ANALYTICAL SYNOPSIS 2002

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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PARLIAMENTARY ASSEMBLIES

ORGANISATION OF PARLIAMENTARY ASSEMBLIES

Special and standing committees

Designation of standing committees

A resolution merely amends Order 36 of the Standing Orders of the National Assembly to designate the Production and Trade Committee as the Committee on Economic Affairs, the Environment and Territorial Planning and to add the environment specifically to the list of areas in which it may act. These provisions are contrary to no constitutional principles or rules.
(2002-462 DC, 10 October 2002, para 1, p. 372)

LEGISLATIVE PROCEDURE

Right to amend

Rules of admissibility and discussion

Provisions of standing orders of parliamentary assemblies relating to amendments

It is alleged that the adoption of a senatorial amendment inserting a clause in the Finance Act, by permitting "the discussion and adoption of amendments that would probably be ruled out of order in the National Assembly", violated Article 40 of the Constitution and section 42 of the Ordinance of 2 January 1959 relating to Finance Acts.

It is both for the Government and for the relevant bodies in the Assemblies, acting in accordance with the procedures provided for by the Standing Orders of each Assembly, to ensure compliance with the rules governing admissibility of amendments tabled by Members of Parliament in financial matters.
(2002-464 DC, 27 December 2002, paras 10 and 12, p. 583)

The Government's right to amend

The applicants challenge the fact that the Government, at the second reading of the Social Modernisation Bill in the National Assembly, deposited amendments consisting of additional clauses "more than fourteen of which concern dismissals". They allege that these clauses, which "substantially amend the Bill, creating from scratch a new legal framework for dismissals", should have been presented in a separate Bill.

The plea that article 39 of the Constitution, relating to Bills, has been violated is inoperative where amendments are deposited by the Government before the meeting of the joint committee in the exercise of the right to amend conferred by the first paragraph of article 44 of the Constitution.
(2001-455 DC, 12 January 2002, paras 2 and 4, p. 49)

Under the second paragraph of article 39 of the Constitution, entirely new financial measures may not be initiated by the Government in the Senate.

The material amendment was presented in coordination with a measure initially presented in the National Assembly during the debate on the Finance (Amendment) Bill for 2002. It merely made a minor correction to the estimated revenue from two taxes for 2003. The amendment

accordingly did not introduce an entirely new financial measure. Objection of procedural irregularity dismissed.
(2002-464 DC, 27 December 2002, paras 15 and 16, p. 583)

Parliament's right to amend

The first paragraph of article 44 of the Constitution provides: "Members of Parliament and the Government shall have the right of amendment". The second paragraph of article 39 provides that "Finance Bills ... shall be presented first to the National Assembly", but this does not preclude financial measures from being presented by way of amendment by Senators.
(2002-464 DC, 27 December 2002, para 11, p. 583)

It is alleged that the adoption of a senatorial amendment inserting a clause in the Finance Act, by permitting "the discussion and adoption of amendments that would probably be ruled out of order in the National Assembly", violated Article 40 of the Constitution and section 42 of the Ordinance of 2 January 1959 relating to Finance Acts.

It is both for the Government and for the relevant bodies in the Assemblies, acting in accordance with the procedures provided for by the Standing Orders of each Assembly, to ensure compliance with the rules governing admissibility of amendments tabled by Members of Parliament in financial matters.
(2002-464 DC, 27 December 2002, paras 10 and 12, p. 583)

Admissibility of amendments to Finance Bills

It is alleged that the adoption of a senatorial amendment inserting a clause in the Finance Act, by permitting "the discussion and adoption of amendments that would probably be ruled out of order in the National Assembly", violated Article 40 of the Constitution and section 42 of the Ordinance of 2 January 1959 relating to Finance Acts.

It is both for the Government and for the relevant bodies in the Assemblies, acting in accordance with the procedures provided for by the Standing Orders of each Assembly, to ensure compliance with the rules governing admissibility of amendments tabled by Members of Parliament in financial matters.

The admissibility of the material amendment was not challenged under article 40 of the Constitution or section 42 of the Ordinance of 2 January 1959 during the parliamentary procedure. Since the question of the admissibility of the amendment was not raised, it cannot be pleaded directly in the Constitutional Council. In any event, the effect of the amendment is to increase central government revenue in 2003.
(2002-464 DC, 27 December 2002, paras 10 and 12, p. 583)

Under the second paragraph of article 39 of the Constitution, entirely new financial measures may not be initiated by the Government in the Senate.

The material amendment was presented in coordination with a measure initially presented in the National Assembly during the debate on the Finance (Amendment) Bill for 2002. It merely made a minor correction to the estimated revenue from two taxes for 2003. The amendment accordingly did not introduce an entirely new financial measure. Objection of procedural irregularity dismissed.
(2002-464 DC, 27 December 2002, paras 15 and 16, p. 583)

Whether amendments are within the instrument being debated

Principles

The combined effect of articles 39, 44 and 45 of the Constitution is that the right to amend may be exercised at every stage of the legislative procedure, subject to the specific provisions applicable after the meeting of the joint committee. But the additions or amendments made to the instrument being debated in the course of the debate, regardless of their number and scope, must not be unrelated to the purpose of the bill before Parliament; otherwise, they would be contrary to articles 39 and 44 of the Constitution.
(2001-455 DC, 12 January 2002, para 5, p. 49; 2002-459 DC, 22 August 2002, para 5, p. 195)

Applications

Relation to the instrument being debated – Existence

The applicants challenge the fact that the Government, at the second reading of the Social Modernisation Bill in the National Assembly, deposited amendments consisting of additional clauses "more than fourteen of which concern dismissals".

When the Bill was first introduced in the National Assembly, Chapter I of Title II already contained sections relating to the prevention of dismissals, the right to information for personnel representatives, the employment plan social and the right to redeployment assistance. It follows that the material provisions, which were inserted before the meeting of the Joint Committee, are not unrelated to the instrument being debated.
(2001-455 DC, 12 January 2002, paras 2 and 6, p. 49)

Section 217 of the Social Modernisation Act so amends the Commercial Code as to make it compulsory for public limited companies to appoint representatives of employees holding shares in the company to the Board of Directors or the Supervisory Board where the shares held by employees account for at least 3 % of the total shares in the company.

When the Bill was first introduced in the National Assembly, Title II already contained sections relating to employment law, and in particular the right to information for personnel representatives. The applicants are accordingly not entitled to plead that the section originates in an amendment unrelated to the original instrument.
(2001-455 DC, 12 January 2002, paras 96 and 99, p. 49)

Section 3, inserted by way of Government amendment adopted by the Senate at first reading, establishes a specific contribution payable by employers and employed persons covered by the "special unemployment insurance scheme for people intermittently active in show-business". The applicants argue that it was adopted by an unconstitutional procedure since it is unrelated to the instrument being debated that establishes support for youth employment schemes.

The section, which amplifies section L 351-14 of the Employment Code to establish a specific contribution payable by employers to finance the insurance benefit paid to certain unemployed workers, is not unrelated to a Bill which, from the time it was laid before the Senate, inserted in Chapter II of Title II of Book III of the Employment Code, relating to measures in support of employment, sections establishing support for youth employment schemes which concern among other things the employers'contribution to financing the unemployment insurance scheme. It follows that section 3 was adopted by a procedure that was constitutional.
(2002-459 DC, 22 August 2002, paras 4 and 6, p. 195)

Extent and scope

The combined effect of articles 39, 44 and 45 of the Constitution is that the right to amend may be exercised at every stage of the legislative procedure, subject to the specific provisions applicable after the meeting of the joint committee. But the additions or amendments made to the instrument being debated in the course of the debate, regardless of their number and scope, must not be unrelated to the purpose of the bill before Parliament; otherwise, they would be contrary to articles 39 and 44 of the Constitution.
(2001-455 DC, 12 January 2002, para 5, p. 49)

Second and subsequent readings – procedure of the Joint Committee

Failure of the Joint Committee

The second paragraph of article 45 of the Constitution makes it the responsibility of the Joint Committee to "propose a text on the provisions still under discussion". Where the Committee agrees neither on the drafting nor on the deletion of a provision still under discussion, it must be regarded as not having succeeded in adopting a common text for the purposes of the fourth paragraph of article 45. Its failure may then be placed on record for the whole set of provisions still under discussion. Such was the case here as a result of the persisting disagreement on clause 1 of the Corsica Bill. By concluding that the Committee had failed in the circumstances,

its Chairman did not act in manner contrary to the constitutional rules governing the legislative procedure.
(2001-454 DC, 17 January 2002, paras 2 to 4, p. 70)

PARLIAMENTARY REVIEW

Scrutiny and direction of government action

Monitoring the implementation of Finance Acts and evaluation of questions relating to public finance

Parliament must be informed in good time of budget-related regulatory measures that are implemented. In particular, in accordance with section 14(I) and (III) of the Institutional Act of 1 August 2001 on Finance Acts, applicable from 1 January 2002, the relevant National Assembly and Senate committees must be informed of every annulment decree before it is published and of "every act of whatever nature that has the object or effect of making appropriations unavailable".
(2002-464 DC, 27 December 2002, para 8, p. 583)

Procedures for censuring the Government

Presentation of the Government's resignation (article 50)

The first paragraph of article 8 and article 50 of the Constitution have neither the object nor the effect of prohibiting the President of the Republic from terminating the term of office of the Prime Minister, outside the situations provided for by article 50 of the Constitution, when the Prime Minister presents the resignation of the Government. The plea that the incoming Prime Minister had no power to sign the Decree of 8 May 2002 calling general elections to the National Assembly is dismissed.
(HAUCHEMAILLE – DÉCLIC, 22 May 2002, paras 4 and 6, p. 127)

JUDICIAL AUTHORITY AND THE COURTS

COURTS

Jurisdiction

Distribution of jurisdiction in the judicial order

Criminal law

Jurisdiction to try cases involving offences of the first four classes committed by minors lay with the Police Court since the entry into force of the Ordinance of 2 February 1945. For the offences provided for by the decree referred to in the new section 706-72 of the Code of Criminal Procedure, the local court is substituted for the police court, applying the same rules of procedure and substance. In particular, under the unchanged provisions of section 21 of the Ordinance of 2 February 1945, minors aged thirteen can receive no more than a warning. By the same token, publicity of proceedings will be subject to the restrictions provided for by

section 14 of the Ordinance. There is accordingly no violation of the specific constitutional principles of juvenile justice.
(2002-461 DC, 29 August 2002, paras 49 to 51, p. 204)

Transfer from one court to another

The possibility offered by the new section L 331-4 of the Code of Judicial Organisation whereby a local court encountering a serious difficulty in a civil case concerning the application of a rule of law or the interpretation of a contract between parties may remit the case to the district court at the request of one of the parties or of its own motion, after seeking the opinion of the other party or parties where appropriate, was introduced in view of the specific nature of the local courts for the sake of the sound administration of justice. The procedure is an additional assurance for the litigant and does not violate equality before justice.
(2002-461 DC, 29 August 2002, paras 21 to 24, p. 204)

Lay courts

Article 64 of the Constitution does not in itself preclude the establishment of local courts whose members are not career judges, provided their judges exercise only a limited proportion of the jurisdiction conferred on district courts and police courts.
(2002-461 DC, 29 August 2002, para 16, p. 204)

Article 66 of the Constitution does not preclude criminal jurisdiction from being conferred on local courts, provided they have no power to sentence persons to custodial penalties. By conferring on local courts only the jurisdiction to hear and determine cases concerning police offences, the legislature satisfied this condition.
(2002-461 DC, 29 August 2002, paras 18 and 19, p. 204)

Organisation of courts and procedure

Organisation of courts of the judicial order

Prosecution service

The judicial authority includes both the judges and the prosecutors.
(2002-461 DC, 29 August 2002, para 74, p. 204)

The fact that the prosecution service may decide to opt for the procedure provided for by the new section 495 of the Code of Criminal Procedure, which allows the President of the *Tribunal correctionnel* to give his decision by Ordinance without prior debate in the event of certain offences contrary to the Road Traffic Code, flows from the fact that it is responsible for prosecuting offences and providing evidence of them.
(2002-461 DC, 29 August 2002, para 79, p. 204)

Procedure

The rules of procedure applicable in the *Tribunal d'instance* and the *Tribunal de police* and extended to the local courts are not contrary to the requirements of article 16 of the Declaration of 1789.
(2002-461 DC, 29 August 2002, para 17, p. 204)

Judgment

Judgment at short notice

It is clear from section 19 of the Administration of Justice (General and Structural Provisions) Act, which inserts in the Ordinance of 2 February 1945 a section 14-2 establishing a procedure for judgment at short notice, taken as a whole, that the section does not violate defence rights,

the presumption of innocence or the principle that penalties must be necessary, or article 66 of the Constitution, or the specific constitutional principles governing juvenile justice. Moreover, the scheme for judgments at short notice corresponds to the specific situation of minors, given the rapid development of their personality.
(2002-461 DC, 29 August 2002, paras 45 to 48, p. 204)

POWER TO ENACT LAWS AND POWER TO MAKE REGULATIONS

GENERAL

Scope and limits of power to enact laws

The legislature must exercise to the full the powers conferred on it by article 34 of the Constitution. In the exercise of those powers, it must respect constitutional principles and rules and ensure that they are respected by the administrative authorities and courts responsible for enforcing the law. The principle that statutes must be clear, which flows from article 34 of the Constitution, and the constitutional objective that legislation, must be intelligible, which flows from articles 4, 5, 6 and 16 of the Declaration of Human and Civic Rights of 1789, require it to protect the holders of rights against interpretations that conflict with the Constitution and the risk of arbitrary action by enacting provisions that are precise and use non-equivocal language. It is for the Constitutional Council to interpret the provisions of a statute that is referred to it where such interpretation is needed to ascertain whether it is constitutional. It is for the appropriate administrative authorities and courts to apply the statute, subject to the reservations, if any, entered by the Constitutional Council as conditions for acknowledging it to be constitutional.
(2001-455 DC, 12 January 2002, paras 8 and 9, p. 49)

Power to determine what is appropriate subject only to constitutionality

Codification

Section 12 of the Corsica Act inserts in the General Code of Territorial Units seven sections relating to the application of town and country planning law in Corsica. The first of these sections establishes a "sustainable plan for the development of Corsica" to replace the plan for the development of Corsica provided for by sections L 144-1 to L 144-6 of the Town and Country Planning Code; these sections are accordingly repealed by section 13 of the Act referred.

The Senators making the referral complain that sections 12 and 13 have removed from the Town and Country Planning Code the sections that relate specifically to Corsica, but it is not for the Constitutional Council to assess the legislature's codification option; the option taken here is not contrary to the constitutional objective of intelligibility and accessibility of legislation or any other constitutional requirement.
(2001-454 DC, 17 January 2002, paras 26 and 27, p. 70)

Failure to exercise full powers available

No failure

New tax scheme

Section 11 of the Finance Act for 2003 allows quoted real-estate investment companies to opt for a company tax exemption scheme. It is alleged that by defining neither the obligation for

the relevant companies to have real-estate business as their principal object nor the procedures for monitoring compliance with that obligation, the legislature failed to exercise its powers to the full.

The legislature designated the eligible companies with adequate precision. It was entitled to refrain from excluding from the new scheme real-estate companies also exercising secondary business activities, notably to improve their cash flow. The profits from these secondary business activities remain subject to company tax in the ordinary way. The portion of their profits that is exempt from company tax is determined by the new section 208(C)(II) of the General Tax Code and will be verified by the tax administration. Plea rejected.
(2002-464 DC, 27 December 2002, paras 35 and 36, p. 583)

Continuity in the public service

By providing in the new section L 34-7-1 of the Code of Public Works and Assets that, where a hire-purchase contract is concluded to finance construction works to which section L 34-3-1 applies, the contract must include clauses allowing public service constraints to be complied with, the legislature did not fail to exercise its full powers under article 34 of the Constitution.
(2002-460 DC, 22 August 2002, paras 12 and 13, p. 198)

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

In setting the amount of the new contribution established by section 118(II) of the Social Modernisation Act, in the absence of an agreement, at four times the monthly salary for growth per job abolished and, in the event of total or partial failure to discharge the agreement, at the difference between the amount for measures provided for by the agreement and the expenditure actually incurred, the legislature exercised its powers to the full.
(2001-455 DC, 12 January 2002, paras 70, 71 and 73, p. 49)

Representation of employees holding shares in the management bodies of public limited companies

Section 217 of the Social Modernisation Act so amends the Commercial Code as to make it compulsory for public limited companies to appoint representatives of employees holding shares in the company to the Board of Directors or the Supervisory Board where the shares held by employees account for at least 3 % of the total shares in the company.

The legislature allegedly acted in violation of the powers conferred on it by article 34 of the Constitution by failing to determine precisely enough the rules for the application of the new provisions in that it did not make provision for "situations where the proportion of the equity in the company held by employees falls below 3 %".

The provision challenged here clearly defines, for the purposes of section L 225-102 of the Commercial Code, the categories of shares taken into account for calculating the proportion of the of the equity in the company held by employees. The relevant employees, having become shareholders via procedures for the collective acquisition of shares in the company, are those who are covered by the annual report that must be laid before the general meeting under that section.

In the absence of an express statutory provision, it is for the general meeting, when considering the annual report, to decide whether to maintain or abandon the representation of the staff of the Board of Directors or the Supervisory Board where the shares held by employees fall below 3 %. The legislature did not fail to exercise its full powers.
(2001-455 DC, 12 January 2002, paras 96, 100, 102 and 103, p. 49)

Social Modernisation Act

Section 96(I) of the Social Modernisation Act inserts three paragraphs after the first paragraph of section L 321-4-1 of the Employment Code. The new second and third paragraphs of the section provide that a job-saving plan in firms where collective working hours are in excess of 35 per week or 1 600 per year is subject to the prior conclusion of a collective agreement for the reduction of working time or, absent such an agreement, to the employer's commitment to

negotiations for one. The new fourth paragraph provides institutions representing employees of the firm, "until completion of the consultation procedure provided for by section L 321-2", with the possibility of making a reference to the court in interlocutory proceedings for an order suspending the dismissal procedure and setting a deadline for the employer to discharge his obligations. It also provides that "as soon as it records that the conditions determined by the second and third paragraphs of this section are met, the court shall authorise the continuation of the procedure. Otherwise it shall, after that deadline, declare that the dismissal procedure is void".

The applicants submit that the legislature inadequately specified the legal rules governing the obligation for the employer to engage in prior negotiations and neglected to settle the question whether the employer could be held liable in the event of a subsequent dispute as to the validity of the job-saving plan.

It is clear from the very terms of the Act referred that the legislature's intention was to define a specific redress procedure allowing a court hearing an interlocutory action brought by the works committee to resolve irregularities vitiating a dismissal procedure or, alternatively, to declare it void. This interpretation is borne out by the amended version of the first paragraph of section L 122-14-4 of the Employment Code and section 111 of the Act referred, which explicitly confines the scope of a declaration of nullity of a dismissal procedure and the obligation to reinstate the dismissed employees to situations provided for by the fifth paragraph of section L 321-4-1, that is to say where "no plan to redeploy employed persons in the context of the job-saving plan is presented by the employer to the representatives of the employees". In the absence of an express provision to this effect, since there is no presumption of nullity, a violation of the statute could not be penalised after the event by the court having jurisdiction over the employment contract annulling the dismissal procedure and ordering reinstatement. All that can be done in the event of a violation would be to order compensation for want of true and serious grounds for dismissal, on the terms laid down by the ordinary law.

The was no need for the section challenged to regulate in greater detail the powers of the court or the procedure to be followed in it, since the rules of the ordinary law can apply in such cases. Accordingly the legislature did not fail to exercise its powers to the full.
(2001-455 DC, 12 January 2002, paras 10 to 13, p. 49)

Section 101 of the Social Modernisation Act replaces the third paragraph of section L 432-1 of the Employment Code by six paragraphs. The second and third paragraphs read: "It shall be compulsory for the Works Committee to be informed and consulted on all plans to restructure and reduce staffing. It shall issue an opinion on such plans and the procedure by which they are applied and may make alternative proposals. Such opinions and alternative proposals, if any, shall be transmitted to the relevant administrative authority. – The Works Committee shall have the right of opposition, exercised by means of a reference to a conciliator as provided for by section L 432-1-3. While the conciliator is investigating the matter, the plan shall be suspended". The first paragraph of section L 432-1-3, inserted by section 106 of the Act referred, reads: "Where the consequence of a plan to cease the activity of an establishment or an independent business entity in whole or in part is to lose one hundred or more jobs, and there is a serious difference between the plan presented by the employer and the alternative proposal or proposals presented by the Works Committee, either side may refer the matter to a conciliator, selected from a list adopted by the Minister of Employment".

For one thing, it is clear from section L 432-1, as amended, read in the light of the legislative history, that this section must be interpreted as giving the Works Committee a right of opposition expressed in the form of a referral to a conciliator, only in the event that "the consequence of a plan to cease the activity of an establishment or an independent business entity in whole or in part is to lose one hundred or more jobs". For another, the word "restructure" ("restructuration") in section 101 is sufficiently precise. Subject to the reservation in paragraph 16 of this decision, section 101 is not contrary to article 34 of the Constitution.
(2001-455 DC, 12 January 2002, paras 14 to 18, p. 49)

Section 108 of the Social Modernisation Act amplifies section L 321-1 of the Employment Code by adding a new paragraph reading as follows: "an employee may be dismissed on economic grounds only when all efforts have been made to train or adapt the employee and the employee cannot be redeployed to a post in the same category as the post currently occupied

or an equivalent post or, failing this and subject to the employee's express agreement, to a post in a lower category within the firm or other firms in the group to which it belongs". According to the legislative history, the legislature's intention was to confirm the rule in case-law that an employer, being bound to perform the employment contract in good faith, has a duty to adapt employees to developments in their posts, that duty now being given statutory form in section L 932-2 of the Employment Code by the Act of 19 January 2000. The effect of the duty is that the employer must provide the employee with the training needed to occupy the posts proposed in the performance of the duty to redeploy, in other words posts of the same category as the post currently occupied or an equivalent post or, subject to his express agreement, a lower category. In the absence of an express provision to this effect, since there is no presumption of nullity, a violation of the statute could not be penalised after the event by the court having jurisdiction over the employment contract annulling the dismissal procedure and ordering reinstatement. Subject to these reservations, section 108 is not contrary to the principle that statutes must be clear, flowing from section 34 of the Constitution.
(2001-455 DC, 12 January 2002, paras 19 to 21, p. 49)

Section 128 of the Social Modernisation Act amplifies section L 432-4-1 of the Employment Code by conferring on the Works Committee the power to refer to the employment inspectorate "facts that raise a suspicion of unwarranted use of limited-duration or temporary contracts". The applicants criticise the legislature's use of the concept of "unwarranted use" of these forms of employment without definitions

Under sections L 122-1 and L 124-2 of the Employment Code, limited-duration or temporary employment contracts may have neither the object nor the effect of filling on a long-term basis a post liked to the firm's normal activity. Section 128 must be interpreted in the light of these general provisions. By referring to the hypothesis of unwarranted use the legislature's intention was to allow the Works Committee to refer a matter to the employment inspectorate wherever, without prejudice to the definition likely to be put on the facts by the courts, it believes that the employer is in breach of sections L 122-1 and L 124-2. Section 128 is accordingly not vitiated by failure to exercise legislative powers to the full.
(2001-455 DC, 12 January 2002, paras 23 and 24, p. 49)

Sections 97 and 98 of the Social Modernisation Act insert sections L 239-1 and L 239-2 in the Commercial Code. Under the first of these sections, where the consequence of a plan to cease the activity of an establishment or an independent business entity in whole or in part is to lose one hundred or more jobs, there must be a decision by the Board of Directors and Supervisory Board after consultation with the Works Committee, after presentation by the head of the firm of a "social and territorial impact study", the content is to be defined by a Decree adopted in the Council of State. The second requires such a study to be presented for "every strategic development plan... that may have a substantial effect on conditions of employment and working conditions" within the company. They submit that the concepts of "establishment" and "independent economic entity" used in section 97 are too vague and that the definition of the "strategic development plan" mentioned in section 98 is frankly laconic.

The fifth paragraph of section L 432-1-3, inserted in the Employment Code by section 106 of the Act referred reads: "The conciliator in the exercise of his function shall enjoy the broadest possible powers to seek information about the firm's situation"; the seventh paragraph reads: "If it is accepted by the two sides the conciliator's recommendation... shall have the legal status of an agreement within the meaning of sections L 132-1 *et seq*". The applicants submit that there is insufficient definition of the conciliator's powers and the legal effects of his recommendation, where it is accepted by the parties.

Section 119 inserts a section L 321-4-3 relating to retraining leave in the Code. The third paragraph of the new section reads: "retraining leave shall betaken during the period of notice, during which the employee shall not be required to report for work. Where the duration of the retraining leave exceeds the period of notice, the latter shall be extended by a period equal to the outstanding period of retraining leave. During this period, the notice shall be suspended". Under the fourth paragraph, during the period of suspension of the notice, the employee shall enjoy monthly remuneration, paid by the employer, in an amount determined in accordance with section L 322-4(4°); the section is criticised as being "difficult to understand" since it provides for the suspension of a period of notice that it also extends.

Section 162 inserts in the Act of 6 July 1989 a new section 22-2, listing on an exhaustive basis the documents which the owner may ask a prospective tenant to produce prior to preparing a

lease, namely "– a passport photograph; – a social security entitlement card; – a copy of a bank or post office account; – a certificate that the bank or post office account has been kept in good order"; the Senators making the referral submit that the meaning of this provision is unclear since an "a contrario" interpretation allows the owner to demand the production of copies of three of the documents and the original of the fourth.

The legislature has in no way violated its powers under article of the Constitution. Sections 97, 98, 106, 119 and 162 are not vitiated by failure to exercise legislative powers to the full.
(2001-455 DC, 12 January 2002, paras 25 to 29, p. 49)

Public procurement

Neither article 34 of the Constitution nor any other constitutional rule requires the conditions for the award of public contacts to be determined by statute. The question whether the selection of a central government contracting partner should or should not be preceded by a publicity and tendering procedure falls to be answered by a decree issued in the Coucil of State in accordance with the second paragraph of the new section L 34-3-1 of the Code of public works and assets, subject to review by the administrative courts, since the purpose of the lease is public construction works for the state on publicly-owned property.
(2002-460 DC, 22 August 2002, para 11, p. 198)

The legislature did not fail to exercise its powers to the full by referring to the procedures provided for by the Code of Public Procurement for the performance of the task entrusted to the awardee of the contract for the design, construction and fitting out of prison establishments. The awardee will be acquainted with the specific requirements of the public prison service in accordance with the procedures provided for by the Code.
(2002-461 DC, 29 August 2002, para 7, p. 204)

Public prison service

The legislature did not violate the powers conferred on it by article 34 of the Constitution by not defining itself the public service obligations to be discharged by the awardees of contacts for functions other than management, registry and surveillance in prison establishments and by providing that the delegation of these functions would be done by decision set out in a decree issued in the Council of State. That delegation decision will impose on the awardee the obligation to comply with the requirements of the public prison service.
(2002-461 DC, 29 August 2002, paras 8 and 9, p. 204)

Establishment of a class of courts

Article 34 of the Constitution, which provides that "Statutes shall determine the rules concerning ... the establishment of new classes of courts and tribunals", does not require the legislature, when establishing a new class of courts and tribunals, to adopt in one and the same statute the rules governing the organisation operation of the new class of courts and tribunals and the rules governing the status of the judges they comprise. But, although it can adopt the first of these sets of rules before the second, the first set can be applied only when the second set has been promulgated.

On the date of the Constitutional Council's decision on the Act referred, the legislature has adopted no provisions on the rules governing the status of the members of the local courts. Since the Act is silent on the entry into force of Title II, it follows that the local courts can be established only when a statute has been promulgated determining the conditions for the appointment and status of their members. Moreover that statute must offer adequate guarantees of satisfaction of the principle of independence that is essential for the exercise of judicial functions and the requirements as to qualifications flowing from article 6 of the Declaration of 1789. Subject to these reservations, the plea that the legislature failed to exercise its powers to the full when establishing this new class of courts must be rejected.
(2002-461 DC, 29 August 2002, paras 11 to 15, p. 204)

Conferment of criminal jurisdiction on a class of courts

The legislature did not violate its own powers by leaving it for a decree issued in the Council of State to specify the police offences that will be transferred to the local courts.
(2002-461 DC, 29 August 2002, para 20, p. 204)

Establishment of closed educational centres

The new section 33 of the Ordinance of 2 February 1945 specifies the terms for placement in a closed educational centre. It defines these "closed centres", the name of which merely expresses the fact that violation of the obligations to which the minor is subject, in particular if he leaves the centre without authorisation, will incur imprisonment and withdrawal of the probation or provisional release order. The plea that the legislature did not exercise its powers to the full must be rejected.
(2002-461 DC, 29 August 2002, paras 52 to 55, p. 204)

Establishment of a compulsory levy

Section 29 of the Finance Act for 2003 determines how the submission of France Télécom to local indirect taxes in the ordinary way is to be offset in terms of central government revenue. If necessary, a fraction of the levy is charged for the benefit of the central government general budget on the proceeds of the land tax on built-up land and on unbuilt land, on the housing tax and on the professional tax charged for the benefit of local authorities and establishments.

The plea that the legislature did not exercise its powers to the full fails on the facts, since the legislature's intention was to subject the levy to the rules already applicable to the costs of assessing and recovering from the proceeds of local direct taxes.
(2002-464 DC, 27 December 2002, paras 47 and 51, p. 583)

Repeal or amendment of earlier statutes

General rules

It is always legitimate for the legislature, acting within the limits of its powers, to amend earlier statutes or to repeal them and, in appropriate cases, substitute new statutes for them. The exercise of this power may not, however, have the effect of depriving constitutional principles of their statutory guarantees.
(2001-455 DC, 12 January 2002, para 36, p. 49)

Delegations granted by the legislature

Delegations unconstitutional

Experimental delegation to the territorial unit of Corsica

Article 3 of the Constitution provides: "National sovereignty shall belong to the people, who shall exercise it through their representatives and by means of referendum. No section of the people nor any individual may arrogate to itself, or to himself, the exercise thereof." The first paragraph of article 34 provides: "Statutes shall be passed by Parliament". Apart from the cases provided for by the Constitution, it is for Parliament alone to take measures on matters reserved for statute. In particular, under article 38, only the Government "may ask Parliament for authorization, for a limited period, to take measures by ordinance that are normally a matter for statute". The legislature may not delegate its powers in matters not provided for by the Constitution.

In the present case, by allowing the legislature, albeit on an experimental, exceptional basis for a limited period, to authorise the territorial unit of Corsica to take measures on matters reserved for statute, the Corsica Act regulates a matter that is reserved for the Constitution. Paragraph IV of the new section L 4424-2 of the General Code of Territorial Units, whose provisions constitute an indivisible whole, must accordingly be declared unconstitutional. The

words “and IV” in section 2 of the Act referred must therefore also be declared unconstitutional.
(2001-454 DC, 17 January 2002, paras 18 to 21, p. 70)

Matters to be determined by institutional act or by ordinary statute

Matters to be determined by institutional act

The provisions of the Institutional Act validating the land tax in French Polynesia, which regulate matters falling within the powers conferred on the territorial authorities under sections 5 and 6 of the Act of 12 April 1996, are institutional.
(2002-458 DC, 7 February 2002, paras 1 and 2, p. 80)

The purpose of the first two paragraphs of section 7 of the Domestic Security (General Policy and Programming) Act is to apply ahead of schedule the rules of presentation provided for by sections 51 and 54 of the Institutional Act of 1 August 2001. Since they seek to amend an Institutional Act, they are out of place in an ordinary statute. They are unconstitutional.
(2002-460 DC, 22 August 2002, paras 22 to 24, p. 198)

Matters to be determined by institutional act or by Finance Act

Matters not to be determined by ordinary statute

Section 6 of the Justice (General Policy and Programming) Act provides that each year from 2004 the Government is to lay before the National Assembly and the Senate, when presenting the settlement bill for the preceding year, a report on the implementation of the act and an assessment of the results in terms of the objectives set in the annexed report and the means deployed to attain them. Under article 47 of the Constitution and section 1 of the Ordinance of 2 January 1959, such a provision, which organises Parliament’s information and review of the management of the public finances in the area of the administration of justice, is out of place in an ordinary statute. It is accordingly declared unconstitutional.
(2002-461 DC, 29 August 2002, paras 91 to 93, p. 204)

Clarity of legislation and constitutionality

The legislature must exercise to the full the powers conferred on it by article 34 of the Constitution. In the exercise of those powers, it must respect constitutional principles and rules and ensure that they are respected by the administrative authorities and courts responsible for enforcing the law. The principle that statutes must be clear, which flows from article 34 of the Constitution, and the constitutional objective that legislation must be intelligible, which flows from articles 4, 5, 6 and 16 of the Declaration of Human and Civic Rights of 1789, require it to protect the holders of rights against interpretations that conflict with the Constitution and the risk of arbitrary action by enacting provisions that are precise and use non-equivocal language. It is for the Constitutional Council to interpret the provisions of a statute that is referred to it where such interpretation is needed to ascertain whether it is constitutional. It is for the appropriate administrative authorities and courts to apply the statute, subject to the reservations, if any, entered by the Constitutional Council as conditions for acknowledging it to be constitutional.
(2001-455 DC, 12 January 2002, paras 8, 9, 29 and 30, p. 49)

Section 217 of the Social Modernisation Act so amends the Commercial Code as to make it compulsory for public limited companies to appoint representatives of employees holding shares in the company to the Board of Directors or the Supervisory Board where the shares held by employees account for at least 3 % of the total shares in the company.

It is alleged that, since the relevant sections of the Commercial Code had just been amended by an Act of 19 February 2001, “this instability in legislation cannot be regarded as in accordance with the constitutional objective of accessibility and intelligibility of legislation”.

The fact that the two sections of the Commercial Code that are amended were already amended by a recent statute does not jeopardise the clarity or the intelligibility of the rule applicable.
(2001-455 DC, 12 January 2002, paras 96, 100 and 101, p. 49)

By adding to section 298 *bis* of the General Tax Code a reference to "usual practice in agriculture", the legislature's intention was to refer to the administration's constant interpretation of section 298 *bis* in value added tax matters, as specified in its instructions. It accordingly did not violate the requirement for clarity imposed by article 34 of the Constitution.
(2002-464 DC, 27 December 2002, para 58, p. 583)

Statutory validation

Principles

The legislature may, as it alone has the power, validate an administrative act where there is an adequate general-interest consideration, but it must respect judicial decisions that have the status of *res judicata* and the principle that penalties may not be ordered retroactively. The act that is validated must be contrary to no constitutional rule or principle, unless the general-interest purpose pursued by the validation is itself of constitutional status. Moreover the scope of the validation must be strictly defined, as otherwise it would violate article 16 of the Declaration of Human and Civic Rights of 1789. The constitutionality of the provisions referred to the Constitutional Council must be considered in the light of all these principles.
(2002-458 DC, 7 February 2002, para 3, p. 80)

Considerations of general interest

No consideration of general interest

Institutional Act validating taxes charged in the territory of French Polynesia by way of land taxes on built-up properties for 1992 to 2001. In view of the limitation rules applicable to taxation in the territory, objections relating to the years from 1992 to 1999 would not be such as to compromise the continuity and smooth operation of public services in the territory. The amounts involved by the validation for each of those years represent a minor share in the receipts of all kinds entered in the budgets of the territorial and communes of French Polynesia. The Validation Act, in so far as it concerns those years, is not justified by a general-interest consideration allowing the legislature to hinder the effects of future court decisions. Unconstitutional in part.
(2002-458 DC, 7 February 2002, paras 1 and 5, p. 80)

No violation of a constitutional principle

Institutional Act validating taxes charged in the territory of French Polynesia by way of land taxes on built-up properties for 1992 to 2001. In so far as it relates to 2000 and 2001, the sole section of the Act is contrary to no constitutional rules or principles. With this validation, the institutional legislature's intention was to avoid disputes arising that could be harmful for French Polynesia. Nearly a thousand complaints had already been deposited, and this could have compromised continuity in the public tax service and the smooth operation of the public service in the administrative courts in the territory, given the resources available to those services. The general interest in such a validation prevailed over the limitation of the rights of taxpayers flowing from the purely formal irregularity that the validation was to remove. The provision challenged has neither the object nor the effect of validating taxes struck down by enforceable court decisions. Its scope is strictly limited. It does not derogate from the principle that more stringent punitive provisions may not have retroactive effect not from the corollary prohibition on reinstating a right lawfully extinguished by effluxion of time. In the absence of validation, restitution of amounts due by way of tax under the substantive rules of tax law might constitute a form of unjust enrichment. Constitutional in part.
(2002-458 DC, 7 February 2002, paras 1 and 4, p. 80)

Injunctions to the Government

No injunction

Section 40 of the Social Modernisation Act calls on the Government, as soon as the Act is published, to organise "consultations with trade unions on the election of employees' representatives to Boards of Directors of general social security schemes and with employers' organisations on the election of employers' representatives".

