ANALYTICAL SYNOPSIS 2003

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 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 Council of State (*Conseil d'Etat*) ;

Cass – Judgement given by the Court of Cassation ;

ECJ – Judgment given by the Court of Justice of the European Communities.

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

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PARLIAMENTARY ASSEMBLIES

RULES APPLYING TO MEMBERS

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Departments of Metropolitan France

The combined provisions of article 6 of the Declaration of Human and Civic Rights of 1789 and articles 3 and 24 of the Constitution require the legislature to modify the distribution of seats of Senators between the departments in line with trends in the population of the territorial units represented by the Senate.

To modify the distribution of seats of Senators between the departments in Table No 6 annexed to the legislative part of the Electoral Code, the legislature has opted for a system of distribution by tranches, with one Senator up to 150 000 habitants plus one additional Senator for each tranche or fraction of a tranche of 250 000 inhabitants. The application of this system leaves a number of demographic disparities untouched, but even so the changes made by the Act referred substantially reduce the former inequalities in representation.

By leaving the departments of Creuse and Paris with the same representation as before, the legislature has departed from the calculation procedure that it had itself determined. But, however regrettable that might be, the derogation, affecting four seats, does not violate the principle of equality of voting rights to such an extent as to make the Act referred unconstitutional.

Given the role conferred on the Senate by article 24 of the Constitution, the new distribution of seats is not unconstitutional.
(2003-475 DC, 24 July 2003, paras 2, 3, 5 to 8, p. 400)

The Institutional Act reforming the Senate gradually raises the number of Senators elected in the departments from 304 to 326 between 2004 and 2010. The total number of Senators will consequently rise from 321 to 346.

The purpose of the increase is to reduce the disparities in representation between the departments. The objective could have been attained without increasing the number of seats, but the increase is not in itself contrary to any constitutional rule or principle.
(2003-476 DC, 24 July 2003, paras 7 and 8, p. 397)

Term of office of Senators

Section 1 of the Institutional Act reforming the Senate, which reduces from nine to six years the term of office of Senators under section LO 275 of the Electoral Code, is not unconstitutional.
(2003-476 DC, 24 July 2003, paras 6 and 9, p. 397)

Eligibility

Ineligibility because of campaign accounts

Having rejected a Member of Parliament's campaign accounts, the Constitutional Council declares under section L 136-1 that he is ineligible for one year running from the date of its decision and removes him from office.
(2002-2981, 30 January 2003, AN, Eure-et-Loir, Constituency 3, para 5, p. 100; 2002-3332, 27 February 2003, AN, Martinique, Constituency 3, paras 6 and 7, p. 202)

ORGANISATION OF PARLIAMENTARY ASSEMBLIES

Bodies of the Assemblies

Bureau

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The provision of the Standing Orders of the National Assembly empowering the Bureau to determine the conditions in which personalities might be allowed to address the Assembly at one of its sittings without a vote being taken has no impact on the rules governing agendas and is contrary neither to article 48 nor to any other provision of the Constitution.
(2003-470 DC, 9 April 2003, para 1, p. 359)

PARLIAMENTARY PROCEEDINGS

Sessions

Determining sitting days and times

Provisions amending the National Assembly's Standing Orders to delay by thirty minutes the beginning of the morning sitting, the end of the afternoon sitting and the beginning of the evening sitting were adopted in compliance with articles 28 and 48 of the Constitution and are not contrary to any other constitutional provision.
(2003-470 DC, 9 April 2003, para 3, p. 359)

Agenda — proceedings

Priority agenda

It is not for the legislature to impose the organisation of a debate in public session, as such an obligation can impede the prerogatives that the Government or each of the Assemblies, in their respective areas, enjoy under Article 48 of the Constitution to determine the agenda.
(2003-484 DC, 20 November 2003, para 100, p. 438)

Sitting reserved for an agenda set by the Assembly

It is legitimate for a parliamentary assembly, in its standing orders, to determine the procedure for examination, discussion and voting on instruments reflecting the specific features of certain procedures. But the practical rules adopted must be in conformity with the constitutional rules applicable to the legislative procedure. In particular, they must respect both the prerogatives enjoyed by the Government in that procedure and the rights of members of the relevant Assembly.

The reduction from one and a half hours to fifteen minutes, absent a decision to the contrary by the Conference of Presidents, in the time allowed for speeches in support of an objection of inadmissibility at the monthly sitting on parliament's initiative is not unconstitutional, since members of the National Assembly retain the possibility of challenging the constitutionality of provisions of the instrument.

The preliminary question is not founded on constitutional rules. The prohibition on presenting a preliminary question at the monthly sitting on parliament's initiative is not unconstitutional as other procedures are available to enable members of parliament to oppose the instrument being debated in its entirety.

A motion referring a matter back to a committee is not founded on constitutional rules. The reduction from one and a half hours to fifteen minutes, absent a decision to the contrary by the Conference of Presidents, of the time allowed for speeches in support of an objection of inadmissibility at the monthly sitting on parliament's initiative is not unconstitutional.
(2003-470 DC, 9 April 2003, paras 8 to 12, p. 359)

It is not for the legislature to impose the organisation of a debate in public session, as such an obligation can impede the prerogatives that the Government or each of the Assemblies, in their respective areas, enjoy under Article 48 of the Constitution to determine the agenda.
(2003-484 DC, 20 November 2003, para 100, p. 438)

Morning set aside for committee business

Provisions amending the Standing Orders of the National Assembly to set Wednesday mornings aside for committee business were adopted in compliance with articles 28 and 48 of the Constitution and are not contrary to any other constitutional provision.
(2003-470 DC, 9 April 2003, para 3, p. 359)

Exercise of voting rights — voting techniques

Voting in public

Neither the provision of the Standing Orders of the National Assembly permitting the Conference of Presidents to cause voting in public to be organised in rooms adjoining the debating chamber when the Constitution requires a qualified majority or the Government is facing a vote of confidence, nor the provision whereby in such cases the duration of the voting is to be determined by the Conference of Presidents is unconstitutional.
(2003-470 DC, 9 April 2003, para 4, p. 359)

LEGISLATIVE PROCEDURE

Right to initiate legislation — Review of admissibility

Right to initiate legislation

Consultation of Council of State on Government Bills

The Council of Ministers discusses Bills, and has the power to amend their content, but this is conditional on consultation of the Council of State, as demanded by the Constitution. Consequently, all questions arising from the text adopted by the Council of ministers must have been submitted to the Council of State when it was consulted.

In the present case, by substituting a threshold of 10 % of registered voters for the threshold of 10 % of votes cast for eligibility for the second ballot at regional elections, provided for by the original draft Bill submitted to the Council of State, the Government altered the nature of the question put to the Council of State. This threshold of 10 % of registered voters was never mentioned during the consultation of the Council of State's Standing Committee. The applicants are accordingly right to submit that the Bill was enacted by an irregular procedure. The relevant provisions are unconstitutional.
(2003-468 DC, 3 April 2003, paras 5 to 9, p. 325)

Bills to be presented first to the Senate (second paragraph of article 39)

Bill with principal purpose of organising territorial units

Condition met

Given its purpose, which is to specify the conditions in which decision-making procedures regarding matters within the jurisdiction of territorial units are organised, the Institutional Bill

presented under the second paragraph of article 72-1 of the Constitution relating to the local referendum was to be, and was, presented first to the Senate, under the second paragraph of article 39 of the Constitution, which reads: "... bills having the primary purpose of organising territorial units ... shall be presented in the first instance in the Senate".
(2003-482 DC, 30 July 2003, para 2, p. 414)

Condition not met

Given its purpose, which is to try out new provisions locally with a view to their possible incorporation into national legislation, the Institutional Bill presented under the fourth paragraph of article 72 of the Constitution relating to experimentation by territorial units is not within the definition of the second paragraph of article 39 of the Constitution, which reads: "... bills having the primary purpose of organising territorial units ... shall be presented in the first instance in the Senate".
(2003-478 DC, 30 July 2003, para 2, p. 406)

Procedural motions

General

It is legitimate for a parliamentary assembly, in its standing orders, to determine the procedure for examination, discussion and voting on instruments reflecting the specific features of certain procedures. But the practical rules adopted must be in conformity with the constitutional rules applicable to the legislative procedure. In particular, they must respect both the prerogatives enjoyed by the Government in that procedure and the rights of members of the relevant Assembly.
(2003-470 DC, 9 April 2003, paras 8 and 9, p. 359; cf. 90-278 DC, 7 November 1990, paras 6 and 7, p. 79)

Preliminary question

The purpose of the preliminary question under Rule 91(4) of the Standing Orders of the National Assembly is "closing debate". The procedure is not founded on constitutional rules. The prohibition on presenting a prior question at the monthly sitting on parliament's initiative is not unconstitutional as other procedures are available to enable members of parliament to oppose the instrument being debated in its entirety.
(2003-470 DC, 9 April 2003, para 11, p. 359)

Objection of inadmissibility

The purpose of the objection of inadmissibility under Rule 91(4) of the Standing Orders of the National Assembly is "establishing that the instrument is contrary to one or more constitutional provisions". The reduction from one and a half hours to fifteen minutes, absent a decision to the contrary by the Conference of Presidents, in the time allowed for speeches in support of an objection of inadmissibility at the monthly sitting on parliament's initiative is not unconstitutional, since members of the National Assembly retain the possibility of challenging the constitutionality of provisions of the instrument.
(2003-470 DC, 9 April 2003, para 10, p. 359. Partial departure from 90-278 DC, 7 November 1990, para 11, p. 79)

Motion referring a matter back to committee

A motion referring a matter back to a committee is not founded on constitutional rules. The reduction from one and a half hours to fifteen minutes, absent a decision to the contrary by the Conference of Presidents, in the time allowed for speeches in support of an objection of inadmissibility at the monthly sitting on parliament's initiative is not unconstitutional.
(2003-470 DC, 9 April 2003, para 12, p. 359, sol. impl.)

Right to amend

Rules of admissibility and discussion

Members' right to amend

Effective democratic debate and, consequently, the sound operation of the constitutional public authorities depends on full respect for the right to amend conferred on members of parliament by article 44 of the Constitution, and on both members of parliament and the Government being free to make full use of the procedures provided to that end. But this dual requirement also entails not making excessive use of these rights.

In the present case, large numbers of amendments were tabled at the committee stage and in the public debate. The mere fact that none of them was adopted by the Senate does not vitiate the procedure whereby the Act was enacted.
(2003-468 DC, 3 April 2003, paras 2 to 4, p. 325)

The only power conferred on Parliament by the Constitution in relation to international treaties and agreements is the power to authorise or prohibit ratification or approval in the circumstances mentioned in article 53.

The removal from Rule 128(1) of the Standing Orders of the National Assembly of the prohibition on amendments and the absence from the outset of all reference to amendments in Rule 47 of the Standing Orders of the Senate cannot be interpreted as giving members of Parliament the power to attach reservations, conditions or interpretative statements to an authorisation to ratify a treaty or to approve an international agreement not subject to ratification.
(2003-470 DC, 9 April 2003, paras 15 and 18, p. 359)

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.
(2003-472 DC, 26 June 2003, para 3, p. 379)

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.
(2003-479 DC, 30 July 2003, para 4, p. 409)

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.
(2003-481 DC, 30 July 2003, para 4, p. 411)

Applications

Relation to the instrument being debated — Existence

Section 64 of the Town Planning and Habitat Act, inserted by an amendment adopted by the Senate at first reading, gives the representative of the State in the department the power, for a

limited period, to authorise communes that respect certain conditions to withdraw from an urban community and join another public establishment for cooperation between communes with its own taxing powers. The applicants submit that the sole purpose of the amendment was to introduce new provisions for cooperation between communes and that it was accordingly not related to the instrument being debated.

Under section L 5216-1 of the General Code of territorial units, urban communities are set up by communes "to prepare and conduct jointly a common project for urban development and land-use planning". The functions that must be transferred to them under section L 5216-5 of the Code include powers in relation to land use planning in the common area, social balance in the habitat and urban policy. The relevant provisions, relating to the territory covered by certain urban communities, cannot be regarded as unrelated to a Bill which from the outset, when first presented in the National Assembly, contained a number of provisions relating to land use planning, the habitat and construction. Section 64 was accordingly adopted by a constitutional procedure.
(2003-472 DC, 26 June 2003, paras 2 and 4, p. 379)

Relation to the instrument being debated — Absence

Section 139 of the Financial Security Act, inserted by an amendment adopted by the Senate at second reading, confers on Rule 103 of the Standing Orders of the Senate the status of special provision within the meaning of sections 4 to 6 of the Act of 31 December 1971, permitting exceptions to be made from the rules relating to the assistance of and representation by a lawyer governed by those sections.

These provisions, which concern disciplinary proceedings for Senate officials, are unrelated to the Bill that gave rise to the Act, which, when presented in the Senate, contained exclusively provisions relating to financial markets, insurance, credit, investment, savings and company accounts. The section is unconstitutional.
(2003-479 DC, 30 July 2003, paras 2 and 5, p. 409)

The relevant provisions, the purpose of which is to validate instruments of secondary legislation modifying the rates of reimbursement of certain medicines, are unrelated to the Bill that gave rise to the Act, which, when presented in the Senate, contained exclusively provisions relating to sports federations, professional sport and training for physical and sporting activities. Section 9 of the Act on the organisation and promotion of physical and sporting activities was adopted by an unconstitutional procedure.
(2003-481 DC, 30 July 2003, para 5, p. 411)

Voting on government and private members' institutional bills

General rules of procedure

The Institutional Act enacted under the fourth paragraph of article 72 of the Constitution relating to experimentation by the territorial units was adopted in accordance with the procedural rules laid down by article 46 of the Constitution. Given its nature, the bill on the basis of which it was enacted was not required to be submitted for the opinion of the Assemblies of the overseas units governed by article 74 of the Constitution. Given its purpose, which is to try out new provisions locally with a view to their possible incorporation into national legislation, the Institutional Bill is not within the definition of the second paragraph of article 39 of the Constitution, which reads: "... bills having the primary purpose of organising territorial units ... shall be presented in the first instance in the Senate".
(2003-478 DC, 30 July 2003, para 2, p. 406)

The Institutional Act enacted under the second paragraph of article 72-1 of the Constitution relating to local referendums was adopted in accordance with the procedural rules laid down by article 46 of the Constitution. Given its nature, the bill on the basis of which it was enacted was not required to be submitted for the opinion of the Assemblies of the overseas units governed by article 74 of the Constitution. Given its purpose, which is to specify the conditions in which decision-making procedures regarding matters within the jurisdiction of territorial units are organised, the Institutional Bill presented under the second paragraph of article 72-1

of the Constitution relating to the local referendum was to be, and was, presented first to the Senate, under the second paragraph of article 39 of the Constitution, which reads: "... bills having the primary purpose of organising territorial units... shall be presented in the first instance in the Senate".
(2003-482 DC, 30 July 2003, para 2, p. 414)

Reference to an ordinary statute finally enacted

The provisions of an ordinary statute to which the Institutional Act on local referendums refers are applicable in the form as drafted at the date of definitive adoption of the institutional act.
(2003-482 DC, 30 July 2003, para 16, p. 414)

PARLIAMENTARY REVIEW

Scrutiny of government action

Fact-finding missions in non-committee business

An amendment to the Standing Orders of the National Assembly allows the Conference of Presidents to establish fact-finding missions on a proposal by the President of the Assembly. This provision is contrary to no constitutional principle or rule provided a fact-finding mission is always temporary and has no more than an information function to assist the National Assembly in exercising its review of the policy of the Government as provided by the Constitution.
(2003-470 DC, 9 April 2003, paras 21 and 22, p. 359; cf. 59-2 DC, 17, 18 and 24 June 1959, art. 2, p. 58)

The provision of the Standing Orders of the National Assembly whereby reports by fact-finding missions established by the Conference of Presidents can be put to debate without vote in public session cannot impede the exercise of the Government's prerogatives under the first paragraph of article 48 of the Constitution to determine the priority agenda.
(2003-470 DC, 9 April 2003, paras 23 and 24, p. 359)

Committees of Inquiry

Membership — Bureau

The provision of the Standing Orders of the National Assembly whereby the function of chairman or rapporteur of a committee of inquiry automatically falls to the political group that moved its appointment is not unconstitutional.
(2003-470 DC, 9 April 2003, para 20, p. 359)

JUDICIAL AUTHORITY AND THE COURTS

STATUS OF THE JUDICIARY

Constitutional safeguards

Requirement of ability (article 6 of the Declaration of Human and Civic Rights)

There are no constitutional rules precluding differentiated recruitment conditions for community judges, provided, however, the institutional legislature has itself specified the level of

legal knowledge or experience required of candidates for these functions in order to meet adequately the requirement of ability under article 6 of the Declaration of 1789 and to that all citizens are equal before the law, as required by the same article.

The prior exercise of "functions involving responsibilities... in administrative, economic or social matters" does not of itself reveal candidates' ability to dispense justice, whatever their professional qualities and background. By defining such categories of candidates for appointment as community judges without specifying the level of legal knowledge or experience required of them, the institutional legislature has manifestly violated article 6 of the Declaration of 1789.

The words "administrative, economic or social" introduced in section 41-17(3°) of the Ordinance of 22 December 1958, are accordingly unconstitutional.
(2003-466 DC, 20 February 2003, paras 13 to 15, p. 156)

Requirement of impartiality (article 16 of the DDH)

Subject to the qualified interpretation set out in paragraphs 20 and 21 of 2000-466 DC, the new section 41-22 of the Ordinance of 22 December 1958, relating to functions incompatible with appointment as community judges, is not contrary to the requirements of independence and impartiality flowing from article 16 of the Declaration of 1789.
(2003-466 DC, 20 February 2003, para 23, p. 156)

Authority of an institutional act

The Justice (Orientation and Programming) Act of 9 September 2002 established community courts and transferred to them a limited share of the jurisdiction hitherto exercised by the Courts of Instance and the Police Courts, which are staffed by career judges. It is accordingly for the institutional legislature to subject community judges to the same rights and obligations as career judges, subject to the derogations and modulations that are warranted by the temporary nature of their functions and by the fact that they operate part time.

The Institutional Act on the status of community judges must accordingly itself determine the rules applicable to them, the sole reservation being the possibility of leaving for the authority empowered to make regulations the power to lay down certain measures applying the rules that it establishes.
(2003-466 DC, 20 February 2003, para 5, p. 156)

Conseil supérieur de la magistrature

The Institutional Act on the status of community judges, which modifies the jurisdiction of the *Conseil supérieur de la magistrature*, was enacted on the basis not only of the third paragraph of article 64 of the Constitution but also of the last paragraph of article 65.
(2003-466 DC, 20 February 2003, para 1, p. 156)

Concept of judiciary

The effect of article 64 of the Constitution and of their combined operation with articles 65 and 66, which with article 64 together constitute Title VIII, on judicial authority, is that the third paragraph of article 64, whereby "An institutional Act shall determine the regulations governing the members of the judiciary", applies to career judges in the ordinary judiciary.

The functions of judges in the ordinary judiciary must basically be exercised by people wishing to devote their professional life to a career in the judiciary, but the Constitution does not preclude the possibility that, to a limited extent, functions normally reserved for career judges might be exercised temporarily by people who do not necessarily envisage a career on the bench, provide there are appropriate guarantees that the principle of independence, indissociable from the exercise of judicial functions, and the requirements of ability under article 6 of the Declaration of 1789, will be satisfied. To that end those concerned should be subject to the rights and obligations applicable to the judiciary in general, subject only to the specific provisions necessitated by the fact that they ac temporarily or part-time.
(2003-466 DC, 20 February 2003, paras 3 and 4, p. 156)

The first paragraph of section 41-20 of the Ordinance subjects community judges to the rules governing the judiciary, but the second and third paragraphs provide that they may not be members of the *Conseil supérieur de la magistrature* or of the promotions committee nor be involved in designating the members of those bodies, and that they may not enjoy any advancement in grade. And sections 13 and 76 are not applicable to them.

The derogations from the rules governing the judiciary in the provisions are warranted by the specific conditions in which community judges are recruited and exercise their functions. They do not jeopardise their independence and are not contrary to the principle of equality.
(2003-466 DC, 20 February 2003, paras 24 and 29, p. 156)

Rules on recruitment

Temporary recruitment and direct appointment

Community judges

The persons to whom the new section 41-17 of the Ordinance applies include not only former administrative and ordinary judges but also candidates with legal knowledge acquired through law studies leading to a full qualification or through professional experience in legal matters. Subject to the requirements as to age and seniority stipulated by the section, this would include members and former members of the legal professions, former civil servants in judicial services in categories A and B, holders of a law degree awarded after at least four years' study with legal experience, persons who can show they have exercised functions involving legal management responsibilities qualifying them for judicial functions, and judicial conciliation officers.

While legal qualifications are a necessary condition for judicial functions, neither the law degrees held by the candidates designated above nor their prior professional experience suffice to raise a general presumption that they will have acquired the qualities they need to settle disputes with the jurisdiction of the community courts. It will therefore be for the appropriate formation of the *Conseil supérieur de la magistrature*, before giving its opinion, to ensure that candidates proposed for appointment are apt to exercise the functions of community court judge and arrange for them to receive, if need be, proper induction training as provided by section 41-19. The *Conseil supérieur de la magistrature* could have access not only to the application file on each candidate proposed by the Minister of Justice but also the files on the other candidates. And if the qualifying period has not demonstrated that the candidate is suitable, the *Conseil supérieur de la magistrature* should issue a negative opinion on the appointment, even if the effect of the opinion is that a vacant post is not filled.
(2003-466 DC, 20 February 2003, paras 11 and 12, p. 156)

Rules governing functions of magistrats

Incompatibilities

Judges in community courts

The new section 41-22 of the Ordinance prohibits members of legal professions with rules and a status protected by legislation or regulations, and their employees, from exercising the functions of judge in the community courts within the territorial jurisdiction of the *tribunal de grande instance* for the place where they reside for professional purposes, and from undertaking any act relating to their profession within the territorial jurisdiction of the community court to which they are attached. This prohibition is to be interpreted as extending to activities exercised as member of a company or firm with the object of jointly exercising the relevant profession on behalf of which the person concerned exercises it.
(2003-466 DC, 20 February 2003, para 20, p. 156)

Under the fourth paragraph of section 41-22, a judge in a community court may not hear a dispute related to his own professional activity, whether he exercises it individually or in a company or firm of which he is a member. This prohibition also applies where he himself or the relevant company or firm has or has had professional relations with one of the parties. In such cases, it is for the president of the *tribunal de grande instance*, under section 41-22, to bring the case before another community court judge in the same district if asked to do so by the relevant judge or by one of the parties. These provisions should always have the effect of preventing a judge from hearing a dispute in connection with his other professional activities.
(2003-466 DC, 20 February 2003, para 21, p. 156)

Promotion, remuneration and discipline

Discipline

The third paragraph of the new section 41-22 of the Ordinance provides: "In the event of a change of professional activity, community court judges shall inform the first president of the court of appeal in whose district they are assigned, who shall inform them if their new activity is incompatible with the exercise of their judicial functions. If this provision does not confer decision-making power on the first president of the court of appeal, he, under section 50-2 of the Ordinance of 22 December 1958, must refer to the *Conseil supérieur de la magistrature* if he considers that the person concerned has failed to discharge his duty to give information or that his new activity is incompatible with the exercise of judicial functions".
(2003-466 DC, 20 February 2003, para 22, p. 156)

COURTS

Organisation of courts and procedure

Organisation or ordinary courts

The new section 41-18 of the Ordinance of 22 December 1958, which entrusts the organisation of the activities and administration of the community courts to a judge at the *tribunal de grande instance* responsible for the administration of the *tribunal d'instance* in whose district the community court is situated, is intended to secure the sound administration of justice and does not violate the independence of the community judges.
(2003-466 DC, 20 February 2003, para 8, p. 156)

LEGAL PROFESSIONS

Incompatibilities

The new section 41-22 of the Ordinance prohibits members of legal professions with rules and a status protected by legislation or regulations, and their employees, from exercising the functions of judge in the community courts within the territorial jurisdiction of the *tribunal de grande instance* for the place where they reside for professional purposes, and from undertaking any act relating to their profession within the territorial jurisdiction of the community court to which they are attached. This prohibition is to be interpreted as extending to activities exercised as member of a company or firm with the object of jointly exercising the relevant profession on behalf of which the person concerned exercises it.
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company or firm of which he is a member. This prohibition also applies where he himself or the relevant company or firm has or has had professional relations with one of the parties. In such cases, it is for the president of the *tribunal de grande instance*, under section 41-22, to bring the case before another community court judge in the same district if asked to do so by the relevant judge or by one of the parties. These provisions should always have the effect of preventing a judge from hearing a dispute in connection with his other professional activities.
(2003-466 DC, 20 February 2003, para 21, p. 156)

POWER TO ENACT LAWS AND POWER TO MAKE REGULATIONS

GENERAL

Scope and limits of power to enact laws

Failure to exercise full powers available

No failure

Police powers

The power of requisition established by section L 2215-1 of the General Code of Territorial Units clarifies and amplifies the administrative police powers currently enjoyed by the Prefect in urgent cases, where the restoration of public order demands requisition measures. In making these clarifications and amplifications the legislature has not failed to exercise its powers to the full. Moreover the measures taken by the Prefect on the basis of these provisions can be challenged by persons concerned in the administrative courts, in particular in interlocutory proceedings or proceedings for a prohibitory injunction.
(2003-467 DC, 13 March 2003, paras 3 and 4, p. 211)

The new section 55-1 of the Code of Criminal Procedure, relating to body sample operations, is drafted in terms that are clear and precise enough to satisfy the requirements of article 34 of the Constitution. The "persons who maybe able to provide information on the relevant facts" are those who are already required to appear before the criminal investigation police officer under section 62 of the Code of Criminal Procedure. Under section 706-54 of the Code of Criminal Procedure, as amended by section 29 of the Domestic Security Act, genetic prints from such persons may in circumstances by registered, nor a fortiori stored, in the national computerised genetic print register. The persons concerned are accordingly not defined too vaguely, and the new obligation imposed by the section that is challenged does not impose an undue harshness within the meaning of article 9 of the Declaration of 1789.
(2003-467 DC, 13 March 2003, para 54, p. 211)

Definition of obligations incumbent on territorial units

By leaving it to a decree issued in the Council of State to define only the thresholds and the conditions for implementing the obligation for territorial units and their public establishments to provide prior information before any operation affecting Treasury accounts, the legislature did not act *ultra vires*. The objection based on violation of article 34 of the Constitution is rejected.
(2003-489 DC, 29 December 2003, para 34, p. 487)

New tax scheme

By determining the nature and modalities of the tax provided for by the first paragraph of the new section L 541-10-1 of the Environment Code to ensure that persons who provide the

public with printed matter bear the cost of collecting and recycling it, the legislature did not act *ultra vires*.
(2003-488 DC, 29 December 2003, para 13, p. 480)

Continuity in the public service

Section 6 of the Act amending the Preventive Archaeology Act of 17 January 2001 allows any person planning to conduct works giving rise to a duty to undertake an archaeological dig to choose the operator who will do so. It provides that the State will authorise the dig after checking the conformity of the contract between the two parties with the specifications applicable to the dig. The Act provides that "The operator shall conduct the dig in accordance with the decisions taken and the specifications imposed by the State and under supervision by its representatives". In enacting these provisions relating to the organisation of the public preventive archaeology service, the legislature did not fail to exercise the full powers available to it under article 34 of the Constitution.
(2003-480 DC, 31 July 2003, para 13, p. 424)

Rights of aliens

By specifying that, upon a refusal to admit an alien, "the alien shall be asked to specify on the notification whether he wishes to enjoy the benefit of the clear day's leeway", the legislature did not violate its powers under article 34 of the Constitution.
(2003-484 DC, 20 November 2003, para 5, p. 438)

Section 7 of the Immigration Control Act expressly provides that as regards the validation of certificates of accommodation, the mayor acts as an authority of the central government. He must present his decision for review by the Prefect. It defines in clear and limitative terms the grounds on which it is possible to refuse to validate a certificate of accommodation. It sets at one month the period within which the mayor or the Prefect, as the case may be, must give an express or implied response. It provides that if the person providing accommodation refuses to allow the accommodation to be inspected, normal conditions of accommodation are deemed not to have been met, but it specifies that the refusal must be an unequivocal expression of will. The legislature did not therefore exceed its powers.
(2003-484 DC, 20 November 2003, paras 14 to 17, p. 438)

Neither article 34 of the Constitution nor any other constitutional provisions reserves for statute the definition of the role of the rapporteur for the residence permits Commission, an administrative Commission with an advisory function.
(2003-484 DC, 20 November 2003, paras 32 to 34, p. 438)

Right of asylum

By providing that a country is regarded as a safe country of origin "if it abides by the principles of freedom, democracy and the rule of law, and human rights and fundamental freedoms", and tasking the management board of the French Office for the Protection of Refugees and Stateless Persons with determining the list of countries meeting the definition, the legislature has not violated the scope of its powers.
(2003-485 DC, 4 December 2003, para 32, p. 455)

It was legitimate for the legislature, without violating the scope of its powers, to leave it to a Decree issued in the Council of State to determine the time in which the French Office for the Protection of Refugees and Stateless Persons should give decisions in the exercise of its priority procedure.
(2003-485 DC, 4 December 2003, para 57, p. 455)

The procedure being purely administrative, it was legitimate for the legislature, without violating the scope of its powers, to leave it to a Decree issued in the Council of State to determine the time in which the provisional residence document allowing an asylum request to be lodged should be issued.
(2003-485 DC, 4 December 2003, para 63, p. 455)

Establishment of a new class of courts

The new section 19(7°) of the Act of 25 July 1952, which leaves it to a Decree issued in the Council of State to determine the conditions for exercising the right to appeal to the Refugees Appeal Commission and conditions in which the President and the Divisional Presidents of that Commission may, after examining the case, rule by Order on appeals that are devoid of any serious aspect such as to invalidate the grounds given by the Director of the Office, violates none of the rules or principles reserved for statute by article 34 of the Constitution.

Moreover, it is clear from the legislative history that cases not warranting treatment by a divisional commission are to be examined by a rapporteur before being brought before the President or the Divisional Presidents of the Commission. It follows that the legislature did not violate the right to an appeal secured by article 16 of the Declaration of 1789 nor the right of asylum.
(2003-485 DC, 4 December 2003, paras 49, 52 and 53, p. 455)

By article 34 of the Constitution: "Statutes shall determine the rules concerning... the establishment of new classes of courts and tribunals...". The Refugees Appeal Commission is a class of courts and tribunals for the purposes of that article. The limited powers held by members of the Commission are a matter for statute, but it was legitimate for the legislature to leave the duration to be determined by the authority empowered to make regulations. But it will be for a Decree issued in the Council of State, subject to judicial review, to determine the duration in such a way as to violate neither the impartiality nor the independence of members of the Commission. Subject to this reservation, the new section 19(6°) of the Act of 25 July 1952 is not unconstitutional.
(2003-485 DC, 4 December 2003, paras 61 and 62, p. 455)

Distribution of an allocation between territorial units

The fact that it is left for a decree deliberated in the Council of State to determine how an allocation is to be distributed between territorial units "on the basis of, in particular, the distance between each of them and Metropolitan France" and the manner in which each territorial unit will prepare its annual balance-sheet and the statistics relating to this assistance is not contrary to article 34 of the Constitution since the amount in issue is a grant paid by the State for the exercise of a discretionary power.
(2003-474 DC, 17 July 2003, paras 20 and 21, p. 389)

Delegations granted by the legislature

Delegations not unconstitutional

Power to adapt legislative provisions

It was legitimate for the legislature, and no violation of the scope of its powers, to provide for an increase by one quarter-year in each year from 2009 to 2012 in the periods of insurance and service needed to qualify for a full pension, while leaving it for a decree to determine adaptations to this process after 2009 so as to ensure constancy in the ratios that the Pensions Reform Act itself determines.
(2003-483 DC, 14 August 2003, para 15, p. 430)

Matters to be determined by institutional act or by ordinary statute

Matters to be determined by institutional act

The provisions of the ordinary statute to which the institutional act relating to local referendums refers are applicable in the form in force on the date of the final adoption of the institutional act.
(2003-482 DC, 30 July 2003, para 16, p. 414)

By the first paragraph of article 47 of the Constitution: "Parliament shall pass finance bills in the manner provided by an institutional Act". It follows that only an institutional act can determine the nature and content of the documents that must be attached to a Finance Act.

Section 54 of the Institutional Act of 1 August 2001 relating to Finance Acts, applicable with effect from 2006, accordingly determines the content of the documents and information to be attached to the Regulation Act, which is a Finance Act by virtue of section 1.

Consequently, the provisions of the Finance (Rectification) Act for 2003 which amplify the information that must be attached to the Regulation Bill with effect from 2006 encroach on the matters reserved by the Constitution for institutional acts.
(2003-488 DC, 29 December 2003, paras 21 to 25, p. 480)

By the first paragraph of article 47 of the Constitution: "Parliament shall pass finance bills in the manner provided by an institutional Act". It follows that only an institutional act can determine the nature and content of the documents that must be attached to a Finance Act.

Section 51 of the Institutional Act of 1 August 2001 relating to Finance Acts, applicable with effect from 1 January 2005, accordingly determines the content of the documents and information to be attached to the Finance Act for the year. By section 51(4°), these documents include "an explanatory annex analysing the estimates for each budgetary revenue item and presenting fiscal expenditure".

Consequently, the provisions of the Finance Act for 2004 which provide that the presentation fiscal expenditure provided for by section 51(4°) is to be in the volume intituled "Ways and Means" annexed to the Finance Bill and specify the content of that volume encroach on the matters reserved by the Constitution for institutional acts.
(2003-489 DC, 29 December 2003, paras 42 to 45, p. 487)

Provisions of an ordinary statute included in an institutional act

The new section 41-18 of the Ordinance of 22 December 1958, which entrusts the organisation of the activities and administration of the community courts to a judge at the *tribunal de grande instance* responsible for the administration of the *tribunal d'instance* in whose district the community court is situated, is not institutional. It has the status of ordinary statute.
(2003-466 DC, 20 February 2003, para 8, p. 156)

Clarity of legislation and constitutionality

The new section 78-2-2 of the Code of Criminal Procedure on searches of vehicles on the basis of a warrant by issued by the State Counsel is clear and precise enough to satisfy the requirements of article 34 of the Constitution. Contrary to the allegation made by the applicants, this applies in particular to the expression "places accessible to the public" and the expression "vehicles specially equipped to be habitable and actually used as a residence". As is clear from the very terms of the first paragraph of the new section 78-2-2 of the Code of Criminal Procedure, each renewal of the warrant issued by the State Counsel is valid for 24 hours.
(2003-467 DC, 13 March 2003, para 12, p. 211)

With the reference in section L 720-4 of the Code of Commerce to the "total sales area of retail shops dealing predominantly in food with a sales area of more than 300 square metres" rather than to the "portion of the sales area devoted to food sales", the legislature has determined a criterion for issuing licences to operate retail food shops that is sufficiently clear and precise.
(2003-474 DC, 17 July 2003, paras 2 and 3, p. 389)

By adopting as it did rules for the calculation of civil servants' retirement pensions and transitional calculation rules, the legislature did not violate the principle of the clarity of legislation under article 34 of the Constitution.
(2003-483 DC, 14 August 2003, paras 37, 38 and 41, p. 430)

Statutory validation

Principles

The legislature, and the legislature alone, may validate an administrative act where there is an adequate consideration of general interest, but only subject to compliance with enforceable

court judgments and the principle that penalties may not have retroactive effect. The act that is validated must violate no constitutional rules or principles unless the general interest consideration grounding the validation is itself of constitutional status. Moreover, the scope of the validation must be strictly defined; otherwise it is contrary to article 16 of the Declaration of Human and Civic Rights of 1789.
(2003-486 DC, 11 December 2003, para 23, p. 467)

Considerations of general interest

No considerations of general interest

By decision given on 2 April 2003, the Council of State held that the Minister of Employment and Solidarity had amended sections L. 245-2 and R. 245-1 of the Social Security Code without having the power to do so, when providing that the Social Security Schemes Central Agency should "extend the costs of doctors' visits to health-care establishments, cure and prevention establishments and dispensaries taken into account for the calculation of the tax, to include the costs of visits to persons acting for those establishments but not making prescriptions". Given the amounts to be recovered, the general conditions of financial equilibrium of the social security scheme will not be significantly affected in the absence of validation of acts of recovery. Since there is no other consideration of general interest to warrant this, section 13 of the Finance Act must be regarded as unconstitutional.
(2003-486 DC, 11 December 2003, para 24, p. 467)

Statute authorising ratification of a treaty

The only power conferred on Parliament by the Constitution in relation to international treaties and agreements is the power to authorise or prohibit ratification or approval in the circumstances mentioned in article 53.

The removal from Rule 128(1) of the Standing Orders of the National Assembly of the prohibition on amendments and the absence from the outset of all reference to amendments in Rule 47 of the Standing Orders of the Senate cannot be interpreted as giving members of Parliament the power to attach reservations, conditions or interpretative statements to an authorisation to ratify a treaty or to approve an international agreement not subject to ratification.
(2003-470 DC, 9 April 2003, paras 15 and 18, p. 359)

Exercise of power to make regulations

Opinion of advisory bodies

Composition of advisory bodies

Administrative regrading committees exercise purely advisory powers. They are not mandatory for administrative authorities and do not jeopardise the "fundamental guarantees granted to civil and military personnel employed by the State", which are a matter for statute under article 34 of the Constitution, nor any other principle or rule reserved by the Constitution for ordinary statute. The provisions relating to the composition of these committees are accordingly a matter for the authority empowered to make regulations.
(2003-194 L, 22 May 2003, paras 3 and 4, p. 375; cf. 98-183 L, 5 May 1998, para 1, p. 243)

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

Use of article 38

Urgency is one of the grounds that the Government can rely on in support of the use of article 38 of the Constitution. In the present case, the excess number of items on the

parliamentary agenda makes it difficult to perform the Government's programme of measures to simplify the law and pursue the codification process within a reasonable time-frame.
(2003-473 DC, 26 June 2003, para 5, p. 382)

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

An enabling Act cannot provide for Ordinances to legislate in areas reserved by the Constitution for institutional statutes and social security (finance) acts, but article 38 of the Constitution authorises Parliament to delegate to the Government all other matters that are to be governed by statute. The argument that section 5 delegates powers in a matter concerning self-government of territorial units and therefore violate article 72 of the Constitution must accordingly be rejected.
(2003-473 DC, 26 June 2003, para 11, p. 382)

Respect for constitutional principles

The provisions of an enabling act may not have the object or effect of dispensing the Government, in the exercise of powers conferred on it in accordance with article 38 of the Constitution, from complying with constitutional rules and principles or with relevant international and European rules. In particular, the provisions relating to public procurement must respect the principles in articles 6 and 14 of the 1789 Declaration, restated in section 1 of the new Code of Public Procurement: "Public procurement shall respect the principles of free access to public orders, equal treatment of candidates and transparency of procedures. — The efficiency of public orders and the sound use of public funds shall be ensured through the advance definition of needs, respect for obligations as regards publicity and competition and the preference for value for money".
(2003-473 DC, 26 June 2003, paras 10 and 24, p. 382)

The legislative history reveals that the powers delegated to the Government by section 34 of the Act authorising the Government to simplify the law with a view to amending, amplifying and codifying various pieces of legislation aim to adapt this legislation to changing circumstances of law and fact without seriously modifying their import, to repeal obsolete provisions and where necessary to amend those which in practice have turned out to be inadequate. This delegation does not jeopardise the self government of territorial units. It does not empower the Government to deprive of their statutory guaranties the constitutional requirements inherent in the protection of public assets. These requirements reside in particular in the existence and continuity of public services based on these assets, in the rights and freedoms of the persons for whose use they are set aside, and in the protection of the property rights that article 17 of the Declaration of 1789 confers on both public and private estates. Section 34 of the Act referred is accordingly not contrary to article 38 of the Constitution.
(2003-473 DC, 26 June 2003, para 29, p. 382)

Areas in which ordinances may be issued — Information for Parliament

Article 38 of the Constitution does not preclude the legislature from empowering the Government to amend or amplify an existing code if the enabling provisions specify the purpose of the measures to be taken.
(2003-473 DC, 26 June 2003, para 28, p. 382)

Presentation of enabling bill and voting on it

Obligations of the Government — Information for Parliament

Article 38 of the Constitution requires the Government to specify in detail for Parliament, in support of its request, the purpose of the measures that it proposes to take by Ordinances and the relevant areas, but it does not require the Government to inform Parliament of the content of the Ordinances that it will enact under these enabling provisions.
(2003-473 DC, 26 June 2003, para 4, p. 382)

Purpose of measures to be taken by ordinance

The purposes of the powers conferred on the Government by section 5 of the Act empowering the Government to simplify the law and the area in which Ordinances can be issued are defined with sufficient precision to satisfy the requirements of article 38 of the Constitution. Such is the case of section 5(1°), which empowers the Government to transpose two directives likely to be adopted during the period of the delegation as regards the award of public procurement contracts, the proposals for which were laid before the two parliamentary Assemblies as required by article 88-4 of the Constitution. The same applies to section 5(3°) which, according to the legislative history, has the purpose of amending the provisions of the General Code of Territorial Units to simplify the rules governing internal powers in matters of public procurement.
(2003-473 DC, 26 June 2003, paras 8, 15 and 23, p. 382)

DISTRIBUTION OF POWERS IN SPECIFIC MATTERS

Civic rights, guaranties of public freedoms

It is for the legislature, under article 34 of the Constitution, to lay down rules concerning the fundamental guarantees given to the citizen for the exercise of public freedoms. In particular it must secure consistency between protection for public order and the detection of offenders, both of which activities are necessary for the protection of constitutional principles and rights, and respect for private life and other rights and freedoms protected by the Constitution.
(2003-467 DC, 13 March 2003, para 20, p. 211)

Public finance — taxation

Central government expenditure — budgetary control

Award of grants and assistance by central government

The purpose of the territorial operating contracts between central government and farmers concluded as provided by section L 311-3 of the Rural Code is, in consideration for financial assistance, to support all the economic, environmental and social functions of agriculture. Their conclusion is not compulsory. The provisions governing them referred to the Constitutional Council are in the nature of regulations.
(2003-195 L, 22 May 2003, para 1, p. 377; cf. 94-176 L, 10 March 1994, paras 2, 5 and 12, p. 67)

Miscellaneous

The provisions of section L 311-4 of the Rural Code which merely designate the ministerial budget in which the appropriations needed to finance assistance under territorial operation contracts are entered jeopardise no principles or rules reserved by the Constitution for statute.
(2003-195 L, 22 May 2003, para 1, p. 377)

Rules governing elections to parliamentary assemblies and local assemblies

Parliamentary assemblies

The purpose of the fifth paragraph of article 3 of the Constitution is not and cannot be to deprive the legislature of its power under article 34 of the Constitution to determine rules governing elections to assemblies.
(2003-475 DC, 24 July 2003, para 18, p. 400)

Public service

Pension rights

Article 34 of the Constitution empowers the legislature to determine the fundamental guarantees granted to civil and military personnel employed by the State and the fundamental principles of the self-government of territorial units, their powers and their resources and of labour law, trade-union law and social security. Under the first paragraph of article 37 of the Constitution, it is for the authority empowered to make regulations to determine how the guarantees and fundamental principles determined by the legislature shall be applied.

