ANALYTICAL SYNOPSIS 2005

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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(Decision n° 2005-529 DC, December 15th 2005, cons. 1, p. 165)

Senate Electoral College

Under Articles 3 and 24 of the Constitution, to the extent that the Senate represents the territorial units of the Republic, it must be elected by an electoral body which itself emanates from these same territorial units. Parliament was therefore right to decide, within the framework of an Institutional Act, that the postponing of local elections until March 2008 necessarily entailed postponing the election of those Senators in Series A, in order to avoid the latter being elected by a college of which a majority of members had exceeded the normal term of their electoral office.

The role conferred on the Senate by Article 24 of the Constitution also justified the postponing by a year of the renewals due in 2010 and 2013, in order to more closely associate in the future the election of Senators and the election by voters of the main body of persons comprising the electoral college. This extension of the terms of office of current senators is an exceptional, transitory measure. Thus the choices made by Parliament, over which the Constitutional Council exercises a limited review, are not patently ill-adapted for the attainment of the purpose determined by it.
(Decision n° 2005-529 DC, December 15th 2005, cons. 4 to 7, p. 165)

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The role conferred on the Senate by Article 24 of the Constitution justified the postponing by a year of the renewals due in 2010 and 2013, in order to more closely associate in the future the election of Senators and the election by voters of the main body of persons comprising the electoral college. This extension of the terms of office of current senators is an exceptional, transitory measure. Thus the choices made by Parliament, over which the Constitutional Council exercises a limited review, are not patently ill-adapted for the attainment of the purpose determined by it.
(Decision n° 2005-529 DC, December 15th 2005, cons. 4 to 7, p. 165)

ORGANISATION OF PARLIAMENTARY ASSEMBLIES

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The changes made to the rules of the National Assembly are the consequence of Article 39 of Institutional Act n° 2001-692 of August 1st 2001 whereby a Finance Bill is sent to the Finance Committee once it has been tabled. They are therefore not unconstitutional.
(Decision n° 2005-526 DC, October 13th 2005, cons. 1, p. 144)

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The changes made to the rules of the National Assembly are the consequence of Article 39 of Institutional Act n° 2001-692 of August 1st 2001 whereby a Finance Bill is sent to the Finance Committee once it has been tabled. They are therefore not unconstitutional.
(Decision n° 2005-526 DC, October 13th 2005, cons. 1, p. 144)

Setting up of Special Committees

The changes made to the rules of the National Assembly are the consequence of Article 39 of Institutional Act n° 2001-692 of August 1st 2001 whereby a Finance Bill is sent to the Finance Committee once it has been tabled. They are therefore not unconstitutional.
(Decision n° 2005-526 DC, October 13th 2005, cons. 1, p. 144)

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The Constitutional Council rules on the legality of legislative proceedings on the basis of the rules which the Constitution itself has laid down or to which it expressly refers. Consultations which, according to the parties making the referral, were not held prior to the tabling of the Social Security Financing Act, are not provided for either by the Constitution or by the Institutional Act to which Indent 20 of Article 34 refers. The arguments raised on this point are thus inoperative.
(Decision n° 2005-528 DC, December 15th 2005, cons. 9, p. 157)

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Proceedings for examining the financial admissibility of an amendment, which make it possible to verify whether such an amendment conforms to Article 40 of the Constitution, should be carried out when such an amendment is tabled.
(Decision n° 2005-519 DC, July 29th 2005, cons. 28, p. 129)

The procedures for examining admissibility provided for by the rules of the National Assembly, which are followed when amendments are tabled, make it possible to check whether such amendments conform to Article 40 of the Constitution.

In such conditions, the changes made to the rules of the National Assembly to allow the applicability of the new rules as to admissibility under the Institutional Acts of August 1st 2001 and August 2nd 2005 pertaining to Finance Acts and Social Security Financing Acts are not unconstitutional.
(Decision n° 2005-526 DC, October 13th 2005, cons. 7, p. 144)

Right of amendment

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An alleged failure to take in consideration Article 43 of Senate regulations is not in itself sufficient to make legislative proceedings unconstitutional.
(Decision nº 2005-512 DC, April 21st 2005, cons. 5, p. 72)

The changes made to Article 118 of the rules of the National Assembly provide that, in the framework of the discussion of the second part of the year Finance Bill, Members' amendments may be presented "unless otherwise decided by the Conference of Presidents" until 5 p. m. two days before the discussion of the mission or the previous evening before discussion of unattached clauses.

Firstly, these allotted periods of time, which concern solely amendments tabled by Members of the Assembly, do not preclude the subsequent tabling of sub-amendments.

Secondly, the acknowledged possibility for the Conference of Presidents to determine another, more restrictive, timeframe, as the case may be, for the tabling of amendments may ensure clarity and accuracy of Parliamentary debate, failing which the rules laid down by Articles 6 of the Declaration of 1789 and 3 of the Constitution would not be guaranteed. However it remains for the Conference of the Presidents to reconcile the abovementioned requirements and the respecting of the right of amendment which Article 44 of the Constitution confers on Members of Parliament. With this qualification, Article 5 of the Resolution in not unconstitutional.
(Decision nº 2005-526 DC, October 13th 2005, cons. 3 to 6, p. 144)

Government's right of amendment

The changes made to Article 118 of the rules of the National Assembly provide that, in the framework of the discussion of the second part of the year Finance Bill, Members' amendments may be presented "unless otherwise decided by the Conference of Presidents" until 5 p. m. two days before the discussion of the mission or the previous evening before discussion of unattached clauses.

These allotted periods of time, which concern solely amendments tabled by Members of the Assembly, do not preclude the subsequent tabling of sub-amendments.
(Decision nº 2005-526 DC, October 13th 2005, cons. 3 to 4, p. 144)

Members'right of amendment

Any Parliamentary Assembly, when called upon to debate a Public Bill or Private Member's Bill, is free to refuse to pass a clause of such a Bill when the latter is put to the vote, including after having already amended said Bill.

In the case in hand, the Senate, during the first reading of the statute referred, was fully at liberty to pass a further clause which reiterated a previous provision which had been amended and then defeated, by using a wording which differed moreover not only from that of the provision which it had decided to suppress but also from that of the text initially submitted to it.
(Decision nº 2005-512 DC, April 21st 2005, cons. 4, p. 72)

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(Decision n° 2005-526 DC, October 13th 2005, cons. 3 to 6, p. 144)

Time allotted for tabling amendments

The changes made to Article 118 of the rules of the National Assembly provide that, in the framework of the discussion of the second part of the year Finance Bill, Members' amendments may be presented "unless otherwise decided by the Conference of Presidents" until 5 p. m. two days before the discussion of the mission or the previous evening before discussion of unattached clauses.

Firstly, these allotted periods of time, which concern solely amendments tabled by Members of the Assembly, do not preclude the subsequent tabling of sub-amendments.

Secondly, the acknowledged possibility for the Conference of Presidents to determine another, more restrictive, timeframe, as the case may be, for the tabling of amendments may ensure clarity and accuracy of Parliamentary debate, failing which the rules laid down by Articles 6 of the Declaration of 1789 and 3 of the Constitution would not be guaranteed. However it remains for the Conference of the Presidents to reconcile the abovementioned requirements and the respecting of the right of amendment which Article 44 of the Constitution confers on Members of Parliament. With this qualification, Article 5 of the Resolution in not unconstitutional.
(Decision n° 2005-526 DC, October 13th 2005, cons. 3 to 6, p. 144)

Admissibility of amendments to Bills pertaining to Social Security Financing Bills

The first indent of IV of Section L.O. 111-7-1 of the Social Security Code provides that: "Within the meaning of Article 40 of the Constitution, when amendments dealing with expenditure targets are proposed to Bills pertaining to the financing of the social security system, expenditure shall be taken as referring to each expenditure target by branch or the national target of expenditure on health and welfare care"...

Amendments which are directly designed to modify expenditure targets or sub-targets are amendments "dealing with expenditure targets".

These provisions offer Members of Parliament the new opportunity of tabling amendments intended to increase the amount of one or more sub-targets included in a target, provided they do not increase the overall amount thereof.

The conformity of amendments with Article 40 of the Constitution may be verified within the framework of proceedings designed to examine financial admissibility, which should be carried out when such an amendment is tabled.
(Decision n° 2005-519 DC, July 29th 2005, cons. 25 to 29, p. 129)

The procedures for examining the admissibility of amendments provided for in the rules of the National Assembly, which apply when amendments are tabled, make it possible to check whether amendments concerning "expenditure targets" in a Social security Finance Bill conform to Article 40 of the Constitution.

Amendments concerning "expenditure targets" are those directly designed to modify the amount of expenditure targets or sub-targets.
(Decision n° 2005-526 DC, October 13th 2005, cons. 7, p. 144)

Sub-amendments – Rules governing admissibility and discussion

The changes made to Article 118 of the rules of the National Assembly provide that, in the framework of the discussion of the second part of the year Finance Bill, Members' amendments

may be presented "unless otherwise decided by the Conference of Presidents" until 5 p. m. two days before the discussion of the mission or the previous evening before discussion of unattached clauses.

These allotted periods of time, which concern solely amendments tabled by Members of the Assembly, do not preclude the subsequent tabling of sub-amendments.
(Decision nº 2005-526 DC, October 13th 2005, cons. 3 and 4, p. 144)

Second deliberation

The first indent of Article 121-3 of the rules of the National Assembly provides for the conditions in which a second deliberation may take place after the discussion of clauses of a part of a Social Security Financing Act.

The second indent of Article 121-3 makes it possible, after having examined the final part of such a Bill, to organize a second deliberation prior to explanations on voting on the whole of the Bill. The consequence of this second indent is that provisions of other parts can be modified solely for coordination purposes. The principles laid down by Article L.O. 111-7-1 of the Social Security Code are thus taken into consideration (implied solution: provisions made applicable, in the conditions thus defined, to both a current year Financing Act and, if need be, to any rectifying Financing Acts)
(Decision nº 2005-526 DC, October 13th 2005, cons. 8, p. 144)

Voting on Bills and Private Member's Bills

Voting on clauses of Bills

A Parliamentary Assembly is always free to refuse to pass a clause of a Bill when the latter is put to the vote, including after having already amended said Bill.
(Decision nº 2005-512 DC, April 21st 2005, cons. 4, p. 72)

Voting on Public Bills and Private Member's Bills of an institutional nature

General rules of procedure

The Institutional Act which amends the statute of January 31st 1976 in order to harmonise and simplify voting conditions in Presidential elections for French persons abroad was passed on the basis of indent 2 of Article 6 of the Constitution and in compliance with the rules of procedure provided for by Article 46. Conforms to the Constitution.
(Decision nº 2005-518 DC, July 13th 2005, cons. 1, p. 114)

Institutional Act pertaining to the Senate

The Institutional Act referred for review by the Constitutional Council, which modifies the date of renewal of members of the Senate, was passed in accordance with the rules of procedure provided for by Article 46 of the Constitution.
(Decision nº 2005-529 DC, December 15th 2005, cons. 1, p. 165)

JUDICIAL AUTHORITY AND THE COURTS

COURTS

Independence of Courts

New Article 465-1 of the Code of Criminal Procedure provides for the *Tribunal correctionnel* to issue a warrant of arrest for an accused person sentenced to a term of imprisonment for

offences of a violent or sexual nature committed while re-offending. The *Tribunal correctionnel* may however decide, while giving specific reasons for this decision, not to order the immediate enforcement of a prison sentence passed by it. The argument based on the infringement of the independence of the Judiciary is thus not supported by the facts.

The duty of the Court to give reasons for not issuing an arrest warrant does not moreover run counter to any requirement of a constitutional nature.
(Decision n° 2005-527 DC, December 8th 2005, cons. 2 and 7, p. 153)

Administrative Courts

Parliamentary debate has shown that Section 111 of the rectifying Finance Act for 2005 is chiefly designed, by the condition which it lays down (calculation of VAT "in addition to" motorway toll charges) to render ineffective, for the period up to January 1st 2001, a decision of the Council of State dated June 29th 2005. It thus infringes the principle of the separation of powers proclaimed in Article 16 of the Declaration of 1789. Unconstitutional.
(Decision n° 2005-531 DC, December 29th 2005, cons. 6, p. 186)

Jurisdiction

Jurisdiction of Courts of law

Distribution of jurisdiction

Courts composed of lay judges

Article 64 of the Constitution does not in itself preclude increasing the jurisdiction of neighbourhood courts of which the Bench is composed of lay judges, once the jurisdiction conferred upon the latter is limited as regards the jurisdiction of civil courts of first instance and Police courts. The extent of this jurisdiction is to be determined by taking into account the number, complexity and type of cases involved.
(Decision n° 2004-510 DC, January 20th 2005, cons. 3, 8 and 11, p. 41)

Parliament has in particular provided that any personal action or an action involving chattels may be brought before a neighbourhood court by any natural person, including when this action relates to his/her professional activity, or legal entity. In such matters, its jurisdiction at first and last instance has been increased from 1 500 to 4 500 €.

Litigation involving the family, civil status, ownership of real estate and consumer credit still comes under the jurisdiction of the courts of first or *grande instance*. Courts of first instance henceforth have sole jurisdiction over litigation involving leases on property used for dwelling purposes, except for that involving the return of deposits of amounts less than 4 000 €, and litigation involving the expulsion of persons without any title or entitlement from property used for dwelling purposes. Generally speaking, the threshold of the jurisdiction of the courts of first instance has been raised from 7 600 to 10 000 €.

It can therefore be seen from the foregoing that the jurisdiction of neighbourhood courts remains limited by the number, complexity and type of civil cases involved.
(Decision n° 2004-510 DC, January 20th 2005, cons. 6 to 8, p. 41)

If in criminal cases the provisions of the statute referred have resulted in increasing, all classes taken together, the number of minor offences over which a neighbourhood court has jurisdiction, compared with those tried by Police courts, the latter will henceforth have sole jurisdiction to try offences of the fifth category. These are the more serious and complex offences which are likely to be entered on a person's criminal record and taken into consideration when deciding whether a person has re-offended. The extent of the jurisdiction of the neighbourhood court should thus be considered as being limited when compared with that of the Police Court.
(Decision n° 2004-510 DC, January 20th 2005, cons. 10 to 12, p. 41)

If Article 66 of the Constitution precludes the power to pass custodial sentences from being conferred on a court composed solely of lay judges, it does not however prevent such power

from being exercised by a court of criminal jurisdiction of which certain members of the Bench are lay judges.

However in such cases it is necessary to ensure sufficient guarantees to satisfy the requirements of the principle of independence, which is inseparable from the holding of all judicial office, and of capacity, as set forth in Article 6 of the Declaration of 1789. Where courts of criminal jurisdiction are concerned, lay judges must remain in the minority.
(Decision n° 2004-510 DC, January 20th 2005, cons. 16 and 17, p. 41)

Jurisdiction of Administrative Courts

Applications

Article L.O. 111-9-1 of the Social Security Code provides that "When, during a review and assessment, the communication of information requested under Article L.O. 111-9 cannot be obtained within a reasonable period of time, calculated taking into account the difficulties involved in collecting such information, the President of the Committees of the National Assembly or the Senate asked to examine the merits of Bills pertaining to the financing of social security may apply to the competent court, sitting in summary jurisdiction, to put en end to this impediment on pain of payment of a penalty."

In accordance with the French conception of the separation of powers, these provisions may only be construed as allowing the administrative judge to order in summary proceedings a legal entity vested with the prerogatives of public authorities to proceed to communicate such information or documents upon pain of payment of a penalty. Subject to this reservation, they are not unconstitutional.
(Decision n° 2005-519 DC, July 29th 2005, cons. 30 and 31, p. 129)

Organization of the Courts and Procedure

Organization of Courts of Law

Office of the Public Prosecutor

The statute which provides that the Public Prosecutor is not required to be present at the court hearing during which the President of the *Tribunal de Grande Instance*, or the Judge delegate appointed by him, rules on an application for approval of punishments in the framework of the criminal plea bargaining procedure, does not run counter to the provisions of Article 34 of the Constitution whereby; "Statutes shall determine the rules concerning: ...criminal procedure..." neither does it infringe the principle of equality before the law, nor the constitutional requirements pertaining to the respect of the rights of the defence and the right to a fair trial, nor the principle of the tailoring of punishments to the characteristics of the offender which derives from Article 8 of the declaration of the Rights of Man and the Citizen of 1789, nor any other constitutional principle.
(Decision n° 2005-520 DC, July 22nd 2005, cons. 1 to 3, p. 118)

Judgment

"Criminal plea bargaining"

The statute which provides that the Public Prosecutor is not required to be present at the court hearing during which the President of the *Tribunal de Grande Instance* or the Judge delegate appointed by him rules on an application for approval of punishments in the framework of the criminal plea bargaining procedure, does not run counter to the provisions of Article 34 of the Constitution whereby; "Statutes shall determine the rules concerning: ...criminal procedure..." neither does it infringe the principle of equality before the law, nor the constitutional requirements pertaining to the respect of the rights of the defence and the right to a fair trial,

nor the principle of the tailoring of punishments to the characteristics of the offender which derives from Article 8 of the declaration of the Rights of Man and the Citizen of 1789, nor any other constitutional principle.
(Decision n° 2005-520 DC, July 22nd 2005, cons. 1 to 3, p. 118)

POWER TO ENACT LAWS AND MAKE REGULATIONS

GENERAL

Scope and limits of power to enact laws

Sovereign power of appreciation of appropriateness with regard to the Constitution

General will

Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 provides: "The Law is the expression of the general will". It follows from this Article, and also from all other relevant constitutional rules pertaining to the purpose of the law, that, subject to specific provisions set forth in the Constitution, the purpose of statute law is to lay down rules and as such it must have a prescriptive scope.
(Decision n° 2005-512 DC, April 21st 2005, cons. 8, p. 72)

Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 provides: "The Law is the expression of the general will". It follows from this Article, and also from all other relevant constitutional rules pertaining to the purpose of the law, that, subject to specific provisions set forth in the Constitution, the purpose of statute law is to lay down rules and as such it must have a prescriptive scope.

One of the specific provisions thus reserved by the Constitution is the penultimate indent of Article 34: "Programme Acts shall determine the objectives of the economic and social action of the State".
(Decision n° 2005-516 DC, July 7th 2005, cons. 4 and 5, p. 102)

Electoral processes

When passing Institutional Acts, Parliament is empowered by Article 25 of the Constitution to determine the term of the powers of each Assembly, and may modify this term in the general interest and subject to compliance with rules and principles of constitutional value. The Constitutional Council is not vested with any general power of appreciation and decision-making similar to that conferred upon Parliament. It is therefore not incumbent upon the Council to seek whether the objective fixed by Parliament could be achieved by other means, once the means retained are not patently inappropriate for the attainment of the prescribed objective.

The role conferred on the Senate by Article 24 of the Constitution also justified the postponing by a year of the renewals due in 2010 and 2013, in order to more closely associate in the future the election of Senators and the election by voters of the main body of persons comprising the electoral college. This extension of the terms of office of current senators is an exceptional, transitory measure. Thus the choices made by Parliament, over which the Constitutional Council exercises a limited review, are not patently ill-adapted for the attainment of the purpose determined by it.
(Decision n° 2005-529 DC, December 15th 2005, cons. 5 and 7, p. 165)

Statute dependent upon the intervention of a subsequent statute

When legislating on institutional matters, Parliament could not merely lay down the principle that Parliamentary committees are informed by the Government of measures affecting the financial balance of the social security system and leave it to future ordinary statutes to specify the means whereby such measures are to be applied. Indent 2 of VI of Article L.O. 111-3 of the Social Security Code, in its new wording, is thus unconstitutional.
(Decision nº 2005-519 DC, July 29th 2005, cons. 15 and 16, p. 129)

Failure to exercise full powers available

No failure

Social Security

When providing in Section 12 of the statute pertaining to the creation of the French International Register, that contracts of employment and the health and welfare cover of seafarers residing outside France employed on seagoing vessels registered in said Register are governed by the law chosen by the parties, Parliament, in the case of contracts entered into within an international framework, has laid down a permanent criteria for determining the applicable law. By expressly reserving the application of France's international and EC commitments, it intended, as is shown by parliamentary debate, to refer to the provisions of Article 6 of the Rome Convention of June 19th 1980, which provides that the choice of the parties cannot result in depriving a worker of the protection which is ensured by mandatory provisions of the law which would be applicable, in the event of there being no choice, under paragraph 2 of said Section.

Parliament has furthermore defined in title II of the same statute, which determines the status of seafarers residing outside France, the rules of social public policy which will apply in all events. These provisions lay down rules governing daily and weekly rest periods, leave, freedom to join a Trade Union and the right to strike, in terms identical to those found in the French Maritime Employment Code. They also lay down minimum guarantees in matters of salary and health and welfare cover.

Parliament has thus passed unequivocal provisions which are sufficiently precise to define the rules applicable to seafarers coming under the scope of Title II.
(Decision nº 2005-514 DC, April 28th 2005, cons. 17 to 19, p. 78)

Public Service

The relevant regulatory body has the power, pursuant to the combined provisions of Articles 34 and 37 of the Constitution, to define in specifications approved by the Council of State the contribution to be made by the company *Aéroports de Paris* to air traffic services assured by the State. When leaving it to this body to define said contribution together with the terms thereof, and, if need be, any necessary compensation, Parliament has not failed to exercise the powers vested in it.
(Decision nº 2005-513 DC, April 14th 2005, cons. 8 to 11, p. 67)

Social Law

According to the terms of the first indent of Article L. 122-14-4 of the Employment Code, as worded pursuant to paragraph V of Section 77 of the Social Cohesion Programme Act, it is the task of the judge, when asked to rule on such a matter, and after having held any dismissal to be void in the absence of any redeployment plan as provided for by Article L. 321-4-1 of said Code, to order that the employee be reinstated in his job unless this prove impossible.

Parliament has given various examples of such impossibility, such as the closing down of a site, or the lack of any similar post suitable for the employee involved.

When laying down these provisions, which set out a rule which is sufficiently clear and precise to be implemented by the judge, Parliament did not fail to exercise the powers conferred upon it by Article 34 of the Constitution.
(Decision nº 2004-509 DC, January 13th 2005, cons. 26 to 27, p. 33)

Neither Article 34 of the Constitution, nor the constitutional objective of the intelligibility and accessibility of the law place Parliament under a duty to explicitly explain rules from which a derogation is granted. In the case in hand, the second indent of Section 3 of the statute pertaining to the creation of the French International Register merely specifies that Title II of this statute, pertaining to "the status of seafarers residing outside France" is not applicable to seafarers residing in France. This indent is neither intended to result in nor does result in making any derogation from the application of the French Maritime Employment Code to seafarers residing in France.
(Decision nº 2005-514 DC, April 28th 2005, cons. 3 and 4, p. 78)

Parliament did not intend, by Title II of Section 2 of the statute pertaining to the creation of the French International Register, to allow the bodies vested with regulatory powers to designate a sole port of registration. Furthermore, said statute is not applicable in any territory or collective territorial unit which, pursuant to indent 4 of Article 72-3 of the Constitution or to Articles 74 or 77 thereof, have their own Employment Code or applicable body of rules. There is thus no factual foundation for the allegation whereby this provision indirectly vested the regulatory body with the power to subject seafarers resident in France to one or more employment codes applicable overseas.
(Decision nº 2005-514 DC, April 28th 2005, cons. 3 and 5, p. 78)

Section 9 of the statute, which provides that when a ship owner recruits a seafarer through a service recruiting or placing such seafaring personnel doing business in a State where no formal approval or licensing process exists or where Convention 179 of the International Labour Organization does not apply, said ship owner "shall ensure" that "said service" "shall comply with the requirements thereof" is not flawed by any failure by Parliament to exercise its powers.

The abovementioned Convention contains precise stipulations setting out the guarantees required of services recruiting or placing seafarers.