This provision, which is not strictly mandatory, does not constitute an injunction by the legislature to the Government in breach of the prerogatives conferred on the latter by the Constitution.
(2001-455 DC, 12 January 2002, paras 55 and 56, p. 49)

Statute approving a report

Statute approving a general policy report

The general policy guidelines set out in annex I to the Domestic Security (General Policy and Programming) Act are not within any of the categories of legislative instruments provided for by the Constitution and therefore do not have the law-making quality of legislation. The legislative or regulatory measures that give effect to these guidelines and confer legal status on them may be referred to the Constitutional Council or the administrative courts, as the case may be.
(2002-460 DC, 22 August 2002, paras 20 and 21, p. 198)

The general policy guidelines set out in the annex to the Justice (General Policy and Programming) Act are not within any of the categories of legislative instruments provided for by the Constitution and therefore do not have the law-making quality of legislation. The legislative or regulatory measures that give effect to these guidelines and confer legal status on them may be referred to the Constitutional Council or the administrative courts, as the case may be.
(2002-461 DC, 29 August 2002, paras 89 and 90, p. 204)

Statute approving a programming report

The programming of means to be deployed for domestic security for the years from 2002 to 2007, set out in annex II the Domestic Security (General Policy and Programming) Act and approved by section 2, has the law-making quality of programming acts provided for by section 1 of the Ordinance of 2 January 1959.
(2002-460 DC, 22 August 2002, paras 20 and 21, p. 198)

The programming of means to be deployed for justice for the years from 2002 to 2007, set out in section 2 of the Act referred and the report annexed to that Act, has the law-making quality of programming acts provided for by section 1 of the Ordinance of 2 January 1959.
(2002-461 DC, 29 August 2002, paras 89 and 90, p. 204)

Exercise of power to make regulations

Territorial units

Territorial unit of Corsica

The new section L 4424-2 (I) of the General Code of Territorial Units merely provides for the procedure whereby the Corsican Assembly may present propositions for the amendment or adaptation of regulatory provisions by the relevant authorities of the State; it does not, therefore, in itself, transfer to this new body any component of the power to make regulations.
(2001-454 DC, 17 January 2002, paras 8 and 9, p. 70)

The new section L 4424-2(II) of the General Code of Territorial Units must be interpreted as restating the rule that the power to make regulations enjoyed by a territorial unit subject to compliance with legislation and regulations cannot be exercised outside the scope of the powers conferred on it by statute. It has neither the object nor the effect of constraining the power to make regulations for the implementation of statutes conferred by article 21 of the Constitution on the Prime Minister subject to the powers conferred on the President of the Republic by article 13 of the Constitution.
(2001-454 DC, 17 January 2002, paras 10 to 15, p. 70)

Sections 9, 12, 17, 19, 24, 25, 26, 28 and 43 of the Corsica Act transfer to the territorial unit of Corsica only limited powers in matters that are not for statute; they define their scope, rules for their exercise and the bodies responsible with precision, in compliance with article 34 of the Constitution. These powers will have to be exercised in compliance with constitutional rules and principles and with statutes and regulations from which the legislature has not explicitly authorised exceptions. None of the provisions challenged can be regarded as violating the indivisibility of the Republic, the integrity of the territory or national sovereignty. They do not affect the fundamental principles of the self-government of territorial units or any of the matters determined by article 34 of the Constitution to be matters for statute. In particular none of them violates the powers conferred on the communes and departments or establishes a power of supervision of one territorial unit over another. Given the geographic and economic characteristics of Corsica, its special status within the Republic and the fact that none of the powers thus conferred affects the essential conditions for giving effect to public freedoms, the differences of treatment generated by these provisions between persons residing in Corsica and persons residing elsewhere in France would not constitute violations of the principle of equality. It follows that the material provisions do not violate article 6 of the Declaration of 1789 or articles 20, 21, 34 and 72 of the Constitution.
(2001-454 DC, 17 January 2002, paras 28 to 30, p. 70)

Article 21 of the Constitution provides: "The Prime Minister... ensures the implementation of legislation. Subject to article 13, he shall have power to make regulations..."; but article 72 provides: "The territorial units of the Republic... shall be self-governing through elected councils and in the manner provided by statute". These provisions enable the legislature to empower a certain category of territorial units, within the limits of the powers conferred on them, to lay down certain rules for the implementation of a statute. But the principle of self-government of territorial units cannot have the effect that the fundamental conditions for the exercise of public freedoms and consequently of the guarantees attaching to them will depend on decisions of territorial units and will therefore not be the same throughout the Republic.

The second and third paragraphs of section L 4424-2(II) merely specify the procedure to be followed and the conditions to be complied with by the territorial unit of Corsica when asking the legislature to confer on it the power to determine rules for the application of a statute where it is necessary to adapt the provisions of national regulations to the specific circumstances of the island. In particular, they state that the request for conferment of powers can concern only such powers as are conferred on this territorial unit by the legislative part of the General Code of Territorial Units. They accordingly exclude the possibility of such a request where the adaptation sought is such as to affect the exercise of an individual freedom or a fundamental right. They are accordingly not contrary to articles 21, 34 and 72 of the Constitution or to the principle of equality before the law.
(2001-454 DC, 17 January 2002, paras 10 to 15, p. 70)

Governmental and administrative organization

Distribution of state powers between various bodies

Principle of power to make regulations

Distribution of powers between Minister and Prefect

The provision of the Employment Code which has the sole purpose of determining the state authority empowered to approve "enterprises solidaires", merely designates the administrative

authority which is empowered to exercise powers on behalf of the state which statute reserves for the executive branch. It does not call into question the fundamental principles or rules that article 34 of the Constitution determines as matters for statute. It is accordingly a matter to be determined by regulation.
(2002-192 L, 10 October 2002, para 1, p. 348)

Provisions of the Code of national service designate the competent Minister as the authority empowered on behalf of the state to accept applications for voluntary civil service, to approve activities exercised by civil volunteers in bodies corporate, to conclude an agreement with the relevant body corporate, to terminate voluntary civil service while it is in progress and to issue civil volunteers with a certificate of completion of voluntary civil service. These provisions merely determine the administrative authority empowered to exercise powers on behalf of the state which statute reserves for the executive branch. It does not call into question the fundamental principles or rules that article 34 of the Constitution determines as matters for statute. It is accordingly a matter to be determined by regulation.
(2002-193 L, 21 November 2002, paras 1 and 2, p. 466)

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

Ratification of ordinances

No ratification

The Ordinance of 19 April 2000 updating and adapting electoral law in the overseas territories was the subject of a Ratification Bill laid before Parliament on 19 July 2000, which is within the time allowed by the Enabling Act of 25 October 1999. It has not, therefore, automatically lapsed. There are therefore no valid grounds for the plea that section L 397, inserted in the Electoral Code by that ordinance and used as the basis for the Decree calling general legislative elections in French Polynesia, is also lapsed.
(HAUCHEMAILLE – DÉCLIC, 22 May 2002, paras 4 and 5, p. 127)

DISTRIBUTION OF POWERS IN SPECIFIC MATTERS

Types of court – Status of magistrats

Types of court – constitutional rules

Local courts

Article 34 of the Constitution provides that statutes shall determine the rules concerning the establishment of new classes of courts and tribunals. These rules include those relating to the method of appointing the persons to sit on the courts and tribunals and rules determining their term of office, all of which rules help to secure the independence and the qualification of these judges.
(2002-461 DC, 29 August 2002, paras 11 to 13, p. 204)

Distribution of jurisdiction between types of courts and within a type

The legislature did not violate its own powers by leaving it for a decree issued in the Council of State to specify the police offences that will be transferred to the local courts.
(2002-461 DC, 29 August 2002, para 20, p. 204)

CONSTITUTIONAL COUNCIL AND CONSTITUTIONAL REVIEW

SCOPE OF CONSTITUTIONAL REVIEW

Jurisdiction of Constitutional Council

Case of Acts promulgated

Case law arising from Decision 85–187 DC

Section 27(1°) of the Act referred abolishes the licence duty for drinks outlets. Section 27(2°) accordingly redrafts section 1699 of the same Code, relating to the rules for the recovery, charging and enforcement of the entertainments tax and the licence duty on drinks outlets.

Under section 1699 of the General Tax Code, as amended by the Act referred and as before, offences against the legislation relating to the entertainments tax "shall be punishable in accordance with the rules and subject to the securities provided for in respect of direct taxes under Title III of the First Part of Book I". The Deputies making the application submit that section 1791 of the General Tax Code, to which reference is made, violates the principle of the proportionality of penalties.

The constitutionality of an Act that has been promulgated can be challenged only through the review of provisions amending or amplifying it or affecting its scope.

The sole purpose of section 27(2°) is to remove from section 1699 of the General Tax Code all references to the licence duty for drinks outlets. The remaining provisions of section 1699, relating to the entertainments tax, as redrafted merely reproduce the provisions that were in force when the Act referred was enacted. It follows that the conditions in which the constitutionality of section 1791 of the General Tax Code can be reviewed are not met.
(2002-464 DC, 27 December 2002, paras 39 to 42, p. 583)

REFERENCES TO CONSTITUTIONAL COUNCIL – ADMISSIBILITY – WITHDRAWAL OF CASE – INOPERATIVE ARGUMENTS AND ARGUMENTS NOT SUPPORTED BY THE FACTS

Status of author or authors of reference

Inadmissibility of a referral made by less than sixty Deputies or less than sixty Senators

The second paragraph of article 61 of the Constitution provides Acts of Parliament may be referred to the Constitutional Council by Members of Parliament, but it demands that they be made by sixty Deputies or sixty Senators.

By letter dated 1 August 2002, Mr Ivan RENAR, Senator, sent to the Constitutional Council a letter signed by himself alone challenging section 3 of the Act referred. The effect of the second paragraph of article 61 of the Constitution is that his challenge must be declared inadmissible.
(2002-459 DC, 22 August 2002, paras 2 and 3, p. 195)

Admissibility of certain pleas

Inadmissibility on the basis of section 42 of Institutional Ordinance No 59-2 of 2 January 1959

Case law arising from Decision 86-126 DC

It is both for the Government and for the relevant bodies in the Assemblies, acting in accordance with the procedures provided for by the Standing Orders of each Assembly, to

ensure compliance with the rules governing admissibility of amendments tabled by Members of Parliament in financial matters. The admissibility of the material amendment was not challenged under article 40 of the Constitution or section 42 of the Ordinance of 2 January 1959 during the parliamentary procedure. Since the question of the admissibility of the amendment was not raised, it cannot be pleaded directly in the Constitutional Council.
(2002-464 DC, 27 December 2002, para 12, p. 583)

Inoperative arguments and arguments not supported by the facts

Inoperative arguments

The applicants challenge the fact that the Government, at the second reading of the Social Modernisation Bill in the National Assembly, deposited amendments consisting of additional clauses "more than fourteen of which concern dismissals". They allege that these clauses, which "substantially amend the Bill, creating from scratch a new legal framework for dismissals", should have been presented in a separate Bill.

The plea that Section 39 of the Constitution, relating to Bills, has been violated is inoperative where amendments are deposited by the Government before the meeting of the joint committee in the exercise of the right to amend conferred by the first paragraph of Section 44 of the Constitution.
(2001-455 DC, 12 January 2002, paras 2 and 4, p. 49)

Pleas not supported by the facts

Section 112 of the Social Modernisation Act merely amends the list in section L 321-4-1 of the Employment Code of measures that may be incorporated in the job-saving plan to be prepared and implemented by the employer under the first paragraph of the section. The applicants submit that the legislature omitted to specify the conditions in which the court can declare the dismissal procedure null and void where the retraining plan is inadequate. These conditions are set out in what was the second and is now the fifth paragraph of section L 321-4-1 of the Employment Code, not amended by the Act referred. The plea is therefore not supported by the facts.
(2001-455 DC, 12 January 2002, para 22, p. 49)

PARAMETERS FOR REVIEW

Parameters followed

Declaration of Human and Civic Rights

Principle of sovereignty (article 3)

Section 49 of the Justice (General Policy and Programming) Act allows only technical electronic surveillance functions unrelated to the exercise of sovereignty to be entrusted to the private sector.
(2002-461 DC, 29 August 2002, paras 84 and 87, p. 204)

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

The Preamble to the Constitution reaffirms the principles established both by the Declaration of Human and Civic Rights of 1789 and by the Preamble to the 1946 Constitution. These include the freedom of enterprise under article 4 of the 1789 Declaration and the economic and social principles set out in the Preamble of 1946, which in turn include, under the fifth paragraph, the right for everybody to employment, and under the eighth paragraph, the right

of all workers, through the intermediary of their representatives, to participate in the collective determination of their conditions of work and in the management of the work place.

It is for the legislature, in the exercise of the power conferred on it by article 34 of the Constitution to determine the fundamental principles of employment law, to ensure that affect is given to the economic and social principles of the Preamble to the 1946 Constitution, while reconciling them with the freedoms guaranteed by the Constitution. In order to lay down rules that will best secure the right for everybody to employment under the fifth paragraph of the Preamble to the 1946 Constitution, it may impose on the freedom of enterprise restrictions linked to this constitutional requirement, provided there is no resultant breach that is disproportionate to the objective pursued.
(2001-455 DC, 12 January 2002, paras 43 to 54, p. 49)

Section 118 (I) of the Social Modernisation Act allows the representative of the state in the department, when a firm with between fifty and a thousand employees plans redundancies on such a scale as to affect the equilibrium of an employment basin, to call on the parties concerned to ensure that the firm contributes to the "creation of business activities, vocational training and the development of employment in the basin". In enacting this provision, which provides for no more than an incentive measure, the legislature has violated neither the freedom of enterprise nor any other constitutional principle or rule.
(2001-455 DC, 12 January 2002, paras 68 and 69, p. 49)

The Act referred amends section L 315-4 of the Construction and Housing Code to specify that the savings premium paid to the holders of a housing savings account shall be received "when the loan is paid". This provision is applicable only to housing savings accounts opened on or after 12 December 2002. The authors of the referral submit that the legislature violated equality by allowing longer-standing account holders to retain a benefit not available to holders of accounts opened on or after 12 December 2002.

It is clear from the legislative history that by subjecting the payment of the housing premium to the actual grant of a building loan, the provision challenged restores to this form of state aid its original function of encouraging the acquisition, renovation or construction of housing. In so doing the legislature must avoid excessive effects on the general scheme of earlier contracts. The date set by the legislature for the entry into operation of the measure does not create differences of treatment or retroactive effects contrary to the Constitution.
(2002-464 DC, 27 December 2002, paras 52 to 54, p. 583)

Equality (article 6)

Article 6 of the 1789 Declaration reads: "... All citizens ... 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." The functions exercised by members of juries provided for by sections 134 et 137 of the Act referred are in effect "high offices, public positions and employment" within the meaning of article 6. The Act referred merely sets an objective of balanced representation as between women and men. It does not have the object and cannot have the effect of causing gender considerations to prevail over abilities, aptitudes and qualifications when members are selected for membership of juries. Subject to this reservation, the relevant provisions are not open to criticism on constitutional grounds.
(2001-455 DC, 12 January 2002, paras 114 and 115, p. 49)

The equality proclaimed by article 6 of the 1789 Declaration must be respected not only before the law but also before the deliberations of local authorities.
(2001-455 DC, 12 January 2002, para 117, p. 49)

Principle that offences and penalties must be defined by statute (article 8)

Under articles 8 and 9 of the 1789 Declaration, no one may be punished except by virtue of a Law drawn up and promulgated before the offence is committed, and legally applied, the punishment must be strictly and evidently necessary, the more severe criminal statute may not have retroactive effect and the presumption of innocence always applies.

The legislature, by virtue of article 34 of the Constitution and the principle that offences and penalties must be provided for by law, has an obligation to determine itself the scope of a

criminal statute and to define offences in terms that are sufficiently clear and precise to allow offenders to be identified and exclude the risk of arbitrary sentencing.
(2001-455 DC, 12 January 2002, paras 81 and 82, p. 49)

Need for penalties (article 8)

Under article 8 of the 1789 Declaration, every penalty provided for by law must be strictly and evidently necessary. The principle of proportionality means that, where several different criminal provisions might be taken as the basis for a conviction for the same act, the penalties incurred may not exceed the highest of the penalties provided for by the law.
(2001-455 DC, 12 January 2002, para 85, p. 49)

Presumption of innocence (article 9)

Under articles 8 and 9 of the 1789 Declaration, no one may be punished except by virtue of a Law drawn up and promulgated before the offence is committed, and legally applied, the punishment must be strictly and evidently necessary, the more severe criminal statute may not have retroactive effect and the presumption of innocence always applies.
(2001-455 DC, 12 January 2002, para 81, p. 49)

The principle of the presumption of innocence declared by article 9 of the Declaration of 1789 does not preclude the judicial authorities from ordering measures that restrict a person's liberty or deprive him of it prior to conviction, where there is sufficient evidence of participation in the commission of a crime, provided always that such measures are ordered in accordance with a procedure that respects defence rights and are necessary for the ascertainment of the truth, for the availability of the person concerned to the courts, for his protection, for the protection of third parties or for the preservation of public order.
(2002-461 DC, 29 August 2002, para 66, p. 204)

Equality of public burden-sharing (article 13)

The principle of equality does not preclude the legislature from imposing specific burdens on certain categories of persons to improve the living conditions of other categories, but it must not have the effect thereby of violating the requirement of article 13 of the 1789 Declaration.
(2001-455 DC, 12 January 2002, para 94, p. 49)

Rights to be secured (article 16)

The rules of procedure applicable in the *Tribunal d'instance* and the *Tribunal de police* and extended to the local courts are not contrary to the requirements of article 16 of the Declaration of 1789.
(2002-461 DC, 29 August 2002, para 17, p. 204)

Preamble to the Constitution of 27 October 1946 – Principles

Principles – Application and implementation

Human dignity (first paragraph)

The plea that the dignity of the child was violated fails on the facts both as regards minors aged thirteen and as regards those from thirteen to sixteen who are prosecuted for offences, since neither category can be placed under electronic surveillance. It fails for other minors, in view either of the criminal nature of the facts alleged or of their age.
(2002-461 DC, 29 August 2002, paras 84 and 86, p. 204)

Right to employment (fifth paragraph)

The Preamble to the Constitution reaffirms the principles established both by the Declaration of Human and Civic Rights of 1789 and by the Preamble to the 1946 Constitution. These

include the freedom of enterprise under article 4 of the 1789 Declaration and the economic and social principles set out in the Preamble of 1946, which in turn include, under the fifth paragraph, the right for everybody to employment, and under the eighth paragraph, the right of all workers, through the intermediary of their representatives, to participate in the collective determination of their conditions of work and in the management of the work place.

It is for the legislature, in the exercise of the power conferred on it by article 34 of the Constitution to determine the fundamental principles of employment law, to ensure that effect is given to the economic and social principles of the Preamble to the 1946 Constitution, while reconciling them with the freedoms guaranteed by the Constitution. In order to lay down rules that will best secure the right for everybody to employment under the fifth paragraph of the Preamble to the 1946 Constitution, it may impose on the freedom of enterprise restrictions linked to this constitutional requirement, provided there is no resultant breach that is disproportionate to the objective pursued.

The effect of the combination of constraints that the definition of redundancy in section 107 of the Social Modernisation Act imposes on the management of a firm is that the firm can no longer dismiss an employee unless its survival is at stake. By enacting these provisions the legislature has subjected the freedom of enterprise to a restriction that is manifestly excessive in terms of the objective pursued – preservation of employment. Section 107 must accordingly be declared unconstitutional.
(2001-455 DC, 12 January 2002, paras 43 to 50, p. 49)

Collective determination of conditions of work (eighth paragraph)

It is for the legislature, in the exercise of the power conferred on it by article 34 of the Constitution to determine the fundamental principles of employment law, to ensure that affect is given to the economic and social principles of the Preamble to the 1946 Constitution, while reconciling them with the freedoms guaranteed by the Constitution. In order to lay down rules that will best secure the right for everybody to employment under the fifth paragraph of the Preamble to the 1946 Constitution, it may impose on the freedom of enterprise restrictions linked to this constitutional requirement, provided there is no resultant breach that is disproportionate to the objective pursued.
(2001-455 DC, 12 January 2002, paras 51 to 54, p. 49)

Section 217 of the Social Modernisation Act so amends the Commercial Code as to make it compulsory for public limited companies to appoint representatives of employees holding shares in the company to the Board of Directors or the Supervisory Board where the shares held by employees account for at least 3 % of the total shares in the company.

Far from violating the eighth paragraph of the 1946 Preamble, the object of the section challenged is to give effect to it by providing for representation of share-holding employees in the management bodies of their companies.
(2001-455 DC, 12 January 2002, paras 96 and 110, p. 49)

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

The legislature cannot decide to transfer resources and burdens between branches in such a way as to seriously compromise the attainment of their objectives and thereby jeopardise the existence of branches or the constitutional requirements attached to the exercise of their tasks.

The pension increases allowed on the basis of the number of children can be seen as a deferred family benefit to offset the cost of family responsibilities at the time of retirement. The doubling of the share of expenditure from the Old-Age Solidarity Fund covered on this basis by the National Family Allowances Fund, provided for by section 59 of the Social Security (Finance) Act for 2003, does not therefore in itself violate the principle of the autonomy of the family branch.

Given the amount of the burdens transferred, accounting for only a small proportion (4 % or so) of all the expenditure of the family branch provided for by way of the objective set by section 60, section 59 does not jeopardise the constitutional requirements attached to the

exercise of the branch's tasks by the Preamble to the Constitution of 1946. Nor does it violate equality between families depending whether they raise children or have done so in the past.
(2002-463 DC, 12 December 2002, paras 24, 27 to 29, p. 540)

Right to a decent standard of living (eleventh paragraph)

The applicants submit that the effect of repealing the "Thomas Act" of 25 March 1997 establishing retirement savings plans is to engender " inequality before retirement between workers in the public sector and employed persons under the general law", given the abolition of the "deductibility from taxable income of payments made by employed persons to build up supplementary retirement pension rights", contrary to the eleventh paragraph of the Preamble to the Constitution of 27 October 1946.

The repeal of the Act makes no change to the rights of employed persons in the private sector to benefits from the basic social security scheme and the supplementary schemes. It does not, therefore, deprive the requirements of the eleventh paragraph of the Preamble to the 1946 Constitution of their statutory guarantees.
(2001-455 DC, 12 January 2002, paras 34 and 37, p. 49)

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

Provisions of the Social Security (Finance) Act for 2003 amending the Social Security Code to allow the basis for reimbursement of medicines in the same generic group to be confined to a "responsible flat rate" determined by Ministerial Order. The purpose of such a rate is to restrict health-care insurance expenditure, and it accordingly helps to preserve the financial equilibrium of social security, this being a constitutional objective.

By leaving it to the patient to cover the portion of the price of the medicine in excess of the responsible flat rate, they will have the effect of varying the portion of the price that is reimbursed depending on the cost of the medicine actually dispensed within a given generic group. It follows that the establishment of the responsible flat rate may indirectly generate differences between persons insured by the social security system depending whether they can or cannot have a generic medicine dispensed.

It will be for the authority empowered to make regulations to provide for a precise information mechanism for all those insured by the social security system regarding the general principles of the new system for reimbursing medicines and the possibility of having medicines prescribed or dispensed at a price as nearly as possible equal to the basis for reimbursement. It will also be for the relevant administrative authorities to accompany the establishment of the new reimbursement system by measures to train health-care professionals in the use of general specialities, to contribute to the development of "best practices" in the prescription of generic medicines by doctors, and to encourage pharmacists to exercise their right to substitute one medicine for another under section L 5125-23 of the Public Health Code.

It will be for the authors of the Order provided for by section L 162-16 of the Social Security Code, as amended by the Act referred, to set the responsible flat rate in such a way as to avoid jeopardising the requirement of the eleventh paragraph of the Preamble to the Constitution of 1946, whereby the Nation "shall guarantee to all, notably to children, mothers and elderly workers, protection of their health". Subject to these reservations, section 43 of the Act referred is not unconstitutional.
(2002-463 DC, 12 December 2002, paras 14 to 23, p. 540)

The legislature cannot decide to transfer resources and burdens between branches in such a way as to seriously compromise the attainment of their objectives and thereby jeopardise the existence of branches or the constitutional requirements attached to the exercise of their tasks.

The pension increases allowed on the basis of the number of children can be seen as a deferred family benefit to offset the cost of family responsibilities at the time of retirement. The doubling of the share of expenditure from the Old-Age Solidarity Fund covered on this basis by the National Family Allowances Fund, provided for by section 59 of the Social Security

(Finance) Act for 2003, does not therefore in itself violate the principle of the autonomy of the family branch.

Given the amount of the burdens transferred, accounting for only a small proportion (4 % or so) of all the expenditure of the family branch provided for by way of the objective set by section 60, section 59 does not jeopardise the constitutional requirements attached to the exercise of the branch's tasks by the Preamble to the Constitution of 1946. Nor does it violate equality between families depending whether they raise children or have done so in the past.
(2002-463 DC, 12 December 2002, paras 24, 27 to 29, p. 540)

Fundamental principles recognised by the laws of the Republic

Principles recognised

Respect for natural justice

The rules of evidence that are more favourable to the claimant, introduced by sections 158 and 169 of the Social Modernisation Act, do not release the claimant from the obligation to prove the precise and coherent elements of fact presented in support of an allegation that a decision concerning him constitutes discrimination in relation to housing or is inspired by a form of moral or sexual harassment at the workplace. The defendant will be able to explain the conduct of which he is accused and to prove that his decision is justified by the management of his real property or by factors that have nothing to do with any form of harassment. In the event of doubt, the court may order all investigation measures that appear useful as means of coming to a conclusion. Subject to these strict reservations interpretation, the provisions challenged are not contrary to the constitutional principle of respect for natural justice.
(2001-455 DC, 12 January 2002, paras 87 to 90, p. 49)

Reduced liability of minors and adaptation of treatment by the criminal law

The reduced criminal liability of minors on the basis of their age, and the need to raise the educational and moral level of juvenile delinquents by means of measures adapted to their age and personality, ordered by a specialised court or in accordance with special procedures, have been recognised by the laws of the Republic since the beginning of the twentieth century. These principles are expressed in particular in the Criminal Majority (Minors) Act of 12 April 1906, the Juvenile Courts Act of 22 July 1912 and the Juvenile Delinquency Ordinance of 2 February 1945.
(2002-461 DC, 29 August 2002, para 26, p. 204)

Principles not recognised

Other

The original provisions of the Ordinance of 2 February 1945 did not preclude the criminal liability of minors and did not preclude measures such as placement, surveillance, custody or, in the case of minors aged more than thirteen, detention being ordered against them in case of need. There is no fundamental principle recognised by the law of the Republic that would have this effect.
(2002-461 DC, 29 August 2002, para 26, p. 204)

Principles of constitutional value stated in articles of the Constitution

Self–government of territorial units

The effect of 72 of the Constitution and article 6 of the 1789 Declaration is that section 216 of the Act referred, which empowers local authorities to pay operating subsidies to local structures of representative trade-union organisations, cannot authorise a local assembly to apply unequal treatment to the local structures of representative trade-union organisations that are

also eligible for such subsidies by reason of the general-interest functions they exercise locally. Subject to this reservation, the section is not unconstitutional.
(2001-455 DC, 12 January 2002, paras 117 and 118, p. 49)

Objectives of constitutional status

Objectives recognised

Accessibility and intelligibility of statutes

The legislature must exercise to the full the powers conferred on it by article 34 of the Constitution. In the exercise of those powers, it must respect constitutional principles and rules and ensure that they are respected by the administrative authorities and courts responsible for enforcing the law. The principle that statutes must be clear, which flows from article 34 of the Constitution, and the constitutional objective that legislation, must be intelligible, which flows from articles 4, 5, 6 and 16 of the Declaration of Human and Civic Rights of 1789, require it to protect the holders of rights against interpretations that conflict with the Constitution and the risk of arbitrary action by enacting provisions that are precise and use non-equivocal language. It is for the Constitutional Council to interpret the provisions of a statute that is referred to it where such interpretation is needed to ascertain whether it is constitutional. It is for the appropriate administrative authorities and courts to apply the statute, subject to the reservations, if any, entered by the Constitutional Council as conditions for acknowledging it to be constitutional.
(2001-455 DC, 12 January 2002, paras 8, 9, 29 and 30, p. 49)

Section 217 of the Social Modernisation Act so amends the Commercial Code as to make it compulsory for public limited companies to appoint representatives of employees holding shares in the company to the Board of Directors or the Supervisory Board where the shares held by employees account for at least 3 % of the total shares in the company.

It is alleged that, since the relevant sections of the Commercial Code had just been amended by an Act of 19 February 2001, "this instability in legislation cannot be regarded as in accordance with the constitutional objective of accessibility and intelligibility of legislation".

The fact that the two sections of the Commercial Code that are amended were already amended by a recent statute does not jeopardise the clarity or the intelligibility of the rule applicable.
(2001-455 DC, 12 January 2002, paras 96, 100 and 101, p. 49)

Financial equilibrium of the social security system

Provisions of the Social Security (Finance) Act for 2003 amending the Social Security Code to allow the basis for reimbursement of medicines in the same generic group to be confined to a "responsible flat rate" determined by Ministerial Order. The purpose of such a rate is to restrict health-care insurance expenditure, and it accordingly helps to preserve the financial equilibrium of social security, this being a constitutional objective.
(2002-463 DC, 12 December 2002, paras 14 to 23, p. 540)

Principles deriving from more than one provision

Continuity in the public services

Under the new section L 34-7-1 of the Code of state assets, a hire-purchase contract for the construction of buildings for use by the courts, police and gendarmerie on publicly-owned property must contain clauses approved by the central government allowing it to prevent the lessor's prerogatives from being incompatible with the smooth operation of the public services.
(2002-460 DC, 22 August 2002, para 15, p. 198)

Parameters not recognized and material not taken into account

Parameters not recognized for constitutional review of statutes

Principle of the autonomy of the branches of social security

The existence of separate branches of social security is recognised by section LO 111-3 of the Social Security Code, though their financial autonomy is not in itself a constitutional principle. But the legislature cannot decide to transfer resources and burdens between branches in such a way as to seriously compromise the attainment of their objectives and thereby jeopardise the existence of branches or the constitutional requirements attached to the exercise of their tasks.
(2002-463 DC, 12 December 2002, paras 24, 27 to 29, p. 540)

NATURE, PROCEDURES AND EXTENT OF CONSTITUTIONAL REVIEW

Conditions for taking account of factors external to the statute

Reference to legislative history

Section 101 of the Social Modernisation Act replaces the third paragraph of section L 432-1 of the Employment Code by six paragraphs. The second and third paragraphs read: "It shall be compulsory for the Works Committee to be informed and consulted on all plans to restructure and reduce staffing. It shall issue an opinion on such plans and the procedure by which they are applied and may make alternative proposals. Such opinions and alternative proposals, if any, shall be transmitted to the relevant administrative authority. – The Works Committee shall have the right of opposition, exercised by means of a reference to a conciliator as provided for by section L 432-1-3. While the conciliator is investigating the matter, the plan shall be suspended". The first paragraph of section L 432-1-3, inserted by section 106 of the Act referred, reads: "Where the consequence of a plan to cease the activity of an establishment or an independent business entity in whole or in part is to lose one hundred or more jobs, and there is a serious difference between the plan presented by the employer and the alternative proposal or proposals presented by the Works Committee, either side may refer the matter to a conciliator, selected from a list adopted by the Minister of Employment".

For one thing, it is clear from section L 432-1, as amended, read in the light of the legislative history, that this section must be interpreted as giving the Works Committee a right of opposition expressed in the form of a referral to a conciliator, only in the event the "the consequence of a plan to cease the activity of an establishment or an independent business entity in whole or in part is to lose one hundred or more jobs". For another, the word "restructure" ("restructuration") in section 101 is sufficiently precise. Subject to the reservation in paragraph 16 of this decision, section 101 is not contrary to article 34 of the Constitution
(2001-455 DC, 12 January 2002, paras 14 to 16 and 18, p. 49)

Section 108 of the Social Modernisation Act amplifies section L 321-1 of the Employment Code by adding a new paragraph reading as follows: "an employee may be dismissed on economic grounds only when all efforts have been made to train or adapt the employee and the employee cannot be redeployed to a post in the same category as the post currently occupied or an equivalent post or, failing this and subject to the employee's express agreement, to a post in a lower category within the firm or other firms in the group to which it belongs". According to the legislative history, the legislature's intention was to confirm the rule in case-law that an employer, being bound to perform the employment contract in good faith, has a duty to adapt employees to developments in their posts, that duty now being given statutory form in section L 932-2 of the Employment Code by the Act of 19 January 2000.
(2001-455 DC, 12 January 2002, paras 19 to 21, p. 49)

Reference to legislative history of the Act referred

It is clear from statements made by the Minister of Justice in Parliament and from the parliamentary debates that preceded the enactment of the Justice (General Policy and Programming) Act and from the report annexed to the Act that with the provisions challenged here the legislature's intention was to establish a new class of courts to hear routine and minor disputes, consisting of lay judges who would exercise their judicial functions on a temporary basis and solely in the local courts while continuing to pursue their ordinary professional activities.
(2002-461 DC, 29 August 2002, para 14, p. 204)

Entry into force of a statute dependent on a subsequent statute

Article 34 of the Constitution, which provides that "Statutes shall determine the rules concerning ... the establishment of new classes of courts and tribunals", does not require the legislature, when establishing a new class of courts and tribunals, to adopt in one and the same statute the rules governing the organisation operation of the new class of courts and tribunals and the rules governing the status of the judges they comprise. But, although it can adopt the first of these sets of rules before the second, the first set can be applied only when the second set has been promulgated.
(2002-461 DC, 29 August 2002, paras 12 and 13, p. 204)

Extent of review

Restricted constitutional review

Accuracy of the budget

Section 32 of the Institutional Act of 1 August 2001, made applicable from 1 January 2002 by section 65, provides: "Finance Acts shall accurately present all the resources and burdens of central government. Their accuracy shall be assessed in the light of such information as is available and of the forecasts that can reasonably be derived therefrom." The accuracy of the Finance Act for the current year is assessed in terms of the absence of any intention to distort the broad aspects of equilibrium.

None of the information laid before the Constitutional Council suggests that the assessments of revenue for 2003 taken into account in the balancing item are vitiated by a manifest error, given the uncertainties inherent in evaluation and the uncertainties as to the development of the economy in 2003. Moreover the alleged error in the economic hypotheses would, according to the applicants themselves, engender only a minor overestimate of tax revenue (€2 billion for net tax revenue) in relation to the aggregate amount of the budget.
(2002-464 DC, 27 December 2002, paras 3 and 4, p. 583)

MEANING AND SCOPE OF THE DECISION

Ineffective statutory provisions

Section 40 of the Social Modernisation Act calls on the Government, as soon as the Act is published, to organise "consultations with trade unions on the election of employees' representatives to Boards of Directors of general social security schemes and with employers'organisations on the election of employers'representatives.

This provision, which is not strictly mandatory, does not constitute an injunction by the legislature to the Government in breach of the prerogatives conferred on the latter by the Constitution.
(2001-455 DC, 12 January 2002, paras 55 and 56, p. 49)

The "general policy guidelines" set out in annex I to the Domestic Security (General Policy and Programming) Act are not within any of the categories of legislative instruments provided for by the Constitution and therefore do not have the law-making quality of legislation. The legislative or regulatory measures that give effect to these guidelines and confer legal status on them may be referred to the Constitutional Council or the administrative courts, as the case may be.
(2002-460 DC, 22 August 2002, paras 20 and 21, p. 198)

The "general policy guidelines" set out in the annex to the Justice (General Policy and Programming) Act are not within any of the categories of legislative instruments provided for by the Constitution and therefore do not have the law-making quality of legislation. The legislative or regulatory measures that give effect to these guidelines and confer legal status on them may be referred to the Constitutional Council or the administrative courts, as the case may be.
(2002-461 DC, 29 August 2002, paras 89 and 90, p. 204)

Qualified interpretations

Examples of *interprétations neutralisantes*

Public and social finance

If in 2003 the broad lines of the equilibrium in the Finance Act diverge substantially from the forecasts, it will be for the Government to present Parliament with a Finance (Amendment) Bill.

Parliament must be informed in good time of budget-related regulatory measures that are implemented. In particular, in accordance with section 14(I) and (III) of the Institutional Act of 1 August 2001 on Finance Acts, applicable from 1 January 2002, the relevant National Assembly and Senate committees must be informed of every annulment decree before it is published and of "every act of whatever nature that has the object or effect of making appropriations unavailable".

Subject to the foregoing observations, pleas of inaccuracy in the Act referred must be rejected.
(2002-464 DC, 27 December 2002, paras 7, 8 and 9, p. 583)

Law governing territorial units

The new section L 4424-2(II) of the General Code of Territorial Units must be interpreted as restating the rule that the power to make regulations enjoyed by a territorial unit subject to compliance with legislation and regulations cannot be exercised outside the scope of the powers conferred on it by statute. It has neither the object nor the effect of constraining the power to make regulations for the implementation of statutes conferred by article 21 of the Constitution on the Prime Minister subject to the powers conferred on the President of the Republic by article 13 of the Constitution.
(2001-454 DC, 17 January 2002, paras 13 and 15, p. 70)

The teaching of the Corsican language is provided for "during normal school hours in pre-primary and primary classes", but this does not make it compulsory for pupils or for teachers; nor can the effect be to release pupils from the rights and obligations applicable to all users of establishments providing or associated with the public education service. It follows that, if the teaching of the Corsican language is optional as a matter of principle and in practice, section 7 is not contrary to the principle of equality or to any other constitutional principle or rule.
(2001-454 DC, 17 January 2002, paras 24 and 25, p. 70)

Recruitment of judges

The statute determining the conditions for the appointment and status of their members must offer adequate guarantees of satisfaction of the principle of independence that is essential for

the exercise of judicial functions and the requirements as to qualifications flowing from article 6 of the Declaration of 1789
(2002-461 DC, 29 August 2002, para 15, p. 204)

Establishment of a new class of courts

On the date of the Constitutional Council's decision on the Act referred, the legislature has adopted no provisions on the rules governing the status of the members of the local courts. Since the Act is silent on the entry into force of Title II, it follows that the local courts can be established only when a statute has been promulgated determining the conditions for the appointment and status of their members.
(2002-461 DC, 29 August 2002, para 15, p. 204)

Severability of provisions declared unconstitutional

Examples of severable provisions

Institutional Acts

The sole section of the Institutional Act validating the land tax on built-up properties in French Polynesia reads: "Subject to enforceable court decisions ordering relief or reductions, taxes charged in the territory of French Polynesia by way of land tax on built-up properties are validated for the years from 1992 to 1999 if their legality is challenged on the grounds that the determination of rental values applying the direct method evaluation method proceeded without a legal basis and, for 2000 and 2001, if their legality is challenged on the grounds that the authority that issued Order No 1274/CM of 17 September 1999 had no power to determine their basis". The validation relating to the years 1992 to 1999 is declared unconstitutional in part.
(2002-458 DC, 7 February 2002, paras 1, 4 and 5, p. 80)

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

Different provisions of a single section inseverable

Censure in part

The first two paragraphs of section 7 of the Domestic Security (General Policy and Programming) Act being unconstitutional, the Constitutional Council must also declare unconstitutional the word "also" in the third paragraph.
(2002-460 DC, 22 August 2002, para 24, p. 198)

RIGHTS AND LIBERTIES

PUBLIC LIBERTIES – GENERAL

Essential conditions for the exercise of public liberties

The legal and financial procedures for territorial units that so wish to participate in the construction or renovation of buildings to be put at the disposal of central government for use by the courts, the national police or the national gendarmerie affect neither the essential

conditions for the exercise of public liberties nor, in particular, the essential conditions for securing public order throughout the national territory.
(2002-460 DC, 22 August 2002, paras 17 to 19, p. 198)

PROTECTION OF INDIVIDUAL LIBERTIES BY THE COURTS

Courts

Courts consisting of lay judges

Article 66 of the Constitution does not preclude criminal jurisdiction from being conferred on the local courts provided they have no power to order measures depriving people of their liberty. By giving these courts jurisdiction solely over police offences, the legislature has satisfied this condition.
(2002-461 DC, 29 August 2002, paras 18 and 19, p. 204)

Detention of minors

It is legitimate for the legislature to provide for a procedure whereby children aged between ten and thirteen may be held for the purposes of an investigation, but such a measure may be taken only in exceptional cases involving serious offences. The use of this procedure, which must be subject to a decision and review by a judge specialising in the protection of children, requires special guarantees.

