the instrument referred

Statutes of the country

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

Section 104 of the Institutional Act referred to the Constitutional Council provides that a "statute of the country" must have undergone fresh deliberation if it is to be referred to the Constitutional Council and thereby makes admissibility of a reference subject to the contested provisions of a "statute of the country" having undergone fresh deliberation. The procedure thus established, which gives effect to the above provisions of article 77 of the Constitution, violates no constitutional rules or principles.
(99-410 DC, 15 March 1999, paras 23 and 24, p. 51)

Admissibility of pleas

Inadmissibility under article 40 of the Constitution

The bureau of the Finance, General Economy and Planning Committee, on an enquiry from a deputy pursuant to rule 92 of the Rules of Procedure of the National Assembly, stated on 28 October 1998 that article 40 of the Constitution did not preclude the Civil Solidarity Pact Bill. The question of the admissibility of the bill having thus been raised, the objection must be entertained.
(99-419 DC, 9 November 1999, para. 12, p. 116)

Inoperative plea or not supported by the facts

Inoperative plea

Under the Act the contribution which it introduces is charged to the supplementary social protection bodies rather than to their members. The fact that some bodies might pass the cost on to premiums and contributions paid by Members does not make the provisions contested unconstitutional.

By section L 862-7(b), inserted in the Social Security Code by section 27 of the Act referred, "insurance and similar bodies not established in France and authorised to operate there by way of freedom to provide services pursuant to section L 310-2 of the Insurance Code shall designate a representative, residing in France, who shall be personally responsible for making the requisite statements and paying the sums due". Such bodies, like other supplementary social protection bodies, are thus subject to the contribution introduced by the Act. The fact that there is a risk of circumvention of the Act does not make it unconstitutional.
(99-416 DC, 23 July 1999, paras 24 and 25, p. 100)

The applicants submit that the establishment of a universal sickness insurance scheme violates the "contributory principle" by allowing benefits to be paid without any form of consideration and contrary to the "principle of freedom of insurance". They further argue that it violates the "principle that health care is reimbursed on the basis of need and not income" by applying a means test to a part of the sickness insurance scheme. And as regards supplementary cover, it violates the "founding principles of membership, contribution, equal rights to reimbursement and involvement in the life of a mutual scheme".

None of the principles pleaded by the applicants has constitutional status. Pleas that they have been violated are accordingly inoperative.

The applicants submit that in the long term the Act is liable to jeopardise the monopoly of management of basic sickness insurance schemes by social security fund authorities, but this

submission, linked to purely hypothetical effects of the reform, cannot be validly pleaded as an objection to the Act referred.
(99-416 DC, 23 July 1999, paras 28 to 30, p. 100)

The consumption tax on alcoholic beverages provided for by section 403 of the General Tax Code is allocated by section 43 of the Finance Act for 1994 to the Old-age Solidarity Fund provided for by section L 135-1 of the Social Security Code. It is accordingly a resource of a public establishment and therefore not subject to section 18 of the ordinance of 2 January 1959, which applies only to central government revenues. The objection that that provision has been violated must accordingly be dismissed.
(99-422 DC, 21 December 1999, para. 10, p. 143)

Plea not supported by the facts

Section L 380-2 of the Social Security Code merely provides exemption from sickness insurance contributions, in relation to the basic cover given on the basis of residence pursuant to section L 380-1 of the Code, for persons affiliated to the general scheme by reason of their residence in France where their income is below a ceiling set by decree. The contributions payable by persons whose resources exceed the ceiling are proportionate to the portion of their resources in excess of the ceiling. The plea based on the existence of a "threshold effect" is unsupported by the facts as regards basic cover.
(99-416 DC, 23 July 1999, para. 8, p. 100)

The dual taxation plea fails on the facts since the contribution introduced by section L 862-4 of the Social Security Code will be deductible from the basis of assessment to corporate income tax by virtue of section 39(1)(4) of the General Tax Code.
(99-416 DC, 23 July 1999, para. 23, p. 100)

By the very terms of the Universal Sickness Insurance Act, although health data may be communicated freely, they may not include direct or indirect reference to individuals. The plea that the Act requires the authorisation of the National Commission for Data Processing and Individual Liberty (C.N.I.L.) for the transmission of data not permitting individuals to be identified accordingly fails on the facts.
(99-416 DC, 23 July 1999, para. 50, p. 100)

The tenth paragraph of the Preamble to the 1946 Constitution provides: "The Nation shall provide the individual and the family with the conditions necessary to their development." The eleventh paragraph provides: "The Nation shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure...".

It was legitimate for the legislature to introduce the Civil Solidarity Pact without reforming the legislation relating to the right of filiation or the legislation relating to the legal status of minors. The existing rules on filiation and the provisions to protect the rights of the child, which include those relating to the rights and duties of parents by way of parental authority, apply to children whose filiation is proved in relation to partners to a Civil Solidarity Pact or one only of them. In the event of litigation relating to parental authority, the family court retains its jurisdiction. The plea accordingly fails on the facts.

The deputies who made the first reference submit that the Act violates the rules of "civil and republican marriage" by "establishing a new form of life together", but the provisions relating to the Civil Solidarity Pact have no impact on any of the rules relating to marriage. The plea of violation of these rules accordingly fails on the facts.

The purpose of the definition of concubinage in the new section 515-8 of the Civil Code is to make clear that the concept can apply in equal measure to a couple consisting of persons of the same sex or of different sexes. For the rest, the definition is taken over from the case law. The plea fails on the facts.
(99-419 DC, 9 November 1999, paras 59, 77 and 78, and 85, p. 116)

It is clear from the legislative history that the relevant bodies of the overseas territorial units affected were consulted. It follows that the objection based on failure to comply with the consultation procedures provided for by articles 74 and 77 of the Constitution fails on the facts.
(99-421 DC, 16 December 1999, para. 28, p. 136)

Provision is made for an annual abatement of five million francs on the amount of corporate income tax, which constitutes the basis of assessment to the contribution contested. The objection that there is a threshold effect fails on the facts.

Specific provisions are laid down for groups within the meaning of section 223 A of the General Tax Code to be subject to the contribution. It follows that the argument based on the legislature's alleged failure to take account of company structures also fails on the facts.
(99-422 DC, 21 December 1999, paras 14 and 15, p. 143)

PARAMETERS FOR REVIEW

Parameters followed

Declaration of Human and Civic Rights

Freedom declared by article 2 of the Declaration of Human and Civic Rights

Article 2 of the Declaration of Human and Civic Rights reads: "The aim of every political association is to preserve the natural and imprescriptible rights of man. These rights are liberty, property, safety and resistance to oppression". The freedom declared by this article implies respect for private life.
(99-416 DC, 23 July 1999, para. 45, p. 100)

Article 2 of the Declaration of Human and Civic Rights reads: "The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are Liberty, Property, Safety and Resistance to Oppression". The freedom declared by this article implies respect for private life.
(99-416 DC, 9 November 1999, para. 73, p. 116)

Principle of sovereignty (article 3)

Section L. 80 C of the Code of Tax Procedures provided: "Where an officer of the tax administration of a foreign country takes any action in relation to a taxpayer in French territory, any demand for back-payment of taxes and any proceedings based on it shall be null and void." The effect of the repeal of this provision was not to permit foreign tax inspectors to conduct their inspections in France. The combined effect of sections L 10 and L 45 of the Code of Tax Procedures is that French tax inspectors alone are empowered to inspect taxes due from taxpayers.
(99-424 DC, 29 December 1999, paras 61 and 63, p. 156)

Freedom declared by article 4 of the Declaration of Human and Civic Rights

It is legitimate for the legislature to modify contracts in the course of their implementation on grounds of the general interest, but it may not change the general scheme of contracts lawfully entered into to such an extent as to manifestly violate the freedom declared by article 4 of the Declaration of Human and Civic Rights.

By providing that beneficiaries of the universal sickness insurance scheme who were previously affiliated to a supplementary social protection body are automatically entitled to cancel the benefit of their affiliation thereto if the body elects not to join the scheme set up by the Act, the legislature gave effect to the constitutional principle of equality before the law as between all beneficiaries of the universal sickness insurance scheme. As the legislature did not intend to exclude all forms of cover, it did not violate current contracts to an extent that would be so serious as to be contrary to the principles of articles 4 and 13 of the Declaration of Human and Civic Rights.
(99-416 DC, 23 July 1999, paras 19 and 27, p. 100)

It was legitimate for the legislature to take into account of the general interest in prohibiting incest to prohibit and declare absolutely void the conclusion of a Civil Solidarity Pact between persons already related by blood or marriage within the degrees specified in the new section 515-2(1) of the Civil Code, and neither the principle of equality nor the freedom declared by article 4 of the 1789 Declaration of Human and Civic Rights was thereby violated.

A contract constitutes the law applicable between the parties, but the freedom declared by article 4 of the 1789 Declaration of Human and Civic Rights of 1789 warrants the possibility of unilateral termination by one or other party of a contract at private law of indeterminate duration, provided the other party is properly informed and compensated for any loss sustained by reason of the circumstances of the termination. Given the need to ensure that one of the parties to certain contracts is protected, the legislature must specify the grounds on which termination is allowed and the conditions to be met upon termination, notably the giving of notice.

Under the last paragraph of section 515-7 of the Civil Code, the partner on whom the termination is imposed may seek compensation for any loss sustained, notably in terms of a fault committed in the manner of the termination. In this case, the provision for an action for damages in the civil courts gives effect to the constitutional principle laid down by article 4 of the 1789 Declaration of Human and Civic Rights, whereby any fault of any person which causes loss to be sustained by another person obliges the person at fault to compensate for it.
(99-419 DC, 9 November 1999, paras 55, 61 and 70, p. 116)

Equality (article 6)

On the date of final adoption of the institutional act relating to the ineligibility of the children's ombudsman, the Bill to establish the office of ombudsman and determining the regulations applicable to him, his powers and his functions was being deliberated in Parliament and still open to amendment. It was accordingly not possible for the legislature to come to an informed decision and deprive that authority of the right to stand for election enjoyed by all citizens under Article 6 of the Declaration of Human and Civic Rights.
(99-420 DC, 16 December 1999, para. 2, p. 134)

Need for penalties (article 8)

The principle that no-one can be punished except for his own acts flows from articles 8 and 9 of the Declaration of Human and Civic Rights.

Article 8 of the Declaration of Human and Civic Rights provides: "Only punishments that are strictly and evidently necessary shall be prescribed by law...". It is accordingly for the Constitutional Council to verify whether, in relation to the offence alleged on a given set of facts, the determination of the penalties incurred is not vitiated by a manifest error of assessment.

In accordance with the combined provisions of article 9 of the Declaration of Human and Civic Rights and the principle that offences and penalties must be defined by law, asserted by article 8 of the Declaration, the definition of a criminal offence must include the guilty act, the *actus reus*, but also the guilty mind, the *mens rea*, be it intended or not.
(99-411 DC, 16 June 1999, paras 7, 13 and 16, p. 75)

Presumption of innocence (article 9)

Article 9 of the Declaration of Human and Civic Rights provides: "As everyone is presumed innocent until declared guilty, force used in making an unavoidable arrest which exceeds that needed to secure his person shall be severely punished by law". It follows that the legislature cannot normally establish a presumption of guilt in the criminal law. Exceptionally, however, such presumptions may be established, notably in relation to minor offences, provided they are not irrebuttable, natural justice is preserved and the facts of the case are such as to generate a probability of responsibility.

The principle that no one can be punished except for his own acts flows from articles 8 and 9 of the Declaration of Human and Civic Rights.

It is clear from article 9 of the Declaration of Human and Civic Rights that guilt of serious crimes and other major offences can flow solely from personal responsibility for acts that are punishable under the criminal law. Consequently, in accordance with the combined provisions of article 9 of the Declaration and the principle that offences and penalties must be defined by law, asserted by article 8 of the Declaration, the definition of a criminal offence must include the guilty act, the *actus reus*, but also the guilty mind, the *mens rea*, be it intended or not.
(99-411 DC, 16 June 1999, paras 5, 7 and 16, p. 75)

Need for taxation and equality of public burden-sharing (article 13)

Article 13 of the Declaration of Human and Civic Rights provides: "For the maintenance of a police force, and for administrative expenses, a general tax is indispensable; it must be equally distributed among all citizens, in proportion to their ability to pay". This principle does not preclude the legislature from imposing certain burdens on certain categories of persons in order to improve the living conditions of other categories of persons, but it must not seriously violate equality of public burden-sharing.

By providing that beneficiaries of the universal sickness insurance scheme who were previously affiliated to a supplementary social protection body are automatically entitled to cancel the benefit of their affiliation thereto if the body elects not to join the scheme set up by the Act, the legislature gave effect to the constitutional principle of equality before the law as between all beneficiaries of the universal sickness insurance scheme. As the legislature did not intend to exclude all forms of cover, it did not violate current contracts to an extent that would be so serious as to be contrary to the principles of articles 4 and 13 of the Declaration of Human and Civic Rights.
(99-416 DC, 23 July 1999, paras 19 and 27, p. 100)

Provision introducing a contribution of 5 % on the assignment to a television service of rights to broadcast events or sports competitions, and allocating the product to a special account entitled "National Sports Development Fund".

The section criticised does not modify the rules governing support from the National Sports Development Fund. The need for the contribution flows from the general-interest status of the Fund's tasks. The criteria for determining who is taxable are objective and rational. The argument that the principle that taxes must be necessary is violated can only be dismissed.

Provisions merging the various capital gains tax schemes and social schemes applicable to individuals in the management of their private assets. Tax is payable where the annual amount of disposals exceeds a limit set at 50 000 francs per taxable household.

The income of a taxable household is normally taxed under the progressive scales of income tax, whereas the provision criticised here provides for taxation of the product of capital disposals at a flat rate. The threshold for disposals is set in the light of a simplification objective, releasing taxpayers who have made only minor operation from the obligation to declare them. By not making the threshold depend on the taxpayer's family, the legislature has not violated the principle of equality before the tax law.

Provision empowering communes to introduce a tax payable by any person exercising a seasonal business activity on a self-employed basis in their territory.

The tax is due for the tax year from the date of first establishment. It is at a uniform rate of no less than 50 francs nor more 800 francs than per square metre.

By failing to take account of the duration of the establishment in the commune as regards non-sedentary activities, the legislature has violated the principle of equality of public burden-sharing.
(99-424 DC, 29 December 1999, paras 35, 37, 42, 45, 46, 48 and 49, p. 156)

Public contribution and role of decision-making bodies (article 14)

Article 14 of the 1789 Declaration implies no specific rules for the adoption by territorial decision-making bodies of financial and tax provisions.
(98-407 DC, 14 January 1999, para. 18, p. 21; comp. 98-397 DC, 6 March 1998, para. 13, Rec. p. 186)

Rights to be secured (article 16)

Article 16 of the Declaration of Human and Civic Rights provides: "A society in which human rights are not guaranteed nor the separation of powers secured lacks a constitution". It follows that there must be no substantial limitations on the right of interested parties to seek redress in the courts.

The legislature can make certain securities issued by public corporations and private-sector corporations responsible for public-service tasks enforceable, and thereby permit measures to be enforced, but it must ensure that the debtor has the right to effective redress regarding the eligibility of such and the obligation to pay that flows from the enforcement procedure. Where a third party can be implicated, he must also have an effective redress procedure.
(99-416 DC, 23 July 1999, paras 38 and 39, p. 100)

Separation of powers (article 16)

The legislature may, where there are adequate grounds of general interest, validate an instrument referred to an administrative court in order to avert the difficulties that might flow from its annulment, but only on that the scope of the validation is strictly defined, given the impact on the review by the relevant court. The effect of validation may not be to preclude all judicial review of the instrument validated irrespective of the grounds pleaded by the applicants for declaring it illegal, for that would violate the principle of the separation of powers and the right to redress in the courts conferred by article 16 of the Declaration of Human and Civic Rights.

One of the purposes of the order of 28 April 1999, contested in the *Conseil d'Etat*, was to reduce the prices charged by private health establishments for 1999, in the absence of an agreement.

The *Conseil d'Etat* had not yet ruled on its legality when the Act referred was adopted. By providing for the validation of instruments issued pursuant to the order "in so far as their legality is contested on the basis of an alleged illegality of that order" without specifying the grounds on which such illegality might be pleaded, the legislature has violated article 16 of the Declaration of Human and Civic Rights. Paragraph IX of section 33 of the Act referred must accordingly be declared unconstitutional.
(99-422 DC, 21 December 1999, paras 64 and 65, p. 143)

The recovery notices vitiated by a formal defect are validated only in so far as they refer only to the notice of back payment of the amount of duties and penalties, charges or interest for late payment, contrary to section R 256-1 of the Code of Tax Procedures. It follows that the notice may be contested in the relevant courts on any other ground of form or substance. Article 16 of the Declaration of Human and Civic Rights is accordingly not violated by the validation contested.
(99-425 DC, 29 December 1999, para. 16, p. 168; cf. 99-422 DC, 21 December 1999, paras 64 and 65, p. 143)

Right to redress (article 16)

The legislature may, where there are adequate grounds of general interest, validate an instrument referred to an administrative court in order to avert the difficulties that might flow from its annulment, but only on that the scope of the validation is strictly defined, given the impact on the review by the relevant court. The effect of validation may not be to preclude all judicial review of the instrument validated irrespective of the grounds pleaded by the applicants for declaring it illegal, for that would violate the principle of the separation of powers and the right to redress in the courts conferred by article 16 of the Declaration of Human and Civic Rights.