Furthermore Section 14 of the statute provides that the placement of all seafarers requires the drawing up of a written agreement which specifies in particular the manner in which the pay of said seafarer is calculated and the conditions of the health and welfare cover he enjoys. It is the task of the ship owner, in the framework of said contractual relationship, to take all necessary steps to ensure that the placement service involved complies with the conditions laid down in the Convention.
(Decision nº 2005-514 DC, April 28th 2005, cons. 7 to 11, p. 78)

When providing in Section 12 of the statute pertaining to the creation of the French International Register that contracts of employment and the health and welfare cover of seafarers residing outside France employed on seagoing vessels registered in said Register are governed by the law chosen by the parties, Parliament, in the case of contracts entered into within an international framework, has laid down a permanent test for determining the applicable law. By expressly reserving the application of France's international and EC commitments, it intended, as is shown by parliamentary debate, to refer to the provisions of Article 6 of the Rome Convention of June 19th 1980, which provides that the choice of the parties cannot result in depriving a worker of the protection which is ensured by mandatory provisions of the law which would be applicable, in the event of there being no choice, under paragraph 2 of said Section.

Parliament has furthermore defined in title II of the same statute, which determines the status of seafarers residing outside France, the rules of social public policy which will apply in all events. These provisions lay down rules governing daily and weekly rest periods, leave, freedom to join a Trade Union and the right to strike, in terms identical to those found in the French Maritime Employment Code. They also lay down minimum guarantees in matters of salary and health and welfare cover.

Parliament has thus passed unequivocal provisions which are sufficiently precise to define the rules applicable to seafarers coming under the scope of Title II.
(Decision nº 2005-514 DC, April 28th 2005, cons. 17 to 19, p. 78)

In indent two of Section 13 of the statute pertaining to the creation of the French International Register, Parliament has provided that the remuneration paid to seafarers who do not reside in France when employed aboard a ship registered in said Register shall not be lower than the amounts fixed, after consultation with representative professional organizations and Trade Unions, by an Ordinance issued by the Minister in charge of the merchant fleet, whereby such amounts are to be determined by reference to the remuneration normally paid or recommended at international levels. Parliament intended, as can be seen from the various records of its debates and preliminary studies, that reference be made to the standards laid down by the International Federation of Transport Workers. Furthermore, the fixing of a minimum wage does not come under the scope of the law.
(Decision n° 2005-514 DC, April 28th 2005, cons. 22, p. 78)

Title I of Section 24 of the statute pertaining to the creation of the French International Register provides that seafarers residing outside France "may" be governed by the contracts and collective agreements applicable under the law governing their contract of employment. By such wording, Parliament intended to preclude the application of agreements or contracts whose scope was likely to exclude the seafarers concerned, or to provide for a lesser degree of protection than that afforded by the provisions of Title II of this statute. It has not failed to exercise the powers vested in it.
(Decision n° 2005-514 DC, April 28th 2005, cons. 23, p. 78)

Intervention of statute law in fields normally governed by regulations

The parties making the referral claim, generally speaking, that the statute referred contains "numerous provisions without any statutory scope... in infringement of Articles 34 and 37 of the Constitution".

Sections 19, 22, 33 and 34 of the statute referred are clearly of a regulatory nature. They do not however as such run counter to the Constitution (implied solution).
(Decision n° 2005-512 DC, April 21st 2005, cons. 22 and 23, p. 72)

Failure to respect the separation between legislative powers and regulatory powers

Declaration of regulatory nature

The parties making the referral claim that the statute referred contains "numerous provisions without any statutory scope... in infringement of Articles 34 and 37 of the Constitution".

Articles 19, 22, 23 and 34 of the statute referred to the Council merely set up in each Academy a Commission on the teaching of foreign languages, modify the terminology relating to an existing body, provide for the introduction and the conditions governing the award of a label of "vocational school", define the "school or establishment project" and the internal rules to be adopted by schools and teaching establishments in the public sector. They in no way call into question either the "fundamental principles of... education" which come under the scope of statute law pursuant to Article 34 of the Constitution, or any other principle or rule which the Constitution places in the domain of statute law. These provisions are clearly of a regulatory nature.
(Decision n° 2005-512 DC, April 21st 2005, cons. 22 and 23, p. 72)

Respective powers of the Constitution and Statute law

Powers conferred by the Constitution on Institutional Acts

The provisions of Article L.O. III-3 of the Social Security Code which reserve for Finance Acts the possibility of creating or amending, without any set-off, measures pertaining to reductions, deductions or exonerations with respect to levies or contributions appropriated to social security are those which Parliament, when passing an Institutional Act, can lay down under the powers vested in it by the Constitution.
(Decision n° 2005-519 DC, July 29th 2005, cons. 10, p. 129)

New article L.O. 111-5-2 of the Social Security Code, which provides for the presentation by the Government of a report on guidelines as to the social security finances and the possibility of a Parliamentary debate on this report, either in the National Assembly or the Senate, is intended to contribute to informing Parliament of the guidelines on social security finances before the examination of finance Bills pertaining thereto. It finds its legitimacy in the power conferred on Institutional Acts by indent 1 of Article 47-1 of the Constitution.
(Decision n° 2005-519 DC, July 29th 2005, cons. 21, p. 129)

The twentieth indent of Article 34 and the first indent of Article 47-1 of the Constitution confer upon an Institutional Act pertaining to statutes concerning social security financing the power to assimilate "expenditure targets" to the "expenditure" mentioned in Article 40 of the Constitution.
(Decision n° 2005-519 DC, July 29th 2005, cons. 27, p. 129)

The provisions of D of I of Article L.O. 111-3 of the Social Security Code together with those of Article L. 111-10-2, which provide for and organize a procedure for consulting Parliamentary committees called upon to examine the merits of Financing Bills entered on the list and the components of sub-targets of expenditure as determined by the Government are those which may be defined in an Institutional Act by reason of the powers vested in the latter by the Constitution. As for the conditions accompanying such provisions, they in no way adversely affect the freedom of appreciation which Article 20 of the Constitution confers on the Government when it determines and conducts the policy of the Nation.
(Decision n° 2005-519 DC, July 29th 2005, cons. 8, 32 and 33, p. 129)

Article 4 bis inserted into the Government Ordinance of January 24th 1996 by Section 20 of the Institutional Act pertaining to Social Security Financing Acts whereby "any new transfer of debts to the *Caisse d'amortissement de la dette sociale* shall be accompanied by an increase in resources of said Office in order not to extend the term allotted for the amortization of the social security debt" is justified by the powers conferred upon the Institutional Act by the twentieth indent of Article 34 of the Constitution whereby "Social Security Financing Acts shall determine the general conditions for the financial balance of social security ... in the manner and with the reservations specified in an Institutional Act".
(Decision n° 2005-519 DC, July 29th 2005, cons. 39 and 40, p. 129)

Respective powers of an Institutional Act and Statute Law

Provisions coming under the scope of an Institutional Act

An Institutional Act can only intervene in the fields and for the purposes set out in the Constitution. The insertion in an Institutional Act of provisions not complying with this requirement may adversely affect the scope thereof.

The provisions of the Institutional Act pertaining to Social Security Financing Acts which are of an institutional nature per se or because they are inseparable from institutional provisions, but which have wrongly been listed as Articles in the L category, should be reclassified as being sections of an I.A. Entry in the holding of the decision.
(Decision n° 2005-519 DC July 29th 2005, cons. 42 and 44, p. 129)

Statutory provisions included in an Institutional Act

An Institutional Act can only intervene in the fields and for the purposes set out in the Constitution. The insertion in an Institutional Act of provisions not complying with this requirement may adversely affect the scope thereof.

Some provisions of the Institutional Act which modify the provisions of Articles listed in L in the Social Welfare and Family Code, the Rural Code and the Social Security code are, by reason of their contents, foreign to the field of the Institutional Act as defined by Article 34 and 47-1 of the Constitution and are not formally inseparable from the institutional provisions of Chapter 1 bis of Title 1 of Book 1 of the Social Security Code. They are therefore merely normal statutory provisions. Entry of their declassification in the holding of the decision.
(Decision n° 2005-519 DC, July 29th 2005, cons. 42 and 43, p. 129)

Clarity of statute law and conformity with the Constitution

Parliament must exercise to the full the powers vested in it by Article 34 of the Constitution. The principle of the clarity of statute law, which derives from the same article of the Constitution, and the constitutional objective that the law be intelligible and accessible, which derives from Articles 4, 5, 6 and 16 from the Declaration of 1789, place it under a duty to enact provisions which are sufficiently precise and unequivocal. Protection must be afforded to all from interpretations which run counter to the Constitution or from the risk of arbitrary decisions, without leaving it to Courts of law or Administrative authorities to fix rules which the Constitution provides should be the sole preserve of statute law. These bodies nevertheless retain a power of appreciation and, if need be, of interpretation inherent in the application of a rule of general scope to specific cases.
(Decision n° 2004-509 DC, January 13th 2005, cons. 25, p. 33)

Parliament must exercise to the full the powers vested in it by Article 34 of the Constitution. The principle of the clarity of statute law, which derives from the same article of the Constitution, and the constitutional objective that the law be intelligible and accessible, which derives from Articles 4, 5, 6 and 16 from the Declaration of 1789, place it under a duty to enact provisions which are sufficiently precise and unequivocal. Protection must be afforded to all from interpretations which run counter to the Constitution or from the risk of arbitrary decisions, without leaving it to Courts of law or Administrative authorities to fix rules which the Constitution provides should be the sole preserve of statute law.

In the case in hand, Sections 27 and 31 of the statute referred to the Constitutional Council, which provide for suitable arrangements or particular actions in favour of certain pupils, impose upon teaching institutions, by reason of the general nature of the terms used, obligations of an imprecise scope. It emerges however from Parliamentary debate and preliminary studies that these Sections impose a duty to employ all reasonable means but not a duty to achieve a prescribed result. Subject to this reservation, they do not run counter to the principle of the clarity of statute law.

In similar fashion, Section 29 of the statute referred to the Constitutional Council, which rewords indent 5 of Article L. 331-1 of the Education Code whereby "When continuous assessment is partially taken into account for the awarding of a national diploma, the assessment of a candidate's knowledge shall be carried out in a equitable manner", should be taken to mean as providing for the use of harmonization procedures between teaching institutions. Subject to this reservation, Section 29 does run counter to the principle of clarity of statute law.
(Decision n° 2005-512 DC,April 21st 2005, cons. 9, 18 to 21, p. 72)

The argument based on a lack of precision cannot usefully be raised with respect to provisions which are devoid of any prescriptive scope.
(Decision n° 2005-516 DC, July 7th 2005, cons. 7, p. 102)

Prescriptive nature of statute law and conformity to the Constitution

Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 provides: "The Law is the expression of the general will". It follows from this Article, and also from all other relevant constitutional rules pertaining to the purpose of the law, that, subject to specific provisions set forth in the Constitution, the purpose of statute law is to lay down rules and as such it must have a prescriptive scope.

In the case in hand, the report appended to the statute referred to the Constitutional Council sets out the aims of State action in the field of education. If the undertakings which appear there do not have the prescriptive scope which attaches to a statute, these provisions are such as may find a place in the category of Programme Acts of an economic or social nature provided for in the penultimate indent of Article 34 of the Constitution. To this extent, they may be approved by Parliament. The argument based on the lack of any prescriptive scope cannot therefore be usefully raised against all the said report.

On the other hand, the provisions of II of Section 7 of the statute referred are clearly devoid of any prescriptive scope: "The aim of schooling is to ensure the success of all pupils. Given the diversity of pupils, schools must recognize and encourage all forms of intelligence to enable pupils to make the most of their abilities... Teaching, under the authority of teachers and with

the support of parents, enables each pupil to do the work and make the efforts needed to develop and highlight his/her abilities, whether intellectual, manual, artistic or sporting. It contributes to preparing his/her personal and professional path in life". These provisions are unconstitutional.
(Decision nº 2005-512 DC, April 21st 2005, cons. 8, 12, 16 and 17, p. 72)

Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 provides: "The Law is the expression of the general will". It follows from this Article, and also from all other relevant constitutional rules pertaining to the purpose of the law, that, subject to specific provisions set forth in the Constitution, the purpose of statute law is to lay down rules and as such it must have a prescriptive scope.

One of the specific provisions thus reserved by the Constitution is the penultimate indent of Article 34: "Programme Acts shall determine the objectives of the economic and social action of the State".

In the case in hand, the provisions of Sections 1 to 6 of the Programme Act which fix the objectives of the action of the State in the energy field are such as may find their place in the category of Programme Acts of an economic and social nature as defined by the penultimate indent of Article 34 of the Constitution. The argument based on their lack of prescriptive scope cannot therefore be usefully raised against them.
(Decision nº 2005-516 DC, July 7th 2005, cons. 4, 5 and 7, p. 102)

Statutory validations

Principles

If Parliament may validate an administrative act for a purpose of sufficient general interest, this is subject to due respect for decisions of courts of law which have become res judicata and the principle that criminal laws and penalties cannot have any retrospective effect. Furthermore any act which is validated must not disregard any rule or principle of constitutional value, unless the purpose of sufficient general interest involved is itself of constitutional value. Lastly, the scope of the validation must be strictly defined, on pain of running counter to Article 16 of the Declaration of 1789.
(Decision nº 2004-509 DC, January 13th 2005, cons. 31, p. 33)

Grounds of general interest

Lack of grounds of sufficient general interest

Section 139 of the Programme Act for Social Cohesion is principally designed to allow the rapid extension of tramway lines in the Urban Community of Strasbourg nothwithstanding the setting aside by the Administrative Court of the Ordinance whereby the Prefect of Bas-Rhin had approved that the necessary purchases and construction work were considered as being for the public good (*déclaration d'utilité publique*). Such validation would also in passing serve to strengthen the case for the construction of tramways in Marseille, Montpellier, le Mans and Valenciennes.

However the general interest involved is not sufficient to justify undermining the principle of the separation of powers and the right to effective control by courts of law which derive from Article 16 of the Declaration of 1789, all the more so as the disputed measure concerns all those tramway lines which were the object of a declaration in 2004 that they were for the public good. Neither does it justify infringing the right to property guaranteed by Article 17 of the Declaration of 1789 which requires, before any expropriation, that the public necessity warranting the infringement of the right to property be duly ascertained in law.
(Decision nº 2004-509 DC, January 13th, cons. 32 and 33, p. 33)

Statute approving a report

Statute approving a Programme report

The report appended to the statute referred to the Constitutional Council fixes the objectives of the State in the fields of primary and secondary schooling. Its provisions are such as may find

a place in the category of programme Acts of a social or economic nature provided for by the penultimate indent of Article 34 of the Constitution. To this extent, Parliament could approve them without the argument based on the lack of prescriptive scope being usefully raised against all the report.
(Decision n° 2005-512 DC, April 21st 2005, cons. 12, p. 72)

Methods of exercising the power to make regulations

Decrees and decisions after the opinion of the Council of State

Article 8 of the Decree organising the Referendum and Articles 2 and 4 of the Decree pertaining to the referendum campaign merely make Articles L. 61, L. 50 and R. 27 of the Electoral Code applicable, and such Articles do not in themselves determine any criminal penalty. They do not therefore belong to the category of provisions which need to be taken by a Decree after the opinion of the Council of State pursuant to Article R. 610-1 of the Criminal Code. (See the decision of September 11th, cons. 1, 5 and 7, p. 148).
(Decision Hauchemaille Meyet, March 24th 2005, cons. 12 and 17, p. 56)

Article 20 of the decree organizing the referendum merely reiterates the terms of Article 1 of the regulations pertaining to the procedure followed before the Constitutional Council for claims concerning referendum operations, on the basis of Article 56 of the Order dated November 7th 1958. Hence the argument that this Article required a Decree from the Council of State on the basis of Article 55 of said Order is without foundation.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 13, p. 56)

Bodies whose opinions do not bind any public authority

The fact that the Higher Council on Adoption is placed under the authority of the Prime Minister does not call into question "rules concerning the status of persons", which come under the scope of statute law pursuant to Article 34 of the Constitution nor any other principle or rule that the Constitution reserves for statute law. It is therefore of a regulatory nature.
(Decision n° 2005-199 L, March 24th 2005, cons. 1, p. 53)

The fact that the National Commission for professional certification is placed under the authority of the Prime Minister does not call into question "the fundamental principles..of education", which come under the scope of statute law pursuant to Article 34 of the Constitution nor any other principle or rule that the Constitution reserves for statute law.
(Decision n° 2005-200 L, March 24th 2005, cons. 1, p. 54)

Governmental and Administrative Organisation

Distribution of the powers of the State between various authorities

Principle of power to make regulations

Designation of ministers empowered to make regulations

The designation of the authority responsible, in the name of the State, for registering certificates, diplomas and qualifications in the national directory of professional qualifications does not call into question "the fundamental principles... of education", which come under the scope of statute law pursuant to Article 34 of the Constitution nor any other principle or rule that the Constitution reserves for statute law.
(Decision n° 2005-200 L, March 24th 2005, cons. 1, p. 54)

Empowerment of the Government to take by Ordinance measures coming under statute law

Initiative

Under Article 38 of the Constitution the Government alone may request Parliament to authorise it to issue such Ordinances. Consequently, a provision authorising the Government to issue an Ordinance which appears in the initial text of a Private Member's Bill must, in the absence of any such request on the part of the Government, be held to run counter to the Constitution.
(Decision n° 2004-510 DC, January 20th 2005, cons. 28 and 29, p. 41)

Conditions governing recourse to Article 38

Respect for constitutional principles

The disputed provisions of the statute enabling the Government to take by Ordinance emergency measures concerning employment do not, either in themselves or in the consequences which they necessarily entail, run counter to any rule or principle of a constitutional nature. They can neither have the purpose or the effect of releasing the Government from compliance with rules and principles of constitutional value, and with applicable international or European norms and standards.
(Decision n° 2005-521 DC, July 22nd 2005, cons. 7 and 11, p. 121)

Presentation of and voting on an Enabling Bill

Obligations of the Government – Informing Parliament

Although Article 38 of the Constitution requires the Government to give Parliament, in support of its request, a precise statement of the purpose of measures which it proposes to take by Ordinance and their scope, it does not require the Government to inform Parliament of the content of the Ordinances to be issued under such enabling legislation.
(Decision n° 2005-521 DC, July 22nd 2005, cons. 5, p. 121)

Purpose of measures to taken by Ordinance

Both the purpose of the authorisation granted to the Government by 1° of Section 1 of the Act enabling latter to take by Ordinance emergency measures concerning employment, i.e. to remove certain obstacles to the hiring of new employees by small-sized companies, and the scope of said Ordinance are set out in a sufficiency precise manner to comply with the requirements of Article 38 of the Constitution.

The same applies to the provisions of 5° of Section 1 which authorise the Government to adjust "rules for counting numbers of employees" used to implement provisions pertaining to employment law or financial obligations imposed by other statutes.
(Decision n° 2005-521 DC, July 22nd 2005, cons. 6 and 14, p. 121)

CONDITIONS FOR IMPLEMENTING ARTICLES 37, INDENT 2 AND 41 OF THE CONSTITUTION

Conditions for implementing Article 37, Indent 2

No case for ruling on groundless referrals – res judicata

When a decision of the Constitutional Council has ruled that a statutory provisions has a regulatory nature, the fact that Parliament subsequently stated that it had "force of law" does

not result in withdrawing from the Prime Minister the authorization given him to modify such a provision by Decree. A referral for the purpose of defining the legal nature thereof is thus groundless.
(Decision n° 2005-202 L, November 17th 2005, cons. 2, p. 151)

DISTRIBUTION OF POWERS IN SPECIFIC MATTERS

Rights of persons

Status of persons

The fact that the Central Authority for Adoption, provided for by indent n° 1 of Article L. 148-2 of the Family and Social Welfare Code, is placed under the authority of the Prime Minister does not call into question "rules concerning the status of persons", which come under the scope of statute law pursuant to Article 34 of the Constitution. The same holds good for the composition of this Authority, determined by indent 2 of the same Article, once the powers which it exercises in matters covered by statute are of a purely consultative nature.
(Decision n° 2005-201 L, October 13th 2005, cons. 1, p. 147)

Adoption

The fact that the Higher Council on Adoption is placed under the authority of the Prime Minister does not call into question "rules concerning the status of persons", which come under the scope of statute law pursuant to Article 34 of the Constitution nor any other principle or rule that the Constitution reserves for statute law. This measure is therefore of a regulatory nature.
(Decision n° 2005-199 L, March 24th 2005, cons. 1, p. 53)

Courts – Status of judges

Courts – Rules setting up courts

Court of Budgetary and Financial Discipline (*Cour de discipline budgétaire et financière*)

The Court of Budgetary and Financial Discipline whose main task is to penalise non compliance with the rules of public accounting by officials empowered to authorise expenditure, constitutes a court within the meaning of Article 34 of the Constitution. Thus the rules setting up this body, including the one that provides that this court is to be composed of members of the Council of State and the Audit Court come under the powers of Parliament.
(Decision n° 2005-198 L, March 3rd 2005, cons. 2, p. 47)

Rules pertaining to the organization of courts which do not come under statute law

It is the task of the regulatory powers, while respecting the principle of mixity provided for by statute law, to determine the number of members of the Council of State and Audit Court making up the Court of Budgetary and Financial Discipline. Provisions which deal with the temporary replacement of the president of the court, its place of sitting and the administrative situation of its members also come under the scope of regulations. The same applies to provisions pertaining to the choice and method of appointment of the *commissaires du gouvernement*, *rapporteurs* and clerk to the court, who do not sit on the Bench when the courts hears cases.
(Decision n° 2005-198 L, March 3rd 2005, cons. 3, p. 47)

The provisions of the code of financial courts dealing with proceedings before the Court of Budgetary and Financial Discipline, referred do not concern the rules setting up this court,

nor the criminal procedure within the meaning of Article 34 of the Constitution, neither the fundamental guarantees afforded to all citizens and civil and military servants of the State for the exercise of their civil liberties. They thus come under the scope of regulatory power. The same applies to the holding of public hearings. However, those vested with the power to make regulations must, when exercising this power, respect rules and principles of constitutional value, general principles of law and international undertakings which have been incorporated into domestic law.
(Decision n° 2005-198 L, March 3rd 2005, cons. 4 and 5, p. 47)

Public Finances – Taxation

Payment for services supplied

If the fixing of rules pertaining to the calculation of the tax base, rate of taxation and methods of collection of all sorts of taxes has been entrusted to Parliament by Article 34 of the Constitution, the latter does not leave it to statute law to create a charge or determine the conditions applicable to a charge levied to cover the costs of a public service or the expenses incurred in setting up or maintaining a public service or the use of a public installation. (comp. 76-92 L, October 6th 1976, cdt. 1)

It is up to the management of a public service, using the revenues from this service, to see to the maintenance, extension and improvement of equipment made necessary by changing circumstances of fact and law, in particular by an increase in the number of people using such a service. Consequently, the taking into consideration, when calculating the amount of charges to be levied, of return on capital invested and present and future expenditure connected with infrastructures or new installations before their coming into service does means that these charges cease to be charges levied in return for services supplied.

The nature of levies charged for services supplied remains unchanged in the event of the fixing of different applicable tariffs for one and the same service provided to the users of a public service or installation, when there exists between these users objective differences in situation justifying a sliding scale of charges or when this sliding scale is imposed in the general interest in connection with the operating conditions of the service or installation.

