VI

ANALYTICAL SYNOPSIS 2008

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 – Judgment given by the full senate of the Council of State (*Conseil d'Etat*).

Cass – Judgment 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 explained in the Glossary.

CONTENTS

PARLIAMENT

STATUS OF MEMBERS

Conditions of eligibility

Ineligibility of a Member due to his campaign account

After having found that the campaign account of a candidate proclaimed elected was rightly refused for non compliance with Article L 52-4 of the Electoral Code, the Constitutional Council held, pursuant to Article L.O 136-1, that said candidate was ineligible for a period of one year as from the date of said ruling and formally declared him to have automatically resigned from office.
(Decision nº 2007-4232, February 7th 2008, A.N Vendée, 5th constit., para.4, p. 69 ; decision nº 2007-4359, March 27th 2008, A.N Rhône, 11th constit., para.5, p. 160)

Incompatibilities

Procedure

Preliminary examination by the Bureau of the House involved.

Referral for a reference by the Constitutional Council by a Member of the National Assembly regarding the compatibility of his office with another position held is admissible : reference in preliminary considerations to a prior meeting of the Bureau of the National Assembly
(Decision nº 2007-23 I, February 14th 2008, paras 1 to 4, p. 75 ; decision nº 2008-24 I/25 I/26 I, February 14th 2008, paras 1 to 3, p. 77)

Concurrent holding of office with other public offices

Non elective public office

Presidency of a Public Interest Consortium

The agreement setting up a Public Interest Consortium was approved by a Government Order. In accordance with the prescribed procedure, the Member making the referral was appointed President of the Public Interest Consortium by an Order of the Minister of Foreign Affairs. He sits " in the capacity of representative of the State" on the Board of Directors of said Consortium, where the majority of voting rights are held by the State and a Public Establishment of the State. The Public Interest Consortium is subject to the control of the National Audit Office (*Cour des comptes*) and a *commissaire du gouvernment* appointed by an Order of the Ministry of Foreign Affairs.

The foregoing thus shows that the office of President of the Public Interest Consortium involved must be considered as being a non elective public office. It thus falls under the scope of incompatibility as defined by Article L.0 142 of the Electoral Code.
(Decision nº 2007-23 I, February 14th 2008, paras 1 to 4, p. 75)

Visiting Professor

The position of Visiting Professor does come under the waiver of incompatibility as regards the holding of non elective office together with the office of Member of Parliament provided for by

Indent 3 (1) of Article L.O of the Electoral Code, which refers solely to "Professors who, at the date of their election, had been appointed to vacant chairs or were directors of research programmes..".
(Decision n° 2008-24 I/25 I/26 I, February 14th 2008, paras 1 to 3, p. 77)

No influence of unpaid voluntary work

The fact that a non elective public office be held in an unpaid voluntary capacity cannot suffice to defeat the provisions of Article L.O 143 of the Electoral Code once the incompatibilities which it lays down are not connected with any payment in consideration of the holding of the offices to which it refers.
(Decision n° 2007-23 I, February 14th 2008, para 4, p. 75)

ORGANISATION OF THE HOUSES OF PARLIAMENT

Organs of the Houses

Bureau of the Houses

The sole article of the resolution amending Article 3 of the Rules of Procedure of the Senate which increases the number of Vice-Presidents from six to eight and the number of secretaries from twelve to fourteen does not run counter to any provision of the Constitution.
(Decision n° 2008-570 DC, November 6th 2008, para.1, p. 371)

LEGISLATIVE PROCEEDINGS

Procedural Motions

Preliminary question

Under Article 45 of the Constitution, as is moreover reiterated by Article 109 of the Rules of the National Assembly, the fact that a Bill under consideration by Parliament is rejected by one of other of the two Houses does not interrupt the normal unfolding of proceedings provided for the passing by both Houses of a final text

Nothing therefore prevents a Bill from being debated after the voting of a preliminary question in connection therewith.
(Decision n° 2008-564 DC, June 19th 2008, para.7, p. 313)

The voting in favour of the preliminary question, and thus the rejection of the text in the conditions which prevailed at that time, meant that all the provisions of the Bill needed to be re-debated.
(Decision n° 2008-564 DC, June 19th 2008, para.12, p. 313)

Right of amendment

Rules governing admissibility and debate

Right of amendment of Members of Parliament

The combination of Article 6 of the Declaration of the Rights of Man and the Citizen of 1989, the first paragraph of Article 34 and 39 of the Constitution, together with Article 40, 41, 44, 45,

47 and 47-1 thereof, show that the right of amendment vested in Members of Parliament and the Government must be able to be exercised fully during the first reading of Government and Private Members' Bills by each of the two Houses. Such a right should not be restricted at such a stage in proceedings, having regard to the requirements of clarity and accuracy of Parliamentary debate, for reasons other than the rules of admissibility and the requirement that an amendment not be devoid of any connection with the purpose of the Bill tabled before the first House called upon to debate it.

The economy of Article 45 of the Constitution and in particular the first paragraph thereof provides that additions to or modifications of amendments tabled by Members of Parliament or the Government after the first reading of a Bill must have a direct connection with the provision under debate. However amendments designed to ensure compliance with the Constitution, coordination with provisions under debate or to rectify any material error are not subject to such a requirement.
(Decision nº 2008-564 DC, June 19th 2008, paras 9 and 10, p. 313)

If during the second reading before the National Assembly, the tabled amendments were not debated, this was because of the voting by the Members of the Assembly in favour of the preliminary question whereby "debate was closed" on the text submitted to them.

By approving the provisions of the text previously passed by the Senate, the Joint Committee meeting after the adoption of the preliminary question thus rejected all amendments likely to be tabled and proposed a text on the provisions remaining under debate.

The other restrictions complained of by the parties making the referral are to be found in paragraph 3 of Article 45 of the Constitution which provides that, when the text drafted by the Joint Committee is submitted by the Government to both Houses for approval, "no amendment shall be admissible without the consent of the Government"
(Decision nº 2008-564 DC, June 19th 2008, paras 11 to 13, p. 313)

Amendments connected or not with the text under debate

Principles

The combination of Article 6 of the Declaration of the Rights of Man and the Citizen of 1989, the first paragraph of Article 34 and 39 of the Constitution, together with Article 40, 41, 44, 45, 47 and 47-1 thereof, show that the right of amendment vested in Members of Parliament and the Government must be able to be exercised fully during the first reading of Government and Private Members' Bills by each of the two Houses. Such a right should not be restricted at such a stage in proceedings, having regard to the requirements of clarity and accuracy of Parliamentary debate, for reasons other than the rules of admissibility and the requirement that an amendment not be devoid of any connection with the purpose of the Bill tabled before the first House called upon to debate it.
(Decision nº 2008-564 DC, June 19th 2008, para. 9, p. 313)

Requirement of direct connection for amendments tabled after the first reading

Principle

The economy of Article 45 of the Constitution and in particular the first paragraph thereof provides that additions to or modifications of amendments tabled by Members of Parliament or the Government after the first reading of a Bill must have a direct connection with the provision under debate. However amendments designed to ensure compliance with the Constitution, coordination with provisions under debate or to rectify any material error are not subject to such a requirement.

A provision remaining under debate is one which has not been passed in the same terms by each of the two Houses
(Decision nº 2008-564 DC, June 19th 2008, para 10, p. 313)

Voting on Government and Private Members'Bills

Voting on the Bill as a whole

Under Article 45 of the Constitution, as reiterated by Article 109 of the Rules of Procedure of the National Assembly, the fact that a Bill debated by Parliament be rejected by one or other of the two Houses, does not interrupt the continuation of the procedures provided for with a view to passing a final text.
(Decision n° 2008-564 DC, June 19th 2008, para 7, p. 313)

Voting on Government and Private Members' Institutional Bills

Referral to provisions of an ordinary statute which has been definitively enacted.

Parliament is at liberty when passing Institutional Acts to make normal statutory provisions applicable to matters coming under the scope of an Institutional Act.
(Decision n° 2008-566 DC, July 9th 2008, paras 4 and 5, p. 338)

Second and subsequent readings – procedure of the Joint Committee

Recourse to the Joint Committee and request that the House reach a final decision

Since the National Assembly had adopted on the second reading a preliminary question concerning the Act on Genetically Modified Organisms previously passed by the Senate, the conditions provided for in Article 45 of the Constitution whereby the Prime Minister may convene a Joint Committee, composed of an equal number of members from each House, were thus met. There was "failure to agree by the two Houses" and thus "provisions remaining under debate". Two readings did indeed take place before each of the two Houses, including the National Assembly where the motion on the preliminary question was debated and adopted.
(Decision n° 2008-564 DC, June 19th 2008, para 8, p. 313)

Once a matter has been declared to be one of urgency, the Prime Minister may convene a Joint Committee at each stage of legislative proceedings after a first reading in each House. A Joint Committee may thus be convened after two readings before one House and one in the other House
(Decision n° 2008-564 DC, June 19th 2008, para 8, p. 313)

Role and procedure of the Joint Committee

The Joint Committee is merely required by paragraph 2 of Article 45 of the Constitution to "submit a text for approval" as regards the provisions remaining under debate. By approving the provisions of the text previously passed by the Senate, the Joint Committee thus rejected all amendments likely to be tabled and proposed a text on the provisions remaining under debate.
(Decision n° 2008-564 DC, June 19th 2008, para 12, p. 313)

Text of the Joint Committee concerning solely provisions remaining under debate

A provision remaining under debate is a provision which has not been passed in the same terms by each of the two Houses.
(Decision n° 2008-564 DC, June 19th 2008, para 10, p. 313)

The voting on the second reading in favour of the preliminary question, and thus the rejection of the text in the conditions which prevailed at that time, meant that all the provisions of the Bill needed to be re-debated

The Joint Committee is however merely required by paragraph 2 of Article 45 of the Constitution to "submit a text for approval" as regards the provisions remaining under debate
(Decision nº 2008-564 DC, June 19th 2008, para 12, p. 313)

JUDICIAL AUTHORITY AND THE COURTS

COURTS

Independence of the Courts

Court of Law

By making the power of the Penalty enforcement court to grant release on parole dependent upon a favourable opinion of an Administrative committee, section 12 of the Act pertaining to post-sentence preventive detention and diminished criminal responsibility due to mental deficiency, has failed to respect the principle of the separation of powers guaranteed by Article 16 of the Declaration of 1789, and of the independence of the Judicial Authority as guardian of the freedom of the individual under Articles 64 and 66 of the Constitution.
(Decision nº 2008-562 DC, February 21st 2008, paras 32 to 34, p. 89)

Separation of powers

By making the power of the Penalty enforcement court to grant release on parole dependent upon a favourable opinion of an Administrative committee, section 12 of the Act pertaining to post-sentence preventive detention and diminished criminal responsibility due to mental deficiency, has failed to respect the principle of the separation of powers guaranteed by Article 16 of the Declaration of 1789, and of the independence of the Judicial Authority as guardian of the freedom of the individual under Articles 64 and 66 of the Constitution.
(Decision nº 2008-562 DC, February 21st 2008, paras 32 to 34, p. 89)

POWER TO ENACT LAWS AND MAKE REGULATIONS

GENERALITIES

Scope and limits of power to enact laws

Sovereign power to decide whether measures are advisable in compliance with the Constitution

Codification

Codification meets the requirement of constitutional status that the law be intelligible and accessible which derives from Articles 4,5, 6 and 16 of the Declaration of the Rights of Man and

the Citizen of 1789. Equality before the law, as proclaimed by Article 6 of the Declaration and the " guaranteeing of rights" required by Article 16 thereof would not be effective if citizens failed to have sufficient knowledge of the norms applicable to them. Such knowledge is moreover necessary for the exercising of the rights and freedoms guaranteed both by Article 4 of the Declaration, whereby such exercising knows no bounds other than those determined by Law, and by Article 5, whereby "Nothing that is not forbidden by Law may be hindered and no-one may be compelled to do that which the Law does not ordain".

Transferring articles from the Employment Code to other Codes merely concerns provisions pertaining to certain specific sectors of activity or professional categories. The layout of the new Employment Code has made it more accessible to its users. The rules governing the merits have been separated from rules governing form and the principles governing the departure therefrom. Far from failing to comply with requirements arising from the object of constitutional status that the law be intelligible and accessible, the new Employment Code tends, on the contrary, to implement such principles.
(Decision n° 2007-561 DC, January 17th 2008, paras 6 to 10, p. 41)

Failure to exercise full powers

No failure to exercise full powers

Public procurement contracts

The definition of small and medium-sized businesses, to whom the candidate must undertake to entrust part of the performance of the partnership agreement does not per se condition the award of said contract. It is based on quantitative elements.

Parliament is at liberty, without failing to exercise its full powers to leave it to a regulation to set out this definition.
(Decision n° 2008-567 DC, July 24th 2008, para.17, p. 341)

When laying down, by the challenged provisions of the statute pertaining to partnership agreements, the principle of the payment of a lump sum premium to the person carrying out a piece of research, making a proposal or an offer containing an innovatory idea in the sole case where the public authority subsequently enters into a partnership agreement with a third party, Parliament has not failed to exercise its powers to the full.
(Decision n° 2008-567 DC, July 24th 2008, para.22, p. 341)

Case of failure to exercise full powers

Scope of application of Criminal law

Article 34 of the Constitution provides : "Statutes shall determine the rules concerning ... crimes and other major offences and the penalties they carry".

By merely leaving it in general terms to regulations to determine the list of information which a person applying for approval or permission to grow and exploit GMO may in no case keep confidential, Parliament, when enacting section 11 of the Act pertaining to GMOs has, in view of the in view of the detrimental effect of such measures on information protected by the rules of confidentiality, failed to exercise its full powers.
(Decision n° 2008-564 DC, June 19th 2008, paras 56 and 57, p. 313)

Rights and freedoms

By merely leaving it in general terms to regulations to determine the list of information which a person applying for approval or permission to grow and exploit GMO may in no case keep confidential, Parliament, when enacting section 11 of the Act pertaining to GMOs has, in view

of the in view of the detrimental effect of such measures on information protected by the rules of confidentiality, failed to exercise its full powers.
(Decision nº 2008-564 DC, June 19th 2008, paras 56 and 57, p. 313)

The Environment

Under Article 7 of the Charter for the Environment, everyone has the right "in the conditions and to the extent provided for by law", to have access to information pertaining to the environment in the possession of public authorities. In addition statutes shall also determine the basic principles of the "preservation of the environment".

By merely leaving it in general terms to regulations to determine the list of information which a person applying for approval or permission to grow and exploit GMO may in no case keep confidential, Parliament, in view of the detrimental effect of such measures on information protected by the rules of confidentiality, failed to exercise its full powers.
(Decision nº 2008-564 DC, June 19th 2008, paras 56 and 57, p. 313)

Social Law and Trade Union Law

If, under Article 34 of the Constitution and paragraph 8 of the Preamble of 1946, Parliament is at liberty to leave to collective bargaining agreements the task of specifying the practical methods of application of the fundamental principles of employment law and providing that in the absence of any collective bargaining agreement said methods are to be determined by a Decree, it is incumbent upon it to exercise fully the powers vested in it by Article 34 of the Constitution. I of section 18 of the Act renovating social democracy and reforming working hours provides for a compulsory compensatory rest break for every extra hour of overtime worked beyond the yearly allocation, but abolishes any regulating of the minimum duration thereof or the conditions in which this time off is to be taken, although the threshold triggering this entitlement to a rest period is not itself regulated by the statute. Parliament has thus failed to precisely specify the conditions of implementation of the principle of the compulsory compensatory rest break and thus failed to exercise fully the powers vested in it by Article 34 of the Constitution.

In the absence of any other statutory guarantee regulating the calculation of the compensatory rest break for overtime worked beyond the yearly allocation or the conditions in which it is to be taken, the Council has censured the referral to collective bargaining or, subsidiarily, to the Decree to define "the duration" of the compulsory compensatory rest break.
(Decision nº 2008-568 DC, August 7th 2008, paras 14 to 16, p. 352)

Finance Acts

Section 124 of the Finance Review Act for 2008 authorises the Minister in charge of the economy to give the guarantee of the State to cover the cost of cleaning up polluted land belonging to the SNPE company. By leaving it to an administrative act to fix the ceiling of said guarantee taking into account an expert appraisal subsequent to the Act without evaluating this expenditure or limiting the amount thereof, this section fails to comply with the provisions of 5° of II of section 34 of the Institutional Act of August 1st 2001 pertaining to Finance Acts and which provides that a Finance Act " shall authorize the giving of State guarantees and determine the operation thereof". Censure for failure to exercise full powers.
(Decision nº 2008-574 DC, December 29th 2008, paras 7 to 9, p. 386)

Repeal or amendment of previous statutes

General rules

Although paragraph 2 of Article 37 of the Constitution makes it possible for the Government to make a referral to the Constitutional Council for the purpose of holding that texts in statutory form enacted after the coming into force of the Constitution of 1958 are of a

regulatory nature and may thus be amended by Decree, Parliament is at liberty to repeal measures of a regulatory nature contained in statutes. The Government was thus able, pursuant to the authority vested in it by Article 38 of the Constitution, to carry out such repeals.
(Decision nº 2007-561 DC, January 17th 2008, para.13, p. 41)

Amendment of previous statutes

Amendment of ordinary statutes

The use of the present indicative being of an imperative nature, replacing the present indicative by wording couched in mandatory terms does not strip the provisions of the new Employment Code of their imperative nature.
(Decision nº 2007-561 DC, January 17th 2008, para.17, p. 41)

Respective powers of Institutional Acts and other Acts

Provisions coming under the scope of an Institutional Act

Under Article 63 of the Constitution "An Institutional Act shall determine the rules of organization and proceeding of the Constitutional Council" The archive system of the Constitutional Council, which cannot be dissociated from the conditions in which the Council carries out its tasks, comes under the scope of an Institutional Act.
(Decision nº 2008-566 DC, July 9th 2008, para 3, p. 338)

Normativity of the law and conformity with the Constitution

The use of the present indicative being of an imperative nature, replacing the present indicative by wording couched in mandatory terms does not strip the provisions of the new Employment Code of their imperative nature.
(Decision nº 2007-561 DC, January 17th 2008, para.17, p. 41)

Intelligibility of the law and conformity with the Constitution

When passing paragraph 1 of Article L 531-2-1 of the Environment Code, Parliament intended to allow the co-existence of genetically modified organisms and conventional or biological crops. To this end, it decided to lay down thresholds for the adventitious or technically unavoidable presence of authorised genetically modified organisms below which products will not be considered to be genetically modified. Parliamentary debate moreover shows that by referring to the "Community definition", Parliament intended that in the current state of the law, when making regulations the competent authority should take into consideration, without however being bound to adopt the same, the labelling thresholds laid down by Article 12 and 24 of regulation 1829/2003 referred to above and by Article 21 of Directive 2001/18/EC when traces of authorised genetically modified organisms are adventitious or technically unavoidable. Parliament has thus placed a limit on the tolerance threshold for traces of adventitious or technically unavoidable genetically modified organisms.

By thus setting out the conditions governing the issuing by the Council of State of a Decree by specifying the abovementioned thresholds and referring to Community law, Parliament did not infringe the constitutional objective that the law be intelligible and accessible.
(Decision nº 2008-564 DC, June 19th 2008, paras 25, 27 to 29, p. 313)

Conditions governing the application and coming into force of statutes

Scope of the principle that statutes may not have retrospective effect

Since post sentence prevention detention is neither a penalty nor a sentence intended to serve as a punishment, the contentions based on failure to respect the provisions of Article 8 of the Declaration of 1789 are inoperative.

However, in view of its custodial nature, the time it may last, the fact that it is indefinitely renewable and ordered after conviction by a court of law, post-sentence preventive detention cannot be ordered in the cases of persons convicted prior to the publication of the statute or convicted after this date of offences committed prior to such date. Indents 2 to 7 of I of section 13 of the statute referred for review, II and consequently IV thereof must therefore be held to be unconstitutional.
(Decision nº 2008-562 DC, February 21st 2008, paras 8 to 10, p. 89)

Manners of exercising the power to make regulations

Compliance with constitutional requirements

Referral to a regulation does not dispense the body making said regulation from compliance with constitutional requirements
(Decision nº 2008-567 DC, July 24th 2008, para 18, p. 341)

Bodies whose opinions are not binding on any public authority

Section 53 of the Act of February 11th 1982 and Article L 614-7 of the Monetary and Financial Code merely confer respectively on the High Council of the Public Sector and the High Council of the Public and Semi-public Financial sector the right to be consulted. These provisions do not call into question either the rules governing the nationalisation of companies and the transfer of ownership of companies from the public to the private sector, which come under the scope of statute law under Article 34 of the Constitution, nor any other principles or rules which the Constitution makes the preserve of statute law. Provisions which lay down such rules are thus of a regulatory nature.
(Decision nº 2008-212L, September 18th 2008, para 1, p. 367)

Governmental and administrative organization

Distribution of the powers of the State between various authorities

Article 21 of the Constitution does not preclude Parliament entrusting to a public authority other than the Prime Minister the task of determining standards for the implementation of principles laid down by statute law, provided that such empowerment concerns solely measures which are limited both in their scope and content.

The power conferred on the Director of the National Union of Health Funds, a public body of the State, by Article 37 of the Social Security Financing Act for 2009 merely concerns the fixing of each Fund's participation in health care contributions of a sole category of professionals and for the sole year 2009. The purpose and scope of said power are determined in a sufficiently precise manner.
(Decision nº 2008-571 DC, December 11th 2008, paras 8 and 9, p. 378)

Principle of the power to make regulations

Designation of Minister(s) entitled to exercise powers

Article 34 of the Constitution provides : "Statutes shall lay down the basic principles ... of the self-government of Territorial Communities, their powers and revenue". Article 72 provides that the Territorial Communities of the Republic shall be self-governing through councils elected " in the conditions provided for by statute". Article 21 provides that "The Prime Minister shall ... ensure the implementation of legislation. Subject to the provisions of

Article 13, he shall have power to make regulations.. – He may delegate certain of his powers to Ministers".