It was legitimate for the legislature, and no violation of the scope of its powers, to provide for an increase by one quarter-year in each year from 2009 to 2012 in the periods of insurance and service needed to qualify for a full pension, while leaving it for a decree to determine adaptations to this process after 2009 so as to ensure constancy in the ratios that the Pensions Reform Act itself determines.
(2003-483 DC, 14 August 2003, paras 12 to 15, p. 430)

By virtue of the distribution of powers under articles 34 and 37 of the Constitution, the additional allowance provided for by section 48 of the Pensions Reform Act for those who have brought up children is one of the fundamental guarantees given to civil servants and is a matter for statute. The same applies to the condition of eligibility for this allowance, whereby the pensioner's professional activity must have been interrupted, but the legislature did not fail to exercise its powers to the full be leaving it for a decree to determine what constitutes an interruption.
(2003-483 DC, 14 August 2003, paras 29 and 30, p. 430)

It was legitimate for the legislature to amend the rate of remuneration of reckonable years payable as regards civil servants' retirement pensions.
(2003-483 DC, 14 August 2003, paras 37 to 39, p. 430)

Determination and implementation of guarantees given to civil servants

Article 34 of the Constitution empowers the legislature to determine the fundamental guarantees granted to civil and military personnel employed by the State. It is for the authority empowered to make regulations to determine how the rules should be applied, in particular to determine procedures for civil servants' grading and career profiles. The provisions governing the membership of administrative grading committees, whose role is purely advisory, are a matter for regulation.
(2003-194 L, 22 May 2003, paras 2 and 4, p. 375; cf. 91-165 L, 12 March 1991, paras 1 to 4, p. 36)

Territorial units

Respective powers of central government and territorial units

Powers of legislature

Compulsory expenditure

By providing that expenditure related to the organisation of the referendum is a compulsory expenditure item for the territorial unit that decided to organise it, section LO 1112-5 of the General Code of Territorial Units does not violate the principle that territorial units are free to dispose of their own resources provided for by the first paragraph of article 72-2 of the Constitution.
(2003-482 DC, 30 July 2003, para 10, p. 414)

Ownership, rights in rem, civil and *commercial obligations*

Fundamental principles of civil and commercial obligations

Public procurement

The purpose of the territorial operating contracts between the central government and farmers concluded as provided by section L 311-3 of the Rural Code is, in consideration for financial assistance, to support all the economic, environmental and social functions of agriculture. Their conclusion is not compulsory. The provisions governing them referred to the Constitutional Council violate neither the "fundamental principles of... the regime governing ownership, rights in rem and civil and commercial obligations", which are a matter for statute under article 34 of the Constitution, nor any other principle or rule classified by the Constitution as a matter for statute.
(2003-195 L, 22 May 2003, para 1, p. 377; cf. 2003-460 DC, 22 August 2002, para 11)

Social security — fundamental principles

Principles applicable to scheme of benefits

Categories of benefit

Old-age insurance

Article 34 of the Constitution empowers the legislature to determine the fundamental guarantees granted to civil and military personnel employed by the State and the fundamental principles of the self-government of territorial units, their powers and their resources and of labour law, trade-union law and social security. Under the first paragraph of article 37 of the Constitution, it is for the authority empowered to make regulations to determine how the guarantees and fundamental principles determined by the legislature shall be applied.

It was legitimate for the legislature, and no violation of the scope of its powers, to provide for an increase by one quarter-year in each year from 2009 to 2012 in the periods of insurance and service needed to qualify for a full pension, while leaving it for a decree to determine adaptations to this process after 2009 so as to ensure constancy in the ratios that the Pensions Reform Act itself determines.
(2003-483 DC, 14 August 2003, paras 12 to 15, p. 430)

Programming Acts

Section 57 of the Overseas Programming Act, whereby central government undertakes to give effect to the economic and social guidelines set forth in a document signed by central government and the Wallis and Futuna Islands, is in its rightful place in a Programming Act as provided for by article 34 of the Constitution.
(2003-474 DC, 17 July 2003, paras 4 to 6, p. 389)

CONSTITUTIONAL COUNCIL AND CONSTITUTIONAL REVIEW

SCOPE OF CONSTITUTIONAL REVIEW

No jurisdiction of Constitutional Council

Constitutional revision approved by Congress

The jurisdiction of the Constitutional Council is strictly delimited by the Constitution. An institutional act can clarify and amplify it only in compliance with the principles laid down by

the Constitution. The Constitutional Council cannot rule on cases other than those expressly provided for by the Constitution.

Article 61 of the Constitution gives the Constitutional Council jurisdiction to exercise constitutional review of institutional acts and, when they are referred to it in accordance with the requirements of that article, ordinary statutes. The Constitutional Council has no power to review revisions of the Constitution under article 61, article 89 or any other provision of the Constitution. It accordingly has no jurisdiction to respond to the application for constitutional review of the revision of the Constitution relating to the decentralised organisation of the Republic, approved by Congress on 17 March 2003.
(2003-469 DC, 26 March 2003, paras 1 to 3, p. 293)

Scope of jurisdiction of Constitutional Council

Review of all the provisions of the Act referred

Constitutional review of the Constitutional Council's own motion of all the unchallenged sections of the ordinary statute associated with the institutional act reforming the election of Senators.
(2003-475 DC, 24 July 2003, para 27, p. 400)

Case of Acts promulgated

Case law arising from Decision 85-187 DC

The Act referred is criticised for not having rectified all the inequalities of representation generated by the rules for the designation of the Senate electoral college governed by sections L 284 and L 285 of the Electoral Code.

The constitutionality of an act that has already been promulgated can be validly challenged only when legislative provisions amending or amplifying or modifying its scope are reviewed.

The Act to reform the election of Senators has neither the object nor the effect of amending or amplifying the rules for the designation of the Senate electoral college governed by sections L 284 and L 285 of the Electoral Code. Nor does it affect its scope. The conditions in which these provisions can be reviewed for constitutionality are accordingly not met.
(2003-475 DC, 24 July 2003, paras 9 to 11, p. 400)

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

No cause of action

Given that section 4 of the act on the election of regional councillors, relating to the threshold to be attained for a list to remain standing at the second ballot, has been declared unconstitutional, there is no need to examine the other objections to these provisions, and in particular to the objection based on violation of the principle of pluralism in the expression of ideas and opinions.
(2003-468 DC, 3 April 2003, para 11, p. 325)

Inoperative arguments and arguments not supported by the facts

Inoperative arguments

Objections based on the violation of the principle of the indivisibility of the Republic and the principle of the unicity of the French people by the creation of eight constituencies for the election of members of the European Parliament are inoperative.
(2003-468 DC, 3 April 2003, para 38, p. 325)

Section 5 of the Preventive Archaeology Act of 17 January 2001 allows archaeological departments set up by territorial units that have seen fit to do so to establish preventive archaeology diagnoses.

The section challenged allows territorial units to instruct their archaeological departments to establish preventive archaeology diagnoses but does not oblige them to do so. It neither creates new powers nor transfers them territorial units. The objection that the fourth paragraph of article 72-2 of the Constitution is violated is inoperative.
(2003-480 DC, 31 July 2003, paras 14 to 17, p. 424)

Arguments challenging the offsetting of the minimum reintegration income are inoperative as the Act referred leaves it for the next Finance Act to specify the conditions and procedure for the offsetting.
(2003-487 DC, 18 December 2003, para 14, p. 473)

By virtue of sections 61 to 67 of the Institutional Act relating to Finance Acts, section 21 of the Act is to enter into force only on 1 January 2005 and will be applicable to Finance Acts for 2006 and subsequent years. The argument that the section is violated is accordingly inoperative as regards the Finance Act for 2004.
(2003-489 DC, 29 December 2003, para 16, p. 487)

Pleas not supported by the facts

Section 44 of the Economic Initiative Act abolishes the additional charge payable in the event of failure by heirs and legatees to comply with their conservation commitments for the purposes of section 43 of the same Act. The applicants submit that these provisions are inseverable from those of this section and should consequently be declared unconstitutional.

Section 44, which merely abolishes a penalty applied in the event of failure to comply with the conditions laid down by sections 787 B and 787 C of the General Tax Code, is legally independent of section 43.
(2003-477 DC, 31 July 2003, paras 8 to 10, p. 418)

The legislature has provided that the issuance of certain residence cards is subject to integration into French society and that the Prefect may ask the mayor of the commune in which the alien resides to assess this condition. The reference to the mayor is consultative, and the argument that the legislature has delegated to a local official a prerogative that by its nature belongs to central government is accordingly inoperative.
(2003-484 DC, 20 November 2003, para 30, p. 438)

Challenge to non-prescriptive provisions

Section 76 of the Domestic Security Act, which provides that a provisional residence authorisation may be issued to a foreigner who files a complaint against a person who is accused of having committed certain offences against him does not generate any new rights for foreigners, nor impose new obligations on them, apart from the issuance of a work permit. Nor does it confer on the administrative authorities powers that it did not already have. In that sense it is accordingly not prescriptive and cannot be struck down as unconstitutional.
(2003-467 DC, 13 March 2003, para 90, p. 211)

Section 3 of the Pensions Reform Act, whereby "insured persons must be able to enjoy fair treatment for retirement irrespective of their past professional activities and the insurance scheme or schemes covering them" merely sets out the consideration of fairness that inspires several of the specific provisions of the Act referred. It is accordingly not prescriptive and cannot be struck down as unconstitutional.
(2003-483 DC, 14 August 2003, paras 2 to 4, p. 430)

Parameters followed

Declaration of Human and Civic Rights

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

It is for the legislature to reconcile the prevention of violations of public order and the detection of offenders, both necessary to safeguard constitutional values and principles, with the exercise of freedoms guaranteed by the Constitution, which include the freedom to come and go and respect for private life, protected by articles 2 and 4 of the Declaration of Human and Civic Rights of 1789, and the individual freedom that article 66 of the Constitution places under the supervision of the judicial authority.

Administrative police measures that might affect the exercise of freedoms guaranteed by the Constitution must be justified by the need to safeguard public order.
(2003-467 DC, 13 March 2003, paras 7 to 9, p. 211)

The freedom declared by article 2 of the 1789 Declaration implies respect for private life.
(2003-467 DC, 13 March 2003, para 19, p. 211)

Article 2 of the Declaration of 1789 provides: "The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are Liberty, Property, Safety and Resistance to Oppression". The freedom declared by this article implies respect for private life.
(2003-484 DC, 20 November 2003, para 22, p. 438)

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

The legislature cannot modify the general scheme of a contract lawfully concluded to such an extent as to manifestly violate the freedom proclaimed by articles 4 and 16 of the Declaration of Human and Civic Rights and, as regards the participation of workers in the collective determination of their working conditions, the eighth paragraph of the Preamble to the 1946 Constitution.
(2002-465 DC, 13 January 2003, para 4, p. 43)

The exercise of the rights and freedoms guaranteed by article 4 of the 1789 Declaration, whereby the exercise thereof may be limited only within such bounds as are determined by law, would be restricted if citizens were not adequately familiar with the rules applicable to them and if those rules were unnecessarily complex.
(2003-473 DC, 26 June 2003, para 5, p. 182)

Freedom declared by article 5

The exercise of the rights and freedoms guaranteed by article 5 of the 1789 Declaration, whereby "Nothing that is not forbidden by Law may be hindered, and no one may be compelled to do what the Law does not ordain", would be restricted if citizens were not adequately familiar with the rules applicable to them and if those rules were unnecessarily complex.
(2003-473 DC, 26 June 2003, para 5, p. 382)

Equality (article 6)

There are no constitutional rules precluding differentiated recruitment conditions for community judges, provided, however, the institutional legislature has itself specified the level of legal knowledge or experience required of candidates for these functions in order to meet adequately the requirement of ability under article 6 of the Declaration of 1789 and to that all citizens are equal before the law, as required by the same article.

The prior exercise of "functions involving responsibilities... in administrative, economic or social matters" does not of itself reveal candidates' ability to dispense justice, whatever their professional qualities and background. By defining such categories of candidates for appointment as community judges without specifying the level of legal knowledge or experience required of them, the institutional legislature has manifestly violated article 6 of the Declaration of 1789.
(2003-466 DC, 20 February 2003, paras 13 to 15, p. 156)

Given the task entrusted to education assistants by the new section L 916-1 of the Education Code, they occupy "public positions and employments" within the meaning of article 6 of the 1789 Declaration.
(2003-471 DC, 24 April 2003, para 10, p. 364)

The equality before the law declared by article 6 of the 1789 Declaration would not be real if citizens were not adequately familiar with the rules applicable to them and if those rules were unnecessarily complex.
(2003-473 DC, 26 June 2003, para 5, p. 382)

The provisions relating to public procurement must respect the principles in articles 6 and 14 of the 1789 Declaration, restated in section 1 of the new Code of Public Procurement.
(2003-473 DC, 26 June 2003, para 10, p. 382)

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

It is legitimate for the legislature to define new offences and determine the penalties incurred for them. But in so doing it must reconcile the requirements of public order and the guarantee of rights protected by the Constitution. It must also, by virtue of article 8 of the 1789 Declaration, respect the principle that penalties must be defined by law and that penalties must be necessary and proportionate.
(2003-467 DC, 13 March 2003, para 60, p. 211)

Need for penalties (article 8)

The purpose of the penalty payment introduced by section L 2215-1 of the General Code of Territorial Units is to oblige people who refuse to do so to discharge the obligations imposed on them by a requisition order. It cannot be regarded as a penalty within the meaning of article 8 of the Declaration of Human and Civic Rights of 1789. The argument that the principles that penalties must be necessary and that penalties cannot be combined for one and the same offence are violated must be dismissed as inoperative.
(2003-467 DC, 13 March 2003, paras 3 and 5, p. 211)

It is for the legislature to reconcile the constitutional objective of combating tax fraud, which flows from article 13 of the Declaration of Human and Civic Rights of 1789, with the principle declared by article 8 that: "The Law must prescribe only the punishments that are strictly and evidently necessary; and no one may be punished except by virtue of a Law drawn up and promulgated before the offence is committed, and legally applied".
(2003-489 DC, 29 December 2003, para 10, p. 487)

Presumption of innocence (article 9)

The recording of personal data in computerised personal data-processing systems by the police and the gendarmerie does not of itself violate the principle of the presumption of innocence.
(2003-467 DC, 13 March 2003, paras 39 and 40, p. 211)

Freedom to express ideas and opinions (article 11)

By adopting section 433-5-1 of the Criminal Code, which makes it an offence to publicly insult the national anthem or the Tricolor flag at an event organised or regulated by the public authorities, the legislature quite properly reconciled the requirements of public order with freedom of expression.
(2003-467 DC, 13 March 2003, paras 104 and 105, p. 211)

Equality of public burden–sharing (article 13)

Section 10 of the Act amending the Preventive Archaeology Act of 17 January 2001 establishes a preventive archaeology charge payable by certain public or private persons wishing to carry out works affecting underground levels on parcels of land of 3 000 square metres or more. The amount is €0.32 per square metre. The proceeds are to finance diagnoses and to feed the National Preventive Archaeology Fund set up by section 12.

The authors of the two referrals submit that there are no objective rational criteria to support the 3 000 square metre threshold and that the legislature violated the principle of equality of public burden-sharing.

The establishment of the preventive archaeology charge, which is a "tax of all types" within the meaning of article 34 of the Constitution, pursues a purpose of general interest. It was legitimate for the legislature, and no violation of article 13 of the Declaration of Human and Civic Rights of 1789, to provide for an exemption for parcels of land of less than 3 000 square metres, since the exemption meets an administrative need to ensure that collection costs are not excessive in relation to the anticipated benefit. Given the amount of the charge, the exemptions allowed by the legislature and the fact that liability to pay the charge is independent of the obligation to carry out preventive archaeology duties, the scheme challenged is not vitiated by manifest error and does not generate a serious breach of equality of public burden-sharing.
(2003-480 DC, 31 July 2003, paras 18 to 21, p. 424)

The effect of article 13 of the Declaration of Human and Civic Rights of 1789 is not to prohibit the practice of having certain burdens borne by certain categories of persons for consideration of general interest, but there must be no serious breach of equality of public burden-sharing.
(2003-484 DC, 20 November 2003, paras 9 and 10, p. 438)

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

The provisions relating to public procurement must respect the principles in articles 6 and 14 of the 1789 Declaration, restated in section 1 of the new Code of Public Procurement.
(2003-473 DC, 26 June 2003, para 10, p. 382)

Rights to be secured (article 16)

The legislature cannot modify the general scheme of a contract lawfully concluded to such an extent as to manifestly violate the freedom proclaimed by articles 4 and 16 of the Declaration of Human and Civic Rights and, as regards the participation of workers in the collective determination of their working conditions, the eighth paragraph of the Preamble to the 1946 Constitution.
(2002-465 DC, 13 January 2003, para 4, p. 43)

Subject to the qualified interpretation set out in paragraphs 20 and 21 of 2000-466 DC, the new section 41-22 of the Ordinance of 22 December 1958, relating to functions incompatible with appointment as community judges, is not contrary to the requirements of independence and impartiality flowing from article 16 of the Declaration of 1789.
(2003-466 DC, 20 February 2003, para 23, p. 156)

The rights to be secured as required by article 16 of the 1789 Declaration would be restricted if citizens were not adequately familiar with the rules applicable to them and if those rules were unnecessarily complex.
(2003-473 DC, 26 June 2003, para 5, p. 382)

Right of redress (article 16)

The requirement that there should first be an administrative redress procedure, failure to exercise it invalidating applications for redress from the courts, does not violate the right to redress secured by article 16 of the 1789 Declaration.
(2003-484 DC, 20 November 2003, para 19, p. 438)

Freedom to marry (articles 2 and 4)

Freedom to marry is a component of the personal freedom secured by articles 2 and 4 of the 1789 Declaration. (Departing from 93-325 DC)
(2003-484 DC, 20 November 2003, para 94, p. 438)

Preamble to the Constitution of 27 October 1946 — Principles

Principles — Application and implementation

Right of asylum (fourth paragraph)

The fourth paragraph of the Preamble to the Constitution of 27 October 1946, to which the Preamble to the Constitution of 1958 refers, provides: "Any man persecuted in virtue of his actions in favour of liberty may claim the right of asylum upon the territories of the Republic". It is for the legislature to provide at all times for all the statutory guarantees needed to meet this constitutional requirement. By providing that an asylum request will be inadmissible if it is made more than five years after the alien has been placed in a detention centre, the legislature sought to reconcile respect for the right of asylum with the need to enforce expulsion orders, which contributes to the preservation of public order, by avoiding dilatory requests.
(2003-484 DC, 20 November 2003, paras 56 and 57, p. 438)

The fourth paragraph of the Preamble to the Constitution of 27 October 1946, to which the Preamble to the Constitution of 1958 refers, provides: "Any man persecuted in virtue of his actions in favour of liberty may claim the right of asylum upon the territories of the Republic". Certain guarantees attached to this right are provided for by international conventions incorporated in domestic law, in particular the Geneva Convention of 28 July 1951 and the New York Protocol of 31 January 1967 on the status of refugees, but it is for the legislature to provide at all times for all the statutory guarantees needed to meet this constitutional requirement.
(2003-485 DC, 4 December 2003, para 2, p. 455)

The confidentiality of information held by the French Office for the Protection of Refugees and Stateless Persons relating to a person seeking asylum in France is an essential guarantee for the right of asylum, which is a constitutional principle implying among other things that asylum-seekers must be given specific protection.

But the Act referred provides for the transmission only of documents concerning persons whose request had been rejected either by a decision of the Refugees Appeals Commission or by a final decision of the French Office for the Protection of Refugees and Stateless Persons. It specifies that the transmission may in no cases include documents presented in support of the asylum request and is confined "documents relating to civil status and travel documents making it possible to determine the nationality of a person whose asylum request is rejected". Moreover, these documents can be transmitted only to duly authorised officials; it will be for the Decree to be issued in the Council of State provided for by the new section 19 of the Act of 25 July 1952 to determine the procedure for exercising the power thus conferred and to provide in particular that the relevant officials must be designated personally and specifically on the basis of the responsibilities they exercise in the application of the legislation on the entry and residence of aliens. And the transmission of the documents must be necessary to give effect to an expulsion order and may in no circumstances jeopardise the safety of the asylum-seeker or his family members.

The provision challenged accordingly does not violate the principle of confidentiality of information relating to asylum-seekers and does not deprive the right to asylum of an essential guarantee.
(2003-485 DC, 4 December 2003, paras 43 to 47, p. 455)

Right to employment (fifth paragraph)

The transfer to the departments of the management of the minimum reintegration income, a welfare benefit meeting a national solidarity requirement, cannot be regarded as contrary to the fifth paragraph of the Preamble to the Constitution of 1946.
(2003-487 DC, 18 December 2003, paras 8 and 9, p. 473)

Collective determination of conditions of work (eighth paragraph)

The legislature cannot modify the general scheme of a contract lawfully concluded to such an extent as to manifestly violate the freedom proclaimed by articles 4 and 16 of the Declaration of Human and Civic Rights and, as regards the participation of workers in the collective determination of their working conditions, the eighth paragraph of the Preamble to the 1946 Constitution.
(2002-465 DC, 13 January 2003, para 4, p. 43)

By providing for the parties to collective bargaining in private-sector not-for-profit health-care and medico-social treatment to be briefed on the parameters concerning aggregate wage-and-salary-bill trends to be adopted in the ministerial approval procedure, the legislature has not violated the freedom to contract nor overlooked the need to reconcile the constitutional requirement for financial equilibrium in social security under the nineteenth paragraph of article 34 of the Constitution and the principle declared by the eighteenth paragraph of the Preamble to the Constitution of 1946 "All workers shall, through the intermediary of their representatives, participate in the collective determination of their conditions of work and in the management of the work place".
(2003-486 DC, 11 December 2003, para 17, p. 467)

Conditions for the development of the child and the family (10th paragraph)

The tenth paragraph of the Preamble to the Constitution of 27 October 1946 reads: "The Nation shall provide the individual and the family with the conditions necessary to their development". It follows that aliens with a stable and regular residence in France are entitled, in the same way as French nationals, to lead a normal family life.

But there are no constitutional principles or rules assuring aliens of a general absolute right of access to the national territory. It is for the legislature to reconcile the preservation of public order, a constitutional objective, and the requirements inherent in the right to lead a normal family life.
(2003-484 DC, 20 November 2003, paras 37 and 38, p. 438)

The transfer to the departments of the management of the minimum reintegration income, a welfare benefit meeting a national solidarity requirement, cannot be regarded as contrary to the fifth paragraph of the Preamble to the Constitution of 1946.
(2003-487 DC, 18 December 2003, paras 8 to 9, p. 473)

Right to a decent standard of living (eleventh paragraph)

The constitutional requirement of the eleventh paragraph of the Preamble to the Constitution of 27 October 1946 entails implementing a policy of national solidarity with retired workers. But it is legitimate for the legislature to satisfy this requirement by means of the practical modalities which it considers appropriate. In particular, it is always legitimate for it to act in matters reserved for it by article 34 of the Constitution and to amend earlier statutes or repeal them and replace them by fresh provisions. And it is legitimate for it, when attaining or reconciling constitutional objectives, to adopt fresh modalities which seem appropriate to it and which may involve amending or abolishing provisions which it considers to be excessive or superfluous. But the exercise of this power may not have the effect of depriving constitutional requirements of statutory guarantees.
(2003-483 DC, 14 August 2003, paras 6 to 8, p. 430)

The transfer to the departments of the management of the minimum reintegration income, a welfare benefit meeting a national solidarity requirement, cannot be regarded as contrary to the eleventh paragraph of the Preamble to the Constitution of 1946.
(2003-487 DC, 18 December 2003, paras 8 to 9, p. 473)

The measures relating to the "integration contract — minimum salary", which are such as to reduce the cost of employing persons with specific difficulties and to induce employers to recruit them, are directly related to the general-interest purpose pursued by the legislature in combating unemployment and exclusion. This general-interest purpose also warrants a part of the salary not being subject to social security contributions and not generating entitlement to

old-age and unemployment insurance benefits. The objections that the Preamble to the Constitution of 1946 is violated must accordingly be rejected.
(2003-487 DC, 18 December 2003, para 26, p. 473)

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

By the eleventh paragraph of the Preamble to the Constitution of 1946, the Nation " shall guarantee to all, notably to children, mothers and elderly workers, protection of their health...". It is always legitimate for the legislature, acting within its powers, to amend earlier provisions or to repeal them and replace them with new provisions, provide it does not thereby deprive constitutional requirements of their statutory guarantees.
(2003-488 DC, 29 December 2003, para 16, p. 480)

Right to rest and leisure (eleventh paragraph)

The right to rest recognised by the eleventh paragraph of the Preamble to the Constitution of 1946 provides the grounds for dismissing an argument based on an unconstitutional violation of the general scheme of contracts lawfully concluded as regards working time.
(2002-465 DC, 13 January 2003, para 11, p. 43)

Principle of equal access to instruction (thirteenth paragraph)

The provisions of the new section L 916-1 of the Code of Education, determining the conditions for the recruitment of education assistants, do not of themselves generate a breach of equality between public educational establishments. But it will be for the relevant administrative authorities to allocate appropriations to finance education assistants between public educational establishments in accordance with objective rational criteria related to the needs of such establishments so that the requirements of the thirteenth paragraph of the Preamble to the Constitution of 1946 are not violated.
(2003-471 DC, 24 April 2003, paras 4 and 5, p. 364)

Fundamental principles recognised by the laws of the Republic

Principles recognised

Diminished liability of minors and adapted penal treatment

The diminution of the criminal liability of minors on the basis of their age, and the need to ensure their educational and moral upbringing through measures adapted to their age and personality, ordered by a specialised court or by appropriate procedures, have always been recognised by the laws of the Republic since the beginning of the twentieth century. These principles are expressed in, among other things, the Minors' Criminal Liability Act of 12 April 1906, the Juvenile Courts Act of 22 July 1912 and the Juvenile Delinquency Ordinance of 2 February 1945.

The principle is not violated by the mere fact that the provisions of the Domestic Security Act relating to personal data processing by the police and gendarmerie contain no restrictions based on the age of the persons to whom the data relate.

But the decree provided for by section 21 (V) of the Act must determine a data storage period reconciling the need to detect offenders with the need to ensure the educational and moral upbringing of juvenile offenders.
(2003-467 DC, 13 March 2003, paras 36 to 38, p. 211)

Principles not recognised

"Principle in favour"

The principle whereby a statute can allow collective bargaining agreements to derogate from statutes, regulations and conventions having broader scope only in a manner that is more

favourable to employed persons is not found in any statutory provision predating the Constitution of 1946 and in particular it is not in the Act of 24 June 1936. It cannot therefore be regarded as a fundamental principle recognised by the laws of the Republic for the purposes of the Preamble to the Constitution of 1946.
(2002-465 DC, 13 January 2003, paras 2 and 3, p. 43)

Principles of constitutional value stated in articles of the Constitution

Principle of the indivisibility of the Republic

The effect of article 88-1 of the Constitution, article 17-1 of the Treaty establishing the European Community and the Treaty on European Union signed on 7 February 1992, ratified with the authorisation of the French people and amplified by the Treaty signed at Amsterdam on 2 October 1997, and of article 19-2, is that the members of the European Parliament elected in France are elected to represent citizens of the European Union residing in France.

It follows that submissions based on a violation of the indivisibility of the Republic and of the principle of the unicity of the French people by the creation of eight constituencies for the election of members of the European Parliament instead of a single constituency covering the entire national territory are inoperative.
(2003-468 DC, 3 April 2003, paras 35 to 38, p. 325)

Decentralised organisation of the Republic

Given their respective powers, their place in the decentralised organisation of the Republic and the rules governing their composition and operation, the Corsican Assembly and the regional councils are not in a different situation in relation to the objective in the fifth paragraph of article 3 of the Constitution, whereby "statutes shall promote the equal access of women and men to electoral offices and functions". There are no local circumstances or other grounds of general interest to justify the difference of treatment. The difference is accordingly contrary to the principle of equality.
(2003-468 DC, 3 April 2003, para 26, p. 325)

Principle of the unicity of the French people

The effect of article 88-1 of the Constitution, article 17-1 of the Treaty establishing the European Community and the Treaty on European Union signed on 7 February 1992, ratified with the authorisation of the French people and amplified by the Treaty signed at Amsterdam on 2 October 1997, and of article 19-2, is that the members of the European Parliament elected in France are elected to represent citizens of the European Union residing in France.

It follows that submissions based on a violation of the indivisibility of the Republic and of the principle of the unicity of the French people by the creation of eight constituencies for the election of members of the European Parliament instead of a single constituency covering the entire national territory is inoperative.
(2003-468 DC, 3 April 2003, paras 35 to 38, p. 325)

Principle of universal suffrage

Section L 12 of the Electoral Code confers on French nationals established outside France the right to be entered on request in the electoral roll for the commune in which they were born, or last domiciled, or last resident, or the commune where a relative in the ascending line was born, is registered or has been registered or where a relative of the first degree in the descending line is registered. Moreover section L 14 of that Code allows them, in certain cases, to ask to be entered on the same electoral roll as their spouse. These provisions allow French nationals established outside France to participate in the election of the European Parliament.

The repeal of section 23 of the Act of 7 July 1977, whereby French nationals established outside a Member State of the European Union and entered on the electoral rolls for the of

the President of the Republic were allowed to vote at polling stations for the election of the European Parliament does not violate the principle of universal suffrage.
(2003-468 DC, 3 April 2003, paras 39 and 40, p. 325)

Principle that statutes must promote parity (political elections)

Given their respective powers, their place in the decentralised organisation of the Republic and the rules governing their composition and operation, the Corsican Assembly and the regional councils are not in a different situation in relation to the objective in the fifth paragraph of article 3 of the Constitution, whereby "statutes shall promote the equal access of women and men to electoral offices and functions". There are no local circumstances or other grounds of general interest to justify the difference of treatment. The difference is accordingly contrary to the principle of equality.
(2003-468 DC, 3 April 2003, para 26, p. 325)

The creation of eight constituencies for the election of members of the European Parliament has neither the object nor the effect of reducing the proportion of women elected in France to the European Parliament. The legislature has maintained the rule that male and female candidates must alternate on lists of candidates, which applied under the old rules. The objection that the fifth paragraph of article 3 of the Constitution is violated fails on the facts.
(2003-468 DC, 3 April 2003, paras 45 and 46, p. 325)

Symbols of the Republic

Section 433-5-1 of the Criminal Code, which creates an offence of scandalising the national flag or the national anthem at public events organised or regulated by public authorities excluded, for instance, "outrages" in works of the intellect, in private clubs or at events not organised or regulated by public authorities. The expression "public events organised or regulated by public authorities", seen in the light of the legislative history, was to be understood as referring to public sporting, recreational or cultural events in places subject to the public health and safety regulations on account of the number of people attending them.
(2003-467 DC, 13 March 2003, paras 99 to 104, p. 211)

Individual freedom

The extension of the period allowed for preventive detention does not violate the role of the judicial authority as defined by article 66 of the Constitution.

The provision challenged does not preclude judicial review of a decision to remand an alien in detention beyond forty-eight hours. The legislature has provided that on this occasion the court, after ensuring that the alien has been given the possibility of asserting his rights, must inform him of the possibilities and time-limits for challenging the decisions concerning him.

Moreover, extending the authorised period of detention has no impact on the alien's right to challenge the administrative decision requiring him to leave French territory. If the administrative court annuls the expulsion order, the alien is immediately released from detention and given a provisional residence authorisation until the Prefect has reconsidered his case.

The alien may be held in detention only for the period strictly necessary for his departure, and the administration must act with all due diligence in that respect. The judicial authority retains the possibility of interrupting the extension of the detention of its own motion or at the request of the alien where the circumstances of law or of fact so justify.
(2003-484 DC, 20 November 2003, paras 63 to 66, p. 438)

Under article 66 of the Constitution, where a judge has, in the full exercise of his powers as guardian of individual freedom, adjudged that a person's freedom must be restored, no obstacles may be put in the way of the decision, even pending the judgment of the court of appeal, if any.

But the judicial authority includes both the judiciary and the prosecution service, and the Act referred confers on the prosecution service the power to act in specific conditions, which distinguish between the parties to a case, being the alien and the representative of central government in the department.

To ensure that effective action is taken on a request from the State counsel for a declaration that an appeal against an order for the release of an alien who has no assurance of proper representation or who constitutes a serious threat to public order has suspensory effect, it is legitimate for the legislature to provide that the person concerned shall be held available to the courts for a period of four hours.

Only the First President of the Court of Appeal or a person appointed by him may decide whether the appeal should have suspensory effect. He must give his decision "without delay" on the State counsel's request, and that expression means that a decision which, if it cannot be taken immediately because the defence wishes to exercise its right, must be taken at the earliest opportunity.
(2003-484 DC, 20 November 2003, paras 74 to 77, p. 438)

Self-government of territorial units

The principle of self-government of territorial units is defined both in article 72 and in article 72-2 of the Constitution.
(2003-489 DC, 29 December 2003, para 25, p. 487)

Under articles 72 and 72-2 of the Constitution, the territorial units of the Republic "shall be self-governing through elected councils" and "enjoy resources of which they may dispose freely", but they do so "in the manner provided by statute".

Under section 15 of the Ordinance of 2 January 1959 laying down the Institutional Act relating to Finance Acts, "the territorial units of the Republic and public establishments shall deposit their available cash resources at the Treasury". Under section 26 of the Institutional Act of 1 August 2001 relating to Finance Acts, applicable with effect from 1 January 2004 as provided by section 65: "Unless otherwise provided by a Finance Act, territorial units and public establishments shall deposit their available cash resources with the central government".

The Act referred provides that territorial units and public establishments must inform the central government in advance of any transaction affecting Treasury accounts. The purpose of this obligation to provide prior information is to improve the management of central government's cash resources by making more active use of funds deposited with it by territorial units and public establishments, thanks to better anticipation of major transactions affecting Treasury accounts. This makes for better use of public funds, which is a constitutional requirement. The purpose is also to avoid the Treasury's account from showing a debit balance and thus respect article 101 of the Treaty establishing the European Community. The legislature has reconciled these objectives and the principles of "self-government" and "free disposal of resources" pleaded by the applicants in a manner which does not appear to be manifestly imbalanced.
(2003-489 DC, 29 December 2003, paras 31 to 33, p. 487)

Article 88-3: the right to vote and stand as a candidate in municipal elections is granted only to citizens of the Union residing in France "in accordance with the terms of the Treaty on European Union".

By including the Union citizens entered on the additional electoral rolls of a commune among the voters summoned to vote at a referendum on the adoption of a decision or other instrument within the powers of the commune, section LO 1112-11 of the General Code of Territorial Units properly applies the second paragraph of article 72-1 of the Constitution and article 88-3, which confers commune voter status on them.
(2003-482 DC, 30 July 2003, para 14, p. 414)

Objectives of constitutional status

Objectives recognized

Preservation of public order

It is for the legislature to reconcile the prevention of violations of public order and the detection of offenders, both necessary to safeguard constitutional values and principles, with the exercise of freedoms guaranteed by the Constitution, which include the freedom to come

and go and respect for private life, protected by articles 2 and 4 of the Declaration of Human and Civic Rights of 1789, and the individual freedom that article 66 of the Constitution places under the supervision of the judicial authority.

Administrative police measures that might affect the exercise of freedoms guaranteed by the Constitution must be justified by the need to safeguard public order.
(2003-467 DC, 13 March 2003, paras 7 to 9, p. 211)

There are no constitutional principles or rules assuring aliens of a general absolute right of access to the national territory. It is for the legislature to reconcile the preservation of public order, a constitutional objective, and the requirements inherent in the right to lead a normal family life.
(2003-484 DC, 20 November 2003, para 38, p. 438)

Pluralism

It is legitimate for the legislature, when laying down rules to govern elections to regional councils, to introduce measures to encourage the grouping of lists of candidates, notably to promote the emergence of a stable and coherent governing majority, but in doing so it must respect pluralism in the expression of ideas and opinions, which is among he foundations of democracy.
(2003-468 DC, 3 April 2003, para 12, p. 325)

Fight against tax fraud

It is for the legislature to reconcile the constitutional objective of combating tax fraud, which flows from article 13 of the Declaration of Human and Civic Rights of 1789, with the principle declared by article 8 that: "The Law must prescribe only the punishments that are strictly and evidently necessary; and no one may be punished except by virtue of a Law drawn up and promulgated before the offence is committed, and legally applied".
(2003-489 DC, 29 December 2003, para 10, p. 487)

Accessibility and intelligibility of statutes

The complexity of the voting method provided for by sections L 338 and L 338-1 of the Electoral Code for regional elections, in particular as regards the distribution of seats between departmental sections, flows from the fact that the legislature wished to reconcile proportional representation in regional voting, the formation of a ruling political majority in the regional council and the restoration of a link between regional councillors and departments. This complexity meets objectives that the legislature regarded as being of general interest. But it is only subject to several reservations that the Constitutional Council can hold that the provisions challenged are not contrary to the objective of intelligibility of statutes.
(2003-468 DC, 3 April 2003, paras 17 to 20, p. 325)

Simplification of the law and further codification meet the constitutional objective of accessibility and intelligibility of the law. The equality before the law declared by article 6 of the Declaration of Human and Civic Rights of 1789 and the guarantee of rights demanded by article 16 would not be effective if citizens were not adequately familiar with the rules applicable to them and if these rules were unnecessarily complex. The exercise of the rights and freedoms guaranteed by article 4 of the Declaration, whereby the exercise thereof may be limited only within such bounds as are determined by law, and article 5, whereby "Nothing that is not forbidden by Law may be hindered, and no one may be compelled to do what the Law does not ordain", would be restricted otherwise.
(2003-473 DC, 26 June 2003, para 5, p. 382)

It is for the legislature to exercise to the full the powers conferred on it by article 34 of the Constitution. In doing so it must respect constitutional principles and rules and ensure that the administrative and judicial authorities responsible for enforcing the law respect them also. The principle of clarity in the law, which emerges from the same article of the Constitution, and the constitutional objective of intelligibility and accessibility of the law which flows from articles 4, 5, 6 and 16 of the Declaration of Human and Civic Rights of 1789, require it to

protect those subject to the law from unconstitutional interpretations and the risk of arbitrary action by adopting sufficiently precise provisions and non-ambiguous forms of words.

Section 7 of the Act referred amplifies section L 52-3 of the Electoral Code relating to the content of ballot papers.

It can be seen from the legislative history of these provisions that the legislature's intention was to make them applicable to the election of Senators. But section L 52-3 so amended is in Title I of Book I of the Electoral Code, the provisions of which do not relate to such elections. Moreover, the legislative scope of the first paragraph inserted in section L 52-3 of the Electoral Code is not clear. And the concepts of "own name", of "list presented in a departmental constituency" and of "representing a political group or party" are ambiguous.

