ANALYTICAL SYNOPSIS 2000

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;

LP – Law of the country: Following the constitutional revision of du 20 June 1998 reintroducing a Title XIII in the Constitution on transitional provisions relating to New Caledonia, Parliament enacted an Institutional Act on 19 March 1999; section 104 provides that a "loi du pays" (law of the country) may be referred to the Constitutional Council prior to promulgation. Decisions relating to them are classified under "LP" (loi du pays);

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 full senate 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

Membership of parliamentary assemblies

Special rules applying to the Senate

Departments in Metropolitan France

The authors of the reference argue that it was not legitimate for the Act referred to amend the procedure for electing Senators without prior revision of the distribution of seats by department in the light of demographic shifts since the last three censuses.

The combined provisions of article 6 of the Declaration of Human and Civic Rights of 1789 and articles 3 and 24 of the Constitution require the legislature to amend the distribution of Senate seats by department in the light of population trends in the territorial units represented in the Senate. But the effect is not to require that this be done before the entry into force of the Act referred.
(2000-431 DC, 6 July 2000, paras 10-11, p. 98)

Senate electoral college

It follows from article 24 of the Constitution that the Senate, since it represents the territorial units of the Republic, must be elected by an electoral college itself representing those units. That electoral college must accordingly consist primarily of the members of the decision-making assemblies of the territorial units. All categories of territorial units must be represented. Moreover the communes must be represented in such a way as to reflect their diversity; finally, to respect the principle of equality of voting rights declared by article 6 of the Declaration of Human and Civic Rights of 1789 and article 3 of the Constitution, the representation of each category of territorial units and of the various types of communes must have regard to the population residing there.

It follows that, while the number of delegates from a municipal council must be based on the population of the commune and while, in the most heavily populated communes, additional delegates selected from outside the municipal council may be elected to represent it, this is subject to the condition that their participation in the Senate electoral college serves solely as a demographic correction factor. The application of the current provisions of section L 285 of the Electoral Code does not jeopardise the principles set out above.

The substantial share, indeed in some departments the majority share accounted for under the Act referred by additional delegates from municipal councils in the electoral colleges would do more than merely constitute a demographic correction factor. The principles set out above are accordingly violated.
(2000-431 DC, 6 July 2000, paras 5 to 8, p. 98)

Qualifications for office

Disqualification *ipso jure*

Acts performed by a member of parliament until the time of the decision by the Constitutional Council declaring him disqualified pursuant to section LO 136 of the Electoral Code remain valid.
(2000-12 D, 4 May 2000, p. 76; sol. impl. cf. 61-2 D, 18 July 1961, Lagaillarde, Rec. p. 63; 96-10 D, 5 September 1996, Tapie, Rec. p. 111)

Right to initiate legislation — Review of admissibility

Right to initiate legislation

Procedure applicable to letters of amendment

A letter of amendment signed by the Prime Minister does not constitute a Government amendment to a Bill on the basis of the first paragraph of article 44 of the Constitution but the exercise of a right to initiate legislation conferred on the Prime Minister by the first paragraph of article 39 of the Constitution. The second paragraph of that article reads: "Government bills shall be discussed in the Council of Ministers after consultation with the Council of State and shall be introduced in one of the two assemblies...".

The letter of amendment introduced in the National Assembly on 21 April 1999 was preceded by discussion in the Council of Ministers the same day and an opinion given by the Council of State on 15 April 1999. Proper procedure.
(2000-433 DC, 27 July 2000, paras 3 and 4, p. 121)

Right to amend

Whether amendments are within the instrument being debated

Relation to the instrument being debated — Existence

The main purpose of section 1 of the Act referred is to modify the population threshold determining the change of the balloting method for municipal elections; but its provisions, combined with those of section 2, have the effect of extending the principle of parity to communes with a population of between 2500 and 3499; the amendment which gave rise to section 1 can therefore be regarded as not lacking a relationship with the relevant Bill.
(2000-429 DC, 30 May 2000, para. 19, p. 84)

The authors of the reference submit that a large number of provisions, notably those establishing a specific legal framework for terrestrial digital sound and television broadcasting services, were the result of amendments the scale of which took them out of the scope of the right to amend.

The effect of the combined provisions of articles 39 and 45 of the Constitution is that the right to amend, which is the corollary of the right to initiate legislation, may be freely exercised subject only to the restrictions imposed by the second, third and fourth paragraphs of article 45 of the Constitution. But the additions or changes made to the instrument in the course of debate may not be unrelated to the object of the instrument nor exceed in their object or scope the inherent limits on the right to amend; otherwise, they violate the first paragraph of article 39 and the first paragraph of article 44 of the Constitution.

The amendments criticised in the reference were adopted at second reading in the National Assembly, before the meeting of the Joint Committee. Moreover, amendments relating to the same subject matter were tabled at the first reading in the Senate. The material provisions are all related to the instrument being debated, whose original purpose was to amend the full range of legislation relating to the audiovisual media. They do not exceed in their object or scope the inherent limits on the right to amend.
(2000-433 DC, 27 July 2000, paras 5 to 7, p. 121)

Relation to the instrument being debated — Absence

Sections 18 and 19 relate to the consequences, provided for respectively by sections L 205 and L 210 of the Electoral Code, of situations of ineligibility and of incompatibility concerning a

general councillor after his election; section 20 supplements section L 2113-17 of the General Code of Local Authorities to lay down a condition of eligibility for the advisory council of each of the associated communes in certain merged communes.

Sections 18 and 20 are the result of amendments adopted at first reading of the Bill in the National Assembly; the additions thus made to the Bill being debated were unrelated to its purpose, which is to encourage the equal access of women and men to electoral office; sections 18 and 20 must accordingly be declared unconstitutional; so must section 19, especially as it was inserted by amendment after the failure of the Joint Committee.
(2000-429 DC, 30 May 2000, paras 25 and 26, p. 84)

The provisions criticised relate solely to rules for the organisation of regional natural parks. The addition to the Bill, during the debates, of clauses relating to solidarity and urban renewal are entirely unrelated to its purposes. Given that they were introduced before the meeting of the Joint Committee, they were adopted by an unlawful procedure and must be declared unconstitutional.
(2000-436 DC, 7 December 2000, para. 63, p. 176)

Need for amendments introduced after the Joint Committee to be directly related

Principle

The combined effect of articles 39, 44 and 45 of the Constitution is that the right to amend, which is the corollary of the right to initiate legislation, may be exercised at any stage of the legislative procedure, subject only to the restrictions imposed by the second, third and fourth paragraphs of article 45; the second paragraph of article 45 provides inter alia that the Joint Committee is "to propose a text on the provisions still under discussion".

It follows from the general scheme of article 45 that additions may not as a rule be made to the instrument being debated by the two assemblies after the meeting of the Joint Committee. If it were possible to do so, the resultant new measures could be adopted without having been considered at a reading preceding the meeting of the Joint Committee and, in the event of disagreement between the assemblies, without having been presented for the conciliation procedure which, under article 45 of the Constitution, that committee is to organise. Under the second paragraph of that article, provisions adopted in identical terms before the meeting of the Joint Committee cannot, as a rule, be amended after it.

It follows that the only amendments that may be adopted after the meeting of the Joint Committee are those that are either directly related to a provision still being debated or imposed by the need to comply with the Constitution, to secure coordination with other instruments being debated by Parliament or to rectify a mistake. At this stage of parliamentary, amendments that do not satisfy one or other of these conditions must be regarded as having been adopted by an improper procedure.
(2000-430 DC, 29 June 2000, paras 5 to 7, p. 95)

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It follows that the only amendments to provisions adopted in identical terms before the meeting of the Joint Committee that may be adopted after the meeting are those that are either directly related to a provision still being debated or imposed by the need to comply with the Constitution, to secure coordination with other instruments being debated by Parliament or to rectify a mistake.
(2000-434 DC, 20 July 2000, paras 2 and 3, p. 107)

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considered at a reading preceding the meeting of the Joint Committee and, in the event of disagreement between the assemblies, without having been presented for the conciliation procedure which, under article 45 of the Constitution, that committee is to organise.
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(2000-435 DC, 7 December 2000, para. 57, p. 164)

Applications

Section 4, which provides for joint lists for the election of members of the Higher Council of French nationals resident in foreign countries elected by proportional representation, is the result of an amendment adopted after failure of the Joint Committee; it is in direct relation to none of the provisions of the Act under discussion; moreover, its adoption is not warranted by the need for coordination with other instruments being debated in Parliament; section 4 must accordingly be held unconstitutional.
(2000-429 DC, 30 May 2000, para. 24, p. 84)

The object and effect of the provisions added to section 1 after the meeting of the Joint Committee are to remove violations of the principle of equality generated by the difference, unrelated to the purpose of the Act, between the electoral rules established before the meeting of the Joint Committee for French Polynesia and those adopted at a fresh reading for the Wallis and Futuna Islands and New Caledonia. Section 1 must accordingly be regarded as having been adopted by a procedure conforming to the Constitution.
(2000-430 DC, 29 June 2000, para. 8, p. 95)

The provisions relating to the voluntary reintroduction of predatory animals and to controls were adopted in identical terms by the two assemblies before the meeting of the Joint Committee. The object and effect of the amendments made after the meeting were neither to comply with the Constitution nor to secure coordination with other instruments being debated by Parliament or to rectify a mistake. Section 3 was accordingly adopted by an improper procedure.
(2000-434 DC, 20 July 2000, para. 6, p. 107)

Section 2(III) of the Act referred inserts in the Rural Code a section L 220-3 defining hunting. By the third paragraph of this new section, hunting does not include cases where a person in charge of a retriever searches for a wounded animal or verifies the result of a shot at an animal, "even outside the hunting season and on a territory where such person has no hunting rights. Such person may kill a wounded animal which he has found as a result of his search."

The provisions whereby a person in charge of a retriever may enter territory on which he has no hunting rights and kill a wounded animal are not part of the definition of hunting and are therefore not directly related to the rest of section 2(III).

The relevant provision was added by an amendment made after the failure of the Joint Committee and is not directly related to any other provision being debated. It is not imposed by the need to comply with the Constitution, to secure coordination with other instruments being debated by Parliament or to rectify a mistake. It must accordingly be regarded as having been adopted by an unconstitutional procedure.
(2000-434 DC, 20 July 2000, paras 8 to 10, p. 107)

The amendments that led to the enactment of section 24, which repeals provisions of the Labour Code relating to the minimum wage for growth in the overseas departments, and

section 69, which establishes a territorial insertion commission for Saint-Pierre-et-Miquelon, were the result of amendments adopted after the meeting of the Joint Committee. They are unrelated to any of the other provisions still being debated. Their adoption was not imposed by the need to comply with the Constitution, to secure coordination with other instruments being debated by Parliament or to rectify a mistake. Sections 24 and 69 must accordingly be regarded as having been adopted by an unconstitutional procedure.
(2000-435 DC, 7 December 2000, paras 56 and 58, p. 164)

POWER TO ENACT LEGISLATION AND POWER TO MAKE REGULATIONS

GENERAL

Scope and limits of the power to enact legislation

Sovereign power to determine expediency subject to compliance with the Constitution

Incompatibility rules

It is legitimate for the legislature to reinforce the incompatibilities between elective functions, if it considers that cumulative local elective functions prevent their holders from exercising them properly.
(2000-426 DC, 30 March 2000, para. 5, p. 62)

It is legitimate for an institutional act to include the function of municipal councillor in the provision restricting the combined exercise of parliamentary and local elective functions only above a certain population threshold, provided the threshold set is not arbitrary. This proviso is satisfied in the instant case, since under section L 252 of the Electoral Code the threshold of 3 500 habitants determines a change in the balloting procedure for the election of members of municipal councils.
(2000-427 DC, 30 March 2000, para. 1, p. 60)

Failure to exercise powers to the full

No failure

By making a distinction in section L 932-2 of the Labour Code, inserted by section 17 of the Act referred, between the training measures that an employer is required to arrange "in order to adapt his employees to developments in their jobs", which are part of their normal working time, and training "to develop his employees' abilities", which can be organised partly outside normal working time, the legislature did not fail to exercise its powers to the full.

The effect of section 19 of the Act referred, relating to the conditions in which firms may be eligible for reduced rates of social security contributions pursuant to section L 241-13-1 of the Social Security Code, is that the determination of the jobs created or preserved by the reduction of working time and by the provisions of mandatory collective agreements are matters to be determined exclusively by agreement between the social partners. Neither the administrative authorities nor the body responsible for collecting social security contributions will verify either the expediency or the scope of the provisions of such agreements.

Section 19(XV) specifies the cases in which failure to comply with the commitments entered into in such agreements prompts the withdrawal or suspension of the benefit of such reduced rates of contribution. In particular, the benefit of the reduced rate is withdrawn in the event of

a false declaration or omission in the application for it and in the event of a failure, attributable to the employer, to give effect to clauses in the agreement relating to collective working time. It is suspended where the recruitment commitments provided for by the agreement are not discharged within the one-year time-frame and where the collective working hours in the firm are "incompatible" with the working time and working hours provided for by the agreement. This formulation must be interpreted as referring to the hypothesis of working hours in the firm that would be manifestly contrary to the time provided for by the agreement.

The second paragraph of section 19(XVI) provides that the benefit of reduced rates of contribution is lost in the event of failure to comply with the agreement. Such failure must be interpreted as referring exclusively to the hypothesis that the rules for the conclusion of the collective agreements mentioned in section 19(II) have not been complied with, be they the ordinary rules governing the conclusion of collective agreements or the specific rules provided for by section 19, (VI) and (VII).

The provisions criticised organise an adversarial procedure prior to the decision by the body responsible for collecting social security contributions to withdraw or suspend the benefit of reduced rates of contribution; in particular, the relevant administrative authority is to prepare a report of which the employer and organisations representing employees are to be notified.

Subject to these reservations, by determining the principles described above and leaving it for a decree deliberated in the Council of State to implement them, the legislature has not violated the powers conferred on it by article 34 of the Constitution.
(99-423 DC, 13 January 2000, paras 9, 12 to 16, p. 33)

Definition of decent housing

Section 187(I) of the Act referred amplifies section 1719 of the Civil Code by requiring the lessor to give the lessee, "if the property concerned is his main residence, decent housing". The section is criticised on the ground that it does not specify "criteria for defining decent housing", on which the content and extent of the lessor's obligations would depend.

The expression "decent housing" in section 187(I) of the Act referred can be defined only in subsection 187(II); the definition given there, which is sufficiently precise, is that decent housing is housing where there is "no manifest hazard to physical safety and health and is fitted out in such manner as to be fit for habitation"; subject to this reservation, the objection based on article 34 of the Constitution is rejected.
(2000-436 DC, 7 December 2000, paras 54 and 55, p. 176)

Definition of obligations incumbent on territorial units

Given that its avowed objectives are not precise, section 1 of the Act referred would be contrary to article 34 of the Constitution if it imposed on territorial units an obligation as to a result to be attained; but it is clear from the legislative history that it must be interpreted as merely requiring the authors of town planning documents to specify the measures to be taken to attain its objectives; it will be for the administrative courts to check for compatibility between the rules set out in such documents and section L 121-1. Subject to this reservation, there is no violation of article 34 of the Constitution.
(2000-436 DC, 7 December 2000, para. 13, p. 176)

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

The tax per animal shot, levied in the specific economic interest of a specific sector and for the benefit of private-sector bodies, is a parafiscal charge and not a direct tax. The rules governing it are matters to be determined by regulation. But it is a matter for the Finance Act to authorise its annual collection, pursuant to the third paragraph of section 4 of the Ordinance of 2 January 1959.
(2000-434 DC, 20 July 2000, para. 16, p. 107)

The fee for the right to use television receivers, given the manner in which it is collected, the purpose for which it was introduced and the legal status of the bodies receiving the proceeds, is a parafiscal charge. It is a matter for the Finance Act to authorise its annual collection after

31 December of the year in which it was introduced, pursuant to section 4 of the Ordinance of 2 January 1959.
(2000-433 DC, 27 July 2000, para. 18, p. 121; cf. 60-8 DC, 11 August 1960, para. 4, p. 25; 79-III L, 21 November 1979, para. 5, p. 50; 80-126 DC, 30 December 1980, para. 13, p. 53; 91-302 DC, 30 December 1991, para. 23, p. 137)

Consultation of the population of Mayotte on its future legal status

The authors of the reference criticise the "uncertain legal nature" of the agreement on which the population of Mayotte is asked to give its opinion. They argue that the Act is vitiated by failure to exercise to the full the powers conferred on the legislature by article 72 of the Constitution.

Under the second paragraph of the Preamble to the 1958 Constitution, the relevant authorities have the power to consult the overseas populations on their future within the Republic and free to determine the subject-matter of such consultations. The agreement on the future of Mayotte, signed in Paris on 27 January 2000, which describes the broad lines of the new status of "*collectivité départementale*" envisaged for Mayotte, is devoid of any legislative status. By the first paragraph of section 1 of the Act referred, the population is merely invited to give its "opinion" on the document, the legislature reserving all its powers under article 72 of the Constitution to determine the status that is ultimately to be applied. The second paragraph of section 3 of the Act referred, whereby "The electorate shall pronounce by a majority of the votes cast", cannot be interpreted as conferring a right to be consulted. The argument that the legislature violated the scope of its own powers must accordingly be dismissed.
(2000-428 DC, 4 May 2000, paras 11 and 12, p. 70)

Tax on meat processors: Community definition of meat-based products

The "other meat-based products" incorporated in the basis of assessment to the taw on purchases of meat are defined by Council Directive 92/5/EEC of 10 February 1992, and the legislature refers to that definition. The objection that the legislature failed to exercise its powers to the full by failing to define the relevant products with adequate precision accordingly fails on the facts.
(2000-441 DC, 28 December 2000, para. 30, p. 201)

Failure to exercise full powers available

Obligation prior to preparation of the social plan

Section 1 (IV) inserts a new paragraph after the first paragraph of section L 321-4-1 of the Labour Code. It provides that before preparing and notifying the staff representatives of the social plan designed to avoid or limit the number of dismissals, an employer in firms employing at least fifty persons "must have concluded an agreement for the reduction of working time, providing for a period of collective working time of employees of the firm of no more than thirty-five hours per week or 1.600 hours per year or, alternatively, must have embarked seriously and fairly in negotiations for the conclusion of such an agreement".

By article 34 of the Constitution, statutes are to determine the rules concerning the fundamental principles of labour law, trade-union law and social security.

By establishing an obligation prior to preparation of the social plan, without specifying the effects of failure to discharge it, and in particular by leaving it to the administrative and judicial authorities to determine whether the obligation is a condition for the validity of the social plan and whether failure to discharge it renders void any subsequent dismissal procedures, the legislature has not exercised its powers to the full. Section 1 (IV) of the Act referred must accordingly be declared unconstitutional.
(99-423 DC, 13 January 2000, paras 6 to 8, p. 33)

Scope of criminal statutes

By section 43-8, "persons and bodies corporate who, free of charge or against payment, directly store and make available to the public signals, written material, images, sounds or messages of

all kinds accessible through these services" may be held criminally or civilly liable by reason of the content of these services in only two circumstances; the first is where "having received an order from a judicial authority, they have not acted promptly to prevent access to such content"; the second is where "having received an approach from a third party arguing that the content that they store is illicit or harmful to his interests, they have not undertaken the appropriate action".

It is legitimate for the legislature, in its function of reconciling freedom of communication with the protection of other people's freedom and safeguarding public order, to establish specific rules governing the criminal liability of those who store content, distinct from the rules applicable to authors and editors of messages, where the content is illicit. But this is subject to compliance with the principle that offences and penalties must be defined by statute and to article 34 of the Constitution, which provides inter alia that: "Statutes shall determine the rules concerning: ...the determination of serious crimes and other major offences and the penalties applicable to them ...".

In the instant case, by the third paragraph of the new section 43-8 inserted in the Act of 30 September 1986, the legislature has subjected the criminal liability of content storers to an approach from a third party arguing that the content "is illicit or harmful to his interests" and to their failure to take appropriate action in response to such approach. By neglecting to specify the form to be taken by such approach and failing to determine the main characteristics of the wrongful conduct that can give rise to criminal liability, the legislature has violated the powers conferred on it by article 34 of the Constitution.

In the last paragraph of section 43-8 of the Act 30 September 1986, as amended by section 1 of the Act referred, the words "or, having received an approach from a third party arguing that the content that they store is illicit or harmful to his interests, they have not undertaken the appropriate action", must accordingly be declared unconstitutional.
(2000-433 DC, 27 July 2000, paras 58, 60 to 62, p. 121)

Intervention of statute in matters to be governed by regulation

The intervention of a statute in matters to be governed by regulation does not render the statute unconstitutional

Article 34 and the first paragraph of article 37 of the Constitution cannot be interpreted in isolation from article 41 and the second paragraph of article 37. Their combined effect is that a provision enacted in a statute is not unconstitutional merely because it affects a matter that is to be governed by regulation, where the Government did not oppose its insertion on grounds of inadmissibility during the parliamentary procedure.
(2000-433 DC, 27 July 2000, para. 22, p. 121)

No power delegated by the legislature

The consequences of the reduction in rates of social security contribution allowed for firms having concluded a collective agreement for the reduction of working time, given their impact on the general equilibrium of the compulsory basic schemes, were taken into account in the Social Security (Finance) Act for 2000. Moreover the budgetary consequences of these new legislative measures, in particular the State contribution to the Fund to finance the reform of employer's social security contributions, were taken into account by the Finance Act for 2000. No violation of article 34 of the Constitution.
(99-423 DC, 13 January 2000, para. 18, p. 33)

Respective powers of the Constitution and statutes

Miscellaneous

Neither article 88-3 of the Constitution nor any other constitutional rule has the effect of requiring the rules governing incompatibilities applicable to the members of decision-making bodies of territorial units to be determined by constitutional statutes.
(2000-426 DC, 30 March 2000, para. 9, p. 62)

Respective powers of institutional acts and statutes

Provisions reserved for institutional acts

The second paragraph of article 74 of the Constitution provides: "The bodies of rules governing the overseas territories shall be established by institutional Acts that define, inter alia, the jurisdiction of their own institutions ...". It follows that the rules governing incompatibilities applicable to the holders of the offices of President and member of the Government of French Polynesia must be determined by institutional act.

By the third paragraph of article 77 of the Constitution, it is for the institutional legislature to determine "the rules for the organisation and operation of the institutions of New Caledonia". These include rules governing incompatibilities applicable to the holders of the offices of President and member of the Government of New Caledonia and of President of a provincial assembly. It follows that the provisions providing for the incompatibility of these functions with the functions of Mayor are compatible with article 77 of the Constitution only if they are confined to restating or applying rules determined by an institutional act.
(2000-426 DC, 30 March 2000, paras 23 and 27, p. 62)

Under the second and third paragraphs of article 74 of the Constitution, provisions defining the powers of the specific institutions of the overseas territories, the main rules governing the organisation and operation of such institutions, including the manner in which the review powers of central government are exercised over them, and provisions which are not inseverable from them, must be determined by an institutional act. Section 1, which relates to the main rules governing the composition of the assembly of French Polynesia is accordingly institutional; the same applies to section 2, as regards the territorial assembly of the Wallis and Futuna Islands.

Article 77 of the Constitution reserves for institutional acts "the rules for the organisation and operation of the institutions of New Caledonia". Section 3, relating to elections to the provincial assemblies and the congress of New Caledonia, is accordingly institutional.

Section 4, relating to the entry into force of institutional provisions, is inseverable from them and accordingly institutional.
(2000-430 DC, 29 June 2000, paras 10 to12, p. 95)

Section 17(XIII) of the Act referred amends section L 223-17 of the Rural Code to read as follows: "The amount and the conditions for recovery of wildlife taxes shall be determined each year by the Finance Act".

The wildlife taxes paid by hunters for the validation of their hunting licence under section L 223-16 of the Rural Code are in the nature of miscellaneous taxes; under section 1 of the ordinance of 2 January 1959 laying down the institutional act on finance acts, tax provisions are not among those reserved exclusively for finance acts; and article 34 of the Constitution provides: "Finance Acts shall determine the resources and obligations of the State in the manner and with the reservations specified in an institutional Act".

The provision criticised, which relates to the definition of the mandatory content of finance acts, falls within the area in which institutional statutes are to be enacted. Since it is not confined to the matters regulated by the ordinance of 2 January 1959, it violates the powers conferred on the institutional legislature by article 34 of the Constitution. Section 17(XIII) of the Act referred is unconstitutional.
(2000-434 DC, 20 July 2000, paras 11, 13 and 14, p. 107)

The new section 53 of the Act of 30 September 1986 requires the Finance Act for each year to enter an amount equal to the amount of exemptions from the licence fee as resources for the special allocation account entitled "account for the use of the audiovisual licence fee", and thus determines a rule as to the mandatory content of the finance acts. But only an institutional act can impose a rule on the financial legislature, as is clear from the provision of article 34 of the Constitution that: "Finance Acts shall determine the resources and obligations of the State in the manner and with the reservations specified in an institutional act". The words "account for the use of the audiovisual licence fee" in Section 53 of the Act of 30 September 1986, inserted by section 15 of the Act referred, must accordingly be declared unconstitutional.
(2000-433 DC, 27 July 2000, para. 19, p. 121)

Section 9 of the Act provides: "Each year the Government shall lay before Parliament, in support of the Finance Bill, a report on the conditions for setting bank rates in the overseas departments and the reasons for their divergence from the rates applied in metropolitan France".

The purpose of a report on the conditions for setting bank rates in the overseas departments is not to organise Parliament's information or its review of the public finances. It follows that section 9 annexes to the Finance Bill a document which is unrelated to the purposes of a Finance Act. The words "in support of the Finance Bill", must accordingly be declared unconstitutional.
(2000-435 DC, 7 December 2000, paras 50 and 51, p. 164)

Miscellaneous

Under the first paragraph of article 25 of the Constitution, the rules governing incompatibilities of members of Parliament are matters for institutional acts, but the rules governing the incompatibility of local executive functions are to be governed by ordinary statute under article 34 of the Constitution. It is accordingly for the ordinary legislature to lay down rules limiting the combined exercise of local executive functions. In the absence of institutional provisions, these rules apply to persons exercising such functions, whether or not they are members of Parliament.

Where an ordinary statute restates or applies a rule laid down by institutional act, there is no violation of the Constitution.
(2000-426 DC, 30 March 2000, paras 8 and 23, p. 62)

Clarity and constitutionality

The restrictions placed on freedom of enterprise by section 14 of the Act referred are not specified clearly and precisely enough. The section must accordingly be declared contrary to article 34 of the Constitution.
(2000-435 DC, 7 December 2000, para. 53, p. 164)

The Senators making the reference submit that the Finance Act for 2001 establishes "a number of financial circuits for transferring expenditure and revenue within specific branches of the social security and the funds for financing them, but also between these branches and funds and the general budget". The establishment of these mechanisms, being a source of complexity, runs counter to the constitutional objective of clarity of statute.

The Social Security (Finance) Act for 2001 does indeed increase the complexity of financial circuits as between compulsory basic social security schemes and the bodies set up to finance them, but it defines clearly enough the new financing rules that it lays down. In particular, it determines the new revenue of each such body and lays down scales for the distribution of the proceeds of each tax allocated. Moreover, transfers between the various specialist funds and compulsory basic social security schemes are defined precisely.