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(99-425 DC, 29 December 1999, para. 16, p. 168; comp. 99-422 DC, 21 December 1999, paras 64 and 65, p. 143)

Principles affirmed by the Preamble to the Constitution of 27 October 1946

Implementation of certain principles

Conditions necessary to the development of the individual and the family (10th paragraph)

The tenth paragraph of the Preamble to the 1946 Constitution reads: "The Nation shall provide the individual and the family with the conditions necessary to their development". The eleventh paragraph reads: "The Nation shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure..."

It is both for the legislature and for the authority empowered to make regulations, in their respective areas, to determine how effect should be given to these principles in accordance with the requirements of these provisions.

It is at all times legitimate for the legislature, acting within the areas reserved for it by article 34 of the Constitution, to enact, within its discretion, new rules for the attainment or reconciliation of constitutional objectives. But the exercise of this power must not have the effect of depriving constitutional requirements of their legal guarantees.

The applicants object that the Act referred establishes a "cut-off threshold" so that persons whose resources only slightly exceed the ceiling provided for in the Act are excluded from the benefit of the universal sickness insurance scheme, with no provision being made to temper the harmful effects of this threshold for many low-income earners.

The impact of the objection is not the same for basic cover and supplementary cover.

For one thing, section L 380-2 of the Social Security Code merely provides exemption from sickness insurance contributions, in relation to the basic cover given on the basis of residence pursuant to section L 380-1 of the Code, for persons affiliated to the general scheme by reason of their residence in France where their income is below a ceiling set by decree. The contributions payable by persons whose resources exceed the ceiling are proportionate to the portion of their resources in excess of the ceiling. The plea based on the existence of a "threshold effect" is unsupported by the facts as regards basic cover.

For another, regarding the means-tested supplementary cover provided for by section L 861-1 of the Social Security Code, the legislature elected to establish the rule that health care expenditure for its beneficiaries would be provided without obligation to pay advances, given their low resources and their correspondingly precarious situation, the paying body being eligible for financial compensation from a public establishment set up for the purpose by section 27 of the Act. The option for a ceiling on resources to determine who is eligible for such a scheme is in relation to the purpose of the Act. It is not for the Constitutional Council to verify whether the objectives pursued by the legislature could have been attained by other means as long as the means provided for by the Act are not manifestly inappropriate. In the instant case, given both the options taken and the fact that the protection given by the Act relates to benefits in kind and not in cash and that they are non-contributory, and given also the difficulties that would be encountered by a measure to soften the effect of the threshold mechanism, the legislature cannot be regarded as violating the principle of equality.
(99-416 DC, 23 July 1999, paras 4 to 6, 8 and 10, p. 100)

The tenth paragraph of the Preamble to the 1946 Constitution reads: "The Nation shall provide the individual and the family with the conditions necessary to their development."

It was legitimate for the legislature to introduce the Civil Solidarity Pact without reforming the legislation relating to the right of filiation or the legislation relating to the legal status of minors. The existing rules on filiation and the provisions to protect the rights of the child, which include those relating to the rights and duties of parents by way of parental authority, apply to children whose filiation is proved in relation to partners to a Civil Solidarity Pact or one only of them. In the event of litigation relating to parental authority, the family court retains its jurisdiction. The plea that the tenth and eleventh paragraphs of the Preamble to the 1946 Constitution are violated accordingly fails on the facts.

It was legitimate for the legislature, given its objective in regard to the situation of two persons living together and bound to each other by certain obligations and linked by a Civil Solidarity Pact, to allow such persons certain advantages without violating the principle of equality nor the need to protect the family as provided by the Preamble to the 1946 Constitution. The rules of the Civil Code protecting the rights of privileged heirs and successors, including descendants, remain applicable.

The plea that the tenth and eleventh paragraphs of the Preamble to the 1946 Constitution are violated must accordingly be rejected.
(99-419 DC, 9 November 1999, paras 77 and 78, 81 and 82, p. 116)

Protection of health and material security guaranteed for children and mothers (eleventh paragraph)

The tenth paragraph of the Preamble to the 1946 Constitution reads: "The nation shall provide the individual and the family with the conditions necessary to their development." The eleventh paragraph reads: "The Nation shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure..."

It is both for the legislature and for the authority empowered to make regulations, in their respective areas, to determine how effect should be given to these principles in accordance with the requirements of these provisions.

It is at all times legitimate for the legislature, acting within the areas reserved for it by article 34 of the Constitution, to enact, within its discretion, new rules for the attainment or reconciliation of constitutional objectives. But the exercise of this power must not have the effect of depriving constitutional requirements of their legal guarantees.

The applicants object that the Act referred establishes a "cut-off threshold" so that persons whose resources only slightly exceed the ceiling provided for in the Act are excluded from the benefit of the universal sickness insurance scheme, with no provision being made to temper the harmful effects of this threshold for many low-income earners.

The impact of the objection is not the same for basic cover and supplementary cover.

For one thing, section L 380-2 of the Social Security Code merely provides exemption from sickness insurance contributions, in relation to the basic cover given on the basis of residence pursuant to section L 380-1 of the Code, for persons affiliated to the general scheme by reason of their residence in France where their income is below a ceiling set by decree. The contributions payable by persons whose resources exceed the ceiling are proportionate to the portion of their resources in excess of the ceiling. The plea based on the existence of a "threshold effect" is unsupported by the facts as regards basic cover.

For another, regarding the means-tested supplementary cover provided for by section L 861-1 of the Social Security Code, the legislature elected to establish the rule that health care expenditure for its beneficiaries would be provided without obligation to pay advances, given their low resources and their correspondingly precarious situation, the paying body being eligible for financial compensation from a public establishment set up for the purpose by section 27 of the Act. The option for a ceiling on resources to determine who is eligible for such a scheme is in relation to the purpose of the Act. It is not for the Constitutional Council to verify whether the objectives pursued by the legislature could have been attained by other means as long as the means provided for by the Act are not manifestly inappropriate. In the instant case, given both the options taken and the fact that the protection given by the Act relates to benefits in kind and not in cash and that they are non-contributory, and given also

the difficulties that would be encountered by a measure to soften the effect of the threshold mechanism, the legislature cannot be regarded as violating the principle of equality.
(99-416 DC, 23 July 1999, paras 4 to 6, 8 and 10, p. 100)

The eleventh paragraph of the Preamble to the 1946 Constitution provides: "The Nation shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure...".

It was legitimate for the legislature to introduce the Civil Solidarity Pact without reforming the legislation relating to the right of filiation or the legislation relating to the legal status of minors. The existing rules on filiation and the provisions to protect the rights of the child, which include those relating to the rights and duties of parents by way of parental authority, apply to children whose filiation is proved in relation to partners to a Civil Solidarity Pact or one only of them. In the event of litigation relating to parental authority, the family court retains its jurisdiction. The plea that the tenth and eleventh paragraphs of the Preamble to the 1946 Constitution are violated accordingly fails on the facts.

It was legitimate for the legislature, given its objective in regard to the situation of two persons living together and bound to each other by certain obligations and linked by a Civil Solidarity Pact, to allow such persons certain advantages without violating the principle of equality nor the need to protect the family as provided by the Preamble to the 1946 Constitution. The rules of the Civil Code protecting the rights of privileged heirs and successors, including descendants, remain applicable.

The plea that the tenth and eleventh paragraphs of the Preamble to the 1946 Constitution are violated must accordingly be rejected.
(99-419 DC, 9 November 1999, paras 77 and 78, 81 and 82, p. 116)

Fundamental principles recognised by the laws of the Republic

Principles recognised

Respect for natural justice

Respect for natural justice is one of the fundamental principles recognised by the laws of the Republic and affirmed by the Preamble to the 1946 Constitution, to which the Preamble to the 1958 Constitution refers.
(99-416 DC, 23 July 1999, para. 38, p. 100)

Freedom of education

The principle of freedom of education is one of the fundamental principles recognised by the laws of the Republic and affirmed by the Preamble to the 1946 Constitution, to which the Preamble to the 1958 Constitution gives constitutional status. As regards higher education, it is founded on the Acts of 12 July 1875 and 18 March 1880. The statement by the thirteenth paragraph of the Preamble to the 1946 Constitution that "the State has a duty to organise free, public and secular education at all levels" cannot be taken to preclude either the existence of private education or the provision of state support for such education as provided by law.

Section L 813-2 of the Rural Code defines the scope of the contractual scheme provided for by sections L 813-8 and L 813-9, but it has neither the object nor the effect of prohibiting agricultural training establishments from opening up their classes that prepare for entry to the higher institutes of agriculture. The plea that public institutes of agriculture have a "monopoly" accordingly fails on the facts.

It was legitimate for the legislature to make state assistance to private educational establishments dependent on the nature and importance of their contribution to the attainment of public educational objectives. It must base its assessment on objective and rational criteria and must, in particular, determine which of the forms of training given by these establishments are eligible for such assistance. In the instant case it was legitimate, given the current specific features of the training given in private agricultural schools, to exclude from the contractual scheme provided for by sections L 813-8 and L 813-9 of the Rural Code, higher-level training

courses not leading to the award of a senior technical diploma. The principle of freedom of education is not violated.
(99-414 DC, 8 July 1999, paras 6 to 9, p. 92).

Principles not adopted

Non-taxation of sums paid by way of indemnity

No constitutional principle or rule lays down a general, absolute prohibition on taxation of sums paid by way of indemnity. It is legitimate for the legislature to provide for the taxation of sums paid by way of indemnity on the cessation of functions, provided individuals' ability to pay is properly taken into account.
(99-424 DC, 29 December 1999, para. 21, p. 156)

Other

At any rate the rule that in the event of an equality of votes cast, the "majority premium" whereby the last remaining seat to be allocated is awarded to the list with the highest average age or the oldest eligible candidate is not of such importance as to be regarded as being among the fundamental principles recognised by the laws of the Republic.
(98-407 DC, 14 January 1999, paras 8 and 9, p. 21)

Objectives of constitutional status

Followed

Accessibility and intelligibility of statutes

The completion of the nine codes mentioned in section 1 of the Act referred to the Constitutional Council satisfies the constitutional objective of the accessibility and intelligibility of statutes.

Equality before the law, as provided for by article 6 of the Declaration of Human and Civic Rights and the rights to be secured as provided for by article 16 would be rendered nugatory if citizens were inadequately informed of the rules applicable to them. Such information is moreover needed for the exercise of the rights and freedoms secured by article 4 of the Declaration, whereby the only limits that may be imposed are those provided for by law, and article 5, whereby "Nothing that is not forbidden by Law may be hindered, and no one may be compelled to do what the Law does not ordain."
(99-421 DC, 16 December 1999, para. 13, p. 136)

Preservation of public order

The prevention of attacks on public order and the detection and conviction of offenders are necessary for the preservation of constitutional principles and rights. It is for the legislature to reconcile these constitutional objectives and the exercise of public freedoms secured by the Constitution, which include individual freedom and freedom to come and go.
(99-411 DC, 16 June 1999, para. 2, p. 75)

Fight against tax fraud

It is for the legislature to reconcile the constitutional objective of fighting tax fraud, which flows of necessity from article 13 of the Declaration of Human and Civic Rights, with the principle declared by article 8, which provides: "Only punishments that are strictly and evidently necessary shall be prescribed; and no one shall be punished except by virtue of a law passed and promulgated before the offence is committed, and legally applied".
(99-424 DC, 29 December 1999, para. 52, p. 156)

Constitutional rules and legislative procedure

Exercise of the right to amend

By virtue of the second paragraph of article 88-4 of the Constitution, the right is conferred on each assembly to issue an opinion on instruments referred to it pursuant to the first paragraph of that article by passing a resolution in the manner prescribed by its Rules of Procedure. It may accordingly determine how such resolutions are to be debated and possibly amended, the constitutional provisions concerning the exercise of the right to amend necessarily being applicable, as they relate exclusively to bills. It is accordingly legitimate for the Senate to reserve for senators, committees or the Delegation for the European Union the right to present amendments to motions for European resolutions.
(99-413 DC, 24 June 1999, para. 6, p. 83)

The first sentence of the second paragraph of article 39 of the Constitution provides: "Government bills shall be discussed in the Council of Ministers after consultation with the *Conseil d'Etat* and shall be introduced in one of the two assemblies"; the first paragraph of article 44 provides: "Members of Parliament and the Government shall have the right of amendment".

The Universal Sickness Insurance (Creation) Act was presented to the National Assembly on 3 March 1999, after deliberation by the Council of Ministers on the same date, the opinion of the *Conseil d'Etat* having been given on 1 March 1999. Title IV of the original draft, subsequently title V, entitled "Modernisation of health and social facilities", grouped a series of provisions on health and social matters. Several provisions were inserted in this title by way of amendments introduced in the course of the legislative procedure, but this was before the Joint Mixed Committee met, the new provisions are not unrelated to the instrument being debated and their purpose and object do not exceed the intrinsic limits of the right to amend.
(99-416 DC, 23 July 1999, paras 53 and 54, p. 100)

Nouméa Agreement — Transitional arrangements provided for by title XIII of the Constitution (articles 76 and 77)

It follows from the first paragraph of article 77 of the Constitution that the Constitutional Council's review of the Institutional Act relating to New Caledonia must proceed on the basis of not only the Constitution but also the guidelines set out in the Nouméa Agreement, which derogates from certain constitutional rules and principles. But such derogations can be accepted only to the extent that they are strictly necessary for the implementation of the Agreement.

The combined effect of sections 188 and 189 of the Institutional Act is that, notwithstanding certain statements to the contrary in the Parliamentary debates, persons are to take part in the elections to the provincial assemblies and the congress who, at the date of the election, appear in the annexed table mentioned in section 189(I) and have been domiciled in New Caledonia for at least ten years, irrespective of the date of their settlement in New Caledonia, even if it was after 8 November 1998. This restricted definition of the electorate is the only one that can be compatible with the will of the authors of the Constitution, as revealed by the Parliamentary debates preceding the enactment of article 77 of the Constitution, and respects the Nouméa Agreement, whereby the electorate to the provincial Assemblies and the congress includes voters who are "entered in the annexed table and meet the requirement of ten years" domicile at the date of the election.

By providing for a meeting of the signatories to review the situation engendered by successive negative responses, not to the outcome of a third consultation but to the outcome of the second, the fourth paragraph of section 217 of the Institutional Act relating to New Caledonia violated the obligation incumbent on the legislature by virtue of article 77 of the Constitution to respect the guidelines defined by the Nouméa Agreement and determine the rules needed to give effect to it. The fourth paragraph of section 217 must accordingly be declared unconstitutional.

The other provisions of section 217, relating to two initial consultations, are severable from the fourth paragraph. They are consistent with the provisions of the Nouméa Agreement appli-

cable to the first two consultations. The legislature is under a constitutional obligation to arrange a third consultation in the event of a negative response to the first two.

(99-410 DC, 15 March 1999, paras 3, 30 to 35, and 52, p. 51)

Parameters not recognised and material not taken into account

Parameters not recognised for constitutional review of statutes

Treaties and international agreements

The applicants submit that the procedures for compensation of expenditure incurred by way of supplementary protection for beneficiaries of the universal sickness insurance scheme confer on sickness insurance bodies a competitive position such as to constitute "abuse of a dominant position" within the meaning of article 86 of the Treaty establishing the European Community. But it is not for the Constitutional Council, on a reference pursuant to article 61 of the Constitution, to review the Act referred for conformity with a treaty. Objection dismissed.

(99-416 DC, 23 July 1999, para. 17, p. 100)

Rules of Procedure of an assembly

Since the Rules of Procedure of the parliamentary assemblies are not themselves constitutional instruments, a mere violation of the fourth paragraph of Rule 91 and the third paragraph of rule 84 of the Rules of Procedure of the National Assembly would not alone render the legislative procedure contrary to the Constitution.

(99-419 DC, 9 November 1999, para. 7, p. 116)

Need for prior Parliamentary proceedings

Application of article 40 of the Constitution

The bureau of the Finance, General Economy and Planning Committee, on an enquiry from a deputy pursuant to rule 92 of the Rules of Procedure of the National Assembly, stated on 28 October 1998 that article 40 of the Constitution did not preclude the Civil Solidarity Pact Bill. The question of the admissibility of the bill having thus been raised, the objection must be entertained.

(99-419 DC, 9 November 1999, para. 12, p. 116)

Rules specific to the Rules of Procedure of the assemblies

Parameters for the constitutional review of the Rules of Procedure of the Assemblies

Given the specific requirements of the hierarchy of norms in the domestic legal order, the constitutionality of Rules of Procedure of the parliamentary assemblies must be reviewed in the light of the Constitution itself, of the institutional acts for which it provides and of the legislative measures taken under the first paragraph of article 92 of the Constitution in the form in which it was then in force for the establishment of the institutions. The latter category includes the Ordinance of 17 November 1958 and amendments made by statute to that Ordinance after 4 February 1959. But such amendments are binding on an assembly where they amend or amplify its Rules of Procedure only if they are constitutional.

