ANALYTICAL SYNOPSIS 2001

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* (Council of State).

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 italicised, usually because no suitable English equivalent exits. These are elucidated in the Glossary.

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(2001-444 DC, 9 May 2001, sol. impl., p. 59)

Eligibility

Disqualification ipso jure

It is for the Constitutional Council, on a referral under section LO 136 of the Electoral Code by the Keeper of the Seals, Minister of Justice, to record that a Senator is automatically disqualified on the ground that he is ineligible by virtue of a court judgment that has become enforceable.
(2001-13 D, 16 January 2001, p. 47)

On 6 July 2000 Mr Hoarau was convicted by the Court of Appeal at Saint-Denis of the Réunion and sentenced to one year's imprisonment suspended, a fine of fifty thousand francs and deprivation of the right to vote and stand for election for a period of three years. The decision became definitive following the judgment given by the Court of Cassation on 27 March 2001 dismissing the appeal by Mr Hoarau against the judgment given by the Court of Appeal at Saint-Denis of the Réunion. On 29 June 2001 the Constitutional Council received a referral under section LO 136 of the Electoral Code from the Keeper of the Seals, Minister of Justice, seeking a declaration that Mr Hoarau was automatically disqualified from his membership of the National Assembly.

But on 14 July 2001 Mr Elie Hoarau presented his resignation to the President of the National Assembly, who received it on 17 July 2001 and took formal note of it by Notice published in the *Journal Officiel* of the French Republic today, 18 July 2001. The referral from the Keeper of the Seals, Minister of Justice, seeking a declaration that Mr Hoarau was automatically disqualified from his membership of the National Assembly has accordingly lapsed. There is no need for the Constitutional Council to rule on the referral.
(2001-14 D, 18 July 2001, paras 1 and 2, p. 97)

Section LO 296 of the Electoral Code provides: "Candidates for election to the Senate must be at least thirty-five years of age. The other conditions for eligibility and grounds of ineligibility shall be the same as for election to the National Assembly...". Section LO 136 of the Electoral Code provides: "A Member of the National Assembly shall automatically be disqualified... if, while a Member, he acquires one of the statuses warranting ineligibility under this Code. Loss of membership shall be recorded by the Constitutional Council on application from the Bureau of the National Assembly, or from the Keeper of the Seals, Minister of Justice, or, in the

event of a conviction after the election, from the Prosecution Service attached to the court which convicted him or her".

The documents in the case reveal that by judgment given by the Court of Appeal for Bastia on 10 May 2000, Mr Louis-Ferdinand de ROCCA SERRA was sentenced to a suspended term of one year's imprisonment and a fine of fifty thousand francs, and to a further penalty of deprivation of civic and civil rights for two years. Following the judgment given by the Court of Cassation on 30 May 2001, the conviction became definitive, even though Mr de ROCCA SERRA pursued redress procedures to obtain a stay of execution of his penalties, revision of the criminal trial, pardon and annulment of the conviction.

Under section 131-26 of the Criminal Code, deprivation of civic and civil rights renders the offender ineligible. Under section LO 130 of the Electoral Code, persons deprived of their eligibility by decision of the courts are ineligible.

It is accordingly for the Constitutional Council, under section LO 136 of the Electoral Code, to record the automatic loss of membership of the Senate for Corse, Sud of Mr de ROCCA SERRA by reason of the ineligibility following his definitive conviction.
(2001-15 D, 20 September 2001, paras 1 to 4, p. 124)

Ineligibility because of campaign account

A candidate who has decided to use an electoral funding association or agent but defrays campaign expenditure direct is ineligible. But direct payment by the candidate of minor expenditure items on practical grounds may be tolerated if the aggregate amount of expenditure concerned is only a small proportion of his aggregate campaign expenditure and is negligible in relation to the maximum allowable expenditure set by section L 52-11 of the Electoral Code. This condition is not satisfied in the event of an expenditure item consisting of the costs of graphic creation representing more than half the aggregate campaign expenditure and nearly 3 % of the maximum amount, set for the relevant election at 391 631 francs.
(2001-2593, 20 September 2001, A.N., Haute-Garonne, Constituency 1, para 2, p. 118)

ORGANISATION OF PARLIAMENTARY ASSEMBLIES

Special and standing committees

Function of standing committees

The first paragraph of section 39 of the Institutional Act relating to Finance Acts provides for the immediate referral of a Finance Bill for the year to the Finance Committee of each Assembly. This is a derogation from article 43 of the Constitution, according to which an instrument is referred to a standing committee only if there is no request for appointment of a special committee. The justification for this limited derogation lies in the specific features of Finance Acts and is a procedural rule that could be laid down in an institutional act under article 47 of the Constitution.
(2001-448 DC, 25 July 2001, para. 92, p. 99)

Regarding examination of and voting on the Finance Bill for the year, section 49 of the Institutional Act relating to Finance Acts provides that by 10 July each year the Finance Committees of the National Assembly and the Senate and the other committees concerned shall address questionnaires to the Government, which is to reply in writing no later than eight clear days after the deadline for distribution of the Bill. The purpose of this provision, enacted on the basis of the powers delegated to the institutional legislature by the first paragraph of article 47 of the Constitution, is to establish the conditions in which members of Parliament are informed of the implementation of Finance Acts, the management of public finances and estimates of the resources and charges of the central government before examining the Finance Bill. But a violation of these procedures would not preclude the commencement of debate on a Finance Bill. The Bill's constitutionality would then fall to be assessed on the basis

of the need for continuity of public life and for accuracy which are essential throughout the examination of Finance Bills.
(2001-448 DC, 25 July 2001, paras 84, 88, 89 and 91, p. 99)

Formation of special committees

The first paragraph of section 39 of the Institutional Act relating to Finance Acts provides for the immediate referral of a Finance Bill for the year to the Finance Committee of each Assembly. This is a derogation from article 43 of the Constitution, according to which an instrument is referred to a standing committee only if there is no request for appointment of a special committee. The justification for this limited derogation lies in the specific features of Finance Acts and is a procedural rule that could be laid down in an institutional act under article 47 of the Constitution.
(2001-448 DC, 25 July 2001, para. 92, p. 99)

PARLIAMENTARY PROCEEDINGS

Agenda — proceedings

Sitting set aside for business determined by the Assembly

The sole purpose of the third paragraph of Article 48 of the Constitution ("At one sitting a month precedence shall be given to the agenda determined by each assembly") is to confer on each assembly the power to determine the priority agenda for one sitting per month; it contains no rules applying to the content of the agenda or to the origin of the documents to be debated; in particular, it does not preclude a Bill entered on the agenda for a sitting from pursuing a comparable objective to an earlier Bill, and it does not preclude the Government from exercising its right to amend under Article 44 of the Constitution when such a Bill is debated; the objection that the procedure was abused must accordingly be rejected.
(2001-451 DC, 27 November 2001, paras 2 and 3, p. 145)

LEGISLATIVE PROCEDURE

Right to amend

Rules of admissibility and debate

Amendments in the final reading before the National Assembly

Section 18 of the Social Security (Finance) Act for 2002, relating to relations between health-care insurance bodies and the health-care professions, is not directly related to one of the sections inserted in the Bill at first reading and numbered 10 A during the debate. This latter section was replaced after the meeting of the Joint Committee by provisions which, given their scope, must be regarded as new provisions. Its adoption was not imposed by the need to respect the Constitution, nor by the need for coordination with other instruments under debate in Parliament or for correction of a clerical error. It is accordingly unconstitutional.
(2001-453 DC, 18 December 2001, paras 30 to 38, p. 164)

Admissibility of amendments to Finance Bills

The second paragraph of section 18(I) of the Institutional Act relating to Finance Acts reserves for a Finance Act the power to create an annexed budget and to allocate revenue to an

annexed budget. The first and last paragraphs of section 19 contain similar provisions as regards special accounts. But the first paragraph of section 18(II) provides that "an annexed budget shall constitute a mission" within the meaning of articles 7 and 47. Each specific appropriation account and each financial support account also constitutes a mission, with appropriations in accordance with the combined provisions of section 20(II) and sections 21 to 24. Given that the mission is a charge within the meaning of article 40 of the Constitution, as provided by articles 7 and 47, the parliamentary amendments moved in this respect can be regarded as admissible only if they have neither the object nor the effect of creating a mission or increasing the aggregate amount of mission appropriations. Sections 18(I) and 19 of the Institutional Act relating to Finance Acts are, subject to this reservation, constitutional.
(2001-448 DC, 25 July 2001, paras 42 to 45, p. 99)

The second paragraph of section 47 of the Institutional Act relating to Finance Acts, whereby "reasons must be given for any amendment together with the arguments in support of it", will make it possible to check the reality of offsettings in any during the procedures for examining financial admissibility.
(2001-448 DC, 25 July 2001, para. 98, p. 99)

Whether amendments are within the instrument being debated

Applications

Relation to the instrument being debated — Existence

Sections 26, 27 and 29 are the result of parliamentary amendments adopted at the first reading of the institutional bill to amend the rules governing judges' careers. The purpose of section 26 is to organise, in the circumstances that it determines, a procedure enabling the criminal courts to request an opinion from the Court of Cassation where a case raises a new point of law. Section 27 extends the scope of the restricted formation of the civil chambers and the criminal chamber of the Court of Cassation made responsible by section L131-6 of the Code of Judicial Organisation for dismissing appeals where the solution is obvious and does not require examination by the ordinary formation of the Court. Section 29 allows the recruitment of judicial assistants in the Court of Cassation.

It follows from the combined provisions of articles 39, 44 and 45 of the Constitution that the right to amend may be exercised at any time during the legislative procedure, subject to the restrictions imposed by the third and fourth paragraphs of article 45. But the additions or changes to the text being debated may not be unrelated to the purpose of the Bill before Parliament; otherwise they would be contrary to the first paragraph of article 39 and the first paragraph of article 44 of the Constitution.

In the instant case, the relevant provisions, the purpose of which is to improve the operation of the Court of Cassation, are not unrelated to the purpose of the Bill, which, when it was laid before the Senate, contained provisions relating specifically to the Court of Cassation. It follows that sections 26, 27 and 29 were enacted by a constitutional procedure.
(2001-445 DC, 19 June 2001, paras 47 to 49, p. 63)

Provisions enacted on the basis of an amendment moved by the Government at the first reading in the National Assembly to establish a new category of cooperative societies are not unrelated to the Bill to establish miscellaneous social, educational and cultural provisions, which from the outset included a series of provisions relating to cooperatives and associations.
(2001-450 DC, 11 July 2001, paras 27 to 29, p. 82)

Extent and scope

Implied but substantial change in the rule known as the rule in the "Séguin amendment" case. It follows from the combined provisions of articles 39, 44 and 45 of the Constitution that the right to amend may be exercised at any time during the legislative procedure, subject to the restrictions imposed by the third and fourth paragraphs of article 45. But the additions or changes to the text being debated may not be unrelated to the purpose of the Bill before

Parliament; otherwise they would be contrary to the first paragraph of article 39 and the first paragraph of article 44 of the Constitution.
(2001-445 DC, 19 June 2001, para. 48, p. 63; sol. impl. ab. jur. 86-225 DC of 23 January 1987, para. 11, p. 13)

The plea that an amendment, by reason of its scale, exceeded the inherent limits of the right to amend is inoperative.
(2001-450 DC, 11 July 2001, para. 30, p. 82)

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

Applications

Section 55 of the Finance (Amendment) Act for 2001, which provides that the portion of profits transferred to indivisible reserves by mutual cooperative societies is deductible from the basis of assessment to corporate income tax, was enacted as the result of an amendment adopted after the failure of the joint committee. The section was inserted in the Bill in the form of an amendment having no direct relation with any of its other provisions. Moreover, its adoption was not imposed by the need to respect the Constitution, nor by the need for coordination with other instruments under debate in Parliament or for correction of a clerical error. It must accordingly be declared unconstitutional as being enacted by an irregular procedure.
(2001-457 DC, 27 December 2001, paras 23 and 24, p. 192)

Voting on institutional bills

Institutional Act relating to the Senate

The Institutional Act referred to the Constitutional Council consists of two sections. Section 1 replaces section LO 121 of the Electoral Code and reads: "The powers of the National Assembly shall expire on the third Tuesday in June in the fifth year following its election". Section 2 provides that section 1 is to apply to the National Assembly elected in June 1997. The Act is not an Institutional Act relating to the Senate which, by article 46 of the Constitution, must be enacted in the same terms by the two assemblies. It was therefore legitimate for it to be enacted by an absolute majority of the Deputies after the failure of the Joint Committee pursuant to the fourth paragraph of article 45 of the Constitution.
(2001-444 DC, 9 May 2001, sol. impl., p. 59)

Promulgation

By deciding that no statute with financial implications for central government could be published without a financial annex specifying its impact for the current year and the next following year, the first paragraph of section 33 of the Institutional Act relating to Finance Acts is contrary to the principle, laid down in particular by article 10 of the Constitution, that promulgation of a statute by the President of the Republic constitutes an order to all relevant authorities and departments to publish it forthwith. The provisions of the same paragraph relating to Decrees are unseverable.
(2001-448 DC, 25 July 2001, paras 63 to 65, p. 99)

PARLIAMENTARY REVIEW

Scrutiny of government action

Information resources for committees

Information for Finance Committees

Section 13 of the Institutional Act relating to Finance Acts provides that the Finance Committee of each Assembly is to have seven days in which to give the Prime Minister its preliminary

opinion of draft decrees ordering payment of advances issued in urgent cases without affecting budgetary equilibrium. In "cases of urgency and overriding needs of the national interest", all that is required is the provision of information. Given the conditions attached to them, these provisions, enacted in compliance with the powers conferred on the institutional legislature by the eighteenth paragraph of article 34, do not violate the constitutional prerogatives of the executive branch but merely enforce the demand in article 14 of the Declaration of 1789 for consent to taxation and monitor the use made of public funds.
(2001-448 DC, 25 July 2001, para. 34, p. 99)

Review of implementation of Finance Acts and "evaluating any aspect of the public finances"

Section 57 of the Institutional Act relating to Finance Acts confers on the Chair, the General rapporteur and, in their own fields, the special rapporteurs of the Finance Committees of the National Assembly and the Senate the task of monitoring and supervising the execution of Finance Acts and "evaluating any aspect of the public finances". To that end, "they shall undertake all on-the-spot or documentary investigations and question all persons they consider useful". All the financial and administrative documents they call for must be supplied to them, "except on matters subject to secrecy on grounds of the national defence or the domestic or external security of the State or to rules governing the secrecy of criminal investigations and medical matters". Section 60 gives the Government two months to reply in writing to observations made following an inspection and evaluation mission. These provisions, which are unseverable from those organising information for members of Parliament for the purposes of examining the Finance Bill, are institutional provisions that violate no constitutional rules or principles.
(2001-448 DC, 25 July 2001, paras 100 and 101, p. 99)

Section 59 of the Institutional Act relating to Finance Acts provides: "Where, in the course of an inspection and evaluation mission, information requested under section 57 has not been supplied after a reasonable period of time, depending on the difficulties encountered in obtaining it, the Chairmen of the Finance Committees of the National Assembly and the Senate may apply to the appropriate court by way of interlocutory proceedings for an injunction to cease non-compliance with the request on pain of a daily penalty payment". In the French concept of the separation of powers, these provisions can only be understood as empowering the administrative court to issue an interlocutory injunction to a body corporate enjoy prerogatives of public authority to supply the relevant documents or information or pay the penalty for failure to do so.
(2001-448 DC, 25 July 2001, paras 102 and 103, p. 99)

JUDICIAL AUTHORITY AND THE COURTS

RULES APPLYING TO THE JUDICIARY

Constitutional safeguards

Independence of judicial authority

In the exercise of its powers, the institutional legislature must comply with constitutional rules and principles; in particular, it must respect not only the principle of the independence of the judicial authority and the rule that judges may not be removed from office by virtue of article 64 of the Constitution, but also the principle declared by Article 6 of the Declaration of Human and Civic Rights that all citizens, being equal in the eyes of the law, "shall be equally eligible to all high offices, public positions and employments, according to their ability, and

without other distinction than that of their virtues and talents". It follows from these provisions, with regard to the recruitment of judges, that account must be taken not only of candidates'abilities, virtues and talents but also that the only abilities, virtues and talents to be taken into account are those that are relevant to the judicial function and guarantee the equality of all citizens before the law. Finally, judges must be treated equally in their career.
(2001-445 DC, 19 June 2001, para. 4, p. 63)

Article 32 amends Articles 1 and 3-1 of the Ordinance of 22 December 1958 referred to above as regards the judges empowered to exercise the functions of the grade to which they belong in the territory in which the Court of Appeal to which they are attached has jurisdiction. Its purpose is to permit the recruitment of these judges at the first grade of the judicial hierarchy and their temporary assignment to the Court of Appeal to which they are attached, and to raise from four to eight months the maximum non-renewable duration for which interested parties can temporarily be assigned to a court there to occupy a vacant post temporarily or to strengthen the manpower in order to ensure that litigation can be handled in a reasonable time. With regard in particular to the judges of the judicial order, this provision does not call into question the guarantees provided for in Article 3-1 of the Ordinance of 22 December 1958 referred to above that are calculated to satisfy the principles of equality and of independence of the judicial authority.
(2001-445 DC, 19 June 2001, para. 52, p. 63)

Irremovability of *magistrats du siège*

Article 64 of the Constitution provides: "Judges shall be irremovable". The second paragraph of section 4 of the Ordinance of 22 December 1958 makes this principle properly applicable by providing: "Consequently, judges may not be reassigned without their consent, even where the effect is to promote them".

The institutional legislature can organise the mobility of judges by limiting the duration of performance of certain judicial duties, but it must determine guarantees to reconcile the consequences of the principle that judges may not be removed from office.

By sections 3, 4, 5 and 6 of the Institutional Act the institutional legislature intended to limit to seven years the period during which a judge or prosecutor can exercise the functions of president of the same court of first or second instance, and to ten years that of specialised judge within the same Tribunal de Grande Instance or first Instance.

If they do not already work in such a capacity at the time of their designation as president of a court or specialised judge, judges are appointed to a post in the grade to which they belong in the Court of Cassation, Court of Appeal or Court of first Instance, as the case may be, within whose territorial jurisdiction they are called on to exercise their new functions. On the expiry of the period determined by the Institutional Act and in the absence of a new assignment made in the meantime and approved by the interested party as likely to assure him of normal career prospects, the judge, after having been released from his function by decree of the President of the Republic, exercises the functions of judge for which he was initially appointed. This reassignment is at the same grade.

Under section 13, these new mobility obligations and their consequences apply only to appointments made after 1 January 2002.

These provisions will apply to all holders of the functions in question. By accepting them, the judges, fully informed of the limitation in time of these functions, will have consented to the rules governing reassignment provided for by the Institutional Act on the expiry of the periods fixed by it.

Given the guarantees thus provided for, the limitation of the period of office enacted by sections 3 to 6 of the Institutional Act do not affect the principle that judges may not be removed from office.
(2001-445 DC, 19 June 2001, paras 25 to 32, p. 63)

Powers exercisable by institutional act

In specifying that a matter that article 34 classifies among those to be regulated by statute is to be governed by an institutional act, the constituent assembly intended to strengthen the

statutory guarantees enjoyed by judges in the judicial order; the Institutional Act on the statute of the judiciary must accordingly itself determine the statutory rules applicable to judges, subject only to the possibility of leaving it for the authority empowered to make regulations to determine certain measures implementing the rules that it enacts.
(2001-445 DC, 19 June 2001, para. 3, p. 63)

It is left for a decree in Council of State to determine, "according to the volume of judicial business, the available manpower in terms of judges and civil servants in legal functions and the population of the area, the list of posts of President and first Vice-President of the Tribunal de Grande Instance, and posts of Prosecutor of the Republic and Deputy Prosecutor, which are non-hierarchy posts". Given the criteria it determined for the designation of the courts concerned, the institutional legislature has not exceeded the limits of its powers.
(2001-445 DC, 19 June 2001, paras 10 and 11, p. 63)

The first provision relates to the notice convening the meeting of the members of the disciplinary bodies of the Higher Council of the Judiciary. The second organises the replacement of the first President of the Court of Cassation and of Prosecutor General at that court by the non-hierarchy judge or prosecutor of the Court of Cassation, being a member of the relevant disciplinary body, where they are unable to act. These provisions are based on the last paragraph of Article 65 of the Constitution concerning the Higher Council of the Judiciary, whereby "An institutional Act shall determine the manner in which this article is to be implemented".
(2001-445 DC, 19 June 2001, para. 60, p. 63)

Conseil supérieur de la magistrature

Provisions that modify the polling techniques for the election to the Higher Council of the Judiciary of representatives of judges not exercising the function of President of a court introduce proportional representation at the two stages of the election and lays down rules to secure equal rights for candidates of both sexes.

The fifth paragraph of article 3 of the Constitution, as amended by Constitutional Act 99-569 of 8 July 1999, provides that "Statutes shall promote equal access by women and men to elective offices and positions", but it is clear both from the legislative history and from its position in that article that this provision applies only to elections to political mandates and offices.

The rules enacted to govern the drawing up of lists of candidates for election to high offices, public positions and employments other than those of a political nature may not, with respect to the principle of equal access stated by Article 6 of the Declaration of 1789, involve any distinction between candidates on the basis of their sex. Consequently, the provisions of section 33 of the Institutional Act which introduce a distinction according to sex in the composition of the lists of candidates for election to the Higher Council of the Judiciary, are unconstitutional.
(2001-445 DC, 19 June 2001, paras 55 to 58, p. 63)

Rules concerning recruitment

General rules applicable to recruitment by competitive examination

Section 23 of the Institutional Act opens up two new competitive examination processes for the recruitment of judges at the second and first grades of the legal hierarchy. The total number of posts offered at each of these competitions may not exceed in any given year a proportion, determined by the Institutional Act, of the total number of recruitments made at the same grade the previous year. This proportion is set at one fifth for competitions for recruitment to the second grade and one tenth for those opened for recruitment to the first grade. The candidates for the functions of the second grade, aged at least thirty-five on 1 January of the year of opening of the competition, and candidates for the functions of the first grade, aged at least fifty on the same date, must meet the conditions laid down by section 16 of the Ordinance of 22 December 1958 and provide evidence of ten or fifteen years'"professional activity in the legal, administrative, economic or social field qualifying them particularly to exercise judicial functions". Training at the National School of the Judiciary is given to candidates who pass

both competitions. The period of training includes in-service training in the courts under the conditions laid down in section 19 and the first paragraph of section 20 of the Ordinance of 22 December 1958, after interested parties have sworn an oath before the Court of Appeal. At the end of the training, they are appointed to the posts for which they were recruited in the forms provided for in section 28 of the Ordinance of 22 December 1958.

No constitutional rule or principle precludes the institutional legislature from introducing new methods of recruitment of judges. But the rules that it lays down for this purpose must, in particular by establishing precise requirements regarding the abilities of the interested parties in conformity with the requirements of Article 6 of the Declaration of Human and Civic Rights of 1789, contribute to ensuring compliance both with the principle of equality before the law and with the independence of the judges thus recruited in the performance of their duties.

In the instant case, since neither the qualifications held by candidates nor the professional activities previously exercised make a legal qualification necessary for the exercise of the functions of judge, the regulations implementing the Act will have to provide that there will be tests in all cases to check candidates'knowledge of the law.

In addition, the judges thus recruited to the first grade will be likely to exercise the functions of adviser at the Court of Appeal. With regard to people who have never exercised judicial office at the first grade of court appointment, the authority empowered to make regulations must ensure that their aptitude for judicial functions in order to guarantee, at the second and last grade, the quality of the decisions given, equality before the law and the smooth operation of the public administration of justice are strictly assessed in addition to their knowledge of the law.

Express provision must be made for the power of the selection board not to fill all the posts available at the competition.

Subject to these reservations, section 23 is in conformity with the above-mentioned constitutional rules and principles, and in particular satisfies the capacity requirement formulated in Article 6 of the Declaration of Human and Civic Rights.
(2001-445 DC, 19 June 2001, paras 39 to 45, p. 63)

Temporary recruitment and direct appointment

The provision raises from one twentieth to one tenth of manpower in the form of non-hierarchy judges and prosecutors at the Court of Cassation, the maximum proportion of Advisers and Advocates General on special assignment. In view of the restrictions maintained by the Institutional Ordinance of 22 December 1958 regarding the conditions of appointment and the term of office of the interested parties, the changes thus made do not call into question the exceptional character of the performance of judicial duties by people who have not devoted their professional life to the judicial career.
(2001-445 DC, 19 June 2001, para. 46, p. 63)

Rules governing functions of *magistrats*

Incompatibilities

The purpose of a provision, subject to the circumstances provided for by the current statutory provisions, is to exclude arbitration from the functions or activities for the exercise of which an authorisation could previously be granted to serving judges. It is legitimate for the institutional legislature, in consideration of the nature of the functions of judge and of the situation of the courts, to limit the possibilities of exemption from the principle of the exclusive character of these functions laid down by the first paragraph of section 8 of the Ordinance of 22 December 1958.
(2001-445 DC, 19 June 2001, paras 17 and 18, p. 63)

Promotion, remuneration and discipline

Promotion — salary increments

The determination of the components of the judicial hierarchy is within the powers of the institutional legislature. The provisions of the Institutional Act which abolish the two groups existing in the first grade of the judicial body, delete the references made by the Ordinance of 22 December 1958 to these groups and repeal the special provisions applicable to them, merely draw the conclusions from this abolition and call for no comment in terms of constitutionality.
(2001-445 DC, 19 June 2001, paras 6 and 7, p. 63)

Sections 10, 11 and 23 of the Institutional Act, create an obligation to reckon years of professional activity prior to appointment for the purposes of advancement for the benefit of judges recruited otherwise than by the first competition for access to the National School of the Judiciary. With regard to judges falling within the categories referred to in sections 10 and 23, the Institutional Act specifies that these years are also taken into account for grading purposes. The benefit of these provisions is extended by sections 10 and 11 to judges who were appointed in the ten years preceding the entry into force of the Institutional Act.

Section 10, which defines the measures applicable to judges recruited via the second and third competition for access to the National School of the Judiciary and those appointed direct as auditor of justice pursuant to section 18-1 of the Ordinance of 22 December 1958, and section 23, relating to judges recruited by competition at the second and first grades of the judicial hierarchy, leave it for a decree in Council of State to determine the conditions for application of these measures.

Under section 11, years of prior professional activity by judges appointed direct to the second grade of the judicial hierarchy pursuant to section 22 of the Ordinance of 22 December 1958 are taken into account for advancement purposes within the two-year limit.

It will be for the authority empowered to make regulations, subject to judicial review, to lay down rules for reckoning prior professional experience of judges appointed under sections 10 and 23 so as not violate the principle of equal treatment in relation to judges appointed under section 11, for whom the Institutional Act lays down these rules itself. Subject to this provision, the provisions in question are not unconstitutional.
(2001-445 DC, 19 June 2001, paras 12 to 15, p. 63)

Concerning provisions whereby: — no judge may be promoted to the first grade in the court where he has been assigned for more than five years, except for the Court of Cassation; — no judge may be appointed to a post corresponding to the functions of President of *Tribunal de Grande Instance* or *Tribunal d'Instance* and to those of State Counsel in the court where he is assigned, except where the post occupied by a judge who exercises one of these functions is raised to a higher hierarchical level; — no judge can be appointed to a non-hierarchy post if he has not exercised two functions at the first grade and, where these functions were of a judicial nature, if he did not exercise them in two different courts; — no judge may be appointed to these posts if he is not or has not been a non-hierarchy judge or if, having exercised the functions of public auditor in the Court of Cassation, he does not occupy another post at the first grade.

All these provisions subordinate judges'advancement or their access to functions as president of a court to conditions of geographical or functional mobility. These conditions, defined by the institutional legislature, undermine neither the principle that judges may not be removed from office nor any other constitutional principle or value.

The exceptional arrangements organised by sections 1 and 7 with regard to judges of the second and first grade in the Court of Cassation are justified by the specific character of the functions exercised by those concerned. They not affect the principle of equal treatment of judges in their career.
(2001-445 DC, 19 June 2001, paras 20 to 24, p. 63)

List of magistrats placed outside the hierarchical structure

Provisions of an institutional act add to the establishment plan of non-hierarchy judges determined by section 3 of the Ordinance of 22 December 1958 the posts of president of

chambers of Courts of Appeal and of Advocate-General in those courts. It is legitimate for the institutional legislature to amend such a list, which violates no constitutional provision.
(2001-445 DC, 19 June 2001, paras 8 and 9, p. 63)

Disciplinary measures

Provisions creating the disciplinary action of temporary exclusion from function for a maximum of a year, with total or partial deprivation of salary, conferring respectively on the first presidents of the courts of appeal and the presidents of the superior courts of appeal the power to refer cases concerning judges to the disciplinary bodies of the Higher Council of the Judiciary, and on the Attorneys-General and public prosecutors at these courts to refer cases concerning members of the prosecution service, organising deputisation for the director of legal services at the hearings of the disciplinary board for judges, organising publicity at hearings of each disciplinary body, except when this is opposed on grounds of "the protection of law and order or of privacy" or of "special circumstances likely to undermine the interests of justice", and amending section 38 of the Act of 29 July 1881 on the freedom of the press, merely drawing the conclusions from thus instituted publicity, are not unconstitutional.
(2001-445 DC, 19 June 2001, para. 37, p. 63)

The first provision relates to the notice convening the meeting of the members of the disciplinary bodies of the Higher Council of the Judiciary. The second organises the replacement of the first President of the Court of Cassation and of Prosecutor General at that court by the non-hierarchy judge or prosecutor of the Court of Cassation, being a member of the relevant disciplinary body, where they are unable to act. These provisions are based on the last paragraph of Article 65 of the Constitution concerning the Higher Council of the Judiciary, whereby "An institutional Act shall determine the manner in which this article is to be implemented".
(2001-445 DC, 19 June 2001, para. 60, p. 63)

Miscellaneous

Application of the Act to reunite civil servants

Section 15 precludes the application to judges of the Act of 30 December 1921 bringing closer civil servants of whom the spouse is established in another department. The right of judges to have account taken of their family circumstances when they are being appointed is preserved, "in so far as that is compatible with the smooth operation of the service and the characteristics of judicial organisation", by the first paragraph of section 29 of the Ordinance of 22 December 1958. It follows that section 15 calls for no criticism on grounds of constitutionality.
(2001-445 DC, 19 June 2001, para. 19, p. 63)

THE COURTS

Independence of the courts

The independence of the ordinary courts is guaranteed by article 64 of the Constitution and the independence of the administrative courts has been guaranteed by the fundamental principles recognised by the laws of the Republic since the Act of 24 May 1872; the same applies to the specific nature of their functions. The Court of Auditors enjoys this protection even if some of its functions, such as auditing accounts and management, are not of a judicial nature. The obligation imposed on it by the first paragraph of section 58 of the Institutional Act to notify the Chairmen and general rapporteurs of the Finance Committees of the National Assembly and the Senate of its draft audit programme and the possibility given them to make their views known on the draft programme are liable to jeopardise its independence and are accordingly unconstitutional.
(2001-448 DC, 25 July 2001, paras 104 to 106, p. 99)

Jurisdiction

Jurisdiction of administrative courts

Applications

Section 59 of the Institutional Act relating to Finance Acts provides: "Where, in the course of an inspection and evaluation mission, information requested under section 57 has not been supplied after a reasonable period of time, depending on the difficulties encountered in obtaining it, the Chairmen of the Finance Committees of the National Assembly and the Senate may apply to the appropriate court by way of interlocutory proceedings for an injunction to cease non-compliance with the request on pain of a daily penalty payment". In the French concept of the separation of powers, these provisions can only be understood as empowering the administrative court to issue an interlocutory injunction to a body corporate enjoy prerogatives of public authority to supply the relevant documents or information or pay the penalty for failure to do so.
(2001-448 DC, 25 July 2001, paras 102 and 103, p. 99)

The new section L 752-27 of the Rural Code, as amended by section 1 of the Act referred, provides: "Subject to section L 752-19, litigation relating to the application of this Chapter shall be within the exclusive jurisdiction of the general social security dispute-settlement system". Certain of these decisions emanate from an administrative authority of central government, exercising prerogatives of public power, and can be separated from relationships between farmers and the bodies set up to manage the new social security scheme established by the Act referred. Such is the case of Ministerial Orders issuing, withholding or withdrawing an insurance company's authorisation to participate in the management of the scheme.