It follows that the additional complexity introduced by the Act referred is not in itself such as to make the Act unconstitutional.
(2000-437 DC, 19 December 2000, paras 2 to 4, p. 190)

Injunctions to the Government

Provisions requiring the Government to present a Bill

Under the second paragraph of section 1 of the Act organising a consultation of the population of Mayotte: "A Bill taking account of the results of this consultation shall be laid before Parliament before 31 December 2000". This provision requiring the Government to present a Bill within a prescribed period has no legal basis either in article 34 of the Constitution or in any other of its provisions and violates the right to initiate legislation conferred by article 39 on the Prime Minister. Moreover this provision could give the impression that the legislature is bound to comply with the content of the agreement as approved by a majority of the

population of Mayotte. The second paragraph of section 1 of the Act referred, which is severable from the first paragraph, is accordingly declared unconstitutional.
(2000-428 DC, 4 May 2000, para. 13, p. 70)

The third paragraph of section L 5915-3 provides that the Prime Minister shall acknowledge receipt with fifteen days of deliberations adopted by the departmental or regional council transmitted to him by the president of the relevant council. It specifies that the Prime Minister "shall determine the time within which he will respond".

The Constitution confers specific powers on the Government and on Parliament. The legislature has no power to enjoin the Prime Minister to respond to proposals for legislative amendments made by the decision-making bodies of territorial units, even if the Prime Minister is left free to determine the time within which he will respond. The provisions are unconstitutional.

The legislative history reveals that the first and third sentences of section 19 of the Act referred require the Government to present a Bill within eighteen months. There is no legal basis for such an injunction either in article 34 or in any other provision of the Constitution, and the right to initiate legislation conferred on the Prime Minister by article 39 is also violated. The provisions are unconstitutional.

Under the first paragraph of section L 3444-2, the councils for the overseas departments may present proposals for the amendment of provisions of legislation or regulations. The third paragraph of that section provides that "the Prime Minister shall acknowledge receipt with fifteen days and shall determine the time within which he will respond".

The Constitution confers specific powers on the Government and on Parliament. The legislature has no power to enjoin the Prime Minister to respond to proposals for legislative amendments made by the decision-making bodies of territorial units, even if the Prime Minister is left free to determine the time within which he will respond. The provisions are unconstitutional.
(2000-435 DC, 7 December 2000, paras 40, 41, 55, 60 and 61, p. 164)

Provisions requiring the Government to allocate and use appropriations

The penultimate paragraph of section 15 of the Act to promote equal access of women and men to electoral office provides: "The appropriations generated by this reduction shall be reallocated in the Finance Act", and in the last paragraph provides: "An annual report shall be laid before Parliament on the use of the appropriations generated by this reduction..."; these provisions, read together, require the Government or Parliament, as the case may be, to allocate and utilise the corresponding appropriations; with regard to the allocation by the Finance Act, an ordinary statute cannot impose such a requirement without violating the Government's right to take initiatives as regards Finance Bills under articles 39, 40 and 47 of the Constitution; nor was it legitimate for the legislature to obstruct the Government's prerogatives as regards implementation of the Finance Act, both to cancel any appropriation becoming superfluous during the year and to amend by way of transfer the distribution of appropriations between budgetary chapters, within the conditions and limits provided for in sections 13 and 14 of the Ordinance of 2 January 1959.
(2000-429 DC, 30 May 2000, para. 14, p. 84)

Exercise of power to make regulations

Measures to give effect to statutes

Obligations on the Government

Section 32 of the Act referred requires the Government to present, before 31 December 2002, a report retracing the trend in the remuneration of employed persons receiving the resources guarantee defined earlier. The report is to specify "the measures envisaged, if appropriate, to render the guarantee without effect by 1 July 2005", given among other things the progression of the growth-oriented minimum wage. "In the light of the conclusions of this report, the

necessary measures shall be adopted to ensure that by that date the guarantee, henceforth having no purpose, will cease to have effect".

The legal basis for the last sentence of section 32 of the Act referred, requiring the Government to take the necessary measures to ensure that by 1 July 2005 the differential supplement ceases to have effect, is in article 34 of the Constitution, regarding the power to make regulations to give effect to statutes. No violation of article 34 of the Constitution.
(99-423 DC, 13 January 2000, paras 20 and 21, p. 33)

Governmental and administrative organisation

Distribution of powers between central government and various authorities

Principle of power to make regulations

Designation of relevant officials

The sole purpose of section 1649 quater K of the General Tax Code, the legal nature of which falls to be determined, is to identify the authority empowered to decide whether the maintenance or renewal of the approval of approved management centres or approved associations for the liberal professions should be subject to replacement of their officers in the event of failure to discharge their functions. It does no more than designate the administrative authority empowered to perform tasks on behalf of the central government which by statute are within the powers of the executive. It has no impact on any of the fundamental principles or any of the rules that are determined by article 34 of the Constitution are to be matters for statute. It is accordingly within the powers of the authority empowered to make regulations.
(2000-189 L, 25 September 2000, para. 1, p. 151)

DISTRIBUTION OF POWERS IN SPECIFIC MATTERS

Civic rights, protection of public freedoms

Voting rights

The second paragraph of Article 34 of the Constitution provides: "Statutes shall determine the rules concerning... civic rights and the fundamental guarantees granted to citizens for the exercise of their public liberties...", but it is for the authority empowered to make regulations, where the requisite statutory provisions are lacking, to determine rules for the implementation of the decision of the President of the Republic, in the exercise of his constitutional prerogatives, to present a text to a referendum pursuant to either Article 11 or Article 89 of the Constitution. It is accordingly for the authority empowered to make regulations to provide for the application of the provisions of statute and regulation governing other forms of electoral consultation, subject to such adaptations as may be required in the circumstances.
(Hauchemaille, 6 September 2000, para. 7, p. 140)
(Pasqua, 6 September 2000, para. 2, p. 144)

Public finance — taxation

Taxes

Definition

The wildlife taxes paid by hunters for the validation of their hunting licence under section L 223-16 of the Rural Code are in the nature of miscellaneous taxes.
(2000-434 DC, 20 July 2000, para. 13, p. 107)

Rules relating to the basis of assessment, calculation and recovery

Where the legislature introduces a new tax, it is free to determine the basis of assessment and the rate, subject to compliance with constitutional principles and rules in manner compatible with the nature of the new tax. In particular, to ensure compliance with the principle of equality, the legislature must base its decisions on objective rational criteria related to its avowed objective.
(2000-437 DC, 19 December 2000, para. 32, p. 190)

Articlet34 of the Constitution reserves for statute the power to determine rules relating to the basis of assessment, calculation and recovery of taxes of all kinds, but that does not mean that the legislature must itself set the rate of each tax. All it is required to do is determine the limits within which the authority empowered to make regulations is to set the rate of the tax. In providing that the rate of the new tax levied for the benefit of the health products safety agency may be set at up to 30 000 francs per request for registration, the legislature did not act in excess of its powers.
(2000-442 DC, 28 December 2000, para. 32, p. 211)

Parafiscal charges

The tax per animal shot, levied in the specific economic interest of a specific sector and for the benefit of private-sector bodies, is a parafiscal charge and not a direct tax. The rules governing it are matters to be determined by regulation. But it is a matter for the Finance Act to authorise its annual collection, pursuant to the third paragraph of section 4 of the Ordinance of 2 January 1959.
(2000-434 DC, 20 July 2000, para. 16, p. 107)

Education

Power to make regulations

Under article 34 of the Constitution: "Statutes shall determine the fundamental principles of ... education". The last sentence of the first paragraph of section 46 of the Act of 2 November 1968 the general policy orientation on higher education,, as amended, does not affect principles since it merely determines the duration of residency and internship in medicine.
(2000-188 L, 30 March 2000, para. 2, p. 56)

General administrative police

General police

Article 34 of the Constitution does not deprive the Head of the Government of the general police powers that he exercises by virtue of his own powers, over and beyond any specific statutory authorisation. His powers include the security measures covered by the provision contested, the sole purpose of which is to guarantee the safety of persons when harmful animals are hunted or destroyed, notably where shooting is involved. No failure by the legislature to exercise powers to the full.
(2000-434 DC, 20 July 2000, para. 19, p. 107)

Special police

The establishment of a special hunting police affects the fundamental principles of property ownership and is accordingly, under article 34 of the Constitution, a matter for the legislature. But the determination of specific rules to conserve game by "reasonable selections from species that may be hunted", according to the provisions of section L 220-1 of the Rural Code, is a matter for regulation.
(2000-434 DC, 20 July 2000, para. 22, p. 107)

The establishment of a special hunting police affects the fundamental principles of property ownership and is accordingly, under article 34 of the Constitution, a matter for the legislature. But the determination of rules governing the operation of such police is a matter for regulation, since it has no impact on any of the rules or fundamental principles which by that Article are matters for statute.

The designation of harmful animals that may be hunted or destroyed by order of the Prefect in accordance with section L 427-6 of the Environment Code or of the Mayor in accordance with section L 2122-21 (9) of the General Code of Local Authorities has no impact on any of these rules or principles. It is accordingly a matter for regulation.
(2000-190 L, 7 November 2000, paras 1 and 2, p. 162)

CONSTITUTIONAL COUNCIL AND CONSTITUTIONAL REVIEW

SCOPE OF CONSTITUTIONAL REVIEW

Constitutional Council lacks jurisdiction

Preferences

It is not for the Constitutional Council to rule on preferences.
(Hauchemaille, 6 September 2000, para. 2, p. 140)

REFERENCES TO CONSTITUTIONAL COUNCIL — ADMISSIBILITY — WITHDRAWAL OF CASE — INOPERATIVE ARGUMENTS AND ARGUMENTS 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 statutes may be referred to the Constitutional Council by members of Parliament, but it reserves the exercise of this right to sixty Deputies or sixty Senators.

By letter dated 12 April 2000, Mr JEAN-BAPTISTE, a Deputy who signed the reference, sent the Constitutional Council, with his signature alone, an "additional pleading". The effect of article 61 of the Constitution is that this pleading must be declared inadmissible.
(2000-428 DC, 4 May 2000, paras 2 and 3, p. 70; cf. 99-419 DC, 9 November 1999, Rec. p. 116)

Pleas inoperative or not supported by the facts

Inoperative pleas

The scheme set up by section 15 of the Act referred, which amends section 9-1 of the Political Life (Financial Transparency) Act of 11 March 1988, does not constitute a penalising scheme but modulates the grant of public support political groups pursuant to sections 8 and 9 of the Act of 11 March 1988. Its purpose is to give parties and groups an incentive to give effect to the principle of equal access of women and men to electoral office, in accordance with articles 3

and 4 of the Constitution. The plea that the principle that penalties must be necessary is accordingly inoperative.
(2000-429 DC, 30 May 2000, para. 13, p. 84)

The authors of the reference complain that section 28 of the Act referred, which inserts a new section L 224-4-1 in the Rural Code authorising the hunting of waterfowl by night from fixed installations in departments where this is a traditional practice, introduces an unwarranted form of unequal treatment between departments where such hunting is authorised and neighbouring departments where it is forbidden, even though the same traditions are to be found. In particular, they refer to the Bay of Mont-Saint-Michel which extends over districts of the departments of Manche and Ille-et-Vilaine.

Under the provision criticised, "hunting by night for waterfowl shall also be authorised on the same terms in cantons of departments where it is traditional" and leaves it to a decree adopted in the Council of State to determine the list of the relevant cantons. It will be for the authority having the power to make regulations to adopt the list, subject to review by the administrative courts, in compliance with the criterion established by the Act. The plea is accordingly inoperative.
(2000-434 DC, 20 July 2000, para. 41, p. 107)

The purpose of the impact studied annexed by the Government to the explanatory memorandum accompanying a Bill is to ensure that Parliament is properly informed of the effect of the instrument laid before it; any imperfections in it are without significance for the constitutionality of the statute eventually enacted.
(2000-436 DC, 7 December 2000, para. 3, p. 176)

The plea that the levy on the tax resources of the communes provided for by the new section L 302-7 violates the equality of taxpayers is inoperative, since the levy is not a local tax.
(2000-436 DC, 7 December 2000, para. 43, p. 176)

Plea not supported by the facts

The plea of violation of the constitutional requirement for clarity in legislation by the provisions of the Act referred relating to the modulation of working time that do not affect the rules governing the fact that public holidays are not working days pursuant to section L 222-1 of the Labour Code is not supported by the facts.

The Deputies and Senators making the reference criticise the fact that the Act referred, and in particular section 5, affect the personal liberty of employed persons. They plead that "the statute makes an arbitrary choice, in place of the employed persons themselves, in favour of more leisure time and lower income, whereas there is no argument of the general interest to justify this massive reduction in working time".

The provisions criticised have neither the object nor the effect of violating the individual liberty of employed persons. The plea is thus not supported by the facts.

The plea by the Senators making the reference that by "predetermining" the content of the various collective agreements for which it provides, the Act referred deprives the eighth paragraph of the Preamble to the 1946 Constitution of its substance, is not supported by the facts.

The Deputies making the reference plead that, since it is not granted in consideration of the "exceptional excess costs that firms will have to bear as a result of the collective negotiations but merely gives effect to the working week of thirty-five hours", the reduction in social security contributions would also effect equality between firms.

This plea is not supported by the facts, since the reduction in social security contributions can be withdrawn or suspended for reasons other than failure to comply with the working-time rules.
(99-423 DC, 13 January 2000, paras 19, 35 and 36, 48, 52 and 53, p. 33)

The provisions whereby the functions of mayor, president of a departmental council and president of a regional council are mutually incompatible, the effect of which is that a pre-existing executive function must be dropped, have neither the object nor the effect of

establishing ineligibility rules. The plea of violation of the constitutional rules and principles relating to ineligibility is accordingly not supported by the facts.
(2000-426 DC, 30 March 2000, paras 2 to 4, p. 62)

Section L 222-10(5°) of the Rural Code, as amended by section 14(II) of the Act referred, excludes from the territory of the approved local hunting association land "in respect of which there is opposition from owners or from joint owners acting unanimously who, on the basis of personal convictions against hunting, prohibit hunting, even by themselves, on their property ...". Under the first paragraph of section L 222-13-1 of that Code, inserted by section 14(IV) of the Act referred: "The opposition mentioned in section L 222-10(5°) shall be admissible on condition that it relates to the entire property owned by the relevant owners or joint owners". This provision does not have the scope argued by the authors of the reference. Given that the legislature wished to insert it in the provisions of the Rural Code relating to the determination of the territory of the approved local hunting associations, and given the general scheme of these provisions, the condition imposed by the first paragraph of section L 222-13-1 of the Rural Code for the exercise of the right of opposition can concern only land in respect of which the opposer is the owner in the territory of the relevant approved local hunting association. The plea is not supported by the facts.
(2000-434 DC, 20 July 2000, paras 26 and 27, p. 107)

The combined effect of the new sections L 122-3 and L 122-4 of the Town Planning Code is that territorial compatibility plans are prepared, on the initiative of communes or groupings of communes, by a public establishment for cooperation between communes or by a joint association. By section L 122-3(II), where the perimeter of the territorial compatibility plan "concerns public establishments for cooperation between communes exercising powers in matters of territorial compatibility plans, it shall cover the entire perimeter of such establishments". The plea that there is a confusion between the territorial powers of communes and public establishments for cooperation between communes accordingly fails on the facts.
(2000-436 DC, 7 December 2000, para. 6, p. 176)

The plea that there is a difference in the treatment of public and private lessors fails on the facts since housing belonging to natural persons and bodies corporate governed by private law and rented out on terms governed by agreements with the public authorities is covered by the provisions criticised.
(2000-436 DC, 7 December 2000, para. 44, p. 176)

Section 21 of the Act referred merely transfers the aggregate financial burden of pension increases for dependent children from the old-age solidarity fund to the national family allowances fund. The plea that a "principle of the autonomy of individual branches of social security" is violated fails on the facts.
(2000-437 DC, 19 December 2000, paras 25 and 27, p. 190)

Section 50, which amends section L 138-2 of the Social Security Code, increases by 0.45 point the rate of the contribution payable under section L 138-1 of that Code by wholesale distributors of pharmaceutical specialities and by firms marketing one or more specialities where they engage in wholesale trade in medicines or specialities that are reimbursable. It is provided that "This section shall apply to turnover on business transacted after 1 October 2000".

This section is criticised as having retroactive effect, there being no considerations of general interest to justify this "apart from increased tax revenue".

However section L 138-4 of the Social Security Code provides that the relevant contribution "shall be based on sales recorded in each calendar quarter". The plea that the provision criticised has retroactive effect accordingly fails on the facts.
(2000-437 DC, 19 December 2000, paras 39 to 41, p. 190)

The purpose of section 8 of the Act referred is to establish a trading account to record operations for the "active management" of the central government cash-flow debt position using time-deposit financial instruments. The plea that this section contains no estimate of revenue and expenditure on the new account fails on the facts. In any event, under section 26 of the Ordinance of 2 January 1959, only the estimate of expenditure and the determination of the authorised overdraft limit require to be specified in the Finance Bill, as is indeed the case here.
(2000-441 DC, 28 December 2000, paras 19 and 20, p. 201)

Parameters followed

Declaration of Human and Civic Rights

Right to property (article 2)

The right to hunt on a piece of land is part of the right to use that land, itself part of the rights of property. No restrictions may be placed on the exercise unless such restrictions are imposed for the sake of general interest considerations and they are not so serious as to deprive the property right of its meaning and scope.
(2000-434 DC, 20 July 2000, para. 24, p. 107)

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

It is legitimate for the legislature to impose on the freedom of enterprise, secured by article 4 of the Declaration of Human and Civic Rights of 1789, restrictions that are justified by general interest considerations or linked to constitutional requirements, provided such restrictions do not have the effect of depriving the right of its scope.

Article 4 of the Declaration of Human and Civic Rights of 1789 provides: "Liberty consists in being able to do anything that does not harm others: thus, the exercise of the natural rights of every man has no bounds other than those that ensure to the other members of society the enjoyment of these same rights. These bounds may be determined only by Law".
(99-423 DC, 13 January 2000, paras 27 and 40, p. 33)

The concern for commercial diversity in urban districts corresponds to an objective of general interest. But by requiring an administrative authorisation prior to any change in the use of commercial or trade premises involving a change in the nature of the activity pursued there, the legislature has imposed on property rights and the freedom of enterprise secured by article 4 of the Declaration of Human and Civic Rights a restriction that is out of proportion to the objective pursued. The eighth paragraph (3°) of section L 123-1 of the Town Planning Code, as amended by section 4 of the Act referred, is accordingly declared unconstitutional.
(2000-436 DC, 7 December 2000, para. 20, p. 176)

The combined effect of sections L 411-4 and L 411-5 inserted in the Construction and Housing Code by section 145 of the Act referred is that "housing which is owned by property companies in which the Caisse des dépôts et consignations has a majority holding and which on 30 June 2000 is covered by an agreement to which section L 351-2 applies and may be treated in the same way as social housing" shall, "even after the expiry of that agreement, and even where there is a transfer of ownership, including cases of compulsory acquisition, remain subject to allocation rules subject to resource-testing and to maximum rents laid down by the administrative authority in the manner provided by a decree deliberated in the Council of State".

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

The housing to which the provision criticised applies belongs to the group of the Caisse des dépôts et consignations and is managed partly in the context of the commercial activities of the Caisse.

The possibility for everybody to enjoy decent housing is a constitutional objective. But the provision criticised does not in practice make a sufficient contribution to the attainment of that objective warranting such a serious violation of the general scheme of contracts lawfully entered into. The constitutional requirements recalled above are violated.

The new section L 411-5 of the Construction and Housing Code is unconstitutional.
(2000-436 DC, 7 December 2000, paras 48, 50 to 53, p. 176)

The obligation to bring rented housing into conformity, imposed by the new section 20-1 of Act 89-462 of 6 July 1989, corresponds to the constitutional objective of securing the possibility for everybody to enjoy decent housing; it is provided that the lessor may be required by the court to undertake specified works within a specified period or alternatively to reduce the rent, but these obligations, which are accompanied by safeguards as to procedure and substance, do not modify the meaning and scope of the right of ownership and do not violate the general scheme of contracts lawfully entered into to such an extent as to violate the freedom secured by article 4 of the Declaration of Human and Civic Rights of 1789.
(2000-436 DC, 7 December 2000, para. 56, p. 176)

Equality (article 6)

The legislature has the power to impose incompatibilities between electoral offices and functions and professional functions, but the resultant restriction on the exercise of public functions must be justified, in relation to the requirements of article 6 of the Declaration of 1789, by the need to protect the voter's freedom of choice, the independence of the elected representative or the independence of the courts against risks of confusion or conflicts of interests.
(2000-426 DC, 30 March 2000, para. 15, p. 62)

Freedom to express ideas and opinions (article 11)

Consultation of the population of Mayotte on its future. Given the limited broadcasting time available on radio and television for the official campaign, it was legitimate for the legislature, without violating article 11 of the Declaration of Human and Civic Rights or article 4 of the Constitution, to reserve participation in the campaign for parties and groups authorised by the election monitoring commission. The representative ness criterion adopted by the legislature, which is basically objective, does not violate the constitutional requirement for pluralism in ideas and opinions.
(2000-428 DC, 4 May 2000, para. 21, p. 70)

The first paragraph of section 3 of the Decree criticised provides: "Political parties or groups represented at the date of this Decree by at least five Deputies or five Senators within a political grouping in the National Assembly or the Senate may ask to take part in the campaign ...". The second paragraph provides: "Other parties or groups may ask to take part in the campaign if, alone or in a national coalition, they received at least 5 % of the votes cast at the election of representatives to the European Parliament held on 13 June 1999". Section 5 provides that political organisations to which the first paragraph of section 3 applies "shall be given two hours of television and two hours of radio broadcasting time in the programme schedules of the national broadcasting companies...". Section 6 allows five minutes television and five minutes radio broadcasting time for political organisations to which the second paragraph of section 3 applies.

By reserving access to the schedules of national television and radio broadcasting companies for political parties and groups, the authors of the Decree were merely giving effect to Article 4 of the Constitution, which provides: "Political parties and groups shall contribute to the exercise of suffrage".

By requiring such political organisations to be represented by at least five members within a political grouping or to have received, alone or in a national coalition, at least 5 % of the votes cast at the election of representatives to the European Parliament held on 13 June 1999, the authors of the Decree had adopted objective criteria which, in view of the limited broadcasting time available for the official campaign, did not run counter to equality between political parties or groups and violated neither the principle of Freedom to express ideas and opinions secured by article 11 of the Declaration of Human and Civic Rights of 1789 nor article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The criteria as to representativeness for the admission of parties and groups to take part in the official campaign for the referendum enable the electorate to be acquainted with a variety of positions. This meets the constitutional demand for pluralism in ideas and opinions imposed by article 11 of the Declaration of Human and Civic Rights.
(Pasqua, 6 September 2000, paras 3 to 6, p. 144)

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

By section 3 of the Act referred, the general social contribution on the earned income defined by section L 136-2(I) of the Social Security Code is reduced where the total income is below a threshold set at 169 times the hourly rate of the growth-oriented minimum wage plus 40 %.

The relevant contribution falls within the category of "taxes of all types" mentioned in article 34 of the Constitution, and it is for the legislature to determine rules governing the base, rates and methods of collection subject to constitutional principles and rules. In particular it must take account of taxpayers' ability to pay, having regard to the specific features of each tax.

It is legitimate for the legislature to change the basis of assessment to the general social contribution in order to lighten the burden on the lowest income groups, but only provided it does not provoke a serious breach in equality of taxpayers. The provision criticised has no regard for the taxpayer's unearned income or for the income of other members of the household or of other dependent persons. The legislature's decision not to have regard to all aspects of ability to pay creates a manifest disparity between taxpayers that is contrary to article 13 of the Declaration of 1789.
(2000-437 DC, 19 December 2000, paras 5, 7 and 9, p. 190)

Right of redress (article 16)

The right to seek redress in the ordinary courts, even in the absence of express provisions to that effect, is available to the property owners concerned. This secures the right to an effective judicial remedy that flows from article 16 of the Declaration of Human and Civic Rights.
(2000-436 DC, 7 December 2000, para. 26, p. 176)

Section 53 establishes an "Asbestos Victims Compensation Fund" as a national public establishment with the task of compensating for damage sustained by "persons recognised as suffering from an occupational disease caused by asbestos" and by "persons who have sustained loss as the direct result of exposure to asbestos in the territory of the Republic". The Fund is also to compensate for loss sustained by persons entitled under the victims thus defined. Under section 53(IV), the Fund has six months from receipt of the application to make the applicant an offer of compensation. Under the last subparagraph of section 53: "Acceptance of the offer or the final decision given by the court in the event of an action pursuant to paragraph V shall have the effect of staying all current actions for compensation and precluding all future actions for compensation for the same loss. The same shall apply to court decisions that have become final and give full compensation for the effects of exposure to asbestos". Under paragraph V of the same section: "The applicant shall enjoy a right of action against the compensation fund only if his application for compensation has been rejected, if no offer has been made to him within the time allowed by the first subparagraph of paragraph IV or if he has not accepted the offer made to him. Such action shall be brought in the Court of Appeal for the claimant's domicile".

The authors of the reference submit that these provisions "substantially violate the right to an effective judicial remedy" conferred by article 16 of the Declaration of Human and Civic Rights.

Under section 53 of the Act referred, victims are to be assured of "full compensation for the losses sustained by them", and a simple and rapid compensation procedure is introduced to that end. A person who opts to apply to the Fund for compensation has the possibility of bringing an action in the Court of Appeal if his application is rejected, if no offer has been made to him after six months or if he rejects the offer that is made to him. Any decision by a Court of Appeal may be referred to the Court of Cassation. The last subparagraph of section 53(IV), relating to the staying and inadmissibility of actions for compensation, is to be read subject to the second subparagraph. Actions for compensation in the ordinary courts remain available to persons who do not apply to the Fund. And victims retain the possibility of bringing actions in the criminal courts. The provisions criticised, which are justified by the desire to simplify contentious procedures, to avoid double compensation for the same loss and to declare victims' rights with great clarity, do not violate the right to an effective judicial remedy conferred by article 16 of the Declaration of Human and Civic Rights.
(2000-437 DC, 19 December 2000, paras 42 to 44, p. 190)

In response to a judgment given by the Court of Justice of the European Communities on 12 September 2000, section 2 amends the rules for the application of value added tax to the operators of road traffic infrastructure on which tolls are charged to bring it into line with the Directive of 17 May 1977. Under the new provisions, operators will be taxable under the new scheme from 1 January 2001.

Under section 2(VII), the only provision contested by the authors of the reference, "The operators of road traffic infrastructure on which tolls are charged who are assessed to value added tax may enter contentious objections for the purpose of obtaining the right to deduct value added tax which has been definitively charged on construction and major repair works carried out after 1 January 1996 on infrastructure which entered service before 12 September 2000".

"The amount to be refunded shall correspond to the excess of the value added tax levied on such works over the value added tax relating to tolls not paid between 1 January 1996 and 11 September 2000".

The sole object and effect of the provision contested are to enable operators who have a financial interest in doing so to obtain the reconstitution of their situation in relation to the new value added tax rules for the period between 1 January 1996 and 11 September 2000. Only value added tax charged on works carried out on or after 1 January 1996 on infrastructure which entered service before 12 September 2000 is deductible, but this limit in time on rights to object, which is in conformity with the general right to object conferred by section L 190 of the Code of Tax Procedures, does not violate the right to a remedy to an extent contrary to article 16 of the Declaration of Human and Civic Rights of 1789.
(2000-441 DC, 28 December 2000, paras 4, 5 and 7, p. 201)

Right to property (articles 2 and 17)

The restrictions imposed on the conditions for the exercise of the right to property by the new section L 123-1 of the Town Planning Code relating to the content of local town plans are justified by the general interest in having local authorities control the way the land is occupied and urban communities develop. Moreover the rules relating to local town plans laid down by the Act referred are not substantially different from those hitherto applicable to land occupation plans. These restrictions are accompanied, subject to judicial review, by assurances in matters of both substance and procedure. In particular, the draft local town plan adopted by the municipal council or presented for modification or revision is subject to a public inquiry by the new sections L 123-10 and L 123-13 of the Town Planning Code. As a result, all those interested are informed of the content of the plan and can make their views known to the chair of the inquiry. The relevant provisions do not violate the right to property in an unconstitutional manner.
(2000-436 DC, 7 December 2000, para. 15, p. 176)

The prohibition on construction within the perimeter of a general plan pending approval of the draft by the commune is justified by the need to avoid compromising or complicating its implementation. This prohibition is confined to a five-year period, applies only to buildings with a surface area in excess of a specified threshold and does not apply to conversion, restoration and limited extensions of existing buildings. An objective of general interest is also served by the establishment of land reserves for the construction of residential accommodation pursuing a social integration purpose. Moreover, wherever one or more of these easements is created, the second paragraph of the new section L 123-17 of the Town Planning Code allows the owners of the relevant land to "give the commune notice to acquire their land on the terms and within the time-limits specified by sections L 230-1 et seq". The limitations placed on the exercise of the right to property by the easements criticised are not so serious as to modify the meaning and scope of the right.
(2000-436 DC, 7 December 2000, para. 18, p. 176)

The concern for commercial diversity in urban districts corresponds to an objective of general interest. But by requiring an administrative authorisation prior to any change in the use of commercial or trade premises involving a change in the nature of the activity pursued there, the legislature has imposed on property rights and the freedom of enterprise secured by article 4 of the Declaration of Human and Civic Rights a restriction that is out of proportion to

the objective pursued. The eighth paragraph of section L 123-1 (3°) of the Town Planning Code, as amended by section 4 of the Act referred, is accordingly declared unconstitutional.
(2000-436 DC, 7 December 2000, para. 20, p. 176).