The new section 4 of the Ordinance of 2 February 1945, which prohibits the preventive detention for questioning of minors aged thirteen and organises an exceptional procedure for holding minors aged ten to thirteen, does not violate these requirements.
(2002-461 DC, 29 August 2002, paras 33 to 38, p. 204)

Provisional detention

It is legitimate for the legislature to amend or repeal earlier provisions, provided constitutional requirements are not thereby deprived of their guarantees. The provisions preceding the Act referred already provided for the provisional detention of minors aged from thirteen to sixteen in relation to very serious offences. By restoring the possibility of provisional detention in relation to less serious offences where they fail to discharge their probation obligations, the provisions challenged here have not deprived any constitutional requirements of their guarantees, given the conditions as to procedure and substance to which provisional detention is subject.
(2002-461 DC, 29 August 2002, paras 39, 40, 42 to 44, p. 204)

The obligation for the examining judge to give reasons for an Order whereby he declines to accept the recommendations of the Public Prosecutor regarding provisional detention violates no constitutional rules.
(2002-461 DC, 29 August 2002, paras 63 to 65, p. 204)

It is at all times legitimate for the legislature, within the limits of its powers, to adopter new procedures for the attainment or reconciliation of constitutional objectives, which it has the sole power to evaluate. But the exercise of this power may not have the effect of depriving constitutional requirements of their statutory guarantees.

In making the amendments to the Code of Criminal Procedure challenged here, the legislature did not violate the equilibrium between the different constitutional requirements concerned or display a degree of rigour that was not necessary in the light of article 9 of the Declaration of 1789.
(2002-461 DC, 29 August 2002, paras 67 to 68, p. 204)

The effect of article 66 of the Constitution and article 9 of the Declaration of 1789 is that in principle, where a judge, in the exercise of the powers conferred on him by article 66 of the

Constitution as guardian of individual liberty, gives a judgment whereby a person is to be released from custody, no obstacles may be raised to the execution of that judgment, even pending an appeal.

But the judicial authority includes both the judges and the prosecutors. The exercise of the power conferred by section 38 of the Justice (General Policy and Programming) Act on the Public Prosecutor to suspend the judgment ordering release cannot have effect beyond the period of two working days allowed the first President of the Court of Appeal to give a decision on the request for suspension. Thereafter, the detention may continue only if there is a judgment by a judge and only if at least two of the conditions required by section 144 of the Code of Criminal Procedure as regards provisional detention are met. The recommendation by the prosecution service must also refer to these conditions. Given the full set of conditions set by the legislature, section 38 of the Act referred is not unconstitutional.
(2002-461 DC, 29 August 2002, paras 69, 70, 72 to 74, p. 204)

Probation

Electronic surveillance

The inevitable effect of placing someone under electronic surveillance is to restrict his individual liberty, and this surveillance can be put in place only with the consent of the person concerned. In certain circumstances, the need for provisional detention will be thereby obviated. It cannot therefore be regarded as excessively harsh for the purposes of article 9 of the Declaration of 1789.
(2002-461 DC, 29 August 2002, paras 83 to 85, p. 204)

Probation and minors

The effect of section 17 of the Justice (General Policy and Programming) Act is that probation orders against minors aged between thirteen and sixteen will be made only when the circumstances, the seriousness of the offence, the constraints of the investigation and the personality of the minor so require.
(2002-461 DC, 29 August 2002, paras 39 to 41, p. 204)

Placement in a closed educational centre will be ordered by the judicial authority. Its duration will be confined to six months, renewable once on a probation basis, and to the duration of the suspended prison sentence. For minor convicts, it is an alternative to imprisonment. Provision is made for educational monitoring and additional teaching, adapted to the personality of the minor. The section is contrary neither to articles 4, 8 and 9 of the Declaration of 1789 nor to the specific constitutional principles applying to justice in relation to minors.
(2002-461 DC, 29 August 2002, paras 52, 53, 56 and 57, p. 204)

The plea that the dignity of the child was violated fails on the facts both as regards minors aged thirteen and as regards those from thirteen to sixteen who are prosecuted for offences, since neither category can be placed under electronic surveillance. It fails for other minors, in view either of the criminal nature of the facts alleged or of their age.
(2002-461 DC, 29 August 2002, paras 84 and 86, p. 204)

RIGHTS OF REDRESS – NATURAL JUSTICE

Civil procedure

The rules of evidence that are more favourable to the claimant, introduced by sections 158 and 169 of the Social Modernisation Act, do not release the claimant from the obligation to prove the precise and coherent elements of fact presented in support of an allegation that a decision concerning him constitutes discrimination in relation to housing or is inspired by a form of moral or sexual harassment at the workplace. The defendant will be able to explain the conduct of which he is accused and to prove that his decision is justified by the management

of his real property or by factors that have nothing to do with any form of harassment. In the event of doubt, the court may order all investigation measures that appear useful as means of coming to a conclusion. Subject to these strict reservations as to interpretation, the provisions challenged are not contrary to the constitutional principle of respect for natural justice.
(2001-455 DC, 12 January 2002, paras 87 to 90, p. 49)

PRINCIPLES OF CRIMINAL LAW

Principle that offences and penalties must be defined by statute

Definition of offences and penalties

Specific definition of offences; requirement met

Section 100 of the Social Modernisation Act insets in the Employment Code a section L 431-5-1 whereby the head of a business may make a public announcement of which the implementing measures may have a significant impact on the working conditions or conditions of employment of his employees only after first informing the Works Committee. Failure to comply incurs the penalties provided for by sections L. 483-1, L. 483-1-1 and L. 483-1-2 of the Employment Code relating to offences involving barriers to the operation of Works Committees.

The applicants criticise section 100 on the grounds that it is contrary to article 34 of the Constitution and to the principles both that offences must be defined by statute and that penalties must be necessary, laid down by article 8 of the 1789 Declaration. It is alleged that the legislature did not adequately spell out the content of the obligation to provide information, breach of which constitutes a criminal offence. In particular, it did not specify the time allowed a head of a firm to inform the staff representatives. Moreover the new section L 431-5-1 is contrary to the "rules governing securities markets, which establish the principle that issuers must inform the public of any important fact which, if generally known, would have an impact on the price of the relevant financial instrument", so that compliance with either of the obligations would put the employer in breach of the other.

The legislature, which specified the nature of the duty to inform, the persons on whom it is incumbent and the recipients of the information, and determined how it is to be discharged, notably the fact that it must precede public announcements, violated neither the scope of its own powers, not the constitutional principle that offences and penalties must be defined by statute. In addition, the statutory requirement under the Act referred for employers to inform staff representatives before publicly announcing a restructuring operation constitutes a ground for release from the criminal or civil liability incurred in respect of such information. Pleas dismissed.
(2001-455 DC, 12 January 2002, paras 62 to 67, p. 49)

Under articles 8 and 9 of the 1789 Declaration, no one may be punished except by virtue of a Law drawn up and promulgated before the offence is committed, and legally applied, the punishment must be strictly and evidently necessary, the more severe criminal statute may not have retroactive effect and the presumption of innocence always applies.

The legislature, by virtue of article 34 of the Constitution and the principle that offences and penalties must be provided for by law, has an obligation to determine itself the scope of a criminal statute and to define offences in terms that are sufficiently clear and precise to allow offenders to be identified and exclude the risk of arbitrary sentencing. While the new section L 122-49 inserted in the Employment Code by the Social Modernisation Act does not specify the "rights" of employed persons that are liable to be violated by the conduct classified as an offence, it must be regarded as concerning rights at the workplace as defined by section L 120-2 of the Employment Code. Subject to this reservation, the pleas that the statute lacks clarity and that the principle that offences must be defined by statute is violated must be dismissed.
(2001-455 DC, 12 January 2002, paras 81 to 83, p. 49)

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

Proportionality of penalties

Under article 8 of the 1789 Declaration, every penalty provided for by law must be strictly and evidently necessary. The principle of proportionality means that, where several different criminal provisions might be taken as the basis for a conviction for the same act, the penalties incurred may not exceed the highest of the penalties provided for by the law.

The courts and, where relevant, the authorities responsible for recovering fines must, in the application of the Act referred, respect this principle of proportionality of penalties. Subject to this reservation, the introduction in the Criminal Code and the Employment Code of two offences of moral harassment at the workplace, the former being broader in scope, is not in itself unconstitutional.
(2001-455 DC, 12 January 2002, paras 85 and 86, p. 49)

Presumption of innocence

Under articles 8 and 9 of the 1789 Declaration, no one may be punished except by virtue of a Law drawn up and promulgated before the offence is committed, and legally applied, the punishment must be strictly and evidently necessary, the more severe criminal statute may not have retroactive effect and the presumption of innocence always applies.

Sections 158 et 169 of the Social Modernisation Act modify the burden of proof in favour of persons who consider that they have been refused rental housing on the basis of a form of illegal discrimination and those who believe they are the victims of moral or sexual harassment. The very provisions of the instrument challenged state that the exceptional rules of evidence laid down therein apply "in the event of litigation". It follows that they are not applicable in criminal matters and cannot therefore have the object or the effect of jeopardising the principle of the presumption of innocence.
(2001-455 DC, 12 January 2002, paras 81 and 84, p. 49)

Principle

The principle of the presumption of innocence declared by article 9 of the Declaration of 1789 does not preclude the judicial authorities from ordering measures that restrict a person's liberty or deprive him of it prior to conviction, where there is sufficient evidence of participation in the commission of a crime, provided always that such measures are ordered in accordance with a procedure that respects defence rights and are necessary for the ascertainment of the truth, for the availability of the person concerned to the courts, for his protection, for the protection of third parties or for the preservation of public order.
(2002-461 DC, 29 August 2002, para 66, p. 204)

Natural justice in the criminal law

No violation of natural justice

The new sections 495 to 495-6 of the Code of Criminal Procedure, which allow the President of the *Tribunal correctionnel* to pass judgment by Order without debate on certain offences against the Road Traffic Code, provide a person against whom such an Order is made with assurances of respect for natural justice equivalent to those enjoyed when the case comes before the *Tribunal correctionnel* itself. Reasons must be given for the Order; the Order may be objected to within 45 days following its notification; there is then a full public adversarial debate in the *Tribunal correctionnel* in which the person concerned is informed of these rules and is entitled to be legally represented. These provisions taken together adequately ensure that there will be a fair trial.
(2002-461 DC, 29 August 2002, para 81, p. 204)

Specific features of criminal justice in relation to minors

Principles applicable

The reduced criminal liability of minors on the basis of their age, and the need to raise the educational and moral level of juvenile delinquents by means of measures adapted to their age and personality, ordered by a specialised court or in accordance with special procedures, are a fundamental principle recognised by the laws of the Republic.

The effect of articles 8 and 9 of the Declaration of 1789 is that the principle of the presumption of innocence, the principle that penalties must be necessary and proportional, the principles of natural justice and the rule set out in article 66 of the Constitution must be respected in relation to minors as to adults.

And when determining rules relating to criminal law in relation to minors the legislature must be sure to reconcile those constitutional requirements with the need to identify offenders and prevent violations of public order, and in particular the security of persons and property, which are necessary for the preservation of constitutional rights.
(2002-461 DC, 29 August 2002, paras 26 to 28, p. 204)

Minor offences

Jurisdiction to try cases involving offences of the first four classes committed by minors lay with the Police Court since the entry into force of the Ordinance of 2 February 1945. For the offences provided for by the decree referred to in the new section 706-72 of the Code of Criminal Procedure, the local court is substituted for the police court, applying the same rules of procedure and substance. In particular, under the unchanged provisions of section 21 of the Ordinance of 2 February 1945, minors aged thirteen can receive no more than a warning. By the same token, publicity of proceedings will be subject to the restrictions provided for by section 14 of the Ordinance. There is accordingly no violation of the specific constitutional principles of juvenile justice.
(2002-461 DC, 29 August 2002, paras 49 to 51, p. 204)

Educational penalties

The specific constitutional principles applicable to the administration of justice in relation to minors do not preclude penalties as provided for by the new section 15-1 of the Ordinance of 2 February 1945, all of which have an educational purpose. Applying the principle of proportionality of penalties, they will obviously reflect family and schooling obligations.
(2002-461 DC, 29 August 2002, paras 30 to 32, p. 204)

FREEDOM OF ENTERPRISE AND FREEDOM OF TRADE AND INDUSTRY

Freedom of enterprise

Scope of principle

The Preamble to the Constitution reaffirms the principles established both by the Declaration of Human and Civic Rights of 1789 and by the Preamble to the 1946 Constitution. These include the freedom of enterprise under article 4 of the 1789 Declaration and the economic and social principles set out in the Preamble of 1946, which in turn include, under the fifth paragraph, the right for everybody to employment, and under the eighth paragraph, the right of all workers, through the intermediary of their representatives, to participate in the collective determination of their conditions of work and in the management of the work place.

It is for the legislature, in the exercise of the power conferred on it by article 34 of the Constitution to determine the fundamental principles of employment law, to ensure that affect is given to the economic and social principles of the Preamble to the 1946 Constitution,

while reconciling them with the freedoms guaranteed by the Constitution. In order to lay down rules that will best secure the right for everybody to employment under the fifth paragraph of the Preamble to the 1946 Constitution, it may impose on the freedom of enterprise restrictions linked to this constitutional requirement, provided there is no resultant breach that is disproportionate to the objective pursued.
(2001-455 DC, 12 January 2002, paras 44 to 46, p. 49)

Applications

Social law

For one thing, the new definition of redundancy in section 107 of the Act referred confines the possibility of redundancy to the three cases it mentions to the exclusion of all other hypotheses, such as cessation of business by the enterprise. For another, by allowing redundancies upon reorganisation of a firm only where the reorganisation is "indispensable for the firm's survival" and not where, as under the existing legislation, if it is necessary to safeguard the firm's competitiveness, the definition prohibits firms from anticipating future economic difficulties and acting to avoid future dismissals on a larger scale. Thirdly, by allowing redundancies only in the event of "serious economic difficulties that cannot be overcome by other means", the Act not only requires the courts, as was the case under the existing legislation, to investigate the economic grounds for dismissals decided on by the head of a business following the procedures lid down in Books IV and III of the Employment Code but also to substitute their assessment of the situation for that of the firm as to the choice between the different options available. The combined effect of the constraints that this definition places on the management of a firm is that can dismiss employees only if its survival is under threat. In enacting these provisions the legislature has put on the freedom of enterprise a restriction that is manifestly excessive in relation to the objective pursued – maintaining employment. Section 107 must accordingly be declared unconstitutional.
(2001-455 DC, 12 January 2002, paras 47 to 50, p. 49)

The legislature has laid down precise rules for the different stages of the collective redundancy procedure, which does not include, as the applicants submit it does, the period of retraining leave provided for by section L 321-4-3 of the Employment Code, as amended by section 119 of the Social Modernisation Act. In regulating as it did the time allowed for the procedures for consulting the Works Committee, the legislature has not subjected the freedom of enterprise to a restriction that is manifestly excessive in terms of the objective pursued.
(2001-455 DC, 12 January 2002, paras 51 to 54, p. 49)

Free competition

There are no constitutional rules or principles requiring different persons to be entrusted with the design, construction, fitting out or maintenance of a public building or prohibiting tenders relating simultaneously to several lots being accepted en bloc in order to select the best bid in overall terms.

The purpose of section 3(I) of the Domestic Security (General Policy and Programming) Act is to facilitate and expedite the construction of buildings for use by the national gendarmerie and the national police by allowing the central government to entrust a single contracting partner with all the tasks of design, construction, fitting out and maintenance. It does not in itself violate the principle of equal access to pubic procurement. Provision is made for the possibility of several small or medium-sized firms to present joint bids; the central government as project leader is empowered to award the contract for separate lots; the awardee is not prevented from subcontracting, and small or medium-sized firms are accordingly not excluded from pubic procurement.
(2002-460 DC, 22 August 2002, paras 3 to 8, p. 198)

There are no constitutional rules or principles requiring different persons to be entrusted with the design, construction, fitting out or maintenance of a public building or prohibiting tenders relating simultaneously to several lots being accepted en bloc in order to select the best bid in overall terms.

The purpose of the new section 2 of the Act of 22 June 1987 is to facilitate and expedite the construction of prisons; it does not in itself violate the principle of equal access to pubic procurement. Provision is made for the possibility of several small or medium-sized firms to present joint bids; the central government as project leader is empowered to award the contract for separate lots; the awardee is not prevented from subcontracting, and small or medium-sized firms are accordingly not excluded from pubic procurement.
(2002-461 DC, 29 August 2002, paras 2 to 6, p. 204)

PROPERTY RIGHTS

No violation

Rights of private shareholders

By allowing, in the scheme it sets up, to hold in a PEA only shares in real-estate investment companies quoted in France, section 11 of the Finance Act for 2003 does not violate property rights nor the right to invest which, the applicants submit, is an integral part of them.
(2002-464 DC, 27 December 2002, para 37, p. 583)

Rental values determined by a public authority

Under the Act referred, where properties intended to be used to house persons in difficult are let or sub-let furnished, the rental value of the furniture and the conditions in which it may be reassessed are determined by Ministerial Order. This entails no substantial violation of property rights. The plea that articles 2 and 17 of the 1789 Declaration are violated must be rejected.
(2001-455 DC, 12 January 2002, paras 91 to 93, p. 49)

Public assets

The new section L 34-7-1 of the Code of public assets permits hire-purchase contracts for the construction of buildings for use by the courts, the police and the gendarmerie, but excludes none of the rules laid down in the same code relating to public property: the duration of the authorisation may not exceed a total of seventy years; the authorisation may be withdrawn before expiry; rights, constructions and installations may be transferred or assigned only to a person approved by the central government; if the central government does not take them over in advance, the works may be incorporated in the state's assets at the end of the lease. All these provisions accordingly offer adequate guarantees as to the preservation of public property.
(2002-460 DC, 22 August 2002, para 14, p. 198)

PRINCIPLE OF EQUALITY

EQUALITY BEFORE THE LAW

Principle

The principle of equality does not preclude the legislature from regulating different situations in different ways or from derogating from equality on grounds of the general interest,

provided in both cases that the difference in treatment is directly related to the purpose of the statute generating it.
(2001-455 DC, 12 January 2002, paras 32 and 106, p. 49)

Respect for principle of equality : absence of discrimination

Local authorities

Article 72 of the Constitution reads: "The territorial units of the Republic... shall be self-governing through elected councils and in the manner provided by statute". The equality proclaimed by article 6 of the 1789 Declaration must be respected not only before the law but also before the deliberations of local authorities.

The effect of these constitutional provisions is that section 216 of the Act referred, which empowers local authorities to pay operating subsidies to local structures of representative trade-union organisations, cannot authorise a local assembly to apply unequal treatment to the local structures of representative trade-union organisations that are also eligible for such subsidies by reason of the general-interest functions they exercise locally. Subject to this reservation, section 216 is not unconstitutional.
(2001-455 DC, 12 January 2002, paras 117 and 118, p. 49)

Section 27 of the Act referred abolishes the licence duty aid by drinks outlets. To offset this, section 27(III) increases for 2003 the balance of the public supply fund to be spread over the urban solidarity fund and the rural solidarity fund.

The abolition of the licence duty for drinks outlets by the Act referred meets an objective of indirect tax simplification. Depending on the size of the commune and the category of licence, the duty varies between €3.8 and €306. Given the small amounts involved, by establishing a comprehensive compensation scheme for the communes, the legislature has not violated equality between communes.
(2002-464 DC, 27 December 2002, paras 39, 43 to 45, p. 583)

Social law

Labour law and trade–union law

The applicants criticise section 96 of the Social Modernisation Act on the ground that, by imposing negotiations for an agreement on the reduction of working time prior to any plan to safeguard employment, it violates equality to the detriment of firms that have no representative trade union structures and therefore cannot negotiate.

The legislature's intention was not to impose on the relevant employers an obligation as to the result to be attained but only an obligation as to the means to be deployed. Section L 321-4-1 of the Employment Code, as amended by the section challenged, must be interpreted as applying exclusively to firms in which there is at least one representative trade-union organisation and as allowing the employer to be attacked for failure to act only where he can be held liable for the failure to perform the obligations provided for by the section. Subject to this reservation, section 96 is not unconstitutional.
(2001-455 DC, 12 January 2002, paras 39 and 40, p. 49)

Conditions for payment of benefits

The new section 33-1 of the Ordinance of 2 February 1945, which provides for the suspension of family allowances for the parents of a minor placed in a closed educational centre, does not create a penalty but merely applies to the specific case of placement in a closed educational centre sections L 513-1 and L 521-2 of the Social Security Code, which provide that family allowances are paid only to persons have actual responsibility for children to help cover the cost of the child's material and other needs. Under section L 512-2 of the Social Security Code and section 40 of the Ordinance of 2 February 1945, the share of family allowances due for a child placed under sections 15, 16, 16 *bis* and 28 of the Ordinance of 2 February 1945 was already, under the earlier provisions of the Act referred, paid to the receiving service unless the

juvenile court specifically requested otherwise because the family "participated in covering the moral and material needs of the child to facilitate his return to the family home".
(2002-461 DC, 29 August 2002, paras 58 to 61, p. 204)

Taxation

No discrimination in capital gains and stock exchange profits taxes

The extension from five to ten years of the period of offsetting of losses on transfers of securities and social rights mentioned in section 150-0 A of the General Tax Code, and the corresponding offsetting of losses on certain operations carried out in France on long-term markets, encourages individuals, despite the fall on the markets for financial instruments, to orient their savings towards such markets in order to boost the economy. It was legitimate for the legislature, given this general-interest objective, to exclude from this measure the products mentioned in section 150 sexies, which concern neither bond issues nor shares. Subject to international conventions, it was just as legitimate to exclude losses on operations on long-term markets abroad.
(2002-464 DC, 27 December 2002, paras 17 to 21, p. 583)

Miscellaneous applications

Insertion of the Corsican language and culture in the school curriculum

The teaching of the Corsican language is provided for "during normal school hours in pre-primary and primary classes", but this does not make it compulsory for pupils or for teachers. Nor can the effect be to release pupils from the rights and obligations applicable to all users of establishments providing or associated with the public education service. It follows that, if the teaching of the Corsican language is optional as a matter of principle and in practice, section 7 is not contrary to the principle of equality or to any other constitutional principle or rule.
(2001-454 DC, 17 January 2002, paras 22 to 25, p. 70)

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

Social law

Participation of employees in enterprises

Section 217 of the Social Modernisation Act so amends the Commercial Code as to make it compulsory for public limited companies to appoint representatives of employees holding shares in the company to the Board of Directors or the Supervisory Board where the shares held by employees account for at least 3 % of the total shares in the company.

Given the legislature's objective of involving employees in the capital structure of companies, share-holding employees are in a different situation from other shareholders and other employees. It was accordingly legitimate for the legislature, which did not violate the principle of equality, to provide for specific representation of them.

By setting at 3 % the rate of involvement triggering specific representation of share-holding employees, the legislature did not commit a manifest error or breach equality between companies.
(2001-455 DC, 12 January 2002, paras 96, 107 and 108, p. 49)

Labour law and trade–union law

The Deputies making the application submit that, by raising the rate of the statutory redundancy allowance, section 113 of the Act referred breaches equality to the detriment of employed persons dismissed for personal reasons.

But employed persons dismissed for personal reasons are, in terms of the statute's avowed objective of preventing redundancies by making them more costly, in a different situation from employees dismissed on other grounds. The section challenged is accordingly not contrary to the principle of equality.
(2001-455 DC, 12 January 2002, paras 41 and 42, p. 49)

Legislation on retirement pensions

The applicants submit that the effect of repealing the "Thomas Act" of 25 March 1997 establishing retirement savings plans is to engender "inequality before retirement between workers in the public sector and employed persons under the general law", given the abolition of the "deductibility from taxable income of payments made by employed persons to build up supplementary retirement pension rights".

Employees bound by a private-law contract of employment and staff of public authorities are covered by different types of legislation as regards their status for the purpose of retirement pensions.
(2001-455 DC, 12 January 2002, paras 34 and 35, p. 49)

Taxation

Civil and commercial real-estate investment companies

The purpose of section 11 of the Finance Act for 2003 is to align the tax rules for investment in rented housing on those for securities investments, in order to support the rented housing market and develop French financial markets. It accordingly allows quoted housing investment companies to opt for a company tax exemption scheme in return for immediate taxation of latent profits at 16.5 % and an obligation to distribute a sizeable proportion of profits.

These provisions are challenged as violating equality between civil companies subject to "tax transparency" and companies benefiting from section 11, under which only distributed profits are taxed as income received by the shareholders. Moreover the shareholders in investment companies will be exempted from income tax if their shares are deposited in an equity savings plan, whereas this possibility is not open to members of partnerships.

Given the purpose of the provisions challenged here, civil property investment companies are in a different situation from companies to which section 11 applies, which advertise publicly for savers on the capital markets. It was accordingly legitimate for the legislature to subject them to different forms of tax treatment without violating equality between companies or between shareholders.
(2002-464 DC, 27 December 2002, paras 27, 28, 31 and 32, p. 583)

Considerations of public interest justifying difference of treatment

Credit establishments

Housing savings

The Act referred amends section L 315-4 of the Construction and Housing Code to specify that the savings premium paid to the holders of a housing savings account shall be received "when the loan is paid". This provision is applicable only to housing savings accounts opened on or after 12 December 2002. The authors of the referral submit that the legislature violated equality by allowing longer-standing account holders to retain a benefit not available to holders of accounts opened on or after 12 December 2002.

It is clear from the legislative history that by subjecting the payment of the housing premium to the actual grant of a building loan, the provision challenged restores to this form of state aid its original function of encouraging the acquisition, renovation or construction of housing. In so doing the legislature must avoid excessive effects on the general scheme of earlier contracts.

The date set by the legislature for the entry into operation of the measure does not create differences of treatment or retroactive effects contrary to the Constitution.
(2002-464 DC, 27 December 2002, paras 52 to 54, p. 583)

Applications

Taxation

The Social Security (Finance) Act for 2003 establishes a levy on strong beers for the benefit of the National Health-Care Insurance Fund for Employed Workers, payable on supplies to consumers of beers with an alcoholic strength by volume exceeding 8.5 degrees.

The legislative history reveals that the purpose of this levy is, as the new section L 245-13 of the Social Security Code states explicitly, to restrict the consumption of beers with a high alcohol content in view of the health risks flowing from immoderate consumption of such products, in particular for young people. Given the objective of protecting public health, the legislature did not violate the principle of equality.
(2002-463 DC, 12 December 2002, paras 10 to 13, p. 540)

The purpose of section 11 of the Finance Act for 2003 is to align the tax rules for investment in rented housing on those for securities investments, in order to support the rented housing market and develop French financial markets. It accordingly allows quoted housing investment companies to opt for a company tax exemption scheme in return for immediate taxation of latent profits at 16.5 % and an obligation to distribute a sizeable proportion of profits.

There is criticism of "the very generous terms laid down to offset the tax consequences of the option offered to quoted real-estate investment companies" when they join the new scheme, and in particular the rate for taxation of latent capital gains and the non-taxation of these capital gains when paid out to members of the company.

Given its avowed general-interest objective, it was legitimate for the legislature to lay down as it did the tax rules governing the exercise of the option, which do not cause central government to bear burdens out of proportion to the desired incentive effect.
(2002-464 DC, 27 December 2002, paras 27, 28, 33 and 34, p. 583)

Access to public procurement

The purpose of section 3(I) of the Domestic Security (General Policy and Programming) Act is to facilitate and expedite the construction of buildings for use by the national gendarmerie and the national police by allowing the central government to entrust a single contracting partner with all the tasks of design, construction, fitting out and maintenance. It does not in itself violate the principle of equal access to pubic procurement. Provision is made for the possibility of several small or medium-sized firms to present joint bids; the central government as project leader is empowered to award the contract for separate lots; the awardee is not prevented from subcontracting, and small or medium-sized firms are accordingly not excluded from pubic procurement.
(2002-460 DC, 22 August 2002, paras 3 to 8, p. 198)

The purpose of the new section 2 of the Act of 22 June 1987 is to facilitate and expedite the construction of prisons; it does not in itself violate the principle of equal access to pubic procurement. Provision is made for the possibility of several small or medium-sized firms to present joint bids; the central government as project leader is empowered to award the contract for separate lots; the awardee is not prevented from subcontracting, and small or medium-sized firms are accordingly not excluded from public procurement.
(2002-461 DC, 29 August 2002, paras 2 to 6, p. 204)

Social security

Aids to payment of social security contributions

Section 52 of the Corsica Act does not release employers of agricultural labour installed in Corsica from their debts to the social security scheme for agricultural workers. The aid, as is

clear from paragraph II of the section referred, can be seen as a part subrogation of the State to the employers, limited to those who are up to with their contributions relating to periods after 31 December 1998 and confined to half the amount of the contributions due for periods prior to 1 January 1999. Those entitled must have paid to the agricultural mutual provident scheme for Corsica "either at least 50 % of the debt relating to employers'social security contributions for the period prior to 1 January 1999 or amounts due by way of these contributions for at least the first eight years of the plan, where the scheme has allowed debt repayments to be spread over a period of no more than fifteen years". They must also be "up to date with the employers'social security contributions to which the aid applies or commit full payment by agreeing a schedule signed for no more than two years between the farmer and the scheme".

The measure is taken for the purpose of restoring a sound situation in agriculture in Corsica, which the legislature considers to be in a parlous state on the basis of objective indicators such as average income per farm.

It follows from the foregoing that the aid established by section 52 is based on objective and rational criteria related to the general-interest objective pursued by the legislature; the objective that the principle of equality is violated in favour of employers of agricultural labour installed in Corsica must accordingly be rejected.
(2001-454 DC, 17 January 2002, paras 31 to 35, p. 70)

Reimbursement of medicines belonging to the same generic group

Provisions of the Social Security (Finance) Act for 2003 amending the Social Security Code to allow the basis for reimbursement of medicines in the same generic group to be confined to a "responsible flat rate" determined by Ministerial Order. The purpose of such a rate is to restrict health-care insurance expenditure, and it accordingly helps to preserve the financial equilibrium of social security, this being a constitutional objective.

By leaving it to the patient to cover the portion of the price of the medicine in excess of the responsible flat rate, they will have the effect of varying the portion of the price that is reimbursed depending on the cost of the medicine actually dispensed within a given generic group. It follows that the establishment of the responsible flat rate may indirectly generate differences between persons insured by the social security system depending whether they can or cannot have a generic medicine dispensed.

It will be for the authority empowered to make regulations to provide for a precise information mechanism for all those insured by the social security system regarding the general principles of the new system for reimbursing medicines and the possibility of having medicines prescribed or dispensed at a price as nearly as possible equal to the basis for reimbursement. It will also be for the relevant administrative authorities to accompany the establishment of the new reimbursement system by measures to train health-care professionals in the use of general specialities, to contribute to the development of "best practices" in the prescription of generic medicines by doctors, and to encourage pharmacists to exercise their right to substitute one medicine for another under section L 5125-23 of the Public Health Code.

It will be for the authors of the Order provided for by section L 162-16 of the Social Security Code, as amended by the Act referred, to set the responsible flat rate in such a way as to avoid jeopardising the requirement of the eleventh paragraph of the Preamble to the Constitution of 1946, whereby the Nation "shall guarantee to all, notably to children, mothers and elderly workers, protection of their health". Subject to these reservations, section 43 of the Act referred is not unconstitutional.
(2002-463 DC, 12 December 2002, paras 14 to 23, p. 540)

Violation of the principle of equality

Taxation

Tax on printed advertising material and free newspapers

It is legitimate for the legislature, in the general interest in protection of the environment, to require those who distribute printed matter to the general public to bear the cost of collecting

and recycling it. But in providing as it did for the exclusion from the scope of section 88 of the Finance Act for 2003 of a large number of items of printed matter that would boost the volume of waste, the legislature created a difference of treatment not directly related to its avowed objective. The principle of equality is accordingly violated.
(2002-464 DC, 27 December 2002, paras 55 to 57, p. 583)

EQUALITY BEFORE THE COURTS

Ordinary courts

Courts

Composition of courts

Transfer from one judge to another

It is legitimate for the legislature to provide for different rules of procedure depending on the facts, situations and persons to whom they apply, but only provided the differences do not proceed from unjustified forms of discrimination and all litigants are assured of equal guarantees, in particular as regards the principle of defence rights, which implies in particular the existence of a fair procedure. The possibility offered by the new section L 331-4 of the Code of Judicial Organisation whereby a local court encountering a serious difficulty in a civil case concerning the application of a rule of law or the interpretation of a contract between the parties may remit the case to the district court at the request of one of the parties or of its own motion, after seeking the opinion of the other party or parties where appropriate, was introduced in view of the specific nature of the local courts for the sake of the sound administration of justice. The procedure is an additional assurance for the litigant and does not violate equality before justice.
(2002-461 DC, 29 August 2002, paras 21 to 24, p. 204)

Litigants

Equal guarantees for litigants

Equality of accused persons and rights of the partie civile

The differences between the référé-détention procedure and the procedure for applying for immediate release under section 187-1 of the Code of Criminal Procedure reflect their differing objectives and do not affect the guarantee of a fair procedure. They do not, therefore, constitute a violation of equality of forces between prosecution and accused.
(2002-461 DC, 29 August 2002, paras 70 and 71, p. 204)

Exceptional procedures for certain offences

The new section 495 of the Code of Criminal Procedure allows the President of the *Tribunal correctionnel* to give his decision by Ordinance without prior debate in the event of certain offences contrary to the Road Traffic Code, but this procedure is not contrary to the principle of equality before the courts since the fact that the prosecution service may decide to opt for the simplified procedure flows from the fact that it is responsible for prosecuting offences and providing evidence of them and the President of the Court must remit the case to the prosecution service if he considers that an adversarial proceeding is useful or that a prison sentence must be passed.
(2002-461 DC, 29 August 2002, paras 75 to 80, p. 204)

Equality before the tax law

Tax schemes

Taxable persons

Tax on printed advertising matter and free newspapers

It is legitimate for the legislature, in the general interest in protection of the environment, to require those who distribute printed matter to the general public to bear the cost of collecting and recycling it. But in providing as it did for the exclusion from the scope of section 88 of the Finance Act for 2003 of a large number of items of printed matter that would boost the volume of waste, the legislature created a difference of treatment not directly related to its avowed objective. The principle of equality is accordingly violated.
(2002-464 DC, 27 December 2002, paras 55 to 57, p. 583)

Tax reliefs

The maximum amount of expenditure on domestic staff deductible from income tax is raised. The applicants submit that the legislature violated the principle of equality of public burden-sharing by neglecting to modulate the amount of the tax relief on the basis of the taxpayer's marital situation and family responsibilities. The raising of the amount allegedly has the effect of conferring "a disproportionate benefit on single people and cohabiters in comparison to married couples".

Article 13 of the Declaration of Human and Civic Rights of 1789 provides: "For the maintenance of the public force, and for administrative expenses, a general tax is indispensable; it must be equally distributed among all citizens, in proportion to their ability to pay". Under article 34 of the Constitution, it is for the legislature to lay down the rules for determining the ability to pay taxes, in compliance with constitutional principles and in the light of the nature of each tax. This determination must not entail any serious violation of equality of public burden-sharing.

The principle of equality does not preclude the legislature from enacting tax incentives in the general interest.