In reality the sound administration of justice does not warrant an exception from the normal distribution of jurisdiction between the two categories of courts in the form of conferment of jurisdiction in such matters on the general social security dispute-settlement system. It follows that section L 752-27 is unconstitutional. The effect of this declaration of unconstitutionality is that section L 142-1 of the Social Security Code should apply, which excludes from general social security dispute-settlement system litigation that by its nature falls within the jurisdiction of another court.
(2001-451 DC, 27 November 2001, paras 42 to 47, p. 145)

POWER TO ENACT LAWS AND POWER TO MAKE REGULATIONS

GENERAL

Scope and limits of power to enact statutes

Power to determine what is appropriate subject only to constitutionality

Rules governing elections

The institutional legislature, which under article 25 of the Constitution enjoys the power to determine the duration of the powers conferred on each of the assemblies, is free to change that duration, provided it complies with constitutional rules and principles. Such rules include article 3, which provides that "Suffrage ... shall always be universal, equal and secret", which implies that the electorate may be called on to exercise its voting rights at reasonable intervals. The Constitutional Council does not have a general discretionary power to take decisions

comparable to that enjoyed by Parliament. It is therefore not for the Council to ascertain whether the objective that the legislature set itself could have been attained by other means, so long as the means used by the statute are not manifestly inappropriate.

The purpose of the Act referred is not to permanently extend the term of office of Deputies, which remains at five years. The legislative history reveals that the legislature considered that, in view of the importance of the place of the election of the President of the Republic by universal direct suffrage in the operation of the institutions of the Fifth Republic, the presidential election should generally precede legislative elections and that this rule should apply from the presidential election scheduled for 2002. The objective set by the legislature is contrary to no constitutional principles or rules. In particular the principle established by article 3 of the Constitution that the electorate may be called on to exercise its voting rights at reasonable intervals is respected.

In addition, to attain its objective, the legislature decided that the powers of the current National Assembly should be extended until the third Tuesday of June 2002. This extension of only eleven weeks is strictly necessary for the attainment of the statute objectives and is exceptional and transitional. It is not, therefore, manifestly inappropriate.

It follows that the institutional act amending the date of expiry of the powers of the National Assembly may be declared constitutional.
(2001-444 DC, 9 May 2001, paras 3 to 6, p. 59)

Failure to exercise full powers available

No failure

New tax scheme

It is for the legislature, when establishing a new tax, to determine the basis of assessment, the rate and the rules governing recovery, provided it complies with constitutional principles and rules.

The basis of assessment, the rate and the rules governing recovery of the preventive archaeology charges, which are "taxes of all types" within the meaning of article 34 of the Constitution, are determined by section 9 of the Act referred. By making the public establishment responsible for setting the amount of the charge within the limits it sets and on the basis of rule laid down by the State regarding the taxable event, the legislature fully exercised its powers.
(2000-439 DC, 16 January 2001, paras 11 and 12, p. 42)

Broadcasting

By providing that the rate of 49 % provided for by section 39(I) of the Act of 30 September 1986 is not applicable to terrestrial television services with an audience not exceeding 2.5 % of the national audience and delegating to the authority empowered to make regulations the task of specifying the administrative and technical conditions in which the *Conseil supérieur de l'audiovisuel* is to ascertain shares of the audience, the legislature did not violate its powers under article 34 of the Constitution.
(2001-450 DC, 11 July 2001, paras 23 to 26, p. 82)

Environmental quality standards for the construction of social housing

Section 90 of the Finance Act for 2002 amends section 1384 A of the General Tax Code, relating to the exemption from property taxes on built-up premises for the owners of certain forms of social housing let to tenants and used as their principal residence where the construction is financed as to at least 50 % by means of a loan given by central government. The purpose of the new provision is to raise the period of exemption from fifteen to twenty years for buildings commenced on or after 1 January 2002 which "satisfy at least four of the five following environmental quality standards: design procedures, in particular technical assistance to the project owner by a professional expert in environmental matters; construction procedures, in particular construction-site waste management; energy and noise perfor-

mance; utilisation of renewable energy sources and materials; management of fluids". The technical definition of these standards is left for a decree to be adopted in the Council of State.

It was legitimate for the legislature, without violating its powers under article 34 of the Constitution, to leave for a decree to be adopted in the Council of State the technical definition of standards, having determined their nature.
(2001-456 DC, 27 December 2001, paras 38, 39 and 41, p. 180)

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

Section 20(III) of the Social Security (Finance) Act for 2002 merely amplifies the first paragraph of section L 245-2 of the Social Security Code to apply a 3 % abatement to the basis of assessment to the relevant contribution to reflect expenditure on "pharmaco-vigilance" within the meaning of section L 5122-11 of the Public Health Code. It makes no other change to the basis of assessment. The plea that this provision is contrary to article 34 of the Constitution and to the objective of intelligibility of statutes accordingly fails on the facts.
(2001-453 DC, 18 December 2001, paras 40 and 41, p. 164)

The flat-rate contribution paid by health-care bodies to finance the agricultural occupational accidents fund is a wealth-distribution tax. The legislature accordingly exercised its powers to the full when providing that the total amount of contributions, subject to an annual maximum of € 24 million, will be equal to "the fund's expenditure forecast for the year, rectified for shortfalls or excesses recorded for the previous year", and that each of the half-shares mentioned earlier will be shared between insurance bodies in proportion to the number of persons insured. The plea that this provision is contrary to article 34 of the Constitution must accordingly be rejected.
(2001-457 DC, 27 December 2001, paras 10 to 14, p. 192)

Failure

Public procurement

It is legitimate for the legislature to seek to reconcile effectiveness in the placing of orders by public bodies and equal treatment of applicant suppliers with other objectives in the general interest inspired by, among other things, social concerns, by providing for a preference for certain categories of applicants where prices are the same or bids are otherwise equivalent. It is also legitimate for it to pursue the same objective by reserving a portion of certain contracts for clearly-defined categories of body, but this may apply only to a small proportion of the relevant contracts for specific supplies or services and only as far as is strictly necessary to satisfy the general-interest objectives pursued.

Section 12 of the MURCEF Act provides that "one quarter of the lots" concerned by "contracts to which the Public Procurement Code applies" which "are allotted" and "relate wholly or partly" to "services that can be performed" by associations or cooperatives whose purpose is to "promote the spirit of independent and collective enterprise" are to be opened to bidding by such associations and cooperatives. Given both their scope and their lack of precision, these provisions violate the principle of equality before the law on a scale that is out of proportion to the general-interest objective of developing the "social economy". The section is accordingly unconstitutional.
(2001-452 DC, 6 December 2001, paras 6 and 7, p. 156)

Repeal or amendment of earlier statutes

Repeal of pre-existing provisions

General rules

Section 91 of the Finance (Amendment) Act for 2001 repeals section 11 of the Social Security (Finance) Act for 2002 and thus restores, for the fourth consecutive year, after having abolished them, the costs of assessment and recovery accepted by tax departments for the

collection of taxes allocated to social security bodies. However open to criticism it may be, this repeal is not contrary to the Constitution.
(2001-457 DC, 27 December 2001, paras 15 to 19, p. 192)

Intervention of a statute in the area reserved for regulations

The intervention of a statute in the area reserved for regulations does not render the statute unconstitutional

The national public establishment responsible for diagnostics and preventive archaeological digs is a *sui generis* category of public establishment for the purposes of article 34 of the Constitution, with no equivalent among existing categories. The determination of its constitutional rules is accordingly a matter for statute. In determining the management and administration bodies of the establishment and specifying their roles, the terms for their election or designation, the categories of persons represented in them and the categories of resources available to the establishment, the legislature exercised the powers conferred on it by article 34 of the Constitution.

The allegation that the authority to enact statutes encroached on the territory of the authority empowered to make regulations must accordingly be dismissed.
(2000-439 DC, 16 January 2001, paras 5 and 7, p. 42, solution implicite)

Matters to be determined by the Constitution or by ordinary statute

Powers delegated by the Constitution to institutional acts

The first provision relates to the notice convening the meeting of the members of the disciplinary bodies of the Higher Council of the Judiciary. The second organises the replacement of the first President of the Court of Cassation and of the Prosecutor-General at that court by the non-hierarchy judge or prosecutor of the Court of Cassation, being a member of the relevant disciplinary body, where they are unable to act. These provisions are based on the last paragraph of Article 65 of the Constitution concerning the Higher Council of the Judiciary, whereby "An institutional Act shall determine the manner in which this article is to be implemented".
(2001-445 DC, 19 June 2001, para. 60, p. 63)

By the eighteenth paragraph of article 34 of the Constitution, whereby "Finance Acts shall determine the resources and obligations of the State in the manner and with the reservations specified in an institutional Act", the constituent authority conferred power on the institutional legislature to determine the detailed rules in accordance with which budgetary revenue and charges and other resources and charges of central government are to be evaluated and authorised by Finance Acts, together with provisions unseverable from such authorisation. The use of the word "reservations" implies that the constituent authority empowered the institutional authority to allow derogations from the principle that the resources and charges of central government are to be determined by Finance Act.
(2001-448 DC, 25 July 2001, para. 4, p. 99)

By the first paragraph of article 47 of the Constitution, whereby "Parliament shall pass Finance Bills in the manner provided by an institutional Act", and the other paragraphs of the same article, which determine the periods of time allowed for the examination of Finance Bills, the constituent authority sought to ensure that the financial measures needed for the continuity of national life could be taken in good time, and more specifically before the beginning of the financial year. Given the objective pursued, it empowered the institutional legislature to determine the rules governing examination of and voting on Finance Bills, which can in certain cases depart from the ordinary rules governing the legislative procedure. The institutional legislature is also empowered to organise the procedures for information on and management review of the public finances needed to enable to Parliament vote on Finance Bills in full knowledge of the facts, and particularly on tax bills.
(2001-448 DC, 25 July 2001, para. 5, p. 99)

The first paragraph of section 39 of the Institutional Act relating to Finance Acts provides for the immediate referral of a Finance Bill for the year to the Finance Committee of each Assembly. This is a derogation from article 43 of the Constitution, according to which an instrument is referred to a standing committee only if there is no request for appointment of a special committee. The justification for this limited derogation lies in the specific features of Finance Acts and is a procedural rule that could be laid down in an institutional act under article 47 of the Constitution.
(2001-448 DC, 25 July 2001, para. 92, p. 99)

Matters to be determined by institutional act or by ordinary statute

Matters to be determined by institutional act

The decision of the Constitutional Council of 27 June 2001 relating to its archives amplifies the Council's Standing Orders. It sets at 60 years the period after which documents flowing from the Council's business may be available for free consultation. The Council may, on such terms as it shall determine, authorise consultation of documents before that time-limit set by that section has expired. Documents are to be deposited at the Archives de France in accordance with the ordinary law.

The decision is taken under section 56 of Ordinance 58-1067 of 7 November 1958 enacting the Institutional Act on the Constitutional Council. Solution implicite: the legal rules governing its archives concern the operation of the Constitutional Council and are therefore a matter for institutional rather than ordinary statute pursuant to article 63 of the Constitution.
(Decision on rules of procedure concerning the archives of the Constitutional Council, 27 June 2001, p. 205)

Given the terms in which powers are conferred by articles 34 and 47 of the Constitution, provisions of the Institutional Act relating to Finance Acts which are not in themselves institutional but are unseverable from the institutional provisions of the act have institutional status. Such is the case in particular of the provisions concerning central government accounts, the rules governing the management of cash resources and liabilities and the "control and evaluation function" of parliamentary finance committees.
(2001-448 DC, 25 July 2001, paras 4, 55, 57, 101 and 113, p. 99)

Provisions of an ordinary statute included in an institutional act

By enacting provisions which amend the Code of Judicial Organisation, the Code of Criminal Procedure and Act 95-125 of 8 February 1995 relating to the organisation of the courts and civil, criminal and administrative procedure, the institutional legislature laid down rules on matters for ordinary statute.
(2001-445 DC, 19 June 2001, para 51, p. 63)

Clarity of legislation and constitutionality

Section 24 of the MURCEF Act relates to the powers of sanction and substitution conferred on the Prefect in relation to communes that have not attained the three-yearly objectives as to the expansion of social housing provided for by section 55 of the Urban Solidarity and Renewal Act of 13 December 2000. The Prefect may declare that a commune is in default by a reasoned Order determining for a period not exceeding three years the surcharge on the commune's tax resources provided for by section L 302-7 of the Construction and Housing Code.

The section that is criticised confers on the Prefect a discretionary power to act in consequence of the commune's default on the basis of three criteria: the "scale of the gap between objectives and attainments in the course of the past three-year period", the "difficulties encountered, if any, by the commune" and the "social housing projects in progress". The provisions challenged also provide for an adversarial procedure.

The conditions laid down for the Prefect's exercise of his powers of sanction and substitution are defined with due precision as to their object and scope and are not contrary to article 34 of the Constitution.
(2001-452 DC, 6 December 2001, paras 8, 10 and 11, p. 156)

The Social Security (Finance) Act for 2002 is still characterised by the complexity of financial circuits between compulsory social security schemes, the bodies set up to finance them and central government, but it clearly specifies the new financing rules which it introduces. It determines new revenue items for each body and establishes scales for the distribution of the proceeds of the taxes concerned. Likewise, transfers between the various specialised funds, compulsory social security schemes and central government are defined with precision. The plea that the constitutional objective of intelligible statutes is violated must accordingly be rejected.
(2001-453 DC, 18 December 2001, para 3, p. 164)

Statutory ratification

The ratification procedure introduced by section 4 of the Institutional Act relating to Finance Acts concerns solely decrees in Conseil d'Etat providing for remuneration for a service rendered by central government, to the exclusion of action taken on the basis of such decrees. Its only purpose is to authorise, beyond the date of entry into force of the next Finance Act, the charging of such remuneration, which under section 3(2°) is distinct from the ordinary revenue from the industrial and commercial activities of central government and its public assets.
(2001-448 DC, 25 July 2001, paras 14 and 15, p. 99)

Conditions under which statutes are enforced and brought into effect

Scope of the principle of non-retroactivity

The principle that statutes may not have retroactive effect is a constitutional principle under article 8 of the Declaration of Human and Civic Rights of 1789 only in the criminal law. The legislature may enact retroactive provisions in other areas, but only where there is an adequate general-interest consideration and only as long as constitutional requirements are not deprived of their statutory guarantees.

The second paragraph of section 12(II) of the Social Security (Finance) Act for 2002 writes off claims against the fund set up by section L 131-8 of the Social Security Code recorded on 31 December 2000 by the Central Agency of the social security bodies and by the relevant schemes, and changes accordingly the accounts for 2000 of the relevant social security bodies. Its effect is accordingly to eliminate a claim on central government guaranteed by statute and in favour of the balance sheets of the social security schemes at 31 December 2000. Given the amount of the claim, the schemes'financial situation and the constitutional requirement of financial equilibrium in social security, the desire to solve the financial difficulties of the fund set up by section L 131-8 of the Social Security Code is not an adequate general-interest consideration to warrant retroactively changing the financial results of a financial year that is over. The second paragraph of section 12(II) is accordingly unconstitutional.
(2001-453 DC, 18 December 2001, paras 23 to 29, p. 164)

The principle that statutes may not have retroactive effect is a constitutional principle under article 8 of the Declaration of Human and Civic Rights of 1789 only in the criminal law. The legislature may enact retroactive provisions in other matters, but only where there is an adequate general-interest consideration and only as long as constitutional requirements are not deprived of their statutory guarantees. Section 24 of the Finance Act for 2002, relating to the car-tax sticker, does not impose a penalty. It was legitimate for the legislature, given its avowed objective of lightening the tax burden, to enact new provisions disapplying provisions that it had enacted previously. The scheduled effective date (December 2001) is contrary to no constitutional requirements.
(2001-456 DC, 27 December 2001, paras 21 and 22, p. 180)

Exercise of power to make regulations

Measures implementing statutes

Obligations incumbent on the Government

The personal autonomy allowance paid by the department is granted by decision of the President of the General Council on a proposal from a committee chaired by him. It is left for a decree in the Council of State to specify the rules of operation and membership of that committee, which is to include "representatives of the department and social security management bodies".

The legislative history reveals that the legislature's intention was that the committee should consist as to a majority of representatives of the General Council. It will be for the authority empowered to make regulations to draw all the conclusions from the legislature's intention. Subject to this reservation, the new section L232-12 of the Code of Social and Family Action is not contrary to article 72 of the Constitution.
(2001-447 DC, 18 July 2001, paras 2 and 7, p. 89)

Governmental and administrative organisation

Distribution of State functions between various bodies

Article 21 of the Constitution reads: "The Prime Minister shall ... ensure the implementation of legislation. Subject to article 13, he shall have power to make regulations and shall make appointments to civil and military posts."

These provisions do not preclude the legislature from entrusting to another authority than the Prime Minister the determination of provisions for the implementation of a statute, but this is on condition that the empowerment concerns only measures that are limited in both scope and content.
(2001-451 DC, 27 November 2001, paras 9 and 10, p. 145)

Principle of power to make regulations

Designation of the competent minister(s)

The new sections L 752-5, L 752-12, L 752-16, L 752-17 and L 752-18 of the Rural Code empower the Minister of Agriculture only to take measures that are limited in both scope and content. The same applies to the new section L 752-14 of the Rural Code, which instructs him to approve the agreement between the *Caisse centrale de la mutualité sociale agricole* and the association of insurance bodies in the management of the new social security scheme or, failing such an agreement or approval of it, to determine himself the rules governing relations between the scheme's various management bodies. These delegations of powers are accordingly not contrary to article 21 of the Constitution.
(2001-451 DC, 27 November 2001, para 12, p. 145)

Miscellaneous applications

The new section L 752-12 of the Rural Code merely confers on the agricultural social security bodies a coordination and supervision function to ensure that the new social security scheme functions smoothly. Neither this section nor any other provision of section 1 of the Act referred confers rule-making powers on them. The objection that article 21 of the Constitution is violated accordingly fails on the facts.
(2001-451 DC, 27 November 2001, para 11, p. 145)

Types of courts — Rules applying to the judiciary

Rules applying to the judiciary

Initial appointment grade

The provision governing reckoning of years of prior professional activity for the grading of judges in their initial appointment grade is a matter to be determined by regulation.
(2001-445 DC, 19 June 2001, para. 16, p. 63)

Public finance — Taxation

Taxation

Rules relating to the basis of assessment, calculation and recovery

The authors of the reference submit that the contributions provided for by the Act referred to finance expenditure on the personalised autonomy allowance violate article 34 of the Constitution. The legislature, they argue, omitted to specify rules for the compulsory deduction from basic retirement pension schemes. The basis of assessment to the charge is arbitrary as the list of bodies liable to pay it is not specified. The discretion enjoyed by the authority empowered to make regulations in setting the rate is excessive. The detailed rules for recovering it are not laid down. By failing to determine the allocation of the resultant revenue in the Fund to finance the personalised autonomy allowance, the legislature failed to exercise its powers to the full.

Article 34 of the Constitution provides: "Statutes shall determine the rules concerning ... the base, rates and methods of collection of taxes of all types".

It is clear from the very words of the provisions criticised that the taxable bodies are the compulsory basic retirement pension schemes. Those provisions define the basis of assessment to the levy as "the sums devoted by each of them in 2000 to expenditure on home helps for elderly persons meeting the conditions as to loss of autonomy provided for by section L232-2", which refers to a national scale allowing elderly persons to be classified in terms of their loss of autonomy. By providing that the rate of the levy will be between 50 % and 75 % of such sums, the legislature has not acted contrary to article 34 of the Constitution. As regards the recovery rules, in the absence of any specific provision in the statute, the legislature has impliedly activated the rules of the ordinary law applicable to the recovery of a debt owed to a public administrative establishment.
(2001-447 DC, 18 July 2001, paras 19 to 21, p. 89)

Remuneration for services rendered

The ratification procedure introduced by section 4 of the Institutional Act relating to Finance Acts concerns solely, decrees in Conseil d'Etat providing for remuneration for a service rendered by central government, to the exclusion of action taken on the basis of such decrees. Its only purpose is to authorise, beyond the date of entry into force of the next Finance Act, the charging of such remuneration, which under section 3(2°) is distinct from the ordinary revenue from the industrial and commercial activities of central government and its public assets.
(2001-448 DC, 25 July 2001, paras 14 and 15, p. 99)

Section 33(I) of the Finance Act for 2002 allocates to the pensions reserve fund all revenue from special allocation account No 902-33, being the proceeds of the fees for use of frequencies allotted by licences to establish and operate third-generation mobile telephony networks.

Section 33(II) amends the method for calculating these fees by providing: "By way of derogation from section L 31 of the Public Assets Code, the fee payable by each holder of a licence to establish and operate a third-generation mobile telephony network... for the use of the frequencies allotted shall be paid as follows: — a fixed portion payable on 30 September of the year in which the licence is issued or at the issue date if it falls after 30 September; — a variable portion payable annually in the form of a percentage of turnover derived from the use of the said frequencies. The rate of the variable portion and the rules for calculating it, in particular the definition of the relevant turnover, shall be determined in the specifications annexed to the licence...". The final paragraph of section 33(II) raises the duration of the licence from fifteen to twenty years.

The use of radio frequencies in the territory of the Republic is a form of private use of public assets belonging to central government. The fee payable by the holder of a licence to establish and operate a third-generation mobile telephony network is accordingly revenue from public assets. There are no constitutional rules or principles that preclude a licence fee being determined on the basis of the licensee's turnover. The rules determining the amount of fees for use of public assets not being within the powers of the legislature, The plea that the relevant section is vitiated by failure to exercise the legislature's powers to the full must be rejected.
(2001-456 DC, 27 December 2001, paras 25 to 28, p. 180)

Public establishments

Concept of category of public establishments

Establishment in a category of its own

National public establishment responsible for preventive archaeology diagnostics and digs

Article 34 of the Constitution provides: "Statutes shall determine the rules concerning ... the creation of categories of public establishments".

Under section 1 of the Act referred, the purpose of preventive archaeology, which is a public service mission governed by the principles applicable to all scientific research, is to "ensure the detection, conservation and safeguarding, by scientific study, of components of the archaeological heritage that are or may be affected by public or private construction or engineering works". It is also to interpret and disseminate the results. The first paragraph of section 4 provides: "Diagnostics and preventive archaeological digs shall be entrusted to a public national administrative establishment. The third paragraph provides: "The public establishment shall ensure... the scientific exploitation of its activities and the dissemination of their results...". Under section 8, preventive archaeology fees are to part-finance the establishment. Under section 9, which determines computation rules, the fees are to be set by decision of the establishment on the basis of central government rules concerning diagnostics and preventive archaeological digs. These rules constitute the taxable event. Under section 9, certain works undertaken by a local authority may be exempted from the preventive archaeology fee by decision of the public establishment.

It follows from all these provisions that the national public establishment responsible for diagnostics and preventive archaeological digs is a *sui generis* category of public establishment for the purposes of article 34 of the Constitution, with no equivalent among existing categories. The determination of its constitutional rules is accordingly a matter for statute. In determining the management and administration bodies of the establishment and specifying their roles, the terms for their election or designation, the categories of persons represented in them and the categories of resources available to the establishment, the legislature exercised the powers conferred on it by article 34 of the Constitution.
(2000-439 DC, 16 January 2001, paras 3 to 5, p. 42)

Territorial units

Self-government of territorial units

Welfare assistance

Article 72 of the Constitution provides that "the territorial units of the Republic ... shall be self-governing through elected councils and in the manner provided by statute". Article 34 of the Constitution provides: "Statutes shall determine the fundamental principles of ... the self-government of territorial units, their powers and their resources". By the eleventh paragraph of the Preamble to the Constitution of 27 October 1946, the Nation is to "guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence from society".

Under the new sections L232-1 and L232-2 of the Code of Social and Family Action, the personalised autonomy allowance is a universal benefit intended to cover the needs of elderly persons who are dependent in conditions matching their needs. It is granted "within the limits of rates set by regulation". It is a compulsory expenditure item for departments. By way of consideration for it, they receive financial allocations from a Fund financed by a fraction of the "generalised social contribution" and by a contribution from the compulsory retirement pension schemes.

Firstly, if the Act gives the departments the power to grant the personalised autonomy allowance, a welfare benefit reflecting a constraint of national solidarity, it is legitimate for the legislature to determine the conditions for the grant of the allowance in such a way as to secure equal treatment for dependent elderly persons throughout the national territory. The legislature was entitled to set these conditions provided it did not encroach on the specific powers of the departments or deprive any departmental body of its actual powers.

Secondly, if the personalised autonomy allowance is granted by the President of the General Council on a proposal from the commission set up by the provision criticised, he is free to disapply that proposal and ask for a new one. It is clear from the legislative history that the legislature's intention was that the commission should consist as to a majority of representatives of the General Council. It will be for the authority empowered to make regulations to draw all the conclusions from the legislative intention. Subject to that reservation, the new section L232-12 of the Code of Social and Family Action is not contrary to article 72 of the Constitution.
(2001-447 DC, 18 July 2001, paras 4 to 7, p. 89)

Ownership — rights in rem — civil and commercial obligations

Fundamental principles of property law

Miscellaneous

Membership of a committee

Term of office

The determination of the term of office of members of the governing bodies of the national committee and regional sections of the multidisciplinary trade association of shellfish producers by the first paragraph of section 10 of the Act of 2 May 1991 does not run counter to the fundamental principles of the "regime governing ownership, rights in rem and civil and commercial obligations" which, under article 34 of the Constitution, are to be determined by statute, nor any other of the principles or rules which are likewise to be determined by statutes

under the Constitution. The words "for a period of four years" in the first paragraph of section 10 of the Act referred are accordingly in the nature of a regulation.
(2000-191 L, 10 January 2001, para. 1, p. 33)

Social security — fundamental principles

Article 34 of the Constitution reads: "Statutes shall determine the fundamental principles of... social security". These fundamental principles that are within the remit of the legislature include those concerning the establishment of a new social security scheme, its organisation and its scope. In particular it is for the legislature to determine the components of the basis of assessment to welfare contributions, the categories of persons subject to the obligation to contribute, and the categories of benefits provided by the scheme. On the other hand, it is left for the authority empowered to make regulations to issue provisions for the implementation of these principles, provided their scope is not distorted.
(2001-451 DC, 27 November 2001, paras 6 and 7, p. 145)

CONSTITUTIONAL COUNCIL AND CONSTITUTIONAL REVIEW

REFERRAL TO THE CONSTITUTIONAL COUNCIL-QUALIFICATIONS FOR ADMISSIBILITY — NO CASE TO ANSWER — INOPERATIVE ARGUMENTS AND ARGUMENTS NOT SUPPORTED BY THE FACTS

Rules applying to person or persons making 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 reserves the power to do so for sixty Deputies or sixty Senators.