It follows that section 7 of the Act referred is contrary to the objective of intelligibility and accessibility of the law.
(2003-475 DC, 24 July 2003, paras 20 to 24 and 26, p. 400)

Insured persons will be familiar with the rule that now determines the period of insurance or benefits required for eligibility for a full retirement pension. If that period can be amended by decree, the variation is inherent both in the impossibility for the legislature of knowing how life expectancy at retirement age will evolve and in its concern to preserve the balance of the pay-as-you-go retirement pension system. Moreover the Pensions Reform Act provides for new measures to ensure that insured persons receive full information, notably as regards their personal situation. There is accordingly no violation of the constitutional objective of intelligibility and accessibility of the law.
(2003-483 DC, 14 August 2003, paras 16 and 17, p. 430)

By adopting as it did rules for the calculation of civil servants' retirement pensions and transitional calculation rules, the legislature did not violate the principle of the clarity of legislation under article 34 of the Constitution.
(2003-483 DC, 14 August 2003, paras 37, 38 and 41, p. 430)

Financial balance of the social security system

The constitutional requirement of financial balance of the social security system does not require the balance to be preserved for every branch and every scheme for every year.
(2003-489 DC, 29 December 2003, para 39, p. 487)

Equal access for women and men to electoral offices and functions

Sections L 294 and L 295 of the Electoral Code are amended to raise from three to four the number of Senators per department above which the election is no longer held by the two-ballot majority voting system but by strongest-average proportional representation. These provisions are challenged as being contrary to article 3 of the Constitution, reducing "the number of seats to which the obligation to present lists of candidates consisting of equal numbers of women and men, listed alternately".

For one thing, the provisions challenged do not of themselves violate the objective of equal access for women and men to electoral offices and functions declared by article 3 of the Constitution.

For another, the purpose of the fifth paragraph of article 3 of the Constitution is not and cannot be to deprive the legislature of its power under article 34 of the Constitution to determine rules governing elections to assemblies.
(2003-475 DC, 24 July 2003, paras 15 to 18, p. 400; cf. 2000-429 DC, 30 May 2000, paras 6 to 8, p. 84; 2003-468 DC, 3 April 2003, para 24, p. 325)

Proper use of public funds

The proper use of public funds is a constitutional requirement.
(2003-489 DC, 29 December 2003, para 33, p. 487 ; cf. 2003-473 DC, 26 June 2003, para 18, p. 382)

Principles flowing from the combined application of several provisions

Principle of representation for the election of Senators

The combined provisions of article 6 of the Declaration of Human and Civic Rights of 1789 and articles 3 and 24 of the Constitution require the legislature to modify the distribution of seats of Senators between the departments in line with trends in the population of the territorial units represented by the Senate.

To modify the distribution of seats of Senators between the departments in Table No 6 annexed to the legislative part of the Electoral Code, the legislature has opted for a system of distribution by tranches, with one Senator up to 150 000 habitants plus one additional Senator for each tranche or fraction of a tranche of 250 000 inhabitants. The application of this system leaves a number of demographic disparities untouched, but even so the changes made by the Act referred substantially reduce the former inequalities in representation.

By leaving the departments of Creuse and Paris with the same representation as before, the legislature has departed from the calculation procedure that it had itself determined. But however regrettable that might be, the derogation, affecting four seats, does not violate the principle of equality of voting rights to such an extent as to make the Act referred unconstitutional.

Given the role conferred on the Senate by Article 24 of the Constitution, the new distribution of seats is not unconstitutional.
(2003-475 DC, 24 July 2003, paras 2, 3, 5 to 8, p. 400)

Constitutional principles related to the accomplishment of public service tasks

Section 6 of the Act amending the Preventive Archaeology Act of 17 January 2001 provides that, for the preventive archaeological digs prescribed by the State, the person planning to carry out the work may call on the services of public- or private-sector persons, provided their scientific competence is ensured by an accreditation issued by the State.

Although there is an objective of general interest relating to the preservation of the archaeological heritage and warranting the legislature's decision to make preventive archaeology a public service task, there is no constitutional principle or rule requiring it to grant exclusive rights to a specialised public establishment. It was legitimate for it to associate the private sector with the performance of this public service by allowing them to carry out the prescribed digs. But this requires administrative and scientific control procedures to be established to ensure the quality of the services performed and the continuity of operations. Section 6 of the Act accordingly provides that preventive digs can be carried out only by persons who are independent of the developer and accredited by the State. It will be for the relevant authority of the State to ensure that persons accredited comply with the constraints of the public service on which they participate and, if not, to withdraw their accreditation. The objection to the possibility of authorising private-sector persons to carry out preventive archaeological digs must accordingly be dismissed.
(2003-480 DC, 31 July 2003, paras 8 to 12, p. 424)

Principle of the continuity of public service

The Preventive Archaeology Act of 1 January 2001 sets time limits within which prescribed diagnostics and digs must be carried out. It provides that, for the preventive archaeological digs prescribed by the State, the person planning to carry out the work may call on the services of public- or private-sector persons, provided their scientific competence is ensured by an accreditation issued by the State.

The public service status of preventive archaeology, stated by section 1 of the Act of 17 January 2001, is not jeopardised by the Act referred. Given their duration, the purpose they serve and the possibilities for intervention by the State when they have expired, the time limits, most of which were already provided for by the rules made under the earlier legislation, do not affect the continuity of preventive archaeology projects. And they have the effect of reconciling the general interest in the preservation of the archaeological heritage with constitutional such as

property rights and freedom of enterprise and with other objectives of general interest such as economic development and land-use planning.

It will be for the relevant authority of the State to ensure that persons accredited comply with the constraints of the public service in which they participate and, if not, to withdraw their accreditation.
(2003-480 DC, 31 July 2003, paras 3 to 12, p. 424)

Principle of protection of public assets

The constitutional requirements inherent in the protection of public assets reside in particular in the existence and continuity of public services based on these assets, in the rights and freedoms of the persons for whose use they are set aside, and in the protection of the property rights that article 17 of the Declaration of 1789 confers on both public and private estates.
(2003-473 DC, 26 June 2003, para 29, p. 382)

Sovereign tasks to be exercised exclusively by central government

Provision authorising the central government, on an experimental basis, to enter into contracts with persons in the public or private sectors for the transport of persons held in detention centres or transit areas. According to the reference, these provisions have the effect that a private person can be entrusted with the exercise of a sovereign task incumbent by its nature on central government. Since the Act excludes all functions on supervising the persons transported, and indeed reserves all the tasks indissociable from the sovereign tasks to be exercised exclusively by central government, the submission is declared unfounded. (Cf. 2002-461 DC).

The purpose of the possibility of bearing arms given to private-sector agents carrying out the transfers, for their personal protection in case of need, is not and cannot be to allow them to exercise functions of supervising the persons transported. It will be for the authority empowered to make regulations and the public authorities to strictly enforce this limitation. Subject to this reservation, the relevant provision is not unconstitutional.
(2003-484 DC, 20 November 2003, paras 87 to 90, p. 438)

Constitutional rules and legislative procedure

Consultation of the Council of State on Government Bills

The Council of Ministers discusses Bills, and has the power to amend their content, but this is conditional on consultation of the council of State, as demanded by the Constitution. Consequently, all questions arising from the text adopted by the Council of Ministers must have been submitted to the Council of State when it was consulted.
(2003-468 DC, 3 April 2003, para 7, p. 325)

Exercise of the right to amend

Effective democratic debate and, consequently the sound operation of the constitutional public authorities depends on full respect for the right to amend conferred on members of parliament by article 44 of the Constitution, and on both members of parliament and the Government being free to make full use of the procedures provided to that end. But this dual requirement also entails not making excessive use of these rights.
(2003-468 DC, 3 April 2003, para 3, p. 325)

Preamble to the Constitution of 1958

The combined effect of the Preamble to the Constitution of 1958 and of articles 1, 72-3 and 75 of the Constitution is that citizens of the Republic who retain their personal status enjoy the constitutionals rights and freedoms that go with French citizenship and are subject to the same

obligations. In restating this principle in the provision challenged, the legislature has not violated article 75 of the Constitution.
(2003-474 DC, 17 July 2003, paras 28 and 29, p. 389)

Parameters not recognized and material not taken into account

Parameters not recognised for constitutional review of statutes

Institutional act not provided for by the Constitution

The Constitutional Council rules on the regularity of the legislative procedure on the basis of the rules laid down or referred to by the Constitution.

Article 74 of the Constitution, in the version that was in force when the Bill was presented, did not leave it for an institutional act to determine the conditions for consultation of the institutions of French Polynesia. The objection based on the absence of consultation of the Council of Ministers of French Polynesia cannot therefore be pleaded.
(2003-474 DC, 17 July 2003, paras 9 to 11, p. 389)

Principle of "territorial continuity"

The principle of "territorial continuity" is not a constitutional principle either in itself or as a corollary of the principle of the indivisibility of the Republic.
(2003-474 DC, 17 July 2003, paras 12 and 13, p. 389)

Question must first have been raised in Parliament

Application of article 40 of the Constitution

The Bill that led to the Institutional Act reforming the Senate provided for an increase in the number of Senators when it was presented in the Senate. There was a definite direct impact on the expenditure of the Senate, which is part of the burden borne by the State.

The Constitutional Council examines the conformity of the legislative procedure with article 40 of the Constitution only if the question of the admissibility of the relevant Bill or amendment was raised in the first assembly where it was presented. The question of the financial admissibility of the Bill in the present case was not raised in the Senate, the first assembly in which it was presented, either when it was presented or when it was debated. It follows that the Constitutional Council has no grounds for directly raising the question of admissibility of the institutional act referred on the basis of article 40 of the Constitution.
(2003-476 DC, 24 July 2003, paras 2 and 4, p. 397)

PROCEDURES AND EXTENT OF REVIEW

Conditions for taking account of factors external to the statute

Reference to legislative history

Reference to legislative history of a constitutional act

The constitutional legislature's intention in enacting the fifth paragraph of article 3 of the Constitution, interpreted in the light of the legislative history of the constitutional revision that gave rise to it, is clearly to enable the legislature to establish rules to make an effective

reality of equal access for women and men to electoral offices and functions. To that end it is now legitimate for the legislature to adopt provisions that either operate as incentives or are mandatory. But it must reconcile the new constitutional provisions with the other constitutional principles and rules from which the constitutional legislature did not wish to derogate.

The purpose of the fifth paragraph of article 3 of the Constitution is not and cannot be to deprive the legislature of its power under article 34 of the Constitution to determine rules governing elections to assemblies.
(2003-475 DC, 24 July 2003, paras 13 and 18, p. 400)

It is clear from the parliamentary debates for the constitutional revision of 28 March 2003 that, by excluding individual acts from the scope of local referendums, considering both the specific rules governing such acts and the threat of violation of individual rights that their adoption by referendum might entail, the institutional legislature did not exceed the powers conferred by the Constitution.
(2003-482 DC, 30 July 2003, para 7, p. 414)

Reference to the legislative history

The legislative history behind section 7, relating to the content of ballot papers, shows that the legislative intention is to make it applicable to the election of Senators. But section L 52-3 as thus amplified is in Title I of Book I of the Electoral Code, which does not relate to such elections.

Section 7 is contrary to the principle of the objective of intelligibility and accessibility of statutes.
(2003-475 DC, 24 July 2003, paras 22 and 26, p. 400)

Section 43 of the Economic Initiative Act extends to outright *inter vivos* donations the succession tax exemption scheme previously laid down by sections 789 A and 789 B of the General Tax Code. It is clear from the legislative history that the legislative intention, in the current demographic context, was to promote the handing down of businesses in conditions that would make for stability in share ownership and the long-term prospects of the firm.
(2003-477 DC, 31 July 2003, paras 3 and 5, p. 418)

Section 47 of the Economic Initiative Act provides for an exemption from the solidarity wealth tax for one half of the value of shares held in certain companies where the shareholders undertake collectively to keep them for at least six years. It is clear from the legislative history that the legislative intention was to guarantee the stability of shareholdings in firms, particularly family firms, and consequently their long-term prospects.
(2003-477 DC, 31 July 2003, para 13, p. 418)

Section 48 of the Economic Initiative Act provides for an exemption from the solidarity wealth tax, on terms which it lays down, for securities received in consideration of subscriptions in cash or in kind to the capital of small and medium-sized firms. It is clear from the legislative history that the purpose is to provide an incentive for productive investment in small and medium-sized firms in view of the job-creating role they play.
(2003-477 DC, 31 July 2003, paras 17 and 19, p. 418)

The applicants in the two cases submit that the legislature made section 48 of the Pensions Reform Act retroactive by applying the new procedure for calculating pension supplements paid from 28 May 2003, but it is clear from the legislative history that the intention was not to affect pensions paid after that date.
(2003-483 DC, 14 August 2003, paras 34 and 35, p. 430)

Extent of review

Restricted constitutional review

Public-service law

Recruitment of *magistrats*

The prior exercise of "functions involving responsibilities... in administrative, economic or social matters" does not of itself reveal candidates' ability to dispense justice, whatever their

professional qualities and background. By defining such categories of candidates for appointment as community judges without specifying the level of legal knowledge or experience required of them, the institutional legislature has manifestly violated article 6 of the Declaration of 1789.

The words "administrative, economic or social" introduced in article 41-17(3°) of the Ordinance of 22 December 1958, are accordingly unconstitutional.
(2003-466 DC, 20 February 2003, paras 13 to 15, p. 156)

Accuracy of the budget

Under section 32 of the Institutional Act of 1 August 2001 on Finance Acts, applicable with effect from 1 January 2002 by virtue of section 65: "Finance Acts shall accurately present all the resources and burdens of central government. Their accuracy shall be assessed in the light of available information and of the estimates that can reasonably be deduced from it". The accuracy of the Finance Act for the year is assessed in terms of the absence of any intention to distort the broad lines of the balance.

None of the information laid before the Constitutional Council suggests that the assumptions as to gross domestic product adopted for 2004 or the forecast as to the budget deficit are vitiated by a manifest error.
(2003-489 DC, 29 December 2003, paras 3 and 4, p. 487)

MEANING AND SCOPE OF THE DECISION

Injunctions

Injunction to the legislature

Given their respective powers, their place in the decentralised organisation of the Republic and the rules governing their composition and operation, the Corsican Assembly and the regional councils are not in a different situation in relation to the objective in the fifth paragraph of article 3 of the Constitution, whereby "statutes shall promote the equal access of women and men to electoral offices and functions". There are no local circumstances or other grounds of general interest to justify the difference of treatment. The difference is accordingly contrary to the principle of equality. It will be for the forthcoming Act on the Corsican Assembly to put an end to this inequality. (Cf. 97-395 DC, 30 December 1997, para 14, p. 333; 98-405 DC, 29 December 1998, para 5, p. 326; 2000-431 DC, 6 July 2000, para 11, p. 98; cf. 2003-483 DC, 14 August 2003, para 26, p. 430).
(2003-468 DC, 3 April 2003, paras 26 to 28, p. 325)

The Constitutional Council is asked to hold that the insurance periods credited in certain circumstances to women who have brought up children should be available to men in the same way as to women. The Constitutional Council cannot issue such an injunction to the legislature without exceeding the powers conferred on it by the Constitution. Moreover, the measure requested of it would merely increase the existing significant differences between women's and men's pension rights.
(2003-483 DC, 14 August 2003, para 26, p. 430)

Qualified interpretations

Examples of *interprétations neutralisantes*

Public-service law

The priority given by the legislature to scholarship students for the recruitment of education assistants operates only where aptitudes are equal (section L 916-1 of the Education Code).
(2003-471 DC, 24 April 2003, para 10, p. 364)

Criminal law

The condemnation of all the illicit occupants of land as provided for by section 322-4-1 of the Criminal Code is not contrary to article 9 of the 1789 Declaration since the general principles of criminal law set out in sections 121-3 and 122-3 of the Criminal Code ("No crime is committed if there is no intention" and "A person who shows that he believed, by reason of an unavoidable mistake as to the law, that he was legitimately entitled to do the act complained of, shall not be criminally liable") will automatically apply in respect for defence rights. The same reservation applies as regards "aggressive begging" which is made an offence by section 225-12-5 of the Criminal Code.
(2003-467 DC, 13 March 2003, paras 73, 76 and 77, p. 211)

Section 433-5-1 of the Criminal Code, which creates an offence of scandalising the national flag or the national anthem at public events organised or regulated by public authorities excluded, for instance, "outrages" in works of the intellect, in private clubs or at events not organised or regulated by public authorities. The expression "public events regulated by public authorities", seen in the light of the legislative history, was to be understood as referring to public sporting, recreational or cultural events in places subject to the public health and safety regulations on account of the number of people attending them.
(2003-467 DC, 13 March 2003, para 104, p. 211)

Social law

It is clear from the debates in Parliament that the sole purpose of section 16, whereby agreements signed earlier are deemed to be signed on the basis of the Act referred, is to protect from challenge in the courts earlier agreements which were not in conformity with the legislation applicable when they were signed but are in conformity with the new Act. It cannot therefore be interpreted as conferring on earlier agreements other effects than those which the signatories intended them to have. Subject to this reservation, the challenge fails on the facts.
(2002-465 DC, 13 January 2003, paras 5 and 6, p. 43)

Rights of aliens

The consultation of police and gendarmerie files in the procedure for renewing a residence card cannot be interpreted as jeopardising the acquisition of French nationality where that nationality is an automatic statutory right nor the renewal of a residence card where such renewal is an automatic statutory right or is imposed by respect for everybody's right to a normal family life.
(2003-467 DC, 13 March 2003, para 35, p. 211)

For the purpose of withdrawal of the temporary residence card, "persons liable to be prosecuted" must be interpreted as meaning only aliens who have committed acts rendering them liable to conviction under the provisions of the Criminal Code to which section 75 of the Domestic Security Act refers.

The principle of the presumption of innocence cannot be validly pleaded outside the criminal law. The principle of defence rights likewise cannot be pleaded to challenge the withdrawal of a residence card on grounds of public order, which is not a criminal penalty but a mere police measure. But those affected will be able to make their views known in the manner prescribed by the ordinary law governing administrative procedure.

It will be for the relevant authority, where it plans to act under the provision challenged, to have regard to the right of everybody to lead a normal family life.
(2003-467 DC, 13 March 2003, paras 84 to 86, p. 211)

Public-service law

Section 6 of the Act authorising the Government to simplify the law, which provides for exceptions from the ordinary law on public procurement, cannot be interpreted as allowing the exercise of a task related to sovereignty to be delegated to a private individual.
(2003-473 DC, 26 June 2003, para 19, p. 382)

Recruitment of *magistrats*

While legal qualifications are a necessary condition for judicial functions, neither the law degrees held by the candidates designated above nor their prior professional experience suffice to raise a general that they will have acquired the qualities they need to settle disputes with the jurisdiction of the community courts. It will therefore be for the appropriate formation of the *Conseil supérieur de la magistrature*, before giving its opinion, to ensure that candidates proposed for appointment are apt to exercise the functions of community court judge and arrange for them to receive, if need be, proper induction training as provided by section 41-19. The *Conseil supérieur de la magistrature* could have access not only to the application file on each candidate proposed by the Minister of Justice but also the files on the other candidates. And if the qualifying period has not demonstrated that the candidate is suitable, the *Conseil supérieur de la magistrature* should issue a negative opinion on the appointment, even if the effect of the opinion is that a vacant post is not filled.
(2003-466 DC, 20 February 2003, para 12, p. 156)

The new section 41-22 of the Ordinance prohibits members of legal professions with rules and a status protected by legislation or regulations, and their employees, from exercising the functions of judge in the community courts within the territorial jurisdiction of the *tribunal de grande instance* for the place where they reside for professional purposes, and from undertaking any act relating to their profession within the territorial jurisdiction of the community court to which they are attached. This prohibition is to be interpreted as extending to activities exercised as member of a company or firm with the object of jointly exercising the relevant profession on behalf of which the person concerned exercises it.
(2003-466 DC, 20 February 2003, para 20, p. 156)

Under the fourth paragraph of section 41-22, a judge in a community court may not hear a dispute elated to his own professional activity, whether he exercises it individually or in a company or firm of which he is a member. This prohibition also applies where he himself or the relevant company or firm has or has had professional relations with one of the parties. In such cases, it is for the president of the *tribunal de grande instance*, under section 41-22, to bring the case before another community court judge in the same district if asked to do so by the relevant judge or by one of the parties. These provisions should always have the effect of preventing a judge from hearing a dispute in connection with his other professional activities.
(2003-466 DC, 20 February 2003, para 21, p. 156)

Examples of mandatory qualified interpretations

Rights and freedoms

It is clear from the debates in Parliament that the Data-processing and Freedom Act of 6 January 1978 will apply to the computerised processing of personal data by the national police and gendarmerie in the exercise of their tasks.
(2003-467 DC, 13 March 2003, paras 26 and 43, p. 211)

Section 2 of the Act of 6 January 1978, whereby an administrative decision "involving an assessment of human conduct" cannot be based exclusively on computer processing "defining an individual profile or personality" is applicable to the consultation of computerised personal data files by the police and gendarmerie as provided for by section 25 of the Domestic Security Act in the context of certain administrative inquiries.

The data contained in such files in each case will therefore constitute merely one element of a decision taken by the administrative authority subject to judicial review.
(2003-467 DC, 13 March 2003, para 34, p. 211)

As regards personal data processing by the police and gendarmerie, the decree provided for by section 21(V) of the Act must determine a data storage period concerning minors reconciling the need to detect offenders with the need to ensure the educational and moral upbringing of juvenile offenders.
(2003-467 DC, 13 March 2003, paras 36 to 38, p. 211)

Classes of courts and tribunals

By article 34 of the Constitution: "Statutes shall determine the rules concerning... the establishment of new classes of courts and tribunals...". The Refugees Appeal Commission is a class of courts and tribunals for the purposes of that article. The limited powers held by members of the Commission are a matter for statute, but it was legitimate for the legislature to leave the duration to be determined by the authority empowered to make regulations. But it will be for a Decree issued in the Council of State, subject to judicial review, to determine the duration in such a way as to violate neither the impartiality nor the independence of members of the Commission. Subject to this reservation, the new section 19(6°) of the Act of 25 July 1952 is not unconstitutional.
(2003-485 DC, 4 December 2003, paras 61 and 62, p. 455)

Criminal law

In the absence of automatic procedures for enforcing the levy authorised by the new section 55-1 of the Code of Criminal Procedure, and given the seriousness of the acts committed, the legislature has not determined a disproportionate quantum for refusal to pay the levy. But it will be for the criminal courts when sentencing for refusal to pay the levy to ensure that the penalty is in proportion to the penalty available for the offence in respect of which the levy was imposed. Subject to this reservation, section 30 of the Domestic Security Act is not unconstitutional.
(2003-467 DC, 13 March 2003, para 57, p. 211)

The penalties provided for by the new section 225-10-1 of the Criminal Code for public soliciting are not manifestly disproportionate. But it will be for the courts to have regard, when sentencing, to the fact that the offender acted under duress. Subject to this reservation, the provision challenged is not contrary to the principle that penalties must be necessary.
(2003-467 DC, 13 March 2003, para 63, p. 211)

Rights of aliens

The judicial authority retains the possibility of interrupting the extension of the detention of its own motion or at the request of the alien where the circumstances of law or of fact so justify.
(2003-484 DC, 20 November 2003, para 66, p. 438)

Electoral law

Given the complexity of ballot procedures for regional elections, in particular as regards the distribution of seats between departmental sections, it will be for the relevant authorities to make all requisite arrangements to inform voters and candidates about the ballot procedure and the fact that the representativeness of each list of candidates must be assessed at the regional level. In particular they must explain that, because the election is a regional one and there is a majority premium, one party might obtain more seats than another in a given departmental section although less votes are cast for it in the department as a whole. They must also specify that the effect of the distribution mechanism can be that the total number of seats available for one and the same departmental section can vary from one regional election to another.

To ensure that voters are well-informed and therefore that the abstention rate does not rise again, the ballot paper for each list in each region must give the name of the list, the name of the candidate heading it and the names of all the candidates on the list, broken down by departmental section.
(2003-468 DC, 3 April 2003, paras 17 to 20, p. 325)

Education

It will be for the relevant administrative authorities to allocate appropriations to finance education assistants between public educational establishments in accordance with objective

rational criteria related to the needs of such establishments so that the requirements of the thirteenth paragraph of the Preamble to the Constitution de 1946 are not violated.
(2003-471 DC, 24 April 2003, para 5, p. 364)

It will be for heads of establishment to base their education assistants recruitment decisions under the new section L 916-1 of the Education Code on the ability of those selected to meet the needs of the establishment.
(2003-471 DC, 24 April 2003, para 10, p. 364)

Territorial units

If departmental revenue from the domestic tax on consumption of petroleum products, transferred to the departments to cover expenditure on the minimum integration income and the solidarity income, were to decline, it would be for the central government to maintain resources at a level equivalent to what was provided for this purpose before the transfer.
(2003-489 DC, 29 December 2003, para 23, p. 487)

Public procurement

There is no constitutional rule or principle that requires the conception, performance, conversion, operation and financing of public-sector infrastructure or the management and financing of services to be entrusted to separate persons. And there is no constitutional rule or principle that prohibits tenders relating simultaneously to several sub-lots of a public contract divided into lots being assessed together to determine the tender that is most satisfactory in terms of its overall equilibrium. The use of hire-purchase or purchase-option schemes to pre-finance public works is not basically contrary to any constitutional requirement.

But the generalised use of such departures from standard practice in public procurement or the management of public assets could deprive certain constitutional requirements inherent in the principle of equality in matters of public procurement, the protection of public assets and the sound use of public funds of their statutory guarantees. The Ordinances issued on the basis of section 6 of the Act authorising the Government to simplify the law must accordingly reserve such special arrangements for situations where there are general interest consideration such as the urgent need in special or local circumstances to make up a delay or the need to have regard for the technical, functional or economic characteristics of a given public supply or work.
(2003-473 DC, 26 June 2003, para 18, p. 382)

Severability of provisions declared unconstitutional

Examples of severable provisions

Ordinary statutes

Provisions setting a threshold of 10 % of the number of registered voters for access to the second ballot at regional elections are severable from the other provisions of the Act.
(2003-468 DC, 3 April 2003, para 10, p. 325)

Section 44 of the Economic Initiative Act abolishes the supplementary charge payable in the event of failure by heirs or donees to comply with their conservation undertakings for the purposes of section 43. The applicants submit that these provisions are inseverable from those of the latter section and should accordingly be declared unconstitutional.

Section 44, which merely abolishes a penalty applicable in the event of failure to comply with the conditions laid down by sections 787B and 787C of the General Tax Code, is legally independent of section 43. It is, moreover, contrary to no constitutional rules or principles. The submission that section 44 should be declared unconstitutional must therefore be rejected, as were the submissions relating to section 43.
(2003-477 DC, 31 July 2003, paras 8 to 10, p. 418)

RIGHTS AND FREEDOMS

PUBLIC FREEDOMS — GENERAL

Aliens

No constitutional principle or rule gives aliens a general absolute right to reside in the national territory. It is therefore legitimate for the legislature, without violating any constitutional right or principle, to make the renewal or issuance of a temporary residence card subject to the absence of any threat to public order.

Given the nature of the offences referred, which all threaten public order, it was legitimate for the legislature to allow temporary residence cards to be withdrawn from persons liable to prosecution for such offences. For the purposes of the provision challenged, interpreted in the light of the parliamentary debates, "persons liable to be prosecuted" must be interpreted as meaning only aliens who have committed acts rendering them liable to conviction under the provisions of the Criminal Code to which section 75 of the Domestic Security Act refers.
(2003-467 DC, 13 March 2003, paras 83 and 84, p. 211)

It was legitimate for the legislature to address the specific situation and long-term difficulties of the department of Guyane and the commune of Saint-Martin in the department of Guadeloupe regarding the international movement of persons by not requiring the residence cards committee to give an opinion on refusals to issue residence cards and by not attaching suspensory effect to actions challenging an expulsion order, which does not violate the equilibrium that respect for the Constitution imposes as between the constraints of public order and the preservation of rights secured by the Constitution. Persons affected will retain the right to bring an action in the courts against administrative police measures. In particular they can apply to the administrative courts by way of urgent proceedings. Nor has the legislature violated the constitutional principle of equality in this specific situation, which is directly related to its avowed objective of boosting the fight against illegal immigration. The adaptations provided for are not contrary to article 73 of the Constitution.
(2003-467 DC, 13 March 2003, paras 108 to 110, p. 211)

RIGHTS OF ALIENS

Principles

There are no constitutional principles or rules assuring aliens of a general absolute right of access and residence to the national territory. It is legitimate for the legislature, when pursuing a general interest objective of establishing a status of long-term resident, to make eligibility for a residence card under section 14 of the Ordinance subject to the twofold condition of duration of residence and integration into French society.
(2003-484 DC, 20 November 2003, para 28, p. 438)

The tenth paragraph of the Preamble to the Constitution of 27 October 1946 reads: "The Nation shall provide the individual and the family with the conditions necessary to their development". It follows that aliens with a stable and regular residence in France are entitled, in the same way as French nationals, to lead a normal family life.

But there are no constitutional principles or rules assuring aliens of a general absolute right of access and residence to the national territory. It is for the legislature to reconcile the preservation of public order, a constitutional objective, and the requirements inherent in the right to lead a normal family life.
(2003-484 DC, 20 November 2003, paras 37 and 38, p. 438)

Entry into France

Entry refused

Aliens who are refused entry into France are duly informed, in a language they understand, that they are entitled to ask for a clear day before being repatriated. Consequently, since all aliens are in the same situation, there is no violation of the principle of equality.

By specifying that where entry is refused "the alien shall be invited to state on the notification whether he wishes to enjoy the benefit of the clear day", the legislature has not violated the scope of its powers under article 34 of the Constitution.
(2003-484 DC, 20 November 2003, paras 2 to 5, p. 438)

Transit area

The applicants complain that the amendments to section 35 quater of the Ordinance restrict the right of "access to a lawyer", allow an alien to be held available to the courts for a period of four hours where there is an order releasing him from the transit area and organise hearings in specially equipped rooms or by means of audiovisual telecommunication techniques, but the Constitutional Council considers that their objections, being identical to those made against section 49 of the Act referred (section 35 bis of the Ordinance), must be rejected on the same grounds.
(2003-484 DC, 20 November 2003, paras 85 and 86, p. 438)

Residence of aliens

Amendment of the conditions for family reunification in section 29 of the Ordinance of 2 November 1945: "If the parties cease living together, the temporary residence card issued to an alien's spouse may, during the two years following its issuance, be withdrawn or renewal of it may be refused. If the parties cease living together before the card is issued, the Prefect or, in Paris, the Prefect of Police, shall refuse to issue the temporary residence card". — But if the parties cease living together on the initiative of the alien on account of domestic violence sustained from the spouse, the Prefect may renew the card". The objection is that these provisions disproportionately violate the "right to private life".

There is no constitutional rule or principle guaranteeing that a particular form of residence card will be maintained or renewed after the conditions for its issuance are no longer satisfied. Rejected.
(2003-484 DC, 20 November 2003, paras 44 to 46, p. 438)

Private family visit

Where the person providing accommodation covers the subsistence costs of the guest during a private family visit up to the amount of resources that an alien is required to have in order to enter France without a certificate of accommodation, there is no violation of article 13 of the Declaration of 1789.

But by making the person providing accommodation responsible for the cost of repatriating the alien accommodated without any limit on the costs involved, without taking account of the good faith of the person providing accommodation or the conduct of the guest and without providing for an appropriate limitation period, the legislature has seriously violated the principle of equality of public burden-sharing.
(2003-484 DC, 20 November 2003, paras 7 to 13, p. 438)

Section 7 of the Immigration Control Act expressly provides that as regards the validation of certificates of accommodation, the mayor acts as an authority of the central government. He must present his decision for review by the Prefect. It defines in clear and limitative terms the grounds on which it is possible to refuse to validate a certificate of accommodation. It sets at one month the period within which the mayor or the Prefect, as the case may be, must give an express or implied response. It provides that if the person providing accommodation refuses to allow the accommodation to be inspected, normal conditions of accommodation are

deemed not to have been met, but it specifies that the refusal must be an unequivocal expression of will. The legislature did not therefore exceed its powers.
(2003-484 DC, 20 November 2003, paras 14 to 17, p. 438)

The eleventh paragraph of section 7 of the Act referred reads: "Every court action challenging a refusal to validate a certificate of accommodation must be preceded by an administrative objection lodged with the Prefect having jurisdiction for the area within two months from the date of the refusal; otherwise, it shall be inadmissible". The following paragraph provides that where the mayor or the Prefect do not respond within one month, that constitutes rejection of the objection.

The requirement that there be an administrative objection to the refusal to validate a certificate of accommodation, as a condition for admissibility of the court action, does not violate the right to a redress procedure under article 16 of the Declaration of 1789. And this requirement does not preclude interlocutory proceedings in the administrative court without awaiting the Prefect's hierarchical review.
(2003-484 DC, 20 November 2003, paras 18 and 19, p. 438)

Residence cards Commission

The Act referred amends the composition of the Residence Cards Commission determined by section 12 quater of the Ordinance of 2 November 1945. The applicants submit that the judges who sit on this Commission, which will include a personality designated by the Prefect for his expertise in matters of public security and a representative of the mayors in the department, will be put in a minority and its independence will be undermined. They argue that the adversarial nature of the procedure and respect for defence rights are not secured. And the conditions for action by the rapporteur of the commission, who represents the Prefect, are not specified.

The provision challenged, which merely amends the composition of an administrative commission of the central government with an advisory function, violates no constitutional principle. Nor is it vitiated by failure to exercise powers to the full since neither article 34 nor any other provision of the Constitution reserves the definition of the role of rapporteur for such a commission as a matter for statute.
(2003-484 DC, 20 November 2003, paras 32 to 34, p. 438)

Resident's card

There are no constitutional principles or rules assuring aliens of a general absolute right of access and residence to the national territory. It is legitimate for the legislature, when pursuing a general interest objective of establishing a status of long-term resident, to make eligibility for a residence card under section 14 of the Ordinance subject to the twofold condition of duration of residence and integration into French society.
(2003-484 DC, 20 November 2003, para 28, p. 438)

As long as their presence is not a threat to public order, aliens losing their entitlement to the resident's card under the provision raising from one year to two years the duration of the marriage required for the automatic issue of the resident's card, retain the right to a temporary residence card. The provision challenged accordingly violates neither the freedom to marry nor the right to lead a normal family life.
(2003-484 DC, 20 November 2003, paras 35 to 39, p. 438)

Right to marry

As long as their presence is not a threat to public order, aliens losing their entitlement to the resident's card under the provision raising from one year to two years the duration of the marriage required for the automatic issue of the resident's card, retain the right to a temporary residence card. The provision challenged accordingly violates neither the freedom to marry nor the right to lead a normal family life.
(2003-484 DC, 20 November 2003, paras 35 to 39, p. 438)

Freedom to marry is a component of the personal freedom secured by articles 2 and 4 of the 1789 Declaration (Departing from 93-325 DC). Respect for it does not mean that the irregular nature of a foreigner's residence in itself precludes his marriage.

While in certain circumstances the fact that an alien is resident illegally may, in conjunction with other facts of the case, raise a serious suspicion that the marriage is being contracted for a purpose other than true married life, the legislature, by treating the fact that an alien cannot prove that he is legally resident as always being evidence that there is no real consent, has violated the constitutional principle of freedom to marry.

By providing for the Prefect to be informed of the situation of an alien performing the formalities required for a marriage without providing evidence that he is legally resident and for transmission to the Prefect of the State counsel's decision to oppose the celebration of the marriage, to order that it be suspended or to authorise it to proceed, section 76 of the Act referred is liable to act as a disincentive to marry and therefore also violates the constitutional principle of freedom to marry.
(2003-484 DC, 20 November 2003, paras 94 to 97, p. 438)

Removal of aliens

Administrative detention orders

Rights of aliens who are detained

Since the detention of an alien jeopardises his individual freedom, he must be informed as rapidly as possible of the rights he can exercise. The provision to the effect that he must be given the information "without delay" means that, if the information cannot be given immediately for objective reasons, it must be given at the earliest opportunity.
(2003-484 DC, 20 November 2003, para 51, p. 438)

The legislature can provide that "in the event of *force majeure*" aliens who are in detention may have no access to an area allowing them to confer with their lawyer confidentially. But the presence of *force majeure*, even if the Act is silent on the question, always releases the administrative authorities from such an obligation.
(2003-484 DC, 20 November 2003, para 52, p. 438)

Duration of detention

The extension of the period allowed for preventive detention does not violate the role of the judicial authority as defined by article 66 of the Constitution.

The provision challenged does not preclude judicial review of a decision to remand an alien in detention beyond forty-eight hours. The legislature has provided that on this occasion the court, after ensuring that the alien has been given the possibility of asserting his rights, must inform him of the possibilities and time-limits for challenging the decisions concerning him.

Moreover, extending the authorised period of detention has no impact on the alien's right to challenge the administrative decision requiring him to leave French territory. If the administrative court annuls the expulsion order, the alien is immediately released from detention and given a provisional residence authorisation until the Prefect has reconsidered his case.

The alien may be held in detention only for the period strictly necessary for his departure, and the administration must act with all due diligence in that respect. The judicial authority retains the possibility of interrupting the extension of the detention of its own motion or at the request of the alien where the circumstances of law or of fact so justify.
(2003-484 DC, 20 November 2003, paras 64 to 66, p. 438)

Individual freedom is not violated where an alien is held in detention for five days after the first extension of fifteen days, where it has not been possible to execute an expulsion order, "despite the diligence of the administration", because the consulate with jurisdiction over him has not issued travel documents, or has issued them tardily, or where means of transport are not available.

The duration of the extension is warranted by the grounds given for it, which are not attributable to the will or lack of diligence of the administration.

Moreover, the legislature has provided that this extension of the detention can be ordered only where it is shown that the travel documents will be issued or the means of transport will be "shortly", so that the necessary conditions for executing the expulsion measure can be met within the five-day extension.
(2003-484 DC, 20 November 2003, paras 69 and 70, p. 438)

Role of the judicial authority

The extension of the period allowed for preventive detention does not violate the role of the judicial authority as defined by article 66 of the Constitution.

The provision challenged does not preclude judicial review of a decision to remand an alien in detention beyond forty-eight hours. The legislature has provided that on this occasion the court, after ensuring that the alien has been given the possibility of asserting his rights, must inform him of the possibilities and time-limits for challenging the decisions concerning him.

Moreover, extending the authorised period of detention has no impact on the alien's right to challenge the administrative decision requiring him to leave French territory. If the administrative court annuls the expulsion order, the alien is immediately released from detention and given a provisional residence authorisation until the Prefect has reconsidered his case.

The alien may be held in detention only for the period strictly necessary for his departure, and the administration must act with all due diligence in that respect. The judicial authority retains the possibility of interrupting the extension of the detention of its own motion or at the request of the alien where the circumstances of law or of fact so justify.
(2003-484 DC, 20 November 2003, paras 64 to 66, p. 438)

Under article 66 of the Constitution, where a judge has, in the full exercise of his powers as guardian of individual freedom, adjudged that a person's freedom must be restored, no obstacles may be put in the way of the decision, even pending the judgment of the court of appeal, if any.

But the judicial authority includes both the judiciary and the prosecution service, and the Act referred confers on the prosecution service the power to act in specific conditions, which distinguish between the parties to a case, being the alien and the representative of central government in the department.

To ensure that effective action is taken on a request from the State counsel for a declaration that an appeal against an order for the release of an alien who has no assurance of proper representation or who constitutes a serious threat to public order has suspensory effect, it is legitimate for the legislature to provide that the person concerned shall be held available to the courts for a period of four hours.

Only the First President of the Court of Appeal or a person appointed by him may decide whether the appeal should have suspensory effect. He must give his decision "without delay" on the State counsel's request, and that expression means that a decision which, if it cannot be taken immediately because the defence wishes to exercise its right, must be taken at the earliest opportunity.
(2003-484 DC, 20 November 2003, paras 74 to 77, p. 438)

Procedure and redress procedures

Under article 66 of the Constitution, where a judge has, in the full exercise of his powers as guardian of individual freedom, adjudged that a person's freedom must be restored, no obstacles may be put in the way of the decision, even pending the judgment of the court of appeal, if any.

But the judicial authority includes both the judiciary and the prosecution service, and the Act referred confers on the prosecution service the power to act in specific conditions, which distinguish between the parties to a case, being the alien and the representative of central government in the department.

To ensure that effective action is taken on a request from the State counsel for a declaration that an appeal against an order for the release of an alien who has no assurance of proper representation or who constitutes a serious threat to public order has suspensory effect, it is legitimate for the legislature to provide that the person concerned shall be held available to the courts for a period of four hours.

Only the First President of the Court of Appeal or a person appointed by him may decide whether the appeal should have suspensory effect. He must give his decision "without delay" on the State counsel's request, and that expression means that a decision which, if it cannot be taken immediately because the defence wishes to exercise its right, must be taken at the earliest opportunity.
(2003-484 DC, 20 November 2003, paras 74 to 77, p. 438)

In authorising the use of specially arranged court rooms in the immediate neighbourhood of detention premises or audio-conference facilities, the legislature's intention was to restrict the number of transfers that would have been contrary to the dignity of the relevant aliens and to the sound administration of justice.

In itself, holding a court hearing in premises in the immediate neighbourhood of detention premises is contrary to no constitutional principle. The fact in this case is that the legislature expressly provided that the court room should be "specially arranged" for clarity, security and fairness of the debates and should allow the court "give judgment in public".

The use of video-conference techniques is subject to the alien's consent, to confidentiality of transmission and to proceedings in the two places being open to the public.