The purpose of the tax relief for employment of domestic staff is to reduce unemployment by developing domestic employment opportunities and combating undeclared labour. The effect is to improve the quality of life of families by encouraging elderly people and invalids to stay at home and promoting child-minding, educational support and home help services. It corresponds to 50 % of the expenditure actually incurred, subject to a ceiling set by the statute. By raising to €10 000 the maximum amount of eligible expenditure, the legislature's intention was to extend the impact of this measure in order to better satisfy the general-interest objective which it set itself. The existence of a single ceiling on eligible expenditure is not contrary to the marital situation of eligible taxpayers or their household costs. It follows that section 8 of the Act deferred does not seriously violate equality of public burden-sharing.
(2002-464 DC, 27 December 2002, paras 22 to 26, p. 583)

Equality of public burden–sharing outside the tax law

Rules for determining rental rates

Section 159 of the Social Modernisation Act provides that, where properties intended to be used to house persons in difficulty are let or sub-let furnished, the rental value of the furniture and the conditions in which it may be reassessed are determined by Ministerial Order. The principle of equality does not preclude the legislature from imposing on certain categories of

persons specific burdens for the purpose of improving the living conditions of other categories but it must not, in doing so, violate the requirement of article 13 of the 1789 Declaration. This requirement is met in the instant case, provided the Ministerial Order does not set a furniture rental value at such a level as to seriously violate equality of public burden-sharing.
(2001-455 DC, 12 January 2002, paras 91, 94 and 95, p. 49)

Social law

Redundancies

It is legitimate for the legislature, provided it does not seriously violate equality of public burden-sharing, to require major firms announcing redundancies that might affect the equilibrium of an employment pole to commit expenditure that offsets the effects of the total or partial closure of an establishment. In the instant case the legislature, which limited the expenditure to four times the value of the monthly minimum growth wage per job lost and allowed it to vary between two and four times that value, depending in particular on the relevant firm's 'financial capacity', has not violated the principle of equality of public burden-sharing declared by article 13 of the 1789 Declaration.
(2001-455 DC, 12 January 2002, paras 70 to 72, p. 49)

EQUALITY AND PUBLIC-SECTOR EMPLOYMENT

Equal admissibility to public-sector posts

Recruitment to public-sector posts

Respect for requirement of ability in candidates

Article 6 of the 1789 Declaration reads: "... All citizens ... 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." The functions exercised by members of juries provided for by sections 134 and 137 of the Act referred are in effect "high offices, public positions and employment" within the meaning of article 6. The Act referred merely sets an objective of balanced representation as between women and men. It does not have the object and cannot have the effect of causing gender considerations to prevail over abilities, aptitudes and qualifications when members are selected for membership of juries. Subject to this reservation, the relevant provisions are not open to criticism on constitutional grounds.
(2001-455 DC, 12 January 2002, paras 114 and 115, p. 49)

ELECTIONS

ELECTORATE, ELIGIBILITY, PRE-ELECTORAL PROCESS

Eligibility

Discharge of national service obligations

An application alleges that a successful candidate had not discharged his legal obligations as to active military service and was therefore ineligible under section 3 of the Ordinance of

24 October 1958, but a copy of the "service record" issued by the military authorities to the candidate to certify that military obligations have been discharged is attached to the application; the application must be rejected as it merely repeats an objection entered against the same candidate, without the slightest evidence, at an earlier election and rejected at the time by the Constitutional Council in a decision dated 14 October 1997.
(2002-2624, 25 July 2002, AN, Loire, Constituency 5, para 2, p. 143)

Criminal offences

Scope of section LO 130 of the Electoral Code

A Court of Appeal ordered that the replacement for a successful candidate be deprived of civic and civil rights but it also ordered that the order be not recorded in bulletin n° 2 of the criminal record. By virtue of section 775-1 of the Code of Criminal Procedure, this latter decision, predating the election, releases form all disqualifications or incapacities of whatever kind flow from the conviction. The plea that the replacement for the candidate is ineligible must accordingly be rejected.
(2002-2738, 28 November 2002, AN, Haute-Corse, Constituency 1, paras 1 and 2, p. 499)

Miscellaneous

Ineligibility for municipal functions ordered against an elected Deputy under a judgment given by an administrative court acting on a referral from the Campaign Accounts and Political Funding Committee, does not extend to legislative elections. The applicant cannot therefore rely on that judgment to submit that the successful candidate was ineligible for election as Deputy.
(2002-2704/2740/2747, 25 July 2002, AN, Bouches-du-Rhône, Constituency 10, para 3, p. 176)

Pre-election process

Electoral rolls

Establishment of rolls

Entries

In the absence of a maœuvre, it is not for the electoral court to rule on whether entries in electoral rolls are in order.
(2002-2620/2716, 7 November 2002, AN, Corse-du-Sud, Constituency 2, para 4, p. 414)

Removal

Deceased voters

Under sections L 16, L 25 and R 18 of the Electoral Code, failures to remove deceased voters from the electoral roll can be challenged by voters in the *Tribunal d'instance*, and the electoral court has jurisdiction only where the failure is the effect of a manœuvre calculated to affect the fairness of the ballot. In the present case electoral operations proceeded on the basis of the electoral rolls as revised on 28 February 2002 and subsequently updated on 5 May 2002; the applicants provide no evidence of that failure to withdraw deceased voters after that date was the effect of a manœuvre.
(2002-2659/2762, 7 November 2002, AN, Alpes-Maritimes, Constituency 1, paras 2 to 5, p. 424)

French citizens residing outside France

Section 23 of the Decree of 14 October 1976 on voting by French citizens residing abroad provides that "unless otherwise provided by the Minister of Foreign Affairs, polling shall begin

at 8 a.m. and close the same day at 6 p.m. (local time)", whereas section 22 of the Decree of 8 March 2001 on the election of the President of the Republic, which is likewise a Decree debated by the Council of Ministers and adopted in the Council of State, provides that: "The polling station opening and closing times shall be determined by the Decree calling the election". Under this latter provision, it was legitimate for section 3 of the Decree of 13 March 2002 calling elections for the President of the Republic, which is an ordinary Decree, to provide that polling must everywhere close no later than 8 p.m.
(M. MEYET, 15 April 2002, para 5, p. 96)

Candidatures

Refusal to declare candidature

The fact that the applicant's replacement was not registered on the electoral roll did not in itself preclude him from registering a declaration of candidature, but Mr G would subsequently have to provide the administrative court with evidence of his status as voter. It was not in order for the applicant to produce evidence for the first time in the Constitutional Council.
(2002-2662, 24 October 2002, AN, Côte-d'Or, Constituency 5, para 4, p. 390)

Withdrawal

A candidate stated in the press that he was planning to withdraw his candidature. The investigation does not show that the withdrawal was made before the closing date for depositing candidatures as required by section R 100 of the Electoral Code. The declaration of candidature accordingly remained valid.
(2002-2625/2630/2678/2722, 10 October 2002, AN, Pas-de-Calais, Constituency 14, para 9, p. 353)

Candidatures for the second ballot

Where none of the candidates has received votes corresponding to at least 12.5 per cent of the registered voters, only the two candidates who received the highest number of votes may remain as candidates for the second ballot (5th paragraph of section L 162 of the Electoral Code).
(2002-2620/2716, 7 November 2002, AN, Corse-du-Sud, Constituency 2, para 3, p. 414)

CAMPAIGN ADVERTISING

Campaign advertising material

The fact that the applicant received the final acknowledgement of his declaration of candidature with some delay did not prevent him from printing a circular and ballot papers in time for them to be distributed by the Campaign Advertising Commission established by section L 166 of the Electoral Code. Rejection.
(2002-2634/2701, 24 October 2002, AN, Var, Constituency 2, para 2, p. 388)

There are no provisions laid down by legislation or regulation relating to campaign advertising material that require documents to be marked "Seen and approved by the candidate" or prohibit the reproduction of photographs of public buildings. The fact that the printer's name and address were not marked on the campaign advertising documents produced on behalf of Mr J. contrary to section 2 of the Press Freedom Act of 29 July 1881, applicable to campaign advertising material under section L 48 of the Electoral Code, had no influence on the outcome of the ballot.
(2002-2643, 5 December 2002, AN, Pas-de-Calais, Constituency 10, para 3, p. 508)

Posters

Presentation of posters

The applicant complains that the successful candidate displayed posters using a combination of blue, white and red contrary to section R 27 of the Electoral Code, but the use of these colours among others did not give the candidature an official appearance. The plea fails on the facts.
(2002-2612, 24 October 2002, AN, Loire-Atlantique, Constituency 3, para 2, p. 386)

The fact that several posters containing one or other of the three colours blue, white and red were displayed close each other did not in the circumstances violate section R 27 of the Electoral Code.
(2002-2647/2723, 31 October 2002, AN, Pas-de-Calais, Constituency 5, para 6, p. 401)

Posters and manifestoes common to the two constituencies in French Polynesia contained photographs of the two candidates and their alternates. No manœuvre in the circumstances that might mislead voters as to the candidates seeking their votes in each of the constituencies.
(2002-2638/2639, 7 November 2002, AN, French Polynesia, Constituency 1 and Constituency 2, para 2, p. 418)

Place of display

A hoarding set up for a single poster outside the sites reserved for the candidate had no influence on the outcome of the ballot.
(2002-2625/2630/2678/2722, 10 October 2002, AN, Pas-de-Calais, Constituency 14, para 7, p. 353)

The applicant alleges that hoardings set up by the regional council around construction sites where it was the project leader operated in favour of one of the two candidates present at the second ballot. The documents produced in support of the allegation prove that the hoardings contained only posters for the unsuccessful candidate. Rejected.
(2002-2767, 31 October 2002, AN, Guadeloupe, Constituency 4, para 4, p. 406)

The fact that the candidate displayed posters on the window of his election headquarters did not affect the outcome of the ballot.
(2002-2653/2718, 14 November 2002, AN, Hérault, Constituency 2, para 5, p. 458)

An election poster was displayed on several locked official notice boards in a large housing project belonging to the social housing office, of which the successful candidate was president. This display, with which all residents were in contact at their own homes every day throughout the campaign cold be interpreted as electoral advertising from the Office and accordingly constituted pressure on voters which, the gap separating the two candidates after the second ballot being only 244 votes, can have distorted the outcome of the ballot. Annulment.
(2002-2672, 21 November 2002, AN, Val-d'Oise, Constituency 5, para 6, p. 470)

Date of display

Objection based on section L 51 rejected, since it has not been shown that the display of posters on commercial hoardings, which the candidate admits to having done, continued after the commencement of the legally permissible period.
(2002-2693, 21 November 2002, AN, Nord, Constituency 8, para 1, p. 473)

Place and date of display

The applicant alleges that on the Wednesday following the first ballot the mayors of several communes in his constituency caused all first-ballot hoardings to be removed, with the exception of hoarding No 1 assigned to the candidate who was eventually successful and hoarding 2 assigned to a candidate who was unsuccessful at the first ballot. The fairness of the ballot was not affected as the alleged facts were not in the nature of a manœuvre, the circulars of the two candidates present at the second ballot were sent to voters in the manner prescribed by the Electoral Code and the successful candidate led by a margin of 257 votes.
(2002-2694, 24 October 2002, AN, Seine-Maritime, Constituency 6, paras 1 and 2, p. 395)

Posters covered up or torn

The applicant, who received 3.75 % of the votes cast at the first ballot, argues that there was a "systematic campaign" to damage his electoral posters.

A few hoardings reserved for the applicant were covered up, and a few posters for another unsuccessful candidate were displayed outside the electoral hoardings contrary to section L 51 of the Electoral Code. Irregularities without influence on the outcome of the ballot, given the substantial shortage of votes needed to qualify the applicant for the second ballot.
(2002-2671/2758, 10 October 2002, AN, Bouches-du-Rhône, Constituency 8, paras 2 and 4, p. 359)

The applicant challenges assertions made in a pamphlet issued by or for Mr A that he accepted the support of the National Front and the content of flyers stuck on his posters suggesting, in insulting terms, that he was close to that party, but he had adequate time to respond to the assertions. However open to criticism the violation of section L 51 of the Electoral Code, the facts alleged by the applicant were not in the circumstances such as to affect the fairness of the ballot.
(2002-2731, 24 October 2002, AN, Moselle, Constituency 8, para 2, p. 399)

The day before the second ballot, brightly-coloured flyers were stuck on the applicant's election posters, referring to the fact that he was under formal examination in the courts. This large-scale poster campaign on a date when it was no longer possible for the candidate to reply to this new element of electoral polemics in the constituency, was such as to distort the outcome of the ballot in view of the narrow gap (156 votes) separating the candidates. Annulment.
(2002-2697, 21 November 2002, AN, Paris, Constituency 17, para 2, p. 476)

No significant influence on the outcome of the ballot as only a small number of hoardings was concerned.
(2002-2658, 28 November 2002, AN, Seine-St-Denis, Constituency 5, para 8, p. 489)

The applicant complains that posters were systematically covered up. But she was standing as replacement for a candidate who received 1 302 votes, or 2.3 % of the votes cast at the first ballot, and does not show that, given the gap in the number of votes cast for the various candidates, the facts were on such a scale as to affect the outcome of the ballot.
(2002-2641/2744, 5 December 2002, AN, Bouches-du-Rhône, Constituency 11, para 3, p. 506)

Content of posters

A pamphlet and a poster brought to public attention in the last two days before the second ballot record the position allegedly taken by a candidate on the question of Palestine and reproduce certain of his statements. It is not submitted that these statements were inaccurate. Their juxtaposition with pictures of dramatic events in the Middle East is a criticisable procedure, but the investigation reveals that the polemics surrounding the candidate's positions arose several times during the campaign. The distribution, however late, of documents not proven to be the fault of the successful candidate, cannot be regarded as being of such a nature as to affect the fairness of the ballot.
(2002-2653/2718, 14 November 2002, AN, Hérault, Constituency 2, para 8, p. 458)

The day before the second ballot, brightly-coloured flyers were stuck on the applicant's election posters reproducing a press article listing candidates under formal examination in the courts. The applicant's name, which appeared on the list, was underlined and surrounded by arrows to highlight it, by those responsible for sticking them. The title and the comment added to the article aimed to increase its impact. This large-scale poster campaign on a date when it was no longer possible for the candidate to reply to this new element of electoral polemics in the constituency, was such as to distort the outcome of the ballot in view of the narrow gap (156 votes) separating the candidates. Annulment.
(2002-2697, 21 November 2002, AN, Paris, Constituency 17, para 2, p. 476)

Ballot papers

General

It was not wrong for ballot papers bearing a candidate's name to be deposited at a polling station as the candidate's declaration of candidature remained valid.
(2002-2625/2630/2678/2722, 10 October 2002, AN, Pas-de-Calais, Constituency 14, para 9, p. 353)

Section R 30 of the Electoral Code provides: "Ballot papers may not exceed the following formats:... 105 mm × 148 mm for ballot papers containing two names". There is nothing to preclude papers of a smaller format from being deposited. The objection that certain ballot papers were smaller is not valid.
(2002-2625/2630/2678/2722, 10 October 2002, AN, Pas-de-Calais, Constituency 14, para 10, p. 353)

The fact that the Union pour la majorité presidentielle announced that it was withdrawing its first-ballot nomination of Mr K. does not constitute a manœuvre. New ballot papers for Mr K. not mentioning the nomination could not be printed in good time, but the investigation has not revealed that the continued presence of the reference on the ballot papers caused the applicant to lose enough votes to reverse the outcome of the ballot or even to harm him in any way.
(2002-2731, 24 October 2002, AN, Moselle, Constituency 8, para 2, p. 399)

Section R 105 of the Electoral Code provides: "The following shall be disregarded when votes are counted:... 6° Papers containing one or more names other than those of the candidate and the replacement". Failure to comply warrants the annulment of the ballot papers where the addition of one or more names to those specified in that provision may have engendered confusion in voters'minds and is therefore a manœuvre to mislead the electorate.

All candidates are free to express support for a Government whose action seems to him to be compatible with his political orientations. While the candidate was not nominated by a political party belonging to the presidential majority, he was widely known to belong to that majority. Consequently, he did not engage in a manœuvre by expressing his support for the Government that was supported by that majority.

The ballot papers used at the second ballot by the successful candidate expressed "support for the Government of Jean-Pierre RAFFARIN", whereas those used at the first ballot expressed "support for the Government of the presidential majority". The investigation does not reveal that the change, whereby the candidate merely expressed support for the Government rather than the Government's support for the candidate, was liable to engender confusion in the voters'minds between his candidature and the candidate nominated by the "Union pour la majorité presidentielle". The General voters'counting committee was right to declare his ballot papers valid.
(2002-2657/2841, 19 December 2002, AN, Paris, Constituency 15, paras 2 to 6, p. 552; cf. – decisions 88-1100, 23 November 1988, AN, Var, Constituency 1, para 2, p. 218, and 88-1030 and 88-1031, 21 June 1988, AN, Oise, Constituencies 1 and 2, p. 80 and 82)

There are no provisions laid down by legislation or regulation that preclude ballot papers from being printed in the three colours blue, white and red. The fact that the successful candidate's ballot papers stated "with support from the RPR – UDF – DL – DVD" was not likely to mislead voters, even though one of the candidates at the first ballot claiming to belong to the "miscellaneous right" category had come to his support.
(2002-2687/2741, 19 December 2002, AN, Allier, Constituency 1, para 9, p. 558)

Circulars

Presentation of manifestoes

There are no provisions laid down by legislation or regulation that preclude ballot papers from being printed on a blue background and including the signature of personalities supporting the candidate.
(2002-2647/2723, 31 October 2002, AN, Pas-de-Calais, Constituency 5, para 5, p. 401)

Distribution

The application merely submits that the successful candidate caused an excessive number of manifestoes and circulars to be distributed and that, like her opponent at the second ballot, she enjoyed privileged access to the press and broadcasting media. Given the number of votes cast for each of the candidates, both at the first and at the second ballot, the alleged facts, even if proven, manifestly had no influence on the outcome of the ballot.
(2002-2677, 25 July 2002, AN, Deux-Sèvres, Constituency 2, para 2, p. 168)

Press

The press is entitled to report freely on an election campaign. The objection that the press paid inadequate attention to the applicant's campaign is rejected.
(2002-2612, 24 October 2002, AN, Loire-Atlantique, Constituency 3, para 4, p. 386)

Political statements by a newspaper

Organs of the press are free to publish the articles of their choice and to express support for one of the candidates. The investigation does not reveal that articles in the local press on the successful candidate's action as president of the urban community affected the fairness of the ballot.
(2002-2625/2630/2678/2722, 10 October 2002, AN, Pas-de-Calais, Constituency 14, para 4, p. 353)

The press is entitled to report on an election campaign as it wishes. The article challenged here, which reports an expression of political support, added nothing new to the election debate.
(2002-2649/2663/2664, 7 November 2002, AN, Alpes-de-Haute-Provence, Constituency 1, para 5, p. 422)

The press is entitled to report on an election campaign as it wishes. The applicant has no grounds for submitting that the daily newspaper "La Montagne" reported inadequately on the final political meeting of his campaign.
(2002-2687/2741, 19 December 2002, AN, Allier, Constituency 1, para 7, p. 558)

Paid inserts in newspapers

The content of an advertising insert in a daily newspaper on the day of the first ballot, relating to the signing of an agreement between a body coordinating gerontology projects and a financial establishment and merely mentioning the support given to that body by several territorial units, one of them being the urban community chaired by one of the candidates, is in no way electoral. The first paragraph of section L 52-1 of the Electoral Code is not violated.
(2002-2625/2630/2678/2722, 10 October 2002, AN, Pas-de-Calais, Constituency 14, para 5, p. 353)

It has not been shown that certain comments appearing in the local press on a candidate's election campaign were "obtained in exchange for money or services" and thus constituted a disguised form of press advertising contrary to section L 52-1 of the Electoral Code.
(2002-2703/2745, 5 December 2002, AN, Bouches-du-Rhône, Constituency 7, para 3, p. 518)

Municipal publications

The president's editorial in the January 2002 issue of the newsletter of an urban community cannot be regarded on account of its content being an "advertising promotion campaign" for the achievements or the management of the relevant public establishment within the meaning of section L 52-1. When signing the editorial, the successful candidate referred to his status as Deputy, and his photograph appeared, but this does not in itself mean that the article is election material.
(2002-2645, 14 November 2002, AN, Aisne, Constituency 4, para 2, p. 453)

Neither the fact that the format and layout of "Letter from the Mayor" were modified after Mr M was elected Mayor of Argenteuil in March 2001 nor the fact that no space was reserved for councillors not belonging to the municipal majority will suffice to cause the Letter to be regarded in its entirety as campaign advertising. But certain editorials signed by the mayor are pure campaign advertising in their polemical treatment of the candidate's campaign themes.
(2002-2672, 21 November 2002, AN, Val-d'Oise, Constituency 5, para 2, p. 470)

A monthly municipal newsletter devoted to local life in which the editorial by the mayor, the successful candidate, was dropped for more than six months before the general election, did not violate equality between candidates.
(2002-2688/2692/2714, 28 November 2002, AN, Hauts-de-Seine, Constituency 12, para 8, p. 493)

A brochure put out by the regional tourism committee in the weeks preceding the first ballot was not campaign advertising material. The brochure was accompanied by a letter from the candidate in her capacity as chair of the Rhône-Alpes regional council, as it also was in 2000 and 2001. No violation of sections L 52-1, L 52-8, L 52-12 of the Electoral Code.
(2002-2719, 5 December 2002, AN, Rhône, Constituency 1, para 1, p. 523)

Election meetings

The penultimate day before the first ballot, at a campaign meeting attended by a hundred or so people, the successful candidate presented a photomontage representing his future opponent at the second ballot. Neither this, nor the statements made by the candidate, affected the outcome of the election, confirmed only after the second ballot.
(2002-2653/2718, 14 November 2002, AN, Hérault, Constituency 2, para 4, p. 458)

Radio and television

By a recommendation sent to all radio and television services in the run-up to the general elections on 9 and 16 June 2002, the *Conseil supérieur de l'audiovisuel* ordered all radio and television services, during the period from 7 May to 7 June 2002 inclusive, whenever a given constituency was mentioned, to "report on all candidates" and to ensure that "the various candidates and the personalities supporting them enjoy fair access to airtime".

The regional station of "Réseau France-Outre Mer" in Réunion reported on all candidatures. The investigation reveals no violation of the requirement that all candidates enjoy equal access to airtime. The mere fact that the applicant was not invited by "Réseau France-Outre Mer" to certain debates, of which he does not specify the dates or the participants, is no breach of the Freedom of Communication Act of 30 September 1986 or of the above-mentioned recommendation. And in view of the low number of votes cast for the applicant, this fact did not affect the fairness of the ballot.
(2002-2617, 10 October 2002, AN, Réunion, Constituency 4, paras 3, 4 and 5, p. 350)

The applicant complains of defamatory statements made during broadcasts between the two ballots. The investigation has shown that the statements made did not go beyond the limits of normal electoral polemics but that the applicant had all the time he needed to answer them. Nor has it been shown that the broadcasting campaign between the two ballots was distorted in such a way as to affect the outcome of the ballot.
(2002-2686/2770/2771, 10 October 2002, AN, Guadeloupe, Constituency 3, para 5, p. 362)

Even if it was proved that, as alleged by the applicant, radio and television stations refused to report on his candidature, this could not have distorted the fairness of the ballot in view of the very low number of votes cast for him (325).
(2002-2612, 24 October 2002, AN, Loire-Atlantique, Constituency 3, para 5, p. 386)

Only Mr K and Mr A received enough votes to remain at the second ballot. The National Front candidate at the first ballot recommended voters to impede Mr A's election and party managers expressed support for Mr K. A public statement by Mr K was interpreted as accepting that support. Mr K challenges the way in which the national and regional press reported and analysed these facts, but organs of the press are free to report on an election campaign as they wish. The fact that television services reported these facts is in itself neither a violation of the above-mentioned recommendation of the *Conseil supérieur de l'audiovisuel*, issued under section 16 of the Freedom of Communication Act of 30 September 1986 nor a form of discrimination against Mr K.
(2002-2731, 24 October 2002, AN, Moselle, Constituency 8, paras 1 and 2, p. 399)

An act of violence at the successful candidate's campaign headquarters, even if it was unrelated to the election campaign, was an event that the local television station was free to report. Objection based on the alleged partiality of the immediate report, rebroadcast several times, rejected.

A one-hour programme devoted to the incident reported only the statements by supporters of the successful candidate, but the same station a gave representatives of his opponent the opportunity to state their views in a programme of similar length broadcast at the same time the next day. Rejection.
(2002-2652, 14 November 2002, AN, Guadeloupe, Constituency 1, paras 3 and 4, p. 455)

Internet

The second paragraph of section L 49 of the Electoral Code provides: "From the day before the ballot at 00.00 hour, no campaign advertising material may be broadcast by any broadcasting medium". The successful candidate closed access to the content of his website from Friday

7 June 2002 at midnight until the closure of the first ballot, and from Friday 14 June midnight until the closure of the second ballot, and it is accordingly not in order for the applicant to submit that the existence of the website was contrary to section L 49.
(2002-2727, 19 December 2002, AN, Hauts-de-Seine, Constituency 8, para 5, p. 562)

Letters

Dispatch or distribution of letters on behalf of candidates

The day after the first ballot the successful candidate sent a circular letter to 305 doctors who were voters in the constituency reminding them of the terms of the agreement concluded under the auspices of the Minister of Health between social security bodies and representatives of general practitioners for increases in their consultation fees. The letter highlighted the action of the Minister of Health. Given its content the letter, which repeated one of the issues in the national election campaign, cannot be regarded as constituting such pressure as to be a manœuvre liable to distort the outcome of the ballot.
(2002-2653/2718, 14 November 2002, AN, Hérault, Constituency 2, para 7, p. 458)

Letter in support of a Senator. Did not constitute pressure such as to affect the fairness of the ballot.
(2002-2729, 28 November 2002, AN, Seine-Maritime, Constituency 9, para 4, p. 496)

Letters from local elected officials

Distribution of a personal letter from the Mayor, who was also a regional councillor, to the voters announcing his support for a candidate was not a manœuvre such as to distort the outcome of the ballot.
(2002-2620/2716, 7 November 2002, AN, Corse-du-Sud, Constituency 2, para 6, p. 414)

The distribution of five hundred copies of a letter from the mayor in support of a candidate, with the letter head and official stamp of the town hall, given the conditions in which the document was distributed and its content, was such as to affect the outcome of the first ballot in the commune.
(2002-2620/2716, 7 November 2002, AN, Corse-du-Sud, Constituency 2, para 7, p. 414)

A circular letter inviting those who abstained at the first ballot to vote for a candidate did not violate the principle of equality between candidates as there is no evidence that the registers of signatures of voters was consulted before being sent in to the prefecture (section L 68 of the Electoral Code). Moreover, it is not alleged that there was any refusal to communicate the register contrary to section R 71 of the Code.
(2002-2669, 5 December 2002, AN, Rhône, Constituency 14, para 3 and 4, p. 513)

The fact that a candidate addressed a particular category of voters cannot be regarded as an attack on their freedom to vote.
(2002-2669, 5 December 2002, AN, Rhône, Constituency 14, paras 3 and 5, p. 513)

Pamphlets

General

The plea that the successful candidate organised a large-scale distribution of various pamphlets contrary to section L 165 of the Electoral Code is rejected since it is not alleged that the documents contained material going beyond normal electoral polemics or that they introduced anything new into the campaign debate.
(2002-2643, 5 December 2002, AN, Pas-de-Calais, Constituency 10, para 1, p. 508)

Irregularities entailing annulment of election

The investigation reveals that on the Friday preceding the first ballot, several pamphlets were distributed in the constituency by supporters of the successful candidate. One of these pamphlets, signed by the candidate and distributed in several communes affected by a planned

by-pass road, laid the blame for the fact that the road was to cross these communes on the applicant. Another pamphlet, written by persons close to the successful candidate and distributed to staff of the municipality of Maubeuge, made serious allegations about the conduct of the mayor in managing town hall services. And campaign advertising material distributed the same day, also by the successful candidate, made insulting statements about the applicant. Given that only 34 votes separated the applicant from the number needed to qualify for the second ballot, the distribution of these pamphlets, to which the applicant was unable to reply, was such as to affect the fairness of the ballot. Electoral operations at the first ballot and, consequently the second ballot must accordingly be annulled.
(2002-2725, 10 October 2002, AN, Nord, Constituency 23, para 1, p. 366)

Irregularities without influence on the outcome of the ballot

Date of distribution of pamphlets

Section L 49 of the Electoral Code "prohibits the distribution of pamphlets, circulars and other documents on the day of the ballot", but this prohibition does not apply on the day before the ballot.
(2002-2628, 17 October 2002, AN, Pas-de-Calais, Constituency 6, para 2, p. 373)

The other candidates were able to reply in good time to a pamphlet distributed more than a week before the first ballot which merely dealt with issues in the national election campaign.
(2002-2653/2718, 14 November 2002, AN, Hérault, Constituency 2, para 2, p. 458)

Section L 49 of the Electoral Code "prohibits the distribution of pamphlets, circulars and other documents on the day of the ballot", but this prohibition does not apply to distributions in the few days before the ballot. There is nothing irregular about the distribution, two days before the ballot, of a document which is admitted to be a manifesto.
(2002-2653/2718, 14 November 2002, AN, Hérault, Constituency 2, para 3, p. 458)

Content and scope of pamphlets

Despite their polemical tone, the content of the two pamphlets concerned dealt with issues widely discussed in the local and national press and added nothing new or false to the election debate.
(2002-2640, 7 November 2002, AN, Val-d'Oise, Constituency 9, paras 1 to 3, p. 420)

A candidate was able to reply in good time before the second ballot to a pamphlet distributed by his opponent several days before the first ballot, the content of which related to one of the main issues in the election campaign and did not go beyond the acceptable limits of electoral polemics. Rejection.
(2002-2653/2718, 14 November 2002, AN, Hérault, Constituency 2, para 6, p. 458)

A leaflet and a poster brought to public attention in the last two days before the second ballot record the position allegedly taken by a candidate on the question of Palestine and reproduce certain of his statements. It is not submitted that these statements were inaccurate. Their juxtaposition with pictures of dramatic events in the Middle East is a criticisable procedure, but the investigation reveals that the polemics surrounding the candidate's positions arose several times during the campaign. The distribution, however late, of documents not proven to be the fault of the successful candidate, cannot be regarded as being of such a nature as to affect the fairness of the ballot.
(2002-2653/2718, 14 November 2002, AN, Hérault, Constituency 2, para 8, p. 458)

A pamphlet distributed during the last two days before the second ballot made defamatory allegations against the unsuccessful candidate, but it was also critical of the successful candidate, who has not been proved to responsible for distribution of the pamphlet. Rejection.
(2002-2676, 14 November 2002, AN, Essonne, Constituency 1, para 1, p. 462)

A pamphlet distributed during the last two days before the second ballot made statements implicitly criticising the unsuccessful candidate's Jewish origins. By these statements the pamphlet, the authorship of which has not been proved to lie with the successful candidate, go beyond the limits of electoral polemics to an unacceptable extent. But there was a gap of 2 038 votes, or 5.94 % of the votes cast, between the two candidates at the second ballot. Given the size of this gap, the fairness of the ballot cannot have been distorted, notwithstanding the

content of the pamphlet and its large-scale distribution late in the campaign. It will be for the criminal courts, in an action brought by the applicant, to address the issues of guilt and punishment.
(2002-2676, 14 November 2002, AN, Essonne, Constituency 1, para 2, p. 462)

Pamphlets having no determining influence because of various electoral circumstances

A pamphlet claimed that the successful candidate's opponent at the second ballot was planning to locate a household waste incinerator, but the distribution of this pamphlet, the content of which did not exceed the limits of normal electoral polemics and to which the applicant had time to reply, manifestly did not influence the outcome of the ballot, given the gap in the numbers of votes cast at the second ballot.
(2002-2704/2740/2747, 25 July 2002, AN, Bouches-du-Rhône, Constituency 10, para 4, p. 176)

The applicant, who received 3.75 % of the votes cast at the first ballot, does not provide the slightest evidence either of the large-scale distribution of a pamphlet by another unsuccessful candidate or of the date on which it was allegedly distributed. Moreover, in view of the terms used in his opponent's own manifesto, the content of the pamphlet did not go beyond the limits of normal electoral polemics. Rejection.
(2002-2671/2758, 10 October 2002, AN, Bouches-du-Rhône, Constituency 8, paras 2 and 3, p. 359)

The open letter addressed by the replacement for the successful candidate to the unsuccessful candidate did not exceed the limits of normal electoral polemics in view of the content of the latter's pamphlets, which contained passages that were equally critical of the replacement. Moreover, there was an opportunity to reply.
(2002-2699, 17 October 2002, AN, Calvados, Constituency 2, para 2, p. 384)

The applicant challenges statements relating to his alleged acceptance of support from the National Front in a pamphlet issued by Mr A and the content of flyers stuck on to official posters suggesting in insulting terms that he was close to that party, but he had the opportunity to reply to them in good time. However open to criticism the violation of section L 51 of the Electoral Code may be, the facts alleged by the applicant were not such as to affect the fairness of the ballot.
(2002-2731, 24 October 2002, AN, Moselle, Constituency 8, para 2, p. 399)

The distribution of two pamphlets in the night from the Friday to the Saturday preceding the second ballot, which added nothing new to the election campaign and did not go beyond the limits of normal electoral polemics, was not such as to affect the fairness of the ballot.
(2002-2647/2723, 31 October 2002, AN, Pas-de-Calais, Constituency 5, para 3, p. 401)

Pamphlet of which the origin, date and number of copies distributed were uncertain and the content of which the applicant had time to refute. Rejection.
(2002-2642, 21 November 2002, AN, Hautes-Alpes, Constituency 2, para 2, p. 468)

The offending pamphlet was first distributed three weeks before the first ballot. Notwithstanding the fact that the pamphlet was distributed again between the two ballots, the applicant had the time needed to reply to this pamphlet, the content of which did not go beyond the limits of normal electoral polemics. Rejection.
(2002-2687/2741, 19 December 2002, AN, Allier, Constituency 1, para 2, p. 558)

No irregularities

The applicant complains that the successful candidate organised a large-scale distribution of pamphlets contrary to section L 165 of the Electoral Code. But it is not alleged that the pamphlets contained statements going beyond the limits of normal electoral polemics or that the expenditure incurred in producing and distributing them exceeded the maximum amount of campaign expenses allowed for Deputies by section L 52-11 of the Code. Rejection.
(2002-2612, 24 October 2002, AN, Loire-Atlantique, Constituency 3, para 1, p. 386)

Content not going beyond the limits of normal electoral polemics

Pamphlet distributed on the Friday preceding the second ballot, in response to statements by the applicant that he enjoyed the support of one of the candidates from the first ballot. The investigation reveals that the pamphlet, which challenged the reality of this support, made no

false statements and its content did not go beyond the limits of normal electoral polemics. Rejection.
(2002-2656, 10 October 2002, AN, Eure, Constituency 4, para 1, p. 357)

A pamphlet in which a left-wing candidate criticised the National Front candidate's support for the right-wing candidate, the content of which dealt with one of the main issues in the election campaign between the two ballots, did not go beyond the limits of normal electoral polemics. And the candidate was able to reply the following day with another pamphlet and at a public meeting.
(2002-2689, 17 October 2002, AN, Côtes-d'Armor, Constituency 2, para 1, p. 379)

Pamphlet reproducing an article from a daily newspaper but adding nothing new to the election debate and not going beyond the limits of normal electoral polemics.
(2002-2649/2663/2664, 7 November 2002, AN, Alpes-de-Haute-Provence, Constituency 1, para 6, p. 422)

Miscellaneous irregularities

The presence of three advertising hoardings by a national highway, one of which was set up by the commune of L more than three months before the election and carried slogans hostile to Mr D, unsuccessful candidate at the second ballot losing by 147 votes, was not regarded in the circumstances as having changed the outcome of the ballot. The slogans followed a dispute between the mayor of L and Mr D, mayor of a neighbouring commune and president of an association of communes, regularly reported on in the local press. However open to criticism the process used may have been, it added nothing new to the election campaign. Moreover, although Mr D was aware of the first hoarding on 28 February 2002, he took no legal action before the relevant administrative and judicial authorities. And during the election campaign he had all the time he needed to reply to the accusations made against him, distributing a pamphlet a few days before the first ballot in the relevant communes and neighbouring communes.
(2002-2739, 5 December 2002, AN, Meurthe-et-Moselle, Constituency 7, para 1, p. 528)

Prohibition of all commercial advertising techniques by the first paragraph of section L 52-1 of the Electoral Code

The content of an advertising insert in a daily newspaper on the day of the first ballot, relating to the signing of an agreement between a body coordinating gerontology projects and a financial establishment and merely mentioning the support given to that body by several territorial units, one of them being the urban community chaired by one of the candidates, is in no way electoral. The first paragraph of section L 52-1 of the Electoral Code is not violated.
(2002-2625/2630/2678/2722, 10 October 2002, AN, Pas-de-Calais, Constituency 14, para 5, p. 353)

It is clear from the very words of the third paragraph of section L 52-1 of the Electoral Code that the prohibition it lays down does not apply to a candidate's report on his management of official functions he holds or has held.
(2002-2647/2723, 31 October 2002, AN, Pas-de-Calais, Constituency 5, para 4, p. 401)

An issue of a municipal newsletter announced that the mayor was standing as a candidate, without, comment. Complaint rejected.
(2002-2693, 21 November 2002, AN, Nord, Constituency 8, para 3, p. 473)

It has not been shown that certain comments appearing in the local press on a candidate's election campaign were "obtained in exchange for money or services" and thus constituted a disguised form of press advertising contrary to section L 52-1 of the Electoral Code.
(2002-2703/2745, 5 December 2002, AN, Bouches-du-Rhône, Constituency 7, para 3, p. 518)

Prohibition of advertising promotion campaigns concerning the achievements or management of a territorial unit, laid down by the second paragraph of section L 52-1 of the Electoral Code

Given their content, neither the editorials nor the other articles appearing in several issues of an urban community's two-monthly newsletter, even though they were written by personalities close to a candidate, can be regarded as constituting an "advertising promotion campaign", within the meaning of the second paragraph of section L 52-1 of the Electoral Code, for the achievements or the management of this public establishment public for cooperation between

communes. It is immaterial that the presentation and publication intervals are different from those of the newsletter published previously by the district before it was converted into an urban community. Rejection.
(2002-2625/2630/2678/2722, 10 October 2002, AN, Pas-de-Calais, Constituency 14, para 6, p. 353)

Objection that the two candidates present at the second ballot were given special treatment by the local press akin to "advertising reporting" contrary to section L 52-1 of the Electoral Code. The press is free to report on an election campaign as it wishes. Rejection.
(2002-2767, 31 October 2002, AN, Guadeloupe, Constituency 4, paras 1 and 2, p. 406)