(99-413 DC, 24 June 1999, para. 1, p. 83)

Conditions for taking account of factors external to the statute

Exegetic approach

The combined effect of sections 188 and 189 of the Institutional Act is that, notwithstanding certain statements to the contrary in the Parliamentary debates, persons are to take part in the elections to the provincial assemblies and the congress who, at the date of the election, appear in the annexed table mentioned in section 189(I) and have been domiciled in New Caledonia for at least ten years, irrespective of the date of their settlement in New Caledonia, even if it was after 8 November 1998. This restricted definition of the electorate is the only one that can be compatible with the will of the authors of the Constitution, as revealed by the Parliamentary debates preceding the enactment of article 77 of the Constitution, and respects the Nouméa Agreement, whereby the electorate to the provincial assemblies and the congress includes voters who are "entered in the annexed table and meet the requirement of ten years' domicile at the date of the election".
(99-410 DC, 15 March 1999, paras 3 and 30 to 35, p. 51)

Reference to legislative history

Provisions authorising officers of the customs administration to ask for full information regarding the amount, date and form of payments regarding income of whatever kind received by persons bound by professional secrecy by virtue of section 226-13 of the Criminal Code, without being able to demand information on the nature of the services rendered.

It is clear from these provisions, interpreted in the light of the Parliamentary debates preceding their adoption, that the legislature intended to place tight limits on the information to be requested, which may relate neither to the identity of clients nor to the nature of the services rendered.
(99-424 DC, 29 December 1999, paras 38 and 40, p. 156)

Approval of an objection of inadmissibility

The National Assembly's approval of an objection of inadmissibility cannot bind the Constitutional Council in the exercise of its jurisdiction pursuant to the second paragraph of article 61 of the Constitution.
(99-419 DC, 9 November 1999, para. 8, p. 116)

Extent of review

Power of review vested in the Constitutional Council

The applicants submit that the thresholds that must be passed if a list is to be eligible for the second ballot at a regional election or for merger with another list distorted the objective of the legislature. But the Constitution does not confer on the Constitutional Council a general power of discretion and decision-making identical to that enjoyed by Parliament. It is therefore not for the Council to ascertain whether the objective pursued by the legislature could have been attained by other means, provided the means opted for are, as in this case, not manifestly inappropriate to the objective pursued, which was to promote the emergence of ruling majorities in regional councils while ensuring that different segments of the electorate were duly represented.
(98-407 DC, 14 January 1999, paras 2 to 4, p. 21)

It is therefore not for the Constitutional Council to ascertain whether the objectives pursued by the legislature could have been attained by other means, provided the means opted for are not manifestly inappropriate.
(99-416 DC, 23 July 1999, para. 10, p. 100)

Restricted constitutional review

Accuracy of the budget

The information supplied to the Constitutional Council does not reveal that the estimates of revenue for 2000 entered in the balancing item were manifestly erroneous, in the light of the scale of the alleged under-estimation in relation to the aggregate volume of the budget.
(99-424 DC, 29 December 1999, para. 4, p. 156)

MEANING AND SCOPE OF THE DECISION

Qualified interpretations

Examples of *interprétations neutralisantes*

It follows from sections 515-1 to 515-4 of the Civil Code inserted by section 1 of the Civil Solidarity Pact Act, interpreted in the light of the Parliamentary debates preceding their enactment, that the concept of living together does not cover only shared interests and is not confined to mere cohabitation of two persons. Living together for the purposes of the Act referred involves not only a shared residence but also living as a couple, which is the only reason why the legislature provided for grounds for nullity of the pact, either taking over the impediments to marriage so as to prevent incest or avoiding violation of the obligation of fidelity that flows from marriage. Consequently, without explicitly defining the content of the concept of living together, the legislature has determined the main factors to be taken into account.

Given the nature of the impediments provided for by section 515-2 of the Civil Code, justified on the same grounds as the impediments to marriage, the nullity provided for by that section must be absolute.

The general provisions of the Civil Code relating to contracts and contractual obligations will also tend to be applicable, subject to review by the courts, except as they conflict with this Act. In particular, sections 1109 *et seq.* of the Civil Code, relating to consent, are applicable to the Civil Solidarity Pact.

The provisions of regulations in different areas referring to "single" status will have to be updated to take account of the situation of persons who have entered into such a pact. Until that is done, the question of the applicability of such regulations to such persons will have to be dealt with in the light of their purpose. The same applies to provisions which refer to "married life". The first paragraph of the new section 515-4 of the Civil Code provides: "Partners who are bound by a Civil Solidarity Pact shall give each other mutual and material assistance. The terms on which such assistance is given shall be determined by the pact". The second paragraph of the new section 515-3 of the Civil Code requires the parties to present two originals of the agreement between them to the Registrar; otherwise, it will be inadmissible. The mutual and material assistance is accordingly to be analysed as a duty between the partners to the pact. It follows implicitly, and of necessity, that, while the free will of the partners may be expressed through their determination of the terms on which such assistance is to be given, any clause not compatible with the obligatory nature of the assistance would be void. Moreover, if the pact is silent on the subject, it will be for the court hearing a case on the contract to determine the terms on which the assistance is to be given in the light of the respective situations of the partners.

It is clear from the very wording of the new section 515-5 of the Civil Code that the presumption of half-and-half joint ownership of furniture acquired for a consideration after the conclusion of the pact can be rebutted only by presentation of the agreement whereby the partners disapply the principle. Likewise, the presumption of half-and-half joint ownership of other property of which the partners acquired ownership for a consideration after the conclusion of the pact can be rebutted only by presentation of a document attesting acquisition or subscription which provides otherwise. Where the presumption of joint ownership

cannot be rebutted, sections 815 *et seq.* of the Civil Code, relating to joint ownership, will be applicable. The parties will nevertheless be able to decide, in the initial agreement or an agreement amending it in the case of furniture, or in the document attesting acquisition or subscription in the case of other property, to apply the joint ownership principle provided for by sections 1873-1 *et seq.* of the Civil Code.

The establishment of joint and several liability of the partners in relation to third parties for debts contracted by one of them to meet the needs of their daily life and for expenditure relating to their shared accommodation will not prevent the ordinary rules of civil liability from applying in the event of excesses committed by one of the partners.

By providing in the new sections 515-3 and 515-7 of the Civil Code for the principle of publicity regarding the conclusion, amendment and termination of the pact, the legislature did not fail to exercise full powers available. But in the decree provided for by section 15 of the Act referred, the authority empowered to make regulations, which has the power to determine rules for the application of the above provisions, may organise the access of third parties to the various registers so as to reconcile the protection of third-party rights and respect for the private life of the parties to a pact.

The new section 515-7 of the Civil Code, which allows unilateral breach of the Civil Solidarity Pact, such breach taking effect, except in the event of marriage, three months after the completion of the formalities required by the legislation, and which in any case of unilateral breach, including upon marriage, reserves the partner's right to compensation, is not unconstitutional; any clause in a pact prohibiting the exercise of this right will have to be deemed unwritten.

The new section 515-3 of the Civil Code provides rules for the registration of Civil Solidarity Pacts which serve a dual purpose. First, they aim to ensure compliance with the rules of public order governing the law of persons, one of which is the prohibition of incest. Second, they put a definite date on the Civil Solidarity Pact so that it can be relied on in relation to third parties, whose rights must be safeguarded by the legislature. The purpose of registration is not to reveal the sexual orientation of the partners to the pact.

It follows from the foregoing that, subject to the reservations and clarifications set out above, relating more particularly to the fact that the persons bound by a Civil Solidarity Pact live together, the fact that the pact is absolutely void in the event of failure to comply with section 515-2 of the Civil Code, the fact that the nature of evidence to the contrary enables the presumptions of joint ownership established by section 515-5 of the Civil Code to be rebutted, the rules regarding the joint ownership scheme, the interpretation of provisions referring to "single" status and "married life", the obligation for partners to a pact to provide mutual and material assistance, access by third parties to the various registers in which pacts are entered, the respect for partners' private life and the right of a partner to compensation in the event of a fault in the conditions in which a pact is unilaterally terminated, sections 1 to 7 and 13 to 15 of the Civil Solidarity Pact Act must be declared constitutional.
(99-419 DC, 9 November 1999, paras 26 to 28, 30 to 33, 36, 62, 74 and 91, p. 116)

Universal sickness insurance cover

It will be for the authority empowered to make regulations to set the amounts of the ceilings on resources provided for by sections L 380-2 and Lt861-1 of the Social Security Code for entitlement to basic sickness cover and to supplementary protection and the procedures for the annual review of these ceilings in such a way as to comply with the Preamble to the Constitution de 1946. Subject to that reservation, the objection must be rejected.
(99-416 DC, 23 July 1999, para. 11, p. 100)

Criminal law

The legislature allows the holder of the registration certificate of a vehicle to rebut the presumption of fault by proving *force majeure* or by supplying other information to establish that he is not the person who committed an offence. He can, moreover, be ordered to pay a fine only by a court decision reflecting the facts of the case and his ability to pay. Assuming the registration-certificate holder can present his defence at every stage of the procedure, natural justice is accordingly respected.

The combined effect of article 9 of the Declaration of Human and Civic Rights and the principle that offences and penalties must be determined by the law in accordance with article 8 of the Declaration, the definition of a criminal offence must include not only the guilty conduct, the *actus reus*, but also the guilty mind, the *mens rea*, be it intended or not.

In the absence of any details of the guilty mind required for an offence contrary to section L 4-1 of the Road Traffic Code, the courts must apply the general provision of section 121-3 of the Criminal Code, whereby "there is no criminal conduct where there is no intention to commit an offence". Subject to this strict reservation, section 7 is compatible with the constitutional requirements recalled above.
(99-411 DC, 16 June 1999, paras 6, 16 and 17, p. 75)

Rules of Procedure of the assemblies

If the Delegation for the European Union observes that the Government has not lodged with the Bureau of the Senate an instrument which it believes should have been referred to the Senate, it so informs the President of the Senate, who requests the Government to refer the instrument to his assembly. This does not have the effect of placing the Government under an obligation to refer to the Senate drafts of or proposals for European Community or Union instruments which in its opinion do not contain measures reserved for the legislative branch or documents emanating from a European Union institution the referral of which to the parliamentary assemblies is at its sole discretion, pursuant to article 88-4 of the Constitution.
(99-413 DC, 24 June 1999, para. 2, p. 83)

Customary civil status

Section 10 provides: "A legitimate, natural or adopted child whose father or mother has customary civil status shall have customary civil status". This provision must be interpreted as also conferring customary civil status on a child whose filiation is established only in relation to one parent having that status. If the child's filiation was subsequently established in relation to the other parent, he would retain customary civil status only if that parent also had customary civil status. Subject to this reservation, section 10 cannot be held to be unconstitutional.
(99-410 DC, 15 March 1999, paras 12 and 13, p. 51)

Consultation on accession to full sovereignty (New Caledonia)

It is clear from point 5 of the Nouméa Agreement that, first, in the event of a negative answer to the first consultation, a second consultation must be organised in the second year following the first consultation, if requested by one third of the Members of congress, and that, second, in the event of a negative answer to the second consultation, a third consultation must be organised by the same procedure and within the same time-limit. Lastly, the meeting of the Committee of Signatories to the Nouméa Agreement to consider the situation engendered by the negative answers may be held only after three successive consultations.

In the event of a negative answer to the first consultation, the second paragraph of section 217 must be interpreted as imposing the organisation of a second consultation at the written request of one third of the Members of congress.
(99-410 DC, 15 March 1999, paras 50 and 51, p. 51)

EFFECTS OF DECISIONS OF THE CONSTITUTIONAL COUNCIL

Hypothesis that enforceability is not pleaded

Intervention of a revision of the Constitution

The effect of article 77 of the Constitution, inserted by the Constitutional Act of 20 July 1998 relating to New Caledonia, is that the Constitutional Council's review of the Institutional Act

provided for by that article must be based not only on the Constitution but also on the guidelines established by the Nouméa Agreement, which derogates from certain constitutional rules and principles.

Given this change in the legal situation, the Constitutional Council must review all the provisions of the Institutional Act, even if certain are drafted in the same terms or have the same legal effect as provisions earlier declared constitutional by the Constitutional Council or contained in Act 88-1028 of 9 November 1988 laying down statutory provisions in preparation for the self-determination of New Caledonia in 1998, adopted by the French people at a referendum.
(99-410 DC, 15 March 1999, paras 3 and 4, p. 51)

RIGHTS AND LIBERTIES

CIVIC RIGHTS

Equal voting rights

Election of Members of the congress of the territory of New Caledonia and the provincial assemblies

The combined effect of articles 188 and 189 of the Institutional Act is that, notwithstanding certain statements to the contrary in the Parliamentary debates, persons are to take part in the elections to the provincial assemblies and the congress who, at the date of the election, appear in the annexed table mentioned in section 189(I) and have been domiciled in New Caledonia for at least ten years, irrespective of the date of their settlement in New Caledonia, even if it was after 8 November 1998. This restricted definition of the electorate is the only one that can be compatible with the will of the authors of the Constitution, as revealed by the Parliamentary debates preceding the enactment of article 77 of the Constitution, and respects the Nouméa Agreement, whereby the electorate to the provincial assemblies and the congress includes voters who are "entered in the annexed table and meet the requirement of ten years domicile at the date of the election".
(99-410 DC, 15 March 1999, paras 3 and 30 to 34, p. 51)

Right of eligibility

On the date of final adoption of the institutional act relating to the ineligibility of the children's ombudsman, the Bill to establish the office of ombudsman and determining the regulations applicable to him, his powers and his functions was being deliberated in Parliament and still open to amendment. It was accordingly not possible for the legislature to come to an informed decision and deprive that authority of the right to stand for election enjoyed by all citizens under Article 6 of the Declaration of Human and Civic Rights.
(99-420 DC, 16 December 1999, para. 2, p. 134)

INDIVIDUAL FREEDOM TO BE SECURED BY THE JUDICIAL AUTHORITY

Lack of violation of individual freedom (article 66)

Reduction of the number of points on driving licences

The procedure introduced by section L 11-1 of the Road Traffic Code does not violate individual freedom within the meaning of article 66 of the Constitution.
(99-411 DC, 16 June 1999, para. 20, p. 75)

RIGHTS OF REDRESS

Procedure for reduction of the number of points on driving licences

Where a driver is accused of one of the offences specified in section L 11-1 of the Road Traffic Code, he is informed of the number of points he may lose. The loss of points, directly related to criminal or unlawful conduct in relation to the road traffic rules, can be ordered only after the driver has been found criminally liable following an assessment of the reality of the offence and his responsibility for it by the courts, on application from the accused person. Moreover, there is possibility of review by the administrative courts of the procedure for deduction of points. The right to redress is accordingly secured.
(99-411 DC, 16 June 1999, para. 21, p. 75)

Enforcement procedures

Article 16 of the Declaration of Human and Civic Rights provides: "A society in which human rights are not guaranteed nor the separation of powers secured lacks a constitution". It follows that there must be no substantial limitations on the right of interested parties to seek redress in the courts.

The legislature can make certain securities issued by public corporations and private-sector corporations responsible for public-service tasks enforceable, and thereby permit measures to be enforced, but it must ensure that the debtor has the right to effective redress regarding the eligibility of such securities and the obligation to pay that flows from the enforcement procedure. Where a third party can be implicated, he must also have an effective redress procedure.

For one thing, under the provisions criticised the measure of constraint imposed by the various bodies concerned after formal notice has been given and not followed up by action may be contested by the debtor in the social security tribunal. It is only after the time allowed for the objection procedure has elapsed that the measure of constraint has the effect of a judgment and that the creditor body can commence attachment proceedings. Moreover, if the measure of constraint is contested, the attachment order can be applied for only after an enforceable judgment recording the creditor body's rights has been given. This procedure safeguards the debtor's right to seek redress in the courts.

For another, notice of the attachment order is given both to the third party and to the debtor. The effect is to confer an immediate right on the creditor body to receive the sums to which it relates, but both the debtor and the third-party attached can contest it in the court having jurisdiction in matters of enforcement. Payment is deferred while proceedings are in progress and, in the event of court proceedings, until a final decision has been given, unless the court orders otherwise. At this stage of the procedure both the debtor and the third party attached are thus assured of respect of their right of effective redress.
(99-416 DC, 23 July 1999, paras 38 to 41, p. 100)

PRINCIPLES OF CRIMINAL LAW

Principle that offences and penalties must be defined by statute

Definition of offences and penalties

Specific definition of offences; requirement met

International Criminal Court

Article 22 of the Statute provides: "A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the

jurisdiction of the Court". The definition of a crime is subject to strict interpretation and cannot be extended by analogy. Article 25 defines the cases of personal criminal liability for which a person may be convicted. By article 30, "a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge". Articles 31 to 33 list the grounds for excluding criminal responsibility. The Statute accordingly determines with precision the scope of the offences and grounds for excluding liability and defines crimes, in terms both of their material elements and of their mental element, with such clarity and precision that offenders can be identified and arbitrary action excluded. These provisions comply with the principle that offences and penalties must be defined by statute defined by articles 7 and 8 of the Declaration of Human and Civic Rights.
(98-408 DC, 22 January 1999, para. 22, p. 29)

Content of the definition of an offence

It follows from article 9 of the Declaration of Human and Civic Rights that guilt of an offence cannot be attributed solely because of material responsibility for the punishable act. Consequently, the combined effect of article 9 of the Declaration of Human and Civic Rights and the principle that offences and penalties must be determined by the law in accordance with article 8 of the Declaration, the definition of a criminal offence must include not only the guilty conduct, the *actus reus*, but also the guilty mind, the *mens rea*, be it intended or not.