By letter dated 4 July 2001, Mr Bernard SEILLER, Senator, sent the Constitutional Council, over his signature alone, a pleading contesting other provisions of the Act referred.. The effect of the second paragraph of article 61 of the Constitution is that the pleading must be declared inadmissible.
(2001-450 DC, 11 July 2001, paras 2 and 3, p. 82)

Pleas to be disregarded

On 14 July 2001 Mr Elie Hoarau presented his resignation to the President of the National Assembly who received it on 17 July 2001 and took formal note of it by Notice published in the *Journal Officiel* of the French Republic today, 18 July 2001. The referral from the Keeper of the Seals, Minister of Justice, seeking a declaration that Mr Hoarau was automatically disqualified from his membership of the National Assembly has accordingly lapsed. There is no need for the Constitutional Council to rule on the referral.
(2001-14 D, 18 July 2001, para. 2, p. 97; cf. Weber 2000-12 D, 4 May 2000, p. 76; comp. decision Tapie 96-10 D, 5 September 1996, p. 111)

Inoperative pleas or pleas not supported by the facts

Inoperative pleas

By reserving the right to terminate pregnancy to "pregnant woman whose condition places them in a situation of distress", the legislature intended to exclude any fraud against the law

and, more generally, any distortion of the principles that it laid down, and these principles include "respect for the human being from the beginning of its life" under section L2211-1 of the Code of Public Health. The risk that a statute might be violated does not make it unconstitutional.
(2001-446 DC, 27 June 2001, para. 5, p. 74; cf. decisions 91-304 DC of 15 January 1992, paras 8 to 10, p. 18 and 99-416 DC, 23 July 1999, para. 25, p. 100)

The objection based on violation of the principle of independence of the university professors is inoperative since the freedom of the doctor in his capacity as head of department is all that is involved in this case.
(2001-446 DC, 27 June 2001, para. 16, p. 74)

The plea based on the allegation that an amendment, by reason of its scale, exceeds the limits inherent in the right to amend is inoperative.
(2001-450 DC, 11 July 2001, para. 30, p. 82)

The Act referred substitutes a statutory social security scheme for a contractual insurance scheme, but this substitution, which entails no form of expropriation, cannot be regarded as a deprivation of property within the meaning of article 17 of the Declaration of 1789. The plea that that article is violated is accordingly inoperative.
(2001-451 DC, 27 November 2001, para 16, p. 145)

The prospectus mentioned in section L 412-1 of the Monetary and Financial Code is prepared by persons who issue a public invitation to invest in savings accounts and is intended to inform potential investors. It accordingly operates in relationships governed by private law. The regulatory and supervisory powers conferred by statute on the Securities Exchange Commission do not change the legal status of this document. By authorising it to be prepared in a language in common use in financial matters, the legislature, which was concerned to have regard for France's Community commitments and common practice on international markets, has not given interested parties a right to use a language other than French in their relations with the Securities Exchange Commission or, in the event of litigation, with the French courts. The plea that article 2 of the Constitution is violated is accordingly inoperative.
(2001-452 DC, 6 December 2001, para 17, p. 156)

Pleas not supported by the facts

Far from conferring on the public establishment exclusive rights to use the results of its digs, section 4 of the Act referred requires it to disseminate the results of the scientific exploitation of its activities. The public establishment "is active in education, the dissemination of culture and the valorisation of archaeology". Under the current legislation, reports on archaeological digs are administrative documents that are accessible to the public. Section 3 of the Act referred requires central government to produce and update the national archaeological map, with all the public establishments engaged in archaeological research activities and local authorities, and the map is to "combine and organise all archaeological data available for the national territory". A decree is to determine the terms on which the map may be communicated to any person requesting it. The plea that the legislature has violated the freedom of expression secured by article 10 of the Declaration of Human and Civic Rights of 1789 accordingly fails on the facts.
(2000-439 DC, 16 January 2001, para. 21, p. 42)

The new section L 752-12 of the Rural Code merely confers on the agricultural social security bodies a coordination and supervision function to ensure that the new social security scheme functions smoothly. Neither this section nor any other provision of section 1 of the Act referred confers rule-making powers on them. The plea that article 21 of the Constitution is violated accordingly fails on the facts.
(2001-451 DC, 27 November 2001, para 11, p. 145)

In the absence of specific provisions in the Act referred, the legislature did not intend to take decisions withholding authorisations (to participate in the performance of a public social security service) out of the scope of the rules of ordinary law relating to the obligation to give reasons for individual administrative decisions under section 1 of the Act of 11 July 1979. The plea fails on the facts.
(2001-451 DC, 27 November 2001, para 24, p. 145)

Section 56 of the Social Security (Finance) Act for 2002 entrusts the National Family Allowances Fundwith financing the parental leave allowance. It was legitimate for the legislature, for the sake of administrative simplification, to entrust the social security health-care insurance bodies with the management of daily parental leave allowances while making the National Family Allowances Fund responsible for the overall costs of parental leave. It follows that the provisions challenged do not violate section LO 111-3 of the Social Security Code. For the same reasons, the plea that the principle of the autonomy of the various branches of social security is violated fails on the facts.
(2001-453 DC, 18 December 2001, paras 55, 56 and 59, p. 164)

Rejection of application challenging a statute on which the Constitutional Council has already ruled

The first paragraph of Article 10 of the Constitution provides: "The President of the Republic shall promulgate Acts of Parliament within fifteen days following the final adoption of an Act and its transmission to the Government." Under the second, third and fourth paragraphs of Article 61, that period can be suspended only if the Act is referred to the Constitutional Council prior to promulgation; the Constitutional Council must then take a decision within a month, or even within eight days if the Government so requests on grounds of urgency. By setting such deadlines, the constituent assembly wished to exclude any further suspension of the promulgation period, which would necessarily result from examination of a subsequent referral to the Constitutional Council. It follows that when the Council has given a decision under the second paragraph of article 61 of the Constitution, it cannot entertain a fresh referral of the same instrument. The Voluntary Interruption of Pregnancy (Abortion) and Contraception Act was definitively passed by Parliament on 30 May 2001; the Constitutional Council gave its decision on the Act — Decision 2001-446 DC — under the second paragraph of Article 61 of the Constitution on 27 June 2001. Consequently, the referral by the signatory delegates, challenging the Voluntary Interruption of Pregnancy (Abortion) and Contraception Act, registered at the general secretariat of the Constitutional Council on 29 June 2001, cannot be entertained by the Constitutional Council.
(2001-449 DC, 4 July 2001, paras 1 to 5, p. 80)

PARAMETERS FOR REVIEWING INSTRUMENTS FOR CONSTITUTIONALITY

Parameters followed

Declaration of Human and Civic Rights

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

By extending the period of ten to twelve weeks during which the right to terminate pregnancy to "pregnant woman whose condition places them in a situation of distress", the legislature intended to exclude any fraud against the law and, more generally, any denaturing of the principles that it laid down, and these principles include "respect for the human being from the beginning of its life" under section L2211-1 of the Code of Public Health". The risk that a statute might be violated does not make it unconstitutional.
(2001-446 DC, 27 June 2001, para. 5, p. 74)

Section L2212-3 of the Code of Public Health, as amended by section 4 of the Act referred, relates to the first medical examination requested by a woman with a view to the interruption of her pregnancy and provides that a guidance file must be given to her, specifying its contents; the Act no longer requires this file to include "the enumeration of the rights, aid and benefits given by the law to families, mothers, married or unmarried, and their children, and the possibilities offered by the adoption of a child to be born". Section L2212-4 of the same Code, as amended by section 5 of the Act referred, relates to the preliminary social consultation. Under the first two paragraphs of this section as amended, this consultation remains obliga-

tory only for non-emancipated women who are minors; it is merely "proposed" to major woman.

Sections L2212-3 and L2212-4 of the Code of Public Health as amended respect the freedom of pregnant woman who wish to terminate their pregnancy; the information concerning aid and help available to mothers and their children is provided to women who are of age and have accepted the preliminary social consultation provided for by the first paragraph of section L2212-4 of that Code. This consultation "is systematically proposed before... the termination of pregnancy, to woman who are of age" and comprises an "individual interview in which she will be offered suitable assistance or advice on her situation". Under the second paragraph of the same section, the preliminary consultation is compulsory for non-emancipated woman who are minors. Consequently, the disputed provisions do not violate the principle of freedom laid down by Article 2 of the Declaration of Human and Civic Rights.
(2001-446 DC, 27 June 2001, paras 8 and 10, p. 74)

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 limits related to constitutional requirements or justified by the general interest, provided there are no limits that are out of proportion to the objective pursued.

The tenth paragraph of the Preamble to the 1946 Constitution reads: "The Nation shall provide the individual and the family with the conditions necessary to their development"; the eleventh paragraph reads: "It shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence from society". It is both for the legislature and for the authority empowered to make regulations, within their respective fields, to determine practical rules for the implementation of these provisions, in compliance with their underlying principles.

It is always legitimate for the legislature, acting in the areas reserved for it by article 34 of the Constitution, and in particular, as is the case here, in regard to the fundamental principles of social security, to adopt new provisions to attain or reconcile constitutional objectives within its discretion, provided that in the exercise of this power it may not deprive constitutional requirements of their proper statutory protection.

The purpose of the provisions of the Act referred is to improve the social protection of self-employed farmers, in particular by establishing daily allowances and a survivor's pension and by means of better compensation for permanent invalidity. It was accordingly legitimate for the legislature to satisfy the requirements of those provisions of the 1946 Preamble by establishing a new branch of social security, and it has committed no manifest error in the exercise of its discretion such as to constitute an unconstitutional restriction on the freedom of enterprise.
(2001-451 DC, 27 November 2001, paras 18 to 21, p. 145)

Equality (article 6)

The sole purpose of section 6 of the Finance Act for 2002, which releases taxpayers who file their returns by electronic means from the obligation to attach receipts issued by trade unions in order to obtain tax relief on union contributions, is to encourage electronic tax returns. It does not affect the obligation to produce the receipts in the event of a subsequent tax inspection. It is accordingly not contrary to the principle of equality.
(2001-456 DC, 27 December 2001, paras 13 and 14, p. 180)

Freedom to express ideas and opinions (article 11)

Article 11 of the 1789 Declaration cannot be pleaded in relation to information for investors on public invitations to invest in savings accounts.
(2001-452 DC, 6 December 2001, para 19, p. 156)

Section 62 of the Finance Act for 2002 extends the objects of the Fund for the modernisation of the daily and similar press providing political and general information to the distribution of the national daily press providing political and general information. The Deputies making the referral argue that this measure, which provides no benefits for the daily press in other categories, and in particular the sporting dailies, violates pluralism in the press.

It was legitimate for the legislature to establish a form of State aid to compensate for the specific excess costs of distributing the national daily press providing political and general information. The measure is inspired by the concern to preserve pluralism in the daily press providing political and general information, the maintenance and development of which are necessary for the effective exercise of the liberty proclaimed by article 11 of the Declaration of Human and Civic Rights of 1789.
(2001-456 DC, 27 December 2001, paras 36 and 37, p. 180)

Equality of public burden-sharing (article 13)

It is for the legislature, when introducing a tax, to freely determine the basis of assessment to it and its rate, subject to respect for constitutional principles and rules and having regard to the features of the new tax. In particular, to ensure respect for the principle of equality, it must base its decisions on objective and rational criteria reflecting its avowed purposes.

Section 20 of the Social Security (Finance) Act for 2002 amends the rates of the three upper brackets of the contribution payable by pharmaceutical laboratories, raising them from 15 %, 18 % and 21 % to 17 %, 25 % and 31 %. The choice of these rates meets the requirement for objectivity and rationality in relation to the legislature's dual avowed purposes. It implies no threshold effect. There is no manifest error of assessment. Given the fact, among others, that section L 245-4 of the Social Security Code exempts from this contribution firms whose turnover is below 100 million francs, section 20 does not seriously violate equality of public burden-sharing.
(2001-453 DC, 18 December 2001, paras 45 to 48, p. 164)

Need for taxation (articles 13 and 14)

Section 20(I) of the Social Security (Finance) Act for 2002 raises the rate of the contribution payable by pharmaceutical laboratories on a scale in four brackets, related to the ratio between their expenditure on promotion and information targeted on practitioners and their pre-tax turnover in France. The increase serves the dual purpose of causing firms doing business in pharmaceutical specialities to contribute to the financing of health-care insurance and of preventing unjustified expenditure on medicines. In enacting this provision, the legislature did not violate the principle of the need for taxation.
(2001-453 DC, 18 December 2001, paras 42 to 44, p. 164)

Need for taxation and equality of public burden-sharing (articles 13 and 14)

It was legitimate for section 61 of the Institutional Act relating to Finance Acts, on the basis of article 34 of the Constitution, to provide for an obligation for all guarantees given by central government to be authorised by a Finance Act within three years, so as to ensure clarity as to financial commitments, but the penalty for failure to authorise them in this way cannot be to declare the relevant guarantees invalid. To do so would violate equality in public charge-sharing and, in serious cases, of property rights. It is clear from the legislative history that the purpose of section 61 is to ensure that Parliament is informed of the guarantees given by central government rather than to invalidate those which, having been given in the past, have not been authorised in the appointed time.
(2001-448 DC, 25 July 2001, para. 110, p. 99)

Taxation and the role of Parliament (article 14)

The applicants submit that the Fund to finance the personalised autonomy allowance should not be provided for by a Finance Act, or by a Social Security (Finance) Act. Parliament is allegedly deprived of the power to review the public finances which it enjoys under article 14 of the Declaration of Human and Civic Rights of 1789, whereby: "All citizens have the right to

ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration".

The involvement of public retirement pension schemes and the fraction of the yield of the generalised social contribution, which constitute revenue of the Fund to finance the personalised autonomy allowance, are determined by the Act referred. By enacting it, Parliament confirmed the need for it and consented to it. Under the first paragraph of section 4 of the Ordinance of 2 January 1959 enacting the Institutional Act relating to Finance Acts, it will have to authorise its collection each year in the Finance Act. Under the nineteenth paragraph of article 34 of the Constitution, it will also have to draw the conclusions as required in the Social Security (Finance) Act.
(2001-447 DC, 18 July 2001, paras 14 and 15, p. 89)

The examination of Finance Bills is a privileged opportunity for the exercise of the right secured by article 14 of the Declaration, whereby: "All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration".
(2001-448 DC, 25 July 2001, para. 3, p. 99)

Transfers of tax revenue and changes in the allocation of burdens for the benefit of the fund to finance the reform of employers'social security contributions do not violate the principle of consent to taxation, declared by article 14 of the Declaration of Human and Civic Rights of 1789, provided Parliament is clearly informed of the grounds for them and has freely consented by its vote in favour. The principle of consent to taxation does not mean that a tax levied to cover a specific need cannot subsequently be used to cover another need.
(2001-453 DC, 18 December 2001, para 22, p. 164)

Separation of powers (article 16)

Section 7 of the Institutional Act relating to Finance Acts provides that appropriations are to be voted on per mission and that they are "specialised by programme or allocation" within each mission, but the third paragraph of section 7(I) provides that a "specific mission shall group the appropriations of the various public authorities, each of them being the subject of one or more allocations". This arrangement safeguards the principle of the financial autonomy of the relevant public authorities, which is part of the principle of the separation of powers.
(2001-448 DC, 25 July 2001, para. 25, p. 99)

Section 154 of the Finance Act for 2002 establishes a committee to verify the use made of appropriations entered at Chapter 37-91 ("Special Funds") of the budget for the Prime Minister's general services. Under articles 5, 15, 21, 34, 35 and 47 of the Constitution, while it is for Parliament to authorise declarations of war, to vote on the appropriations needed for the national defence and to verify the use made of them, it cannot intervene in routine operations. The penultimate paragraph of section 154(III), and the final paragraph, which is unseverable from it, are accordingly unconstitutional.
(2001-456 DC, 27 December 2001, paras 42 to 45, p. 180)

Section 115 of the Finance Act for 2002 reads: "I. There shall be annexed to the Finance Bill for the year an explanatory report for each public authority setting out the appropriations requested by them. — II. There shall be annexed to the Budgetary Settlement Bill an explanatory annex setting out for each public authority the final amount of the appropriations opened and the expenditure recorded and presenting the differences as against the initial appropriations. — III. This article shall apply for the first time to the Finance Acts for 2003".

These provisions cannot be interpreted as precluding a rule to the effect that the constitutional public authorities themselves determine the appropriations they need to operate. This rule is inherent in the principle of financial autonomy that secures the separation of powers. Subject to this reservation, the article is constitutional.
(2001-456 DC, 27 December 2001, paras 46 and 47, p. 180)

Right to redress (article 16)

Article 16 of the Declaration of 1789 reads: "Any society in which no provision is made for guaranteeing rights or for the separation of powers, has no Constitution". It follows that there

can be no substantial violation of the right of interested parties to seek an effective remedy in the courts.

Firstly, under the new section L 752-16 of the Rural Code, contributions to finance the occupational disease and accident compensation scheme for self-employed farmers are borne by heads of farms or of agricultural businesses and not by those entitled under them; consequently, by reserving for heads of farms or of agricultural businesses and for administrative authorities the right to challenge this classification, the new section L 752-19 of the Rural Code in no way violates article 16 of the Declaration of 1789.

Secondly, automatic affiliation decisions issued by the heads of departmental labour, employment and social policy inspectorates for agriculture can be challenged in the relevant social security court.
(2001-451 DC, 27 November 2001, paras 36 to 39, p. 145)

Property rights (articles 2 and 17)

Section 1(I) of the Act referred repeals section L131-2 of the Commercial Code, whereby shipping brokers, interpreters and ships'conductors "shall have the sole right, in the event of litigation in the courts, to translate declarations, charter parties, bills of lading, contracts and all business documents that require to be translated", and are the only authorised intermediaries in commercial and customs litigation between aliens, ships'masters, merchants, crews of vessels and other seafarers". By section 1(II), these operations may now be carried out "freely by the ship owner or his representative, who may be the captain".

The abolition of the professional privilege previously enjoyed by brokers, interpreters and ships'conductors does not constitute deprivation of property rights within the meaning of article 17 of the Declaration of Human and Civic Rights of 1789. The pleas that the article is violated, and in particular the plea that there was no prior compensation, must be dismissed as inoperative.
(2000-440 DC, 10 January 2001, paras 2 and 5, p. 39)

It was legitimate for section 61 of the Institutional Act relating to Finance Acts, on the basis of article 34 of the Constitution, to provide for an obligation for all guarantees given by central government to be authorised by a Finance Act within three years, so as to ensure clarity as to financial commitments, but the penalty for failure to authorise them in this way cannot be to declare the relevant guarantees invalid. To do so would violate equality in public charge-sharing and, in serious cases, property rights. It is clear from the legislative history that the purpose of section 61 is to ensure that Parliament is informed of the guarantees given by central government rather than to invalidate those which, having been given in the past, have not been authorised in the appointed time.
(2001-448 DC, 25 July 2001, para. 110, p. 99)

Under the first paragraph of section 17(II) of the Institutional Act relating to Finance Acts the support funds are to consist of "non-tax funds paid by persons or bodies corporate to support expenditure items of public interest and the proceeds of bequests and donations to the State". Part One of the Finance Act provides for and evaluates the corresponding revenue and the amount of the appropriations that can be covered in this way, which is included in the maximum amount of expenditure from the general budget and annexed budgets and the maximum amount of charges on special accounts. If, in the course of a year, the amount of revenue actually recorded exceeded those maximum amounts, it would fall to a Finance (Rectification) Act to open the requisite appropriations. If the appropriations were not adequately adjusted by the Finance (Rectification) Act, the Regulation Act would have to make the adjustment. In any event, section 17 cannot have the effect of precluding the use of funds in accordance with the will of the payer as required by the last paragraph of section 17(II). Otherwise there would be a violation of the property rights secured by article 2 of the Declaration of Human and Civic Rights of 1789.
(2001-448 DC, 25 July 2001, paras 46 to 48, p. 99)

The Act referred substitutes a statutory social security scheme for a contractual insurance scheme, but this substitution, which entails no form of expropriation, cannot be regarded as a deprivation of property within the meaning of article 17 of the Declaration of 1789. And incidentally, the Act permits private-sector insurers to participate in the management of the

new scheme alongside the agricultural mutual societies and leaves self-employed farmers free to choose their affiliation body. The plea that that article is violated is accordingly inoperative.
(2001-451 DC, 27 November 2001, para 16, p. 145)

Preamble to the Constitution of 27 October 1946 — Principles

Implementation of certain principles

Human dignity (first paragraph)

By raising from ten to twelve weeks the period during which a pregnancy may be voluntarily terminated where the pregnant woman is, because of her condition, in a situation of distress, the Act has not, in the current state of knowledge and techniques, destroyed the balance that the Constitution requires between safeguarding human dignity against any form of deterioration and the freedom of women under article 2 of the Declaration of Human and Civic Rights. It follows from the second paragraph of section 16-4 of the Civil Code that the word eugenics can only be used to describe "any practice... tending to the organisation of human selection". Such is not the case here.
(2001-446 DC, 27 June 2001, para. 5, p. 74)

Conditions necessary for the development of the child and the family (tenth paragraph)

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 limits related to constitutional requirements or justified by the general interest, provided there are no limits that are out of proportion to the objective pursued.

The tenth paragraph of the Preamble to the 1946 Constitution reads: "The Nation shall provide the individual and the family with the conditions necessary to their development"; the eleventh paragraph reads: "It shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence from society". It is both for the legislature and for the authority empowered to make regulations, within their respective fields, to determine practical rules for the implementation of these provisions, in compliance with their underlying principles.

It is always legitimate for the legislature, acting in the areas reserved for it by article 34 of the Constitution, and in particular, as is the case here, in regard to the fundamental principles of social security, to adopt new provisions to attain or reconcile constitutional objectives within its discretion, provided that in the exercise of this power it may not deprive constitutional requirements of their proper statutory protection.

The purpose of the provisions of the Act referred is to improve the social protection of self-employed farmers, in particular by establishing daily allowances and a survivor's pension and by means of better compensation for permanent invalidity. It was accordingly legitimate for the legislature to satisfy the requirements of those provisions of the 1946 Preamble by establishing a new branch of social security, and it has committed no manifest error in the exercise of its discretion such as to constitute an unconstitutional restriction on the freedom of enterprise.
(2001-451 DC, 27 November 2001, paras 18 to 21, p. 145)

The pension increases corresponding to the number of children can be seen as a deferred family benefit to offset the financial consequences of family burdens borne after retirement. Given the limited amount of the burdens transferred from the National Family Allowances Fund to the Old-age Solidarity Fund, section 60 of the Social Security (Finance) Act for 2002 does not violate equality between families, depending whether they do or do not raise children or have done so in the past, and is not contrary to the relevant provisions of the 1946 Preamble.
(2001-453 DC, 18 December 2001, para 65, p. 164)

It is alleged that, as a result of the transfers of tax revenue to the fund to finance the reform of employers'social security contributions, the deficit of the National Employed Persons'Health-care Insurance Fund is widened by 5.9 billion francs in 2001 and 11.8 billion francs in 2002.

Doubts are also expressed about two provisions that allegedly widen by 3.6 billion francs the deficit of the old age solidarity fund set up to help finance the basic schemes.

The revenue of the National Old-age Insurance Fund is allegedly reduced as a result of the increase in the share allocated to the old-age pensions reserve fund of the welfare levies on capital and investment income provided for by sections L 245-14 and L 245-15 of the Social Security Code.

An exceptional contribution by the National Employed Persons'Health-care Insurance Fund to financing the "Biotox Plan" in 2001 allegedly places an additional burden of 1.3 billion francs.

The transfers of tax revenues and burdens challenged here are defined with sufficient precision and, given their amount, do not jeopardise the operation of the relevant schemes and bodies to such an extent as to prevent them from exercising their functions or operating the policies required to comply with the requirements flowing from the fifth and sixth paragraphs of the 1946 Preamble.
(2001-453 DC, 18 December 2001, paras 15 to 19 and 21, p. 164)

Right to a decent standard of living (eleventh paragraph)

Article 72 of the Constitution provides that "the territorial units of the Republic ... shall be self-governing through elected councils and in the manner provided by statute". Article 34 of the Constitution provides: "Statutes shall determine the fundamental principles ... the self-government of territorial units, their powers and their resources". By the eleventh paragraph of the Preamble to the Constitution of 27 October 1946, the Nation is to "guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence from society".

Under the new sections L232-1 and L232-2 of the Code of Social and Family Action, the personalised autonomy allowance is a universal benefit intended to cover the needs of elderly persons who are dependent in conditions matching their needs. It is granted "within the limits of rates set by regulation". It is a compulsory expenditure item for departments. By way of consideration for it, they receive financial allocations from a Fund financed by a fraction of the "generalised social contribution" and by a contribution from the compulsory retirement pension schemes.

Firstly, if the Act gives the departments the power to grant the personalised autonomy allowance, a welfare benefit reflecting a constraint of national solidarity, it is legitimate for the legislature to determine the conditions for the grant of the allowance in such a way as to secure equal treatment for dependent elderly persons throughout the national territory. The legislature was entitled to set these conditions provided it did not encroach on the specific powers of the departments or deprive any departmental body of its actual powers.

Secondly, if the personalised autonomy allowance is granted by the President of the General Council on a proposal from the commission set up by the provision criticised, he is free to disapply that proposal and ask for a new one. It is clear from the legislative history that the legislature's intention was that the commission should consist as to a majority of representatives of the General Council. It will be for the authority empowered to make regulations to draw all the conclusions from the legislative intention. Subject to that reservation, the new section L232-12 of the Code of Social and Family Action is not contrary to article 72 of the Constitution.
(2001-447 DC, 18 July 2001, paras 4 to 7, p. 89)

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

The termination of pregnancy is medically more delicate when practised between the tenth and twelfth weeks, but it can, in the current state of knowledge and medical technique, be

practised safely enough for women's health to be unthreatened; the Act referred comprises sufficient guarantees in this respect. It follows that the objection based on violation of the eleventh subparagraph of the Preamble to the Constitution of 1946 must be rejected.
(2001-446 DC, 27 June 2001, para. 7, p. 74)

It is alleged that, as a result of the transfers of tax revenue to the fund to finance the reform of employers'social security contributions, the deficit of the National Employed Persons'Health-care Insurance Fund is widened by 5.9 billion francs in 2001 and 11.8 billion francs in 2002.

Doubts are also expressed about two provisions that allegedly widen by 3.6 billion francs the deficit of the old age solidarity fund set up to help finance the basic schemes.

The revenue of the National Old-age Insurance Fund is allegedly reduced as a result of the increase in the share allocated to the old-age pensions reserve fund of the welfare levies on capital and investment income provided for by sections L 245-14 and L 245-15 of the Social Security Code.

An exceptional contribution by the National Employed Persons'Health-care Insurance Fund to financing the "Biotox Plan" in 2001 allegedly places an additional burden of 1.3 billion francs.

The transfers of tax revenues and burdens challenged here are defined with sufficient precision and, given their amount, do not jeopardise the operation of the relevant schemes and bodies to such an extent as to prevent them from exercising their functions or operating the policies required to comply with the requirements flowing from the fifth and sixth paragraphs of the 1946 Preamble.
(2001-453 DC, 18 December 2001, paras 15 to 19 and 21, p. 164)

Principle of national solidarity (twelfth paragraph)

The purpose of the "Biotox Plan" support fund is to respond to the threat of terrorism by equipping the nation as quickly as possible with arrangements for the storage and distribution of medicines to combat the massive propagation of infectious diseases. By establishing such a scheme, the legislature is, in the general interest, pursuing public health objectives. Participation in this fund by the National Employed Persons'Health-care Insurance Fund, provided for by section 42, is not alien to its functions. Moreover, nearly half the resources of the Fund come from taxes of all kinds, and the contributions paid into it are received in relation to more than 80 % of those covered by social insurance. It was accordingly legitimate for the legislature, without violating the principle of the equality of public burden-sharing by citizens or the principle of national solidarity, to provide on an exceptional basis for a majority contribution by the National Employed Persons'Health-care Insurance Fund to the financing of the relevant fund.
(2001-453 DC, 18 December 2001, paras 51 and 52, p. 164)

Principle of equal access to education (13th paragraph)

The principle of equal access to education declared by the third paragraph of the Preamble to the 1946 Constitution and reaffirmed by the Preamble to the 1958 Constitution must be respected by the Board of Governors of the *Institut d'études politiques* at Paris, which is empowered by the new section L621-3 of the Code of Education to diversify its catchment to include all pupils in advanced secondary education.
(2001-450 DC, 11 July 2001, paras 31 to 33, p. 82)

Fundamental principles recognised by the laws of the Republic

Principles not accepted

Other

The applicants submit that the exclusive allocation of the yield of the generalised social contribution to financing social security is a fundamental principle recognised by the laws of the Republic. By derogating from that principle, the legislature has violated the Constitution.

There is no constitutional or institutional principle or rule to preclude a fraction of the yield of the generalised social contribution, which is within the category of "taxes of all kinds" within the meaning of article 34 of the Constitution, from being devoted to other purposes than financing social security schemes.
(2001-447 DC, 18 July 2001, paras 16 and 17, p. 89)

Principles of constitutional value stated in articles of the Constitution

Self-government of territorial units

Section 24 of the MURCEF Act relates to the powers of sanction and substitution conferred on the Prefect in relation to communes that have not attained the three-yearly objectives as to the expansion of social housing provided for by section 55 of the Urban Solidarity and Renewal Act of 13 December 2000. The Prefect may declare that a commune is in default by a reasoned Order determining for a period not exceeding three years the surcharge on the commune's tax resources provided for by section L 302-7 of the Construction and Housing Code. The increase is subject to two limits: its rate may not exceed the ratio between the number of social housing units not constructed and the three-year housing objective established in accordance with section L 302-8 of the Code and the levy, even after the increase, remains limited to 5 % of the commune's real operating costs. Moreover the Prefect may substitute himself for the commune by entering into an agreement with a body for the construction or acquisition of social housing units. In this event, the corresponding expenditure is charged to the commune, subject to a maximum amount per housing unit of €13 000 in the Ile-de-France and €5 000 elsewhere in France.

The section that is criticised confers on the Prefect a discretionary power to act in consequence of the commune's default on the basis of three criteria: the "scale of the gap between objectives and attainments in the course of the past three-year period", the "difficulties encountered, if any, by the commune" and the "social housing projects in progress". The provisions challenged also provide for an adversarial procedure.

The mayor, after being informed by the Prefect of his reasoned intention to launch the procedure for recording his failure to act, may make his views known within two months; the mayor may then bring an action challenging against the Prefect's order. By providing for this procedure, the legislature has enabled the Prefect, subject to judicial review, to have regard to the nature and value of the reasons for the commune's delay in attaining its three-year objective. The provisions criticised have neither the object nor the effect of conferring an arbitrary power on the Prefect.

The conditions laid down for the Prefect's exercise of his powers of sanction and substitution are defined with due precision as to their object and scope and are not contrary to article 72 of the Constitution.
(2001-452 DC, 6 December 2001, paras 8, 10 and 11, p. 156)

Section 24 of the MURCEF Act inserts in the Construction and Housing Code a section L 302-9-1 relating to the powers of sanction and substitution conferred on the Prefect in relation to communes that have not attained the three-yearly objectives as to the expansion of social housing provided for by section 55 of the Urban Solidarity and Renewal Act of 13 December 2000.

The proceeds of the surcharge, which will be allocated in the same way as the levy, are subject to an identical maximum. The fact that these proceeds can be for the benefit of persons not residing in the commune is merely the consequence of a mechanism of solidarity between urban communes that violates no constitutional rules or principles.
(2001-452 DC, 6 December 2001, paras 8 to 10 and 12, p. 156) (see 2000-436 DC, 7 December 2000, paras 37 and 38, p. 176.)

French language

The first paragraph of article 2 of the Constitution provides: "The language of the Republic shall be French." It follows that French must be used by legal persons governed by public law and by persons governed by private law exercising public service functions, and, in their

relations with public administrative authorities and services, individuals may not assert a right to use a language other than French or be required to use such a language. Article 2 of the Constitution does not prohibit the use of translations.

The prospectus mentioned in section L 412-1 of the Monetary and Financial Code is prepared by persons issue a public invitation to invest in savings accounts and is intended to inform potential investors. It accordingly operates in relationships governed by private law. The regulatory and supervisory powers conferred by statute on the Securities Exchange Commission do not change the legal status of this document. By authorising it to be prepared in a language in common use in financial matters, the legislature, which was concerned to have regard for France's Community commitments and common practice on international markets, has not given interested parties a right to use a language other than French in their relations with the Securities Exchange Commission or, in the event of litigation, with the French courts. The plea that article 2 of the Constitution is violated is accordingly inoperative.
(2001-452 DC, 6 December 2001, paras 16 and 17, p. 156)

Central government and territorial units may support associations set up to preserve regional languages, but as a result of article 2 of the Constitution the use of a language other than French may not be imposed on pupils in public education establishments, neither in the life of the establishment nor in the teaching of subjects other than the relevant language.