It follows that the relevant provisions adequately secure a fair trial.
(2003-484 DC, 20 November 2003, paras 81 to 83, p. 438)

CIVIC RIGHTS

Fairness of ballot

The Regional Councillors Election Act does not in itself encourage electoral manœuvres. It will be for the electoral court to assess whether the designation as head of a regional list of a candidate who is not ranked high enough to be elected in a departmental section has or has not, in the circumstances of the case, affected the fairness of the ballot.
(2003-468 DC, 3 April 2003, para 21, p. 325)

Section 7 of the Act referred amplifies section L 52-3 of the Electoral Code as regards the content of ballot papers by providing in particular that "for elections on the list ballot system, lists presented in each of the departmental or regional constituencies may take the same name for the sake of nation-wide identification. The name may be that of a political group or party or that of its representative".

In certain cases this means that ballot papers may bear the names of persons who are not candidates for the election. That could generate confusion among voters and thus affect the fairness of the ballot.

It follows that section 7 is contrary to the principle of fair ballots.
(2003-475 DC, 24 July 2003, paras 21, 25 and 26, p. 400)

Pluralism

It is legitimate for the legislature, when laying down rules to govern elections to regional councils, to introduce measures to encourage the grouping of lists of candidates, notably to promote the emergence of a stable and coherent governing majority, but in doing so it must respect pluralism in the expression of ideas and opinions, which is among the foundations of democracy.

The threshold of 5 % of the votes cast at the first ballot set for the possibility of merging with another list at the second ballot at a regional election, already adopted in other provisions of the Electoral Code to reconcile proportionate representation with the establishment of a

stable and coherent governing majority stable, does not in itself violate the principle of pluralism of ideas and opinions, nor equality of voting rights, nor the freedom of political parties.
(2003-468 DC, 3 April 2003, paras 12 and 13, p. 325)

The Constitution does not confer on the Constitutional Council a general power of assessment and decision-making comparable to that enjoyed by Parliament. The Council may not, therefore, seek to ascertain whether the legislature's objective in establishing eight constituencies for the election of members of the European Parliament could have been attained by other means since the procedure adopted is not manifestly inappropriate to the objective pursued. The legislature's intention was to reconcile the attempt to bring voters and their elected representatives closer together with the representation of different ideas and opinions. The resultant reconciliation is not vitiated by a manifest error.

The plea that the replacement of a single national constituency by eight constituencies reduces the chances of candidates not belonging to major political parties, thus violating the freedom of voters and pluralism of ideas and opinions in a manner not justified by any consideration of general interest, must accordingly be rejected.
(2003-468 DC, 3 April 2003, paras 41 and 42, p. 325)

Intelligibility of electoral statutes

The complexity of the voting method provided for by sections L 338 and L 338-1 of the Electoral Code for regional elections, in particular as regards the distribution of seats between departmental sections, flows from the fact that the legislature wished to reconcile proportional representation in regional voting, the formation of a ruling political majority in the regional council and the restoration of a link between regional councillors and departments. This complexity meets objectives that the legislature regarded as being of general interest.

It will be for the relevant authorities to make all requisite arrangements to inform voters and candidates about the ballot procedure and the fact that the representativeness of each list of candidates must be assessed at the regional level. In particular they must explain that, because the election is a regional one and there is a majority premium, one party might obtain more seats than another in a given departmental section although less votes are cast for it in the department as a whole. They must also specify that the effect of the distribution mechanism can be that the total number of seats available for one and the same departmental section can vary from one regional election to another.

To ensure that voters are well-informed and therefore that the abstention rate does not rise again, the ballot paper for each list in each region must give the name of the list, the name of the candidate heading it and the names of all the candidates on the list, broken down by departmental section.
(2003-468 DC, 3 April 2003, paras 15 to 20, p. 325)

GUARANTEE OF INDIVIDUAL FREEDOM BY THE JUDICIAL AUTHORITY

Scope of article 66 of the Constitution

It is for the legislature to reconcile the prevention of violations of public order and the detection of offenders, both necessary to safeguard constitutional values and principles, with the exercise of freedoms guaranteed by the Constitution, which include the freedom to come and go and respect for private life, protected by articles 2 and 4 of the Declaration of Human and Civic Rights of 1789, and the individual freedom that article 66 of the Constitution places under the supervision of the judicial authority.

Apart from cases where they act on a requisition by the judicial authority, authorised police officers may hold a person only where there are plausible reasons to suspect that he has just committed an offence or where there are reasonable grounds for believing in the need to prevent the committee of an offence. In such cases, the judicial authority must also be

informed at the earliest opportunity and the rest of the procedure must be under its supervision.
(2003-467 DC, 13 March 2003, paras 7, 8 and 10, p. 211)

Vehicle searches

Regarding vehicle searches on a requisition by the State Prosecutor, the reconciliation by the new section 78-2-2 of the Code of Criminal Procedure of the prevention of violations of public order and the detection of offenders, both necessary to safeguard constitutional values and principles, with the exercise of freedoms guaranteed by the Constitution, which include respect for private life, freedom to come and go and individual freedom, is vitiated by no manifest error. The list of offences in the first paragraph of the section is not manifestly excessive in view of the public interest in detecting offenders. The section does not violate article 66 of the Constitution.
(2003-467 DC, 13 March 2003, paras 11 and 12, p. 211)

As regards vehicle searches carried out to record offences *flagrante delicto*, the new section 78-2-3 of the Code of Criminal Procedure is in conformity with the relevant constitutional requirements of the prevention of violations of public order and the detection of offenders, both necessary to safeguard constitutional values and principles, with the exercise of freedoms guaranteed by the Constitution, which include respect for private life, freedom to come and go and individual freedom by reason of the conditions that are imposed for searches ("reasonable suspicion that an offence has been committed or... reasonable grounds for believing in the need to prevent the committee of an offence"). The section does not violate article 66 of the Constitution.
(2003-467 DC, 13 March 2003, paras 13 and 14, p. 211)

As regards vehicle searches carried out by the administrative police, the new section 78-2-4 of the Code of Criminal Procedure is in conformity with the relevant constitutional requirements of the preservation of public order and the exercise of freedoms guaranteed by the Constitution, which include respect for private life, freedom to come and go and individual freedom by reason of the conditions that are imposed for searches ("preventing serious violations of the safety of persons and property"). The section does not violate article 66 of the Constitution.
(2003-467 DC, 13 March 2003, paras 15 and 16, p. 211)

Individual freedom and aliens

Administrative detention orders

Since the detention of an alien jeopardises his individual freedom, he must be informed as rapidly as possible of the rights he can exercise. The provision to the effect that he must be given the information "without delay" means that, if the information cannot be given immediately for objective reasons, it must be given at the earliest opportunity.
(2003-484 DC, 20 November 2003, para 51, p. 438)

The extension of the period allowed for preventive detention does not violate the role of the judicial authority as defined by article 66 of the Constitution.

The provision challenged does not preclude judicial review of a decision to remand an alien in detention beyond forty-eight hours. The legislature has provided that on this occasion the court, after ensuring that the alien has been given the possibility of asserting his rights, must inform him of the possibilities and time-limits for challenging the decisions concerning him.

Moreover, extending the authorised period of detention has no impact on the alien's right to challenge the administrative decision requiring him to leave French territory. If the administrative court annuls the expulsion order, the alien is immediately released from detention and given a provisional residence authorisation until the Prefect has reconsidered his case.

The alien may be held in detention only for the period strictly necessary for his departure, and the administration must act with all due diligence in that respect. The judicial authority retains

the possibility of interrupting the extension of the detention of its own motion or at the request of the alien where the circumstances of law or of fact so justify.
(2003-484 DC, 20 November 2003, paras 64 to 66, p. 438)

Suspensory effect of appeal

Under article 66 of the Constitution, where a judge has, in the full exercise of his powers as guardian of individual freedom, adjudged that a person's freedom must be restored, no obstacles may be put in the way of the decision, even pending the judgment of the court of appeal, if any.

But the judicial authority includes both the judiciary and the prosecution service, and the Act referred confers on the prosecution service the power to act in specific conditions, which distinguish between the parties to a case, being the alien and the representative of central government in the department.

To ensure that effective action is taken on a request from the State counsel for a declaration that an appeal against an order for the release of an alien who has no assurance of proper representation or who constitutes a serious threat to public order has suspensory effect, it is legitimate for the legislature to provide that the person concerned shall be held available to the courts for a period of four hours.

Only the First President of the Court of Appeal or a person appointed by him may decide whether the appeal should have suspensory effect. He must give his decision "without delay" on the State counsel's request, and that expression means that a decision which, if it cannot be taken immediately because the defence wishes to exercise its right, must be taken at the earliest opportunity.
(2003-484 DC, 20 November 2003, paras 74 to 77, p. 438)

Holding in transit area

The applicants complain that the amendments to section 35 quater of the Ordinance restrict the right of "access to a lawyer", allow an alien to be held available to the courts for a period of four hours where there is an order releasing him from the transit area and organise hearings in specially equipped rooms or by means of audiovisual telecommunication techniques, but the Constitutional Council considers that their objections, being identical to those made against section 49 of the Act referred (section 35 bis of the Ordinance), must be rejected on the same grounds.
(2003-484 DC, 20 November 2003, paras 85 and 86, p. 438)

Tasks to be exercised only by central government

Provision authorising the central government, on an experimental basis, to enter into contracts with persons in the public or private sectors for the transport of persons held in detention centres or transit areas. According to the reference, these provisions have the effect that a private person can be entrusted with the exercise of a sovereign task incumbent by its nature on central government. Since the Act excludes all functions on supervising the persons transported, and indeed reserves all the tasks indissociable from the sovereign tasks to be exercised exclusively by central government, the submission is declared unfounded. (Cf. 2002-461 DC)

The purpose of the possibility of bearing arms given to private-sector agents carrying out the transfers, for their personal protection in case of need, is not and cannot be to allow them to exercise functions of supervising the persons transported. It will be for the authority empowered to make regulations and the public authorities to strictly enforce this limitation. Subject to this reservation, the relevant provision is not unconstitutional.
(2003-484 DC, 20 November 2003, paras 87 to 90, p. 438)

PERSONAL FREEDOM

Freedom to marry as component of personal freedom

Section 175-2 of the Civil Code, as amended by section 76 of the Act referred, allows the Registrar, where there is serious evidence that the marriage is being celebrated for a purpose than for living together as man and wife, to refer the case to the State counsel, who has fifteen days to issue a reasoned decision authorising the marriage, opposing it or deciding that it must be suspended for a period not exceeding one month, renewable once by special reasoned decision. The decision may be challenged before the President of the *Tribunal de grande instance*, which must give its ruling within ten days. Given the guarantees thus established, the procedure provided for by section 175-2 of the Civil Code cannot be regarded as excessive violating the constitutional principle of freedom to marry.
(2003-484 DC, 20 November 2003, para 93, p. 438)

Freedom to marry is a component of the personal freedom secured by articles 2 and 4 of the 1789 Declaration (Departing from 93-325 DC). Respect for it does not mean that the irregular nature of a foreigner's residence in itself precludes his marriage.

While in certain circumstances the fact that an alien is resident illegally may, in conjunction with other facts of the case, raise a serious suspicion that the marriage is being contracted for a purpose other than true married life, the legislature, by treating the fact that an alien cannot prove that he is legally resident as always being evidence that there is no real consent, has violated the constitutional principle of freedom to marry.

By providing for the Prefect to be informed of the situation of an alien performing the formalities required for a marriage without providing evidence that he is legally resident and for transmission to the Prefect of the State counsel's decision to oppose the celebration of the marriage, to order that it be suspended or to authorise it to proceed, section 76 of the Act referred is liable to act as a disincentive to marry and therefore also violates the constitutional principle of freedom to marry.
(2003-484 DC, 20 November 2003, paras 94 to 97, p. 438)

Personal freedom of employed persons

The new section L 262-37 of the Code of Social Action and Families provides: "The content of the integration contract shall be negotiated between the person drafting it and the person to whom it is awarded. The contract shall be freely entered into by the parties and shall be based on mutual commitments by both of them". Persons concerned accordingly have the possibility of opposing the inclusion of the "integration — minimum income contract" among the integration facilities offered pursuant to section L 262-38 of the Code. Section 43 of the Act referred accordingly violates neither personal freedom nor freedom to contract.
(2003-487 DC, 18 December 2003, paras 27 and 28, p. 473)

RIGHTS OF REDRESS — DEFENCE RIGHTS

Administrative procedure

The requisition measures taken by the Prefect on the basis of section L 2215-1 of the General Code of Territorial Units can be challenged in the administrative courts, notably through urgent proceedings or a periodic penalty payment procedure.
(2003-467 DC, 13 March 2003, paras 3 and 4, p. 211)

The requirement that there should first be an administrative redress procedure, failure to exercise it invalidating applications for redress from the courts, does not violate the right to redress secured by article 16 of the 1789 Declaration.
(2003-484 DC, 20 November 2003, para 19, p. 438)

The new section 19(7°) of the Act of 25 July 1952, which leaves it to a Decree issued in the Council of State to determine the conditions for exercising the right to appeal to the Refugees Appeal Commission and conditions in which the President and the Divisional Presidents of that Commission may, after examining the case, rule by Order on appeals that are devoid of any serious aspect such as to invalidate the grounds given by the Director of the Office, violates none of the rules or principles reserved for statute by article 34 of the Constitution.

Moreover, it is clear from the legislative history that cases not warranting treatment by a divisional commission are to be examined by a rapporteur before being brought before the President or the Divisional Presidents of the Commission. It follows that the legislature did not violate the right to an appeal secured by article 16 of the Declaration of 1789 nor the right of asylum.
(2003-485 DC, 4 December 2003, paras 49, 52 and 53, p. 455)

PRINCIPLES OF CRIMINAL LAW

Principle that offences and penalties must be defined by statute

Principles governing sentencing

General

Under article 8 of the Declaration of Human and Civic Rights of 1789, which applies to all penalties, a penalty can be imposed only subject to respect for the principles that offences and penalties must be defined by statute, that penalties must be necessary and that the stricter criminal law may not be applied retroactively. Defence rights must also be respected.
(2003-489 DC, 29 December 2003, para 11, p. 487)

Scope

Tax penalties

By providing for fines payable under the employment premium legislation, the legislature did not intend to depart from the provisions applicable to tax penalties in relation to direct taxes. Sections L 80 and L 195 A of the Code of Tax Procedures, among others, will apply. Consequently, the challenges based on the automatic nature of the penalty and on the violation of defence rights fail on the facts.
(2003-489 DC, 29 December 2003, para 12, p. 487)

Police measures

The purpose of the penalty payment introduced by section L 2215-1 of the General Code of Territorial Units is to oblige people who refuse to do so to discharge the obligations imposed on them by a requisition order. It cannot be regarded as a penalty within the meaning of article 8 of the Declaration of Human and Civic Rights of 1789. The argument that the principles that penalties must be necessary and that penalties cannot be combined for one and the same offence are violated must be dismissed as inoperative.
(2003-467 DC, 13 March 2003, paras 3 and 5, p. 211)

Definition of offences and penalties

Specific definition of offences; requirement met

The principle that offences must be defined by statute is not violated by the new section 225-10-1 of the Criminal Code, since the offence of public soliciting is defined in clear and precise terms.
(2003-467 DC, 13 March 2003, para 62, p. 211)

The new offence determined by section 225-12-1 of the Criminal Code of "soliciting, accepting or obtaining sexual relations from a person engaging in prostitution... in exchange for remuneration or the promise of remuneration, where that person is in a particularly vulnerable situation" is committed only if the vulnerability of the person engaging in prostitution is apparent or is known to the offender. Such vulnerability is defined in terms of the word "particularly" and of the fact that it is due to illness, a physical or mental deficiency or pregnancy. It follows that the principle that nobody may be punished except for his own acts and the principle that the definition of a criminal offence must involve an intentional element are respected.
(2003-467 DC, 13 March 2003, paras 64 and 65, p. 211)

Act prohibiting, and creating a criminal offence of, contracting a marriage "for the sole purpose of obtaining a residence permit or enabling another person to obtain it, or of acquiring French nationality or enabling another person to acquire it" and organising a marriage for such purposes. These provisions violate no constitutional principle or rule. In particular they define the facts constituting the offence clearly and precisely without violating the principle that offences and penalties must be defined by statute.
(2003-484 DC, 20 November 2003, para 43, p. 438)

Offences defined by reference to foreign legislation

The Act referred defines an offence of assisting the illegal entry, movement or residence of an alien on the territory of a State party to an international convention against illegal trafficking in migrants. It provides: "the illegality of the situation of the alien shall be assessed by reference to the legislation of the relevant State". According to the reference, making the offence dependent on foreign legislation whereas the criminal intent can be assessed only by reference to French law violates the principle that offences and penalties must be defined by statute.

The provision challenged merely defines an element constituting a transnational offence of assisting the illegal residence of an alien. Such offences, established by French criminal law under international conventions to which France is a party, violate no constitutional principles or rules. The principle declared by section 121-3 of the Criminal Code that there is no criminal offence where there is no intention to commit it is automatically applicable. It follows that the provision challenged does not violate article 8 of the Declaration of 1789.
(2003-484 DC, 20 November 2003, paras 40 to 42, p. 438)

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

Principle

It is legitimate for the legislature to provide for new offences and to determine the penalties incurred for them. But in doing so it must reconcile the requirements of public order and the guarantee of rights secured by the Constitution. Under article 8 of the 1789 Declaration it must also respect the principle that penalties must be provided for by statute and the principle that penalties must be necessary and proportionate.

Public soliciting is liable to entail disturbances of public order, in particular for public tranquillity, hygiene and safety. By depriving pimps of their sources of profit, the prohibition of soliciting on the public highway helps to combat trafficking in human beings. The legislature's creation of an offence of public soliciting accordingly violates no constitutional rules or principles.
(2003-467 DC, 13 March 2003, paras 60 and 61, p. 211)

The prevention of violations of property rights and public order are necessary for the preservation of constitutional rights and principles. But when creating offences committed in the form of such violations, the legislature must reconcile these constitutional requirements with the exercise of freedoms guaranteed by the Constitution, which include respect for private life, freedom to come and go and the inviolability of the home. Given its avowed objectives it must also, in compliance with constitutional principles, lay down rules for the determination of offences and the penalties incurred for them.

Regarding "travellers", the legislature has not committed a manifest error vitiating its reconciliation of the protection of property rights and public order with the exercise d of rights secured by the Constitution.
(2003-467 DC, 13 March 2003, paras 70 and 71, p. 211)

Proportionality of penalties

In the absence of automatic procedures for enforcing the levy authorised by the new section 55-1 of the Code of Criminal Procedure, and given the seriousness of the acts committed, the legislature has not determined a disproportionate quantum for refusal to pay the levy. But it will be for the criminal courts, when sentencing for refusal to pay the levy, to ensure that the penalty is in proportion to the penalty available for the offence in respect of which the levy was imposed. Subject to this reservation, section 30 of the Domestic Security Act is not unconstitutional.
(2003-467 DC, 13 March 2003, para 57, p. 211)

The penalties provided for by the new section 225-10-1 of the Criminal Code for public soliciting are not manifestly disproportionate. But it will be for the courts to have regard, when sentencing, to the fact that the offender acted under threat or duress. Subject to this reservation, the provision challenged is not contrary to the principle that penalties must be necessary.
(2003-467 DC, 13 March 2003, para 63, p. 211)

In the absence of a manifest disproportion between offences that are likely to be committed by "travellers" as regards the illegal occupation of land belonging to others and the corresponding penalties, it is not for the Constitutional Council to substitute its assessment for that of the legislature. Given the nature of the relevant practices, the legislature did not violate the principle that penalties must be necessary when providing for supplementary penalties in the form of suspension of driving licences for up to three years and the confiscation of motor vehicles used in the committee of an offence, except for vehicles used as residences.
(2003-467 DC, 13 March 2003, para 72, p. 211)

Limited review by Constitutional Council

By setting the amount of the fine at €100, or 40 % of the amount of the payment on account for an employment premium wrongly received where the recipient's bad faith is proved, the legislature has not provided for a penalty manifestly disproportionate to the offence.
(2003-489 DC, 29 December 2003, para 13, p. 487)

Prohibition of cumulative penalties

Cumulative penalties

The purpose of the penalty payment introduced by section L 2215-1 of the General Code of Territorial Units is to oblige people who refuse to do so to discharge the obligations imposed on them by a requisition order. It cannot be regarded as a penalty within the meaning of article 8 of the Declaration of Human and Civic Rights of 1789. The argument that the principles that penalties must be necessary and that penalties cannot be combined for one and the same offence are violated must be dismissed as inoperative.
(2003-467 DC, 13 March 2003, paras 3 and 5, p. 211)

Given the conduct constituting it, the offence defined by section 312-12-1 of the Criminal Code of soliciting money aggressively or with threats from a dangerous animal concerns conduct that is distinct from that constituting extortion under section 312-1 of the Criminal Code. The plea that there is double criminality fails on the facts.
(2003-467 DC, 13 March 2003, paras 78 to 80, p. 211)

Presumption of innocence

Principle not violated

The recording of personal data in computerised personal data-processing systems by the police and the gendarmerie does not of itself violate the principle of the presumption of innocence.

In the event of a final decision withdrawing the case or a final acquittal, personal data relating to accused persons are deleted. The State Prosecutor may order their preservation "for reasons linked to the purposes served by the files", this exception from the general rule having to be justified on grounds of public order constraints determined by the judicial authority. In this case the withdrawal or acquittal must be recorded.

Where there is a decision to stay or terminate proceedings, personal data relating to accused persons are kept unless the State Prosecutor orders their deletion. If he does not do so, decisions to stay proceedings or to terminate them on grounds of inadequate evidence are recorded in the file. It will be for the judicial authority to assess in each case, on the basis of the grounds given for the decision, whether or not public order constraints justify the preservation of the data.

All persons recorded in the file must be able to exercise their right to access and correct the data on them in the conditions provided for by section 39 of the Act of 6 January 1978.
(2003-467 DC, 13 March 2003, paras 39 to 43, p. 211)

The external samples taken in accordance with the new section 55-1 of the Code of Criminal Procedure do not violate the presumption of innocence. On the contrary, they may well prove the innocence of the persons giving them.
(2003-467 DC, 13 March 2003, para 56, p. 211)

The fact that land belonging to the people is occupied by "travellers" raises a probability that the intention to offend is present. The condemnation of all the illicit occupants of land as provided for by section 322-4-1 of the Criminal Code is not contrary to article 9 of the 1789 Declaration since the general principles of criminal law set out in sections 121-3 and 122-3 of the Criminal Code ("No crime in committed if there is no intention" and "A person who shows that he believed, by reason of an unavoidable mistake as to the law, that he was legitimately entitled to do the act complained of, shall not be criminally liable") will automatically apply in respect for defence rights.
(2003-467 DC, 13 March 2003, para 73, p. 211)

RIGHT TO LIFE AND PHYSICAL HEALTH AND SAFETY

Samples

Blood samples

In the interests of victims of rape, acts of aggression or sexual assault, the new section 706-47-1 of the Code of Criminal Procedure provides for the possibility of performing a simple medical examination and a simple blood sample on a person against whom there is serious or concordant evidence of having committed one of the offences mentioned in sections 222-23 to 222-26 and 227-25 to 227-27 of the Criminal Code. If the person concerned does not consent, the operation may be performed only on written instructions from the State Prosecutor or the examining judge and only at the request of the victim or where his or her interests warrant it, in the latter case notably where the victim is a minor. It follows that the constraint on the person concerned is not excessive to an extent not necessitated by the other constitutional requirements that apply, and in particular, in accordance with the eleventh paragraph of the Preamble to the Constitution of 1946, the protection of the victim's health. The medical examination and blood sample do not violate defence rights, the requirements of a fair trial or the presumption of innocence.

The list of offences in the first paragraph of the new section 706-47-1 of the Code of Criminal Procedure is not vitiated by a manifest error, given the legislature's avowed objective.

It is clear from the explicit terms of the third paragraph of the new section 706-47-1 of the Code of Criminal Procedure that the judicial authority will have full discretion where the victim asks for the medical examination or blood sample to be performed despite the refusal of the person concerned. In particular, where the nature of the offence does not entail a risk for the victim's health, it can decline to act on the request.
(2003-467 DC, 13 March 2003, paras 47 to 51, p. 211)

External samples

It is clear from the very terms, as interpreted in the light of the parliamentary debates, that the expression "external sample" in the new section 55-1 of the Code of Criminal Procedure refers to a sample involving no internal bodily intervention. There will be no painful, intrusive or invasive procedure affecting the dignity of those concerned. The plea of the inviolability of the human body accordingly fails on the facts. Nor does the external sample affect individual freedom. And since the sample is taken in the course of the investigation to ascertain the truth, it does not impose unnecessary constraints on "persons against whom there are one or more plausible reasons for suspecting that they have committed or attempted to commit an offence".
(2003-467 DC, 13 March 2003, para 55, p. 211)

Social rights of aliens

The purpose of the provisions challenged is to avoid the state's health-care scheme covering for one year the full cost of health care incurred by a person of foreign nationality who has been residing illegally in France for less than three months. But they provide an assurance of emergency treatment "failure to provide which would endanger the patient's life" or could engender a serious and long-term deterioration of their health. By adopting these measures, the legislature has not derived the requirement imposed by the eleventh paragraph of the Preamble to the Constitution of 1946 of its statutory guarantees.
(2003-488 DC, 29 December 2003, paras 16 to 18, p. 480)

FREEDOM TO COME AND GO

Body and luggage searches for security purposes

The new section 3-1 of the Act of 12 July 1983 imposes a strict accreditation procedure allowing private-sector security operatives to take part in verification operations. In the absence of consent, they may only undertake visual inspections of hand luggage. Operations involving body and luggage searches in the absence of consent may be ordered only by the prefect, on grounds of serious threats to public security and special circumstances for a restricted period in determined places. These arrangements do not violate individual liberty.

The same applies to the new section 3-2 of the Act of 12 July 1983. Access to premises where major sporting, cultural and recreational events take place calls for specific surveillance measures to protect the physical safety of those taking part. None of the measures provided for by the section will jeopardise individual freedom.
(2003-467 DC, 13 March 2003, paras 97 and 98, p. 211)

RIGHT OF ASYLUM

Principle

The fourth paragraph of the Preamble to the Constitution of 27 October 1946, to which the Preamble to the Constitution of 1958 refers, provides: "Any man persecuted in virtue of his

actions in favour of liberty may claim the right of asylum upon the territories of the Republic". It is for the legislature to provide at all times for all the statutory guarantees needed to meet this constitutional requirement. By providing that an asylum request will be inadmissible if it is made more than five years after the alien has been placed in a detention centre, the legislature sought to reconcile respect for the right of asylum with the need to enforce expulsion orders, which contributes to the preservation of public order, by avoiding dilatory requests. To that end it has provided that the alien will be fully informed of the time allowed for making an asylum application, and time will not begin to run until that information has been given. Moreover, given the specific reference to a particular category of detention "centres", the five-day period does not include any time spent in detention by an alien in another type of premises. And section 27 bis of the Ordinance, as currently drafted, reads: "An alien may not be removed to another country if he can show that his life or freedom are threatened or that he is exposed to treatments contrary to article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950". It follows that the Act referred has not deprived the right of asylum of its essential statutory guarantees.
(2003-484 DC, 20 November 2003, paras 56 to 59, p. 438)

The fourth paragraph of the Preamble to the Constitution of 27 October 1946, to which the Preamble to the Constitution of 1958 refers, provides: "Any man persecuted in virtue of his actions in favour of liberty may claim the right of asylum upon the territories of the Republic". Certain guarantees attached to this right are provided for by international conventions incorporated in domestic law, in particular the Geneva Convention of 28 July 1951 and the New York Protocol of 31 January 1967 on the status of refugees, but it is for the legislature to provide at all times for all the statutory guarantees needed to meet this constitutional requirement.
(2003-485 DC, 4 December 2003, para 2, p. 455)

Respect of right of asylum

Restrictions on cases of admission of aliens to reside in France

The administrative authority can oppose admission for residence purposes in the three cases covered by the new section 8 (2° to 4°) of the Act of 25 July 1952, but the relevant aliens are entitled under the new section 10 to remain in the national territory until the French Office for the Protection of Refugees and Stateless Persons has notified them of its decision. Given the constitutional requirement of safeguarding public order, it was legitimate for the legislature to submit asylum applications to a priority examination procedure in the three cases of refusal of admission for residence purposes.
(2003-485 DC, 4 December 2003, paras 54 to 56, p. 455)

Subsidiary protection

The Act referred provides: "subsidiary protection shall not be given to a person of whom there are serious reasons to believe... that he has committed a serious offence against the ordinary criminal law" or that "his activity in the territory is a serious threat to public order, public security or the security of the State".

The authors of the referrals regard the concept of "serious offence against the ordinary criminal law" is vitiated by failure of the legislature to exercise its powers to the full since it specifies nether the nature of the relevant offences, nor the place where they are committed, nor the criminal legislation applicable.

The Act referred applies to subsidiary protection a ground for exclusion already implemented subject to judicial review as regards recognition of refugee status under article 1(F)(b) of the Geneva Convention.

The provision challenged is drafted in such a way as to imply without any ambiguity that the offence may be committed in the country of origin, in France or in a third country. This definition is not open to criticism on constitutional grounds.

Lastly the seriousness of an offence that might exclude a person from the benefit of this right can be assessed only in the light of French criminal law. It was legitimate for the legislature to leave it to the French Office for the Protection of Refugees and Stateless Persons, subject to review by the Refugees Appeals Commission, to examine the applicant's practical situation in depth and then assess whether the facts, in view of their nature, they conditions in which they were committed and the seriousness of the loss sustained by the victims, were a "serious offence against the ordinary criminal law" warranting exclusion form subsidiary protection.
(2003-485 DC, 4 December 2003, paras 19 to 23, p. 455)

The Act referred provides: "subsidiary protection shall not be given to a person of whom there are serious reasons to believe... that he has committed a serious offence against the ordinary criminal law" or that "his activity in the territory is a serious threat to public order, public security or the security of the State".

The legislature is criticised for having taken as a ground for exclusion from subsidiary protection the "serious threat to public order", which means conferring on the French Office for the Protection of Refugees and Stateless Persons "a task that is contrary to the protection of the individual that goes with the right of asylum".

There are no constitutional principles or rules precluding the legislature, when establishing the subsidiary protection scheme, from deciding that an activity that is serious threat to public order, public security or the security of the State constitutes a ground for exclusion from subsidiary protection.

The Act referred leaves it to the French Office for the Protection of Refugees and Stateless Persons to assess whether that ground for exclusion should be relied on, but its power to do so flows from the legislature's decision to confer on a single independent body all the powers relating to recognition of refugee status and the grant of subsidiary protection. That decision, based on the general interest in unifying and rationalising procedures, is not open to criticism of constitutional grounds.
(2003-485 DC, 4 December 2003, paras 19, 24 to 26, p. 455)

Safe country of origin

The sole effect of having the nationality of a safe country is to trigger a priority procedure for processing asylum requests. The Act provides: "taking account of the fact that a country of origin is safe shall not preclude the individual assessment of every request", and the applicant has the right to remain in France during that examination, while the French Office for the Protection of Refugees and Stateless Persons is not released from its obligation to interview him. It follows that the provision challenged has not deprived the right of asylum of its essential statutory guarantees.

The Act referred seeks to treat asylum requests in an appropriate manner so as to improve the protection given to persons eligible for refugee status or subsidiary protection. Given this objective, asylum-seekers from countries that can be regarded as respecting the principles of freedom, democracy and the rule of law and human rights and fundamental freedoms are in a different situation from asylum-seekers from other countries. The fact that the rules of procedure are different depending whether the asylum-seeker is or is not from a safe country is not contrary to the principle of equality.

The decision determining the list of countries regarded as safe countries of origin will be open to challenge on grounds of *ultra vires* and will not be binding on the Refugees Appeals Commission when it assesses the situation of each asylum-seeker. It follows that the provision challenged does not violate the independence of the Refugees Appeals Commission vis-à-vis the French Office for the Protection of Refugees and Stateless Persons, which is an essential guarantee of the right of asylum, and has no impact on its impartiality.
(2003-485 DC, 4 December 2003, paras 37 to 40, p. 455)

"Internal asylum"

The applicants challenge the Act referred on the ground that that it establishes "an alternative internal asylum" that deprives the right of asylum of its essential guarantees.

Firstly, by referring to the geographical area in which persecutions or threats are made or carried out, the Act referred specifies the criteria whereby the French Office for the Protection of Refugees and Stateless Persons may evaluate the risk of persecution or the seriousness of the threats facing an asylum-seeker in order to determine whether he is eligible for refugee status or subsidiary protection.

Secondly, where the asylum-seeker has access to protection in part of his country of origin, the Act merely allows the Office to withhold asylum but in no way obliges it to do so.

Thirdly, a person may not be refused asylum on such grounds unless two conditions are met — there must be "no reason to fear persecution or exposure to a serious threat" and there must be "reasonable grounds for believing that he can stay in that part of the country". Where the Act provides for forms of protection that can be supplied by international or regional organisations present on the spot, it will be for the Office and in appropriate cases the Refugees Appeals Commission to determine whether such organisations can give the asylum-seeker effective protection.

Under the Act, the French Office for the Protection of Refugees and Stateless Persons is to examine the application in the light of the general conditions in the relevant area of the country of origin and the applicant's personal situation. It must also take account of the author of the persecutions, being governed by state authorities or not. Each application is to be examined individually in the light of these factors, assessed on the date on which the Office gives its decision. It will be for the Office, subject to review by the Refugees Appeals Commission, to refuse to grant asylum on the ground set out in the third paragraph of the new section 2(III) of the Act of 25 July 1952 only after ascertaining that the person concerned can safely reach a substantial part of his country of origin, settle there and lead a normal life. Subject to this reservation, the provision challenged is not unconstitutional.
(2003-485 DC, 4 December 2003, paras 12 to 18, p. 455)

French Office for the Protection of Refugees and Stateless Persons

Articles 13 and 21 of the Constitution do not preclude the legislature from conferring on an authority of the central government other than the Prime Minister the power to determine rules for the implementation of a statute, provided however that the empowerment concerns only measures limited in both scope and content. Such is the case of the establishment of the list of safe countries, which can be entrusted to the Management Board of the French Office for the Protection of Refugees and Stateless Persons.
(2003-485 DC, 4 December 2003, paras 34 and 35, p. 455)

Procedure

Under the Act referred, when ruling on an asylum application, the French Office for the Protection of Refugees and Stateless Persons may dispense with an interview with the applicant if, in particular, it appears that the applicant has the nationality of a country for which article 1(C)(5) of the Geneva Convention of 28 July 1951 (safe country) has been activated.

The applicants submit that the legislature has removed an essential guarantee that made the right of asylum more effective on the ground that the right to an individual examination of each demand necessarily includes the right for the applicant to make his views known and provide oral testimony.

The provisions challenged merely states the grounds on which the French Office for the Protection of Refugees and Stateless Persons may decide to dispense with interviewing the applicant. It confers a discretionary power on the Office, to be assessed on the basis of a case-by-case assessment whether there is a need to call the applicant for an interview. The fact that the applicant is not interviewed cannot have the effect of releasing the Office from its duty to make an individual examination of the facts presented in support of the application, in accordance with the principle laid down by the Act. The provision challenged accordingly does not deprive the right of asylum of an essential guarantee.
(2003-485 DC, 4 December 2003, paras 5 to 7, p. 455)

Under the Act referred, when ruling on an asylum application, the French Office for the Protection of Refugees and Stateless Persons may dispense with an interview with the applicant

if, in particular, it appears that the applicant has the nationality of a country for which article 1(C)(5) of the Geneva Convention of 28 July 1951 (safe country) has been activated.

The applicants submit that, by applying different rules of procedure to persons seeking the same right, this provision creates differences of treatment unrelated to the purpose of the Act.

The Act referred provides for proper treatment for asylum applications to secure better protection for persons meeting the requirements for eligibility for refugee status or subsidiary. Applicants having the nationality of a country for which the Geneva Convention is no longer applicable are accordingly in a different situation from other applicants. It follows that the principle of equality is not violated.
(2003-485 DC, 4 December 2003, paras 5, 8 to 10, p. 455)

Given the constitutional requirement of safeguarding public order, it was legitimate for the legislature to submit asylum applications to a priority examination procedure in the three cases of refusal of admission for residence purposes.

It was legitimate for the legislature, without violating its own powers, to leave it to a Decree issued in the Council of State to determine the periods within which the French Office for the Protection of Refugees and Stateless Persons is to give decisions in accordance with the priority procedure.
(2003-485 DC, 4 December 2003, paras 56 and 57, p. 455)

Communication of documents

The confidentiality of information held by the French Office for the Protection of Refugees and Stateless Persons relating to a person seeking asylum in France is an essential guarantee for the right of asylum, which is a constitutional principle implying among other things that asylum-seekers must be given specific protection.

But the Act referred provides for the transmission only of documents concerning persons whose request had been rejected either by a decision of the Refugees Appeals Commission or by a final decision of the French Office for the Protection of Refugees and Stateless Persons. It specifies that the transmission may in no cases include documents presented in support of the asylum request and is confined to "documents relating to civil status and travel documents making it possible to determine the nationality of a person whose asylum request is rejected". Moreover, these documents can be transmitted only to duly authorised officials; it will be for the Decree to be issued in the Council of State provided for by the new section 19 of the Act of 25 July 1952 to determine the procedure for exercising the power thus conferred and to provide in particular that the relevant officials agents must be designated personally and specifically on the basis of the responsibilities they exercise in the application of the legislation on the entry and residence of aliens. And the transmission of the documents must be necessary to give effect to an expulsion order and may in no circumstances jeopardise the safety of the asylum-seeker or his family members.

The provision challenged accordingly does not violate the principle of confidentiality of information relating to asylum-seekers and does not deprive the right to asylum of an essential guarantee.
(2003-485 DC, 4 December 2003, paras 43 to 47, p. 455)

Refugees Appeals Commission

The independence of the Refugees Appeals Commission vis-à-vis the French Office for the Protection of Refugees and Stateless Persons is an essential guarantee of the right of asylum.
(2003-485 DC, 4 December 2003, para 40, p. 455)

The new section 5(V) of the Act of 25 July 1952, which allows the President and the Divisional Presidents of the Commission to make Orders dismissing manifestly unfounded applications by an expedited procedure, reduces the time taken for the Refugees Appeals Commission to come to a judgment and thus enables asylum-seekers to exercise their rights of redress more effectively.
(2003-485 DC, 4 December 2003, paras 49 to 51, p. 455)

The new section 19(7°) of the Act of 25 July 1952, which leaves it to a Decree issued in the Council of State to determine the conditions for exercising the right to appeal to the Refugees

Appeal Commission and the conditions in which the President and the Divisional Presidents of that Commission may, after examining the case, rule by Order on appeals that are devoid of any serious aspect such as to invalidate the grounds given by the Director of the Office, violates none of the rules or principles reserved for statute by article 34 of the Constitution.

Moreover, it is clear from the legislative history that cases not warranting treatment by a divisional commission are to be examined by a rapporteur before being brought before the President or the Divisional Presidents of the Commission. It follows that the legislature did not violate the right to an appeal secured by article 16 of the Declaration of 1789 nor the right of asylum.
(2003-485 DC, 4 December 2003, paras 49, 52 and 53, p. 455)

By article 34 of the Constitution: "Statutes shall determine the rules concerning... the establishment of new classes of courts and tribunals...". The Refugees Appeal Commission is a class of courts and tribunals for the purposes of that article. The limited powers held by members of the Commission are a matter for statute, but it was legitimate for the legislature to leave the duration to be determined by the authority empowered to make regulations. But it will be for a Decree issued in the Council of State, subject to judicial review, to determine the duration in such a way as to violate neither the impartiality nor the independence of members of the Commission. Subject to this reservation, the new section 19(6°) of the Act of 25 July 1952 is not unconstitutional.
(2003-485 DC, 4 December 2003, paras 61 and 62, p. 455)

RESPECT FOR PRIVATE LIFE

Data files

Police and gendarmerie files

All the guarantees provided for by sections 21 to 23 of the Domestic Security Act and by the Data-processing and Freedom Act of 6 January 1978, which, as is clear from the debates in Parliament, will apply to the computerised processing of personal data by the national police and gendarmerie in the exercise of their tasks, will reconcile the respect for private life with the preservation of public order in a manner that is not manifestly unbalanced.
(2003-467 DC, 13 March 2003, paras 21 to 27, p. 211)

There are no constitutional rules opposing on grounds of principle the administrative use of personal data gathered in the course of criminal investigation police activities. But such use would be contrary to articles 2, 4, 9 and 16 of the 1789 Declaration if it was excessive and capable of violating the legitimate rights and interests of the persons concerned.

Given the grounds on which data may be consulted and the accompanying restrictions and precautions, the Domestic Security Act does not violate any of these constitutional requirements.

Under section 2 of the Act of 6 January 1978, the data contained in such files in each case will therefore constitute merely one element of a decision taken by the administrative authority subject to judicial review.

These provisions do not in themselves violate the rights of aliens, which do not include a general absolute right to acquire French nationality or to have a residence card renewed. But they cannot be interpreted as jeopardising the acquisition of French nationality where that nationality is an automatic statutory right nor the renewal of a residence card where such renewal is an automatic statutory right or is imposed by respect for everybody's right to a normal family life.
(2003-467 DC, 13 March 2003, paras 32 to 35, p. 211)

Rights of aliens

The fourteenth paragraph of section 7 of the Act referred provides: "Applications for validation of certificates of accommodation may be stored and processed by computer to preclude

abuses of procedure. The corresponding data files shall be set up by the mayors, in accordance with provisions determined by a Decree issued in the Council of State after the National Commission on Data-processing and Liberty has given its opinion. That Decree shall specify the period during which the data shall be stored and the conditions for updating them, the rules governing entitlement to access for persons who are to consult the files and the conditions in which the persons concerned may exercise their right of access".