The president's editorial in the January 2002 issue of the newsletter of an urban community cannot be regarded on account of its content being an "advertising promotion campaign" for the achievements or the management of the relevant public establishment public within the meaning of section L 52-1. When signing the editorial, the successful candidate referred to his status as Deputy, and his photograph appeared, but this does not in itself mean that the article is election material.
(2002-2645, 14 November 2002, AN, Aisne, Constituency 4, para 2, p. 453)

Reports in the local press on various cultural and sports events such as the "Quatre jours de Dunkerque", the "Rallye des Flandres", the "Salon de la gastronomie", and the "Soirée cabaret en l'honneur de la vie associative", which the successful candidate helped to organise as mayor of the commune sponsoring them, cannot be regarded as constituting an "advertising promotion campaign" for the achievements or the management of a territorial unit within the meaning of section L 52-1.
(2002-2693, 21 November 2002, AN, Nord, Constituency 8, para 4, p. 473)

In the May 2002 issue of the newsletter of the town of which she is mayor, the replacement for the successful candidate signed an article setting out and commenting on the main components of the budget passed by the commune and two other articles setting out the consequences for the municipality of new legislative provisions on the scale for the local infrastructure tax and local town planning. These documents cannot be regarded as constituting an "advertising promotion campaign" for the achievements or the management of a commune within the meaning of section L 52-1.
(2002-2673, 5 December 2002, AN, Nord, Constituency 21, para 1, p. 516)

Prohibition on gifts from bodies corporate laid down by the second paragraph of section L 52-8 of the Electoral Code

Free space given for pages on a candidate's campaign by an Internet provider did not violate section L 52-8 of the Electoral Code prohibiting gifts from bodies corporate given that, in accordance with the general conditions for the use of the service to accommodate personal web pages, every candidate – indeed everybody – was able to enjoy the same service from the same company.
(2002-2682, 25 July 2002, AN, Savoie, Constituency 1, paras 2 and 3, p. 172)

Since the publication of an editorial by the successful candidate in the newsletter of a community of communes cannot be regarded as un instrument of campaign advertising, the plea that there was a benefit in kind from that body corporate, contrary to section L 52-8 of the Electoral Code is rejected.
(2002-2645, 14 November 2002, AN, Aisne, Constituency 4, para 4, p. 453)

Pressure – intervention – maœuvres

Nature of pressure, intervention or maœuvres

Intervention by public authorities. No manœuvre

The organisation of an ecumenical rally at which the High Commissioner of the Republic read a message from the President of the Republic to the families of members of a political party

who had died in an air crash and at which the President of the Territorial Government also spoke was not an electoral event.
(2002-2638/2639, 7 November 2002, AN, French Polynesia, Constituency 1 and Constituency 2, para 3, p. 418)

The organisation of a meeting of tenants of a public social housing office at which the successful candidate, vice-chairman of the office, had an ideal opportunity to speak in public, though without attacking his opponents or making statements about rents the tone or content of which would have constituted pressure on voters, was not held to constitute a manœuvre. The same applies to the continued presence of a poster incorporating his photograph in the entrance halls of buildings, which merely stated when he held his "surgery" in his capacity as mayor.
(2002-2658, 28 November 2002, AN, Seine-St-Denis, Constituency 5, para 3, p. 489)

Neither the candidate's presence at the inauguration of a secondary school nor the publication of a message in a brochure about the Resistance constituted promotion of the candidate.
(2002-2719, 5 December 2002, AN, Rhône, Constituency 1, para 2, p. 523)

Interventions by various bodies

Political groupings

In a statement widely reported in the press, the person in charge of the local C.P.N.T. movement called on voters to "see that Mr D is beaten", whereas the candidate for this movement in the constituency at the first ballot, in accordance with instructions from the national headquarters, had refrained from giving voters any recommendations for the second ballot. The offending statement whereby the author stated the official position of his movement while dissociating himself from it, was not in the nature of a manœuvre and was not such as to mislead voters.
(2002-2694, 24 October 2002, AN, Seine-Maritime, Constituency 6, paras 3 and 4, p. 395)

Professional organisations

The replacement for the successful candidate held the post of president of the Chamber of Agriculture. The investigation does not reveal that the candidate received support from it during the election campaign. Whatever the links between the weekly "L'Allier agricole" and the Chamber of Agriculture for the Allier, the investigation reveals that this publication did not openly support either candidate in the election campaign. The mere fact that an editorial signed by the manager of the publication implicitly sided in favour of a change in governing majority between the two ballots cannot be regarded as support from the weekly for the candidature of Mr P.
(2002-2687/2741, 19 December 2002, AN, Allier, Constituency 1, para 3, p. 558)

Candidate's use of official functions

Miscellaneous

An election poster was displayed on several locked official notice boards in a large housing project belonging to the social housing office, of which the successful candidate was president. This display, with which all residents were in contact at their own homes every day throughout the campaign could be interpreted as electoral advertising from the Office and accordingly constituted pressure on voters which, the gap separating the two candidates after the second ballot being only 244 votes, can have distorted the outcome of the ballot. Annulment.
(2002-2672, 21 November 2002, AN, Val-d'Oise, Constituency 5, para 6, p. 470)

Pressure by intimidation or corruption

Acts of violence

It is common ground that an isolated act of violence occurred at the successful candidate's campaign headquarters, but this has not been shown to have generated a climate of violence throughout the campaign, such as to affect the fairness of the ballot.
(2002-2652, 14 November 2002, AN, Guadeloupe, Constituency 1, para 2, p. 455)

Threats

The complaint concerns the fact that election posters were systematically covered up and that threats were proffered when certain posters were put up. But the applicant, replacement for a candidate who obtained 1 302 votes at the first ballot, or 2.3 % of the votes cast, has not shown that, in view of the number of votes cast for each of the candidates, the facts were on such a scale as to affect the outcome of the ballot.
(2002-2641/2744, 5 December 2002, AN, Bouches-du-Rhône, Constituency 11, para 3, p. 506)

Distribution or promises of money, gifts or other benefits

No manœuvre since grants were paid to all communes that had actually applied for them.
(2002-2638/2639, 7 November 2002, AN, French Polynesia, Constituency 1 and Constituency 2, para 4, p. 418)

The distribution of umbrellas by the Regional Council to voters in the commune of Saint-Louis de Marie-Galante was not such as to affect the fairness of the ballot.
(2002-2652, 14 November 2002, AN, Guadeloupe, Constituency 1, para 6, p. 455)

The Mothers'Day distribution of coffee-pots to mothers in the commune, where the successful candidate is mayor, did not change the outcome of the ballot, given the wide gap in the number of votes cast for the successful candidate and the other candidates, both in this commune and in other communes in the constituency.
(2002-2613/2616/2763, 19 December 2002, AN, Réunion, Constituency 3, paras 7 and 9, p. 549; cf. 97-2129/2136 of 9 January 1998, Réunion, Constituency 3, para 2, p. 32)

False or malicious statements

On the morning of the second ballot, a candidate was taken to hospital by ambulance and stayed there under observation until the end of the afternoon. The information was broadcast by a local radio station and alarmist reports as to his state of health circulated all day. It is submitted that the rumours, some going so far as to report his death, dissuaded certain voters from voting for him.

It has not been shown that the distribution of information about the applicant's hospitalisation was in the nature of a manœuvre. While the effect of certain rumours on the ignorance of the electorate may have been to exaggerate the seriousness of his state of health, the number of votes cast for each of the candidates indicates that it was not such as to affect the fairness of the ballot.
(2002-2686/2770/2771, 10 October 2002, AN, Guadeloupe, Constituency 3, paras 6 and 7, p. 362)

The unsuccessful candidate was able to reply to defamatory accusations by relying on a judgment given on 7 June 2002 convicting his opponent of an offence of defamation.
(2002-2658, 28 November 2002, AN, Seine-St-Denis, Constituency 5, para 6, p. 489)

Manœuvres or intervention relating to candidates'political situation

Selection

A dissident candidate falsely claimed to be supported by a union of political parties, but the falseness of the claim was commented on by press releases issued by the decision-making bodies of the parties involved in setting up the union and confirming their selection of a candidate, who issued numerous clarifications during the campaign. Given the numbers of votes cast for the various candidates at the first ballot, it follows that the conduct of the dissident candidate affected neither the number nor the identity of the candidates standing at the second ballot.
(2002-2679, 17 October 2002, AN, Isère, Constituency 3, paras 2 and 3, p. 377)

Rejection of an application that merely submits that the conditions in which the "Union pour la majorité presidentielle" was set up and selected its candidates for the general election violated the "separation between state and parties", transparency and fair electoral competition and the prohibition on mandatory instructions, without showing that there was a violation of equality between candidates or that the fairness of the ballot was affected.
(2002-2724, 24 October 2002, AN, Aveyron, Constituency 3, paras 1 and 2, p. 397)

The fact that the Union pour la majorité presidentielle announced that it was withdrawing its first-ballot nomination of Mr K does not constitute a manœuvre. New ballot papers for Mr K not mentioning the nomination could not be printed in good time, but the investigation has not revealed that the continued presence of the reference on the ballot papers caused the applicant to lose enough votes to reverse the outcome of the ballot or even to harm him in any way.
(2002-2731, 24 October 2002, AN, Moselle, Constituency 8, para 2, p. 399)

Two political parties having deselected their two respective candidates in favour of the candidate of the "Union de la gauche", the objection that the candidate wrongly claimed to be supported by these two parties fails on the facts.
(2002-2703/2745, 5 December 2002, AN, Bouches-du-Rhône, Constituency 7, para 4, p. 518)

Support

Successful candidate (Mr P) who was selected for the second ballot by the party which selected the candidate who came third at the first ballot (Mr F). Mr F wanted "France to be able to rebuild itself on the basis of a majority", without explicitly calling on voters to vote for Mr P. This position was widely reported in the press. In these conditions, given that there was a gap of 3 538 votes between the candidates at the second ballot, the fact that Mr P claimed in a pamphlet that he had the personal support of Mr F did not mislead voters or affect the outcome of the ballot.
(2002-2688/2692/2714, 28 November 2002, AN, Hauts-de-Seine, Constituency 12, para 4, p. 493)

It is common ground that a candidate eliminated at the first ballot supported the successful candidate and came out in favour of the presidential majority. The investigation further reveals that the candidate had been suspended and not excluded from the "Rassemblement pour la République". The letter thanking this "presidential majority – RPR candidate" for his "loyal and energetic support" cannot be regarded as a manœuvre to mislead voters.
(2002-2657/2841, 19 December 2002, AN, Paris, Constituency 15, para 20, p. 552)

Manœuvres or intervention relating to the second ballot

Miscellaneous manœuvres

On the morning of the second ballot, a candidate was taken to hospital by ambulance and stayed there under observation until the end of the afternoon. The information was broadcast by a local radio station and alarmist reports as to his state of health circulated all day. It is submitted that the rumours, some going so far as to report his death, dissuaded certain voters from voting for him.

It has not been shown that the distribution of information about the applicant's hospitalisation was in the nature of a manœuvre. While the effect of certain rumours on the ignorance of the electorate may have been to exaggerate the seriousness of his state of health, the number of votes cast for each of the candidates indicates that it was not such as to affect the fairness of the ballot.
(2002-2686/2770/2771, 10 October 2002, AN, Guadeloupe, Constituency 3, paras 6 and 7, p. 362)

The rise in the number of void ballot papers between the first and second ballots in a commune by no means proves in itself that there was a manœuvre.
(2002-2652, 14 November 2002, AN, Guadeloupe, Constituency 1, para 7, p. 455)

The day before the second ballot, brightly-coloured flyers were stuck on the applicant's election posters, referring to the fact that he was under formal examination in the courts. This large-scale poster campaign on a date when it was no longer possible for the candidate to reply to this new element of electoral polemics in the constituency, was such as to distort the outcome of the ballot in view of the narrow gap (156 votes) separating the candidates. Annulment.
(2002-2697, 21 November 2002, AN, Paris, Constituency 17, para 2, p. 476)

Neither a book autographing session by the successful candidate's wife in a bookshop in Moulins, nor the routine advertising surrounding this event, was such as to affect the fairness of the ballot.
(2002-2687/2741, 19 December 2002, AN, Allier, Constituency 1, para 4, p. 558)

Organization of the ballot

Composition of electoral offices

Constitution of electoral offices

No provisions laid down by law or regulation preclude the president of a polling station from exercising at the same time the functions of delegate for a candidate. That mere fact does not raise a presumption of fraud or manœuvres.
(2002-2686/2770/2771, 10 October 2002, AN, Guadeloupe, Constituency 3, para 10, p. 362)

The fact that certain members of polling stations exercised the function of scrutineer without voters present having first been approached did not in itself affect the fairness of the ballot, since it has not been shown that it had the object or effect of permitting fraud.
(2002-2686/2770/2771, 10 October 2002, AN, Guadeloupe, Constituency 3, para 11, p. 362)

Even if it is proved that all the polling stations in a commune, as alleged, did not have four assessors and that electoral operations sometimes took place in the presence of less than three members of the polling station, that would not be such as to affect the fairness of the ballot, as the investigation had not revealed, and it is not alleged, that the absences had the object or effect of facilitating fraud.
(2002-2761, 10 October 2002, AN, Martinique, Constituency 1, para 6, p. 368)

In the absence of fraud, the fact that the same person officiated at two polling stations has no effect.
(2002-2658, 28 November 2002, AN, Seine-St-Denis, Constituency 5, para 11, p. 489)

Proceedings during the ballot

Duration of the ballot and derogations

Section 23 of the Decree of 14 October 1976 on voting by French citizens residing abroad provides that "unless otherwise provided by the Minister of Foreign Affairs, polling shall begin at 8 a.m. and close the same day at 6 p.m. (local time)", whereas section 22 of the Decree of 8 March 2001 on the election of the President of the Republic, which is likewise a Decree debated by the Council of Ministers and adopted in the Council of State, provides that: "The polling station opening and closing times shall be determined by the Decree calling the election". Under this latter provision, it was legitimate for section 3 of the Decree of 13 March 2002 calling elections for the President of the Republic, which is an ordinary Decree, to provide that "polling must everywhere close no later than 8 p.m."
(MEYET, 15 April 2002, para 5, p. 96)

By providing that polling must close no later than 8 p.m., the Decrees of 3 and 8 May 2002 calling elections to the National Assembly, which are ordinary Decrees, merely, and legitimately, lay down rules governing the exercise by prefects of the powers conferred on them by section R 41 of the Electoral Code, inserted by a Decree adopted in the Council of State.
(HAUCHEMAILLE – DÉCLIC, 22 May 2002, paras 4, 7 and 8, p. 127)

The criticism that the Decree of 8 May 2002 violates the principle of equality of voters by not providing for opening hours at polling stations in the overseas departments in such a way that the results for the metropolitan departments cannot be known there before polling is unfounded. The situation generated by time differences, however regrettable, does not affect the reliability of the election, nor equality of voting rights. Moreover section R 41 of the Electoral Code empowers the prefect to bring the opening hour at polling stations forward in certain communes to enable the largest possible number of voters to vote before the metropolitan results are known.
(HAUCHEMAILLE – DÉCLIC, 22 May 2002, paras 9 and 10, p. 127)

Duration of the ballot

In several polling stations, voting did not begin at 8 a.m. as required by section R 41 of the Electoral Code. But the investigation does not reveal that the delays in opening polling stations, which generally did not exceed an hour, actually prevented certain voters from voting or affect the fairness of the ballot.

The fact that a polling station opened late does not in itself warrant closing it later than the statutory closing time.
(2002-2761, 10 October 2002, AN, Martinique, Constituency 1, paras 3 and 4, p. 368)

Providing voters with ballot papers and envelopes

Ballot papers

No provision laid down by law or regulation and applicable to the election of Deputies precludes a candidate from mentioning on his ballot paper the political parties supporting his candidature. An application that merely cites this objection without challenging the reality of the support claimed on the successful candidate's ballot papers is therefore unfounded.
(2002-2668, 25 July 2002, AN, Paris, Constituency 21, para 2, p. 165)

No provision laid down by law or regulation and applicable to the election of Deputies precludes the use of several colours on ballot papers.
(2002-2772, 25 July 2002, AN, Ardèche, Constituency 3, para 2, p. 194)

Given the results obtained by the candidate both in other polling stations in the commune and throughout the constituency, the brief absence of ballot papers bearing his name in one of the polling stations did not distort the outcome of the first ballot or, consequently, the second. Moreover, voters could use the ballot paper supplied by the Campaign Advertising Committee under section R 157 of the Electoral Code or use a handwritten paper as authorised by section R 104.
(2002-2670, 17 October 2002, AN, Vaucluse, Constituency 1, paras 1 and 2, p. 375)

Ballot papers of a candidate briefly covered up by another candidate's papers: no practical effect.
(2002-2620/2716, 7 November 2002, AN, Corse-du-Sud, Constituency 2, para 8, p. 414)

Signatures on register

Minor irregularities

Trace of a deletion covered up by a signature: no practical effect.
(2002-2620/2716, 7 November 2002, AN, Corse-du-Sud, Constituency 2, para 11, p. 414)

The failure of members of the polling station to sign the register and to indicate the total number of voters had no practical effect.
(2002-2620/2716, 7 November 2002, AN, Corse-du-Sud, Constituency 2, para 16, p. 414)

Signatures

Irregularity in sixteen votes recorded by a mere cross, line or strike-through.
(2002-2620/2716, 7 November 2002, AN, Corse-du-Sud, Constituency 2, para 12, p. 414)

Irregularity in eight votes recorded by an identical signature opposite the names of two voters without this being explained by the use of proxy votes.
(2002-2620/2716, 7 November 2002, AN, Corse-du-Sud, Constituency 2, para 13, p. 414)

Irregularity in nineteen votes at the first ballot, the signatures on the register being different from those at the second ballot without this being explained by the use of proxy votes.
(2002-2620/2716, 7 November 2002, AN, Corse-du-Sud, Constituency 2, para 14, p. 414)

The purpose of section L 64 of the Electoral Code is to authenticate the vote cast by a voter who cannot sign the register himself, leaving him free to determine the voter who will sign for him.

52 voters placed a simple cross opposite their names, which cannot be treated as an initial or signature. Opposite 44 other voters'names there was the statement "cannot sign" without another voter's signature. Thus 96 votes were cast in a manner not complying with section L 64 of the Electoral Code.

Nearly a hundred voters thus failed to sign. It cannot be argued that the persons who were unable to sign could not designate another voter to certify their inability and sign for them. The votes cannot be held to have been cast validly. The election, won by a margin of 58 votes, which is less than the 96 invalid votes, must be annulled.
(2002-2755/2756, 19 December 2002, AN, Wallis and Futuna, paras 2 to 5, p. 564; comp. 97-2247, 22 January 1998, AN, Wallis and Futuna, paras 9 to 11, p. 78)

Miscellaneous incidents

The fact that the authority responsible for electoral operations in the commune provided voters with a symbolic decontamination facility right by the polling station and organised a simulated poll at which voters were asked to vote for candidates not standing at the second ballot is incompatible with the dignity of the ballot and were liable to violate the secrecy of the ballot and the freedom of the voters. Votes cast in the commune annulled.
(Proclamation of 8 May 2002, Results of the election of the President of the Republic, para 1, p. 114)

On the day of the ballot the delegate for a candidate at a polling station engaged in campaign advertising on the public highway, among other things distributing ballot papers. But this very brief incident cannot be regarded as having affected the fairness of the ballot.
(2002-2761, 10 October 2002, AN, Martinique, Constituency 1, para 12, p. 368)

The members of a polling station withdrew briefly to a room neighbouring the room in which the ballot box was placed, leaving the door open, but it is not alleged that this fact, not recorded in the formal report, had the object of effect of permitting fraud.
(2002-2698, 17 October 2002, AN, Dordogne, Constituency 3, para 1, p. 381)

At most of the polling stations in the commune of P, and during part of the first ballot, persons of whom some claimed to be delegates for the successful candidate retrieved and communicated to third parties information allowing them to identify voters who had not yet cast their vote. Given the size of the winning margin at both the first and the second ballot (approx. 5 000), these practices, however regrettable, cannot be regarded as having affected the fairness of the ballot.
(2002-2691, 24 October 2002, AN, Seine-Saint-Denis, Constituency 2, para 1, p. 393)

Municipal employees in a commune, outside polling stations, issued certificates of registration to voters who attended without their voter's card. The issuance of such certificates is nether prohibited by the Electoral Code nor of such a nature as to affect the outcome of the ballot. It has not been shown that the practice had the object of bringing pressure to bear on voters. Rejection of the plea of such pressure.
(2002-2717/2765, 31 October 2002, AN, Réunion, Constituency 2, paras 2 and 3, p. 404)

Unexplained disappearance from the town hall of a batch of ballot envelopes a few days before the first ballot. No effect on the fairness of the ballot, as envelopes of another colour were used in polling stations throughout the commune and no anomalies were observed in the course of electoral operations such as to point to fraudulent use of the lost envelopes.
(2002-2743, 21 November 2002, AN, Seine-Saint-Denis, Constituency 12, para 2, p. 479)

The fact that on the day of the second ballot the successful candidate was overheard making insulting statements about his opponent in front of two people outside the polling station had no effect.
(2002-2658, 28 November 2002, AN, Seine-St-Denis, Constituency 5, para 12, p. 489)

Special voting procedures

Voting by proxy

Drawing up of proxies

Request for a criminal police officer to come; certificates

Under the second paragraph of section R 72 of the Electoral Code: "Criminal police officers empowered to draw up proxies, or their delegates, shall on request come to meet persons who, on account of illness or infirmity, cannot come to them". The investigation conducted on 7 November 2002 and the documents laid before the Constitutional Council on that occasion reveal that persons from whom proxies had been received had asked for criminal police officers or their delegates to come to them and were eligible for the relevant provisions. The investigation does not reveal that gathering these proxies constituted a manœuvre. The mere fact that certain requests from these voters were not accompanied by one of the supporting documents required by section R 73 of the Electoral Code does not warrant deducting the corresponding number of votes.
(2002-2687/2741, 19 December 2002, AN, Allier, Constituency 1, para 12, p. 558)

Information recorded on proxies, signatures

In the absence of information warranting a presumption of fraud, the fact that a few proxies were not signed by the principal and that a proxy was drawn up by a criminal police officer who had not been duly empowered had no effect on the outcome of the ballot.
(2002-2687/2741, 19 December 2002, AN, Allier, Constituency 1, para 10, p. 558)

Absence of supporting documents

Under the second paragraph of section R 72 of the Electoral Code: "Criminal police officers empowered to draw up proxies, or their delegates, shall on request come to meet persons who, on account of illness or infirmity, cannot come to them". The investigation conducted on 7 November 2002 and the documents laid before the Constitutional Council on that occasion reveal that persons from whom proxies had been received had asked for criminal police officers or their delegates to come to them and were eligible for the relevant provisions. The investigation does not reveal that gathering these proxies constituted a manœuvre. The mere fact that certain requests from these voters were not accompanied by one of the supporting documents required by section R 73 of the Electoral Code does not warrant deducting the corresponding number of votes.
(2002-2687/2741, 19 December 2002, AN, Allier, Constituency 1, para 12, p. 558)

Sorting and counting

Counting procedures

Organisation of the count

In one of the polling stations in the constituency, the ballot box was unlocked before the register of signature had been totalled, contrary to section L 65 of the Electoral Code, but this irregularity had no effect on the fairness of the ballot, since it is neither shown nor alleged that it had the effect of facilitating fraud or calculation errors.
(2002-2656, 10 October 2002, AN, Eure, Constituency 4, para 2, p. 357)

A television channel showed footage of the president of a polling station who himself took part in the count by opening envelopes and calling out the names of the candidates whose names were on the ballot papers instead of handing them over to be read by another scrutineer, contrary to section L 65 of the Electoral Code. But it is neither shown nor alleged that he

evaded verification by the assessors or delegates. In any event, the investigation does not reveal that these facts, however open to criticism, could have affected the election, given the winning margin.
(2002-2686/2770/2771, 10 October 2002, AN, Guadeloupe, Constituency 3, para 12, p. 362)

The fact that the number of blank or void ballot papers was higher at the second ballot than at other elections does not in itself prove that there were errors or fraud during the count.
(2002-2694, 24 October 2002, AN, Seine-Maritime, Constituency 6, para 5, p. 395)

Sorting and counting operations contrary to section L 65 of the Electoral Code, which requires envelopes containing ballot papers to be bundled a hundred at a time in a large envelope. The irregularity was not such as to affect the fairness of the ballot, since it has not been shown to have had the object or effect of facilitating fraud or errors in the count.
(2002-2693, 21 November 2002, AN, Nord, Constituency 8, para 7, p. 473)

Validity of ballot papers

Statements

The word "Vote" appeared before the successful candidate's name on his ballot papers, which specified the successive elective functions held by him and his replacement, but this is contrary to no provision of law and did not constitute pressure on voters or a manœuvre such as to affect the fairness of the ballot.
(2002-2699, 17 October 2002, A. N., Calvados, Constituency 2, para 1, p. 384)

Use of first-ballot ballot papers at second ballot

No provision laid down by law or regulation precludes the use at the second ballot of ballot papers printed for the candidate for the first ballot. Results are rectified to include two ballot papers annulled on this ground.
(2002-2658, 28 November 2002, AN, Seine-St-Denis, Constituency 5, para 14, p. 489)

Number of signatures different from number of envelopes in ballot box

Precedent set after 1988 elections

Where the number of ballot papers and envelopes in the ballot boxes does not correspond to the number of signatures on the register, the lower of the two numbers should be accepted. Consequently, hypothetical deduction of seven votes both from the number of votes cast and from the number of votes received by the successful candidate.
(2002-2658, 28 November 2002, AN, Seine-St-Denis, Constituency 5, para 15, p. 489)

Miscellaneous irregularities and incidents

Rectifications consisting of voiding ten votes cast were intended to correct clerical errors. Rejection.
(2002-2659/2762, 7 November 2002, AN, Alpes-Maritimes, Constituency 1, para 7, p. 424)

In certain polling stations ballot papers that should have been destroyed in the presence of voters were annexed to the official report and sent mistakenly to the central office, but this violation of section R 68 of the Electoral Code did not affect the fairness of the ballot, since it was not shown that it had the object or effect of facilitating fraud.
(2002-2687/2741, 19 December 2002, AN, Allier, Constituency 1, para 13, p. 558)

Establishment of records and annexes thereto

Tally sheets

The investigation revealed that during the count votes were tallied on the basis of documents other than those annexed to the official reports. This violation of section R 68 of the Electoral Code, however regrettable, cannot be regarded as having affected the fairness of the ballot,

since the investigation has not revealed that the number of votes recorded in the report was wrong.
(2002-2761, 10 October 2002, AN, Martinique, Constituency 1, para 8, p. 368)

It is submitted that the number of signatures recorded in the registers for several polling stations does not correspond to the number of actual signatures. This fact is without effect on the soundness of the ballot since it is neither shown nor alleged that the number of signatures recorded in the registers for these polling stations does not correspond to the number of actual signatures or that the latter number differs from the number of ballot papers found in the ballot box.
(2002-2761, 10 October 2002, AN, Martinique, Constituency 1, para 9, p. 368)

It is alleged that the registers of signatures were not "closed in letters and figures" after the closure of the ballot in several polling stations. But it is submitted neither that the registers were not signed by the members of the polling stations, nor that the number of signatures in the registers recorded in the official reports were erroneous, nor that these numbers differed from the number of ballot papers found in the ballot box. Rejection.
(2002-2761, 10 October 2002, AN, Martinique, Constituency 1, para 11, p. 368)

Records

The Counting Commission observed that the first page of the records of electoral operations in certain communes did not mention the number of voters present, of ballot papers in the ballot box without envelopes and of votes cast, but these irregularities had not effect on the outcome of the ballot.
(2002-2698, 17 October 2002, AN, Dordogne, Constituency 3, para 9, p. 381)

Omission of the time at which the official records were signed. No effect.
(2002-2658, 28 November 2002, AN, Seine-St-Denis, Constituency 5, para 13, p. 489)

Items annexed: blank papers and empty envelopes

No provision laid down by law or regulation requires envelopes found to be empty in the ballot box to be annexed to the official record of electoral operations.
(2002-2698, 17 October 2002, AN, Dordogne, Constituency 3, paras 2, 3 and 5, p. 381; 2002-2659/2762, 7 November 2002, AN, Alpes-Maritimes, Constituency 1, para 7, p. 424)

Blank and void ballot papers annexed to the official records from certain polling stations were not initialled by members of those polling stations or bore only one, but the documents annexed to the official records, which do not mention any complaint regarding the validity of the votes declared void, correspond to the description of them. No challenge to the counting of blank and void ballot papers.
(2002-2698, 17 October 2002, AN, Dordogne, Constituency 3, paras 2, 3 and 6, p. 381)

Section L 66 of the Electoral Code requires only blank and void ballot papers to be annexed to the official record, not the envelopes that contained them.
(2002-2698, 17 October 2002, AN, Dordogne, Constituency 3, paras 2, 3 and 7, p. 381)

A number of blank and void ballot papers annexed to the official records from several polling stations were not initialled by members of those polling stations and the grounds for annexing them are not given, but they correspond to the figures for blank and void ballot papers given in the official records, which do not mention any complaint.
(2002-2738, 28 November 2002, AN, Haute-Corse, Constituency 1, para 5, p. 499)

SENATE ELECTIONS

ELECTORAL OPERATIONS

Proceedings during the ballot

Delegates prevented from acting – Replacements

Several replacement delegates not entered on the register of signatures were allegedly allowed to vote in place of delegates from municipal councils without producing documentary

evidence of the latters'inability to act. Given that documents enabling the electoral court to exercise its review are not annexed to the official report, and given that at the second ballot there was a gap of only one vote between the successful candidate and the runner-up, electoral operations are annulled.
(2002-2809, 19 December 2002, Senate, Haute-Saône, para 1, p. 571)

Sorting and counting

Records

Given that documents enabling the electoral court to exercise its review are not annexed to the official report, and given that at the second ballot there was a gap of only one vote between the successful candidate and the runner-up, electoral operations are annulled.
(2002-2809, 19 December 2002, Senate, Haute-Saône, para 1, p. 571)

LITIGATION

Powers of the Constitutional Council

Validity of instruments organising elections

Given the general function of monitoring the regularity of the election of the President of the Republic conferred on it by article 58 of the Constitution, the Constitutional Council may exceptionally rule on applications concerning a future election where declaring such applications inadmissible might seriously compromise the effectiveness of its review of the election, would vitiate electoral operations in general or would jeopardise the normal operation of public authorities.

These conditions are met neither by the permanent instruments challenged (Decrees of 14 October 1976, 29 February 1988 and 8 September 1995 on voting by French citizens residing outside France for the election of the President of the Republic; implied decision in view of the silence regarding an application for repeal of these Decrees; Decree of 30 August 2001 establishing an Interior Ministry index file of candidates and successful candidates), or by the specific instruments challenged (Decree of 18 February 2002, which merely determines the date on which the administration is to send a form to holders of elective office who are entitled to nominate a candidate for election as President; Decree of 15 February 2002, which merely determines the membership and headquarters of the National Campaign Control; Order made on 12 March 2002 by the Chairman of that Commission, which merely designates its rapporteurs; chapter I of the memento prepared by the Interior Minister for presidential election candidates and circular of 5 February 2002 on the transmission of nomination forms, which are no more than measures implementing the legislative measures and regulations applicable to the election).
(HAUCHEMAILLE, MEYET and CAZAUX, 15 April 2002, paras 2 to 5, p. 99)

Given the general function of monitoring the regularity of the election of the President of the Republic conferred on it by article 58 of the Constitution, the Constitutional Council may exceptionally rule on applications concerning a future election where declaring such applications inadmissible might seriously compromise the effectiveness of its review of the election, would vitiate electoral operations in general or would jeopardise the normal operation of public authorities. These conditions are met by the Decree of 13 March 2002 calling the election.
(M. MEYET, 15 April 2002, para 1, p. 96)

The conditions which enable the Constitutional Council to rule in exceptional circumstances on applications calling into question an election that has not yet taken place are no longer met following this election. The Constitutional Council lacks jurisdiction ratione temporis to hear and determine applications challenging the Decree calling the presidential election. It lacks jurisdiction ratione materiae to hear and determine the other applications challenging

permanent instruments or instruments laying down nothing more than measures implementing the legislative measures and regulations applicable to the election.
(DÉCLIC – HAUCHEMAILLE – BIDALOU, 9 May 2002, para 3, p. 122)

Admissibility

The question of a body corporate's *locus standi* to apply for annulment of a Decree calling an election is reserved. Submissions rejected "without need for a ruling on the admissibility of the application".
(HAUCHEMAILLE – DÉCLIC, 22 May 2002, paras 9 and 10, p. 127)

Decree calling the election

The conditions which enable the Constitutional Council to rule in exceptional circumstances before the proclamation of the results of an election are met both by the Decree of 3 May 2002 summoning the electoral colleges in French Polynesia for the general to the National Assembly and by the Decree of 8 May 2002 relating to the other electoral colleges.
(HAUCHEMAILLE – DÉCLIC, 22 May 2002, paras 2 and 3, p. 127)

Other instruments

The conditions which enable the Constitutional Council to rule in exceptional circumstances before the proclamation of the results of an election are not met by the decision of the *Conseil supérieur de l'audiovisuel* of 14 May 2002, which merely determines the conditions for the production, scheduling and broadcasting of programmes relating to the official election campaign.
(HAUCHEMAILLE – DÉCLIC, 22 May 2002, paras 2 and 3, p. 127)

It is for the legislature, under article 6 of the Declaration of Human and Civic Rights of 1789 in conjunction with articles 3 and 24 of the Constitution, to redraw constituency boundaries to take account where necessary of population shifts since the entry into force of the General Elections (Constituency Boundaries) Act No 86-1197 of 24 November 1986, but the Constitutional Council, acting as here under article 59 rather than article 61 of the Constitution, has no jurisdiction to review the constitutionality of the legislative provisions in table 1 annexed to section L 125 of the Electoral Code.
(2002-2634/2701, 24 October 2002, AN, Var, Constituency 2, paras 3 and 4, p. 388)

Authority of treaties in relation to statutes and administrative instruments

Sections 33 and 35 of the Ordinance of 7 November 1958, which provides that a voter or candidate may not validly refer to the Constitutional Council a challenge against anything other than the election of a Member of Parliament in a given constituency, does not subject citizens'rights to any restriction prohibited by article 25 of the International Covenant on Civil and Political Rights.
(2002-2665, 25 July 2002, AN, para 2, p. 161)

Matters outside the jurisdiction of the Constitutional Council

Review of electoral rolls

It is not for the Constitutional Council, as electoral court, to rule on the regularity of entries in the electoral roll, except where there is a manœuvre such as to distort the fairness of the ballot. An application merely submitting that ten or so persons should not have been entered on the electoral roll for four communes "since they do not live there" and alleging no manœuvre must be rejected.
(2002-2619, 25 July 2002, AN, Corrèze, Constituency 3, para 2, p. 136)

Constitutionality of a statute

It is for the legislature, under article 6 of the Declaration of Human and Civic Rights of 1789 in conjunction with articles 3 and 24 of the Constitution, to redraw constituency boundaries to take account where necessary of population shifts since the entry into force of the General Elections (Constituency Boundaries) Act No 86-1197 of 24 November 1986, but the Constitutional Council, acting as here under article 59 rather than article 61 of the Constitution, has no jurisdiction to review the constitutionality of the legislative provisions in table 1 annexed to section L 125 of the Electoral Code.
(2002-2621/2666/2700, 25 July 2002, AN, Var, Constituency 6, paras 4 and 5, p. 138; 2002-2637/2702/..., 25 July 2002, AN, Var and others, paras 3 and 4, p. 154; 2002-2704/2740/2747, 25 July 2002, AN, Bouches-du-Rhône, Constituency 10, paras 9 and 10, p. 176; 2002-2625/2630/2678/2722, 10 October 2002, AN, Pas-de-Calais, Constituency 14, paras 2 and 3, p. 353; 2002-2671/2758, 10 October 2002, AN, Bouches-du-Rhône, Constituency 8, para 7, p. 359; 2002-2641/2744, 5 December 2002, AN, Bouches-du-Rhône, Constituency 11, para 2, p. 506; 2002-2713, 5 December 2002, AN, Rhône, Constituency 13, para 1, p. 521)

The Constitutional Council, acting as here under article 59 rather than article 61 of the Constitution, has no jurisdiction to review the constitutionality of the legislative provisions in table 1 annexed to section L 125 of the Electoral Code relating to constituency boundaries.
(2002-2703/2745, 5 December 2002, AN, Bouches-du-Rhône, Constituency 7, para 2, p. 518)

The applicant submits by way of objection that the recommendation of the *Conseil supérieur de l'audiovisuel* of 3 April 2002 to all television and radio services for the legislative elections of 9 and 16 June 2002 was illegal. It is clear from his arguments that he really wishes to challenge the constitutionality of the Freedom of Communication Act of 30 September 1986 under which the recommendation was issued. It is not for the Constitutional Council, hearing an application under article 59 of the Constitution against the election of a Deputy, to review the constitutionality of a statute.
(2002-2617, 10 October 2002, AN, Réunion, Constituency 4, para 2, p. 350)

Non-recoverable costs

Section 75-I of the Legal Aid Act No 91-647 of 10 July 1991 is not applicable in proceedings in the Constitutional Council.
(2002-2719, 5 December 2002, AN, Rhône, Constituency 1, para 4, p. 523)

Annulment of a recommendation of the *Conseil supérieur de l'audiovisuel*

The Constitutional Council has no jurisdiction to entertain an application for annulment of recommendation No 2002-4 of the *Conseil supérieur de l'audiovisuel* of 3 April 2002 to all television and radio services for the legislative elections of 9 and 16 June 2002.
(2002-2617, 10 October 2002, AN, Réunion, Constituency 4, para 1, p. 350)