When entrusting the Minister in charge of the Economy with the task of defining "methodology" with a view to helping Territorial Communities to enter into partnership agreements, such methodology is limited in both scope and content and thus Parliament has not failed to comply with Article 21 of the Constitution.
(Decision nº 2008-567 DC, July 24th 2008, paras 5 and 6, p. 341)

Various implementations

Provisions of the Highway Code which are intended to :- (i) designate the Administrative authority of the State to which should be addressed objections to the transfer of registration certificates by the Treasury accountant or requests for certificates of non opposition by a vehicle owner for the purpose of selling the same ; – (ii) fix the duration of the validity of said certificate ; indicate the department and data bank in charge of registering and storing the address or change of address of said owner do not call into question the fundamental principles "of property, real rights and civil and commercial obligations" nor any other principles or rules which the Constitution reserves for statute law. They are therefore of a regulatory nature.
(Decision nº 2008-210 L, May 7th 2008, paras 1 and 2, p. 303)

Neither the provisions of the Highway Code which designate the Administrative authority of the State responsible for various procedural measures or the giving of information concerning the withdrawal of registration certificates of certain vehicles nor those of Section 57 of the Act of July 9th 1991 designating the State bodies empowered to receive declarations from Bailiffs entailing the seizure of a debtor's vehicle call into question the fundamental principles of the " systems of ownership, property rights and civil and commercial obligations" which are the preserve of statute law under Article 34 of the Constitution, nor any other principle which the Constitution reserves for statute law.
(Decision nº 2008-213 L, October 16th 2008, paras 1 and 2, p. 369)

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

Ratification of Ordinances

The Government, when tabling a Bill ratifying an Ordinance and Parliament when passing the same, merely implements the provisions of Article 38 of the Constitution without adversely affecting the right to effective redress before a court of law nor the right to a fair trial which derive from Article 16 of the Declaration of the Rights of Man and the Citizen of 1789.
(Decision nº 2007-561 DC, January 17th 2008, para.4, p. 41)

Debate on a ratifying Government Bill.

The argument contending that the ratified Ordinance exceeded the limits of the authority vested in the Government is inoperative where a ratifying statute is concerned.
(Decision nº 2007-561 DC, January 17th 2008, para.12, p. 41)

CONDITIONS FOR APPLYING ARTICLES 37 (paragraph 2) AND 41 OF THE CONSTITUTION

Although paragraph 2 of Article 37 of the Constitution makes it possible for the Government to make a referral to the Constitutional Council for the purpose of holding that texts in statutory form enacted after the coming into force of the Constitution of 1958 are of a

regulatory nature and may thus be amended by Decree, Parliament is at liberty to repeal measures of a regulatory nature contained in statutes. The Government was thus able, pursuant to the authority vested in it by Article 38 of the Constitution, to carry out such repeals.
(Decision nº 2007-561 DC, January 17th 2008, para.13, p. 41)

Conditions for applying Article 37 paragraph 2

Powers of the Constitutional Council

Although the Constitutional Council has held that the provisions included in the body of texts and the captions referring to the divisions thereof are of a regulatory nature, it did not rule on the purely grammatical consequences thereof. These consequences, such as changes in definite articles or pronouns or agreement of adjectives and past participles may be taken into account when the power to make regulations is exercised. (Imp. Sol)
(Decision nº 2008-214 L, December 4th 2008, para 1, p. 376)

DISTRIBUTION OF POWERS BY SUBJECT MATTER

Types of Court – Status of the Judiciary

Types of Court – Rules for the composition thereof

Although, in view of the principle of equal representation governing their composition and the nature of their attributions, the *Conseil de prud'hommes* (Employment Tribunals) are a court within the meaning of Article 34 of the Constitution, Articles L 1411-1 to L 1411-6 and L.1422-1 to L.1422-3 of the new Employment Code set out their jurisdiction. The argument contending that this new Code refers to "the judicial authority instead of the *Conseil des prud'hommes"* is not supported by the facts
(Decision nº 2007-561 DC, January 17th 2008, para.15, p. 41)

Public Legal Entities

Naming of a Public Establishment

Statutory provisions which merely give a name to a Public Establishment of the State do not call into question either the rules concerning "the fundamental guarantees granted to citizens for the exercise of their civil liberties" or "the setting up of categories of public legal entities" deriving from Article 34 of the Constitution, nor any other principle or rule which the Constitution reserves for statute law.
(Decision nº 2008-214 L, December 4th 2008, para 1, p. 376)

Territorial Communities

Self-government of Territorial Communities

Orders placed by Public bodies

Under Article 34 of the Constitution "Statutes shall lay down the basic principles of the self-government of Territorial Communities, their powers and revenue". Article 72 provides

that the Territorial Communities of the Republic shall be self-governing through councils elected " in the manner provided for by statute".

The "methodology" to be defined by those vested with the power to make regulations with a view entering into a partnership agreement is merely designed to assist said Territorial Communities in the decision-taking process. It does not call into question the basic principles of self-government of Territorial Communities but merely proposes a manner of implementing the same. Parliament thus did not fail to comply with Article 34 of the Constitution.
(Decision n° 2008-567 DC, July 24th 2008, paras 5 and 6, p. 341)

Preservation of the Environment

Under Article 34 of the Constitution, statute law shall determine the fundamental principles " of the preservation of the environment".

Parliamentary debate shows that by referring to the "Community definition", Parliament intended that in the current state of the law, when making regulations, the competent authority should take into consideration, without however being bound to adopt the same, the labelling thresholds laid down by Article 12 and 24 of regulation 1829/2003 referred to above and by Article 21 of Directive 2001/18/EC when traces of authorised genetically modified organisms are adventitious or technically unavoidable. Parliament has thus placed a limit on the tolerance threshold for traces of adventitious or technically unavoidable genetically modified organisms and required that such thresholds be fixed species by species after consultation of the High Council on Biotechnologies. It has made it compulsory for the fixing of such limits to respect "freedom to consume and produce products with or without genetically modified organisms, without this being harmful for the environment and the specific nature of conventional and quality crops". By thus setting out the conditions governing the issuing by the Council of State of a Decree by specifying the abovementioned thresholds and referring to Community law, Parliament did not fail to exercise its powers to the full.
(Decision n° 2008-564 DC, June 19th 2008, paras 26, 28 and 29, p. 313)

The number of representatives of each of the categories of members of the High Committee for transparency and information on nuclear safety, other than members of Parliament, appearing in indent 2 of section 23 of the Act of June 13th 2006 does not call into question the fundamental principles of the "preservation of the environment" which is the preserve of statute law under Article 34 of the Constitution, nor any other principles or rules which the Constitution reserves for statute law. This number is therefore of a regulatory nature.
(Decision n° 2008-211 L, September 18th 2008, para 1, p. 365)

Property – real rights – civil and commercial obligations

Fundamental principles of property and obligations

Miscellaneous

Provisions of the Highway Code which are intended to :- (i) designate the Administrative authority of the State to which should be addressed objections to the transfer of registration certificates by the Treasury accountant or requests for certificates of non opposition by a vehicle owner for the purpose of selling the same ; – (ii) fix the duration of the validity of said certificate ; indicate the department and data bank in charge of registering and storing the address or change of address of said owner do not call into question the fundamental principles "of property, real rights and civil and commercial obligations" nor any other principles or rules which the Constitution reserves for statute law. They are therefore of a regulatory nature.
(Decision n° 2008-210 L, May 7th 2008, paras 1 and 2, p. 303)

Neither the provisions of the Highway Code which designate the Administrative authority of the State responsible for various procedural measures or the giving of information concerning the withdrawal of registration certificates of certain vehicles nor those of Section 57 of the Act of July 9th 1991 designating the State bodies empowered to receive declarations from Bailiffs entailing the seizure of a debtor's vehicle call into question the fundamental principles of the " systems of ownership, property rights and civil and commercial obligations" which are the preserve of statute law under Article 34 of the Constitution, nor any other principle which the Constitution reserves for statute law.
(Decision nº 2008-213 L, October 16th 2008, paras 1 and 2, p. 369)

Employment Law – Trade Union Law

Although the independence of Labour inspectors must be included in the fundamental principles of Employment Law within the meaning of Article 34 of the Constitution, determining which Administrative authority is vested with the powers concerned within the "labour inspection system" within the meaning of II of Book 1 of part 8 of the New Code is a matter for regulations.
(Decision nº 2007-561 DC, January 17th 2008, para 14, p. 41)

Collective bargaining

If, under Article 34 of the Constitution and paragraph eight of the Preamble of 1946 Parliament is at liberty to leave to collective bargaining agreements the task of specifying the practical methods of application of the fundamental principles of employment law and providing that in the absence of any collective bargaining agreement said methods are to be determined by a Decree, it is incumbent upon it to exercise fully the powers vested in it by Article 34 of the Constitution. I of section 18 of the Act renovating social democracy and reforming working hours provides for a compulsory compensatory rest break for every extra hour of overtime worked beyond the yearly allocation, but abolishes any regulating of the minimum duration thereof or the conditions in which this time off is to be taken, although the threshold triggering this entitlement to a rest period is not itself regulated by the statute. Parliament has thus failed to precisely specify the conditions of implementation of the principle of the compulsory compensatory rest break and thus failed to exercise fully the powers vested in it by Article 34 of the Constitution.
(Decision nº 2008-568 DC, August 7th 2008, paras 14 and 15, p. 352)

Social security – fundamental principles

Principles applicable to each type of benefit

Categories of persons under a duty to pay contributions

The determining of categories of persons under a duty to pay contributions must be included in the fundamental principles of social security. However it is up to those vested with the power to make regulations to fix the rate of the share of each of these categories as regards the payment of this contribution. The argument based on the fact that statute law alone could change the amount payable by dentists as health care insurance for 2009 is thus dismissed.
(Decision nº 2008-571 DC, December 11th 2008, para. 7, p. 378)

CONSTITUTIONAL COUNCIL AND REVIEW OF CONSTITUTIONALITY

MAKING REFERRALS TO THE CONSTITUTIONAL COUNCIL – CONDITIONS GOVERNING ADMISSIBILITY – NO CASE TO ANSWER – INOPERATIVE ARGUMENT OR ARGUMENT NOT SUPPORTED BY THE FACTS

Capacity of the person(s) making the referral

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

Although paragraph 2 of Article 61 of the Constitution provides that statutes may be referred to the Constitutional Council for review by Members of Parliament, the exercising of this prerogative is reserved for a group of no fewer than sixty Members of the National Assembly or sixty Senators. Mr Gaston Flosse, Senator, sent the Constitutional Council, by a letter dated December 8th 2008 of which he was sole signatory, a memorandum contesting the provisions of section 96 of the Social Security Financing Act. This memorandum is inadmissible under the provisions of the second paragraph of Article 61 of the Constitution.
(Decision nº 2008-571 DC, December 11th 2008, paras 2 and 3, p. 378)

NORMS OF REFERENCE FOR REVIEW OF CONSTITUTIONALITY

Norms of reference retained

Declaration of the Rights of Man and the Citizen

Right to privacy (Article 2)

It is incumbent upon Parliament to ensure conciliation between the right to privacy and other constitutional requirements connected in particular with the safeguarding of law and order. Application of this principle to control the entry of a declaration of irresponsibility on form nº 1 of the Criminal Record file.
(Decision nº 2008-562 DC, February 21st 2008, paras 29 to 31, p. 89)

Principle of responsibility (Article 4)

The principle of responsibility derives from Article 4 of the Declaration of 1789.
(Decision nº 2008-564 DC, June 19th 2008, para.39, p. 313)

Principle of legality of offences and punishments (Article 8)

Article 8 of the Declaration of 1789 proclaims that "The Law must prescribe only punishments which are strictly and evidently necessary and no one shall be punished except by virtue of a statute drawn up and promulgated before the commission of the offence and legally applied". These principles thus apply solely to penalties and sentences intended to serve as punishments.
(Decision nº 2008-562 DC, February 21st 2008, para 8, p. 89)

Presumption of innocence (Article 9)

Post-sentence preventive detention and surveillance are not repressive measures and hence the argument based on failure to respect the presumption of innocence is inoperative.
(Decision nº 2008-562 DC, February 21st 2008, paras 11 and 12, p. 89)

No undue harshness (Article 9)

Post-sentence preventive detention and surveillance must comply with the principle, deriving from Article 9 of the Declaration of 1789 and Article 66 of the Constitution, whereby the freedom of the individual should not be restricted with undue harshness. It is indeed the task of Parliament to ensure the conciliation between the necessary maintenance of law and order to ensure the safeguarding of rights and principles of constitutional value and the exercising of constitutionally guaranteed freedoms. The latter include the freedom to come and go and the right to privacy, protected by Articles 2 and 4 of the Declaration of 1789 and the freedom of the individual of which Article 66 entrusts the protection to the Judicial Authority. Any infringement of the exercising of these freedoms should be tailored, necessary and proportionate to the aims of preventing the commission of offences it is sought to attain.
(Decision nº 2008-562 DC, February 21st 2008, para 13, p. 89)

Separation of powers (Article 16)

By making the power of the Penalty enforcement court to grant release on parole dependent upon a favourable opinion of an Administrative committee, section 12 of the Act pertaining to post-sentence preventive detention and diminished criminal responsibility due to mental deficiency, has failed to respect the principle of the separation of powers guaranteed by Article 16 of the Declaration of 1789.
(Decision nº 2008-562 DC, February 21st 2008, paras 32 to 34, p. 89)

The provisions of the National Heritage Code applicable to the archives of the Constitutional Council and requiring on each occasion the agreement of the latter does not infringe the principle of the separation of powers guaranteed by Article 16 of the Declaration of the Rights of Man and the Citizen. The same applies to the provision whereby the conservation of documents from the public archives remaining to be selected shall be ensured "under the scientific and technical supervision of the body administering the Archives" insofar as this supervision does not vest this administrative body with any decision-taking power.
(Decision nº 2008-566 DC, July 9th 2008, paras 7 to 9, p. 338)

Article 16 of the Declaration of the Rights of Man and the Citizen proclaims : "Any society in which no provision is made for guaranteeing rights or the separation of powers, has no Constitution".

Section 37 of the Social Security Financing Act for 2009 makes it possible to set off the financial consequences of the application of the decision of the *Conseil d'Etat* of June 16th 2008 which set aside the Ministerial Order approving the national agreement signed by the Health Care Funds and Dentists insofar as it was of retrospective effect. This provision does not however revalidate the agreement held to be void by the Court and as such does not adversely affect either the holding or the grounds of said decision. It cannot thus be considered as being designed to censure the decision of a Court.
(Decision nº 2008-571 DC, December 11th 2008, paras 10 and 13, p. 378)

Right of redress (Article 16)

The right to effective redress and the right to a fair trial derive from Article 16 of the Declaration of the Rights of Man and the Citizen of 1789.
(Decision nº 2007-561 DC, January 17th 2008, para 4, p. 41)

The argument based on the infringement of the right of effective redress before a court of law, which derives from Article 16 of the Declaration of 1789, is unsupported by the facts since none of the contested provisions adversely affects the jurisdiction of the judge, who, if the matter is referred to him by an interested party, if need be in summary proceedings, will be

required to ascertain whether, on the basis of a prior assessment, the conditions making it possible to have recourse to a partnership agreement have been met.
(Decision nº 2008-567 DC, July 24th 2008, para 10, p. 341)

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

Manner of implementation of certain principles

Principle of freedom to join a Trade Union (paragraph 6)

Under paragraph 6 of the Preamble of 1946 "All men may defend their rights and interests through Trade Union action and may belong to the Union of their choice". An agreement between the State and the Unions as to the manner whereby preliminary declarations are brought to the notice of the Administrative Authority does not mean that the transmission of said declarations is to be ensured by Trade Unions nor does it impede the freedom of each member of the teaching profession to personally decide whether or not to take part in a strike.

Qualified.
(Decision nº 2008-569 DC, August 7th 2008, paras 16 and 17, p. 359)

Right to strike (paragraph 7)

Paragraph 7 of the Preamble of 1946 provides : "The right to strike shall be exercised within the framework of the laws governing said right". When including this provision, the constituent power wished to state that the right to strike is a principle of constitutional status but is not unrestricted and thus empowered Parliament to determine such restrictions by achieving the necessary conciliation between the defence of professional interests, where striking is a means to an end, and the safeguarding of the general interest, which a strike may adversely affect. In particular where public services are concerned, recognising the right to strike should not result in precluding Parliament from determining the necessary limits of such a right in order to ensure the continuity of public service which, like the right to strike, is a principle of constitutional status.
(Decision nº 2008-569 DC, August 7th 2008, para.8, p. 359)

Principle of participation (paragraph 8)

Although paragraph 8 of the Preamble to the Constitution of October 27th 1946 provides " All workers shall, through their representatives, participate in the collective determination of their working conditions and in the management of the workplace", Article 34 of the Constitution makes the determination of the fundamental principles of employment law the preserve of statute law. It is therefore incumbent upon Parliament to determine, having due respect for the principle set forth in paragraph 8 of the Preamble, the conditions and guarantees of the implementation thereof.
(Decision nº 2008-568 DC, August 7th 2008, para.4, p. 352)

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

In order to introduce child-minding facilities for schoolchildren in public pre-school classes or elementary schools or in private pre-school classes or elementary schools under contract with the State, the Constitutional Council referred to the 10th paragraph of the Preamble of the Constitution of October 27th 1946 whereby "The Nation shall provide the individual and the family with the conditions necessary for their development".
(Decision nº 2008-569 DC, August 7th 2008, paras 6 and 7, p. 359)

Protection of health and material security guaranteed in particular to the child and the mother (paragraph 11)

The provisions of section 90 of the Social Security Financing Act merely enable employees each year to voluntarily extend their working life for a further five years. They thus do not fail

to comply with the requirements of paragraph 11 of the Preamble of 1946 concerning the right to health, rest and leisure.
(Decision nº 2008-571 DC, December 11th 2008, paras 17 and 19, p. 378)

Right to rest and leisure (paragraph 11)

The provisions of section 90 of the Social Security Financing Act merely enable employees each year to voluntarily extend their working life for a further five years. They thus do not fail to comply with the requirements of paragraph 11 of the Preamble of 1946 concerning the right to health, rest and leisure.
(Decision nº 2008-571 DC, December 11th 2008, paras 17 and 19, p. 378)

Principle of equal access to education (paragraph 13)

To dismiss the argument that the restrictions imposed on the right of teaching staff to strike by the statute introducing a right for parents to benefit from child-minding facilities have no justification in the context of ensuring the continuity of public service, the Constitutional Council referred to paragraph 13 of the Preamble of the Constitution of October 27th 1946 whereby " The Nation guarantees equal access for children and adults to instruction, vocational training and culture. The provision of free public secular education at all levels is a duty of the State".
(Decision nº 2008-569 DC, August 7th 2008, paras 6 and 7, p. 359)

Charter for the Environment 2004

All the rights and duties defined in the Charter of the Environment have constitutional status
(Decision nº 2008-564 DC, June 19th 2008, paras 18 and 49, p. 313)

Principle of precaution (Article 5)

The provisions of Article 5 of the Charter for the Environment, like all the other rights and duties set out in the Charter for the Environment, have constitutional status. They are thus binding upon the Government and administrative authorities within the limits of the areas under their jurisdiction. It is thus incumbent upon the Constitutional Council, when asked to rule under Article 61 of the Constitution, to ensure that Parliament has not failed to respect the principle of precaution and has taken the necessary measures to ensure compliance with said principle by other public authorities.
(Decision nº 2008-564 DC, June 19th 2008, para 18, p. 313)

Principle of information (Article 7)

The provisions of Article 7 of the Charter for the Environment, like all the other rights and duties set out in the Charter for the Environment, have constitutional status.
(Decision nº 2008-564 DC, June 19th 2008, paras 48 and 49, p. 313)

The number of representatives of each of the categories of members of the High Committee for transparency and information on nuclear safety, other than members of Parliament, appearing in indent 2 of section 23 of the Act of June 13th 2006 does not call into question the fundamental principles of the "preservation of the environment" which is the preserve of statute law under Article 34 of the Constitution, nor any other principles or rules which the Constitution reserves for statute law. This number is therefore of a regulatory nature.
(Decision nº 2008-211 L, September 18th 2008, para 1, p. 365)

Fundamental principles recognised by the laws of the Republic

Conditions governing recognition

The Republican tradition cannot be usefully raised to argue that a statute which runs counter to it is unconstitutional unless this tradition has given rise to a fundamental principle

recognised by the laws of the Republic within the meaning of the first paragraph of the Preamble to the Constitution of October 27th 1948.

A principle which does not derive from any statutory provisions prior to the Constitution of 1946 and which is, on the contrary, contradicted by various prior statutes cannot be considered as constituting a fundamental principle recognised by the laws of the Republic.
(Decision nº 2008-563 DC, February 21st 2008, para.3, p. 100)

Principles not retained

Others

The tradition whereby electoral rules cannot be modified in the year preceding an election in not a fundamental principle recognised by the laws of the Republic within the meaning of the first paragraph of the Preamble to the Constitution of October 27th 1946.