The Deputies and Senators making the reference submit that these provisions are not properly reconciled with the need to preserve public order and respect for private life.

Article 2 of the Declaration of 1789 reads: "The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are Liberty, Property, Safety and Resistance to Oppression". The freedom proclaimed by this article implies respect for private life.

The purpose of computerised processing of applications for validation of certificates of accommodation for aliens making private family visits, which mayors may establish in their capacity as agents of central government, is to combat illegal immigration. This contributes to preserving public order, which is a constitutional requirement. Moreover, the Act leaves it to a Decree issued in the Council of State after the National Commission on Data-processing and Liberty has given its opinion to determine the guarantees for persons whose data are processed, in compliance with the Act of 6 January 1978. Given the grounds laid down for access to personal data and the restrictions and precautions surrounding their processing, in particular the limitation on the period during which they may be stored, the Act referred reconciles respect for private life with the preservation of public in a manner which is not manifestly excessive.
(2003-484 DC, 20 November 2003, paras 20 to 23, p. 438)

Situation of aliens

The fact that the legislature has provided that the issuance of certain residence cards for purposes of family reunification or for the parents of under-age children of French nationality is subject to a dual condition of duration of residence and integration into French society does not violate the right to lead a normal family life since, in the absence of threat to public order, applicants are automatically entitled to a temporary residence card endorsed "private and family life".
(2003-484 DC, 20 November 2003, paras 28 and 29, p. 438)

FREEDOM OF ENTERPRISE AND FREEDOM OF TRADE AND INDUSTRY

Freedom of trade and industry

By referring in section L 720-4 of the Commercial Code to "the total sales area of retail shops selling primarily food products with a total sales area of more than 300 square metres", section 56 of the Overseas Programming Act, which seeks to restrict dominant positions, is not contrary to the principle of freedom of trade and industry.
(2003-474 DC, 17 July 2003, paras 2 and 3, p. 389)

Freedom of enterprise

Applications

Criminal law

Section 225-10(4°) of the Criminal Code, whereby it is an offence directly or through an intermediary to "sell, hire or in any way supply to one or more persons vehicles of whatever

kind knowing that they will use them for the purposes of prostitution" in no way prohibits persons engaging in prostitution from acquiring and using a vehicle and does not violate the freedom of enterprise of sellers and hirers of vehicles, which is limited by the prohibition on knowingly contributing to activities that are contrary to the law or public order.
(2003-467 DC, 13 March 2003, paras 66 and 67, p. 211)

National public establishment responsible for preventive archaeology diagnostics and digs

Although there is an objective of general interest relating to the preservation of the archaeological heritage and warranting the legislature's decision to make preventive archaeology a public service task, there is no constitutional principle or rule requiring it to grant exclusive rights to a specialised public establishment. It was legitimate for it to associate the private sector with the performance of this public service by allowing them to carry out the prescribed digs. But this requires administrative and scientific control procedures to be established to ensure the quality of the services performed and the continuity of operations. Section 6 of the Act accordingly provides that preventive digs can be carried out only by persons who are independent of the developer and accredited by the State. It will be for the relevant authority of the State to ensure that persons accredited comply with the constraints of the public service in which they participate and, if not, to withdraw their accreditation. The objection that the possibility of participation by private-sector persons in preventive archaeological digs violates constitutional principles specific to the public service must accordingly be dismissed.
(2003-480 DC, 31 July 2003, paras 10 to 12, p. 424)

FREEDOM OF CONTRACT

Scope of principle

The legislature cannot modify the general scheme of a contract lawfully concluded to such an extent as to manifestly violate the freedom proclaimed by articles 4 and 16 of the Declaration of Human and Civic Rights and, as regards the participation of workers in the collective determination of their working conditions, the eighth paragraph of the Preamble to the 1946 Constitution.
(2002-465 DC, 13 January 2003, para 4, p. 43)

Applications

Social law

A provision which gives full effect to contractually-agreed quotas of overtime negotiated for the purposes of rights to compulsory compensatory time off improves the situation of the employees concerned in relation to the right to rest acknowledged by the eleventh paragraph of the Preamble to the 1946 Constitution. It does not therefore unconstitutionally violate the general scheme of contracts lawfully concluded.
(2002-465 DC, 13 January 2003, paras 7 to 11, p. 43)

By providing for the parties to collective bargaining in private-sector not-for-profit health-care and medico-social treatment to be briefed on the parameters concerning aggregate wage-and-salary-bill trends to be adopted in the ministerial approval procedure, the legislature has not violated the freedom to contract nor overlooked the need to reconcile the constitutional requirement for financial equilibrium in social security under the nineteenth paragraph of article 34 of the Constitution and the principle declared by the eighteenth paragraph of the Preamble to the Constitution of 1946 ("All workers shall, through the intermediary of their representatives, participate in the collective determination of their conditions of work and in the management of the work place").
(2003-486 DC, 11 December 2003, para 17, p. 467)

The new section L 262-37 of the Code of Social Action and Families provides: "The content of the integration contract shall be negotiated between the person drafting it and the person to whom it is awarded. The contract shall be freely entered into by the parties and shall be based on mutual commitments by both of them". Persons concerned accordingly have the possibility of opposing the inclusion of the "integration — minimum income contract" among the integration facilities offered pursuant to section L 262-38 of the Code. Section 43 of the Act referred accordingly violates neither personal freedom nor freedom to contract.
(2003-487 DC, 18 December 2003, paras 27 and 28, p. 473)

RIGHT TO WORK

Pension rights

The constitutional requirement of the eleventh paragraph of the Preamble to the Constitution of 27 October 1946 entails implementing a policy of national solidarity with retired workers. But it is legitimate for the legislature to satisfy this requirement by means of the practical modalities which it considers appropriate. In particular, it is always legitimate for it to act in matters reserved for it by article 34 of the Constitution and amend earlier statutes or repeal them and replace them by fresh provisions. And it is legitimate for it, when attaining or reconciling constitutional objectives, to adopt fresh modalities which seem appropriate to it and which may involve amending or abolishing provisions which it considers to be excessive or superfluous. But the exercise of this power may not have the effect of depriving constitutional requirements of statutory guarantees.
(2003-483 DC, 14 August 2003, paras 6 to 8, p. 430)

Right to rest

A provision which gives full effect to contractually-agreed quotas of overtime negotiated for the purposes of rights to compulsory compensatory time off improves the situation of the employees concerned in relation to the right to rest acknowledged by the eleventh paragraph of the Preamble to the 1946 Constitution. It does not therefore unconstitutionally violate the general scheme of contracts lawfully concluded.
(2002-465 DC, 13 January 2003, paras 7 to 11, p. 43)

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

Collective agreements

Interpretation

It is clear from the debates in Parliament that the sole purpose of section 16, whereby agreements signed earlier are deemed to be signed on the basis of the Act referred, is to protect from challenge in the courts earlier agreements which were not in conformity with the legislation applicable when they were signed but are in conformity with the new Act referred. It cannot therefore be interpreted as conferring on earlier agreements other effects than those which the signatories intended them to have. Subject to this reservation, the challenge fails on the facts.
(2002-465 DC, 13 January 2003, paras 5 and 6, p. 43)

Content

The principle that a statute cannot authorise collective employment agreements to derogate from statutes and regulations or from agreements having a broader scope unless they are more

favourable to employed persons is not a fundamental principle recognised by the laws of the Republic.
(2002-465 DC, 13 January 2003, paras 2 and 3, p. 43)

FAMILY LAW

Right to a normal family life

Principle

It will be for the relevant authority, when it is minded to withdraw an alien's residence card on grounds of public order, to have regard to the right of everybody to lead a normal family life.
(2003-467 DC, 13 March 2003, para 86, p. 211)

No violation

The fact that the legislature has provided that the issuance of certain residence cards for purposes of family reunification or for the parents of under-age children of French nationality is subject to a dual condition of duration of residence and integration into French society does not violate the right to lead a normal family life since, in the absence of threat to public order, applicants are automatically entitled to a temporary residence card endorsed "private and family life".
(2003-484 DC, 20 November 2003, paras 28 and 29, p. 438)

As long as their presence is not a threat to public order, aliens losing their entitlement to the resident's card under the provision raising from one year to two years the duration of the marriage required for the automatic issue of the resident's card, retain the right to a temporary residence card. The provision challenged accordingly violates neither the freedom to marry nor the right to lead a normal family life.
(2003-484 DC, 20 November 2003, paras 35 to 39, p. 438)

LOCAL CIVIL STATUS

The combined effect of the Preamble to the Constitution of 1958 and of articles 1, 72-3 and 75 of the Constitution is that citizens of the Republic who retain their personal status enjoy the constitutional rights and freedoms that go with French citizenship and are subject to the same obligations. In restating this principle in the provision challenged, the legislature has not violated article 75 of the Constitution. Since it was not jeopardising the actual existence of the marital status of local law, it could legitimately adopt provisions calculated to make the relevant rules evolve towards compatible with the principles and rights protected by the Constitution (gradual abolition of polygamy, repudiation and inequalities for succession purposes).
(2003-474 DC, 17 July 2003, paras 28 and 29, p. 389)

ADVERSARY NATURE OF CERTAIN PROCEDURES

Defence rights outside the criminal law

Proceedings involving aliens

The principle of the presumption of innocence cannot be pleaded outside the criminal law. Nor can the principle of defence rights be pleaded against withdrawal of a residence card on grounds of public order, which is not a penalty but a police measure. But those affected will be

able to make their views known in the manner prescribed by the ordinary legislation relating to administrative procedure.
(2003-467 DC, 13 March 2003, para 85, p. 211)

The legislature can provide that "in the event of *force majeure*" aliens who are in detention may have no access to an area allowing them to confer with their lawyer confidentially. But the presence of *force majeure*, even if the Act is silent on the question, always releases the administrative authorities from such an obligation.
(2003-484 DC, 20 November 2003, para 52, p. 438)

PROPERTY RIGHTS

Instruments applicable. Scope of article 17 of the Declaration of Human and Civic Rights

Scope of principle

The prevention of violations of property rights and public order are necessary for the preservation of constitutional principles and rights. But it is for the legislature, when laying down measures to combat such violations, to reconcile these constitutional requirements with the exercise of freedoms secured by the Constitution, which include the freedom to come and go, respect for private life and the inviolability of the home.
(2003-467 DC, 13 March 2003, para 70, p. 211)

The legislative history reveals that the powers delegated to the Government by section 34 of the Act authorising the Government to simplify the law with a view to amending, amplifying and codifying various pieces of legislation aim to adapt this legislation to changing circumstances of law and fact without seriously modifying their import, to repeal obsolete provisions and where necessary to amend those which in practice have turned out to be inadequate. This delegation does not jeopardise the self government of territorial units. It does not empower the Government to deprive of their statutory guarantees the constitutional requirements inherent in the protection of public assets. These requirements reside in particular in the existence and continuity of public services based on these assets, in the rights and freedoms of the persons for whose use they are set aside, and in the protection of the property rights that article 17 of the Declaration of 1789 confers on both pubic and private estates.
(2003-473 DC, 26 June 2003, para 29, p. 382)

No violation of property rights

Public assets

The use of hire-purchase or purchase-option schemes to pre-finance public works is not basically contrary to any constitutional requirement.

But the generalised use of such departures from standard practice in public procurement or the management of public assets could deprive certain constitutional requirements inherent in the principle of equality in matters of public procurement, the protection of public assets and the sound use of public funds of their statutory guarantees. The Ordinances issued on the basis of section 6 of the Act authorising Government to simplify the law must accordingly reserve such special arrangements for situations where there are general interest consideration such as the urgent need in special or local circumstances to make up a delay or the need to have regard for the technical, functional or economic characteristics of a given public supply or work.
(2003-473 DC, 26 June 2003, para 18, p. 382)

PRINCIPLE OF EQUALITY

EQUALITY BEFORE THE LAW

Principle

The principle of equality does not preclude the legislature from addressing different situations in different ways or from departing from equality on grounds of general interest, provided always that the resultant difference of treatment is directly related to the purpose of the Act.
(2003-472 DC, 26 June 2003, para 6, p. 379)

The award of welfare benefits related to the education of children ought never to depend on the sex of the parents.
(2003-483 DC, 14 August 2003, para 24, p. 430)

Article 6 of the Declaration of Human and Civic Rights of 1789 reads: "The Law is the expression of the general will. All citizens have the right to take part, personally or through their representatives, in its making. It must be the same for all, whether it protects or punishes". While as a general rule the principle of equality demands that people in the same situation be treated in the same way, there is no obligation to treat people in different situations in different ways.
(2003-489 DC, 29 December 2003, para 37, p. 487)

Respect for principle of equality: absence of discrimination

Social law

Social security

Given its objective of guaranteeing the pay-as-you-go pensions system, the legislature has made the calculation of pension rights dependent on life expectancy after sixty. In doing so it has not violated the principle of equality.
(2003-483 DC, 14 August 2003, paras 18 and 19, p. 430)

Section 48 of the Pensions Reform Act awards additional pension rights to all civil servants who brought up children born or adopted before 1 January 2004, if they interrupted their professional activity. Contrary to what the applicants submit, this provision gives the same possibility to both women and men.

The date on which this provision is scheduled to enter into force is the date when the bill that gave rise to the Act was deliberated in the Council of Ministers and thus became public knowledge. Like the date of 1 January 2004, it is based on objective and rational criteria. Moreover, the differences of treatment challenged, which are provisional and inherent in the changeover from one legal scheme to another, are not contrary to the principle of equality.
(2003-483 DC, 14 August 2003, paras 31 to 33, p. 430)

While as a general rule the principle of equality demands that people in the same situation be treated in the same way, there is no obligation to treat people in different situations in different ways.

It was legitimate for the legislature, without violating the principle of equality, to provide that the universal health-care supplementary protection financing fund would endow the social security schemes and supplementary social protection bodies with a flat-rate amount for each person covered.
(2003-489 DC, 29 December 2003, paras 37 and 38, p. 487 ; cf. 99-416 DC, 23 July 1999, para 14, p. 100)

Labour and trade union law

As a result of the specific difficulties they face in entering working life, beneficiaries of the "integration contract — minimum income", who have a contract of employment but continue

to receive the minimum integration income in accordance with the conditions set by the new section L 262-12-1 of the Code of Social and Family Action, are in a different situation from other employed persons.
(2003-487 DC, 18 December 2003, paras 19 to 26, p. 473)

Entitlement to benefits

The legislature has transferred to the departments the task of monitoring integration contracts and examining applications for and decisions awarding the minimum integration income, but on the conditions determined by the Act. And the President of the General Council can suspend the payment of the allowance and terminate entitlement to the minimum integration income only in the cases specified there. The amount of the minimum integration income and the rules for varying it are determined by Decree.

It follows that the legislature has determined sufficient conditions to avoid serious violations of equality in the award of the minimum integration income, a social benefit which meets a national solidarity requirement.
(2003-487 DC, 18 December 2003, paras 6 to 8, p. 473)

Situation of aliens

Aliens who are refused entry into France are duly informed, in a language they understand, that they are entitled to ask for a clear day before being repatriated. Consequently, since all aliens are in the same situation, there is no violation of the principle of equality.
(2003-484 DC, 20 November 2003, para 4, p. 438)

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

The principle of equality does not preclude the legislature from addressing different situations in different ways or from departing from equality on grounds of general interest, provided always that the resultant difference of treatment is directly related to the purpose of the Act.
(2003-474 DC, 17 July 2003, para 23, p. 389)

Territorial units

Overseas

By reason of its geographical situation and the rules governing it, Corsica is not in the same situation as the units to which articles 72-3 *et seq.* of the Constitution apply. By the same token, persons originating overseas who reside in Metropolitan France are for statutory purposes in a different situation from persons residing overseas. Section 60 of the Overseas Programming Act therefore does not violate the principle of equality and is not unconstitutional.
(2003-474 DC, 17 July 2003, paras 22 to 24, p. 389)

Communes

The applicants submit that section 64 of the Land Use and Habitat Act breaches equality between communes belonging to an urban community by making it possible for some of them to withdraw before the end of the period of unification of the rates of the business tax, by way of derogation from the third paragraph of section L 5211-19 of the General Code of Territorial Units.

The right to apply for withdrawal is available only to communes that have been attached without their agreement to the periphery of an existing urban community. The provisions challenged, which concern only communes that are in a different situation from other communes belonging to an urban community, does not violate the principle of equality.
(2003-472 DC, 26 June 2003, paras 5 and 7, p. 379)

Criminal law

Section 21(II) of the Domestic Security Act, whereby victims may oppose the preservation of data in a personal data file on them when the offender has been convicted is not vitiated by a violation of the principle of equality to the detriment of the offender.
(2003-467 DC, 13 March 2003, para 44, p. 211)

The distinction made by section 322-4-1 of the Criminal Code between communes that have satisfied their obligations under the Act of 5 July 2000 on the reception and habitat of travellers and communes that have neglected to do so is based on objective and rational criteria directly related to the legislature's avowed objective of receiving travellers in conditions compatible with public order and the rights of third parties. The definition of offence challenged here is not contrary to the principle of equality before the criminal law.
(2003-467 DC, 13 March 2003, para 74, p. 211)

Social law

Specific categories of persons entitled to benefits

Given the purpose of the Act, which is to avoid the state's health-care scheme covering for one year the full cost of health care incurred by a person of foreign nationality who has been residing illegally in France for less than three months, it was legitimate for the legislature, without violating the principle of equality, to preclude health-care provision by the state for aliens who have been resident in France for less than three months while assuring them of emergency treatment.
(2003-488 DC, 29 December 2003, paras 19 and 20, p. 480)

Asylum-seekers

Under the Act referred, when ruling on an asylum application, the French Office for the Protection of Refugees and Stateless Persons may dispense with an interview with the applicant if, in particular, it appears that the applicant has the nationality of a country for which article 1(C)(5) of the Geneva Convention of 28 July 1951 (safe country) has been activated.

The Act referred provides for proper treatment for asylum applications to secure better protection for persons meeting the requirements for eligibility for refugee status or subsidiary. Applicants having the nationality of a country for which the Geneva Convention is no longer applicable are accordingly in a different situation from other applicants. It follows that the principle of equality is not violated.
(2003-485 DC, 4 December 2003, paras 5, 8 to 10, p. 455)

Considerations of public interest justifying difference of treatment

Applications

Access to public procurement

There is no constitutional rule or principle that requires the conception, performance, conversion, operation and financing of public-sector infrastructure or the management and financing of services to be entrusted to separate persons. And there is no constitutional rule or principle that prohibits tenders relating simultaneously to several sub-lots of a public contract divided into lots being assessed together to determine the tender that is most satisfactory in terms of its overall equilibrium.

But the generalised use of such departures from standard practice in public procurement or the management of public assets could deprive certain constitutional requirements inherent in the principle of equality in matters of public procurement, the protection of public assets and the sound use of public funds of their statutory guarantees. The Ordinances issued on the basis of section 6 of the Act authorising the Government to simplify the law must accordingly

reserve such special arrangements for situations where there are general interest consideration such as the urgent need in special or local circumstances to make up a delay or the need to have regard for the technical, functional or economic characteristics of a given public supply or work.
(2003-473 DC, 26 June 2003, para 18, p. 382)

Social law

Pensions — Family benefits

The award of welfare benefits related to the education of children ought never to depend on the sex of the parents.

But it is for the legislature to address factual inequalities that women have suffered from hitherto. In particular, they have interrupted their professional activity more often than men to bring up children. In 2001, for instance, their average insurance period was eleven years shorter than that of men. Women's pensions are on average a third lower than men's. Given the general interest in dealing with this situation and preventing the consequences that the repeal of section L 351-4 of the Social Security Code would have on pensions paid in years to come, it was legitimate for the legislature to maintain, subject to amendments, provisions to offset inequalities that are supposed to disappear.

Section L 351-4 of the Social Security Code, which on certain conditions gives women a credit of a quarter year's pensionable year for each year during which they brought up children, is therefore not unconstitutional.
(2003-483 DC, 14 August 2003, paras 21 to 25, p. 430)

EQUALITY OF PUBLIC SERVICE

Equality of public service education

The provisions of the new section L 916-1 of the Code of Education, determining the conditions for the recruitment of education assistants, do not of themselves generate a breach of equality between public educational establishments. But it will be for the relevant administrative authorities to allocate appropriations to finance education assistants between public educational establishments in accordance with objective rational criteria related to the needs of such establishments so that the requirements of the thirteenth paragraph of the Preamble to the Constitution of 1946 are not violated.
(2003-471 DC, 24 April 2003, paras 4 and 5, p. 364)

It is clear from the very terms of the new section L 916-2 of the Code of Education that the section merely allows education assistants to participate, outside the tasks for which they are recruited, in additional educational, sporting and cultural activities organised by territorial units during school hours on the basis of section L 216-1 or cultural, sporting, social or socio-educational activities organised outside school hours on the basis of section L 212-15. The section thus has neither the object nor the effect of allowing territorial units to finance posts of educational assistants to perform tasks provided for by section L 916-1 that should be provided by central government.
(2003-471 DC, 24 April 2003, para 6, p. 364)

EQUALITY OF PUBLIC BURDEN–SHARING

Equality before the tax law

Principle

It is for the legislature, when it establishes a tax, to determine freely the basis of assessment and the rate, subject to constitutional principles and rules and in the light of the characteristics of

each tax. Under article 13 of the Declaration of Human and Civic Rights of 1789 the common contribution to the burdens of the Nation "must be equally distributed among all citizens, in proportion to their ability to pay". The principle of equality does not preclude the legislature, on grounds of general interest, from providing for tax relief measures by way of incentives for the development of economic activities, applying objective and rational criteria reflecting the objective pursued. All these principles are applicable to free conversion rights and the solidarity wealth tax.
(2003-477 DC, 31 July 2003, para 2, p. 418)

Under article 34 of the Constitution, it is for the legislature to determine the rules for taxation of taxable persons, in compliance with constitutional principles and having regard to the characteristics of each tax. The principle of equality does not preclude specific taxes from being instituted to provide taxable persons with an incentive to adopt forms of conduct conforming to general interest objectives, provided the rules laid down to that end are justified by those objectives.
(2003-488 DC, 29 December 2003, para 9, p. 480)

Tax schemes

Application of different tax bases to enterprises in different situations

Section 47 of the Economic Initiative Act provides for an exemption from the solidarity wealth tax for one half of the value of shares held in certain companies where the shareholders undertake collectively to keep them for at least six years. Eligibility for this exemption depends on a collective commitment to keep at least 20 % of entitlements relating to a quoted company or at least 34 % in the case of an unquoted company.

It is clear from the legislative history that the legislative intention was to guarantee the stability of shareholdings in firms, particularly family firms, and consequently their long-term prospects. This tax relief operates as an incentive to minority shareholders, who are not eligible for relief on professional assets, to keep their shares. Given the objective of general interest pursued thereby, it was legitimate for the legislature to adopt a different capital-holding threshold for quoted and unquoted companies, as holdings are differently dispersed in the two categories of company.
(2003-477 DC, 31 July 2003, paras 11 and 14, p. 418)

Section 47 of the Economic Initiative Act provides for an exemption from the solidarity wealth tax for one half of the value of shares held in certain companies where the shareholders undertake collectively to keep them for at least six years. It is clear from the legislative history that the legislative intention was to guarantee the stability of shareholdings in firms, particularly family firms, and consequently their long-term.

This tax relief operates as an incentive to minority shareholders, who are not eligible for relief on professional assets, to keep their shares. Given the objective pursued, companies are in a different situation from one-man businesses, which do not have capital open to third parties and whose owners are exempt from the solidarity wealth tax.
(2003-477 DC, 31 July 2003, paras 11 and 15, p. 418)

Different tax provisions for different professional activities

Section 48 of the Economic Initiative Act provides for an exemption from the solidarity wealth tax, on terms which it lays down, for securities received in consideration of subscriptions in cash or in kind to the capital of small and medium-sized firms. The legislative intention is to provide an incentive for productive investment in small and medium-sized firms in view of the job-creating role they play. Given the purpose of the Act, one-man businesses are in a different situation from companies, as their capital is not open to third parties.
(2003-477 DC, 31 July 2003, paras 17, 19 and 21, p. 418)

Wealth tax

Basis of assessment

Section 47 of the Economic Initiative Act provides for an exemption from the solidarity wealth tax for one half of the value of shares held in certain companies where the shareholders

undertake collectively to keep them for at least six years. Eligibility for this exemption depends on a collective commitment to keep at least 20 % of entitlements relating to a quoted company or at least 34 % in the case of an unquoted company. Moreover one of the shareholders must exercise managerial functions in the company.

The section is challenged as violating the principle of equality of public burden-sharing. The applicants' first submission is that, whereas the objective was to encourage family firms to preserve a family capital structure, section 47 does not reserve the measure for family shareholdings. Secondly, they criticise the difference of treatment of shareholders on the basis of the fact that the collective commitment to keep shares must apply to 20 % of the shares in a quoted company although securities in such companies are regarded as professional assets by section 885 O bis of the General Tax Code only beyond a threshold of 25 %. Thirdly, the exclusion of one-man businesses seriously breaches equality between taxpayers.

The legislative intention was to guarantee the stability of shareholdings in firms, particularly family firms, and consequently their long-term prospects. This tax relief operates as an incentive to minority shareholders, who are not eligible for relief on professional assets, to keep their shares. Given the conditions imposed as to stability in the capital and management of the firm and the amount confined to one half of the value of shares in it, the advantage cannot be regarded as seriously violating the principle of equality of public burden-sharing.

Given the objective of general interest pursued thereby, it was legitimate for the legislature to adopt a different capital-holding threshold for quoted and unquoted companies, as holdings are differently dispersed in the two categories of company. Section 885 O bis of the General Tax Code adopts a 25 % threshold, but it is common to quoted and unquoted companies.

Given the objective pursued, companies are in a different situation from one-man businesses, which do not have capital open to third parties and whose owners are exempt from the solidarity wealth tax.

It follows that the principle of equality is not violated.
(2003-477 DC, 31 July 2003, paras 11 to 16, p. 418)

Section 48 of the Economic Initiative Act provides for an exemption from the solidarity wealth tax, on terms which it lays down, for securities received in consideration of subscriptions in cash or in kind to the capital of small and medium-sized firms.

The applicants submit that the section violates the principle of equality on four grounds. First, it gives a benefit that is out of proportion to objective pursued by giving a total exemption. Second, the resultant benefit is enjoyed by companies in banking, finance and insurance but not by companies in movable or immovable property management, though they are in the same situation in relation to the purposes of the Act. Third, the provision unjustifiably excludes "capital injections into a one-man business". Fourth, extension of the benefit to injections in kind is contrary to the object pursued and generates a risk of circumvention.

The legislative intention is to provide an incentive for productive investment in small and medium-sized firms in view of the job-creating role they play. The definition of the firms concerned, which has regard to the number of persons employed, the turnover or total balance-sheet and the composition of the capital, is clear and is related to the objective pursued. Given the risk involved in such an investment, it was legitimate for the legislature to provide for a total exemption from solidarity wealth tax on securities received in consideration of these productive investments.

Given this objective of general interest, it was legitimate for the legislature both to exclude activities of own-account management of movable property and activities of management or rental of immovable property and to include commercial banking, finance and insurance activities.

Given the purpose of the Act, one-man businesses are in a different situation from companies, as their capital is not open to third parties.

It was right for the legislature to extend the new facility not only to cash injections but also to injections in the form of necessary supplies. In both cases, the investment is productive and open to the same risk. By expressly excluding injections in the form of immovable property and securities, the legislature took the requisite precautions to obviate the risk of circumventions for the purposes of tax evasion.

It follows that the principle of equality is not violated.
(2003-477 DC, 31 July 2003, paras 17 to 23, p. 418)

Section 49 of the Economic Initiative Act lowers from 75 % to 50 % the proportion that shares held directly must account for in the assets of a company manager in order to be regarded as professional assets excluded from the basis of assessment to solidarity wealth tax.

Recent trends in the value of shares compared with the real property market mean that securities held by company managers can lose their status as professional assets without the breakdown of their overall assets being changed. To take account of this economic reality, it was legitimate for the legislature to set at one half of a company manager's assets the threshold above which shares in the company are to be regarded as professional assets.

The section therefore does not confer a tax advantage out of proportion to the objective pursued by the Act.
(2003-477 DC, 31 July 2003, paras 24 to 27, p. 418)

Taxable persons

Tax on advertising material and free newspapers

The proliferation of printed matter distributed to individuals free of charge or made available to them without their having requested it is a major source of damage to the environment. It was accordingly legitimate for the legislature, and no violation of the principle of equality, to confine the scope of the new scheme to the producers and distributors of such material. The resultant difference of treatment, based on objective and rational criteria, is directly related to the purpose of the Act on the collection and recycling of printed matter.

But by imposing this scheme on free printed matter distributed unsolicited to all letterboxes without indication of addressees' names while exempting the same printed matter where the addressees' names are indicated, the legislature has established a difference of treatment that is not justified by the objective pursued. The words "without indication of addressees' names" are accordingly unconstitutional.
(2003-488 DC, 29 December 2003, paras 8 to 12, p. 480)

Airport tax

By imposing a tax on airline transport which is added to the price paid by the customer and the proceeds of which will be allocated, via the Airports and Air Travel Intervention Fund, to securing territorial continuity between overseas units and metropolitan France, the legislature has not seriously violated equality of public burden-sharing.
(2003-489 DC, 29 December 2003, para 18, p. 487)

Tax advantages

It is for the legislature, when it establishes a tax, to determine freely the basis of assessment and the rate, subject to constitutional principles and rules and in the light of the characteristics of each tax. Under article 13 of the Declaration of Human and Civic Rights of 1789 the common contribution to the burdens of the Nation "must be equally distributed among all citizens, in proportion to their ability to pay". The principle of equality does not preclude the legislature, on grounds of general interest, from providing for tax relief measures by way of incentives for the development of economic activities, applying objective and rational criteria reflecting the objective pursued. All these principles are applicable to free conversion rights and the solidarity wealth tax.
(2003-477 DC, 31 July 2003, para 2, p. 418)

Section 43 of the Economic Initiative Act extends to outright *inter vivos* donations the succession tax exemption scheme previously laid down by sections 789A and 789B of the General Tax Code.

The applicants submit that the reasons why the legislature had previously restricted the benefit to transmissions of firms on death was the possibility given by section 790 of the General Tax Code of enjoying a reduction of up to 50 % of donation duties and that under the combined

effect of the two provisions the grant of such an advantage seriously breached the principle of equality before the tax law.

The legislative intention, in the current demographic context, was to promote the handing down of businesses in conditions that would make for stability in share ownership and the long-term prospects of the firm. The legislature made the extension of the tax relief provided for in the event of a succession to donations dependent on transmission of full ownership of shares and business assets. And the benefit of this relief is subject to conditions, already laid down in the Act, relating to stability of the capital and management of the firm. The benefit is accordingly not such as to seriously breach equality of public burden-sharing.
(2003-477 DC, 31 July 2003, paras 3 to 5, p. 418)

Section 43 of the Economic Initiative Act extends to outright *inter vivos* donations the succession tax exemption scheme previously laid down by sections 789A and 789B of the General Tax Code.

The applicants submit that the reason why the legislature previously limited the benefit to transmissions of firms upon death was the possibility offered by section 790 of the General Tax Code of enjoying a reduction in donation duties of up 50 % and that, as a result of the combination of the two schemes, the grant of it would seriously violate the principle of equality before the tax law.

The legislative intention, in the current demographic context, was to promote the handing down of businesses in conditions that would make for stability in share ownership and the long-term prospects of the firm.

It was legitimate for the legislature, given the general interest objective pursued, to refrain from excluding the relevant donations from section 790 of the General Tax Code, since that section, which promotes the early transmission of assets, has a different object and scope and prohibiting the combined benefit of the two schemes would have greatly reduced the incentive.
(2003-477 DC, 31 July 2003, paras 3 to 6, p. 418)

Section 47 of the Economic Initiative Act provides for an exemption from the solidarity wealth tax for one half of the value of shares held in certain companies where the shareholders undertake collectively to keep them for at least six years. Eligibility for this exemption depends on a collective commitment to keep at least 20 % of entitlements relating to a quoted company or at least 34 % in the case of an unquoted company. Moreover one of the shareholders must exercise managerial functions in the company.

The section is challenged as violating the principle of equality of public burden-sharing. The applicants' first submission is that, whereas the objective was to encourage family firms to preserve a family capital structure, section 47 does not reserve the measure for family shareholdings. Secondly, they criticise the difference of treatment of shareholders on the basis of the fact that the collective commitment to keep shares must apply to 20 % of the shares in a quoted company although securities in such companies are regarded as professional assets by section 885 O bis of the General Tax Code only beyond a threshold of 25 %. Thirdly, the exclusion of one-man businesses seriously breaches equality between taxpayers.

The legislative intention was to guarantee the stability of shareholdings in firms, particularly family firms, and consequently their long-term prospects. This tax relief operates as an incentive to minority shareholders, who are not eligible for relief on professional assets, to keep their shares. Given the conditions imposed as to stability in the capital and management of the firm and the amount confined to one half of the value of shares in it, the advantage cannot be regarded as seriously violating the principle of equality of public burden-sharing.

Given the objective of general interest pursued thereby, it was legitimate for the legislature to adopt a different capital-holding threshold for quoted and unquoted companies, as holdings are differently dispersed in the two categories of company. Section 885 O bis of the General Tax Code adopts a 25 % threshold, but it is common to quoted and unquoted companies.

Given the objective pursued, companies are in a different situation from one-man businesses, which do not have capital open to third parties and whose owners are exempt from the solidarity wealth tax.

It follows that the principle of equality is not violated.
(2003-477 DC, 31 July 2003, paras 11 to 16, p. 418)

Section 48 of the Economic Initiative Act provides for an exemption from the solidarity wealth tax, on terms which it lays down, for securities received in consideration of subscriptions in cash or in kind to the capital of small and medium-sized firms. The legislative intention is to provide an incentive for productive investment in small and medium-sized firms in view of the job-creating role they play.

The definition of the firms concerned, which has regard to the number of persons employed, the turnover or total balance-sheet and the composition of the capital, is clear and is related to the objective pursued. Given the risk involved in such an investment, it was legitimate for the legislature to provide for a total exemption from solidarity wealth tax on securities received in consideration of these productive investments.
(2003-477 DC, 31 July 2003, paras 17 and 19, p. 418)

Section 48 of the Economic Initiative Act provides for an exemption from the solidarity wealth tax, on terms which it lays down, for securities received in consideration of subscriptions in cash or in kind to the capital of small and medium-sized firms. The legislative intention is to provide an incentive for productive investment in small and medium-sized firms in view of the job-creating role they play.

It was right for the legislature to extend the new facility not only to cash injections but also to injections in the form of necessary supplies. In both cases, the investment is productive and open to the same risk. By expressly excluding injections in the form of immovable property and securities, the legislature a took the requisite precautions to obviate the risk of circumventions for the purposes of tax evasion.
(2003-477 DC, 31 July 2003, paras 17, 19 and 22, p. 418)

Section 49 of the Economic Initiative Act lowers from 75 % to 50 % the proportion that shares held directly must account for in the assets of a company manager in order to be regarded as professional assets excluded from the basis of assessment to solidarity wealth tax.

Recent trends in the value of shares compared with the real property market mean that securities held by company managers can lose their status as professional assets without the breakdown of their overall assets being changed. To take account of this economic reality, it was legitimate for the legislature to set at one half of a company manager's assets the threshold above which shares in the company are to be regarded as professional assets.

The section therefore does not confer a tax advantage out of proportion to the objective pursued by the Act.
(2003-477 DC, 31 July 2003, paras 24 to 27, p. 418)

The principle of equality does not preclude the legislature from laying down tax incentives on grounds of the general interest. In the present case it wished to promote the formation of additional old-age retirement provision. It determined the limits within which the tax relief available to savers is granted and the maximum income to which the relief may be applied. Moreover, sums paid at the end of the savings period will themselves be subject to income tax. The provisions challenged, relating to individual retirement savings plans, accordingly do not violate any constitutional principles or rules.
(2003-489 DC, 29 December 2003, para 28, p. 487)

Threshold for exemption

Section 47 of the Economic Initiative Act provides for an exemption from the solidarity wealth tax for one half of the value of shares held in certain companies where the shareholders undertake collectively to keep them for at least six years. Eligibility for this exemption depends on a collective commitment to keep at least 20 % of entitlements relating to a quoted company or at least 34 % in the case of an unquoted company.

The legislative intention was to guarantee the stability of shareholdings in firms, particularly family firms, and consequently their long-term prospects. The tax relief this granted is to operate as an incentive to minority shareholders, who are not eligible for the exemption for professional assets, to keep the shares they hold. Given the general interest objective pursued, it was legitimate for the legislature to adopt a shareholding threshold of 20 % for quoted companies and 34 % for unquoted companies as the dispersion of capital holdings in the two types of company is unequal. While section 885 O bis of the General Tax Code treats holdings

of shares in companies as professional assets from 25 % upwards, that threshold is common top quoted and unquoted companies.
(2003-477 DC, 31 July 2003, paras 11 and 14, p. 418)

Section 49 of the Economic Initiative Act lowers from 75 % to 50 % the proportion that shares held directly must account for in the assets of a company manager in order to be regarded as professional assets excluded from the basis of assessment to solidarity wealth tax.

Recent trends in the value of shares compared with the real property market mean that securities held by company managers can lose their status as professional assets without the breakdown of their overall assets being changed. To take account of this economic reality, it was legitimate for the legislature to set at one half of a company manager's assets the threshold above which shares in the company are to be regarded as professional assets.

The section therefore does not confer a tax advantage out of proportion to the objective pursued by the Act.
(2003-477 DC, 31 July 2003, paras 24 to 27, p. 418)

Section 10 of the Act amending the Preventive Archaeology Act of 17 January 2001 establishes a preventive archaeology charge payable by certain public or private persons wishing to carry out works affecting underground levels on parcels of land of 3 000 square metres or more. The amount is €0.32 per square metre. The proceeds are to finance diagnoses and to feed the National Preventive Archaeology Fund set up by section 12.

The authors of the two referrals submit that there are no objective rational criteria to support the 3 000 square metre threshold and that the legislature violated the principle of equality of public burden-sharing.

The establishment of the preventive archaeology charge, which is a "tax of all types" within the meaning of article 34 of the Constitution, pursues a purpose of general interest. It was legitimate for the legislature, and no violation of article 13 of the Declaration of Human and Civic Rights of 1789, to provide for an exemption for parcels of land of less than 3 000 square metres, since the exemption meets an administrative need to ensure that collection costs are not excessive in relation to the anticipated benefit. Given the amount of the charge, the exemptions allowed by the legislature and the fact that liability to pay the charge is independent of the obligation to carry out preventive archaeology duties, the scheme challenged is not vitiated by manifest error and does not generate a serious breach of equality of public burden-sharing.
(2003-480 DC, 31 July 2003, paras 18 to 21, p. 424)

Equality of public burden-sharing outside the tax law

Principle

The effect of article 13 of the Declaration of Human and Civic Rights of 1789 is not to prohibit that practice of having certain burdens borne by certain categories of persons for consideration of general interest, but there must be no serious breach of equality of public burden-sharing.
(2003-484 DC, 20 November 2003, paras 9 and 10, p. 438)

Administrative police

Where the person providing accommodation covers the subsistence costs of the guest during a private family visit up to the amount of resources that an alien is required to have in order to enter France without a certificate of accommodation, there is no violation of article 13 of the Declaration of 1789.

But by making the person providing accommodation responsible for the cost of repatriating the alien accommodated without any limit on the costs involved, without taking account of the good faith of the person providing accommodation or the conduct of the guest and without providing for an appropriate limitation period, the legislature has seriously violated the principle of equality of public burden-sharing.
(2003-484 DC, 20 November 2003, paras 7 to 13, p. 438)

EQUALITY IN PUBLIC-SECTOR EMPLOYMENT

Equal rights of access to public-sector employment

Public-sector recruitment rules

Respect for the requirement of capacity in candidates

Given the task entrusted to education assistants by the new section L 916-1 of the Education Code, they occupy "public positions and employments" within the meaning of article 6 of the 1789 Declaration. It will be for heads of establishment to base their education assistants recruitment decisions on the ability of those selected to meet the needs of the establishment. It was legitimate for the legislature to establish a priority to scholarship students for the recruitment of education assistants operates provided their aptitudes are equal.
(2003-471 DC, 24 April 2003, para 10, p. 364)

Equality of retirement pension rights

Equality between women and men

Section 48 of the Pensions Reform Act awards additional pension rights to all civil servants who brought up children born or adopted before 1 January 2004, if they interrupted their professional activity. Contrary to what the applicants submit, this provision gives the same possibility to both women and men.