Section 134 of the Finance Act for 2002 authorises the appointment and establishment of teaching staff working in private education establishments at primary and secondary levels managed by the association "Diwan" and also provides that on the date of their incorporation non-teaching staff can also become contract staff governed by public law. The object and effect cannot be to decide on the principle of the incorporation of these establishments in the public education system. Given that these establishments practice the "full immersion" technique, which does not only teach a regional language but also uses it as the general vehicular language within the establishment, it will be for the relevant administrative authorities, subject to judicial review, to rule on requests for incorporation in compliance with article 2 of the Constitution and relevant statutory provisions. Subject to this reservation, article 134 is not unconstitutional.
(2001-456 DC, 27 December 2001, paras 48 to 52, p. 180)

Constitutional objectives

Objectives retained

Preservation of public order

It is for the legislature to reconcile the exercise of freedoms secured by the Constitution and the prevention of violations of public order and the fight against tax fraud, which are constitutional objectives. The provisions criticised specify the conditions in which the general right of communication conferred by statute on customs officers, officials of the Directorate-General of Taxes and investigators of the Securities Exchange Commission regarding data held and processed by telecommunications operators and service providers designated by sections 43-7 and 43-8 of the Freedom of Communication Act (No 86-1067 of 30 September 1986) is exercised. Under these provisions, the right of access may be exercised only "in accordance with section L 32-3-1 of the Posts and Telecommunications Code", which determines with precision the nature and conditions for preservation and communication of information. The legislature has accordingly implemented and reconciled the relevant constitutional requirements, and there is no manifest error.
(2001-457 DC, 27 December 2001, paras 6 to 9, p. 192)

Fight against tax fraud

It is for the legislature to reconcile the exercise of freedoms secured by the Constitution and the prevention of violations of public order and the fight against tax fraud, which are constitutional objectives. The provisions criticised specify the conditions in which the general right of communication conferred by statute on customs officers, officials of the Directorate-General of Taxes and investigators of the Securities Exchange Commission regarding data

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(2001-457 DC, 27 December 2001, paras 6 to 9, p. 192)

Accessibility and intelligibility of statutes

The applicants submit that the financing rules in the new section L232-21 (II) are so complex and contradictory as to violate both the principle of the self-government of territorial units provided for by article 72 of the Constitution and the objective of clarity and intelligibility of legislation.

Articles 34 and 72 of the Constitution empower the legislature to define categories of expenditure that constitute compulsory expenditure for local authorities. But the resultant obligations for a territorial unit must be defined with precision as to their object and scope and cannot violate the specific powers of territorial units or jeopardise their self-government.

The applicants submit that the legislature failed to specify the weighting to be attached to each of the three criteria used to compute the support given by the Fund for financing the personalised autonomy allowance in each department. It thus "left it to the authority empowered to make regulations to determine whether the purpose of the Fund... was to offset charges borne by the departments... or to support less-favoured departments".

The third paragraph of the new section L232-21 (II) of the Code of Social and Family Action provides: "The amount of this support shall be divided annually between the departments on the basis of the share the expenditure borne by each of them in respect of the personalised autonomy allowance in the total amount of expenditure recorded the previous year in respect of the personalised autonomy allowance in all departments combined". The amount thus distributed is to be "modulated to reflect the taxable potential... and the number of persons receiving the minimum insertion income in each department". It is clear from the very words of the statute and from legislative history that the legislature has defined a principal criterion for distributing the Fund's support and that the other two criteria merely modulate it on the basis of the situation in each department as regards its resources and its other welfare charges. The legislature has accordingly adequately specified the factors for calculating the support to be paid by the Fund to each department for the purposes of articles 34 and 72 of the Constitution.

The applicants submit that, depending the order in which the various distribution, topping-up and skimming-off operations provided for by the new section L232-21 (II) are performed, the Act could jeopardise the self-government of territorial units by imposing contradictory rules on them.

Under the new section L232-21 (II) of the Code of Social and Family Action, the contribution by the Fund for financing the personalised autonomy allowance for each department depends first and foremost on the distribution based on the above three criteria. It is raised, if need be, in accordance with the seventh and eighth paragraphs of section L232-21 (II) for departments whose expenditure on the personalised autonomy allowance, in relation to the number of persons aged over seventy-five, exceeds the national average by at least thirty per cent. The resultant contribution may not exceed half the department's on the personalised autonomy allowance. The total amount of expenditure on the personalised autonomy allowance in each department is also limited by the tenth paragraph of section L232-21 (II) to an amount equal to the yield of eighty per cent of the increase for third parties on 1 January 2001 for the number of beneficiaries. The expenditure committed by the department above that maximum is borne by the Fund. This rule will enable departments whose expenditure exceeds the maximum set by the Act to call on the Fund to guarantee the excess.

The Act referred increases the complexity of financial circuits relating to social protection, but it sets out clearly, precisely and unambiguously the new financing rules that it introduces. In particular, it determines the support provided by the Fund for each department and deter-

mines the distribution scales for the yield of the relevant taxes. It follows that the complexity introduced by the Act referred, however real, is not such as to make the Act unconstitutional.
(2001-447 DC, 18 July 2001, paras 23 to 29, p. 89)

Contrary to what the senators making the first referral argue, the fact that the Act referred does not make it possible to see the whole picture of the new scheme is the effect of the distribution of powers effected by articles 34 and 37 of the Constitution. The Act referred violates neither the constitutional objective of the intelligibility of statutes nor the requirement for clarity in statutes imposed by article 34 of the Constitution.
(2001-451 DC, 27 November 2001, para 13, p. 145)

The Social Security (Finance) Act for 2002 is still characterised by the complexity of financial circuits between compulsory social security schemes, the bodies set up to finance them and central government, but it clearly specifies the new financing rules which it introduces. It determines new revenue items for each body and establishes scales for the distribution of the proceeds of the taxes concerned. Likewise, transfers between the various specialised funds, compulsory social security schemes and central government are defined with precision. The plea that the constitutional objective of intelligible statutes is violated must accordingly be rejected.
(2001-453 DC, 18 December 2001, para 3, p. 164)

Financial equilibrium of social security system

The constitutional requirement of financial equilibrium of the social security system does not mean that equilibrium must be strictly secured for every branch of every system every year.
(2001-453 DC, 18 December 2001, para 20, p. 164)

Objectives not retained

Precautionary principle

Contrary to what applicants state, the precautionary principle is not a constitutional principle.
(2001-446 DC, 27 June 2001, para. 6, p. 74)

Rules of constitutional status in the legislative procedure

Abuse of procedure

Section 18 of the Social Security (Finance) Act for 2002, relating to relations between health-care insurance bodies and the health-care professions, is not directly related to one of the sections inserted in the Bill at first reading and numbered 10 A during the debate. This latter section was replaced after the meeting of the Joint Committee by provisions which, given their scope, must be regarded as new provisions. Its adoption was not imposed by the need to respect the Constitution, nor by the need for coordination with other instruments under debate in Parliament or for correction of a mistake. It is accordingly unconstitutional.
(2001-453 DC, 18 December 2001, paras 30 to 38, p. 164)

Parameters not recognised and material not taken into account

Parameters not recognised for constitutional review of statutes

Principle of autonomy of the various branches of the social security system

The purpose of sections 55 and 56 of the Social Security (Finance) Act for 2002 is to establish, for the benefit of the relevant categories of persons, whatever the social legislation applicable to them, a right to take leave in the event of a birth or adoption. The benefit is accordingly a family allowance to be financed by the National Family Allowances Fund, both as regards employed persons and, subject to the ceiling on social security expenditure, as regards civil

servants whose salaries remain payable during periods of leave. It was legitimate for the legislature, for the sake of administrative simplification, to entrust the social security health-care insurance bodies with the management of daily parental leave allowances while making the National Family Allowances Fund responsible for the overall costs of parental leave. It follows that the provisions challenged do not violate section LO 111-3 of the Social Security Code. For the same reasons, the plea that the principle of the autonomy of the various branches of social security is violated fails on the facts.
(2001-453 DC, 18 December 2001, paras 55, 56, 57 and 59, p. 164)

The existence of different branches of social security is recognised by section LO 111-3 of the Social Security Code, but the financial autonomy of the branches is not in itself a constitutional principle. However, the legislature cannot decide on transfers of resources and charges between branches that would manifestly compromise the attainment of their objectives and jeopardise both the existence of the branches and the constitutional requirements pertaining to the exercise of their functions.
(2001-453 DC, 18 December 2001, paras 61 to 65, p. 164)

Question must first have been raised in Parliament

Application of section LO 111-3-III of the Social Security Code

Before considering whether the provisions of several sections of the Social Security (Finance) Act for 2002 were such as should not have been enacted in a Social Security (Finance) Act, the Constitutional Council observed no failure to raise the relevant questions in Parliament.
(2001-453 DC, 18 December 2001, paras 75, 86 and 87, p. 164; sol. impl. ab.jur. 96-384 DC, 19 December 1996, paras 3 and 4, p. 141; cf. 2000-437 DC, 19 December 2000, p. 190)

NATURE, PROCEDURES AND EXTENT OF CONSTITUTIONAL REVIEW

Extent of review

Power of review vested in the Constitutional Council

The institutional legislature, which under article 25 of the Constitution enjoys the power to determine the duration of the powers conferred on each of the assemblies, is free to change that duration, provided it complies with constitutional rules and principles. Such rules include article 3, which provides that "Suffrage ... shall always be universal, equal and secret", which implies that the electorate may be called on to exercise its voting rights at reasonable intervals. The Constitutional Council does not have a general discretionary power to take decisions comparable to that enjoyed by Parliament. It is therefore not for the Council to ascertain whether the objective that the legislature set itself could have been attained by other means, so long as the means used by the statute are not manifestly inappropriate.
(2001-444 DC, 9 May 2001, para. 3, p. 59)

It is not for the Constitutional Council, which does not have a general discretionary decision-making power comparable to that of Parliament, to call into question the provisions enacted by the legislature on the basis of the state of knowledge and techniques; it is always legitimate for Parliament, acting within its powers, to amend earlier legislation or to repeal it and substituting fresh provisions for it if necessary; the exercise of this power must not, however, have the effect of depriving constitutional requirements of their legal guarantees.
(2001-446 DC, 27 June 2001, para. 4, p. 74)

Qualified interpretations

Examples of *interprétations neutralisantes*

Public and social finance law

Section 39 of the Institutional Act relating to Finance Acts provides that the Finance Bill for the year, including the reports provided for by section 50 and the annexes mentioned in Article 51(1°) to (6°), must be presented and distributed "no later than the first Tuesday in October of the year preceding the year in which the budget is to be executed". If by reason of circumstances a document that is to be distributed is supplied to members of parliament in whole or in part after that date, section 39 cannot be interpreted as precluding examination of the Finance Bill. The constitutionality of the Finance Bill would then fall to be reviewed in the light of the requirement for continuity of national life and of the concern for accuracy that preside over the examination of the Finance Bill throughout the procedure.
(2001-448 DC, 25 July 2001, paras 73 to 76, p. 99)

Section 46 of the Institutional Act relating to Finance Acts requires the Closure of Accounts Bill to be presented and distributed before 1 June of the year following the close of the relevant financial year. The same deadline applies for all the documents provided for by section 54 and the report and certification of accounts issued by the Court of Auditors in accordance with section 58. Section 41 of the Act provides that in each Assembly the Closure of Accounts Bill relating to the preceding year is to be put to the vote at first reading before the debate on the Finance Bill for the following year commences. The purpose of these deadlines is to ensure that Parliament is informed in good time to come to an opinion in full knowledge of the facts on Finance Bills laid before it. A violation of these procedures would not preclude commencing the examination of the Bill concerned. The constitutionality of the Finance Bill would then fall to be reviewed in the light of the requirement for continuity on national life and of the concern for accuracy that preside over the examination of the Finance Bill throughout the procedure.
(2001-448 DC, 25 July 2001, paras 78, 79, 81, 82, 88 and 89, p. 99)

Section 18 of the Institutional Act relating to Finance Acts provides that "an annexed budget shall constitute a mission". Given that the mission is a charge within the meaning of article 40 of the Constitution, as provided by articles 7 and 47, the parliamentary amendments moved in this respect can be regarded as admissible only if they have neither the object nor the effect of creating a mission or increasing the aggregate amount of mission appropriations. Sections 18(I) and 19 of the Institutional Act relating to Finance Acts are, subject to this reservation, constitutional.
(2001-448 DC, 25 July 2001, paras 42 to 45, p. 99)

The institutional legislature's intention behind section 18(I), relating to annexed budgets, was to exclude the entry of operations other than those of central government services not enjoying legal personality and engaging in the production of goods or services against fees as their main activity. Provision is accordingly made for conditions complying with the powers conferred on the legislature by article 34 of the Constitution. From the date of entry into force of the Institutional Act specified in section 67, Finance Acts will have to respect the scope of annexed budgets thus defined.
(2001-448 DC, 25 July 2001, para. 49, p. 99)

The first paragraph of section 21(I) of the Institutional Act relating to Finance Acts, relating to specific appropriation accounts, requires budgetary expenditure recorded in these accounts to be financed solely by "special revenue which is by its nature directly related to the expenditure concerned". The legislative history reveals that in imposing this condition the legislature's intention was to limit the possibilities for derogation from the rule that revenue in the central government budget cannot be set aside for specific purposes without impeding the application of the principles of sound management of public moneys.
(2001-448 DC, 25 July 2001, para. 51, p. 99)

As regards the report on the situation and trend of transfer payments, which must be presented at the opening of the ordinary session under section 52 of the Institutional Act relating to Finance Acts for the examination of and voting on both the Finance Bill and the Social Security (Finance) Bill for the next year, "the financial estimates for the current year and the next two years relating to all legislative or regulatory provisions envisaged by the Government" are purely indicative. They cannot have the effect of constraining the Government's discretion to decide and adapt under article 20 of the Constitution when determining and conducting the policy of the Nation.
(2001-448 DC, 25 July 2001, paras 85, 90 and 91, p. 99)

Section 59 of the Institutional Act relating to Finance Acts provides: "Where, in the course of an inspection and evaluation mission, information requested under section 57 has not been supplied after a reasonable period of time, depending on the difficulties encountered in obtaining it, the Chairmen of the Finance Committees of the National Assembly and the Senate may apply to the appropriate court by way of interlocutory proceedings for an injunction to cease non-compliance with the request on pain of a daily penalty payment". In the French concept of the separation of powers, these provisions can only be understood as empowering the administrative court to issue an interlocutory injunction to a body corporate enjoy prerogatives of public authority to supply the relevant documents or information or pay the penalty for failure to do so.
(2001-448 DC, 25 July 2001, paras 102 and 103, p. 99)

The final paragraphs of section 58 of the Institutional Act relating to Finance Acts impose on the Court of Auditors, in its function of assisting Parliament, a variety of obligations relating in particular to investigations and reports. These obligations must be interpreted in the light of the last paragraph of article 47 of the Constitution, whereby: "The Audit Court shall assist Parliament and the Government in monitoring the implementation of Finance Acts". It is accordingly for the competent authorities of the Court of Auditors to ensure that the equilibrium sought by the constituent authority is not distorted to the detriment of one of the two bodies. Such will be the case, in particular, of the time-limit provided for by section 58(2°).
(2001-448 DC, 25 July 2001, paras 107 and 108, p. 99)

It was legitimate for section 61 of the Institutional Act relating to Finance Acts, on the basis of article 34 of the Constitution, to provide for an obligation for all guarantees given by central government to be authorised by a Finance Act within three years, so as to ensure clarity as to financial commitments, but the penalty for failure to authorise them in this way cannot be to declare the relevant guarantees invalid. To do so would violate equality in public charge-sharing and, in serious cases, of property rights. It is clear from the legislative history that the purpose of section 61 is to ensure that Parliament is informed of the guarantees given by central government rather than to invalidate those which, having been given in the past, have not been authorised in the appointed time.
(2001-448 DC, 25 July 2001, para. 110, p. 99)

Separation of powers

Section 115 of the Finance Act for 2002 reads: "I. There shall be annexed to the Finance Bill for the year an explanatory report for each public authority setting out the appropriations requested by them. — II. There shall be annexed to the Budgetary Settlement Bill an explanatory annex setting out for each public authority the final amount of the appropriations opened and the expenditure recorded and presenting the differences as against the initial appropriations. — III. This article shall apply for the first time to the Finance Acts for 2003".

These provisions cannot be interpreted as precluding a rule to the effect that the constitutional public authorities themselves determine the appropriations they need to operate. This rule is inherent in the principle of financial autonomy that secures the separation of powers. Subject to this reservation, the article is constitutional.
(2001-456 DC, 27 December 2001, paras 46 and 47, p. 180)

Examples of *interprétations neutralisantes directives*

The decision-making power conferred by the first paragraph of the new section L 752-14 of the Rural Code on the Minister of Agriculture may not be exercised arbitrarily or in manner

contrary to the principle of equality before the law. It will be for the authority empowered to make regulations, subject to judicial review, to determine objective conditions for issuing this authorisation, strictly justified in terms of the scheme's operating constraints. Subject to this reservation, the objection must be rejected.
(2001-451 DC, 27 November 2001, para 25, p. 145)

The provisions of the Act referred, and in particular the new section L 752-12 of the Rural Code, which defines the functions of the agricultural mutual provident societies in the management of the basic scheme, do not in themselves violate the principle of equality in any way. The possibility that the Act may be circumvented in the course of its application does not make it unconstitutional. In any event it will be for the relevant administrative authorities and courts to enforce the principle of equality and free competition on the market for supplementary insurance.
(2001-451 DC, 27 November 2001, paras 33 and 34, p. 145)

Section 27(I)(2°) of the Act referred merely allows the public to be given information, in cases and conditions determined by the Securities Exchange Commission, by material written in a language commonly used in financial matters other than French. It is not in itself contrary to the principle of equality before the law. But it will be for the Securities Exchange Commission, both in the exercise of its regulatory function and in its supervisory function, to enforce the principle and, in particular, under section L. 412-1 of the Monetary and Financial Code, to ensure that the summary contains basic data regarding the "content" and "procedures of the operation" and on the "organisation, financial situation and prospects of the issuer".
(2001-452 DC, 6 December 2001, para 18, p. 156)

French language

Central government and territorial units may support associations set up to preserve regional languages, but as a result of article 2 of the Constitution the use of a language other than French may not be imposed on pupils in public education establishments, neither in the life of the establishment nor in the teaching of subjects other than the relevant language.

Section 134 of the Finance Act for 2002 authorises the appointment and establishment of teaching staff working in private education establishments at primary and secondary levels managed by the association "Diwan" and also provides that on the date of their incorporation non-teaching staff can also become contract staff governed by public law. The object and effect cannot be to decide on the principle of the incorporation of these establishments in the public education system. Given that these establishments practice the "full immersion" technique, which does not only teach a regional language but also uses it as the general vehicular language within the establishment, it will be for the relevant administrative authorities, subject to judicial review, to rule on requests for incorporation in compliance with article 2 of the Constitution and relevant statutory provisions. Subject to this reservation, article 134 is not unconstitutional.
(2001-456 DC, 27 December 2001, paras 48 to 52, p. 180)

Severability of provisions that do not comply with the Constitution

Provisions declared unconstitutional unseverable from other provisions of same statute

Unseverability of provisions of the same section

By deciding that no statute with financial implications for central government could be published without a financial annex specifying its impact for the current year and the next following year, the first paragraph of section 33 of the Institutional Act relating to Finance Acts is contrary to the principle, laid down in particular by article 10 of the Constitution, that promulgation of a statute by the President of the Republic constitutes an order to all relevant authorities and departments to publish it forthwith. The provisions of the same paragraph relating to Decrees are unseverable.
(2001-448 DC, 25 July 2001, paras 63 to 65, p. 99)

EFFECTS OF DECISIONS OF CONSTITUTIONAL COUNCIL

Invoking the authority of res judicata

Litigation in relation to legislation

Section 24 of the Finance Act for 2002 extends to legal persons, within the limit of three vehicles of less than 3.5 tonnes, the exemption given by section 6 of the Finance Act for 2001. The scheme, which was for the benefit only of small traders operating under their personal name, was held to be in accordance with the principle of equality by the Constitutional Council's decision of 28 December 2000. The difference in treatment being reduced in the new scheme, the plea that the principle of equality is violated must be rejected.
(2001-456 DC, 27 December 2001, paras 18 to 20, p. 180)

RULES APPLYING TO MEMBERS OF THE COUNCIL

Secrecy of deliberations and voting

The decision of the Constitutional Council of 27 June 2001 concerning its archives amplifies the Constitutional Council's Standing Orders. It sets at 60 years the period after which documents relating to the Constitutional Council's activities may be available for free consultation. But the Council may authorise consultation earlier than that on such terms as it shall determine. Deposits in the national archives are organised in accordance with the ordinary law applicable to public archives.

The relevant decision was taken pursuant to section 56 of Ordinance 58-1067 of 7 November 1958 enacting the Institutional Act on the Constitutional Council. Implied conclusion: the legal rules governing the archives concern the operation of the Constitutional Council and are accordingly, under article 63 of the Constitution, a matter for institutional rather than ordinary statute.
(Decision on rules of procedure concerning the archives of the Constitutional Council, 27 June 2001, p. 205)

OPERATION

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RIGHTS AND LIBERTIES

CIVIC RIGHTS

Equal voting rights

Campaign funding for the election of members of the National Assembly

Disqualification resulting from failure to deposit campaign account

A candidate who, contrary to section L 52-12 of the Electoral Code, has not deposited his campaign accounts within the prescribed period of two months after the final ballot at the election, is ineligible by virtue of section LO of the Electoral Code.
(2001-2592, 20 September 2001, A.N., Haute-Garonne, Constituency 1, paras 1 to 3, p. 116)

Ineligibility due to direct payment of campaign expenditure in presence of a funding agent

A candidate who has decided to use an electoral funding association or agent but defrays campaign expenditure direct is ineligible. But direct payment by the candidate of minor expenditure items on practical grounds may be tolerated if the aggregate amount of expenditure concerned is only a small proportion of his aggregate campaign expenditure and is negligible in relation to the maximum allowable expenditure set by section L 52-11 of the Electoral Code. This condition is not satisfied in the event of an expenditure item consisting of the costs of graphic creation representing more than half the aggregate campaign expenditure and nearly 3 % of the maximum amount, set for the relevant election at 391 631 francs.
(2001-2593, 20 September 2001, A.N., Haute-Garonne, Constituency 1, para 2, p. 118)

RIGHT TO REDRESS

Administrative procedure

Except as regards decisions imposing a penalty of a punitive nature, constitutional rules and values do not of themselves impose a requirement that enforceable decisions emanating from an administrative authority or social security body must state the reasons on which they are based or be preceded by an adversarial procedure. But it is legitimate for the legislature to impose such an obligation in certain circumstances.

In the present case, provisions whereby an authorisation must be withdrawn if conditions to which it is subject are not complied with do not have the effect of imposing a penalty. Likewise, automatic affiliations ordered by an administrative authority on the basis of the Act are not penalties; nor are the Ministerial Order establishing a list of the various categories of risk or decisions by agricultural mutual provident societies classify farms or agricultural business on the basis of that list. Certain of these decisions will be subject to a legal obligation to state reasons or follow an adversarial procedure under the Acts of 11 July 1979 and 12 April 2000. The objection that natural rights are violated must accordingly be rejected.
(2001-451 DC, 27 November 2001, paras 40 and 41, p. 145)

RIGHT TO LIFE AND PERSONAL SAFETY; HEALTH PROTECTION

Termination of pregnancy

By raising from ten to twelve weeks the period during which a pregnancy may be voluntarily terminated where the pregnant woman is, because of her condition, in a situation of distress,

the Act has not, in the current state of knowledge and techniques, destroyed the balance that the Constitution requires between safeguarding human dignity against any form of deterioration and the freedom of women under article 2 of the Declaration of Human and Civic Rights; it follows from the second paragraph of section 16-4 of the Civil Code that the word eugenics can only be used to describe "any practice... tending to the organisation of human selection"; such is not the case here.
(2001-446 DC, 27 June 2001, para. 5, p. 74)

HUMAN DIGNITY

Application

By raising from ten to twelve weeks the period during which a pregnancy may be voluntarily terminated where the pregnant woman is, because of her condition, in a situation of distress, the Act has not, in the current state of knowledge and techniques, destroyed the balance that the Constitution requires between safeguarding human dignity against any form of deterioration and the freedom of women under article 2 of the Declaration of Human and Civic Rights; it follows from the second paragraph of section 16-4 of the Civil Code that the word eugenics can only be used to describe "any practice... tending to the organisation of human selection"; such is not the case here.
(2001-446 DC, 27 June 2001, para. 5, p. 74)

FREEDOM OF CONSCIENCE AND OPINION

Freedom of conscience

Article 10 of the Declaration of Human and Civic Rights of 1789 provides: "No one may be disturbed on account of his opinions, even religious ones, as long as the manifestation of such opinions does not interfere with the established Law and Order"; the fifth paragraph of the Preamble to the 1946 Constitution states that "No person may suffer prejudice in his work or employment by virtue of his origins, opinions or beliefs"; freedom of conscience is one of the fundamental principles recognised by the laws of the Republic.

Under the first paragraph of section L2212-8 of the Code of Public Health, "a doctor may never be obliged to practise a termination of pregnancy"; by the second paragraph, "no midwife, nurse or medical auxiliary of whatever status may be required to contribute to a termination of pregnancy"; no penalty may be imposed in the event of a refusal; the freedom of those likely to be involved in such interventions is thus respected.

Even though the head of a department in a public health establishment cannot, pursuant to the disputed provision, oppose pregnancies being terminated in his department, he retains the right under the relevant provisions the Code of Public Health to refrain from terminating them himself; this safeguards his freedom of personal conscience, which cannot be exerted at the expense of that of other doctors and medical staff working in his service; these provisions contribute in addition to respect for the constitutional principle of the equality of users before the law and before the public service.
(2001-446 DC, 27 June 2001, paras 13 to 15, p. 74)

FREEDOM OF EXPRESSION AND INFORMATION

Freedom of the press

Principles

The conditions in which audiovisual broadcasters and the press operate are different. Decision 84-181 DC of 10 October 1984 (Rec. p. 78, para. 41), holding that legislative provisions

"requiring persons owning or controlling daily newspapers to comply at all times with ceilings excesses over which may depend on the success of those newspapers with the public or the misfortunes of competing dailies" are "obviously unconstitutional", cannot be validly relied on against provisions relating to the rule limiting to 49 % the share that can be held by one and the same person in the capital of a company holding a licence to operate a terrestrial television service with a share of the national audience of more than 2.5 %.
(2001-450 DC, 11 July 2001, para. 21, p. 82)

Broadcasting

Objective of pluralism

Objective not violated

Under section 17(I) of the Act referred, which amplifies section 39(I) of the Act of 30 September 1986, the maximum 49 % that one and the same person may hold in the capital or voting rights of a terrestrial television service where that person owns a company holding licence to operate a television service does not apply where the share of the national audience is no more than 2.5 %. Given that the purpose of the new provisions is to introduce digital terrestrial broadcasting by private-sector television companies, this reconciliation by the legislature of the freedom of communication and the other technical requirements and constraints applicable to audiovisual broadcasting is not manifestly unbalanced.
(2001-450 DC, 11 July 2001, paras 13 to 21, p. 82)

FREEDOM OF ASSOCIATION

Status for tax purposes

The purpose of section 6 of the Finance Act for 2002 is to relax the conditions to be met by bodies operating in the general interest, such as associations, in order to be considered as acting not for profit for the purposes of the tax law and therefore exempt from value added tax. In certain circumstances it enables bodies operating in the general interest to remunerate their senior staff without jeopardising the disinterested nature of their management for the purposes of section 261 of the General Tax Code. It does not affect exercise of the freedom of association.
(2001-456 DC, 27 December 2001, paras 15 and 16, p. 180)

FREEDOM OF ENTERPRISE AND FREEDOM OF TRADE AND INDUSTRY

Freedom of enterprise

Scope

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 related to constitutional requirements or justified in the general interest, provided they are not manifestly disproportionate to the objective pursued.
(2000-439 DC, 16 January 2001, para. 14, p. 42)

It is legitimate for the legislature to determine rules and conditions for the participation of private individuals in the performance of the public social security service it has set up. It was legitimate for such participation to be subject to administrative authorisation.
(2001-451 DC, 27 November 2001, para 23, p. 145)

Applications

National public establishment responsible for preventive archaeology diagnostics and digs

Preventive archaeology, which is a public service mission, is an integral part of archaeology. Its purpose is to ensure the preservation of elements of the archaeological heritage threatened by construction and civil engineering works and to interpret and disseminate the results. Section 2 of the Act referred provides that central government must prescribe measures for the detection, conservation and safeguarding of the archaeological heritage and ensure that checks and evaluations are carried out on preventive archaeological operations. The fees introduced by section 9 are to ensure the national offsetting of expenditure on diagnostic operations, digs and the scientific exploitation of the results.

It was consequently legitimate for the legislature, given the general interest objective pursued and the means chosen to do so, to confer on the public national establishment set up by section 4 the exclusive right to carry out diagnostic operations and preventive archaeology digs.

Section 4 of the Act referred provides that "in performing its mission, the public establishment shall involve the archaeological services of territorial units and other public-sector bodies". It may also use the services, under contract, of other bodies corporate with archaeological research facilities.

The plea that the provision criticised impose unconstitutional restrictions on the freedom of enterprise must accordingly be dismissed.
(2000-439 DC, 16 January 2001, paras 15 to 18, p. 42)

Establishment of a new branch of social security

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 limits related to constitutional requirements or justified by the general interest, provided there are no limits that are out of proportion to the objective pursued.

The tenth paragraph of the Preamble to the 1946 Constitution reads: "The Nation shall provide the individual and the family with the conditions necessary to their development"; the eleventh paragraph reads: "It shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence from society". It is both for the legislature and for the authority empowered to make regulations, within their respective fields, to determine practical rules for the implementation of these provisions, in compliance with their underlying principles.

It is always legitimate for the legislature, acting in the areas reserved for it by article 34 of the Constitution, and in particular, as is the case here, in regard to the fundamental principles of social security, to adopt new provisions to attain or reconcile constitutional objectives within its discretion, provided that in the exercise of this power it may not deprive constitutional requirements of their proper statutory protection.