This tradition does not derive from any statutory provisions prior to the Constitution of 1946. Various previous statutes moreover modified electoral rules in the year preceding an election.
(Decision nº 2008-563 DC, February 21st 2008, para.3, p. 100)

Principles of constitutional status laid down by Articles of the Constitution

Independence of the Judicial Authority

By making the power of the Penalty enforcement court to grant release on parole dependent upon a favourable opinion of an Administrative committee, section 12 of the Act pertaining to post-sentence preventive detention and diminished criminal responsibility due to mental deficiency, has failed to respect the principle of the independence of the Judicial Authority as guardian of the freedom of the individual under Articles 64 and 66 of the Constitution.
(Decision nº 2008-562 DC, February 21st 2008, paras 32 to 34, p. 89)

Independence of the Constitutional Council

All the provisions of Title VII of the Constitution show that the constituent power intended to guarantee the independence of the Constitutional Council. By allowing free consultation of the archives of the work of the Constitutional Council after the expiry of a period of 25 years, section 1 of the Institutional Act does not adversely affect the independence of the Constitutional Council. The same applies to the provision whereby the conservation of documents from the public archives remaining to be selected shall be ensured "under the scientific and technical supervision of the body administering the Archives" insofar as this supervision does not vest this administrative body with any decision-taking power.
(Decision nº 2008-566 DC, July 9th 2008, paras 6 to 9, p. 338)

Article 88-1 : Participation of the Republic in the European Communities and the European Union

Although the transposing into domestic law of a Directive is a constitutional requirement, it is clear from the Constitution and in particular Article 88-4 thereof that this requirement does not result in adversely affecting the separation between matters which are the preserve of statute law and those which are the preserve of regulations as determined by the Constitution.
(Decision nº 2008-564 DC, June 19th 2008, para.53, p. 313)

Objectives of constitutional status

Retained

Accessibility and intelligibility of statutes

Codification meets the requirement of constitutional status that the law be intelligible and accessible which derives from Articles 4,5, 6 and 16 of the Declaration of the Rights of Man and

the Citizen of 1789. Equality before the law, as proclaimed by Article 6 of the Declaration and the "guaranteeing of rights" required by Article 16 thereof would not be effective if citizens failed to have sufficient knowledge of the norms applicable to them. Such knowledge is moreover necessary for the exercising of the rights and freedoms guaranteed both by Article 4 of the declaration, whereby such exercising knows no bounds other than those determined by Law, and by Article 5, whereby "Nothing that is not forbidden by Law may be hindered and no-one may be compelled to do that which the Law does not ordain".
(Decision nº 2007-561 DC, January 17th 2008, paras 6 to 10, p. 41)

The statute facilitating the access of women and men to the office of *Conseiller general* is precise and unequivocal. It therefore does not fail to comply with the objective of constitutional status of accessibility and intelligibility of statutes.
(Decision nº 2008-563 DC, February 21st 2008, para.5. p. 100)

Parliament must exercise to the full the powers vested in it by the Constitution, and in particular by Article 34 thereof. The full exercise of these powers, and in particular the constitutional objective that the law be intelligible and accessible, which derives from Articles 4,5, 6 and 16 of the Declaration of the Rights of Man and the Citizen 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 nº 2008-564 DC, June 19th 2008, para.25, p. 313)

Parliament must exercise to the full the powers vested in it by the Constitution and in particular by Article 34 thereof. The full exercise of such powers, together with the object of constitutional status that the law be intelligible and accessible, which derives from Articles 4,5,6 and 16 of the Declaration of 1789, place it under a duty to enact provisions which are sufficiently precise and unequivocal.

When amending Article 25 of the Ordinance of June 17th 2004, Parliament intended to offer adjudicating bodies the possibility of having automatically recourse to negotiated procedures for the signing of contracts. To this end it has defined two different procedures, supposedly alternative, over and above a threshold fixed by Decree. However the wording used only refers, in both cases, to contracts of which the amount is "over the threshold". These provisions which must furthermore be combined with III of Article 7 of the Ordinance as amended, which refers to contracts of which the amount " is lower than the threshold fixed by Decree" fail to comply, in view of their contradictory nature, with the object of constitutional status that the law be intelligible and accessible.

The final two indents of section 16 of the Act pertaining to partnership agreements are thus unconstitutional.
(Decision nº 2008-567 DC, July 24th 2008, paras 38 to 40, p. 341)

Proper use of public funds

No rule or principle of constitutional status precludes a public body from entrusting a third party, for a specified period, with an overall assignment involving the design, financing, construction or transformation, upkeep, maintenance, operation and management of works, equipment or intangible goods necessary for the public service. However generalising such departures from normal practice in matters of orders placed by public bodies or rules governing the public domain might result in depriving of statutory guarantees constitutional requirements inherent to equality before the placing of orders by public bodies, the protection of public property and the proper use of public funds, a requirement of constitutional status deriving from Articles 14 and 15 of the Declaration of 1789. In the case in hand the statute referred for review has reserved such departures solely for situations which are justified by considerations of general interest.
(Decision nº 2008-567 DC, July 24th 2008, para.9, p. 341)

Presuming that the condition of urgency was met, subject solely to an evaluation prior to the entering into of a partnership agreement not being unfavourable, the challenged provisions result in restricting the scope of this evaluation and preventing the judge from exercising his power of appraisal as to the urgency involved. They therefore deprive of statutory guarantees

the constitutional requirements of equality before the placing of orders by public bodies, the protection of public property and the proper use of public funds
(Decision nº 2008-567 DC, July 24th 2008, para.14, p. 341)

Principles arising from the combination of several provisions

Principle of the continuity of public services

To dismiss the argument that the restrictions imposed on the right of teaching staff to strike by the statute introducing a right for parents to benefit from child-minding facilities have no justification in the context of ensuring the continuity of public service, the Constitutional Council referred to paragraph 13 of the Preamble of the Constitution of October 27th 1946 whereby " The Nation guarantees equal access for children and adults to instruction, vocational training and culture. The provision of free public secular education at all levels is a duty of the State".
(Decision nº 2008-569 DC, August 7th 2008, paras 6 and 7, p. 359)

Principle of protection of the public domain

No rule or principle of constitutional status precludes a public body from entrusting a third party, for a specified period, with an overall assignment involving the design, financing, construction or transformation, upkeep, maintenance, operation and management of works, equipment or intangible goods necessary for the public service. However generalising such departures from normal practice in matters of orders placed by public bodies or rules governing the public domain might result in depriving of statutory guarantees constitutional requirements inherent to equality before the placing of orders by public bodies, the protection of public property and the proper use of public funds, a requirement of constitutional status deriving from Articles 14 and 15 of the Declaration of 1789. In the case in hand the statute referred for review has reserved such departures solely for situations which are justified by considerations of general interest.
(Decision nº 2008-567 DC, July 24th 2008, para.9, p. 341)

Presuming that the condition of urgency was met, subject solely to an evaluation prior to the entering into of a partnership agreement not being unfavourable, the challenged provisions result in restricting the scope of this evaluation and preventing the judge from exercising his power of appraisal as to the urgency involved. They therefore deprive of statutory guarantees the constitutional requirements of equality before the placing of orders by public bodies, the protection of public property and the proper use of public funds
(Decision nº 2008-567 DC, July 24th 2008, para.14, p. 341)

Principle of protection of the Property of public bodies

The principle of equality before the law and public burdens together with the protection of the right of ownership, which concerns not only property belonging to private individuals but also to the State or other public bodies, derive firstly from Articles 6 and 13 of the Declaration of 1789 and secondly from Articles 2 and 17 of said Declaration. These principles preclude property belonging to the national heritage of public bodies being disposed of or encumbered with long-lasting rights to the benefit of persons acting in the furtherance of private interests without any suitable consideration taking into account the true value of said property.
(Decision nº 2008-567 DC, July 24th 2008, para.25, p. 341)

Norms of reference not retained and elements not taken into consideration

Norms of reference not retained for review of the constitutionality of statutes

Rules of procedure of a House of Parliament

Alleged failure to comply with Articles 42, 84 and 151-4 of the Rules of the National Assembly cannot per se result in legislative proceedings running counter to the Constitution.
(Decision nº 2008-564 DC, June 19th 2008, para. 5, p. 313)

Specific rules of procedure of Houses of Parliament

Rules of procedure of Houses of Parliament do not in themselves have constitutional status

Alleged failure to comply with Articles 42, 84 and 151-4 of the Rules of the National Assembly cannot per se result in legislative proceedings running counter to the Constitution.
(Decision nº 2008-564 DC, June 19th 2008, para. 5, p. 313)

Norms of reference for review of the constitutionality of Rules of procedure of Houses of Parliament.

The amending of Article 7 of the Rules of procedure of the Senate, which merely draws the consequences of Institutional Act nº 2007-223 of February 21st 2007 containing statutory and institutional provisions pertaining to French overseas territories by adding one member to each of the two Standing committees of said House does not run counter to any provision of the Constitution.
(Decision nº 2008-565 DC, June 26th 2008, para. 1, p. 328)

NATURE, MANNER OF EXERCISING 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 concerning the statute referred for review

Taking into consideration of Parliamentary debate and preliminary studies concerning the Act on Genetically Modified Organisms to dismiss the complaint against the creation of a specific offence of deliberate destruction of crops. Parliamentary debate shows that Parliament intended, by creating a specific offence, to respond to repeated destruction of authorised crops of genetically modified organisms and thus, by introducing punishments designed to serve as a deterrence, ensure protection for such crops, in particular for those grown for research purposes. No patent disproportion between the offence and the punishment incurred
(Decision nº 2008-564 DC, June 19th 2008, para. 36, p. 313)

Scope of review

Power of appraisal vested in the Constitutional Council

The Constitution does not vest the Constitutional Council with any general power of appraisal and decision-making similar to that vested in Parliament.
(Decision nº 2008-568 DC, August 7th 2008, para. 5, p. 352)

Review of proportionality

Review of appropriateness

Under indent 4 of Article 706-53-13 of the Code of Criminal Procedure, placing a person in a secure socio-medico-judicial centre is intended to make it possible, thanks to the medical,

social and psychological care which is permanently on offer, to eventually put an end to such detention. Post-sentence preventive detention is reserved for persons who are potentially very dangerous and present a high risk of re-offending because they suffer from serious personality disorders. In view of the fact that a post-sentence preventive detention order is a measure which totally deprives an offender of his freedom, the definition of the scope of such a measure must be one which is appropriate in view of such personality disorders.

In view of the extreme seriousness of the crimes involved and the severity of the sentence passed by the *Cour d'assises*, the scope of post-sentence preventive detention appears to be appropriate for the purpose it is sought to achieve.

The guarantees provided for by the first two indents of Article 706-53-14 of the Code of Criminal Procedure are appropriate to ensure that preventive post sentence detention will be reserved solely for persons who are particularly dangerous because they suffer from serious personality disorders.
(Decision nº 2008-562 DC, February 21st 2008, paras 14 to 16, p. 89)

Review of necessity

Given the seriousness of the restrictions it places on the freedom of the individual, post-sentence preventive detention can only be considered as being a necessary measure as long as no other measure less invasive of such freedom can offer sufficient guarantees of preventing the commission of acts which seriously endanger the personal safety of others.

Articles 706-53-13 and 706-53-14 of the Code of Criminal Procedure guarantee that a post-sentence preventive detention order can only be made by the regional court competent to order such measures when such an order is strictly necessary.
(Decision nº 2008-562 DC, February 21st 2008, paras 17 and 18, p. 89)

Maintaining a convicted person who has served his sentence in a socio-medico-judicial preventive centre in order to ensure that he benefits from medical, social and psychological treatment must be of a necessary harshness. This is the case when the convicted offender while serving his sentence was able to receive care or treatment intended to diminish his dangerousness but such care or treatment failed to produce satisfactory results either due to the state of the person involved or his refusal to undergo treatment.

Compliance with the provisions introduced by section 1 of the statute referred for review guarantees that it has proved impossible to avoid post-sentence preventive detention by treatment and care while the original sentence was being served. It will thus be left to the regional court competent to order post-sentence preventive detention to check whether the person who is the subject of such an order has been able, during his sentence, to have the benefit of care and treatment suitable for the personality disorders from which he suffers. With this qualification post-sentence preventive detention applicable to persons convicted after the publication of the statute referred for review is necessary for the purpose it is sought to achieve.
(Decision nº 2008-562 DC, February 21st 2008, paras 19 to 21, p. 89)

Review of proportionality (in the strict sense of the word)

By the provisions inserted in the Code of Criminal Procedure Parliament has accompanied the placing of persons under post-sentence preventive detention orders by guarantees such as to ensure the conciliation between freedom of the individual of which Article 66 of the Constitution entrusts the protection to the Judicial Authority and the aim of preventing persons from re-offending.
(Decision nº 2008-562 DC, February 21st 2008, para 22, p. 89)

In order for post-sentence preventive detention to continue to be a measure of strict necessity, Parliament has intended that regular account be taken of the progress made by the person subjected to such measures and whether said person submits himself on a permanent basis to the treatment on offer. The argument based on the fact that unlimited renewal of the measure is disproportionate has thus been dismissed.
(Decision nº 2008-562 DC, February 21st 2008, para 23, p. 89)

Limited review of constitutionality

The Act on Genetically Modified Organisms creates a specific offence of destruction of genetically modified organisms intended to respond, by introducing punishments designed to serve as a deterrence, to repeated destruction of authorised crops of genetically modified organisms and ensure protection for such crops from the risk of deliberate destruction which has been increased by the setting up of a national register making known to the public the nature and location of land on which genetically modified organisms are cultivated. This provision does not fail to respect the principle of the necessity of punishments nor the principle of equality before criminal law.

No patent error of appreciation
(Decision nº 2008-564 DC, June 19th 2008, para. 36, p. 313)

The opinions of the High Council on Biotechnologies regarding each application for an authorisation to release genetically modified organisms are made public, in accordance with Articles L 531-3 and L 531-4 of the Environment Code as amended by the Act on Genetically Modified Organisms. Furthermore, the national register indicating the nature and location of plots of land where genetically modified organisms are cultivated is made available to the public. Hence, when not providing that said register should include details of studies and tests previously carried out on authorised genetically modified organisms, Parliament did not distort the principle of the right to information which it is incumbent upon it to implement.
(Decision nº 2008-564 DC, June 19th 2008, para. 50, p. 313)

MEANING AND SCOPE OF A DECISION

Qualified interpretations

Examples of neutralising interpretations

Teaching

Under paragraph 6 of the Preamble of 1946 "All men may defend their rights and interests through Trade Union action and may belong to the Union of their choice". An agreement between the State and the Unions as to the manner whereby preliminary declarations are brought to the notice of the Administrative Authority does not mean that the transmission of said declarations is to be ensured by Trade Unions not does it impede the freedom of each member of the teaching profession to personally decide whether or not to take part in a strike.
(Decision nº 2008-569 DC, August 7th 2008, paras 16 and 17, p. 359)

Interpretation of a statute after partial censuring

Miscellaneous

In view of the adverse effect it has on existing agreements, the final sentence of IV of section 18 of the Act renovating social democracy and reforming working hours which suppresses the previous provisions relating to overtime fails to comply with the constitutional requirements regarding the calling into question of agreements lawfully entered into and thus must be held to be unconstitutional.

In view of the censuring of this sentence which governed the application timewise of I of section 18, the Constitutional Council held that insofar as Parliament intended, when passing this section, to modify the interaction between the various collective bargaining agreements to develop bargaining within companies regarding overtime, the provisions of I thereof hence are to apply immediately.
(Decision nº 2008-568 DC, August 7th 2008, para.20, p. 352)

Examples of prescriptive qualified interpretations

Rights and freedoms

Compliance with the provisions introduced by section 1 of the statute referred for review guarantees that it has proved impossible to avoid post-sentence preventive detention by treatment and care while the original sentence was being served. It will thus be left to the regional court competent to order post-sentence preventive detention to check whether the person who is the subject of such an order has been able, during his sentence, to have the benefit of care and treatment suitable for the personality disorders from which he suffers. With this qualification post-sentence preventive detention applicable to persons convicted after the publication of the statute referred for review is necessary for the purpose it is sought to achieve.
(Decision nº 2008-562 DC, February 21st 2008, paras 19 to 21, p. 89)

Social Law

Although the independence of Labour inspectors must be included in the fundamental principles of Employment Law within the meaning of Article 34 of the Constitution, determining which Administrative authority is vested with the powers concerned within the "labour inspection system" within the meaning of II of Book 1 of part 8 of the New Code is a matter for regulations. With this qualification, the contention that the reference to an "Administrative authority" fails to respect the division of powers deriving from Articles 34 and 37 of the Constitution should be dismissed.
(Decision nº 2007-561 DC, January 17th 2008, para 14, p. 41)

Public Authorities

The referral to Decrees of the *Conseil d'Etat* made by certain provisions of the National Heritage Code applicable to the archives of the Constitutional Council is a means of implementing the new Article 58 of the Ordinance of November 7th 1958. In accordance with Article 55 of said Ordinance, the Decrees of the *Conseil d'Etat* applicable to the archives of the Constitutional Council should therefore entail consultation of the Constitutional Council and a deliberation in the Council of Ministers.
(Decision nº 2008-566 DC, July 9th 2008, paras 10 and 11, p. 338)

Postponement of a finding of unconstitutionality

The provision contained in indents 9 and 13 of section 11 of the Act on Genetically Modified Organisms which leaves it to a Decree of the Council of State to draw up the list of informations which a person applying for approval or permission to grow and exploit GMO may in no case keep confidential, should be held to be unconstitutional for failure by Parliament to exercise fully the powers vested in it.

However the determination of information which in no case may be kept confidential is required, in the event of contained use of genetically modified organisms, by Article 19 of Directive 90/219/CE referred to hereinabove and, in the event of deliberate release of such organisms, by Article 25 of Directive 2001/18/EC. Hence the drawing up of lists containing such information derives from the constitutional requirement of the transposing into domestic law of Community Directives. Any immediate finding that the challenged provisions are unconstitutional would be

tantamount to disregarding such a requirement and entailing patently disproportionate consequences. Therefore, in order to enable Parliament to rectify its failure to exercise its full powers, the effects of the finding of unconstitutionality shall be postponed until January 1st 2009.
(Decision nº 2008-564 DC, June 19th 2008, para. 58, p. 313)

Whether provisions held to be unconstitutional are severable or not

Consequential censure

The Constitutional Council held to be unconstitutional, for failure by Parliament to exercise its full powers, the leaving to collective bargaining to fix "the duration" of the compulsory compensatory rest break set out in indents 2 and 3 of Article L 3121-11 of the Employment Code as worded pursuant to I of section 18 of the Act on renovating social democracy and reforming working hours.

It consequently held the provisions of IV of this section whereby the fixing of said duration by statute law is of a temporary nature to be unconstitutional.
(Decision nº 2008-568 DC, August 7th 2008, para 16, p. 352)

EFFECTS OF DECISIONS OF THE CONSTITUTIONAL COUNCIL

Hypothesis where res judicata is not argued

Res judicata as regards another text

The Constitutional Council refuses to rule on the argument based on failure to take into account its decision of December 2nd 2004 concerning the ratification of Ordinance nº 2004-559 of June 17th 2004 pertaining to partnership agreements. It merely recalls that, as worded prior to the statute referred for review, the Ordinance provided for a succinct account of the prior evaluation of all cases of urgency whereas henceforth an assessment may only be succinct in cases of urgency resulting from an unforeseeable situation arising from a case of *force majeure*.
(Decision nº 2008-567 DC, July 24th 2008, para 4, p. 341)

OPERATION

Article 63 of the Constitution provides that : "An Institutional Act shall determine the rules of organisation and operation of the Constitutional Council" The archive system of the Constitutional Council, which is indissociable from the conditions in which the Constitutional Council carries out its tasks, therefore comes under the scope of an Institutional Act.
(Decision nº 2008-566 DC, July 9th 2008, para 3, p. 338)

All the provisions of Title VII of the Constitution show that the constituent power intended to guarantee the independence of the Constitutional Council. By allowing free consultation of the archives of the work of the Constitutional Council after the expiry of a period of 25 years, section 1 of the Institutional Act does not adversely affect the independence of the Constitutional Council. The same applies to the provision whereby the conservation of documents from the public archives remaining to be selected shall be ensured "under the scientific and technical supervision of the body administering the Archives" insofar as this supervision does not vest this administrative body with any decision-taking power.
(Decision nº 2008-566 DC, July 9th 2008, paras 6 to 9, p. 338)

The provisions of the National Heritage Code applicable to the archives of the Constitutional Council and requiring on each occasion the agreement of the latter does not infringe the

principle of the separation of powers guaranteed by Article 16 of the Declaration of the Rights of Man and the Citizen. The same applies to the provision whereby the conservation of documents from the public archives remaining to be selected shall be ensured "under the scientific and technical supervision of the body administering the Archives" insofar as this supervision does not vest this administrative body with any decision-taking power.
(Decision n° 2008-566 DC, July 9th 2008, paras 7 to 9, p. 338)

The referral to Decrees of the *Conseil d'Etat* made by certain provisions of the National Heritage Code applicable to the archives of the Constitutional Council is a means of implementing the new Article 58 of the Ordinance of November 7th 1958. In accordance with Article 55 of said Ordinance, the Decrees of the *Conseil d'Etat* applicable to the archives of the Constitutional Council should therefore entail consultation of the Constitutional Council and a deliberation in the Council of Ministers.
(Decision n° 2008-566 DC, July 9th 2008, paras 10 and 11, p. 338)

RIGHTS AND FREEDOMS

CIVIC RIGHTS

Fairness and regularity of elections

When providing that when a Member of Parliament elected as *Conseiller general* resigns from the latter office due to concurrent holding of offices his substitute replaces him without there being any need to organise a by-election, the statute facilitating the access of women and men to the office of *Conseiller general* has not adversely affected the free choice of voters. Voters are aware, from the moment a person states that he is standing for election, of the identity of the candidate and of any substitutes chosen by the said candidate. They are also aware of whether or not the candidate is already a Member of Parliament.
(Decision n° 2008-563 DC, February 21st 2008, para.4, p. 100)

When providing that when a Member of Parliament elected as *Conseiller general* resigns from the latter office due to concurrent holding of offices his substitute replaces him without there being any need to organise a by-election, the statute facilitating the access of women and men to the office of *Conseiller general* does not as such encourage electoral manœuvres. It is the task of the judge reviewing the election to decide whether the fact that a candidate who was a already a Member of Parliament stood for election as *Conseiller general* solely in order to facilitate the election of his substitute, without himself ever intending to take up this office, has adversely affected the fairness and regularity of the election.
(Decision n° 2008-563 DC, February 21st 2008, para.7, p. 100)

Intelligibility of Electoral law

The statute facilitating the access of women and men to the office of *Conseiller general* is precise and unequivocal. It therefore does not fail to comply with the objective of constitutional status of accessibility and intelligibility of statutes.
(Decision n° 2008-563 DC, February 21st 2008, para.5, p. 100)

GUARANTEE OF FREEDOM OF THE INDIVIDUAL BY THE JUDICIAL AUTHORITY

Separation of powers

By making the power of the Penalty enforcement court to grant release on parole dependent upon a favourable opinion of an Administrative committee, section 12 of the Act pertaining to

post-sentence preventive detention and diminished criminal responsibility due to mental deficiency, has failed to respect the principle of the separation of powers guaranteed by Article 16 of the Declaration of 1789, and of the independence of the Judicial Authority as guardian of the freedom of the individual under Articles 64 and 66 of the Constitution.
(Decision nº 2008-562 DC, February 21st 2008, paras 32 to 34, p. 89)

Post sentence preventive detention

Although for persons convicted after the coming into effect of the statute, post-sentence preventive detention may only be ordered if the *Cour d'assises* has expressly provided when convicting and sentencing the offender that his case be re-examined after the completion of the custodial sentence with a view to possibly making such an order, the decision of the Court does not per se constitute an order for such a measure but merely makes it possible in cases, when at the end of a custodial sentence, the other requirements have been met. The *Cour d'assises* does not therefore make an order for post-sentence preventive detention when handing down the original sentence ; such an order is made by the regional court which decides on such measures. The making of a post-sentence preventive detention order is not based on the guilt of the person convicted by the *Cour d'assises* but on whether or not such a person would appear to present a high risk of dangerousness in the opinion of the regional court when the latter takes its decision. Such an order is only made once the convicted offender has served his sentence and is designed to prevent persons who suffer from serious personality disorders from re-offending. Post-sentence preventive detention is therefore neither a penalty nor a sentence of a punitive nature. The same holds good for post-sentence preventive surveillance. The arguments based on failure to comply with Article 8 of the Declaration of 1789 are thus inoperative.