Legal aid

Since the legal aid scheme was not established under an institutional act enacted under article 63 of the Constitution, it is not applicable in proceedings in the Constitutional Council. Application for aid rejected.
(2002-2635/2636, 25 July 2002, AN, Gironde, Constituency 2, paras 5 and 6, p. 152)

Lodging of application

Status of applicant

A replacement candidate has status to challenge the election of a Deputy.
(2002-2641/2744, 5 December 2002, AN, Bouches-du-Rhône, Constituency 11, para 3, p. 506)

Authorities to which application must be made

Under sections 33 and 34 of the Ordinance of 7 November 1958 and section 1 of the Standing Orders for proceedings in the Constitutional Council relating to disputes as to the election of

deputies and senators, an application lodged at the sub-prefecture is not admissible. In the present case the application was forwarded to the prefecture, but it was registered there only after the expiry of the ten days'time allowed by section 33 of that Ordinance, running from the day following that on which the results of the election are declared, that is to say 17 June 2002.
(2002-2766, 25 July 2002, AN, Vienne, Constituency 3, paras 1 to 3, p. 190)

Time limits

Premature application

Under sections 33 and 35 of the Ordinance of 7 November 1958, the Constitutional Council may not validly entertain applications other than those challenging the election of a Member of Parliament. Since no candidate had been declared elected after the first ballot and the applicant was not asking for a particular candidate to be declared elected, his application challenging electoral operations at the first ballot is premature and accordingly inadmissible.
(2002-2611, 12 June 2002, A.N., Vaucluse, paras 1 and 2, p. 131; 2002-2614, 25 July 2002, AN, Val-de-Marne, Constituency 2, paras 1 and 2, p. 133; 2002-2615, 25 July 2002, AN, Seine-Saint-Denis, Constituency 10, paras 1 and 2, p. 134; 2002-2623, 25 July 2002, AN, Somme, Constituency 4, paras 1 and 2, p. 142; 2002-2632, 25 July 2002, AN, Manche, Constituency 4, paras 1 and 2, p. 151)

Forms of application

Collective applications

Application concerning the two constituencies in French Polynesia, made by a candidate in Constituency 1 and a voter in Constituency 2. Admissible.
(2002-2638/2639, 7 November 2002, AN, French Polynesia, Constituency 1 and Constituency 2, para 1, p. 418)

Submissions and arguments

Submissions (admissibility)

No formal application for annulment

Complaints or protests

Sections 33 and 35 of the Ordinance of 7 November 1958 provide that a voter or candidate may not validly refer to the Constitutional Council a challenge against anything other than the election of a Member of Parliament in a given constituency. An application which merely asks for review of the validity of the mandate of certain Deputies is accordingly inadmissible.
(2002-2646, 25 July 2002, AN, paras 1 and 2, p. 158)

Requests for rectification of results not affecting the outcome

Under sections 33 and 35 of the Ordinance of 7 November 1958, the Constitutional Council may not validly entertain applications other than those challenging the election of a Member of Parliament. Since no candidate had been declared elected after the first ballot and the applicant was not asking for a particular candidate to be declared elected, his application challenging electoral operations at the first ballot is premature and accordingly inadmissible.
(2002-2611, 12 June 2002, A.N., Vaucluse, paras 1 and 2, p. 131)

A candidate who obtained 3.9 % of the votes at the first ballot is not entitled to apply for rectification of the results of electoral operations.
(2002-2704/2740/2747, 25 July 2002, AN, Bouches-du-Rhône, Constituency 10, paras 6 and 7, p. 176)

An application which merely asks for nine votes in his favour to be restored is accordingly inadmissible.
(2002-2734, 25 July 2002, AN, Haute-Vienne, Constituency 1, paras 1 and 2, p. 187)

An application which merely asks for the annulment of votes cast for three candidates on the ground that their ballot papers were not in order does not challenge the election of the successful candidate. Inadmissible.
(2002-2613/2616/2763, 19 December 2002, AN, Réunion, Constituency 3, para 2, p. 549)

Application not challenging the election itself

Sections 33 and 35 of the Ordinance of 7 November 1958 provide that a voter or candidate may not validly refer to the Constitutional Council a challenge against anything other than the election of a Member of Parliament in a given constituency. An application which merely asks for votes cast in his favour at the first ballot to be restored without challenging the election is accordingly inadmissible.
(2002-2618, 25 July 2002, AN, Eure, Constituency 3, paras 1 and 2, p. 135)

An application which merely asks for votes cast in his favour at the first ballot to be restored without challenging the election is accordingly inadmissible.
(2002-2675, 25 July 2002, AN, Val-d'Oise, Constituency 2, paras 1 and 2, p. 167)

Application merely for an investigation

Sections 33 and 35 of the Ordinance of 7 November 1958 provide that a voter or candidate may not validly refer to the Constitutional Council a challenge against anything other than the election of a Member of Parliament in a given constituency. An application that merely asks the Constitutional Council to check whether the successful candidate's campaign expenses recorded in his campaign accounts are in order is accordingly inadmissible.
(2002-2680, 25 July 2002, AN, Ariège, Constituency 1, paras 1 and 2, p. 170)

Application against proceedings giving rise to second ballot

The effect of distribution on the Friday before the first ballot of pamphlets to which the applicant had no opportunity to reply, given that only 34 votes separated the applicant from the number needed to qualify for the second ballot, was such as to affect the fairness of the first ballot. Electoral operations at the first ballot and, consequently the second ballot must accordingly be annulled.
(2002-2725, 10 October 2002, AN, Nord, Constituency 23, para 1, p. 366)

Sections 33 and 35 of the Ordinance of 7 November 1958 provide that a voter or candidate may not validly refer to the Constitutional Council a challenge against anything other than the election of a Member of Parliament in a given constituency. An application that merely asks the Constitutional Council to review the results of the first ballot without challenging either the election or even the need or conditions for the second ballot must accordingly be rejected.
(2002-2717/2765, 31 October 2002, AN, Réunion, Constituency 2, paras 4, p. 404)

Reimbursement of campaign advertising costs linked to challenges to the election

Sections 33 and 35 of the Ordinance of 7 November 1958 provide that a voter or candidate may not validly refer to the Constitutional Council a challenge against anything other than the election of a Member of Parliament in a given constituency. An application that merely asks for reimbursement of campaign expenditure actually incurred is accordingly inadmissible.
(2002-2626/2685, 25 July 2002, AN, Bas-Rhin, Constituency 9, paras 3 and 4, p. 145; 2002-2635/2636, 25 July 2002, AN, Gironde, Constituency 2, paras 3 and 4, p. 152)

Challenge to the entire results of the election. Determination of the contested election

Sections 33 and 35 of the Ordinance of 7 November 1958 provide that a voter or candidate may not validly refer to the Constitutional Council a challenge against anything other than the election of a Member of Parliament in a given constituency. A submission that the entire results of the election should be annulled is accordingly inadmissible.
(2002-2629/2684, 25 July 2002, AN, Pas-de-Calais, Constituency 9, para 3, p. 149)

These provisions do not subject citizens' rights to any restriction prohibited by article 25 of the International Covenant on Civil and Political Rights. Submissions challenging the electoral operations in 575 constituencies are accordingly inadmissible.
(2002-2665, 25 July 2002, AN, para 2, p. 161)

Insulting or defamatory pleadings

In the circumstances, there is no need to entertain a submission requesting the deletion of insulting or defamatory passages from the application.
(2002-2687/2741, 19 December 2002, AN, Allier, Constituency 1, para 16, p. 558)

Arguments

Question not within the jurisdiction of the electoral court

Under sections L 16, L 25 and R 18 of the Electoral Code, failures to remove deceased voters from the electoral roll can be challenged by voters in the *Tribunal d'instance*, and the electoral court has jurisdiction only where the failure is the effect of a manœuvre calculated to affect the fairness of the ballot. In the present case electoral operations proceeded on the basis of the electoral rolls as revised on 28 February 2002 and subsequently updated on 5 May 2002; the applicants provide no evidence that failure to withdraw deceased voters after that date was the effect of a manœuvre.
(2002-2659/2762, 7 November 2002, AN, Alpes-Maritimes, Constituency 1, paras 2 to 5, p. 424)

New arguments

Existence

The objection based on the distribution of a pamphlet was presented only in an additional pleading registered after the expiry of the ten-day period provided for by section 33 of the Ordinance of 7 November 1958. It is accordingly inadmissible.
(2002-2686/2770/2771, 10 October 2002, AN, Guadeloupe, Constituency 3, para 3, p. 362)

Two pleas presented after the expiry of the ten-day period and relating in one case to campaign expenses in excess of the maximum allowed and in the other to financial participation of a party unknown to the CCFP at the date of the election, must be regarded as new and accordingly inadmissible, as the applicant, in his initial pleading, referred only to the inclusion of a specific expenditure item in the campaign accounts.
(2002-2653/2718, 14 November 2002, AN, Hérault, Constituency 2, para 12, p. 458)

The objection to entry of an expenditure item in the successful candidate's campaign accounts was raised for the first time in a rejoinder registered after the ten-day period allowed by section 33 of the Ordinance of 7 November 1958. Objection inadmissible.
(2002-2669, 5 December 2002, AN, Rhône, Constituency 14, para 9, p. 513)

The objection that other expenditure items were not recorded in the campaign accounts or were understated was raised for the first time in a rejoinder registered after the ten-day period allowed by section 33 of the Ordinance of 7 November 1958. Objection inadmissible.
(2002-2733, 5 December 2002, AN, Lot-et-Garonne, Constituency 3, para 4, p. 525)

The objection that a circular written by the mayor of a commune on the town hall letterhead and calling on voters to vote for one of the two candidates standing at the second ballot was raised for the first time in a rejoinder registered after the ten-day period allowed by section 33 of the Ordinance of 7 November 1958. Objection inadmissible; another objection to the campaign advertising material was presented within the time allowed (Cf. 68-560, 28 November 1968, AN, Territoire de Belfort, Constituency 1, p. 149; 97-2264, 23 January 1998, AN, Somme, Constituency 5, p. 89, para 4)
(2002-2739, 5 December 2002, AN, Meurthe-et-Moselle, Constituency 7, para 2, p. 528)

Objection of illegality

The Decree of 13 March 2002 calling the election of the President of the Republic was issued under the second paragraph of article 7 of the Constitution, which reads: "Balloting shall be

begun by a writ of election issued by the Government". It is not a measure implementing the Decree of 14 October 1976. The challenge on grounds that the Decree is illegal is accordingly inoperative.
(MEYET, 15 April 2002, para 3, p. 96)

Sections 33 and 35 of the Ordinance of 7 November 1958 provide that a voter or candidate may not validly refer to the Constitutional Council a challenge against anything other than the election of a Member of Parliament in a given constituency. These provisions do not subject citizens' rights to any restriction prohibited by article 25 of the International Covenant on Civil and Political Rights.
(2002-2665, 25 July 2002, AN, para 2, p. 161)

Arguments not sufficiently precise

Objection made in such imprecise terms that the electoral court cannot examine it is inadmissible.
(2002-2622, 25 July 2002, AN, Haute-Garonne, Constituency 1, para 2, p. 140; 2002-2677, 25 July 2002, AN, Deux-Sèvres, Constituency 2, para 3, p. 168)

The objection that the successful candidate's manifesto contained an erroneous statement as to the dispute concerning the water purification charge is not supported by arguments of fact or law enabling the electoral court to examine it.
(2002-2629/2684, 25 July 2002, AN, Pas-de-Calais, Constituency 9, para 5, p. 149)

The objection that various forms of pressure were brought to bear on the applicant during the campaign is not supported by particulars and justifications enabling the electoral court to examine it.
(2002-2635/2636, 25 July 2002, AN, Gironde, Constituency 2, para 7, p. 152)

An application which merely refers to statements made by candidates before the first ballot that certain voters had not received all the ballot papers and manifestoes which they should have and is not supported by particulars and justifications enabling the electoral court to examine it is inadmissible.
(2002-2650, 25 July 2002, AN, Val-de-Marne, Constituency 5, paras 1 and 2, p. 159)

Objections that certain candidates did not respect the time for opening the election campaign and that the Campaign Advertising Committee never met are not supported by particulars and justifications enabling the electoral court to examine them.
(2002-2625/2630/2678/2722, 10 October 2002, AN, Pas-de-Calais, Constituency 14, para 11, p. 353)

Allegations that two of the candidatures at the first ballot were inadmissible for lack of consent.
(2002-2628, 17 October 2002, AN, Pas-de-Calais, Constituency 6, para 1, p. 373)

Objection based on violation of the Data-Processing, Data Files and Freedom Act of 6 January 1978 not supported by particulars and justifications enabling the electoral court to examine it.
(2002-2733, 5 December 2002, AN, Lot-et-Garonne, Constituency 3, para 7, p. 525)

Arguments unsupported by the slightest evidence

An application alleges that a successful candidate had not discharged his legal obligations as to active military service and was therefore ineligible under section 3 of the Ordinance of 24 October 1958, but a copy of the "service record" issued by the military authorities to the candidate to certify that military obligations have been discharged is attached to the application; the application must be rejected as it merely repeats an objection entered against the same candidate, without the slightest evidence, at an earlier election and rejected at the time by the Constitutional Council in a decision dated 14 October 1997.
(2002-2624, 25 July 2002, AN, Loire, Constituency 5, para 2, p. 143)

Objection alleging defamatory intent in that the applicant's posters were removed from the reserved locations and that his opponent at the second ballot had large-scale poster display facilities near the polling stations. The objections are not supported by particulars and justifications enabling the electoral court to examine them and must be rejected.
(2002-2761, 10 October 2002, AN, Martinique, Constituency 1, para 1, p. 368)

The applicant states that pressure was brought to bear by persons outside the polling stations, calling on voters in a commune to refrain from voting, and produces witness statements. But these statements are not corroborated either by the reports by delegates for the Electoral Operations Control Commission or by reports by gendarmerie patrols at the scene. The same applies to "serious incidents" alleged without evidence to have to occurred in polling stations in two communes.
(2002-2761, 10 October 2002, AN, Martinique, Constituency 1, para 5, p. 368)

The applicant submits, on the basis of written statements by assessors he designated for certain polling stations, that the assessors were prevented from operating. The statements are not corroborated by the official reports from those polling stations, signed without comment by the relevant assessors on polling day. They are also contradicted by written statements from the successful candidate's delegates for those stations. The facts cannot be regarded as proven.
(2002-2761, 10 October 2002, AN, Martinique, Constituency 1, para 7, p. 368)

Rejection of an application raising several objections concerning the election campaign and electoral operations and violation of the financing rules and campaign expenses limits, without any facts allowing it to be examined.
(2002-2757, 14 November 2002, AN, Nord, Constituency 13, paras 1 and 2, p. 464)

The applicant submits that misleading allegations as to his ineligibility were disseminated during the election campaign and that his ballot papers and manifestos were not distributed to part of the electorate, but these submissions are not supported by the slightest evidence and must accordingly be rejected.
(2002-2713, 5 December 2002, AN, Rhône, Constituency 13, para 2, p. 521)

Inoperative arguments

A low turnout and an excessive number of blank ballot papers are irrelevant in terms of proper electoral operations.
(2002-2626/2685, 25 July 2002, AN, Bas-Rhin, Constituency 9, para 5, p. 145)

The application merely asserts that the successful candidate entered into a commitment contrary to article 27 of the Constitution by accepting the selection of a party that undertook to "support the President of the Republic and his Government for the next five years". Such an objection clearly cannot jeopardise the outcome of the election.
(2002-2667, 25 July 2002, AN, Paris, Constituency 12, paras 2 and 3, p. 163; 2002-2715, 25 July 2002, AN, Ain, Constituency 4, paras 2 and 3, p. 179)

The way in which the RFO-Martinique television channel reported on counting operations on the evening of the second ballot and after polling closed cannot have affected the outcome of the ballot.
(2002-2761, 10 October 2002, AN, Martinique, Constituency 1, para 2, p. 368)

An objective relating to difficulties in the first ballot campaign is inoperative since these difficulties did not prevent the candidate from obtaining enough votes to stand at the second ballot.
(2002-2658, 28 November 2002, AN, Seine-St-Denis, Constituency 5, para 7, p. 489)

An objective relating to irregularities at the first ballot is inoperative since it is not submitted that they were such as to change the order of preference expressed by the voters or, consequently, the conditions in which the second ballot took place.
(2002-2658, 28 November 2002, AN, Seine-St-Denis, Constituency 5, para 9, p. 489)

Withdrawal of argument

Implied withdrawal. Various arguments briefly raised in the initial application on the basis of the argument that electoral rolls were falsified in that deceased voters did not vote or of the existence of wrongly annulled ballot papers, but not supported and not reiterated in subsequent pleadings, must be rejected.
(2002-2686/2770/2771, 10 October 2002, AN, Guadeloupe, Constituency 3, para 13, p. 362)

Investigation

General powers of investigation

Rejection without prior debate

Premature application. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2614, 25 July 2002, AN, Val-de-Marne, Constituency 2, paras 1 and 2, p. 133; 2002-2615, 25 July 2002, AN, Seine-Saint-Denis, Constituency 10, paras 1 and 2, p. 134; 2002-2623, 25 July 2002, AN, Somme, Constituency 4, paras 1 and 2, p. 142; 2002-2632, 25 July 2002, AN, Manche, Constituency 4, paras 1 and 2, p. 151)

Application not challenging the election of a Deputy. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2618, 25 July 2002, AN, Eure, Constituency 3, paras 1 and 2, p. 135; 2002-2646, 25 July 2002, AN, paras 1 and 2, p. 158; 2002-2675, 25 July 2002, AN, Val-d'Oise, Constituency 2, paras 1 and 2, p. 167; 2002-2734, 25 July 2002, AN, Haute-Vienne, Constituency 1, paras 1 and 2, p. 187)

Application that merely challenges the regularity of electoral rolls without alleging a manœuvre. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2619, 25 July 2002, AN, Corrèze, Constituency 3, paras 1 and 2, p. 136)

Applications relying on irregularities without influence on the outcome of the ballot and asking the Constitutional Council to review the constitutionality of the legislative provisions in table 1 annexed to section L 125 of the Electoral Code and relating to constituency boundaries. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2621/2666/2700, 25 July 2002, AN, Var, Constituency 6, paras 2 to 5, p. 138)

Application relying on irregularities which, even if they were proven, and given the number of votes cast for each of the candidates, would be without influence on the outcome of the ballot and containing objections in terms that are too imprecise to allow the electoral court to examine them. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2622, 25 July 2002, AN, Haute-Garonne, Constituency 1, paras 1 and 2, p. 140)

Application on the basis of a single objection, unsupported by the slightest evidence. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2624, 25 July 2002, AN, Loire, Constituency 5, paras 1 and 2, p. 143)

Application not challenging the election of a Deputy joined to an application on the basis of a single inoperative objection. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2626/2685, 25 July 2002, AN, Bas-Rhin, Constituency 9, paras 2 to 5, p. 145)

Application relying on irregularities which, given the number of votes cast, manifestly cannot have influenced the outcome of the ballot and containing objections that are too imprecise. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2629/2684, 25 July 2002, AN, Pas-de-Calais, Constituency 9, paras 2 to 5, p. 149)

Application not challenging the election of a Deputy joined to an application not supported by particulars and justifications enabling the electoral court to examine it and an objection which manifestly cannot have influenced the outcome of the ballot. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2635/2636, 25 July 2002, AN, Gironde, Constituency 2, paras 2 to 7, p. 152)

Applications asking the Constitutional Council to review the constitutionality of the legislative provisions in table 1 annexed to section L 125 of the Electoral Code and relating to constituency boundaries. No jurisdiction. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2637/2702/..., 25 July 2002, AN, Var and others, paras 2 to 4, p. 154)

Application not supported by particulars and justifications enabling the electoral court to examine it. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2650, 25 July 2002, AN, Val-de-Marne, Constituency 5, paras 1 and 2, p. 159)

Application containing inadmissible submissions and submissions based on a single argument already determined by the Constitutional Council. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2665, 25 July 2002, AN, paras 2 and 3, p. 161)

Application on the basis of a single inoperative objection. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2667, 25 July 2002, AN, Paris, Constituency 12, paras 1 to 3, p. 163; 2002-2715, 25 July 2002, AN, Ain, Constituency 4, paras 1 to 3, p. 179)

Application relying merely on an objection relating to political support on ballot papers without challenging the reality of the support. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2668, 25 July 2002, AN, Paris, 21e circ., paras 1 and 2, p. 165)

Application relying on irregularities which, even if they were proven, and given the number of votes cast for each of the candidates, would be without influence on the outcome of the ballot and containing objections in terms that are too imprecise to allow the electoral court to examine them. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2677, 25 July 2002, AN, Deux-Sèvres, Constituency 2, paras 1 to 3, p. 168)

Application merely arguing that an investigation should be ordered in order to check whether expenses incurred by a successful candidate are recorded in his campaign accounts. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2680, 25 July 2002, AN, Ariège, Constituency 1, paras 1 and 2, p. 170)

Single objection based on violation of the second paragraph of section L 52-8 of the Electoral Code prohibiting gifts from bodies corporate but manifestly unfounded. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2682, 25 July 2002, AN, Savoie, Constituency 1, paras 1 to 3, p. 172)

Application relying on irregularities which, given the number of votes by which the applicant failed to qualify for the second ballot, manifestly did not influence the outcome of the ballot. General allegations raising no objections that can be relied on to challenge the regularity of the election. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2683, 25 July 2002, AN, Puy de Dôme, Constituency 3, paras 1 and 2, p. 174)

Applications relying on irregularities that are inoperative, unfounded or outside the jurisdiction of the Constitutional Council. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2704/2740/2747, 25 July 2002, AN, Bouches-du-Rhône, Constituency 10, paras 6 and 7, p. 176)

Application alleging a variety of irregularities which, even if they were proven and considering the number of votes obtained by each of the candidates, manifestly did not influence the outcome of the ballot. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2720, 25 July 2002, AN, Martinique, Constituency 2, paras 1 to 3, p. 181)

Application based on an objection without influence on the outcome of the election and raising no other objections that can be relied on to challenge the regularity of the election. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2728, 25 July 2002, AN, Finistère, Constituency 1, paras 1 and 2, p. 183; 2002-2730, 25 July 2002, AN, Seine-Maritime, Constituency 4, paras 1 and 2, p. 185)

Application by a candidate relying on irregularities at the first ballot without influence on his presence at the second ballot or on the outcome of the election. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2760, 25 July 2002, AN, Seine-Saint-Denis, Constituency 4, paras 1 and 2, p. 188)

Application lodged at the sub-prefecture and registered at the prefecture after the expiry of the ten-day period allowed by section 33 of the Ordinance of 7 November 1958. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2766, 25 July 2002, AN, Vienne, Constituency 3, paras 1 to 3, p. 190)

Single objection based on the fact that the results of the election were broadcast four hours before polls closed in an overseas department. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2769, 25 July 2002, AN, Guadeloupe, Constituency 2, paras 1 and 2, p. 192; 2002-2686/2770/2771, 10 October 2002, AN, Guadeloupe, Constituency 3, para 2, p. 362)

Application merely challenging the printing of ballot papers in several colours although no provision laid down by law or regulation applicable to the election of Deputies prohibits this. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2772, 25 July 2002, AN, Ardèche, Constituency 3, paras 1 and 2, p. 194)

Applications asking the Constitutional Council to review the constitutionality of the legislative provisions in table 1 annexed to section L 125 of the Electoral Code and relating to constituency boundaries. Rejection without investigation on the basis of section 38 of the Ordinance of 7 November 1958.
(2002-2625/2630/2678/2722, 10 October 2002, AN, Pas-de-Calais, Constituency 14, paras 2 and 3, p. 353; 2002-2671/2758, 10 October 2002, AN, Bouches-du-Rhône, Constituency 8, para 6, p. 359)

Joinder of cases

Joinder of seven applications challenging instruments preparing the election of the President of the Republic.
(HAUCHEMAILLE – MEYET and CAZAUX, 15 April 2002, para 1, p. 99)

Joinder of six applications challenging instruments preparing the presidential election and a complaint challenging the list of candidates at the first ballot.
(DÉCLIC – HAUCHEMAILLE – BIDALOU, 9 May 2002, para 1, p. 122)

Joinder of twenty-four applications against electoral operations in 23 constituencies and based on the sole objection that the distribution of seats between constituencies was not based on "primarily demographic considerations".
(2002-2637/2702/..., 25 July 2002, AN, Var and others, para 1, p. 154)

Joinder of three applications against electoral operations in the same constituency.
(2002-2686/2770/2771, 10 October 2002, AN, Guadeloupe, Constituency 3, para 2, p. 362)

Collective declaration of ineligibility of fourty-seven candidates who failed to deposit campaign accounts contrary to section L 52-12 of the Electoral Code.
(2002-2774 and others, 5 December 2002, AN, Ineligibilities – Failure to deposit campaign accounts, paras 1 to 5, p. 531)

Collective declaration of ineligibility for one year under section LO 128 of the Electoral Code concerning thirty-three candidates whose campaign accounts were not presented by a member of the Order of Accountants.
(2002-2773 and others, 19 December 2002, AN, Ineligibilities – Failure to present campaign accounts by a member of the Order of Accountants, paras 1 to 3, p. 566)

Administrative scrutiny

The investigation conducted on 7 November 2002 and the documents laid before the Constitutional Council on that occasion reveal that persons from whom proxies had been received had asked for criminal police officers or their delegates to come to them and were eligible for the provisions of section R 73 of the Electoral Code.
(2002-2687/2741, 19 December 2002, AN, Allier, Constituency 1, para 12, p. 558)

Interlocutory proceedings, special applications, want of grounds

Withdrawal of proceedings

Decision purely and simply recording the withdrawal by the Campaign Accounts and Political Funding Committee of its referral concerning a candidate at the election.
(2002-2780, 5 December 2002, AN, Bouches-du-Rhône, Constituency 8, para 1, p. 534; 2002-2799, 5 December 2002, AN, Hautes-Alpes, Constituency 2, para 1, p. 537)

Special applications

Rejection of a request for a hearing not needed given the state of the investigation.
(2002-2676, 14 November 2002, AN, Essonne, Constituency 1, para 4, p. 462)

The examination of the official records and of the documents annexed to them has not revealed anomalies in the counting of the ballot papers declared void. Rejection accordingly of a request for an additional investigation measure calling for production of all the official records for the constituency.
(2002-2738, 28 November 2002, AN, Haute-Corse, Constituency 1, para 5, p. 499)

There is no need to order either the additional investigation or the hearing requested by the applicant.

In the circumstances, there is no need to entertain a submission requesting the deletion of insulting or defamatory passages from the application.
(2002-2687/2741, 19 December 2002, AN, Allier, Constituency 1, paras 12, 15 and 16, p. 558)

Evaluation of the facts by the Constitutional Council

Irregularities not affecting the outcome

Irregularities not shown to have permitted fraud

Voters in Guadeloupe Constituency 2 were informed of the outcome of the election four hours before polling closed, but the applicant does not allege that the distribution of the estimates was based on a fraudulent manœuvre. The situation engendered by the change of time-zones, however regrettable its disadvantages may be, affected neither the outcome of the election noir equality of voting rights.
(2002-2769, 25 July 2002, AN, Guadeloupe, Constituency 2, para 2, p. 192)

The situation engendered by the change of time-zones, however regrettable its disadvantages may be, affected neither the outcome of the election noir equality of voting rights.
(2002-2686/2770/2771, 10 October 2002, AN, Guadeloupe, Constituency 3, para 2, p. 362; 2002-2652, 14 November 2002, AN, Guadeloupe, Constituency 1, para 9, p. 455)

Irregularities which, given the gap in the number of votes cast, did not affect the outcome

A candidate who obtained 97 votes at the first ballot alleges that manifestoes were not placed in envelopes in the order in which candidatures were registered, that in one commune he was given hoarding No 5 instead of No 15, that he received threats and was the victim of acts of aggression and that he interrupted his election campaign on medical grounds. Given the number of votes that the applicant needed to stand at the second ballot, the alleged facts, even if proven, manifestly cannot have affected the outcome of the ballot.
(2002-2629/2684, 25 July 2002, AN, Pas-de-Calais, Constituency 9, para 4, p. 149)

Application merely submitting that the successful candidate had an excessive number of manifestoes and circulars distributed and, like his opponent at the second ballot, enjoyed privileged access to the press and broadcasting media. Given the number of votes cast for the candidates at both the first and the second ballots, the alleged facts, even if proven, manifestly cannot have affected the outcome of the ballot.
(2002-2677, 25 July 2002, AN, Deux-Sèvres, Constituency 2, para 2, p. 168)

Radio and television stations allegedly withheld airtime from a candidate for whom 161 votes were cast at the first ballot. But this fact manifestly cannot have affected the outcome of the ballot, given the number of votes that the applicant needed to stand at the second ballot and the other means of making his candidature known.
(2002-2683, 25 July 2002, AN, Puy de Dôme, Constituency 3, para 2, p. 174)

A candidate for whom 136 votes were cast at the first ballot alleges that the ballot papers for two candidates, for whom 86 and 218 votes were cast respectively, were not in conformity with the regulations, that certain polling stations did not close at the proper time, that the presidents of the relevant polling stations failed to mention the excess opening times in their official records of electoral operations, that he had not been authorised to hold a meeting in the territory of a commune and that fourteen proxies were not in order. Given the number of votes cast for each of the candidates, the alleged facts, even if proven, manifestly cannot have affected the outcome of the ballot.
(2002-2720, 25 July 2002, AN, Martinique, Constituency 2, paras 2 and 3, p. 181)

Candidatures

A dissident candidate falsely claimed to be supported by a union of political parties, but the falseness of the claim was commented on by press releases issued by the decision-making bodies of the parties involved in setting up the union and confirming their selection of candidate, which issued numerous clarifications during the campaign. Given the numbers of votes cast for the various candidates at the first ballot, it follows that the conduct of the dissident candidate affected neither the number nor the identity of the candidates standing at the second ballot.
(2002-2679, 17 October 2002, AN, Isère, Constituency 3, paras 2 and 3, p. 377)

Campaign advertising

The limited access to the media complained of by the applicant, who received 50 votes at the first ballot, manifestly cannot have affected the outcome.
(2002-2635/2636, 25 July 2002, AN, Gironde, Constituency 2, para 7, p. 152)

A pamphlet claimed that the successful candidate's opponent at the second ballot was planning to locate a household waste incinerator, but the distribution of this pamphlet, the content of which did not exceed the limits of normal electoral polemics and to which the applicant had time to reply, manifestly did not influence the outcome of the ballot, given the gap in the numbers of votes cast at the second ballot.
(2002-2704/2740/2747, 25 July 2002, AN, Bouches-du-Rhône, Constituency 10, para 4, p. 176)

A candidate who obtained 173 votes at the first ballot alleges that several of his campaign posters were torn. Even if proven, his fact cannot have affected the outcome of the ballot, given the number of votes obtained by each of candidates.
(2002-2730, 25 July 2002, AN, Seine-Maritime, Constituency 4, para 2, p. 185)

The outcome of the ballot cannot have been influenced by irregularities lying in the fact that the leading candidates at the first ballot displayed posters combining the colours blue, white and red contrary to section R 27 of the Electoral Code, that the applicant, who obtained 88 votes, did not enjoy media coverage of his campaign on a scale comparable to that enjoyed by the two leading candidates, both in the press and on television, and that a mayor refused to lend him a meeting room.
(2002-2628, 17 October 2002, AN, Pas-de-Calais, Constituency 6, para 3, p. 373)

Given, the major gap (8 338 votes) between the two candidates at the second ballot, the objections concerning the election campaign, even if proven to be true, were not such as to affect the fairness of the ballot. Objections not analysed in the application.
(2002-2660, 5 December 2002, AN, Hauts-de-Seine, Constituency 2, para 8, p. 510)

The falsification of an electoral letter from a candidate and its distribution to a large number of voters to lead them to believe that he was seeking "moral support" and a financial contribution, even if proven to be true, were not such as to affect the outcome of the ballot, given the number of votes obtained by the various candidates.
(2002-2613/2616/2763, 19 December 2002, AN, Réunion, Constituency 3, para 6, p. 549)

Electoral operations

Minor irregularities affecting ballot papers at the first ballot. Even if proven, the irregularities cannot have affected the outcome of the ballot, given the number of votes obtained by each of candidates.
(2002-2622, 25 July 2002, AN, Haute-Garonne, Constituency 1, para 2, p. 140)

Given the results obtained by the candidate both in other polling stations in the commune and throughout the constituency, the brief absence of ballot papers bearing his name in one of the polling stations did not distort the outcome of the first ballot or, consequently, the second. Moreover, voters could use the ballot paper supplied by the Campaign Advertising Committee under section R 157 of the Electoral Code or use a handwritten paper as authorised by section R 104.
(2002-2670, 17 October 2002, AN, Vaucluse, Constituency 1, paras 1 and 2, p. 375)

The official record of a polling station reports the annulment of 24 votes but only 15 ballot papers are annexed to it, and in another polling station four votes were wrongly added to the total for the successful candidate, but deducting the 13 votes challenged from the total obtained by that candidate would not have the effect of causing him to lose the majority of votes cast, as the successful candidate obtained 132 votes more than his opponent at the second ballot.
(2002-2698, 17 October 2002, AN, Dordogne, Constituency 3, para 10, p. 381)

The demonstration by militants in front of certain polling stations on polling day and the presence of banners, posters and flags at the entrance to a polling station, however regrettable, cannot have affected the outcome of the ballot, given the large numbers of votes cast for the successful candidate in each constituency.
(2002-2638/2639, 7 November 2002, AN, French Polynesia, Constituency 1 and Constituency 2, para 5, p. 418)

Irregularities at first ballot of no effect on position of second-ballot candidates

Irregularity in the ballot papers of a candidate who obtained 3.7 % of the votes at the first ballot. Campaign expenditure in excess of the permitted maximum incurred by a candidate eliminated at the first ballot who also falsely claims to enjoy the support of a political party. The applicant neither shows nor indeed alleges that the irregularities which he pleads and which, he submits, prevented him from reaching the "threshold of 5 % of the votes cast needed to qualify for reimbursement of campaign documents and the flat-rate reimbursement of campaign expenditure" prevented him from standing at the second ballot or otherwise affected the outcome of the ballot.
(2002-2704/2740/2747, 25 July 2002, AN, Bouches-du-Rhône, Constituency 10, paras 6 and 7, p. 176)

An application from a candidate who obtained 4.27 % of the votes cast at the first ballot and merely submits that facts attributable to an unsuccessful candidate prevented him from crossing the "5 % threshold", without alleging that they prevented him from standing at the second ballot must be rejected.
(2002-2760, 25 July 2002, AN, Seine-Saint-Denis, Constituency 4, para 2, p. 188)

Proceedings during the ballot

Given the spread of votes at the first ballot, even after a hypothetical deduction of votes cast improperly, the full set of irregularities cannot be regarded as having had a decisive influence on the results of the first ballot or, consequently, on the outcome of the election.
(2002-2620/2716, 7 November 2002, AN, Corse-du-Sud, Constituency 2, para 19, p. 414)

Irregularities not affecting the outcome in view of the specific circumstances of the election

Voters were assigned to polling stations in a commune on the basis of alphabetical criteria and not the geographical criteria prescribed by section L17 of the Electoral Code. Addresses on envelopes sent to voters by the Campaign Advertising Commission were abbreviated. Manifestly no influence on the outcome of the ballot.
(2002-2621/2666/2700, 25 July 2002, AN, Var, Constituency 6, para 3, p. 138)

Even if proven, the fact that a candidate was preventing from recording her observations in the official record did not affect the outcome of the election.
(2002-2728, 25 July 2002, AN, Finistère, Constituency 1, para 2, p. 183)

The presence of three advertising hoardings by a national highway, one of which was set up by the commune of L more than three months before the election and carried slogans hostile to Mr D, unsuccessful candidate at the second ballot losing by 147 votes, was not regarded in the circumstances as having changed the outcome of the ballot. The slogans followed a dispute between the mayor of L and Mr D, mayor of a neighbouring commune and president of an association of communes, regularly reported on in the local press. However open to criticism the process used may have been, it added nothing new to the election campaign. Moreover, although Mr D was aware of the first hoarding on 28 February 2002, he took no legal action before the relevant administrative and judicial authorities. And during the election campaign he had all the time he needed to reply to the accusations made against, distributing a pamphlet a few days before the first ballot in the relevant communes and neighbouring communes.
(2002-2739, 5 December 2002, AN, Meurthe-et-Moselle, Constituency 7, para 1, p. 538)

Irregularities warranting rectification

Annulment of certain votes

Electoral operations

96 votes were cast in a manner not complying with section L 64 of the Electoral Code. Annulment of the election, won by a margin of 58 votes.
(2002-2755/2756, 19 December 2002, AN, Wallis and Futuna, para 5, p. 564; comp. 97-2247, 22 January 1998, AN, Wallis and Futuna, paras 9 to 11, p. 78)

Principles of review

Since documents enabling the electoral court to review the participation of replacements in a Senate election were not annexed to the official record, and there was only a single vote between the two candidates at the second ballot, electoral operations are annulled.
(2002-2809, 19 December 2002, Senate, Haute-Saône, para 1, p. 571)

Scope of decision

Res judicata status of Constitutional Council decisions

The objection that the Decree of 8 May 2002 convening electoral colleges for the election of deputies to the National Assembly was issued by an authority not empowered to that end was rejected by decision of the Constitutional Council on 22 May 2002 concerning the legality of the Decree. That decision has res judicata status, precluding further examination of the objection.
(2002-2665, 25 July 2002, AN, para 3, p. 161)

Redress procedure

Application for rectification

New precedent

An application casting doubt on the Constitutional Council's assessment of the influence exerted by irregularities committed during the election campaign on the result of the first ballot does not constitute such an application. Application inadmissible.
(2002-2620/2716, 5 December 2002, AN, Corse-du-Sud, Constituency 2, para 1, p. 504)

An application casting doubt on the Constitutional Council's assessment of the rejection of campaign accounts by the Campaign Accounts and Political Funding Committee does not constitute such an application. Application inadmissible.
(2002-2787, 5 December 2002, AN, Alpes-Maritimes, Constituency 1, para 1, p. 535)

CAMPAIGN ACCOUNTS

Deposit

Time allowed for depositing

Ineligibility

The election was won at the second ballot, held on 16 June 2002. It is common ground that at midnight on 16 August 2002, when the period allowed by section L 52-12 of the Electoral Code expired, the three candidates concerned had not deposited their campaign accounts at the prefecture. In particular, the campaign accounts of one of them were deposited only on 19 September 2002. Ineligibility for one year running from the date of this decision.
(2002-2793/2794/2795, 31 October 2002, AN, Allier, Constituency 1, para 3, p. 410)

Campaign accounts not deposited within two months with the High Commissioner of the Republic in French Polynesia. Ineligibility.
(2002-2775, 7 November 2002, AN, French Polynesia, Constituency 1, paras 1 to 3, p. 427)

On the expiry of the period allowed by section L 52-12 of the Electoral Code, Mr L had not deposited his campaign accounts at the prefecture. Whatever the reasons for his failure to discharge this obligation, he must be declared ineligible for one year running from the date of this decision under section LO 128 of the Electoral Code.
(2002-2873, 21 November 2002, AN, Paris, Constituency 17, para 3, p. 483)

Accounts not deposited within two months. Ineligibility.
(2002-2882/2883, 28 November 2002, AN, Seine-Saint-Denis, Constituency 5, paras 1 to 3, p. 502; 2002-2846, 19 December 2002, AN, Martinique, Constituency 1, para 3, p. 579)

Campaign accounts deposited late and not deposited at the prefecture. Ineligibility.
(2002-2885, 5 December 2002, AN, Meurthe-et-Moselle, Constituency 7, paras 1 to 3, p. 538)

Accounts not deposited at the prefecture. Ineligibility.
(2002-2803/2807, 19 December 2002, AN, Réunion, Constituency 3, paras 1 to 3, p. 569)

Campaign accounts not deposited with the high administrator of the Wallis-and-Futuna islands. Ineligibility.
(2002-2880/2881, 19 December 2002, AN, Wallis and Futuna, paras 1 to 3, p. 580)

Conditions of deposit

Accounts not certified

Two candidates'campaign accounts were not presented by a member of the order of accountants. They must be declared ineligible for one year running from the date of this decision.
(2002-2791/2792, 31 October 2002, AN, Allier, Constituency 1, para 3, p. 408)

The obligation to have accounts presented by an accountant is incumbent on a candidate who has not withdrawn his candidature before the closing date for candidatures (section R 100 of the Electoral Code).
(2002-2788, 7 November 2002, AN, Alpes-Maritimes, Constituency 1, paras 1 to 3, p. 435)

The accounts deposited at the prefecture were not presented by a member of the order of accountants. Ineligibility for one year running from the date of this decision.
(2002-2822, 7 November 2002, AN, Val-d'Oise, Constituency 9, paras 1 to 3, p. 441; 2002-2875, 21 November 2002, AN Val-d'Oise, Constituency 5, para 3, p. 487)

No supporting vouchers

Campaign accounts not giving details of operations or vouchers. Partly produced for the Committee. Rightly rejected.
(2002-2787, 7 November 2002, AN, Alpes-Maritimes, Constituency 1, paras 1 and 2, p. 433)

The campaign accounts were not accompanied by all the bank statements needed to enable the Campaign Accounts and Political Funding Committee to check the actual payments of a substantial portion of the expenditure, but the most recent bank statements presented for the first time in the Constitutional Council provide evidence of the actual payment of the total amount. There is accordingly no need to apply section LO 128 of the Electoral Code.
(2002-2872, 21 November 2002, AN, Paris, Constituency 17, para 2, p. 481)

The campaign accounts were not accompanied by all the vouchers provided for by section L 52-12. In response to requests from the CCFP for justification of expenditure totalling €6 964.40, the candidate merely produced receipts without explanations that cannot be regarded as valid substitutes for vouchers. The Committee was accordingly right to reject the accounts in this respect. Ineligibility for one year running from the date of this decision under section LO 128 of the Electoral Code.
(2002-2845, 19 December 2002, AN, Martinique, Constituency 1, paras 1 and 2, p. 577)

Gifts

Bodies corporate

Free space given for pages on a candidate's campaign by an Internet provider did not violate section L 52-8 of the Electoral Code prohibiting gifts from bodies corporate given that, in accordance with the general conditions for the use of the service to accommodate personal web pages, every candidate – indeed everybody – was able to enjoy the same service from the same company.
(2002-2682, 25 July 2002, AN, Savoie, Constituency 1, paras 2 and 3, p. 172)

Expenses in excess of receipts

The campaign accounts contain a revenue item of €23 095 under "advances and loans" corresponding to the candidate's own contribution of an amount obtained by a personal loan from a bank. But the bank loan was only for €21 743. The campaign accounts accordingly fail to record adequate revenue even though for a few weeks the accounts of the financing association were credited with €23 095 as a result of an error by the bank that was corrected before the campaign accounts were deposited.

