VI

ANALYTICAL SYNOPSIS 2009

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 16 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 referenda 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 House – **AN** (*Assemblée Nationale)* or **Senate –** Department and constituency, **e.g. AN, Bouches-du-Rhône, 2nd Constituency.**

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 land: 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 land) 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 Parliament;

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 delivered by the Council of State (*Conseil d'Etat*) in plenary sitting.

Cass – Judgment delivered by the Court of Cassation

ECJ – Judgment delivered 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

CONSTITUTIONAL NORMS OF REFERENCE

DECLARATION OF THE RIGHTS OF MAN AND THE CITIZEN OF AUGUST 26th 1789

Article 2

Right to privacy

The liberty proclaimed by Article 2 of the Declaration implies the right to privacy
(Decision nº 2009-580 DC, June 10th 2009, para.22, p. 107)

Article 4

Freedom of contract and the right to maintain the economy of contracts lawfully entered into

Parliament cannot adversely affect contracts lawfully entered into on grounds other than the general interest without failing to comply with the requirements deriving from Articles 4 and 16 of the Declaration of 1789, and those, where participation of workers in the collective determination of their working conditions is concerned, of paragraph 8 of the Preamble of 1946.
(Decision nº 2009-592 DC, November 19th 2008, para. 9, p. 193)

Article 6

The Law as the expression of the general will

Clarity and accuracy of Parliamentary Debate

Transversal norm of reference for monitoring Resolutions amending the Rules of procedure of the Houses of Parliament
(Decision nº 2009-581 DC, June 25th 2009, para.3, p. 120 ; decision nº 2009-582 DC, June 25th 2009, para.3, p. 132)

Equality before the law

The principle of equality before public procurement orders derives from Article 6 of the Declaration of 1789.
(Decision nº 2009-575 DC, February 12th 2009, para.4, p. 48)

Article 6 of the Declaration of 1789 proclaims: "The Law shall be the same for all, whether it protects or punishes". 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 difference in treatment is directly connected with the purpose sought to be achieved by the statute which introduces such different treatment.
(Decision nº 2009-578 DC, March 18th 2009, para.19, p. 73)

Equality in matters of access to employment in the public service

Article 6 of the Declaration of 1789 proclaims that all citizens "shall be equally eligible for all honours, public posts and employment, according to their ability and without other distinction that that of their qualities and skills. "
(Decision nº 2009-584 DC, July 16th 2009, para.12, p. 140)

Article 9: Presumption of innocence and unnecessary harshness

Presumption of innocence

Under Article 9 of the Declaration of 1789, every man is presumed innocent until proved guilty
(Decision nº 2009-580 DC, June 10th 2009, para.17, p. 107)

Article 11 – Free communication of ideas and opinions

The free communication of ideas and opinions would not be effective if the public for whom such audiovisual communication is intended were not able to have at its disposal, in both private and public sectors, programmes guaranteeing the expression of varying schools of thought while respecting the essential requirement of honest news-gathering and communication. The ultimate goal to be attained is that listeners and viewers, who are among the fundamental beneficiaries of the freedom proclaimed by Article 11, should be able to freely make their choice without having imposed upon them decisions taken by private interests or public bodies.
(Decision nº 2009-577 DC, March 3rd 2009, para.2, p. 64)

Reference by the Constitutional Council to Article 11 of the Declaration of 1789 when reviewing the Act furthering the Diffusion and Protection of Creation on the Internet
(Decision nº 2009-580 DC, June 10th 2009, paras 12 and 15, p. 107)

Article 13 – Public burden sharing

Equality before public burden sharing

Article 13 of the Declaration of 1789 proclaims "For the maintenance of the forces of law and order and administrative expenses a general tax is indispensable and shall be equally borne by all citizens in proportion to their ability to pay the same". Under Article 34 of the Constitution it is up to Parliament to determine, taking into account constitutional principles and the nature of each tax, to lay down the rules for appraising the ability of each citizen to pay taxes. In particular, to comply with the principle of equality, this appraisal must be based on objective and rational criteria in view of the purpose it is sought to achieve. This appraisal must not however lead to any clear infringement of the principle of equality before public burden sharing.
(Decision nº 2009-577 DC, March 3rd 2009, para. 25, p. 64; decision nº 2009-599 DC, December 29th 2009, paras 15 and 38, p. 218)

Although Article 13 of the Declaration of 1789 does not preclude Parliament from having certain categories of persons bear certain burdens on grounds of general interest, this must not lead to lead to any patent infringement of the principle of equality before public burden sharing.
(Decision nº 2009-599 DC, December 29th 2009, para.72, p. 218)

Article 16

Separation of Powers

Applications

The injunction addressed to the Government to transmit all new terms of reference and conditions concerning national broadcasting companies to the relevant Parliamentary committees constitutes, once said terms of reference are fixed by Decree and thus of a regulatory

nature, the intervention of a legislative body in the implementation of the powers to make regulations, and thus runs counter to the principle of the separation of powers.
(Decision nº 2009-577 DC, March 3rd 2009, paras 29 to 31, p. 64)