However in view of its custodial nature, the time it may last, the fact that it is indefinitely renewable and ordered after conviction by a court of law, post-sentence preventive detention cannot be ordered in the cases of persons convicted prior to the publication of the statute or convicted after this date of offences committed prior to such date. Indents 2 to 7 of I of section 13 of the statute referred for review, II and consequently IV thereof are therefore be held to be unconstitutional.
(Decision nº 2008-562 DC, February 21st 2008, paras 8 to 10, p. 89)

Provided that the regional court competent to order post-sentence preventive detention checks whether the person who is the subject of such an order has been able, during his sentence, to have the benefit of care and treatment suitable for the personality disorders from which he suffers, the provisions inserted by Parliament into the Code of Criminal procedure concerning post-sentence preventive detention do not constitute any infringement of the freedom to come and go and the right to privacy, protected by Articles 2 and 4 of the Declaration of 1789 and the freedom of the individual of which Article 66 entrusts the protection to the Judicial Authority, in a manner which is not tailored, necessary and proportionate to the aims of preventing the commission of offences it is sought to attain.
(Decision nº 2008-562 DC, February 21st 2008, paras 14 to 23, p. 89)

FREEDOM AND RESPONSIBILITY

Article L 663-5 of the Rural Code, as worded pursuant to the Act on Genetically Modified Organisms, simplifies the system of compensation for economic loss, without limiting the right of farmers who have sustained injury to seek relief on any other lawful grounds. These provisions thus do not impose any restriction on the principle of responsibility which derives from Article 4 of the Declaration of 1789.
(Decision nº 2008-564 DC, June 19th 2008, para. 39, p. 313)

RIGHT OF REDRESS – RIGHTS OF THE DEFENCE

Generalities

The argument based on the infringement of the right of effective redress before a court of law, which derives from Article 16 of the Declaration of 1789, is unsupported by the facts since none of the contested provisions adversely affects the jurisdiction of the judge, who, if the matter is referred to him by an interested party, if need be in summary proceedings, will be required to ascertain whether, on the basis of a prior assessment, the conditions making it possible to have recourse to a partnership agreement have been met.
(Decision nº 2008-567 DC, July 24th 2008, para 10, p. 341)

Presuming that the condition of urgency was met, subject solely to an evaluation prior to the entering into of a partnership agreement not being unfavourable, the challenged provisions result in restricting the scope of this evaluation and preventing the judge from exercising his power of appraisal as to the urgency involved. They therefore deprive of statutory guarantees the constitutional requirements of equality before the placing of orders by public bodies, the protection of public property and the proper use of public funds.
(Decision nº 2008-567 DC, July 24th 2008, para.14, p. 341)

Administrative procedure

The Government, when tabling a Bill ratifying an Ordinance and Parliament when passing the same, merely implement the provisions of Article 38 of the Constitution without adversely affecting the right to effective redress before a court of law nor the right to a fair trial which derive from Article 16 of the Declaration of the Rights of Man and the Citizen of 1789.
(Decision nº 2007-561 DC, January 17th 2008, para.4, p. 41)

LEGAL CERTAINTY

Other retrospective measure

Validation by Parliament

Parliament may retrospectively modify a legal rule or validate an administrative act on condition that by do doing it acts sufficiently in the general interest and respects both res judicata decisions of the courts and the principle of no retrospectiveness of offences and punishments. Furthermore the act modified or validated must not infringe any rule or principle of constitutional status, unless the end sought to be achieved is itself of constitutional status. Lastly, the scope of the modification or validation must be strictly defined.

Section 37 of the Social Security Financing Act for 2009 makes it possible to set off the financial consequences of the application of the decision of the *Conseil d'Etat* of June 16th 2008 which set aside the Ministerial Order approving the national agreement signed by the Health Care Funds and Dentists on May 11th 2006 insofar as it was of retrospective effect.

The setting aside of one of the terms of this agreement, during the first year of the application of the latter, was such as to adversely affect the balance of mutually agreed benefits. The provision thus is designed to re-establish this balance and preserve the financial equilibrium of Social Security. It is limited in scope and time, strictly proportionate to the purpose which it is sought to achieve and does not deprive any constitutional requirement of statutory guarantees. It therefore serves a purpose of sufficient general interest.
(Decision nº 2008-571 DC, December 11th 2008, paras 11, 12 and 14, p. 378)

Principles of necessity and proportionality in matters of criminal procedure

Principle of the tailoring of punishments

Diminished responsibility on the grounds of mental deficiency

The provisions of Article 706-139 of the Code of Criminal Procedure as worded pursuant to the Act pertaining to post-sentence preventive detention and diminished criminal responsibility due to mental deficiency which deal with failure by a person found to be of diminished responsibility to comply with preventive measures ordered does not depart from the provisions of Article 122-1 of the Criminal Code whereby the criminal diminished responsibility of a person due to his mental or psychic state is to be assessed at the time when the incriminated acts are committed. The offence provided for under Article 706-139 will therefore only apply to persons who were criminally responsible for their acts when failing to comply with the requirements contained in a preventive measure. The argument based on an infringement of the principle of the necessity of punishments and legality of offences must be dismissed.
(Decision nº 2008-562 DC, February 21st 2008, para 27, p. 89)

A finding of diminished criminal responsibility on the grounds of mental deficiency is not a punishment
(Decision nº 2008-562 DC, February 21st 2008, para 31, p. 89)

Principle of legality of offences and punishments

Definition of offences and punishments

Specific definition of offence. Requirement met

In the absence of any precise indication in the provision of section 7 of the Act on Genetically Modified Organisms as to the *mens rea* of the offence of "deliberation destruction", the principle set out in Article 121-3 of the Criminal Code whereby no offence can be committed in the absence of *mens rea* will automatically apply. Hence, only persons acting deliberately and fully aware that genetically modified organisms were cultivated on the piece of land involved can be convicted of the offence provided for in 3° of Article L 671-15 of the Rural Code. Dismissal of the contention that the application of such an offence to involuntary destruction would lead to disproportionate punishments.
(Decision nº 2008-564 DC, June 19th 2008, para. 35, p. 313)

Necessity of punishments and immediate application of the least harsh statute

Proportionality of punishments

Restricted review by the Constitutional Council

The Act on Genetically Modified Organisms creates a specific offence of destruction of genetically modified organisms intended to respond, by introducing punishments designed to serve as a deterrence, to repeated destruction of authorised crops of genetically modified organisms and ensure protection for such crops from the risk of deliberate destruction which has been increased by the setting up of a national register making known to the public the nature and location of land on which genetically modified organisms are cultivated. This provision does not fail to respect the principle of the necessity of punishments.

No patent error of appreciation.
(Decision nº 2008-564 DC, June 19th 2008, para. 36, p. 313.)

Presumption of innocence

No failure to respect this principle

Article 706-125 of the Code of Criminal Procedure as worded pursuant to the Act pertaining to post-sentence preventive detention and diminished criminal responsibility due to mental deficiency introduces a hearing before the *Chambre de l'Instruction* for the latter to make a ruling as to the diminished criminal responsibility due to mental deficiency of the person placed under a preliminary criminal investigation. If the *Chambre de l'Instruction* deems that there are sufficient charges against the person who was the object of the preliminary criminal investigation and that said person comes under the scope of Article 122-1 of the Criminal Code, this Court has no jurisdiction either to find the person guilty of committing the offences charged or to rule on the civil liability of said person. The arguments based on a confusion between the role of an Investigating Magistrate and a Trial court and the resulting infringement of the presumption of innocence are therefore unsupported by the facts.
(Decision nº 2008-562 DC, February 21st 2008, paras 25 and 26, p. 89)

RIGHT TO PRIVACY

Files

Criminal records

When no preventive measure has been ordered by the Court with respect to a person found to be criminally irresponsible, such a finding is not information likely to be legally necessary for assessing the criminal responsibility of the person who may subsequently be the object of other criminal proceedings. Hence, as regards Criminal Records, such a finding can only, without infringing in an unnecessary manner the right to privacy as deriving from Article 2 of the Declaration of 1789, be entered on form nº 1 of the Criminal Record file when the preventive measures have been ordered and remain in effect. Reserved.
(Decision nº 2008-562 DC, February 21st 2008, paras 28 to 31, p. 89)

THE ENVIRONMENT

Principle of precaution (Article 5)

The principle of precaution, guaranteed by Article 5 of the Charter for the Environment is binding upon the Government and administrative authorities within the limits of the areas under their jurisdiction. It is thus incumbent upon the Constitutional Council, when asked to rule under Article 61 of the Constitution, to ensure that Parliament has not failed to respect the principle of precaution.

The provisions of Articles L 533-2, L 533-3 and L 533-5 of the Environment Code as worded pursuant to the Act on Genetically Modified Organisms are designed to prohibit the cultivating in open fields of genetically modified organisms which, in the current state of knowledge and techniques, may seriously and irreversibly affect the environment. The fact that the technical conditions governing crops of genetically modified organisms do not exclude the

accidental presence of such organisms in other products does not constitute any failure to comply with the principle of precaution.
(Decision nº 2008-564 DC, June 19th 2008, paras 18 and 21, p. 313)

The principle of precaution, guaranteed by Article 5 of the Charter for the Environment is binding upon the Government and administrative authorities within the limits of the areas under their jurisdiction. It is thus incumbent upon the Constitutional Council, when asked to rule under Article 61 of the Constitution, to ensure that Parliament has taken the necessary steps to ensure compliance with said principle by other public authorities.

The Act on Genetically Modified Organisms defines very precisely the attributions of the High Council on Biotechnologies vested with the task of keeping the Government informed on all issues involving genetically modified organisms or any other biotechnology and assessing the risks for the environment and human health which the use of genetically modified organisms may involve. Indent 2 of Article L 531-2-1 of the Environment Code provides that "decisions to grant authorisations for genetically modified organisms shall only be taken after a prior independent and transparent assessment of the risks for the environment and human health-....carried out by a group of experts in accordance with the principles of competence, pluralism, transparency and impartiality". The provisions of section 9 of the statute lay down the conditions for an ongoing surveillance by the administrative authority of the sanitary and phytosanitary state of plants and the possible appearance of unwanted effects on the environment due to agricultural practices. Lastly, Articles L 533-3-1 and L 533-8 of the Environment Code provide that in the event of the discovery of risks for the environment after the granting of authorization, the administrative authority may take appropriate measures including, where necessary, suspension of the authorisation.

When making such provisions, Parliament took measures needed to ensure the respect by public authorities of the principle of precaution where genetically modified organisms are concerned.
(Decision nº 2008-564 DC, June 19th 2008, paras 18 and 22, p. 313)

Principle of information (article 7)

The provisions of Article 7 of the Charter for the Environment have constitutional status. The very terms thereof indicate that it is the task of Parliament to lay down "the conditions and extent" governing the exercising by any person of the right to have access to information concerning the environment held by the public authorities. Only the measures concerning the application of the said conditions and extent laid down by Parliament are left to be made by regulations.
(Decision nº 2008-564 DC, June 19th 2008, paras 48,49 and 56, p. 313)

FREEDOM OF ENTERPRISE AND FREEDOM OF TRADE AND INDUSTRY

Freedom of enterprise

Applications

Article L 663-5 of the Rural Code, as worded pursuant to the Act on Genetically Modified Organisms, simplifies the system of compensation for economic loss, without limiting the right of farmers who have sustained injury to seek relief on any other lawful grounds. These provisions thus do not impose any restriction on the principle of responsibility which derives from Article 4 of the Declaration of 1789.
(Decision nº 2008-564 DC, June 19th 2008, para. 39, p. 313)

FREEDOM OF CONTRACT

Scope of principle

Parliament cannot, on grounds other than the general interest, pass legislation adversely affecting contracts lawfully entered into without failing to comply with the requirements deriving from Articles 4 and 16 of the Declaration of the Rights of Man and the Citizen of 1789 and, in the case of the participation of workers in the collective determination of their working conditions, paragraph 8 of the Preamble of 1946.
(Decision nº 2008-568 DC, August 7th 2008, para.18, p. 352)

Applications

Social Law

The first sentence of IV of section 18 of the Act renovating social democracy and reforming working hours results in doing away with, as from January 1st 2010, all the terms of previous collective bargaining agreements on overtime in order for new negotiations to take place either at company level or failing that at branch level.

Firstly this measure concerns several hundred collective bargaining agreements applicable to several million employees. It involves terms dealing with the amount of overtime which comply with the new statutory provisions. It affects firstly collective bargaining agreements at branch level which already authorize the negotiating of company agreements under 9° of section 43 of Act nº 2004-391 of May 4th 2004 and secondly company agreements entered into on the basis of this waiver.

Secondly as from the publication of the statute in question, parties to collective bargaining at company and branch level may, after repudiating previous agreements, negotiate and enter into agreements without waiting until January 1st 2010 in the conditions and manner laid down by the new statute.

Thirdly, doing away with the terms concerning overtime in existing agreements would alter the balance of said agreements and confer upon these previous agreements other effects that those which the signatories therefore intended them to have.

Thus, in view of the adverse effect on currently existing agreements, this provision fails to comply with the constitutional requirements that Parliament cannot, on grounds other than the general interest, pass legislation adversely affecting contracts lawfully entered into without failing to comply with the requirements deriving from Articles 4 and 16 of the Declaration of the Rights of Man and the Citizen of 1789 and, in the case of the participation of workers in the collective determination of their working conditions, paragraph 8 of the Preamble of 1946.
Censure
(Decision nº 2008-568 DC, August 7th 2008, paras. 18 to 20, p. 352)

EMPLOYMENT LAW

Right to rest

The provisions of section 90 of the Social Security Financing Act merely enable employees each year to voluntarily extend their working life for a further five years. They thus do not fail to comply with the requirements of paragraph 11 of the Preamble of 1946 concerning the right to health, rest and leisure.
(Decision nº 2008-571 DC, December 11th 2008, paras 17 and 19, p. 378)

PARTICIPATION OF WORKERS IN THE COLLECTIVE DETERMINATION OF THEIR WORKING CONDITIONS AND MANAGEMENT OF COMPANIES

Workers'representation

Principle

The right to participate through their delegates in "the collective determination of working conditions and the management of companies" vests, if not in all workers employed at any given time by a business, at least in all those workers who are closely and permanently connected with the work community which this business comprises, even if they are not employees thereof.

Parliament intended to specify this concept of persons closely connected with the work community in order to reinforce the legal certainty as regards businesses employing sub-contractors and workers assigned to them by the latter. To this effect Parliament has provided for conditions as to continuous presence, fixed respectively at 12 and 24 months, in order to enable workers assigned to a business by sub-contractors to vote or stand in elections held in the business in which they are working. These provisions are not flawed by any manifest error of appraisal. If Parliament has provided that these workers must cast their vote in the business which employs them or the business which avails itself of their services, this is in order to limit situations in which a person may vote twice. The objective and rational criteria laid down by Parliament do not fail to comply with the requirements of paragraph 8 of the Preamble of 1946.
(Decision nº 2008-568 DC, August 7th 2008, para.6, p. 352)

RIGHT TO STRIKE

Power of Parliament

Paragraph 7 of the Preamble of 1946 provides : "The right to strike shall be exercised within the framework of the laws governing said right". When including this provision, the constituent power wished to state that the right to strike is a principle of constitutional status but is not unrestricted and thus empowered Parliament to determine such restrictions by achieving the necessary conciliation between the defence of professional interests, where striking is a means to an end, and the safeguarding of the general interest, which a strike may adversely affect. In particular where public services are concerned, recognising the right to strike should not result in precluding Parliament from determining the necessary limits of such a right in order to ensure the continuity of public service which, like the right to strike, is a principle of constitutional status.
(Decision nº 2008-569 DC, August 7th 2008, para.8, p. 359)

No infringement of the right to strike

Formalities

The increasing, by the statute introducing a right for parents to benefit from child-minding facilities, from five to thirteen days of the maximum time which may be imposed between the moment a Trade Union notifies the Administrative authority of the grounds for its contemplating strike action and the beginning of such strike action does not impose any unjustified restriction of the exercising of the right to strike, insofar as this period is designed firstly to

allow for negotiations likely to avoid such strike action and secondly if need be to organize a child-minding service for pupils during school hours.
(Decision nº 2008-569 DC, August 7th 2008, para. 9, p. 359)

Individual declaration

Under paragraph 6 of the Preamble of 1946 "All men may defend their rights and interests through Trade Union action and may belong to the Union of their choice". An agreement between the State and the Unions as to the manner whereby preliminary declarations are brought to the notice of the Administrative Authority does not mean that the transmission of said declarations is to be ensured by Trade Unions not does it impede the freedom of each member of the teaching profession to personally decide whether or not to take part in a strike.

Qualified.
(Decision nº 2008-569 DC, August 7th 2008, paras 16 and 17, p. 359)

TRADE UNION LAW

No infringement of Trade Union freedom

Under paragraph 6 of the Preamble of 1946 "All men may defend their rights and interests through Trade Union action and may belong to the Union of their choice". An agreement between the State and the Unions as to the manner whereby preliminary declarations are brought to the notice of the Administrative Authority does not mean that the transmission of said declarations is to be ensured by Trade Unions not does it impede the freedom of each member of the teaching profession to personally decide whether or not to take part in a strike.

Qualified.
(Decision nº 2008-569 DC, August 7th 2008, paras 16 and 17, p. 359)

FAMILY LAW

Conditions for the development of the family

In order to introduce child-minding facilities for schoolchildren in public pre-school classes or elementary schools or in private pre-school classes or elementary schools under contract with the State, the Constitutional Council referred to the 10th paragraph of the Preamble of the Constitution of October 27th 1946 whereby "The Nation shall provide the individual and the family with the conditions necessary for their development".
(Decision nº 2008-569 DC, August 7th 2008, paras 6 and 7, p. 359)

RIGHT TO PROPERTY

Applicable texts. Scope of application of Article 17 of the Declaration of the Rights of Man and the Citizen

Article L 663-5 of the Rural Code, as worded pursuant to the Act on Genetically Modified Organisms, simplifies the system of compensation for economic loss, without limiting the right of farmers who have sustained injury to seek relief on any other lawful grounds. These

provisions are thus not aimed at nor result in adversely affecting freedom of enterprise and the right to property.
(Decision nº 2008-564 DC, June 19th 2008, para. 39, p. 313)

Scope of principle

The principle of equality before the law and public burdens together with the protection of the right of ownership, which concerns not only property belonging to private individuals but also to the State or other public bodies, derive firstly from Articles 6 and 13 of the Declaration of 1789 and secondly from Articles 2 and 17 of said Declaration. These principles preclude property belonging to the national heritage of public bodies being disposed of or encumbered with long-lasting rights to the benefit of persons acting in the furtherance of private interests without any suitable consideration taking into account the true value of said property.
(Decision nº 2008-567 DC, July 24th 2008, para.25, p. 341)

No infringement of the right to property

Property belonging to public bodies

The principle of equality before the law and public burdens together with the protection of the right of ownership, preclude property belonging to the national heritage of public bodies being disposed of or encumbered with long-lasting rights to the benefit of persons acting in the furtherance of private interests without any suitable consideration taking into account the true value of said property.