The right of pre-emption for public authorities, which affects the conditions for the exercise of the right to property, is justified by the performance of the general-interest measures and operations falling within sections L 210-1 and L 300-1 of the Town Planning Code. The purpose of these measures and operations is "to give effect to a local habitat policy, to organise the preservation, extension or installation of business activities, to promote the development of leisure activities and tourism, to provide public facilities, to combat unhealthy premises, to encourage urban renewal, and to safeguard or upgrade constructed and non-constructed sites and natural areas".

The period during which the public authority holding the right of pre-emption may not use or dispose of the pre-empted property for any purpose other than those mentioned above without first offering to re-convey it to the former owner cannot be reduced to the extent of jeopardising the general-interest objective that justified the exercise of the right of pre-emption. In setting the period at five years, the legislature did not go beyond the limit. The new section L 213-11 of the Town Planning Code does not violate the right to property in a manner contrary to the Constitution.
(2000-436 DC, 7 December 2000, paras 24 and 25, p. 176)

The obligation to bring rented housing into conformity, imposed by the new section 20-1 of Act 89-462 of 6 July 1989, corresponds to the constitutional objective of securing the possibility for everybody to enjoy decent housing. It is provided that the lessor may be required by the court to undertake specified works within a specified period or alternatively to reduce the rent, but these obligations, which are accompanied by safeguards as to procedure and substance, do not modify the meaning and scope of the right of ownership and do not violate the general scheme of contracts lawfully entered into to such an extent as to violate the freedom secured by article 4 of the Declaration of Human and Civic Rights of 1789.
(2000-436 DC, 7 December 2000, para. 56, p. 176)

Section 193 of the Act referred amends several provisions of Act 86-1290 of 23 December 1986. In particular, it inserts three new sections — sections 44 bis, 44 ter and 44 quater — relating to consultation between lessor and lessee. The procedure is purely consultative and does not have the effect of obliging the lessor to divulge confidential information regarding the management of his assets, so that the right to property is not affected. The objection is rejected.
(2000-436 DC, 7 December 2000, paras 57 and 59, p. 176)

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

Implementation of certain principles

Right to employment (5th paragraph)

It is for the legislature to determine the fundamental principles of labour law, and in particular to lay down specific rules that will best secure, in accordance with the fifth paragraph of the Preamble to the 1946 Constitution, the right for every person to obtain employment, while ensuring that this right is accessible to the greatest number of individuals, and respect for the eleventh paragraph of the Preamble, whereby the Nation "shall guarantee to all...rest and leisure...". By setting the working week at thirty-five hours, the legislature was seeking to give effect to the fifth and eighth paragraphs of the Preamble to the 1946 Constitution.
(99-423 DC, 13 January 2000, para. 27, p. 33)

Collective determination of conditions of work (8th paragraph)

The eighth paragraph of the Preamble to the 1946 Constitution provides: "All workers shall, through the intermediary of their representatives, participate in the collective determination of their conditions of work and in the management of the work place". By Article 34 of the Constitution, the fundamental principles of labour law, trade-union law and social security are

matters to be determined by statute. It is accordingly for the legislature to determine, in compliance with this constitutional provision, the conditions and guarantees for its implementation.
(99-423 DC, 13 January 2000, para. 28, p. 33)

Right to suitable means of existence (11th paragraph)

The effect of the increased rates of pension to take account of dependent children is in certain circumstances to increase the pension of any person covered by the general scheme or an aligned scheme who has had or raised at least three children. These increases can be analysed as a deferred family benefit which seeks at the time of retirement to compensate for the financial consequences of family responsibilities. The constitutional requirements flowing from the tenth and eleventh paragraphs of the Preamble to the 1946 Constitution are not violated by the contested transfer.
(2000-437 DC, 19 December 2000, para. 26, p. 190)

Protection of health, material security, rest and leisure, particularly for mothers and children (11th paragraph)

The sole purpose of the amendment of section L 147-5 of the Town Planning Code is to allow existing buildings and districts and villages in "C zones", i.e. those exposed to moderate noise levels in the neighbourhood of airports, to be upgraded. The effect of these operations will be to increase only very slightly the number of people exposed to noise pollution. No violation of the eleventh paragraph of the Preamble to the 1946 Constitution, which provides that the Nation "shall guarantee to all ... protection of their health".
(2000-436 DC, 7 December 2000, para. 29, p. 176)

Right to rest and leisure (11th paragraph)

It is for the legislature to determine the fundamental principles of labour law, and in particular to lay down specific rules that will best secure the right for every person to obtain employment, in accordance with the fifth paragraph of the Preamble to the 1946 Constitution, while ensuring that this right is accessible to the greatest number of individuals, and respect for the eleventh paragraph of the Preamble, whereby the Nation "shall guarantee to all...rest and leisure...". By setting the working week at thirty-five hours, the legislature was seeking to give effect to the fifth and eighth paragraphs of the Preamble to the 1946 Constitution.
(99-423 DC, 13 January 2000, para. 27, p. 33)

Fundamental principles recognised by the laws of the Republic

Principles recognised

Freedom of association

Freedom of association is one of the fundamental principles recognised by the laws of the Republic solemnly reaffirmed by the Preamble to the Constitution. But this freedom does not preclude specific control measures by the State on specific categories of association on grounds of their public service functions, the nature and volume of the resources they receive and the unavoidable expenditure they bear.
(2000-434 DC, 20 July 2000, para. 38, p. 107)

Constitutional principles stated by articles of the Constitution

Principle that the French people are one and indivisible

The authors of the reference submit that "by isolating a fraction of the national population for consultation purposes", the legislature "implicitly acknowledges the existence of a Mahorais

people". This, they argue, violates the principles of the indivisibility of the Republic and of the French people.

The 1958 Constitution distinguishes the French people from the people of the overseas territories, who are given free determination and the free expression of their will. Pleas rejected as inoperative.
(2000-428 DC, 4 May 2000, paras 9 and 10, p. 70; cf. 99-412 DC, 5 June 1999, paras 5, 6 and 7, Rec. p. 71)

Article 1 of the Constitution provides: "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 first paragraph of article 72 provides: "The territorial units of the Republic shall be the communes, the departments and the overseas territories. Any other territorial unit shall be established by statute". The second paragraph of that article provides: "These units shall be self-governing through elected councils and in the manner provided by statute".

It follows that the overseas departments and Saint-Pierre-et-Miquelon are territorial units that constitute an integral part of the Republic. Consequently the legislature's reference to the "pact linking the overseas territories to the Republic" is unconstitutional.
(2000-435 DC, 7 December 2000, paras 6, 7, 8 and 9, p. 164)

Self-government of territorial units

The purpose of the territorial compatibility plans is to determine general development orientations for a particular built-up area. The other planning documents, and in particular the local plans prepared by the communes, are simply required by section L 122-1 to be compatible with these general orientations. This obligation is not such as to violate the self-government of the relevant territorial units.
(2000-436 DC, 7 December 2000, para. 7, p. 176)

Given that its avowed objectives are not precise, section 1 of the Act referred would be contrary to article 34 of the Constitution if it imposed on territorial units an obligation as to a result to be attained. But it is clear from the legislative history that it must be interpreted as merely requiring the authors of town planning documents to specify the measures to be taken to attain its objectives. It will be for the administrative courts to check for compatibility between the rules set out in such documents and section L 121-1. Subject to this reservation, there is no violation of article 34 of the Constitution.
(2000-436 DC, 7 December 2000, para. 13, p. 176)

The purpose of section 55 of the Act referred, which amends sections L 302-5 et seq. of the Construction and Housing Code, is to construct social housing in communes where it accounts for less than 20 % of primary residences, thus giving effect to the objective of social integration. The levy on the tax revenue of communes established by the new section L 302-7 of the Construction and Housing Code is a compulsory burden borne by the commune as long as it has not attained the objective set by the Act. The sums corresponding to the levy are allocated to intercommunal bodies, to public land-holding agencies or to urban renewal funds set up to carry out property operations in support of social housing. This creates a mechanism for solidarity between urban communes. The levy is set at 1 000 francs per unit of social housing in deficit or at 20 % of the per capita tax potential if that potential exceeds 5 000 francs in the year in which the Act is promulgated. In no case may the total levy exceed 5 % of the commune's real operating costs; and expenditure incurred by the commune for purposes related to those of the Act may be deducted from the levy.

It follows from the foregoing that the levy criticised here does not have the effect of reducing the aggregate resources of the communes or of reducing their tax resources to the point of jeopardising their self-government.
(2000-436 DC, 7 December 2000, paras 33, 37 and 38, p. 176)

The objective of social integration is defined with adequate precision since it is deemed to be attained for the purposes of section 55 where the number of units of social housing accounts for 20 % of primary residences in the commune. This threshold, which was already provided for by the previous legislation, is not an arbitrary one. It should be noted that in the aggregate, social housing units already accounted for a little over 20 % of primary residences in the urban areas concerned. Both the communes that are subject to the obligation and the primary

residences and social housing units taken into account for the calculation of the 20 % are determined with precision and in accordance with criteria related to the purpose of the statute. The objection that private-sector rented housing units covered by agreements for the purpose of the individual housing support allowance are not taken into account fails on the facts.

It follows that the obligation for communes to create new social housing units is defined with precision as regards both its object and its scope and does not have the effect of restraining their self-government.
(2000-436 DC, 7 December 2000, paras 39 and 40, p. 176)

Under the new section L 302-9 of the Construction and Housing Code, the Prefect may by reasoned Order declare that a commune has not discharged its obligations in connection with the local habitat programme or, where there is no local habitat programme, has failed to attain the three-year objective for growth in the number of social housing units provided for by the final paragraph of the new section L 302-8. The effect of such declaration is both to double the levy on the tax resources of the commune provided for by section L 302-7 and to preclude any further approval for office premises on the basis of section L 510-1 of the Town Planning Code. The Prefect may also enter into an agreement with an agency for the construction or acquisition and restoration of social housing units in order to attain the statutory 20 % objective. If the central government pays a grant in support of such operations, matching funds must be provided by the commune, and there is no ceiling on the amount.

By attaching these consequences to delays in a commune's attainment of the three-year objective without distinguishing on the basis of the nature or validity of the reasons for the delay, the legislator has established a penalty that is incompatible with article 72 of the Constitution. The new section L 302-9 of the Construction and Housing Code, with the exception of the first two sentences, and section L 302-9-1 of that Code, are declared unconstitutional.
(2000-436 DC, 7 December 2000, paras 46 and 47, p. 176)

Involvement of political parties and groups in the expression of the public vote (article 4)

Consultation of the population of Mayotte on its future: given the limited broadcasting time available on radio and television for the official campaign, it was legitimate for the legislature, without violating article 11 of the Declaration of Human and Civic Rights or article 4 of the Constitution, to reserve participation in the campaign for parties and groups authorised by the electoral monitoring commission. The representativeness criterion adopted by the legislature, which is basically objective, does not violate the constitutional requirement for pluralism in ideas and opinions.
(2000-428 DC, 4 May 2000, para. 21, p. 70)

Article 4 of the Constitution provides: "Political parties and groups shall contribute to the exercise of suffrage". The first paragraph of section 3 of the Decree criticised provides: "Political parties or groups represented at the date of this Decree by at least five Deputies or five Senators within a political grouping in the National Assembly or the Senate may ask to take part in the campaign ...". The second paragraph provides: "Other parties or groups may ask to take part in the campaign if alone or in a national coalition they received at least 5 % of the votes cast at the election of representatives to the European Parliament held on 13 June 1999".

By adding to the criterion of representation within a parliamentary grouping a criterion empowering parties or groups on the basis of the results at the last election of representatives to the European Parliament and setting the threshold at 5 % of the votes cast, the authors of the Decree, in view of the limited broadcasting time available for the official campaign, did not violate equality between political parties or groups nor violate the constitutional requirement for pluralism in ideas and opinions.
(Larrouturou, 23 August 2000, paras 5 and 6, p. 137)

By reserving access to the schedules of national television and radio broadcasting companies for political parties and groups, the authors of the Decree were merely giving effect to Article 4 of the Constitution, which provides: "Political parties and groups shall contribute to the exercise of suffrage".
(Pasqua, 6 September 2000, para. 4, p. 144)

Constitutional objectives

Recognized

Pluralism

Consultation of the population of Mayotte on its future. Given the limited broadcasting time available on radio and television for the official campaign, it was legitimate for the legislature, without violating article 11 of the Declaration of Human and Civic Rights or article 4 of the Constitution, to reserve participation in the campaign for parties and groups authorised by the electoral monitoring commission. The representativeness criterion adopted by the legislature, which is basically objective, does not violate the constitutional requirement for pluralism in ideas and opinions.
(2000-428 DC, 4 May 2000, para. 21, p. 70)

Article 11 of the Declaration of Human and Civic Rights of 1789 provides: "The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law".

Pluralism of social and cultural expression is itself a constitutional objective. Respect for pluralism is one of the preconditions for democracy. The freedom to communicate ideas and opinions, secured by article 11 of the Declaration of Human and Civic Rights of 1789, would be nugatory if the audience to which the broadcasting media address their programmes was unable to enjoy access to both private and public sector programmes guaranteeing the expression of different currents of thought in respect for the overriding constraint of fairness in information. The ultimate objective is that the listeners and viewers who are among the primary beneficiaries of the freedom proclaimed by article 11 should be in a position to exercise their freedom of choice without either private or public interests being able to substitute their decisions for them and without them being treated merely as a market.

It is for the legislature, which has power under article 34 of the Constitution to determine rules concerning the fundamental guarantees enjoyed by citizens for the exercise of public freedoms, to reconcile, given the state of technical progress and general-interest economic considerations, the exercise of the freedom of communication secured by article 11 of the Declaration of 1789 with the constraints inherent in audiovisual communication techniques and operators and the constitutional objectives of safeguarding public order, other people's freedom and the preservation of pluralism of social and cultural expression, which these media, in view of their considerable influence, can jeopardise.
(2000-433 DC, 27 July 2000, paras 8 to 10, p. 121)

Article 4 of the Constitution provides: "Political parties and groups shall contribute to the exercise of suffrage". The first paragraph of section 3 of the Decree criticised provides: "Political parties or groups represented at the date of this Decree by at least five Deputies or five Senators within a political grouping in the National Assembly or the Senate may ask to take part in the campaign ...". The second paragraph provides: "Other parties or groups may ask to take part in the campaign if, alone or in a national coalition, they received at least 5 % of the votes cast at the election of representatives to the European Parliament held on 13 June 1999".

By adding to the criterion of representation within a parliamentary grouping a criterion empowering parties or groups on the basis of the results at the last election of representatives to the European Parliament and setting the threshold at 5 % of the votes cast, the authors of the Decree, in view of the limited broadcasting time available for the official campaign, did not violate equality between political parties or groups nor violate the constitutional requirement for pluralism in ideas and opinions.
(Larrouturou, 23 August 2000, paras 5 and 6, p. 137)

The first paragraph of section 3 of the Decree criticised provides: "Political parties or groups represented at the date of this Decree by at least five Deputies or five Senators within a political grouping in the National Assembly or the Senate may ask to take part in the campaign ...". The second paragraph provides: "Other parties or groups may ask to take part in the campaign if, alone or in a national coalition, they received at least 5 % of the votes cast at the election of representatives to the European Parliament held on 13 June 1999". Section 5 provides that

political organisations to which the first paragraph of section 3 applies "shall be given two hours of television and two hours of radio broadcasting time in the programme schedules of the national broadcasting companies...". Section 6 allows five minutes television and five minutes radio broadcasting time for political organisations to which the second paragraph of section 3 applies.

By reserving access to the schedules of national television and radio broadcasting companies for political parties and groups, the authors of the Decree were merely giving effect to Article 4 of the Constitution, which provides: "Political parties and groups shall contribute to the exercise of suffrage".

By requiring such political organisations to be represented by at least five members within a political grouping or to have received, alone or in a national coalition, at least 5 % of the votes cast at the election of representatives to the European Parliament held on 13 June 1999, the authors of the Decree had adopted objective criteria which, in view of the limited broadcasting time available for the official campaign, did not run counter to equality between political parties or groups and violated neither the principle of Freedom to express ideas and opinions secured by article 11 of the Declaration of Human and Civic Rights of 1789 nor article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The criteria as to representativeness for the admission of parties and groups to take part in the official campaign for the referendum enable the electorate to be acquainted with a variety of positions. This meets the constitutional demand for pluralism in ideas and opinions imposed by article 11 of the Declaration of Human and Civic Rights.
(Pasqua, 6 September 2000, paras 3 to 6, p. 144)

The purpose of section 6(I) of the Act referred is to waive claims for 13 million francs owed to the central government by the newspaper l'Humanité by way of participatory loans given in 1990 and 1993 and charged to the Treasury special account entitled "Loans from the Economic and Social Development Fund". Claims for contractual interest payments falling due for 1999 and 2000 are also waived.

The authors of the reference submit that the special treatment given to l'Humanité, "which treats a newspaper expressing a particular opinions more favourably than others", is contrary to the principle of equality.

The provision contested also waives part of the debt due from a company in difficult. It is not unusual for companies that have received loans from the Economic and Social Development Fund to enjoy this form of assistance, which contributes to the attainment of the constitutional objective of preserving pluralism in the daily political and general press. Objection rejected
(2000-441 DC, 28 December 2000, paras 16 to 18, p. 201)

Possibility for any person to enjoy decent housing

The obligation to bring rented housing into conformity, imposed by the new section 20-1 of Act 89-462 of 6 July 1989, corresponds to the constitutional objective of securing the possibility for everybody to enjoy decent housing.
(2000-436 DC, 7 December 2000, para. 56, p. 176)

Accessibility and intelligibility of statutes

The Senators making the reference submit that the Finance Act for 2001 establishes "a number of financial circuits for transferring expenditure and revenue within specific branches of the social security and the funds for financing them, but also between these branches and funds and the general budget". The establishment of these mechanisms, being a source of complexity, runs counter to the constitutional objective of intelligibility of statute.

The Social Security (Finance) Act for 2001 does indeed increase the complexity of financial circuits as between compulsory basic social security schemes and the bodies set up to finance them, but it defines clearly enough the new financing rules that it lays down. In particular, it determines the new revenue of each such body and lays down scales for the distribution of the proceeds of each tax assigned. Moreover, transfers between the various specialist funds and compulsory basic social security schemes are defined precisely.

It follows that the additional complexity introduced by the Act referred is not in itself such as to make the Act unconstitutional.
(2000-437 DC, 19 December 2000, paras 2 to 4, p. 190)

Constitutional rules and legislative procedure

Exercise of the right to amend

The combined effect of articles 39, 44 and 45 of the Constitution is that the right to amend, which is the corollary of the right to initiate legislation, may be exercised at any stage of the legislative procedure, subject only to the restrictions imposed by the second, third and fourth paragraphs of article 45; the second paragraph of article 45 provides inter alia that the Joint Committee is "to propose a text on the provisions still under discussion". In particular, provisions adopted in identical terms before the meeting of the Joint Committee cannot, as a rule, be amended after it.

It follows that the only amendments to provisions adopted in identical terms before the meeting of the Joint Committee that may be adopted after the meeting are those that are either directly related to a provision still being debated or imposed by the need to comply with the Constitution, to secure coordination with other instruments being debated by Parliament or to rectify a mistake.
(2000-434 DC, 20 July 2000, paras 2 and 3, p. 107)
(2000-435 DC, 7 December 2000, para. 57, p. 164)

It follows from the general scheme of article 45 that additions may not as a rule be made to the instrument being debated by the two assemblies after the meeting of the Joint Committee. If it were possible to do so, the resultant new measures could be adopted without having been considered at reading preceding the meeting of the Joint Committee and, in the event of disagreement between the assemblies, without having been presented for the conciliation procedure which, under article 45 of the Constitution, that committee is to organise.
(2000-434 DC, 20 July 2000, para. 7, p. 107)
(2000-435 DC, 7 December 2000, para. 57, p. 164)

Preamble to the Constitution of 1958

Second paragraph

Consultation of the relevant overseas populations

Consultation of the territorial unit on its own statutory development

The first paragraph of section 1 of the Act referred provides that "a consultation shall be organised before 31 July 2000 to enable the population of Mayotte to express its opinion on the agreement on the future of Mayotte signed in Paris on 27 January 2000 and published in the Journal officiel de la République française on 8 February 2000".

The authors of the reference submit that the consultation organised by the Act has no constitutional basis.

The second paragraph of the Preamble to the 1958 Constitution provides: "By virtue of these principles and that of the self-determination of peoples, the Republic offers to the overseas territories that express the will to adhere to them new institutions founded on the common ideal of liberty, equality and fraternity and conceived with a view to their democratic development". To give effect to this provision, the competent authorities of the Republic are empowered by the Constitution to consult relevant overseas populations, not only as to their wish to remain within the French Republic or to become independent, but also on the development of the status of their territorial unit within the Republic. But in the latter case, those authorities by virtue of article 72 of the Constitution, cannot be bound by the result of the consultation.

It follows from the foregoing that the consultation organised by the Act referred in order to seek the opinion of the population of Mayotte on the agreement of 27 January 2000 enjoys a basis in the second paragraph of the Preamble to the 1958 Constitution.
(2000-428 DC, 4 May 2000, paras 4 to 7, p. 70; cf. 87-226 DC, 2 June 1987, Rec. p. 34)

Requirement that the consultation be fair and clear

The question put to the relevant populations must meet the double constitutional requirement of fairness and clarity.

Section 1 of the Act referred, organising a consultation of the population of Mayotte, expressly provides that the population shall be asked to give "its opinion" on the agreement of 27 January 2000. The third paragraph of point I of the agreement provides that "Mayotte shall be given a new status established by statute "after the people of Mayotte have been consulted on the broad lines of that status". It follows that the question put to the electorate generates no risk of ambiguity as to the consultation's absence of legislative effect. Moreover the content of the agreement describes with adequate clarity the main points of the status of "departmental unit" envisaged by the legislature to enable Mayotte "to adopt a form of legal, economic and social organisation that is as close as possible to the normal status". By terming the new unit a "departmental unit", the legislature left no risk of confusion with an overseas department since, among other things, it is made perfectly clear by point II(4) of the agreement that "Mayotte shall continue to enjoy special legislative status", statutes being applicable there "only if it is expressly so provided after the opinion of the departmental council has been received". The objective is to extend to Mayotte the principle of the single legislative identity only on the "horizon 2010". Lastly, it was legitimate for the legislature to consult the relevant population on a status other than that of overseas department, even if the document defining the broad lines of that status had not been approved by all the parties before whom it was laid prior to the consultation.

But it will be for the competent authorities, and in particular by the authority empowered to make regulations, to make all appropriate arrangements to bring to the attention of the population of Mayotte that fact that its vote is purely consultative.
(2000-428 DC, 4 May 2000, paras 16 and 17, p. 70; cf. 87-226 DC, 2 June 1987, Rec. p. 34)

For the purposes of the second paragraph of the Preamble to the Constitution of 1958, the competent authorities of the Republic are empowered by the Constitution to consult the relevant overseas people on the evolution of the status of their territory within the Republic.

Where they do so, they are free to determine the subject-matter of the consultation. The Bill organising the consultation must satisfy the dual constitutional requirements of clarity and fairness. Under article 72 of the Constitution, the legislature is not bound by the result of the consultation. Subject to these reservations, section L 5916-1 of the General Code of Local Authorities is not unconstitutional.
(2000-435 DC, 7 December 2000, paras 43 and 44, p. 164)

Requirement that the broad lines of the status on which the relevant populations are consulted be in conformity with the Constitution

The broad lines of the status contained in the agreement of 27 January 2000 on the future of Mayotte on which the relevant populations are consulted violate no constitutional rules or principles. This conformity with the Constitution is a requirement for the constitutionality of the consultation itself.
(2000-428 DC, 4 May 2000, para. 8, p. 70)

Parameters not recognised and material not taken into account

Parameters not recognised for constitutional review of statutes

Treaties and international agreements

The deputies making the reference submit that the legislature established "a scheme discriminating in favour of public-service broadcasters in the allocation of new frequencies for terrestrial digital services", contrary to European Community competition law.

It is solely for the competent administrative and judicial authorities to enforce Community competition law.
(2000-433 DC, 27 July 2000, paras 25 and 28, p. 121)

NATURE, PROCEDURES AND SCOPE OF CONSTITUTIONAL REVIEW

Conditions for taking into account factors external to the statute

Exegetic approach

Section L 222-10(5°) of the Rural Code, as amended by section 14(II) of the Act referred, excludes from the territory of the approved local hunting association land "in respect of which there is opposition from owners or from joint owners acting unanimously who, on the basis of personal convictions against hunting, prohibit hunting, even by themselves, on their property...". Under the first paragraph of section L 222-13-1 of that Code, inserted by section 14(IV) of the Act referred: "The opposition mentioned in section L 222-10(5°) shall be admissible on condition that it relates to the entire property owned by the relevant owners or from joint owners". This provision does not have the scope argued by the authors of the reference. Given that the legislature wished to insert it in the provisions of the Rural Code relating to the determination of the territory of the approved local hunting associations, and given the general scheme of these provisions, the condition imposed by the first paragraph of section L 222-13-1 of the Rural Code for the exercise of the right of opposition can concern only land in respect of which the opposer is the owner in the territory of the relevant approved local hunting association. The plea is not supported by the facts.
(2000-434 DC, 20 July 2000, paras 26 and 27, p. 107)

Reference to legislative history

The ban on hunting one day each week does not violate the rights of property ownership seriously enough for the meaning and scope of that right to be distorted, but the ban must be justified on grounds of general interest. Such grounds are provided by the need to ensure the safety of children of school age and persons accompanying them on Wednesdays, when the schools are closed. However, the power conferred on the administrative authority to choose a different weekly twenty-four period "in the light of local circumstances", no general-interest grounds being given in the provision criticised or in the parliamentary debates in support of the ban, violates the rights of property ownership in manner contrary to the Constitution.
(2000-434 DC, 20 July 2000, para. 31, p. 107)

It follows from the fifth paragraph of Article 3 of the Constitution, read in the light of the legislative history of the Constitutional Act of 8 July 1999, that the constituent authority's intention was to empower the legislature to establish any mechanism that would give full effect to the principle of equal access for women and men to elective offices and positions; to this end, the legislature henceforth has the power to adopt provisions to attain that objective either on an exhortatory or on a mandatory basis; but it must reconcile the new constitutional provisions with the other constitutional rules and principles from which the constituent authority did not intend to derogate.