In the absence of any details of the guilty mind required for an offence contrary to section L 4-1 of the Road Traffic Code, the courts must apply the general provision of section 121-3 of the Criminal Code, whereby "there is no criminal conduct where there is no intention to commit an offence". Subject to this strict reservation, section 7 is compatible with the constitutional requirements recalled above.
(99-411 DC, 16 June 1999, paras 16 and 17, p. 75)

Need for penalties, and immediate application of the more lenient provision

Principle

International Criminal Court

Article 11(1) provides: "The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute". Article 24 lays down the principle of "non-retroactivity *ratione person*" and the principle that "the law more favourable to the person being investigated, prosecuted or convicted shall apply". This satisfies the principle that a more severe criminal statute cannot have retroactive effect implied by article 8 of the Declaration of Human and Civic Rights.
(98-408 DC, 22 January 1999, para. 23, p. 29)

Violation of the principle

The constitutionality of a statute already promulgated may be reviewed on the occasion of the review of legislative provisions amending or amplifying it or modifying its scope. Section 195(I)(5) of the Act referred to the Constitutional Council extends to elections for the congress and provincial assemblies of New Caledonia the scope of application of sections 192, 194 and 195 of the Act of 25 January 1985 relating to recovery and judicial winding-up of companies. It is accordingly for the Constitutional Council to verify that these provisions are constitutional.

By article 8 of the Declaration of Human and Civic Rights: "Only punishments that are strictly and evidently necessary shall be prescribed by law; and no one shall be punished except by virtue of a law passed and promulgated before the offence is committed, and legally applied."

The principle that penalties must be necessary implies that disqualification from public elective office may be applied only if the court has expressly ordered it, having regard to the circumstances of the specific case; the possibility for the court to release the offender from his

disqualification, at his request, if he has made a sufficient contribution to paying off his liability, does not in itself suffice to secure respect for the requirements imposed by the principle of necessity laid down by article 8 of the Declaration of Human and Civic Rights.

By providing for disqualification from public elective office for at least five years in respect of any natural person against whom a personal bankruptcy order, a prohibition pursuant to section 192 of the Act of 25 January 1985 or a judicial winding-up order has been made, without the court making the order having to order the disqualification expressly, section 194 of the Act violates the principle that penalties must be necessary. Section 195 of the Act, which refers to disqualification from public elective office, must also be declared unconstitutional as being inseverable from it. Section 195(I)(5) of the Institutional Act referred to the Constitutional Council must accordingly be regarded as contrary to the Constitution.
(99-410 DC, 15 March 1999, paras 36 to 43, p. 51)

Proportionality of penalties

Limited review by Constitutional Council

Provisions to strengthen the penalties for errors and omissions in invoices for the purposes of assessment to value added tax. The effect of these provisions is to allow the imposition of fines following action taken on the power to inspect which are adapted to the nature of the inspection conducted. The purpose of the power to inspect provided for by sections L. 80 F et seq. of the Code of Tax Procedures is to "detect breaches of the rules governing invoicing applicable to persons liable to value added tax...". It has neither the object nor the effect of establishing supplementary taxes. By setting the flat-rate amount of the fine at 100 francs per error or omission, subject to a maximum of one quarter of the amount of a given invoice, the legislature has not provided for a penalty that is manifestly disproportionate to the seriousness of the breaches established.
(99-424 DC, 29 December 1999, paras 57 and 59, p. 156)

The second paragraph of section L 21-2 of the Road Traffic Code provides that the effect of the section is not to make the holder of the vehicle's registration certificate criminally liable. Payment of the fine incurred, the maximum amount of which is that prescribed for corresponding offences, is not entered in the offender's criminal record, is not counted for purposes of repeat offence and does not give rise to deduction of points from the driving licence. Moreover, the personal enforcement rules are not applicable to such payment. The penalty imposable under section L 21-2 cannot therefore be regarded as manifestly disproportionate to the offence punished.

Under article 8 of the Declaration of Human and Civic Rights, it is for the Constitutional Council to verify whether the penalties prescribed for the offences defined are not vitiated by a manifest error of assessment.

The elements constituting the offence defined by the new section L 4-1 of the Road Traffic Code are distinct from the offence of putting other people in danger defined by section 223-1 of the Criminal Code, which is punishable by imprisonment for one year and a fine of 100 000 francs. As the legislation stands, the offence of exceeding the speed limit by 50 kph is an offence of only the fifth category and there are no rules as to repeat offences. By prescribing rules as to repeat offences in order to combat dangerous driving, and imposing a criminal penalty of three months' imprisonment and a fine of 25 000 francs, the legislature has set a maximum penalty that is below the penalty that could be imposed if the offence met the conditions of section 223-1 of the Criminal Code, thus taking into consideration the relative seriousness of the different offences. Even if the same conduct can be classified as different offences in relation to section 223-1 of the Criminal Code and section L 4-1 of the Road Traffic Code, the sentence cannot exceed the maximum provided for in respect of the offence of putting other people in danger.

It follows from the foregoing that the penalties provided for by section L 4-1 of the Road Traffic Code are not vitiated by being manifestly disproportionate. In the absence of a disproportion, it is not for the Constitutional Council to substitute its assessment for that of the legislature.

Under section L 11-2 of the Road Traffic Code, the points lost for an offence are half the initial number of points, whereas in the case of a minor criminal offence the proportion is no more

than one third. The conditions in which losses of points can be cumulative are specified by that section. Consequently, the loss of the number of points attributed to a driving licence is quantified on a variable basis depending on the seriousness of the offence. This penalty, applied either to a minor offence or to a major offence, including the major offence created by section L 4-1 of the Road Traffic Code, is not manifestly disproportionate to the offences to which it relates.
(99-411 DC, 16 June 1999, paras 8, 13 to 15, 22, p. 75)

Presumption of innocence

Principle that presumptions of guilt in criminal matters are prohibited

Article 9 of the Declaration of Human and Civic Rights provides: "As everyone is presumed innocent until declared guilty, force used in making an unavoidable arrest which exceeds that needed to secure his person shall be severely punished by law". It follows that the legislature cannot normally establish a presumption of guilt in criminal matters. Exceptionally, however, such presumptions may be established, notably in relation to minor offences, provided they are not irrebuttable, natural justice is preserved and the facts are such as to generate a probability of responsibility.

In the instant case, the holder of the registration certificate for a vehicle is required to pay a sum equivalent to the amount of the fine incurred for offences against the Road Traffic Code on the basis of a simple presumption which proceeds from a reasonable probability of responsibility for the offence. The legislature permits the accused to rebut the presumption of guilt by showing that there was *force majeure* or by furnishing adequate evidence that he was not the perpetrator of the offence. Constitutional.
(99-411 DC, 16 June 1999, paras 5 and 6, p. 75)

International Criminal Court

Article 66 affirms the presumption of innocence that is enjoyed by any person until his guilt has been proved to the satisfaction of the Court. It is for the prosecutor to prove that the accused person is guilty. Under article 67, the accused is assured that "[n]ot to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal". The requirements of article 9 of the Declaration of Human and Civic Rights are accordingly met.
(98-408 DC, 22 January 1999, para. 21, p. 29)

Natural justice in the criminal law

No violation of natural justice

International Criminal Court

Under article 59, a State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws. A person arrested shall be brought promptly before the competent judicial authority in the custodial State, in accordance with the law of that State, particularly regarding the regularity of the arrest and compliance with the individual's rights. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release. Respect for natural justice is thus secured from the initial procedure before the Court and during the trial. In particular, article 55 provides that the person may have legal assistance of the person's choosing or, if the person does not have legal assistance, to have legal assistance assigned to him or her when being questioned either by the Prosecutor, or by national authorities. The Pre-Trial Chamber of the Court has the sole power to issue warrants, and particularly arrest warrants. A person brought before the Court may apply for interim release pending judgment. Article 60 requires the Pre-Trial Chamber to periodically review its ruling on the release or detention of the person. It is to ensure that a person is not detained for an

unreasonable period prior to trial due to inexcusable delay by the Prosecutor. The Trial Chamber is required by article 64 to "ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses". Trials are to be in public, though the Trial Chamber may determine that special circumstances require that certain proceedings be in closed session. Sentencing is to be at a public hearing. The constitutional requirements relating to natural justice and to the existence of a fair procedure guaranteeing balance as between the rights of the parties are thus satisfied.
(98-408 DC, 22 January 1999, para. 25, p. 29)

Offences to the Road Traffic Code

The legislature permits the accused to rebut the presumption of guilt by showing that there was *force majeure* or by furnishing adequate evidence that he was not the perpetrator of the offence. He can, moreover, be ordered to pay a fine only by a court decision reflecting the facts of the case and his ability to pay. Assuming the registration-certificate holder can present his defence at every stage of the procedure, natural justice is accordingly respected.
(99-411 DC, 16 June 1999, para. 6, p. 75)

Personal nature of criminal liability

The effect of section L 21-2 of the Road Traffic Code, inserted by section 6 of the Act referred, is that in the absence of an event of *force majeure* such as theft of the vehicle, the refusal of the holder of the registration certificate to admit his own responsibility in the commission of an offence, if he is the perpetrator, or otherwise his refusal or inability to supply valid explanations would constitute a personal fault; this could be analysed as a refusal to help with the ascertainment of the truth or as a lack of proper care and attention in looking after the vehicle. The principle established by articles 8 and 9 of the Declaration of Human and Civic Rights that no one can be punished except for his own offences is accordingly respected.
(99-411 DC, 16 June 1999, para. 7, p. 75)

FREEDOM TO COME AND GO

Principle

The prevention of attacks on public order and the detection and the conviction of offenders are necessary for the preservation of constitutional principles and rights. It is for the legislature to reconcile these constitutional objectives and the exercise of public freedoms secured by the Constitution, which include individual freedom and freedom to come and go.
(99-411 DC, 16 June 1999, para. 2, p. 75)

No violation of freedom to come and go

Given its purpose, and subject to the guarantees surrounding its implementation, the procedure introduced by section L 11-1 of the Road Traffic Code does not violate the freedom to come and go.
(99-411 DC, 16 June 1999, para. 20, p. 75)

RESPECT FOR PRIVACY

Principle

The freedom declared by article 2 of the Declaration of Human and Civic Rights implies respect for private life.
(99-416 DC, 23 July 1999, para. 45, p. 100)

Health data

It is for the legislature to introduce a procedure that is conducive to safeguarding respect for privacy, where the transmission of health data from which individual persons can be identified is requested. By requiring authorisation from the National Commission for Data Processing and Freedom (C.N.I.L.) for the transmission of such data, the legislature, without violating article 11 of the Declaration of Human and Civic Rights, has in this case determined a procedure that secures respect for privacy.

(99-416 DC, 23 July 1999, para. 51, p. 100)

Individual electronic card (social security)

Section L 161-31(I) of the Social Security Code provides that the individual electronic card "must make it possible for the holder or his legal representative to express his agreement to revelation of data needed not only for the coordination of health care but also for health monitoring"; under section L 161-31(II), in the interest of patients' health, the card is to contain a health record in which only information useful for emergency care purposes and for the continuity and coordination of treatment will be recorded. By section L. 162-1-6(I) of the Code, this information can only be recorded on the card with the holder's consent or, in the case of a minor or a person under incapacity, of his legal representative. The persons empowered to give this consent may also "insist that access to part of the information contained in the health record be subordinate to a secret code that they have themselves generated". The holder has access to the contents of the health record via duly authorised medical personnel. He is entitled to have it rectified, to have certain items removed and to oppose disclosure of certain information when the card is modified. It will be for a decree in the *Conseil d'Etat*, after public and reasoned opinion has been issued by the National Council of the Order of Doctors and the National Commission for Data-Processing and Freedoms (C.N.I.L.), to determine the nature of the information entered in the health record, the procedures for identifying the medical professionals who entered the information and the conditions in which, depending on the types of information, medical professionals will be permitted to read, enter or delete data. The violation of rules allowing the disclosure of information in the medical record and of the rules relating to modification will be punishable in accordance with section L 162-1-6(VI) of the Social Security Code. The criminal penalties provided for by these provisions will apply without prejudice to section V of chapter VI of title II of Book Two of the Criminal Code entitled "Violations of personal rights by computer files or processes"). Lastly, the legislature has not derogated from section 21 of the Act of 6 January 1978 relating to the powers of supervision and review of the National Commission for Data-Processing and Freedoms (C.N.I.L.).

The set of guarantees regarding the implementation of section 36 of the Act referred, which include system security features, are such as to safeguard respect for private life.

(99-416 DC, 23 July 1999, paras 46 and 47, p. 100)

Civil Solidarity Pact

The new Section 515-3 of the Civil Code provides rules for the registration of Civil Solidarity Pacts which serve a dual purpose. First, they aim to ensure compliance with the rules of public order governing the law of persons, one of which is the prohibition of incest. Second, they put a definite date on the Civil Solidarity Pact so that it can be relied on in relation to third parties, whose rights must be safeguarded by the legislature. The purpose of registration is not to reveal the sexual orientation of the partners to the pact.

The conditions for processing, storing and disclosing the information relating to the Civil Solidarity Pact are to be determined by a decree in the *Conseil d'Etat* after the National Commission for Data-Processing and Freedoms (C.N.I.L.) has given its opinion. The guarantees given by the legislation relating to data-processing and freedom will thus be applicable. Subject to this reservation, the legislature has not violated the principle of respect for privacy.

(99-419 DC, 9 November 1999, paras 74 and 75, p. 116)

Professional secrecy

Provisions authorising officers of the customs administration to ask for full information regarding the amount, date and form of payments regarding income of whatever kind received by persons bound by professional secrecy, by virtue of section 226-13 of the Criminal Code, without being able to demand information on the nature of the services rendered.

It is clear from these provisions, interpreted in the light of the Parliamentary debates preceding their adoption, that the legislature intended to place tight limits on the information to be requested, which may relate neither to the identity of clients nor to the nature of the services rendered. Section 226-13 of the Criminal Code, expressly cited, would apply if a person holding information to which the section applies were to divulge it.

(99-424 DC, 29 December 1999, paras 38 and 40, p. 156)

Medical secrecy

The freedom declared by article 2 of the Declaration of Human and Civic Rights implies right to respect for privacy. This right requires special vigilance in the transmission of medical information on named persons between prescribing doctors and social security bodies. But it is for the legislature to reconcile the right to respect for privacy and the constitutional principle of financial equilibrium in social security schemes.

By the very terms of the provision criticised, the medical information conveyed by the doctor to sickness insurance bodies when certifying incapacity for work or ordering transport by ambulance is intended solely for the "medical inspection service". The medical advisers in that service are bound by section 104 of the Code of Medical Ethics to observe secrecy as regards all medical information in their possession which reveals names directly or indirectly, including in relation to bodies calling on their services. But arrangements are to be set up for the transmission of documents to the medical advisers so as to ensure that the information they contain remains strictly confidential. Given its purpose, which is to curb excessive expenditure that may in some cases be unjustified, the provision criticised does not violate the right to privacy contrary to article 2 de la Declaration of Human and Civic Rights.

(99-422 DC, 21 December 1999, paras 52 and 53, p. 143)

FREEDOM OF EXPRESSION AND INFORMATION

General

Use of a language other than French

The freedom proclaimed by article 11 of the Declaration of Human and Civic Rights of 1789, whereby "Free communication of ideas and opinions is one of the most precious human rights: citizens may therefore speak, write and print freely, though in cases determined by statute they may be made to answer for any abuse of this right" must be reconciled with the first paragraph of article 2 of the Constitution, whereby "The language of the Republic shall be French".

By virtue of these provisions, public-law corporations and private-law entities supplying a public service are obliged to use French; private individuals can claim no right, in their relations with government departments or public authorities, to use any language other than French, nor must they be compelled to do so; article 2 of the Constitution does not prohibit the use of translations; its application must not entail any neglect of the importance, in education, research and audiovisual communication, of the freedom of expression and communication.

(99-412 DC, 15 June 1999, paras 7 and 8, p. 71)

FREEDOM OF ENTERPRISE AND FREEDOM OF TRADE AND INDUSTRY

Freedom of contract

By providing that beneficiaries of the universal sickness insurance scheme who were previously affiliated to a supplementary social protection body are automatically entitled to cancel the benefit of their affiliation thereto if the body elects not to join the scheme set up by the Act, the legislature gave effect to the constitutional principle of equality before the law as between all beneficiaries of the universal sickness insurance scheme. As the legislature did not intend to exclude all forms of cover, it did not violate current contracts to an extent that would be so serious as to be contrary to the principles of articles 4 and 13 of the Declaration of Human and Civic Rights.

(99-416 DC, 23 July 1999, para. 27, p. 100)

FAMILY LAW

Conditions for the development of the family

The tenth paragraph of the Preamble to the 1946 Constitution provides: "The Nation shall provide the individual and the family with the conditions necessary to their development." The eleventh paragraph provides: "It shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure...".

It was legitimate for the legislature to introduce the Civil Solidarity Pact without reforming the legislation relating to the right of filiation or the legislation relating to the legal status of minors. The existing rules on filiation and the provisions to protect the rights of the child, which include those relating to the rights and duties of parents by way of parental authority, apply to children whose filiation is proved in relation to partners to a Civil Solidarity Pact or one only of them. In the event of litigation relating to parental authority, the family court retains its jurisdiction. The plea of violation of the tenth and eleventh paragraphs of the Preamble to the 1946 Constitution accordingly fails on the facts.

It was legitimate for the legislature, given its objective in regard to the situation of two persons living together and bound to each other by certain obligations and linked by a Civil Solidarity Pact, to allow such persons certain advantages without violating the principle of equality nor the need to protect the family as provided by the Preamble to the 1946 Constitution. The rules of the Civil Code protecting the rights of privileged heirs and successors, including descendants, remain applicable.