The provisions of sections 14 and 33 of the Act on partnership agreements which enable Public bodies to authorize the contracting party to grant leases and property rights on the private domain of a Public body for a duration longer than that provided for such a partnership do not fail to comply with these principles. Firstly, these provisions provide for consideration to the benefit of said Public body and secondly the value of said property will be assessed by the relevant State services and lastly, upon the expiry of the partnership agreement, the leases and rights granted by the partner, which are accessory to the partnership agreement, shall revert to the Public body.
(Decision nº 2008-567 DC, July 24th 2008, paras 23 to 29, p. 341)

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 departing from the principle of equality for reasons of general interest provided that, in each case, the resulting different treatment is directly connected with the purpose sought to be achieved by the statute which introduces said different treatment.
(Decision nº 2008-567 DC, July 24th 2008, para 36, p. 341 ; decision nº 2008-568 DC, August 7th 2008, para 7, p. 352)

Respect for the principle of equality : no unjustified discrimination

Local Communities

In view of their ability to bear the risk of financial consequences arising from failure by the other contracting party to perform its obligations, the State and its Public Establishments are

not on the same footing as Territorial Communities and their Public Establishments. The provisions of section 45 of the Act on partnership agreements which waives the requirement for builders'liability insurance for the party entering into a partnership agreement with the State or a national Public Establishment, without extending the benefit of this measure to partnership agreements entered into with a Territorial Community or local Public Establishment do not fail to comply with the principle of equality.
(Decision nº 2008-567 DC, July 24th 2008, paras 36 and 37, p. 341)

Social Law

Social security

When providing in section 90 of the Social Security Financing Act that employees may each year voluntarily extend their working life for a further five years, Parliament did not introduce any difference in treatment and thus did not fail to comply with the principle of equality, which does not preclude Parliament from treating different situations in different ways, nor from departing from the principle of equality for reasons of general interest provided that, in each case, the resulting different treatment is directly connected with the purpose sought to be achieved by the statute which introduces said different treatment.
(Decision nº 2008-571 DC, December 11th 2008, para 20, p. 378)

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

Criminal law

The Act on Genetically Modified Organisms creates a specific offence of destruction of genetically modified organisms intended to respond, by introducing punishments designed to serve as a deterrence, to repeated destruction of authorised crops of genetically modified organisms and ensure protection for such crops from the risk of deliberate destruction which has been increased by the setting up of a national register making known to the public the nature and location of land on which genetically modified organisms are cultivated. This provision does not fail to respect the principle of equality before the law
(Decision nº 2008-564 DC, June 19th 2008, para. 36, p. 313)

Rules on incompatibility

A local elected official who in order to comply with the rules pertaining to concurrent holding of offices chooses to resign from his office as *Conseiller general* after being elected to Parliament, and a Member of Parliament who is subsequently elected to the office of *Conseiller general* and who resigns from the latter office for the same reason are not in the same situation. Parliament could therefore without failing to respect the principle of equality, modify the rule governing the replacement of the Member of Parliament holding incompatible offices following his election as *Conseiller general*.
(Decision nº 2008-563, February 21st 2008, para.6, p. 100)

Considerations of general interest justifying different treatment

Social Law

Parliament was free, when specifying the meaning of being closely connected with a work community in order to reinforce the legal certainty as regards businesses employing subcontractors and workers assigned to them by the latter, not to confer on all workers placed at the disposal of a business the right to vote or stand in elections for workers'delegates and for

representatives on the Works Committee. The difference in treatment thus introduced has a direct connection with the purpose it is sought to achieve.
(Decision nº 2008-568 DC, August 7th 2008, para 8, p. 352)

Miscellaneous applications

Access to orders placed by Public bodies

No rule or principle of constitutional status precludes a Public body from entrusting a third party, for a specified period, with an overall assignment involving the design, financing, construction or transformation, upkeep, maintenance, operation and management of works, equipment or intangible goods necessary for the public service. However generalising such departures from normal practice in matters of orders placed by public bodies or rules governing the public domain might result in depriving of statutory guarantees constitutional requirements inherent to equality before the placing of orders by public bodies, the protection of public property and the proper use of public funds, a requirement of constitutional status deriving from Articles 14 and 15 of the Declaration of 1789. In the case in hand the statute referred for review has reserved such departures solely for situations which are justified by considerations of general interest.
(Decision nº 2008-567 DC, July 24th 2008, para.9, p. 341)

Presuming that the condition of urgency was met, subject solely to an evaluation prior to the entering into of a partnership agreement not being unfavourable, the challenged provisions result in restricting the scope of this evaluation and preventing the judge from exercising his power of appraisal as to the urgency involved. They therefore deprive of statutory guarantees the constitutional requirements of equality before the placing of orders by public bodies, the protection of public property and the proper use of public funds
(Decision nº 2008-567 DC, July 24th 2008, para.14, p. 341)

ELECTIONS

CAMPAIGN LITERATURE

Posters

Places for pasting of posters

An official record drawn up by a Bailiff at the request of the party making the referral shows that six posters of another candidate were pasted contrary to the provisions of Article L.51 of the Electoral Code, which prohibits the pasting of electoral posters elsewhere than on the hoardings reserved for such purposes. These occurrences did not however have any effect on the outcome of the vote.
(Decision nº 2007-4176, June 26th 2008, A.N. Val-d'Oise, 8th constit., para.3, p. 329)

Press

Taking of a political stand by a newspaper

Newspapers and periodicals are free to report on electoral campaigns as they see fit and also to support one or other of the candidates. The complaint based on the fact that the Dépêche du

Midi supported the winning candidate and did not mention the candidacy of the party making the referral should be dismissed.
(Decision nº 2007-3747, January 17th 2008, A.N. Tarn-et-Garonne, 2nd constit., para.1, p. 49)

The article complained of by the party making the referral, which appeared in the December 5th 2007 issue of the newspaper "le Canard Enchaîné" and referred to another article published in June 2007, did not introduce any new element into the electoral debate and the party making the referral had the opportunity of replying. Said party has therefore no grounds for arguing that this publication was a manœuvre likely to affect the outcome of the ballot.
(Decision nº 2007-4176, June 26th 2008, A.N. Val-d'Oise, 8th constit. para.1, p. 329)

Letters

Sending or distributing of letters in favour of candidates

Letters from Members of Parliament

The use by an outgoing Senator during elections to the Senate of Senate headed-notepaper to announce his candidacy to the Mayors of his constituency, and subsequently to invite the delegates of the *Département* to an electoral meeting was not a means of pressure on voters such as to unfairly effect the outcome of the ballot.
(Decision nº 2008-4519, November 6th 2008, Senate, Aude, para.1, p. 372)

Pressure, interventions, manœuvres

Nature of pressure, interventions, manœuvres

Pressure by intimidation or corruption

Threats

However regrettable may have been the insults and threats uttered against supporters of the party making the referral during the electoral campaign they were not such as to have affected the outcome of the ballot.
(Decision nº 2007-4176, June 26th 2008, A.N. Val-d'Oise, 8th constit., para.2, p. 329)

Insults

However regrettable may have been the insults and threats uttered against supporters of the party making the referral during the electoral campaign they were not such as to have affected the outcome of the ballot.
(Decision nº 2007-4176, June 26th 2008, A.N. Val-d'Oise, 8th constit., para.2, p. 329)

False or malicious information

The comments reported by the Dépêche du Midi which the party making the referral claims were insulting to him were either not ascribable to the winning candidate or else did not exceed the bounds of normal electioneering.
(Decision nº 2007-3747, January 17th 2008, A.N. Tarn-et-Garonne, 2nd constit., para.2, p. 49)

Manœuvres or interventions concerning the political situation of candidates

No manœuvre

Although Mrs R, who campaigned with the support of the political party UDF-MODEM, referred not only to this party but also to the presidential majority by printing on her electoral manifesto and other campaign documents the words " With the President of the Republic", this fact was not such as to mislead voters since she has not claimed the support of any other political party and has not stood in the second round of the ballot.
(Decision nº 2007-3747, January 17th 2008, A.N. Tarn-et-Garonne, 2nd constit., para.3, p. 49)

ELECTORAL OPERATIONS

Holding of the ballot

Providing voters with ballot papers and envelopes

The fact that voters themselves took envelopes and ballot papers off the waste paper table did not infringe any provision of the Electoral Code.
(Decision nº 2007-4176, June 26th 2008, A.N. Val-d'Oise, 8th constit., para.5, p. 329)

Polling booths

The fact that certain polling booths did not have wastepaper baskets did not infringe any provision of the Electoral Code.
(Decision nº 2007-4176, June 26th 2008, A.N. Val-d'Oise, 8th constit., para.5, p. 329)

Violence or pressure during the ballot

Pressure on tellers or delegates

The party making the referral argues that, during the second round of the ballot in polling station nº 23 of the Commune of Sarcelles, a teller attempting to check the identity of a voter holding a proxy was subsequently encouraged to leave the polling station for an hour during which more than one hundred voters cast their votes. Dismissal of the argument for want of proof.
(Decision nº 2007-4176, June 26th 2008, A.N. Val-d'Oise, 8th constit., para.6, p. 329)

Sorting and counting of votes

Counting of votes

Miscellaneous irregularities and incidents

During electoral operations in the second round of the ballot, envelopes holding one hundred ballot papers were distributed, contrary to the provisions of Article L 65 of the Electoral Code, without being signed by the President or at least two tellers of the polling station, as is attested by the records of the polling station. However, firstly, it has not been proved that this irregularity, which occurred in the presence of the tellers, was such as to permit fraud or errors in counting the votes, and, secondly, the allegation that unsigned envelopes containing one hundred ballot papers left on the sorting tables had been signed beforehand has not been proved.
(Decision nº 2007-4176, June 26th 2008, A.N. Val-d'Oise, 8th constit., para.7, p. 329)

Drawing up of official records and appendices thereof

Appendices : void ballot papers and empty envelopes

Article L.66 of the Electoral Code does not require that ballot papers and envelopes held to be void or blank must be signed by the members of the Bureau before all votes are counted.
(Decision nº 2007-4176, June 26th 2008, A.N. Val-d'Oise, 8th constit., para.8, p. 329)

ELECTIONS OF SENATORS

Senators representing French Nationals living abroad

French Polynesia is an integral part of the French Republic. The parties making the referral have therefore no grounds for arguing that paragraph 5 of Article 24 of the Constitution whereby " French Nationals living abroad are represented ..in the Senate".
(Decision nº 2008-4520 to 4522, November 6th 2008, Senate, French Polynesia, para.2, p. 374)

Campaign Literature

Incidents

Although the parties making the referral argue that the elected Senator made defamatory remarks about his opponent, President of French Polynesia, during the debate on budget guidelines prior to the voting on the provisional budget for 2009, these remarks, even were they proved to have been made, had no effect on the outcome of the ballot.
(Decision nº 2008-4520 to 4522, November 6th 2008, Senate, French Polynesia, para.5, p. 374)

Electoral operations

Holding of the Ballot

Opening times of Polling Stations

Although a judicial investigation has revealed that voting began at 9.15 a.m instead of 8.30 a.m as required by the Decree of May 26th 2008, this delay which was due to compliance with the formalities governing the setting up of the officiating bodies of voting sections was not such as to distort the outcome of the ballot.
(Decision nº 2008-4520 to 4522, November 6th 2008, Senate, French Polynesia, para.6, p. 374)

LITIGATION

Submittals and arguments

Submittals (admissibility)

Requirement for prior referral to an Administrative Court

The parties making the referral did not avail themselves of the opportunity given to them by Article L 292 of the Electoral Code of bringing proceedings before the Administrative Court of

French Polynesia prior to the holding of the ballot in order to contest the list of persons qualified to vote for the election of Senators. Their referral at first instance to the Constitutional Council complaining of irregularities vitiating the designation of voters is thus inadmissible.
(Decision nº 2008-4520 to 4522, November 6th 2008, Senate, French Polynesia, paras 3 and 4, p. 374)

Arguments

Fresh arguments

Existence

A complaint that the Town Council of Sarcelles voted a subsidy to an association for electoral purposes is inadmissible since it was lodged after the expiry of the ten day period laid down by Article 33 of the Ordinance of November 7th 1958.
(Decision nº 2007-4176, June 26th 2008, A.N. Val-d'Oise, 8th constit., para.4, p. 329)

Arguments not supported by the facts

Investigations have shown that the candidate proclaimed the winner had visited the Communes of the second constituency of Tarn-et-Garonne on May 21st and June 8th 2007, at a time when she was on holiday. The complaint that the candidate proclaimed the winner had profited from facilities of the *Conseil General* by campaigning during her working hours is not supported by the facts.
(Decision nº 2007-3747, January 17th 2008, A.N. Tarn-et-Garonne, 2nd constit., para.11, p. 49)

A study of the case file shows that the elected candidate refunded the Senate administrative and financial office the cost of sending by the Luxembourg Palace postal services a letter to delegates of the *Département* inviting them to an electoral meeting. The argument that the candidate had the benefit of financial assistance contrary to Article L 52-8 of the Electoral Code is not supported by the facts.
(Decision nº 2008-4519, November 6th 2008, Senate, Aube, para.2, p. 372)

Judicial investigation

General powers of investigation

Joining together of various cases

Collective finding of ineligibility of 50 candidates not filing campaign accounts or an attestation of no expenditure or income drawn up by a financial agent contrary to the provisions of Article L. 52-12 of the Electoral Code.
(Decision nº 2007-4007 et al, January 17th 2008, A.N., Ineligibilities, No filing of campaign accounts, paras 1 to 5, p. 54 ; decision nº 2007-4080 et al, February 7th 2008, A.N., Ineligibilities, No filing of campaign accounts, paras 1 to 5, p. 61 ; decision nº 2007-4014 et al, February 14th 2008, A.N., Ineligibilities, No filing of campaign accounts, paras 1 to 5, p. 82)

Collective finding of ineligibility of 40 candidates filing their campaign accounts or an attestation of no expenditure or income drawn up by a financial agent out of time contrary to the provisions of Article L. 52-12 of the Electoral Code.
(Decision nº 2007-4045 et al, February 7th 2008, A.N., Ineligibilities, Filing of campaign accounts out of time, paras 1 to 5, p. 58 ; decision nº 2007-4094 et al, March 27th 2008, A.N., Ineligibilities, Filing of campaign accounts out of time, paras 1 to 5, p. 123)

Collective finding of ineligibility of 23 candidates failing to have their campaign accounts certified by a Chartered accountant or an attestation of no expenditure or income drawn up by a financial agent contrary to the provisions of Article L. 52-12 of the Electoral Code.
(Decision nº 2007-4011 et al, February 14th 2008, A.N., Ineligibilities, No certificate of campaign accounts by a Chartered accountant, paras 1 to 3, p. 79)

Collective finding of ineligibility of 18 candidates failing to designate a financial agent as required by Articles L.52-4, L 52-6 and L. 52-12 of the Electoral Code.
(Decision nº 2007-4069 et al, February 14th 2008, A.N., Ineligibilities, No designation of financial agent paras 1 to 3, p. 86)

Collective finding of ineligibility of 54 candidates not filing campaign accounts or an attestation of no expenditure or income drawn up by a financial agent contrary to the provisions of Article L. 52-12 of the Electoral Code.
(Decision nº 2007-4036 et al, March 27th 2008, A.N., Ineligibilities, No filing of campaign accounts, paras 1 to 5, p. 113)

Collective finding of ineligibility of 29 candidates not filing campaign accounts or an attestation of no expenditure or income drawn up by a financial agent contrary to the provisions of Article L. 52-12 of the Electoral Code.
(Decision nº 2007-4016 et al, April 17th 2008, A.N., Ineligibilities, No filing of campaign accounts, paras 1 to 3, p. 185)

Collective finding of ineligibility of 41 candidates failing to have their campaign accounts certified by a Chartered accountant or an attestation of no expenditure or income drawn up by a financial agent contrary to the provisions of Article L. 52-12 of the Electoral Code.
(Decision nº 2007-4017 et al, April 17th 2008, A.N., Ineligibilities, No certificate of campaign accounts by a Chartered accountant, paras 1 to 3, p. 188)

Collective finding of ineligibility of 13 candidates failing to designate a financial agent as required by Articles L.52-4, L 52-6 and L. 52-12 of the Electoral Code.
(Decision nº 2007-4030 et al, April 17th 2008, A.N., Ineligibilities, No designate of financial agent, paras 1 to 3, p. 193)

Joining of six referrals, of which five were collective, against the same election.
(Decisions nº 2008-4509 to 2008-4514, June 26th 2008, A.N Eure-et-Loir, 1st constit., para.1, p. 332)

Joining together of three complaints as to the electoral operations which took place in French Polynesia on September 21st 2008 for the election of three Senators.
(Decision nº 2008-4520 to 4522, November 6th 2008, Senate, French Polynesia para.1, p. 374)

Proof

Allegations not substantiated by any evidence

The party making the referral argues that, during the second round of the ballot in polling station nº 23 of the Commune of Sarcelles, a teller attempting to check the identity of a voter holding a proxy was subsequently encouraged to leave the polling station for an hour during which more than one hundred voters cast their votes. The party has not however adduced any evidence in support of this allegation.

The argument based on the fact that unsigned envelopes containing one hundred ballot papers left on the sorting tables had been signed beforehand has not been proved.
(Decision nº 2007-4176, June 26th 2008, A.N. Val-d'Oise, 8th constit., paras 6 and 7, p. 329)

Procedural incidents, particular referrals, no reason for ruling

No reason for ruling

After having made a referral to the Constitutional Council about the candidate on the grounds that the latter had failed to file his campaign accounts, the Committee firstly realised that it had mistakenly deemed that the candidate had failed to comply with the requirements laid down by Article L 52-12 and secondly, approved his campaign accounts. Referral to the Constitutional Council has thus become pointless. Withdrawal changed to no reason for ruling.
(Decision nº 2007-4005, March 27th 2008, A.N Hauts-de-Seine, 10th constit., para.1, p. 105 ; decision nº 2007-4006, March 27th 2008, A.N Val-de-Marne, 1st constit., para.1, p. 107)

The death of the candidate renders pointless the referral of the National Committee for Campaign Accounts and Political Financing to the Constitutional Council requesting the Council to find the candidate ineligible for one year pursuant to Article L.O 128 of the Electoral Code. There is no reason to rule on this referral.
(Decision nº 2007-4408, April 17th 2008, A.N Nord, 15th constit., para.1, p. 274)

Various referrals

Request for rectification of material errors

Contending that decision n° 2007-3449 of July 26th 2007 is flawed by a failure to make a ruling, the party making the referral does not petition the Council to rectify a material error. The referral is thus inadmissible.
(Decision n° 2007-3449R, January 17th 2008, A.N., Seine-Saint-Denis, 10th constit., para.1, p. 47)

While contesting the opinion expressed by the Constitutional Council as to the regularity of his campaign accounts in its decision n° 2007-3985 of November 29th 2007, the party making the referral doe not petition the Council to rectify a material error. The referral is thus inadmissible.
(Decision n° 2007-3965R, January 17th 2008, A.N. hauts-de-Seine, 12th constit., para.1, p. 52)

CAMPAIGN ACCOUNTS

Filing of accounts

Duty to file accounts. Capacity as candidate

Finding of ineligibility of a candidate, pursuant to Article L.O 128 of the Electoral Code, for a period of 1 year as from the date of the decision, for not filing his campaign account in the conditions provided for by Article L. 52-12 of said Code.
(Decision n° 2008-4517, June 26th 2008, A.N., Val d'Oise 8th constit., paras 1 to 3, p. 336)

Failure to file accounts

Ineligibility

Collective finding of ineligibility of 50 candidates not filing campaign accounts or an attestation of no expenditure or revenue drawn up by a financial agent contrary to the provisions of Article L. 52-12 of the Electoral Code.
(Decision n° 2007-4007 et al, January 17th 2008, A.N., Ineligibilities, No filing of campaign accounts, paras 1 to 5, p. 54 ; decision n° 2007-4080 et al, February 7th 2008, A.N., Ineligibilities, No filing of campaign accounts, paras 1 to 5, p. 61 ; decision n° 2007-4014 et al, February 14th 2008, A.N., Ineligibilities, No filing of campaign accounts, paras 1 to 5, p. 82)

Collective finding of ineligibility of 54 candidates not filing campaign accounts or an attestation of no expenditure or revenue drawn up by a financial agent contrary to the provisions of Article L. 52-12 of the Electoral Code.
(Decision n° 2007-4036 et al, March 27th 2008, A.N., Ineligibilities, No filing of campaign accounts, paras 1 to 5, p. 113)

Collective finding of ineligibility of 29 candidates not filing campaign accounts or an attestation of no expenditure or income drawn up by a financial agent contrary to the provisions of Article L. 52-12 of the Electoral Code.
(Decision n° 2007-4016 et al, April 17th 2008, A.N., Ineligibilities, No filing of campaign accounts, paras 1 to 3, p. 185)

A candidate who sent the Committee an attestation from his financial agent stating that he had incurred no expenditure and received no revenue when he had in fact received a donation from a natural person is deemed not to have filed his campaign accounts. Ineligibility.
(Decision n° 2007-4374 April 17th 2008, A.N, Guadeloupe, 4th constit., paras 1 and 2, p. 268)

Time allotted for filing accounts

Ineligibility

Collective finding of ineligibility of 40 candidates filing their campaign accounts or an attestation of no expenditure or revenue drawn up by a financial agent out of time contrary to the provisions of Article L. 52-12 of the Electoral Code.
(Decision n° 2007-4045 et al, February 7th 2008, A.N., Ineligibilities, Filing of campaign accounts out of time, paras 1 to 5, p. 58 ; decision n° 2007-4094 et al, March 27th 2008, A.N., Ineligibilities, Filing of campaign accounts out of time, paras 1 to 5, p. 123)

A candidate who sent the Committee an attestation from his financial agent stating that he had incurred no expenditure and received no revenue when he had in fact incurred expenditure is deemed to have failed to file his campaign accounts within the time allotted by Article L 52-12 of the Electoral Code. The presentation of a campaign account once this period of time had expired has no effect on the fact that no accounts were filed. Ineligibility.
(Decision n° 2007-4348, April 17th 2008, A.N Rhone, 14th constit., paras 1 and 2, p. 262)

Requirements concerning filing of accounts

Under indent 1 of Article 22 of Ordinance n° 45-2138 of September 19th 1945 setting up the National Order of Chartered Accountants and laying down regulations as to the title and profession of Chartered Accountant : "The profession of Chartered Accountant is incompatible with any profession or activity likely to adversely affect the independence of the person practicing as Chartered Accountant..". However if the failure to comply with this prohibition is such as to incur disciplinary measures as regards the Chartered Accountant involved, it does not have any adverse effect on the lawfulness of any accounting he may have carried out for a client. The National Committee for Campaign Accounts and Political Financing was there wrong to refuse a candidate's campaign account on the ground that it had been presented by his son, a Chartered Accountant. There is thus no reason to hold this candidate ineligible.
(Decision n° 2007-4516, April 17th 2008, A.N Seine-Maritime, 11th constit., paras 1 and 2, p. 301)

Collective finding of ineligibility of 23 candidates failing to have their campaign accounts certified by a Chartered accountant or an attestation of no expenditure or revenue drawn up by a financial agent contrary to the provisions of Article L. 52-12 of the Electoral Code.
(Decision n° 2007-4011 et al, February 14th 2008, A.N., Ineligibilities, No certificate of campaign accounts by a Chartered accountant paras 1 to 3, p. 79)

Collective finding of ineligibility of 41 candidates failing to have their campaign accounts certified by a Chartered accountant or an attestation of no expenditure or income drawn up by a financial agent contrary to the provisions of Article L. 52-12 of the Electoral Code.
(Decision n° 2007-4017 et al, April 17th 2008, A.N., Ineligibilities, No certificate of campaign accounts by a Chartered accountant paras 1 to 3, p. 188)

In view of the purpose which Article L 52-6 of the Electoral Code seeks to achieve, the requirement that the candidate have his campaign accounts presented by a Chartered Accountant who cannot be his financial agent is a major formal requirement from which no departure can be allowed. The arguments of "good faith" and material error raised by the candidate are thus inoperative. Ineligibility
(Decision n° 2007-4106, April 17th 2008, A.N, Haute-Loire, 2nd constit., para.3, p. 220)

Failure to designate a financial agent

Under Articles L 52-4, L 52-6 and L 52-12 of the Electoral Code, the duty to designate a financial agent is a major formal requirement from which no departure can be allowed. 18 candidates failing to comply with this requirement are thus held to be ineligible.
(Decision n° 2007-4069 et al. February 14th 2008, A.N. Ineligibilities. Failure to designate a financial agent, paras 1 to 3, p. 86)

Under Articles L 52-4, L 52-6 and L 52-12 of the Electoral Code, the duty to designate a financial agent is a major formal requirement from which no departure can be allowed. 13 candidates failing to comply with this requirement are thus held to be ineligible.
(Decision n° 2007-4030 et al. April 17th 2008, A.N, Ineligibilities, Failure to designate a financial agent, paras 1 to 3, p. 193)

Under Articles L 52-4 and L 52-6 of the Electoral Code, the duty to register the name of a candidate's financial agent at the Prefecture is a major formal requirement from which no departure can be allowed. The involuntary nature of failure to effect said registration at the Prefecture and the good faith of the candidates are not operative arguments. Ineligibility.
(Decisions n° 2007-4095/4124, April 17th 2008, A.N, Vienne, 1st and 4th constits., para.3, p. 218)

Investigations have shown that a candidate registered the name of her financial agent with the Prefecture of the *Département* in which she resides. The National Committee for Campaign Accounts and Political Financing was thus wrong to refuse to accept her campaign account on

the basis that she had failed to effect such registration. No grounds for holding the candidate ineligible.
(Decision nº 2007-4307, April 17th 2008, A.N, Seine-et-Marne, 1st constit., paras 1 and 2, p. 258)

Failure to produce supporting documents

Investigations have shown that the campaign accounts were not accompanied by any supporting documents making it possible to certify the reality and regularity of the transactions carried out. Rightful refusal of accounts. Ineligibility.
(Decision nº 2007-4341, March 27th 2008, A.N, Seine-et-Marne, 7th constit., paras 1 and 2, p. 154)

The campaign accounts filed are not accompanied by supporting documents proving actual settlement of all the expenditure entered in the accounts and the person involved has failed to produce the supporting documents requested by the National Committee for Campaign Accounts and Political Financing.