The contested provisions of the Act referred, laying down mandatory rules concerning the presence of candidates of each sex in the lists of candidates at proportional elections, are within the measures that the legislature can henceforth adopt under the new provisions of article 3 of the Constitution; they violate none of the constitutional rules or principles from which the Constitutional Act did not intend to derogate.
(2000-429 DC, 30 May 2000, paras 7 and 8, p. 84)

Reference to a statute not yet promulgated

A provision reduces to eighteen the age at which nationals of a Member State of the European Union other than France may stand for election, whereas for French citizens it applies the age

for eligibility for the National Assembly, set at twenty-three by section LO 127 of the Electoral Code, as amended by section 1 of the Institutional Act relating to incompatibilities between electoral offices referred to the Constitutional Council in another case. It was legitimate for the legislature to set at eighteen the age eligibility for election to the European Parliament, provided it did so for all potential candidates. The discrimination accordingly violates the principle of equality.
(2000-426 DC, 30 March 2000, para. 19, p. 62)

Scope of review

Power of review vested in the Constitutional Council

It is always legitimate for the legislature, acting within the limits of its powers, to amend earlier statutes or to repeal them and, in appropriate cases, substitute new statutes for them. The exercise of this power may not, however, have the effect of depriving constitutional principles of their legal guarantees.
(2000-433 DC, 27 July 2000, para. 55, p. 121)

The Constitutional Council does not have the same general discretionary and decision-making power as Parliament. It cannot consider whether the purposes pursued by the legislature could have been attained by other means, provided the manner in which the statute pursues them is not manifestly inappropriate.
(2000-433 DC, 27 July 2000, para. 41, p. 121)

Restricted constitutional review

Accuracy of the budget

The Deputies making the reference contest the accuracy of the revenue and expenditure entered in the budget on the ground that tax revenues are understated. The central government resources described in the Finance Acts are always forecasts presented in the form of estimates. The facts put to the Constitutional Council do not reveal that the estimates used for the balancing item are manifestly erroneous in light of the alleged under-estimation of the general volume of the budget.
(2000-441 DC, 28 December 2000, paras 2 and 3, p. 201)

MEANING AND SCOPE OF THE DECISION

Provisions having no mandatory effect

The first two sentences of section 1 of the Act referred, which have no strictly mandatory effect, merely introduce the subsequent provisions of the Act, in particular Title VII ("Local democracy and the development of the overseas departments"). It follows that the acknowledgement that certain local assemblies have "the capacity to propose changes to the law", and the reference to the "principle that the people must be consulted on such changes as are planned" must be understood within the limits and on the terms determined by Title VII.
(2000-435 DC, 7 December 2000, para. 11, p. 164)

Qualified interpretations

Examples of *interprétations neutralisantes*

Section L 222-10(5°) of the Rural Code, as amended by section 14(II) of the Act referred, excludes from the territory of the approved local hunting association land "in respect of which

there is opposition from owners or from joint owners acting unanimously who, on the basis of personal convictions against hunting, prohibit hunting, even by themselves, on their property ...". Under the first paragraph of section L 222-13-1 of that Code, inserted by section 14(IV) of the Act referred: "The opposition mentioned in section L 222-10(5°) shall be admissible on condition that it relates to the entire property owned by the relevant owners or joint owners". This provision does not have the scope argued by the authors of the reference. Given that the legislature wished to insert it in the provisions of the Rural Code relating to the determination of the territory of the approved local hunting associations, and given the general scheme of these provisions, the condition imposed by the first paragraph of section L 222-13-1 of the Rural Code for the exercise of the right of opposition can concern only land in respect of which the opposer is the owner in the territory of the relevant approved local hunting association. The plea is not supported by the facts.
(2000-434 DC, 20 July 2000, para. 26, p. 107)

Negotiation of treaties

The second paragraph of sections L 3441-4 and L 4433-4-3 must be interpreted as empowering the authorities of the Republic to take part in negotiations at any time.

The decision by the competent authorities of the Republic to sign an international agreement cannot be made subject to any form of prior authorisation. Consequently, the reference to the "acceptance" of the departmental or regional council in the third paragraph of sections L 3441-4 and L 4433-4-3 must be interpreted as requiring consultations on a purely advisory basis. Whatever the status of the decision taken by these councils, the authorities of the Republic retain the full freedom to confer powers to sign agreements on their behalf on whoever they wish, including the presidents of the departmental or regional councils concerned.

This being so, sections L 3441-4 and L 4433-4-3 of the General Code of local authorities are constitutional.
(2000-435 DC, 7 December 2000, paras 23 to 25, p. 164)

Public and social finance

It was legitimate for the legislator to set the amount of the estimated revenue of the funds to finance the reform of employers' social security contributions at 7 billion francs, given the change to the basis of assessment to the general tax on polluting activities provided for by the Finance (Amendment) Bill for 2000 in the course of proceedings in Parliament. But, if the effect of promulgation of this Act was to significantly reduce the expected yield of the tax and with it the fund provided for at the time of the enactment of the Social Security (Finance) Act for 2001, then there would have to be a further Social Security (Finance) Act to rectify the general financial balance of the social security scheme under the impact of the measures enacted in the Finance (Amendment) Act for 2000.
(2000-437 DC, 19 December 2000, para. 18, p. 190)

Territorial units

The relevant articles of the Constitution require the status of the overseas departments to be the same as the status of metropolitan departments, subject only to measures needed to adapt them to their specific situation. These adaptations may not have the effect of giving the overseas departments a "particular form of organisation" within the meaning of article 74 of the Constitution, which is reserved solely for overseas territories.

It follows that the possibility recognised by the Act for the overseas departments "to enjoy their own form of institutional organisation in the future" must be interpreted within the limits set by section 73 of the Constitution. Subject to that reservation, the first sentence of the fourth paragraph of section 1 of the Act referred is constitutional.

The first paragraph of section L 5911-1 of the General Code of Local Authorities provides: "in overseas regions consisting of s single department, there shall be a congress of elected departmental and regional elected representatives consisting of departmental and regional councillors". In the current state of the legislation, therefore, it will be possible to create a

congress of elected departmental and regional elected representatives in all the overseas regions despite the reference in section 1 of the Act to the "attachment of the people of Réunion to their island being organised in the ordinary way".
(2000-435 DC, 7 December 2000, paras 9, 10 and 34, p. 164)

Given that its avowed objectives are not precise, section 1 of the Act referred would be contrary to article 34 of the Constitution if it imposed on territorial units an obligation as to a result to be attained. But it is clear from the legislative history that it must be interpreted as merely requiring the authors of town planning documents to specify the measures to be taken to attain its objectives. It will be for the administrative courts to check for compatibility between the rules set out in such documents and section L 121-1. Subject to this reservation, there is no violation of article 34 of the Constitution.
(2000-436 DC, 7 December 2000, para. 13, p. 176)

Social law

The effect of section 19 of the Act referred, relating to the conditions in which firms may be eligible for reduced rates of social security contributions pursuant to section L 241-13-1 of the Social Security Code, is that the determination of the jobs created or preserved by the reduction of working time and by the provisions of mandatory collective agreements are matters to be determined exclusively by agreement between the social partners. Neither the administrative authorities nor the body responsible for collecting social security contributions will verify either the expediency or the scope of the provisions of such agreements.

Section 19(XV) specifies the cases in which failure to comply with the commitments entered into in such agreements prompts the withdrawal or suspension of the benefit of such reduced rates of contribution. In particular, the benefit of the reduced rate is withdrawn in the event of a false declaration or omission in the application for it and in the event of a failure, attributable to the employer, to give effect to clauses in the agreement relating to the collective working time. It is suspended where the recruitment commitments provided for by the agreement are not discharged within the one-year time-frame and where the collective working hours in the form are "incompatible" with the working time and working hours provided for by the agreement. This formulation must be interpreted as referring to the hypothesis of working hours in the firm that would be manifestly contrary to the time provided for by the agreement.

The second paragraph of section 19(XVI) provides that the benefit of reduced rates of contribution in the event of failure to comply with the agreement. Such failure must be interpreted as referring exclusively to the hypothesis that the rules for the conclusion of the collective agreements mentioned in section 19(II) have not been complied with, be they the ordinary rules governing the conclusion of collective agreements or the specific rules provided for by section 19, (VI) and (VII).

Subject to these reservations, by determining the principles described above and leaving it for a decree of the Council of State to implement them, the legislature has not violated the powers conferred on it by article 34 of the Constitution.
(99-423 DC, 13 January 2000, paras 9, 12 to 14, and 16, p. 33)

Section 187(I) of the Act referred amplifies section 1719 of the Civil Code by requiring the lessor to give the lessee, "if the property concerned is his main residence, decent housing". The section is criticised on the ground that it does not specify "criteria for defining decent housing", on which the content and extent of the lessor's obligations would depend. The authors of the reference further submit that constraints are imposed on lessors that jeopardise their freedom to dispose of their property and their "full freedom of contract".

The expression "decent housing" in section 187(I) of the Act referred can be defined only in subsection 187(II). The definition given there, which is sufficiently precise, is that decent housing is housing where there is "no manifest hazard to physical safety and health and is fitted out in such manner as to be fit for habitation". Subject to this reservation, the objection based on article 34 of the Constitution is rejected.
(2000-436 DC, 7 December 2000, paras 54 and 55, p. 176)

Interpretation of a statute after partial censure

The Constitutional Council must hold unconstitutional section 15 of the Act to promote equal access of women and men to electoral office, whereby the appropriations generated by the reduction in the first fraction of the aid given to political parties is to be reallocated in the Finance Act and an annual report shall be laid before Parliament on the use of the appropriations generated by this reduction; the reduction in aid is bound to cause to cause the corresponding appropriations to lapse.
(2000-429 DC, 30 May 2000, para. 15, p. 84)

Examples of qualified interpretation directive

Where the owner of property declares that he opposes hunting on his property by reason of his personal convictions, he may not be asked to justify his opposition.
(2000-434 DC, 20 July 2000, para. 28, p. 107)

Freedom of association is not violated by the rule laid down by section L 221-7 of the Rural Code, as amended by section 7 of the Act referred, that departmental hunting federations are subject to economic and financial control by the central Government and to review by the Court of Auditors and the regional chambers of audit. But it is for the authority empowered to make regulations to lay down the detailed rules for giving effect to these review provisions in such a manner as to comply with the constitutional principle of freedom of association in so far as that is compatible with the specific features of the category of associations concerned. Subject to this reservation, the argument that that principle is violated must be rejected.
(2000-434 DC, 20 July 2000, para. 40, p. 107)

Consultation of the population of Mayotte on its future legal status

The Act referred organises a consultation of the population of Mayotte on its future legal status.

It will be for the competent authorities, and in particular the authority empowered to make regulations, to make all appropriate arrangements to bring to the attention of the population of Mayotte that fact that its vote is purely consultative.
(2000-428 DC, 4 May 2000, para. 17, p. 70)

Consultation of the people of the overseas departments on changes to the status of their territorial unit within the Republic

For the purposes of the second paragraph of the Preamble to the Constitution of 1958, the competent authorities of the Republic are empowered by the Constitution to consult the relevant overseas people on the evolution of the status of their territory within the Republic.

Where they do so, they are free to determine the subject-matter of the consultation. The Bill organising the consultation must satisfy the dual constitutional requirements of clarity and fairness. Under article 72 of the Constitution, the legislature is not bound by the result of the consultation. Subject to these reservations, section L 5916-1 of the General Code of Local Authorities is not unconstitutional.
(2000-435 DC, 7 December 2000, paras 43 and 44, p. 164)

Severability of provisions declared unconstitutional

Examples of severable provisions

Ordinary statutes

The words: "and no later than one year after the entry into force of this Act" in section 28(II) of the Act referred must be declared unconstitutional. But the same does not apply to the words: "with the exception of provisions to contrary effect in sections L 212-5 and L 212-5-1 of the Labour Code as amended by section 5 of this Act", since the amendments made by the Act

referred to sections L 212-5 and L 212-5-1 of the Labour are unrelated to the agreements concluded under the Act of 13 June 1998, or else are the foreseeable consequences of the reduction of the statutory working week to thirty-five hours.
(99-423 DC, 13 January 2000, para. 46, p. 33)

Unconstitutional provisions and some or all of the rest of the statute inseverable

Inseverability of one section of a statute from other sections

General case

The words "performed in enterprises where the collective working hours are no longer than the statutory period determined by section L 212-1 or to a period considered as equivalent", in the first paragraph of section L 212-5 (I) of the Labour Code as amended by section 5 (II) of the Act referred, must be declared unconstitutional. The second paragraph of section L 212-5 (I) must also be declared unconstitutional. Section 5 (III) is inseverable from these unconstitutional provisions.
(99-423 DC, 13 January 2000, para. 71, p. 33)

Section 9 of the Act referred, which makes sections L 264 (first paragraph), L 265 and L 267 of the Electoral Code, and the reference to section 1 in section 10 of the Act applicable to the communes of French Polynesia of 2 500 inhabitants and more, are inseverable from the unconstitutional provision of section 1.
(2000-429 DC, 30 May 2000, para. 22, p. 84)

Inseverability within one and the same section

Partial censure

The words "performed in enterprises where the collective working hours are no longer than the statutory period determined by section L 212-1 or to a period considered as equivalent", in the first paragraph of section L 212-5 (I) of the Labour Code as amended by section 5 (II) of the Act referred, must be declared unconstitutional. The second paragraph of section L 212-5 (I) must also be declared unconstitutional. Section 5 (III) is inseverable from these unconstitutional provisions". The second paragraph of section L 212-5 (I) must also be declared unconstitutional. The fourth, fifth and sixth paragraphs of section L 212-5 (I) of the Labour Code are inseverable from these unconstitutional provisions.
(99-423 DC, 13 January 2000, para. 71, p. 33)

The provisions extending the general tax on polluting activities are contrary to the principle of equality before the tax law. The other provisions of subsection I of the same section are inseverable. Section 37 (I) must be declared unconstitutional as must, therefore, section 37 (II) and (III).
(2000-441 DC, 28 December 2000, para. 38, p. 201)

EFFECTS OF DECISIONS OF THE CONSTITUTIONAL COUNCIL

Hypothesis that enforceability of an earlier decision is not pleaded

Intervention of a revision of the Constitution

There is nothing, subject to articles 7, 16 and 89 of the Constitution, to preclude the constituent authority from inserting in the Constitution new provisions which derogate from constitutional rules or principles in the situations they concern. Such is the case of articles 3 and 4 of the Constitution as amended by the Constitutional Act of 8 July 1999, which have the object and effect of removing the constitutional obstacles highlighted by the Constitutional Council in Decisions 82-146 DC of 18 November 1982 and 98-407 DC of 14 January 1999.

Accordingly, it was not legitimate for the authors of the reference to plead that those decisions had the force of settled law.
(2000-429 DC, 30 May 2000, para. 6, p. 84)

Scope of earlier decisions

In Decision 2000-427 of 30 March 2000, the Constitutional Council, on a reference pursuant to Articles 46 and 61 of the Constitution, held the Institutional Act concerning incompatibilities between electoral mandates to be constitutional; the Constitutional Council considered, in connection with section LO 141 of the Electoral Code as amended by section 3 of the Institutional Act, that "it is legitimate for the Institutional Act to include municipal councillorship in the mechanism for restricting the simultaneous exercise of membership of Parliament and of local electoral office only above a certain population threshold, provided the threshold selected is not arbitrary; that condition is met in the instant case, since the threshold of 3500 inhabitants determines, pursuant to section L 252 of the Electoral Code, a change of balloting technique for the election of members of municipal councils"; this reason provides the necessary support for the operative part of that decision.

The fact that the ordinary legislature has amended the population threshold laid down by section L 252 of the Electoral Code while the institutional legislature has not amended the threshold determined by section LO 141 of the Code means that section 3 of the Institutional Act of 5 April 2000 no longer has a basis in the Constitution; it follows that section 1 of the Act referred must be declared unconstitutional.
(2000-429 DC, 30 May 2000, paras 20 and 21, p. 84)

RIGHTS AND LIBERTIES

CIVIC RIGHTS

Incompatibilities

The provisions whereby the functions of mayor, president of a departmental council and president of a regional council are mutually incompatible, the effect of which is that a pre-existing executive function must be dropped, have neither the object nor the effect of establishing ineligibility rules. The plea of violation of the constitutional rules and principles relating to ineligibility is accordingly not supported by the facts.

The legislature has the power to impose incompatibilities between electoral offices and functions and professional functions, but the resultant restriction on the exercise of public functions must be justified, in relation to the requirements of article 6 of the Declaration of 1789, by the need to protect the voter's freedom of choice, the independence of the elected representative or the independence of the courts against risks of confusion or conflicts of interests.

This justification is lacking since the incompatibilities criticised are not confined to cases where the territorial unit wholly or partly coincides in geographical terms with the area covered by a consular chamber or a commercial court.
(2000-426 DC, 30 March 2000, paras 2 to 4, 15 and 16, p. 62)

Principle that offences and penalties must be defined by statute

Principles governing the imposition of penalties

General

It is legitimate for the legislature, in its function of reconciling freedom of communication with the protection of other people's freedom and safeguarding public order, to establish specific rules governing the criminal liability of those who store content, distinct from the rules applicable to authors and editors of messages, where the content is illicit. But this is subject to compliance with the principle that offences and penalties must be defined by statute and to article 34 of the Constitution, which provides inter alia that: "Statutes shall determine the rules concerning: ...the determination of serious crimes and other major offences and the penalties applicable to them...".
(2000-433 DC, 27 July 2000, para. 60, p. 121)

Non-judicial authorities

Neither the principle of the separation of powers nor any other constitutional principle or rule precludes an administrative authority, acting in the exercise of its public-authority prerogatives, from exercising a penalising function where that is necessary for the performance of its function, provided the exercise of such penalising power is accompanied by measures to secure the rights and liberties secured by the Constitution. In particular the principle that penalties must be necessary and provided for by statute and the principle of defence rights must be respected, these principles being applicable to all penalties even if the legislature has empowered a non-judicial authority to order them.

Article 8 of the Declaration of Human and Civic Rights of 1789 provides: "The Law must prescribe only the punishments that are strictly and evidently necessary; and no one may be punished except by virtue of a Law drawn up and promulgated before the offence is committed, and legally applied".
(2000-433 DC, 27 July 2000, paras 50 and 51, p. 121)

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

Violation of this principle

By section 42-4 of the Act of 30 September 1986, as amended by section 71(VI) of the Act referred, "in any case of failure to discharge the obligations incumbent on radio or television broadcasters, the *Conseil supérieur de l'audiovisuel* shall order that a statement, the terms, duration and conditions of which it shall determine, be inserted in their programme schedule". The same section provides that the decision is to be given without recourse to the procedure provided for by section 42-7 of the Act of 30 September 1986; refusal to comply with the decision is punishable by a fine imposed in manner provided by sections 42-2 and 42-7 of that Act.

The Deputies making the reference argue that, by making the obligation to broadcast a statement into an automatic penalty, the legislature has failed to respect the principle that penalties must be necessary, declared by article 8 of the Declaration of Human and Civic Rights.

Article 8 of the Declaration of Human and Civic Rights of 1789 provides: "The Law must prescribe only the punishments that are strictly and evidently necessary; and no one may be punished except by virtue of a Law drawn up and promulgated before the offence is committed, and legally applied".

The penalty consisting of an obligation to insert a statement in programme schedules in the event of a failure by a radio or television broadcaster to discharge its obligations would, following this amendment to the legislation, be automatic. In certain circumstances the automatic nature of the penalty could have the effect of punishment greatly exceeding the seriousness of the alleged offence. Consequently, by preventing the *Conseil supérieur de l'audiovisuel* from adapting the penalty to the seriousness of the alleged offence, in the specific circumstances of the specific case, the legislature has violated the principle that penalties must be necessary, declared by article 8 of the Declaration of Human and Civic Rights of 1789. Sections 71(VI), and section 72(II)(1) of the Act referred, which has the same object in relation to national programming companies as the preceding provision, must accordingly be declared unconstitutional.
(2000-433 DC, 27 July 2000, paras 48, 49, 51 and 52, p. 121)

Natural justice in the criminal law

No violation of natural justice

Section 71(VIII) of the Act referred amends section 42-7 of the Act of 30 September 1986. Section 72(III) of the Act referred amends section 48-6 of the same Act. The effect of the amendments is to delete the provisions under which, for certain of the penalties provided for by section 42-1 of the Act of 30 September 1986 and for all those provided for by sections 42-3 and 48-2, the Vice-president of the Council of State is to designate a member of that administrative court to investigate and report.

The deputies making the referral criticise these provisions as violating article 11 of the Declaration of Human and Civic Rights. They submit that by removing the involvement of the rapporteur from the Council of State, the legislature has abolished "a fundamental guarantee for companies to whom a penalty procedure is applicable".

The involvement of a member of the administrative court outside the *Conseil supérieur de l'audiovisuel* as rapporteur is indeed no longer required by the statute, but all the constitutional guarantees applicable to administrative penalty orders remain applicable in the material cases. In particular, respect for natural justice, a fundamental principle recognised by the laws of the Republic, is secured. Moreover, any decision of the *Conseil supérieur de l'audiovisuel* imposing a penalty must state the reasons on which it is based and full redress is available by way of appeal to the Council of State. No constitutional principle is therefore deprived of its legal guarantees by the relevant provisions.
(2000-433 DC, 27 July 2000, paras 53, 54 and 56, p. 121)

FREEDOM OF CONSCIENCE AND OPINION

Freedom of conscience

Where the owner of property declares that he opposes hunting on his property by reason of his personal convictions, he may not be asked to justify his opposition.
(2000-434 DC, 20 July 2000, para. 28, p. 107)

FREEDOM OF EXPRESSION AND INFORMATION

Audiovisual broadcasting

Powers of legislature

Freedom of communication

Section 8 of the Act referred replaces section 47 of the Act of 30 September 1986 by sections 47 to 47-6. Under the new section 47-4, the appointment by the *Conseil supérieur de l'audiovisuel* of

the Chairman of the Board of Directors of France Télévision and the Chairmen of the companies mentioned in section 47-3 "shall be made by reasoned decision and the hearings and discussions of the Conseil relevant thereto shall be made public".

The *Conseil supérieur de l'audiovisuel* is an independent administrative authority guaranteeing the exercise of freedom of communication. To secure the independence of the national programming companies responsible for devising and programming radio and television broadcasts and thus contributing to the exercise of the freedom of communication declared by article 11 of the Declaration of Human and Civic Rights of 1789, sections 47-1 and 47-3 of the Act of 30 September 1986 provide that the Chairmen of those companies are to be appointed by that authority for a term of five years.

The requirement that reasons be given for decisions appointing the Chairmen of the Boards of Directors of the national programming companies by the *Conseil supérieur de l'audiovisuel* meets a need for transparency and thus helps to give full effect to the constitutional requirements mentioned above.

But the guarantee offered by the appointment procedure would no longer be effective if all the minutes of hearings and discussions within the *Conseil supérieur de l'audiovisuel* had to be made public. The members of the Conseil and candidates for appointment would no longer enjoy full freedom to speak their minds, this being a vital condition for the emergence of an informed collective decision based solely on the general interest and the sound operation of public-service broadcasting fully respecting its independence. Moreover full publication of these hearings and discussions might jeopardise respect for the privacy of those concerned.
(2000-433 DC, 27 July 2000, paras 11 to 14, p. 121)

Objective of pluralism

Article 11 of the Declaration of Human and Civic Rights of 1789 provides: "The free communication of ideas and of opinions is one of the most precious rights of man. Any citizen may therefore speak, write and publish freely, except what is tantamount to the abuse of this liberty in the cases determined by Law".

Pluralism of social and cultural expression is itself a constitutional objective. Respect for pluralism is one of the preconditions for democracy. The freedom to communicate ideas and opinions, secured by article 11 of the Declaration of Human and Civic Rights of 1789, would be nugatory if the audience to which the broadcasting media address their programmes was unable to enjoy access to both private and public sector programmes guaranteeing the expression of different currents of thought in respect for the overriding constraint of fairness in information. The ultimate objective is that the listeners and viewers who are among the primary beneficiaries of the freedom proclaimed by article 11 should be in a position to exercise their freedom of choice without either private or public interests being able to substitute their decisions for them and without them being treated merely as a market.

It is for the legislature, which has power under article 34 of the Constitution to determine rules concerning the fundamental guarantees enjoyed by citizens for the exercise of public freedoms, to reconcile, given the state of technical progress and general-interest economic considerations, the exercise of the freedom of communication secured by article 11 of the Declaration of 1789 with the constraints inherent in audiovisual communication techniques and operators and the constitutional objectives of safeguarding public order, other people's freedom and the preservation of pluralism of social and cultural expression, which these media, in view of their considerable influence, can jeopardise.
(2000-433 DC, 27 July 2000, paras 8 to 10, p. 121)

FREEDOM OF ASSOCIATION

Obligations imposed on certain categories of association

Federations of hunters are private-sector bodies, but they are governed by a specific legislative status and are entrusted with the performance of public service tasks. Departmental federa-

tions of hunters participate, under section L 221-2 of the Rural Code as amended by section 7 of the Act referred, "in developing the departmental wildlife tax and protecting wildlife and its habitats"; they help to prevent poaching, they "undertake information, education and technical support measures for gamekeepers and hunters" and "coordinate the activities of approved local hunters' associations"; they "undertake activities to prevent damage by game and run compensation schemes"; they prepare departmental game management programmes and may, for the purposes of all these tasks, recruit development staff with the requisite powers of action; they collect considerable resources from compulsory contributions paid by hunters and charges introduced under hunting plans; they may also receive grants from public authorities, in particular for wildlife conservation schemes and educational activities; their compulsory expenditure now includes compensation payable for damage by game. It follows that the need for the central government to verify that the hunters' federations properly perform the public service tasks incumbent on them and properly use the resources they receive for the purpose justifies the establishment of a specific review scheme.

It follows that the freedom of association is violated neither by the obligation for federations to use the model sets of regulations prepared by the ministry responsible for hunting, nor by the model proxy forms for voting in general meetings of departmental hunting federations laid down by section 5 of the Act, nor by the rules of internal organisation laid down by the same section. Nor is the freedom of association violated by the rule that the budgets of departmental and regional hunting federations must be submitted to the central government representative in the department before execution and that the budget of the national hunting federation must likewise be submitted to the minister responsible for hunting. Freedom of association is not violated by the rule laid down by section L 221-7 of the Rural Code, as amended by section 7 of the Act referred, whereby departmental hunting federations are subject to economic and financial review by the central government and to general control by the Court of Auditors and the Regional Chambers of Audit.

But it is for the authority empowered to make regulations to lay down the detailed rules for giving effect to these review provisions in such a manner as to comply with the constitutional principle of freedom of association in so far as that is compatible with the specific features of the category of associations concerned.
(2000-434 DC, 20 July 2000, paras 39 and 40, p. 107)

FREEDOM OF ENTERPRISE AND FREEDOM OF COMMERCE AND INDUSTRY

Freedom of enterprise

Scope of the principle

It is legitimate for the legislature to impose on the freedom of enterprise secured by article 4 of the Declaration of Human and Civic Rights of 1789 restrictions that are justified by general interest considerations or linked to constitutional requirements, provided such restrictions do not have the effect of depriving the right of its scope.

Section 8 of the Act referred establishes new rules for modulating working hours in terms of the whole year or part of it. But the working week may not exceed thirty-five hours on average and the annual maximum is 1.600 hours. Section 11 of the Act lays down new specific rules concerning managerial staff. The legislature has determined the conditions in which the objective of reducing the working hours of the different categories of managerial staff may be attained, in the light of the functions they exercise within the firm.

The "structural aid" measures for firms established by the Act of 13 June 1998 to accompany the reduction in statutory working hours are replaced by the financial aid scheme set up by Chapter VIII of the Act referred.

The legislature has thus implemented and reconciled the constitutional requirements referred to above. There is no manifest error in this reconciliation. In particular, the measures do not violate the freedom of enterprise to such an extent as to modify its scope.