A limited set off may be organized between the various charges levied without the latter losing their status of charges levied for services supplied, once the services for which they constitute payment contribute to providing the same overall service, and that the total proceeds thereof do not exceed the cost of the services supplied.
(Decision n° 2005-513 DC, April 14th 2005, cons. 14 to 17, p. 67)

Territorial Units

Self-government of territorial units

The fact that the Central Authority for Adoption, provided for by indent n° 1 of Article L. 148-2 of the Family and Social Welfare Code, is placed under the authority of the Prime Minister does not call into question "the fundamental principles of self-government of territorial units", which come under the scope of statute law pursuant to Article 34 of the Constitution. The same holds good for the composition of this Authority, determined by indent 2 of the same Article, once the powers which it exercises in matters covered by statute are of a purely consultative nature, even though the Departments play a part in matters of adoption and representatives of General Councils sat on this Authority until now under the indent of which the downgrading is now requested. (See a contrario n° 2001-447 DC dated July 18th 2001, cons. 7).
(Decision n° 2005-201 L, October 13th 2005, cons. 1, p. 147)

Education

Power to make regulations

The designation of the authority responsible, in the name of the State, for registering certificates, diplomas and qualifications in the national directory of professional qualifications does not call into question "the fundamental principles... of education", which come under the scope of statute law pursuant to Article 34 of the Constitution nor any other principle or rule that the Constitution reserves for statute law.
(Decision n° 2005-200 L, March 24th 2005, cons. 1, p. 54)

Articles 19, 22, 23 and 34 of the statute referred to the Council merely set up in each Academy a Commission on the teaching of foreign languages, modify the terminology relating to an existing body, provide for the introduction and the conditions governing the award of a label of "vocational school", define the "school or establishment project" and the internal rules to be adopted by schools and teaching establishments in the public sector. They in no way call into question either the "fundamental principles of... education" which come under the scope of statute law pursuant to Article 34 of the Constitution, or any other principle or rule which the Constitution places in the domain of statute law. These provisions are clearly of a regulatory nature.
(Decision n° 2005-512 DC, April 21st 2005, cons. 22 and 23, p. 72)

Employment Law – Trade Union Law

Collective bargaining

Parliament is free, after having defined the rights and duties pertaining to working conditions and employer-employee relationships, to leave it to employers or employees or their representative organizations to specify, in particular by collective bargaining, the detailed rules for the application of the rules it adopts.

Parliament could thus, without in any way adversely affecting the arrangements made in collective agreements already entered into, to leave it to collective branch or company contracts or agreements to determine the practical methods for implementing the provisions which extend the contractual system of laying down a predetermined number of working days in a year to non-executive staff, and to define the category of employees involved.
(Decision n° 2005-523 DC, July 29th 2005, cons. 8 and 9, p. 137)

Programme Acts

Pursuant to the terms of the penultimate indent of Article 34 of the Constitution "Programme Acts shall determine the objectives of the economic and social action of the State". The Institutional Act of August 1st 2001 pertaining to Finance Acts repealed Article 1 of the Ordinance of January 2nd 1959 which provided that "Programme authorizations may be grouped together in statutes known as 'Programme Acts'". Under Article 70 of the Constitution, "Any Programme Bill of an economic or social nature" shall be submitted to the Economic and Social Council. The report appended to the statute referred fixes the objectives of State action in the field of education. Its provisions are such as may find a place in the category of Programme Acts of an economic or social nature provided for by the penultimate indent of Article 34 of the Constitution.

Should however the Government wish to have Parliament participate in the policy which it intends to implement in the field of education by a Programme Act, it would be required to comply with the procedure laid down for this purpose.

In the case in hand, once the Bill from which originated the statute referred was tabled before the first Assembly to which it was submitted, the report appended thereto belonged to the category of Programme Acts. Although it underwent various Parliamentary amendments during its reading, it was always intended to have Parliament approve provisions which, albeit

devoid of any legal effect, laid down qualitative and quantitative objectives in educational matters. Hence, under Article 70 of the Constitution, it should have been submitted to the Economic and Social Council for its opinion. Failure to comply with this requirement therefore flawed the legality of the procedure followed for its approval. Hence Article 12 of the statute referred, which approves the appended report, in unconstitutional.
(Decision nº 2005-512 DC, April 21st 2005, cons. 10 and 12 to 15, p. 72)

Since the repeal on January 1st 2005 of Article 1 of the Government ordinance of January 2nd 1959 by the Institutional Act of August 1st 2001 pertaining to Finance Acts, the category of Programme Acts of a social or economic nature is defined by the sole penultimate indent of Article 34 of the Constitution. The provisions of Sections 1 to 6 of the Programme Act which fix the objectives of the action of the State in the field of energy and which were finally passed by Parliament after January 1st 2005 are such as may find a place in this category of statutes. The argument based on their lack of prescriptive scope cannot thus be usefully raised against them.
(Decision nº 2005-516 DC, July 7th 2005, cons. 7, p. 102)

CONSTITUTIONAL COUNCIL AND REVIEW OF CONSTITUTIONALITY.

SCOPE OF THE POWER OF THE CONSTITUTIONAL COUNCIL TO REVIEW CONSTITUTIONALITY

Lack of jurisdiction of the Constitutional Council

Revision of the Constitution approved by Congress

It is not the task of the Constitutional Council to rule on Section 3 of Constitutional Act nº 2005-204 of March 1st 2005 which modified Title XV of the Constitution in the light of the ruling of the Constitutional Council dated 19th November 2004 whereby the Constitutional Council held that the authorization to ratify the Treaty required a revision of the Constitution.
(Decision Hoffer et Gabarro-Arpa, May 19th 2005, cons. 8, p. 90)

Extent of the jurisdiction of the Constitutional Council

Examination of uncontested provisions of the statute referred

Only the civil jurisdiction of the neighbourhood courts was contested. The Constitutional Council automatically examines their jurisdiction in criminal matters.
(Decision nº 2004-510 DC, January 20th 2005, cons. 10 to 12, p. 41)

Automatic examination of a provision empowering the Government, in the absence of any request on its part, to issue an Ordinance under Article 38 of the Constitution.
(Decision nº 2004-510 DC, January 20th 2005, cons. 27 to 30, p. 41)

REFERRAL TO THE CONSTITUTIONAL COUNCIL – CONDITIONS OF ADMISSIBILITY – NO CASE TO ANSWER – INOPERATIVE ARGUMENT OR ARGUMENT NOT SUPPORTED BY THE FACTS

Capacity of the parties referring a matter to the Council

Inadmissibility of a referral made by fewer than sixty members of the National Assembly or fewer than sixty Senators

Although the second indent of Article 61 of the Constitution provides that statutes may be referred to the Constitutional Council by Members of Parliament, such referrals may only be made by a group of not less than sixty Members of the National Assembly, or sixty Senators.

Consequently the second referral registered at the Secretariat General of the Constitutional Council, signed by twenty five Members of the National Assembly, twenty two of whom had signed the first referral, is inadmissible.
(Decision nº 2004-509 DC, January 13th 2005, cons. 2 to 4, p. 33)

No case for ruling on submittals

When a decision of the Constitutional Council has ruled that a statutory provisions has a regulatory nature, the fact that Parliament subsequently stated that it had "force of law" does not result in withdrawing from the Prime Minister the authorization given him to modify such a provision by Decree. A referral for the purpose of defining the legal nature thereof is thus groundless.
(Decision nº 2005-202 L, November 17th 2005, cons. 2, p. 151)

Inoperative argument or argument not supported by the facts

Inoperative argument

Arguments based on the absence of consultation prior to the tabling of a Social Security Financing Act are inoperative when such consultations are not provided for by either the Constitution or the Institutional Act to which it expressly refers.
(Decision nº 2005-528 DC, December 15th 2005, cons. 9, p. 157)

The argument based on an infringement of the right to health by provisions which merely adapt rules governing the charging of the patient's contribution to the fixed rate hospital charge without modifying the statutory provision upon which the amount of the contribution to be borne by the patient will be based is inoperative.
(Decision nº 2005-528 DC, December 15th 2005, cons. 10, p. 157)

Argument not supported by the facts

When providing, in Section 16 of the statute pertaining to the creation of the French International Register, for the drawing up of a table specifying shipboard working arrangements and for each post service at sea and service in port, Parliament necessarily intended to refer to the single service table provided for on every seagoing vessel both by Convention nº 180 of the International Labour Organisation and the Decree of March 31st 2005 on the length of seafarers'working hours. Sections 16 and 17 of the same statute lay down as regards minimum daily and weekly rest periods, public holidays and leave for seafarers not resident in France identical rules to those applicable to other seafarers. All the rules laid down by French law, EC regulations and France's international undertakings apply to matters of health and safety at work. Parliament has thus laid down for working conditions on board ship rules which neither differentiate between seafarers on the basis of their country of residence, nor make it

possible to make such a differentiation. The argument raised on the grounds of the infringement of the principle of equality is therefore not supported by the facts.
(Decision n° 2005-514 DC, April 28th 2005, cons. 31, p. 78)

The challenged provisions of the statute enabling the Government to take by Ordinance emergency measures concerning employment do not, either in themselves or in the consequences which they necessarily entail, run counter to any rule or principle of a constitutional nature. In particular the provisions of 5° of Section 1 merely authorize an adjustment of "rules for counting numbers of employees" used to implement provisions pertaining to employment law or financial obligations imposed by other statutes, but do not make any changes to the contents of said provisions or obligations. The argument based on the failure to take into account the right of employees to participate in determining their working conditions and their right to rest and protection of their health, as set forth in the eight and eleventh indents of the Preamble of 1946, is therefore not supported by the facts.
(Decision n° 2005-521 DC, July 22nd 2005, cons. 11 and 12, p. 121)

PARAMETERS FOR REVIEW OF CONSTITUTIONALITY

Applicable norms of reference

Declaration of the Rights of Man and the Citizen

The freedom proclaimed by Article 4 of the Declaration of the Rights of Man and the Citizen

If the possibility of suing a person for liability implements the constitutional requirement laid down by the provisions of Article 4 of the 1789 Declaration of the Rights of Man and the Citizen whereby "Freedom consists in being able to do everything which does not harm others", this requirement does not preclude Parliament, in certain matters, and for reasons of general interest, from specifying the conditions in which such liability may be incurred. By specifically providing that any creditor assisting a company in financial difficulties would find himself liable in the event of fraud, manifest interference in the management of the debtor company, or the taking out of disproportionate guarantees, Parliament has not suppressed such liability.

When specifying the cases in which the liability of creditors will be incurred because of the assistance supplied, it attempted to clarify the legal framework in which this liability could be brought into play. Such clarification helps to remove impediments to the granting of financial assistance needed to ensure the survival of companies undergoing financial difficulties. It thus satisfies a requirement of sufficient general public interest. No violation of the principle of liability.
(Decision n° 2005-522 DC, July 22nd 2005, cons. 8, 10 to 12, p. 125)

The principle derived from Articles 4 and 9 of the Declaration of 1789 whereby the freedom of the person cannot be subjected to unduly harsh restrictions must be complied with when placing persons under mobile electronic monitoring in the framework of court-ordered surveillance, even when the latter is devoid of any punitive nature.
(Decision n° 2005-527 DC, December 8th 2005, cons. 16, p. 153)

The Law as the expression of the General Will (Article 6)

Clarity and accuracy of Parliamentary debate

It is necessary to ensure the clarity and accuracy of Parliamentary debate, failing which neither the rule set out in Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 whereby "The Law is the expression of the general will" nor that deriving from indent 1 of Article 3 of the Constitution, whereby "National sovereignty shall belong to the people who shall exercise it through their representatives..." would be guaranteed.
(Decision n° 2005-526 DC, October 13th 2005, cons. 3 to 6, p. 144)

Prescriptive nature of statutes

Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 provides: "The Law is the expression of the general will". It follows from this Article, and also from all other relevant constitutional rules pertaining to the purpose of the law, that, subject to specific provisions set forth in the Constitution, the purpose of statute law is to lay down rules and as such it must have a prescriptive scope. See decision nº 2004-500 DC July 29th 2004, cons. 12.
(Decision nº 2005-512 DC, April 21st 2005, cons. 8, p. 72)

Need for punishments (Article 8)

The principle whereby punishments should be tailored to the characteristics of the offender derives from Article 8 of the Declaration of the Rights of Man and the Citizen.
(Decision nº 2005-520 DC, July 22nd 2005, cons. 1 to 3, p. 118)

No retrospective effect of criminal law (Article 8)

The principle that harsher provisions of criminal law cannot have any retrospective effect only applies to sentences and penalties intended to punish a person. Parliament could thus, without infringing this principle, provide for the new system of "court-ordered surveillance" to apply to persons convicted for acts committed prior to the coming into force of the statute.
(Decision nº 2005-527 DC, December 8th 2005, cons. 10, 12 to 15, p. 153)

Presumption of innocence (Article 9)

The principle of issuing a warrant of arrest for an accused person sentenced to a term of imprisonment for offences of a violent or sexual nature committed while re-offending is not incompatible with the presumption of innocence guaranteed by Article 9 of the Declaration of 1789, once this measure is linked to a term of imprisonment passed by a court of criminal jurisdiction after the guilt of the accused has been proved in accordance with the law.
(Decision nº 2005-527 DC, December 8th 2005, cons. 2, 5 and 8, p. 153)

No undue harshness (Article 9)

The principle derived from Articles 4 and 9 of the Declaration of 1789 whereby the freedom of the person cannot be subjected to unnecessarily harsh restrictions must be complied with when placing persons under mobile electronic monitoring in the framework of court-ordered surveillance, even when the latter is devoid of any punitive nature.
(Decision nº 2005-527 DC, December 8th 2005, cons. 16, p. 153)

Equality before public burden sharing (Article 13)

Article 13 of the Declaration of the Rights of Man and the Citizen would not be respected if taxation were to be of a confiscatory nature or subjected a certain category of taxpayers to an excessive burden in comparison with their ability to pay taxes.
(Decision nº 2005-530 DC, December 29th 2005, cons. 65, p. 168)

Guaranteeing of rights (Article 16)

Parliamentary debate has shown that Section 111 of the rectifying Finance Act for 2005 is chiefly designed, by the condition which it lays down (calculation of VAT "in addition to" motorway toll charges) to render ineffective, for the period up to January 1st 2001, a decision of the Court of Justice of the European Communities dated September 12th 2000, and a decision of the Council of State dated June 29th 2005. It thus infringes the principle of the separation of powers and the guaranteed rights proclaimed in Article 16 of the declaration of 1789.
(Decision nº 2005-531 DC, December 29th 2005, cons. 6, p. 186)

Separation of Powers (Article 16)

The general interest which is sought to be furthered in section 139 of the Social Cohesion Act, which validates various acts pertaining to the construction of tramway lines, is not sufficient to justify the infringement of the principle of the separation of powers which derives from Article 16 of the Declaration of 1789.
(Decision n° 2004-509 DC, January 13th 2005, cons. 32 and 33, p. 33)

Parliamentary debate has shown that Section 111 of the rectifying Finance Act for 2005 is chiefly designed, by the condition which it lays down (calculation of VAT "in addition to" motorway toll charges) to render ineffective, for the period up to January 1st 2001, a decision of the Council of State dated June 29th 2005. It thus infringes the principle of the separation of powers proclaimed in Article 16 of the declaration of 1789.
(Decision n° 2005-531 DC, December 29th 2005, cons. 6, p. 186)

Right of Redress (Article 16)

The general interest which is sought to be furthered in section 139 of the Social Cohesion Act, which validates various acts pertaining to the construction of tramway lines, is not sufficient to justify the infringement of the right of redress which derives from Article 16 of the Declaration of 1789.
(Decision n° 2004-509 DC, January 13th 2005, cons. 32 and 33, p. 33)

The provisions of the statute safeguarding companies which provide for the cases in which the liability of creditors agreeing to provide assistance may be brought into play does not infringe the right of the persons involved to bring proceedings for redress before a court. No infringement of Article 16 of the Declaration of 1789.
(Decision n° 2005-522 DC, July 22nd 2005, cons. 8, 10 to 13, p. 125)

Right to Property (Articles 2 and 17)

The general interest which is sought to be furthered in section 139 of the Social Cohesion Act, which validates various acts pertaining to the construction of tramway lines, is not sufficient to justify the infringement of the right to property which derives from Article 17 of the Declaration of 1789.
(Decision n° 2004-509 DC, January 13th 2005, cons. 32 and 33, p. 33)

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

Methods of implementing certain principles

Right to work (indent 5)

It is the duty of Parliament, when exercising the powers it enjoys under Article 34 of the Constitution, to determine the fundamental principles of employment law, to ensure the implementation of the social and economic principles set out in the Preamble of 1946, and to reconcile the same with constitutionally guaranteed freedoms. Parliament may, in order to best ensure the right of each person to obtain employment, in accordance with indent 5 of the Preamble of 1946, impose certain restrictions on freedom of enterprise to comply with this constitutional requirement, provided that this leads to no disproportionate infringement of said freedom with respect to the objective pursued.
(Decision n° 2004-509 DC, January 13th 2005, cons. 24, p. 33)

Although it is the duty of Parliament acting within the limits of the powers conferred upon it to determine rules best suited to ensuring, in accordance with indent 5 of the Preamble of 1946, the right of each man to obtain employment, while extending the benefit of this right to the greatest number, Parliament may at all times freely decide as to the opportuneness of amending or repealing previous statutory provisions by, when necessary, replacing them by other provisions. This has been done in the case in hand, when extending the contractual system of laying down a predetermined number of working days in a year to non executive salaried staff.
(Decision n° 2005-523 DC, July 29th 2005, cons. 5 to 7, p. 137)

Collective determination of working conditions (Indent 8)

Indent 8 of the Preamble of 1946 provides that "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". It is the task of Parliament, while respecting this principle, to determine the methods of its implementation.

In the case in hand, Parliament provided for measures meeting the requirements of indent 8 of the Preamble of 1946. Pursuant to II of Section 24 of the statute pertaining to the creation of the French International Register, seafarers residing outside France participate in electing their representatives on board ship. Furthermore, Article 12 reserves the application of more favourable clauses found in contracts or collective agreements. Lastly I of Section 23 provides that: "Any seafarer... may freely join the Trade Union of his choice".
(Decision nº 2005-514 DC, April 28th 2005, cons. 24 to 26 and 28, p. 78)

Parliament is free, after having defined the rights and duties pertaining to working conditions and employer-employee relationships, to leave it to employers or employees or their representative organizations to specify, in particular by collective bargaining, the detailed rules for the application of the rules it adopts.

Parliament could thus, without in any way adversely affecting the arrangements made in collective agreements already entered into, to leave it to collective branch or company contracts or agreements to determine the practical methods for implementing the provisions which extend the contractual system of laying down a predetermined number of working days in a year to non executive employees, and to define the category of employees involved.
(Decision nº 2005-523 DC, July 29th 2005, cons. 8 and 9, p. 137)

Conditions necessary for the development of the child and the family (Indent 10)

Indent 10 of the Preamble of 1946 provides that: "The Nation shall provide the individual and the family with the conditions necessary for their development". The consequence of this provision is that foreigners who live in France in a stable and permanent manner are entitled, just as are French Nationals, to lead a normal family life.

However no principle or rule of constitutional value confers upon foreigners any general and absolute rights to enter and stay on French territory. It is the task of Parliament to reconcile the safeguarding of public order, which is an objective of constitutional value, with the right to lead a normal family life.
(Decision nº 2005-528 DC, December 15th 2005, cons. 13 and 14, p. 157)

Right to rest and leisure (Indent 11)

Indent 11 of the Preamble of 1946 provides that the Nation "shall guarantee to all, notably to children mothers and elderly workers, protection of their health, material security, rest and leisure". It is the duty of Parliament, while respecting the principle set out, to determine the practical methods of its implementation.

In the case in hand, the statute referred does not fail to respect the right to rest and leisure of seafarers not residing in France. The very terms of Section 4 of the statute provide that seagoing vessels registered in the French International Register are subject to the rules governing health and safety at work applicable under French law, EC regulations and France's international undertakings. Sections 16 and 17 of this same statute limit the length of the working hours of seafarers not residing in France and provide for rest periods. Articles 20 and 21 specify the conditions for their repatriation, in particular in the event of illness or accident. The argument based on failure to respect Article 11 of the Preamble of 1946 must therefore be dismissed.
(Decision nº 2005-514 DC, April 28th 2005, cons. 24, 25, 27 and 28, p. 78)

Although it is the duty of Parliament acting within the limits of the powers conferred upon it to determine rules best suited to ensuring, in accordance with paragraph 5 of the Preamble of 1946, the right of each man to obtain employment, while extending the benefit of this right to the greatest number, Parliament may at all times freely decide as to the opportuneness of amending or repealing previous statutory provisions by, when necessary, replacing them with other provisions. It was thus free to extend to certain non executive employees the contractual

system of laying down a predetermined number of working days in a year as defined by Act nº 2000-37 of January 19th 2000 pertaining to the negotiated reduction in working hours, as long as it did not by so doing deprive of statutory guarantees the constitutional requirements concerning the right to health and the right to rest of these employees as derived from indent eleven of the 1946 Preamble. In the case in hand Parliament set out a body of conditions which meet these requirements.
(Decision nº 2005-523 DC, July 29th 2005, cons. 5 to 7, p. 137)

Charter for the Environment of 2004

The Treaty establishing a Constitution for Europe does not run counter to the Charter for the Environment of 2004. The question of the admissibility of an application by a voter contesting the conformity with the Constitution of a treaty of which the ratification is submitted to referendum on the basis of Article 11 of the Constitution is reserved.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 7, p. 56)

Promotion of sustainable development (Article 6)

Pursuant to Article 6 of the Charter for the Environment 2004 "Public policies shall promote sustainable development. To this end they shall reconcile the protection and enhancement of the environment with economic development and social progress". It is up to Parliament, while respecting the principle of reconciliation lay down by these provisions, to determine the practical methods of the implementation thereof.
(Decision nº 2005-514 DC, April 28th 2005, cons. 37, p. 78)

Section 58 of the Programme Act laying down guidelines for energy policy pertaining to the implementation of a "contribution to the public electricity service" merely draws the consequences, in the context of exchanges within the European Community, of support policies drawn up by Members States of the European Community in favour of renewable energies and cogeneration. Given the purpose thereof, it does not run counter to any of the interests mentioned in Article 6 of the Charter for the Environment.
(Decision nº 2005-516 DC, July 7th 2005, cons. 23 to 27, p. 102)

Fundamental principles recognized by the laws of the Republic

Principles not retained

Others

The presence of the Public Prosecutor at a hearing in open court is not a fundamental principle recognized by the laws of the Republic (implied solution).
(Decision nº 2005-520 DC, July 22nd 2005, cons. 3, p. 118)

Principles of constitutional value stated in Articles of the Constitution

Individual freedom

If Article 66 of the Constitution precludes conferring on a court composed solely of lay judges the power to impose custodial sentences, it does not however prevent such power from being exercised by a court of criminal jurisdiction of which certain members of the Bench are lay judges.
(Decision nº 2004-510 DC, January 20th 2005, cons. 16, p. 41)

Article 66 of the Constitution is not infringed by the immediate enforcement of a term of imprisonment passed by the *Tribunal correctionnel* on a person convicted of offences of a violent or sexual nature committed while re-offending, once this measure does not preclude the exercising of the right conferred upon such an accused person by Article 148-1 of the Code of Criminal Procedure to apply for his release.
(Decision nº 2005-527 DC, December 8th 2005, cons. 2 and 6, p. 153)

Principle whereby national sovereignty is vested in the Nation (Article 3)

It is necessary to ensure the clarity and accuracy of Parliamentary debate, failing which neither the rule set out in Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 whereby "The Law is the expression of the general will" nor that deriving from indent 1 of Article 3 of the Constitution, whereby "National sovereignty shall belong to the people who shall exercise it through their representatives..." would be guaranteed.
(Decision n° 2005-526 DC, October 13th 2005, cons. 5, p. 144)

Objectives of constitutional status

Objectives recognized

Accessibility and intelligibility of statutes

Parliament must exercise to the full the powers vested in it by Article 34 of the Constitution. The principle of the clarity of statute law, which derives from the same article of the Constitution, and the constitutional objective that the law be intelligible and accessible, which derives from Articles 4, 5, 6 and 16 from the Declaration of 1789, place it under a duty to enact provisions which are sufficiently precise and unequivocal. Protection must be afforded to all from interpretations which run counter to the Constitution or from the risk of arbitrary decisions, without leaving it to Courts of law or Administrative authorities to fix rules which the Constitution provides should be the sole preserve of statute law. These bodies nevertheless retain a power of appreciation and, if need be, of interpretation inherent in the application of a rule of general scope to specific cases.
(Decision n° 2004-509 DC, January 13th 2005, cons. 25, p. 33)

Parliament must exercise to the full the powers vested in it by Article 34 of the Constitution. The principle of the clarity of statute law, which derives from the same article of the Constitution, and the constitutional objective that the law be intelligible and accessible, which derives from Articles 4, 5, 6 and 16 from the Declaration of 1789, place it under a duty to enact provisions which are sufficiently precise and unequivocal. Protection must be afforded to all from interpretations which run counter to the Constitution or from the risk of arbitrary decisions, without leaving it to Courts of law or Administrative authorities to fix rules which the Constitution provides should be the sole preserve of statute law.
(Decision n° 2005-512 DC, April 21st 2005, cons. 9, p. 72 and decision n° 2005-514 DC, April 28th 2005, cons. 14, p. 78)

Neither Article 34 of the Constitution, nor the constitutional objective of the intelligibility and accessibility of legislation require Parliament to explicitly indicate the rules from which it derogates. In the case in hand indent 2 of Section 3 of the statute pertaining to the creation of the French International Register merely specifies that Title II of this statute, dealing with the "status of seafarers residing outside France" is not applicable to seafarers residing in France. This indent is neither intended to result in nor does result in making any derogation from the application of the French Maritime Employment Code to seafarers residing in France.
(Decision n° 2005-514 DC, April 28th 2005, cons. 3 and 4, p. 78)

The argument based on a lack of precision cannot usefully be raised with respect to provisions which are devoid of any prescriptive scope.
(Decision n° 2005-516 DC, July 7th 2005, cons. 7, p. 102)

Equality before the law as proclaimed by Article 6 of the Declaration of 1789 and the "guaranteed rights" required by Article 16 thereof would not be effective if citizens did not have a sufficient knowledge of the rules applicable to them and if such rules were to be excessively complex as regards the ability of those to whom they apply to grasp the scope thereof. Such complexity would restrict the exercising of the rights and freedoms guaranteed both by Article 4 of the Declaration, whereby such exercising should know no bounds other than those laid down by law, and Article 5 thereof, whereby "Nothing that is not forbidden by law may be hindered, and no one shall be compelled to do what the law does not ordain".