The plea that the tenth and eleventh paragraphs of the Preamble to the 1946 Constitution are violated must accordingly be rejected.

(99-419 DC, 9 November 1999, paras 77 and 78, 81 and 82, p. 116)

ADVERSARY NATURE OF CERTAIN PROCEDURES

Natural justice outside the criminal law

Procedure for reducing the number of points assigned to a driving licence

Where a driver is accused of one of the offences specified in section L 11-1 of the Road Traffic Code, he is informed of the number of points he may lose. The loss of points, directly related to criminal or unlawful conduct in relation to the road traffic rules, can be ordered only after the driver has been found criminally liable following an assessment of the reality of the offence and his responsibility for it by the courts, on application from the accused person. Moreover,

there is possibility of review by the administrative courts of the procedure for deduction of points. The right to redress is accordingly secured.
(99-411 DC, 16 June 1999, para. 21, p. 75)

Enforcement procedures

The redress procedures available to debtors and third-party holders under section 14 of the Act referred respect natural justice and the corollary principle of adversary proceedings at the various stages of the procedure.
(99-416 DC, 23 July 1999, para. 42, p. 100)

PROPERTY RIGHTS

No violation

Joint ownership (Civil Solidarity Pact)

Where property acquired for a consideration by partners to a Civil Solidarity Pact after the conclusion of the pact comes under a joint ownership scheme as provided by the new section 515-5 of the Civil Code, each partner, as party to an indivision, may at any time ask for a division of the property as, by section 815 of the Civil Code, none may be obliged to remain within the joint ownership scheme against his will. And by virtue of section 815-17 of the Code, the creditors who, prior to the joint ownership, could have had a claim on the undivided property, and those whose claim is the result of conservation or management of the property, may pursue their right to seize and sell it. By the same section, the personal creditors of a party to the indivision are entitled to cause the property to be divided on behalf of their debtor or to intervene in a division claimed by him.

Subject to this interpretation, there is no violation to the property rights of the partners to the pact or of their creditors. In any event, if the partners wish to avoid the legal effects of the joint property scheme and in particular the difficulties of management that can flow from it, they will be free to opt to place under a different scheme all the property that they acquire for a consideration after the conclusion of the pact, on the terms mentioned above.
(99-419 DC, 9 November 1999, paras 87 and 88, p. 116)

Continuation of lease (Civil Solidarity Pact)

It was legitimate for the legislature, without affecting the lessor's rights in such manner as to violate his property rights, to extend for the benefit of a person bound to the lessee by a Civil Solidarity Pact the continuation of the lease where the lessee abandons his home and of the transfer of the lease in the event of his death. Moreover, the continuation and transfer are provided for by sections 14 and 15 of the Act of 6 July 1989 for the benefit of the spouse or the cohabiting partner. Under section 14 of the Act referred, the partner bound to the lessor by a Civil Solidarity Pact enjoys the same treatment as the spouse or cohabiting partner as regards notice to quit served by the lessor on the lessee. Constitutional.
(99-419 DC, 9 November 1999, para. 89, p. 116)

Russian loans

In the specific circumstances of the case, given that the loss was sustained a considerable time ago, that the sum set aside to compensate for it is finite, that this sum is disproportionate to the amount of the loss sustained, that it is consequently impossible to allow compensation in strict proportion to the amount of the claims without rendering nugatory the compensation due to holders of purely modest portfolios, and that simplicity in the implementing the compensation rules and speed in settling the relevant sums are essential, the rules laid down by the provision criticised here for the compensation of claims to which the agreements entered into on 26 November 1996 and 27 May 1997 by the French Republic and the Russian Federation

apply, which are in conformity with the objective of solidarity set by the legislature, violate neither the principle of public burden-sharing nor the property rights of the claimants.
(99-425 DC, 29 December 1999, para. 23, p. 168)

FREEDOM DECLARED BY ARTICLE 4 OF THE DECLARATION OF HUMAN AND CIVIC RIGHTS

Unilateral termination of contracts

A contract constitutes the law applicable between the parties, but the freedom declared by article 4 Declaration of Human and Civic Rights of 1789 warrants the possibility of unilateral termination by one or other party of a contract at private law of indeterminate duration, provided the other party is properly informed and compensated for any loss sustained by reason of the circumstances of the termination. Given the need to ensure that one of the parties to certain contracts is protected, the legislature must specify the grounds on which termination is allowed and the conditions to be met upon termination, notably the giving of notice.
(99-419 DC, 9 November 1999, para. 61, p. 116)

FREEDOM OF MARRIAGE

Termination of civil Solidarity Pact

A unilateral termination of a Civil Solidarity Pact, assuming there is no marriage, takes effect three months after the completion of the formalities imposed by the legislature. The fact that a pact expires on the date of marriage of one of the partners gives effect to the constitutional principle of freedom of marriage.

The fact that a pact expires immediately on the marriage of one of the partners satisfies the need to respect the constitutional requirement of freedom of marriage.
(99-419 DC, 9 November 1999, paras 62 and 69, p. 116)

PRINCIPLE OF EQUALITY

EQUALITY BEFORE THE LAW

Respect for principle of equality: absence of discrimination

Social law

Sickness insurance

The principle does not require the legislature, when endeavouring as in this case to narrow the differences in treatment as regards social protection, to remedy all existing differences at the same time. The difference in treatment criticised by the applicants between new beneficiaries of the universal sickness cover and persons who, being already affiliated to a sickness insurance scheme, earn the same income and are obliged to pay contributions, is inherent in the manner in which sickness insurance has gradually evolved in France and the diversity of schemes that

has resulted, which the Act referred leaves untouched. Objection that the principle of equality is violated rejected.
(99-416 DC, 23 July 1999, para. 9, p. 100)

Universal sickness cover

Under section 20 of the Act referred, the terms for compensation for expenditure incurred by way of supplementary protection for beneficiaries of the universal sickness cover are not the same, depending whether the beneficiary opts for a sickness insurance body or a supplementary social protection body. But the resultant differences of treatment between such bodies are the consequence of their different situations in relation to the Act. Sickness insurance bodies are required, since they exercise a public-service function and act on behalf of the State, to cover the supplementary protection of beneficiaries of the universal sickness cover who so request. Supplementary social protection bodies, on the other hand, are entitled quite simply to join or leave the arrangement. The difference of treatment criticised here is thus in direct relation to the purpose of the Act, which is to guarantee access to supplementary health care protection for persons with the lowest resources.

The legislative provision that sickness insurance bodies are made responsible for examining all requests for admission to universal sickness cover also serves this purpose given the simplification of procedures which it engenders. Objection that the principle of equality is violated rejected.
(99-416 DC, 23 July 1999, paras 14 to 16, p. 100)

Regulation of medical expenditure

The system for the regulation of expenditure on treatment in town established by the contested provision merely empowers the *Caisse nationale de l'assurance maladie des travailleurs salariés*, where no agreement with health care professionals has been possible, to vary the rates applicable to them if in the course of the year the trend of expenditure does not appear compatible with compliance with the annual expenditure target. Such changes in rates, which incidentally are by no means automatic and do not prompt repayments, are not contrary to the constitutional principle of equality since their purpose is to be applied to health care professionals concerned by the excessive rise in expenditure and the lower rates will apply solely for the future. This manner of regulating expenditure is based on rational and objective criteria in relation to the objectives of the statute, which is to secure compliance with the annual sickness insurance expenditure target. The argument that the principle of equality is violated must be dismissed.
(99-422 DC, 21 December 1999, para. 47, p. 143)

Law of contract

It was legitimate for the legislature to take into account the general interest in prohibiting incest to prohibit and declare absolutely void the conclusion of a Civil Solidarity Pact between persons already related by blood or marriage within the degrees specified in the new section 515-2(1) of the Civil Code, and neither the principle of equality nor the freedom declared by article 4 of the Declaration of Human and Civic Rights of 1789 was thereby violated. It was also legitimate, and no violation of the principle of equality, not to authorise emancipated minors and adults placed under guardianship to conclude a pact.
(99-419 DC, 9 November 1999, para. 55, p. 116)

Taxation

Application of identical rules to taxpayers in similar situations

The special tax contested here, charged on turnover in 1999 of pharmaceutical laboratories and payable on 1 September 2000, is not a validation measure. It was legitimate for the legislature to introduce this special tax as a means of remedying the financial impact on the balance of the sickness insurance accounts of the decision by the *Conseil d'Etat* of 15 October

1999 annulling certain provisions of the ordinance of 24 January 1996 on urgent measures to restore the finances of the social security scheme. The introduction of the new tax does not violate the principle of equality or indeed any other constitutional principle or rule.
(99-422 DC, 21 December 1999, para. 57, p. 143)

Miscellaneous applications

Equality of pupils and the public education service

The effect of section L 813-2 of the Rural Code is to exclude the classes that prepare for entry to the higher institutes of agriculture from the specific contractual scheme for private schools of agriculture provided for by sections L 813-8 and L 813-9 and thus to disqualify them from state aids to the scheme. Public agricultural training schemes, by virtue of section L 811-2, can extend "up to higher education inclusive".

The principle of equality requires that pupils in private and public educational establishments alike should enjoy equal access to the training available in the public education service and to the various examinations. But it does not require that all training schemes available in the public educational establishments should also be available with state support in private establishments.

The provision criticised does not in fact preclude the possibility of students from private agricultural schools applying on the same terms as students in public establishments for admission to classes that prepare for entry to the higher institutes of agriculture, as the current regulations provide. Moreover, these preparatory classes exist in private general education establishments and enjoy state support on the basis of the Act of 31 December 1959. Objection rejected.
(99-414 DC, 8 July 1999, paras 3 and 6 to 9, p. 92).

Compliance with principle of equality: different treatment in different situations

Taxation

Contribution to finance the "Universal Sickness Insurance Additional Cover Fund"

It is for the legislature, when creating a tax, to determine the basis of assessment and the rate subject to compliance with constitutional principles and rules. In particular, for the sake of compliance with the principle of equality, it must base its assessment on objective and rational criteria reflecting the avowed purpose of the statute.

By requiring supplementary social protection bodies to pay a levy on their healthcare turnover, the legislature was requiring them to contribute to the cost of universal sickness cover. It applied objective and rational criteria for the purpose. By defining as it did the basis of assessment and setting the rate at 1.75 %, the legislature did not seriously violate equality of public burden-sharing. It was legitimate for it to exempt sickness insurance bodies in view of their position within the social protection system, the public-service functions they exercise and the specific constraints that result for them.
(99-416 DC, 23 July 1999, paras 21 and 22, p. 100)

Tax position of persons bound by a PACS

The legislature's intention was to confer special rights on persons who cannot or prefer not to marry but wish to bind themselves to each other by a pact. Unlike persons simply cohabiting, the partners to a pact are subject to certain obligations. In particular, they have an obligation of "mutual and material assistance". This difference of situation justifies the contested difference in treatment between persons cohabiting and persons bound by a Civil Solidarity Pact in the light of the purpose of the statute.

It was legitimate for the legislature to provide for more favourable tax treatment than the scheme for gifts and successions between unrelated persons in favour of persons bound by a pact and owing each other an obligation of mutual and material assistance.
(99-419 DC, 9 November 1999, paras 43 and 51, p. 116)

Taxation of allowances on cessation of functions

Provision relating to income tax on allowances paid to employed persons when the employment contract is terminated and to company directors and managers when their functions cease.

The distinction between employed persons, for whom the exempt portion of the allowance is between a minimum threshold and a maximum amount, and managers and directors, to whom the same maximum amount applies, is justified by the difference in their situation as regards the rules applicable to the cessation of their functions.
(99-424 DC, 29 December 1999, paras 18, 19 and 22, p. 156)

Law governing the public service

Rules concerning signatories to a Civil Solidarity Pact

The obligations incumbent on signatories to a Civil Solidarity Pact put them in a different situation from persons living alone or cohabiting in terms of the rules for assignment and transfer in the public service. It was accordingly legitimate for the legislature, and no violation of the principle of equality, to give them the priority for reassignment enjoyed by married civil servants wishing to work and live in the same place as their spouse.
(99-419 DC, 9 November 1999, para. 57, p. 116)

EQUALITY OF VOTING RIGHTS

Political elections

Election of regional councillors

Division of electoral lists for regional elections by sex

A provision of the Electoral Code (Amendment) Act provides that for regional elections each list must ensure that there are equal numbers of male and female candidates.

Under the present circumstances, and for the reasons given in the decision of 18 November 1982, is that citizenship confers the right to vote and stand for election on identical terms on all those who have not been excluded on grounds of age, incapacity or nationality or for reasons related to the concern to preserve the voters' freedom or the successful candidate's independence, and no distinction may be made between voters or candidates on the basis of their sex. The provisions contested were accordingly declared unconstitutional.
(98-407 DC, 14 January 1999, paras 10 to 12, p. 21; cf. 82-146 DC, 18 November 1982, Rec. p. 66).

EQUALITY OF PUBLIC BURDEN-SHARING

Principle

It is for the legislature to determine, in compliance with constitutional principles and in the light of the features of each form of tax, rules for assessing taxpayers' ability to pay. But the assessment may not involve any serious violation of the principle of equality of public burden-sharing.
(99-419 DC, 9 November 1999, para. 44, p. 116)

Equality before the tax law

Tax schemes

Basis of assessment

Provisions merging the various capital gains tax schemes and social schemes applicable to individuals in the management of their private assets. Tax is payable where the annual amount of disposals exceeds a limit set at 50 000 francs per taxable household.

The income of a taxable household is normally taxed under the progressive scales of income tax, whereas the provision criticised here provides for taxation of the product of capital disposals at a flat rate. The threshold for disposals is set in the light of a simplification objective, releasing taxpayers who have engaged in only minor operations from the obligation to declare them. By not making the threshold depend on the taxpayer's family situation, the legislature has not violated the principle of equality before the tax law.
(99-424 DC, 29 December 1999, paras 42 and 45, p. 156)

Tax reliefs

The potential benefit of being taxed jointly rather than separately as if they were in the same situation as persons living alone, enjoyed by partners to a Civil Solidarity Pact, would, if excessive, constitute a violation of article 13 of the Declaration of Human and Civic Rights, especially as the fact of living together makes it possible to make savings on the same income. But the potential tax reduction given by the allocation of two shares for the purposes of the family quotient reaches its maximum value only if the own income of one of the couple is low or zero; the benefit of the tax relief enjoyed by the other is then justified in terms of article 13 of the Declaration of Human and Civic Rights by the presence in his home of a dependent person. In the other cases, the combined application of the family quotient and the other income-tax computation rules does not confer on the partners to a pact such an advantage in relation to a situation in which they were taxed separately as to entail a serious violation of equality of public burden-sharing. Moreover, this advantage disappears where the own income of each of the two partners is low or equivalent. It follows that section 4 does not entail a serious violation of equality as between partners to a Civil Solidarity Pact and persons living alone.
(99-419 DC, 9 November 1999, para. 45, p. 116)

Tax credits

Provision increasing the flat-rate amount for costs and expenses not deductible by holding companies in the context of the holding company/subsidiary relationship. The tax credit constitutes additional income for the holding company. Assuming there is no difference in yield, there is no difference in treatment under the provision criticised in favour of holding companies with shares in companies formed under a foreign legal system where the equivalent of the tax credit scheme is not known.
(99-424 DC, 29 December 1999, paras 24 to 26, p. 156)

Threshold for exemption

It was legitimate for the legislature to provide for the taxation of sums paid by way of indemnity on the cessation of functions, provided individuals' ability to pay is properly taken into account. The exempt portion may not be lower than the amount determined by the collective agreement or by statute, than half the redundancy payments or than twice the annual gross remuneration received during the calendar year preceding the dismissal. But it may be higher than half of the first tranche of the solidarity tax on wealth.

By setting the principle of a maximum rate of exemption taking the form of relief on the basis of assessment, and determining the level of the maximum, the provision criticised does not constitute a serious breach of equality of public burden-sharing.
(99-424 DC, 29 December 1999, paras 18 to 21, p. 156)

Failure to have regard to duration of installation

Provision empowering communes to introduce a tax payable by any person exercising a seasonal business activity on a self-employed basis in their territory.

The tax is due for the tax year from the date of first establishment. It is at a uniform rate of no less than 50 francs nor more 800 francs than per square metre.

By failing to take account of the duration of the establishment in the commune as regards non-sedentary activities, the legislature has violated the principle of equality of public burden-sharing.

(99-424 DC, 29 December 1999, paras 46, 48 and 49, p. 156)

Fight against tax fraud

It is for the legislature to reconcile the constitutional objective of fighting tax fraud, which flows of necessity from article 13 of the Declaration of Human and Civic Rights, with the principle declared by article 8, which provides: "Only punishments that are strictly and evidently necessary shall be prescribed; and no one shall be punished except by virtue of a law passed and promulgated before the offence is committed, and legally applied."

(99-424 DC, 29 December 1999, para. 52, p. 156)

Social contributions on various categories of income

Social contribution on certain corporate income tax payers

Section 6 provides that corporate income tax payers whose turnover is 50 million francs are more are to pay a social contribution of 3.3 % of that tax.

The terms for imposition of the contribution and its rate do not seriously breach equality of public burden-sharing between the taxable firms.