The legislature, by making the grant of relief on payments of social security charges conditional on a negotiated reduction in working time, has not violated the employer's authority to manage and organise to such an extent as to violate the freedom of enterprise.

Neither the various controls that the administrative authority and the bodies empowered to collect social security contributions are authorised to conduct to verify compliance with the conditions for the making the grant of relief on payments of social security charges, nor the other provisions criticised by the authors of the reference violate the freedom of enterprise in manner contrary to the Constitution.

The pleas of violation of the freedom of enterprise must be rejected.
(99-423 DC, 13 January 2000, paras 27, 29 to 34, p. 33)

Freedom of enterprise is secured by article 4 of the Declaration of Human and Civic Rights. But it is legitimate for the legislature to impose restrictions that are justified by general interest considerations or linked to constitutional requirements.
(2000-433 DC, 27 July 2000, para. 40, p. 121)

Applications

Freedom of enterprise is secured by article 4 of the Declaration of Human and Civic Rights. But it is legitimate for the legislature to impose restrictions that are justified by general interest considerations or linked to constitutional requirements. It must also be at pains to reconcile the various constitutional principles and rules that are applicable to audiovisual broadcasting. This reconciliation must reflect the technical constraints and general-interest economic needs that are specific to the sector. It follows that the legislature, when determining rules to preserve pluralism of social and cultural expression, must ensure that their application does not restrict freedom of enterprise to an extent that would be excessive in relation to the constitutional objective of pluralism.

Section 66 of the Act referred amends section 41 of the Act of 30 September 1986; section 66(3) inserts a new paragraph after the second paragraph of section 41, whereby "one and the same person, holding an authorisation to operate a national analogue terrestrial television service, may acquire control of up to five companies holding authorisations to operate a national digital terrestrial television service" or four companies if one of these services consists of the full and simultaneous digital retransmission of an existing national analogue service; but such services must be originally issued by separate companies.

The first paragraph of section 39(I) of the Act of 30 September 1986 provides: "One and the same natural or legal person acting alone or in concert may not hold, directly or indirectly, more than 49 % of the capital or the voting rights in a company holding an authorisation to operate a national analogue terrestrial television service". By section 65 of the Act referred this provision applies both to analogue and to digital broadcasting.

The legislature has enacted provisions to accompany the introduction of private-sector terrestrial broadcasting of digital television services that have the effect of adapting to the new technical realities the rules that limit the concentration of operators that previously applied only to analogue broadcasting. Given the greater availability of frequency resources for digital broadcasting, section 66 of the Act referred confines to analogue broadcasting the prohibition against a single person holding more than 15 % of the capital or voting rights in two companies holding an authorisation to operate a national analogue terrestrial television service or holding more than 5 % of the capital or voting rights in three such companies. The legislature has also permitted one and the same person to acquire control over up to five national digital terrestrial television services, provided they are originally issued by separate companies.

The legislature, in a technical context where broadcasting frequencies remain limited, was required to introduce mechanisms to prevent a dominant shareholder from acquiring excessive influence over the broadcasting world. Exercising its discretionary power, the legislature was entitled to apply to digital broadcasting a certain number of rules relating to analogue broadcasting, so as to preserve pluralism in social and cultural expression.

By maintaining at 49 % of the capital or voting rights, for a company issuing a national digital television service, the maximum share that one and the same natural or legal person may hold,

the legislature has not violated freedom of enterprise in a manner that is disproportionate to the constitutional objective of pluralism.
(2000-433 DC, 27 July 2000, paras 40, 36, 37, 42 to 44, p. 121)

Freedom of contract

It is legitimate for the legislature to draw the conclusions from the collective-bargaining agreements concluded at its instigation and decide on the basis of their content either to maintain existing legislative provisions or to amend them in a manner that may or not be in accordance with them. But it could not, in the specific circumstances, operate counter to their content without violating the constitutional requirements flowing from article 4 of the Declaration of Human and Civic Rights and the eighth paragraph of the Preamble of 1946, unless there was an adequate consideration of the general interest.

The legislature had no power to decide to act against the content of these agreements unless there was a justification in the form of violation by them of the foreseeable consequences of the reduction in working time provided for by section 1 of the Act of 13 June 1998 or in their breach of legislative provisions in force when they were concluded.

Certain of the provisions inserted by the Act referred in the Labour Code amend the Code in manner contrary to the application of substantial clauses of several agreements concluded under that Act of 13 June 1998, whereas these clauses were contrary to no legislative provision in force when they were concluded and are not in breach of the foreseeable consequences of the reduction in working time provided for by the legislature in 1998. This applies in particular to section 8 of the Act referred, which limits to 1600 hours per year the working hours that can be provide for by a collective-bargaining agreement varying the working week in the course of the year, whereas several agreements provide for an annual volume of working hours which, without contravening the legislative provisions in force when they were concluded, including those relating to public holidays, and without exceeding the weekly average of thirty-five hours provided for by section 1 of the Act of 13 June 1998, is none the less higher than 1.600 hours per year. The same applies to section 6, which reduces from forty-six to forty-four hours the average weekly working hours calculated over any period of twelve consecutive weeks provided for by section L 212-7 of the Labour Code, whereas certain collective agreements had set it at forty-five or forty-six hours.

By not excluding from such provisions the enterprises covered by collective agreements to contrary effect, throughout their duration, the Act referred violates the constitutional requirements flowing from, inter alia, article 4 of the Declaration of Human and Civic Rights.
(99-423 DC, 13 January 2000, paras 42 to 45, p. 33)

PARTICIPATION OF WORKERS IN COLLECTIVE DETERMINATION OF WORKING CONDITIONS AND MANAGEMENT OF THE FIRM

Collective bargaining

Principle

The eighth paragraph of Preamble to the 1946 Constitution provides: "All workers shall, through the intermediary of their representatives, participate in the collective determination of their conditions of work and in the management of the work place". By article 34 of the Constitution, the fundamental principles of labour law, trade-union law and social security are matters to be determined by statute. It is accordingly for the legislature to determine, in compliance with this constitution provision, the conditions and guarantees for its implementation. It is legitimate for the legislature, acting on the basis of these provisions after defining rights and duties relating to terms of employment, to leave employers and employed persons, or their representatives, free to determine the practical rules according to which its enactments are to be applied, after due discussion.
(99-423 DC, 13 January 2000, para. 28, p. 33)

PROPERTY RIGHTS

The right to hunt on a piece of land is part of the right to use that land, itself part of the rights of property. No restrictions may be placed on the exercise of that right unless such restrictions are imposed for the sake of general interest considerations and they are not so serious as to deprive the property right of its meaning and scope.
(2000-434 DC, 20 July 2000, para. 24, p. 107)

Violations of property rights

The ban on hunting one day each week does not violate the rights of property ownership seriously enough for the meaning and scope of that right to be distorted, but the ban must be justified on grounds of general interest. Such grounds are provided by the need to ensure the safety of children of school age and persons accompanying them on Wednesdays, when the schools are closed. However, the power conferred on the administrative authority to choose a different weekly twenty-four period "in the light of local circumstances", no general-interest grounds being given in the provision criticised or in the parliamentary debates in support of the ban, violates the rights of property ownership in manner contrary to the Constitution.
(2000-434 DC, 20 July 2000, para. 31, p. 107)

The effect of the provisions added to section L 229-5 of the Rural Code is to deprive owners of pieces of land of at least twenty-five hectares of the right to hunt that they enjoyed under section L 229-4 of the Rural Code, whereas neither the provision criticised nor the parliamentary debates state the general-interest considerations justifying the withdrawal of the right to hunt. Unconstitutional provision.
(2000-434 DC, 20 July 2000, para. 34, p. 107)

No violation of property rights

Restrictions on conditions for the exercise of property rights

Principle

The second paragraph of section L 220-1 of the Rural Code, as amended by section 2 of the Act, provides that "hunting shall be pursued in conditions that are compatible with the non-appropriation of nature", but this is expressed to be "in respect for property rights". It is clear from the very terms of this general provision that it has neither the object nor the effect of violating property rights.
(2000-434 DC, 20 July 2000, para. 25, p. 107)

PRINCIPLE OF EQUALITY

EQUALITY BEFORE THE LAW

Principle

The principle of equality does not preclude the legislature from regulating different situations in different ways nor from derogating from equality on general-interest grounds, provided always the resultant difference in treatment is directly related to the object pursued by the Act providing for it.
(99-423 DC, 13 January 2000, para. 60, p. 33)
(2000-433 DC, 27 July 2000, para. 45, p. 121)
(2000-441 DC, 28 December 2000, para. 26, p. 201; cf. 99-405 DC, 29 December 1998, p. 326, para. 20)

Respect for principle of equality: absence of discrimination

Audiovisual broadcasting

Licensing scheme

Section 38 of the Act referred extends to digital broadcasting the scheme for priority allocation of frequencies enjoyed under existing legislation by public broadcasting services for analogue broadcasting. But under the final paragraph of section 44(I) of the Act of 30 September 1986, as amended by section 4 of the Act referred, only subsidiaries of France Télévision issuing digital broadcasting services for which users are not required to pay remuneration will enjoy the priority allocation of frequencies, to the extent strictly necessary for the performance of the public-service tasks imposed by their charter. Subsidiaries of France Télévision established in accordance with the first paragraph of section 44-1, inserted in the Act of 30 September 1986 by section 5 of the Act referred, on the other hand, will be subject to the procedure for calls for applications established by section 30-1.

Under the new section 30-1(III) of the Act of 30 September 1986, all national analogue television services already licensed will be licensed without calls for applications to use frequencies for the full simultaneous digital retransmissions of their programmes. Broadcasters of such services will also enjoy the possibility, without calls for applications, of controlling a second digital television service, without prejudice to the possibility also given them by the Act of responding to calls for applications for the supply of digital television services.

Under the above provisions of section 44 of the Act of 30 September 1986 as amended, the priority access of national programme companies to broadcasting frequencies is subject to strict rules. It will be for the appropriate administrative and judicial authorities to ensure that each of these companies complies with Community competition law. The difference in treatment allowed by the Act is justified, within the limits described above, by the difference in the situation of private- and public-sector companies, given the public-service functions entrusted to the latter, now regulated by sections 3 and 4 of the Act referred. It follows that the objections must be rejected.
(2000-433 DC, 27 July 2000, paras 26 to 28, p. 121)

The legislature's intention was to subject "operators of multiple satellite services" to a number of new obligations. Henceforth distributors of audiovisual broadcasting services by satellite must make a prior declaration to the *Conseil supérieur de l'audiovisuel*; the file accompanying the declaration must specify the composition and structure of the services offered; a decree adopted in the Council of State will specify the minimum proportions of services independent of the operator to be included in the "satellite package"; the *Conseil supérieur de l'audiovisuel* may, by reasoned decision given within one month following the declaration, oppose the operation of a satellite service and the modification of the composition or structure of the service offered if it considers that this service does not meet the criteria set by the Act. The provisions of section 55 of the Act referred impose the same type of editorial obligations on cable and satellite sound and television broadcasting services.

Furthermore, in current circumstances, operators of cable broadcasting services, unlike satellite operators, enjoy a local quasi-monopoly; connection to a cable network is simpler; cable operators, who use the local public infrastructure, can adapt the service they offer to local life and thus offer a set of programmes reflecting local interests; and they can offer additional telecommunications services, notably of the interactive kind.

By maintaining a prior licensing scheme for the operation of cable radio and television distribution networks and imposing a declaration scheme for satellite distribution services, with the power for the *Conseil supérieur de l'audiovisuel* to declare its opposition, the legislature has substantially harmonised the legal rules applicable to the two modes of distribution, while taking account of a difference in situation directly related to its avowed objective of preserving pluralism. The objection must accordingly be rejected.
(2000-433 DC, 27 July 2000, paras 29, 31 to 33, p. 121)

Public-sector channels

Sections 65 and 66 are alleged to create unwarranted discrimination between public and private-sector channels "since public-sector channels can establish wholly-owned subsidiaries".

The principle of equality does not preclude the legislature from regulating different situations in different ways nor from derogating from equality on general-interest grounds, provided always the resultant difference in treatment is directly related to the object pursued by the Act providing for it.

Under the final paragraph of section 44(I) of the Act of 30 September 1986, as amended by section 4 of the Act referred, only subsidiaries of France Télévision issuing digital broadcasting services for which users are not required to pay remuneration will enjoy the priority allocation of frequencies, to the extent strictly necessary for the performance of the public-service tasks are exempt from the restriction on the proportion of the capital that may be held by one and the same natural or legal imposed by section 39 of the Act. It is legitimate for the legislature, without violating the principle of equality, to determine specific rules for these companies, having regard to their public-service functions. The objection must be rejected.
(2000-433 DC, 27 July 2000, paras 39, 45 and 46, p. 121)

Construction and housing

Consultation between lessors and lessees

The Act referred does not violate the principle of equality by providing that the consultation scheme applies in the same way to private-sector lessors and lessors of social housing, since the relevant lessors are all bodies corporate engaged in the management of residential property and landlord/tenant relationships in the private and social sectors are now governed by broadly the same statutory provisions.
(2000-436 DC, 7 December 2000, para. 60, p. 176)

Social law

Conditions for eligibility for benefits

In view of the solidarity that applies both within each basic scheme and between schemes in the form of transfers and offsetting arrangements, the fact that certain members contribute to the financing of family benefits without receiving benefits in their turn does not in itself violate the principle of equality.
(2000-437 DC, 19 December 2000, para. 24, p. 190)

Benefit of reduced rates of social security contributions

It is legitimate for the legislature, without violating the principle of equality, to promote collective bargaining for the determination of working hours by making the grant of reduced rates of social security contributions subject to the conclusion of a collective agreement, such conclusion being facilitated by the new procedures defined in section 19.

By excluding certain public bodies from the reduced rates of social security contributions on account of their specific features, under the fourth of section 21 of the Act referred, the legislature has not violated the principle of equality.
(99-423 DC, 13 January 2000, paras 51 and 54, p. 33)

Benefit of differential salary allowance

The legislature has not violated the principle of equality by excluding from eligibility for the differential supplement persons employed full-time and persons employed part-time and recruited after the reduction of working time to posts not equivalent to those occupied by employed persons enjoying the guarantee.
(99-423 DC, 13 January 2000, para. 61, p. 33)

Taxation

Increase in rate of a levy — Criteria for determining basis of assessment

Section 49 amends section L 138-10 of the Social Security Code, relating to the contribution applicable to the expansion in the turnover of pharmaceutical firms that have not entered into agreements with the Health Products Economic Committee. Subsection I sets at 3 % the rate of expansion of turnover of the aggregate set of firms liable to the contribution for 2001 as the assessable amount. Subsection II amends the rules for computing the contribution. In particular, where the rate of expansion of the turnover of the firms liable to the exceeds 4 %, the overall rate of contribution applicable to that portion of the excess is 70 %.

The authors of the reference submit that this provision violates the principle of equality of public burden-sharing in three ways. First, the 3 % rate set by the statute, which is "completely independent of the national sickness insurance expenditure target", is based on no objective and rational factors related to the purpose of the Act. Second, the 70 % contribution rate is "manifestly punitive". Third, the rules laid down by the legislature are a violation of the equality of public burden-sharing of firms liable to the contribution and firms exempted from it.

Where the legislature introduces a new tax, it is free to determine the basis of assessment and the rate, subject to compliance with constitutional principles and rules in manner compatible with the nature of the new tax. In particular, to ensure compliance with the principle of equality, the legislature must base its decisions on objective rational criteria related to its avowed objective.

Firstly, the provision contested does no more than raise from 2 % to 3 % the rate of expansion of the turnover of the firms concerned on which the contribution provided for by section L 138-10 of the Social Security Code is payable. The selection of this rate meets the requirement of objectivity and rationality in terms of the legislature's double avowed objective of having firms that market pharmaceutical specialities contribute to financing the sickness insurance scheme and of holding down the level of expenditure on medicines. It was accordingly legitimate for the legislature to select a threshold triggering the contribution that is different from the national sickness insurance expenditure target.

Secondly, the 70 % rate provided for by section 49 applies to the portion of the turnover that exceeds by 4 % the turnover for the previous year and not to aggregate turnover for the year of assessment. Moreover, under the fifth paragraph of section L 138-12 of the Social Security Code, the amount of the contribution for any firm liable to it may not exceed 10 % of its pre-tax turnover in France on reimbursable medicines. The contribution is accordingly not punitive.

Thirdly, firms which have undertaken on a contractual basis to participate in the project for holding the costs of reimbursable medicines down are in a specific situation justifying their exemption from payment of the contribution.

The plea that equality of public burden-sharing is violated is rejected.
(2000-437 DC, 19 December 2000, paras 29, 30, 32 to 36, p. 190)

Miscellaneous applications

Waiver of debts due from a firm in difficulty

The purpose of section 6(I) of the Act referred is to waive claims for 13 million francs owed to the central government by the newspaper l'Humanité by way of participatory loans given in 1990 and 1993 and charged to the Treasury special account entitled "Loans from the Economic and Social Development Fund". Claims for contractual interest payments falling due for 1999 and 2000 are also waived.

The authors of the reference submit that the special treatment given to l'Humanité, "which treats a newspaper expressing a particular opinion more favourably than others", is contrary to the principle of equality.

The provision contested also waives part of the debt due from a company in difficult. It is not unusual for companies that have received loans from the Economic and Social Development Fund to enjoy this form of assistance, which contributes to the attainment of the constitutional objective of preserving pluralism in the daily political and general press. Objection rejected
(2000-441 DC, 28 December 2000, paras 16 to 18, p. 201)

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

Territorial units

Communes

Given the purpose of section 55 of the Act referred, which is to promote the balanced development of social housing, and the very nature of the obligation introduced by the section, it was legitimate for the legislature to exclude non-urban communes, isolated communes and small communes.
(2000-436 DC, 7 December 2000, para. 41, p. 176)

Regions

The Ile-de-France region is particularly densely built up; this difference of situation justifies the fact that the scope of the Act includes the communes in this region whose population is 1.500 or more, whereas the threshold for other regions is 3.500 inhabitants.
(2000-436 DC, 7 December 2000, para. 42, p. 176)

Audiovisual broadcasting

Holders of audiovisual broadcasting licenses

Section 38 of the Act referred extends to digital broadcasting the scheme for priority allocation of frequencies enjoyed under existing legislation by public broadcasting services for analogue broadcasting. But under the final paragraph of section 44(I) of the Act of 30 September 1986, as amended by section 4 of the Act referred, only subsidiaries of France Télévision issuing digital broadcasting services for which users are not required to pay remuneration will enjoy the priority allocation of frequencies, to the extent strictly necessary for the performance of the public-service tasks imposed by their charter. Subsidiaries of France Télévision established in accordance with the first paragraph of section 44-1, inserted in the Act of 30 September 1986 by section 5 of the Act referred, on the other hand, will be subject to the procedure for calls for applications established by section 30-1.

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Under the above provisions of section 44 of the Act of 30 September 1986 as amended, the priority access of national programme companies to broadcasting frequencies is subject to strict rules. It will be for the appropriate administrative and judicial authorities to ensure that each of these companies complies with Community competition law. The difference in treatment allowed by the Act is justified, within the limits described above, by the difference in the situation of private- and public-sector companies, given the public-service functions entrusted to the latter, now regulated by sections 3 and 4 of the Act referred. It follows that the objections must be rejected.
(2000-433 DC, 27 July 2000, paras 26 to 28, p. 121)

The legislature's intention was to subject "operators of multiple satellite services" to a number of new obligations. Henceforth distributors of audiovisual broadcasting services by satellite must make a prior declaration to the *Conseil supérieur de l'audiovisuel*; the file accompanying the declaration must specify the composition and structure of the services offered; a decree adopted in the Council of State will specify the minimum proportions of services independent of the operator to be included in the "satellite package"; the *Conseil supérieur de l'audiovisuel* may, by reasoned decision given within one month following the declaration, oppose the operation of a satellite service and the modification of the composition or structure of the service offered if it considers that this service does not meet the criteria set by the Act. The provisions of section 55 of the Act referred impose the same type of editorial obligations on cable and satellite sound and television broadcasting services.

Furthermore, in current circumstances, operators of cable broadcasting services, unlike satellite operators, enjoy a local quasi-monopoly; connection to a cable network is simpler; cable operators, who use the local public infrastructure, can adapt the service they offer to local life and thus offer a set of programmes reflecting local interests; and they can offer additional telecommunications services, notably of the interactive kind.

By maintaining a prior licensing scheme for the operation of cable radio and television distribution networks and imposing a declaration scheme for satellite distribution services, with the power for the *Conseil supérieur de l'audiovisuel* to declare its opposition, the legislature has substantially harmonised the legal rules applicable to the two modes of distribution, while taking account of a difference in situation directly related to its avowed objective of preserving pluralism. The objection must accordingly be rejected.
(2000-433 DC, 27 July 2000, paras 29, 31 to 33, p. 121)

Specific geographic situations

Under the fourth paragraph of section 34(I) of the Act of 30 September 1986, as amended by section 58 of the Act referred, in the territory of French Polynesia alone, a network distributing audiovisual broadcasting services by cable may operate one or more frequencies allowing direct individual reception of the signals by subscriber households. This differs from the arrangement set up by the third paragraph of section 34(I) for cable radio and television distribution networks which may be established in sparsely-inhabited areas whose features are to be defined by decree.

It is legitimate for the legislature, without violating the constitutional principle of equality, to authorise direct microwave reception of signals carried by a cable network in French Polynesia, given the extent and the specific geographical features of that territory, where satellite services are few and far between.
(2000-433 DC, 27 July 2000, paras 34 and 35, p. 121)

Public-sector channels

Sections 65 and 66 are alleged to create unwarranted discrimination between public and private-sector channels "since public-sector channels can establish wholly-owned subsidiaries".

The principle of equality does not preclude the legislature from regulating different situations in different ways nor from derogating from equality on general-interest grounds, provided always the resultant difference in treatment is directly related to the object pursued by the Act providing for it.

Under the final paragraph of section 44(I) of the Act of 30 September 1986, as amended by section 4 of the Act referred, only subsidiaries of France Télévision issuing digital broadcasting services for which users are not required to pay remuneration will enjoy the priority allocation of frequencies, to the extent strictly necessary for the performance of the public-service tasks are exempt from the restriction on the proportion of the capital that may be held by one and the same natural or legal imposed by section 39 of the Act. It is legitimate for the legislature, without violating the principle of equality, to determine specific rules for these companies, having regard to their public-service functions. The objection must be rejected.
(2000-433 DC, 27 July 2000, paras 39, 45 and 46, p. 121)

Social law

Labour law and trade-union law

The difference in treatment between employed persons who, until 1 January 2002, work in a firm where the statutory working week is thirty-nine hours and those employed by a firm subject to the new statutory working week, based on the difference in the size of their firms, is purely temporary. As was stated in the decision of 10 June 1998, the time allowed to firms employing no more than twenty persons reflects the specific difficulties of personnel management in such firms.

It was legitimate for the legislature, without violating the principle of equality, to lay down specific rules for managerial staff, in the light of the functions they exercise.
(99-423 DC, 13 January 2000, paras 55, 56 and 76, p. 33)

Town planning

Rules applicable to real property under town-planning documents

Each local town planning plan must set the rules applicable to each area within its perimeter on the basis of both the specific feature of the area and the objective set by the Town Planning Code; the resultant differences between properties subject to different local town plans or located in different areas within the same plan reflect the need to take account of different situations; the plea that the principle of equality is violated is rejected.
(2000-436 DC, 7 December 2000, para. 16, p. 176)

Incompatibility rules

The powers exercised by the European Parliament are different from those of the National Assembly and the Senate of the Republic, which participate in the exercise of national sovereignty pursuant to article 3 of the Constitution. Given the specific nature of the office held by representatives in the European Parliament and the constraints inherent in its exercise, it is legitimate for an ordinary statute governing their situation to provide that the combined exercise of that office and of a local executive function would not permit their holder to exercise one and the other satisfactorily. The argument that there is a breach of equality between representatives in the European Parliament and the national parliament must be rejected.
(2000-426 DC, 30 March 2000, para. 12, p. 62)

Taxation

Tax on meat processors

Firstly, from 1 January 2001, the yield from the tax on meat purchases will no longer be allocated to financing the public meat-processing service but will be entered as a revenue item in the general central government budget. Pleas to the effect that the allocation of the tax on meat purchases means that meat distributors should be subject to it on account of the quantities sold are accordingly inoperative.

Secondly, the upper limits of the rate of taxation determined by the legislature are not punitive.

Thirdly, the basis of assessment to the tax will not be the distributors' turnover but their purchases. The legislature's intention in determining the new threshold for exemption was to simplify firms' procedures and obligations. It was legitimate and no violation of the principle of equality for the Act to provide for payment of the tax only by persons with a turnover in excess of a threshold which it sets.
(2000-441 DC, 28 December 2000, paras 27 to 29, p. 201)

VAT rules applicable to motorway operators

The sole object and effect of section 2(VII) of the Act referred are to enable operators who have a financial interest in doing so to obtain the reconstitution of their situation in relation to the new value added tax rules, and this does not violate the principle of equality, being applicable to all firms in the same situation. The fact that certain firms, having carried out the bulk of their works before 1 January 1996, will not enjoy the right to deduct relating to works before that date, does not violate the principle of equality as these firms are in a different situation. Objection rejected.
(2000-441 DC, 28 December 2000, para. 7, p. 201)

Tax rules applicable to capital gains

The purpose of section 3 of the Act referred is to abolish the annual relief on certain capital gains provided for by the third subparagraph of section 158(3) of the General Tax Code "where the net taxable income of single, widowed or divorced taxpayers exceeds the amount mentioned in the final bracket of the scale of amounts subject to income tax", this amount being doubled for married taxpayers making a joint tax return.

Article 13 of the Declaration of Human and Civic Rights of 1789 provides: "For the maintenance of the public 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". By Article 34 of the Constitution, it is for the legislature to determine, in compliance with constitutional principles and having regard to the specific features of each tax, rules for assessing relative abilities to pay. But this assessment may not have the effect of producing a serious breach of equality of public burden-sharing. And the principle of equality does not preclude the legislature from enacting incentive measures in the general interest in the form of tax reliefs.

When introducing relief on certain forms of capital gains, in dividends on shares issued in France, the legislature's main purpose was to encourage the acquisition of securities by new investors. It was legitimate for that purpose to abolish the relief for taxpayers whose net taxable income exceeds the amount mentioned in the final bracket of the scale of amounts subject to income tax. Far from violating article 13 of the Declaration of Human and Civic Rights of 1789, such a limitation in the scope of the relevant tax relief would reflect the relevant taxpayers' ability to pay. And the threshold effects are not excessive. Plea rejected.
(2000-442 DC, 28 December 2000, paras 2, 4 and 5, p. 211)

General-interest considerations justifying difference in treatment

Principle and general

The authors of the reference complain that section 28 of the Act referred, which inserts a new section L 224-4-1 in the Rural Code authorising the hunting of waterfowl by night from fixed installations in departments where this is a traditional practice, introduces an unwarranted form of unequal treatment between departments where such hunting is authorised and neighbouring departments where it is forbidden, even though the same traditions are to be found. In particular, they refer to the Bay of Mont-Saint-Michel which extends over districts of the departments of Manche and Ille-et-Vilaine.