The date on which this provision is scheduled to enter into force is the date when the bill that gave rise to the Act was deliberated in the Council of Ministers and thus became public knowledge. Like the date of 1 January 2004, it is based on objective and rational criteria. Moreover, the differences of treatment challenged, which are provisional and inherent in the changeover from one legal scheme to another, are not contrary to the principle of equality.
(2003-483 DC, 14 August 2003, paras 31 to 33, p. 430)

Equality as regards entitlement dates

The rules applicable to the calculation of the amount of pension payable are those in force on the date of entitlement. The calculation therefore depends on the civil servant's situation and not on the paying authority's diligence.
(2003-483 DC, 14 August 2003, paras 37, 38 and 40, p. 430)

The rules applicable to the calculation of the amount of pension payable are those in force on the date on which all the conditions for entitlement are met and payment can commence. The calculation therefore depends on the civil servant's situation and not on the paying authority's diligence. By adopting this approach to calculation, the legislature has neither made an arbitrary choice nor violated the principle of equality between civil servants.
(2003-483 DC, 14 August 2003, paras 43 to 45, p. 430)

EQUALITY OF VOTING TIGHTS

Political elections

Election of regional councillors

Effect on the election of Senators

The calculation rules laid down by the new section L 338-1 of the Electoral Code can have the effect of causing the total membership of the Senate electoral college for each department to

vary from one regional election to another and can also have a limited effect on the political composition as a result of the majority premium established by section L 338, but these effects will be felt as regards only a small fraction of the regional councillors in each departmental section. Moreover, regional councillors are themselves a small proportion of Senate electoral college members. It was therefore legitimate for the legislature to substitute the rules criticised for the earlier provisions and there is no violation in matters of Senate elections of the constitutional objective of intelligibility of statutes, or of the principle of equality of voting rights, or of pluralism of ideas and opinions.
(2003-468 DC, 3 April 2003, paras 29 to 32, p. 325)

Electoral rules applicable to Corsica

Given their respective powers, their place in the decentralised organisation of the Republic and the rules governing their composition and operation, the Corsican Assembly and the regional councils are not in a different situation in relation to the objective in the fifth paragraph of article 3 of the Constitution, whereby "statutes shall promote the equal access of women and men to electoral offices and functions". There are no local circumstances or other grounds of general interest to justify the difference of treatment. The difference is accordingly contrary to the principle of equality.

But the Constitutional Council can put an end to this breach of equality only by striking down the new provisions of section L 346 of the Electoral Code. That would run counter to the constitutional assembly's desire to promote by statutory means the equality of women and men in elective offices and functions.

Section 9 of the Regional Councillors Election Act cannot therefore be held unconstitutional. It will be for the next Corsica Assembly Act to rectify this inequality.
(2003-468 DC, 3 April 2003, paras 22 to 28, p. 325)

Election of members of the European Parliament

The criteria underlying the delimitation of constituencies for the election of members of the European Parliament are not vitiated by manifest errors of assessment.

It is clear from the very terms of section 4 of the Act of 7 July 1977, as now amended, that the distribution of seats between constituencies will be based on primarily demographic factors, reviewed after each general census of the population. There is accordingly no breach of equality of voting rights.
(2003-468 DC, 3 April 2003, paras 43 and 44, p. 325)

Election of Deputies and Senators

Demographic bases

The calculation rules laid down by the new section L 338-1 of the Electoral Code can have the effect of causing the total membership of the Senate electoral college for each department to vary from one regional election to another and can also have a limited effect on the political composition as a result of the majority premium established by section L 338, but these effects will be felt as regards only a small fraction of the regional councillors in each departmental section. Moreover, regional councillors are themselves a small proportion of Senate electoral college members. It was therefore legitimate for the legislature to substitute the rules criticised for the earlier provisions and there is no violation in matters of Senate elections of the constitutional objective of intelligibility of statutes, or of the principle of equality of voting rights, or of pluralism of ideas and opinions.
(2003-468 DC, 3 April 2003, paras 29 to 32, p. 325)

The combined provisions of article 6 of the Declaration of Human and Civic Rights of 1789 and articles 3 and 24 of the Constitution require the legislature to modify the distribution of seats of Senators between the departments in line with trends in the population of the territorial units represented by the Senate.

To modify the distribution of seats of Senators between the departments in Table No 6 annexed to the legislative part of the Electoral Code, the legislature has opted for a system of distribution by tranches, with one Senator up to 150 000 habitants plus one additional Senator for each tranche or fraction of a tranche of 250 000 inhabitants. The application of this system leaves a number of demographic disparities untouched, but even so the changes made by the Act referred substantially reduce the former inequalities in representation.

By leaving the departments of Creuse and Paris with the same representation as before, the legislature has departed from the calculation procedure that it had itself determined. But however regrettable that might be, the derogation, affecting four seats, does not violate the principle of equality of voting rights to such an extent as to make the Act referred unconstitutional.

Given the role conferred on the Senate by Article 24 of the Constitution, the new distribution of seats is not unconstitutional.
(2003-475 DC, 24 July 2003, paras 2, 3, 5 to 8, p. 400)

ELECTIONS

ELECTORATE, ELIGIBILITY, PRE-ELECTORAL PROCESS

Eligibility

Electoral rolls

The fact that Mr M was not entered on any electoral roll did not in itself preclude his candidature from being registered, but it was up to him to provide evidence of his status as voter, no later than the administrative court hearing. It is common ground that he failed to provide such evidence. The administrative court was accordingly right to reject his candidature. Plea rejected.
(2002-2631/2661/2696, 30 January 2003, AN, Paris, Constituency 19, para 5, p. 68)

Miscellaneous

Ineligibility for the functions of general councillor ordered against the elected Deputy by the Melun administrative court on 20 October 1998 in a judgment on a reference from the National Campaign Accounts and Political Funding Committee, confirmed by decision of the Council of State on 17 September 1999, did not extend to legislative elections. The applicant cannot therefore plead that judgment, which in any case had expired by the time of the election, to seek annulment of the election.
(2002-2644/2648, 20 January 2003, AN, Seine-et-Marne, Constituency 3, para 3, p. 51)

Pre-election process

Electoral rolls

Establishment of rolls

Removal from rolls

The fact that letters addressed by the applicant to voters on the electoral rolls for Constituency 1 in Paris were returned to him marked “does not live at this address”, and the allegation that

521 of these voters cast votes on 16 June 2002 do not suffice to establish the existence of manœuvres such as to jeopardise the reliability of the ballot.
(2002-2690, 20 January 2003, AN, Paris, Constituency 1, para 3, p. 60)

It is not for the Constitutional Council, as electoral court, to rule on the regularity of entries in the electoral roll unless there has been a manœuvre such as to jeopardise the reliability of the ballot. The applicant states that 1 623 of the 30 000 letters that she sent to voters in the constituency were returned to her marked "does not live at this address", but the fact that certain address particulars on the electoral rolls are erroneous does not in itself establish that the entry of these votes on the roll was a fraudulent manœuvre. Plea rejected.
(2002-2631/2661/2696, 30 January 2003, AN, Paris, Constituency 19, para 7, p. 68)

CAMPAIGN ADVERTISING

Advertising methods

Posters

Number of posters

It emerges from the investigation, and in particular the photographs in the file, that in the weeks preceding the first ballot the Communist Party had a large number of posters put up all over the town of M, calling on voters to mobilise "against the right and the far right". This violation of section L 51 of the Electoral Code was on a large scale and recurred throughout the period preceding the first ballot. It could well have had a negative impact on the number of votes cast for certain candidates, and in particular Mr G., the candidate standing for the Union pour la majorité présidentielle.

Following first-ballot electoral operations on 9 June 2002, Mr G was only two votes short of the threshold of 12.5 % of the registered voters laid down by section L 162 of the Electoral Code for eligibility for the second ballot. This being so, the facts described above may well have affected the fairness of the ballot. Electoral operations at the first ballot, and consequently at the second ballot, are annulled.
(2002-2651/2655/2887, 30 January 2003, AN, Seine-Saint-Denis, Constituency 7, paras 8 and 10, p. 71)

It emerges from the investigation, and in particular the photographs in the file, that in the weeks preceding the first ballot the Communist Party had a large number of posters put up all over the town of M, calling on voters to mobilise "against the right and the far right". This violation of section L 51 of the Electoral Code was on a large scale and recurred throughout the period preceding the first ballot. It could well have had a negative impact on the number of votes cast for certain candidates, and in particular Mr G, the candidate standing for the Union pour la majorité présidentielle.

Moreover, it has been shown, notably by reports made by bailiffs, that the distribution of a pamphlet presenting Mr K as the "candidate of the republican right, selected by the UDF" continued after May 22, the date on which the Union pour la Démocratie française withdrew its selection of him. Even if Mr G had had the opportunity during the election campaign to make clear that he had now been selected by that party, the distribution of false information continued until the day before the ballot, notably with the distribution of the local edition of "Le Parisien", containing a list of candidates in the constituency, with "UDF" specified at Mr K's name. This may have misled certain voters.

Following first-ballot electoral operations on 9 June 2002, Mr G was only two votes short of the threshold of 12.5 % of the registered voters laid down by section L 162 of the Electoral Code for eligibility for the second ballot. This being so, the facts described above may well have affected the fairness of the ballot. Electoral operations at the first ballot, and consequently at the second ballot, are annulled.
(2002-2651/2655/2887, 30 January 2003, AN, Seine-Saint-Denis, Constituency 7, paras 8 to 10, p. 71)

Ballot papers

Sending ballot papers

The fact that certain voters had not, before the first ballot, received Mr L's circular and ballot paper that the Campaign Advertising Committee should have sent them under section R 34 of the Electoral Code had no effect on the results at the second ballot, where Mr L, having received the number of votes at the first ballot required by section L 162, was able to stand.
(2002-2690, 20 January 2003, AN, Paris, Constituency 1, para 4, p. 60)

Acceptance of ballot papers by the Campaign Advertising Committee

The name of the applicant's replacement was on his declaration of candidature and ballot papers in accordance with sections L 155 and L 165 of the Electoral Code. The Campaign Advertising Committee therefore acted contrary to the fifth paragraph of section R 38 and the third paragraph of section R 34 in refusing to accept his ballot paper on the ground that the name of the replacement appearing there was different from the name on the receipt of the declaration of candidature. It was also wrong to decline to execute the injunction issued by the administrative court at Melun to send the relevant papers to all voters. But it emerges from the investigation that the Campaign Advertising Committee sent his manifesto to all voters and that ballot papers were available at all polling stations in the constituency. Given that the applicant, who obtained 6 104 votes at the ballot, needed 1 238 more to stand at the second ballot under the third paragraph of section L 162 of the Electoral Code, the irregularity consisting of the Campaign Advertising Committee's failure to send his ballot papers to voters, however open this failure by an administrative authority may be, did not have the effect of modifying the outcome of the ballot.

The Campaign Advertising Committee refused to accept the ballot papers of another candidate, but it does not emerge from the investigation that there was anything irregular about this refusal. Plea rejected.
(2002-2644/2648, 20 January 2003, AN, Seine-et-Marne, Constituency 3, paras 5 and 6, p. 51)

General

The fact that "République française" was printed on Mr V's ballot papers cannot be regarded as having made his candidature an official one or as having constituted pressure on voters.
(2002-2764, 30 January 2003, AN, Réunion, Constituency 1, para 15, p. 80)

Press

Political statements by a newspaper

The issue of the local weekly periodical publication distributed on the day before the second ballot neither "censured" the losing candidate nor constituted a "call to censure" him. In any event, by reason of its content, that issue, which did not take sides for either of the two candidates but merely reproduced their programmes, cannot be regarded as a pamphlet distributed out of time in support of the successful candidate.
(2003-3377, 15 May 2003, AN, Wallis and Futuna, Mr Kamilo GATA, para 1, p. 368)

Internet

Even if a message posted on a website on 13 June 2002 was electoral campaign advertising, the fact that it was kept on the site until polling day would not constitute an operation prohibited by the second paragraph of section L 49 of the Electoral Code, since it is not alleged that its content was modified after midnight on Friday 14 June. (Date of second ballot: 16 June)
(2002-2690, 20 January 2003, AN, Paris, Constituency 1, para 6, p. 60)

Since a message posted on a website is not electoral campaign advertising, the plea that its presence on the site was contrary to the second paragraph of section L 49 of the Electoral Code is unfounded.
(2002-2759, 30 January 2003, AN, Pyrénées-Orientales, Constituency 3, para 7, p. 75)

Pamphlets

Irregularities without influence on the outcome of the ballot

Date of distribution

Before the first ballot, a pamphlet criticised the applicant's record as deputy mayor of Paris responsible for finance prior to the municipal elections of March 2001 and mentioned the fact that the candidate's replacement had been placed under formal investigation, and other pamphlets distributed before the first ballot took up the same themes. It follows that pamphlets, posters and statements at meetings in election campaign events in the week preceding the second ballot did not constitute a new element of electoral polemics which the person concerned was unable to answer. Rejected.
(2002-2690, 20 January 2003, AN, Paris, Constituency 1, para 5, p. 60)

The first paragraph of section L 49 of the Electoral Code prohibits "distributing or causing to be distributed, on polling day, any newssheets, circulars or other documents", but that prohibition does not apply to material distributed in the days preceding polling day. The plea relating to the distribution of a pamphlet, the day before the second ballot, that has not been shown to constitute a new element of electoral polemics which the person concerned was unable to answer, is rejected.
(2002-2759, 30 January 2003, AN, Pyrénées-Orientales, Constituency 3, para 6, p. 75)

Pamphlets having no determining influence because of various electoral circumstances

The plea based on the volume of campaign advertising material used by the successful candidate is not backed up by specifications allowing it to be assessed. Although, before the first ballot, the successful candidate distributed campaign advertising documents contrary to the last paragraph of section L 165 of the Electoral Code, the effect was not to distort the outcome of the two ballots following which the candidate obtained a number of votes well in excess of the candidate who came second. While the fact that the printer's name and address are not printed on the successful candidate's pamphlets is contrary to section 2 of the Press Freedom Act of 29 July 1881, made applicable to campaign advertising by section L 48 of the Electoral Code, the omission did not have the effect of preventing verification of the candidate's campaign accounts since, under section L 52-12 of the Electoral Code, the accounts were required to be accompanied by invoices, estimates and other documents to vouch for the amount of expenditure incurred or committed by or on behalf of the candidate.
(2002-2644/2648, 20 January 2003, AN, Seine-et-Marne, Constituency 3, para 4, p. 51)

No irregularities

Content not exceeding the limits of electoral polemics

The applicant criticises the fact that on the day before the first ballot a pamphlet entitled "Les casseurs de l'Union" and a letter were distributed on a large scale to residents in the commune of Plessis-Trévise, in which the successful candidate allegedly made statements such as to discredit his opponent. The content of these documents has not been shown to have exceeded the limits of electoral polemics, which throughout the campaign for the first ballot were kept at a high level by both the candidates.
(2002-2681, 20 January 2003, AN, Val-de-Marne, Constituency 4, para 4, p. 57)

Miscellaneous irregularities

The applicant's opponents, at a meeting held on 12 June 2002, affirmed that Mr L had not properly controlled the Paris Municipal Credit when he was deputy to the mayor of Paris, but such statements where made on a date enabling him to reply. The gap between the number of votes cast for Mr L and for the successful candidate was such that neither the polemical nature of the language used to attack Mr L and his replacement, nor the content of the flyers stuck over Mr L's posters, nor the fact that other flyers, calling for voters to vote for candidates

supporting the President of the Republic, were stuck on the hoardings of a polling station on 15 June 2002, however regrettable, could have affected the outcome of the ballot.
(2002-2690, 20 January 2003, AN, Paris, Constituency 1, para 5, p. 60)

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

The successful candidate was mayor of his town. The editorial signed by the first deputy in the June 2002 supplement to the municipal newsletter relating to registration for sporting and cultural activities organised by the commune did not constitute commercial advertising in the press prohibited by the first paragraph of section L 52-1 of the Electoral Code.
(2002-2654/2674/2742, 20 January 2003, AN, Hauts-de-Seine, Constituency 5, para 6, p. 54)

The plea that in the months preceding the electoral operations the successful candidate organised an advertising campaign in support of his candidature, citing various events either in his activity as vice-president of the regional council, is rejected. It emerges from the investigation neither that information put to the public, in particular by a daily newspaper, involved the use of commercial advertising techniques for electoral purposes, nor that it took the form of a campaign to promote the achievements or management of a territorial unit organised by the unit.
(2002-2759, 30 January 2003, AN, Pyrénées-Orientales, Constituency 3, paras 1 and 2, p. 75)

Prohibition of advertising campaigns promoting the achievements or management of a local authority (second paragraph of section L 52-1 of the Electoral Code)

Neither the June 2002 supplement to the municipal newsletter of the town of L, relating to registration for sporting and cultural activities organised by the commune, nor the May 2001 issue which contains an editorial and articles relating to security can, given their content, be regarded as constituting a "promotional advertising campaign" on the achievements or management of a territorial unit within the meaning of the second paragraph of section L 52-1 of the Electoral Code. Neither the commune's participation in the organisation of a world boxing championship on 23 May 2002, nor its organisation of a "Sportsnight" on 31 May 2002 as in previous years, nor its organisation, as in previous years, of a summer festival on a date after the second ballot, nor the distribution of a "practical guide to selective household waste disposal", nor the letter sent by the commune on 27 May 2002 announcing that, as in the previous year, there would be a gift on 14 July, can be regarded as a "promotional advertising campaign". The cost of these publications and events cannot be regarded as expenditure committed or incurred with a view to the election. It was accordingly not required to be in the candidate's campaign accounts forte purposes of section L 52-12 of the Electoral Code.
(2002-2654/2674/2742, 20 January 2003, AN, Hauts-de-Seine, Constituency 5, para 7, p. 54)

The issues criticised of the municipal monthly newsletter "Villiers-Infos" merely provided local residents with information on local life and made no reference to the election. The March-April 2002 issue of the Mayor's Letter presented in support of the application merely, on the occasion of the general election, presents main institutions of the Republic and the electoral system. These cannot be regarded as constituting a "promotional advertising campaign" on the achievements or management of a territorial unit within the meaning of the paragraph of section L 52-1.
(2002-2681, 20 January 2003, AN, Val-de-Marne, Constituency 4, paras 6 and 7, p. 57)

The "2002 budget special issue" published by the city of Paris cannot be regarded, given the mode of distribution by being made available for members of the public to take from the town hall of Paris and of certain of its districts for a few days during March 2002, as constituting a "promotional advertising campaign" on the achievements or management of a territorial unit within the meaning of the paragraph of section L 52-1 of the Electoral Code.
(2002-2690, 20 January 2003, AN, Paris, Constituency 1, para 7, p. 60)

Pressure — intervention — manœuvres

Nature of pressure, intervention or manœuvres

Candidate's use of credit of official authorities

Utilisation of the name or image of the Head of State

Campaign advertising documents for the successful candidate, distributed during the campaign for the first ballot, stated that the candidate and his replacement supported the President of the Republic and the parties in the presidential majority, but they did not explicitly state that they had been selected by the Union pour la majorité présidentielle. Plea rejected.
(2002-2654/2674/2742, 20 January 2003, AN, Hauts-de-Seine, Constituency 5, para 3, p. 54)

The applicant complains that the successful candidate claimed during the campaign to enjoy the "personal support of the President of the Republic" and "official support of the Prime Minister", but he does not explain how such statements can constitute a manœuvre such as to distort the outcome of the ballot.
(2002-2681, 20 January 2003, AN, Val-de-Marne, Constituency 4, para 2, p. 57)

Candidate's use of official functions

The annulment of the electoral operations of 11 and 18 March 2001 for the designation of municipal councillors at Levallois-Perret by judgment given by the Paris administrative court on 17 October 2001 and upheld by decision of the Council of State on 29 July 2002 did not have the effect of precluding the successful candidate from alluding to his status as mayor of the commune prior to the decision, since under section L 250 of the Electoral Code the appeal to the Council of State had suspensory effect. The fact that he alluded to that status during the campaign for the general election of 9 and 16 June 2002 did not, therefore, constitute an irregularity such as to affect the fairness of the ballot.
(2002-2654/2674/2742, 20 January 2003, AN, Hauts-de-Seine, Constituency 5, para 2, p. 54)

The allegation that the successful candidate exerted pressure on voters by referring to his status as Vice-president of the regional council is not backed up by adequate evidence of its reality or intensity.
(2002-2759, 30 January 2003, AN, Pyrénées-Orientales, Constituency 3, para 12, p. 75)

Manœuvres or intervention relating to candidates' political situation

Party political affiliation or ticket

Campaign advertising documents for the successful candidate, distributed during the campaign for the first ballot, stated that the candidate and his replacement supported the President of the Republic and the parties in the presidential majority, but they did not explicitly state that they had been selected by the Union pour la majorité présidentielle.

At the second ballot there were three candidates, including the successful candidate, who had come first at the first ballot, and Mr C, who had come second and was the only candidate officially selected by the Union pour la majorité présidentielle for the second ballot. During the campaign for the second ballot, pamphlets were distributed for the successful candidate, some of them headed "Union pour la majorité présidentielle", affirming that the UMP had asked Mr C to stand down from the second ballot. But in the campaigns for both ballots Mr C had regularly informed voters that he was the sole candidate selected by the Union pour la majorité présidentielle. Moreover, the two candidates' ballot papers were perfectly unambiguous as to the fact that Mr C alone had been selected. Given the gap in the numbers of votes cast for the successful candidate and the Socialist candidate, it follows that the conduct of the successful candidate, however regrettable, cannot have affected the outcome of the ballot.
(2002-2654/2674/2742, 20 January 2003, AN, Hauts-de-Seine, Constituency 5, paras 3 and 4, p. 54)

Selections

The applicant complains that the successful candidate claimed during the campaign to enjoy the "personal support of the President of the Republic" and "official support of the Prime Minister", but he does not explain how such statements can constitute a manœuvre such as to distort the outcome of the ballot.
(2002-2681, 20 January 2003, AN, Val-de-Marne, Constituency 4, para 2, p. 57)

It emerges from the investigation, and in particular the photographs in the file, that in the weeks preceding the first ballot the Communist Party had a large number of posters put up all over the town of M, calling on voters to mobilise "against the right and the far right". This violation of section L 51 of the Electoral Code was on a large scale and recurred throughout the period preceding the first ballot. It could well have had a negative impact on the number of votes cast for certain candidates, and in particular Mr G, the candidate standing for the Union pour la majorité présidentielle.

Moreover, it has been shown, notably by reports made by bailiffs, that the distribution of a pamphlet presenting Mr K as the "candidate of the republican right, selected by the UDF" continued after May 22, the date on which the Union pour la Démocratie française withdrew its selection of him. Even if Mr G had had the opportunity during the election campaign to make clear that he had now been selected by that party, the distribution of false information continued until the day before the ballot, notably with the distribution of the local edition of "Le Parisien", containing a list of candidates in the constituency, with "UDF" specified at Mr K's name. This may have misled certain voters.

Following first-ballot electoral operations on 9 June 2002, Mr G was only two votes short of the threshold of 12.5 % of the registered voters laid down by section L 162 of the Electoral Code for eligibility for the second ballot. This being so, the facts described above may well have affected the fairness of the ballot. Electoral operations at the first ballot, and consequently at the second ballot, are annulled.
(2002-2651/2655/2887, 30 January 2003, AN, Seine-Saint-Denis, Constituency 7, paras 8 to 10, p. 71)

Manœuvres or intervention relating to the second ballot

Support

At the second ballot there were three candidates, the successful candidate, who came first at the first ballot, Mr C, who came second and who was the only one selected at the second ballot by the Union pour la majorité présidentielle, and the applicant, selected by the Socialist Party. This last candidate submits that a pamphlet distributed between the two ballots, on 12 June, called on left-leaning voters to vote for Mr C to prevent the successful candidate from being elected, as Mr D, socialist general councillor, had done in 1995. But on 14 June Mr D had a press release issued, stating that he was not the author of the pamphlet and that he supported the applicant. The applicant cannot therefore submit that voters were misled as to the support he enjoyed at the second ballot.
(2002-2654/2674/2742, 20 January 2003, AN, Hauts-de-Seine, Constituency 5, paras 4 and 5, p. 54)

The applicant complains of a letter sent to residents of the commune by the Senator-Mayor of Sucy-en-Brie on Senate headed notepaper a few days before the first ballot to support the candidature of the successful candidate. But it emerges from the investigation that the letter followed a pamphlet issued by another candidate from the same political group as the successful candidate and citing the Senator's name in such a way as to suggest that he enjoyed his support. In the circumstances of the case, the letter criticised does not appear to constitute a manœuvre such as to affect the outcome of the ballot.
(2002-2681, 20 January 2003, AN, Val-de-Marne, Constituency 4, para 3, p. 57)

Miscellaneous manœuvres

The fact that letters addressed by the applicant to voters on the electoral rolls for Constituency 1 in Paris were returned to him marked "does not live at this address", and the allegation that

521 of these voters cast votes on 16 June 2002 do not suffice to establish the existence of manœuvres such as to jeopardise the reliability of the ballot.
(2002-2690, 20 January 2003, AN, Paris, Constituency 1, para 3, p. 60)

ELECTORAL OPERATIONS

Organisation of ballot

Composition of electoral offices

Constitution of electoral offices

It was in accordance with section R 43 of the Electoral Code that Mr W, ranked thirty-fourth in the table of municipal councillors in Levallois-Perret, was not designated to preside one of the thirty-one polling stations in the commune.
(2002-2654/2674/2742, 20 January 2003, AN, Hauts-de-Seine, Constituency 5, para 9, p. 54)

A municipal councillor having informed the mayor of S that she wished to exercise her right to preside a polling station for the second ballot at the general elections to be held four days later, the mayor was not entitled to reject her request, presented in good time before the date of the second ballot, on the ground that that municipal councillor had not given him prior notice of her intention, and in so doing he violated section R 43. But it does not emerge from the investigation that the irregularity constituted a manœuvre having the object or effect of promoting fraud in the ballot.
(2002-2764, 30 January 2003, AN, Réunion, Constituency 1, para 20, p. 80)

Special voting procedures

Voting by proxy

Drawing up of proxies

Information recorded on proxies, signatures

A proxy form not bearing the signature of the author, there being no means for the authority before which it was drawn up to certify his inability to sign, is void. The vote cast by means of the proxy must accordingly be subtracted from the total number of votes cast and from the number cast for the successful candidate. Given the gap of 318 votes between the number cast for the successful candidate and his opponent, this is not such as to affect the outcome of the ballot.
(2003-3377, 15 May 2003, AN, Wallis and Futuna, Mr Kamilo GATA, para 5, p. 368)

Transmission of documents

Under the combined provisions of sections R 75, R 203 and R 204 of the Electoral Code, the authority before which the proxy form is drawn up sends, by registered mail without an envelope, the first section to the chief of the territorial constituency (in Wallis and Futuna) where the author resides and the second section to the proxy.

Mere failure to transmit the sections by registered mail would warrant annulment of the proxy votes only if it is shown that the effect was to modify the use made of the proxy votes or that it constituted a manœuvre to distort the outcome of the ballot. The applicant states that 304 proxy forms used by proxies were not sent by registered mail, but he does not submit that failure to transmit them by that procedure had any effect on the way the proxy votes were used or constituted a manœuvre to distort the outcome of the ballot.

Moreover, while the applicant alleges that "a certain number of proxies were held up at the post office and distributed after the ballot held on 23 March 2003", this allegation is unsupported.
(2003-3377, 15 May 2003, AN, Wallis and Futuna, Mr Kamilo GATA, paras 2 to 4, p. 368)

LITIGATION

Jurisdiction of Constitutional Council

Authority of treaties in relation to statutes and administrative instruments

Section 33 of the Ordinance of 7 November 1958, which confers the right to challenge an election on all persons entered on the electoral roll for the constituency in which the election took place and on persons standing as candidates in incompatible neither with article 13 of the European Convention for the protection of human rights and fundamental freedoms nor with article 2 of the International Covenant on civil political rights, which secure for everybody a right to effective redress before a national body in the event of a violation of the rights they secure.
(2003-3371/3376, 27 February 2003, AN, Paris Constituency 17, Val-d'Oise Constituency 5, para 2, p. 209)

Review of certain judgments given by administrative courts

Judgment on the validity of candidatures

It emerges from the investigation that, noting that Mr M was not on the electoral roll and could not provide evidence of his status as voter, the Prefect of Paris, acting on the basis of section LO 160 of the Electoral Code, declined to register his statement of candidature and referred it to the administrative court for Paris. By judgment given on 22 May 2002 that court refused to register the candidature on the ground that the candidate could not show that he head the status of voter. Mr M and Mr P, who was to be his replacement, are entitled to challenge electoral operations by pleading that the refusal was illegal.

The fact that Mr M was not entered on any electoral roll did not in itself preclude his candidature from being registered, but it was up to him to provide evidence of his status as voter, no later than the administrative court hearing. It is common ground that he failed to provide such evidence. The administrative court was accordingly right to reject his candidature. Plea rejected.
(2002-2631/2661/2696, 30 January 2003, AN, Paris, Constituency 19, paras 3 to 5, p. 68)

Matters outside the jurisdiction of the Constitutional Council

Checks on validity of electoral roll

In the absence of manœuvres such as to affect the fairness of the ballot, it is not for the Constitutional Council to rule on the regularity of entries in the electoral rolls.
(2002-2690, 20 January 2003, AN, Paris, Constituency 1, para 2, p. 60)

It is not for the Constitutional Council, as electoral court, to rule on the regularity of entries in the electoral rolls, unless there is a manœuvre such as to affect the fairness of the ballot.
(2002-2631/2661/2696, 30 January 2003, AN, Paris, Constituency 19, para 7, p. 68)

Incompatibility of certain functions with membership of Parliament

The applicant cannot plead the existence of an incompatibility between the successful candidate's office of deputy and his other functions. This incompatibility, which can only operate after the election, would have no impact on the election itself.
(2002-2681, 20 January 2003, AN, Val-de-Marne, Constituency 4, para 1, p. 57)

Constitutionality of a legislative instrument

Under the combined provisions of article 6 of the Declaration of Human and Civic Rights of 1789 and articles 3 and 24 of the Constitution, it was for the legislature to modify constituency boundaries in response, wherever necessary, to population trends since the entry into force of Act 86-1197 of 24 November 1986 on the determination of constituencies for the election of deputes, but is not for the Constitutional Council, acting as here under article 59 rather than article 61 of the Constitution, to review the constitutionality of the legislative provisions in table No 1 annexed to section L 125 of the Electoral Code. The applicant cannot therefore challenge the delimitation of the constituency in which he was a candidate.
(2002-2644/2648, 20 January 2003, AN, Seine-et-Marne, Constituency 3, para 2, p. 51)

Lodging of application

Status of applicant

An applicant who was neither a voter nor a candidate in the relevant constituencies has no status to challenge the electoral operations held there.
(2003-3371/3376, 27 February 2003, AN, Paris Constituency 17, Val-d'Oise Constituency 5, para 3, p. 209)

Forms of application

Address of applicant

Order 3 of the Standing Orders applicable to the procedure before the Constitutional Council provides that "Applications on which proceedings are based shall state the name, forename(s), address and status of the applicant(s) and the name of the successful candidate(s) whose election is contested, together with a statement of the facts and arguments pleaded...", but it is not submitted here that the fact that Mr L did not live at the address that he had given the Constitutional Council had the effect of impeding the smooth operation of the procedure. Ms B. is accordingly not entitled to submit that the application is inadmissible.
(2002-2690, 20 January 2003, AN, Paris, Constituency 1, para 1, p. 60)

Submissions and arguments

Arguments

New arguments

Existence

A plea based on violation of section L 52-4, prohibiting a candidate who has designated a financial agent from setting campaign expenditure direct and raised for the first time in a written pleading registered after the expiry of the deadline set by section 33 of the Ordinance of 7 November 1958 is not admissible.
(2002-2759, 30 January 2003, AN, Pyrénées-Orientales, Constituency 3, para 25, p. 75)

A plea based on the use of photographs belonging to a public authority to illustrate the successful candidate's campaign newsletter was a raised for the first time in a written rejoinder registered after the expiry of the deadline of ten days set by section 33 of the Ordinance of 7 November 1958. New ground is inadmissible.
(2002-2764, 30 January 2003, AN, Réunion, Constituency 1, para 8, p. 80)

Arguments unsupported by evidence

The applicant submits that the candidatures of Mr S and Mr D were inspired and financed by the successful candidate to weaken his principal opponent's position and that these candida-

tures constituted a manœuvre enabling the successful candidate to use campaign advertising material not retraceable through his own campaign accounts, contrary to the principle of the unicity of the campaign account provided for by section L 52-5. He does not provide the slightest evidence in support of his submission, which is based exclusively on suppositions inspired by the existence of personal or professional relations between Mr S and the successful candidate and of electoral issues common to that candidate and Mr S and Mr D The National Campaign Accounts and Political Funding Committee, having been informed of this submission to the Constitutional Council and investigated it, approved the accounts that are here challenged. None of the alleged facts indicates the existence of fraud. The submission must accordingly be dismissed without it being necessary to accede to the applicant's request for consultation of the campaign accounts of the candidates contested.
(2002-2633/2695, 20 January 2003, AN, Moselle, Constituency 1, paras 10 to 12 and 9, p. 47)

In support of a submission that an election should be annulled, it is not enough for the applicant to "wonder" about the successful candidate's eligibility.
(2002-2681, 20 January 2003, AN, Val-de-Marne, Constituency 4, para 1, p. 57)

Investigation

General powers of instruction

Joinder of cases

Collective declaration of ineligibility of 10 candidates who paid direct, and not via their financial agent, sums that cannot be described as minor expenditure items. Contrary to section L 52-4 of the Electoral Code.
(2002-2810 and others, 30 January 2003, AN, Ineligibilities, Campaign expenditure settled direct by candidates who had designated a financial agent, para 1, p. 85)

Collective declaration of ineligibility of 46 candidates who neglected to deposit campaign accounts, contrary to section L 52-12 of the Electoral Code.
(2002-2826 and others, 30 January 2003, AN, Ineligibilities, Failure to deposit campaign accounts, paras 1 to 5, p. 91)

Collective declaration of ineligibility of 51 candidates who had not had their campaign accounts certified by a member of the Order of Accountants, contrary to section L 52-12 of the Electoral Code.
(2002-2831 and others, 30 January 2003, AN, Ineligibilities, Failure to deposit campaign accounts, paras 1 to 3, p. 94)

Collective declaration of ineligibility of 10 candidates who failed to supply all the vouchers required by section L 52-12 of the Electoral Code.
(2002-2800 and others, 6 February 2003, AN, Ineligibilities, Absence of vouchers for receipts and expenditure, para 1, p. 106)

Collective declaration of ineligibility of 40 candidates who deposited their campaign accounts out of time, contrary to section L 52-12 of the Electoral Code.
(2002-2818 and others, 6 February 2003, AN, Ineligibilities, Deposit out of time, paras 1 to 5, p. 108)

Collective declaration of ineligibility of 25 candidates who had not had their campaign accounts certified by a member of the Order of Accountants, contrary to section L 52-12 of the Electoral Code.
(2002-2840 and others, 6 February 2003, AN, Ineligibilities, Failure to have campaign accounts deposited by a member of the Order of Accountants, paras 1 to 3, p. 112)

Collective declaration of ineligibility of 10 candidates who paid direct, and not via their financial agent, sums that cannot be described as minor expenditure items. Contrary to section L 52-4 of the Electoral Code.
(2002-2870 and others, 6 February 2003, AN, Ineligibilities, Campaign expenditure settled direct by candidates who had designated a financial agent, para 1, p. 115)

Collective declaration of ineligibility of 29 candidates who neglected to deposit campaign accounts, contrary to section L 52-12 of the Electoral Code.
(2002-3010 and others, 6 February 2003, AN, Ineligibilities, Failure to deposit campaign accounts, paras 1 to 4, p. 139)

Collective declaration of ineligibility of 31 candidates who neglected to deposit campaign accounts, contrary to section L 52-12 of the Electoral Code.
(2002-2796 and others, 27 February 2003, AN, Ineligibilities, Failure to deposit campaign accounts, paras 1 to 5, p. 163)

Collective declaration of ineligibility of 11 candidates who paid direct, and not via their financial agent, sums that cannot be described as minor expenditure items. Contrary to section L 52-4 of the Electoral Code.
(2002-2996 and others, 27 February 2003, AN, Ineligibilities, Campaign expenditure settled direct by candidates who had designated a financial agent, paras 1 to 14, p. 180)

Collective declaration of ineligibility of 6 candidates who deposited their campaign accounts out of time, contrary to section L 52-12 of the Electoral Code.
(2002-3173 and others, 27 February 2003, AN, Ineligibilities, Deposit out of time, paras 1 to 4, p. 190)

Collective declaration of ineligibility of 18 candidates who had not had their campaign accounts certified by a member of the Order of Accountants, contrary to section L 52-12 of the Electoral Code.
(2002-3190 and others, 27 February 2003, AN, Ineligibilities, Failure to deposit campaign accounts, paras 1 to 3, p. 194)

Collective declaration of ineligibility of 11 candidates who paid direct, and not via their financial agent, sums that cannot be described as minor expenditure items. Contrary to section L 52-4 of the Electoral Code.
(2002-2945 and others, 20 March 2003, AN, Ineligibilities, Campaign expenditure settled direct by candidates who had designated a financial agent, paras 2 and 14, p. 242)

Collective declaration of ineligibility of 15 candidates who had not had their campaign accounts certified by a member of the Order of Accountants, contrary to section L 52-12 of the Electoral Code.
(2002-3174 and others, 20 March 2003, AN, Ineligibilities, Failure to have campaign accounts deposited by a member of the Order of Accountants, paras 1 to 3, p. 266)

Collective declaration of ineligibility of 19 candidates who neglected to deposit campaign accounts, contrary to section L 52-12 of the Electoral Code.
(2002-3221 and others, 20 March 2003, AN, Ineligibilities, Failure to deposit campaign accounts, paras 3 to 6, p. 270)

Procedural incidents, specific requests, no cause of action

Request to consult campaign accounts

The applicant submits that the candidatures of Mr S and Mr D were inspired and financed by the successful candidate to weaken his principal opponent's position and that these candidatures constituted a manœuvre enabling the successful candidate to use campaign advertising material not retraceable through his own campaign accounts, contrary to the principle of the unicity of the campaign account provided for by section L 52-5. He does not provide the slightest evidence in support of his submission, which is based exclusively on suppositions inspired by the existence of personal or professional relations between Mr S and the successful candidate and of electoral issues common to that candidate and Mr S and Mr D. The National Campaign Accounts and Political Funding Committee, having been informed of this submission to the Constitutional Council and investigated it, approved the accounts that are here challenged. None of the alleged facts indicates the existence of fraud. The submission must accordingly be dismissed without it being necessary to accede to the applicant's request for consultation of the campaign accounts of the candidates contested.
(2002-2633/2695, 20 January 2003, AN, Moselle, Constituency 1, paras 9, 10, 11 and 12, p. 47)

Requests constituting abuse of process

Two requests from an applicant lacking standing to act several of whose requests have already been rejected on the same ground constitute an abuse of process.
(2003-3371/3376, 27 February 2003, AN, Paris Constituency 17, Val-d'Oise Constituency 5, para 4, p. 209)

Deposit

Obligation to deposit. Status of candidate

The person concerned formally denies that she was the author of the declaration of candidature made in her name. Substantial difference between her signature and the signature on the declaration. No cause for a declaration of ineligibility.
(2002-2901, 20 March 2003, AN, Nord, Constituency 10, para 2, p. 238)

Candidature not withdrawn in the manner prescribed by section R 100 of the Electoral Code. The candidate submits that the campaign accounts presented in her name are false. The National Campaign Accounts and Political Funding Committee was accordingly right to record that no campaign accounts had been presented. Ineligibility.
(2002-3157, 27 March 2003, AN, Val-de-Marne, Constituency 9, paras 3 to 5, p. 311)

Time allowed for depositing

Ineligibility

No accounts presented. The candidate states that she sent her accounts to the prefecture but does not provide the slightest evidence is support of her statement and the Prefect for the department states that he did not receive the candidate's accounts. Ineligibility.
(2002-2857, 30 January 2003, AN, Réunion, Constituency 1, paras 1 to 3, p. 98)

Accounts not deposited at the prefecture by midnight on 9 August 2002, when the deadline set by section L 52-12 of the Electoral Code expired. The candidate submits that he sent his campaign accounts direct to the National Campaign Accounts and Political Funding Committee by letter sent from la Réunion on 9 August 2002, but even if this is shown to be the case, he will not have been able to meet the deadline set by section L 52-12 of the Electoral Code. Ineligibility.
(2002-2784, 6 February 2003, AN, La Réunion, Constituency 4, paras 1 to 3, p. 104)

No accounts presented. Ineligibility.
(2002-2985, 6 February 2003, AN, Pas-de-Calais, Constituency 1, paras 1 to 3, p. 131; 2002-3353, 9 April 2003, AN, Seine-Saint-Denis, Constituency 1, para 3, p. 349; 2003-3378, 24 July 2003, AN, Nord, Constituency 23, paras 1 to 3, p. 395)

The existence of a disagreement on the price of services rendered by the printer of campaign documents does not release the candidate from the obligation to establish and deposit campaign accounts. Ineligibility.
(2002-3345, 27 March 2003, AN, Eure, Constituency 2, para 3, p. 321; 2002-3101, 9 April 2003, AN, Bas-Rhin, Constituency 5, para 3, p. 341)

Conditions of deposit

Account not certified

The candidate affirms but does not prove that he deposited campaign accounts presented by an accountant within the deadline set by section L 52-12 of the Electoral Code. Ineligibility.
(2002-2927, 27 March 2003, AN, Hérault, Constituency 7, para 3, p. 297)

Accounts not signed by candidate

Section L 52-12 of the Electoral Code provides that the campaign accounts must be established by the candidate, and evidence of compliance with that obligation may be furnished, until the date on which the National Campaign Accounts and Political Funding Committee gives its ruling, by the signature placed on his campaign accounts by the candidate.