(99-422 DC, 21 December 1999, paras 11 and 13, p. 143)

Equality of public burden-sharing outside the tax law

Security holders

Russian loans

The rules contested here, relating to compensation for the claims to the agreements entered into on 26 November 1996 and 27 May 1997 by the French Republic and the Russian Federation apply provide for the payment of a flat-rate sum to each holder eligible for compensation, plus an amount in proportion to the total value of his portfolio, subject to a maximum amount. The maximum is set at 150 000 Gold francs at the 1914 value. It is clear from the very wording of the provisions criticised that the purpose of these rules is not to reimburse the securities but to give "compensation in solidarity" to their holders for the purposes of applying those agreements.

In the specific circumstances of the case, given that the loss was sustained a considerable time ago, that the sum set aside to compensate for it is finite, that this sum is disproportionate to the amount of the loss sustained, that it is consequently impossible to allow compensation in strict proportion to the amount of the claims without rendering nugatory the compensation due to holders of purely modest portfolios, and that simplicity in the implementing the compensation rules and speed in settling the relevant sums are essential, the rules violate neither the principle of public burden-sharing nor the property rights of the claimants.

(99-425 DC, 29 December 1999, paras 22 and 23, p. 168)

Social law

Supplementary social protection bodies — Universal Sickness Cover

The new section 6-1, inserted in the Act of 31 December 1989 by section 23 of the Act referred, provides that at the end of his period of entitlement to benefits any person who has benefited from the universal sickness cover shall receive from the body providing it "a proposal for renewal of his affiliation or his contract for one year, with eligibility for the same benefits and for a charge not exceeding an amount to be set by Order". Provided the order does not set a maximum amount such as to involve a serious violation of equality of public burden-sharing, these provisions are not contrary to article 13 of the Declaration of Human and Civic Rights.

By providing that beneficiaries of the universal sickness insurance scheme who were previously affiliated to a supplementary social protection body are automatically entitled to cancel the benefit of their affiliation thereto if the body elects not to join the scheme set up by the Act, the legislature gave effect to the constitutional principle of equality before the law as between all beneficiaries of the universal sickness insurance scheme. As the legislature did not intend to exclude all forms of cover, it did not violate current contracts to an extent that would be so serious as to be contrary to the principles of articles 4 and 13 of the Declaration of Human and Civic Rights.
(99-416 DC, 23 July 1999, paras 26 and 27, p. 100)

ELECTIONS

ELECTORATE, ELIGIBILITY, PRE-ELECTORAL PROCESS

Electorate

Eligibility

Senate electoral college

Section LO 274 of the Electoral Code, which provides: "Three hundred and four senators shall be elected in the departments", does not preclude the legislative provisions relating to Senate electoral rules from organising the membership of delegates from territorial units other than those elected in the department in the Senate electoral college.
(98-407 DC, 14 January 1999, para. 15, p. 21; comp. 91-290 DC, 9 May 1991, paras 28 and 29, Rec. p. 58)

CAMPAIGN ADVERTISING

Advertising methods

Press

Political statements by a newspaper

Press organs are free to publish the articles they wish and are entitled to report freely on an election campaign. The applicant submits that two articles published by a daily newspaper on the day of the first ballot could have influenced voters against a candidate standing at the first

ballot, but the investigation has not revealed that these articles, the content of which did not exceed normal election polemics, were able to affect the fairness of the outcome.

(99-2571/2572/2573, 9 March 1999, AN, Alpes-Maritimes, Constituency 2, para. 2, p. 46)

Radio and television

The fact that a television news programme on the day but one before the first ballot broadcast a report that presented only some of the candidates, however open to criticism, was not in the circumstances such as to affect the outcome, given the number of votes lacking for the candidate to stand at the second ballot and the other means available to him for presenting his candidature.

(95-2575, 24 June 1999, AN, Bouches-du-Rhône, Constituency 9, para. 1, p. 81)

ELECTORAL OPERATIONS

Proceedings during the ballot

Checks on voters' identities

Documents used

An order dated 24 September 1998, in the form in force on the date of the election, required identity papers to be "valid" if they were to be presented.

At polling stations in the commune of Aubagne, voters were allowed to vote at the first and second ballots on presentation of expired national identity cards. In the circumstances, given among other things that many voters had not been able to obtain a new card to replace their expired identity card after the date of publication of the order, this irregularity, which is neither proved nor even alleged to be related to any kind of manœuvre or fraud, had no effect on the validity and fairness of the ballot.

(95-2575, 24 June 1999, AN, Bouches-du-Rhône, Constituency 9, paras 2 and 3, p. 81)

Registers

Signatures

Examination of the attendance sheets and returns, the records of the polling stations in the commune of Aubagne, where certain figures were falsified, always to the detriment of the applicant, the registers of signatures and all the documents in the file for the case, and in particular of the testimony of 35 enrolled voters, who did not vote although their signatures appear on the register of signatures, and of assessors and polling officers who certify that they do not recognise their signature on the election returns, reveals that there was organised fraud which affected the results for polling stations 10, 17 and 26. The fact, pleaded in defence of the successful candidate, that irregularities were also observed in certain polling stations in other communes is merely a further reason for doubting the fairness of the ballot and can in no case be taken to justify this violation of the very principle of democracy that is constituted by the fraud already observed.

(98-2562/2568, 3 February 1999, AN, Bouches-du-Rhône, Constituency 9, para. 2, p. 43)

LITIGATION

Submissions and arguments

Arguments

Inoperative arguments

Even if they were true, neither the reference made in the election campaign to the death of the former Mayor of Nice, nor the allegedly fruitless attempt to cancel a ballot paper cast for the applicant would have affected the fairness of the ballot. Moreover, the applicant cannot validly plead the low turnout at the ballot as a ground for contesting it.
(99-2571/2572/2573, 9 March 1999, AN, Alpes-Maritimes, Constituency 2, paras 6 and 7, p. 46)

Assessment of facts by Constitutional Council

Irregularities warranting rectification

Annulment of election

Impossibility of rectifying the result of the ballot

Despite the seriousness of the fraudulent manœuvres that vitiated the ballot, the impossibility of determining the exact number of votes to be allocated to each of the two candidates standing at the second ballot precludes the court from accepting the applicant's submission that it should declare him elected after correction of the results. The Constitutional Council has no option but to annul the election.
(98-2562/2568, 3 February 1999, AN, Bouches-du-Rhône, Constituency 9, para. 3, p. 43)

CAMPAIGN ACCOUNTS

Depositing

Time allowed for depositing

Ineligibility

A candidate whose campaign accounts were not received at the prefecture within the mandatory time-limit set by the second paragraph of section L 52-12 of the Electoral Code is ineligible for one year running from the date of the Constitutional Council's decision.
(99-2574, 9 March 1999, AN, Alpes-Maritimes, Constituency 2, p. 49; 99-2577, 8 July 1999, AN, Bouches-du-Rhône, Constituency 9, p. 90)

No declaration of ineligibility

On 28 May 1999 at 2.400 hours, when the time-limit set by section L 52-12 of the Electoral Code expired, the prefecture of Bouches-du-Rhône had not received Mr M's campaign accounts, but the investigation reveals that he deposited them by registered letter at the post office of Montpellier-Pompignane on 27 May 1999. Given the time taken for post to be delivered and the distance from the place where he posted his campaign accounts and the prefecture of Bouches-du-Rhône, Mr M's campaign accounts must be regarded as having been

posted in good time for registration before the expiry of the time-limit set by the second paragraph of section L 52-12 of the Electoral Code, even though they were actually registered at the prefecture of Bouches-du-Rhône only on Tuesday 1 June 1999.
(99-2576, 8 July 1999, AN, Bouches-du-Rhône, Constituency 9, para. 2, p. 88)

Unsuccessful candidate

Unsuccessful candidate lacks status to contest the accounts of another unsuccessful candidate

Section LO 186-1 of the Electoral Code empowers the Constitutional Council, without prior intervention by the National Campaign Accounts and Political Financing Committee, to draw the consequences of a situation where the investigation reveals that a candidate is one to whom the second paragraph of Section LO 128 applies, in cases where electoral operations in the constituency have been contested before it in proper form, but an unsuccessful candidate has no status to bring an action before the Constitutional Council contesting the campaign accounts of another unsuccessful candidate.
(98-2562/2568, 3 February 1999, AN, Bouches-du-Rhône, Constituency 9, para. 4, p. 43)

PUBLIC AND SOCIAL FINANCE

INITIATIVE IN FINANCE MATTERS

Assessment of financial impact

Direct financial impact

Management charges

The potential increase in expenditure generated for the relevant public services by management functions flowing from the Civil Solidarity Pact Bill was neither direct nor certain. It was therefore right and proper for the Bill not to be declared inadmissible by reason of its impact on the public finances.

The Act was not adopted contrary to article 40 of the Constitution.
(99-419 DC, 9 November 1999, paras 18 and 19, p. 116)

Compensation for increased burdens or diminished resources

Possibility of compensation for a diminution of resources by a new resource

When the question of the admissibility of the Civil Solidarity Pact Bill was examined, the resource appearing in clause 12 could be regarded as real compensation for the diminution of public resources flowing from joint assessment to income tax and the changes in the duties payable on transfers free of charge, provided for by clauses 2 and 3 of the Bill in favour of persons who conclude a Civil Solidarity Pact. This increase was immediate and for the benefit of the State, in the same way as income tax, the yield of which was reduced.

Clause 12 relating to compensation for the diminution of resources, was deleted by way of government amendment at first reading in the National Assembly.

The objection that the Bill should have been declared inadmissible by reason of its impact on public resources must be rejected.

(99-419 DC, 9 November 1999, paras 14 to 16, p. 116)

Procedure for applying article 40 of the Constitution

The bureau of the Finance, General Economy and Planning Committee, on an enquiry from a deputy pursuant to rule 92 of the Rules of Procedure of the National Assembly, stated on 28 October 1998 that article 40 of the Constitution did not preclude the Civil Solidarity Pact Bill. The question of the admissibility of the Bill having thus been raised, the objection must be entertained.

(99-419 DC, 9 November 1999, para. 12, p. 116)

DIRECT AND INDIRECT TAXES

Direct taxes

Allocation of the proceeds of a tax to a public or private industrial and commercial establishment or to a private person entrusted with public-service tasks

Provision abolishing the allocation to the National Book Fund of royalties on publication of books for sale and on the use of reproduction techniques, which will now be directly allocated to the National Book Centre. The allocation of tax proceeds to a public establishment is contrary to no constitutional rule or principle.

(99-424 DC, 29 December 1999, paras 33 and 34, p. 156)

Need for taxation

Provision introducing a contribution of 5 % on the allocation to a television service of rights to broadcast events or sports competitions, and allocating its product to a special account entitled "National Sports Development Fund".

The section criticised does not modify the rules governing support from the National Sports Development Fund. The need for the contribution flows from the general-interest status of the Fund's tasks. The criteria for determining who is taxable are objective and rational. The argument that the principle that taxes must be necessary is violated can only be dismissed.

(99-424 DC, 29 December 1999, paras 35 and 37, p. 156)

Tax inspections — procedure

Section L. 80 C of the Code of Tax Procedures provides: "Where an officer of the tax administration of a foreign country takes any action in relation to a taxpayer in French territory, any demand for back-payment of taxes and any proceedings based on it shall be null and void." The effect of the repeal of this provision was not to permit foreign tax inspectors to conduct their inspections in France. The combined effect of sections L 10 and L 45 of the Code of Tax Procedures is that French tax inspectors alone are empowered to inspect taxes due from taxpayers.

(99-424 DC, 29 December 1999, paras 61 and 63, p. 156)

Respect for economic and financial balance, new expenditure in the course of the financial year

New expenditure

Section 7 of the Act referred, inserted by way of government amendment, extends without time-limit the status of person entitled under sickness insurance affiliates to persons bound to an affiliate by a Civil Solidarity Pact and thus directly creates new public financial burdens.

These burdens are not for central government to bear and are accordingly not within the provisions of section 1 of the Ordinance of 2 January 1959 laying down the Institutional Act relating to Finance Acts.
(99-419 DC, 9 November 1999, paras 20 and 21, p. 116)

Revenue determined by the Finance (Rectification) Act for the preceding year

The authors of the referral contest the evaluation of the central government's tax revenue for 2000, arguing that it does not take account of "the highly dynamic trend of receipts in 1999 and of the actual economic growth rate for 1999". They plead in support the review of the yield of corporate income tax for the current year, undertaken at the Government's initiative at the time of the debate on the Finance (Rectification) Act for 1999.

The information supplied to the Constitutional Council does not reveal that the estimates of revenue for 2000 entered in the balancing item were manifestly erroneous, in the light of the scale of the alleged under-estimation in relation to the aggregate volume of the budget. Given the rules for charging corporate income tax, the increase entered in the Finance (Rectification) Act for 1999 did not of necessity entail an adjustment to the evaluation of the yield of that tax for 2000 recorded in estimate A annexed to section 67 of the Act referred. If the yield of that tax substantially exceeded forecasts in 2000, it would be for the Government to present the two assemblies, as it has undertaken to do, with a Finance (Rectification) Bill.
(99-424 DC, 29 December 1999, paras 3 and 4, p. 156)

Disruption of the forecast economic and financial equilibrium

The information supplied to the Constitutional Council does not reveal that the estimates of revenue for 2000 entered in the balancing item were manifestly erroneous, in the light of the scale of the alleged under-estimation in relation to the aggregate volume of the budget. If the yield of that tax substantially exceeded forecasts in 2000, it would be for the Government to present the two assemblies, as it has undertaken to do, with a Finance (Rectification) Bill.
(99-424 DC, 29 December 1999, para. 4, p. 156)

Exercise of budgetary control

Audit of public finances

General and explanatory annexes

The combined provisions of the fifth paragraph of section 1, section 32 and the second and fourth paragraphs of section 43 of ordinance n° 59-2 of 2 January 1959 laying down the institutional act relating to finance acts does not necessarily require a full table of posts financed from central government budget to be given in the finance act, but when Parliament debates and determines the appropriations for the various government departments it must be given detailed information on the total established and non-established staff employed on permanent posts by the central government and the appropriations available for their remuneration. The authority empowered to make regulations as regards the creation, aboli-

tion and conversion of such posts is bound by the information given in the explanatory annexes, given that Parliament votes the corresponding appropriations.
(99-424 DC, 29 December 1999, paras 6 and 7, p. 156)

Evaluation of tax and non-tax revenue of central government

No distortion of broad lines of budgetary balance

The authors of the referral contest the evaluation of the central government's tax revenue for 2000, arguing that it does not take account of "the highly dynamic trend of receipts in 1999 and of the actual economic growth rate for 1999". They plead in support the review of the yield of corporate income tax for the current year, undertaken at the Government's initiative at the time of the debate on the Finance (Rectification) Act for 1999.

The information supplied to the Constitutional Council does not reveal that the estimates of revenue for 2000 entered in the balancing item were manifestly erroneous, in the light of the scale of the alleged under-estimation in relation to the aggregate volume of the budget. Given the rules for charging corporate income tax, the increase entered in the Finance (Rectification) Act for 1999 did not of necessity entail an adjustment to the evaluation of the yield of that tax for 2000 record in estimate A annexed to section 67 of the Act referred. If the yield of that tax substantially exceeded forecasts in 2000, it would be for the Government to present the two assemblies, as it has undertaken to do, with a Finance (Rectification) Bill.
(99-424 DC, 29 December 1999, paras 3 and 4, p. 156)

Universality of budget

Allocation of the proceeds of a tax to a public or private industrial and commercial establishment or to a private person entrusted with public-service tasks

Provision abolishing the allocation to the National Book Fund of royalties on publication of books for sale and on the use of reproduction techniques, which will now be directly allocated to the National Book Centre. The allocation of tax proceeds to a public establishment is contrary to no constitutional rule or principle.
(99-424 DC, 29 December 1999, paras 33 and 34, p. 156)

Revenue not recorded in budget

It is objected that the Finance Act does not fully retrace two taxes — the overtime tax and the social contribution on company profits, allocated by the Finance (Social Security) Act to the Fund for financing the reform of the employers' social security contributions.

These contributions are allocated to a public establishment. That establishment's expenditure is not of a kind that is by its nature a matter for central government. It is not, therefore, necessary for the contributions to be provided for by a finance act, as is clear from the first paragraph of section 1 of ordinance n° 59-2 of 2 January 1959 on finance acts, which provides that finance acts are to determine the nature, amount and allocation of central government resources. By the second paragraph of section 31 of that ordinance, the legislature alone, in the first part of the finance act, has power to give a general authorisation to levy taxes allocated to public authorities and establishments. It follows that, notwithstanding the drawbacks inherent in any debudgetisation in terms of auditing the public finances, the principles of unity and universality of the budget have not been violated.
(99-424 DC, 29 December 1999, paras 11 and 12, p. 156)

Content and presentation of Finance Acts

Provisions that may be not made in a Finance Act

Participation of representatives of Parliament in decisions to commit expenditure (new)

Since the provisions whereby: "In order to preserve parliamentary control, all projects, regardless of their amount, that are financed in the priority solidarity area from appropriations

entered in the budget for the Ministry of Foreign Affairs and are within the remit of the Aid and Cooperation Fund on 31 December 1999 may be implemented by that Ministry only upon the prior agreement of the Steering Committee of the Fund or of such body as may be substituted for it, in which members of each assembly shall sit" relates exclusively to a decision-making procedure that belongs properly to the executive, they are not among those which, by reason of section 1 of ordinance n° 59-2 of 2 January 1959, may be enacted in a finance act.