The purpose of the provisions of the Act referred is to improve the social protection of self-employed farmers, in particular by establishing daily allowances and a survivor's pension and by means of better compensation for permanent invalidity. It was accordingly legitimate for the legislature to satisfy the requirements of those provisions of the 1946 Preamble by establishing a new branch of social security, and it has committed no manifest error in the exercise of its discretion such as to constitute an unconstitutional restriction on the freedom of enterprise.
(2001-451 DC, 27 November 2001, paras 18 to 21, p. 145)

Freedom of contract

It is legitimate for the legislature to modify contracts in the course of performance on grounds of the general interest, but it cannot modify the general scheme of a contract lawfully

concluded to such an extent as to manifestly violate the freedom proclaimed by article 4 of the Declaration of Human and Civic Rights.

The cancellation of insurance contracts in the course of performance is inherent in the changes made to the social protection scheme by the Act referred and enables farms to freely choose their insurer. The date of 1 April 2002 scheduled for this cancellation is not such as to seriously violate the requirements of article 4 of the 1789 Declaration. The objection must be rejected.
(2001-451 DC, 27 November 2001, paras 26 to 28, p. 145)

PROPERTY RIGHTS

Property rights not violated

National public establishment responsible for preventive archaeology diagnostics and digs

The applicants submit that "the Act de facto expropriates private enterprises and persons or bodies corporate exercising any activities related to preventive archaeology" and thereby violates property rights.

The rights conferred on the public establishment by the Act referred provide for no form of deprivation of property within the meaning of article 17 of the Declaration of Human and Civic Rights of 1789. The plea is unfounded.
(2000-439 DC, 16 January 2001, paras 19 and 20, p. 42)

PRINCIPLE OF EQUALITY

EQUALITY BEFORE THE LAW

Principle

Under the new sections L.232-1 and L.232-2 of the Code of Social and Family Action, the personalised autonomy allowance is a universal benefit intended to cover the needs of elderly persons who are dependent in conditions matching their needs. It is granted "within the limits of rates set by regulation". It is a compulsory expenditure item for departments. By way of consideration for it, they receive financial allocations from a Fund financed by a fraction of the "generalised social contribution" and by a contribution from the compulsory retirement pension schemes.

If the Act gives the departments the power to grant the personalised autonomy allowance, a welfare benefit reflecting a constraint of national solidarity, it is legitimate for the legislature to determine the conditions for the grant of the allowance in such a way as to secure equal treatment for dependent elderly persons throughout the national territory. The legislature was entitled to set these conditions provided it did not encroach on the specific powers of the departments or deprive any departmental body of its actual powers.
(2001-447 DC, 18 July 2001, paras 5 and 6, p. 89)

Respect for principle of equality: non-discrimination

Social law

Social security

The provisions of the Act referred, and in particular the new section L 752-12 of the Rural Code, which defines the functions of the agricultural mutual provident societies in the

management of the basic scheme, do not in themselves violate the principle of equality in any way. The possibility that the Act may be circumvented in the course of its application does not make it unconstitutional. In any event it will be for the relevant administrative authorities and courts to enforce the principle of equality and free competition on the market for supplementary insurance.
(2001-451 DC, 27 November 2001, paras 33 and 34, p. 145)

Recovery of welfare benefits from a succession

The purpose of the new section L232-19 of the Code of Social and Family Action is to exclude the recovery of sums paid out by way of personalised autonomy allowance "from the estate of the recipient or his legatees or donees".

The authors of the reference submit that this provision creates a manifest violation of equality between recipients of the personalised autonomy allowance and recipients of the specific dependence allowance, who remain subject to section L132-8 of the Code of Social and Family Action, which provides for recovery of welfare benefits from the estate of the recipient or his legatees or donees.

Under the Act referred the purpose of the personalised autonomy allowance is to take the place of the specific dependence allowance. The rights of the current recipients of the allowance are preserved by the Act referred, as provided by section 19(III), but that section also provides that "persons who, prior to the entry into force of this Act, received the specific dependence allowance may apply to receive the personalised autonomy allowance...", and that "no later than 1 January 2004... the rights under this Act of recipients of the specific dependence allowance who do not apply for the personalised autonomy allowance shall be reviewed". Since the new legislation pursues the same objective as the legislation which it replaces and recipients of the specific dependence allowance have the possibility of opting for the personalised autonomy allowance, it cannot validly be argued that the legislature has violated the constitutional principle of equality before the law.
(2001-447 DC, 18 July 2001, paras 9 to 11, p. 89)

Financial institutions

Unit trusts

Given that it lays down a number of rules to ensure the impartiality of the management bodies of the *Fonds de réserve pour les retraites*, and although it entrusts administrative management of the Fund to the *Caisse des dépôts et consignations*, which controls an investment firm, the new section L135-10 of the Code of Social Security does not in itself violate equality between investment firms likely to respond to invitations to tender for the Fund's financial management. But it will be both for the supervisory authorities, at the initiative of anybody who can show an interest and for the competent courts to enforce the principle of equality between tenderers, which entails respect for free competition.
(2001-450 DC, 11 July 2001, paras 9 and 10, p. 82)

Taxation

No discrimination between taxpayers in the collection of and litigation concerning income taxes

The purpose of section 6 of the Finance Act for 2002 is to relax the conditions to be met by bodies operating in the general interest, such as associations, in order to be considered as acting not for profit for the purposes of the tax law and therefore exempt from value added tax. In certain circumstances it enables bodies operating in the general interest to remunerate their senior staff without jeopardising the disinterested nature of their management for the purposes of section 261 of the General Tax Code. It does not affect exercise of the freedom of association.
(2001-456 DC, 27 December 2001, paras 15 and 16, p. 180)

Section 24 of the Finance Act for 2002 extends to legal persons, within the limit of three vehicles of less than 3.5 tonnes, the exemption given by section 6 of the Finance Act for 2001. The scheme, which was for the benefit only of small traders operating under their personal name, was held to be in accordance with the principle of equality by the Constitutional Council's decision of 28 December 2000. The difference in treatment being reduced in the new scheme, the plea that the principle of equality is violated must be rejected.
(2001-456 DC, 27 December 2001, paras 18 to 20, p. 180)

Miscellaneous applications

Public invitations to invest

The authors of the referral submit that section 27(I)(2°) of the Act referred violates the principle of equality by making "a distinction on the basis of a potential investor's ability to understand a foreign language".

The section merely allows the public to be given information, in cases and conditions determined by the Securities Exchange Commission, by material written in a language commonly used in financial matters other than French. It is not in itself contrary to the principle of equality before the law. But it will be for the Securities Exchange Commission, both in the exercise of its regulatory function and in its supervisory function, to enforce the principle and, in particular, under section L. 412-1 of the Monetary and Financial Code, to ensure that the summary contains basic data regarding the "content" and "procedures of the operation" and on the "organisation, financial situation and prospects of the issuer".
(2001-452 DC, 6 December 2001, paras 15 and 18, p. 156)

Equality of pupils and the public education service

The new section L621-3 of the Code of Education empowers the Board of Governors of the *Institut d'études politiques* at Paris to "adopt admission procedures involving specific rules to ensure diversified recruitment from among pupils in advanced secondary education". It follows from the thirteenth paragraph of the Preamble to the 1946 Constitution, whereby "The Nation guarantees equal access for children and adults to instruction..." that the Board of Governors must organise recruitment on the basis of criteria such as to guarantee respect for equal access to education. Subject to this reservation, the new section L621-3 of the Code of Education is constitutional.
(2001-450 DC, 11 July 2001, paras 31 to 33, p. 82)

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

Welfare law

Specific categories of rights holders

The new section L621-3 of the Code of Education empowers the Board of Governors of the *Institut d'études politiques* at Paris to "adopt admission procedures involving specific rules to ensure diversified recruitment from among pupils in advanced secondary education". It follows from the thirteenth paragraph of the Preamble to the 1946 Constitution, whereby "The Nation guarantees equal access for children and adults to instruction..." that the Board of Governors must organise recruitment on the basis of criteria such as to guarantee respect for equal access to education. Subject to this reservation, the new section L621-3 of the Code of Education is constitutional.
(2001-450 DC, 11 July 2001, paras 6 to 8, p. 82)

Town planning

Prefect's powers to sanction communes that have not attained the three-year objectives as to the expansion of social housing

Section 24 of the MURCEF Act relates to the powers of sanction and substitution conferred on the Prefect in relation to communes that have not attained the three-yearly objectives as to the expansion of social housing provided for by section 55 of the Urban Solidarity and Renewal Act of 13 December 2000. The Prefect may declare that a commune is in default by a reasoned Order determining for a period not exceeding three years the surcharge on the commune's tax resources provided for by section L 302-7 of the Construction and Housing Code. The increase is subject to two limits: its rate may not exceed the ratio between the number of social housing units not constructed and the three-year housing objective established in accordance with section L 302-8 of the Code and the levy, even after the increase, remains limited to 5 % of the commune's real operating costs. Moreover the Prefect may substitute himself for the commune by entering into an agreement with a body for the construction or acquisition of social housing units. In this event, the corresponding expenditure is charged to the commune, subject to a maximum amount per housing unit of €13 000 in the Ile-de-France and €5 000 elsewhere in France.

The section that is criticised confers on the Prefect a discretionary power to act in consequence of the commune's default on the basis of three criteria: the "scale of the gap between objectives and attainments in the course of the past three-year period", the "difficulties encountered, if any, by the commune" and the "social housing projects in progress". The provisions challenged also provide for an adversarial procedure. The mayor, after being informed by the Prefect of his reasoned intention to launch the procedure for recording his failure to act, may make his views known within two months; the mayor may then bring an action challenging against the Prefect's order. By providing for this procedure, the legislature has enabled the Prefect, subject to judicial review, to have regard to the nature and value of the reasons for the commune's delay in attaining its three-year objective. The provisions criticised have neither the object nor the effect of conferring an arbitrary power on the Prefect. The conditions laid down for the Prefect's exercise of his powers of sanction and substitution are defined with due precision as to their object and scope and are not contrary to the principle of equality.
(2001-452 DC, 6 December 2001, paras 8 and 10, p. 156)

Taxation

Aid for training in small businesses

The authors of the referral submit that a provision whose object is to give tax relief on vocational training expenditure incurred in the years from 2002 to 2004 by firms meeting certain conditions is "contrary to the principles of competition policy". The measure is not applicable to firms with a turnover of 50 million francs or more.

The definition of the scope of this provision in based on objective and rational criteria related to the policy on aid for training in small businesses. It generates no unjustified difference of treatment between firms. The article does not violate the principle of equality.
(2001-457 DC, 27 December 2001, paras 2 and 3, p. 192)

Considerations of general interest warranting a difference in treatment

Applications

Taxation

The purpose of section 6 of the Finance Act for 2002 is to relax the conditions to be met by bodies operating in the general interest, such as associations, in order to be considered as acting not for profit for the purposes of the tax law and therefore exempt from value added

tax. In certain circumstances it enables bodies operating in the general interest to remunerate their senior staff without jeopardising the disinterested nature of their management for the purposes of section 261 of the general Tax Code. It does not affect the exercise of the freedom of association.
(2001-456 DC, 27 December 2001, paras 15 and 16, p. 180)

Section 90 of the Finance Act for 2002 amends section 1384 A of the General Tax Code, relating to the exemption from property taxes on built-up premises for the owners of certain forms of social housing let to tenants and used as their principal residence where the construction is financed as to at least 50 % by means of a loan given by central government. The purpose of the new provision is to raise the period of exemption from fifteen to twenty years for buildings commenced on or after 1 January 2002 which satisfy at least four of the five environmental quality standards it determines.

The Senators making the referral submit that section 90 violates equality between taxpayers to the detriment of owners of non-social housing the construction of which meets the same environmental standards.

The principle of equality does not preclude the legislature from treating different situations differently or from departing from equality on grounds of the general interest, provided always that the resultant difference of treatment must be directly related to the purpose of the statute providing for it. In particular it may on such grounds enact tax incentive measures. In the present case better integration of social housing in the environment, given the financial constraints at the construction stage, is a general-interest ground justifying the exemption from land tax given by the Act referred. The plea that the principle of equality is violated must accordingly be rejected.
(2001-456 DC, 27 December 2001, paras 38 to 40, p. 180)

Miscellaneous

Section 33(I) of the Finance Act for 2002 allocates to the pensions reserve fund all revenue from special allocation account No 902-33, being the proceeds of the fees for use of frequencies allotted by licences to establish and operate third-generation mobile telephony networks. Section 33(II) amends the method for calculating these fees by providing: "By way of derogation from section L 31 of the Public Assets Code, the fee payable by each holder of a licence to establish and operate a third-generation mobile telephony network... for the use of the frequencies allotted shall be paid as follows: — a fixed portion payable on 30 September of the year in which the licence is issued or at the issue date if it falls after 30 September; — a variable portion payable annually in the form of a percentage of turnover derived from the use of the said frequencies. The rate of the variable portion and the rules for calculating it, in particular the definition of the relevant turnover, shall be determined in the specifications annexed to the licence...". The final paragraph of section 33(II) raises the duration of the licence from fifteen to twenty years.

The principle of equality does not preclude the legislature from treating different situations differently or from departing from equality on grounds of the general interest, provided always that the resultant difference of treatment must be directly related to the purpose of the statute providing for it.

The purpose of section 33, following the partly unsuccessful outcome of the licence issue procedure in 2001, is to revise the method of calculating the fee in terms more favourable to the operator and thus encourage the issue of new licences. The new method of calculation and the new duration laid down for licences will be valid both for new and for existing licensees. The competitive advantage enjoyed according to the authors of the referral by new licensees over existing licensees will be of limited duration only and is merely the consequence of a reform meeting the wishes of the legislature to open the sector up to competition and to swell the pensions reserve fund. This advantage is thus justified by general-interest considerations related to the purpose of the provisions contested. The plea that the principle of equality is violated must accordingly be rejected.
(2001-456 DC, 27 December 2001, paras 25, 26, 29 and 30, p. 180)

Section 62 of the Finance Act for 2002 extends the objects of the Fund for the modernisation of the daily and similar press providing political and general information to the distribution of

the national daily press providing political and general information. The Deputies making the referral argue that this measure, which provides no benefits for the daily press in other categories, and in particular the sporting dailies, violates pluralism in the press.

It was legitimate for the legislature to establish a form of State aid to compensate for the specific excess costs of distributing the national daily press providing political and general information. The measure is inspired by the concern to preserve pluralism in the daily press providing political and general information, the maintenance and development of which are necessary for the effective exercise of the liberty proclaimed by article 11 of the Declaration of Human and Civic Rights of 1789.
(2001-456 DC, 27 December 2001, paras 36 and 37, p. 180)

Violation of the principle of equality

Public service delegations and public procurement

It is legitimate for the legislature to seek to reconcile effectiveness in the placing of orders by public bodies and equal treatment of applicant suppliers with other objectives in the general interest inspired by, among other things, social concerns, by providing for a preference for certain categories of applicants where prices are the same or bids are otherwise equivalent. It is also legitimate for it to pursue the same objective by reserving a portion of certain contracts for clearly-defined categories of body, but this may apply only to a small proportion of the relevant contracts for specific supplies or services and only as far as is strictly necessary to satisfy the general-interest objectives pursued.

Section 12 of the MURCEF Act provides that "one quarter of the lots" concerned by "contracts to which the Public Procurement Code applies" which "are allotted" and "relate wholly or partly" to "services that can be performed" by associations or cooperatives whose purpose is to "promote the spirit of independent and collective enterprise" are to be opened to bidding by such associations and cooperatives. Given both their scope and their lack of precision, these provisions violate the principle of equality before the law on a scale that is out of proportion to the general-interest objective of developing the "social economy". The section is accordingly unconstitutional.
(2001-452 DC, 6 December 2001, paras 6 and 7, p. 156)

EQUALITY BEFORE THE PUBLIC SERVICE

Equality before the public health service

Section 8 of the Act referred removes the possibility previously enjoyed by the head of a department in a public health establishment to oppose pregnancies being terminated in his department. This provision contributes to respect for the constitutional principle of the equality of users before the law and before the public service.
(2001-446 DC, 27 June 2001, para. 15, p. 74)

EQUALITY OF PUBLIC BURDEN-SHARING

Equality before the tax law

Tax schemes

Scale of rates

It is for the legislature, when introducing a tax, to freely determine the basis of assessment to it and its rate, subject to respect for constitutional principles and rules and having regard to the

features of the new tax. In particular, to ensure respect for the principle of equality, it must base its decisions on objective and rational criteria reflecting its avowed purposes.

Section 20 of the Social Security (Finance) Act for 2002 amends the rates of the three upper brackets of the contribution payable by pharmaceutical laboratories, raising them from 15 %, 18 % and 21 % to 17 %, 25 % and 31 %. The choice of these rates meets the requirement for objectivity and rationality in relation to the legislature's dual avowed purposes. It implies no threshold effect. There is no manifest error of assessment. Given the fact, among others, that section L 245-4 of the Social Security Code exempts from this contribution firms whose turnover is below a hundred million francs, section 20 does not seriously violate equality of public burden-sharing.
(2001-453 DC, 18 December 2001, paras 45 to 48, p. 164)

Equality of public burden-sharing outside the tax law

Compensation

Compensation in the event of abolition of an occupation

Section 1(I) of the Act referred repeals section L131-2 of the Commercial Code, whereby shipping brokers, interpreters and ships'conductors "shall have the sole right, in the event of litigation in the courts, to translate declarations, charter parties, bills of lading, contracts and all business documents that require to be translated", and are the only authorised intermediaries in commercial and customs litigation between aliens, ships'masters, merchants, crews of vessels and other seafarers". By section 1(II), these operations may now be carried out "freely by the ship owner or his representative, who may be the captain".

Under the first paragraph of section 2 of the Act, "the holders of office of broker-interpreters and ships'conductors shall be compensated for the loss of the right conferred on them by section 91 of the Finance Act of 28 April to present a successor for the approval of the Minister responsible for the Merchant Navy". The conditions in which applications for compensation are to be considered by a national commission are provided for by section 3. The rules for calculating the compensation, "paid... in the form of a single payment within six months of the application", are determined by section 4.

The abolition of the professional privilege previously enjoyed by brokers, interpreters and ships'conductors does not constitute deprivation of property rights within the meaning of article 17 of the Declaration of Human and Civic Rights of 1789. The plea that the article is violated, and in particular the plea that there was no prior compensation, must be dismissed as inoperative.

Article 13 of the Declaration of Human and Civic Rights of 1789 does not preclude specific charges being borne by specific categories of persons on grounds of the general interest, but the effect must not be to seriously distort equality of public charge-sharing.

The abolition of the monopoly of broker-interpreters and ships'conductors is the result of the legislature's desire to bring national law into line with the Community Regulation of 12 October 1992. The amount of the compensation to be paid to them under section 4 for the loss of the right of presentation is 65 % of the value of the offices pertaining to the activities covered by the professional privilege that is abolished. This evaluation, which reflects the net average receipt and the average operating balance from 1992 to 1996, is vitiated by no manifest error. Moreover, section 5 of the Act entitles those concerned to access to various regulated professions. And section 6 provides that for two years they will retain the privilege conferred by section L131-2 of the Code of Commerce as it stood before amendment, though they are released from the prohibition by section L131-7 of the Code on engaging in any business transaction. Consequently, the compensation rules provided for by the Act referred do not seriously distort the equality of public charge-sharing.

The provisions criticised are accordingly contrary to no constitutional principles or rules.
(2000-440 DC, 10 January 2001, paras 2, 5 to 8, p. 39)

Principe of national solidarity

The purpose of the "Biotox Plan" support fund is to respond to the threat of terrorism by equipping the nation as quickly as possible with arrangements for the storage and distribution of medicines to combat the massive propagation of infectious diseases. By establishing such a scheme, the legislature is, in the general interest, pursuing public health objectives. Participation in this fund by the National Employed Persons'Health-care Insurance Fund, provided for by section 42, is not alien to its functions. Moreover, nearly half the resources of the Caisse come from taxes of all kinds, and the contributions paid into it are received in relation to more than 80 % of those covered by social insurance. It was accordingly legitimate for the legislature, without violating the principle of the equality of public burden-sharing by citizens or the principle of national solidarity, to provide on an exceptional basis for a majority contribution by the National Employed Persons'Health-care Insurance Fund to the financing of the relevant fund.
(2001-453 DC, 18 December 2001, paras 51 and 52, p. 164)

EQUALITY IN THE CIVIL SERVICE

Equal access to public employment

Entry to judiciary

Integration into a corps

Sections 10, 11 and 23 of the Institutional Act, create an obligation to reckon years of professional activity prior to appointment for the purposes of advancement for the benefit of judges recruited otherwise than by the first competition for access to the National School of the Judiciary. With regard to judges falling within the categories referred to in sections 10 and 23, the Institutional Act specifies that these years are also taken into account for grading purposes. The benefit of these provisions is extended by sections 10 and 11 to judges who were appointed in the ten years preceding the entry into force of the Institutional Act.

Section 10, which defines the measures applicable to judges recruited via the second and third competition for access to the National School of the Judiciary and those appointed direct as auditor of justice pursuant to section 18-1 of the Ordinance of 22 December 1958, and section 23, relating to judges recruited by competition at the second and first grades of the judicial hierarchy, leave it for a decree in Council of State to determine the conditions for application of these measures.

Under section 11, years of prior professional activity by judges appointed direct to the second grade of the judicial hierarchy pursuant to section 22 of the ordinance of 22 December 1958 are taken into account for advancement purposes within the two-year limit.

It will be for the authority empowered to make regulations, subject to judicial review, to lay down rules for reckoning prior professional experience of judges appointed under sections 10 and 23 so as not violate the principle of equal treatment in relation to judges appointed under section 11, for whom the Institutional Act lays down these rules itself. Subject to this proviso, the provisions in question are not unconstitutional.
(2001-445 DC, 19 June 2001, paras 12 to 15, p. 63)

Conditions of recruitment as civil servants

Equality of the sexes

Provisions that modify the polling techniques for the election to the Higher Council of the Judiciary of representatives of judges not exercising the function of President of a court

introduce proportional representation at the two stages of the election and lays down rules to secure equal rights for candidates of both sexes.

The fifth paragraph of article 3 of the Constitution, as amended by Constitutional Act 99-569 of 8 July 1999, provides that "Statutes shall promote equal access by women and men to elective offices and positions", but it is clear both from the legislative history and from its position in that article that this provision applies only to elections to political mandates and offices.

The rules enacted to govern the drawing up of lists of candidates for election to high offices, public positions and employments other than those of a political nature may not, with respect to the principle of equal access stated by Article 6 of the Declaration of 1789, involve any distinction between candidates on the basis of their sex. Consequently, the provisions of section 33 of the Institutional Act which introduce a distinction according to sex in the composition of the lists of candidates for election to the Higher Council of the Judiciary, are unconstitutional.
(2001-445 DC, 19 June 2001, paras 56 to 58, p. 63)

Equal treatment of civil servants during their career

Principle

Integration in a corps

Sections 10, 11 and 23 of the Institutional Act, create an obligation to reckon years of professional activity prior to appointment for the purposes of advancement for the benefit of judges recruited otherwise than by the first competition for access to the National School of the Judiciary. With regard to judges falling within the categories referred to in sections 10 and 23, the Institutional Act specifies that these years are also taken into account for grading purposes. The benefit of these provisions is extended by sections 10 and 11 to judges who were appointed in the ten years preceding the entry into force of the Institutional Act.

Section 10, which defines the measures applicable to judges recruited via the second and third competition for access to the National School of the Judiciary and those appointed direct as auditor of justice pursuant to section 18-1 of the Ordinance of 22 December 1958, and section 23, relating to judges recruited by competition at the second and first grades of the judicial hierarchy, leave it for a decree in Council of State to determine the conditions for application of these measures.

Under section 11, years of prior professional activity by judges appointed direct to the second grade of the judicial hierarchy pursuant to section 22 of the Ordinance of 22 December 1958 are taken into account for advancement purposes within the two-year limit.

It will be for the authority empowered to make regulations, subject to judicial review, to lay down rules for reckoning prior professional experience of judges appointed under sections 10 and 23 so as not violate the principle of equal treatment in relation to judges appointed under section 11, for whom the Institutional Act lays down these rules itself. Subject to this provision, the provisions in question are not unconstitutional.
(2001-445 DC, 19 June 2001, paras 12 to 15, p. 63)

EQUALITY OF VOTING RIGHTS

Political elections

Election of members of an overseas territorial assembly

Representativeness

Section 1 of the Institutional Act referred to the Constitutional Council raises the number of members of the Assembly of French Polynesia from forty-one to forty-nine and distributes the

additional seats over the five existing constituencies. The number of elected members will be 32 instead of 22 in the Windward Islands; 7 instead of 8 in the Leeward Islands and 4 instead of 5 in the Tuamotu and Gambier Islands. It will remain at 3 in the Marquise Islands and the Southern Islands.

Given the results of the last census of the population in the various archipelagos constituting French Polynesia, section 1 reduces the demographic gaps in representation in relation to the earlier provisions. The legislature has improved the compliance with the principle that an assembly elected by direct universal suffrage must be elected on proper demographic bases, a principle that flows from article 6 of the Declaration of Human and Civic Rights of 1789 and articles 1 and 3 of the Constitution. It has derogated therefrom only in very small measure, to take account of the general interest constraint of ensuring the effective representation of the least populated and most remote archipelagos.
(2000-438 DC, 10 January 2001, paras 3 and 4, p. 37)

Miscellaneous elections

Designation of representatives

Election to *Conseil supérieur de la magistrature*

Provisions that modify the polling techniques for the election to the Higher Council of the Judiciary of representatives of judges not exercising the function of President of a court introduce proportional representation at the two stages of the election and lay down rules to secure equal rights for candidates of both sexes.

The fifth paragraph of article 3 of the Constitution, as amended by Constitutional Act 99-569 of 8 July 1999, provides that "Statutes shall promote equal access by women and men to elective offices and positions", but it is clear both from the legislative history and from its position in that article that this provision applies only to elections to political mandates and offices.

The rules enacted to govern the drawing up of lists of candidates for election to high offices, public positions and employments other than those of a political nature may not, with respect to the principle of equal access stated by Article 6 of the Declaration of 1789, involve any distinction between candidates on the basis of their sex. Consequently, the provisions of section 33 of the Institutional Act which introduce a distinction according to sex in the composition of the lists of candidates for election to the Higher Council of the Judiciary, are unconstitutional.
(2001-445 DC, 19 June 2001, paras 56 to 58, p. 63)

ELECTIONS

ELECTORATE, ELIGIBILITY, PRE-ELECTORAL PROCESS

Eligibility

Functions

Functions not rendering ineligible

Member of a Minister's cabinet.
(2001-2594/2595/2596, 8 November 2001, Senate, Moselle, Mr Bernard FOUCAULT, para 8, p. 126)

Members of the government

There is no legislative provision providing that Members of the Government are ineligible for election to Parliament.
(2001-2594/2595/2596, 8 November 2001, Senate, Moselle, Mr Bernard FOUCAULT, para 8, p. 126)

CAMPAIGN ADVERTISING

Campaign material

Ballot papers

Ballot papers accepted by Campaign Advertising Commission

The third and fourth paragraphs of section R38 of the Electoral Code provide: "The agent for the candidate or list must give the Chairman of the Committee, before a closing date set for each ballot by Order of the Prefect, the printed copies of the circular and at least twice as many ballot papers as there are registered voters. The Committee shall not be obliged to transmit printed matter given to it after that date." It is common ground that Mr DANCALE's ballot papers were given to the Campaign Advertising Committee after the closing date set by Order of the Prefect issued under section R38 of the Electoral Code. The Committee accordingly acted lawfully in refusing to transmit these documents to voters.
(2001-2589, 9 May 2001, A.N., Haute-Garonne, Constituency 1, para. 1, p. 55)

Circulars

Miscellaneous irregularities

The combined effect of sections L 308 and R 155 of the Electoral Code is that each candidate or list of candidates may have a circular printed, and the distribution costs and, in certain circumstances, the printing costs may be borne by central government, but this does not preclude candidates from sending other documents to senatorial electors at their own expense.
(2001-2594/2595/2596, 8 November 2001, Senate, Moselle, Mr Bernard FOUCAULT, para 3, p. 126)

No irregularity

Content not exceeding the limits of electoral polemics

The applicant contests statements made in the circular of one of the candidates, sent to voters, but the content of the circular did not exceed the bounds of electoral polemics.
(2001-2589, 9 May 2001, A.N., Haute-Garonne, Constituency 1, para. 2, p. 55)

Press

Political statements by a newspaper

The press is free to report on an election campaign. The plea that the press paid inadequate attention to certain candidates'campaigns must be rejected.
(2001-2589, 9 May 2001, A.N., Haute-Garonne, Constituency 1, para. 3, p. 55)

Organs of the press are free to report on an election campaign as they wish.
(2001-2594/2595/2596, 8 November 2001, Senate, Moselle, Mr Bernard FOUCAULT, para 9, p. 126)

Opinion polls

Tests relating to the results of Senate elections disseminated on the Senate website before the date of the ballot cannot in any way be regarded as opinion polls.
(2001-2599 to 2606, 8 November 2001, Senate, Jura and others, para 8, p. 133)

Letters

Dispatch or distribution of letters on behalf of candidates

There is no legislation that prohibits candidates for election to the Senate from sending campaign letters to municipal councillors before the legal date for the beginning of the campaign.
(2001-2594/2595/2596, 8 November 2001, Senate, Moselle, Mr Bernard FOUCAULT, para 2, p. 126)

Letters from local councillors

Between the two ballots, the President of the department council sent the members of the Senate electoral college a letter informing them that he would support certain candidates. Although the fact that the letter was written on the headed notepaper of the President of the department council is open to criticism, the letter itself cannot be regarded as having constituted a form of pressure or manœuvre such as would distort the outcome of the ballot.
(2001-2598, 8 November 2001, Senate, Meuse, Mr Roger DUMEZ, para 1, p. 131)

Prohibition of gifts from legal persons (second paragraph of section L 52-8 of the Electoral Code)

The prohibition of gifts from legal persons, with the exception of political parties or associations, is applicable to Senate elections under section L 308-1 of the Electoral Code. Where a candidate or a list of candidates violates the prohibition, the election will have to be annulled if the effect of the gifts was to distort the equality between candidates in such a way as to affect the fairness of the election. In the present case there was no influence in view of the difference between the numbers of votes cast.
(2001-2594/2595/2596, 8 November 2001, Senate, Moselle, Mr Bernard FOUCAULT, para 5, p. 126)

Pressure, intervention, manœuvres

Nature of pressure, intervention, manœuvres

Intervention by public authorities

Other electoral office-holders

Between the two ballots, the President of the department council sent the members of the Senate electoral college a letter informing them that he would support certain candidates. Although the fact that the letter was written on the headed notepaper of the President of the department council is open to criticism, the letter itself cannot be regarded as having constituted a form of pressure or manœuvre such as would distort the outcome of the ballot.
(2001-2598, 8 November 2001, Senate, Meuse, Mr Roger DUMEZ, para 1, p. 131)

Intervention by public authorities — no manœuvre

Between the two ballots, the President of the department council sent the members of the Senate electoral college a letter informing them that he would support certain candidates. Although the fact that the letter was written on the headed notepaper of the President of the

department council is open to criticism, the letter itself cannot be regarded as having constituted a form of pressure or manœuvre such as would distort the outcome of the ballot.
(2001-2598, 8 November 2001, Senate, Meuse, Mr Roger DUMEZ, para 1, p. 131)

Manœuvres or intervention relating to the second ballot

Recommendations to vote for a candidate

Between the two ballots, the President of the department council sent the members of the Senate electoral college a letter informing them that he would support certain candidates. Although the fact that the letter was written on the headed notepaper of the President of the department council is open to criticism, the letter itself cannot be regarded as having constituted a form of pressure or manœuvre such as would distort the outcome of the ballot. The fact that the offending letter implicitly excluded a candidate of the department majority cannot be regarded as having constituted a form of pressure or manœuvre, given the specific composition of the Senate electoral college.
(2001-2598, 8 November 2001, Senate, Meuse, Mr Roger DUMEZ, para 1, p. 131)

Miscellaneous manœuvres

The possibility of linking to tests relating to the results of Senate elections disseminated on the Senate website before the date of the ballot cannot in any way be regarded as having affected the fairness of the outcome of the ballot.
(2001-2599 to 2606, 8 November 2001, Senate, Jura and others, paras 7 and 8, p. 133)

ELECTORAL OPERATIONS

Proceedings during the ballot

Signatures on register

Signatures

Voters'signatures being placed upside down on the register do not constitute an irregularity.
(2001-2589, 9 May 2001, A.N., Haute-Garonne, Constituency 1, para. 4, p. 55)

LITIGATION

Jurisdiction of Constitutional Council

General

In the exercise of the function of reviewing the election of Deputies and Senators conferred on it by article 59 of the Constitution, the Constitutional Council can in exceptional cases rule on referrals raising questions regarding future elections if declaring such referrals inadmissible might seriously jeopardise the effectiveness of its electoral review function, vitiate electoral operations in general or disrupt the proper functioning of public authorities. These conditions are met in the case of the referral of a decree convening Senate electoral colleges.
(HAUCHEMAILLE-MARINI, referral challenging the decree calling Senate elections, 20 September 2001, para 2, p. 121)

Review of instruments organising elections

Mr HAUCHEMAILLE asks the Constitutional Council to annul part of Decree 2001-213 of 8 March 2001 implementing Act 62-1292 of 6 November 1962 relating to the election of the President of the Republic by universal suffrage. The Decree was presented for the prior consultation required by the first paragraph of section 3(III) of the Act of 6 November 1962, which refers to section 46 of the Ordinance of 7 November 1958. A voter accordingly has no standing to ask the Constitutional Council to give a judicial decision on the regularity of these instruments except as provided by section 50 of the Ordinance enacting the Institutional Act of 7 November 1958, to which the Act of 6 November 1962 also refers.