The National Campaign Accounts and Political Funding Committee did not accede to the candidate request for authorisation to regularise his campaign accounts by adding his signature. The Committee was not legally entitled to rely on the absence of a signature on the campaign accounts to regard them as not established by the candidate and to reject them on that basis.
(2002-3204, 27 February 2003, AN, Paris, Constituency 7, paras 3 and 4, p. 196)

No supporting vouchers

Collective declaration of ineligibility of 10 candidates whose campaign accounts as deposited did not contain details of certain transactions or vouchers enabling the National Campaign Accounts and Political Funding Committee to approve, revise or reject them. Accounts rightly rejected. Ineligibility.
(2002-2800 and others, 6 February 2003, AN, Ineligibility, No vouchers for receipts and expenditure, paras 2 and 3, p. 106)

Campaign accounts did not contain details of certain transactions or vouchers enabling the National Campaign Accounts and Political Funding Committee to approve, revise or reject them. Accounts rightly rejected. Ineligibility.
(2002-2962, 6 February 2003, AN, Gironde, Constituency 10, paras 1 and 2, p. 127)

Collective declaration of ineligibility of 6 candidates who did not supply all the vouchers for expenditure required by section L 52-12 of the Electoral Code.
(2002-3006 and others, 6 February 2003, AN, Ineligibility, No vouchers for expenditure, paras 1 to 3, p. 137)

Collective declaration of ineligibility of 6 candidates whose campaign accounts as deposited did not contain vouchers for expenditure enabling the National Campaign Accounts and Political Funding Committee to approve, revise or reject them. Accounts rightly rejected. Ineligibility.
(2002-3006 and others, 6 February 2003, AN, Ineligibility, No vouchers for expenditure, paras 1 to 3, p. 137)

Campaign accounts containing no vouchers for actual payment of several invoices totalling €13 538 or the payment of a personal contribution of €13 275 before expiry of the deadline for depositing accounts. Once that contribution is deducted, the campaign accounts are in deficit. Accounts rightly rejected. Ineligibility.
(2002-3212, 6 February 2003, AN, Paris, Constituency 6, paras 1 to 6, p. 150)

To reject the campaign accounts, the National Campaign Accounts and Political Funding Committee relied on the fact that despite its request, the candidate did not produce statements for the bank account opened by his financial agent or photocopies of cheques for donations of more than €150. The candidate produced these documents in the Constitutional Council. Examination of them reveals no violations of statutory requirements as to the financing and limits of campaign expenditure. No cause of ineligibility.
(2002-3342, 27 February 2003, AN, Saône-et-Loire, Constituency 3, paras 1 and 2, p. 207)

Campaign accounts do not contain vouchers for actual payment of all expenditure. Ineligibility.
(2002-2782, 20 March 2003, AN, Nord,, Constituency 8, para 2, p. 232)

Campaign accounts did not contain vouchers enabling the National Campaign Accounts and Political Funding Committee to approve, revise or reject them. Defence arguments that the candidate's campaign expenditure was modest and partly paid in cash are inoperative. Ineligibility.
(2002-2974, 20 March 2003, AN, Loire-Atlantique, Constituency 9, paras 2 and 3, p. 248)

Campaign accounts only partly supported by expenditure vouchers. In his comments, the accountant who presented the accounts mentioned the absence of vouchers. The candidate did not reply to requests for explanations. Accounts rightly rejected. Ineligibility.
(2002-3050, 20 March 2003, AN, Haut-Rhin, Constituency 3, paras 2 and 3, p. 254)

The campaign accounts deposited by the candidate did not contain vouchers for actual payment of all the expenditure recorded in the accounts. Documents produced for the first time in the Constitutional Council only partly vouch for the reality of the expenditure declared in the campaign accounts. Ineligibility.
(2002-3280, 20 March 2003, AN, Yvelines, Constituency 6, para 2, p. 279; 2002-3296, 20 March 2003, AN, Loire, Constituency 7, para 2, p. 281)

All financial transactions

The candidate gave no information under the heading relating to resources in the accounts and wrongly recorded expenditure on official campaign advertising in the summary of the accounts, but the supplementary explanations and documents supplied by the candidate in response to requests from the Committee's rapporteur reveal that the receipts in the campaign accounts consists primarily of his own contribution and that all expenditure items declared were settled before the accounts were deposited at the prefecture. Despite the mistakes made in his accounts, they are neither in deficit nor inaccurate. Accounts wrongly rejected. No cause of ineligibility.
(2002-3204, 27 February 2003, AN, Paris, Constituency 7, para 5, p. 196)

Expenditure other than the official campaign expenditure was omitted and official campaign expenditure was included, but the omission of the former as not due to the candidate's desire to cheat but simply due to confusion as the amounts of the two types of expenditure were so similar. The accounts are not therefore vitiated by inaccuracy. Two amounts substituted, and no cause of ineligibility.
(2002-2933, 20 March 2003, AN, Paris, Constituency 12, para 3, p. 240)

The campaign accounts presented by Mr M and signed by a member of the order of accountants reflected only part of the expenditure incurred by the candidate for his election campaign. In response to requests for explanations, Mr M supplied new accounts where the amounts of receipts and expenditure differed from the earlier ones and were not presented by a member of the order of accountants. Accounts rightly rejected. Ineligibility.
(2002-3012, 20 March 2003, AN, Loire-Atlantique, Constituency 2, paras 2 and 3, p. 252)

Candidate's accounts rejected on the ground that all the expenditure on his election campaign was not recorded, part of his communication expenditure having been covered by his political party.

The relevant expenditure was for the printing of national campaign documents containing a common text with individual material adapted to each candidate. On 3 June 2002 a formal agreement was concluded between the candidate and the national treasurer of the political party for covering the expenditure. Then accounts should be revised to reinstate the amount of the corresponding item on both the receipts and the expenditure side and thus to record all transactions in support of Mr B's candidature. No cause of ineligibility.
(2002-3130, 20 March 2003, AN, Gard, Constituency 3, paras 2 and 3, p. 258)

Account recording no receipts

The accounts record only the amount of the campaign receipts. It emerges from the investigation that the candidate had no campaign expenditure to declare. No cause of ineligibility.
(2002-3326, 27 March 2003, AN, Vosges, Constituency 2, paras 1 and 2, p. 319)

Expenses in excess of receipts

Several donations made to the candidate by individuals to finance his campaign were made after the date of the election. The candidate presents for the first time in the Constitutional Council documentary evidence of commitments the date of which cannot be verified. These donations must therefore be regarded as out of order and be deducted from the receipts recorded in the candidate's campaign accounts. As a result of the deduction, the accounts are in deficit contrary to section L 52-12 of the Electoral Code. Accounts rightly rejected. Ineligibility.
(2002-2969, 6 February 2003, AN, Pyrénées-Atlantiques, Constituency 6, paras 1 to 4, p. 129)

Two donations of €100 and €2 300, made to the candidate by individuals to finance his campaign, were made after 16 June 2002, the date of the election, without the candidate providing evidence of payment commitments entered into by donors before 17 June. Once these irregular donations are deducted from the receipts recorded in the candidate's campaign accounts, the accounts are in deficit contrary to section L 52-12 of the Electoral Code. Accounts rightly rejected. Ineligibility.
(2002-3014, 6 February 2003, AN, Var, Constituency 6, paras 1 to 4, p. 142)

Campaign accounts containing no vouchers for the payment of the candidate's own contribution of €13 275 before the legal deadline for presentation of the accounts. Once this contribution is deducted from the receipts recorded in the candidate's campaign accounts, the accounts are in deficit. Accounts rightly rejected. Ineligibility.
(2002-3212, 6 February 2003, AN, Paris, Constituency 6, paras 5 and 6, p. 150)

Inadequate receipts declared in the accounts to cover the campaign expenditure. No evidence to prove the origin of the amount of the campaign receipts. No evidence for settlement of expenditure at the legal deadline for depositing the accounts. Ineligibility.
(2002-3277, 27 March 2003, AN, Rhône, Constituency 10, para 3, p. 317)

A cheque for €3 050 corresponding to the donation made by an individual was deposited on the candidate's financial agent's bank account on 31 July 2002, which is after the date of the election in the constituency. The candidate does not show that the cheque was drawn or a commitment made before that date. These donations must therefore be regarded as out of order and be deducted from the receipts recorded in the candidate's campaign accounts. As a result of the deduction, the accounts are in deficit. Accounts rightly rejected. Ineligibility.
(2002-3224, 9 April 2003, AN, Haute-Savoie, Constituency 2, para 4, p. 347)

Regularisation before the Constitutional Council

To reject the campaign accounts, the National Campaign Accounts and Political Funding Committee relied on the fact that despite its request the candidate did not produce statements for the bank account opened by his financial agent or photocopies of cheques for donations of more than €150. The candidate produced these documents in the Constitutional Council. Examination of them reveals no violations of statutory requirements as to the financing and limits of campaign expenditure. No cause of ineligibility.
(2002-3342, 27 February 2003, AN, Saône-et-Loire, Constituency 3, paras 1 and 2, p. 207)

Production before the Constitutional Council of vouchers proving the actual payment of two expenditure items. No cause of ineligibility.
(2002-2866, 20 March 2003, AN, Isère, Constituency 3, para 3, p. 236)

When deposited the accounts were not accompanied by vouchers for the actual payment of expenditure incurred by the candidate, but that payment is vouched for by documents produced for the first time before the Council. No cause of ineligibility.
(2002-2967, 20 March 2003, AN, Charente-Maritime, Constituency 4, para 3, p. 246)

Decision declaring no cause for ineligibility on the basis of the production, for the first time before the Constitutional Council, of vouchers missing from the file put before the National Campaign Accounts and Political Funding Committee.
(2002-3112, 20 March 2003, AN, Doubs, Constituency 3, para 2, p. 256; 2002-3151, 20 March 2003, AN, Indre-et-Loire, Constituency 4, para 2, p. 264; 2002-3248, 20 March 2003, AN, Hauts-de-Seine, Constituency 3, para 2, p. 273)

Production, for the first time before the Constitutional Council, of the last statements of bank accounts opened by the financial agent, the prefect's receipt for the designation of that agent and the evidence for the balance of the personal contribution, not available to the NCAPFC. No cause of ineligibility, as the examination of these documents reveals no violations of the statutory rules relating to the financing and limitation of campaign expenditure.
(2002-3352, 20 March 2003, AN, Seine-Saint-Denis, Constituency 1, para 2, p. 289)

When deposited the accounts were not accompanied by vouchers enabling the National Campaign Accounts and Political Funding Committee to verify the actual payment of printing expenditure committed by the candidate, but examination of documents produced by the candidate for the first time before the Constitutional Council reveals that there is evidence of the actual payment of the expenditure. No cause of ineligibility.
(2002-2802, 9 April 2003, AN, Hauts-de-Seine, Constituency 2, para 2, p. 335)

Funding association

It emerges from the investigation that the funding association set up for Mr B's campaign was declared at the prefecture, which acknowledged receipt on 28 May 2002. The formalities to make the association public were performed without delay. A bank account was opened in the

association's name to accept receipts and finance expenditure to be entered in the candidate's campaign accounts in accordance with section L 52-5. The funding association was entitled to operate even if the publication in the Journal officiel was delayed until 15 June 2002.
(2002-2681, 20 January 2003, AN, Val-de-Marne, Constituency 4, paras 8 and 9, p. 57)

The date of the declaration of the campaign funding association is the material date for calculating the amount of expenditure settled direct by the candidate.
(2002-3340, 20 March 2003, AN, Morbihan, Constituency 5, para 3, p. 285)

Funding association or financial agent

The first paragraph of section L 52-4 of the Electoral Code prohibits candidates from gathering funds to finance their campaign otherwise than via a financial agent. Mr B received donations worth €2 670 direct. His good faith and inexperience are without influence on the prohibition. Ineligibility.
(2002-2819, 30 January 2003, AN, Pyrénées-Orientales, Constituency 3, paras 1 and 2, p. 89)

The financial agent did not open the single bank or postal account required by section L 52-6 of the Electoral Code. Moreover, 32 % of the expenditure was not settled by the financial agent. Accounts rightly rejected. Ineligibility.
(2002-2959, 6 February 2003, AN, Haute-Garonne, Constituency 1, paras 1 and 2, p. 125)

Given the purpose of sections L 52-4 and L 52-6 of the Electoral Code, the obligation to declare the name of the financial agent to the prefecture is a substantial formality that cannot be neglected.

The candidate omitted to declare her financial agent. The candidate submits that the omission was purely involuntary and that a person had agreed to act as her financial agent, but that does not preclude the application of section LO 128. Accounts rightly rejected. Ineligibility.
(2002-2934, 27 February 2003, AN, Manche, Constituency 1, paras 1 to 3, p. 170)

Given the purpose of sections L 52-4 and L 52-6 of the Electoral Code, which is financial transparency in political life, and the nature of the relationship between candidate and replacement, a candidate cannot designate his replacement as financial agent.

A candidate's replacement exercised the functions of financial agent for the candidate. Accounts rightly rejected. Ineligibility.
(2002-3266, 27 February 2003, AN, Seine-Saint-Denis, Constituency 8, paras 1 and 2, p. 200)

Content of accounts

Receipts

Donations or benefits from political parties or groups

To reject the successful candidate's accounts, the National Campaign Accounts and Political Funding Committee acted on the basis of the fact that the candidate had received from the M section of the Communist Party contributions in kind worth €2 730. They were regarded as out of order on the grounds that the section is not one of the entities covered by the Party's accounts.

Given the purpose of the legislation relating to financial transparency of political life, the financing of election campaigns and the limitation of campaign expenditure, a body corporate governed by private law pursuing a political object can be regarded as a "political party or group" within the meaning of section L 52-8 of the Electoral Code only if it is covered by sections 8 and 9 of the Act 11 March 1988, or has submitted to the rules laid down by sections 11 to 11-7 of the Act, which require political parties and groups to raise funds only via an agent, who may be an individual whose name has been declared at the prefecture or a funding association approved by the National Campaign Accounts and Political Funding Committee.

The M section of the Communist Party is merely the Party's local representation, covered by sections 8 and 9 of the Act of 11 March 1988. The treasurer of the national board of the

Communist Party has also certified that the local sections have no other resources than those paid by the departmental funding associations set up by the federations. The participation of the M section in financing the successful candidate's campaign was not prohibited by section L 52-8 of the Electoral Code. Accounts wrongly rejected.
(2002-2651/2655/2887, 30 January 2003, AN, Seine-Saint-Denis, Constituency 7, paras 2 to 4, p. 71)

It was legitimate for a political group covered by sections 8 and 9 of Act 88-227 of 11 March 1988 on financial transparency in political life to contribute to the financing of Mr V's election campaign via a departmental federation that the national bodies had not dissolved and which constituted one of its local representations. Mr V's campaign accounts record as a contribution in kind the cost of occupying premises made available to the candidate during the election campaign by the Party's departmental federation. The cost was calculated on the basis of the rent payable by the group to the owner of the building under a lease concluded in 1996 at an amount not apparently lower than the rents for other premises in the same building. Plea that the company owning the building gave Mr V an indirect benefit is rejected.
(2002-2764, 30 January 2003, AN, Réunion, Constituency 1, paras 1 to 3, p. 80)

To reject the candidate's accounts, the National Campaign Accounts and Political Funding Committee proceeded on the basis of the fact that the candidate had received a donation from the "Unité écologique". This donation was regarded as out of order on the ground that, despite being requested to do so, the candidate neither showed nor even alleged that that association was to be regarded as a political party.

There is no need to rule on the association's status association in relation to the Act of 11 March 1988, and the irregularity ascertained by the Committee, given the low value of the advantage and the conditions in which it was given, does not warrant rejection of the campaign accounts. Decision revised accordingly. No cause of ineligibility.
(2002-2897, 6 February 2003, AN, Var, Constituency 7, paras 1 to 4, p. 119; 2002-2898, 6 February 2003, AN, Vaucluse, Constituency 4, paras 1 to 4, p. 121)

Under the second paragraph of section L 52-8 of the Electoral Code, political parties or groups are the only bodies corporate that may be involved in financing a candidate's election campaign.

Where a body corporate governed by private law pursuing a political object has recourse to a funding association, the association must have been set up by the date on which that body corporate participates in financing the campaign or makes a donation to a candidate. Evidence that it was set up must be provided by a document with a definite date. Such is the case of the acknowledgement of receipt of the declaration of the association. The funding association must also have been accredited by the Committee no later than the date on which it states whether or not it accepts that the campaign accounts which received the funding or the donation are in order or, if it does state this in the time allowed by section L 52-15 of the Code, no later than the date when the time allowed runs out.

In the present case, the association entitled "Fédération d'action du Lamentin", which pursues a political object, was set up on 9 January 2001. The association, which was not governed by sections 8 and 9 of the Act of 11 March 1988, only declared its funding association at the prefecture on 19 November 2002, following the Committee's request for explanations. On the date on which the association "Fédération d'action du Lamentin" paid for expenditure incurred by the candidate for the campaign for the elections held on 9 and 16 June 2002, its funding association had not been duly set up. The "Fédération d'action du Lamentin" could not be regarded as a "political party or group" within the meaning of section L 52-8 of the Electoral Code.
(2002-3332, 27 February 2003, AN, Martinique, Constituency 3, paras 2 to 5, p. 202)

The Le Puy section of the Socialist Party is merely the local representation of the party, which is governed by sections 8 and 9 of the Act of 11 March 1988. The donation made by the section was accordingly not prohibited, as the legislation stands, by section L 52-8 of the Electoral Code. No cause of ineligibility.
(2002-3059, 9 April 2003, AN, Haute-Loire, Constituency 2, paras 1, 2 and 3, p. 339)

The Villeneuve-d'Ascq committee is merely the local representation of the Mouvement des citoyens — Pôle républicain, which is governed by sections 8 and 9 of the Act of 11 March

1988. The donation made by the section was accordingly not prohibited, as the legislation stands, by section L 52-8 of the Electoral Code. No cause of ineligibility.
(2002-3149, 9 April 2003, AN, Nord, Constituency 11, paras 2 and 3, p. 343)

The Faches-Thumesnil committee is merely the local representation of the Mouvement des citoyens — Pôle républicain, which is governed by sections 8 and 9 of the Act of 11 March 1988. The donation made by the section was accordingly not prohibited, as the legislation stands, by section L 52-8 of the Electoral Code. No cause of ineligibility.
(2002-3158, 9 April 2003, AN, Nord, Constituency 1, paras 2 to 4, p. 345)

Donations to a candidate by an individual (1st paragraph of section L 52-8 of the Electoral Code)

Period

Several donations made to the candidate by individuals to finance his campaign were made after the date of the election. The candidate presents for the first time in the Constitutional Council documentary evidence of commitments the date of which cannot be verified. These donations must therefore be regarded as out of order and be deducted from the receipts recorded in the candidate's campaign accounts. As a result of the deduction, the accounts are in deficit contrary to section L 52-12 of the Electoral Code. Accounts rightly rejected. Ineligibility.
(2002-2969, 6 February 2003, AN, Pyrénées-Atlantiques, Constituency 6, paras 1 to 4, p. 129)

Two donations of €100 and €2 300, made to the candidate by individuals to finance his campaign, were made after 16 June 2002, the date of the election, without the candidate providing evidence of payment commitments entered into by donors before 17 June. Once these irregular donations are deducted from the receipts recorded in the candidate's campaign accounts, the accounts are in deficit contrary to section L 52-12 of the Electoral Code. Accounts rightly rejected. Ineligibility.
(2002-3014, 6 February 2003, AN, Var, Constituency 6, paras 1 to 4, p. 142)

Given the object pursued, section L 52-4 and the third paragraphs of sections L 52-5 and L 52-6 of the Electoral Code do not preclude the campaign accounts from recording receipts corresponding to cheques cashed after the election, provided always that the cheques were drawn prior to the election.

To reject the campaign accounts, the National Campaign Accounts and Political Funding Committee proceeds on the basis of the deficit generated by the fact that donations made after the election have been deducted. But the documents in the case, and particularly the certification by the accountant who certified the accounts, not contradicted by information gathered by the Committee during the procedure, show that cheques corresponding to these donations were drawn prior to the date of the election. Accounts wrongly rejected. No cause of ineligibility.
(2002-2939, 27 February 2003, AN, Aisne, Constituency 1, paras 1 to 3, p. 174)

Given the object pursued, section L 52-4 and the third paragraphs of sections L 52-5 and L 52-6 of the Electoral Code do not preclude the campaign accounts from recording receipts corresponding to cheques cashed after the election, provided always that the cheques were drawn prior to the election.

Under the first paragraph of section L 52-12 of the Electoral Code, the campaign accounts must be in balance or show a profit and may not be in deficit.

Several donations made to the candidate by individuals to finance her campaign were made after the 9 June 2002, the date on which the election was held. The candidate submits that these donations were made in performance of a "moral commitment", but she provides no evidence that such a commitment was actually entered into. These donations must therefore be regarded as out of order and be deducted from the receipts recorded in the candidate's campaign accounts. As a result of the deduction, the accounts are in deficit. Accounts rightly rejected.
(2002-2965, 27 February 2003, AN, Loiret, Constituency 3, paras 1 to 4, p. 178)

Given the object pursued, section L 52-4 and the third paragraphs of sections L 52-5 and L 52-6 of the Electoral Code do not preclude the campaign accounts from recording receipts

corresponding to cheques cashed after the election, provided always that the cheques were drawn prior to the election.

Several donations made to the candidate by individuals to finance his campaign were made after the date of the election. The candidate presents for the first time in the Constitutional Council documentary evidence of commitments the date of which cannot be verified. These donations must therefore be regarded as out of order and be deducted from the receipts recorded in the candidate's campaign accounts. As a result of the deduction, the accounts are in deficit contrary to section L 52-12 of the Electoral Code. Accounts rightly rejected. Ineligibility.
(2002-3251, 27 February 2003, AN, Loire, Constituency 6, paras 1 to 6, p. 198)

A cheque for €3 050 corresponding to the donation made by an individual was deposited on the candidate's financial agent's bank account on 31 July 2002, which is after the of the election in the constituency. The candidate does not show that the cheque was drawn or a commitment made before that date. These donations must therefore be regarded as out of order and be deducted from the receipts recorded in the candidate's campaign accounts. As a result of the deduction, the accounts are in deficit. Accounts rightly rejected. Ineligibility.
(2002-3224, 9 April 2003, AN, Haute-Savoie, Constituency 2, para 4, p. 347)

Amount

An individual made the candidate a donation of €7 622. The amount of the donation exceeds the maximum allowed by the first paragraph de section L 52-8. Accounts rightly rejected. Ineligibility.
(2002-2955, 6 February 2003, AN, Bouches-du-Rhône, Constituency 1, paras 1 and 2, p. 123)

An individual made the candidate a donation of €7 239. The amount of the donation exceeds the maximum allowed by the first paragraph de section L 52-8. Accounts rightly rejected. Ineligibility.
(2002-3257, 6 February 2003, AN, Rhône, Constituency 2, paras 1 and 2, p. 154)

Under the combined provisions of section L 52-8 and L 392 of the Electoral Code, donations by individuals to the funding of the campaign of one or more candidates for the election of deputies in New Caledonia may not exceed 545 000 CFP francs. It was accordingly rightly that campaign accounts recording a donation of 1 051 655 CFP francs from an individual were rejected. Ineligibility.
(2002-3373, 9 April 2003, AN, New Caledonia, Constituency 2, paras 1 and 2, p. 353)

Payment techniques — Cheque — Cash

A donation of €3 000 by an individual was paid in cash, contrary to the third paragraph of section L 52-8. Accounts rightly rejected. Ineligibility.
(2002-3142, 6 February 2003, AN, Nord, Constituency 6, paras 1 and 2, p. 148)

Two donations of €4 500 euros each by individuals were paid in cash, contrary to the third paragraph of section L 52-8. Accounts rightly rejected. Ineligibility.
(2002-3226, 6 February 2003, AN, Doubs, Constituency 4, paras 1 and 2, p. 152)

Payment techniques — financial agent (section L 52-4)

The first paragraph of section L 52-4 prohibits candidates from gathering funds to finance their campaign otherwise than via a financial agent. Mr B received donations worth €2 670 direct. His good faith and inexperience are without influence on the prohibition. Ineligibility.
(2002-2819, 30 January 2003, AN, Pyrénées-Orientales, Constituency 3, paras 1 and 2, p. 89)

The candidate cashed on his personal bank account a cheque for €10 671 drawn by an individual and then paid to his financial agent the sum of €4 573, in return for which a donation receipt was issued to the drawer of the cheque. There is thus a donation received otherwise than via his financial agent contrary to section L 52-4 of the Electoral Code. Accounts rightly rejected. Ineligibility.
(2002-3077, 6 February 2003, AN, Charente-Maritime, Constituency 1, paras 1 and 2, p. 146)

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

The commune of M financed the retransmission of several meetings of the municipal council by a cable television service between December 2001 and May 2002. Despite the drawbacks of doing so during a period that overlapped with the election campaign, the principle had been accepted by the *Conseil supérieur de l'audiovisuel* on condition that there would be nothing electoral about it. It does not emerge from the investigation that this condition was violated, or that the debates were used as an opportunity for showing support for the successful candidate at the general election. The brochure intituled "Contract of objectives and partnership for the successful schooling of M's children", which was made by the municipal printshop and distributed to the families of schoolchildren in the commune at the beginning of June 2002, concerns an agreement between the commune and the National Ministry of Education. Given its content, the cost of printing it is not by way of being expenditure incurred directly in support of Mr B's candidature at the general election. Plea that the candidate benefited from a contribution in kind from a public authority, contrary to section L 52-8 of the Electoral Code, is rejected.
(2002-2651/2655/2887, 30 January 2003, AN, Seine-Saint-Denis, Constituency 7, para 5, p. 71)

No donation or benefit

The applicants submit that the commune of W., where the successful candidate is mayor, participated in financing his election campaign through a variety of communication actions across the constituency.

The issue of the municipal newsletter that is criticised was distributed in May 2001, more than twelve months before the election. It follows that the relevant expenditure can in no case be regarded as covered by section L 52-8.

It emerges from the investigation that the document intituled "La vérité sur les obus chimiques dans l'agglomération messine" was distributed in the context of a national debate between local elected officials in Lorraine and the public authorities as to the means of decommissioning old stocks of shells containing chemical agents discovered at W. and that it made no reference to the forthcoming elections. Plea rejected.

The successful candidate is also alleged to have enjoyed unlawful advantages in the organisation of the Strawberry Fair held in W. in June each year. But it is neither shown nor indeed alleged that in 2002 the Fair was the occasion for events designed to influence voters. The mere fact that the date of the election of the Strawberry Queen, which should have been the third Sunday in June, the day of the second ballot, was brought forward two weeks to the first Sunday in June is not sufficient to establish that there was a violation of section L 52-8 of the Electoral Code.
(2002-2633/2695, 20 January 2003, AN, Moselle, Constituency 1, paras 2 to 8, p. 47)

The various municipal and national events referred to by the applicant, and in particular a Christmas meal for elderly residents, were not campaign events. The relevant expenditure cannot therefore be regarded is incurred for the purposes of the election campaign.
(2002-2759, 30 January 2003, AN, Pyrénées-Orientales, Constituency 3, paras 16 to 18, p. 75)

Before the first and second ballots, Mr A, as "Mayor and Senator", sent circulars to voters in P, recommending them to vote for Mr C, but it has not been shown that the cost of preparing and distributing the circulars was covered by the commune de P contrary to section L 52-8 of the Electoral Code.
(2002-2759, 30 January 2003, AN, Pyrénées-Orientales, Constituency 3, para 20, p. 75)

Neither a picnic organised by a public establishment for intercommunal cooperation for its staff, nor the sports day traditionally organised for local government personnel on Mothers' Day, nor the other events which the candidate attended as mayor, was an election campaign event. These events cannot therefore be regarded as contributions in kind by a body corporate prohibited by section L 52-8 of the Electoral Code.
(2002-2764, 30 January 2003, AN, Réunion, Constituency 1, para 6, p. 80)

Mr V, mayor, was regularly accompanied by his chief of staff when visiting voters, but it emerges from the investigation that this public servant assisted with the candidate's election campaign while on leave of absence in lieu of remuneration for overtime worked at the town hall. No violation of section L 52-8.
(2002-2764, 30 January 2003, AN, Réunion, Constituency 1, para 9, p. 80)

Entry in the campaign accounts of a receipt from the partnership current account held by the candidate as member of a housing association. This receipt corresponding to a claim that the candidate had on the association cannot be regarded as a donation from a body corporate. No cause of ineligibility.
(2002-3029, 27 March 2003, AN, Rhône, Constituency 6, paras 2 and 3, p. 299)

Gifts or benefits not warranting rejection of the accounts

Section L 52-8 of the Electoral Code prohibits bodies corporate other than political parties from giving donations or benefits to a candidate, but neither that section nor any other provision applicable to the election of deputies entails rejection of the campaign accounts on the sole ground that the candidate enjoyed a benefit to which they apply. It is for the National Campaign Accounts and Political Funding Committee and ultimately the electoral court to assess, in the light of all the circumstances of the case, and in particular the nature of the benefit, its value and the conditions in which it was given, whether the accounts should be rejected accordingly.

Donation by the association "Unité écologique". There is no need to rule on the association's status in relation to the Act of 11 March 1988, and the irregularity ascertained by the Committee, given the low value of the advantage and the conditions in which it was given, does not warrant rejection of the campaign accounts. Decision revised accordingly. No cause of ineligibility.
(2002-2897, 6 February 2003, AN, Var, Constituency 7, paras 1 to 4, p. 119)

Donation of €42 by the association "Unité écologique". There is no need to rule on the association's status in relation to the Act of 11 March 1988, and the irregularity ascertained by the Committee, given the low value of the advantage and the conditions in which it was given, does not warrant rejection of the campaign accounts. Decision revised accordingly. No cause of ineligibility.
(2002-2898, 6 February 2003, AN, Vaucluse, Constituency 4, paras 1 to 4, p. 121)

The candidate declared a benefit in kind received from a graphic design company for the creation of her "communication card", but it emerges from the investigation that the benefit, of an estimated value of approximately €200, cannot, given the low value of the advantage and the conditions in which it was given, be regarded as warranting rejection of her campaign accounts on the basis of section L 52-8 of the Electoral Code. No cause of ineligibility.
(2002-3158, 9 April 2003, AN, Nord, Constituency 1, paras 2, 3 and 5, p. 345)

Gifts or benefits warranting rejection of the accounts

Several companies, which cannot be regarded as political parties within the meaning of the Act of 11 March 1988, made donations to a candidate to finance his election campaign totalling €1 000 contrary to section L 52-8 of the Electoral Code. Given the value of the benefit, accounts rightly rejected. Ineligibility.
(2002-3024, 6 February 2003, AN, Guyane, Constituency 2, paras 1 and 2, p. 144)

The successful candidate received a benefit prohibited by section L 52-8 from a body corporate that cannot be regarded as a "political party or group". In the circumstances of the case, given the nature of the benefit, the conditions in which it was given and its value as a proportion of the expenditure in the accounts, even after deduction of auditing costs, the irregularity committed by the candidate warrants rejection of his campaign accounts. Ineligibility and removal from office.
(2002-3332, 27 February 2003, AN, Martinique, Constituency 3, paras 6 and 7, p. 202)

Campaign accounts containing on the receipts side benefits in kind of an amount of €536 from two commercial companies corresponding to the supply of "tee-shirts" and the printing of post cards. The invoices bear the hand-written endorsement "donation in kind" and are not receipted. The candidate received a donation prohibited by section L 52-8 of the Electoral Code. Given the nature of the benefit, the conditions in which it was given and its value as a proportion of the expenditure in the accounts, the Committee was right to reject his campaign accounts. Ineligibility.
(2002-3333, 27 February 2003, AN, Martinique, Constituency 3, paras 1 to 4, p. 205)

Motor-car made available to the candidate free of charge by a commercial company. Given the nature of the benefit, the conditions in which it was given and its value (€3000), the candidate must be regarded as having received a benefit from a body corporate other than a political party contrary to section L 52-8 of the Electoral Code. Ineligibility.
(2002-3061, 27 March 2003, AN, Ariège, Constituency 2, para 2, p. 301)

Expenditure

Expenses required to be recorded in the account

While the fact that the printer's name and address are not printed on the successful candidate's pamphlets is contrary to section 2 of the Press Freedom Act of 29 July 1881, made applicable to campaign advertising by section L 48 of the Electoral Code, the omission did not have the effect of preventing verification of the candidate's campaign accounts since, under section L 52-12 of the Electoral Code, the accounts were required to be accompanied by invoices, estimates and other documents to vouch for the amount of expenditure incurred or committed by or on behalf of the candidate.
(2002-2644/2648, 20 January 2003, AN, Seine-et-Marne, Constituency 3, para 4, p. 51)

Posters signed "PCF 93" calling on voters to mobilise "against the right and the far right" were displayed in M during the month preceding the first ballot. The applicant submits that they were not used elsewhere in the department. In the circumstances of the case, since the successful candidate was supported by the Communist Party, the cost of this poster campaign in M must be regarded as expenditure incurred directly for his benefit and with his agreement contrary to section L 52-12 of the Electoral Code. This expense is not recorded in his campaign accounts and must be incorporated in them. But as the total expenditure declared by the candidate is €4 492 below the maximum allowable amount of campaign expenditure determined in accordance with section L 52-11 of the Electoral Code, it does not emerge from the investigation that doing so causes the maximum amount to be exceeded.
(2002-2651/2655/2887, 30 January 2003, AN, Seine-Saint-Denis, Constituency 7, para 6, p. 71)

Failure to record in the campaign accounts an amount of €3 760 corresponding to travel and entertainment expenses. An omission on this scale vitiates the accuracy of the accounts. Ineligibility.
(2002-3210, 20 March 2003, AN, Moselle, Constituency 10, para 2, p. 268)

Failure to record campaign expenses in the campaign accounts. Accounts inaccurate. Ineligibility.
(2002-3348, 20 March 2003, AN, Aveyron, Constituency 1, para 2, p. 287)

Failure to record in the campaign accounts an amount of at least €3 750 paid to reimburse expenditure incurred by the campaign manager. An omission on this scale vitiates the accuracy of the accounts. Accounts rightly rejected. Ineligibility.
(2002-3375, 9 April 2003, AN, Oise, Constituency 7, para 2, p. 357)

Expenses not required to be recorded in the account

Two candidates opened a website for the purpose of electoral operations, but it was in fact a free-hosted personal pages sited supplied by an internet services provider. In accordance with the general terms for using the service, any candidate –and indeed anyone at all– could enjoy the same service from the same company. It follows that the candidates did not violate section L 52-12 of the Electoral Code by failing to enter the corresponding expenditure in their campaign accounts. No cause of ineligibility.
(2002-2937/2958, 27 February 2003, AN, Puy-de-Dôme, Constituency 1 and 3, paras 1 and 2, p. 172)

The candidate's website, which had already existed for artistic purposes for two years, was extended to cover electoral matters, but the work was done by young voluntary workers. It follows that the contribution was not required to be recorded in the accounts.
(2002-2933, 20 March 2003, AN, Paris, Constituency 12, para 5, p. 240)

Official campaign expenditure was not required to be recorded in the campaign accounts under the combined provisions of sections L 52-12 and R 26 to R 39 of the Electoral Code.
(2002-3143, 20 March 2003, AN, Ardèche, Constituency 3, para 3, p. 262)

Expenses paid direct (section L 52-4)

Collective declaration of ineligibility of 10 candidates who paid direct rather than through their financial agent expenses that cannot be regarded as small amounts contrary to section L 52-4 of the Electoral Code. The arguments relied on by some of them to justify their failure to comply with these provisions, in particular their good faith, their inexperience, the late issuance of a cheque book to their financial agent and the agent's temporary unavailability are without effect on the prohibition on direct payment of campaign expenditure when they have decided to operate through a financial agent.
(2002-2810 and others, 30 January 2003, AN, Ineligibilities, Campaign expenditure paid by candidates who had designated a financial agent, paras 1 to 14, p. 85)

It emerges from the investigation, in particular from a certificate issued by a manager at the La Teste-de-Buch postal distribution centre, that the successful candidate deposited a cheque for €6 720 there on 27 May 2002, corresponding to the amount of an invoice addressed to her financial agent, that the sole purpose of the deposit was to serve as a guarantee for the subsequent payment of the invoice by the agent, who could not be reached on the day of the transaction, and it was as a result of an error by La Poste that the cheque, which was passed on to the verification office at the Bordeaux sorting centre, was then cashed. The candidate's intention was not to pay the invoice direct. There is no need to take account of this sum of €6 270 in assessing compliance with section L 52-4 of the Electoral Code.

The travel expenses paid direct by the candidate, totalling €484, are negligible as a proportion of the candidate's aggregate expenditure and of the maximum amount allowed. The direct payment of such sums does not warrant rejection of the candidate's campaign accounts.