(99-424 DC, 29 December 1999, para. 64, p. 156)

Provisions relating to expenditure

Expenditure allocated to future contingent operations

It is alleged that the appropriations required to cover expenditure announced by the Government and relating to the permanent status of the increase in the special allowance paid at the beginning of the school year and to payment by the central government of a subsidy to the National Family Allowances Fund to cover its expenditure on the social action fund for immigrant workers and their families, was not entered in a finance act.

The fourth paragraph of section 1 of ordinance n° 59-2 of 2 January 1959 on finance acts does not create an obligation to provide in a finance act for the budgetary consequences of future decisions the cost, date and implementing rules of which remain to be determined.

(99-424 DC, 29 December 1999, paras 13 to 15, p. 156)

Creation, abolition and conversion of posts

Miscellaneous

The combined provisions of the fifth paragraph of section 1, section 32 and the second and fourth paragraphs of section 43 of ordinance n° 59-2 of 2 January 1959 laying down the institutional act relating to finance acts does not necessarily require a full table of posts financed from central government budget to be given in the finance act, but when Parliament debates and determines the appropriations for the various government departments it must be given detailed information on the total established and non-established staff employed on permanent posts by the central government and the appropriations available for their remuneration. The authority empowered to make regulations as regards the creation, abolition and conversion of such posts is bound by the information given in the explanatory annexes, given that Parliament votes the corresponding appropriations.

(99-424 DC, 29 December 1999, paras 6 and 7, p. 156)

Miscellaneous-Yield of a tax allocated to a public establishment

It is objected that the Finance Act does not fully retrace two taxes — the overtime tax and the social contribution on company profits, allocated by the Finance (Social Security) Act to the Fund for financing the reform of the employers' social security contributions.

These contributions are allocated to a public establishment. That establishment's expenditure is not of a kind that is by its nature a matter for central government. It is not, therefore, necessary for the contributions to be provided for by a finance act, as is clear from the first paragraph of section 1 of ordinance n° 59-2 of 2 January 1959 on finance acts, which provides that finance acts are to determine the nature, amount and allocation of central government resources. By the second paragraph of section 31 of that ordinance, the legislature alone, in the first part of the finance act, has power to give a general authorisation to levy taxes allocated to public authorities and establishments. It follows that, notwithstanding the drawbacks inherent in any debudgetisation in terms of auditing the public finances, the principles of unity and universality of the budget have not been violated.

(99-424 DC, 29 December 1999, paras 11 and 12, p. 156)

Unity of the budget

The deputies making the reference argue that the transfer to sickness insurance schemes of certain expenditure hitherto borne by central government constitutes "debudgetisation" of expenditure which, by its nature, ought to be in the general budget of the central government, and that the principles of the unity, universality and accuracy of the budget are accordingly violated.

The expenditure transferred to the sickness insurance schemes, which is directly related to the protection of public health, cannot be regarded as expenditure which, by its nature, ought to be in the general budget of the central government. Argument dismissed.

(99-422 DC, 21 December 1999, paras 39 and 40, p. 143)

It is objected that the Finance Act does not fully retrace two taxes — the overtime tax and the social contribution on company profits, allocated by the Finance (Social Security) Act to the Fund for financing the reform of the employers' social security contributions.

These contributions are allocated to a public establishment. That establishment's expenditure is not of a kind that is by its nature a matter for central government. It is not, therefore, necessary for the contributions to be provided for by a finance act, as is clear from the first paragraph of section 1 of ordinance n° 59-2 of 2 January 1959 on finance acts, which provides that finance acts are to determine the nature, amount and allocation of central government resources. By the second paragraph of section 31 of that ordinance, the legislature alone, in the first part of the finance act, has power to give a general authorisation to levy taxes allocated to public authorities and establishments. It follows that, notwithstanding the drawbacks inherent in any debudgetisation in terms of auditing the public finances, the principles of unity and universality of the budget have not been violated.

(99-424 DC, 29 December 1999, paras 11 and 12, p. 156)

Accuracy of the budget

The information supplied to the Constitutional Council does not reveal that the estimates of revenue for 2000 entered in the balancing item were manifestly erroneous, in the light of the scale of the alleged under-estimation in relation to the aggregate volume of the budget. Given the rules for charging corporate income tax, the increase entered in the Finance (Rectification) Act for 1999 did not of necessity entail an adjustment to the evaluation of the yield of that tax for 2000 record in estimate A annexed to section 67 of the Act referred. If the yield of that tax substantially exceeded forecasts in 2000, it would be for the Government to present the two assemblies, as it has undertaken to do, with a Finance (Rectification) Bill.

The combined provisions of the fifth paragraph of section 1, section 32 and the second and fourth paragraphs of section 43 of ordinance n° 59-2 of 2 January 1959 laying down the institutional act relating to finance acts does not necessarily require a full table of posts financed from central government budget to be given in the finance act, but when Parliament debates and determines the appropriations for the various government departments it must be given detailed information on the total established and non-established staff employed on permanent posts by the central government and the appropriations available for their remuneration. The authority empowered to make regulations as regards the creation, abolition and conversion of such posts is bound by the information given in the explanatory annexes, given that Parliament votes the corresponding appropriations.

The applicants refer in particular to the existence of staff "paid from appropriations" for the Ministries of Education, the Interior and Justice, not entered in the accounts for posts at these Ministries. They also allege, in relation to "youth employment posts", that the "temporary nature of the material contracts cannot justify the failure to enter these public staff in the central government budget".

The fact is that the explanatory annexes to the Finance Bill show the appropriations required for the remuneration of boarding school teachers and supervisors, supervisors at day schools, auxiliary teachers, security staff and agents of justice, and the number of posts created, converted and abolished. The Finance Act does not reveal that there are excess recruitments. Ordinance n° 59-2 of 2 January 1959 on finance acts does not require entry in the finance act

of the personnel of other central government bodies where the central government covers their remuneration in whole or in part, where the expenditure is provided for in the finance act.

The accuracy of the Finance Act is alleged to be affected by transfers of tax revenue to the social security system, representing "a massive debudgetisation of tax resources", contrary to the principles of unity and universality of the finance act. It is objected that the Finance Act does not fully retrace two taxes — the overtime tax and the social contribution on company profits, allocated by the Finance (Social Security) Act to the Fund for financing the reform of the employers' social security contributions.

These contributions are allocated to a public establishment. That establishment's expenditure is not of a kind that is by its nature a matter for central government. It is not, therefore, necessary for the contributions to be provided for by a finance act, as is clear from the first paragraph of section 1 of ordinance n° 59-2 of 2 January 1959 on finance acts, which provides that finance acts are to determine the nature, amount and allocation of central government resources. By the second paragraph of section 31 of that ordinance, the legislature alone, in the first part of the finance act, has power to give a general authorisation to levy taxes allocated to public authorities and establishments. It follows that, notwithstanding the drawbacks inherent in any debudgetisation in terms of auditing the public finances, the principles of unity and universality of the budget have not been violated.

It is alleged that the appropriations required to cover expenditure announced by the Government and relating to the permanent status of the increase in the special allowance paid at the beginning of the school year and to payment by the central government of a subsidy to the National Family Allowances Fund to cover its expenditure on the social action fund for immigrant workers and their families, was not entered in a finance act.

The fourth paragraph of section 1 of ordinance n° 59-2 of 2 January 1959 on finance acts does not render it compulsory to provide in a finance act for the budgetary consequences of future decisions the cost, date and implementing rules of which remain to be determined.
(99-424 DC, 29 December 1999, paras 4 to 9, 11 to 15, p. 156)

The deputies making the reference contest the accuracy of the estimate of tax revenue, even after the upward adjustment of 11.3 billion francs made by way of government amendment. They allege that the upward adjustment is "too small", having regard to the results recorded on the first eleven months of 1999.

There is no manifest error in the estimate of tax revenue in the Act referred. The objection that the revenue estimates are inaccurate is dismissed.
(99-425 DC, 29 December 1999, paras 2 to 5, p. 168)

SOCIAL SECURITY (FINANCE) ACTS

Content and presentation of Social Security (Finance) Acts

Provisions that may be made in a Social Security (Finance) Act

Fund to finance the reform of employers' social security contributions

The purpose of the Fund established by section L. 131-8 of the Social Security Code is to offset the fall in employers' social security contributions as a result both of the reductions in rates of contribution for firms that have entered into a collective agreement for the reduction of working time and the lower rates for low salaries. Both the expenditure from this Fund, listed in section L 131-9, and the revenue provided for by section L 131-10, are such as to have a significant impact on the general financial balance of compulsory basic schemes. The product of the social contribution on company profits introduced by section 6 and the general tax on polluting activities, substantially modified by section 7, are likely to considerably augment the Fund. The provisions of these sections relating to the basis of assessment, the calculation and

the recovery of these taxes are inseverable from section 5, which established the Fund. It follows that sections 4, 5 and 6 of the statute constitute the inseverable components of a general plan to meet a basic social security schemes financing need and are provisions that may be made in a Social Security (Finance) Act pursuant to section LO 111-3(III) of the Social Security Code.

(99-422 DC, 21 December 1999, para. 8, p. 143)

Expenditure on health centres

Expenditure on the operation of health centres has a significant impact on the general balance of the sickness insurance accounts. The purpose of the arrangements set up by way of agreement and provided for by the provision contested is to bring such expenditure under control while encouraging preventive medicine and modes of remuneration other than payment-per-procedure that would yield savings for the schemes. This provision is accordingly a provision that may be made in a Social Security (Finance) Act pursuant to section LO 111-3(III) of the Social Security Code.

(99-422 DC, 21 December 1999, para. 43, p. 143)

Authorisation to market a generic speciality

The first three paragraphs of section 31 provide that authorisation to market a generic speciality may be issued before the expiry of the intellectual property rights in the reference speciality. But the generic speciality may not be offered for sale until those rights have expired and the laboratory holding the patent in the reference speciality must also be informed.

The legislature's intention was to speed up the actual marketing of generic specialities. The use of such specialities can have a significant impact on the general balance of the sickness insurance schemes. Given the object and the anticipated financial effects of speeding up the marketing of generic specialities, the first three paragraphs of section 31 are provisions that may be made in a Social Security (Finance) Act pursuant to section LO 111-3(III) of the Social Security Code.

(99-422 DC, 21 December 1999, paras 58 and 60, p. 143)

Provisions that may not be made in a Social Security (Finance) Act

Resources guarantee for the *Caisse nationale des allocations familiales*

The purpose of section 15 is to establish a resources guarantee for the *Caisse nationale des allocations familiales* for the period from 1 January 1998 to 31 December 2002. The section provides that if it is found at the end of that period that the resources for 2002 are lower than those for 1997, after adjustments for which it provides, there will be a payment from the central government "in manner prescribed by the Finance and Social Security (Finance) Acts to offset the difference recorded".

It follows that the provision contested cannot affect the general equilibrium of the family allowances branch until 2003 and then only if, as is provided by section 15, the Finance and Social Security (Finance) Acts for that year make provision accordingly. Its purpose is not to improve the conditions for parliamentary review of the application of Social Security (Finance) Acts. The proper place for this provision is not, therefore, the Social Security (Finance) Act for 2000. Section 15 is declared unconstitutional.

(99-422 DC, 21 December 1999, paras 32 and 34, p. 143)

Miscellaneous

The fourth paragraph of section 31 provides that bio-availability studies to demonstrate the bio-equivalence of a generic speciality with a reference speciality "shall be considered as experimental procedures for the purposes of section L 613-5 of the Intellectual Property Code".

This provision is devoid of direct financial effect on the sickness insurance accounts and is not inseverable from the rest of the section. Its proper place is not in a Social Security (Finance) Act. It should accordingly be declared unconstitutional.
(99-422 DC, 21 December 1999, para. 61, p. 143)

General rules for the scrutiny of Social Security (Finance) Acts

Time limits

The fact that the Senate enjoyed an extra day for its first reading of the Social Security (Finance) Bill does not constitute such an irregularity as to vitiate the legislative procedure since the time allowed for the second reading in each of the two assemblies was not affected by the extra day enjoyed by the Senate.
(99-422 DC, 21 December 1999, para. 4, p. 143)

Accuracy of the Social Security (Finance) Act

Accuracy of the forecasts entered in the Social Security (Finance) Act

The forecast revenue of the Fund for 2000 derived from the consumption tax on tobacco products, the social contribution on corporate income tax, the general tax on polluting activities and the contribution on overtime are recorded in the section contested in the category of "taxes allocated to specific purposes" in an aggregate amount of 59.6 billion francs. The central government contribution provided for by the new section L 131-10(7) of the Social Security Code is recorded as 4.3 billion francs in the "public contributions" category, no revenue being forecast by way of funds not utilised in the previous year for the purposes of section L 131-10(6). It follows that the argument that the forecast recorded in section 12 of the Act fails on the facts.

Even if the argument was supported by the facts, the long-term negative growth in certain of the Fund's revenue items would not jeopardise the accuracy of the revenue forecasts for 2000.
(99-422 DC, 21 December 1999, paras 25 and 27, p. 143)

Consistency between Social Security (Finance) Act and Finance Act being debated by Parliament

As regards the additional resources for the farmers' retirement pension scheme, the necessary provisions for coordination with the Finance Act were adopted when the Act referred was reread by the National Assembly. Since the balance of the product of the social solidarity contribution imposed on companies is allocated in the year following its collection, the Social Security (Finance) Act does not need to express the impact on the 2001 situation. Provisions were also adopted for coordination with the reduction in the rates for application of the specific compensation between retirement pension schemes.

Moreover, the fact that the Finance Bill then being debated failed to draw the consequences of certain provisions of the Social Security (Finance) Act has no effect on the accuracy of the forecasts made in the latter Act. The objection can be made only against the Finance Act.
(99-422 DC, 21 December 1999, paras 29 and 30, p. 143)

PRESIDENT OF THE REPUBLIC

IMMUNITY FROM SUIT

Article 27(1) of the Statute of the International Criminal Court provides: "This Statute shall apply equally to all persons without any distinction based on official capacity. In particular,

official capacity as a Head of State or Government, a member of a Government or Parliament... shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence"; article 27(2) further provides that "Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person."

By the first paragraph of article 26 of the Constitution, Members of Parliament enjoy immunity in respect of the opinions expressed and the votes cast in the exercise of their duties; by the second paragraph, they may not be arrested for a serious crime or other major offence, nor be subjected to any other custodial or semi-custodial measure, without the authorisation of the bureau of the Assembly of which they are a member; such authorisation is not required in the case of a serious crime or other major offence committed *flagrante delicto* or a final sentence.

Article 27 of the Statute is accordingly unconstitutional.
(98-408 DC, 22 January 1999, paras 15 to 17, p. 29)

REVISION OF THE CONSTITUTION

POWERS OF THE CONSTITUENT ASSEMBLY

Principles

Subject to articles 7, 16 and 89 of the Constitution, there is nothing to preclude the constituent assembly from introducing new provisions in the text of the Constitution which, in the situations to which they refer, derogate from constitutional rules or principles, even if the derogations are purely implicit.
(99-410 DC, 15 March 1999, para. 3, p. 51)

Application

Subject to articles 7, 16 and 89 of the Constitution, there is nothing to preclude the constituent assembly from introducing new provisions in the text of the Constitution which, in the situations to which they refer, derogate from constitutional rules or principles, even if the derogations are purely implicit. That is not the case here. It follows from the first paragraph of article 77 of the Constitution that the Constitutional Council's review of the Institutional Act relating to New Caledonia must proceed on the basis not only of the Constitution but also of the guidelines set out in the Nouméa Agreement, which derogates from certain constitutional rules and principles. But such derogations can be accepted only to the extent that they are strictly necessary for the implementation of the Agreement.
(99-410 DC, 15 March 1999, para. 3, p. 51)

TERRITORY OF THE REPUBLIC — TERRITORIAL UNITS

SELF-GOVERNMENT OF TERRITORIAL UNITS

Principle

Resources and burdens of territorial units

Provision empowering communes to introduce a tax payable by any person exercising a seasonal business activity on a self-employed basis in their territory.

The tax is due for the tax year from the date of first establishment. It is at a uniform rate of no less than 50 francs nor more 800 francs than per square metre.

By failing to take account of the duration of the establishment in the commune as regards non-sedentary activities, the legislature has violated the principle of equality of public burden-sharing.
(99-424 DC, 29 December 1999, paras 46, 48 and 49, p. 156)

Internal administration of territorial units

Structures

No violation of self-government

Article 72 of the Constitution provides: "The territorial units of the Republic ... shall be self-governing through elected councils", but it adds "in the manner provided by statute".

It was legitimate for the legislature to introduce a specific regional budget adoption procedure to take account of the current operating difficulties of the regional councils. Since a regional council is free to reject the text laid before it under that article, the legislature has not deprived the regional decision-making body of its powers.
(98-407 DC, 14 January 1999, paras 18 and 19, p. 21)

Violation of self-government

By imposing a publicity principle on debates in the standing commission instead of leaving it to the rules of procedure of the regional council to determine this operating rule, the legislature restricted the right to self-government of a territorial unit to such an extent as to violate article 72 of the Constitution; provision declared unconstitutional.
(98-407 DC, 14 January 1999, para. 26, p. 21)

ORGANISATION OF TERRITORIAL UNITS

Territorial units

New Caledonia — Transitional arrangements provided for by title XIII of the Constitution (articles 76 and 77)

Institutions of New Caledonia

Provincial assemblies

The first paragraph of section 2 of the Institutional Act relating to New Caledonia does not mention the provincial assemblies among the institutions of New Caledonia, whereas point 2 of the Nouméa Agreement does so, but this does not mean that the Institutional Act violates the obligation imposed by article 77 of the Constitution to determine the rules for the organisation and operation of the institutions of New Caledonia "along the lines set out in the agreement and as required for its implementation", as its provisions taken together, in particular those of title IV (the provinces) implicitly but necessarily confer on the provincial assemblies the characteristics of an institution of New Caledonia. Compatible with article 2 of the Constitution.