In tax matters, when the law attains a level of complexity such that it becomes unintelligible for the citizen, it also runs counter to Article 14 of the Declaration of 1789, whereby "All citizens have the right to ascertain, by themselves, or through their representatives, the need for public

taxation, to consent to it freely, to see how it is used, and to determine the proportion, basis, collection and duration thereof".

This is particularly the case when tax laws invite the taxpayer, as is the case here, to make choices and makes the final tax burden dependent on the informed choices made by the taxpayer. With respect to the principle of equality before taxation, the justification of tax incentives offered to the taxpayer is linked to the real possibility for the latter to calculate with a reasonable degree of foresight the amount of tax payable according to the various options available to him.

However reasons of general interest may justify the complexity of the law. In the case in hand, the complexity of section 78 of the Finance Act 2006, which caps tax benefits, is both excessive and not justified by a reason of sufficient general interest. It is therefore unconstitutional.
(Decision n° 2005-530 DC, December 29th 2005, cons. 77 to 89, p. 168)

Principles deriving from more than one provision

Principle of representation for the election of Senators

Under Articles 3 and 24 of the Constitution, to the extent that the Senate represents the territorial units of the Republic, it must be elected by an electoral body which itself emanates from these same territorial units. Parliament was therefore right to decide, within the framework of an Institutional Act, that the postponing of local elections until March 2008 necessarily entailed postponing the election of those Senators in Series A, in order to avoid the latter being elected by a college of which a majority of members had exceeded the normal term of their electoral office.

The role conferred on the Senate by Article 24 of the Constitution also justified the postponing by a year of the renewals due in 2010 and 2013, in order to more closely associate in the future the election of Senators and the election by voters of the main body of persons comprising the electoral college. This extension of the terms of office of current Senators is an exceptional, transitory measure. Thus the choices made by Parliament, over which the Constitutional Council exercises a limited review, are not patently ill-adapted for the attainment of the purpose determined by it.
(Decision n° 2005-529 DC, December 15th 2005, cons. 4 to 7, p. 165)

Principle of the continuity of public services

The delisting of property belonging to the public domain cannot result in depriving of statutory guarantees the constitutional requirements which result from the existence and continuity of the public services to which it is still intended to contribute.

The provisions of sections 2, 5 and 6 of the statute pertaining to airports guarantee compliance, under normal circumstances, with the constitutional requirements as to the continuity of public services. Parliament has provided that the State will continue to be the major shareholder of the Company *Aéroports de Paris*. After having defined the tasks which this company is to carry out, Parliament has stated that specifications will specify the conditions in which the company will ensure the provision of public services connected with the airports which it operates and will carry out the tasks of administrative police which it is under a duty to assure. These specifications will also lay down the methods whereby the State will ensure the performance of the duties connected with the provision of public services and of contracts entrusting third parties with the provision of such services. This document, which must be approved by a Decree of the Council of State, will also determine the administrative penalties to be imposed on the company in the event of failure by the latter to perform its obligations. Lastly, the statute referred enables the State to oppose the disposal of any installation or land needed by the company Aéroports de Paris to satisfactorily perform or develop the public services which it is required to provide.

In exceptional circumstance, the competent State authorities may if necessary, requisition persons, goods and services under the powers of administrative police vested in them or under the provisions of the Defence Code.
(Decision n° 2005-513 DC, April 14th 2005, cons. 4, 5 and 6, p. 67)

Principle of the prescriptive nature of statutes

Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 provides: "The Law is the expression of the general will...". It follows from this Article, and also from all other relevant constitutional rules pertaining to the purpose of the law, that, subject to specific provisions set forth in the Constitution, the purpose of statute law is to lay down rules and as such it must have a prescriptive scope.
(Decision n° 2005-512 DC, April 21st 2005, cons. 8, p. 72)

Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 provides: "The Law is the expression of the general will...". It follows from this Article, and also from all other relevant constitutional rules pertaining to the purpose of the law, that, subject to specific provisions set forth in the Constitution, the purpose of statute law is to lay down rules and as such it must have a prescriptive scope.

The penultimate indent of Article 34 of the Constitution which provides that "Programme Acts shall determine the objectives of the economic and social action of the State" is one of the particular provisions reserved by the Constitution.
(Decision n° 2005-516 DC, July 7th 2005, cons. 4 and 5, p. 102)

Rules of constitutional value with respect to legislative proceedings

Clarity and accuracy of debate

It is necessary to ensure the clarity and accuracy of Parliamentary debate, failing which neither the rule set out in Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 whereby "The Law is the expression of the general will..." nor that deriving from indent 1 of Article 3 of the Constitution, whereby "National sovereignty shall belong to the people who shall exercise it through their representatives..." would be guaranteed.
(Decision n° 2005-526 DC, October 13th 2005, cons. 5, p. 144)

Parameters not recognized and material not taken into account

Parameters not recognized for constitutional review of statutes

Regulations of an Assembly

Alleged failure to comply with Article 43 of Senate regulations cannot, per se, make legislative proceedings unconstitutional.
(Decision n° 2005-512 DC, April 21st 2005, cons. 5, p. 72)

Qualified questions

Principle of the tailoring of punishments to the characteristics of offenders

The principle whereby punishments should be tailored to the characteristics of the offender derives from Article 8 of the Declaration of the Rights of Man and the Citizen. The question of its constitutional value is thus no longer qualified.
(Decision n° 2005-520 DC, July 22nd 2005, cons. 3, p. 118)

Rules specific to regulations governing Assemblies

Rules of procedure of Assemblies do not per se have any constitutional value

Alleged failure to comply with Article 43 of Senate regulations cannot, per se, make legislative proceedings unconstitutional.
(Decision n° 2005-512 DC, April 21st 2005, cons. 5, p. 72)

Parameters for constitutional review of regulations governing Assemblies

Amendments made to the rules of Procedure of the Senate, which merely drawn the necessary conclusions from the coming into force on January 1st 2005, of all of Institutional Act nº 2001-692 of August 1st 2001 pertaining to Finance Acts, do not infringe any constitutional rule or principle.
(Decision nº 2005-515 DC, May 19th 2005, cons. 1, p. 88)

The changes made to the rules of the National Assembly necessitated by the Institutional Acts of August 1st 2001 and August 2nd 2005 pertaining to Finance Acts and Social Security Financing Acts are not unconstitutional.
(Decision nº 2005-526 DC, October 13th 2005, cons. 2, p. 144)

NATURE, MANNER OF EXERCICE AND SCOPE OF REVIEW OF CONFORMITY WITH THE CONSTITUTION

Conditions for taking into account extrinsic elements of a statute

Reference to Parliamentary debate and preliminary studies

Reference to Parliamentary debate and preliminary studies with respect to a statute of constitutional value

The Constitution was revised after the ruling of the Constitutional Council on November 19th 2004 in order to remove the impediments to the ratification of the Treaty establishing a Constitution for Europe pinpointed by the Council. The revision dated March 1st 2005 must thus be interpreted taking in account the grounds for this decision.
(Decision Hauchemaille and Le Mailloux, May 25th 2005, cons. 4, p. 93)

Reference to Parliamentary debate and preliminary studies with respect to the statute referred

Parliamentary debate and in particular the sequence of the votes cast by the Senate show that the fact that an additional clause was passed which reiterated a provision which had previously been amended and defeated did not adversely affect the sincerity of the proceedings and did not infringe any constitutional requirement.
(Decision nº 2005-512 DC, April 21st 2005, cons. 4, p. 72)

It was by basing its decision on Parliamentary debate that the Constitutional Council found that Section 111 of the rectifying Finance Act for 2005 was chiefly designed, by the condition which it laid down (calculation of VAT "in addition to" motorway toll charges) to render ineffective, for the period up to January 1st 2001, and a decision of the Council of State dated June 29th 2005.
(Decision nº 2005-531 DC, December 29th 2005, cons. 6, p. 186)

Scope of review

Power of appreciation conferred on the Constitutional Council

When passing Institutional Acts, Parliament is empowered by Article 25 of the Constitution to determine the term of the powers of each Assembly, and may modify this term in the general interest and subject to compliance with rules and principles of constitutional value. The Constitutional Council is not vested with any general power of appreciation and decision-making similar to that conferred upon Parliament. It is therefore not incumbent upon the Council to seek whether the objective fixed by Parliament could be achieved by other means,

once the means retained are not patently inappropriate for the attainment of the prescribed objective.
(Decision nº 2005-529 DC, December 15th 2005, cons. 5, p. 165)

Limited review of constitutionality

Jurisdiction of courts of law

Parliament did not make any patent error of appreciation when laying down the jurisdiction of the new neighbourhood courts.
(Decision nº 2004-510 DC, January 20th 2005, cons. 12, p. 41)

MEANING AND SCOPE OF A DECISION

Statutory provisions devoid of prescriptive scope

Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 provides: "The Law is the expression of the general will". It follows from this article, and also from all other relevant constitutional rules pertaining to the purpose of the law, that, subject to specific provisions set forth in the Constitution, the purpose of statute law is to lay down rules and as such it must have a prescriptive scope.

In the case in hand, the report appended to the statute referred to the Constitutional Council sets out the aims of State action in the field of education. If the undertakings which appear there do not have the prescriptive scope which attaches to a statute, these provisions are such as may find a place in the category of Programme Acts of an economic or social nature provided for in the penultimate indent of Article 34 of the Constitution. To this extent, they may be approved by Parliament. The argument based on the lack of any prescriptive scope cannot therefore be usefully raised against all the said report.

On the other hand, the provisions of II of Section 7 of the statute referred are clearly devoid of any prescriptive scope: "The aim of schooling is to ensure the success of all pupils. Given the diversity of pupils, schools must recognize and encourage all forms of intelligence to enable pupils to make the most of their abilities... Teaching, under the authority of teachers and with the support of parents, enables each pupil to do the work and make the efforts needed to develop and highlight his/her abilities, whether intellectual, manual, artistic or sporting. It contributes to preparing his/her personal and professional path in life". These provisions run counter to the Constitution.
(Decision nº 2005-512 DC, April 21st 2005, cons. 8, 12, 16 and 17, p. 72)

Article 6 of the Declaration of the Rights of Man and the Citizen of 1789 provides: "The Law is the expression of the general will". It follows from this Article, and also from all other relevant constitutional rules pertaining to the purpose of the law, that, subject to specific provisions set forth in the Constitution, the purpose of statute law is to lay down rules and as such it must have a prescriptive scope.

One of the specific provisions thus reserved by the Constitution is the penultimate indent of Article 34: "Programme Acts shall determine the objectives of the economic and social action of the State".

In the case in hand, the provisions of Sections 1 to 6 of the Programme Act which fix the objectives of the action of the State in the energy field are such as may find their place in the category of Programme Acts of an economic and social nature as defined by the penultimate indent of Article 34 of the Constitution. The argument based on their lack of prescriptive scope cannot therefore be usefully raised against them.
(Decision nº 2005-516 DC, July 7th 2005, cons. 4, 5 and 7, p. 102)

Injunctions

Injunctions to Parliament

The general interest of constitutional value attached to protecting the health of the Nation justifies that the participation of the national health insurance fund in the support fund set up for implementing preventive measures, necessary in 2005 and 2006, should continue until the end of 2006. Sections 5 and 64 of the statute referred do not run counter to Section 17 of the Institutional Act of August 1st 2001 and as such are not, in the current state of affairs, unconstitutional.

However, the financing of these measures must, starting in 2007, be made to comply with the new institutional requirements governing accounting procedures pertaining to the appropriation of revenue.
(Decision nº 2005-528 DC, December 15th 2005, cons. 23 and 24, p. 157)

Under Sections 18 and 20 of the Institutional Act of August 1st 2001, ancillary budgets and special accounts may not comprise one sole programme. Consequently the special appropriation account "Financial holdings of the State" must be made to comply with the requirements with the new institutional rules. The same holds good for other special accounts in the Finance Act which comprise one sole programme, and for the ancillary budget "Journaux officiels".
(Decision nº 2005-530 DC, December 29th 2005, cons. 27 and 37, p. 168)

Qualified interpretation

Examples of interpretations which make a statute consistent with the Constitution

Law of public and social finances

Delay in distributing all or any of the documents required by the Institutional Act to better inform Parliament and strengthen its control of public finance or any failure to comply with procedures laid down for such purposes cannot preclude discussion of a Finance Bill. The conformity of the latter to the Constitution would be decided on the basis of compliance with the requirements of the continuity of the life of the Nation and of the sincerity of Parliamentary proceedings throughout the examination of Finance Acts.
(Decision nº 2005-517 DC, July 7th 2005, cons. 6, p. 108)

The Government is free to contemplate, immediately upon the tabling of a year Finance Bill, reserving a small fraction of credits opened in order to make provision for any subsequent shortfall in the balancing of the budget. New provisions to such effect provided for in the Institutional Act should not however be taken as placing the Government under a duty to place credits in reserve. Neither should they adversely affect the prerogatives which Articles 20 and 21 confer on the Government with respect to the implementation of Finance Acts.
(Decision nº 2005-517 DC, July 7th 2005, cons. 7, p. 108)

New Article L.O. 111-4 of the Social Security Code redefines the list and contents of reports and documents to be appended or annexed to the year Finance Bill in order to better inform Parliament.

Delay in distributing all or any of the documents required cannot preclude discussion of a Finance Bill. The conformity of the latter to the Constitution would be decided on the basis of compliance with the requirements of the continuity of the life of the Nation and of the sincerity of Parliamentary proceedings throughout the examination of Finance Acts; the same would apply in cases when circumstances did not make it possible to table all or part of the said documents.

Subject to this qualified interpretation, Article L.O. 111-4 of the Social Security Code is not unconstitutional.
(Decision nº 2005-519 DC, July 29th 2005, cons. 17 to 19 and 22, p. 129)

Article L.O. 111-9-1 of the Social Security Code provides that "When, during an assessment and monitoring assignment, information requested under Article L.O. 111-9 cannot be obtained

within a reasonable period of time, computed taking into account the difficulties involved in collecting such information, the President of the National Assembly and Senate Committees called upon to examine the merits of Bills for financing social security may request a court of relevant jurisdiction, sitting in summary proceedings, to put an end to this impediment on pain of payment of a penalty".

In accordance with the French conception of the separation of powers, these provisions may only be construed as allowing the administrative judge to order in summary proceedings a legal entity vested with the prerogatives of public authorities to proceed to communicate such information or documents upon pain of payment of a penalty. Subject to this qualification, they are not contrary to the Constitution.
(Decision nº 2005-519 DC, July 29th 2005, cons. 30 and 31, p. 129)

New Article L.O. 132-3-1 of the Code of Financial Courts which imposes various duties on the Audit Court, concerning in particular the carrying out of investigations and the filing of reports must be interpreted in the light of the final indent of Article 47-1 of the Constitution, which provides that "The Audit Court shall assist Parliament and the Government in monitoring the implementation of Finance Acts". It is therefore up to the competent authorities of the Audit Court to ensure that the balance required by the Constitution is not tilted to the detriment of one or other of these bodies.
(Decision nº 2005-519 DC, July 29th 2005, cons. 35 to 37, p. 129)

Social law

When, in the framework of family reunification proceedings, the situation of a child who has already entered France is regularised, this child shall carry an entitlement to family allowances.
(Decision nº 2005-528 DC, December 15th 2005, cons. 18, p. 157)

Rules governing Assemblies

The acknowledged possibility for the Conference of Presidents to fix time frames for the tabling of amendments may ensure clarity and accuracy of Parliamentary debate, failing which the principles laid down in Articles 6 of the Declaration of 1789 and 3 of the Constitution would not be guaranteed. However it remains for the Conference of the Presidents to reconcile the abovementioned requirements and the respecting of the right of amendment which Article 44 of the Constitution confers on Members of Parliament.
(Decision nº 2005-526 DC, October 13th 2005, cons. 5, p. 144)

Education

Sections 27 and 31 of the statute referred to the Constitutional Council, which provide for suitable arrangements or particular actions in favour of certain pupils, impose upon teaching institutions, by reason of the general nature of the terms used, obligations of an imprecise scope. It emerges however from Parliamentary debate and preliminary studies that these Sections impose a duty to employ all reasonable means but not a duty to achieve a prescribed result. Subject to this reservation, they do not disregard the principle of the clarity of statute law.

In similar fashion, Section 29 of the statute referred to the Constitutional Council, which rewords indent 5 of Article L. 331-1 of the Education Code whereby "When continuous assessment is partially taken into account for the awarding of a national diploma, the assessment of candidate's knowledge shall be carried out in a equitable manner", should be taken to mean as providing for the use of harmonization procedures between teaching institutions. Subject to this qualified interpretation, Section 29 does not infringe the principle of clarity of statute law.
(Decision nº 2005-512 DC, April 21 st 2005, cons. 18 to 21 p. 72)

Examples of mandatory qualified interpretations

Tax Law

The participation of the national health insurance fund in the support fund set up for purchasing, storing and delivering products designed to prevent diseases connected with or

treat persons exposed to certain health hazards does not, because of its mandatory nature, appear in the list of revenue which, under Section 17 of the Institutional Act of August 1st 2001 pertaining to Finance Acts, may contribute to the financing of a support fund.

However the general interest of constitutional value attached to protecting the health of the Nation justifies that the participation of the national health insurance fund in the support fund set up for implementing preventive measures, necessary in 2005 and 2006, should continue until the end of 2006. Sections 5 and 64 of the statute referred do not run counter to Section 17 of the Institutional Act of August 1st 2001 and as such are not, in the current state of affairs, unconstitutional.

However, the financing of these measures must, starting in 2007, be made to comply with the new institutional requirements governing accounting procedures pertaining to the appropriation of revenue.
(Decision nº 2005-528 DC, December 15th 2005, cons. 23 and 24, p. 157)

Under Sections 7 and 47 of the Institutional Act pertaining to the Finance Acts dated August 1st 2001, a mission cannot comprise one sole programme. Under sections 18, 19 and 20 of the same Institutional Act of August 1st 2001, ancillary budgets and special accounts allocated credits constitute a mission within the meaning of Sections 7 and 47. Therefore, in the current state of the law, they should not comprise one sole programme.

However the presentation of 'mono-programme' missions in the Finance Act 2006 is part of the introduction of a new budgetary listing. In order to give the relevant authorities the time needed to carry out the necessary adaptations and overcome the difficulties inherent in such reform, the compliance of such missions with the new institutional rules may only take effect starting in 2007. Subject to this qualification, they are not, at the present time, unconstitutional.
(Decision nº 2005-530 DC, December 29th 2005, cons. 24 to 27, 36 and 37, p. 168)

Courts of law

Qualification whereby, when a neighbourhood judge sits as one of three judges constituting the *Tribunal correctionnel*, the other judges must be qualified members of the Judiciary.
(Decision nº 2004-510 DC, January 20th 2005, cons. 19 and 20, p. 41)

Territorial units

Article L.O. 1114-4 of the General Code of Territorial Units, which is designed to guarantee the continued financial autonomy of territorial units, provides to this end that the Government shall transmit to Parliament for a given year, no later than June 1st of the second following year, "a report showing, for each category of territorial units, the share of own resources in the general body of resources together with the methods used to calculate the same and the evolution thereof. It indicates that "if, for a category of territorial units, the share of own resources does not comply with the rules laid down by Article L.O. 1114-3, the necessary provisions shall be made by a Finance Act no later than the second year following the making of such ascertainment".

If, upon reading this report, it were to appear that, due to changing circumstances, and in particular due to the effect of the disputed Article, combined as may be with other reasons, the share of own resources in the general body of resources of a category of territorial units were to fall below the minimum threshold determined by Article L.O. 1114-3 of the General Code of Territorial Units, the Finance Act for the second year following the ascertaining of this situation shall specify the appropriate measures for to re-establishing the degree of financial autonomy of this category at the level fixed by Parliament in an Institutional Act. Furthermore if this report were to show that the capping of the local tax on businesses as regards added value impeded the running of a territorial unit to the extent that its self-government were impaired in such a manner as to infringe Article 72 of the Constitution, it would be up to the Government to take the appropriate corrective measures.
(Decision nº 2005-530 DC, December 29th 2005, cons. 99, p. 168)

Scope of previous decisions

Authoritative interpretations

The Constitutional Council reviewed the conformity of the appropriation of taxes to Social Security with Sections 2, 34, 36 and 51 of the Institutional Act of August 1st 2001 as interpreted by it in its decision of July 25th 2001: "statute law can only appropriate taxes of whatsoever kind to a third party in the framework of a public service mission which this party is required to perform on the threefold condition that the Finance Act for the year involved authorises the levying of such taxes, that when these taxes have been instituted for the benefit of the State, a Finance Act makes the necessary appropriation, and lastly that the Finance Bill for the year involved be accompanied by an Explanatory memorandum setting out the list and evaluation of such taxation".
(Decision nº 2005-530 DC, December 29th 2005, cons. 57, p. 168)

Decisions which are res judicata

When a decision of the Constitutional Council has ruled that a statutory provision has a regulatory nature, the fact that Parliament subsequently stated that it had "force of law" does not result in withdrawing from the Prime Minister the authorization given him to modify such a provision by Decree. A referral for the purpose of defining the legal nature thereof is thus groundless.
(Decision nº 2005-202 L, November 17th 2005, cons. 2, p. 151)

ECONOMIC AND SOCIAL COUNCIL

ATTRIBUTIONS

Consultation on Programme Bills or plans of an economic or social nature

Pursuant to the terms of the penultimate indent of Article 34 of the Constitution "Programme Acts shall determine the objectives of the economic and social action of the State". The Institutional Act of August 1st 2001 pertaining to Finance Acts repealed Article 1 of the ordinance of January 2nd 1959 which provided that "Programme authorizations may be grouped together in statutes known as 'Programme Acts'". Under Article 70 of the Constitution, "Any Programme Bill of an economic or social nature" shall be submitted to the Economic and Social Council. The report appended to the statute referred fixes the objectives of State action in the field of education. Its provisions are such as may find a place in the category of Programme Acts of an economic or social nature provided for by the penultimate indent of Article 34 of the Constitution.