Accounts wrongly rejected. No cause of ineligibility.
(2002-3025, 30 January 2003, AN, Gironde, Constituency 8, paras 3 to 5, p. 102)

Collective declaration of ineligibility of 10 candidates who paid direct rather than through their financial agent expenses that cannot be regarded as small amounts. The fact that the financial agent did not have a bank card is without effect on the violation of section L 52-4 of the Electoral Code.
(2002-2870 and others, 6 February 2003, AN, Ineligibilities, Campaign expenditure paid by candidates who had designated a financial agent, paras 2 to 14, p. 115)

The direct payment of minor expenses by the candidate for practical reasons can be tolerated but only if the total amount is low in relation to the expenses recorded in the campaign accounts and negligible in relation to the maximum amount allowed by section L 52-11 of the Electoral Code. These conditions are not met in the case of expenses which, even if amounts paid to a salaried employee of the candidate's replacement are left out of account, represent 34 % of the total campaign expenditure and 28 % of the maximum amount. The practical reasons relied on by the candidate, relating principally to the summer period, are inoperative. Nor can section L 118-3 of the Electoral Code be validly relied on as it is not applicable to legislative elections. Accounts rightly rejected. Ineligibility.
(2002-2989, 6 February 2003, AN, Rhône, Constituency 7, paras 1 to 4, p. 133)

Expenses paid direct by the candidate represent 15.7 % of the total expenditure recorded in the campaign accounts and 9.1 % of the maximum amount. The candidate's good faith and the accuracy of his campaign accounts are inoperative. Ineligibility.
(2002-2835, 27 February 2003, AN, Paris, Constituency 1, paras 1 to 4, p. 166)

Expenses paid direct by the candidate represent 10.7 % of the total expenditure recorded in the campaign accounts and 10.7 % of the maximum amount. The candidate's good faith, his inexperience, the fact that the chairman of his funding association was unable to be permanently available and the small individual amounts paid direct are inoperative. Ineligibility.
(2002-2839, 27 February 2003, AN, Paris, Constituency 15, paras 1 to 4, p. 168)

Expenses paid direct by the candidate after designation of his financial agent represent 12.6 % of the total expenditure recorded in the campaign accounts, after designation of his financial agent, and 7.1 % of the maximum amount. The candidate's good faith and the late award of a loan are inoperative. Ineligibility.
(2002-2953, 27 February 2003, AN, Bouches-du-Rhône, Constituency 1, paras 1 to 4, p. 176)

Expenses paid direct by the candidate represent 15.9 % of the total expenditure recorded in the campaign accounts and 5.7 % of the maximum amount. The candidate's good faith, the

accuracy of his accounting records and the practical reasons for paying the expenses direct are inoperative. Ineligibility.
(2002-3081, 27 February 2003, AN, Indre-et-Loire, Constituency 2, paras 1 to 4, p. 184)

The prohibition on the candidate under section L 52-4 of the Electoral Code from paying campaign expenses himself when he has designated a financial agent applies only after the designation of the financial agent. The expenses paid direct by the candidate represent 2.1 % of the total amount of expenditure in the campaign accounts after the designation and 0.9 % of the maximum amount. The amounts are low in relation to the total expenditure recorded in the campaign accounts after 18 December 2001 and negligible in relation to the maximum amount. No cause of ineligibility.
(2002-3152, 27 February 2003, AN, Eure-et-Loir, Constituency 1, paras 1 to 4, p. 188)

Expenses paid direct by the candidate represent 15.7 % of the total expenditure recorded in the campaign accounts and 12 % of the maximum amount. The candidate's good faith, his late selection as candidate and the delay in paying him a bank loan are inoperative. Ineligibility.
(2002-3180, 27 February 2003, AN, Nièvre, Constituency 3, paras 1 to 4, p. 192)

Expenses paid direct by the candidate, after designation of his financial agent, represent 18.5 % of the total expenditure recorded in the campaign accounts and 8.8 % of the maximum amount set for the constituency. Ineligibility.
(2002-2815, 20 March 2003, AN, Guadeloupe, Constituency 3, para 3, p. 234)

Expenses paid direct by the candidate represent 75.3 % of the total expenditure recorded in the campaign accounts and 45.7 % of the maximum amount. The candidate's good faith, the accuracy of his accounts, the fact that no donations were received, the unavailability of his financial agent and the agent's ignorance of the relevant legislative provisions are inoperative. Ineligibility.
(2002-3253, 20 March 2003, AN, Hérault, Constituency 1, paras 2 to 4, p. 275)

Expenses paid direct by the candidate represent 15.7 % of the total expenditure recorded in the campaign accounts and 3.7 % of the maximum amount. The candidate's good faith, the accuracy of his accounts, the unavailability of his financial agent and the small amounts involved are inoperative. Ineligibility.
(2002-3276, 20 March 2003, AN, Côtes-d'Armor, Constituency 5, paras 2 to 4, p. 277)

Even if the candidate's allegations that the total expenses he paid direct were lower than the total recorded by the Committee were true, the expenses would still represent 8.7 % of the total expenditure recorded in the campaign accounts. The candidate's good faith, the accuracy of his accounts, the unavailability of his financial agent and the small individual catering amounts involved are inoperative. Ineligibility.
(2002-3319, 20 March 2003, AN, Haute-Garonne, Constituency 2, paras 2 to 4, p. 283)

Expenses paid direct by the candidate after designation of his financial agent amount to €258 and represent 46 % of the total expenditure recorded in the campaign accounts. The defence arguments of the candidate's good faith, the accuracy of his accounts and the small amounts involved are inoperative. Ineligibility.
(2002-2915, 27 March 2003, AN, Aisne, Constituency 2, paras 3 and 4, p. 295)

Expenses paid direct by the candidate after designation of his financial agent amount to €2 194. This can be regarded as low in relation to the total expenditure recorded in the campaign accounts, but it corresponds to 3.7 % of the maximum amount set for this election at €59 050, and that is not a negligible proportion. The defence arguments of the candidate's good faith and the fact that the campaign was financed from private resources are inoperative. Ineligibility.
(2002-3066, 27 March 2003, AN, Paris, Constituency 18, paras 3 and 4, p. 303)

Expenses paid direct by the candidate after designation of his financial agent represent at least 21.4 % of the total expenditure recorded in the campaign accounts and 16.2 % of the maximum amount set for this election. The defence arguments of the candidate's good faith, the small individual amounts involved and the fact that this expenditure was reimbursed to the candidate by his financial agent are inoperative. Ineligibility.
(2002-3074, 27 March 2003, AN, Seine-Saint-Denis, Constituency 3, paras 3 and 4, p. 307)

Expenses paid direct by the candidate represent less than 2 % of the maximum amount set for this election but exceed 40 % of total campaign expenditure. The defence arguments of the

candidate's good faith, the unavailability of the financial agent and the reimbursement of the expenses by the agent are inoperative. Ineligibility.
(2002-3118, 27 March 2003, AN, Marne, Constituency 6, paras 3 and 4, p. 309)

Expenses paid direct by the candidate represent 58 % of the total expenses recorded in the campaign accounts and 2.2 % of the maximum amount set for this election. The defence arguments of the candidate's good faith and difficulties in setting up his funding association are inoperative. Ineligibility.
(2002-3193, 27 March 2003, AN, Val-d'Oise, Constituency 8, paras 3 and 4, p. 313)

Expenses paid direct by the candidate, without going through his financial agent, represent 3 % of the maximum amount set for this election. The defence arguments of the candidate's good faith, the late award of a loan which then turned out to be inadequate and the lack of deposits on the financial agent's bank account after 18 June 2002 are inoperative. Ineligibility.
(2002-3239, 27 March 2003, AN, Bouches-du-Rhône, Constituency 15, paras 3 and 4, p. 315)

Expenses paid direct by the candidate represent 40.3 % and the expenses in the accounts and 5.6 % of the maximum amount set for this election. The defence arguments of the mistake made by the financial agent's bank and the late issuance of a cheque book are inoperative. Ineligibility.
(2002-3368, 27 March 2003, AN, Aveyron, Constituency 2, paras 3 and 4, p. 323)

Expenses prior to designation

After deducting expenses that the candidate paid before his funding association was declared, expenses that he paid direct after that date represent more than 43 % of the expenditure recorded in his rectified campaign accounts and 4 % of the maximum amount. The fact that he had to pay certain invoices himself is inoperative. Ineligibility.
(2002-3340, 20 March 2003, AN, Morbihan, Constituency 5, paras 2 to 4, p. 285)

Expenses paid direct by the candidate were prior to designation of his financial agent. Accounts wrongly rejected. No cause of ineligibility.
(2002-3354, 20 March 2003, AN, Allier, Constituency 3, para 2, p. 291)

After deducting expenses that the candidate paid before his funding association was declared and expenses for the acquisition of a mobile telephone for personal use, expenses that he paid direct represent 9.9 % of the total expenditure recorded in the campaign accounts and 3.4 % of the maximum amount. Ineligibility.
(2002-2987, 9 April 2003, AN, Oise, Constituency 2, paras 3 to 5, p. 337)

Official campaign expenses

Official campaign expenses are not required to be recorded in the campaign accounts under the combined provisions of section L 52-12 and R 26 to R 39 of the Electoral Code. The other expenses were paid by the candidate's funding association. Accounts wrongly rejected. No cause of ineligibility.
(2002-2933, 20 March 2003, AN, Paris, Constituency 12, paras 3 and 4, p. 240)

Official campaign expenses are not required to be recorded in the campaign accounts under the combined provisions of section L 52-12 and R 26 to R 39 of the Electoral Code. After deduction of these amounts, the expenses recorded in the accounts and paid direct by the candidate represent 3.6 % of the expenses recorded in the campaign accounts and 0.8 % of the maximum amount. They are therefore low in relation to the expenses recorded in the campaign accounts and negligible in relation to the maximum amount. Accounts wrongly rejected. No cause of ineligibility.
(2002-3132, 20 March 2003, AN, Essonne, Constituency 6, paras 2 and 3, p. 260)

Official campaign expenses are not required to be recorded in the campaign accounts under the combined provisions of section L 52-12 and R 26 to R 39 of the Electoral Code. After deduction of these amounts, the expenses recorded in the campaign accounts amount to €360, entirely paid by the financial agent. Accounts wrongly rejected. No cause of ineligibility.
(2002-3143, 20 March 2003, AN, Ardèche, Constituency 3, para 3, p. 262)

Expenses paid direct by the candidate relate to the official campaign and were not required to be recorded in the campaign accounts. No cause of ineligibility.
(2002-3068, 27 March 2003, AN, Paris, Constituency 10, para 3, p. 305)

Benefits in kind — assessment

The successful candidate's campaign accounts include amounts for benefits in kind corresponding to the provision of premises by two political parties. It has not been shown that the costs were under-evaluated.
(2002-2690, 20 January 2003, AN, Paris, Constituency 1, para 10, p. 60)

Even if it is accepted that circulars addressed by the mayor of P to voters residing in the commune were distributed with the candidate's agreement, the total expenditure recorded in the campaign accounts after incorporation of the cost of preparing and distributing the circulars is below the maximum amount allowed.
(2002-2759, 30 January 2003, AN, Pyrénées-Orientales, Constituency 3, para 24, p. 75)

Invoices not paid before accounts are deposited

The fact that the printer performing printing work related to the official election campaign presented a supplementary invoice to the departmental federation of the candidate's party after the accounts were deposited does not make the accounts inaccurate, as there is no evidence that the candidate had prior knowledge of the supplement. The amount for support from political parties and the total of expenditure are revised, but no cause of ineligibility.
(2002-2986, 20 March 2003, AN, Aube, Constituency 3, paras 3 and 4, p. 250)

Accounts rejected by the Committee on the ground that they did not record all the campaign expenses as one printing item was not recorded. But it emerges from the investigation that this expense item was covered by the sum of €7 500 recorded in the accounts and that the candidate had entered it as a provisional item partly paid pending settlement of a dispute with the printer. The candidate came to an agreement with the printer after her accounts were deposited and paid the balance due, which eventually came to €7 109. No cause of ineligibility.
(2002-3369, 9 April 2003, AN, Eure, Constituency 1, paras 2 and 3, p. 351)

Campaign accounts rejected as inaccurate on the ground that the candidate had included printing costs of €2 230 without providing evidence that they had actually been paid. But it emerges from the investigation that on 10 July 2002, before the final deadline for depositing the candidate's campaign accounts, a cheque for €2 230 was drawn by the candidate's financial agent to pay for the relevant printing work. Even though the cheque was not cashed by the printing firm until after the deadline had expired, that fact does not affect the accuracy of the candidate's campaign accounts since on the date on which the Committee gave its finding, proof of actual payment was furnished. No cause of ineligibility.
(2002-3374, 9 April 2003, AN, Dordogne, Constituency 1, paras 2 to 4, p. 355)

Principles of unicity and completeness of accounts

The applicant submits that the candidatures of Mr S and Mr D were inspired and financed by the successful candidate to weaken his principal opponent's position and that these candidatures constituted a manœuvre enabling the successful candidate to use campaign advertising material not retraceable through his own campaign accounts, contrary to the principle of the unicity of the campaign account provided for by section L 52-5. He does not provide the slightest evidence in support of his submission, which is based exclusively on suppositions inspired by the existence of personal or professional relations between Mr S and the successful candidate and of electoral issues common to that candidate and Mr S and Mr D. The National Campaign Accounts and Political Funding Committee, having been informed of this submission to the Constitutional Council and investigated it, approved the accounts that are here challenged. None of the alleged facts indicates the existence of fraud. The submission must accordingly be dismissed without it being necessary to accede to the applicant's request for consultation of the campaign accounts of the candidates contested.
(2002-2633/2695, 20 January 2003, AN, Moselle, Constituency 1, paras 10 to 12, p. 47)

Deficit

To reject the campaign accounts, the National Campaign Accounts and Political Funding Committee proceeds on the basis of the deficit generated by the fact that donations made after the election have been deducted. But the documents in the case, and particularly the

certification by the accountant who certified the accounts, not contradicted by information gathered by the Committee during the procedure, show that cheques corresponding to these donations were drawn prior to the date of the election. Accounts wrongly rejected. No cause of ineligibility.
(2002-2939, 27 February 2003, AN, Aisne, Constituency 1, paras 1 to 3, p. 174)

Under the first paragraph of section L 52-12 of the Electoral Code, the campaign accounts must be in balance or show a profit and may not be in deficit.

Several donations made to the candidate by individuals to finance his campaign were made after 16 June 2002, the date on which the election was held. The candidate presents for the first time in the Constitutional Council documentary evidence of commitments the date of which cannot be verified. These donations must therefore be regarded as out of order and be deducted from the receipts recorded in the candidate's campaign accounts. As a result of the deduction, the accounts are in deficit. Accounts rightly rejected. Ineligibility.
(2002-2965, 27 February 2003, AN, Loiret, Constituency 3, paras 1 to 4, p. 178)

Campaign accounts recording an excess of expenditure over vouched receipts and not revealing how the candidate financed the entirety of his campaign expenditure. Candidate did not reply to requests for explanations. Accounts rightly rejected. Ineligibility.
(2002-3129, 27 February 2003, AN, Essonne, Constituency 5, paras 1 to 3, p. 186)

Under the first paragraph of section L 52-12 of the Electoral Code, the campaign accounts must be in balance or show a profit and may not be in deficit.

Several donations made to the candidate by individuals to finance his campaign were made after the 9 June 2002, the date on which the election was held. The candidate that these donations were made in performance of a "moral commitment", but she provides no evidence that such a commitment was actually entered into. These donations must therefore be regarded as out of order and be deducted from the receipts recorded in the candidate's campaign accounts. As a result of the deduction, the accounts are in deficit. Accounts rightly rejected. Ineligibility.
(2002-3251, 27 February 2003, AN, Loire, Constituency 6, paras 1 to 6, p. 198)

Donations or benefits from public figures or bodies corporate governed by private law

Gifts or benefits warranting rejection of the accounts — Ineligibility

A printing firm to which the successful candidate had contracted the preparation of his campaign advertising material gave him a credit totalling €1 307, being the difference between the amounts expected by way of reimbursement by the central government of printing and display costs for official campaign advertising material, calculated on the basis of rates fixed in accordance with section R. 39 of the Electoral Code and the actual cost. The successful candidate used this to finance additional campaign advertising material printing costs. The printing firm subsequently rectified the invoices sent to the prefecture to bring down to its proper level the basis for central government reimbursement of printing and display costs, and the successful candidate reimbursed the firm for work financed from the credit given, but these regularisations were made only after requests for explanation from the National Campaign Accounts and Political Funding Committee. Given the nature of the benefit, the conditions in which it was given and its amount in relation to the total expenditure recorded in the accounts, the irregularity committed by the successful candidate warrants rejection of his campaign accounts, ineligibility and removal from office.
(2002-2981, 30 January 2003, AN, Eure-et-Loir, Constituency 3, paras 1 to 5, p. 100)

No donation or benefit

Neither the editorial signed by the candidate in his function as mayor of the first district of Paris in the May 2002 issue of the district newsletter, nor the invitations to a concert given on 27 May 2002, signed on the same basis, are campaign-related. It has not been shown that the editorial calling for votes for the candidate, in the 12 June 2002 issue of "Initiatives Paris 2^{e} — Lettre d'information de la droite indépendante et libérale", was published with his agreement.

The corresponding costs were not required to be recorded on the expenditure side of the campaign accounts, and the National Campaign Accounts and Political Funding Committee was right to approve the accounts. No cause to reject Mr L's campaign accounts and no cause of ineligibility.
(2002-2690, 20 January 2003, AN, Paris, Constituency 1, paras 12 and 13, p. 60)

Successful candidate — Ineligibility — Annulment of election

Removal from office

Having rejected a Member of Parliament's campaign accounts for failure to comply with section L 52-8 of the Electoral Code, the Constitutional Council declares under Article L 136-1 that he is ineligible for one year running from the date of its decision and removes him from office.
(2002-2981, 30 January 2003, AN, Eure-et-Loir, Constituency 3, para 5, p. 100; 2002-3332, 27 February 2003, AN, Martinique, Constituency 3, paras 6 and 7, p. 202)

PUBLIC AND SOCIAL FINANCE

INITIATIVE IN FINANCE MATTERS

Assessment of financial impact

Direct financial impact

Purpose of article 40 of the Constitution

The Bill that led to the Institutional Act reforming the Senate provided for an increase in the number of Senators when it was presented in the Senate. There was a definite direct impact on the expenditure of the Senate, which is part of the burden borne by the State.
(2003-476 DC, 24 July 2003, para 2, p. 397)

Procedure for applying article 40 of the Constitution

The Bill that led to the Institutional Act reforming the Senate provided for an increase in the number of Senators when it was presented in the Senate. There was a definite direct impact on the expenditure of the Senate, which is part of the burden borne by the State.

Rules 24 and 25 of the Rules of Procedure of the Senate contain provisions to organise the review of Bills and amendments moved by a Senator for admissibility on the basis of article 40 of the Constitution.

The Constitutional Council examines the conformity of the legislative procedure with article 40 of the Constitution only if the question of the admissibility of the relevant Bill or amendment was raised in the first assembly where it was presented. The question of the financial admissibility of the Bill in the present case was not raised in the Senate, the first assembly in which it was presented, either when it was presented or when it was debated. It follows that the Constitutional Council has no grounds for directly raising the question of admissibility of the institutional act referred on the basis of article 40 of the Constitution.
(2003-476 DC, 24 July 2003, paras 2 to 4, p. 397)

Universality of budget

Special Treasury accounts

Special accounts

By virtue of sections 61 to 67 of the Institutional Act relating to Finance Acts, section 21 of the Act is to enter into force only on 1 January 2005 and will be applicable to Finance Acts for 2006 and subsequent years. The argument that the section is violated is accordingly inoperative as regards the Finance Act for 2004.
(2003-489 DC, 29 December 2003, para 16, p. 487)

The first paragraph of section 25 of the Ordinance of 2 January 1959 is still applicable and reads: "Special accounts record transactions which, under a provision of a Finance Act enacted at the initiative of the Government, are financed from specific resources...".

By imposing a tax on airline transport which is added to the price paid by the customer and the proceeds of which will be allocated, via the Airports and Air Travel Intervention Fund, to securing territorial continuity between overseas units and metropolitan France, the legislature has not violated section 25 of the Ordinance of 2 January 1959 nor seriously violated equality of public burden-sharing.
(2003-489 DC, 29 December 2003, paras 17 and 18, p. 487)

Content and presentation of finance bills

Provisions that may be not made in a Finance Act

Review by central government

Section 70 of the Finance (Rectification) Act for 2003, relating to economic and financial review by the central government of bodies receiving the proceeds of taxes or equivalent charges assigned to specific purposes, is out of place in a Finance Act as defined in section 1 of the Ordinance of 2 January 1959.
(2003-488 DC, 29 December 2003, paras 27 and 29, p. 480)

Documents annexed to a finance bill

By the first paragraph of article 47 of the Constitution: "Parliament shall pass finance bills in the manner provided by an institutional Act". It follows that only an institutional act can determine the nature and content of the documents that must be attached to a Finance Act.

Section 54 of the Institutional Act of 1 August 2001 relating to Finance Acts, applicable with effect from 2006, accordingly determines the content of the documents and information to be attached to the Regulation Act, which is a Finance Act by virtue of section 1.

Consequently, the provisions of the Finance (Rectification) Act for 2003 which amplify the information that must be attached to the Regulation Bill with effect from 2006 encroach on the matters reserved by the Constitution for institutional acts. Section 80(III)(B), the third paragraph of section 86 and its fourth paragraph, which is inseverable, are out of place in the Act referred and must be declared unconstitutional.
(2003-488 DC, 29 December 2003, paras 21 to 25, p. 480)

By the first paragraph of article 47 of the Constitution: "Parliament shall pass finance bills in the manner provided by an institutional Act". It follows that only an institutional act can determine the nature and content of the documents that must be attached to a Finance Act.

Section 51 of the Institutional Act of 1 August 2001 relating to Finance Acts, applicable with effect from 1 January 2005, accordingly determines the content of the documents and information to be attached to the Finance Act for the year. By section 51(4°), these documents include "an explanatory annex analysing the estimates for each budgetary revenue item and presenting fiscal expenditure".

Consequently, the provisions of section 81 (I) of the Finance Act for 2004 which provide that the presentation of fiscal expenditure provided for by section 51(4°) is to be in the volume intituled "Ways and Means" annexed to the Finance Bill and specify the content of that volume encroach on the matters reserved by the Constitution for institutional acts. It is out of place in the Act referred and must be declared unconstitutional, as must paragraph III which is inseverable.
(2003-489 DC, 29 December 2003, paras 42 to 45, p. 487)

Miscellaneous

Section 58 of the Finance (Rectification) Act for 2003, which raises from six months to one year the period of validity of certain passports, is out of place in a Finance Act as defined in section 1 of the Ordinance of 2 January 1959.
(2003-488 DC, 29 December 2003, paras 26 and 29, p. 480)

The second paragraph of section 100 of the Finance (Rectification) Act for 2003, which defines rules governing the representation of regional savings and provident banks on the supervisory board of the National Savings and Provident Banks Fund, is out of place in a Finance Act as defined in section 1 of the Ordinance of 2 January 1959.
(2003-488 DC, 29 December 2003, paras 28 and 29, p. 480)

Provisions that may be made only in a Finance Act

Section 4 of the Minimum Integration Income (Decentralisation) Act leaves it for the next Finance Act to specify the conditions and procedures for the offsetting to be made in 2004 in accordance with section 36 of the Institutional Act of 1 August 2001 relating to Finance Acts, which provides: "A resource established for the benefit of the central government may be assigned in whole or in part to another body corporate only by a Finance Act".
(2003-487 DC, 18 December 2003, para 14, p. 473)

Provisions relating to expenditure

Limitative appropriations

Where Parliament, by a Finance Act, votes different ceilings for major categories of expenditure and appropriations made available to ministries, this does not place the latter under an obligation to expend the entire appropriations opened for them. Expenditure authorisations do not preclude the prerogatives enjoyed by the Government under article 20 of the Constitution regarding the implementation of the Finance Act.
(2003-489 DC, 29 December 2003, para 6, p. 487)

Annulment of appropriations

Where Parliament, by a Finance Act, votes different ceilings for major categories of expenditure and appropriations made available to ministries, this does not place the latter under an obligation to expend the entire appropriations opened for them. Expenditure authorisations do not preclude the prerogatives enjoyed by the Government under article 20 of the Constitution regarding the implementation of the Finance Act. Section 14 of the Institutional Act of 1 August 2001 relating to Finance Acts, which is applicable from 1 January 2002, provides that "in order to prevent a deterioration of the budgetary equilibrium defined by the most recent Finance Act for the current year, an appropriation may be annulled by Decree issued on a report from the Minister responsible for Finance. An appropriation that has lapsed may be annulled by a Decree issued likewise". The Government is accordingly entitled to provide for

a small proportion of the appropriations opened at the beginning of the year to be placed in the reserve to prevent a deterioration of the budgetary equilibrium.
(2003-489 DC, 29 December 2003, para 6, p. 487)

Accuracy of the budget

If the broad lines of the budgetary equilibrium laid by the Finance Act depart substantially from the forecast in the course of the year, the Government must lay before Parliament a Finance (Rectification) Bill.

But failure to present a Finance (Rectification) Bill in good time, however open to criticism, has no impact on the constitutionality of the year-end Finance (Rectification) Bill.
(2003-488 DC, 29 December 2003, paras 4 and 5, p. 480)

Under section 32 of the Institutional Act of 1 August 2001 on Finance Acts, applicable with effect from 1 January 2002 by virtue of section 65: "Finance Acts shall accurately present all the resources and burdens of central government. Their accuracy shall be assessed in the light of available information and of the estimates that can reasonably be deduced from it". The accuracy of the Finance Act for the year is assessed in terms of the absence of any intention to distort the broad lines of the balance.
(2003-489 DC, 29 December 2003, para 3, p. 487)

The forecasts challenged have to be assessed in the light of the information available at the time when the draft that gave rise to the Act referred was deposited and adopted, having regard to intrinsic unknown factors.

None of the information laid before the Constitutional Council suggests that the assumptions as to gross domestic product adopted for 2004 or the forecast as to the budget deficit are vitiated by a manifest error.

The information available to the Constitutional Council does not reveal that the Government concealed from Parliament the commitments entered into vis-à-vis the Community institutions that might affect the forecasts in the Finance Act for 2004.
(2003-489 DC, 29 December 2003, paras 4 and 5, p. 487)

Having informed Parliament of its intention to provide for a small proportion of the appropriations opened at the beginning of the year to be placed in the reserve to prevent a deterioration of the budgetary equilibrium, the Government did not violate the principle of accuracy.
(2003-489 DC, 29 December 2003, para 6, p. 487)

SOCIAL SECURITY (FINANCE) ACTS

Content and presentation of Social Security (Finance) Acts

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

Provisions directly affecting the financial equilibrium of compulsory basic schemes

Given the importance of wages and salaries in the operation of private-sector not-for-profit health-care and medico-social establishments and the proportion of these costs borne by compulsory basic social security schemes, a provision designed to improve the procedure for approving collective bargaining agreements in this sector by briefing the parties in advance on the parameters concerning aggregate wage-and-salary-bill trends to be adopted in the ministerial approval procedure will affect the financial equilibrium of compulsory basic schemes. It is accordingly properly enacted in a finance act.
(2003-486 DC, 11 December 2003, paras 14 and 16, p. 467)

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

Inseverable provisions

Section 77(II) of the Act referred is inseverable from section 77(I), which renews the arrangement whereby the central government covers half the arrears of social security contributions payable by certain employers of agricultural labour in Corsica. It is automatically unconstitutional.
(2003-486 DC, 11 December 2003, para 20, p. 467)

Miscellaneous

The amendment made by section 39 of the Social Security (Finance) Act to section L 321-1 of the Social Security Code merely confirms that health-care insurance scheme will not cover procedures not performed or prescribed on account of the patient's condition but on account of demands made by external regulations or clauses of a contract. Its limited scope is such that it does not significantly affect the financial equilibrium of compulsory basic social security schemes and does not improve Parliament's review of Social Security (Finance) Acts. It adds unnecessary complexity to the implementation of section L 321-1 of the Social Security Code. Consequently, section 39 must be declared automatically unconstitutional without it being necessary to examine the applicants' objections to it.
(2003-486 DC, 11 December 2003, paras 12 and 13, p. 467)

Section 6 of the Act referred authorises the general councils of overseas departments which levy a tax on the consumption of cigarettes under section 268 of the Customs Code to set a "minimum rate". It affects only the resources of those departments. It is declared automatically unconstitutional.
(2003-486 DC, 11 December 2003, para 18, p. 467)

Section 35 of the Act referred attaches "to the Minister responsible for Health a committee chiefly responsible for evaluating the application of the setting of rates for procedures". It is declared automatically unconstitutional as being out of place in a finance act.
(2003-486 DC, 11 December 2003, para 19, p. 467)

Section 77(I) of the Act referred, amending section 52 of the Corsica Act of 22 January 2002, renews the arrangement whereby the central government covers half the arrears of social security contributions payable by certain employers of agricultural labour in Corsica. Its provisions, and the inseverable provisions of section 77(II), do not significantly affect the financial equilibrium of compulsory basic social security schemes and do not improve Parliament' s review of Social Security (Finance) Acts. They are automatically unconstitutional.
(2003-486 DC, 11 December 2003, para 20, p. 467)

Respect for general conditions of financial equilibrium

Provision of a Finance Act not such as to affect the general conditions of financial equilibrium

The constitutional requirement of financial balance of the social security system does not require the balance to be preserved for every branch and every scheme for every year.

The purpose of the "flat rate" established by section 140 of the Finance Act is to bring expenditure on the supplementary universal sickness cover under control. Given its purpose, the amount involved and the financial situation of the health-care insurance funds, the measure provided for by the section challenged does not have such an impact as to adversely affect the general financial equilibrium of the social security system.
(2003-489 DC, 29 December 2003, paras 39 and 40, p. 487)

Accuracy of the Social Security (Finance) Act

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

The health-care insurance revenue forecasts and expenditure targets have to be assessed in the light of the information available at the time when the draft that gave rise to the Act referred was deposited and adopted, having regard to intrinsic unknown factors.

Neither the hypotheses underlying the revenue forecasts challenged here, nor the national health-care expenditure targets for 2004, the progression of which does not overlook the spontaneous trend of health-care expenditure or the effect of the new measures, nor the targets for expenditure on the sickness, maternity, invalidity and death sectors, are vitiated by a manifest error.

Contrary to what the applicants submit, the information available to the Constitutional Council does not reveal that the Government concealed from Parliament the commitments entered into vis-à-vis the Community institutions that might affect the forecasts in the Social Security (Finance) Act for 2004.
(2003-486 DC, 11 December 2003, paras 4 to 7, p. 467)

GOVERNMENT

POWERS SPECIFIC TO THE GOVERNMENT

No conflict regarding the powers specific to the Government

Where Parliament, by a Finance Act, votes different ceilings for major categories of expenditure and appropriations made available to ministries, this does not place the latter under an obligation to expend the entire appropriations opened for them. Expenditure authorisations do not preclude the prerogatives enjoyed by the Government under article 20 of the Constitution regarding the implementation of the Finance Act.
(2003-489 DC, 29 December 2003, para 6, p. 487)

PRESIDENT OF THE REPUBLIC

FUNCTIONS AND POWERS

Distribution of powers between the Prime Minister and the President of the Republic

Article 52 of the Constitution provides: "The President of the Republic shall negotiate and ratify treaties. — He shall be informed of any negotiations for the conclusion of an international agreement not subject to ratification". The power to negotiate, conclude and approve an international agreement not subject to ratification lies with the executive.
(2003-470 DC, 9 April 2003, para 13, p. 359)

REVISION OF THE CONSTITUTION

POWERS OF THE CONSTITUENT ASSEMBLY

Application

Subject to articles 7, 16 and 89 of the Constitution, there is nothing to preclude the constituent assembly from incorporating in the Constitution new provisions which, in specific cases,

derogate from constitutional rules or principles. Such is the case of the fourth paragraph of article 72 of the Constitution as amended by the Constitutional Act of 28 March 2003, which by way of exception from article 34 of the Constitution and the principle of equality before the law, in certain cases empowers Parliament to authorise territorial units temporarily, on a trial basis, to give effect to measures departing from statutory provisions and capable of subsequent generalised application.
(2003-478 DC, 30 July 2003, para 3, p. 406)

DECENTRALISED ORGANISATION OF THE REPUBLIC (constitutional revision of 28 March 2003)

GENERAL PRINCIPLES

Local democracy

Local referendum

It is clear from the parliamentary debates for the constitutional revision of 28 March 2003 that, by excluding individual acts from the scope of local referendums, considering both the specific rules governing such acts and the threat of violation of individual rights that their adoption by referendum might entail, the institutional legislature did not exceed the powers conferred by the Constitution.
(2003-482 DC, 30 July 2003, para 7, p. 414)

By making the referendum's decision-making status subject to at least half the registered voters having cast a vote, section LO 1112-7 of the General Code of Territorial Units does not violate the scope of the empowerment enjoyed by the institutional legislature under article 72-1 of the Constitution.
(2003-482 DC, 30 July 2003, para 11, p. 414)

By including the Union citizens entered on the additional electoral rolls of a commune among the voters summoned to vote at a referendum on the adoption of a decision or other instrument within the powers of the commune, section LO 1112-11 of the General Code of Territorial Units properly applies the second paragraph of article 72-1 of the Constitution and article 88-3, which confers commune voter status on them.
(2003-482 DC, 30 July 2003, para 14, p. 414)

POWERS OF TERRITORIAL UNITS

Principle of "subsidiarity" (second paragraph of article 72)

The transfer to the departments of the management of the minimum reintegration income, a welfare benefit meeting a national solidarity requirement, cannot be regarded as contrary to the fifth paragraph of the Preamble to the Constitution of 1946.
(2003-487 DC, 18 December 2003, para 8, p. 473)

Local experimentation (fourth paragraph of article 72)

By adopting the rules laid down in sections LO 1113-1 to LO 1113-7 of the General Code of Territorial Units, and in particular by linking the power of the authority empowered to make regulations to establish the list of territorial units allowed to take part in an experimental

project, and by providing that in appropriate cases the measures taken experimentally may be given general effect, the institutional legislature neither failed to exercise to the full the powers conferred on it by the fourth paragraph of article 72 of the Constitution nor exceeded their limits.
(2003-478 DC, 30 July 2003, para 6, p. 406)

Specific powers

Social assistance

The transfer to the departments of the management of the minimum reintegration income, a welfare benefit meeting a national solidarity requirement, cannot be regarded as contrary to the provisions of the fifth, tenth and eleventh paragraphs of the Preamble to the Constitution of 1946.
(2003-487 DC, 18 December 2003, paras 8 and 9, p. 473)

FINANCES OF TERRITORIAL UNITS

Freedom to make use of resources (first paragraph of article 72-2)

The first paragraph of article 72-2 of the Constitution reads: "Territorial units shall enjoy resources of which they may dispose freely on the conditions determined by statute". In itself this provision does not preclude the legislature from authorising the central government to pay subsidies to territorial units for specific purposes.
(2003-474 DC, 17 July 2003, para 15, p. 389)

By providing that expenditure related to the organisation of the referendum constitutes a compulsory expenditure item for a territorial unit that decides to organise it, section LO 1112-5 of the General Code of Territorial Units does not violate the principle that territorial units may dispose freely of their resources as provided by the first paragraph of article 72-2 of the Constitution.
(2003-482 DC, 30 July 2003, para 10, p. 414)

Under articles 72 and 72-2 of the Constitution, the territorial units of the Republic "shall be self-governing through elected councils" and "enjoy resources of which they may dispose freely", but they do so "in the manner provided by statute".

Under section 15 of the Ordinance of 2 January 1959 laying down the Institutional Act relating to Finance Acts, "the territorial units of the Republic and public establishments shall deposit their available cash resources at the Treasury". Under section 26 of the Institutional Act of 1 August 2001 relating to Finance Acts, applicable with effect from 1 January 2004 as provided by section 65: "Unless otherwise provided by a Finance Act, territorial units and public establishments shall deposit their available cash resources with the central government".

The Act referred provides that territorial units and public establishments must inform the central government in advance of any transaction affecting Treasury accounts. The purpose of this obligation to provide prior information is to improve the management of central government's cash resources by making more active use of funds deposited with it by territorial units and public establishments, thanks to better anticipation of major transactions affecting Treasury accounts. This makes for better use of public funds, which is a constitutional requirement. The purpose is also to avoid the Treasury's account from showing a debit balance and thus respect article 101 of the Treaty establishing the European Community. The legislature has reconciled these objectives and the principles of "self-government" and "free disposal of resources" pleaded by the applicants in a manner which does not appear to be manifestly imbalanced.
(2003-489 DC, 29 December 2003, paras 31 to 33, p. 487)

Resources (second and third paragraphs of article 72-2)

Own resources

Concept of decisive share

The third paragraph of article 72-2 of the Constitution provides: "The tax revenue and other own resources of territorial units shall, for each category of territorial unit, represent a decisive share of their resources. The conditions for the implementation of this rule shall be determined by institutional act". Violation of these provisions cannot be validly pleaded until such time as the institutional act determining the resources of territorial units and, for each category of units, the minimum share to be accounted for by tax revenues and other own resources in their resources has been promulgated.
(2003-489 DC, 29 December 2003, para 21, p. 487)

Transfer, creation and extension of powers (fourth paragraph of article 72-2)

The fourth paragraph of article 72-2 of the Constitution reads: "Whenever powers are transferred between central government and the territorial units, resources equivalent to those which were devoted to the exercise of those powers shall be transferred also. Wherever the effect of powers newly created or extended is to increase the expenditure to be borne by territorial units, resources determined by statute shall be allocated".

Section 60 of the Overseas Programming Act, which has the sole purpose of contributing to the financing of an "air passage grant" for overseas residents in addition to whatever other grants are available for the same purposes from central government, the European Union and the relevant territorial units, has the effect neither of creating new powers or transferring them within the meaning of article 72-2.
(2003-474 DC, 17 July 2003, para 16 and 17, p. 389)

Section LO 1112-5 of the General Code of Territorial Units cannot be regarded as transferring, creating or extending powers within the meaning of the fourth paragraph of article 72-2 of the Constitution since the local referendum is only an optional procedure for territorial units to adopt their decisions or other instruments.
(2003-482 DC, 30 July 2003, para 10, p. 414)

Section 5 of the Act amending the Preventive Archaeology Act of 17 January 2001 allows the archaeology services set up by such territorial units as see fit to do so to establish preventive archaeology diagnostics.

The section challenged allows territorial units to instruct their archaeological services to establish preventive archaeology diagnostics, but does not oblige them. It neither creates new powers nor transfers powers to territorial units. The submission that the fourth paragraph of article 72-2 of the Constitution is violated is inoperative.
(2003-480 DC, 31 July 2003, paras 14 to 17, p. 424)

Section 4 of the Minimum Integration Income (Decentralisation) Act provides that the compensation for burdens flowing from the transfer and creation of powers shall be calculated for 2004 "on the basis of the expenditure generated by the payment of the minimum integration income in 2003". For subsequent years, "the compensation shall be finally adjusted in the light of the departments' administrative accounts for 2004". It follows that section 4 does not in itself violate either the principle of self-government of the departments, nor the principle that every transfer of powers between central government and territorial units is accompanied by a transfer of resources equivalent to those devoted to their exercise, nor the principle that every creation of powers is accompanied by the resources determined by statute.
(2003-487 DC, 18 December 2003, paras 12 and 13, p. 473)

Section 4 of the Minimum Integration Income (Decentralisation) Act leaves it for the next Finance Act to specify the conditions and procedures for the offsetting to be made in 2004 in accordance with section 36 of the Institutional Act of 1 August 2001 relating to Finance Acts, which provides: "A resource established for the benefit of the central government may be assigned in whole or in part to another body corporate only by a Finance Act". Section 52 of the

Act referred provides that it shall be applicable from 1 January 2004 "on condition that the provisions of the finance act mentioned in section 4 have come into force by then". It follows that, if the compensation rules in the Finance Act for 2004 were declared unconstitutional, the Act referred would not come into force. The pleas against that compensation must therefore be rejected as inoperative.
(2003-487 DC, 18 December 2003, para 14, p. 473)

The fourth paragraph of article 72-2 of the Constitution reads: "Whenever powers are transferred between central government and the territorial units, resources equivalent to those which were devoted to the exercise of those powers shall be transferred also. Wherever the effect of powers newly created or extended is to increase the expenditure to be borne by territorial units, resources determined by statute shall be allocated".

By transferring to the departments revenue corresponding to the amounts of expenditure implemented by central government in 2003 for the minimum integration income and the solidarity income, the provision challenged respects the principle that burdens determined on the date of the transfer and the resources transferred must be equivalent. But if departmental revenue from the domestic tax on consumption of petroleum products, transferred to the departments to cover expenditure on the minimum integration income and the solidarity income, were to decline, it would be for the central government to maintain resources at a level equivalent to what was provided for this purpose before the transfer.

Moreover, the provision challenged provides for a mechanism to adapt the financial compensation for the supplementary burden placed on departments by the creation of a minimum activity income and the increase in the number of recipients of the minimum integration income following the restriction of the duration of payment of the specific solidarity allowance. In doing so it respects the principle that whenever powers are transferred between central government and the territorial units, resources equivalent to those which were devoted to the exercise of those powers shall be transferred also.
(2003-489 DC, 29 December 2003, paras 22 to 25, p. 487)

Equalisation (fifth paragraph of article 72-2)

The fifth paragraph of article 72-2 of the Constitution reads: "Equalisation mechanisms to promote equality between territorial units shall be provided for by statute". This paragraph, the purpose of which is to reconcile the principle of freedom with the principle of equality by establishing financial equalisation mechanisms, does not demand that every type of resource be equalised.
(2003-474 DC, 17 July 2003, para 18, p. 389)

The fifth paragraph of article 72-2 of the Constitution reads: "Equalisation mechanisms to promote equality between territorial units shall be provided for by statute". This paragraph, the purpose of which is to reconcile the principle of freedom with the principle of equality by establishing financial equalisation mechanisms, does not demand that every type of resource be equalised.
(2003-487 DC, 18 December 2003, para 15, p. 473)

ORGANISATION OF TERRITORIAL UNITS OF THE REPUBLIC

Overseas departments and regions (article 73)

Common rules

Power to act in areas reserved for statute (third to sixth paragraphs of article 73)

The fifth paragraph of article 73 of the Constitution excludes the department and region of La Réunion from the possibility given by the second and third paragraphs of enjoying rule-making powers in areas reserved for statute. But section 60 of the Overseas Programming Act

does not confer the power so to act. The plea that article 73 is violated must therefore be rejected.
(2003-474 DC, 17 July 2003, para 19, p. 389)

Overseas units governed by article 74 (article 74)

Common rules

Principle of legislative speciality (third paragraph of article 74)

The institutional act enacted under the second paragraph of article 72-1 of the Constitution relating to the local referendum is fully applicable to all territorial units to which Title XII of the Constitution applies.
(2003-482 DC, 30 July 2003, para 5, p. 414)

Consultative procedure (sixth paragraph of article 74)

By its nature, the institutional act enacted under the fourth paragraph of article 72 of the Constitution relating to experimentation by territorial units was not required to be presented for the opinion of the Assemblies of the overseas units to which article 74 of the Constitution applies.
(2003-478 DC, 30 July 2003, para 2, p. 406)

By its nature, the institutional act enacted under the second paragraph of article 72-1 of the Constitution relating to the local referendum was not required to be presented for the opinion of the Assemblies of the overseas units to which article 74 of the Constitution applies.
(2003-482 DC, 30 July 2003, para 2, p. 414)

TERRITORY OF THE REPUBLIC — TERRITORIAL UNITS

ORGANISATION OF TERRITORIAL UNITS

Overseas departments

Measures adapting the legislative structure and administrative organisation of the overseas departments

Scope

Article 73 of the Constitution is not violated by the adaptations provided for by sections 141 and 142 of the Domestic Security Act which give permanent status in French Guyana and the commune of Saint-Martin in Guadeloupe to derogating provisions made applicable in the departments overseas for five years by the Act of 11 May 1998 whereby the opinion of the residence cards committee is not sought on refusals to issue a residence card and expulsion orders do not have suspensory effect.
(2003-467 DC, 13 March 2003, para 110, p. 211)

TREATIES AND INTERNATIONAL AGREEMENTS — INTERNATIONAL LAW

INTRODUCTION OF TREATIES AND AGREEMENTS INTO DOMESTIC LAW

Information for Parliament (article 88-4 of the Constitution)

The purposes of the powers conferred on the Government by section 5 of the Act empowering the Government to simplify the law and the area in which Ordinances can be issued are defined with sufficient precision to satisfy the requirements of article 38 of the Constitution. Such is the case of section 5(1°), which empowers the Government to transpose two directives likely to be adopted during the period of the delegation as regards the award of public procurement contracts, the proposals for which were laid before the two parliamentary Assemblies as required by article 88-4 of the Constitution.
(2003-473 DC, 26 June 2003, para 8, p. 382)

Section 88-4 of the Constitution enables Parliament to make its views known on drafts or proposals for European Community and European Union legislation, but it does not concern the transposal of directives into domestic law after they have been adopted.
(2003-473 DC, 26 June 2003, para 9, p. 382)

INDEX OF ANALYTICAL ENTRIES

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GLOSSARY

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

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

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 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.