But, in the exercise of its general function of reviewing electoral operations under the Act of 6 November 1962, it is for the Constitutional Council to rule on applications contesting instruments on which the regularity of future operations is predicated where declaring such applications inadmissible would seriously jeopardise the effectiveness of its review of electoral operations, vitiate the ballot in general or disrupt the normal operation of the public authorities.

The conditions in which, exceptionally, the Constitutional Council can give a ruling in advance of the declaration of the results of a ballot are not met in the case of the Decree contested here, which does not apply to a specific election but lays down permanent general rules applicable to the election of the President of the Republic by universal suffrage.
(HAUCHEMAILLE (second case), 14 March 2001, paras 1 to 4, p. 53)

In the exercise of its general function of reviewing the regularity of the election of Deputies and Senators under article 59 of the Constitution, the Constitutional Council may exceptionally rule on applications contesting the regularity of future elections, but only if declaring such applications inadmissible under sections 32 to 45 of the Ordinance of 7 November 1958 would seriously jeopardise the effectiveness of its review of electoral operations, vitiate the ballot in general or disrupt the normal operation of the public authorities.

In the instant case Mr HAUCHEMAILLE's submissions are not against the Decree calling general legislative elections but against the Decree calling voters to elect Deputies in three constituencies. The conditions in which, exceptionally, the Constitutional Council can give a ruling in advance of the declaration of the results of a ballot are accordingly not met.
(HAUCHEMAILLE (first case), 14 March 2001, paras 2 and 3, p. 51)

Review of certain rulings made by administrative courts

Ruling bearing on the membership of the senatorial electoral college

Referral seeking annulment of a judgment given by the Administrative Court on the designation of Senate electors (sections L 292 and R 147 of the Electoral Code). Referral inadmissible, as the Senate election itself is not challenged.
(2001-2607, 8 November 2001, Senate, commune of Espinchal, Puy-de-Dôme, Mr Michel GOIGOUX, paras 1 and 2, p. 137)

Questions not within Jurisdiction of Constitutional Council

Constitutionality of a statute

Mr HAUCHEMAILLE is a registered voter neither in Constituency 1 of the department of Haute-Garonne, nor in Constituency 8 of the department of Alpes-Maritimes, nor in Constituency 8 of the department of Val-d'Oise, and has not declared his candidacy in any of these constituencies. Under section 33 of the Ordinance of 7 November 1958, which the Constitutional Council on a reference under section 59 of the Constitution is not to review for constitutionality, Mr HAUCHEMAILLE has no standing to contest the electoral operations conducted in those constituencies. His application is accordingly inadmissible.
(2001-2590, 9 May 2001, A.N., Haute-Garonne, Constituency 1 and others, para. 2, p. 57)

It is not for the Constitutional Council, hearing a referral challenging the Decree convening Senate electoral colleges, to review the constitutionality of the distribution of Senate seats

among the departments determined by Table 6 annexed to the legislative part of the Electoral Code.
(HAUCHEMAILLE-MARINI, referral challenging the decree calling Senate elections, 20 September 2001, paras 6 and 7, p. 121)

Lodging of applications

Status of applicant

Mr HAUCHEMAILLE is a registered voter neither in Constituency 1 of the department of Haute-Garonne, nor in Constituency 8 of the department of Alpes-Maritimes, nor in Constituency 8 of the department of Val-d'Oise, and has not declared his candidacy in any of these constituencies. Under section 33 of the Ordinance of 7 November 1958, which the Constitutional Council on a reference under section 59 of the Constitution is not to review for constitutionality, Mr HAUCHEMAILLE has no standing to contest the electoral operations conducted in those constituencies. His application is accordingly inadmissible.
(2001-2590, 9 May 2001, A.N., Haute-Garonne, Constituency 1 and others, para. 2, p. 57)

A candidate at the Senate elections in the department of Nord who was not registered on the list of candidates in another department where elections were also taking place has no standing to challenge the results of Senate elections in departments other than Nord.
(2001-2599 to 2606, 8 November 2001, Senate, Jura and others, para 3, p. 133)

Submissions and arguments

Submissions (admissibility)

Requirement of a prior application to an administrative court

Regularity of Senate electors challenged. Jurisdiction of Administrative Court (sections L 292 and R 147 of the Electoral Code). Plea not admissible if presented for the first time before the Constitutional Council by a Senate elector.
(2001-2594/2595/2596, 8 November 2001, Senate, Moselle, Mr Bernard FOUCAULT, para 4, p. 126)

Unsubstantiated request for annulment

Application for partial annulment

Application for annulment of the election of only one Senator out of the five elected by proportional representation on the basis of the highest average, based on objections not related to ineligibility or incompatibility. Decision rejecting the referral without it being necessary to determine whether acting on these objections would enable the court to decide on the exact distribution of votes cast for the various lists and, therefore, whether the referral was admissible.
(2001-2594/2595/2596, 8 November 2001, Senate, Moselle, Mr Bernard FOUCAULT, p. 126 (sol. impl.); cf. 98-2564, 10 November 1998, Senate, Bouches-du-Rhône, para 2, p. 296)

Entire results of election challenged. Determination of the challenged election

Section 33 of Ordinance 58-1067 of 7 November 1958 enacting the Institutional Act governing the Constitutional Council provides: "...The right to context an election shall be enjoyed by all persons registered on the electoral roll for the constituency in which the election was held and by all persons having declared their candidacy".

The applicant seeks the annulment of all the electoral operations that led to the designation of Senators for departments in series B as defined in Table 5 referred to in section LO 276 of the Electoral Code. He was not a candidate for election in any of these departments. He argues that he is duly entered on the electoral roll for the commune of M. (Yvelines), but his status as

elector does not give him the right to challenge the results of the Senate elections outside the department of the Yvelines. Inadmissible.
(2001-2597, 8 November 2001, Senate, all departments in series B, Mr Stéphane HAUCHEMAILLE, paras 1 and 2, p. 129)

Pleas

New pleas

Existence

A fresh objection presented outside the ten-day limit set by section 33 of the Institutional Ordinance of 7 November 1958 is inadmissible.
(2001-2598, 8 November 2001, Senate, Meuse, Mr Roger DUMEZ, para 2, p. 131)

Pleas unsupported by evidence

No evidence is adduced in support of the allegation that there were irregularities affecting posters on election hoardings.

It follows that Mr DANCALE is not entitled to apply for the annulment of the electoral operations conducted in Constituency 1 of the department of Haute-Garonne on 25 March and 1 April 2001.
(2001-2589, 9 May 2001, A.N., Haute-Garonne, Constituency 1, paras 5 and 7, p. 55)

Inoperative pleas

It was for the legislature, under the combined provisions of article 6 of the Declaration of Human and Civic Rights of 1789 and articles 3 and 24 of the Constitution, to modify the distribution by department of Senate seats in Table 6 annexed to the legislative part of the Electoral Code, to take account of population trends in the territorial units represented in the Senate, but such shortcomings are in any event without impact on the obligation for the Government to convene the Senate electoral college within the period prescribed by sections LO 275 to LO 277 and L 311 of the Electoral Code.
(HAUCHEMAILLE-MARINI, referral challenging the decree calling Senate elections, 20 September 2001, paras 7 and 8, p. 121)

The objection that tests relating to Senate election results were published on the Senate's website before the date of the ballot cannot validly be pleaded in relation to departments not concerned by the publication.
(2001-2599 to 2606, 8 November 2001, Senate, Jura and others, para 6, p. 133)

The electoral court cannot validly entertain a plea based on the fact that the content of a website was contrary to section 31 of Act 78-17 of 6 January 1978 on data-processing, data-files and liberties, which prohibits the computer storage of personal data recording political opinions, without the express agreement of the person concerned.
(2001-2599 to 2606, 8 November 2001, Senate, Jura and others, para 7, p. 133)

Judicial inquiry

General powers during the judicial inquiry

Joinder of actions

Joinder of two referrals relating to the same Decree convening Senate electoral colleges.
(HAUCHEMAILLE-MARINI, referral challenging the decree calling Senate elections, 20 September 2001, para 1, p. 121)

Assessment of facts by Constitutional Council

Irregularities without influence on the outcome

Irregularities not affecting the outcome by reason of the special composition of the Senate electoral college

Two organs of the regional press, before the ballot, reported on tests relating to the results of Senate elections published on the Senate's website, but they cannot have affected the fairness of the outcome of the ballot in view of the specific composition of the Senate electoral college and the way in which the press reported on the results.
(2001-2599 to 2606, 8 November 2001, Senate, Jura and other, para 8, p. 133)

The fact that a letter implicitly excluded a candidate belonging to the department majority cannot be regarded as a form of pressure or a manœuvre such as to affect the fairness of the outcome of the ballot in view of the specific composition of the Senate electoral college.
(2001-2598, 8 November 2001, Senate, Meuse, Mr Roger DUMEZ, para 1, p. 131)

Irregularities not affecting the outcome, given the difference in votes cast

Campaign advertising

An association published a pamphlet promoting a candidate. The applicant pleads violation of the second paragraph of section L. 52-8 of the Electoral Code, which prohibits legal persons other than political parties from assisting a candidate's campaign. No influence on the outcome in view of the differences in the numbers of votes cast, and therefore no need to check whether the association is or is not a political party or group for the purposes of sections 7 to 11-9 of Act 88-227 of 11 March 1988.
(2001-2594/2595/2596, 8 November 2001, Senate, Moselle, Mr Bernard FOUCAULT, paras 5 and 6, p. 126)

CAMPAIGN ACCOUNTS

Depositing

Obligation to deposit. Status of candidate

The documents in the case show that Mr R. did not withdraw his candidature in the manner provided for by section R 100 of the Electoral Code, whereby: "Candidatures may be withdrawn only until the closing date for depositing candidatures. The withdrawal shall be registered in the same way as the candidature". It follows that the candidate was under an obligation to deposit campaign accounts.
(2001-2608, 22 November 2001, A.N., Alpes-Maritimes, Constituency 8, para 2, p. 139)

Time allowed for depositing

Ineligibility

A candidate whose campaign accounts have not been received at the prefecture within the mandatory time-limit laid down by the second paragraph of section L52-12 of the Electoral Code is ineligible for one year running from the date of the Constitutional Council's decision.
(2000-2588, 10 January 2001, A.N., Haut-Rhin, Constituency 6, paras 1 to 3, p. 35)

A candidate whose campaign accounts have not been received at the prefecture within the mandatory time-limit and in the form laid down by section L52-12 of the Electoral Code is ineligible for one year running from the date of the Constitutional Council's decision.
(2001-2591, 19 June 2001, A.N., Seine-Maritime, Constituency 9, paras 1 to 3, p. 61)

A candidate who, contrary to section L 52-12 of the Electoral Code, has not deposited his campaign accounts within the prescribed period of two months after the final ballot at the election, is ineligible by virtue of section LO 128 of the Electoral Code.
(2001-2592, 20 September 2001, A.N., Haute-Garonne, Constituency 1, paras 1 to 3, p. 116)

A candidate whose campaign accounts have not been received in the manner and within the period prescribed by section L 52-12 is ineligible for one year from the of the Constitutional Council's Decision.
(2001-2609, 22 November 2001, A.N., Alpes-Maritimes, Constituency 8, para 3, p. 141)

A candidate whose campaign accounts have not been received in the manner and within the period prescribed by section L 52-12 is ineligible for one year from the of the Constitutional Council's Decision.
(2001-2610, 22 November 2001, A.N., Alpes-Maritimes, Constituency 8, para 3, p. 143)

Conditions of deposit

Account not certified

The campaign accounts were not presented by a member of the Order of chartered accountants and approved accountants. The fact that the accounts recorded no revenue and no expenditure cannot be pleaded in support of an exception from an obligation which, in view of the objective pursued by section L. 52-12 of the Electoral Code, is a substantial formality. It is for the Constitutional Council under section LO 128 of the Electoral Code, to declare the person concerned ineligible for one year from 22 November 2001, the date of this decision.
(2001-2608, 22 November 2001, A.N., Alpes-Maritimes, Constituency 8, para 2, p. 139)

Account showing neither revenue nor expenditure

The campaign accounts were not presented by a member of the Order of chartered accountants and approved accountants. The fact that the accounts recorded no revenue and no expenditure cannot be pleaded in support of an exception from an obligation which, in view of the objective pursued by section L. 52-12 of the Electoral Code, is a substantial formality. It is for the Constitutional Council under section LO 128 of the Electoral Code, to declare the person concerned ineligible for one year from 22 November 2001, the date of this decision.
(2001-2608, 22 November 2001, A.N., Alpes-Maritimes, Constituency 8, para 2, p. 139)

Funding association or agent

Direct payment by the candidate of minor expenditure items on practical grounds may be tolerated if the aggregate amount of expenditure concerned is only a small proportion of his aggregate campaign expenditure and is negligible in relation to the maximum allowable expenditure set by section L 52-11 of the Electoral Code. This condition is not satisfied in the event of an expenditure item consisting of the costs of graphic creation representing more than half the aggregate campaign expenditure and nearly 3 % of the maximum amount, set for the relevant election at 391 631 francs.
(2001-2593, 20 September 2001, A.N., Haute-Garonne, Constituency 1, para 2, p. 118)

PUBLIC AND SOCIAL FINANCE

INITIATIVE IN FINANCE MATTERS

Creation of a mission

Under section 7 of the Institutional Act relating to Finance Acts, each of the charges borne by the central government budget is part of a mission combining appropriations "covered by one or more public services or one or more ministries". In accordance with the third paragraph of section 43, Parliament's votes relate to missions. To secure compliance with article 40 of the Constitution, therefore, which provides that "amendments introduced by Members of Parliament shall not be admissible where their adoption would have as a consequence either a diminution of public resources or the creation or increase of an item of public expenditure", the second paragraph of section 7 rightly provides that "only a provision of a Finance Bill moved by the government may create a mission", which in the Finance Act corresponds to a public charge.
(2001-448 DC, 25 July 2001, para. 23, p. 99)

DIRECT AND INDIRECT TAXES

Direct taxes

Distribution tax

The flat-rate contribution paid by health-care bodies to finance the agricultural occupational accidents fund is a wealth-distribution tax.
(2001-457 DC, 27 December 2001, paras 10 to 14, p. 192)

Allocation of proceeds of a tax to a public industrial or commercial establishment or to a private person responsible for a public service task

Under the second paragraph of section 2 of the Institutional Act relating to Finance Acts, in conjunction with sections 34, 36 and 51, an Act may allocate direct to a third party taxes of all kinds "only for the purposes of public service missions entrusted to him", and subject to the three conditions that the charging of the taxes is authorised by the Finance Act for the year, that, where the tax is for the benefit of central government, the allocation is made by a Finance Act and that the Finance Bill for the year is accompanied by an explanatory annex concerning the list and the evaluation of these taxes. These provisions comply with articles 13 and 14 of the Declaration of Human and Civic Rights of 1789 and article 47 of the Constitution, which empowers the institutional legislature to provide for such conditions.
(2001-448 DC, 25 July 2001, para. 10, p. 99)

Need for taxation

Section 20(I) of the Social Security (Finance) Act for 2002 raises the rate of the contribution payable by pharmaceutical laboratories on a scale in four brackets, related to the ratio between their expenditure on promotion and information targeted on practitioners and their pre-tax turnover in France. The increase serves the dual purpose of causing firms doing business in pharmaceutical specialities to contribute to the financing of health-care insurance and of preventing unjustified expenditure on medicines. In enacting this provision, the legislature did not violate the principle of the need for taxation.
(2001-453 DC, 18 December 2001, paras 42 to 44, p. 164)

Given in particular the sums involved and its degressive nature, the designation of bodies liable to pay the flat-rate contribution to finance the agricultural occupational accidents fund and the criteria for liability to it are objective and rational.
(2001-457 DC, 27 December 2001, para 13, p. 192)

Tax inspections — procedure

The sole purpose of section 6 of the Finance Act for 2002, which releases taxpayers who file their returns by electronic means from the obligation to attach receipts issued by trade unions in order to obtain tax relief on union contributions, is to encourage electronic tax returns. It does not affect the obligation to produce the receipts in the event of a subsequent tax inspection. It is accordingly not contrary to the principle of equality.
(2001-456 DC, 27 December 2001, paras 13 and 14, p. 180)

Generalised social contribution

There is no constitutional or institutional principle or rule to preclude a fraction of the yield of the generalised social contribution, which is within the category of "taxes of all kinds" within the meaning of article 34 of the Constitution, from being devoted to other purposes than financing social security schemes.
(2001-447 DC, 18 July 2001, para. 17, p. 89)

FINANCE ACTS

General rules relating to consideration of finance Bills

Time allowed for examination

Section 39 of the Institutional Act relating to Finance Acts provides that the Finance Bill for the year, including the reports provided for by section 50 and the annexes mentioned in Article 51(1°) to (6°), must be presented and distributed "no later than the first Tuesday in October of the year preceding the year in which the budget is to be executed". If by reason of circumstances a document that is to be distributed is supplied to members of parliament in whole or in part after that date, section 39 cannot be interpreted as precluding examination of the Finance Bill. The constitutionality of the Finance Bill would then fall to be reviewed in the light of the requirement for continuity on national life and of the concern for accuracy that preside over the examination of the Finance Bill throughout the procedure.
(2001-448 DC, 25 July 2001, paras 73 to 76, p. 99)

Closure of Accounts Acts

Section 46 of the Institutional Act relating to Finance Acts requires the Closure of Accounts Bill to be presented and distributed before 1 June of the year following the close of the relevant financial year. The same deadline applies for all the documents provided for by section 54 and the report and certification of accounts issued by the Court of Auditors in accordance with section 58. Section 41 of the Act provides that in each Assembly the Closure of Accounts Bill relating to the preceding year is to be put to the vote at first reading before the debate on the Finance Bill for the following year commences. The purpose of these deadlines is to ensure that Parliament is informed in good time to come to an opinion in full knowledge of the facts on Finance Bills laid before it. A violation of these procedures would not preclude commencing the examination of the Bill concerned. The constitutionality of the Finance Bill would then fall to be reviewed in the light of the requirement for continuity on national life and of the concern for accuracy that preside over the examination of the Finance Bill throughout the procedure.
(2001-448 DC, 25 July 2001, paras 78, 79, 81, 82, 88 and 89, p. 99)

Finance (Amendment) Act

Any delay in distributing the annexes that section 53 of the Institutional Act relating to Finance Acts requires to be attached to Finance (Rectification) Bills would not preclude commencing the examination of the Bill concerned. The constitutionality of the Finance Bill would then fall to be reviewed in the light of the requirement for continuity in national life and of the concern for accuracy that preside over the examination of the Finance Bill throughout the procedure.
(2001-448 DC, 25 July 2001, paras 79 to 81, p. 99)

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

Disruption of the forecast economic and financial equilibrium

If the rate of recovery of established revenue in 2002 differs substantially from the forecast used for the balancing item, it will be for the Government to lay before Parliament a Finance (Amendment) Bill.
(2001-456 DC, 27 December 2001, para 4, p. 180)

Exercise of budgetary control

Audit of public finances

Extent of annual parliamentary review

The authors of the referral submit that "treating as budgetary revenue the annual payment by CADES to central government is in conformity neither with section 15 nor with section 30 of Ordinance 59-2 of 2 January 1959 laying down the Institutional Act relating to Finance Acts", on the grounds that "the annual payment by CADES to central government should be regarded as a cash resource for the part corresponding to the principal debt and as a budgetary revenue item for the part corresponding to interest on that debt".

Under sections 2 and 4 of the Ordinance of 24 January 1996, the purpose of the public establishment known as "Social Debt Amortisation Fund" is to make payments to the general budget of central government in accordance with a timetable set by the Ordinance. These provisions, which were not held unconstitutional by the decision given by the Constitutional Council on 18 December 1997, establish no legal link between payments by the Fund to the central government and the conditions for reimbursement of the social security debt. As the Constitutional Council held on 29 December 1993, such payments do not constitute reimbursement of a loan or an advance for the purposes of section 3 of the Ordinance of 2 January 1959 laying down the Institutional Act relating to Finance Acts. Plea rejected.
(2001-456 DC, 27 December 2001, paras 33 to 35, p. 180)

Section 115 of the Finance Act for 2002 reads: "I. There shall be annexed to the Finance Bill for the year an explanatory report for each public authority setting out the appropriations requested by them. — II. There shall be annexed to the Budgetary Settlement Bill an explanatory annex setting out for each public authority the final amount of the appropriations opened and the expenditure recorded and presenting the differences as against the initial appropriations. — III. This article shall apply for the first time to the Finance Acts for 2003".

These provisions cannot be interpreted as precluding a rule to the effect that the constitutional public authorities themselves determine the appropriations they need to operate. This rule is inherent in the principle of financial autonomy that secures the separation of powers. Subject to this reservation, the article is constitutional.
(2001-456 DC, 27 December 2001, paras 46 and 47, p. 180)

General and explanatory annexes

As regards the levies on revenue defined by section 6 of the Institutional Act relating to Finance Acts, the documents attached to the Finance Bill for the year under section 51 must

contain the most detailed grounds possible for both revenue and expenditure. Moreover, the analysis of the estimate for each levy on the revenue of central government must be given in an explanatory annex.
(2001-448 DC, 25 July 2001, paras 17 to 20, p. 99)

The second paragraph of section 39 of the Institutional Act relating to Finance Acts requires each of the "general annexes" mentioned in section 51(7°) to be presented and distributed "at least five clear days before the National Assembly examines at first reading the revenue or appropriations to which they relate". The purpose of these deadlines is to ensure that Parliament is informed in good time to come to an opinion in full knowledge of the facts on Finance Bills laid before it. Any delay in distributing all or part of the documents would not preclude commencing the examination of the Bill concerned. The constitutionality of the Finance Bill would then fall to be reviewed in the light of the requirement for continuity on national life and of the concern for accuracy that preside over the examination of the Finance Bill throughout the procedure.
(2001-448 DC, 25 July 2001, paras 77, 79 and 81, p. 99)

It is submitted that the contents of the equilibrium table in the balancing item are "manifestly erroneous". According to the authors of the referral, while the amounts recorded there reflect a "series of amendments to reduce several appropriations", certain of these appropriations "do not appear in the Finance Bill for 2002". Four articles in Chapters of the general budget are cited.

Section 43 of the Ordinance of 2 January 1959 provides: "As soon as the Finance Act for the year is promulgated..., the Government shall issue decrees... allocating the appropriations for each Ministry to their respective Chapters... These decrees may change the relevant chapters in relation to the appropriations entered for the previous year only in accordance with amendments proposed by the Government in the explanatory annexes and voted on by Parliament". The Government was therefore only required to provide Parliament, in the explanatory memorandum relating to each of the relevant amendments, with information on the chapter-by-chapter allocation of the proposed changes. In any event, the alleged errors or omissions, being of limited amount, accidental and purely technical, did not violate Parliament's right to information.
(2001-456 DC, 27 December 2001, paras 9 and 10, p. 180)

Evaluation of tax and non-tax revenue of central government

Tax allocated to a public establishment

It is submitted that the allocation of various tax revenue items to the fund to finance the reform of employers'social security contributions and the failure to record the fund's expenditure in the central government budget violate the Ordinance of 2 January 1959 and adversely affect the accuracy of the Act referred.

Under the first paragraph of section 1 of the Ordinance of 2 January 1959, the resources and expenditure of a public establishment public do not have to be recorded in the Finance Act, which, under the second paragraph of section 31 of the Ordinance, must simply give the general authorisation to collect taxes allocated to public establishments. It follows that, notwithstanding the effects of removal from the budget in terms of parliamentary review, neither the principle of the accuracy of the budget nor any other constitutional principle has been violated.
(2001-456 DC, 27 December 2001, paras 5 and 6, p. 180)

Broad outline of budgetary balance not distorted

It is alleged that the level of tax revenue is "manifestly overestimated" since the rate of economic growth is estimated too optimistically.

The information laid before the Constitutional Council does not show that the evaluations of revenue for 2002 taken into account in the balancing item are vitiated by any manifest error, given the unpredictable nature of their evaluation and the specific uncertainties as to the evolution of the economy in 2002. If the rate of recovery of established revenue in 2002 differs

substantially from the forecast used for the balancing item, it will be for the Government to lay before Parliament a Finance (Amendment) Bill.
(2001-456 DC, 27 December 2001, paras 3 and 4, p. 180)

Financial impact of tax measures taken during the current fiscal year

The applicants submit that the Fund to finance the personalised autonomy allowance should not be provided for by a Finance Act, or by a Social Security (Finance) Act. Parliament is allegedly deprived of the power to review public finances which it enjoys under article 14 of the Declaration of Human and Civic Rights of 1789, whereby: "All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration".

The involvement of public retirement pension schemes and the fraction of the yield of the generalised social contribution, which constitute revenue of the Fund to finance the personalised autonomy allowance, are determined by the Act referred. By enacting it, Parliament confirmed the need for it and consented to it. Under the first paragraph of section 4 of the Ordinance of 2 January 1959 enacting the Institutional Act relating to Finance Acts, it will have to authorise its collection each year in the Finance Act. Under the nineteenth paragraph of article 34 of the Constitution, it will also have to draw the conclusions as required in the Social Security (Finance) Act.
(2001-447 DC, 18 July 2001, paras 14 and 15, p. 89)

Closure of Accounts Acts

Section 46 of the Institutional Act relating to Finance Acts requires the Closure of Accounts Bill to be presented and distributed before 1 June of the year following the close of the relevant financial year. The same deadline applies for all the documents provided for by section 54 and the report and certification of accounts issued by the Court of Auditors in accordance with section 58. Section 41 of the Act provides that in each Assembly the Closure of Accounts Bill relating to the preceding year is to be put to the vote at first reading before the debate on the Finance Bill for the following year commences. The purpose of these deadlines is to ensure that Parliament is informed in good time to come to an opinion in full knowledge of the facts on Finance Bills laid before it. A violation of these procedures would not preclude commencing the examination of the Bill concerned. The constitutionality of the Finance Bill would then fall to be reviewed in the light of the requirement for continuity on national life and of the concern for accuracy that preside over the examination of the Finance Bill throughout the procedure.
(2001-448 DC, 25 July 2001, paras 78, 79, 81, 82, 88 and 89, p. 99)

Universality of budget

Allocation of revenue — Obligation to allocate revenue without deducting expenditure

Revenue levy for the benefit of territorial units and the European Communities

It was legitimate for the Institutional Act to provide for levies on the revenue of central government in favour of territorial units or the European Communities to cover their expenditure or offset the exemptions, reductions or maximum rates as regards direct taxes for the benefit of territorial units, given that it defines the beneficiaries and purposes of the levies clearly and exhaustively and the objectives of clarity of accounts and effectiveness of parliamentary review are satisfied. To that end, the need for definition and precise and distinct evaluation of each levy on revenue is expressed in section 34(I)(4°), which provides that each of them is to be evaluated in Part One of the Finance Act. By the same token, as regards the levies on revenue defined by section 6 of the Institutional Act relating to Finance Acts, the documents attached to the Finance Bill for the year under section 51 must contain the most detailed grounds possible for both revenue and expenditure. Moreover, the analysis of the

estimate for each levy on the revenue of central government must be given in an explanatory annex. Subject to these reservations, section 6 of the Institutional Act relating to Finance Acts is constitutional.
(2001-448 DC, 25 July 2001, paras 17 to 20, p. 99)

Revenue not appearing in the budget

It is submitted that the allocation of various tax revenue items to the fund to finance the reform of employers'social security contributions and the failure to record the fund's expenditure in the central government budget violate the Ordinance of 2 January 1959 and adversely affect the accuracy of the Act referred.