The combined effect of articles 188 and 189 of the Institutional Act is that, notwithstanding certain statements to the contrary in the parliamentary debates, persons are to take part in the elections to the provincial assemblies and the congress who, at the date of the election, appear

in the annexed table mentioned in section 189(I) and have been domiciled in New Caledonia for at least ten years, irrespective of the date of their settlement in New Caledonia, even if it was after 8 November 1998. This restricted definition of the electorate is the only one that can be compatible with the will of the authors of the Constitution, as revealed by the Parliamentary debates preceding the enactment of article 77 of the Constitution, and respects the Nouméa Agreement, whereby the electorate to the provincial Assemblies and the congress includes voters who are "entered in the annexed table and meet the requirement of ten years' domicile at the date of the election."
(99-410 DC, 15 March 1999, paras 8 and 33, p. 51)

Congress — Statutes of the country

It will be for "statutes of the country" enacted pursuant to section 24 of the Institutional Act relating to New Caledonia, and reviewable by the Constitutional Council, to determine, for each type of occupation and each industry the "sufficient duration of residence" mentioned in the first and second paragraphs of that section on the basis of objective and rational criteria in direct relation with the promotion of local employment, without imposing restrictions beyond those which are strictly necessary for the implementation of the Nouméa Agreement. In any event, that duration may not exceed that which is determined by the combined provisions of sections 4 and 188 of the same Act for the purpose of acquiring New Caledonia citizenship.

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

Section 104 of the Institutional Act relating to New Caledonia provides that a "statute of the country" must have undergone fresh deliberation if it is to be referred to the Constitutional Council and thereby makes admissibility of a reference subject to the contested provisions of a "statute of the country" having undergone fresh deliberation. The procedure thus established, which gives effect to the above provisions of article 77 of the Constitution, violates no constitutional rules or principles.

Section 107 of the same Act gives a legal definition of "statutes of the country" and the procedure whereby the *Conseil d'Etat* may confirm that a provision of a statute of the country has been enacted in a matter not mentioned in section 99. The legality of such provision can then be contested before the relevant administrative court.
(99-410 DC, 15 March 1999, paras 17, 24 and 25, p. 51)

Provisions of an institutional nature

Section 10(A) of the Act referred inserts section L 121-39-4 in the Code of Communes of New Caledonia, providing for the procedure by which the High Commissioner may refer to the Judicial Division of the *Conseil d'Etat* a decision taken by the authorities of New Caledonia or a province which he believes to be of such a nature as to seriously compromise the operation or integrity of a facility of national defence concern. Such a provision affects the operation of the institutions of New Caledonia. It is an institutional provision within the meaning of article 77 of the Constitution. It follows that it was enacted by an unconstitutional procedure and is declared unconstitutional.
(99-409 DC, 15 March 1999, para. 2, p. 63)

MEMBERSHIP OF THE REPUBLIC — INDIVISIBILITY OF THE REPUBLIC

Principles of indivisibility of the Republic and unicity of the French people

Principle of indivisibility of the Republic

As article 1 of the Constitution states: "France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of

origin, race or religion. It shall respect all beliefs." The principle that the French people is one, and that no section of it may claim to exercise national sovereignty, is also of constitutional status. In the light of these basic principles, no collective rights can be recognised as inhering in any group defined by community of origin, culture, language or belief.

Taken together, these provisions of the European Charter for Regional or Minority Languages, in that they confer specific rights on "groups" of speakers of regional or minority languages within "territories" in which these languages are used, undermine the constitutional principles of the indivisibility of the Republic, equality before the law and the unicity of the French people.

(99-412 DC, 15 June 1999, paras 5, 6, 10 and 13, p. 71)

Principle of the unicity of the French people

As article 1 of the Constitution states: "France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs." The principle that the French people is one, and that no section of it may claim to exercise national sovereignty, is also of constitutional status. In the light of these basic principles, no collective rights can be recognised as inhering in any group defined by community of origin, culture, language or belief.

Taken together, these provisions of the European Charter for Regional or Minority Languages, in that they confer specific rights on "groups" of speakers of regional or minority languages within "territories" in which these languages are used, undermine the constitutional principles of the indivisibility of the Republic, equality before the law and the unicity of the French people.

(99-412 DC, 15 June 1999, paras 5, 6 and 10, p. 71)

Consultations relating to the accession of New Caledonia to full sovereignty

It is clear from point 5 of the Nouméa Agreement that, first, in the event of a negative answer to the first consultation, a second consultation must be organised in the second year following the first consultation, if requested by one third of the Members of congress, and that, second, in the event of a negative answer to the second consultation, a third consultation must be organised by the same procedure and within the same time-limit. Lastly, the meeting of the Committee of Signatories to the Nouméa Agreement to consider the situation engendered by the negative answers may be held only after three successive consultations.

In the event of a negative answer to the first consultation, the second paragraph of section 217 of the Institutional Act relating to New Caledonia must be interpreted as imposing the organisation of a second consultation at the written request of one third of the Members of congress.

By providing for a meeting of the signatories to review the situation engendered by successive negative responses, not to the outcome of a third consultation but to the outcome of the second, the fourth paragraph of section 217 violated the obligation incumbent on the legislature by virtue of article 77 of the Constitution to respect the guidelines defined by the Nouméa Agreement and determine the rules needed to give effect to it. The fourth paragraph of section 217 must accordingly be declared unconstitutional.

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

(99-410 DC, 15 March 1999, paras 50 to 52, p. 51)

TREATIES AND INTERNATIONAL AGREEMENTS — INTERNATIONAL LAW

INTRODUCTION OF TREATIES AND INTERNATIONAL AGREEMENTS INTO DOMESTIC LAW

Reference to Constitutional Council — Scope of review — Admissibility — Inoperable arguments

Reference on the basis of article 54 of the Constitution

Scope of reference

When the French Government signed the Charter, it also made an interpretative statement specifying the meaning and scope it intends to give to the Charter or to certain of its provisions in the light of the Constitution; a unilateral statement of this kind is no more than an instrument relating to the treaty which, in the event of a dispute, may be used to interpret it; the Constitutional Council, on a reference under article 54 of the Constitution, may therefore review the constitutionality of the undertakings entered into by France irrespective of that statement.
(99-412 DC, 15 June 1999, para. 4, p. 71)

Parameters for constitutional review

Condition of reciprocity

Condition of reciprocity imposed by article 55 of the Constitution

There is no need for the condition of reciprocity to apply, given the purpose of the international commitments entered into in order to promote peace and security in the world and to secure respect for the general principles of public law.
(98-408 DC, 22 January 1999, para. 12, p. 29)

Principle of national sovereignty

Respect for principle of national sovereignty

The essential conditions for the exercise of national sovereignty are not violated by provisions imposing restrictions on the principle of complementarity between the International Criminal Court and the national courts in the event of a lack of good will or of availability of the State. The same applies to provisions determining the powers of investigation of the prosecutor where the State is unavailable and those governing the execution of punishments.
(98-408 DC, 22 January 1999, paras 32, 33, 37 and 40, p. 29)

Violation of principle of national sovereignty

The provisions imposing restrictions on the principle of complementarity between the International Criminal Court and the national courts in the absence of a lack of good will or of availability of the State and those conferring powers of investigation on the prosecutor, likewise in the absence thereof, violate the essential conditions for the exercise of national sovereignty.
(98-408 DC, 22 January 1999, paras 34 and 38, p. 29)

Other constitutional principles or rules

General

The Preamble to the 1946 Constitution declares the safeguarding of the human person against all forms of servitude to be a constitutional principle.

The fourteenth paragraph of the Preamble to the Constitution of 1946 declares that the French Republic "shall respect the rules of public international law", and the fifteenth paragraph declares that "subject to reciprocity, France consents to the restrictions of sovereignty necessary for the organisation and defence of peace".

Article 53 of the 1958 Constitution 1958, like article 27 of the 1946 Constitution, enshrines the existence of "treaties or agreements relating to international organisation". Article 55 of the 1958 Constitution provides: "Treaties or agreements duly ratified or approved shall, upon publication, prevail over Acts of Parliament, subject, in regard to each agreement or treaty, to its application by the other party".

Where an international agreement contains a clause that is contrary to the Constitution or jeopardises the rights and freedoms secured by the Constitution, the authorisation to ratify it requires revision of the Constitution.
(98-408 DC, 22 January 1999, paras 8, 10, 11 and 13, p. 29)

Principles of criminal law and criminal procedure

Principle of the presumption of innocence

Article 66 affirms the presumption of innocence that is enjoyed by any person until his guilt has been proved to the satisfaction of the Court. It is for the prosecutor to prove that the accused person is guilty. Under article 67, the accused is assured that "[n]ot to have imposed on him or her any reversal of the burden of proof or any onus of rebuttal". The requirements of article 9 of the Declaration of Human and Civic Rights are accordingly met.
(98-408 DC, 22 January 1999, para. 21, p. 29)

Principle that offences and penalties must be defined by statute

Article 22 of the Statute provides: "A person shall not be criminally responsible under this Statute unless the conduct in question constitutes, at the time it takes place, a crime within the jurisdiction of the Court". The definition of a crime is subject to strict interpretation and cannot be extended by analogy. Article 25 defines the cases of personal criminal liability for which a person may be convicted. By article 30, "a person shall be criminally responsible and liable for punishment for a crime within the jurisdiction of the Court only if the material elements are committed with intent and knowledge". Articles 31 to 33 list the grounds for excluding criminal responsibility. The Statute accordingly determines with precision the scope of the offences and grounds for excluding liability and defines crimes, in terms both of their material elements and of their mental element, with such clarity and precision that offenders can be identified and arbitrary action excluded. These provisions comply with the principle that offences and penalties must be defined by statute defined by articles 7 and 8 of the Declaration of Human and Civic Rights.

The rules governing the determination and the measure of the penalties that may be ordered by the Court are in accordance with the principles that penalties must be necessary and defined by statute.
(98-408 DC, 22 January 1999, paras 22 and 26, p. 29)

Natural justice

Under article 59, a State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person in question in accordance with its laws. A person arrested shall be brought promptly before the competent judicial authority in the custodial State, in accordance with the law of that State, particularly regarding the

regularity of the arrest and compliance with the individual's rights. The person arrested shall have the right to apply to the competent authority in the custodial State for interim release. Respect for natural justice is thus secured from the initial procedure before the Court and during the trial. In particular, article 55 provides that the person may have legal assistance of the person's choosing or, if the person does not have legal assistance, to have legal assistance assigned to him or her when being questioned either by the Prosecutor, or by national authorities. The Pre-Trial Chamber of the Court has the sole power to issue warrants, and particularly arrest warrants. A person brought before the Court may apply for interim release pending judgment. Article 60 requires the Pre-Trial Chamber to periodically review its ruling on the release or detention of the person. It is to ensure that a person is not detained for an unreasonable period prior to trial due to inexcusable delay by the Prosecutor. The Trial Chamber is required by article 64 to "ensure that a trial is fair and expeditious and is conducted with full respect for the rights of the accused and due regard for the protection of victims and witnesses". Trials are to be in public, though the Trial Chamber may determine that special circumstances require that certain proceedings be in closed session. Sentencing is to be at a public hearing. The constitutional requirements relating to natural justice and to the existence of a fair procedure guaranteeing balance as between the rights of the parties are thus satisfied.

(98-408 DC, 22 January 1999, para. 25, p. 29)

Need for penalties, and immediate application of the more lenient provision

Article 11(1) provides: "The Court has jurisdiction only with respect to crimes committed after the entry into force of this Statute". Article 24 lays down the principle of "non-retroactivity *ratione personae*" and the principle that "the law more favourable to the person being investigated, prosecuted or convicted shall apply". This satisfies the principle that a more severe criminal statute cannot have retroactive effect implied by article 8 of the Declaration of Human and Civic Rights.

The rules governing the determination and the measure of the penalties that may be ordered by the Court are in accordance with the principles that penalties must be necessary and defined by statute.

(98-408 DC, 22 January 1999, paras 23 and 26, p. 29)

Miscellaneous

Article 29 of the Statute provides: "The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations". No constitutional rules or principles prohibit the provision that there may be no limitation period for the most serious crimes that affect humanity in its entirety.

A warrant of arrest of a person which the Court may address to the State in which a person of whatever nationality may be, being a person found guilty by the Court or of whom "There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court" violates no constitutional rule or principle.

The judges of the Court independent in the performance of their functions, as articles 40 and 48 of the Statute provide for such privileges and immunities as are necessary. Moreover, the judges assigned to the appeals section may not sit in other sections. Articles 41 and 42 of the Statute determine the procedure for excusing and disqualifying judges and prosecutors. And Article 46 provides for the procedure whereby a member of the Court may be removed from office in the event of a serious breach of his or her duties. The requirement that the Court be independent and impartial is thus satisfied.

The procedures for appeals and for revision of judgments of the Court, for compensation for unlawful arrest or detention, for reparations for damage, loss and injury to, or in respect of, victims are constitutional.

(98-408 DC, 22 January 1999, paras 20 and 24, 27 and 28, p. 29)

Special rules governing liability (laid down by articles 26, 68 and 68-1 of the Constitution) of the President of the Republic, members of the government and members of Parliament

Article 27(1) of the Statute of the International Criminal Court provides: "This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a member of a Government or Parliament ... shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of sentence"; article 27(2) further provides that "Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person."

By the first paragraph of article 26 of the Constitution, Members of Parliament enjoy immunity in respect of the opinions expressed and the votes cast in the exercise of their duties; by the second paragraph, they may not be arrested for a serious crime or other major offence, nor be subjected to any other custodial or semi-custodial measure, without the authorisation of the bureau of the Assembly of which they are a member; such authorisation is not required in the case of a serious crime or other major offence committed *flagrante delicto* or a final sentence.

Article 27 of the Statute is accordingly contrary to the special rules governing liability laid down by articles 26, 68 and 68-1 of the Constitution.
(98-408 DC, 22 January 1999, paras 15 to 17, p. 29)

Principle of indivisibility of the Republic

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Taken together, these provisions of the European Charter for Regional or Minority Languages, in that they confer specific rights on "groups" of speakers of regional or minority languages within "territories" in which these languages are used, undermine the constitutional principles of the indivisibility of the Republic, equality before the law and the unicity of the French people.
(99-412 DC, 15 June 1999, paras 5, 6, 10 and 13, p. 71)

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Language of the Republic

The freedom proclaimed by article 11 of the Declaration of Human and Civic Rights of 1789, whereby "Free communication of ideas and opinions is one of the most precious human rights: citizens may therefore speak, write and print freely, though in cases determined by statute they may be made to answer for any abuse of this right" must be reconciled with the first paragraph of article 2 of the Constitution, whereby "The language of the Republic shall be French". By virtue of these provisions, public-law corporations and private-law entities supplying a public

service are obliged to use French; private individuals can claim no right, in their relations with government departments or public authorities, to use any language other than French, nor must they be compelled to do so; article 2 of the Constitution does not prohibit the use of translations; its application must not entail any neglect of the importance, in education, research and audiovisual communication, of the freedom of expression and communication.

Certain provisions of the European Charter for Regional or Minority Languages are also contrary to the first paragraph of article 2 of the Constitution in that they seem to recognise a right to use a language other than French not only in "private life" but also in "public life" — a category in which the Charter includes judicial authorities and administrative authorities and public services.
(99-412 DC, 15 June 1999, paras 7, 8 and 11, p. 71)

Freedom to communicate thoughts and opinions

The freedom proclaimed by article 11 of the Declaration of Human and Civic Rights of 1789, whereby "Free communication of ideas and opinions is one of the most precious human rights: citizens may therefore speak, write and print freely, though in cases determined by statute they may be made to answer for any abuse of this right" must be reconciled with the first paragraph of article 2 of the Constitution, whereby "The language of the Republic shall be French". By virtue of these provisions, public-law corporations and private-law entities supplying a public service are obliged to use French; private individuals can claim no right, in their relations with government departments or public authorities, to use any language other than French, nor must they be compelled to do so; article 2 of the Constitution does not prohibit the use of translations; its application must not entail any neglect of the importance, in education, research and audiovisual communication, of the freedom of expression and communication.
(99-412 DC, 15 June 1999, paras 7 and 8, p. 71)

Subject matter, procedure and scope of review

Subject-matter of review

Having regard to their nature, none of the other undertakings entered into by France is contrary to the Constitution, most of them, incidentally, doing no more than recognise practices that France has already implemented to promote regional languages.
(99-412 DC, 15 June 1999, para. 13, p. 71)

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GLOSSARY

Caisse nationale d'assurance maladie (CNAM) : National organ in charge of health insurance within the *Social Security.*

Caisse nationale des allocations familiales (CNAF) : National organ in charge of family allowances.

Conférence des Présidents : Composed of the deputy-speakers of the house, the chairmen of the standing committees, the general budget reporter of the Finance committee and the presidents of parliamentary parties. This *Conférence* organizes the agenda of the assembly. The vote of each president is weighted in proportion to the number of members of his group.

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

Interprétation neutralisante : Interpretation by the Constitutional Council that makes the law consistent with the Constitution.

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).

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