Under the provision criticised, "hunting by night for waterfowl shall also be authorised on the same terms in cantons of departments where it is traditional" and leaves it to a decree adopted in the Council of State to determine the list of the relevant cantons. It will be for the authority having the power to make regulations to adopt the list, subject to review by the administrative courts, in compliance with the criterion established by the Act. The plea is accordingly inoperative.
(2000-434 DC, 20 July 2000, paras 41 and 42, p. 107)

Violation of principle of equality

Territorial entity of Corsica

Plan to reschedule the social debts of farmers in Corsica

Neither the provision contested nor the legislative history make clear that a special situation in Corsica justifies a special plan to reschedule the social debts of farmers in the manner prescribed by the Act referred. The mere fact that delays in paying social security contributions are longer than elsewhere does not justify the difference in treatment between farmers in Corsica and farmers on the mainland in a similar situation. Neither the Act nor the legislative history refers to any consideration of general interest that would justify such a difference in treatment. The principle of equality is violated.
(2000-441 DC, 28 December 2000, para. 46, p. 201)

Social law

By excluding from eligibility for the differential supplement certain persons employed part-time at the time of the reduction of working time in posts equivalent to those occupied by employed persons enjoying the guarantee, the legislature has provided for a difference of treatment not directly related to its avowed objective.

The rules governing remuneration for overtime laid down by section 5 apply from the first hour in excess of the working week, set by section L 212-1 of the Labour Code at thirty-five hours, whether or not firms have set their working week at that level. Persons employed in the two categories of firms mentioned in section 5 are in an identical situation with regard to the object pursued by these rules. Moreover, the failure, if any, of negotiations for the reduction of the collective working hours in the firm cannot be attributed to each employed person.

Consequently, by establishing a 25 % excess rate for the first four hours of overtime for persons employed in firms where the collective working week is no more than thirty-five hours whereas the rate is only 15 % for persons employed in other firms, the legislature has established a difference in treatment to the detriment of the latter that is not directly related to the object pursued by the Act.

For the same reasons, the treatment of employed persons to whom the third paragraph of section 5 applies is contrary to the principle of equality.

For the same reasons, the third paragraph of section 25 of the Act referred must be declared unconstitutional. For the same reasons, section 992-2, part I of the Rural Code must be declared unconstitutional.
(99-423 DC, 13 January 2000, paras 61, 68 to 74, p. 33)

The second subparagraph of section 3(II) of the Act referred allows social security contributions to be reduced for sea fishermen owning their vessels who sustained loss as a result of a cyclone where a state of natural emergency is declared in all or part of the territory of an overseas department.

These provisions provide for "100 % exemption from employers" and self-employed persons' contributions to the family allowances, sickness insurance and superannuation schemes for six months following the natural emergency' for fishermen "who are up to date with their payments for members of their crews". But they provide only for a three-month deferment of payment of arrears of employers' and self-employed persons' contributions "for those who are not up to date with their payments for members of their crews".

The principle of equality does not preclude the legislature from treating different situations in different ways nor from departing from the principle of equality on general interest grounds, provided always that the resultant difference in treatment is directly related to the purpose of the statute.

Given the purpose of the statute, which is to promote the rapid restoration of productive capacities following a cyclone, sea fishermen, whether or not they have paid up the charges payable on their crews, are in the same situation. By treating them differently, in that some are entitled to exemption from social security contributions for six months while others enjoy no

more than a three-month deferment in the payment of their arrears, the legislature has violated the principle of equality.
(2000-435 DC, 7 December 2000, paras 45 to 48, p. 164)

Right to stand for election

A provision reduces to eighteen the age at which nationals of a Member State of the European Union other than France may stand for election, whereas for French citizens it applies the age for eligibility for the National Assembly, set at twenty-three by section LO 127 of the Electoral Code, as amended by section 1 of the Institutional Act relating to incompatibilities between electoral offices referred to the Constitutional Council in another case. It was legitimate for the legislature to set at eighteen the age eligibility for election to the European Parliament, provided it did so for all potential candidates. The discrimination accordingly violates the principle of equality.
(2000-426 DC, 30 March 2000, para. 19, p. 62)

EQUALITY OF PUBLIC BURDEN-SHARING

Equality before the tax law

Principle

The principle of equality does not preclude the legislature from regulating different situations in different ways nor from derogating from equality on general-interest grounds, provided always the resultant difference in treatment is directly related to the object pursued by the Act providing for it.
(2000-441 DC, 28 December 2000, para. 26, p. 201; cf. 99-405 DC, 29 December 1998, p. 326, para.20)

Article 13 of the Declaration of Human and Civic Rights of 1789 provides: "For the maintenance of the public 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". By Article 34 of the Constitution, it is for the legislature to determine, in compliance with constitutional principles and having regard to the specific features of each tax, rules for assessing relative abilities to pay. But this assessment may not have the effect of producing a serious breach of equality of public burden-sharing. And the principle of equality does not preclude the legislature from enacting incentive measures in the general interest in the form of tax reliefs.
(2000-442 DC, 28 December 2000, para. 4, p. 211)

Tax schemes

Basis of assessment

Section 54 of the Act referred amends section 1396 of the general Tax Code relating to land tax on unbuilt land. It empowers the municipal council to increase by a flat rate not exceeding five francs per square metre the rateable value of land eligible for construction classed as being in an urban area by a town planning document. Earlier provisions imposed a maximum of 500 % of the rateable value.

The legislature's sole purpose in increasing the rateable value provided for by section 1396 of the General Tax Code was to substitute a flat rate ceiling for the previous limit expressed as a proportion of the rateable value. The increase in the tax payable on land eligible for construction is not excessive and is justified by the increased value of the relevant land as a result of its classification and of the infrastructure works carried out by the commune. The increase criticised is thus based on objective and rational criteria directly related to the purposes of the Act. The plea that equality before the tax law is violated is rejected.
(2000-436 DC, 7 December 2000, paras 30 and 32, p. 176)

Section 37(I) of the Act referred extends the general tax on polluting activities established by section 266 sexies of the Customs Code to electricity and fossil fuels. It sets the basis of assessment, the scale, the exemptions and the recovery rules for this tax.

By article 34 of the Constitution, it is for the legislature to determine rules governing the base, rates and methods of collection of taxes. The principle of equality does not preclude the introduction of specific taxes to act as an incentive to forms of conduct in accordance with objectives of general interest, provided the relevant rules are justified in terms of those objectives.

It is clear both from the explanatory memorandum to the Act and from the legislative history behind section 37 that the objective of the measure is to boost the fight against the greenhouse effect in the context of France's international commitments, by giving firms an incentive to bring their consumption of energy products under control. The response to the plea that the principle of equality before the tax law is violated must depend on the ability of the provisions criticised to meet this objective of general interest.

For one thing, the rules for the computation of the tax laid down in section 37 could have the effect of taxing one firm more heavily than another similar firm even though it has emitted less carbon gases into the atmosphere.

For another, electricity is to be subject to the tax even though, by reason of the sources of electricity production in France, electricity consumption accounts for a very low proportion of carbon gas emissions and, if used in place of fossil fuels, could help to combat the greenhouse effect.

The differences of treatment generated by the operation of the Act are not related to the legislature's avowed objective. The relevant provisions are accordingly contrary to the principle of equality before the tax law. Provisions unconstitutional.
(2000-441 DC, 28 December 2000, paras 32, 34 to 38, p. 201)

Section 71 of the Act referred inserts in the General Code of Local Authorities the new sections L 2333-87 to L 2333-90, empowering the communes to introduce a tax payable by any person who engages in self-employed seasonal activities on their territory.

It is for the legislature, when introducing a tax, to determine its basis of assessment and its rate subject to constitutional principles and rules. In particular, to ensure respect for the principle of equality, must be based.

By determining as the basis of assessment the surface area of the premises or site where the seasonal business is pursued or, where that business is pursued exclusively in a vehicle, twice the vehicle's surface area, and by providing that the rate per day may not be less than five francs nor more than sixty francs per square metre, the legislature based its decision on objective and rational criteria related to the objective it pursued. By taxing seasonal business activities of traders not subject to business tax in the commune, the legislature's intention was to remedy a situation it considered unfair. By providing for variations in the amount of the tax on the basis of the surface area of the premises, site or vehicle, within the limits described above and taking account of the duration of the business in the commune, it did not violate the principle of equality before the tax law. Objection rejected.
(2000-442 DC, 28 December 2000, paras 20, 22 to 24, p. 211)

Scale adopted

The upper limits on the rate of the meat-processing tax set by the legislature at between 1 % and 3.9 % of meat purchases are not punitive in nature.
(2000-441 DC, 28 December 2000, para. 28, p. 201)

Taxable persons

Car tax sticker

The authors of the reference submit that section 6 of the Act referred (which exempts natural persons from the differential tax on motor vehicles) violates the principle of equality by treating differently tradesmen doing business in their own name and those who have opted for the one-man limited-liability company scheme.

Given the legislature's objective of relieving the tax burden on individuals, it was legitimate for it, and no violation of the principle of equality, to reserve the benefit of the exemption for tradesmen doing business in their own name.
(2000-442 DC, 28 December 2000, paras 7 and 8, p. 211)

Threshold for exemption

Section 35 of the Finance (Amendment) Act for 2000 is said to engender unwarranted discrimination on account of the intended use of the proceeds of the tax on meat purchases, being charged "mainly on medium- and large-sized distribution firms". The criterion of taxability on the basis of aggregate turnover is said to be irrelevant and unrelated to ability to pay.

The basis of assessment to the tax will not be the distributors' turnover but their purchases. The legislature's intention in determining the new threshold for exemption was to simplify firms' procedures and obligations. It was legitimate and no violation of the principle of equality for the Act to provide for payment of the tax only by persons with a turnover in excess of a threshold which it sets.
(2000-441 DC, 28 December 2000, paras 24 and 29, p. 201)

Withdrawal of a form of tax relief better reflecting ability to pay

The purpose of section 3 of the Act referred is to abolish the annual relief on certain capital gains provided for by the third subparagraph of section 158(3) of the General Tax Code "where the net taxable income of single, widowed or divorced taxpayers exceeds the amount mentioned in the final bracket of the scale of amounts subject to income tax", this amount being doubled for married taxpayers making a joint tax return.

Article 13 of the Declaration of Human and Civic Rights of 1789 provides: "For the maintenance of the public 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". By Article 34 of the Constitution, it is for the legislature to determine, in compliance with constitutional principles and having regard to the specific features of each tax, rules for assessing relative abilities to pay. But this assessment may not have the effect of producing a serious breach of equality of public burden-sharing. And the principle of equality does not preclude the legislature from enacting incentive measures in the general interest in the form of tax reliefs.

When introducing relief on certain forms of capital gains, in dividends on shares issued in France, the legislature's main purpose was to encourage the acquisition of securities by new investors. It was legitimate for that purpose to abolish the relief for taxpayers whose net taxable income exceeds the amount mentioned in the final bracket of the scale of amounts subject to income tax. Far from violating article 13 of the Declaration of Human and Civic Rights of 1789, such a limitation in the scope of the relevant tax relief would reflect the relevant taxpayers' ability to pay. And the threshold effects are not excessive. Plea rejected.
(2000-442 DC, 28 December 2000, paras 2, 4 and 5, p. 211)

Social contributions on various categories of income

Basis of assessment

By section 3 of the Act referred, the general social contribution on the earned income defined by section L 136-2(I) of the Social Security Code is reduced where the total income is below a threshold set at 169 times the hourly rate of the minimum wage for growth plus 40 %.

The relevant contribution falls within the category of "taxes of all types" mentioned in article 34 of the Constitution, and it is for the legislature to determine rules governing the base, rates and methods of collection subject to constitutional principles and rules. In particular it must take account of taxpayers' ability to pay, having regard to the specific features of each tax.

It is legitimate for the legislature to change the basis of assessment to the general social contribution in order to lighten the burden on the lowest income groups, but only provided it does not provoke a serious breach in equality of taxpayers. The provision criticised has no regard for the taxpayer's unearned income or for the income of other members of the household or of other dependent persons. The legislature's decision not to have regard to all aspects of ability to pay creates a manifest disparity between taxpayers that is contrary to article 13 of the Declaration of 1789.
(2000-437 DC, 19 December 2000, paras 5, 7 and 9, p. 190)

Equality of public burden-sharing outside the tax law

Licence fees

Licence fees for public services

Section 36(I) provides for the staggered payment of the licence fee payable by each holder of a licence to establish and operate a third-generation mobile telephone network.

The authors of the reference submit that the legislature committed a manifest error by describing as a licence fee for a public service "a charge which, in view of its amount and the intervals for payment, is unrelated to the income expected to flow from the use of facilities for the provision of a public service". The principle of equality of public burden-sharing is also allegedly violated.

The use of radio-electric frequencies in the territory of the Republic is one means of private use of the state's public assets. The licence fee payable by each holder of a licence to establish and operate a third-generation mobile telephone network is a revenue item which properly belongs to the resources of central government within the meaning of the second paragraph of section 5 of the Ordinance of 2 January 1959. The award of a licence confers the right to occupy frequencies for fifteen years. It thus gives the holder a tradable benefit from the moment when it is awarded. It was accordingly legitimate for the legislature to provide that the licence would be determined on a flat-rate basis for the entire duration of the licence. It was also entitled to provide for different payments for different years in the fifteen-year period. It is legitimate for the scheduling of the payments to reflect the immediate advantage conferred by the licence.
(2000-442 DC, 28 December 2000, paras 12 to 14, p. 211)

Compensation

Specific impositions on general interest rounds

Section 48 of the Act referred requires operators licensed pursuant to sections L 33-1 and L 34-1 of the Posts and Telecommunications Code to "install and operate the facilities needed for interceptions based on considerations of public security. The requisite investments shall be borne by them". It further provides that "the state shall contribute to financing the cost borne by operators in operating the relevant facilities on terms determined by a Decree deliberated in the Council of State".

It is objected that this section requires operators to bear the entire cost of the investments required for interception facilities and part of the cost of operating them. The authors of the reference submit that this violates the principle of equality of public burden-sharing.

It is legitimate for the legislature, observing the freedoms secured by the Constitution, to impose on telecommunications network operators a duty to install and operate technical facilities needed for interceptions based on considerations of public security, but their support for safeguarding public order in the general interest of the people at large is not inherent in the operation of a telecommunications network. The resultant expenditure cannot, therefore, be made to be borne directly by operators. Unconstitutional.
(2000-441 DC, 28 December 2000, paras 39 to 41, p. 201)

Social law

Social contributions

Section 9 of the Social Security (Finance) Act for 2001 simplifies the method of determining the basis of assessment to social security contributions payable by farmers by allowing them to opt between two reference periods: the preceding year or the three preceding years. The violation of equality denounced by the Deputies making the reference is said to lie in the abolition of the option available to persons subject to the real taxation scheme in favour of the current year.

The consequence criticised of the simplification measure decided on by the legislature, which is provisional and inherent in the simplification exercise, does not violate the principle of equality of public burden-sharing. Nor is the principle violated by the fact that during the transitional period the same year could be taken as a basis of assessment to social security contributions for two consecutive years. Objection rejected.
(2000-437 DC, 19 December 2000, paras 11 and 12, p. 190)

EQUALITY OF VOTING RIGHTS

Political elections

Election of members of an overseas territorial assembly

Section 1 inserts in the Act of 21 October 1952 a new section 6-2 which provides, in relation to the election of members of the assembly of French Polynesia: "The difference between the number of candidates of each sex on any list may be no more than one. Each list shall be made up of alternate candidates of each sex".

The section was adopted in identical terms by the two assemblies of Parliament, before the Joint Committee met. At that stage of the procedure, it provided that: "the difference between the number of candidates of each sex on any list may be no more than one". The final text, imposing the need for alternate male and female candidates, was the outcome of an amendment at a subsequent reading in the National Assembly.

The object and effect of the provisions added to section 1 after the meeting of the Joint Committee were to remove the violation of the principle of equality resulting from the difference, which was not directly related to the purpose of the Act, between the electoral rules introduced before the meeting of the Joint Committee for French Polynesia and those adopted at a new reading for the Wallis and Futuna Islands and New Caledonia. Section 1 must be regarded as having been adopted by a lawful procedure since the only amendments that could be adopted after the meeting of the Joint Committee must either be directly related to a provision still under debate or be imposed by the need to abide by the Constitution, to ensure coordination with other instruments under debate in Parliament or to correct a mistake.
(2000-430 DC, 29 June 2000, paras 2, 3, 7 and 8, p. 95)

Election of Deputies and Senators

Demographic bases for the election

It follows from article 24 of the Constitution that the Senate, since it represents the territorial units of the Republic, must be elected by an electoral college itself representing those units. That electoral college must accordingly consist primarily of members of the decision-making assemblies of the territorial units; all categories of territorial units must be represented; moreover the communes must be represented in such a way as to reflect their diversity; finally, to respect the principle of equality of voting rights declared by article 6 of the Declaration of Human and Civic Rights of 1789 and article 3 of the Constitution, the representation of each

category of territorial units and of the various types of communes must have regard to the population residing there.

It follows that, while the number of delegates from a municipal council must be based on the population of the commune and while, in the most heavily populated communes, additional delegates selected from outside the municipal council may be elected to represent it, this is subject to the condition that their participation in the Senate electoral college serves solely as a demographic correction factor. The application of the current provisions of section L 285 of the Electoral Code does not jeopardise the principles set out above.

The substantial share, indeed in some departments the majority share, accounted for under the Act referred by additional delegates from municipal councils in the electoral colleges would do more than merely constitute a demographic correction factor. The principles set out above are accordingly violated.
(2000-431 DC, 6 July 2000, paras 5 to 8, p. 98)

Referendum

The author of the reference asks the Constitutional Council to declare unconstitutional section 3 of the Decree of 18 July 2000 on the campaign for the referendum of 24 September 2000. He argues that by allowing participation in the official campaign not only by political parties or groups represented in a parliamentary group but also by parties and groups which received at least 5 % of the votes cast at the election of representatives to the European Parliament on 13 June 1999, the section violates articles 2, 3 and 4 of the Constitution.

The first paragraph of section 3 of the Decree criticised provides: "Political parties or groups represented at the date of this Decree by at least five Deputies or five Senators within a political grouping in the National Assembly or the Senate may ask to take part in the campaign ..."; the second paragraph provides: "Other parties or groups may ask to take part in the campaign if alone or in a national coalition they received at least 5 % of the votes cast at the election of representatives to the European Parliament held on 13 June 1999".

By adding to the criterion of representation within a parliamentary grouping a criterion empowering parties or groups on the basis of the results at the last election of representatives to the European Parliament and setting the threshold at 5 % of the votes cast, the authors of the Decree, in view of the limited broadcasting time available for the official campaign, did not violate equality between political parties or groups nor violate the constitutional requirement for pluralism in ideas and opinions.
(Larrouturou, 23 August 2000, paras 1, 5 and 6, p. 137)

By requiring such political organisations to be represented by at least five members within a political grouping or to have received, alone or in a national coalition, at least 5 % of the votes cast at the election of representatives to the European Parliament held on 13 June 1999, the authors of the Decree had adopted objective criteria which, in view of the limited broadcasting time available for the official campaign, did not run counter to equality between political parties or groups.
(Pasqua, 6 September 2000, paras. 5, p. 144)

ELECTIONS

ELECTORATE, ELIGIBILITY, PRE-ELECTORAL PROCESS

Eligibility

Entry on an electoral list

Waiver of section L 7 of the Electoral Code

The offences of which Mr E was convicted were committed between 1988 and 1990, before the entry into force of the Act of 19 January 1995 which inserted section L 7 in the Electoral Code, providing that nobody who has been convicted of certain offences may be entered on an electoral list within the five years following the date on which the conviction became final. Section L 7 of the Electoral Code is accordingly not applicable to him.
(2000-2581, 30 March 2000, AN, Landes, Constituency 3, paras 3 and 7, p. 58)

Functions

Functions which do not fall within ineligibility cases

The fact that on the date of his election to the Senate Mr V. was first Vice-Chairman of a General Council, Mayor and executive director of a local public cooperation establishment did not bring him into one of the cases of ineligibility specified by sections LO 127 *et seq.* of the Electoral Code, applicable to the election of Senators under section LO 296 of that Code. Plea dismissed.
(99-2578, 27 January 2000, Senate, Savoie, para. 1, p. 48)

Criminal convictions

Scope of section LO 130 of the Electoral Code

It is provided in terms by section LO 130 of the Electoral Code that the first paragraph applies to persons automatically disqualified by conviction for a criminal offence for entry on an electoral list and not to those who have been sentenced expressly to a penalty of deprivation of voting and eligibility rights by a court decision; the latter are subject solely to point 1° of the second paragraph of that section. The situation of Mr E., against whom an order of deprivation of voting and eligibility rights has been made for a period of two years, is accordingly covered by point 1° of the second paragraph of section LO 130 of the Electoral Code alone. The two-year deprivation of voting and eligibility rights had expired on the date of the disputed election. The application for annulment of the election is dismissed.
(2000-2581, 30 March 2000, AN, Landes, Constituency 3, paras 2, 5 and 6, p. 58)

Pre-electoral operations

Constitutional Council jurisdiction

The author of the reference asks the Constitutional Council to annul three decrees relating to the referendum. He argues that Decree 2000-655 of 12 July 2000 should have been countersigned by the Minister of Justice and the Minister responsible for Relations with Parliament. Decree 2000-666 of 18 July 2000 should be annulled both in consequence and as lacking the countersignatures of the Minister of Justice and the Minister for External Relations. And

Decree 2000-667 of 18 July 2000 should be annulled in consequence of the annulment of the other two Decrees.

The functions entrusted to the Constitutional Council by section 46 of the Ordinance of 7 November 1958 laying down the Institutional Act relating to the Constitutional Council are advisory in nature as regards the organisation of referendum operations. But the Council exercises a judicial role under sections 49 and 50 where it rules on disputes as to the manner in which these operations are conducted.

The Decrees criticised were submitted in advance for the consultation required by section 46 of the Ordinance of 7 November 1958 laying down the Institutional Act. It follows that a voter has standing to request the Constitutional Council to rule in a judicial capacity on the regularity of these acts only in the manner provided by section 50 of the Ordinance of 7 November 1958, as clarified and amplified by the Rules of Procedure.

However, in the exercise of its general task of overseeing the regularity of referendum operations under article 60 of the Constitution, it is for the Constitutional Council to rule on applications doubting the regularity of forthcoming operations where, if such applications were declared inadmissible, there would be a risk of seriously compromising the effectiveness of its review of referendum operations, vitiating the general ballot procedure or jeopardising the proper functioning of the public authorities.

In the instant case, the conditions in which, exceptionally, the Constitutional Council can give a ruling before the results of the ballot are declared are met in view of the nature of the acts complained of and the arguments submitted.
(Hauchemaille, 25 July 2000, paras 1 to 6, p. 117)

ELECTORAL OPERATIONS

Proceedings during the ballot

Ballot boxes

Ballot box left unattended for an undetermined period in the around midday: this constitutes an irregularity in the electoral operations in this commune. They must be annulled.
(Proclamation of results of referendum of 24 September 2000, 28 September 2000, para. 1, p. 153)

A ballot box was not transparent, contrary to section L 63 of the Electoral Code. The results of the ballot must be annulled for the relevant polling station.
(Proclamation of results of referendum of 24 September 2000, 28 September 2000, para. 3, p. 153)

Violence or pressure at the time of the ballot

Pressure on voters

Voters entering the polling station found a pile of ballot papers prepared by the commune with the slogan: "Immediate reopening of the pharmacy in the Horgues shopping mall: Yes". This constituted a manœuvre which, given the large of number of ballot papers declared void for this very reason, calls for annulment of the electoral operations in this commune.
(Proclamation of results of referendum of 24 September 2000, 28 September 2000, para. 2, p. 153)

Sorting and counting

Counting

Validity of ballot papers

At several polling stations in the department, envelopes found in the ballot box contained not only a ballot paper but also a tract with various statements on it. These ballot papers, declared

void by the polling stations, were wrongly reinstated by the departmental counting committee. The number of votes cast in the department must accordingly be reduced by 36, that is to say 24 YES votes and 12 NO votes.
(Proclamation of results of referendum of 24 September 2000, 28 September 2000, para. 4, p. 153)

Blank papers

The application presented by Mr D., candidate for the "association for the recognition of the blank vote" at the election held in Constituency 21 of Paris, merely complains that blank papers were not counted among the votes cast. The count, conducted in accordance with section L 66 of the Electoral Code, can neither have affected the fairness of the ballot nor breached equality between the candidates. It is not contested that ballot papers bearing the name of Mr D. and specifying the name of the association for which he was standing were counted in the votes cast. Mr D's application must be dismissed.
(99-2579/2580, 27 January 2000, AN, Paris, Constituency 21, para. 2, p. 50)

Reports and annexes thereto

The report for the commune was not transmitted. Without the report the Constitutional Council cannot examine the complaints, if any, made by voters. The results of the ballot must accordingly be annulled for this commune.
(Proclamation of results of referendum of 24 September 2000, 28 September 2000, para. 5, p. 153)

LITIGATION

Powers of the Constitutional Council

Regularity of instruments organising elections

The Decrees criticised were submitted in advance for the consultation required by section 46 of the Ordinance of 7 November 1958 laying down the Institutional Act. It follows that a voter has standing to request the Constitutional Council to rule in a judicial capacity on the regularity of these acts only in the manner provided by section 50 of the Ordinance of 7 November 1958, as clarified and amplified by the Rules of Procedure.

However, in the exercise of its general task of overseeing the regularity of referendum operations under article 60 of the Constitution, it is for the Constitutional Council to rule on applications doubting the regularity of forthcoming operations where, if such applications were declared inadmissible, there would be a risk of seriously compromising the effectiveness of its review of referendum operations, vitiating the general ballot procedure or jeopardising the proper functioning of the public authorities.

The conditions in which, exceptionally, the Constitutional Council can give a ruling before the results of the ballot are declared are met in the case of Decrees 2000-655 of 12 July 2000 and 2000-666 and 2000-667 of 18 July 2000. But they are not met in the case of recommendation 2000-3 of 24 July 2000 of the *Conseil supérieur de l'audiovisuel* or of decision 2000-409 of 26 July 2000 of the same authority.
(Hauchemaille, 23 August 2000, paras 1 to 3, p. 134)

Authority of treaties in relation to statutes and administrative instruments

By requiring such political organisations to be represented by at least five members within a political grouping or to have received, alone or in a national coalition, at least 5 % of the votes cast at the election of representatives to the European Parliament held on 13 June 1999, the authors of the Decree had adopted objective criteria which, in view of the limited broadcasting time available for the official campaign, did not run counter to equality between political parties or groups and violated neither the principle of freedom to express ideas and opinions

secured by article 11 of the Declaration of Human and Civic Rights of 1789 nor article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.
(Pasqua, 6 September 2000, para. 5, p. 144)

Submissions and arguments

Submissions (admissibility)

Dispute as to the regularity of the instruments organising the elections

The author of the reference asks the Constitutional Council to annul three decrees relating to the referendum. He argues that Decree 2000-655 of 12 July 2000 should have been countersigned by the Minister of Justice and the Minister responsible for Relations with Parliament. Decree 2000-666 of 18 July 2000 should be annulled both in consequence and as lacking the countersignatures of the Minister of Justice and the Minister for External Relations. And Decree 2000-667 of 18 July 2000 should be annulled in consequence of the annulment of the other two Decrees.

The functions entrusted to the Constitutional Council by section 46 of the Ordinance of 7 November 1958 laying down the Institutional Act relating to the Constitutional Council are advisory in nature as regards the organisation of referendum operations. But the Council exercises a judicial role under sections 49 and 50 where it rules on disputes as to the manner in which these operations are conducted.

The Decrees criticised were submitted in advance for the consultation required by section 46 of the Ordinance of 7 November 1958 laying down the Institutional Act. It follows that a voter has standing to request the Constitutional Council to rule in a judicial capacity on the regularity of these acts only in the manner provided by section 50 of the Ordinance of 7 November 1958, as clarified and amplified by the Rules of Procedure.