Under the first paragraph of section 1 of the Ordinance of 2 January 1959, the resources and expenditure of a public establishment public do not have to be recorded in the Finance Act, which, under the second paragraph of section 31 of the Ordinance, must simply give the general authorisation to collect taxes allocated to public establishments. It follows that, notwithstanding the effects of removal from the budget in terms of parliamentary review, neither the principle of the accuracy of the budget nor any other constitutional principle has been violated.
(2001-456 DC, 27 December 2001, paras 5 and 6, p. 180)

Special Treasury accounts

Specific appropriation accounts

Sections 19 and 20 provide that a specific appropriation account shall constitute a mission. Given that the mission is a charge within the meaning of article 40 of the Constitution, as provided by articles 7 and 47, the parliamentary amendments moved in this respect can be regarded as admissible only if they have neither the object nor the effect of creating a mission or increasing the aggregate amount of mission appropriations. Section 18(I) and section 19 of the Institutional Act relating to Finance Acts are, subject to this reservation, constitutional.
(2001-448 DC, 25 July 2001, paras 42 to 45, p. 99)

The first paragraph of section 21(I) of the Institutional Act relating to Finance Acts, relating to specific appropriation accounts, requires budgetary expenditure recorded in these accounts to be financed solely by "special revenue which is by its nature directly related to the expenditure concerned". The legislative history reveals that in imposing this condition the legislature's intention was to limit the possibilities for derogation from the rule that revenue in the central government budget cannot be set aside for specific purposes without impeding the application of the principles of sound management of public money.
(2001-448 DC, 25 July 2001, para. 51, p. 99)

Financial support accounts

Under sections 19 and 20 of the Institutional Act relating to Finance Acts, each specific appropriation account constitutes a mission. Given that the mission is a charge within the meaning of article 40 of the Constitution, as provided by articles 7 and 47, the parliamentary amendments moved in this respect can be regarded as admissible only if they have neither the object nor the effect of creating a mission or increasing the aggregate amount of mission appropriations.
(2001-448 DC, 25 July 2001, paras 42 to 45, p. 99)

Support funds

General rules

Under the first paragraph of section 17(II) of the Institutional Act relating to Finance Acts the support funds are to consist of " non-tax funds paid by persons or bodies corporate to support expenditure items of public interest and the proceeds of bequests and donations to the State".

Part One of the Finance Act provides for and evaluates the corresponding revenue and the amount of the appropriations that can be covered in this way, which is included in the maximum amount of expenditure from the general budget and annexed budgets and the maximum amount of charges on special accounts. If, in the course of a year, the amount of revenue actually recorded exceeded those maximum amounts, it would fall to a Finance (Rectification) Act to open the requisite appropriations. If the appropriations were not adequately adjusted by the Finance (Rectification) Act, the Regulation Act would have to make the adjustment. In any event, section 17 cannot have the effect of precluding the use of funds in accordance with the will of the payer as required by the last paragraph of section 17(II). Otherwise there would be a violation of the property rights secured by article 2 of the Declaration of Human and Civic Rights of 1789.
(2001-448 DC, 25 July 2001, paras 46 to 48, p. 99)

Ancillary budget

The institutional legislature's intention behind section 18(I), relating to annexed budgets, was to exclude the entry of operations other than those of central government services not enjoying legal personality and engaging in the production of goods or services against fees as their main activity. Provision is accordingly made for conditions complying with the powers conferred on the legislature by article 34 of the Constitution. From the date of entry into force of the Institutional Act specified in section 67, Finance Acts will have to respect the scope of annexed budgets thus defined.
(2001-448 DC, 25 July 2001, para. 49, p. 99)

Ancillary budget treated in same way as a mission

Under section 18 of the Institutional Act relating to Finance Acts, annexed budgets constitute a mission. Given that the mission is a charge within the meaning of article 40 of the Constitution, as provided by articles 7 and 47, the parliamentary amendments moved in this respect can be regarded as admissible only if they have neither the object nor the effect of creating a mission or increasing the aggregate amount of mission appropriations. Subject to these reservations, sections 18(I) and 19 of the Institutional Act relating to Finance Acts are constitutional.
(2001-448 DC, 25 July 2001, paras 42 to 45, p. 99)

Content and presentation of Finance Acts

Provisions that must be made in a Finance Act

Sections 3 to 6 of the Institutional Act amending the rules governing the judiciary provides that judges called on to exercise the functions of specialised judge or President of a Court are to be appointed as supernumeraries at the court to which they are attached and that the excess must be "absorbed as soon as a vacancy arises" at the relevant court. Supernumerary appointments are a provisional adjustment mechanism to safeguard a guarantee. The fifth paragraph of section 1 of the Ordinance of 2 January 1959 enacting the Institutional Act relating to Finance Acts provides: "Posts may be created and converted only on the basis of provisions of a Finance Act"; the provisions relating to supernumerary appointments will enter into force, under section 13 of the Institutional Act, only on 1 January 2002. It will be for the Finance Act to create such posts as may be required for their implementation. Subject to this reservation, the appointment of judges as supernumeraries provided for by the Institutional Act is not contrary to section 1 of the Ordinance of 2 January 1959.
(2001-445 DC, 19 June 2001, paras 33 to 35, p. 63)

Provisions that may be made in a Finance Act

Tax provisions

Section 62(II) of the Finance (Amendment) Act for 2001 relates to the right of communication enjoyed by the tax administration in the exercise of its control function as regards data

held and processed under section L 32-3-1 of the Posts and Telecommunications Code. It is properly enacted in a Finance Act. Section 62(I) and (III), relating to comparable rights enjoyed by the customs administration and the investigators of the Securities Exchange Commission are, in conjunction with section 62(II), the unseverable components of set of provision. They are properly enacted in a Finance Act.
(2001-457 DC, 27 December 2001, para 4, p. 192)

Information and supervision of the Parliament over public finance management

Section 13 of the Institutional Act relating to Finance Acts provides that the Finance Committee of each Assembly is to have seven days in which to give the Prime Minister its preliminary opinion on draft decrees ordering payment of advances issued in urgent cases without affecting budgetary equilibrium. In "cases of urgency and overriding needs of the national interest", all that is required is the provision of information. Given the conditions attached to them, these provisions, enacted in compliance with the powers conferred on the institutional legislature by the eighteenth paragraph of article 34, do not violate the constitutional prerogatives of the executive branch but merely enforce the demand in article 14 of the Declaration of 1789 for consent to taxation and monitor the use made of public funds.
(2001-448 DC, 25 July 2001, para. 34, p. 99)

Section 48 of the Institutional Act relating to Finance Acts requires the Government, in the last quarter of the ordinary session, to present a report on trends in the national economy and guidelines for public finances, which can be debated in the National Assembly and the Senate.

As regards the report on the situation and trend of transfer payments, which must be presented at the opening of the ordinary session under section 52 of the Institutional Act relating to Finance Acts for the examination of and voting on both the Finance Bill and the Social Security (Finance) Bill for the next year, "the financial estimates for the current year and the next two years relating to all legislative or regulatory provisions envisaged by the Government" are purely indicative. Section 56 requires not only the various decrees and orders provided for by the Institutional Act but also "the reports providing their background, except on matters subject to the secrecy on grounds of national defence, the internal and external security of the State and foreign affairs" to be published in the *Journal officiel*. The purpose of this provision, enacted on the basis of the powers delegated to the institutional legislature by the first paragraph of article 47 of the Constitution, is to establish the conditions in which members of Parliament are informed of the implementation of Finance Acts, the management of public finances and estimates of the resources and charges of the central government before examining the Finance Bill. But a violation of these procedures would not preclude the commencement of debate on a Finance Bill. The Bill's constitutionality would then fall to be assessed on the basis of the need for continuity of public life and for accuracy which are essential throughout the examination of Finance Bills.
(2001-448 DC, 25 July 2001, paras 83 to 89 and 91, p. 99)

As regards the report on the situation and trend of transfer payments, which must be presented at the opening of the ordinary session under section 52 of the Institutional Act relating to Finance Acts for the examination of and voting on both the Finance Bill and the Social Security (Finance) Bill for the next year, "the financial estimates for the current year and the next two years relating to all legislative or regulatory provisions envisaged by the Government" are purely indicative. They cannot have the effect of constraining the Government's discretion to decide and adapt under article 20 of the Constitution when determining and conducting the policy of the Nation.
(2001-448 DC, 25 July 2001, paras 85, 90 and 91, p. 99)

Section 57 of the Institutional Act relating to Finance Acts confers on the Chair, the General rapporteur and, in their own fields, the special rapporteurs of the Finance Committees of the National Assembly and the Senate the task of monitoring and supervising the execution of Finance Acts and "evaluating any aspect of the public finances". To that end, "they shall undertake all on-the-spot or documentary investigations and question all persons they consider useful". All the financial and administrative documents they call for must be supplied to them, "except on matters subject to secrecy on grounds of the national defence or the domestic or external security of the State or to rules governing the secrecy of criminal investigations and medical matters". Section 60 gives the Government two months to reply in

writing to observations made following an inspection and evaluation mission. These provisions, which are unseverable from those organising information for members of Parliament for the purposes of examining the Finance Bill, are institutional provisions that violate no constitutional rules or principles.
(2001-448 DC, 25 July 2001, paras 100 and 101, p. 99)

Section 59 of the Institutional Act relating to Finance Acts provides: "Where, in the course of an inspection and evaluation mission, information requested under section 57 has not been supplied after a reasonable period of time, depending on the difficulties encountered in obtaining it, the Chairmen of the Finance Committees of the National Assembly and the Senate may apply to the appropriate court by way of interlocutory proceedings for an injunction to cease non-compliance with the request on pain of a daily penalty payment". In the French concept of the separation of powers, these provisions can only be understood as empowering the administrative court to issue an interlocutory injunction to a body corporate enjoying prerogatives of public authority to supply the relevant documents or information or pay the penalty for failure to do so.
(2001-448 DC, 25 July 2001, paras 102 and 103, p. 99)

The final paragraphs of section 58 of the Institutional Act relating to Finance Acts impose on the Court of Auditors, in its function of assisting Parliament, a variety of obligations relating in particular to investigations and reports. These obligations must be interpreted in the light of the last paragraph of article 47 of the Constitution, whereby: "The Audit Court shall assist Parliament and the Government in monitoring the implementation of Finance Acts". It is accordingly for the competent authorities of the Court of Auditors to ensure that the equilibrium sought by the constituent authority is not distorted to the detriment of one of the two bodies. Such will be the case, in particular, of the time-limit provided for by section 58(2°).
(2001-448 DC, 25 July 2001, paras 107 and 108, p. 99)

Section 154 of the Finance Act for 2002 establishes a committee to verify the use made of appropriations entered at Chapter 37-91, ("Special Funds") of the budget for the Prime Minister's general services. Under articles 5, 15, 21, 34, 35 and 47 of the Constitution, while it is for Parliament to authorise declarations of war, to vote on the appropriations needed for the national defence and to verify the use made of them, it cannot intervene in routine operations. The penultimate paragraph of section 154(III), and the final paragraph, which is unseverable from it, are accordingly unconstitutional.
(2001-456 DC, 27 December 2001, para 43, p. 180)

Provisions that may be not made in a Finance Act

Local administration

Section 39 of the Finance (Amendment) Act for 2001 allows the effective date of the prefectoral order extending the limits of an urban community to be deferred. Section 40 provides likewise as regards conurbation communities. Section 47 allows the municipal councils of Paris, Marseille and Lyon to delegate powers to district councils for the award and performance of certain public contracts.

These provisions are not related to the purposes of a Finance Act. They were accordingly enacted by an unconstitutional procedure.
(2001-457 DC, 27 December 2001, paras 25 and 26, p. 192)

Local taxation (allocation and information)

Section 97 of the Finance Act for 2002 merely specifies the allocation of the proceeds of the temporary residence tax charged by communes. Section 98 provides that the mayor or the president of the public establishment for cooperation between communes shall report annually to the municipal council or the community council on the collection of temporary residence taxes and the use made of the proceeds. Section 99 requires the mayor to announce increases planned for the financial year ahead when the report is presented.

These provisions are not related to the purposes of a Finance Act. They were accordingly enacted by an unconstitutional procedure.
(2001-456 DC, 27 December 2001, paras 56 and 57, p. 180)

Section 41 of the Finance (Amendment) Act for 2001 amends the method of calculating the compensation paid by public establishments for cooperation between communes with their own taxing powers to the communes that are members of them.

These provisions are not related to the purposes of a Finance Act. They were accordingly enacted by an unconstitutional procedure.
(2001-457 DC, 27 December 2001, paras 25 and 26, p. 192)

Provisions not reserved for Finance Acts

Tax provisions

The applicants submit that the Fund to finance the personalised autonomy allowance should not be provided for by a Finance Act, or by a Social Security (Finance) Act. Parliament is allegedly deprived of the power to review public which it enjoys under article 14 of the Declaration of Human and Civic Rights of 1789, whereby: "All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration".

The involvement of public retirement pension schemes and the fraction of the yield of the generalised social contribution, which constitute revenue of the Fund to finance the personalised autonomy allowance, are determined by the Act referred. By enacting it, Parliament confirmed the need for it and consented to it. Under the first paragraph of section 4 of the Ordinance of 2 January 1959 enacting the Institutional Act relating to Finance Acts, it will have to authorise its collection each year in the Finance Act. Under the nineteenth paragraph of article 34 of the Constitution, it will also have to draw the conclusions as required in the Social Security (Finance) Act.
(2001-447 DC, 18 July 2001, paras 14 and 15, p. 89)

Provisions relating to expenditure

Expenditure allocated to future contingent operations

The fourth paragraph of section 1 of the Ordinance of 2 January 1959 does not impose an obligation to provide in the initial Finance Act for the budgetary consequences of future decisions whose cost, date and implementation remain to be determined.
(2001-456 DC, 27 December 2001, para 8, p. 180)

New expenditure as a result of legislative measures enacted in the course of the year

Under the provisions of the Ordinance of 2 January 1959, combined with Title V of the Constitution, the purposes of the rules laid down by the fourth paragraph of section 1 and the fifth paragraph of section 2 is to preclude a statute from allowing new expenditure without prior assessment in a Finance Act of its impact on the financial balance for the current year or subsequent years.

The Act referred does not violate these rules, since it does not allow the charges for which it provides to be met without the requisite appropriations being provided for, evaluated and authorised by a Finance Act for the year, amended if necessary by a Finance (Rectification) Act.
(2000-439 DC, 16 January 2001, paras 9 and 10, p. 42)

Permanent charges borne by central government. Charges for the public debt

The purpose of sections 55 and 56 of the Social Security (Finance) Act for 2002 is to establish, for the benefit of the relevant categories of persons, whatever the social legislation applicable

to them, a right to take leave in the event of a birth or adoption. The benefit is accordingly a family allowance to be financed by the National Family Allowances Fund, both as regards employed persons and, subject to the ceiling on social security expenditure, as regards civil servants whose salaries remain payable during periods of leave. The continued payments of salaries or wages by central government to its staff during parental leave will be included in the personnel expenditure appearing in the central government budget. There is accordingly no violation of the principle of the universality of the budget, under which the remuneration of central government staff must be recorded in its budget.
(2001-453 DC, 18 December 2001, paras 55, 57 and 58, p. 164)

Carryover of appropriations

Section 15(IV) of the Institutional Act provides: "Carry-over orders shall be published no later than 31 March of the year following the year in which available commitment authorisations or payment appropriations were recorded"; the legislature has thereby laid down a condition as to timing that contributes to the timely preparation of the Accounts Closure Bill for the relevant year. This condition, which does not violate the prerogatives conferred on the executive branch of government, is within the powers conferred by the eighteenth paragraph of article 34.
(2001-448 DC, 25 July 2001, para. 39, p. 99)

Decrees ordering payment of advances

Section 13 of the Institutional Act relating to Finance Acts provides that the Finance Committee of each Assembly is to have seven days in which to give the Prime Minister its preliminary opinion on draft decrees ordering payment of advances issued in urgent cases without affecting budgetary equilibrium. In "cases of urgency and overriding needs of the national interest", all that is required is the provision of information. Given the conditions attached to them, these provisions, enacted in compliance with the powers conferred on the institutional legislature by the eighteenth paragraph of article 34, do not violate the constitutional prerogatives of the executive branch but merely enforce the demand in article 14 of the Declaration of 1789 for consent to taxation and monitor the use made of public funds.
(2001-448 DC, 25 July 2001, paras 33 and 34, p. 99)

Miscellaneous — Yield of a tax allocated to a public establishment

It is submitted that the allocation of various tax revenue items to the fund to finance the reform of employers'social security contributions and the failure to record the fund's expenditure in the central government budget violate the Ordinance of 2 January 1959 and adversely affect the accuracy of the Act referred.

Under the first paragraph of section 1 of the Ordinance of 2 January 1959, the resources and expenditure of a public establishment public do not have to be recorded in the Finance Act, which, under the second paragraph of section 31 of the Ordinance, must simply give the general authorisation to collect taxes allocated to public establishments. It follows that, notwithstanding the effects of removal from the budget in terms of parliamentary review, neither the principle of the accuracy of the budget nor any other constitutional principle has been violated.
(2001-456 DC, 27 December 2001, paras 5 and 6, p. 180)

Unity of the budget

The authors of the referral submit that "treating as budgetary revenue the annual payment by CADES to central government is in conformity neither with section 15 nor with section 30 of Ordinance 59-2 of 2 January 1959 laying down the Institutional Act relating to Finance Acts", on the grounds that "the annual payment by CADES to central government should be regarded as a cash resource for the part corresponding to the principal debt and as a budgetary revenue item for the part corresponding to interest on that debt".

Under sections 2 and 4 of the Ordinance of 24 January 1996, the purpose of the public establishment known as "Social Debt Amortisation Fund" is to make payments to the general budget of central government in accordance with a timetable set by the Ordinance. These provisions, which were not held unconstitutional by the decision given by the Constitutional Council on 18 December 1997, establish no legal link between payments by the Fund to the central government and the conditions for reimbursement of the social security debt. As the Constitutional Council held on 29 December 1993, such payments do not constitute reimbursement of a loan or an advance for the purposes of section 3 of the Ordinance of 2 January 1959 laying down the Institutional Act relating to Finance Acts. Plea rejected.
(2001-456 DC, 27 December 2001, paras 33 to 35, p. 180)

Accuracy of the budget

The principle of accuracy declared by section 32 of the Institutional Act relating to Finance Acts does not have the same scope in relation to Closure of Accounts Acts and to other Finance Acts. In the case of the Finance Act for the year, Finance (Rectification) Acts and special acts enacted by emergency procedures such as those provided for by section 45, accuracy is taken to mean the absence of any intention to distort the broad lines of the equilibrium determined by the Finance Act. The accuracy of the Closure of Accounts Act, on the hand, refers to the exactness of the accounts rendered.
(2001-448 DC, 25 July 2001, paras 60 and 61, p. 99)

It is alleged that the level of tax revenue is "manifestly overestimated" since the rate of economic growth is estimated too optimistically.

The information laid before the Constitutional Council does not show that the evaluations of revenue for 2002 taken into account in the balancing item are vitiated by any manifest error, given the unpredictable nature of their evaluation and the specific uncertainties as to the evolution of the economy in 2002. If the rate of recovery of established revenue in 2002 differs substantially from the forecast used for the balancing item, it will be for the Government to lay before Parliament a Finance (Amendment) Bill.
(2001-456 DC, 27 December 2001, paras 3 and 4, p. 180)

It is submitted that the allocation of various tax revenue items to the fund to finance the reform of employers'social security contributions and the failure to record the fund's expenditure in the central government budget violate the Ordinance of 2 January 1959 and adversely affect the accuracy of the Act referred.

Under the first paragraph of section 1 of the Ordinance of 2 January 1959, the resources and expenditure of a public establishment public do not have to be recorded in the Finance Act, which, under the second paragraph of section 31 of the Ordinance, must simply give the general authorisation to collect taxes allocated to public establishments. It follows that, notwithstanding the effects of removal from the budget in terms of parliamentary review, neither the principle of the accuracy of the budget nor any other constitutional principle has been violated.
(2001-456 DC, 27 December 2001, paras 5 and 6, p. 180)

It is submitted that the contents of the equilibrium table in the balancing item are "manifestly erroneous". According to the authors of the referral, while the amounts recorded there reflect a "series of amendments to reduce several appropriations", certain of these appropriations "do not appear in the Finance Bill for 2002". Four articles in Chapters of the general budget are cited.

Section 43 of the Ordinance of 2 January 1959 provides: "As soon as the Finance Act for the year is promulgated..., the Government shall issue decrees... allocating the appropriations for each Ministry to their respective Chapters... These decrees may change the relevant chapters in relation to the appropriations entered for the previous year only in accordance with amendments proposed by the Government in the explanatory annexes and voted on by Parliament". The Government was therefore only required to provide Parliament, in the explanatory memorandum relating to each of the relevant amendments, with information on the chapter-by-chapter allocation of the proposed changes. In any event, the alleged errors or omissions, being of limited amount, accidental and purely technical, did not violate Parliament's right to information.
(2001-456 DC, 27 December 2001, paras 9 and 10, p. 180)

Speciality of the budget

Under the first paragraph of section 7(IV) of the Institutional Act relating to Finance Acts, appropriations entered in the budget are made available to Ministers by Decrees adopted as provided by section 44. Under the principle of the specific allocation of budgetary appropriations, the provision of appropriations voted in the Finance Act must, for each programme or allocation for each Ministry, be in conformity with the amounts appearing in the explanatory annexes provided for by sections 51, 53 and 54, as amended by votes in Parliament (if the case arises).
(2001-448 DC, 25 July 2001, para 26, p. 99)

It is submitted that the contents of the equilibrium table in the balancing item are "manifestly erroneous". According to the authors of the referral, while the amounts recorded there reflect a "series of amendments to reduce several appropriations", certain of these appropriations "do not appear in the Finance Bill for 2002". Four articles in Chapters of the general budget are cited.

Section 43 of the Ordinance of 2 January 1959 provides: "As soon as the Finance Act for the year is promulgated..., the Government shall issue decrees... allocating the appropriations for each Ministry to their respective Chapters... These decrees may change the relevant chapters in relation to the appropriations entered for the previous year only in accordance with amendments proposed by the Government in the explanatory annexes and voted on by Parliament". The Government was therefore only required to provide Parliament, in the explanatory memorandum relating to each of the relevant amendments, with information on the chapter-by-chapter allocation of the proposed changes.
(2001-456 DC, 27 December 2001, paras 9 and 10, p. 180)

Amendments and additional sections in Finance Bills. Admissibility

Mission

The second paragraph of section 18(I) of the Institutional Act relating to Finance Acts reserves for a Finance Act the power to create an annexed budget and to allocate revenue to an annexed budget. The first and last paragraphs of section 19 contain similar provisions as regards special accounts. But the first paragraph of section 18(II) provides that "an annexed budget shall constitute a mission" within the meaning of articles 7 and 47. Each specific appropriation account and each financial support account also constitutes a mission, with appropriations in accordance with the combined provisions of section 20(II) and sections 21 to 24. Given that the mission is a charge within the meaning of article 40 of the Constitution, as provided by articles 7 and 47, the parliamentary amendments moved in this respect can be regarded as admissible only if they have neither the object nor the effect of creating a mission or increasing the aggregate amount of mission appropriations. Sections 18(I) and 19 of the Institutional Act relating to Finance Acts are, subject to this reservation, constitutional.
(2001-448 DC, 25 July 2001, paras 42 to 45, p. 99)

Section 47 of the Institutional Act relating to Finance Acts determines the conditions for admissibility of amendments to Finance Bills moved by the Government and members of Parliament. The first paragraph provides: "Items of public expenditure within the meaning of articles 34 and 40 of the Constitution shall, in the case of amendments to appropriations, be examined mission by mission". "Amendments to appropriations" means amendments to the sections of the second part of the Finance Act for the year referred to in section 34(II)(1°) and (3°), amendments to modifications of the same sections by Finance (Rectification) Acts, amendments to similar provision of the Acts referred to in section 45 and amendments to rectify adjustments of appropriations made by the Closure of Accounts Acts. Combined with section 7, these provisions offer members of Parliament a new possibility for presenting amendments to increase appropriations for one or more programmes or allocations included within a mission, provide they do not increase the appropriations for the mission.
(2001-448 DC, 25 July 2001, paras 95 and 96, p. 99)

The second paragraph of section 47 of the Institutional Act relating to Finance Acts, whereby "reasons must be given for any amendment together with the arguments in support of it", will

make it possible to check the reality of offsettings in any during the procedures for examining financial admissibility.
(2001-448 DC, 25 July 2001, para. 98, p. 99)

SOCIAL SECURITY (FINANCE) ACTS

Parliamentary control

Information for Parliament

Presentation of report and annexes

As regards the report on the situation and trend of transfer payments, which must be presented at the opening of the ordinary session under section 52 of the Institutional Act relating to Finance Acts for the examination of and voting on both the Finance Bill and the Social Security (Finance) Bill for the next year, "the financial estimates for the current year and the next two years relating to all legislative or regulatory provisions envisaged by the Government" are purely indicative. They cannot have the effect of constraining the Government's discretion to decide and adapt under article 20 of the Constitution when determining and conducting the policy of the Nation.
(2001-448 DC, 25 July 2001, paras 85, 90 and 91, p. 99)

Content and presentation of Social Security (Finance) Acts

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

Provisions directly affecting the financial equilibrium of compulsory basic schemes

Section 31 of the Social Security (Finance) Act for 2002 establishes the principle of a reduction in working time in the public hospital service. The reduction in weekly working hours entails the creation of many new jobs in public hospitals in 2002. The financing of this provisions is provided for in the national health-care insurance target as to three billion francs, corresponding to the share covered by the health-care insurance scheme in the recruitment of staff and the financing of overtime. Section 31 accordingly has a direct impact on the financial equilibrium of the compulsory basic health-care schemes.
(2001-453 DC, 18 December 2001, para 73, p. 164)

The purpose of section 73 of the Social Security (Finance) Act for 2002 is to modernise and simplify the recovery of social security contributions. To that end it authorises among other things the transmission of social security returns and the payment of contributions by electronic means. Given the investments needed to introduce the system and to improve the recovery of social security contributions which is expected to ensue, section 73 will have a significant impact on the financial equilibrium of the compulsory basic social security schemes in 2002.
(2001-453 DC, 18 December 2001, para 74, p. 164)

The purpose of section 75 of the Social Security (Finance) Act for 2002, which reforms the functions and management of the Union of National Social Security Funds, is to give that body the means to carry out its functions so as to compensate for the current default of its managing bodies following the decision taken by certain social partners to withdraw from the Management Board. This will enable collective bargaining to resume at national level with the representatives of the 200 000 or so staff of the general social security scheme's management bodies. Such bargaining has a direct impact on the remuneration of such staff and consequently a significant impact on the operating costs of the general social security scheme's

management bodies recorded in the expenditure target provided for by section L.O. 111-3(I)(3°) of the Social Security Code.
(2001-453 DC, 18 December 2001, para 75, p. 164)

Provisions enacted in response to the need to respect the Constitution

Section 30(III) of the Social Security (Finance) Act for 2002 amends the definition of the resources of recipients of the personalised autonomy allowance who are accommodated in an establishment, taken into account for calculating the allowance. It has no significant impact on the financial equilibrium of the compulsory basic social security schemes and there is no reason why it should appear in the Act referred.

But the effect of declaring this provision unconstitutional would be to preserve in the current legislation an error that generates a difference of treatment, contrary to the principle of equality, between recipients of the allowance, depending whether they are accommodated in an establishment or residing in their own home. This provision being enacted in response to the need to respect the Constitution, it should not be declared unconstitutional.
(2001-453 DC, 18 December 2001, paras 76 and 77, p. 164)

Measure affecting the financial equilibrium of the current year

The constitutionality of the amendments for 2001, which obviate the need for the Government to introduce a Finance (Amendment) Bill, is challenged.

Section LO 111-3(II) of the Social Security Code does not preclude the revision, in the Finance Act for 2002, of revenue forecasts, expenditure targets for the various branches and the national health-care insurance expenditure target for 2001.
(2001-453 DC, 18 December 2001, paras 9 and 10, p. 164)

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

Section 91 of the Finance (Amendment) Act for 2001 repeals section 11 of the Social Security (Finance) Act for 2002 and thus restores, for the fourth consecutive year, after having abolished them, the costs of assessment and recovery accepted by tax departments for the collection of taxes allocated to social security bodies. The estimated aggregate amount of the costs of assessment and recovery invoiced by central government to social security bodies is approximately €52 million. The measure provided for by the section criticised, which is properly enacted in a Finance Act, does not have such an impact of the general financial equilibrium of the social security system for 2002 that it should be enacted in a Social Security (Finance) Act. However open to criticism it may be, this repeal is not contrary to the Constitution.
(2001-457 DC, 27 December 2001, paras 15 to 19, p. 192)

Measures having an impact only on the results of the previous year

Section 59 of the Social Security (Finance) Act for 2002 provides funds for the reserve account to finance the Investment Fund for the development of early childhood reception structures by drawing on the excess for 2000 of the family branch of the general social security scheme.

This can affect only the results for 2000. In particular, the effects are taken into account neither in the family branch expenditure target for 2002 nor in the revised expenditure target for 2001. The section, whose provisions constitute an unseverable entity, are not properly enacted in the Social Security (Finance) Act 2002.
(2001-453 DC, 18 December 2001, paras 78, 81 and 82, p. 164)

Section 68 of the Social Security (Finance) Act for 2002 provides that in 2002 the National Family Allowances Fund is to pay €762 million to the pensions reserve fund. This sum is drawn on the excess for 2000 of the family branch.

The measure challenged, which is within none of the categories mentioned in section LO 111-3(I), would have an impact only on the 2000 accounts of the compulsory basic schemes.

Section 68, whose provisions constitute an unseverable entity, must accordingly be declared unconstitutional.
(2001-453 DC, 18 December 2001, paras 83 and 85, p. 164)

Presentation of a report

A provision that within three months the Government is to report to Parliament on the conditions in which hospital laboratory technicians could be graded in active category B of the public hospital service is not properly enacted in the Social Security (Finance) Act.
(2001-453 DC, 18 December 2001, para 86, p. 164)

Miscellaneous

Section 48 of the Social Security (Finance) Act for 2002 allows litigants against the asbestos victims compensation fund "to be assisted or represented by their spouse, an ascendant or a descendant in the direct line, or a lawyer or a delegate for the most representative associations of the industrial disabled".

Section 50 recognise as an accident on the way to or from work, covered as occupational accidents, accidents sustained by an employed person while travelling between the establishments of two employers belonging to the same group.