Rightful refusal of accounts. Ineligibility.
(Decision nº 2007-4426, March 27th 2008, A.N, Seine-et-Marne, 4th constit., paras 1 and 2, p. 169)

Investigations have shown that the campaign accounts did not contain any breakdown of certain transactions nor any supporting documents making it possible for the National Committee for Campaign Accounts and Political Financing to approve, rectify or refuse the account. Since the person involved did not provide all the necessary supporting documents required by the Committee, the latter rightly refused to approve said accounts. Ineligibility.
(Decision nº 2007-4031, April 17th 2008, A.N, Bouches-du-Rhône, 14th constit., paras 1 and 2, p. 196)

Regularisation before the Constitutional Council

Although the campaign accounts filed on August 1st 2007 were not accompanied by the final bank statement needed to allow the National Committee for Campaign Accounts and Political Financing to verify the actual settlement of a substantial amount of the expenditure stated, an inspection of said bank statement, produced for the first time before the Constitutional Council, showed that the entire amount of said expenditure had actually been settled. In these conditions, there is no reason for applying Article L.O 128 of the Electoral Code.
(Decision nº 2007-4396, March 27th 2008, A.N, Seine-et-Marne, 9th constit., paras 1 and 2, p. 165)

When refusing the campaign accounts the National Committee for Campaign Accounts and Political Financing based its decision on the fact that the candidate took out an interest-free loan from a bank to finance his campaign and that, by so doing, he profited from the assistance of a legal entity contrary to the abovementioned provisions of Article L 52-8.

However the person involved produced for the first time before the Constitutional Council the relevant loan agreement which showed that the loan had been taken out over a period of twelve months and that, as specified in the loan agreement, all interest had been paid to the bank on the day the funds were made available. In these conditions, there is no reason to hold that the candidate is ineligible.
(Decision nº 2007-4468, April 17th 2008, A.N, Dordogne, 3rd constit., paras 2 and 3, p. 279)

Funding association

An electoral funding association is deemed to have been designated as financial agent as from the day of its registration at the Prefecture by the candidate in accordance with the provisions of section 5 of the Act of July 1st 1901 pertaining to the contract of association to which Article L 52-5 of the Electoral Code refers, and not merely from the date on which this registration appears in the *Journal officiel*.
(Decision nº 2007-4335, March 27th 2008, A.N, Paris, 11th constit., para 3, p. 152)

Funding association or financial agent

In view of the purpose which the provisions of Articles L 52-4, L 52-6 and L52-7 of the Electoral Code seek to achieve, the duty to register the name of the financial agent with the Prefecture,

together with the name of any new agent called upon to replace the former is a major formal requirement from which no departure can be allowed.

The findings of investigations, which moreover are not disputed, have shown that the office of financial agent was not held by the person whom the candidate had registered with the Prefecture but by the husband of said person. This change was not registered. Rightful refusal of accounts. Ineligibility.
(Decision nº 2007-4343, March 27th 2008, A.N, Haute-Garonne 7th constit., paras 1 to 3, p. 156)

Bank account

Mrs D, the financial agent of her husband, opened a bank account under the reference "Féd. Dép. CNIP Gers Compte Campagne". This account which bore neither the name of the agent nor that of the candidate thus failed to comply with the requirements of Article L 52-6 of the Electoral Code. Furthermore documents produced in support of the campaign account revealed that invoices corresponding to campaign expenditure were made out in the name of either "Mrs D, financial agent of M.D" or "Pierre D, CNI candidate", or even "Féd. Dép. CNIP Gers". If Mr D pleads his good faith and ignorance of the rules which he is said to have broken, this cannot preclude the application of the provisions of Article L52-6 which have not been complied with in this case. In these conditions, rightful refusal of accounts. Ineligibility
(Decision nº 2007-4039, April 17th 2008, A.N, Gers 2nd constit., paras 1 and 2, p. 204)

An inspection of the campaign account and appended documents filed by the candidate shows that the agent which he had designated did not open one sole bank or post office account as required by Article L 52-6 referred to above. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4051, April 17th 2008, A.N, French Polynesia, 1st constit., paras 1 and 2, p. 212)

The financial agent of the candidate did not open one sole bank or post office account as required by Article L 52-6 of the Electoral Code. Although the latter argues that he personally bore all campaign expenditure and pleads his good faith, these circumstances cannot preclude the application of the provisions of Article L52-6 which have not been complied with in this case. In these conditions, rightful refusal of accounts. Ineligibility
(Decision nº 2007-4055, April 17th 2008, A.N, French Polynesia 2nd constit., paras 1 to 3, p. 214)

The financial agent of the candidate did not open a bank or post office account. Although the candidate claims that it was impossible for her to open a bank account in the name of her agent, these circumstances cannot preclude the application of the provisions of Article L52-6 which have not been complied with in this case. In these conditions, rightful refusal of accounts. Ineligibility
(Decision nº 2007-4157, April 17th 2008, A.N, Nord 22nd constit., paras 1 to 3, p. 230)

Although Article L 52-6 of the Electoral Code requires candidates to open a sole bank account, the financial agent of the candidate successively opened two bank accounts, one at the Credit mutuel in 2006, the other at the Crédit coopératif in April 2007 following a bank loan taken out for the electoral campaign. However investigations have revealed that since April 2007 the first account was not used in any significant manner. In these circumstances, the candidate is deemed to have had one sole account at a time. Wrongful refusal of account. No reasons for ineligibility.
(Decision nº 2007-4347, April 17th 2008, A.N, Rhone 14th constit., paras 1 and 2, p. 260)

The financial agent of the candidate did not open a bank or post office account. Although the candidate claims that it was impossible for his agent to open a bank account and pleads good faith, these circumstances cannot preclude the application of the provisions of Article L52-6 which have not been complied with in this case. In these conditions, rightful refusal of accounts. Ineligibility
(Decision nº 2007-4400, April 17th 2008, A.N, Gironde 2nd constit., paras 1 to 3, p. 270)

National Committee for Campaign Accounts and Political Financing

Referral

Insofar as the National Committee for Campaign Accounts and Political Financing was not in a position to transmit to the judge reviewing the election the account which it refused there are

no grounds for finding the candidate involved ineligible pursuant to Article L.O 128 of the Electoral Code.
(Decision nº 2007-4003, April 17th 2008, A.N, Paris 15th constit., paras 1 to 3, p. 181)

Procedure

Investigations have revealed that the candidate was given the opportunity of presenting his comments on the direct settlement of electoral expenditure by himself and persons taking part in his campaign, after the designation of his financial agent. The argument of failure to respect the principle of audi alteram partem in proceedings before the National Committee for Campaign Accounts and Political Financing is unsupported by the facts.
(Decision nº 2007-4470, April 17th 2008, A.N, Charente 4th constit., para 2, p. 281)

An examination of the case file shows that the sole criticism on which the National Committee for Campaign Accounts and Political Financing based its decision to refuse to approve the campaign accounts was notified to the candidate on several occasions by mail in October, November and December 2007. This criticism which is based on the failure to include in the account the cost of hiring vehicles contrary to article L52-12 of the Electoral Code was set out in terms devoid of any ambiguity. The party involved was therefore fully aware of the grounds of this criticism since he replied by producing supporting documents pertaining to this expenditure. The argument of failure to respect the principle of audi alteram partem in proceedings before the National Committee for Campaign Accounts and Political Financing is unsupported by the facts.
(Decision nº 2007-4484, April 17th 2008, A.N, Martinique 1st constit., para 2, p. 289)

Contents of campaign accounts

Revenue

Donations or benefits conferred by political parties or groups

In view of the purpose of the legislation pertaining to financial transparency in political life, the financing of electoral campaigns and the limiting of electoral expenditure, a legal entity in private law which has given itself a political object cannot be considered as being a "political party or group" within the meaning of Article L 52-8 of the Electoral Code unless it comes under the scope of sections 8 and 9 of Act nº 88-227 of March 11th 1988, or has submitted itself to the rules laid down by sections 11 to 11-7 of the same statute, which require in particular political parties and groups to collect funds solely through an agent.

In the case in hand, the case file shows that the association involved, which gave itself a political object, does not come under the scope of sections 8 and 9 of the Act of March 11th 1988 and has not submitted itself to the rules laid down by sections 11 to 11-7 of the same statute. Therefore, and on these sole grounds, this association cannot be considered as being a political party or group within the meaning of Article L 52-8 of the Electoral Code.

In these conditions, the candidate should be deemed to have received a prohibited benefit from this legal entity. Therefore, in the circumstances of the case in hand, in particular in view of the benefit involved, the conditions in which it was conferred and its amount in comparison with total campaign expenditure, the National Committee for Campaign Accounts and Political Financing was right to refuse to approve the candidate's campaign account. Ineligibility.
(Decision nº 2007-4282, April 17th 2008, A.N, Doubs 3rd constit., paras 1 to 4, p. 252)

A legal entity in private law which has given itself a political object cannot be considered as being a "political party or group" within the meaning of Article L 52-8 of the Electoral Code unless it comes under the scope of sections 8 and 9 of Act nº 88-227 of March 11th 1988, or has submitted itself to the rules laid down by sections 11 to 11-7 of the same statute, which require in particular political parties and groups to collect funds solely through an agent.

The organisation "Unitat catalana" supplied 85 % of the campaign revenue of the candidate. It is not a political party within the meaning of the abovementioned statutory provisions. In these conditions, the candidate should be deemed to have received a benefit prohibited by Article L 52-8 of the Electoral Code from this legal entity. Therefore, in the circumstances of the case in hand, in particular in view of the benefit involved, the conditions in which it was conferred and its amount in comparison with total campaign expenditure, the National Committee for Campaign Accounts and Political Financing was right to refuse to approve the candidate's campaign account. Ineligibility.
(Decision nº 2007-4301, April 17th 2008, A.N, Pyrénées–Orientales, 1st constit., paras 2 and 3, p. 256)

Donations given to a candidate by a legal entity other than political parties or groups (indent 2 of Article L.52-8 of the Electoral Code)

No donation or benefit

The following are not to be considered as constituting a donation or benefit :

- travelling by the candidate proclaimed the winner undertaken as part of her professional duties in her capacity as Head of the Private Office of the President of the *Conseil general*

- expenditure borne by the *Conseil general* of a day working in Paris since it has not been proved that this visit to Paris was not connected with the electoral campaign of the candidate

- organising of an event known as "La Route du pain" held every year by the *Conseil general* to promote local products in which she participated notwithstanding the fact that no other candidate had been invited to attend and that the President of the *Conseil general* had participants applaud her during a meal

- the letter of the Mayor of the Commune P, which counts fewer than 400 registered voters, inviting the population to attend the public meeting of the candidate proclaimed the winner once it has not been alleged that such a letter was sent with her agreement ;

- a supposed financial contribution by a commercial company for the setting up, hosting, maintenance and illustration of a Web site once investigations have revealed that the financial agent of the candidate settled the corresponding invoices and entered this expenditure in the candidate's campaign accounts ;

- the payment made to the candidate during the campaign by the *Conseil general*, her employer, insofar as it has not been proved that the number of days of holiday leave taken by the candidate to take part in the election campaign, namely a total of 20 days in accordance with the terms of Article L 122-24-1 of the Employment Code, duly deducted from her entitlement to holiday leave, exceeded the leave to which she was entitled as employee.
(Decision nº 2007-3747, January 17th 2008, A.N Tarn-et-Garonne, 2nd constit., paras 5 to 11, p. 49)

A study of the case file shows that the elected candidate refunded the Senate administrative and financial office the cost of sending by the Luxembourg Palace postal services a letter to delegates of the *Département* inviting them to an electoral meeting. The argument that the candidate had the benefit of financial assistance contrary to Article L 52-8 of the Electoral Code is not supported by the facts.
(Decision nº 2008-4519, November 6th 2008, Senate, Aube, para.2, p. 372)

Conferment of a benefit not leading to refusal of accounts.

In order to refuse the candidate's account, the National Committee for Campaign Accounts and Political Financing based its decision on the fact that the candidate had had the benefit of free use of an amphitheatre belonging to the Association Ecole internationale des sciences du traitement de l'information. This benefit was considered as being improper on the grounds that it was a benefit in kind conferred by a legal entity other than a political party or group.

Investigations have revealed that this amphitheatre was made available to all the candidates who asked to use it. In view of the nature of the benefit involved and the conditions in which it was conferred, the alleged irregularity does not per se justify in the case in hand the refusal to approve the campaign account.
(Decision n° 2007-4483, April 17th 2008, A.N, Val-d'Oise 2nd constit., paras 1 to 4, p. 287)

Donation or benefit leading to refusal of account

In view of the purpose of the legislation pertaining to financial transparency in political life, the financing of electoral campaigns and the limiting of electoral expenditure, a legal entity in private law which has given itself a political object cannot be considered as being a "political party or group" within the meaning of Article L 52-8 of the Electoral Code unless it comes under the scope of sections 8 and 9 of Act n° 88-227 of March 11th 1988, or has submitted itself to the rules laid down by sections 11 to 11-7 of the same statute, which require in particular political parties and groups to collect funds solely through an agent.

In the case in hand, the case file shows that the association involved, "Communistes de la Somme" which gave itself a political object, does not come under the scope of the aforementioned provisions of the Act of March 11th 1988. It thus cannot be considered to be a party within the meaning of Article L 52-8 of the Electoral Code. In these conditions, the candidates should be deemed to have received a prohibited benefit from a legal entity. Therefore, in the circumstances of the case in hand, in particular in view of the benefit involved, the conditions in which it was conferred and its amount in comparison with their respective total campaign expenditure, the irregularities committed by the two candidates justify the refusal to approve their campaign accounts. Ineligibility.
(Decision n° 2007-4117/4158, April 17th 2008, A.N, Somme, 4th and 5th constits., paras 1 to 3, p. 226)

The organisation "Unitat catalana" supplied 85 % of the campaign revenue of the candidate. It is not a political party within the meaning of the abovementioned statutory provisions. In these conditions, the candidate should be deemed to have received a benefit prohibited by Article L 52-8 of the Electoral Code from this legal entity. Therefore, in the circumstances of the case in hand, in particular in view of the benefit involved, the conditions in which it was conferred and its amount in comparison with total campaign expenditure, the National Committee for Campaign Accounts and Political Financing was right to refuse to approve the candidate's campaign account. Ineligibility.
(Decision n° 2007-4301, April 17th 2008, A.N, Pyrénées–Orientales, 1st constit., paras 2 and 3, p. 256)

A company operating a hypermarket whose application for a transfer to other premises for extension purposes had been refused, intervened in the election campaign by mobilising its employees and inciting its customers not to vote for the person making the referral, namely the losing candidate, whom it held responsible for the failure of its business plans. Before the first round of the ballot, it had printed and distributed thousands of handouts hostile to said candidate and continued to distribute them massively between the two rounds of the ballot. These handouts, which invited people to vote for "the most representative candidate" could only be interpreted as designed to ensure the election of the other candidate, the sole other candidate standing in the second round of the ballot. Furthermore, three days before the second round of the ballot, the President of the company organised a demonstration by his employees against the person making the referral in front of the Town Hall, after closing the hypermarket and bussing said employees during their working hours to demonstrate outside the Town Hall.

Far from dissociating herself from this campaign, the elected candidate took up the defence of this project and made it part of her own electioneering. She associated herself actively, directly and repeatedly with this project. She organized a visit of the hypermarket by a nationally known personality from her political party, and this visit was widely publicised by the local press. She participated in the demonstration organised by the employees of this hypermarket.

In view of all these circumstance, the elected candidate was considered by the Constitutional Council as having profited from direct or indirect benefits conferred by a legal entity contrary to the provisions of Article L 52-8 of the Electoral Code. The fact that she profited from such prohibited benefits, in view of their nature and the conditions in which they were conferred, justified the refusal of her campaign account.
(Decision n° 2008-4509 to 2008-4514, June 26th 2008,, A.N, Eure-et-Loir, 1st constit., paras 2 to 5, p. 332)

Expenditure

Expenditure required to be entered in campaign accounts

Investigations have shown that among the criticised expenditure the amount of 1650 € concerned expenses connected with a public meeting held to incite voters to vote for the candidate. This expenditure, duly entered in the campaign account, was wrongly defined as personal expenditure by the National Committee for Campaign Accounts and Political Financing.
(Decision nº 2007-4471, April 17th 2008,, A.N, Bas-Rhin, 1st constit., para.3, p. 283)

Expenditure not required to be entered in campaign accounts

Expenditure amounting to 3814 € cannot be considered as having been incurred to incite voters to vote for the candidate. Such expenditure should therefore not be entered in the campaign account. However although this fact makes it necessary to rectify the account it does not justify its being refused by the Committee.
(Decision nº 2007-4471, April 17th 2008,, A.N, Bas-Rhin, 1st constit., para.4, p. 283)