Should however the Government wish to have Parliament participate in the policy which it intends to implement in the field of education by a Programme Act, it would be required to comply with the procedure laid down for this purpose.

In the case in hand, once the Bill from which originated the statute referred was tabled before the first Assembly to which it was submitted, the report appended thereto belonged to the category of Programme Acts. Although it underwent various Parliamentary amendments during its reading, it was always intended to have Parliament approve provisions which, albeit devoid of any legal effect, laid down qualitative and quantitative objectives in educational matters. Hence, under Article 70 of the Constitution, it should have been submitted to the Economic and Social Council for its opinion. Failure to comply with this requirement

therefore flawed the legality of the procedure followed for its approval. Hence Article 12 of the statute referred, which approves the appended report, runs counter to the Constitution.
(Decision nº 2005-512 DC, April 21 st 2005, cons. 10 and 12 to 15, p. 72)

Pursuant to the terms of the penultimate indent of Article 34 of the Constitution "Programme Acts shall determine the objectives of the economic and social action of the State" The Institutional Act of August 1st 2001 pertaining to Finance Acts repealed Article 1 of the Ordinance of January 2nd 1959 which provided that "Programme authorizations may be grouped together in statutes known as 'Programme Act'. Under Article 70 of the Constitution, "Any Programme Bill of an economic or social nature" shall submitted to the Economic and Social Council.

Under the combined provisions of the final indent of Article 1 of the Ordinance of January 2nd 1959 and of Articles 34 and 70 of the Constitution, any law which not only laid down medium or long term objectives in social and economic matters but also included detailed forecasted expenditure for attaining said objectives was to be considered before January 1st 2005 as being a "Programme Act of an economic or social nature".

When the Bill from which the referred statute originates was first tabled before the first Assembly to which it was submitted, at a date prior to the abrogation of Article 1 of the Ordinance of January 2nd 1959, said Bill did not include any detailed forecasted expenditure and was thus not a Programme Act. The Government was thus not required to submit it for opinion to the Economic and Social Council.
(Decision nº 2005-516 DC, July 7th 2005, cons. 5 and 6, p. 102)
Compare with decision nº 2003-474 DC, July 17th 2003, cons. 11.

RIGHTS AND FREEDOMS

GUARANTEE OF INDIVIDUAL FREEDOMS BY THE JUDICIAL AUTHORITY

Courts of Law

Courts composed of lay judges

If Article 66 of the Constitution precludes the power to pass custodial sentences from being conferred on a court composed solely of lay judges, it does not however preclude such power from being exercised by a court of criminal jurisdiction of which certain members of the bench are lay judges.

However in such cases it is necessary to ensure sufficient guarantees to satisfy the requirements of the principle of independence, which is inseparable from the holding of all judicial office, and of capacity, as set forth in Article 6 of the Declaration of 1789. Where courts of criminal jurisdiction are concerned, lay judges must remain in the minority.
(Decision nº 2004-510 DC, January 20th 2005, cons. 16 and 17, p. 41)

Neighbourhood judges are vested with the same rights and have the same duties as professional judges, subject to the derogations and arrangements justified by the provisional nature of their office and the part-time nature of the latter. In its ruling dated February 20th 2003 the Constitutional Council considered that, subject to the qualifications laid down and taking into account the ruling of non conformity which it made, the institutional provisions determining the status of neighbourhood judges afforded the guarantees of independence and capacity required by the Constitution.

Under the final indent of section 5 of the statute referred, a single neighbourhood judge may sit as one of the three judges constituting the Bench in the *Tribunal Correctionnel*. In such a case, in order to ensure compliance with the constitutional requirements of independence and capacity the other members of the Court must be professional judges.

Subject to this reservation, the challenged provisions do not infringe Article 66 of the Constitution.
(Decision nº 2004-510 DC, January 20th 2005, cons. 18 to 20, p. 41)

PERSONAL FREEDOM

Personal freedom and undue harshness

The principle derived from Articles 4 and 9 of the Declaration of 1789 whereby the freedom of the person cannot be subjected to unduly harsh restrictions must be complied with when placing persons under mobile electronic monitoring in the framework of court – ordered surveillance, even when the latter is devoid of any punitive nature.

This monitoring is designed to prevent offenders from re-offending in high risk cases, and is intended to apply solely to persons sentenced to custodial sentences of ten years or more after having been convicted of certain strictly defined certain offences of a particularly serious nature. The restrictions which it entails are not intolerable and are proportionate to the objective which Parliament seeks to attain. It can only be carried out with the consent of the convicted person.

In the case in hand, Parliament took sufficient precautions to ensure that no undue harshness is inflicted on those involved.
(Decision nº 2005-527 DC, December 8th 2005, cons. 10, 16 to 21, p. 153)

RIGHT OF REDRESS – RIGHTS OF THE DEFENCE

Civil proceedings

If the statute referred enables legal entities to bring a case before neighbourhood courts, such entities were already allowed to appear before such courts as defendants. This new possibility does not affect the office of the neighbourhood judge and does not infringe the rights of the defence, or the right to a fair trial guaranteed by Article 16 of the declaration of the Rights of Man and of the Citizen of 1789.
(Decision nº 2004-510 DC, January 20th 2005, cons. 9, p. 41)

The provisions of the statute safeguarding companies which provide for the cases in which the liability of creditors agreeing to provide assistance may be brought into play does not infringe the right of the persons involved to bring proceedings for redress before a court. No infringement of Article 16 of the Declaration of 1789.
(Decision nº 2005-522 DC, July 22nd 2005, cons. 8, 10 to 13, p. 125)

LEGAL CERTAINTY

Adverse modification of a situation recognised by law

Parliament may at all times, when acting within the limits of its powers, modify or repeal previous statutes by replacing them, as the case may be, with other provisions. However when doing this, it cannot strip constitutional requirements of legal guarantees. In particular, it would infringe the guaranteed rights proclaimed in Article 16 of the Declaration of 1789 if it adversely modified situations recognised by law without such modifications being justified by sufficient reasons of general interest.

In the case in hand, Section 7 of the Finance Act 2006 which puts an end to tax exemption of interest paid on certain home-buyers saving schemes only concerns schemes which have reached their term. This does not have any retrospective effect. It does not therefore adversely

affect a situation recognised by law in conditions contrary to the guaranteed rights proclaimed by Article 16 of the Declaration of 1789.
(Decision n° 2005-530 DC, December 29th 2005, cons. 45 and 46, p. 168)

Announcement of a case law

New legislation

The participation of the national health insurance fund in the support fund set up for purchasing, storing and delivering products designed to prevent diseases connected with or treat persons exposed to certain health hazards does not, because of its mandatory nature, appear in the list of revenue which, under Section 17 of the Institutional Act of August 1st 2001 pertaining to Finance Acts, may contribute to the financing of a support fund.

However the general interest of constitutional value attached to protecting the health of the Nation justifies that the participation of the national health insurance fund in the support fund set up for implementing preventive measures, necessary in 2005 and 2006, should continue until the end of 2006. Sections 5 and 64 of the statute referred do not run counter to Section 17 of the Institutional Act of August 1st 2001, applicable as from the Finance Act 2006, and as such are not, in the current state of affairs, unconstitutional.

However, the financing of these measures must, starting in 2007, be made to comply with the new institutional requirements governing accounting procedures pertaining to the appropriation of revenue.
(Decision n° 2005-528 DC, December 15th 2005, cons. 23 and 24, p. 157)

Under Sections 7, 18 and 20 of the Institutional Act of August 1st 2001, applicable for the first time to the Finance Act 2006, missions may not comprise one sole programme. However, in order to give the relevant authorities the time needed to carry out the necessary adaptations and overcome the difficulties inherent in such reform, the compliance of "mono-programme" with the new institutional rules may only take effect starting in 2007. Subject to this qualification, they are not, at the present time, unconstitutional.
(Decision n° 2005-530 DC, December 29th 2005, cons. 24 to 27, 36 and 37, p. 168)

PRINCIPLES OF CRIMINAL LAW

Principle of necessity and proportionality in matters of criminal procedure

Principle of the tailoring of punishments to the characteristics of offenders

The statute which provides that the Public Prosecutor is not required to be present at the court hearing during which the President of the *Tribunal de Grande Instance* or the Judge delegate appointed by him rules on an application for approval of punishments in the framework of the criminal plea bargaining procedure, does not run counter to the principle of the tailoring of punishments to the characteristics of offenders which derives from Article 8 of the declaration of the Rights of Man and the Citizen of 1789.
(Decision n° 2005-520 DC, July 22nd 2005, cons. 1 to 3, p. 118)

Principle of legality of offences and punishments

No retrospective effect of criminal law

Scope of the principle

The principle that harsher provisions of criminal law cannot have any retrospective effect only applies to sentences and penalties intended to punish a person. Parliament could thus,

without infringing this principle, provide for the new system of "court-ordered surveillance" to apply to persons convicted for acts committed prior to the coming into force of the statute.

Firstly, court-ordered surveillance, which makes it possible to impose various obligations, in particular the placing under mobile electronic monitoring, at the time of the release from prison of a convicted person presenting a high risk of re-offending, is limited to the length of remission of sentence which this person has obtained and is a means of serving the sentence which was passed by the trial court.

Secondly, when ordered by the penalty enforcement judge, including when it involves placing a convicted person under mobile electronic monitoring, court-ordered surveillance is not based on the guilt of the convicted person, but on the dangerousness of the latter and is designed solely to prevent re-offending. It therefore is neither a punishment nor a sentence.
(Decision n° 2005-527 DC, December 8th 2005, cons. 10, 12 and 15, p. 153)

Presumption of innocence

No infringement

New Article 465-1 of the Code of Criminal Procedure provides that the *Tribunal correctionnel*, unless it decides otherwise and gives special reasons for its decision, shall issue a warrant of arrest for an accused person sentenced to a term of imprisonment for offences of a violent or sexual nature committed while re-offending. This measure in not incompatible with the presumption of innocence guaranteed by Article 9 of the 1789 Declaration once it is linked to a term of imprisonment passed by a court of criminal jurisdiction after the guilt of the accused has been proved in accordance with the law.

Neither is it excessive taking into account the seriousness of the offences involved and the aggravating circumstances of re-offending.
(Decision n° 2005-527 DC, December 8th 2005, cons. 2, 5 and 8, p. 153)

Right to a fair trial

The statute which provides that the Public Prosecutor is not required to be present at the court hearing during which the President of the *Tribunal de Grande Instance* or the Judge delegate appointed by him rules on an application for approval of punishments in the framework of the criminal plea bargaining procedure, does not run counter to the constitutional requirements pertaining to the right to a fair trial.
(Decision n° 2005-520 DC, July 22nd 2005, cons. 1 to 3, p. 118)

Rights of the Defence in criminal matters

No failure to respect the rights of the Defence

The statute which provides that the Public Prosecutor is not required to be present at the court hearing during which the President of the *Tribunal de Grande Instance* or the Judge delegate appointed by him rules on an application for approval of punishments in the framework of the criminal plea bargaining procedure, does not run counter to the constitutional requirements pertaining to the respecting of the rights of the Defence.
(Decision n° 2005-520 DC, July 22nd 2005, cons. 1 to 3, p. 118)

Enforcement of penalties

The new system of "court-ordered surveillance" which makes it possible to impose various obligations, in particular the placing under mobile electronic monitoring, at the time of the release from prison of a convicted person presenting a high risk of re-offending, constitutes a means of serving the sentence which was passed by the trial court, and is not a sentence or a penalty. Parliament could therefore, without infringing the principle whereby criminal law

should not have retrospective effect, provide for its application to persons convicted for acts committed before the coming into effect of the law. Although this measure does not have a punitive nature, the placing of a person under mobile electronic monitoring in the framework of court – ordered surveillance must however comply with the principle which derives from Articles 4 and 9 of the 1789 Declaration whereby the freedom of the person should not be subjected to unduly harsh restrictions. In the case in hand Parliament has taken sufficient precautions to ensure that no unduly harsh measures will be imposed on the persons involved.
(Decision n° 2005-527 DC, December 8th 2005, cons. 10 to 21, p. 153)

RIGHT TO LIFE AND PHYSICAL SAFETY

PROTECTION OF HEALTH

Protection of health

Application

Participation of persons paying social security contributions

A provision which merely adapts rules governing the charging of the patient's contribution to the fixed rate hospital charge in no way affects the amount of the participation to be borne by the person paying social security contributions during periods of hospitalisation. If, in the case in hand, the Government indicated, during Parliamentary debate, that this amount was to be changed, such a measure could only be taken by regulation, and not on the basis of Article L. 174-4 of the Social Security Code, which the disputed Articles modifies, but on that of those provisions which remain unchanged, namely of I of Article L. 322-2 and 1° of Article L. 322-3. The arguments claiming that the challenged Article infringes the right to health by unduly increasing this participation is therefore inoperative.
(Decision n° 2005-528 DC, December 15th 2005, cons. 10, p. 157)

Rights to decent means of existence. Indent 11 of the Preamble of 1946

Indent 11 of the Preamble of 1946 provides that the Nation "shall guarantee to all, notably to children, mothers and elderly workers, protection of their health, material security, rest and leisure". It is the task of Parliament to decide how best to implement the principle set forth.

In the case in hand, the statute referred does not infringe the right to health and rest of seafarers residing outside France. The very terms of Section 4 of the statute provide that seagoing vessels registered in the French International Register are subject to the rules governing health and safety at work applicable under French law, EC regulations and France's international undertakings. Sections 16 and 17 of this same statute limit the length of the working hours of seafarers not residing in France and provide for rest periods. Articles 20 and 21 specify the conditions for their repatriation, in particular in the event of illness or accident. The argument that indent 11 of the Preamble of 1946 has been infringed must therefore be dismissed.
(Decision n° 2005-514 DC, April 28th 2005, cons. 24, 25, 27 and 28, p. 78)

THE ENVIRONMENT

Promotion of sustainable development (Article 6)

Pursuant to Article 6 of the Charter for the Environment 2004 "Public policies shall promote sustainable development. To this end they shall reconcile the protection and enhancement of

the environment with economic development and social progress". It is up to Parliament, while respecting the principle of reconciliation laid down by these provisions, to determine the practical methods of the implementation thereof.

When passing section 4 of the statute pertaining to the creation of the French International Register, Parliament took steps to promote safety at sea and the protection of the environment. It did not therefore fail to comply with the requirements of Article 6 of the Charter for the Environment.
(Decision n° 2005-514 DC, April 28th 2005, cons. 37 and 38, p. 78)

Section 58 of the Programme Act laying down guidelines for energy policy pertaining to the implementation of a "contribution to the public electricity service" merely draws the consequences, in the context of exchanges within the European Community, of support policies introduced by Members States of the European Community in favour of renewable energies and cogeneration. Given the purpose thereof, it does not run counter to any of the interests mentioned in Article 6 of the Charter for the Environment whereby "Public policies shall promote sustainable development. To this end they shall reconcile the protection and enhancement of the environment with economic development and social progress".
(Decision n° 2005-516 DC, July 7th 2005, cons. 23 to 27, p. 102)

FREEDOM OF ENTERPRISE AND FREEDOM OF TRADE AND INDUSTRY

Freedom of enterprise

Applications

Social Law

According to the terms of the first indent of Article L. 122-14-4 of the Employment Code, as worded pursuant to paragraph V of Section 77 of the Social Cohesion Programming Act, it is the task of the judge, when asked to rule on such a matter, and after having held any dismissal to be void in the absence of any redeployment plan as provided for by Article L. 321-4-1 of said Code, to order that the employee be reinstated in his job unless this prove impossible.

Parliament has given various examples of such impossibility, such as the closing down of a site, or the lack of any similar post suitable for the employee involved.

Parliament has thus reconciled the right of everyone to obtain employment, from which the right of dismissed employees to replacement directly derives, and freedom of enterprise, which the reintegration of dismissed employees might adversely affect, and when so doing did not commit any patent error flawing such reconciliation.
(Decision n° 2004-509 DC, January 13th 2005, cons. 26 and 28, p. 33)

FREEDOM OF CONTRACT

No application

Taxation

Tax exemption provided for by Parliament of interest paid on certain home-buyers saving schemes is not a contractual provision of this scheme. The argument whereby the putting an end to such an exemption adversely affects the general structure of contracts entered into in accordance with the law is therefore is not supported by the facts.
(Decision n° 2005-530 DC, December 29th 2005, cons. 44, p. 168)

LABOUR LAW

Principle

It is the duty of Parliament, when exercising the powers it enjoys under Article 34 of the Constitution, to determine the fundamental principles of Labour Law, to ensure the implementation of the social and economic principles set out in the Preamble of 1946, and to reconcile the same with constitutionally guaranteed freedoms. Parliament may, in order to best ensure the right of each person to obtain employment, in accordance with indent 5 of the Preamble of 1946, impose certain restrictions on freedom of enterprise to comply with this constitutional requirement, provided that this leads to no disproportionate infringement of said freedom with respect to the objective pursued.
(Decision n° 2004-509 DC, January 13th 2005, cons. 24, p. 33)

Right to rest

Although it is the duty of Parliament when exercising the powers vested in it to lay down rules best suited to ensuring, in accordance with indent 5 of the Preamble of 1946, the right of each man to employment, while extending the benefit of this right to the greatest number, Parliament may at all times freely decide as to the opportuneness of amending or repealing previous statutory provisions by, when necessary, replacing them by other provisions. It was thus free to extend the contractual system of laying down a predetermined number of working days in a year to non-executive employees as long as it did not by so doing deprive of statutory guarantees the constitutional requirements concerning the right to health and the right to rest of these employees derived from paragraph eleven of the 1946 Preamble. In the case in hand Parliament set out a body of conditions which meet these requirements.
(Decision n° 2005-523 DC, July 29th 2005, cons. 5 to 7, p. 137)

PARTICIPATION OF WORKERS IN COLLECTIVE DETERMINATION OF WORKING CONDITIONS AND MANAGEMENT OF FIRMS

Collective bargaining

Principle

Parliament is free, after having defined the rights and duties attached to working conditions and employer-employee relationships, to leave it to employers and their employees, or their representatives organisations, to specify, in particular through the collective bargaining process, the practical methods of application of the norms which it lays down.

It was therefore able, without in any way adversely affecting the contents of collective agreements already entered into, to leave to branch contracts, collective agreements or enterprise agreements the task of setting out detailed rules for applying the provisions which extend the contractual system of laying down a predetermined number of working days in a year to non-executive employees and of defining the categories of employees involved.
(Decision n° 2005-523 DC, July 29th 2005, cons. 8 and 9, p. 137)

FAMILY LAW

Right to a normal family life

Principle

Indent 10 of the Preamble to the Constitution of 1946 provides that: "The Nation shall provide the individual and the family with the conditions necessary for their development". The

consequence of this provision is that foreigners who live in France in a stable and permanent manner are entitled, just as are French Nationals, to lead a normal family life.

However no principle or rule of constitutional value confers upon foreigners general and absolute rights to enter and stay on French territory. It is the task of Parliament to reconcile the safeguarding of public order, which is an objective of constitutional value, with the right to lead a normal family life.
(Decision nº 2005-528 DC, December 15th 2005, cons. 13 and 14, p. 157)

No infringement of this right

The family reunification procedure established by Book IV of the Code for the Entry and Installation of Foreign Nationals and the Right of Asylum is a statutory guarantee of the right of foreigners who live in France in a stable and permanent manner to lead a normal family life. This procedure neither runs counter to indent 10 of the Preamble to the Constitution of 1946, nor infringes the principle of equality, once it provides for adequate and proportional rules. In particular it does not preclude derogating from the rule whereby family reunification may only be applied for with regard to children residing outside France when such an application is made. When passing the disputed provision, Parliament intended to avoid the granting of family allowances for children entering France without compliance with the rules of family reunification, thus rendering such a procedure ineffective, insofar as it might encourage foreign Nationals to have their children come to France without any verification of their ability to offer them the decent living and housing conditions which normally prevail in France, the host country. When making such an appreciation, Parliament did not manifestly fail to reconcile the various constitutional requirements involved.

The distinction established by Parliament between children who entered France in the framework of the family reunification procedure and those who entered without complying with the rules governing this procedure are directly related to the objective which Parliament seeks to attain. The argument based on a breach of the principle of equality is thus dismissed.

However, when, in the framework of family reunification proceedings, the situation of a child who has already entered France is regularised, this child shall carry an entitlement to family allowances.
(Decision nº 2005-528 DC, December 15th 2005, cons. 15 to 18, p. 157)

PRINCIPLE OF EQUALITY

EQUALITY BEFORE THE LAW

Principle

The principle of equality does not preclude Parliament from treating different situations in different ways, nor from derogating from the principle of equality in the general interest provided that in each case the resulting difference of treatment is directly related to the purpose of the statute providing for such different treatment.
(Decision nº 2004-509 DC, January 13th 2005, cons. 17, p. 33; decision nº 2005-516 DC, July 7th 2005, cons. 16, p. 102 and decision nº 2005-514 DC, April 28th 2005, cons. 30, p. 78)

Respect for the Principle of Equality: no unjustified discrimination

Situation of Foreigners

The distinction established by Parliament between children who have entered France under the family reunification procedure and those entering without complying with this procedure

is in keeping with the objective pursued. The argument based on the infringement of the principle of equality is thus dismissed.
(Decision nº 2005-528 DC, December 15th 2005, cons. 17, p. 157)

Respect for the principle of equality: different treatment justified by a different situation

Section 58 of the Programme Act laying down guidelines for energy policy provides firstly, for the refunding to consumers of renewable electricity imported from another EU Member State of that part of the contribution to the public electricity service corresponding to the financial support for renewable energies and, secondly, the taxing of those exporting renewable electricity to another EU Member State, to the extent thereof. These provisions merely draw the necessary consequences, in the framework of intercommunity exchanges, of the support policies introduced by Members States of the European Community to encourage renewable energies and cogeneration. They thus aim at re-establishing conditions of equality in competition. There is thus no infringement of the principle of equality.
(Decision nº 2005-516 DC, July 7th 2005, cons. 22 to 24, p. 102)

Parliament has created a charge inuring to the benefit of creditors who agree to give debtors further funding by supplying new goods or services in the framework of an agreement of which the approval terminates the conciliation procedure, in order to incite them, irregardless of their status, to supply companies in financial difficulties with assistance needed for the survival of their business. With this purpose in mind, creditors who take the risk of agreeing to provide further assistance, either as contributions in cash or by supplying goods or services, find themselves in a different position from those of creditors who merely agree to waive existing debts. No infringement of the principle of equality.
(Decision nº 2005-522 DC, July 22nd 2005, cons. 2 to 6, p. 125)

Social law

Under sections 13, 16 and 26 of the statute pertaining to the creation of the French International Register the rules for paying seafarers residing outside France, whether governing the payment of a minimum wage or overtime, and the health and welfare cover of these seafarers are different from those applicable to seafarers residing in France.