For the definition of accidents on the way to and from work sustained by agricultural employed workers, section 51 includes detours between home and workplace for the sake of regular car-sharing.

None of these provisions significantly affects the financial equilibrium of compulsory basic schemes.
(2001-453 DC, 18 December 2001, para 87, p. 164)

Respect for general financial equilibrium

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

The applicants submit that the Fund to finance the personalised autonomy allowance should not be provided for by a Finance Act, or by a Social Security (Finance) Act. Parliament is allegedly deprived of the power to review public which it enjoys under article 14 of the Declaration of Human and Civic Rights of 1789, whereby: "All citizens have the right to ascertain, by themselves, or through their representatives, the need for a public tax, to consent to it freely, to watch over its use, and to determine its proportion, basis, collection and duration".

The involvement of public retirement pension schemes and the fraction of the yield of the generalised social contribution, which constitute revenue of the Fund to finance the personalised autonomy allowance, are determined by the Act referred. By enacting it, Parliament confirmed the need for it and consented to it. Under the first paragraph of section 4 of the Ordinance of 2 January 1959 enacting the Institutional Act relating to Finance Acts, it will have to authorise its collection each year in the Finance Act. Under the nineteenth paragraph of article 34 of the Constitution, it will also have to draw the conclusions as required in the Social Security (Finance) Act.
(2001-447 DC, 18 July 2001, paras 14 and 15, p. 89)

The applicants submit that the levy on the yield of the "generalised social contribution" reduced correspondingly the revenue of the Old-Age Solidarity Fund, generating a deficit that would violate the constitutional objective of equilibrium in social security, but it will be for the Social Security (Finance) Act for 2002 to draw the conclusions from the new provisions.
(2001-447 DC, 18 July 2001, para. 18, p. 89)

Accuracy of the Social Security (Finance) Act

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

The realism of the forecasts for aggregate wages and salaries and for growth in gross domestic product serving as a basis for the forecasts of aggregate expenditure by compulsory schemes and bodies set up to help finance them is challenged. According to a report laid before the Social Security Audit Board, the hypothesis adopted as regards health-care insurance expenditure is particularly ambitious and attainment of the target set "would require a substantial slowdown in comparison with the average trend for the last two years", whereas the authors of the referral assert that there is nothing in the Act to suggest that health-care insurance expenditure will slow down. Given previous years' forecasts and outturns, the family branch expenditure target appears to have been overestimated.

The information laid before the Constitutional Council does not show that the evaluations of revenue for 2002 taken into account in the balancing item are vitiated by any manifest error, given the unpredictable nature of their evaluation and the specific uncertainties as to the evolution of the economy in 2002. But if serious doubts are raised as to the general conditions of equilibrium in the compulsory basic social security schemes in 2002, it will be for the Government to lay the requisite adjustments before Parliament in a Finance (Amendment) Bill or alternatively, if there is still time, in a Social Security (Finance) Bill for 2003.
(2001-453 DC, 18 December 2001, paras 5 and 6, p. 164)

The referral criticises the alleged insufficiency of the share allocated to the pensions reserve fund by the section of the Social Security (Finance) Act from the proceeds of the social levies on income from assets and investments. It is alleged that neither the levy nor the fresh allocation of the proceeds of privatisation provided for in the Finance Bill for 2002, currently before Parliament, will suffice to cover the "drastic reduction" in the price of licences to establish and operate third-generation mobile telephony networks. The Government's statement that it will allocate the said proceeds of privatisation to other expenditure is pleaded in evidence to challenge the accuracy of these forecasts.

The evaluations of revenue from the transfer of publicly-owned assets set out in the Finance Bill for 2002 appear adequate to cover the loss of revenue sustained by the pensions reserve fund as a result of the reduction in the price of licences mentioned above. The distribution of revenue is accordingly not vitiated by inaccuracy.
(2001-453 DC, 18 December 2001, paras 7 and 8, p. 164)

The authors of the referral submit that the procedure for raising the evaluation of the proceeds of the social solidarity contribution charged to companies for 2001 are contrary to the principle of accuracy.

The purpose of the provisions in the Social Security (Finance) Act for 2002 to that end is to draw the conclusions of a measure, set out in the Finance (Amendment) Bill for 2001 currently before Parliament, which raises by 1.5 billion francs the portion of that contribution that is allocated to the annexed budget for agricultural social expenditure in 2001. The revised evaluation of "taxes allocated" in 2001 is accordingly increased by the amount in the article challenged. The balance to be carried over to 2002 is thus reduced by 1.5 billion francs. But this reduction in the balance is partly offset by a revenue overshoot of 800 million francs in 2001. Another section of the Finance Act accordingly reduces by 700 million francs the "taxes allocated" item for 2002.

This coordination does not violate the principle of accuracy.
(2001-453 DC, 18 December 2001, paras 11 to 13, p. 164)

Section 76 of the Social Security (Finance) Act sets the limits within which the cash needs of the five compulsory basic schemes may be covered by non-permanent resources for the purposes of section L.O. 111-3(I)(5°) of the Social Security Code.

The authors of the referral submit that the limits thus set are either useless or overestimated or excessively optimistic and accordingly contrary both to the principle of accuracy and to the provisions of the Social Security Code mentioned above, which set them up as warning lights for Parliament.

The information laid before the Constitutional Council does not show that the maximum limits on non-permanent resources are vitiated by a manifest error, given the variability of year-end cash balances.
(2001-453 DC, 18 December 2001, paras 66 to 68, p. 164)

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

As regards the report on the situation and trend of transfer payments, which must be presented at the opening of the ordinary session under section 52 of the Institutional Act relating to Finance Acts for the examination of and voting on both the Finance Bill and the Social Security (Finance) Bill for the next year, "the financial estimates for the current year and the next two years relating to all legislative or regulatory provisions envisaged by the Government" are purely indicative. They cannot have the effect of constraining the Government's discretion to decide and adapt under article 20 of the Constitution when determining and conducting the policy of the Nation.
(2001-448 DC, 25 July 2001, paras 85, 90 and 91, p. 99)

Provisions adopted by way of amendment

Section 18 of the Social Security (Finance) Act for 2002, relating to relations between health-care insurance bodies and the health-care professions, is not directly related to one of the sections inserted in the Bill at first reading and numbered 10 A during the debate. This latter section was replaced after the meeting of the Joint Committee by provisions which, given their scope, must be regarded as new provisions. Its adoption was not imposed by the need to respect the Constitution, nor by the need for coordination with other instruments under debate in Parliament or for correction of a mistake. It is accordingly unconstitutional.
(2001-453 DC, 18 December 2001, paras 30 to 38, p. 164)

Question first raised in Parliament

Principle not applied

Before considering whether the provisions of several sections of the Social Security (Finance) Act for 2002 were such as should not have been enacted in a Social Security (Finance) Act, the Constitutional Council observed no failure to raise the relevant questions in Parliament.
(2001-453 DC, 18 December 2001, paras 75, 86 and 87, p. 164; sol. impl. ab.jur. 96-384 DC, 19 December 1996, paras 3 and 4, p. 141; cf. 2000-437 DC, 19 December 2000, p. 190)

GOVERNMENT

POWERS SPECIFIC TO THE GOVERNMENT

No conflict regarding the powers specific to the Government

As regards the report on the situation and trend of transfer payments, which must be presented at the opening of the ordinary session under section 52 of the Institutional Act relating to Finance Acts for the examination of and voting on both the Finance Bill and the Social Security (Finance) Bill for the next year, "the financial estimates for the current year and the next two years relating to all legislative or regulatory provisions envisaged by the Government" are purely indicative. They cannot have the effect of constraining the Government's

discretion to decide and adapt under article 20 of the Constitution when determining and conducting the policy of the Nation.
(2001-448 DC, 25 July 2001, paras 85, 90 and 91, p. 99)

PRIME MINISTER

Distribution of powers between Prime Minister and President of the Republic

Under article 13 of the Constitution, the President of the Republic signs decrees deliberated upon in the Council of Ministers, but neither section L 309 of the Electoral Code ("The election shall be called by decree") nor any other provision requires the decree convening Senate electoral colleges to be signed by the President of the Republic. The Prime Minister accordingly has the power to sign such a decree.
(HAUCHEMAILLE-MARINI, referral challenging the decree calling Senate elections, 20 September 2001, para 4, p. 121)

PRESIDENT OF THE REPUBLIC

RULES RELATING TO THE PRESIDENTIAL ELECTION

Categories of citizens entitled to present a candidate

Section 1 of the Institutional Act referred to the Constitutional Council, which adds to the categories of citizens entitled to nominate candidates for the election of the President of the Republic the "Delegated Mayors of Associated Communes", "Mayors of Districts in Lyon and Marseille" and "Presidents of the decision-making bodies of the Urban Communities, of the Conurbation Communities or of the Communities of Communes and French nationals being Members of the European Parliament elected in France", is constitutional.
(2001-443 DC, 1 February 2001, para. 3, p. 49)

Funding of campaigns for the election of the President of the Republic

Jurisdiction of Constitutional Council

Section 4(2°) of the Institutional Act referred to the Constitutional Council raises from one quarter to one half of the maximum rate provided for by the second paragraph of section 3(II) of the Act of 6 November 1962 the flat-rate reimbursement allowed to each candidate who receives more than 5 % of the total votes cast at the first ballot. Section 4(3°) provides that the reimbursement is not given to candidates who exceeded the maximum permissible amount of electoral expenditure, or to candidates who fail to present campaign accounts or whose campaign accounts have been rejected, "save in the event of a decision to contrary effect by the Constitutional Council in cases where the violation of the relevant provisions was unintentional and of limited impact". These provisions are contrary to no constitutional rule or principle.
(2001-443 DC, 1 February 2001, paras 3 and 4, p. 49)

ELECTION

Pre-electoral operations

A voter asks the Constitutional Council to order that a passage in the recommendation of the *Conseil supérieur de l'audiovisuel* of 23 October 2001 be rewritten on the grounds that, recalling

the judgment given by the Court of Cassation on 4 September 2001 relating to the incompatibility of section 11 of the Act of 19 July 1977 with the European Convention for the Protection of Human Rights and Fundamental Freedoms and drawing the conclusion that, in the absence of criminal penalties, the prohibition by section 11 of the Act on publication of opinion-poll results in the last week preceding any ballot and during the ballot itself, the *Conseil supérieur de l'audiovisuel* was inciting broadcasting services to distribute last-minute opinion poll results that were likely to affect the outcome of the ballot, thus generating a risk of "seriously compromising the review of electoral operations by the Constitutional Council".

The recommendation challenged was subject in advance to the consultation required by the first paragraph of section 3(III) of the Act of 6 November 1962, which refers to section 46 of the Ordinance of 7 November 1958. It follows that a voter basically has standing to ask the Constitutional Council to give a judicial ruling on the regularity of these acts only in the conditions set out in section 50 of the Ordinance laying down the Institutional Act of 7 November 1958, to which the aforementioned provision of the Act of 6 November 1962 also refers.

However, in the exercise of its general function of reviewing the regularise of electoral operations under the Act of 6 November 1962, it is for the Constitutional Council to rule on referrals raising questions regarding future elections if declaring such referrals inadmissible might seriously jeopardise the effectiveness of its electoral review function, vitiate electoral operations in general or disrupt the proper functioning of public authorities.

The conditions in which the Constitutional Council, in exceptional cases, may rule on the outcome of a ballot prior to their proclamation are not met in relation to the recommendation challenged.
(HAUCHEMAILLE, 13 December 2001, paras 1 to 4, p. 162) (see HAUCHEMAILLE, 23 August 2000, paras 1 to 3, p. 134 and HAUCHEMAILLE, 25 July 2000, paras 1, 3 to 5, p. 117)

Litigation

Jurisdiction of Constitutional Council

Questions not within jurisdiction of Constitutional Council

Mr HAUCHEMAILLE asks the Constitutional Council to annul part of Decree 2001-213 of 8 March 2001 implementing Act 62-1292 of 6 November 1962 relating to the election of the President of the Republic by universal suffrage. The Decree was presented for the prior consultation required by the first paragraph of section 3(III) of the Act of 6 November 1962, which refers to section 46 of the Ordinance of 7 November 1958. A voter accordingly has no standing to ask the Constitutional Council to give a judicial decision on the regularity of these instruments except as provided by section 50 of the Ordinance enacting the Institutional Act of 7 November 1958, to which the Act of 6 November 1962 also refers.

But, in the exercise of its general function of reviewing electoral operations under the Act of 6 November 1962, it is for the Constitutional Council to rule on applications contesting instruments on which the regularity of future operations is predicated where declaring such applications inadmissible would seriously jeopardise the effectiveness of its review of electoral operations, vitiate the ballot in general or disrupt the normal operation of the public authorities.

The conditions in which, exceptionally, the Constitutional Council can give a ruling in advance of the declaration of the results of a ballot are not met in the case of the Decree contested here, which does not apply to a specific election but lays down to permanent general rules applicable to the election of the President of the Republic by universal suffrage.
(Hauchemaille (second case), 14 March 2001, paras 1 to 4, p. 53)

Complaints procedure

Challenge to the regularity of instruments organising the elections

A voter asks the Constitutional Council to order that a passage in the recommendation of the *Conseil supérieur de l'audiovisuel* of 23 October 2001 be rewritten on the grounds that, recalling

the judgment given by the Court of Cassation on 4 September 2001 relating to the incompatibility of section 11 of the Act of 19 July 1977 with the European Convention for the Protection of Human Rights and Fundamental Freedoms and drawing the conclusion that, in the absence of criminal penalties, the prohibition by section 11 of the Act on publication of opinion-poll results in the last week preceding any ballot and during the ballot itself, the *Conseil supérieur de l'audiovisuel* was inciting broadcasting services to distribute last-minute opinion poll results that were likely to affect the outcome of the ballot, thus generating a risk of "seriously compromising the review of electoral operations by the Constitutional Council".

The recommendation challenged was subject in advance to the consultation required by the first paragraph of section 3(III) of the Act of 6 November 1962, which refers to section 46 of the Ordinance of 7 November 1958. It follows that a voter basically has standing to ask the Constitutional Council to give a judicial ruling on the regularity of these acts only in the conditions set out in section 50 of the Ordinance laying down the Institutional Act of 7 November 1958, to which the aforementioned provision of the Act of 6 November 1962 also refers.

However, in the exercise of its general function of reviewing the regularise of electoral operations under the Act of 6 November 1962, it is for the Constitutional Council to rule on referrals raising questions regarding future elections if declaring such referrals inadmissible might seriously jeopardise the effectiveness of its electoral review function, vitiate electoral operations in general or disrupt the proper functioning of public authorities.

The conditions in which the Constitutional Council, in exceptional cases, may rule on the outcome of a ballot prior to their proclamation are not met in relation to the recommendation challenged.
(HAUCHEMAILLE, 13 December 2001, paras 1 to 4, p. 162) (see HAUCHEMAILLE, 23 August 2000, paras 1 to 3, p. 134 and HAUCHEMAILLE, 25 July 2000, paras 1, 3 to 5, p. 117)

Campaign accounts

Reimbursements by the State

Section 4(2°) of the Institutional Act referred to the Constitutional Council raises from one quarter to one half of the maximum rate provided for by the second paragraph of section 3(II) of the Act of 6 November 1962 the flat-rate reimbursement allowed to each candidate who receives more than 5 % of the total votes cast at the first ballot. Section 4(3°) provides that the reimbursement is not given to candidates who exceeded the maximum permissible amount of electoral expenditure, or to candidates who fail to present campaign accounts or whose campaign accounts have been rejected, "save in the event of a decision to contrary effect by the Constitutional Council in cases where the violation of the relevant provisions was unintentional and of limited impact". These provisions are contrary to no constitutional rule or principle.
(2001-443 DC, 1 February 2001, paras 3 and 4, p. 49)

FUNCTIONS AND JURISDICTION

Promulgation of statutes

By deciding that no statute with financial implications for central government could be published without a financial annex specifying its impact for the current year and the next following year, the first paragraph of section 33 of the Institutional Act relating to Finance Acts is contrary to the principle, laid down in particular by article 10 of the Constitution, that promulgation of a statute by the President of the Republic constitutes an order to all relevant authorities and departments to publish it forthwith. The provisions of the same paragraph relating to Decrees are unseverable.
(2001-448 DC, 25 July 2001, paras 63 to 65, p. 99)

Distribution of powers between Prime Minister and President of the Republic

Under article 13 of the Constitution, the President of the Republic signs decrees deliberated upon in the Council of Ministers, but neither section L 309 of the Electoral Code ("The election shall be called by decree") nor any other provision requires the decree convening Senate electoral colleges to be signed by the President of the Republic. The Prime Minister accordingly has the power to sign such a decree.
(HAUCHEMAILLE-MARINI, referral challenging the decree calling Senate elections, 20 September 2001, para 4, p. 121)

TERRITORY OF THE REPUBLIC — TERRITORIAL UNITS

SELF-GOVERNMENT OF TERRITORIAL UNITS

Principle

Article 72 of the Constitution provides that "the territorial units of the Republic ... shall be self-governing through elected councils and in the manner provided by statute". Article 34 of the Constitution provides: "Statutes shall determine the fundamental principles of ... the self-government of territorial units, their powers and their resources". By the eleventh paragraph of the Preamble to the Constitution of 27 October 1946, the Nation is to "guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure. All people who, by virtue of their age, physical or mental condition, or economic situation, are incapable of working, shall have to the right to receive suitable means of existence from society".

Under the new sections L232-1 and L232-2 of the Code of Social and Family Action, the personalised autonomy allowance is a universal benefit intended to cover the needs of elderly persons who are dependent in conditions matching their needs. It is granted "within the limits of rates set by regulation". It is a compulsory expenditure item for departments. By way of consideration for it, they receive financial allocations from a Fund financed by a fraction of the "generalised social contribution" and by a contribution from the compulsory retirement pension schemes.

Firstly, if the Act gives the departments the power to grant the personalised autonomy allowance, a welfare benefit reflecting a constraint of national solidarity, it is legitimate for the legislature to determine the conditions for the grant of the allowance in such a way as to secure equal treatment for dependent elderly persons throughout the national territory. The legislature was entitled to set these conditions provided it did not encroach on the specific powers of the departments or deprive any departmental body of its actual powers.

Secondly, if the personalised autonomy allowance is granted by the President of the General Council on a proposal from the commission set up by the provision criticised, he is free to disapply that proposal and ask for a new one. It is clear from the legislative history that the legislature's intention was that the commission should consist as to a majority of representatives of the General Council. It will be for the authority empowered to make regulations to draw all the conclusions from the legislative intention. Subject to that reservation, the new section L232-12 of the Code of Social and Family Action is not contrary to article 72 of the Constitution.
(2001-447 DC, 18 July 2001, paras 4 to 7, p. 89)

Articles 34 and 72 of the Constitution empower the legislature to define categories of expenditure that constitute compulsory expenditure for local authorities. But the resultant obligations for a territorial unit must be defined with precision as to their object and scope and cannot violate the specific powers of territorial units or jeopardise their self-government.
(2001-447 DC, 18 July 2001, para. 24, p. 89)

Resources and burdens of territorial units

Articles 34 and 72 of the Constitution empower the legislature to define categories of expenditure that constitute compulsory expenditure for local authorities. But the resultant obligations for a territorial unit must be defined with precision as to their object and scope and cannot violate the specific powers of territorial units or jeopardise their self-government.

The applicants submit that the legislature failed to specify the weighting to be attached to each of the three criteria used to compute the support given by the Fund for financing the personalised autonomy allowance in each department. It thus "left it to the authority empowered to make regulations to determine whether the purpose of the Fund... was to offset charges borne by the departments... or to support less-favoured departments".

The third paragraph of the new section L232-21(II) of the Code of Social and Family Action provides: "The amount of this support shall be divided annually between the departments on the basis of the share the expenditure borne by each of them in respect of the personalised autonomy allowance in the total amount of expenditure recorded the previous year in respect of the personalised autonomy allowance in all departments combined". The amount thus distributed is to be "modulated to reflect the taxable potential... and the number of persons receiving the minimum insertion income in each department". It is clear from the very words of the statute and from legislative history that the legislature has defined a principal criterion for distributing the Fund's support and that the other two criteria merely modulate it on the basis of the situation in each department as regards its resources and its other welfare charges. The legislature has accordingly adequately specified the factors for calculating the support to be paid by the Fund to each department for the purposes of articles 34 and 72 of the Constitution.

The applicants submit that, depending the order in which the various distribution, topping-up and skimming-off operations provided for by the new section L232-21(II) are performed, the Act could jeopardise the self-government of territorial units by imposing contradictory rules on them.

Under the new section L232-21(II) of the Code of Social and Family Action, the contribution by the Fund for financing the personalised autonomy allowance for each department depends first and foremost on the distribution based on the above three criteria. It is raised, if need be, in accordance with the seventh and eighth paragraphs of section L232-21(II) for departments whose expenditure on the personalised autonomy allowance, in relation to the number of persons aged over seventy-five, exceeds the national average by at least thirty per cent. The resultant contribution may not exceed half the department's on the personalised autonomy allowance. The total amount of expenditure on the personalised autonomy allowance in each department is also limited the tenth paragraph of section L232-21(II) to an amount equal to the yield of eighty per cent of the increase for third parties on 1 January 2001 for the number of beneficiaries. The expenditure committed by the department above that maximum is borne by the Fund. This rule will enable departments whose expenditure exceeds the maximum set by the Act to call on the Fund to guarantee the excess.

Given the rules governing the Fund's support to the departments, and in particular the guarantee that expenditure that each of them is left to bear will be no higher than the threshold set by the tenth paragraph of section L232-21(II), the provisions criticised will not have the effect of restricting the resources of departments to the point of jeopardising their self-government and thus violating the constitutional principle in article 72 of the Constitution.
(2001-447 DC, 18 July 2001, paras 24 to 28 and 30, p. 89)

Section 24 of the MURCEF Act relates to the powers of sanction and substitution conferred on the Prefect in relation to communes that have not attained the three-yearly objectives as to the expansion of social housing provided for by section 55 of the Urban Solidarity and Renewal Act of 13 December 2000. The Prefect may declare that a commune is in default by a reasoned Order determining for a period not exceeding three years the surcharge on the commune's tax resources provided for by section L 302-7 of the Construction and Housing Code. The increase is subject to two limits: its rate may not exceed the ratio between the number of social housing units not constructed and the three-year housing objective established in accordance with section L 302-8 of the Code and the levy, even after the increase, remains limited to 5 % of the commune's real operating costs. Moreover the Prefect may substitute himself for the

commune by entering into an agreement with a body for the construction or acquisition of social housing units. In this event, the corresponding expenditure is charged to the commune, subject to a maximum amount per housing unit of €13 000 in the Ile-de-France and €5 000 elsewhere in France.

The section that is criticised confers on the Prefect a discretionary power to act in consequence of the commune's default on the basis of three criteria: the "scale of the gap between objectives and attainments in the course of the past three-year period", the "difficulties encountered, if any, by the commune" and the "social housing projects in progress". The provisions challenged also provide for an adversarial procedure.

The mayor, after being informed by the Prefect of his reasoned intention to launch the procedure for recording his failure to act, may make his views known within two months; the mayor may then bring an action challenging against the Prefect's order. By providing for this procedure, the legislature has enabled the Prefect, subject to judicial review, to have regard to the nature and value of the reasons for the commune's delay in attaining its three-year objective. The provisions criticised have neither the object nor the effect of conferring an arbitrary power on the Prefect.

The conditions laid down for the Prefect's exercise of his powers of sanction and substitution are defined with due precision as to their object and scope and are not contrary to article 72 of the Constitution.
(2001-452 DC, 6 December 2001, paras 8, 10 and 11, p. 156)

Section 24 of the MURCEF Act inserts in the Construction and Housing Code a section L 302-9-1 relating to the powers of sanction and substitution conferred on the Prefect in relation to communes that have not attained the three-yearly objectives as to the expansion of social housing provided for by section 55 of the Urban Solidarity and Renewal Act of 13 December 2000.

The proceeds of the surcharge, which will be allocated in the same way as the levy, are subject to an identical maximum. The fact that these proceeds can be for the benefit of persons not residing in the commune is merely the consequence of a mechanism of solidarity between urban communes that violates no constitutional rules or principles.
(2001-452 DC, 6 December 2001, paras 8 and 12, p. 156) (see 2000-436 DC, 7 December 2000, paras 37 and 38, p. 176).

Section 24 of the Finance Act for 2002, relating to the car-tax sticker, further reduces the proportion of territorial units'tax revenues in their aggregate resources, but not to such an extent as to jeopardise their self-government. Moreover, it does not have the effect of reducing their aggregate resources since there are arrangements to offset the loss of revenue flowing from the new exemptions.
(2001-456 DC, 27 December 2001, para 23, p. 180)

Cooperation between territorial units

Self-government of territorial units not violated

The applicants submit that "the Act de facto expropriates private enterprises and persons or bodies corporate exercising any activities related to preventive archaeology" and thereby violates property rights.

The rights conferred on the public establishment by the Act referred provide for no form of deprivation of property within the meaning of article 17 of the Declaration of Human and Civic Rights of 1789. The plea is unfounded.
(2000-439 DC, 16 January 2001, paras 19 and 20, p. 42)

Central government jurisdiction

Representative of central government

Section 24 of the MURCEF Act relates to the powers of sanction and substitution conferred on the Prefect in relation to communes that have not attained the three-yearly objectives as to the expansion of social housing provided for by section 55 of the Urban Solidarity and Renewal Act

of 13 December 2000. The Prefect may declare that a commune is in default by a reasoned Order determining for a period not exceeding three years the surcharge on the commune's tax resources provided for by section L 302-7 of the Construction and Housing Code. The increase is subject to two limits: its rate may not exceed the ratio between the number of social housing units not constructed and the three-year housing objective established in accordance with section L 302-8 of the Code and the levy, even after the increase, remains limited to 5 % of the commune's real operating costs. Moreover the Prefect may substitute himself for the commune by entering into an agreement with a body for the construction or acquisition of social housing units. In this event, the corresponding expenditure is charged to the commune, subject to a maximum amount per housing unit of €13 000 in the Ile-de-France and €5 000 euros elsewhere in France.

The section that is criticised confers on the Prefect a discretionary power to act in consequence of the commune's default on the basis of three criteria: the "scale of the gap between objectives and attainments in the course of the past three-year period", the "difficulties encountered, if any, by the commune" and the "social housing projects in progress". The provisions challenged also provide for an adversarial procedure.

The mayor, after being informed by the Prefect of his reasoned intention to launch the procedure for recording his failure to act, may make his views known within two months; the mayor may then bring an action challenging against the Prefect's order. By providing for this procedure, the legislature has enabled the Prefect, subject to judicial review, to have regard to the nature and value of the reasons for the commune's delay in attaining its three-year objective. The provisions criticised have neither the object nor the effect of conferring an arbitrary power on the Prefect.

The conditions laid down for the Prefect's exercise of his powers of sanction and substitution are defined with due precision as to their object and scope and are not contrary to article 34 or article 72 of the Constitution.
(2001-452 DC, 6 December 2001, paras 8, 10 and 11, p. 156)

ORGANISATION OF TERRITORIAL UNITS

Overseas territories

Procedures for consultation of Territorial Assembly

Consultation not mandatory

The Act referred makes applicable in French Polynesia certain provisions of the Code Public Health, but these provisions concern matters that are reserved for central government and amend none of the conditions and reservations that operate under the Institutional Act of 12 April 1996. They do not introduce, amend or repeal provisions specific to the territory of French Polynesia and affecting its organisation. They may accordingly be made applicable there without consultation of the territorial assembly as provided for by article 74 of the Constitution. The plea that the legislative procedure was irregular is dismissed.
(2001-446 DC, 27 June 2001, para. 21, p. 74; cf 94-342 DC, 7 July 1994, para. 5, p. 92)

Territory of French Polynesia

Section 1 of the Institutional Act referred to the Constitutional Council raises the number of members of the Assembly of French Polynesia from forty-one to forty-nine and distributes the additional seats over the five existing constituencies. The number of elected members will be 32 instead of 22 in the Windward Islands; 7 instead of 8 in the Leeward Islands and 4 instead of 5 in the Tuamotu and Gambier Islands. It will remain at 3 in the Marquise Islands and the Southern Islands.

Given the results of the last census of the population in the various archipelagos constituting French Polynesia, section 1 reduces the demographic gaps in representation in relation to the earlier provisions. The legislature has improved the compliance with the principle that an assembly elected by direct universal suffrage must be elected on proper demographic bases, a principle that flows from article 6 of the Declaration of Human and Civic Rights of 1789 and articles 1 and 3 of the Constitution. It has derogated therefrom only in very small measure, to take account of the general interest constraint of ensuring the effective representation of the least populated and most remote archipelagos.
(2000-438 DC, 10 January 2001, paras 3 and 4, p. 37)

Health is not among the matters to be regulated by the State listed exhaustively in section 6 of the Institutional Act of 12 April 1996, and is consequently, under section 5 of that Act, a matter to be regulated by the authorities of French Polynesia; however, sections L2212-1, L2212-7 and L2212-8 of the Code of Public Health, referred to above, which deal with the possibility for a pregnant woman who is in a situation of distress because of her condition to ask for her pregnancy to be interrupted, with the exercise of parental authority where the woman is a minor who has not been emancipated and with the doctor's freedom to refuse to practise a voluntary interruption of pregnancy himself, relate in the first two cases to the law of persons and therefore to civil law, and, in the third, to a guarantee of freedom public, all these being matters which under section 6 of the Institutional Act are matters for the state; but their implementation in the area of public health is within the powers of the territory; consequently, the objection based on the alleged lack of power of the ordinary legislator cannot be accepted.
(2001-446 DC, 27 June 2001, para. 20, p. 74)

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GLOSSARY

Caisse centrale de la mutualité sociale agricole: Central organism in charge of agricultural social security.

Caisse des dépôts et consignations: Public financial institution. Does banking business and administers public and private funds on behalf of central government to finance low-cost housing in particular.

Conseil supérieur de la magistrature: The organ which gives opinions on or makes recommendations for the nomination of the *magistrats* and sits as their disciplinary council.

Conseil supérieur de l'audiovisuel: 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.

Fonds de réserve pour les retraites: National establishment in charge of supplying extrafunding for retirement pensions.

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

Magistrats: Members of the judicial courts who mainly include those in charge of rendering justice (*magistrats du siège)*, those demanding it in the name of the state *(procureurs* or *substituts généraux* and *parquet*, state counsel) or those investigating criminal cases *(juges d'instruction,* investigating judges).

Magistrats du siège: see *magistrats.*

Tribunal de grande instance: First degree judicial court within the jurisdiction of a C*our d'appel.*