Expenditure directly settled. (Article L 52-4)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating her financial agent represents 20 % of the total expenditure of her campaign account and 1.7 % of the ceiling. The personal problems of her agent and the latter's lack of availability are inoperative arguments. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4216, February 7th 2008, A.N, Vaucluse 1st constit, paras 1 to 5, p. 65)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent represents 52.46 % of the total expenditure of his campaign account and 1.98 % of the ceiling. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4224, February 7th 2008, A.N, Haute-Vienne 3rd constit., paras 1 to 3, p. 67)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent represents 34.58 % of the total expenditure of his campaign account and 8.17 % of the ceiling. His good faith, the late issuing of a cheque book to his agent, the refusal by the bank to issue a bankers'cheque to pay the Post Office bill on the grounds that the time required for crediting the money deposited in the account had not expired, together with the refunding by his financial agent of expenditure directly settled by the candidate are inoperative arguments. Rightful refusal of account. Ineligibility. Automatic resignation from office.
(Decision nº 2007-4232, February 7th 2008, A.N, Vendée 5th constit., paras 1 to 4, p. 69)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account

and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent represents 18 % of the total expenditure of his campaign account and 1.36 % of the ceiling. Argument that the candidate's financial agent took time opening a bank account is inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4239, February 7th 2008, A.N, Hérault 2nd constit., paras 1 to 4, p. 71)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating her financial agent represents 12.11 % of the total expenditure of her campaign account and 3.75 % of the ceiling. Argument that her financial agent was not often available is inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4266, February 7th 2008, A.N, Alpes-Maritimes 1st constit., paras 1 to 4, p. 73)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent and without any intervention of the latter represents 19.8 % of the total expenditure of his campaign account. Argument that his financial agent was not often available, of candidate's good faith and unawareness of the applicable rules are inoperative arguments. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4004, March 27th 2008, A.N, Paris 15th constit., , paras 1 to 4, p. 103)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the campaign director of the candidate after she had registered her financial agent and without the intervention of said agent represents 17.67 % of the total expenditure of her campaign account and 13.61 % of the ceiling. Arguments of candidate's good faith, that the expenditure involved had been incurred as a matter of urgency, that part of the expenditure could only be settled by a bank credit card, an instrument of payment which the funding association did not possess, of the unavailability of the financial agent due to health problems and the repayment of the monies paid are inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4021, March 27th 2008, A.N, Rhône, 7th constit., paras 1 to 4, p. 109)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent and without the intervention of the latter represents 14.98 % of the total expenditure of his campaign account and 12.42 % of the ceiling. Argument putting forward practical difficulties connected with the duty to settle campaign expenditure by the financial agent is inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4035, March 27th 2008, A.N, Bouches-du-Rhône 14th constit., paras 2 to 4, p. 111)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account

and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating her financial agent and without the intervention of the latter represents 12.26 % of the total expenditure of her campaign account and 1.6 % of the ceiling. Arguments that financial agent was late in receiving his cheque book and that each item of expenditure involved was modest are inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4073, March 27th 2008, A.N, Loire 4th constit., paras 1 to 4, p. 117)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent and without the intervention of the latter represents 7.91 % of the total expenditure of his campaign account and 3.93 % of the ceiling. Arguments that his bank took time opening an account in the name of his financial agent and issuing the latter with a chequebook, that he had to pay his suppliers immediately and that the monies involved were repaid to him by his financial agent are inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4088, March 27th 2008, A.N, Paris 1st constit., paras 2 to 4, p. 119)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent and without the intervention of the latter represents 20.2 % of the total expenditure of his campaign account and 1.8 % of the ceiling. Argument that expenditure directly settled by the candidate was paid back to him by the financial agent is inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4092, March 27th 2008, A.N, Paris 14th constit., paras 1 to 4, p. 121)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating her financial agent and without the intervention of the latter represents 10.2 % of the total expenditure of her campaign account and 4.7 % of the ceiling. Arguments that financial agent was late in receiving his cheque book, that he repaid expenditure directly settled by the candidate and that each item of expenditure involved was modest, that the candidate acted in good faith are inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4163, March 27th 2008, A.N, Paris 3rd constit., paras 1 to 4, p. 130)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent and without the intervention of the latter represents 89.8 % of the total expenditure of his campaign account and 41 % of the ceiling. Arguments that several banks refused to open an account in the name of his financial agent, thus necessitating the intervention of the Bank of France under Article L 312-1 of the Monetary and Financial Code is inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4174, March 27th 2008, A.N, Alpes-Maritimes, 7th constit., paras 2 to 4, p. 132)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of

said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent and without the intervention of the latter represents 15.46 % of the total expenditure of her campaign account and 5.01 % of the ceiling. Arguments that the financial agent was late in receiving his cheque book, that each item of expenditure involved was modest, of the insufficiency of information given and that the candidate acted in good faith are inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4212, March 27th 2008, A.N, Gers 1st constit., paras 1 to 4, p. 134)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent and other expenditure paid by the financial agent via his own bank account and not the sole bank account required by Article L 52-6 of the Code in order to trace all financial transactions represents 55.1 % of the total expenditure of his campaign account and 3.6 % of the ceiling. Argument concerning difficulty connected with length of time required to obtain a cheque book after opening a bank account is inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4215, March 27th 2008, A.N, Hérault 3rd constit., paras 2 to 4, p. 138)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent and without the intervention of the latter represents 44.4 % of the total expenditure of his campaign. Argument that each item of expenditure involved was modest is inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4221, March 27th 2008, A.N, Moselle, 3rd constit., paras 1 to 4, p. 140)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating her financial agent represents 25.78 % of the total expenditure of her campaign account and 3.70 % of the ceiling. Argument concerning late candidacy of candidate and length of time required to obtain a cheque book after opening a bank account is inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4264, March 27th 2008, A.N, Bouces-du-Rhone, 13th constit., paras 2 to 4, p. 142)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating her financial agent represents 42.2 % of the total expenditure of her campaign account and 7.3 % of the ceiling. Arguments concerning length of time required to obtain a cheque book for the financial agent and the good faith of the candidate are inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4291, March 27th 2008, A.N, Var, 3rd constit., paras 1 to 4, p. 144)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of

said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent and without the intervention of the latter represents 34.5 % of the total expenditure of his campaign account. Rightful refusal of account. Ineligibility.
(Decision n° 2007-4293, March 27th 2008, A.N, Alpes-Maritime, 6th constit., paras 1 to 3, p. 146)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent and without the intervention of the latter represents 73 % of the total expenditure of his campaign account and 21 % of the ceiling. Rightful refusal of account. Ineligibility.
(Decision n° 2007-4331, March 27th 2008, A.N, Nord, 24th constit., paras 1 to 3, p. 148)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent and without the intervention of the latter represents 22.56 % of the total expenditure of his campaign account and 9.3 % of the ceiling. Argument that financial agent refunded expenditure directly settled by candidate is inoperative. Rightful refusal of account. Ineligibility.
(Decision n° 2007-4332, March 27th 2008, A.N, Rhône, 8th constit., paras 1 to 4, p. 150)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent represents 8.41 % of the total expenditure of his campaign account and 7.95 % of the ceiling. Rightful refusal of account. Ineligibility.
(Decision n° 2007-4335, March 27th 2008, A.N, Paris, 11th constit., paras 2 and 3, p. 152)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate and several people participating in his election campaign, after registering the financial agent of the candidate and without the intervention of the latter, represent, after deducting that part of expenditure which, according to the candidate, corresponds to his personal contributions in kind, 8.17 % of the total expenditure of his campaign account and 7.6 % of the ceiling.

Contrary to what is claimed by the candidate, the payment by a political supporter, in lieu and stead of the financial agent, of invoices for the purchase of food for buffets offered during election meetings cannot be considered as a donation in kind on the part of said person. The arguments that the financial agent was unavailable due to health problems, when investigations have shown that this occurrence was not a case of *force majeure*, that the candidate acted in all good faith and that amounts directly paid by supporters were refunded to them by the financial agent and entered in the campaign account are inoperative. Rightful refusal of account. Ineligibility.
(Decision n° 2007-4359, March 27th 2008, A.N, Rhône, 11th constit., paras 2 to 5, p. 160)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent and without the intervention of the latter represents 39 % of the total expenditure of his campaign account and 5 % of the ceiling. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4425, March 27th 2008, A.N, Yvelines, 9th constit., paras 2 and 3, p. 167)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating his financial agent and without the intervention of the latter represents 10.68 % of the total expenditure of his campaign account and 4.25 % of the ceiling. Arguments that candidate acted in good faith, of the late issuing of a cheque book to the financial agent, of the refusal of tradesmen to grant credit to the financial agent and the material impossibility for the agent to permanently accompany supporters are inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4434, March 27th 2008, A.N, Bouches-du-Rhône, 1st constit., paras 2 to 4, p. 171)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating her financial agent and without the intervention of the latter represents 16 % of the total expenditure of her campaign account and 4 % of the ceiling. Arguments that candidate acted in good faith, of the poor service of the bank and the fact that a cheque for printing costs, which had been deposited as a guarantee pending payment by the financial agent, had nevertheless been cashed are inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4466, March 27th 2008, A.N, Bouches-du-Rhône, 9th constit, paras 2 to 4, p. 175)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating her financial agent represents 25 % of the total expenditure of her campaign account and 3.5 % of the ceiling. Argument that the financial agent refunded this expenditure is inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4010, April 17th 2008, A.N, Val-de-Marne, 3rd constit, paras 1 to 4, p. 183)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating her financial agent represents 17.71 % of the total expenditure of her campaign account and 5.6 % of the ceiling. Arguments that her agent was not often available and the refunding of payments by the latter are not sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4020, April 17th 2008, A.N., Rhône, 3rd constit., paras 1 to 4, p. 191)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of

said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after designating her financial agent represents 3.09 % of the total expenditure of her campaign account and 1.21 % of the ceiling. These amounts are slight compared with the total expenditure and trifling compared with the ceiling. Wrongful refusal of account. No reason for holding that the candidate is ineligible.
(Decision nº 2007-4033, April 17th 2008, A.N., Bouches-du-Rhône, 14th constit., paras 1 to 5, p. 198)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, the Committee criticises the candidate for having, after designating her financial agent and without the intervention of the latter, directly paid an amount of 7 929.22 €, representing 26.79 % of the total expenditure of her campaign account and 13.35 % of the ceiling. Even supposing that it is possible to accede to the candidate's request that this amount be reduced to 2 818.88 €, the contested expenditure after reduction would stand at 9.52 % of total campaign expenditure and 4.74 % of the ceiling, amounts which can hardly be described as slight in comparison with all campaign expenditure and trifling as regards the ceiling. The delay in the making available of the bank loan she had solicited and her argument that she acted in good faith are not sufficient to preclude the application of the provisions of Article L 52-4. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4040, April 17th 2008, A.N., Gers, 2nd constit., paras 1 to 4, p. 206)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the designation of his financial agent, which should be deemed to have taken place when the funding association was registered with the Prefecture, represents 35 % of the total expenditure of his campaign account. Arguments that the candidate acted in good faith, that the funding association was not able to obtain instruments of payment in time or the belated receipt of notice of the registration are not sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4041, April 17th 2008, A.N., Seine-et-Marne, 8th constit., paras 2 to 4, p. 208)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of her financial agent represents 83.33 % of the total expenditure of her campaign account and 13.94 of the ceiling. Argument that the candidate acted in good faith is inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4043, April 17th 2008, A.N, La Réunion, 1st constit., paras 1 to 3, p. 210)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of her financial agent represents 16.83 % of the total expenditure of her campaign account and 3.49 % of the ceiling. Arguments that the candidate acted in good faith, the delay in obtaining a loan, and the failure to credit this amount to the account of the account opened by his

financial agent until July 10th are not sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4070, April 17th 2008, A.N., Var, 4th constit., paras 1 to 4, p. 216)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate and several persons participating in her election campaign after the registration of her financial agent represents 24 % of the total expenditure of her campaign account and 11 % of the ceiling. Even supposing that the portion of expenditure disputed by the candidate was wrongly taken into account, the excess of the disputed expenditure would still represent 19.7 % of her total campaign expenditure and 8.8 % of the ceiling. Arguing that she acted in good faith and that her campaign account was accurate are not sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4107, April 17th 2008, A.N, Hérault, 6th constit., paras 1 to 4, p. 222)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of his financial agent represents 41 % of the total expenditure of his campaign account and 10 % of the ceiling. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4108, April 17th 2008, A.N, Oise, 1st constit., paras 1 to 3, p. 224)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate, after the designation of her financial agent, which should be considered as having taken place on the date when her funding association was registered by her at the Prefecture, as provided for by section 5 of the Act of July 1st 1901, represents 10.54 % of the total expenditure of her campaign account and 7.14 % of the ceiling. Neither the time needed to open a bank account and obtain a cheque book, nor the impossibility of postponing certain items of expenditure, nor the candidate's good faith are sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4120, April 17th 2008, A.N, Doubs, 4th constit., paras 1 to 4, p. 228)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code

In the case in hand, expenditure directly settled by the candidate, after the registration of his financial agent, represents 16.9 % of the total expenditure of his campaign account and 6.65 % of the ceiling. Neither the fact that the candidate was not always accompanied by his financial agent throughout the campaign, nor the unavailability of said agent for health reasons during part of the campaign, nor the urgent need to pay certain expenses, nor the good faith of the candidate are sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4180, April 17th 2008, A.N, Seine-Saint-Denis, 8th constit., paras 1 to 4, p. 234)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account

and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of her financial agent represents 66.5 % of the total expenditure of her campaign account and 2.30 % of the ceiling. Argument of good faith inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4188, April 17th 2008, A.N., Gard, 5th constit., paras 1 to 3, p. 236)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of his financial agent represents 9.92 % of the total expenditure of his campaign account and 4.35 % of the ceiling. Neither the unavailability of said agent, nor the refusal of tradesman to agree to postpone payment are sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4206, April 17th 2008, A.N., Allier, 3rd constit., paras 1 to 4, p. 240)

If by way of a departure from the major formal requirement of recourse to a financial agent for all expenditure incurred for the purpose of the campaign, direct payment of some minor expenses by the candidate may be allowed, this is on the twofold condition that the amount thereof, taking into account not only expenditure incurred before the designation of the financial agent but also that settled prior to said designation and not refunded by said agent, be slight in comparison with all the campaign expenditure and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, electoral expenditure directly settled by the candidate prior to the designation of his financial agent was not subsequently refunded by the latter and did not appear in the bank account opened pursuant to Article 52-6 of the Electoral Code amounted to 2214 €. In addition electoral expenditure amounting to 356 € was directly borne by the candidate after the designation of his financial agent and without the intervention of the latter. The total amount of expenditure directly settled by the candidate represents 10.35 % of the total expenditure of his campaign and 4.04 % of the ceiling.

The argument raised by the candidate that he acted in all good faith is not sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code which were not complied with in the case in hand. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4223, April 17th 2008, A.N., Yonne, 1st constit., paras 1 to 4, p. 242)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of her financial agent represents 15.33 % of the total expenditure of her campaign account and 7.03 % of the ceiling. Neither the good faith of the candidate, nor her unawareness of the applicable rules are sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4227, April 17th 2008, A.N., Haute-Vienne, 4th constit., paras 1 to 4, p. 244)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of her financial agent represents 27.67 % of the total expenditure of her campaign account and 16.72 % of the ceiling. The fact that the financial agent was unavailable during part of the

campaign for health reasons is not sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4260, April 17th 2008, A.N, Bouches-du-Rhone, 8th constit., paras 1 to 4, p. 246)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of his financial agent represents 27.6 % of the total expenditure of his campaign account. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4267, April 17th 2008, A.N., Alpes-Maritimes, 1st constit., paras 1 to 3, p. 248)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of her financial agent represents 27 % of the total expenditure of her campaign account and 9.73 % of the ceiling. The fact that the candidate was only chosen to stand late in the day and the delay in obtaining a bank loan are not sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4369, April 17th 2008, A.N., Isère, 9th constit., paras 1 to 4, p. 264)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of her financial agent represents 47 % of the total expenditure of her campaign account and 1.8 % of the ceiling. Neither the delay in receiving a cheque book not the defaulting of the party which had given her its backing are sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4372, April 17th 2008, A.N., Guadeloupe 4th constit., paras 1 to 4, p. 266)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of his financial agent represents 74 % of the total expenditure of his campaign account and 12 % of the ceiling. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4404, April 17th 2008, A.N., Guadeloupe 3rd constit., paras 1 to 3, p. 272)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of her financial agent the entirety of the total expenditure of her campaign account and 17 % of the ceiling. Neither the delay in obtaining a cheque book, not the difficulties encountered during the election campaign, nor the good faith of the candidate are sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4430, April 17th 2008, A.N Bouches-du-Rhone, 4th constit., paras 1 to 4, p. 275)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of his financial agent represents the entirety of the total expenditure of his campaign account and 34 % of the ceiling. Rightful refusal of account. Ineligibility.
(Decision n° 2007-4438, April 17th 2008, A.N., Mayotte, paras 1 to 3, p. 277)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, even if one admits that only one third of the surface area of the premises rented by the candidate were used as his committee rooms, expenditure incurred by the candidate for his campaign and directly settled by himself or by persons participating in his campaign after the registration of his financial agent and without the intervention of the latter represent 4.17 % of total expenditure of his campaign account and 2.1 % of the ceiling. The arguments that the candidate acted in good faith, that it took time to open a bank account for the financial agent and the lack of availability of the latter are not operative. Rightful refusal of account. Ineligibility.
(Decision n° 2007-4470, April 17th 2008, A.N., Charente, 4th constit., paras 1 to 5, p. 281)

The candidate states that she used the bank card attached to the bank account of her financial agent to settle four items of expenditure amounting overall to 576 € and corresponding to a journey to Paris for an event organised by her party on the occurrence of the general election. This use of a means of payment attached to the account of the financial agent constitutes an infringement of Article L 52-4 and L 52-6 of the Electoral Code, taking into account the purpose of said provisions.

However, in view firstly of the circumstances of the case in hand and the nature of the expenditure involved, the limited number of financial transactions and secondly of the very modest nature of the overall amount of said expenditure in comparison with the total expenditure of the campaign account there is no justification for refusing approval of the campaign account.
(Decision n° 2007-4471, April 17th 2008, A.N., Bas-Rhin, 5th constit., para 5, p. 283)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate, which it has not been proved was actually settled after the registration of his financial agent, represents 18.7 % of the total expenditure of his campaign account and 4.7 % of the ceiling. The argument that it took time to open a bank account after the designation of this financial agent is not sufficient to preclude the application of the provisions of Article L 52-4. Rightful refusal of account. Ineligibility.
(Decision n° 2007-4478, April 17th 2008, A.N., Yvelines 3rd constit, paras 1 to 4, p. 285)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of his financial agent represents 25.24 % of the total expenditure of his campaign account and 4.81 % of the ceiling. Rightful refusal of account. Ineligibility.
(Decision n° 2007-4503, April 17th 2008, A.N., New Caledonia 1st constit., paras 1 to 3, p. 297)

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of

said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate, after the designation of her financial agent, which should be considered as having taken place on the date when her funding association was registered with the prefecture, pursuant to the provisions of section 5 of the Act of July 1st 1901, represents 4.3 % of the total expenditure of her campaign account and 3.9 % of the ceiling.

The obligation to settle certain expenditure during the period between the registration of her funding association at the Prefecture and the publication of this registration in the *Journal officiel* as provided for in the same section 5, a period during which this association had difficulties in opening a bank account, is not sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4508, April 17th 2008, A.N., Haute-Vienne 2nd constit., paras 1 to 4, p. 299)

Expenditure prior to designation

If for practical reasons, the fact that a candidate directly pays some minor expenses after the designation of his agent may be tolerated, this can only the case when the overall amount of said expenses is slight in comparison with all the campaign expenditure entered in the account and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, expenditure directly settled by the candidate after the registration of his financial agent and without the intervention of the latter represents 9 % of the total expenditure of his campaign account and 3 % of the ceiling. The argument that the expenditure which the candidate is reprimanded for having settled directly had been settled prior to the designation of the financial agent is inoperative. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4214, March 27th 2008, A.N., Seine-Maritime, 6th constit., paras 2 to 4, p. 136)

If by way of a departure from the major formal requirement of recourse to a financial agent for all expenditure incurred for the purpose of the campaign, direct payment of some minor expenses by the candidate may be allowed, this is on the twofold condition that the amount thereof, taking into account not only expenditure incurred before the designation of the financial agent but also that settled prior to said designation and not refunded by said agent, be slight in comparison with all the campaign expenditure and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, electoral expenditure which was directly settled by the candidate prior to the designation of his financial agent and not subsequently refunded by the latter nor entered in the bank account opened pursuant to Article 52-6 of the Electoral Code amounted to 93.5 % of the total expenditure of his campaign and 67.7 % of the ceiling.

The argument raised by the candidate that having financed his campaign with his own funds he thought in all good faith that he could carry out a set off between two financial transactions, namely payment of money by him into the agent's account and reimbursement by the latter to himself of an amount equal to said payment, and that the expenditure considered by the Committee as having been directly incurred were entered in full in his campaign account is not sufficient to preclude the application of the provisions of Article L 52-4 which were not complied with in the case in hand. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4162 April 17th 2008, A.N, Eure, 1st constit., paras 1 to 4, p. 232)

If by way of a departure from the major formal requirement of recourse to a financial agent for all expenditure incurred for the purpose of the campaign, direct payment of some minor expenses by the candidate may be allowed, this is on the twofold condition that the amount thereof, taking into account not only expenditure incurred before the designation of the financial agent but also that settled prior to said designation and not refunded by said agent, be slight in comparison with all the campaign expenditure and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, electoral expenditure which was directly settled by the candidate prior to the designation of his financial agent and not subsequently refunded by the latter nor entered

in the bank account opened pursuant to Article 52-6 of the Electoral Code amounts to 23.73 % of the total expenditure of his campaign and 17.11 % of the ceiling.

The argument raised by the candidate that having financed his campaign with his own funds he thought in all good faith that he could carry out a set off between two financial transactions, namely payment of money by him into the agent's account and reimbursement by the latter to himself of an amount equal to said payment, and that the expenditure considered by the Committee as having been directly incurred were entered in full in his campaign account is not sufficient to preclude the application of the provisions of Article L 52-4 which were not complied with in the case in hand. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4205, April 17th 2008, A.N., Pyrénées-Orientales, 4th constit., paras 1 to 4, p. 238)

If by way of a departure from the major formal requirement of recourse to a financial agent for all expenditure incurred for the purpose of the campaign, direct payment of some minor expenses by the candidate may be allowed, this is on the twofold condition that the amount thereof, taking into account not only expenditure incurred before the designation of the financial agent but also that settled prior to said designation and not refunded by said agent, be slight in comparison with all the campaign expenditure and trifling as regards the ceiling of expenditure laid down by Article L 52-11 of the Electoral Code.

In the case in hand, electoral expenditure which was directly settled by the candidate prior to the designation of his financial agent and not subsequently refunded by the latter nor entered in the bank account opened pursuant to Article 52-6 of the Electoral Code amounted to 24.1 % of the total expenditure of his campaign and 12.4 % of the ceiling.

The arguments raised by the candidate that it took time to obtain a loan and open a bank account and that he had acted in good faith are not sufficient to preclude the application of the provisions of Article L 52-4 of the Electoral Code which were not complied with in the case in hand. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4281, April 17th 2008, A.N., Nord, 20th constit., paras 1 to 4, p. 250)

Principle of one single and exhaustive account

The accuracy of the account is flawed by the omission of expenditure incurred for campaign purposes amounting overall to 3193.32 € corresponding to printing and poster pasting costs other than those of the official campaign and to travel and restaurant expenses. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4115, March 27th 2008, A.N., Lot, 2nd constit., paras 1 and 2, p. 126)

Investigations have shown that the amount of an invoice corresponding to expenditure incurred for campaign purposes has not been entered in the campaign account in its entirety. Inaccuracy.