The argument based on the infringement of the principle of equality must nevertheless be dismissed. Firstly, a vessel flying the French flag cannot be considered as a part of French territory. Seafarers residing outside France employed on board a seagoing vessel registered in said Register cannot avail themselves of all rules pertaining to the territorial application of French law. Secondly, as regards pay and health and welfare cover, these seafarers are not in the same situation as their counterparts who reside in France, taking into account the economic and social conditions of the country which is the centre of their material and moral interests. In view of this objective difference in their situation, Parliament was free to apply to them minimal rules which differed from those provided for seafarers residing in France. The resulting different treatment is directly related to the purpose of the statute which is to promote the French flag by improving its competitive nature for seagoing vessels.
(Decision nº 2005-514 DC, April 28th 2005, cons. 32 to 35, p. 78)

Length of working hours

In order to specify what is meant by the expression "actual length of working hours" found in indent 1 of Article L. 212-4 of the Employment Code, Parliament provided that the time needed for an employee to travel from his home to a workplace other than his normal workplace is not to be considered as being actual working hours. It has however provided for the payment of a compensation in consideration of the extra time needed to travel to this other workplace and has also provided that the time required to travel this distance must not entail any loss of salary when it coincides with normal working hours. It thus based these provisions on objective and rational criteria identical for all employees and directly related to the purpose of this measure. Consequently the fact that this compensation may be different for employees who have their home situated nearer or further away from their normal workplace

does not constitute any infringement of the principle of equality, since the difference involved results from a different situation directly connected with their right to freely choose their place of residence.
(Decision n° 2004-509 DC, January 13th 2005, cons. 18 to 19, p. 33)

Law of the environment

The features and the impact on the environment of installations used by those who harness the wind to produce energy mean that the latter are in a different position from those who produce energy from other sources. Hence a provision which attaches new conditions to the obligation to buy electricity produced by this source of energy does not constitute an infringement of the principle of equality.
(Decision n° 2005-516 DC, July 7th 2005, cons. 14 to 17, p. 102)

The installation of windmills on the public maritime domain entails particular constraints connected both with the rules relating to the occupation of this domain and the substantial volume, cost and duration of work needed to dismantle such installations and restore the site to its original state at the end of such operations. Parliament was thus founded in requiring operators of such installations to provide stricter financial guarantees than those required of other wind energy producers. No infringement of the principle of equality.
(Decision n° 2005-516 DC, July 7th 2005, cons. 19 to 21, p. 102)

Considerations of general interest justifying different treatment

Applications

Employment

No principle or rule of constitutional value prohibits Parliament from taking steps designed to assist persons confronted with particular difficulties.

Parliament could therefore, in order to facilitate the recruitment of young persons under twenty six, authorise the Government to take specific steps as regards the rules governing the counting of employees. The different treatment which may result from the challenged measure serves a purpose in the general interest which it is up to Parliament to appreciate, and as such, does not run counter to the Constitution.
(Decision n° 2005-521 DC, July 22nd 2005, cons. 13, p. 121)

EQUALITY BEFORE COURTS OF LAW

Courts of Law

Courts

Composition of Courts

The statute which provides that the Public Prosecutor is not required to be present at the court hearing during which the President of the *Tribunal de Grande Instance* or the Judge delegate appointed by him rules on an application for approval of punishments in the framework of the criminal plea bargaining procedure has not infringed the principle of equality before the law.
(Decision n° 2005-520 DC, July 22nd 2005, cons. 1 to 3, p. 118)

Persons involved in legal proceedings

Equality of guarantees for persons involved in legal proceedings

Rights of the defence

Parliament make lay down rules of procedure which differ according to the facts, situations and persons involved, provided that these differences are not based on unjustified discrimination and that all persons involved in legal proceedings enjoy equal guarantees, in particular as regards respects for rights of the defence, which implies in particular the right to a fair trial for all.

Firstly, persons involved in criminal proceedings are tried by a Bench of judges in the *Tribunal correctionnel* which, irregardless of the judges sitting on the Bench, applies the same rules of procedure and the same substantive rules of law.

Secondly, the leeway granted to the president of the *Tribunal de grande instance* to draw up a list of neighbourhood judges likely to sit on the Bench is designed to enable him to chose the person best suited to carrying out this task; it does not deprive the person being tried by the court of any guarantee.

This method of appointment makes it possible to take into account the availability of neighbourhood judges and is designed to ensure the proper conduct of the machinery of justice. The order determining the Bench on which they sit will moreover be issued after consultation of the General Assembly of trial judges of the court involved, pursuant to Articles L. 710-1 and R. 311-23 of the Code of Judicial Organisation.
(Decision n° 2004-510 DC, January 20th 2005, cons. 22 to 25, p. 41)

EQUALITY OF PUBLIC BURDEN-SHARING

Equality before taxation

Principle

Article 13 of the Declaration of the Rights of Man and the Citizen would not be respected if taxation were to be of a confiscatory nature or subjected a certain category of taxpayers to an excessive burden in comparison with their ability to pay taxes.
(Decision n° 2005-530 DC, December 29th 2005, cons. 65, p. 168)

System of taxation

Section 74 of the Finance Act 2006 caps the amount of money a tax household shall pay in direct taxes. Its II inserts in the General Tax Code a new Article 1 whereby "direct taxes paid by a taxpayer shall not exceed 60 % of his income".

In its principle this Article, far from running counter to the principle of equality before taxation, is designed to avoid a manifest infringement of the principle of equality of public burden-sharing. The requirement laid down by Article 13 of the Declaration of the Rights of Man and the Citizen of 1789 would indeed not be complied with if taxation were to be of a confiscatory nature or subjected a certain category of taxpayers to an excessive burden in comparison with their ability to pay taxes.
(Decision n° 2005-530 DC, December 29th 2005, cons. 61, 65 and 66, p. 168)

Section 74 of the Finance Act 2006 caps the amount of money a tax household shall pay in direct taxes. Its II inserts in the General Tax Code a new Article 1 whereby "the amount of direct taxes paid by a taxpayer shall not exceed 60 % of his income" and at the same time inserts a new article 1649-0 A in the same Code creating a right to restitution of that fraction of taxation exceeding this amount and determines the direct taxes and categories of income which are taken into consideration for the computation of these taxes.

Neither the determining of that part of income beyond which payment of direct taxes carries a right to restitution nor the definition of income taken into consideration for computation, nor the methods employed to effect restitution are inappropriate for achieving the objective laid down by Parliament, namely that taxation should not be of a confiscatory nature or subject a certain category of taxpayers to an excessive burden in comparison with their ability to pay taxes.
(Decision n° 2005-530 DC, December 29th 2005, cons. 61 to 63 and 67, p. 168)

Taxpayers

Levy on energy consumption

The capping of the amount due as a contribution to the public electricity service was fixed on the basis of an objective criterion, namely the amount of added value produced by enterprises on which such a tax is levied. As is shown by Parliamentary debate and preliminary work, it is designed to preserve the competitiveness of small and medium size business concerns which consume large amounts of electricity and to safeguard jobs. The capping in terms of absolute value fixed by I of section 5 of Act n° 2000-108 of the february 10th 2000 is intended to re-establish equality in conditions of competition in the same sector between small, medium and large sized businesses which consume large amount of electricity. The argument raised must be dismissed.
(Decision n° 2005-516 DC, July 7th 2005, cons. 29, p. 102)

Tax benefits

It appears from parliamentary debate that in order to ensure the development of business concerns and safeguard employment, Parliament wished to stabilise corporate capital. To this end, new Article 885 I quarter of the General Tax Code encourages employees and officers of a company to become shareholders, with the shares they hold not falling into the category of professional assets exempt from the wealth tax pursuant to Article 885 O bis of the General Tax Code. These new tax benefits are designed to incite both current corporate officers and employees, and former corporate officers and employees who have retired, to keep the shares they hold. Given the conditions laid down as to the length of time these shares must be held, fixed at six years, and the clear connection between these shareholders and the company whose shares they hold, the partial tax exemption provided for is based on objective and rational criteria directly connected with the objectives pursued by Parliament. No infringement of the principle of equality.
(Decision n° 2005-530 DC, December 29th 2005, cons. 47 and 49, p. 168)

Exemption threshold

It appears from parliamentary debate that in order to ensure the development of business concerns and safeguard employment, Parliament wished to stabilise corporate capital. To this end, new Article 885 I quarter of the General Tax Code introduced an exemption from the wealth tax of three quarters of the value of shares held both by current corporate officers and employees and by former corporate officers and employees who have retired. Taking into consideration the general interest objectives underlying this measure, Parliament, using its power of appreciation, was at liberty to determine as it saw best the threshold of this new tax exemption, the treatment of which remains quite distinct from that applicable to professional assets. As a co-ordinating measure, it was also free to fix the same exemption threshold, pursuant to Article 885 I bis of the General Tax Code, for persons who collectively undertake to keep the shares which they own.
(Decision n° 2005-530 DC, December 29th 2005, cons. 47, 49 to 51, p. 168)

ELECTIONS

ELECTORATE, ELIGIBILTY, PRE-ELECTORAL PROCESS

Pre-electoral process

Persons standing for election

Late withdrawal of candidacy

Judicial investigations show that M.S did not withdraw his candidacy in the conditions laid down for such withdrawals by the combined provisions of Articles L. 157 and P. 100 of the Electoral Code. His name thus quite properly appeared on the list of persons standing for election registered by the Prefect of the Department of Gironde on October 22nd 2004. He must thus be considered as having stood for election during the first round of the Parliamentary election which was held in the 2nd constituency of said Department.
(Decision nº 2005-3403, June 22nd 2005, A.N, Gironde, 2e circ. cons. 1, p. 98)

ELECTIONEERING PROPAGANDA

Electioneering media

Press

The written Press is free to write about electoral campaigns as it sees fit. Articles published in the regional press informing readers of a new proposal made by a communist candidate did not, either by their contents or the date of their publication, vitiate the fairness of the electoral process.
(Decision nº 2005-3407, July 29th 2005, Sénat, Haute-Corse, cons. 2, p. 140)

Radio-Television

The repeating by a local radio of statements made by a candidate in the regional press was part of a general body of information concerning the electoral campaign and did not introduce any new element into the electoral debate. It did not therefore in any way influence the outcome of voting.
(Decision nº 2005-3407, July 29th 2005, Sénat, Haute-Corse, cons. 3, p. 140)

ELECTORAL OPERATIONS

Proceedings during the ballot

Polling booths

Numerous voters were authorized to cast their vote outside polling booths, thus disregarding the provisions of the Electoral Code designed to guarantee the secrecy of the ballot, and these irregularities continued despite the observations made by the judge delegated by the Consti-

tutional Council, who was thus unable to ensure that voting took place in the prescribed manner. All the votes cast in the polling station involved were declared null and void.
(Proclamation of the results of the referendum of May 29th 2005, June 1st 2005, cons. 2, p. 95)

Lists of voters

Signatures

Voters were not invited to sign the list of voters, despite the fact that this obligation is designed to allow monitoring of the electoral process and ensure the fairness of the latter. This irregularity continued notwithstanding the observations made by the judge delegated by the Constitutional Council. All the votes cast in the commune involved were held to be null and void.
(Proclamation of the results of the referendum of May 29th 2005, June 1st 2005, cons. 4, p. 95)

Specific voting procedures

Proxy voting

Particular cases

Hospices, hospitals, various communities

Under Article L. 71 of the Electoral Code "On request, the following persons may exercise their right to vote by proxy: ... c) persons in preventive custody and prisoners serving sentences which do not deprive them of their right to vote".

If the person making the referral states that prisoners entitled to vote were not given the opportunity of exercising this right, he does not prove that the foregoing provisions of Article L. 71 of the Electoral Code were not complied with.
(Decision nº 2005-3409, October 13th 2005, A.N Hauts-de-Seine, 13e circ. cons. 1 and 2, p. 149)

Sorting and counting of votes

Counting votes cast

Organization of sorting and counting

The destruction of ballot papers despite a contestation of the regularity of the sorting and counting of votes prevents the Constitutional Council from reaching any decision as to the regularity of the voting process.

All the votes cast in the polling station involved were held to be null and void
(Proclamation of the results of the referendum of May 29th 2005, June 1st 2005, cons. 5, p. 95)

SENATE ELECTIONS

Electoral operations

Proceedings during the ballot

Access to voting room

The official whose presence in the voting room was contested had been appointed in accordance with Article R. 157 of the Electoral Code which provides that the supervision of

ballot papers is carried out by an employee appointed by the Committee provided for in the first indent of said Article.
(Decision n° 2005-3407, July 29th 2005, Sénat, Haute-Corse, cons. 5, p. 140)

Polling booth

The argument that some twenty votes cast their vote outside the polling booth is not accompanied by any precise details making it possible to decide whether this allegation is founded. No observation on this point, nor on any other point, is to be found in the official record of voting operations.
(Decision n° 2005-3407, July 29th 2005, Sénat, Haute-Corse, cons. 7, p. 140)

Delegates unable to cast their vote – Alternate voters

Order of precedence of alternate voters

Articles L. 288 and L. 289 of the Electoral Code provide that when a delegate whose name is entered on the list of those voting is unable to cast his vote, the next alternate voter in the order prescribed by said Articles shall vote in his stead, unless this alternate voter is also unable to vote. Judicial investigations have shown that, contrary to the allegations made by the applicant, these provisions were duly complied with as regards the twelve alternate voters of the communal delegates who were allowed to cast their votes.
(Decision n° 2005-3407, July 29th 2005, Sénat, Haute-Corse, cons. 6, p. 140)

LITIGATION

Submittals and arguments

Requalification of submittals

An application calling into question the communicating to voters of the explanatory memorandum of the Bill authorizing the ratification of the Treaty establishing a Constitution for Europe and petitioning the Constitutional Council to order the competent authorities to refrain from proceeding to communicate such information is considered as being aimed at obtaining the setting aside of Article 3 of the Decree organising the holding of the referendum insofar as it implicity makes provision for making the disputed document available to voters.
(Decision de Villiers and Peltier, April 7th 2005, cons. 1 and 2, p. 61)

Arguments

Arguments not supported by the facts

The argument based on the allegation that the ballot box was not transported in accordance with the requirements laid down by the first indent of Article 63 of the Electoral Code is not supported by the facts.
(Decision n° 2005-3407, July 29th 2005, Sénat, Haute-Corse, cons. 4, p. 140)

Arguments unsubstantiated by evidence

Arguments based on allegations that two polling stations were not properly constituted, that twenty voters cast their votes outside the polling booth and that twenty ballot papers should have been held to be null and void were not substantiated by any evidence making it possible to decide whether said allegations were founded or unfounded.
(Decision n° 2005-3407, July 29th 2005, Sénat, Haute-Corse, cons. 7, p. 140)

Dismissal without any judicial investigation of a reference failing to show that L. 71 of the Electoral Code was not complied with in relation to voting by proxy by prisoners entitled to vote.
(Decision n° 2005-3409, October 13th 2005, A.N., Hauts-de-Seine, 13e circ., cons. 2, p. 149)

Judicial Investigation

General powers of investigation

Dismissal without any prior investigation *audi alteram partem*

Dismissal without any investigation of a referral failing to show that Article L. 71 of the Electoral code was not complied with in relation to voting by proxy by prisoners entitled to vote.
(Decision n° 2005-3409, October 13th 2005, A.N., Hauts-de-Seine, 13e circ., cons. 2, p. 149)

Joining together of cases

A collective declaration of ineligibility concerning three candidates in the same constituency, two of them having failed to file their campaign accounts or provide an attestation of no expenditure or revenue drawn up by a financial agent, the third having filed accounts out of time.
(Decision n° 2005-3404/3405/3406, June 22nd 2005, A.N, Gironde, 2e circ., cons. 1 to 3, p. 100)

CAMPAIGN ACCOUNTS

Filing of accounts

Duty to file accounts. Capacity as candidate

Judicial investigations show that M.S did not withdraw his candidacy in the conditions laid down for such withdrawals by the combined provisions of Articles L. 157 and R. 100 of the Electoral Code. His name thus quite properly appeared on the list of persons standing for election registered by the Prefect of the Department of Gironde on October 22nd 2004. He must thus be considered as having stood for election during the first round of the Parliamentary election which was held in the 2nd constituency of said Department.
(Decision n° 2005-3403, June 22nd 2005, A.N, Gironde, 2e circ. cons. 1, p. 98)

Time allotted for filing accounts

Ineligibility

Failure to file accounts. Ineligibility.
(Decision n° 2005-3401, March 10th 2005, A.N. Gard, 5e circ., cons. 1 to 3, p. 49)

Declaration of ineligibility concerning three candidates who failed to file their campaign accounts within the time allotted by Article L. 52-12 of the Electoral Code and failed to provide an attestation of no expenditure or revenue drawn up by a financial agent.
(Decision n° 2005-3404/3405/3406, June 22nd 2005, A.N, Gironde, 2e circ., cons. 3, p. 100)

Failure to file campaign accounts or to provide an attestation of no expenditure or revenue drawn up by a financial agent. Ineligibility.
(Decision n° 2005-3408, July 13th 2005, A.N, Yvelines, 8e circ., cons. 3, p. 116)

Conditions for filing accounts

An account showing neither revenue or expenditure

A candidate sent the National Committee for Campaign Accounts and Political Financing a letter attesting that he had not incurred any expenditure nor received any revenue in relation with his standing for election, said attestation was not drawn up by a financial agent contrary to the provisions of Article L. 52-12 of the Electoral Code. Ineligibility.
(Decision n° 2005-3403, June 22nd 2005, A.N, Gironde, 2e circ., cons. 4, p. 98)

Content of accounts

Expenditure

Expenditure paid directly (Art. L. 52-4)

Although for practical reasons, it may be tolerated that a candidate pay minor items of expenditure after appointing a financial agent, such payments must only be of a small amount in comparison with overall campaign expenditure and negligible as regards the ceiling placed on expenditure by Article L. 52-11 of the Electoral Code. In the case in hand, expenditure directly paid by the candidate after the declaration of his electoral financing association represented 22 % of the overall expenditure recorded in his campaign account and 19 % of the ceiling. The fact that a checkbook was only given to this association after some considerable time had elapsed is an inoperative argument. Ineligibility.
(Decision n° 2005-3402, March 10th 2005, A.N., Paris, 15e cir., cons. 1 to 4, p. 51)

PUBLIC AND SOCIAL FINANCE

INITIATIVES IN FINANCIAL MATTERS

Scope of Article 40 of the Constitution

Proceedings for examining the financial admissibility of an amendment, which make it possible to verify whether such an amendment conforms to Article 40 the Constitution, should be carried out when such an amendment is tabled.
(Decision n° 2005-519 DC, July 29th 2005, cons. 28, p. 129)

The procedures for examining admissibility provided for by the rules of the National Assembly, which are followed when amendments are tabled, make it possible to check whether such amendments conform to Article 40 of the Constitution.

In such conditions, the changes made to the rules of the National Assembly to allow the applicability of the new rules as to admissibility under the Acts of August 1st 2001 and August 2nd 2005 pertaining to Finance Acts and Social Security Financing Acts are not unconstitutional.
(Decision n° 2005-526 DC, October 13th 2005, cons. 7, p. 144)

TAXES AND LEVIES

Taxes

Appropriation of taxes to Social Security

Under Sections 2, 34, 36 and 51 of the Institutional Act of July 25th 2001, statute law can only appropriate taxes of whatsoever kind to a third party in the framework of a public service

mission which this party is required to perform, on the threefold condition that the Finance Act for the year involved authorises the levying of such taxes, that when these taxes have been instituted for the benefit of the State, a Finance Act makes the necessary appropriation, and lastly that the Finance Bill for the year involved be accompanied by an Explanatory memorandum setting out the list and evaluation of such taxation.

Directly appropriating such taxes to Social Security and other special funds in order to set off the reduction of certain health and welfare contributions complies with the foregoing provisions, once the main task of these bodies is to manage a public service, that the collection and appropriation of these taxes, levied to the benefit of the State, were authorised by the Finance Act 2006, and lastly that the list and evaluation thereof appear in the Schedules of both the Social Security Financing Bill and the Finance Bill.
(Decision n° 2005-530 DC, December 29th 2005, cons. 57 and 58, p. 168)

CHARGES LEVIED FOR SERVICES SUPPLIED

Meaning of charges levied

If the fixing of rules pertaining to the calculation of the tax base, rate of taxation and methods of collection of all sorts of taxes has been entrusted to Parliament by Article 34 of the Constitution, the latter does not leave it to statute law to create a charge or determine the conditions applicable to a charge levied to cover the costs of a public service or the expenses incurred in setting up or maintaining a public service or the use of a public installation. (comp. 76-92 L, October 6th 1976, cons. 1)
(Decision n° 2005-513 DC, April 14th 2005, cons. 14, p. 67)

Charges levied

Modulation of charges levied

It is up to the management of a public service, using the revenues from this service, to see to the maintenance, extension and improvement of equipment made necessary by changing circumstances of fact and law, in particular by an increase in the number of people using such a service. Consequently, the taking into consideration, when calculating the amount of charges to be levied, of return on capital invested and present and future expenditure connected with infrastructures or new installations before their coming into service does means that these charges cease to be charges levied in return for services supplied.

The nature of levies charged for services supplied remains unchanged in the event of the fixing of different applicable tariffs for one and the same service provided to the users of a public service or installation, when there exists between these users objective differences in situation justifying a sliding scale of charges or when this sliding scale is imposed in the general interest in connection with the operating conditions of the service or installation.
(Decision n° 2005-513 DC, April 14th 2005, cons. 15 and 16, p. 67)

Set-off between charges levied

A limited set off may be organized between the various charges levied without the latter losing their status of charges levied for services supplied, once the services for which they constitute payment contribute to providing the same overall service, and that the total proceeds thereof do not exceed the cost of the services supplied.
(Decision n° 2005-513 DC, April 14th 2005, cons. 17, p. 67)

General rules governing discussion of Finance Bills

Informing Parliament

The list and evaluation of the various taxes directly appropriated to Social Security and other special funds in order to set off the reduction of certain health and welfare contributions appeared in the Schedules of both the Social Security Finance Bill and the Finance Bill. These documents enable Parliament to have all the necessary information in its possession when voting on the set-offs involved.
(Decision n° 2005-530 DC, December 29th 2005, cons. 58, p. 168)

Exercising of budgetary review

Reviewing the management of public finances

General Schedules and Explanatory Schedules

The documents to be appended to the Finance Bill under Sections 51 and 54 of the Institutional Act of August 1st 2001 should enable Parliament to have all the necessary information in its possession before voting, and to review *a posteriori* the use made of the authorisations requested of it. Performance indicators in these documents should not be tainted with inaccuracy.

Such inaccuracy has not been proved as regards the Finance Act 2006. Although some delays and shortcomings have been noted and must be rectified in the future, they are not such, either by their number or extent, as to call into question the legality of all of the parliamentary proceedings involved.
(Decision n° 2005-530 DC, December 29th 2005, cons. 3 to 5, p. 168)

Budgetary universality

Appropriation of revenue. Principle of no merger

Exceptional appropriation of revenue

Under sections 34 and 35 of the Institutional Act pertaining to Finance Acts of August 1st 2001 as amended, the surpluses of which the Finance Act for the year and, as may be, any rectifying Finance Act, must determine the methods of utilisation, are those likely to be ascertained at the end of the financial year by deducting from the proceeds of all taxes of whatsoever kind levied in favour of the State the total provided for by the initial Finance Act. When passing an Institutional Act, Parliament did not intend to allow specific rules to be envisaged for using the surpluses thus ascertained as regards a specific category of revenue. By laying down a specific rule governing the use of surpluses resulting from taxation of oil, irrespective of the features of the latter, Parliament failed to comply with the provisions of the Institutional Act.
(Decision n° 2005-530 DC, December 29th 2005, cons. 40 and 41, p. 168)

Revenue not appearing in the budget

Under Sections 2, 34, 36 and 51 of the Institutional Act of July 25th 2001, statute law can only appropriate taxes of whatsoever kind to a third party in the framework of a public service mission which this party is required to perform, on the threefold condition that the Finance Act for the year involved authorises the levying of such taxes, that when these taxes have been instituted for the benefit of the State, a Finance Act makes the necessary appropriation, and

lastly that the Finance Bill for the year involved be accompanied by an Explanatory memorandum setting out the list and evaluation of such taxation.

Directly appropriating such taxes to Social Security and other special funds in order to set off the reduction of certain health and welfare contributions complies with the foregoing provisions, once the main task of these bodies is to manage a public service, that the collection and appropriation of these taxes, levied to the benefit of the State, were authorised by the Finance Act 2006, and lastly that the list and evaluation thereof appear in the Schedules of both the Social Security Finance Bill and the Finance Bill.
(Decision n° 2005-530 DC, December 29th 2005, cons. 57 and 58, p. 168)

Special Treasury Accounts

Special appropriation accounts

Section 21 of the Institutional Act of August 1st 2001 provides that "operations of everyday management" are excluded from expenditure recorded in the special appropriation account pertaining to financial holdings of the State.