The principle of the separation of powers prohibits a body of one of the Houses of Parliament in charge of assessing public policies from, on the basis of the sole Rules of procedure of said House, having the benefit of the help of Experts for which the Government is accountable. It also prohibits reports of such a body from addressing injunctions to the Government.
(Decision nº 2009-581 DC, June 25th 2009, paras 59, 61 and 62, p. 120)

The separation of powers requires a request for the setting up of a Committee of inquiry made by a Parliamentary group under a provision of the Rules of procedure of the House involved which provides that each group is entitled to a Committee of inquiry each sitting year to comply with the provisions of Article 6 of Ordinance nº 58-1100 of November 17th 1958 pertaining to the operating of the Houses of Parliament which firstly prohibit the setting up of Committees of inquiry into acts which have led to legal proceedings as long as these proceedings are still ongoing and secondly requires any Committee of inquiry to cease its work once a preliminary judicial inquiry has been launched as regards the acts which the Committee is enquiring into.
(Decision nº 2009-582 DC, June 25th 2009, paras 4 to 6, p. 132)

Although, under Article 77 of the Constitution, Parliament when enacting Institutional Acts may determine the conditions in which the institutions of New Caledonia shall be consulted, at the request of the Presidents of the Houses of Parliament, on Private Members'Bills containing provisions specific to New Caledonia, it is not at liberty, without infringing the principle of the separation of powers, to allow them to decide to reduce the time allowed to consult the Congress of New Caledonia. Censure
(Decision nº 2009-587 DC, July 30th 2009, para.16, p. 152)

Combination of several provisions of the Declaration of 1789.

Objective of intelligibility and accessibility of the law (Articles 4,5,6 and 16)

No infringement of the requirement of constitutional status of the intelligibility and accessibility of statute law.
(Decision nº 2009-592 DC, November 19th 2009, paras 4 to 7, p. 193)

The creation of two categories of equalisation accounts for the tax on the added value of businesses and the fixing of the manner of operation thereof do not infringe the objective of constitutional status of accessibility and intelligibility of the law.
(Decision nº 2009-599 DC, December 29th 2009, paras 19, 20, 23, 55 to 59, p. 218)

Maintaining of contracts lawfully entered into (Articles 4 and 16)

Parliament cannot adversely affect contracts lawfully entered into on grounds other than the general interest without failing to comply with the requirements deriving from Articles 4 and 16 of the Declaration of 1789, and those, where participation of workers in the collective determination of their working conditions is concerned, of paragraph 8 of the Preamble of 1946.
(Decision nº 2009-592 DC, November 19th 2009, para. 9, p. 193)

Principle of accuracy of the State budget (Articles 14 and 15)

Affirmation of the constitution status of this principle
(Decision nº 2009-585 DC, August 6th 2009, para.2, p. 159)

Guarantees of the right to property (Articles 2 and 17)

Reference by the Constitutional Council to Articles 2 and 17 of the Declaration of 1789 when reviewing the Act furthering the Diffusion and Protection of Creation on the Internet
(Decision nº 2009-580 DC, June 10th 2009, para.13, p. 107)

PRINCIPLES AFFIRMED BY THE PREAMBLE TO THE CONSTITUTION OF 1946

Paragraph 1: Principle of respect for the dignity of the human being

The Preamble to the Constitution of 1946 has reaffirmed that all human beings, irrespective of race, religion or creed, possess certain sacred and inalienable rights. The protection of the dignity of the human being from all types of enslavement and debasement is to be counted among these rights and is a principle of constitutional status.
(Decision nº 2009-593 DC, November 19th 2009, para. 3, p. 196)

Paragraph 8: Principle of the participation of workers

Parliament cannot adversely affect contracts lawfully entered into on grounds other than the general interest without failing to comply with the requirements deriving from Articles 4 and 16 of the Declaration of 1789, and those, where participation of workers in the collective determination of their working conditions is concerned, of paragraph 8 of the Preamble of 1946.
(Decision nº 2009-592 DC, November 19th 2009, para. 9, p. 193)

Paragraph 10: Conditions necessary for the development of the Individual and the Family

The rules governing Sunday rest of employees are the result of an attempt which Parliament is required to make to reconcile freedom of enterprise and paragraph 10 of the Preamble of 1946
(Decision nº 2009-588 DC August 6th 2009, paras 3, 8 and 13, p. 163)

Paragraph 11

Right to suitable means of existence, protection of health and material security

The constitutional requirements deriving from paragraphs 10 and 11 of the Preamble of 1946 entail the implementation of a policy of national solidarity in favour of the underprivileged. It is up to Parliament, in order to comply with said requirement, to chose such concrete means of implementation as it sees fit. In particular, Parliament is always at liberty, when enacting statutes in the field which Article 34 of the Constitution makes the preserve of Parliament, to amend previous statutes or repeal the same by replacing them, if need be, by other provisions. It is also at liberty, in order to attain or conciliate objectives of constitutional status, to introduce new means or methods which of which it is free to decide the opportuneness and which may lead to the amending or suppressing of provisions which it deems excessive or useless. However, the exercising of such powers must not lead to depriving requirements of a constitutional nature of statutory guarantees
(Decision nº 2009-599 DC, December 29th 2009, paras 100 and 101, p. 218)