The candidate cannot validly argue that the deficit was covered by a payment made by his political party after the expiry of the statutory period for depositing accounts under an agreement concluded before the election. Ineligibility.
(2002-2886, 31 October 2002, AN, Nord, Constituency 23, paras 2 and 3, p. 412)

Regularisation before the Constitutional Council

Subsequent to the Campaign Accounts and Political Funding Committee decision rejecting her campaign accounts, the candidate produced bank statements certifying the origin of the resources appearing in the campaign accounts. These documents having proved that the resources were in order, there is no need to apply section LO 128 of the Electoral Code.
(2002-2828, 19 December 2002, AN, Hauts de Seine, Constituency 8, para 2, p. 573)

Campaign Accounts and Political Funding Committee

Principles

The Campaign Accounts and Political Funding Committee is an administrative authority and not a court. The position it takes when examining a candidate's campaign accounts is

therefore without prejudice to the decision of the Constitutional Council, which has jurisdiction to review the election under article 59 of the Constitution.
(2002-2657/2841, 19 December 2002, AN, Paris, Constituency 15, para 10, p. 552)

The successful candidate omitted to include in his campaign accounts a sum corresponding to the cost of an article, but this omission does not proceed from any desire to deceive. It is simply that the political group whose programme he published did not select him in the end, given the decision taken by the Union pour la majorité presidentielle in May 2002 to support another candidate. Moreover the candidate's accounts record other expenditure items related to publication of his monthly. In view of all the circumstances and the amount at stake, the omission does not warrant rejection of the accounts.
(2002-2657/2841, 19 December 2002, AN, Paris, Constituency 15, para 17, p. 552)

Evaluations by the Committee

Where a candidate regularly publishes a newspaper, only articles directly related to his campaign in the constituency have to be considered for the purpose of expenditure that must be entered in his accounts. It is therefore necessary to check whether issues of the periodical published by the candidate contain material that is electoral for the purposes of the first paragraph of section L 52-12 of the Electoral Code.

Given the average cost of a page in the periodical as ascertained by the investigation, the cost of inserting the article is €2 959.28. This expenditure must be recorded in the successful candidate's campaign accounts. Once this sum has been entered, the accounts must be finalised with expenditure at €50 065.28. This is below the maximum of €55 740 set for this constituency, in accordance with section L 52-11 of the Electoral Code. Objection that this provision was violated rejected.
(2002-2657/2841, 19 December 2002, AN, Paris, Constituency 15, paras 11 and 15, p. 552)

Contents of accounts

Revenue

Gifts or benefits by political parties or groups

The successful candidate received financial contributions from the Martinique federation of the Socialist Party and the Socialist Section at Trinité, whose accounts have not been traced in the accounts of the Socialist Party for 2001. The two bodies are merely the local representations of the Socialist Party, which is covered by sections 8, 9 and 9-1 of the Act of 11 March 1988. Gifts from that federation and a section are not prohibited, as the legislation stands, by section L 52-8 of the Electoral Code. CCFP decision rejecting the campaign accounts set aside.
(2002-2844, 19 December 2002, AN, Martinique, Constituency 1, paras 1 to 4, p. 575)

Gifts to a candidate by a body corporate other than a political party or group (second paragraph of section L 52-8 of the Electoral Code)

No gift or benefit

Cultural and sports events which the commune of which the successful candidate is mayor launched or helped to organise and which were not accompanied by activities designed to influence voters cannot be regarded as constituting electoral events and were not organised contrary to section L 52-8.
(2002-2693, 21 November 2002, AN, Nord, Constituency 8, para 5, p. 473)

Neither the distribution of a newsletter relating to road maintenance in the department nor the use in a leaflet put out by the candidate of a photograph of a hoarding belonging to the department council, nor a letter of support from a Senator can be regarded as constituting gifts from a body corporate contrary to section L 52-8 of the Electoral Code.
(2002-2729, 28 November 2002, AN, Seine-Maritime, Constituency 9, paras 5 and 6, p. 496)

The cost of distributing 120 copies of a letter of support for a candidate from a municipal councillor to those in charge of local associations was borne by the commune of which the candidate is mayor, but the investigation reveals that the distribution was decided on without the candidate's agreement. He also reimbursed the cost of it and entered it on the expenditure side of his campaign accounts.
(2002-2669, 5 December 2002, AN, Rhône, Constituency 14, paras 7 and 8, p. 513)

The distribution at a meeting organised by an association of pensioners of a department store of perfume samples in boxes bearing the store's logo with a calculator donated by the candidate took place without his knowledge and cannot in the circumstances be regarded as a gift from a body corporate within the meaning of section L 52-8 of the Electoral Code.
(2002-2719, 5 December 2002, AN, Rhône, Constituency 1, para 3, p. 523)

The objection that the distribution of a letter supporting the successful candidate was financed by a farmers'union contrary to section L 52-8 of the Electoral Code fails on the facts since correspondence between the president of the union reveals that the letter did not come from the union but from a member of it expressing a personal opinion on the basis of an address list to which he had free access.
(2002-2733, 5 December 2002, AN, Lot-et-Garonne, Constituency 3, paras 2 and 1, p. 525)

The objection that the distribution of a letter supporting the successful candidate was financed by a farmers'union contrary to section L 52-8 of the Electoral Code fails on the facts since the address list used to send the letter was rented out to an agricultural cooperative and it is not shown that the company under-evaluated the benefit or bore other benefits.
(2002-2733, 5 December 2002, AN, Lot-et-Garonne, Constituency 3, paras 1 and 2, p. 525)

Expenditure incurred in setting up advertising hoardings carrying slogans hostile to the unsuccessful candidate at the second ballot but bearing no reference to the election or any reference to support for the successful candidate was not regarded as a gift from a body corporate to the successful candidate, since he has denied all direct or indirect involvement in setting them up and the investigation has not shown that they were put up with his agreement.
(2002-2739, 5 December 2002, AN, Meurthe-et-Moselle, Constituency 7, para 4, p. 528)

Gifts or benefits warranting rejection of the accounts

Given the purpose of the legislation relating to financial transparency in political life, the financing of electoral campaigns and the restrictions on electoral expenditure, a private-sector body corporate pursuing a political object may be regarded as a "political party or group" for the purposes of section L 52-8 of the Electoral Code only if it is covered by sections 8, 9 and 9-1 of the Act of 11 March 1988 or has submitted to the rules laid down by sections 11 to 11-7 of that Act, which among other things allow political parties and groups to gather funds only via an agent, who may be a natural person whose name has been registered at the prefecture or a financing association approved by the Campaign Accounts and Political Funding Committee.

Payment to the candidate by the "Union des contribuables d'Europe" of a gift constituting the entire revenue side of his campaign accounts. Since it is neither shown nor alleged that on the date of the payment that body could be regarded as a political party for the purposes of the foregoing provisions of the Act of 11 March 1988 or that it had designated a financial agent or set up an approved financing association, Ms LEBEAU must be regarded as having received a benefit from a body corporate contrary to section L 52-8 of the Electoral Code. The Campaign Accounts and Political Funding Committee as accordingly right to reject the candidate's accounts. Ineligibility under section LO 128 of the Electoral Code for one year running from the date of this decision.
(2002-2874, 21 November 2002, AN, Val-d'Oise, Constituency 5, paras 1 and 2, p. 485)

Expenditure

Expenses required to be recorded in the account

The Campaign Accounts and Political Funding Committee was right to revise the campaign accounts of a candidate by adding the expenditure incurred in sending an electoral circular. To that end it added to the declared expenditure a sum representing the costs of the operation

and to the revenue a sum of the same amount, which it described as a benefit in kind from the person concerned. The objection that the expenditure item was not recorded in the accounts, contrary to section L 52-12, is rejected.
(2002-2653/2718, 14 November 2002, AN, Hérault, Constituency 2, para 11, p. 458)

It is argued that part of the cost of producing and distributing these pamphlets was not recorded in the successful candidate's campaign accounts, but the omission, which was not observed by the Campaign Accounts and Political Funding Committee, is not manifest from the investigation.
(2002-2643, 5 December 2002, AN, Pas-de-Calais, Constituency 10, para 2, p. 508)

The objection is that the cost of various documents distributed for the election and expenditure on the organisation of electoral meetings were not fully recorded in the successful candidate's campaign accounts. But the omission was not observed by the Campaign Accounts and Political Funding Committee nor revealed by the investigation.
(2002-2673, 5 December 2002, AN, Nord, Constituency 21, paras 2 and 3, p. 516)

It was quite right for successful candidate's campaign accounts to record only one third of the expenditure incurred by a political party for a meeting organised in support of three candidates that it had selected in the department.
(2002-2733, 5 December 2002, AN, Lot-et-Garonne, Constituency 3, para 3, p. 525)

Where a candidate regularly publishes a newspaper, only articles directly related to his campaign in the constituency have to be considered for the purpose of expenditure that must be entered in his accounts. It is therefore necessary to check whether issues of the periodical published by the candidate contain material that is electoral for the purposes of the first paragraph of section L 52-12 of the Electoral Code.
(2002-2657/2841, 19 December 2002, AN, Paris, Constituency 15, para 11, p. 552)

Expenses required to be recorded in the account

Cost of a monthly publication devoted entirely to the municipal life of a commune.
(2002-2688/2692/2714, 28 November 2002, AN, Hauts-de-Seine, Constituency 12, para 11, p. 493)

Expenditure incurred by the department to publicise its activities and not being electoral material does not require to be recorded in the campaign accounts.
(2002-2729, 28 November 2002, AN, Seine-Maritime, Constituency 9, paras 7 and 8, p. 496)

The distribution of gifts such as coffee-pots on Mothers'Day by an association subsidised by the commune, of which the successful candidate is mayor, however regrettable during an election campaign, is so traditional that it cannot be regarded as expenditure incurred specifically for the general election and as required accordingly to be recorded in the campaign accounts.
(2002-2613/2616/2763, 19 December 2002, AN, Réunion, Constituency 3, paras 7 and 8, p. 549; cf. 97-2129/2136, 9 January 1998, Réunion, Constituency 3, para 8, p. 33)

In 2001 the candidate sent certain voters in the constituency two invitations to discussion meetings, two copies of a newsletter and a greetings card for 2002, but in view of the date on which these documents were distributed and their content, they must be regarded as linked to the exercise of the candidate's function as Deputy and not as campaign advertising material. Their costs are not campaign expenditure.
(2002-2727, 19 December 2002, AN, Hauts-de-Seine, Constituency 8, para 1, p. 562)

Expenses paid direct (section L 52-4)

The fact that on practical grounds the candidate paid certain minor items direct can be tolerated, but only if the aggregate amount involved is very low in comparison to the total amount of the expenditure in the campaign accounts and negligible in relation to the maximum amount authorised by section L 52-11 of the Electoral Code. These conditions were not met in respect of expenditure representing 16 % of the total campaign expenditure and nearly 7 % of the maximum amount. Ineligibility.
(2002-2778, 7 November 2002, AN, Alpes-de-Haute-Provence, Constituency 1, paras 1 and 2, p. 429)

These conditions were not met in respect of expenditure representing 16 % of the total campaign expenditure and nearly 7 % of the maximum amount. The fact that the candidate was not obliged to use a financial agent as he had received no gifts and the fact that each of the

thirty-nine expenditure items was modest and that his financial agent, commonly absent, received his cheque book only very late, are inoperative. Ineligibility.
(2002-2786, 7 November 2002, AN, Haute-Corse, Constituency 1, paras 1 and 2, p. 431)

These conditions were not met in respect of expenditure representing 24 % of the total campaign expenditure and nearly 5 % of the maximum amount. The fact that the candidate acted in good faith and was not aware of the rules are inoperative. Ineligibility.
(2002-2811, 7 November 2002, AN, Pas-de-Calais, Constituency 6, paras 1 and 2, p. 439)

These conditions were not met in respect of expenditure representing 42 % of the total campaign expenditure and nearly 1 % of the maximum amount. The fact that the candidate acted in good faith and that he paid the non-reimbursable part of his campaign expenditure himself on practical grounds are inoperative. Ineligibility.
(2002-2827, 7 November 2002, AN, Hauts-de-Seine, Constituency 8, paras 1 and 2, p. 443)

These conditions were not met in respect of expenditure representing 24 % of the total campaign expenditure and nearly 4 % of the maximum amount. The fact that the financial agent received his cheque book only very late and that an invoice had to be paid urgently The fact that the candidate acted in good faith are inoperative.
(2002-2849, 7 November 2002, AN, Rhône, Constituency 14, paras 1 and 2, p. 445)

Amounts to be incorporated

Given the average cost of a page in the periodical as ascertained during the investigation, the cost of inserting the relevant article was €2 959.28. This expenditure must be recorded in the successful candidate's campaign accounts. After that sum has been incorporated, the expenditure side of the accounts must be closed at €50 065.28. This is below the maximum amount of €55 740 allowed for the constituency in accordance with section L 52-11 of the Electoral Code. Objection that the section is violated is rejected.
(2002-2657/2841, 19 December 2002, AN, Paris, Constituency 15, para 15, p. 552)

Invoices not paid before accounts are deposited

Invoices paid after the Committee asked for vouchers. Accounts rightly rejected as not giving an accurate description of campaign expenditure.
(2002-2789, 7 November 2002, AN, Alpes-Maritimes, Constituency 1, paras 1 and 2, p. 437)

Principles of the unicity and completeness of the accounts

It has not been shown that the successful candidate engaged in a manœuvre to prompt two fictitious candidatures to circumvent the campaign financing rules.
(2002-2658, 28 November 2002, AN, Seine-St-Denis, Constituency 5, para 2, p. 489)

Advertising campaign

The objection is inoperable if the offending document was distributed before the close season determined by section L 52-1 of the Electoral Code.
(2002-2688/2692/2714, 28 November 2002, AN, Hauts-de-Seine, Constituency 12, paras 2 and 3, p. 493)

Departmental newsletter relating to road works carried out by the General Council. Given its content, cannot be regarded as an "advertising campaign".
(2002-2729, 28 November 2002, AN, Seine-Maritime, Constituency 9, paras 1 and 2, p. 496)

None of the nine events referred to by the applicant was an electoral event, nor can therefore be regarded as a gift from a body corporate prohibited by section L 52-8 of the Electoral Code.
(2002-2660, 5 December 2002, AN, Hauts-de-Seine, Constituency 2, paras 1 and 2, p. 510)

Given its content, this is not the case of a letter supporting a candidate, sent by a municipal councillor to those in charge of local associations.
(2002-2669, 5 December 2002, AN, Rhône, Constituency 14, para 2, p. 513)

Gifts or benefits to a candidate form a public body or a private-sector body corporate

Gifts or benefits not warranting rejection of the accounts

Given their extremely small scale, neither the participation of a local employee in the organisation of a campaign meeting held in town hall premises in the presence of the successful candidate, mayor of the commune, nor the campaign posters observed on the hoardings of a housing project belonging to the public social housing office, warrant the rejection of the accounts.
(2002-2672, 21 November 2002, AN, Val-d'Oise, Constituency 5, para 4, p. 470)

The monthly "Paris 16e", declared at the Publications and Press Agencies Commission and enjoying the benefit of the press rules, is partly financed by advertising revenue. By regularly buying advertising space in this publication, bodies corporate participated only indirectly in financing the relevant two pages up to the cost of these pages not covered by subscriptions. Given the nature and amount of this benefit and the terms on which it was given, the assistance thereby deemed to have been provided does not warrant the rejection of the accounts.
(2002-2657/2841, 19 December 2002, AN, Paris, Constituency 15, para 18, p. 552)

No gift or benefit

A circular addressed to 305 doctors was despatched by the University Teaching Hospital at Montpellier, where the candidate works. He used certain facilities of this public establishment, but the investigation reveals that as he was authorised to engage in private practice at the hospital he paid a fee to cover his personal use of secretarial services available there. Consequently, the cost of sending the circulars, which can be booked to his personal secretarial costs, cannot be regarded as having been borne by a body corporate. The objection that section L 52-8 of the Electoral Code was violated must be rejected.
(2002-2653/2718, 14 November 2002, AN, Hérault, Constituency 2, para 10, p. 458)

Editorials in a municipal newsletter were campaign advertising, given that they were of a polemical nature in relating to issues raised in the campaign of the successful candidate, who was mayor of the relevant commune. The proportion of these publications that was basically electoral does not exceed that of which the production and distribution costs during the election campaign were paid to the commune by the financial agent and recorded in the candidate's campaign accounts.
(2002-2672, 21 November 2002, AN, Val-d'Oise, Constituency 5, para 2, p. 470)

Since it was not shown that the pages in the May-June 2002 issue of "Municipalités magazine" reporting on Mr S's candidature were produced with his agreement, he cannot be regarded as having received a gift from a body corporate contrary to the second paragraph of section L 52-8.
(2002-2697, 21 November 2002, AN, Paris, Constituency 17, para 5, p. 476)

The candidate's invitation to a dinner organised by an association at a charity gala was not regarded as campaign advertising, even though the association was subsidised by the commune.
(2002-2660, 5 December 2002, AN, Hauts-de-Seine, Constituency 2, para 3, p. 510)

In 2001 the candidate sent certain voters in the constituency two invitations to discussion meetings, two copies of a newsletter and a greetings card for 2002, but in view of the date on which these documents were distributed and their content, they must be regarded as linked to the exercise of the candidate's function as Deputy and not as campaign advertising material. Their costs are not campaign expenditure.

The documents were sent out by and at the expense of the National Assembly, but it is clear from the foregoing that the mailing costs cannot be regarded as having been a contribution to financing the candidate's campaign. They are accordingly not gifts made illegally by a body corporate for the purposes of the second paragraph of section L 52-8 of the Electoral Code.
(2002-2727, 19 December 2002, AN, Hauts-de-Seine, Constituency 8, paras 1 and 2, p. 562)

Successful candidate – Ineligibility – Annulment of the election

Maximum levels exceeded

Principles

The applicant must provide evidence to support an omission of expenditure in the campaign account of the elected candidate if the omission was not observed by the Committee and was not revealed by the investigation.
(2002-2620/2716, 7 November 2002, AN, Corse-du-Sud, Constituency 2, para 2, p. 414)

Unsuccessful candidate

Examination of accounts pursuant to section LO 186-1 of the Electoral Code

Section LO 186-1 of the Electoral Code allows the Constitutional Council, without the need for prior intervention by the Campaign Accounts and Political Funding Committee, to draw the conclusions from a situation where the investigation reveals that a candidate is in one of the cases mentioned in the second paragraph of section LO 128 of the Code, where it has received a valid objection to electoral operations in the constituency.
(2002-2697, 21 November 2002, AN, Paris, Constituency 17, paras 3 to 6, p. 476)

PUBLIC AND SOCIAL FINANCE

FINANCE ACTS

General rules relating to consideration of finance bills

Priority consideration by National Assembly

The first paragraph of article 44 of the Constitution provides: "Members of Parliament and the Government shall have the right of amendment". The second paragraph of article 39 provides that "Finance bills ... shall be presented first to the National Assembly ", but this does not preclude financial measures from being introduced by way of amendment by Senators.
(2002-464 DC, 27 December 2002, para 11, p. 583)

Under the second paragraph of article 39 of the Constitution, entirely new financial measures may not be initiated by the Government in the Senate.

The material amendment was presented in coordination with a measure initially presented in the National Assembly during the debate on the Finance (Amendment) Bill for 2002. It merely made a minor correction to the estimated revenue from two taxes for 2003. The amendment accordingly did not introduce an entirely new financial measure. Objection of procedural irregularity dismissed.
(2002-464 DC, 27 December 2002, paras 15 and 16, p. 583)

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

Disruption of the forecast economic and financial equilibrium

If in 2003 the broad lines of budgetary balance in the Finance Act diverged substantially from the forecasts, it would be for the Government to lay a Finance (Amendment) Bill before Parliament.
(2002-464 DC, 27 December 2002, para 7, p. 583)

Universality of budget

Allocation of revenue – Obligation to allocate revenue without deducting expenditure

Failure to allocate revenue

The financial contribution established by section 118(II) of the Social Modernisation Act and paid by firms in the absence of an agreement or in the event of total or partial failure to perform an agreement is a central government tax revenue item, but even so it serves as an incentive measure. It was legitimate for the legislature to classify it as a non-allocated revenue item.
(2001-455 DC, 12 January 2002, paras 70, 71 and 74, p. 49)

Obligation to allocate revenue without deducting expenditure

The allegation that the first paragraph of section 18 of the Ordinance of 2 January 1959 is violated fails on the facts since the proportion of new central government revenue to offset the effects of bringing France Télécom under the ordinary tax rules for the purposes of local direct taxation will be traceable in the budget line for "other direct taxes raised by he issue of tax rolls" in the general budget (line 2 in volume A).
(2002-464 DC, 27 December 2002, paras 47, 49 and 50, p. 583)

Content and presentation of finance bills

Provisions that may be not made in a Finance Act

Distribution of appropriations over territorial units

Sections 91 to 95 of the Finance Act for 2003 relate to the distribution of the general operating budget over territorial units. Section 99 merely amplifies the rules governing distribution of part of the proceeds of the national equalisation fund established by section 1648 B *bis* of the General Tax Code. These provisions, which do not modify the resources and burdens of central government, are out of place in a Finance Act as defined by section 1 of the Ordinance of 2 January 1959.
(2002-464 DC, 27 December 2002, paras 60 and 61, p. 583)

Rules applicable to drinks outlet licences

The purpose of section 28 of the Finance Act for 2003, which amplifies section L 3332-14 of the Public Health Code, is to derogate from the rules governing the transfer of drinks outlet licences. It is out of place in a Finance Act as defined by section 1 of the Ordinance of 2 January 1959.
(2002-464 DC, 27 December 2002, paras 59 and 61, p. 583)

Provisions relating to expenditure

Appropriations may not be exceeded

The Parliamentary vote, in the Finance Act, of maximum amounts for major categories of expenditure and appropriations placed at the disposal of Ministers does not oblige them to spend the entire appropriations opened. Expenditure authorisations do not act as a barrier to the prerogatives enjoyed by the Government under article 20 of the Constitution for the implementation of the Finance Act.
(2002-464 DC, 27 December 2002, para 5, p. 583)

Annulment of appropriations

The Parliamentary vote, in the Finance Act, of maximum amounts for major categories of expenditure and appropriations placed at the disposal of Ministers does not oblige them to spend the entire appropriations opened. Expenditure authorisations do not act as a barrier to the prerogatives enjoyed by the Government under article 20 of the Constitution for the implementation of the Finance Act. Section 14 of the Institutional Act of August 2001, made applicable with effect from 1 January 2002, provides that "to prevent deterioration of the budgetary balance defined by the most recent Finance Act for the relevant year, an appropriation may be annulled by decree issued on the basis of a report from the Minister of Finance. An appropriation that has lapsed may be annulled by decree issued on the same basis". It was accordingly legitimate for the Government to provide for a "budgetary regulatory mechanism" by placing a small fraction of the appropriations in reserve at the beginning of the year to cover the risk of a deterioration of the budgetary balance.
(2002-464 DC, 27 December 2002, para 5, p. 583)

Parliament must be informed in good time of budget-related regulatory measures that are implemented. In particular, in accordance with section 14(I) and (III) of the Institutional Act of 1 August 2001 on Finance Acts, applicable from 1 January 2002, the relevant National Assembly and Senate committees must be informed of every annulment decree before it is published and of "every act of whatever nature that has the object or effect of making appropriations unavailable".
(2002-464 DC, 27 December 2002, para 8, p. 583)

Carry-over of appropriations

The explanations given to Parliament by the Government on management measures envisaged for the year, and in particular on the foreseeable amounts of appropriations to be carried over, do not reveal any inaccuracy in the expenditure forecasts.
(2002-464 DC, 27 December 2002, para 6, p. 583)

Accuracy of the budget

Section 32 of the Institutional Act of 1 August 2001, made applicable from 1 January 2002 by section 65, provides: "Finance Acts shall accurately present all the resources and burdens of central government. Their accuracy shall be assessed in the light of such information as is available and of the forecasts that can reasonably be derived therefrom." The accuracy of the Finance Act for the current year is assessed in terms of the absence of any intention to distort the broad aspects of equilibrium.
(2002-464 DC, 27 December 2002, para 3, p. 583; cf. 2001-448 DC, 25 July 2001, para 60, p. 99)

None of the information laid before the Constitutional Council suggests that the assessments of revenue for 2003 taken into account in the balancing item are vitiated by a manifest error, given the uncertainties inherent in evaluation and the uncertainties as to the development of the economy in 2003. Moreover the alleged error in the economic hypotheses would, according to the applicants themselves, engender only a minor overestimate of tax revenue (€2 billion for net tax revenue) in relation to the aggregate amount of the budget.
(2002-464 DC, 27 December 2002, para 4, p. 583)

By informing Parliament of its intention to establish to provide for a budgetary regulatory mechanism by placing a small fraction of the appropriations in reserve at the beginning of the year to cover the risk of a deterioration of the budgetary balance, the Government respected the principle of accuracy.
(2002-464 DC, 27 December 2002, para 5, p. 583)

The explanations given to Parliament by the Government on management measures envisaged for the year, and in particular on the foreseeable amounts of appropriations to be carried over, do not reveal any inaccuracy in the expenditure forecasts.
(2002-464 DC, 27 December 2002, para 6, p. 583)

Clarity of tax legislation

Section 298 *bis* of the General Tax Code provides that for the purposes of value added tax, the simplified scheme for agriculture applies automatically to farmers whose activities are comparable in nature or importance to those of industrial or trading firms, even if their business is related to their agricultural activity. Section 108 of the Finance Act for 2003 amplifies these provisions by providing that they do not apply to taxation of "operations regarded as being part of the usual business of agriculture". The legislature's intention was to refer to the administration's constant interpretation of section 298 *bis* in value added tax matters, as specified in its instructions. Section 108 is unambiguous and accordingly did not violate the requirement for clarity imposed by article 34 of the Constitution.
(2002-464 DC, 27 December 2002, para 58, p. 583)

SOCIAL SECURITY (FINANCE) ACTS

Matters for institutional statutes

Reports

The reports provided for by sections 7 and 31 of the Social Security (Finance) Act for 2003 do not have to be annexed to the Social Security (Finance) Bill, nor deposited at the same time as it is. No violation of the first paragraph of article 47-1 of the Constitution, under which it is for an institutional act to determine the conditions in which Parliament passes the Social Security (Finance) Act.
(2002-463 DC, 12 December 2002, paras 36 and 37, p. 540)

Content and presentation of Social Security (Finance) Acts

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

Provisions directly affecting the financial balance of compulsory basic schemes

Section 23(I) of the Social Security (Finance) Act makes the healthcare establishments modernisation fund responsible for financing management and organisation audits of healthcare establishments and provides that hospital management recommendations will be made on the basis of the results of audits and distributed to establishments. The legislature's intention thereby was to improve the management and organisation of hospitals. The anticipated effects of the audits will significantly affect the general of the healthcare insurance scheme. Section 23(I) is accordingly not out of place in a Social Security (Finance) Act for the purposes of section LO 111-3 (III) of the Social Security Code.
(2002-463 DC, 12 December 2002, para 39, p. 540)

The purpose of section 42 of the Social Security (Finance) Act for 2003 is to delay from 31 December 2003 to 31 December 2006 the deadline for conclusion of "tripartite agreements" provided for by section L 313-12 of the Social and Family Code, only about a tenth of which have been signed. The effect will be to spread over three further years the increase in the burdens borne by the healthcare insurance scheme as a result of medicalisation of establishments accommodating dependent elderly people. Given its impact on the balance of the healthcare insurance scheme in 2003, it is within the proper purview of a Social Security (Finance) Act.
(2002-463 DC, 12 December 2002, para 41, p. 540)

Section 56(IV), (V) and (VI) de la Social Security (Finance) Act for 2003 provides a "convention on objectives and management" for the "occupational accidents and diseases" branch of

the general social security scheme. Given their object and foreseeable effects, these provisions are such as to significantly affect the financial balance of the general scheme.
(2002-463 DC, 12 December 2002, paras 42 and 43, p. 540)

Provisions to improve the monitoring of Social Security (Finance) Acts

The task of the Parliamentary Healthcare Policy Review Office established by section 2 of the Social Security (Finance) Act for 2003 is to inform Parliament of the consequences of public health policy options "to contribute to the monitoring of Social Security (Finance) Acts". Its establishment is not out of place in a Social Security (Finance) Act for the purposes of section LO 111-3(III) of the Social Security Code.
(2002-463 DC, 12 December 2002, para 35, p. 540)

The very purpose of the reports provided for by sections 7 and 31 of the Social Security (Finance) Act for 2003 is to improve Parliamentary review of the application of Social Security (Finance) Acts. The are therefore rightfully in a such an Act by virtue of section LO 111-3(III) of the Social Security Code.
(2002-463 DC, 12 December 2002, paras 36 to 38, p. 540)

Section 56(VII) of the Social Security (Finance) Act for 2003 establishes a supervisory committee for the "occupational accidents and diseases" branch of the general social security scheme, the Chairman and many members of which are Members of Parliament. It improves Parliamentary review of the application of Social Security (Finance) Acts.
(2002-463 DC, 12 December 2002, paras 42 and 44, p. 540)

Inseverable provisions

By excluding the audit reports provided for by section 23(I) of the Social Security (Finance) Act for 2003 from the right to communication established by the Act of 17 July 1978, section 23(II) aims to secure the confidentiality and, consequently, the accuracy and quality of these reports. It is accordingly inseverable from section 23(I) and is rightly placed in the Act referred.
(2002-463 DC, 12 December 2002, para 40, p. 540)

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

Inseverable provisions

Section 56(I) and (III) of the Social Security (Finance) Act for 2003 are inseverable from section 56(II), which is out of place in such an act. Section 56(I), (II) and (III) are unconstitutional.
(2002-463 DC, 12 December 2002, para 45, p. 540)

Miscellaneous

The second paragraph of section 31 of the Social Security (Finance) Act for 2003, which provides that the copy of the report mentioned in the first paragraph is addressed to the supervisory council of the National healthcare insurance fund for employed workers is out of place in a Social Security (Finance) Act.
(2002-463 DC, 12 December 2002, para 38, p. 540)

Section 56(II) of the Social Security (Finance) Act for 2003 provides that members of the Occupational accidents and maladies diseases committee, hitherto selected by the members of the board of administration of the National healthcare insurance fund for employed workers, will henceforth be designated direct by representative professional organisations and trade unions. These provisions, and Section 56(I) and (III), which are inseverable from them, do not have the effect either of directly affecting the financial equilibrium of the general scheme or of improving Parliamentary review of the application of Social Security (Finance) Acts. They are out of place in such an act and must be declared unconstitutional.
(2002-463 DC, 12 December 2002, para 45, p. 540)

Section 28 of the Social Security (Finance) Act for 2003, which allows hospital doctors in private practice to receive their fees "direct" and no longer exclusively "via the hospital management", is out of place in a Social Security (Finance) Act. It is declared unconstitutional.
(2002-463 DC, 12 December 2002, paras 46 and 47, p. 540)

Section 30 of the Social Security (Finance) Act for 2003, which in Chapter II of Title VI of Book I of the Social Security Code, replaces contracts of good practice by contracts of professional practice, is out of place in a Social Security (Finance) Act. It is declared unconstitutional.
(2002-463 DC, 12 December 2002, paras 46 and 47, p. 540)

Section 32 of the Social Security (Finance) Act for 2003, which changes the name of the medical review service of the healthcare insurance scheme and redefines its tasks without changing their substance, is out of place in a Social Security (Finance) Act. It is declared unconstitutional.
(2002-463 DC, 12 December 2002, paras 46 and 47, p. 540)

Accuracy of the Social Security (Finance) Act

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

It is submitted that by "presenting unrealistic forecasts", the sections determining revenue forecasts for each category for each of the compulsory schemes and for the bodies set up to finance them for 2003 and 2002 violate the requirement of accuracy. In particular, the forecasts are said to be based on overstated growth forecasts as they fail to reflect the outturn for the first three quarters of 2002. The argument proceeds from the downward revision of central government revenue forecasts for 2002 in the Finance (Amendment) Bill laid before Parliament, and the decline in the same revenue under an amendment to the Finance Act for 2003 currently being debated.

It is clear from the evidence laid before the Constitutional Council and from the legislative history relating to the Finance Acts that the adjustments made to tax revenue, on a small scale incidentally, are the result of specific trends in certain central government taxes without there being any change in the general economic hypotheses underlying the general forecasts either for 2002 or for 2003. There is no evidence in the information available at the time of presentation of the Bill on which the Act referred was enacted or at the time of its son adoption, given the degree of unreliability inherent in revenue forecasts, that that these forecasts are vitiated by a manifest error.
(2002-463 DC, 12 December 2002, paras 2 to 4, p. 540)

The Government's undertaking to present a Finance (Amendment) Bill in 2003 if necessary is in conformity with the requirement of accuracy and with section LO 111-3(II) of the Social Security Code.
(2002-463 DC, 12 December 2002, para 5, p. 540)

It is alleged that the objectives determined for healthcare expenditure are manifestly underestimated. In particular, the national objective for 2003 cannot be exceeded "in view of the structural causes of the growth in health expenditure". The Act referred provides no measures to restrain this expenditure warranting a substantial departure form the trend in relation to the revised objective for 2002.