The terms of the same Section 21 and parliamentary debate prior to its passing show that by requiring that revenue of a special appropriation account be "in essence directly related" to expenditure, the Institutional Act intended to restrict the possibilities of derogating from the principle of non-appropriation of revenue to expenditure. Without seeking to impede compliance with the requirements of good management of public resources, this statute defined the possibility of appropriating revenue to an item of expenditure in the framework of a special appropriation account in a more restrictive manner than under the terms of Ordinance n° 59-2 of January 2nd 1959.

However, in the case in hand, the operations which the Finance Act 2006 enters as expenditure, which are not of a recurrent nature, cannot be deemed to constitute everyday management operations. They are directly related to revenue coming from the sale of assets, only the expenditure inherent in these operations and intrinsically linked to the proceeds thereof are chargeable to the account. Entering them as expenditure in the account is justified by the requirement of good management of public resources. In these conditions, the argument must be dismissed.
(Decision n° 2005-530 DC, December 29th 2005, cons. 31 to 33, p. 168)

Revenue of the special appropriation account "Automatic monitoring and punishment of offences under the Highway Code" is not in essence directly related to expenditure incurred by the Government's decision to allow credit institutions a set-off for loans taken out with a view to funding driving lessons on order to obtain a driving licence. Section 21 of the Institutional Act pertaining to Finance Acts of August 1st 2001, which requires that revenue of a special appropriation account be "in essence, directly related" to expenditure has thus not been complied with.
(Decision n° 2005-530 DC, December 29th 2005, cons. 34 and 35, p. 168)

Support Fund

General rules

The participation of the national health insurance fund in the support fund set up for purchasing, storing and delivering products designed to prevent diseases connected with or treat persons exposed to certain health hazards does not, because of its mandatory nature, appear in the list of revenue which, under Section 17 of the Institutional Act of August 1st 2001 pertaining to Finance Acts, may contribute to the financing of a support fund.

If the general interest of constitutional value attached to protecting the health of the Nation justifies not finding that, in the present circumstances, this failure to comply with the Institutional Act of August 1st 2001, renders Sections 5 and 64 of the Finance Act 2006 unconstitutional, the financing of these measures must, starting in 2007, be made to comply

with the new institutional requirements governing accounting procedures pertaining to the appropriation of revenue.
(Decision nº 2005-528 DC, December 15th 2005, cons. 23 and 24, p. 157)

Contents and presentation of Finance Bills

Provisions which should appear in Finance Acts

The Decree pertaining to the referendum campaign is not intended to result in, and shall not result in increasing the credits voted by Parliament in the framework of the Finance Act for 2005. The expense resulting for the State from the application of Articles 8 to 10 of said Decree shall be charged to the credits fixed by the initial Finance Act for 2005, amended if need be by a Finance Act. The argument that the challenged Decree encroaches upon the reserved domain of Finance Acts must therefore be dismissed.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 19, p. 56)

Provisions which may not appear in a Finance Act

Provisions which are foreign to the scope of Finance Acts as determined by the Institutional Act of August 1st 2005 are those which do not concern State resources, burdens, funds, loans, debt, guarantees or accounting, which do not deal with taxes of all kinds appropriated to legal entities other than the State, which are not designed to distribute grants to territorial units or approve financial agreements, which do not concern the financial liability of public service staff or information for or review by Parliament of management of public finances.
(Decision nº 2005-530 DC, December 29th 2005, cons. 103, p. 168)

Territorial units

Section 105 of the Finance Act 2006, which is intended to enable regional councils to delegate to certain public establishments other than 'local'ones, the management of advances which they grant to certain business concerns, and Section 148 of the same statute, which provides that assets appropriated to the housing of students and belonging to a public establishment may be transferred to Communes or public establishments of cooperation between Communes which undertake to renovate or rehabilitate such housing, are foreign to the scope of Finance Acts as determined by the Institutional Act of August 1st 2001 pertaining to Finance Acts. They have thus been passed by a procedure which is unconstitutional.
(Decision nº 2005-530 DC, December 29th 2005, cons. 101 to 103, p. 168)

Missions and programmes

Perimeter of missions

Under Section 7 of the Institutional Act pertaining to Finance Acts of August 1st 2001: "Credits opened by Finance Acts to cover each item of budgetary expenditure of the State shall be grouped together by missions placed under the authority of one or more services of one or more Ministries. A mission comprises a group of programmes contributing to a defined public policy. Only a provision of a Finance Act initiated by the Government may create a mission".

It is the task of the Government to define the perimeter of missions depending on the public policies being implemented. It is also up to the government to chose whether or not to set up such missions using credits from one or more Ministries.

In the case in hand, the criteria upon which the definition of the missions called into question rests are not flawed by any manifest error of appreciation.
(Decision nº 2005-530 DC, December 29th 2005, cons. 13 and 14, p. 168)

Structure of missions

Under Sections 7 and 47 of the Institutional Act pertaining to Finance Acts dated August 1st 2001, a mission cannot comprise one sole programme. Under sections 18, 19 and 20 of the

same Institutional Act of August 1st 2001, ancillary budgets and special accounts allocated credits constitute a mission within the meaning of Sections 7 and 47. Therefore, in the current state of the law, they should not comprise one sole programme.

However the presentation of 'mono-programme' missions in the Finance Act 2006 is part of the introduction of a new budgetary listing. In order to give the relevant authorities the time needed to carry out the necessary adaptations and overcome the difficulties inherent in such reform, the compliance of such missions with the new institutional rules may only take effect starting in 2007. Subject to this qualification, they are not, at the present time, unconstitutional.
(Decision nº 2005-530 DC, December 29th 2005, cons. 24 to 27, 36 and 37, p. 168)

Creation, suppression and transformation of jobs

Personnel placed at disposal

Transforming the placing at disposal of State personnel into secondments does not run counter to any constitutional or organic rule. In the case in hand, the measure implemented by the Finance Act 2006, which concerns teaching staff employed by the Ministry of Education who work for non-State bodies is set off by the payment to the bodies concerned of a subsidy equivalent to the amount of the remuneration paid to the personnel on secondment by these bodies. It is designed to make it easier to identify the real employers of such personnel and the reality of the assistance which the State affords them. It does not run counter to the principle of budgetary accuracy.
(Decision nº 2005-530 DC, December 29th 2005, cons. 9, p. 168)

Budgetary Unity

Set-offs for exemptions or reductions as regards social security contributions cannot be considered as being expenditure which should, per se, appear in the budget of the State.
(Decision nº 2005-530 DC, December 29th 2005, cons. 59, p. 168)

Budgetary accuracy

The documents to be appended to the Finance Bill under Sections 51 and 54 of the Institutional Act of August 1st 2001 should enable Parliament to have all the necessary information in its possession before voting, and to review *a posteriori* the use made of the authorisations requested of it. Performance indicators in these documents should not be tainted with inaccuracy.

Such inaccuracy has not been proved as regards the Finance Act 2006. Although some delays and shortcomings have been noted and must be rectified in the future, they are not such, either by their number or extent, as to call into question the legality of all of the parliamentary proceedings involved.
(Decision nº 2005-530 DC, December 29th 2005, cons. 3 to 5, p. 168)

Exercise of Parliamentary Review

Information supplied to Parliament

Delay in distributing all or any of the documents required by the Institutional Act to better inform Parliament and strengthen its control of public finance or any failure to comply with procedures laid down for such purposes cannot preclude discussion of a Finance Bill. The conformity of the latter to the Constitution would be decided on the basis of compliance with the requirements of the continuity of the life of the Nation and of the sincerity of Parliamentary proceedings throughout the examination of Finance Acts.
(Decision nº 2005-517 DC, July 7th 2005, cons. 6, p. 108)

General Rules

Voting on parts of a Financing Act

New Article L.O. 111-7-1 of the Social Security Code makes debate on part of a Finance Act for a year dependent on the passage of the previous part thereof, and, with respect to the fourth part pertaining to expenditure for the forthcoming year, on the passage of the third part thereof pertaining to revenue.
(Decision n° 2005-519 DC, July 29th 2005, cons. 24, p. 129)

The first indent of Article 121-3 of the rules of the National Assembly provides for the conditions in which a second deliberation may take place after the discussion of clauses of a part of a Social Security Financing Act.

The second indent of Article 121-3 makes it possible, after having examined the final part of such a Bill, to organize a second deliberation prior to explanations on voting on the whole of the Bill. The consequence of this second indent is that provisions of other parts can be modified solely for coordination purposes. The principles laid down by Article L.O. 111-7-1 of the Social Security Code are thus taken into consideration (implied solution: provisions made applicable, in the conditions thus defined, to both a current year Finance Act and, if need be, to any rectifying Finance Acts)
(Decision n° 2005-526 DC, October 13th 2005, cons. 8, p. 144)

Exercise of Parliamentary Review

Information supplied to Parliament

New article L.O. 111-5-2 of the Social Security Code, which provides for the presentation by the Government of a report on guidelines as to the social security finances and the possibility of a Parliamentary debate on this report, either in the National Assembly or the Senate, is intended to contribute to informing Parliament of the guidelines on social security finances before the examination of finance Bills pertaining thereto.
(Decision n° 2005-519 DC, July 29th 2005, cons. 21, p. 129)

Article L.O. 111-9-1 of the Social Security Code provides that "When, during a review and assessment, the communication of information requested under Article L.O. 111-9 cannot be obtained within a reasonable period of time, calculated taking into account the difficulties involved in collecting such information, the President of the Committees of the National Assembly or the Senate asked to examine the merits of Bills pertaining to the financing of social security may apply to the competent court, sitting in summary jurisdiction, to put en end to this impediment on pain of payment of a penalty."

In accordance with the French conception of the separation of powers, these provisions may only be construed as allowing the administrative judge to order in summary proceedings a legal entity vested with the prerogatives of public authorities to proceed to communicate such information or documents upon pain of payment of a penalty. Subject to this reservation, they are not unconstitutional.
(Decision n° 2005-519 DC, July 29th 2005, cons. 30 and 31, p. 129)

The provisions of D of I of Article L.O. 111-3 of the Social Security Code together with those of Article L. 111-10-2, which provide for and organize a procedure for consulting Parliamentary committees called upon to examine the merits of Financing Bills entered on the list and the components of sub-targets of expenditure as determined by the Government are those which may be defined in an Institutional Act by reason of the powers vested in the latter by the Constitution. As for the conditions accompanying such provisions, they in no way adversely affect the freedom of appreciation which Article 20 of the Constitution confers on the Government when it determines and conducts the policy of the Nation.
(Decision n° 2005-519 DC, July 29th 2005, cons. 8, 32 and 33, p. 129)

Tabling of reports and appendices

New Article L.O. 111-4 of the Social Security Code redefines the list and contents of reports and documents to be appended or annexed to the year Finance Bill in order to better inform Parliament in due time and enable it, with full knowledge of the facts, to give its opinion on Social Security Finance Bills which are submitted for its approval.

Delay in distributing all or any of the documents required cannot preclude discussion of a Finance Bill. The conformity of the latter to the Constitution would be decided on the basis of compliance with the requirements of the continuity of the life of the Nation and of the sincerity of Parliamentary proceedings throughout the examination of Finance Acts; the same would apply in cases when circumstances did not make it possible to table all or part of the said documents.
(Decision n° 2005-519 DC, July 29th 2005, cons. 17 to 19 and 22, p. 129)

Contents and presentation of Social Security Financing Acts

Provisions which may appear in a Social Security Financing Act

Principle

Indent 20 of Article 34 of the Constitution provides that: "Social Security Financing Acts shall determine the general conditions of the financial balance of social security, and in the light of their revenue forecasts, shall determine expenditure targets in the manner and with the reservations specified in an Institutional Act".

I of Article L.O. 111-3 of the Social Security Code determines the purpose and contents of each of the four parties of the Social Security Financing Act concerning, respectively, the last concluded fiscal year, the current year, and, as regards the coming year, firstly revenue and the general balance, and secondly expenditure. III and IV of the same Article complete the list of provisions which can only be approved in the framework of Social Security Financing Acts. Lastly, V sets out those which may appear in such a statute.
(Decision n° 2005-528 DC, December 15th 2005, cons. 25 and 26, p. 157)

Provisions which may not appear in a Social Security Financing Act

Provisions devoid of any sufficiently direct effect on revenue

Mandatory basic schemes

Paragraph VI of Section 25 of the Financing Act which increases the duty of principals to monitor sub-contracting business concerns in the framework of the combat against hiring foreigners not having the requisite permits to work in France, and imposes these same duties on private persons, is outside the scope of Social Security Financing Acts. These measures have too indirect an effect on the revenue of mandatory basic schemes to warrant them being appended to the provisions of 1° and 2° of B of V of Article L.O. 111-3 of the Social Security Code. They are hence automatically unconstitutional.
(Decision n° 2005-528 DC, December 15th 2005, cons. 28, p. 157)

Provisions devoid of any sufficiently direct effect on expenditure

Mandatory basic schemes

Section 36 of the Social Security Financing Act which specifies the powers of conciliators working in local health insurance offices has too indirect an effect on the mandatory basic schemes of social security to warrant it being appended to the provisions of 1° and 2° of C of V of Article L.O. 111-3 of the Social Security Code. It is hence automatically unconstitutional.
(Decision n° 2005-528 DC, December 15th 2005, cons. 29, p. 157)

Section 49 of the Social Security Financing Act which extends the scope of the derogatory treatment given to biomedical research aimed at assessing everyday healthcare is of no effect as regards the expenditure of the mandatory basic schemes of social security, or else has too indirect an effect to warrant it being appended to the provisions of 1° and 2° of C of V of Article L.O. 111-3 of the Social Security Code. It is hence automatically unconstitutional.
(Decision n° 2005-528 DC, December 15th 2005, cons. 29, p. 157)

III of Section 73 of the Social Security Financing Act completes the general body of rules governing civil servants of the State, territorial units and hospitals with a view to increasing, in certain cases, the length of paid maternity leave. It has no effect on the expenditure of the mandatory basic schemes of social security. It is thus automatically unconstitutional.
(Decision n° 2005-528 DC, December 15th 2005, cons. 29, p. 157)

Provisions not improving the information supplied to Parliament and the latter's review of the application of Financing Acts

Section 58 of the Social Security Financing Act provides that the Government shall put to Parliament a report on the "various tax instruments making it possible to reduce the price of fruit and vegetables, and comparative effectiveness thereof". Section 59 of the same statute requires the Government to put to Parliament a report on "the influence of substitutes for mothers'milk on the development of infant obesity". These provisions cannot be considered as being intended, within the meaning of 4° of C of V of Article L.O. 111-3 of the Social Security Code, to improve the information supplied to Parliament and the latter's review of the application of Social Security Financing Acts. They are thus automatically unconstitutional.
(Decision n° 2005-528 DC, December 15th 2005, cons. 30, p. 157)

Provisions concerning bodies excluded from the scope of Financing Acts

Supplementary health insurance bodies

I of section 15 of the Social Security Financing Act which provides that the most representative supplementary health insurance bodies may sign the agreement specifying the methods whereby insurers may institute proceedings against liable third parties falls outside the scope of Social Security Financing Acts. These bodies are not mandatory bodies collecting mandatory social security contributions, neither are they the other bodies referred to in Article L.O. 111-3 of the Social Security Code. I of section 15 is thus automatically unconstitutional.
(Decision n° 2005-528 DC, December 15th 2005, cons. 27, p. 157)

Sections 93 and 94 of the Financing Act which provide that supplementary health insurance bodies shall be informed by local health insurance offices of the implementation of the procedures defined in Articles L. 133-4 and L. 314-1 of the Social Security Code are outside the scope of Social Security Financing Acts. These bodies are not mandatory bodies collecting mandatory social security contributions, neither are they the other bodies referred to in Article L.O. 111-3 of the Social Security Code. Sections 93 and 94 are thus automatically unconstitutional.
(Decision n° 2005-528 DC, December 15th 2005, cons. 27, p. 157)

Accuracy of the Social Security Financing Act

Accuracy of accounts

The term accuracy, when applied to that part of the year Finance Act relating to the previous financial year, is to be taken as requiring that all accounts be true and accurate.
(Decision n° 2005-519 DC, July 29th 2005, cons. 6, p. 129)

Accuracy of forecasts made in Social Security Financing Acts

The truth and accuracy of the general conditions of the financial balance of social security for the current and forthcoming year shall be determined by the absence of any intention to falsify the broad outlines of this balance.
(Decision n° 2005-519 DC, July 29th 2005, cons. 6, p. 129)

The general conditions of the financial balance of social security for a current year and the forthcoming year must be accurately established**.** This accuracy is distinguished by the absence of any intention to distort the broad outlines of this balance. The national health-care insurance expenditure target must therefore be established in advance by the Government in the light of the information available when the Social Security Financing Bill is tabled. It is thus up to the Government to inform Parliament, when this Bill is under discussion, of any new circumstances of law or fact likely to call into question the general conditions of the financial balance of the mandatory basic social security schemes and, should the need arise, to rectify initial forecasts.

In the case in hand, the national health-care insurance expenditure target as set out by the Government in the part of the Financing Bill for 2006 was in accordance with the conclusions of the Social Security Accounts Committee which met prior to the decisions taken by the Council of Ministers. This forecast was based on the most recent economic information available for all the schemes. These estimates showed in particular that health-care expenditure for patients consulting doctors in private practice would be markedly lower than initial forecasts, thus making it possible to offset a forecast overspending of the same order for institutionalised health-care establishments. Data subsequently available did not call this estimate into question. In these circumstances, it is not proven that the national health-care expenditure target for 2005 was flawed by inaccuracy.
(Decision nº 2005-528 DC, December 15th 2005, cons. 2 to 6, p. 157)

Coherence between the Social Security Financing Act referred and the Finance Act before Parliament

I of Article L.O. 111-3 of the Social Security Code, combined with III of Article L.O. 111-4, provides that the Social Security Financing Act approves, in the part relating to revenue and the general balance for the forthcoming year, the total amount of set-offs allowed to Social Security bodies under reductions and exonerations from payment of social security contributions and appropriated revenue.

This provision is designed to enhance the transparency of financial relations between the State and social security by establishing a link between the Finance Act, which makes it possible for such set-offs to take effect, and the Social Security Financing Act. However its scope should be interpreted taking account the provisions of IV of Article L.O. 111-3, which reserves for Finance Acts the possibility of implementing such measures without set-offs.
(Decision nº 2005-519 DC, July 29th 2005, cons. 7, p. 129)

Under C 2° (c) of Article L.O. 111-3 of the Social Security Code, the Social Security Financing Act approves, in the part comprising provisions pertaining to revenue and the general balance for the forthcoming year, the amount of set-off mentioned in the Schedule provided for in III 5° of Article L.O. 111-4 of the Social Security Code. Section 24 of the Social Security Financing Act for 2006 has laid down the amount of set-off referred to in the Schedule provided for in 5° of III of Article L.O. 111-4 of the Social Security Code. In view of the assessment made by Parliament of the proceeds of taxation appropriated to social security under Section 56 of the Finance Act and other set-off measures provided for by the 2006 Finance Act, Section 56 is coherent with Section 24 of the Financing Act. In all events, as provided for by the same IV of Section 56, "in the event of a shortfall between the proceeds in 2006 of taxes and levies appropriated and the final amount of the fall in revenue linked to the reductions in social security contributions mentioned in I for the same year, this shortfall shall be regularised, for the year 2006, by the next forthcoming Finance Act once the final amount of the loss of revenue has been ascertained".
(Decision nº 2005-530 DC, December 29th 2005, cons. 55 and 56, p. 168)

GOVERNMENT

POWERS SPECIFIC TO THE GOVERNMENT

Determining and conducting the policy of the Nation (Article 20)

The Government is free to contemplate, immediately upon the tabling of a year Finance Bill, reserving a small fraction of credits opened in order to make provision for any subsequent shortfall in the balancing of the budget. New provisions to such effect provided for in the Institutional Act should not however be interpreted as placing the Government under a duty to place credits in reserve. Neither should they adversely affect the prerogatives which Articles 20 and 21 of the Constitution confer on the Government with respect to the implementation of Finance Acts.
(Decision nº 2005-517 DC, July 7th 2005, cons. 7, p. 108)

Failure to take into account powers specific to the Government

Article 38 provides that the Government alone may ask Parliament for authorization to issue Ordinances.

Hence a provision empowering the Government to issue an Ordinance contained in the initial draft of a Private Member's Bill must, in the absence of any request made by the Government, be held to be unconstitutional.
(Decision nº 2004-510 DC, January 20th 2005, cons. 28 and 29, p. 41)

PRIME MINISTER

Initiative in matters of legislation

Bills

Explanatory memorandum

The explanatory memorandum which, in accordance with the traditions of the Republic, accompanies a Bill and sets out the reasons why it should be enacted, is inseparable from this Bill.