However, in the exercise of its general task of overseeing the regularity of referendum operations under article 60 of the Constitution, it is for the Constitutional Council to rule on applications doubting the regularity of forthcoming operations where, if such applications were declared inadmissible, there would be a risk of seriously compromising the effectiveness of its review of referendum operations, vitiating the general ballot procedure or jeopardising the proper functioning of the public authorities.
(Hauchemaille, 25 July 2000, paras 1, 3 to 5, p. 117)

Arguments

Inoperative arguments

The author of the reference cannot validly rely, in support of his submission that electoral operations should be annulled, on sections LO 137 *et seq.* of the Electoral Code relating to cases of incompatibility, made applicable to Senators by section LO 297 of that Code.
(99-2578, 27 January 2000, Senate, Savoie, para. 2, p. 48)

The author of the reference asks the Constitutional Council to declare unconstitutional section 3 of the Decree of 18 July 2000 on the campaign for the referendum of 24 September 2000, which refers to the results of the European elections held on 13 June 1999. He argues that there was great inequality of access by "small lists" to broadcasting time in the campaign for the election of 13 June 1999.

The argument that the conditions for participation of political parties in the campaign for the election of representatives to the European Parliament held on 13 June 1999 concerns the results of a past election. Argument rejected.
(Larrouturou, 23 August 2000, paras 1 and 7, p. 137)

Investigation

Evidence

Affirmation by parties not corroborated by evidence

Mr B. offers no evidence in support of his allegation that the Minister of the Interior wrongfully attributed a political label to the party for which he stood as a candidate and thus adversely affected the fairness of the ballot. His application must accordingly be dismissed.
(99-2579/2580, 27 January 2000, AN, Paris, Constituency 21, paras 3 and 4, p. 50)

Redress procedures

Application for revision or cancellation

Ms C. S. s'application is not for mere correction of a mistake to rectify the decision of 20 February 1998 but for revision of that decision.

The second paragraph of article 62 of the Constitution provides: "No appeal shall lie from the decisions of the Constitutional Council", and no provisions of the Constitution provide for revision of its decisions. The application is therefore contrary to the provisions cited above. It accordingly follows that it must be dismissed as inadmissible without there being any need for the hearings requested.
(2000-2585, 12 July 2000,AN, Paris, Constituency 2, p. 102)

CAMPAIGN ACCOUNTS

Deposit

Conditions of deposit

Account not certified

The candidate's campaign accounts were not presented by a member of the Order of accountant/auditors and approved accountants. The fact that the accounts recorded no expenditure or revenue is not a valid ground for an exception from an obligation which, given the purpose of section L 52-12 of the Electoral Code, constitutes a substantial formality. Nor does the fact, even if it were proven, that an accountant who had been requested to present the accounts had refused to do release the candidate from compliance with this formality. The Constitutional Council, by virtue of section LO 128 of the Electoral Code, must accordingly declare the candidate ineligible for one year running from 30 May 2000, the date of its decision.
(2000-2582 and 2000-2583, 30 May 2000, para. 2, p. 78 and 80)

Financing association or financial agent

Ms G. declares that she covered directly, and not through her agent, 18 316 francs of expenditure incurred for her election campaign. It is legitimate for a candidate to settle certain expenditure items, on practical grounds, but this can be tolerated only if the items are relatively small. But Ms G. directly settled nearly half the expenditure to be recorded in her campaign accounts. The direct payments are contrary to the second paragraph of section L 52-4 of the Electoral Code. The Constitutional Council, by virtue of section LO 128 of the

Electoral Code, must accordingly declare the Ms G. ineligible for one year running from the date of its decision.
(2000-2584, 30 May 2000, para. 2, p. 82)

PUBLIC AND SOCIAL FINANCE

DIRECT AND INDIRECT TAXES

Direct taxes

The wildlife taxes paid by hunters for the validation of their hunting licence under section L 223-16 of the Rural Code are in the nature of miscellaneous taxes within the meaning of article 34 of the Constitution.
(2000-434 DC, 20 July 2000, para. 13, p. 107)

Parafiscal charges

Licence fee for the use of television receivers

The licence fee for the use of television receivers, given the manner in which it is established, the purpose for which it was introduced and the legal status of the bodies to which the proceeds are allocated, is a parafiscal charge. It is a matter exclusively for the Finance Act to authorise its annual collection beyond 31 December of the year in which it is established, pursuant to the third paragraph of section 4 of the Ordinance of 2 January 1959.
(2000-433 DC, 27 July 2000, para. 18, p. 121; cf. 60-8 DC, 11 August 1960, para. 4, p. 25; 79-III L, 21 November 1979, para. 5, p. 50 ; 80-126 DC, 30 December 1980, para. 13, p. 53; 91-302 DC, 30 December 1991, para. 23, p. 137)

Miscellaneous

The tax per animal shot, levied in the specific economic interest of a specific sector and for the benefit of private-sector bodies, is a parafiscal charge and not a direct tax. The rules governing it are matters to be determined by regulation. But it is a matter for the Finance Act to authorise its annual collection, pursuant to the third paragraph of section 4 of the Ordinance of 2 January 1959.
(2000-434 DC, 20 July 2000, para. 16, p. 107)

FINANCE ACTS

Exercise of budgetary control

Audit of public finances

Powers of legislature

Section 9 of the Act provides: "Each year the Government shall lay before Parliament, in support of the Finance Bill, a report on the conditions for setting bank rates in the overseas departments and the reasons for their divergence from the rates applied in metropolitan France".

The purpose of a report on the conditions for setting bank rates in the overseas departments is not to organise Parliament's information or its review of the public finances. It follows that section 9 annexes to the Finance Bill a document which is unrelated to the purposes of a Finance Act. The words "in support of the Finance Bill", must accordingly be declared unconstitutional.
(2000-435 DC, 7 December 2000, paras 50 and 51, p. 164)

Respect for prerogatives of the Government

The penultimate paragraph of section 15 of the Act to promote equal access of women and men to electoral office provides: "The appropriations generated by this reduction shall be reallocated in the Finance Act", and in the last paragraph provides: "An annual report shall be laid before Parliament on the use of the appropriations generated by this reduction..."; these provisions, read together, require the Government or Parliament, as the case may be, to allocate and utilise the corresponding appropriations; with regard to the allocation by the Finance Act, an ordinary statute cannot impose such a requirement without violating the Government's right to take initiatives as regards Finance Bills under articles 39, 40 and 47 of the Constitution; nor was it legitimate for the legislature to obstruct the Government's prerogatives as regards implementation of the Finance Act, both to cancel any appropriation becoming superfluous during the year and to amend by way of transfer the distribution of appropriations between budgetary chapters, within the conditions and limits provided for in sections 13 and 14 of the Ordinance of 2 January 1959.
(2000-429 DC, 30 May 2000, para. 14, p. 84)

Evaluation of borrowed and cash-flow resources

Section 46 of the Act referred, relating to the balance of resources and burdens of the central government, gives no estimate of the amount of borrowed and cash-flow resources. The authors of the reference submit that the Finance Act accordingly violates section 31 of the Institutional Ordinance of 2 January 1959 and does not specify the ways and means of securing financial equilibrium.

It is clear from the parliamentary reports that when debating the Finance Bill Parliament had all the information to which it was entitled as to the amount of borrowed and cash-flow resources to be used to finance the general balance. Estimate A annexed to the section criticised sets out the ways and means of securing financial equilibrium for each revenue item. Objection rejected.
(2000-442 DC, 28 December 2000, paras 17 and 18, p. 211)

Evaluation of tax and non-tax revenue of central government

No distortion of broad lines of budgetary equilibrium

The Deputies making the reference contest the accuracy of the revenue and expenditure entered in the budget on the ground that tax revenues are understated. The central government resources described in the Finance Acts are always forecasts presented in the form of estimates. The facts put to the Constitutional Council do not reveal that the estimates used for the balancing item are manifestly erroneous in light of the alleged under-estimation of the general volume of the budget.
(2000-441 DC, 28 December 2000, paras 2 and 3, p. 201, sol. impl.)

Universality of budget

Allocation of revenue — Obligation to allocate revenue without deducting expenditure

Failure to allocate revenue

From 1 January 2001, the yield from the tax on meat purchases will no longer be assigned to financing the public meat-processing service but will be entered as a revenue item in the

general central government budget. Pleas to the effect that the allocation of the tax on meat purchases means that meat distributors should be subject to it on account of the quantities sold are accordingly inoperative.
(2000-441 DC, 28 December 2000, para. 27, p. 201)

Special cash-flow accounts

Trading accounts

The purpose of section 8 of the Act referred is to establish a trading account to record operations for the "active management" of the central government cash-flow debt position using time-deposit financial instruments.

The plea that this section contains no estimate of revenue and expenditure on the new account fails on the facts. In any event, under section 26 of the Ordinance of 2 January 1959, only the estimate of expenditure and the determination of the authorised overdraft limit require to be specified in the Finance Bill, as is indeed the case here.
(2000-441 DC, 28 December 2000, paras 19 and 20, p. 201)

Loan accounts

Section 16 of the Finance (Amendment) Act for 2000 opens a "payment appropriation for operating expenditure" on the account entitled "Cash loans to foreign states and to the French Development Agency to promote economic and social development". The Senators making the reference submit that this appropriation, which is not booked properly in accordance with the budget nomenclature, should have been booked to the "Account for the appropriation of the proceeds of sales of securities and shares".

The appropriations opened by the section criticised are booked to the chapter entitled "Cash loans to foreign states and to the French Development Agency to promote economic and social development". They are therefore intended for lending operations and not for a capital endowment. The objection fails on the facts.
(2000-441 DC, 28 December 2000, paras 21 and 22, p. 201)

Content and presentation of finance bills

Provisions that may be made only in a Finance Act

The new section 53 of the Act of 30 September 1986 requires the Finance Act for each year to enter as resources for the special allocation account entitled "account for the use of the audiovisual licence fee" an amount equal to the amount of exemptions from the licence fee, and thus determines a rule as to the mandatory content of the finance acts. But only an institutional act can impose a rule of the financial legislature, as is clear from the provision of article 34 of the Constitution that: "Finance Acts shall determine the resources and obligations of the State in the manner and with the reservations specified in an institutional Act". The words "account for the use of the audiovisual licence fee" in Section 53 of the Act of 30 September 1986, inserted by section 15 of the Act referred, must accordingly be declared unconstitutional.
(2000-433 DC, 27 July 2000, para. 19, p. 121)

Provisions that may be made in a Finance Act

Taxes of all types

Section 89 of the Act referred amends the basis of assessment to the contribution for the reimbursement of the social debt.

It relates to "taxes of all types" within the meaning of article 34 of the Constitution and may validly be in a Finance Act. But, as was made clear in the Decision 2000-437 DC of 19 December 2000, such provisions are out of place in a Social Security (Finance) Act.
(2000-442 DC, 28 December 2000, paras 25 and 27, p. 211)

Provisions that may be made in a Finance Act whose impact on the general conditions of the financial equilibrium of the social security scheme must be taken into account in a Social Security (Finance) Act

Section 3 of the Finance (Amendment) Act allocates to Fund to finance the reform of employer's social security contributions the residue of the tax on the consumption of manufactured tobacco products levied by the central government for 2000.

The second subparagraph of section LO 111-3(II) of the Social Security Code provides: "Only Finance Acts may amend provisions enacted under subsection I(1°) to (5°)". The purpose of the latter provision is to preclude the general conditions for financial equilibrium flowing from the Social Security (Finance) Act for the current, as amended by Finance (Amendment) Acts, from being affected by the application of legislation or regulations whose impact on that equilibrium in the course of the year could not have been assessed and taken into account by one of those Finance Acts in the course of the year.

The transfer of the residue of the tax on the consumption of manufactured tobacco products from the central government budget to the Fund to finance the reform of employer's social security contributions is estimated at three billion francs. This transfer would affect the general conditions for financial equilibrium of the social security scheme for 2000 whereas no Social Security (Finance) Act has taken account of that effect, nor indeed can do so between now and the end of the financial year. Section 16(IX) of the Social Security (Finance) Act for 2001 (enacted on 23 December 2000) merely makes the allocation of duties on beverages to the Fund to finance the reform of employer's social security contributions applicable from 1 January 2000.

Section 3 must accordingly be declared unconstitutional as violating section LO 111-3 of the Social Security Code.
(2000-441 DC, 28 December 2000, paras 8, 10 to 12, p. 201)

Provisions that may be made in a Finance Act whose impact on the general conditions of the financial equilibrium of the social security scheme need not be taken into account in a Social Security (Finance) Act

Section 4 of the Finance (Amendment) Act increases by 350 million francs the levy on the proceeds of the social contribution by bodies corporate to the ancillary budget for agricultural social benefits for 2000. The effect is to reduce by the same amount the resources allocated to the old-age solidarity fund.

The measure in question, which may be made in a Finance Act, does not have such an effect on the general conditions for financial equilibrium of the social security scheme for 2000 that it should first have been taken into account in a Social Security (Finance) Act. The objection that section LO 111-3 of the Social Security Code is violated is rejected.
(2000-441 DC, 28 December 2000, paras 13 and 15, p. 201)

Provisions that may not be made in a Finance Act

Amendment of social protection scheme for personnel of a public establishment

Section 85 of the Finance Act amends section L 722-20 of the Rural Code. The purpose of the amendment is to extend to the non-established personnel of the public establishment "Domaine de Pompadour" whose contracts have been transferred to the public establishment "Les Haras nationaux" the social protection scheme for persons employed in agriculture.

This provision does not concern the determination of the central government's resources and burdens. Its purpose is not to organise Parliament's information on or review of the management of public finances or to impose financial liabilities on public servants. Nor is it a taxing

provision. And it entails neither the creation nor the conversion of posts within the meaning of the fifth paragraph of section 1 of the Ordnance of 2 January 1959. Section 85 is not a matter for a Finance Act. It was accordingly enacted by an unconstitutional procedure.
(2000-442 DC, 28 December 2000, paras 34 and 36, p. 211)

Definition of the use made of the proceeds of a tax

Section 86 of the Finance Act amends section L 142-2 of the Town Planning Code so as to redefine the use that may be made of the proceeds of the departmental tax on vulnerable natural areas.

This provision does not concern the determination of the central government's resources and burdens. Its purpose is not to organise Parliament's information on or review of the management of public finances or to impose financial liabilities on public servants. Nor is it a taxing provision. And it entails neither the creation nor the conversion of posts within the meaning of the fifth paragraph of section 1 of the Ordnance of 2 January 1959. Section 86 is not a matter for a Finance Act. It was accordingly enacted by an unconstitutional procedure.
(2000-442 DC, 28 December 2000, paras 35 and 36 p. 211)

Grants to trade union organisations

Section 70 of the Finance Act for 2001 inserts in the General Code of Local Authorities two new sections, under which the communes and departments may make operating grants to the communal or intercommunal structures of representative trade union organisations and the departmental structures of such organisations.

This provision does not concern the determination of the central government's resources and burdens. Its purpose is not to organise Parliament's information on or review of the management of public finances or to impose financial liabilities on public servants. Nor is it a taxing provision. And it entails neither the creation nor the conversion of posts within the meaning of the fifth paragraph of section 1 of the Ordnance of 2 January 1959. Section 70 is not a matter for a Finance Act. It was accordingly enacted by an unconstitutional procedure.
(2000-442 DC, 28 December 2000, paras 33 and 36, p. 211)

Provisions that may be made only in a Finance Act

The penultimate paragraph of section 15 of the Act to promote equal access of women and men to electoral office provides: "The appropriations generated by this reduction shall be reallocated in the Finance Act", and in the last paragraph provides: "An annual report shall be laid before Parliament on the use of the appropriations generated by this reduction..."; these provisions, read together, require the Government or Parliament, as the case may be, to allocate and utilise the corresponding appropriations; with regard to the allocation by the Finance Act, an ordinary statute cannot impose such a requirement without violating the Government's right to take initiatives as regards Finance Bills under articles 39, 40 and 47 of the Constitution.
(2000-429 DC, 30 May 2000, para. 14, p. 84)

Provisions that must not necessarily be made in a Finance Act

Tax provisions

The effect of section 1 of the Ordnance of 2 January 1959 laying down the Institutional Act on finance acts is that tax provisions are not among those that may be made only by a finance act.
(2000-434 DC, 20 July 2000, para. 13, p. 107; cf. 84-170 DC, 4 June 1984, para. 4, p. 45)

Accuracy of the budget

The Deputies making the reference contest the accuracy of the revenue and expenditure entered in the budget on the ground that tax revenues are understated. The central govern-

ment resources described in the Finance Acts are always forecasts presented in the form of estimates. The facts put to the Constitutional Council do not reveal that the estimates used for the balancing item are manifestly erroneous in light of the alleged under-estimation of the general volume of the budget.
(2000-441 DC, 28 December 2000, paras 2 and 3, p. 201; of 93-320, 21 June 1984, para. 23, p. 146)

Section 46 of the Finance Act for 2001, relating to the balance of resources and burdens of the central government, gives no estimate of the amount of borrowed and cash-flow resources. The authors of the reference submit that the Finance Act accordingly violates section 31 of the Institutional Ordinance of 2 January 1959 and does not specify the ways and means of securing financial equilibrium. Nor, they submit, does it respect the principles of accuracy and universality, given the allocation of revenue to the Fund to finance the reform of employer's social security contributions and the allegedly arbitrary nature of the estimate of the amount of revenue on the Account for the appropriation of the proceeds of sales of securities and shares. The ceilings on expenditure are also said to be inaccurate.

It is clear from the parliamentary reports that when debating the Finance Bill Parliament had all the information to which it was entitled as to the amount of borrowed and cash-flow resources to be used to finance the general balance. Estimate A annexed to the section criticised sets out the ways and means of securing financial equilibrium for each revenue item. As was made clear in Decision 99-424 DC of 29 December 1999, neither the expenditure nor the revenue of the Fund to finance the reform of employer's social security contributions, which by nature are not necessarily a matter for the central government, do not have to be made in a Finance Act. Moreover given the information available to the Constitutional Council, there is no manifest error in the estimate of the revenue on the special account or in the ceilings on expenditure set by the section criticised.
(2000-442 DC, 28 December 2000, paras 17 and 18, p. 211)

SOCIAL SECURITY (FINANCE) ACTS

Content and presentation of Social Security (Finance) Acts

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

Measure affecting the financial equilibrium of the current year

Section 16(IX) of the Social Security (Finance) Act for 2001 (enacted on 23 December 2000) makes the allocation of duties on beverages to the Fund to finance the reform of employer's social security contributions applicable from 1 January 2000. These duties were entered as revenue in the old-age solidarity fund provided for by section 5 of the Social Security (Finance) Act for 2000. In support of their objection to the new allocation, the Senators making the reference submit that a measure affecting the financial equilibrium of compulsory basic schemes in 2000 was out of place in the Act referred. Neither section LO 111-3(II), which provides that "Only a Finance Act may amend provisions enacted under subsection I(1°) to (5°)" nor any other provision precludes the amendment of section 5 of the Social Security (Finance) Act for 2000 by section 16 of the Act referred. The pleas based on failure of section 16 to comply with section LO 111-3 of the Social Security Code.
(2000-437 DC, 19 December 2000, paras 56 and 57, p. 190)

Extension of relief on contributions provided for by the Act on the reduction of working time

The financial equilibrium of basic schemes in 2001 is significantly affected by section 14, which extends to new categories of employed persons the benefit of the relief on employer's contributions provided for by the Act of 19 January 2000. This section is accordingly one of those that may be enacted in a Social Security (Finance) Act.
(2000-437 DC, 19 December 2000, para. 58, p. 190)

Transmission of samples for medical analyse

Section 44, which allows health professionals, establishments and centres not equipped with medical biology laboratories to transmit samples for analysis, has a significant impact on the equilibrium of the sickness insurance scheme. This section is accordingly one of those that may be enacted in a Social Security (Finance) Act.
(2000-437 DC, 19 December 2000, para. 58, p. 190)

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

Amendment of basis of assessment to CRDS

Section 4 amends the basis of assessment to the contribution for the reimbursement of the social debt by exempting certain retired persons and pensioners. The proceeds of the contribution are wholly allocated to the social debt amortisation fund, which is not a body established to help finance compulsory basic schemes. Moreover, the amendment of the basis of assessment has no direct financial impact on the equilibrium of these schemes.
(2000-437 DC, 19 December 2000, para. 51, p. 190)

Repeal of Retirement Savings Plans Act of 25 March 1997

Section 24, which repeals the Retirement Savings Plans Act of 25 March 1997, has no direct impact on the financial equilibrium of compulsory basic social security schemes in 2001.
(2000-437 DC, 19 December 2000, para. 52, p. 190)

Coverage of payments to supplementary retirement schemes

Section 29 makes the old-age solidarity fund provided for by section L 135-1 of the Social Security Code responsible for the accreditation by supplementary retirement schemes of periods of unemployment and pre-retirement during which allowances were paid by the central government. The bodies receiving the resultant payments are not compulsory basic social security schemes. The section contested accordingly does not directly affect the financial equilibrium of such schemes.
(2000-437 DC, 19 December 2000, para. 53, p. 190)

Modus operandi of the Technical agency for information on hospitalisation

Section 39 specifies the modus operandi of the Technical agency for information on hospitalisation. It does not significantly affect the financial equilibrium of compulsory basic social security schemes in 2001.
(2000-437 DC, 19 December 2000, para. 54, p. 190)

Apartments for therapeutic coordination

Section 45 amends the rules governing the operation and financing of apartments for therapeutic coordination and peripatetic alcoholism cure centres. It does not significantly affect the financial equilibrium of compulsory basic social security schemes in 2001.
(2000-437 DC, 19 December 2000, para. 54, p. 190)

Advertising for medicines before they cease to be reimbursable

Section 46 authorises advertising for medicines prior to their removal from the list of reimbursable specialities. It does not significantly affect the financial equilibrium of compulsory basic social security schemes in 2001.
(2000-437 DC, 19 December 2000, para. 54, p. 190)

Respect for general conditions of financial equilibrium

Provision of an ordinary statute such as to affect the general conditions of financial equilibrium

Section 3 of the Finance (Amendment) Act allocates to Fund to finance the reform of employer's social security contributions the residue of the tax on the consumption of manufactured tobacco products levied by the central government for 2000.

The second subparagraph of section LO 111-3(II) of the Social Security Code provides: "Only Finance Acts may amend provisions enacted under subsection I(1°) to (5°)". The purpose of the latter provision is to preclude the general conditions for financial equilibrium flowing from the Social Security (Finance) Act for the current, as amended by Finance (Amendment) Acts, from being affected by the application of legislation or regulations whose impact on that equilibrium in the course of the year could not have been assessed and taken into account by one of those Finance Acts in the course of the year.

The transfer of the residue of the tax on the consumption of manufactured tobacco products from the central government budget to the Fund to finance the reform of employer's social security contributions is estimated at three billion francs. This transfer would affect the general conditions for financial equilibrium of the social security scheme for 2000 whereas no Social Security (Finance) Act has taken account of that effect, nor indeed can do so between now and the end of the financial year. Section 16(IX) of the Social Security (Finance) Act for 2001 (enacted on 23 December 2000) merely makes the allocation of duties on beverages to the Fund to finance the reform of employer's social security contributions applicable from 1 January 2000.

Section 3 of the Act referred must accordingly be declared unconstitutional as violating section LO 111-3 of the Social Security Code.
(2000-441 DC, 28 December 2000, paras 8, 10 to 12, p. 201)

Provision of an ordinary statute not such as to affect the general conditions of financial equilibrium

Section 4 of the Finance (Amendment) for 2000 increases by 350 million francs the levy on the proceeds of the social contribution by bodies corporate to the ancillary budget for agricultural social benefits for 2000. The effect is to reduce by the same amount the resources allocated to the old-age solidarity fund.

The measure in question, which may be made in a Finance Act, does not have such an effect on the general conditions for financial equilibrium of the social security scheme for 2000 that it should first have been taken into account in a Social Security (Finance) Act. The objection that section LO 111-3 of the Social Security Code is violated is rejected.
(2000-441 DC, 28 December 2000, paras 13 and 15, p. 201)

Accuracy of the Social Security (Finance) Act

Section 55 sets the national target for sickness insurance expenditure across the range of compulsory basic schemes at 693.3 billion francs for 2001. The Senators making the reference submit that the estimate is not based on objective rational criteria.

It is clear from the legislative history that the target whose accuracy is contested was determined in the light of actual expenditure in 2000 and the forecast pattern for 2001. Such an estimate is not vitiated by any manifest error; the plea must be rejected.
(2000-437 DC, 19 December 2000, paras 45 and 46, p. 190)

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

The revenue forecasts for each category must be entered in the Social Security (Finance) Act under section LO 111-3(I)(2°) of the Social Security Code. It is for the legislature, when adopting the amount of those forecasts, to have regard to all the information, including tax information, that can have an impact on the revenue of the compulsory basic schemes and the

bodies established to help finance them. And it is on the basis of the revenue forecasts that the legislature is required by article 34 of the Constitution to determine expenditure targets.

The legislature was not required to determine in the Social Security (Finance) Act for 2001 itself the new general tax scheme for polluting activities, even though the proceeds of the tax are to be paid into the Fund to finance the reform of employers' social security contributions.

It was legitimate for the legislator to set the amount of the estimated revenue of the funds to finance the reform of employers' social security contributions at 7 billion francs, given the change to the basis of assessment to the general tax on polluting activities provided for by the Finance (Amendment) Bill for 2000 in the course of proceedings in Parliament. But, if the effect of promulgation of this Act was to significantly reduce the expected yield of the tax and with it the fund provided for at the time of the enactment of the Social Security (Finance) Act for 2001, then there would have to be a further Social Security (Finance) Act to rectify the general financial balance of the social security scheme under the impact of the measures enacted in the Finance (Amendment) Act for 2000. Subject to this reservation, the objections are dismissed.
(2000-437 DC, 19 December 2000, paras 16 to 19, p. 190)

Provisions adopted by way of amendment

Prior parliamentary procedures

Principle not applied

The Constitutional Council observes no failure to abide by parliamentary procedures regarding provisions of the Social Security (Finance) Act for 2001 adopted by way of parliamentary amendments and constituting intruders in this kind of act.
(2000-437 DC, 19 December 2000, sol. imp., p. 190)

PUBLIC ASSETS

The use of radio-electric frequencies in the territory of the Republic is one means of private use of the state's public assets. The licence fee payable by each holder of a licence to establish and operate a third-generation mobile telephone network is a revenue item which properly belongs to the resources of central government within the meaning of the second paragraph of section 5 of the Ordinance of 2 January 1959. The award of a licence confers the right to occupy frequencies for fifteen years. It thus gives the holder a tradable benefit from the moment when it is awarded. It was accordingly legitimate for the legislature to provide that the licence would be determined on a flat-rate basis for the entire duration of the licence. It was also entitled to provide for different payments for different years in the fifteen-year period. It is legitimate for the scheduling of the payments to reflect the immediate advantage conferred by the licence.
(2000-442 DC, 28 December 2000, para. 14, p. 211)

GOVERNMENT

SPECIFIC POWERS OF GOVERNMENT

No violation of specific powers of Government

Under article 21 of the Constitution, the Prime Minister exercises the power to make regulations "subject to article 13"; the first paragraph of article 13 of the Constitution provides: "The

President of the Republic shall sign the ordinances and decrees deliberated upon in the Council of Ministers". These provisions are not violated by article 22 of Decree 2000-666 of 18 July 2000 organising the referendum, whereby "A Decree deliberated by the Council of Ministers after the Constitutional Council has given its opinion shall determine the adjustments required for the application of this Decree in the overseas territories, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon".
(Hauchemaille, 6 September 2000, para. 9, p. 140)

PRIME MINISTER

General administrative police

General police

Article 34 of the Constitution does not deprive the Head of the Government of the general police powers that he exercises by virtue of his own powers, over and beyond any specific statutory authorisation. His powers include the security measures covered by the provision contested, the sole purpose of which is to guarantee the safety of persons when harmful animals are hunted or destroyed, notably where shooting is involved. No failure by the legislature to exercise powers to the full.
(2000-434 DC, 20 July 2000, para. 19, p. 107)

Special police

The establishment of a special hunting police affects the fundamental principles of property ownership and is accordingly, under article 34 of the Constitution, a matter for the legislature. But the determination of specific rules to conserve game by "reasonable selections from species that may be hunted", according to the provisions of section L 220-1 of the Rural Code, is a matter for regulation.
(2000-434 DC, 20 July 2000, para. 22, p. 107)

The establishment of a special hunting police affects the fundamental principles of property ownership and is accordingly, under article 34 of the Constitution, a matter for the legislature. But the determination of rules governing the operation of such police is a matter for regulation, since it has no impact on any of the rules or fundamental principles which by that Article are matters for statute.