The healthcare expenditure objectives were determined in the light of actual expenditure outturns for 2001 and early 2002. This expenditure was forecast for 2002 and 2003 on the basis of the deferred effect of measures already in place, the provisions of this Act and the impact of commitments already made. It is not clear from the information before the Constitutional Council that these forecasts are vitiated by a manifest error.
(2002-463 DC, 12 December 2002, paras 6 to 8, p. 540)

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

The argument that the social revenue forecasts violate the requirement of accuracy proceeds from the downward revision of central government revenue forecasts for 2002 in the Finance

(Amendment) Bill laid before Parliament, and the decline in the same revenue under an amendment to the Finance Act for 2003 currently being debated.

It is clear from the evidence laid before the Constitutional Council and from the legislative history relating to the Finance Acts that the adjustments made to tax revenue, on a small scale incidentally, are the result of specific trends in certain central government taxes without there being any change in the general economic hypotheses underlying the general forecasts either for 2002 or for 2003.
(2002-463 DC, 12 December 2002, paras 3 and 4, p. 540)

GOVERNMENT

STATUS OF GOVERNMENT

Appointment

Appointment of other members of the Government

The appointment of members of the Government has immediate effect. It therefore had effect before the signing of the Decree of 8 May 2002 calling the election, challenged here.
(HAUCHEMAILLE – DÉCLIC, 22 May 2002, para 6, p. 127)

Presentation of the Government's resignation (section 50)

The first paragraph of section 8 and section 50 of the Constitution have neither the object nor the effect of prohibiting the President of the Republic from terminating the term of office of the Prime Minister, outside the situations provided for by section 50 of the Constitution, when the Prime Minister presents the resignation of the Government. The plea that the incoming Prime Minister had no power to sign the Decree of 8 May 2002 calling general elections to the National Assembly is dismissed.
(HAUCHEMAILLE – DÉCLIC, 22 May 2002, paras 4 and 6, p. 127)

POWERS SPECIFIC TO THE GOVERNMENT

No conflict regarding the powers specific to the Government

Section 40 of the Social Modernisation Act calls on the Government, as soon as the Act is published, to organise "consultations with trade unions on the election of employees' representatives to Boards of Directors of general social security schemes and with employers'organisations on the election of employers'representatives".

This provision, which is not strictly mandatory, does not constitute an injunction by the legislature to the Government in breach of the prerogatives conferred on the latter by the Constitution.
(2001-455 DC, 12 January 2002, paras 55 and 56, p. 49)

The Parliamentary vote, in the Finance Act, of maximum amounts for major categories of expenditure and appropriations placed at the disposal of Ministers does not oblige them to spend the entire appropriations opened. Expenditure authorisations do not act as a barrier to the prerogatives enjoyed by the Government under article 20 of the Constitution for the implementation of the Finance Act.
(2002-464 DC, 27 December 2002, para 5, p. 583)

PRIME MINISTER

Legislative initiative

Government Bills

The applicants challenge the fact that the Government, at the second reading of the Social Modernisation Bill in the National Assembly, deposited amendments consisting of additional clauses "more than fourteen of which concern dismissals". They allege that these clauses, which "substantially amend the Bill, creating from scratch a new legal framework for dismissals", should have been presented in a separate Bill.

The plea that article 39 of the Constitution, relating to Bills, has been violated is inoperative where amendments are deposited by the Government before the meeting of the joint committee in the exercise of the right to amend conferred by the first paragraph of article 44 of the Constitution.
(2001-455 DC, 12 January 2002, paras 2 and 4, p. 49)

PRESIDENT OF THE REPUBLIC

ELECTION OF PRESIDENT OF THE REPUBLIC

Pre-election process

Establishment of list of candidates

Challenges before the Constitutional Council

List of candidates at first ballot

It is for the Constitutional Council, when it adopts the list of candidates for the election of the President of the Republic under section 3(I) of the Act of 6 November 1962, to verify the number and validity of the nominations, to check that candidatures are in order and that candidates accept the nomination, to record that the sealed envelope containing the declaration of their assets has been deposited and to receive their undertaking to deposit, if they are elected, a fresh declaration as provided for by that section. The sole purpose of the procedure laid down by section 8 of Decree 2001-213 of 8 March 2001, which confers on any person nominated the right to object to the list of candidates for the presidential election, is to enable applicants who believe they have good grounds for doing so to challenge the decision taken on the basis of the conditions set out above.
(M. CHEMINADE, 7 April 2002, para 1, p. 88; M. LARROUTUROU, 7 April 2002, para 1, p. 92; M. MATAGNE, 7 April 2002, para 1, p. 94)

The complainant submits that he was the target of serious press attacks designed to prevent persons qualified to nominate candidates for the presidential election from nominating him. The circumstances to which he refers are without impact on the regularity of the decision whereby the Constitutional Council adopted the list of candidates for the presidential election. Complaint rejected.
(M. CHEMINADE, 7 April 2002, para 2, p. 88)

The complainant was not nominated. He consequently has no standing to challenge the decision establishing the list of candidates for the presidential election.
(M. HAUCHEMAILLE, 7 April 2002, paras 1 and 2, p. 90; DÉCLIC – HAUCHEMAILLE – BIDALOU, 9 May 2002, para 2, p. 122)

The complainant submits that the main audiovisual media reported inadequately on his candidature and thereby made it difficult for him to obtain the requisite number of nominations. Such circumstances cannot be validly pleaded in support of an application challenging the decision whereby the Constitutional Council adopted the list of candidates for the presidential election. Complaint rejected.
(M. LARROUTUROU, 7 April 2002, para 2, p. 92)

Allegations to the effect that two of the candidates "knowingly violated... the nuclear non-proliferation treaty" and had agreed "to exclude defence matters from the national debate" cannot be validly pleaded in support of an application challenging the decision whereby the Constitutional Council adopted the list of candidates for the presidential election. Complaint rejected.
(M. MATAGNE, 7 April 2002, para 2, p. 94)

Electoral operations

Organisation of the ballot

Decree calling elections

The Decree of 13 March 2002 calling the election of the President of the Republic was issued under the second paragraph of article 7 of the Constitution, which reads: "Balloting shall be begun by a writ of election issued by the Government". It is not a measure implementing the Decree of 14 October 1976. The challenge on grounds that the Decree is illegal is accordingly inoperative.
(M. MEYET, 15 April 2002, para 3, p. 96)

Section 23 of the Decree of 14 October 1976 on voting by French citizens residing abroad provides that "unless otherwise provided by the Minister of Foreign Affairs, polling shall begin at 8 a.m. and close the same day at 6 p.m. (local time)", whereas section 22 of the Decree of 8 March 2001 on the election of the President of the Republic, which is likewise a Decree debated by the Council of Ministers and adopted in the Council of State, provides that: "The polling station opening and closing times shall be determined by the Decree calling the election". Under this latter provision, it was legitimate for section 3 of the Decree of 13 March 2002 calling elections for the President of the Republic, which is an ordinary Decree, to provide that polling must everywhere close no later than 8 p.m.
(M. MEYET, 15 April 2002, para 5, p. 96)

The conditions which enable the Constitutional Council to rule in exceptional circumstances on applications calling into question an election that has not yet taken place are no longer met following this election. The Constitutional Council lacks jurisdiction ratione temporis to hear and determine applications challenging the Decree calling the presidential election.
(DÉCLIC – HAUCHEMAILLE – BIDALOU, 9 May 2002, para 3, p. 122)

Constitutional Council delegates

Observations not acted on

Failure to act on observations made by the magistrate delegated by the Constitutional Council to attend the counting of votes at polling station No 1 in the commune of Cannet-des-Maures (Var), contrary to section L 65 of the Electoral Code. All votes cast at the polling station annulled.
(Declaration of 24 April 2002, Results of first ballot, para 4, p. 102)

Barriers to exercise of functions

The president and assessors at polling station No 27 in the 13th district of Paris endeavoured to prevent the magistrate delegated by the Constitutional Council to monitor electoral operations in situ from exercising the function entrusted to him. Pressures were brought to bear on him and threats were proffered. This constitutes a barrier to the exercise of the Constitutional Council's monitoring function. Moreover the official report transmitted to the departmental counting commission did not record the delegate's observations. All votes cast at the polling station must be annulled.
(Declaration of 24 April 2002, Results of first ballot, para 3, p. 102)

Proceedings during the ballot

Checks on voters'identities

In polling station No 1 in the commune of Bouc-Bel-Air (Bouches-du-Rhône), voters'identities were not checked as required by sections L 62 and R 60 of the Electoral Code. This irregularity persisted despite observations made by one of the candidates'delegate. Given this deliberate and persistent violation of provisions designed to ensure that the ballot proceeds correctly and fairly, all votes cast at the polling station must be annulled.
(Declaration of 24 April 2002, Results of first ballot, para 1, p. 102)

At two polling stations, voters'identities were not checked as required by sections L 62 and R 60 of the Electoral Code. This irregularity persisted despite observations made by the magistrate delegated by the Constitutional Council. All votes cast at the polling station annulled.
(Proclamation du 8 May 2002, Results of election President of the Republic, para 4, p. 114)

Voters'identities were not checked as required by section R 60 of the Electoral Code for communes with more than 5 000 habitants, despite observations made by the magistrate delegated by the Constitutional Council. Moreover, many voters were allowed to vote without entering the booths as required by section L 60 of the Electoral Code. All votes cast at the polling station must be annulled.
(Proclamation of 8 May 2002, Results of election President of the Republic, para 5, p. 114)

Miscellaneous irregularities

The fact that the authority responsible for electoral operations provided voters with a symbolic "decontamination" facility beside the polling station and organised a mock election at which voters were invited to vote for candidates not standing at the second ballot is incompatible with the dignity of the ballot and was liable to violate the secrecy of the vote and voters'freedom. All votes cast at the polling station must be annulled.
(Proclamation of 8 May 2002, Results of election President of the Republic, para 1, p. 114)

Many voters were allowed to vote without entering the booths as required by section L 60 of the Electoral Code. Moreover voters'identities were not checked as required by section R 60 of the Electoral Code for communes with more than 5 000 habitants, despite observations made by the magistrate delegated by the Constitutional Council. All votes cast at the polling station must be annulled.
(Proclamation of 8 May 2002, Results of election President of the Republic, para 5, p. 114)

Sorting and counting

Counting procedures

At polling station No 1 in the commune of Cannet-des-Maures (Var), votes were not counted by the procedures determined by section L 65 of the Electoral Code. This irregularity, which in the circumstances was liable to assist fraud, persisted despite observations made by the magistrate delegated by the Constitutional Council. Given this deliberate and persistent violation of provisions designed to ensure that the ballot proceeds correctly and fairly, all votes cast at the polling station must be annulled.
(Declaration of 24 April 2002, Results of first ballot, para 4, p. 102)

At a polling station, votes were not counted by the procedures determined by section L 65 of the Electoral Code. This irregularity was, in the circumstances, liable to prompt mistakes and assist fraud. All votes cast at the polling station must be annulled.
(Proclamation of 8 May 2002, Results of election President of the Republic, para 3, p. 114)

Other anomalies

At polling station No 11 in the commune of Saint-Herblain (Loire-Atlantique), the departmental counting commission observed serious unexplained discrepancies between the figures recorded in the official report on the results and those on the tally sheets, in particular as between the votes cast for the various candidates and the total votes cast. As the Constitutional Council cannot exercise its function of monitoring the regularity of electoral operations, all votes cast at the polling station must be annulled.
(Declaration of 24 April 2002, Results of first ballot, para 2, p. 102)

The departmental counting commission observed serious unexplained discrepancies between the number of ballot papers declared blank or void in the official reports from two polling stations and the blank or void ballot papers attached to those reports. Moreover, proper grounds were not given for cancelling twenty-two ballot papers in one polling station and nineteen in the other. The conditions in which blank and void ballot papers were attached to the reports were contrary to section L 66 of the Electoral Code. All votes cast at the polling station must be annulled.
(Proclamation of 8 May 2002, Results of election President of the Republic, para 2, p. 114)

Irregularities relating to official reports and items annexed

The official report for polling station No 27 of the thirteenth district of Paris, containing written observations by the delegate of the Constitutional Council concerning attempts to impede his exercise of his function, was not sent to the departmental counting commission. All votes cast at the polling station must be annulled.
(Declaration of 24 April 2002, Results of first ballot, para 3, p. 102)

Litigation

Redress procedure

Admissibility of complaints by voters

By section 30 of the Decree of 8 March 2001, the right to refer matters direct to the Constitutional Council is enjoyed solely by candidates and the representative of the State. A voter may challenge operations only by having his complaint recorded in the official report of electoral operations. Complaints addressed direct to the Constitutional Council are accordingly not admissible.
(Declaration of 24 April 2002, Results of first ballot, visas, p. 102)

Complaints registered by voters in the official report of electoral operations calling into question the electoral operations overall are admissible (sol. impl.). The Constitutional Council has examined them and concluded that the facts set out, even if proven, are not such as to cast doubt either on the regularity or on the fairness of the ballot.
(Proclamation of 8 May 2002, Results of election President of the Republic, visas, p. 114)

Campaign accounts

Contents of accounts

Expenditure

Non-reimbursable expenditure

Cost of "second ballot drink" cannot be regarded as incurred in the candidate's election campaign, which had already finished at that stage.
(Decision on the campaign accounts of Mr Alain MADELIN, 26 September 2002, para 4, p. 325)

Deposit on surcharge for use of an aircraft.
(Decision on the campaign accounts of Mr François BAYROU, 26 September 2002, para 4, p. 242)

Excessive dress costs.
(Decision on the campaign accounts of Mr François BAYROU, 26 September 2002, para 5, p. 242)

Expenditure on a meeting organised on 21 April 2002 after the first ballot cannot be regarded as incurred in the candidate's election campaign, which had already finished at that stage.
(Decision on the campaign accounts of Mr François BAYROU, 26 September 2002, para 6, p. 242)

Cost of buying equipment not resold. Amounts modified on the basis of depreciation.
(Decision on the campaign accounts of Mr François BAYROU, 26 September 2002, para 7, p. 242)

Expenditure on a reception organised on 5 May 2002 on the occasion of the second ballot and other expenditure incurred after that date cannot be regarded as incurred in the candidate's election campaign, which had already finished at that stage.
(Decision on the campaign accounts of Mr Jean-Marie LE PEN, 26 September 2002, para 6, p. 260)

Expenditure for which no vouchers are presented.
(Decision on the campaign accounts of Mr Jean-Marie LE PEN, 26 September 2002, para 7, p. 260)

Communication expenses of the candidate's wife and miscellaneous expenses, notably dress costs, for her and one of her daughters.
(Decision on the campaign accounts of Mr Jean-Marie LE PEN, 26 September 2002, para 8, p. 260)

Purchase of a work of art and subsidy for a cultural association.
(Decision on the campaign accounts of Mr Jean-Marie LE PEN, 26 September 2002, para 9, p. 260)

Foreign travel expenditure whereas section 10 of the Institutional Act of 31 January 1976 prohibits campaign advertising abroad.
(Decision on the campaign accounts of Mr Jean-Marie LE PEN, 26 September 2002, para 10, p. 260; Decision on the campaign accounts of Mr Jacques CHIRAC, 26 September 2002, para 8, p. 252; Decision on the campaign accounts of Mr Jean-Pierre CHEVENEMENT, 26 September 2002, para 4, p. 317; Decision on the campaign accounts of Mr Noël MAMERE, 26 September 2002, para 5, p. 285)

Expenditure on receptions organised after the first ballot cannot be regarded as incurred in the candidate's election campaign, which had already finished at that stage.
(Decision on the campaign accounts of Mr Lionel JOSPIN, 26 September 2002, para 4, p. 293)

Celebration organised by a political party involving only debate on general policy issues and a concert and not falling within the candidate's election campaign.
(Decision on the campaign accounts of Mr Olivier BESANCENOT, 26 September 2002, para 4, p. 339)

Part of the content of miscellaneous pamphlets and publications is general information and cannot be directly related to the election campaign. Excess costs deducted.
(Decision on the campaign accounts of Mr Olivier BESANCENOT, 26 September 2002, para 5, p. 339)

Travel not related to the election campaign.
(Decision on the campaign accounts of Mr Olivier BESANCENOT, 26 September 2002, para 6, p. 339)

Expenditure on a meeting organised on 21 April 2002 after the first ballot cannot be regarded as incurred in the candidate's election campaign, which had already finished at that stage.
(Decision on the campaign accounts of Mr Olivier BESANCENOT, 26 September 2002, para 7, p. 339)

Invoice concerning the publication of an issue of a magazine of which only a third of a page is devoted to the election campaign. The amount of expenditure paid by the financial agent must be reduced accordingly.
(Decision on the campaign accounts of Mr Robert HUE, 26 September 2002, para 5, p. 309)

Invoice concerning the publication of a brochure relating to a national subscription for a political party.
(Decision on the campaign accounts of Mr Robert HUE, 26 September 2002, para 6, p. 309)

Cost of buying computer equipment not resold. Amounts modified on the basis of depreciation.
(Decision on the campaign accounts of Mr Robert HUE, 26 September 2002, para 7, p. 309)

Three invoices for lawyer's fees for unspecified services.
(Decision on the campaign accounts of Ms Christiane TAUBIRA, 26 September 2002, para 4, p. 268)

Fees for impounding the candidate's car.
(Decision on the campaign accounts of Ms Christiane TAUBIRA, 26 September 2002, para 5, p. 268)

Part of the expenditure incurred for the candidate's election campaign was paid direct by a political party and was not reimbursed by the financial agent before the campaign accounts were deposited. This expenditure must be regarded as finally borne by the party and classified under "support in kind from political parties", and must be deducted from expenditure declared as paid by the financial agent.
(Decision on the campaign accounts of Ms Christine BOUTIN, 26 September 2002, para 4, p. 301)

Costs incurred in sending two letters to mayors on 29 April and 22 May 2002 cannot be regarded as incurred in the candidate's election campaign, which had already finished at that stage.
(Decision on the campaign accounts of Ms Christine BOUTIN, 26 September 2002, para 5, p. 301)

Invoices of which originals not produced.
(Decision on the campaign accounts of Mr Jacques CHIRAC, 26 September 2002, para 4, p. 252)

Hotel bills for staff responsible for protecting the President of the Republic.
(Decision on the campaign accounts of Mr Jacques CHIRAC, 26 September 2002, para 6, p. 252)

Equipment not used.
(Decision on the campaign accounts of Mr Jacques CHIRAC, 26 September 2002, para 7, p. 252)

Expenditure on receptions organised on the evening after the first ballot cannot be regarded as incurred in the candidate's election campaign, which had already finished at that stage.
(Decision on the campaign accounts of Mr Jean-Pierre CHEVENEMENT, 26 September 2002, para 5, p. 317)

Expenditure on purchasing works written by authors other than the candidate.
(Decision on the campaign accounts of Mr Jean-Pierre CHEVENEMENT, 26 September 2002, para 7, p. 317)

The fact that two employees on short-term contracts were kept on from 22 April to 21 June 2002 to establish the campaign accounts can be accepted, but there has to be a deduction from personnel costs for the salaries, excluding precarity premiums and holiday bonuses, of two other employees whose continued employment during that period was not justified. The same applies for that period to the rent paid to a political party for sub-letting campaign headquarters.
(Decision on the campaign accounts of Mr Noël MAMERE, 26 September 2002, para 4, p. 285)

Benefits in kind from political parties

Supplementary expenditure covered by a political party for distribution of its monthly review devoted in part to promoting a candidate or his election programme.
(Decision on the campaign accounts of Mr Jean SAINT-JOSSE, 26 September 2002, paras 4 and 5, p. 276)

Cost of two public meetings organised by a political party campaigning for the candidate's election. Part of the corresponding expenditure must be added to the expenditure side of the campaign accounts and to the revenue side as support received from a political party.
(Decision on the campaign accounts of Mr Robert HUE, 26 September 2002, para 4, p. 309)

Costs of insurance for campaign headquarters and of provision of computer equipment covered by a political party, and miscellaneous expenditure borne by that party when the candidate travelled, must be added to the expenditure side and, to be in order, to the revenue side of the campaign accounts, as support received from a political party.
(Decision on the campaign accounts of Ms Christiane TAUBIRA, 26 September 2002, para 7, p. 268)

Several public meetings were devoted substantially to the establishment of a political party but partly to supporting the candidate's election. Part of the corresponding expenditure must be added to the expenditure side of the campaign accounts and to the revenue side as support received from a political party.
(Decision on the campaign accounts of Mr Jacques CHIRAC, 26 September 2002, para 5, p. 252)

The premises and facilities of the departmental federations of a political party must be regarded as having been used for the election campaign as soon as the candidate declared his candidature, this being the date from which other electoral expenditure was accordingly recorded in the campaign accounts, with the exception of a few expenditure items recorded at an earlier date. The cost corresponding to this use must be added to the expenditure side of the campaign accounts and to the revenue side as support received from a political party.
(Decision on the campaign accounts of Mr Jacques CHIRAC, 26 September 2002, para 9, p. 252)

Other benefits in kind

The accounts include promotion costs incurred by a publishing house to which the candidate had entrusted the publication of a work that was electoral in nature and, among the expenditure incurred by the financial agent, the cost of acquiring copies of the same work. The amount recorded in the accounts by way of publisher's costs must include not only promotion costs but also the costs of producing the part of the work that was not covered by the financing association. This cost is evaluated and entered as a benefit in kind on the expenditure side and, to be in order, on the revenue side of the accounts.
(Decision on the campaign accounts of Mr François BAYROU, 26 September 2002, para 9, p. 242)

By reason of its content a work by the candidate, published in January 2002, must be regarded as directly related to the candidate's election campaign. The cost of publishing and marketing it must be regarded as expenditure incurred in support of the candidate's election. This cost is evaluated and entered as a benefit in kind on the revenue side of the accounts.
(Decision on the campaign accounts of Mr Olivier BESANCENOT, 26 September 2002, para 9, p. 339)

By reason of its content a work by the candidate, published in January 2002, must be regarded as directly related to the candidate's election campaign.. The cost of it must be regarded as expenditure incurred in support of his election. As the financial agent acquired copies and resold them, the cost of the acquisition and the proceeds of the sales were rightly entered as expenditure and revenue respectively on the sale of promotional items. But the financial agents accounts do not fully record the expenditure on copies of the work not acquired by the agent. The amount must be added to the amounts entered as expenditure and revenue in the campaign accounts as "other benefits in kind".
(Decision on the campaign accounts of Mr Jean-Pierre CHEVENEMENT, 26 September 2002, para 6, p. 317)

Expenses not required to be recorded in the account

A substantial portion of two issues of a political party's monthly review is devoted to promoting a candidate or his election programme, but the rest is general information. The rest is deducted from the "benefits in kind from a political party".
(Decision on the campaign accounts of Mr Jean SAINT-JOSSE, 26 September 2002, paras 4 and 5, p. 276)

The accounts mention, among "other benefits in kind", an amount corresponding to the cost for a publisher of publishing an electoral work by the candidate and, under the expenditure incurred by the campaign financing association, an amount corresponding to the association's acquisition of 253 copies of the same work. The cost of producing the copies, which is thus entered in the accounts twice, must be deducted from "other benefits in kind".
(Decision on the campaign accounts of Ms Corinne LEPAGE, 26 September 2002, para 4, p. 227)

Cost of reissuing two volumes of a novel written by the candidate and cost of promoting them (€300) incurred by the publisher. Deduction from "other benefits in kind".
(Decision on the campaign accounts of Mr Noël MAMERE, 26 September 2002, para 7, p. 285)

Revenue

Personal contribution

A contribution corresponding in reality to a loan from a political party to the candidate must be entered as a personal contribution from the candidate.
(Decision on the campaign accounts of Mr Jean SAINT-JOSSE, 26 September 2002, para 8, p. 276)

Under the first two paragraphs of section 3 of the Act of 6 November 1962, the advance made by central government on the flat-rate reimbursement of campaign expenditure must be entered in the accounts as contributed by the candidate to the financial agent and not as other revenue.
(Decision on the campaign accounts of Ms Arlette LAGUILLER, 26 September 2002, para 5, p. 332; Decision on the campaign accounts of Ms Christine BOUTIN, 26 September 2002, paras 6 and 7, p. 301; Decision on the campaign accounts of Ms Corinne LEPAGE, 26 September 2002, para 6, p. 227)

Rejection of accounts

The accounts of a candidate who received from a body corporate other than a political party benefits prohibited by section L 52-8 of the Electoral Code must be rejected. A commune bore

the full cost of a sending out two sets of approximately 62 000 letters to elected officials asking them to publicly support his candidature. From June 2001 to April 2002 the candidate, whose accounts record no personnel costs, had the services of a staff member paid by the same commune, whose involvement in the election campaign took part substantially during his normal working hours.
(Decision on the campaign accounts of Mr Bruno MEGRET, 26 September 2002, paras 1 to 3, p. 221)

Reimbursement by central government

In this case the two conditions laid down by the final paragraph of section V of the Act of 6 November 1962 enabling the Constitutional Council to award at least part of the flat-rate central government reimbursement to a candidate whose accounts have been rejected – violation of the provisions concerned was not intentional and was on a small scale – are not met. The candidate must accordingly repay the advance of €153 000 that he received.
(Decision on the campaign accounts of Mr Bruno MEGRET, 26 September 2002, para 4, p. 221)

The maximum flat-rate reimbursement to which a candidate who obtained at least 5 % of the votes cast at the first ballot is entitled is one twentieth of the maximum amount of campaign expenditure allowed for candidates at the first ballot, or €739 800. But this reimbursement can exceed neither the amount of campaign expenditure from the financial agent's account nor the amount of the personal contribution. It is confined in this case to the amount of the personal contribution.
(Decision on the campaign accounts of Mr Alain MADELIN, 26 September 2002, paras 5 and 6, p. 325; Decision on the campaign accounts of Ms Christine BOUTIN, 26 September 2002, paras 10 and 11, p. 301; Decision on the campaign accounts of Ms Corinne LEPAGE, 26 September 2002, paras 9 and 10, p. 227)

It is confined in this case to the amount of the campaign expenditure.
(Decision on the campaign accounts of Mr Daniel GLUCKSTEIN, 26 September 2002, paras 6 and 7, p. 235; Decision on the campaign accounts of Mr Jean SAINT-JOSSE, 26 September 2002, paras 10 and 11, p. 276; Decision on the campaign accounts of Mr Olivier BESANCENOT, 26 September 2002, paras 12 and 13, p. 339)

In this case, this reimbursement does not exceed neither the amount of campaign expenditure from the financial agent's account nor the amount of the personal contribution.
(Decision on the campaign accounts of Mr Robert HUE, 26 September 2002, paras 11 and 12, p. 309; Decision on the campaign accounts of Ms Christiane TAUBIRA, 26 September 2002, paras 10 and 11, p. 268)

The maximum flat-rate reimbursement to which a candidate who obtained at least 5 % of the votes cast at the first ballot is entitled is half the maximum amount of campaign expenditure allowed for candidates at the first ballot, or €7 398 000. But this reimbursement can exceed neither the amount of campaign expenditure from the financial agent's account nor the amount of the personal contribution. It is confined in this case to the amount of the personal contribution.
(Decision on the campaign accounts of Ms Arlette LAGUILLER, 26 September 2002, paras 6 and 7, p. 332)

It is confined in this case to the amount of the campaign expenditure.
(Decision on the campaign accounts of Mr Noël MAMERE, 26 September 2002, paras 10 and 11, p. 285)

The central government reimbursement must be set at this amount provided it exceeds neither the amount of campaign expenditure from the financial agent's account nor the amount of the personal contribution.
(Decision on the campaign accounts of Mr François BAYROU, 26 September 2002, paras 16 and 17, p. 242; Decision on the campaign accounts of Mr Lionel JOSPIN, 26 September 2002, paras 8 and 9, p. 293; Decision on the campaign accounts of Mr Jean-Pierre CHEVENEMENT, 26 September 2002, paras 10 and 11, p. 317)

The maximum flat-rate reimbursement to which a candidate who obtained at least 5 % of the votes cast at the first ballot is entitled is half the maximum amount of campaign expenditure allowed for candidates at the second ballot, or €9 882 000. But this reimbursement can exceed neither the amount of campaign expenditure from the financial agent's account not the amount of the personal contribution.
(Decision on the campaign accounts of Mr Jean-Marie LE PEN, 26 September 2002, paras 13 and 14, p. 260; Decision on the campaign accounts of Mr Jacques CHIRAC, 26 September 2002, paras 12 and 13, p. 252)

Devolution of excesses if any to the Fondation de France

Under the eighth paragraph of section 3(II) of the Act of 6 November 1962, the positive balance of the accounts of the financial agent, as recorded in the summary table, devolves to the *Fondation de France*.
(Decision on the campaign accounts of Mr Alain MADELIN, 26 September 2002, para 7, p. 325; Decision on the campaign accounts of Mr Daniel GLUCKSTEIN, 26 September 2002, para 8, p. 235; Decision on the campaign accounts of Mr Jean SAINT-JOSSE, 26 September 2002, para 12, p. 276; Decision on the campaign accounts of Mr Olivier BESANCENOT, 26 September 2002, para 14, p. 339; Decision on the campaign accounts of Ms Christiane TAUBIRA, 26 September 2002, para 12, p. 268; Decision on the campaign accounts of Ms Christine BOUTIN, 26 September 2002, para 12, p. 301; Decision on the campaign accounts of Ms Corinne LEPAGE, 26 September 2002, para 11, p. 227)

TERRITORY OF THE REPUBLIC – TERRITORIAL UNITS

DEFINITION OF TERRITORIAL UNITS

Units created by statute

Territorial unit of Corsica

Although the new section L 4424-1 of the General Code of Territorial Units does not state that the Corsican Assembly conducts the affairs of the territorial unit of Corsica alone, it cannot be interpreted in any other way. It follows that it does not subject the communes and departments of Corsica to the authority of a superior territorial unit.
(2001-454 DC, 17 January 2002, paras 6 and 7, p. 70)

SELF–GOVERNMENT OF TERRITORIAL UNITS

Principle

Territorial unit of Corsica

The new section L 4424-2(I) of the General Code of Territorial Units merely specifies the procedure whereby the Corsican Assembly may present propositions for the amendment or adaptation of regulatory provisions by the relevant authorities of the State. It does not, therefore, in itself, transfer to this new body any component of the power to make regulations.
(2001-454 DC, 17 January 2002, paras 8 and 9, p. 70)

The new section L 4424-2(II) of the General Code of Territorial Units must be interpreted as restating the rule that the power to make regulations enjoyed by a territorial unit subject to compliance with legislation and regulations cannot be exercised outside the scope of the powers conferred on it by statute. It has neither the object nor the effect of constraining the power to make regulations for the implementation of statutes conferred by article 21 of the Constitution on the Prime Minister subject to the powers conferred on the President of the Republic by article 13 of the Constitution.
(2001-454 DC, 17 January 2002, paras 10 to 15, p. 70)

Sections 9, 12, 17, 19, 24, 25, 26, 28 and 43 of the Corsica Act transfer to the territorial unit of Corsica only limited powers in matters that are not for statute. They define their scope, rules for their exercise and the bodies responsible with precision, in compliance with the rule in article 34 of the Constitution. These powers will have to be exercised in compliance with

constitutional rules and principles and with statutes and regulations from which the legislature has not explicitly authorised exceptions. None of the provisions challenged can be regarded as violating the indivisibility of the Republic, the integrity of the territory or national sovereignty; they do not affect the fundamental principles of the self-government of territorial units or any of the matters determined by article 34 of the Constitution to be matters for statute. In particular none of them violates the powers conferred on the communes and departments or establishes a power of supervision of one territorial unit over another; given the geographic and economic characteristics of Corsica, its special status within the Republic and the fact that none of the powers thus conferred affects the essential conditions for giving effect to public freedoms, the differences of treatment generated by these provisions between persons residing in Corsica and persons residing elsewhere in France would not constitute violations of the principle of equality. It follows from the foregoing that the material provisions do not in whole or in part violate article 6 of the Declaration of 1789 or articles 20, 21, 34 et 72 of the Constitution.
(2001-454 DC, 17 January 2002, paras 28 to 30, p. 70)

Resources and burdens of territorial units

Section 27 of the Act referred abolishes the licence duty aid by drinks outlets. To offset this, section 27(III) increases for 2003 the balance of the public supply fund to be spread over the urban solidarity fund and the rural solidarity fund.

Under article 72 of the Constitution, territorial units "shall be self-governing through elected councils and in the manner provided by statute". By article 34 it is for the legislature to determine the fundamental principles of the self-government of territorial units, their powers and their resources, and the base, rates and methods of collection of taxes of all types. But the rules laid down by statute on the basis of these provisions cannot have the effect of limiting the tax resources of territorial units to such an extent as to restrict their self-government.

The abolition of the licence duty for drinks outlets by the Act referred meets an objective of indirect tax simplification. Depending on the size of the commune and the category of licence, the duty varies between €3.8 and €306. Given the small amounts involved, by establishing a comprehensive compensation scheme for the communes, the legislature has not violated equality between communes.
(2002-464 DC, 27 December 2002, paras 39, 43 to 45, p. 583)

ORGANISATION OF TERRITORIAL UNITS

Territorial units of the Republic

Territorial unit of Corsica

Compliance with article 72 of the Constitution

The new section L 4424-2(II) of the General Code of Territorial Units must be interpreted as restating the rule that the power to make regulations enjoyed by a territorial unit subject to compliance with legislation and regulations cannot be exercised outside the scope of the powers conferred on it by statute. It has neither the object nor the effect of constraining the power to make regulations for the implementation of statutes conferred by article 21 of the Constitution on the Prime Minister subject to the powers conferred on the President of the Republic by article 13 of the Constitution.
(2001-454 DC, 17 January 2002, paras 10 to 15, p. 70)

Article 21 of the Constitution provides: "The Prime Minister... ensures the implementation of legislation. Subject to article 13, he shall have power to make regulations..."; but article 72 provides: "The territorial units of the Republic... shall be self-governing through elected councils and in the manner provided by statute". These provisions enable the legislature to

empower a certain category of territorial units, within the limits of the powers conferred on them, to lay down certain rules for the implementation of a statute. But the principle of self-government of territorial units cannot have the effect that the fundamental conditions for the exercise of public freedoms and consequently of the guarantees attaching to them will depend on decisions of territorial units and will therefore not be the same throughout the Republic.

The second and third paragraphs of section L 4424-2(II) merely specify the procedure to be followed and the conditions to be complied with by the territorial unit of Corsica when asking the legislature to confer on it the power to determine rules for the application of a statute where it is necessary to adapt the provisions of national regulations to the specific circumstances of the island. In particular, they state that the request for conferment of powers can concern only such powers as are conferred on this territorial unit by the legislative part of the General Code of Territorial Units. They accordingly exclude the possibility of such a request where the adaptation sought is such as to affect the exercise of an individual freedom or a fundamental right. They are accordingly not contrary to articles 21, 34 and 72 of the Constitution or to the principle of equality before the law.
(2001-454 DC, 17 January 2002, paras 10 to 15, p. 70)

Definition of powers

Sections 9, 12, 17, 19, 24, 25, 26, 28 and 43 of the Corsica Act transfer to the territorial unit of Corsica only limited powers in matters that are not for statute. They define their scope, rules for their exercise and the bodies responsible with precision, in compliance with the rule in article 34 of the Constitution. These powers will have to be exercised in compliance with constitutional rules and principles and with statutes and regulations from which the legislature has not explicitly authorised exceptions. None of the provisions challenged can be regarded as violating the indivisibility of the Republic, the integrity of the territory or national sovereignty; they do not affect the fundamental principles of the self-government of territorial units or any of the matters determined by article 34 of the Constitution to be matters for statute. In particular none of them violates the powers conferred on the communes and departments or establishes a power of supervision of one territorial unit over another; given the geographic and economic characteristics of Corsica, its special status within the Republic and the fact that none of the powers thus conferred affects the essential conditions for giving effect to public freedoms, the differences of treatment generated by these provisions between persons residing in Corsica and persons residing elsewhere in France would not constitute violations of the principle of equality. It follows from the foregoing that the material provisions do not in whole or in part violate article 6 of the Declaration of 1789 or articles 20, 21, 34 et 72 of the Constitution.
(2001-454 DC, 17 January 2002, paras 28 to 30, p. 70)

Devolution to the Corsican Assembly of a power to make proposals

The new section L 4424-2(III) of the General Code of Territorial Units merely specifies the procedure whereby the Corsican Assembly may present propositions for the amendment or adaptation of legislation applicable to Corsica. It does not, therefore, in itself, transfer to this new body any matter that is to be governed by statute.
(2001-454 DC, 17 January 2002, paras 16 and 17, p. 70)

Insertion of the Corsican language and culture in the school curriculum

The teaching of the Corsican language is provided for "during normal school hours in pre-primary and primary classes", but this does not make it compulsory for pupils or for teachers; nor can the effect be to release pupils from the rights and obligations applicable to all users of establishments providing or associated with the public education service. It follows that, if the teaching of the Corsican language is optional as a matter of principle and in practice, section 7 is not contrary to the principle of equality or to any other constitutional principle or rule.
(2001-454 DC, 17 January 2002, paras 22 to 25, p. 70)

INDEX OF ANALYTICAL ENTRIES

A – B

C – D

E – F

G – H

I – J

L – M – N

O – P

Q – R

S – T

U – V

GLOSSARY

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.

Fondation de France: An institution charged with receiving, administering and redistributing donations made to 532 'sheltered'foundations recognized as promoting the public interest.

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).

Tribunal correctionnel: Formation of the *Tribunal de Grande instance* with jurisdiction in matters of serious criminal offences.

Tribunal d'instance: Court consisting of a judge sitting alone, generally having territorial jurisdiction in a judicial district (*arrondissement*).

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

Tribunal de police: Formation of the *Tribunal d'instance* with jurisdiction in matters of minor criminal offences.