Rightful refusal of account. Ineligibility.
(Decision nº 2007-4351, March 27th 2008, A.N., Seine-Maritime, 12th constit., paras 1 to 3, p. 158)

Investigations have shown that expenditure incurred for campaign purposes has not been entered in the campaign account. Inaccuracy.

Rightful refusal of account. Ineligibility.
(Decision nº 2007-4392, March 27th 2008, A.N., Hautes-Pyrénées, 1st constit., paras 1 and 2, p. 163)

The accuracy of the account is flawed by the omission of expenditure incurred for campaign purposes amounting overall to 1459 € corresponding to the cost of hiring the candidate's committee room and a village hall, taking part in a course of training and postal expenses. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4485, March 27th 2008, A.N., Lot-et-Garonne, 3rd constit., paras 1 and 2, p. 177)

The accuracy of the account is flawed by the omission of expenditure incurred for campaign purposes amounting overall to 3193.32 € corresponding to printing and poster pasting costs other than those of the official campaign and to travel and restaurant expenses. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4515, March 27th 2008, A.N., Lot, 1st constit., paras 1 and 2, p. 179)

Investigations have shown that expenditure incurred for campaign purposes, namely invoices for travel, restaurants, telephone and letter franking has not been entered in the campaign

account filed by the candidate. This omission which concerns 13 % of the expenditure incurred for the election campaign, expenditure moreover directly settled by the candidate, flaws the accuracy of this account. Rightful refusal of account. Ineligibility.
(Decision nº 2007-4034, April 17th 2008, A.N., Bouches-du-Rhone, 14th constit., paras 1 and 2, p. 200)

Investigations have shown that expenditure incurred for campaign purposes, namely the rental of six vehicles by the Departmental federation of the candidate's political party, has not been entered in the campaign account filed by the candidate. Insofar as he was the President of this Federation, the candidate could not have failed to be aware of this expenditure incurred for his campaign Given the circumstances and the magnitude of this omission, the National Committee for Campaign Accounts and Political Financing refused to approve this campaign account. Ineligibility.
(Decision nº 2007-4484, April 17th 2008, A.N., Martinique, 1st constit., paras 1 and 3, p. 289)

Investigations have shown that expenditure corresponding to the cost of designing, printing, transporting and distributing a campaign document, amounting overall to 9861e was incurred on behalf of the candidate but was not entered in his campaign account. Although the candidate states that she had not given her agreement to ordering these documents, she nevertheless states that the director of her campaign placed this order and, contrary to what she contends, it has been proved that she made use of this document.

In view of its magnitude, this omission flaws the accuracy of the campaign account. Rightful refusal. Ineligibility
(Decision nº 2007-4501, April 17th 2008, A.N., Nord, 10th constit., paras 1 to 3, p. 293)

Deficit

Under Articles L 52-4, L 52-6 and L 52-11 of the Electoral Code, which are devoid of any ambiguity the financial agent of the candidate many only accept revenue until the date on which the candidate files his campaign account.

An inspection of the campaign account reveals that, out of 14178 € which the candidate states were personally made by him, only 10000 € had actually been paid to the financial agent prior to the filing of the account, the remainder only being paid on August 24th 2007, i.e after the filing of the account. Once this difference of 4178 € is deducted from the revenue entered in the candidate's campaign account, this account shows a deficit contrary to the provisions of Article L 52-12 of the Electoral Code. Rightful refusal of account without it being necessary to examine any other grounds for said refusal. Ineligibility.
(Decision nº 2007-4151, March 27th 2008, A.N., Loire, 5th constit., paras 1 to 3, p. 128)

On the date on which it was filed the campaign account showed a deficit contrary to the provisions of Article L 52-12 of the Electoral Code, which justified the refusal of said account. Rightful refusal. Ineligibility.
(Decision nº 2007-4443, March 27th 2008, A.N., Rhone, 10th constit., paras 1 to 3, p. 173)

The candidate entered the amount of 3606 € in his campaign account as having been personally paid by him to his financial agent, whereas he had in fact only paid 1500 € prior to the filing of said account. Once the difference of 2106 € is deducted from revenue entered in the campaign account, the latter shows a deficit. The good faith of the candidate and his unawareness of the rules are inoperative arguments. Ineligibility under Article LO 128 of the Electoral Code.
(Decision nº 2007-4037, April 17th 2008, A.N., Moselle, 6th constit., paras 3 and 4, p. 202)

On the date on which it was filed the candidate's campaign account showed a deficit contrary to the provisions of Article L 52-12 of the Electoral Code. The candidate cannot rely on the argument that, after the expiry of the statutory allotted time for filing accounts, he filed a fresh account which was balanced. His arguments that he acted in good faith and was encountering personal difficulties are not operative. Ineligibility.
(Decision nº 2007-4295, April 17th 2008, A.N., Bouches-du-Rhone, 3rd constit., paras 2 and 3, p. 254)

Under Articles L 52-4, L 52-6 and L 52-11 of the Electoral Code, the financial agent of the candidate many only accept revenue until the date on which the candidate files his campaign account.

On the date on which it was filed the candidate's campaign account showed a deficit contrary to the provisions of Article L 52-12 of the Electoral Code, which justified the refusal of said account. Although the candidate subsequently obtained a bank loan and received donations, these circumstances, which occurred after the filing of the campaign account, have no effect on the lack of compliance of said account with the provisions referred to above. Rightful refusal of account. Ineligibility.
(Decision n° 2007-4500, April 17th 2008, A.N., New Caledonia, 2nd constit., paras 1 and 2, p. 291)

Under Articles L 52-4, L 52-6 and L 52-11 of the Electoral Code, the financial agent of the candidate many only accept revenue until the date on which the candidate files his campaign account.

On the date on which it was filed the candidate's campaign account showed a deficit contrary to the provisions of Article L 52-12 of the Electoral Code, which justified the refusal of said account. Although the candidate subsequently this circumstance, which occurred after the filing of the campaign account, has no effect on the lack of compliance of said account with the provisions referred to above. Rightful refusal of account. Ineligibility.
(Decision n° 2007-4502, April 17th 2008, A.N., New Caledonia, 1st constit., paras 1 to 3, p. 295)

Donations or benefits conferred on a candidate by a public body or a legal entity in private law

Conferment of a benefit leading to refusal of account – Ineligibility

Direct or indirect benefits conferred by a legal entity contrary to the provisions of Article L 52-8 of the Electoral Code, in view of their nature and the conditions in which they were conferred, justified the refusal of the candidate's campaign account.
(Decision n° 2008-4509 to 2008-4514, June 26th 2008, A.N., Eure-et-Loir, 1st constit., para 5, p. 332)

Elected candidate – Ineligibility – Nullification of election

The receipt of a prohibited benefit, having regard to the nature thereof and the conditions in which it was conferred, justifies the refusal of the candidate's campaign account. Pursuant to Article L.O 128 of the Electoral Code, the Constitutional Council must thus hold that said candidate is ineligible for a period of one year as from the date of its decision and that the elections which took place in the 1st constituency of the Department of Eure-et-Loir are null and void.
(Decision n° 2008-4509 to 2008-4514, June 26th 2008, A.N., Eure-et-Loir, 1st constit., para 6, p. 332)

Automatic resignation from office

After having found that the campaign accounts of a candidate proclaimed elected were rightly refused for non compliance with Article L 52-4 of the Electoral Code, the Constitutional Council held, pursuant to Article L.O 136-1 of the Electoral Code, that said candidate was ineligible for a period of one year as from the date of said ruling and formally declared him to have automatically resigned from office
(Decision n° 2007-4232, February 7th 2008, A.N., Vendée, 5th constit., para.4, p. 69 ; decision n° 2007-4359, March 27th 2008, A.N., Rhône, 11th constit., para.5, p. 160)

PUBLIC AND SOCIAL FINANCES

FINANCE ACTS

Contents and presentation of Finance Bills

Provisions required to be included in a Finance Act

6° of II of section 34 of the Institutional Act of August 1st 2001 pertaining to Finance Acts provides that the Finance Act "shall authorising the giving of guarantees of the State and the rules thereto pertaining"

Section 124 of the Finance Review Act for 2008 authorises the Minister in charge of the Economy to give the guarantee of the State to cover the cost of cleaning up polluted land belonging to the SNPE company. However the Finance Act could not leave it to an administrative act to fix the ceiling of said guarantee taking into account an expert appraisal subsequent to the Act without evaluating this expenditure or limiting the amount thereof.
(Decision nº 2008-574 DC, December 29th 2008, paras 7 to 9, p. 386)

Provisions not to be included in a Finance Act

Distribution of grants between Territorial Communities

VII of section 6 of the Finance Review Act for 2008 pertaining to the distribution of the proceeds of the *octroi de mer* tax between Territorial Communities is not included in the means of setting off expenditure set out in Article L.O 6371-5 of the General Code of Territorial Communities. It is not intended, as is authorized by c) of 7° of II of section 34 of the Institutional Act of August 1st 2001 "to define the means of distributing the aid given by the State to Territorial Communities". It does not concern the determination of revenue and expenditure of the State. Neither does it come under the scope of any other category of provisions to be found in an Finance Act. It was thus passed in proceedings which are unconstitutional.
(Decision nº 2008-574 DC, December 29th 2008, paras 3 to 5, p. 386)

Reports to Parliament

Section 53 of the Finance Review Act for 2008 which provides that the Government shall put before Parliament a report showing firstly the application of the measure introduced by Act nº 2001-420 of May 15th 2000 pertaining to the new economic regulations and making it possible to suspend the flow of money towards "tax havens" and secondly the methods implemented to monitor flows of money with businesses located in such tax havens, and also section 144 of the same statute, which provides that the Government shall put before Parliament a report on the desirability of extending partial unemployment benefits as provided by Article L 5122-1 of the Employment Code to agents of local administrative bodies in charge of a industrial and commercial public service are outside the domain of Finance Acts.
(Decision nº 2008-574 DC, December 29th 2008, paras 10 and 12, p. 386)

Miscellaneous

Section 80 of the Finance Review Act for 2008 which is designed to authorise certain wine growers to use the appellations "grand cru classé" and "premier cru classé" is outside the domain of Finance Acts.
(Decision nº 2008-574 DC, December 29th 2008, para 11, p. 386)

Section 147 of the Finance Review Act for 2008 which amends Article 568 of the General Tax Code to specify the conditions for managing tobacco shops, is outside the domain of Finance Acts.
(Decision nº 2008-574 DC, December 29th 2008, para 13, p. 386)

SOCIAL SECURITY FINANCING ACTS

Contents and presentation of Social Security Financing Bills

Provisions which may be included in a Social Security Financing Act

Provisions having a sufficiently direct effect on expenditure

Prolonging the working life of an employee beyond the period necessary to obtain a full-rate retirement pension has a direct effect on both expenditure and revenue of the compulsory basic pensions systems. The challenged provisions may thus be included in a Social Security Financing Act.
(Decision nº 2008-571 DC, December 11th 2008, paras 17 and 18, p. 378)

Section 37 of the Social Security Financing Act for 2009 is designed to enable the Director of the National Union of Health Care Funds to reduce for the year 2009 the assuming by said Funds of part of the health insurance contributions of dentists. In view of the effect of this measure, calculated at over one hundred million euros, on the expenditure of compulsory basic health care systems, this provision may be included in a Social Security Financing Act
(Decision nº 2008-571 DC, December 11th 2008, para 6, p. 378)

Provisions which may not be included in a Social Security Financing Act

Provisions without a sufficiently direct effect on revenue

Compulsory basic health care systems

1° and 2° of I of section 20 of the Social Security Financing Act for 2009 which contain the methods whereby the employer shall assume employees' transport costs in mandatory annual negotiations on wages provided for in the branch under Article L 2241-2 of the Employment Code and in the company under Article L 2242-8, Indent 1° of 3° of I of the same section which requires the employer, in the context of said negotiations, to propose a mobility plan and Article 21 which contains various measures concerning legal certainty and relations between contributors to and contribution collecting bodies of the Social Security system do not come under the scope of Social Security Financing Acts. The measures which appear in the part of the Social Security Financing Act which contains the provisions concerning revenue and the general equilibrium for 2009 have no effect or a too indirect effect on the revenue of compulsory basic health care systems or bodies contributing to the financing thereof.
(Decision nº 2008-571 DC, December 11th 2008, para 23, p. 378)

Provisions not having a sufficiently direct effect on expenditure

Compulsory basic health care systems

Section 40 of the Social Security Financing Act for 2009 which reintroduces the concept of "relevant medical practitioner", section 41 which designates the Authority empowered to fix the amount of the contribution due by health care professionals not using electronic health care forms, section 43 which provides for informing patients of the list of practitioners and

health care centres which have signed "health care improvement contracts", section 44 which leaves it to a Decree to determine the manner whereby patients shall participate in a system for monitoring the side effects of medication, the three final indents of section 45 which deal with the duties and means of operation of the public interest group in charge of developing shared health data systems, section 46 which sets up an experiment in order to give certain patients a portable device containing their health care background in digital form, section 55 which increases the powers of the Director of the Regional Hospitalisation Agency over Directors of health care, social and medico-social institutions and over the institutions themselves in the event of financial difficulties or poor management thereof, section 56 which makes it compulsory to certify the accounts of certain public health care institutions, section 57 which changes the manner of financing the National Management Centre for hospital medical practitioners and directors of public hospitals, section 58 which regroups three bodies in a single public interest group, I of section 65 which has the National Solidarity Fund for Autonomy participate in the cost of training nursing and family health care assistants for the elderly or handicapped adults, section 72 which imposes the indication of the resale price of protheses and other medical devices on the prior estimate of the cost thereof are all outside the scope of Social Security Financing Acts. These measures which concern health care insurance and which are included in the part of the Social Security Financing Act containing provisions relating to expenditure for 2009 have no effect or a too indirect effect on the expenditure of compulsory basic health care systems or bodies contributing to the financing thereof.
(Decision nº 2008-571 DC, December 11th 2008, para 24, p. 378)

Section 94 of the Social Security Financing Act for 2009 which fixes at 70 the age limit for Presidents of the Board of Directors of State Public Establishments and at 65 the limit for General Managers and Mangers of such bodies, section 96, which is not of a permanent nature and which reforms the conditions for the allocation of the temporary overseas indemnity up until 2028 and abolishes it at that date are all outside the scope of Social Security Financing Acts. These measures which concern old age insurance and which are included in the part of the Social Security Financing Act containing provisions relating to expenditure for 2009 have no effect or a too indirect effect on the expenditure of compulsory basic health care systems or bodies contributing to the financing thereof.
(Decision nº 2008-571 DC, December 11th 2008, para 25, p. 378)

Section 99 of the Social Security Financing Act for 2009 which authorises, in the event of contestation as to the determination of the rate of incapacity of a victim, the transmission of the medical report to a medical practitioner on secondment to the court involved and section 109 which amends the tax credit system for businesses which set up or participate in setting up day nursery centres are all outside the scope of Social Security Financing Acts. These measures which concern occupational injuries and illnesses and the family branch and which are included in the part of the Social Security Financing Act containing provisions relating to expenditure for 2009 have no effect or a too indirect effect on the expenditure of compulsory basic health care systems or bodies contributing to the financing thereof.
(Decision nº 2008-571 DC, December 11th 2008, para 26, p. 378)

Provisions not aimed at nor resulting in modifying the general conditions of the financial equilibrium of the social security system

Section 111 of the Social Security Financing Act which amends the methods of appointment and cessation of office of Directors and Accountants of General Health Care systems are all outside the scope of Social Security Financing Acts. This measure pertaining to the organisation or internal management of compulsory basic health care systems or bodies contributing to the financing thereof is not designed to modify the general conditions of the financial equilibrium of the social security system.
(Decision nº 2008-571 DC, December 11th 2008, para 27, p. 378)

DECENTRALISED ORGANISATION OF THE REPUBLIC

FINANCES OF TERRITORIAL COMMUNITIES

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

Transfer of powers

The methods of transferring powers between the State, the region of Guadeloupe, the *Département* of Guadeloupe and the Commune of Saint-Martin on the one hand and the Community of Saint-Martin on the other hand are governed in particular by Article L.O 6371-5 of the General Code of Territorial Communities.

VII of section 6 of the Finance Review Act for 2008 pertaining to the distribution of the proceeds of the *octroi de mer* tax between Territorial Communities is not included in the means of setting off expenditure set out in Article L.O 6371-5 of the General Code of Territorial Communities.
(Decision nº 2008-574 DC, December 29th 2008, paras 3 to 5, p. 386)

Creation and extension of powers

Under Article 72-2 of the Constitution : " Whenever powers are transferred between central government and the Territorial Communities, revenue equivalent to that given over to the exercise of these powers shall also be transferred. Whenever the effect of newly created or extended powers is to increase the expenditure to be borne by Territorial Communities, revenue as determined by statute shall be allocated to said Communities". These provisions, concerning the creation and extension of powers refer solely to those which are of a mandatory nature. In such a hypothesis, Parliament is merely under a duty to accompany these creations or extensions by revenue of which it is free to determine the level, without however distorting the principle of self-government of Territorial Communities.
(Decision nº 2008-569 DC, August 7th 2008, para.13, p. 359)

Existence

Mandatory powers

Parliament has provided firstly that the amount of the indemnity paid to each Commune which has set up child-minding facilities shall depend on the number of children availing themselves of these facilities. Secondly it has introduced a "minimum amount of indemnity" paid, in the event of there being an insufficient number of children availing themselves of these services, to any Commune which has set up such facilities. Lastly it has provided that this amount shall not be lower, each day, than nine times the minimum hourly wage of each member of the teaching staff taking part in the strike. In these conditions it has sufficiently determined the level of revenue accompanying the creation of this public service and has not failed to comply with paragraph 4 of Article 72-2 of the Constitution.
(Decision nº 2008-569 DC, August 7th 2008, para.14, p. 359)

INTERNATIONAL TREATIES AND AGREEMENTS – INTERNATIONAL AND EUROPEAN COMMUNITY LAW

STATUTE TRANSPOSING COMMUNITY INSTRUMENTS

Meaning of transposing statute

The fourth paragraph of Article L 531-2-1 of the Environment Code, as worded pursuant to section 2 of the Act on Genetically Modified Organisms, contrary to the claims of the Members of the National Assembly making the referral, is not designed to transpose Directive 2001/18/EC. Their argument based on the patent incompatibility with said Directive must therefore be dismissed.
(Decision nº 2008-564 DC, June 19th 2008, paras. 30 and 31, p. 313)

Although the transposing into domestic law of a Directive is a constitutional requirement, it is clear from the Constitution and in particular Article 88-4 thereof that this requirement does not result in adversely affecting the separation between matters which are the preserve of statute law and those which are the preserve of regulations as determined by the Constitution.
(Decision nº 2008-564 DC, June 19th 2008, para. 53, p. 313)

A priori power of review of the Constitutional Council

Paragraph 1 of Article 88-1 of the Constitution provides : "The Republic shall participate in the European Communities and in the European Union constituted by States which have freely chosen, by virtue of the treaties that established them, to exercise some of their powers in common". The transposing into domestic law of a Community Directive thus derives from a constitutional requirement.

It is the task of the Constitutional Council, when, under Article 61 of the Constitution, a statute designed to transpose a Community Directive into domestic law is referred for review to ensure compliance with said requirement. However its power of review in such circumstances is subject to a twofold restriction.

Firstly, the transposing of a Community Directive cannot run counter to a rule or principle inherent in the constitutional identity of France, unless the constituent authority has given its consent thereto.

Secondly, required to give its ruling before the promulgation of a statute within the time allotted by Article 61 of the Constitution, the Constitutional Council cannot request a preliminary ruling from the Court of Justice of the European Communities under Article 234 of the Treaty creating the European Community. It may therefore only rule that a statutory provision clearly incompatible with the Directive which it is designed to transpose is unconstitutional. In all events it is the task of national Courts, if need be, to make a request for a preliminary ruling from the Court of Justice of the European Communities.
(Decision nº 2008-564 DC, June 19th 2008, paras 42 to 45, p. 313)

No patent incompatibility

Paragraph 3 of Article 31 of the Directive 2001/18/EC requires Member States to establish public registers designed to record and make known to the public the location of the release of genetically modified organisms carried out for research purposes or the putting on the market of the same, without requiring that said registers include information as to studies and tests previously carried out on said genetically modified organisms.

The disputed provision which establishes, at national level, such a register designed to be made known to the public is not patently incompatible with Directive 2001/18/CE and thus does not run counter to Article 88-1 of the Constitution.
(Decision nº 2008-564 DC, June 19th 2008, paras 46 and 47, p. 313)

Parliament's leaving it to the Council of State to determine by Decree the list of information which may in no case be kept confidential cannot be considered per se as having patently failed to comply with Directive 2001/18/EC and thus as running counter to Article 88-1 of the Constitution.
(Decision n° 2008-564 DC, June 19th 2008, para 55, p. 313)

INDEX OF ANALYTICAL ENTRIES

A – B

C – D

E – F – G

H – I – J

L – M – N

O – P

Q – R

S – T

V – W

GLOSSARY

Chambre de l'instruction : a Division of the Court of Appeal whose task is to rule on decisions taken by Investigating Magistrates in preliminary investigations into offences.

Commissaire du Gouvernement "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.

Conseil d'État **(Council of State)** : The highest Administrative Court, vested with both judicial and administrative powers

Conseil de prud'hommes : These "industrial" or "employment" tribunals are comprised solely of non-professional elected lay judges (*conseillers prud'hommes*), evenly split between those representing employers and employees. Their job is to settle disputes arising from the signing, performance or termination of individual contracts of employment. In the event of failure to achieve an amicable settlement between the parties, they will try a case on its merits.

Conseil général : an elected body in charge of matters concerning the *Département* in its capacity as a Territorial Community.

Conseiller général : Member of the *Conseil général* (elected by direct universal suffrage).

Cour d'assises : Criminal Court which hears crimes and serious indictable offences.

Cour des comptes : Court vested with the task of auditing the finances of the States, public establishments, social security and bodies receiving State funding.

Département : Territorial Community.

Force majeure : Unforeseeable and unavoidable occurrence.

Octroi de mer : French tax on most imported products levied in French overseas regions.