The designation of harmful animals that may be hunted or destroyed by order of the Prefect in accordance with section L 427-6 of the Environment Code or of the Mayor in accordance with section L 2122-21 (9) of the General Code of Local Authorities has no impact on any of these rules or principles. It is accordingly a matter for regulation.
(2000-190 L, 7 November 2000, paras 1 and 2, p. 162)

MEMBERS OF THE GOVERNMENT

Mr Vaillant and Mr Paul were appointed Minister of the Interior and State Secretary for Overseas Affairs respectively by Decree signed by the President of the Republic and countersigned by the Prime Minister on 29 August 2000. The decision took effect immediately. It follows that both on 30 August 2000, when the Decree contested was deliberated in the Council of Ministers, and on 31 August 2000, when it was countersigned by Mr Vaillant and Mr Paul, they were exercising the functions of Minister of the Interior and State Secretary for Overseas Affairs.
(Hauchemaille, 6 September 2000, para. 10, p. 140)

PRESIDENT OF THE REPUBLIC

FUNCTIONS AND POWERS

Continuity of government action

The second paragraph of Article 34 of the Constitution provides: "Statutes shall determine the rules concerning ...civic rights and the fundamental guarantees granted to citizens for the exercise of their public liberties ...", but it is for the authority empowered to make regulations, where the requisite statutory provisions are lacking, to determine rules for the implementation of the decision of the President of the Republic, in the exercise of his constitutional prerogatives, to present a text to a referendum pursuant to either article 11 or article 89 of the Constitution. It is accordingly for the authority empowered to make regulations to provide for the application of the provisions of statute and regulation governing other forms of electoral consultation, subject to such adaptations as may be required in the circumstances.
(Hauchemaille, 6 September 2000, para. 7, p. 140)

Under article 21 of the Constitution, the Prime Minister exercises the power to make regulations "subject to article 13"; the first paragraph of article 13 of the Constitution provides: "The President of the Republic shall sign the ordinances and decrees deliberated upon in the Council of Ministers". These provisions are not violated by article 22 of Decree 2000-666 of 18 July 2000 organising the referendum, whereby "A Decree deliberated by the Council of Ministers after the Constitutional Council has given its opinion shall determine the adjustments required for the application of this Decree in the overseas territories, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon".
(Hauchemaille, 6 September 2000, para. 9, p. 140)

The second paragraph of Article 34 of the Constitution provides: "Statutes shall determine the rules concerning ...civic rights and the fundamental guarantees granted to citizens for the exercise of their public liberties...", but it is for the authority empowered to make regulations, where the requisite statutory provisions are lacking, to determine rules for the implementation of the decision of the President of the Republic, in the exercise of his constitutional prerogatives, to present a text to a referendum pursuant to either article 11 or article 89 of the Constitution. It is accordingly for the authority empowered to make regulations to provide for the application of the provisions of statute and regulation governing other forms of electoral consultation, subject to such adaptations as may be required in the circumstances.
(Pasqua, 6 September 2000, para. 2, p. 144)

Decrees deliberated in the Council of Ministers

Article 19 of the Constitution provides: "Acts of the President of the Republic, other than those provided for under articles 8 (first paragraph), 11, 12, 16, 18, 54, 56 and 61, shall be countersigned by the Prime Minister and, where required, by the appropriate ministers". The Minister of Justice, whose failure to countersign is criticised, was not an "appropriate minister" for the purposes of article 19 of the Constitution, since she was not primarily responsible for preparing and implementing the Decree deliberated in the Council of Ministers contested by the author of the reference.
(Meyet, 11 September 2000, para. 4, p. 148)

REFERENDUM

ORGANISATION

Powers of authority empowered to make regulations

The second paragraph of Article 34 of the Constitution provides: "Statutes shall determine the rules concerning ...civic rights and the fundamental guarantees granted to citizens for the

exercise of their public liberties...", but it is for the authority empowered to make regulations, where the requisite statutory provisions are lacking, to determine rules for the implementation of the decision of the President of the Republic, in the exercise of his constitutional prerogatives, to present a text to a referendum pursuant to either article 11 or article 89 of the Constitution. It is accordingly for the authority empowered to make regulations to provide for the application of the provisions of statute and regulation governing other forms of electoral consultation, subject to such adaptations as may be required in the circumstances.
(Hauchemaille, 6 September 2000, para. 7, p. 140)
(Pasqua, 6 September 2000, para. 2, p. 144)

Under article 21 of the Constitution, the Prime Minister exercises the power to make regulations "subject to article 13"; the first paragraph of article 13 of the Constitution provides: "The President of the Republic shall sign the ordinances and decrees deliberated upon in the Council of Ministers". These provisions are not violated by article 22 of Decree 2000-666 of 18 July 2000 organising the referendum, whereby "A Decree deliberated by the Council of Ministers after the Constitutional Council has given its opinion shall determine the adjustments required for the application of this Decree in the overseas territories, New Caledonia, Mayotte and Saint-Pierre-et-Miquelon".
(Hauchemaille, 6 September 2000, para. 9, p. 140)

Section R. 610-1 of the Criminal Code provides: "Minor offences and their categories shall be determined by Decrees deliberated in the Council of State". Section 8 of Decree 2000-666 of 18 July 2000 on the organisation of the referendum provides in particular for the application to electoral operations of section L 61 of the Electoral Code whereby: "It shall be prohibited to bear arms in any electoral assembly". This provision, which merely imposes a prohibition and does not provide for any criminal penalties, did not require a Decree deliberated by the Council of State in order to be applicable to referendum operations.
(Meyet, 11 September 2000, para. 1, p. 148)

Campaign

Pluralism

The first paragraph of section 3 of the Decree criticised provides: "Political parties or groups represented at the date of this Decree by at least five Deputies or five Senators within a political grouping in the National Assembly or the Senate may ask to take part in the campaign..."; the second paragraph provides: "Other parties or groups may ask to take part in the campaign if alone or in a national coalition they received at least 5 % of the votes cast at the election of representatives to the European Parliament held on 13 June 1999"; section 5 provides that political organisations to which the first paragraph of section 3 applies "shall be given two hours of television and two hours of radio broadcasting time in the programme schedules of the national broadcasting companies..."; section 6 allows five minutes television and five minutes radio broadcasting time for political organisations to which the second paragraph of section 3 applies.

By reserving access to the schedules of national television and radio broadcasting companies for political parties and groups, the authors of the Decree were merely giving effect to Article 4 of the Constitution, which provides: "Political parties and groups shall contribute to the exercise of suffrage".

By requiring such political organisations to be represented by at least five members within a political grouping or to have received, alone or in a national coalition, at least 5 % of the votes cast at the election of representatives to the European Parliament held on 13 June 1999, the authors of the Decree had adopted objective criteria which, in view of the limited broadcasting time available for the official campaign, did not run counter to equality between political parties or groups and violated neither the principle of Freedom to express ideas and opinions secured by article 11 of the Declaration of Human and Civic Rights of 1789 nor article 10 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

The criteria as to representativeness for the admission of parties and groups to take part in the official campaign for the referendum enable the electorate to be acquainted with a variety of

positions. This meets the constitutional demand for pluralism in ideas and opinions imposed by article 11 of the Declaration of Human and Civic Rights.
(Pasqua, 6 September 2000, para. 3 à 6, p. 144)

JURISDICTION OF CONSTITUTIONAL COUNCIL

Review of regularity of instruments organising the referendum

The author of the reference asks the Constitutional Council to annul three decrees relating to the referendum. He argues that Decree 2000-655 of 12 July 2000 should have been countersigned by the Minister of Justice and the Minister responsible for Relations with Parliament; Decree 2000-666 of 18 July 2000 should be annulled both in consequence and as lacking the countersignatures of the Minister of Justice and the Minister for External Relations; and Decree 2000-667 of 18 July 2000 should be annulled in consequence of the annulment of the other two Decrees.

The functions entrusted to the Constitutional Council by section 46 of the Ordinance of 7 November 1958 laying down the Institutional Act relating to the Constitutional Council are advisory in nature as regards the organisation of referendum operations; but the Council exercises a judicial role under sections 49 and 50 where it rules on disputes as to the manner in which these operations are conducted.

The Decrees criticised were submitted in advance for the consultation required by section 46 of the Ordinance of 7 November 1958 laying down the Institutional Act. It follows that a voter has standing to request the Constitutional Council to rule in a judicial capacity on the regularity of these acts only in the manner provided by section 50 of the Ordinance of 7 November 1958, as clarified and amplified by the Rules of Procedure.

However, in the exercise of its general task of overseeing the regularity of referendum operations under article 60 of the Constitution, it is for the Constitutional Council to rule on applications doubting the regularity of forthcoming operations where, if such applications were declared inadmissible, there would be a risk of seriously compromising the effectiveness of its review of referendum operations, vitiating the general ballot procedure or jeopardising the proper functioning of the public authorities.

In the instant case, the conditions in which, exceptionally, the Constitutional Council can give a ruling before the results of the ballot are declared are met in view of the nature of the acts complained of and the arguments submitted.

Article 19 of the Constitution provides: "Acts of the President of the Republic, other than those provided for under articles 8 (first paragraph), 11, 12, 16, 18, 54, 56 and 61, shall be countersigned by the Prime Minister and, where required, by the appropriate ministers."

Regarding Decree 2000-655 of 12 July 2000, the members of the Government whose failure to countersign is criticised do not have the status of "appropriate ministers" for the purposes of article 19 of the Constitution since they were not principally responsible for preparing and implementing the relevant Decree of the President of the Republic. In relation to Decree 2000-666 of 18 July 2000, the argument is unsupported by the facts.
(Hauchemaille, 25 July 2000, paras 1 to 9, p. 117)

The Decrees criticised were submitted in advance for the consultation required by section 46 of the Ordinance of 7 November 1958 laying down the Institutional Act. It follows that a voter has standing to request the Constitutional Council to rule in a judicial capacity on the regularity of these acts only in the manner provided by section 50 of the Ordinance of 7 November 1958, as clarified and amplified by the Rules of Procedure.

However, in the exercise of its general task of overseeing the regularity of referendum operations under article 60 of the Constitution, it is for the Constitutional Council to rule on applications doubting the regularity of forthcoming operations where, if such applications were declared inadmissible, there would be a risk of seriously compromising the effectiveness of its review of referendum operations, vitiating the general ballot procedure or jeopardising the proper functioning of the public authorities.

The conditions in which, exceptionally, the Constitutional Council can give a ruling before the results of the ballot are declared are met in the case of Decrees 2000-655 of 12 July 2000 and 2000-666 and 2000-667 of 18 July 2000. But they are not met in the case of recommendation 2000-3 of 24 July 2000 of the *Conseil supérieur de l'audiovisuel* or of decision 2000-409 of 26 July 2000 of the same authority.

None of the arguments raised by the author of the reference to contest the Decrees of 12 and 18 July 2000 deserves to be taken seriously.
(Hauchemaille, 23 August 2000, paras 1 to 4, p. 134)

The Decrees criticised were submitted in advance for the consultation required by section 46 of the Ordinance of 7 November 1958 laying down the Institutional Act. It follows that a voter has standing to request the Constitutional Council to rule in a judicial capacity on the regularity of these acts only in the manner provided by section 50 of the Ordinance of 7 November 1958, as clarified and amplified by the Rules of Procedure of 5 October 1988.

However, in the exercise of its general task of overseeing the regularity of referendum operations under article 60 of the Constitution, it is for the Constitutional Council to rule on applications doubting the regularity of forthcoming operations where, if such applications were declared inadmissible, there would be a risk of seriously compromising the effectiveness of its review of referendum operations, vitiating the general ballot procedure or jeopardising the proper functioning of the public authorities.

The conditions in which, exceptionally, the Constitutional Council can give a ruling before the results of the ballot are declared are met in view of the nature of the instrument contested and the arguments raised.
(Larrouturou, 23 August 2000, paras 2 to 4, p. 137)

The conditions in which, exceptionally, the Constitutional Council can give a ruling before the results of the ballot are declared are met in the case of the Decrees of 18 July 2000 on the organisation of the referendum and the referendum campaign and of the Decree of 31 August 2000, transposing the previous Decrees to the overseas territories and units; but they are not met in the case of Decree 2000-731 of 1 August 2000, which merely provides for the application of three sections of the Criminal Code to referendum operations, or of the Orders of 23 and 24 August 2000 on the referendum campaign.
(Hauchemaille, 6 September 2000, para. 5, p. 140)

The author of the reference argues that section 8 of Decree 2000-666 of 18 July 2000 on the organisation of the referendum, making provisions of the Electoral Code relating to proxy votes applicable to referendum operations, violates article 3 of Additional Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms. That article applies specifically to the election of the legislature. It follows that the author of the reference cannot rely on it to contest section 8 of the Decree.
(Meyet, 11 September 2000, para. 3, p. 148)

Questions not within the jurisdiction of the Constitutional Council

Section 8 of Decree 2000-666 of 18 July 2000 on the organisation of the referendum makes provisions of the Electoral Code relating to proxy votes, and in particular sections L 71 to L 78, applicable to referendum operations. The author of the reference argues that it violates the principles of equality and of the secrecy of the ballot declared by the third paragraph of article 3 of the Constitution. But the Constitutional Council may review statutes for constitutionality only in the cases and by the procedures determined by article 61 of the Constitution.
(Meyet, 11 September 2000, para. 2, p. 148)

MONITORING REFERENDUM OPERATIONS

Proceedings during the ballot

Ballot papers

Voters entering the polling station found a pile of ballot papers prepared by the commune with the slogan: "Immediate reopening of the pharmacy in the Horgues shopping mall: Yes". This

act, which was contrary to section 2 of Decree 2000-666 of 18 July 2000, constituted a manœuvre which, given the large of number of ballot papers declared void for this very reason, calls for annulment of the electoral operations in this commune.
(Proclamation of results of referendum of 24 September 2000, 28 September 2000, para. 2, p. 153)

Ballot boxes

A ballot box used at a polling station in the town hall was not transparent, contrary to section L 63 of the Electoral Code. The results of the ballot must be annulled for the relevant polling station.
(Proclamation of results of referendum of 24 September 2000, 28 September 2000, para. 3, p. 153)

Sorting and counting

Counting

At several polling stations in the department, envelopes found in the ballot box contained not only a ballot paper but also a tract with various statements on it. These ballot papers, declared void by the polling stations, were wrongly reinstated by the departmental counting committee. The number of votes cast in the department must accordingly be reduced by 36, that is to say 24 YES votes and 12 NO votes.
(Proclamation of results of referendum of 24 September 2000, 28 September 2000, para. 4, p. 153)

Litigation

Assessment of impact of irregularities

In the sole polling station for the commune, a ballot box left unattended for an undetermined period in the around midday: this constitutes an irregularity in the electoral operations in this commune. They must be annulled
(Proclamation of results of referendum of 24 September 2000, 28 September 2000, para. 1, p. 153)

The report for the commune was not transmitted. Without the report the Constitutional Council cannot examine the complaints, if any, made by voters. The results of the ballot must accordingly be annulled for this commune.
(Proclamation of results of referendum of 24 September 2000, 28 September 2000, para. 5, p. 153)

TERRITORY OF THE REPUBLIC — TERRITORIAL UNITS

SELF-GOVERNMENT OF TERRITORIAL UNITS

Principle

Respective powers of central government and territorial units

The principle of the self-government of territorial units which, under article 72 of the Constitution, is exercised "in the manner provided by statute", does not preclude the legislature from regulating the incompatibility of local executive functions to promote their proper exercise.
(2000-426 DC, 30 March 2000, para. 6, p. 62)

Resources and burdens of territorial units

Under article 72 of the Constitution, territorial units "shall be self-governing through elected councils", but this is "in the manner provided by statute". Article 34 of the Constitution reserves for the legislature the power to determine the fundamental principles of the self-government of territorial units, their powers and their resources, and the base, rates and methods of collection of taxes of all types.

However, the rules laid down by statutes on the basis of these provisions may not have the effect of reducing the aggregate resources of territorial units or of reducing the share of these resources accounted by tax revenue to the point of hindering their self-government.

In consideration for the abolition from 2001 of the regional share in the housing tax, the Act referred provides for compensation from the central government for the loss of revenue sustained by the regions. Section 11 (1) (2) provides: "This compensation shall be equal to the product of the general housing tax roles or the roles of the special equipment tax charged in addition to the housing for the benefit of each region and the territorial unit of Corsica in 2000, upgraded in the light of the trend in the aggregate operational allocation". Although these provisions reduce the share of the regions' aggregate resources accounted for by tax revenues, they do not have the effect either of restricting the share of this revenue or of reducing the regions' aggregate resources to the point of hindering their self-government.
(2000-432 DC, 12 July 2000, paras 4 to 6, p. 104)

The authors of the reference submit that section 6 of the Act referred (which exempts natural persons from the differential tax on motor vehicles) violates the principle of the self-government of territorial units provided for by article 72 of the Constitution.

Although the provisions criticised further reduce the share of tax revenues in the aggregate resources of territorial units but they have neither the object nor the effect of reducing their aggregate resources to the point of jeopardising their self-government. In particular, in consideration of the loss of revenue of the departments and the territorial unit of Corsica as a result of the new tax exemptions, section 6 provides for index-linked compensation to be borne by central government from the general operating fund from 2002.
(2000-442 DC, 28 December 2000, paras 6, 7 and 10, p. 211)

ORGANISATION OF TERRITORIAL UNITS OF THE REPUBLIC

Overseas Departments

Measures to adapt the legislative and administrative organisation of the overseas departments

General

Article 1 of the Constitution provides: "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 first paragraph of article 72 provides: "The territorial units of the Republic shall be the communes, the departments and the overseas territories. Any other territorial unit shall be established by statute". The second paragraph of that article provides: "These units shall be self-governing through elected councils and in the manner provided by statute".

Article 73 of the Constitution provides: "Measures may be taken to adapt the legislative system and administrative organisation of the overseas departments to their particular situation".

It follows that the overseas departments and Saint-Pierre-et-Miquelon are territorial units that constitute an integral part of the Republic. Consequently the legislature's reference to the "pact linking the overseas territories to the Republic" is unconstitutional.

The relevant articles of the Constitution require the status of the overseas departments to be the same as the status of metropolitan departments subject only to measures needed to adapt them to their specific situation. These adaptations may not have the effect of giving the

overseas departments a "particular form of organisation" within the meaning of article 74 of the Constitution, which is reserved solely for overseas territories.

It follows that the possibility recognised by the Act for the overseas departments "to enjoy their own form of institutional organisation in the future" must be interpreted within the limits set by section 73 of the Constitution. Subject to that reservation, the first sentence of the fourth paragraph of section 1 of the Act referred is constitutional.
(2000-435 DC, 7 December 2000, paras 6 to 10, p. 164)

Scope

The purpose of Book IX, inserted in the General Code of Local Authorities by section 62 of the Act referred, is to determine rules of procedure to facilitate exchanges of views between departmental and regional elected representatives regarding institutional developments and changes in the allocation of powers. To that end, provisions introduced in the General Code of Local Authorities specify rules governing meetings of departmental and regional elected representatives.

Under sections L 5912-1, L 5913-1, L 5915-1 à L; 5915-3 of the General Code of Local Authorities, the establishment of the congress of departmental and regional elected representatives, which does not have the effect of establishing an elected council through which a territorial unit of the Republic governs itself, does not violate the specific rules governing the overseas departments and regions. Nor has the legislature violated the constitutional provisions enshrining the self-government of these territorial units.

The purpose of the procedure thus organised by section 62 of the Act referred is to enable departmental and regional elected representatives to present the Prime Minister with mere proposals relating, as has been seen, to the institutional development of the overseas departments and changes in the allocation of their powers. It does not go beyond the adaptation measures required by the specific situation of the overseas departments and accordingly does not violate article 73 of the Constitution.
(2000-435 DC, 7 December 2000, paras 35 to 39, p. 164)

Overseas territories

Institutional provisions

By the second paragraph of article 74 of the Constitution: "The bodies of rules governing the overseas territories shall be established by institutional Acts that define, inter alia, the jurisdiction of their own institutions...". It follows that the rules governing incompatibilities applicable to the holders of the offices of President and member of the Government of French Polynesia must be determined by institutional act. However, a provision of an ordinary statute which merely restates or applies a rule laid down by an institutional act does not violate the Constitution.
(2000-426 DC, 30 March 2000, para. 23, p. 62)

Territorial units of the Republic

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

Institutions of New Caledonia

Economic and Social Council

The first paragraph of section 155 of the Institutional Act of 19 March 1999 on New Caledonia provides: "The Economic and Social Council shall be consulted on draft laws of the country ... relating to economic or social matters...".

The law of the country referred to the Constitutional Council, which amends the Tax Code applicable in New Caledonia, has the sole purpose of introducing a new tax based on the provision of services against payment. The purpose of this tax is to boost the budget of New Caledonia. The law of the country contested here does not relate to an "economic matter" within the meaning of section 155. Its adoption by the congress does not necessarily, therefore, have to be preceded by consultation of the Economic and Social Council of New Caledonia.
(2000-1LP, 27 January 2000, paras 3 and 4, p. 53)

Local Finance Committees

Section 48 of the Institutional Act of 9 March 1999 on New Caledonia provides: "The Local Finance Committee, consisting of representatives of the central government, New Caledonia, the provinces and the communes shall be consulted by the Government on draft laws of the country... relating to financial relations between New Caledonia, the provinces and the communes of New Caledonia...".

The law of the country referred to the Constitutional Council has the sole purpose of introducing a new tax for the benefit of the budget of New Caledonia. This does not concern financial relations between New Caledonia, the provinces and the communes. The Government of New Caledonia was not required to consult the Local Finance Committee on the draft law of the country.
(2000-1LP, 27 January 2000, paras 6 and 7, p. 53)

Respect for procedure for adoption of laws of the country

On 7 December 1999, the congress of New Caledonia enacted a law of the country relating to the introduction of a general tax on services. At the request of fourteen members of congress, and in accordance with sections 103 and 104 of the Institutional Act, there was a fresh debate on this law on 28 December 1999. Contrary to what is said by the authors of the reference, neither the Economic and Social Council nor the Local Finance Committee had to be consulted on an instrument which has the sole purpose of introducing a new tax for the benefit of the budget of New Caledonia. The law of the country referred to the Constitutional Council was accordingly adopted by a constitutional procedure.
(2000-1LP, 27 January 2000, paras 1 and 2, p. 53)

INCORPORATION IN THE REPUBLIC — INDIVISIBILITY OF THE REPUBLIC

No violation of the principle of the indivisibility of the Republic

Consultation of the population of Mayotte on its future legal status

The authors of the reference submit that "by isolating a fraction of the national population to consult it", the legislature "implicitly recognises the existence of a Mahorais people". This, they argue, violates the principles of the indivisibility of the Republic and the unicity of the French people.

The 1958 Constitution distinguishes the French people from the peoples of the overseas territories, whose right to self-determination and to the freedom of expression of their will is recognised. The argument is rejected as inoperative.
(2000-428 DC, 4 May 2000, paras 9 and 10, p. 70)

TREATIES AND INTERNATIONAL AGREEMENTS — INTERNATIONAL LAW

INTRODUCTION OF TREATIES AND AGREEMENTS INTO DOMESTIC LAW

Negotiations

The first paragraph of section L 3441-3 of the General Code of Local Authorities empowers the authorities of the Republic to confer powers on the Presidents of the General Councils of overseas departments to negotiate and sign agreements relating to matters within the powers of central government with one or more neighbouring states, territories or regional agencies, including specialised agencies in the United Nations family.

The first paragraph of section L 4433-4-2 of the General Code of Local Authorities provides that the Presidents of the General Councils of Guadeloupe, Martinique, French Guyana and Réunion may have the same powers conferred on them.

It was legitimate for the legislature, and no violation of either the exercise of national sovereignty or the prerogatives enjoyed by the central government under the third paragraph of article 72 of the Constitution, to empower the Presidents of the General Councils of overseas departments and of the Regional Councils of Guadeloupe, Martinique, French Guyana and Réunion to negotiate and sign agreements relating to matters within the powers of central government since for that purpose the Presidents of General or Regional Councils must have been expressly empowered to that end by the authorities of the Republic and the agreements remain subject to the procedures provided for by articles 52 and 53 of the Constitution.

Where they negotiate or sign the relevant agreements, the Presidents of General or Regional Councils act as representatives of central government on behalf of the French Republic. In the discharge of their powers they must act in accordance with the instructions given them by the relevant authorities of the Republic. These authorities remain free to confer powers on other plenipotentiaries or to confer powers on the Presidents of the General or Regional Councils in relation solely to either negotiation or signature. They may withdraw the powers thus conferred at any time. The provisions are constitutional.

Under the first paragraph of section L 3441-4 and the first paragraph of section L 4433-4-3 of the General Code of Local Authorities, the General Councils of overseas departments and of the Regional Councils of Guadeloupe, Martinique, French Guyana and Réunion may, in the areas of power of the department or region, as the case may be, ask the relevant authorities of the Republic to empower their President to negotiate agreements with neighbouring states, territories or regional agencies, in compliance with the Republic's international commitments.

The second paragraph of the same sections provides: "Where such authorisation is given, the authorities of the Republic shall, if they so request, be represented at the negotiation".

The third paragraph of each of those sections provides that after the negotiations the draft agreement shall be laid before the General or Regional Council "for acceptance". The authorities of the Republic may then, subject to compliance with the Republic's international commitments, empower the President of the General or Regional Council to sign the agreements.

The authorities of the Republic have a discretionary power of assessment and decision in the implementation of sections L 3441-4 and L 4433-4-2 of the General Code of Local Authorities. The foregoing considerations as to the scope of sections L 3441-3 and L 4433-4-2 of the Code apply to these provisions. In particular, Where they negotiate or sign the relevant agreements, the Presidents of General or Regional Councils act as representatives of central government. The second paragraph of sections L 3441-4 and L 4433-4-3 must, moreover, be interpreted as empowering the authorities of the Republic to take part in negotiations at any time.

The decision by the competent authorities of the Republic to sign an international agreement cannot be made subject to any form of prior authorisation. Consequently, the reference to the

"acceptance" of the departmental or regional council in the third paragraph of sections L 3441-4 and L 4433-4-3 must be interpreted as requiring consultations on a purely advisory basis. Whatever the status of the decision taken by these councils, the authorities of the Republic retain the full freedom to confer powers to sign agreements on their behalf on whoever they wish, including the presidents of the departmental or regional councils concerned. This being so, sections L 3441-4 and L 4433-4-3 of the General Code of local authorities are constitutional.

By providing that the Presidents of the General Councils of overseas departments and of the Regional Councils of Guadeloupe, Martinique, French Guyana and Réunion may at their request negotiate agreements signed directly by the authorities of the Republic, the legislature has violated constitutional requirements. The signing of the agreements referred to in sections L 3441-5 and L 4433-4-4 is a power specifically enjoyed by the authorities of the Republic, in which the Presidents of the decision-making bodies of the relevant territorial units cannot partake at their sole initiative. Provisions unconstitutional.
(2000-435 DC, 7 December 2000, paras 15 to 28, p. 164)

INDEX OF ANALYTICAL ENTRIES

A-B

C-D

E

F-G

I-J-L

M-N-O

P-Q

R

S

T-U-V

GLOSSARY

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

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

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