It is designed not only to present the principal features of the Bill, but also to highlight the interest its enactment holds.
(Decision de Villiers and Peltier, April 7th 2005, cons. 6 and 9, p. 61)

The explanatory memorandum which, in accordance with the traditions of the Republic, accompanies a Bill, is designed not only to present the principal features of this Bill but also to highlight the interest its enactment holds.
(Decision Hoffer and Gabarro-Arpa, May 19th 2005, cons. 10, p. 90)

PRESIDENT OF THE REPUBLIC

RULES PERTAINING TO THE PRESIDENTIAL ELECTION

Voting by French citizens living abroad

The statute which, passed on the basis of Indent 2 of Article 6 of the Constitution, amends the Institutional Act of January 31st 1976 in order to harmonise and simplify voting conditions in Presidential elections for French citizens living abroad conforms to the Constitution.
(Decision nº 2005-518 DC, July 13th 2005, cons. 1, p. 114)

REFERENDUM

INITIATIVE

Bill submitted to a referendum

No provision of the Constitution requires that a Bill submitted to a referendum be signed by the Prime Minister and tabled with one or other of the two Parliamentary Assemblies.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 6, p. 56)

Government statement and debate

Under Article 11 of the Constitution, it is only once the President of the Republic has decided by Decree, at the request of the Government, to submit a Bill to a referendum that the Government shall make a statement before each Assembly which shall be followed by a debate.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 6, p. 56)

Internal constitutional review

Conformity of a Treaty with the Constitution

The Treaty establishing a Constitution for Europe does not run counter to the Charter for the Environment of 2004. The question of the admissibility of an application by a voter contesting the conformity with the Constitution of a treaty of which the ratification is submitted to referendum on the basis of Article 11 of the Constitution is reserved.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 7, p. 56)

RULES FOR HOLDING REFERENDA

Competence of authorities vested with power to make regulations

If Indent 2 of Article 34 of the Constitution provides that "Statutes shall determine the rules concerning civic rights and the fundamental guarantees granted to citizens for the exercise of their civil liberties", it is up to the authorities vested with powers to make regulations, in the absence of the requisite statutory provisions, to determine the means of implementing the decision by which the President of the Republic, using his constitutional prerogatives, submits a text to referendum under Articles 11 or 89 or Title XV of the Constitution. It is the task of the authorities vested with powers to make regulations to take the necessary steps to make statutory provisions and regulations governing other elections apply to the holding of a referendum and amend them as and when necessary for this purpose.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 8, p. 56)

Although Article 34 of the Constitution provides: "Statutes shall determine the rules concerning civic rights and the fundamental guarantees granted to citizens for the exercise of their civil liberties..." it is up to the authorities vested with powers to make regulations, in the absence of the requisite statutory provisions, to determine the means of implementing the decision by which the President of the Republic, using his constitutional prerogatives, submits a text to referendum under Articles 11 or 89 or Title XV of the Constitution. It is the task of the authorities vested with powers to make regulations to take the necessary steps to make statutory provisions and regulations governing other elections apply to the holding of a referendum and amend them as and when necessary for this purpose. Such is the case with provisions specifying the conditions in which certain political parties may be authorised to

participate in the campaign, in particular by having the right to be heard during programmes broadcast by national broadcasting bodies.
(Decision "Génération écologie" and al, April 7th 2005, cons. 3, p. 64)

Electoral literature

Article 3 of the Decree organising the holding of the referendum, whereby "The text of the Bill submitted to a referendum and that of the Treaty appended thereto shall be printed and distributed to the voters by the Administration, subject to the provisions of Article 2 of the Decree of August 6th 1992 referred to hereinabove", does not fail to comply with the requirements of clarity and fairness pertaining to the holding of referenda, or the principle of equality between voters, or the provisions of Articles 4 of the Constitution whereby "Political parties and groups shall contribute to the exercise of suffrage".
(Decision Hauchemaille Meyet, March 24th 2005, cons. 10, p. 56)

Article 3 of the Decree organising the holding of the referendum was not required to specify a precise date for the sending of electoral literature, since the constitutional requirements that the consultation be clear and fair themselves put the Administration under a duty to implement all available measures to ensure that voters may usefully familiarise themselves with said literature before voting.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 11, p. 56)

Once a Bill is submitted to a referendum under Article 11 of the Constitution, the requirements that the consultation be clear and fair require that this Bill be sent to voters prior to the holding of this consultation. In addition, the explanatory memorandum which, in accordance with the traditions of the Republic, accompanies a Bill and sets out the reasons why it should be enacted, is inseparable from this Bill. The principle of communicating the Bill, including the explanatory memorandum of the reasons for the Bill to those on the electoral register thus implements Article 11 of the Constitution and complies with the requirements that the consultation be clear and fair. Further more this method of proceeding was also employed for previous referenda, in particular those held in 1992 and 2000.
(Decision de Villiers and Peltier, April 7th 2005, cons. 4 to 7, p. 61)

The Decree of March 17th 2005 organising the holding of the referendum implicity provided for the communication of the explanatory memorandum of which the contents had been determined by the Council of Ministers on March 9th 2005 when it discussed this Bill. The contents of the criticised explanatory memorandum, which not only set out the main features of the Bill but also highlight the interest such enactment holds, are not ultra vires this purpose. Article 3 of the Decree organising the holding of the referendum thus quite lawfully implicity provides for the communication of this document.
(Decision de Villiers and Peltier, April 7th 2005, cons. 8 to 10, p. 61)

The explanatory memorandum which, in accordance with the traditions of the Republic, accompanies a Bill is designed not only to set out the main features of the Bill but also to highlight the interest such enactment holds. The contents of the explanatory memorandum of the Bill authorising the ratification of the Treaty establishing a Constitution for Europe are thus not ultra vires its intended purpose.
(Decision Hoffer and Garbarro-Arpa, May 19th 2005, cons. 9 and 10, p. 90)

The final paragraph of the explanatory memorandum of the Bill authorising the ratification of the Treaty establishing a Constitution for Europe, which clarifies and explains the scope of the reference made to the ruling of the Constitutional Council dated November 19th 2004 in the statutory provisions referred to in the Decree dated March 9th 2005 deciding to submit this Bill to a referendum, does not contain any inaccurate information or information likely to mislead voters.
(Decision Hoffer and Garbarro-Arpa, May 19th 2005, cons. 13, p. 90)

After the ruling delivered by the Constitutional Council on November 19th 2004, the Constitution was revised in order to remove impediments to the ratification of the Treaty establishing a Constitution for Europe which the Council had identified. It is under these conditions that the people of France have been called upon to make their decision known. The absence of any express reference to the ruling of the Constitutional Council in the Bill appended to the

Decree of March 9th 2005 deciding to submit the Bill authorising the ratification of said Treaty to a referendum is not therefore unconstitutional.
(Decision Hauchemaille and Le Mailloux, May 25th 2005, cons. 3 and 4, p. 93)

Campaign

Campaign Advertising

Those provisions of Article 1 of the Decree pertaining to the referendum campaign do not run counter to any constitutional rule or principle, and are not flawed by any patent error in adapting to the referendum the normal rules governing the holding of elections which, unless as otherwise provided for in relation to other forms of campaign advertising by other Articles of the same Decree, provide that the campaign shall end at midnight on the eve of voting. The same holds good for the provisions of Article 2 which cause to come into effect as of midnight on the eve of May 9th 2005 the prohibitions set forth in Article L. 50-1, the third indent of Article L. 51 and the first indent of Article L. 52-1 of the Electoral Code.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 16, p. 56)

Pluralism

In requiring of a political party that no fewer than five members of the National Assembly or five Senators state that they belong to said party, or that said party obtain not less than 5 % of votes cast in the latest elections to the European Parliament, computed on a national basis, in order to benefit from the allocation of public funding of political parties and groups in 2005, Article 3 of the challenged Decree has retained objective criteria which, due in particular to the limited broadcasting time available for the official campaign on radio and television, does not infringe the equality between political parties and groups and does not infringe Article 4 of the Constitution which provides that "Political parties and groups shall contribute to the exercise of suffrage".
(Decision "Génération écologie" and al, April 7th 2005, cons. 4, p. 64)

Financing

In the absence of any statutory provisions applicable in such matters, the authorities vested with the power to make regulations have made available public financing for political formations authorised to participate in the referendum campaign. They was not required when so doing to transpose all the rules governing other consultations of the electorate, in particular those capping expenditure.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 16, p. 56)

Article 60 of the Constitution whereby "The Constitutional Council shall ensure the proper conduct of referendum operations provided for in Articles 11 and 89 and Title XV and shall declare the results of the referendum", in no way precludes the National Committee for Campaign Accounts and Political Financing set up by Article L. 52-14 of the Electoral Code from being entrusted with the task of monitoring justifications of expenditure incurred by duly recognised political formations and the computation of those amounts to be reimbursed by the State.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 18, p. 56)

The Decree pertaining to the referendum campaign is not intended to result in, and shall not result in increasing the credits voted by Parliament in the framework of the Finance Act for 2005. The expense resulting for the State from the application of Articles 8 to 10 of said Decree shall be charged to the credits fixed by the initial Finance Act for 2005, amended if need be by a Finance Act. The argument that the challenged Decree encroaches upon the reserved domain of Finance Acts must therefore be dismissed.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 19, p. 56)

Criminal Penalties

Article 8 of the Decree organising the holding of the referendum merely makes Article L. 61 of the Electoral Code applicable, which Article does not in itself determine any criminal

penalties. It does not therefore belong to the category of provisions which require a Decree from the Council of State pursuant to Article R. 610-1 of the Criminal Code. (See the decision of September 11th, cons. 1, 5 and 7, p. 148)
(Decision Hauchemaille Meyet, March 24th 2005, cons. 12, p. 56)

Articles 2 and 4 of the Decree organising the holding of the referendum merely make Article L. 50 and R. 27 of the Electoral Code applicable, which Articles do not in themselves determine any criminal penalties. They do not therefore belong to the category of provisions which require a Decree from the Council of State pursuant to Article R. 610-1 of the Criminal Code. (See the decision of September 11th, cons. 1, 5 and 7, p. 148)
(Decision Hauchemaille Meyet, March 24th 2005, cons. 17, p. 56)

JURISDICTION OF THE CONSTITUTIONAL COUNCIL

Review of the validity of texts organizing the holding of the referendum

Under the general task of reviewing the proper conduct of referendum operations which is entrusted to it by Article 60 of the Constitution, it is the duty of Constitutional Council to rule on applications calling into question the proper conduct of future operations in cases where any ruling of inadmissibility of such applications might seriously compromise the effectiveness of its monitoring of referendum operations, hinder the proper conduct of the voting process or adversely affect the normal functioning of the government of the country. These conditions have been met as regards the nature of the Decree submitting a Bill to a referendum, that organizing the holding of the referendum, and that pertaining to the referendum campaign.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 3, p. 56)

The Constitutional Council has jurisdiction to rule on a application requesting that a Decree laying down the conditions in which a political party may be authorised to participate in the referendum campaign be held to be null and void.
(Decision "Génération écologie" and al, April 7th 2005, cons. 1, p. 64)

The conditions allowing the Constitutional Council to entertain an application to have a provision of a regulatory nature found to be null and void have been met with respect to the provision involved, which appears in a Decree specific to the referendum.
(Decision de Villiers and Peltier, April 7th 2005, cons. 3, p. 61)

These conditions have been met with respect to the provisions which the Council is asked to hold null and void which appear in the Decrees specific to the referendum, namely the Decree of March 9th 2005 submitting a Bill to a referendum and Article 3 of the Decree of March 17th 2005 organising the holding of the referendum
(Decision Hoffner and Garbarro-Arpa, May 19th 2005, cons. 3, p. 90)

These conditions have been met with respect to the nature of the challenged Decree which is specific to the referendum.
(Decision Hauchemaille and Le Mailloux, May 25th 2005, cons. 2, p. 93)

Matters outside the jurisdiction of the Constitutional Council

Articles 2 and 4 of the Decree relating to the referendum campaign make the provisions of Article L. 48 of the Electoral Code, which provide that "In the Departments of Haut-Rhin, Bas-Rhin and Moselle, Sections 15 and 17 of the abovementioned statute shall only apply subject to the provisions of the Local Act of July 10th 1906" applicable to this campaign. It is not the duty of the Constitutional Council when ruling, as in the case in hand, under Article 60 and not Article 61 of the Constitution, to appreciate the constitutionality of the Local Act of July 10th 1906, which, unlike Article L. 48 which has been extended to the referendum by a Decree, retains its statutory value.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 20, p. 56)

The Constitutional Council has no jurisdiction to rule on an application to find that an Order determining the list of political organisations authorised to participate in the referendum campaign is null and void.
(Decision "Génération écologie" and al, April 7th 2005, cons. 1, p. 64)

Under the general task of reviewing the proper conduct of referendum operations which is entrusted to it by Article 60 of the Constitution, it is the duty of Constitutional Council to rule on applications calling into question the proper conduct of future operations in cases where any ruling of inadmissibility of such applications might seriously compromise the effectiveness of its monitoring of referendum operations, hinder the proper conduct of the voting process or adversely affect the normal functioning of the government of the country. These conditions have not been met with respect to a decision of the Ministry for Foreign affairs to inform voters by posters bearing the words "European Constitution" of the contents of certain provisions of the Treaty establishing a Constitution for Europe. It is up to the political formation lodging this application to refer the matter to the relevant administrative court, if it feels that this matter justifies such referral.
(Decision RPF, May 3rd 2005, cons. 1, p. 87)

The Constitutional Council has no jurisdiction either to rectify the Decree of the President of the Republic deciding to submit a Bill to a referendum or to order that the date of voting be postponed.
(Decision Hoffner and Garbarro-Arpa, May 19th 2005, cons. 2 and 4, p. 90)

REVIEWING THE CONDUCT OF REFERENDUM OPERATIONS

Organisation of the ballot

A sincere, clear and fair consultation

The Bill submitted to the French people under Article 11 of the Constitution is aimed at authorising the ratification of the treaty establishing a Constitution for Europe and not at amending the French Constitution.

Furthermore Constitutional Act nº 2005-204 of March 1st has amended Title XV whereby the Constitutional Council ruled that authorisation to ratify the Treaty required a prior revision of the Constitution. Section 3 of said statute, which it is not the duty of the Constitutional Council to rule upon, has expressly provided that as from the coming into force of the Treaty, the current Title XV of the Constitution entitled "On the European Communities and the European Union" will be replaced by a new Title XV entitled "On the European Union". If it is the wish of the constituent assembly to make the coming into force of this new Title XV dependent upon the coming into effect of the Treaty itself, the said condition has been clearly set out.

Voters are therefore not kept in ignorance as to the consequences of their votes.
(Decision Hoffner and Garbarro-Arpa, May 19th 2005, cons. 5 to 8, p. 90)

The final paragraph of the explanatory memorandum of the Bill authorising the ratification of the Treaty establishing a Constitution for Europe, which clarifies and explains the scope of the reference made to the ruling of the Constitutional Council dated November 19th 2004 in the statutory provisions referred to in the Decree dated March 9th 2005 deciding to submit this Bill to a referendum, does not contain any inaccurate information or information likely to mislead voters. It does not therefore fail to comply with the requirements that the consultation be clear and fair.
(Decision Hoffer and Garbarro-Arpa, May 19th 2005, cons. 13, p. 90)

The voting process

Official records

The fact that the records of voting operations are not made available to voters so that they may, as the case may be, record their contestation as provided for by Article 1 of the Regulations of October 5th 1988 applicable to the procedure followed before the Constitutional Council as regards claims concerning referendum operations, and this notwithstanding the observations made by the judge delegated by the Council, does not make it possible to ensure the

genuineness of the ballot nor the right to redress. All the votes cast in the six polling stations involved are held to be null and void.
(Proclamation of the results of the Referendum of May 29th 2005, June 1st 2005, cons. 1, p. 95)

Polling booths

Numerous voters were authorized to cast their vote outside polling booths, thus disregarding the provisions of the Electoral Code designed to guarantee the secrecy of the ballot, and these irregularities continued despite the observations made by the judge delegated by the Constitutional Council, who was thus unable to ensure that voting took place in the proper prescribed manner. All the votes cast in the polling station involved were declared null and void.
(Proclamation of the results of the referendum of May 29th 2005, June 1st 2005, cons. 2, p. 95)

List of voters

Voters were not invited to sign the list of voters, despite the fact that this obligation is designed to allow monitoring of the electoral process and ensure the fairness of the latter. This irregularity continued notwithstanding the observations made by the judge delegated by the Constitutional Council. All the votes cast in the commune involved were held to be null and void.
(Proclamation of the results of the referendum of May 29th 2005, June 1st 2005, cons. 4, p. 95)

Delegate of the Constitutional Council

The President of the polling station having refused to allow the judge delegated by the Constitutional Council to carry out his task, said judge was not able to monitor the voting process.

All the votes cast in the polling station involved were held to be null and void.
(Proclamation of the results of the referendum of May 29th 2005, June 1st 2005, cons. 3, p. 95)

Sorting and counting of votes

Counting of votes

The destruction of ballot papers despite a contestation with respect to the sorting and counting of votes prevents the Constitutional Council from reaching any decision as to the regularity of the voting process.

All the votes cast in the polling station involved were held to be null and void.
(Proclamation of the results of the referendum of May 29th 2005, June 1st 2005, cons. 5, p. 95)

Litigation

Rules of procedure

Article 20 of the Decree organising the referendum merely reiterates the terms of Article 1 of the regulations pertaining to the procedure followed before the Constitutional Council for claims concerning referendum operations, on the basis of Article 56 of the Ordinance dated November 7th 1958. Hence the argument against this Article are inoperative, in particular the one which argues that this Article required a Decree from the Council of State on the basis of Article 55 of said Ordinance.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 13, p. 56)

DECENTRALISED ORGANISATION OF THE REPUBLIC

GENERAL PRINCIPLES

Self-government of territorial units

If the report which the Government must transmit to Parliament under Article L.O. 1114-4 of the General Code of Territorial Units were to reveal that section 85 of the Finance Act 2006, which reforms the system of capping the business tax on the basis of added value and determines the manner in which the State bears the cost of the reductions thus granted, hindered the administration of a territorial unit so as to seriously adversely affect its self-government to an extent that Article 72 of the Constitution was infringed, it would be incumbent upon the Authorities to take the necessary corrective measures. (Reserved).
(Decision n° 2005-530 DC, December 29th 2005, cons. 90, 97 to 99, p. 168)

Section 85 of the Finance Act 2006 reforms the system of capping the business tax on the basis of added value and determines the manner in which the State bears the cost of the reductions thus granted.

The set-off mechanism, which will only apply as from taxes levied for the year 2007, is not intended to affect and will not affect the budgets for 2005 and 2006. Moreover, the interference between business taxes collected on the territory upon which a business concern is implanted and whose business tax is capped, will in no way result in introducing a system of supervision between these units. The complaints based on the infringement of the principle of self-government of territorial units is thus not supported by the facts.
(Decision n° 2005-530 DC, December 29th 2005, cons. 90 and 92, p. 168)

POWERS OF TERRITORIAL UNITS

Principle of "subsidiarity" (Article 72, indent 2)

The second indent of Article 72 of the Constitution provides that "Territorial units may take decisions in all matters which are within powers than can best be exercised at their level". As a result of the general nature of the terms employed, the choice of Parliament to confer a power on the State rather than on a territorial unit can only be called into question on the basis of this provision if it is patently clear that in view of its features and the interests involved, this power would be better exercised by a territorial unit.

The definition by the Prefect of windmill development areas is intended to develop wind energy taking into account the possibilities of making connections with electricity grids, while protecting the surrounding countryside, historical monuments and listed sites of outstanding interest. In view of these aims, Parliament did not clearly fail to respect the abovementioned provisions of indent two of Article 72 when conferring on the Prefect the power to define windmill development areas. It did not introduce any State supervision of the communes or the regions involved nor undermine their freedom of self-government nor their financial autonomy.
(Decision n° 2005-516 DC, July 7th 2005, cons. 12 and 13, p. 102)

FINANCES OF TERRITORIAL UNITS

Resources (Article 72-2, indents 2 and 3)

Own resources

The Constitutional Council could not but censure statutes necessarily resulting in adversely affecting the decisive nature of the share of own resources of a category of territorial unit, as

provided for by the institutional provisions of Articles L.O. 1114-1 to L.O. 1114-4 of the General Code of Territorial Units which implement the provisions of indent 3 of Article 72-2 of the Constitution. However section 85 of the Finance Act 2006, which reforms the system of capping the business tax on the basis of added value and determines the manner in which the State bears the cost of the reductions thus granted, will not itself entail consequences of such magnitude that the degree of financial autonomy of a category of territorial units would deteriorate to an extent incompatible with the rule laid down by Article L.O. 1114-3.

In all events, if the report which the Government must transmit to Parliament under Article L.O. 1114-4 of the General Code of Territorial Units were to reveal that because of changing circumstances, in particular due to section 85 of the Finance Act 2006, and other possible causes, the share of own resources in the overall resources of a category of territorial units were to fall below the threshold provided for by Article L.O. 1114-3, it would be incumbent upon the Finance Act for the second year after the ascertaining of such a situation to take the necessary corrective measures to re-establish the degree of financial autonomy of the said category at the level specified by the Institutional Act (Reserved).
(Decision n° 2005-530 DC, December 29th 2005, cons. 90, 93 to 98, p. 168)

Transfer, creation and extension of powers (Article 72-2, indent 4)

Transfer of powers

Under the provisions of the fourth indent of Article 72-2 of the Constitution, when transferring to territorial units powers previously exercised by the State, Parliament is required to transfer revenue corresponding to the increase in expenditure determined at the date of transfer.
(Decision° 2004-509 DC, January 13th 2005, cons. 8, p. 33)

Creation and extension of powers

Existence

The provisions of indent four of Article 72-2 of the Constitution relating to the creation and extension of powers only concern those of a mandatory nature.
(Decision° 2004-509 DC, January 13th 2005, cons. 9, p. 33)

The challenged provisions are not intended to result in, and do not result in obliging territorial units to contribute to the creation or running of "employment centres". Neither do they oblige these same territorial units to hire persons encountering particular difficulties in finding employment under "employment accompanying contracts". These powers are thus those of which the exercise is of an optional nature and the argument based on failure to respect Article 72-2 of the Constitution thus fails. Dismissed.
(Decision° 2004-509 DC, January 13th 2005, cons. 11, p. 33)

Mandatory powers

The provisions of indent four of Article 72-2 of the Constitution relating to the creation and extension of powers concern solely those powers of a mandatory nature. In such a case, Parliament is only under a duty to accompany these creations or extensions of powers by revenue of which it may freely determine the level, without distorting the principle of the free self-government of such units.
(Decision° 2004-509 DC, January 13th 2005, cons. 9, p. 33)

ORGANISATION OF TERRITORIAL UNITS OF THE REPUBLIC

French Southern and Antarctic Territories (Article 72-3, indent 4)

The statute pertaining to the creation of the French International Register, which is not a statute pertaining to sovereignty, has not been made applicable to French Southern and

Antarctic Territories which, under indent four of Article 72-3 of the Constitution, have their own rules governing employment or their own Labour Code.
(Decision n° 2005-514 DC, April 28th 2005, cons. 5, p. 78)

Overseas Territorial Units governed by Article 74

Common rules

Principle of legislative speciality (article 74, indent 3)

The statute pertaining to the creation of the French International Register, which is not a statute pertaining to sovereignty, has not been made applicable to Mayotte, the Wallis and Futuna Islands and French Polynesia which, under Article 74 of the Constitution, have their own rules governing employment or their own Labour Code.
(Decision n° 2005-514 DC, April 28th 2005, cons. 5, p. 78)

TEMPORARY PROVISIONS RELATING TO NEW CALEDONIA (Article 77)

New Caledonia

The statute pertaining to the creation of the French International Register, which is not a statute pertaining to sovereignty, has not been made applicable to New Caledonia which, under Article 77 of the Constitution, its own rules governing employment or its own Labour Code.
(Decision n° 2005-514 DC, April 28th 2005, cons. 5, p. 78)

TREATIES AND INTERNATIONAL AGREEMENTS – INTERNATIONAL LAW

INTRODUCTION OF TREATIES AND AGREEMENTS INTO DOMESTIC LAW

Scope of review

Respecting the principle of national sovereignty and its components

Principle

In the event of an international commitment containing a clause contrary to the Constitution, calling into question constitutionally guaranteed rights and freedoms, or adversely affecting the essential conditions of the exercising of national sovereignty, authorisation for the ratification thereof would require a revision of the Constitution.

The irrevocable adhesion to an international commitment affecting an inherent domain of national sovereignty adversely affects the exercising of the latter.
(Decision n° 2005-524/525 DC, October 13th 2005, cons. 3 and 5, p. 142)

Respect for the principle

Protocol n° 13 of the European Convention for the Protection of Human Rights and Fundamental Freedoms relating to the abolition of the death penalty in all circumstances does not

contain any clause contrary to the Constitution and does not call into question any constitutionally guaranteed rights and freedoms.

If it excludes any derogation or reserve, it may be denounced in the conditions laid down by Article 58 of this Convention. It does not therefore adversely affect the essential conditions of the exercising of national sovereignty.
(Decision nº 2005-524/525 DC, October 13th 2005, cons. 4 and 6, p. 142)

SCOPE OF TREATIES INTRODUCED INTO DOMESTIC LAW

Authority of Treaties in relation to administrative acts

Treaties and review of the constitutionality of statutes

The Treaty establishing a Constitution for Europe does not run counter to the Charter for the Environment of 2004. The question of the admissibility of an application by a voter contesting the conformity with the Constitution of a treaty of which the ratification is submitted to referendum on the basis of Article 11 of the Constitution is reserved.
(Decision Hauchemaille Meyet, March 24th 2005, cons. 7, p. 56)

PRIVATE INTERNATIONAL LAW

Territorial scope of application of law

Under current rules governing the Law of the sea, a seagoing vessel flying the French flag cannot be considered as constituting a part of French territory. Hence seafarers residing outside France who are employed on board a seagoing vessel registered in the French International Register cannot avail themselves of all the rules linked to the territorial scope of application of French law.
(Decision nº 2005-514 DC, April 28th 2005, cons. 33, p. 78)

INDEX OF ANALYTICAL ENTRIES

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GLOSSARY

Caisse d'amortissement de la dette sociale (CADES) : "Social debt amortization fund": a financial structure set up in 1996 initially to purge deficits accumulated by Social Security bodies since 1993. It is financed by loans and a tax levied on all income (contribution to reimbursement of the social debt: CRDS) until January 2014.

Commissaire du governement "Independent Court Officer": found in Administrative courts and the ***Tribunal de conflits*** (a court which arbitrates conflicts of jurisdiction between regular and administrative courts), this person is a member of the court whose task it is to put before the court an independent opinion as to the solution which, in substantive law, is best suited to resolving the point of law raised by the case in hand.

Déclaration d'utilité publique: « declaration of public purpose": an administrative act which after consultation of the population, represents the preliminary stage of a real estate operation contemplated by a public body, for instance in cases of expropriation for a public purpose it sets out the reasons for such expropriation. Compliance with the requirement of making this declaration governs the continuation of the procedure underway.

Tribunal correctionnel: Formation of the *Tribunal de Grande instance* with jurisdiction in matters of serious criminal offences

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