Right to the protection of health

Three references to the requirements of paragraph 11 of the Preamble to the Constitution of 1946 concerning the protection of health when the Constitutional Council reviewed the Act reforming Hospitals and pertaining to Patients, Health and Territories.
(Decision nº 2009-584 DC, July 16th 2009, paras. 6,15 and 19, p. 140)

Right to rest

The principle of Sunday rest is one of the guarantees of the right to rest vested in employees by paragraph 11 of the Preamble of 1946.
(Decision nº 2009-588 DC, August 6th 2009, para.2, p. 163)

Combinations of paragraphs 10 and 11 of the Preamble to the Constitution of 1946

Opportunity for each person to have decent housing

Under the principles set forth in paragraphs 10 and 11 of the Preamble to the Constitution of 1946, the right for each person to have the opportunity of having decent housing is an objective of constitutional status.
(Decision nº 2009-578 DC, March 18th 2009, para.12, p. 73)

Paragraph 13 -Teaching, professional training and culture

Constitutional public teaching service

Firstly, Article 1 of the Constitution provides: " France shall be an indivisible, secular, democratic and social Republic. It shall ensure the quality of all citizens before the law, without distinction of origin, race or religion." Paragraph 13 of the Preamble to the Constitution of 1946, confirmed by the Constitution of 1958 provides: " The provision of free, public and secular education at all levels is a duty of the State". Secondly, the freedom of teaching constitutes one of the fundamental principles recognized by the laws of the Republic. Under these rules or principles of constitutional status, the principle of secularity does not preclude Parliament, on condition that its appraisal is based on objective and rational criteria, from providing for the participation of public bodies in the financing of the running of private institutes of education which have entered into a contract with the State, depending on the nature and extent of their contribution to the carrying out of teaching missions.
(Decision nº 2009-591 DC, October 22nd 2009, paras 5 and 6, p. 187)

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 1946. The principle relied upon by the parties whereby the drawing of electoral constituency boundaries can only be done by statute law does not derive from any legislative provisions prior to the Constitution of 1946 and is, in any case, expressly contradicted by the Constitution of October 4th 1958.
(Decision nº 2009-573 DC January 8th 2009, para.16, p. 36)

Principles not retained

Others

The Act of July 13th 1906, introducing weekly rest for employees and workers, and providing that weekly rest should be taken on Sundays has not by so doing laid down a fundamental

principle recognised by the laws of the Republic. Implied solution: when such a fundamental principle is raised, the Constitutional Council takes into account the provisions of paragraphs 10 and 11 of the Preamble to the Constitution of 1946 when reviewing the provisions of the statute reaffirming the principle of Sunday rest and designed to adapt exceptions to this principle in touristic and thermal communes and areas and other conurbations for employees volunteering to work on Sundays.
(Decision nº 2009-588 DC, August 6th 2009, para 2 to 4, p. 163)

CONSTITUTION OF OCTOBER 4th 1958

Preamble and Article 1

Principle of secularity

Firstly, Article 1 of the Constitution provides: " France shall be an indivisible, secular, democratic and social Republic. It shall ensure the quality of all citizens before the law, without distinction of origin, race or religion." Paragraph 13 of the preamble to the Constitution of 1946, confirmed by the Constitution of 1958 provides: " The provision of free, public and secular education at all levels is a duty of the State". Secondly, the freedom of teaching constitutes one of the fundamental principles recognized by the laws of the Republic. Under these rules or principles of constitutional status, the principle of secularity does not preclude Parliament, on condition that its appraisal is based on objective and rational criteria, from providing for the participation of public bodies in the financing of the running of private institutes of education which have entered into a contract with the State, depending on the nature and extent of their contribution to the carrying out of teaching missions. The provisions under review which require Communes of residence to make a financial contribution to the running of private schools under contract with the State which are situated in another Commune do not fail to comply with these requirements. The argument based on the infringement of the principle of secularity should thus be dismissed.
(Decision nº 2009-591 DC, October 22nd 2009, paras 4 to 6, p. 187)

Title 1 – On Sovereignty

Principle of equality of suffrage (Article 3)

These provisions of Article 1 of the Constitution, paragraph 1 of Article 3 and paragraph 3 of Article 24 of the Constitution show that the National Assembly, which is elected by direct universal suffrage, must be elected on an essentially demographic basis providing for a distribution of the number of seats and the drawing of boundaries of constituencies which best comply with the principle of equality before suffrage. Although Parliament may take into account considerations of general interest which may affect the scope of this general rule, this may only be done to a limited extent.
(Decision nº 2008-573 DC, January 8th 2009, paras 20 and 21, p. 36)

Contribution of political parties and groups to the expression of suffrage (Article 4)

Under paragraph 3 of Article 4 of the Constitution: "Statute law shall guarantee the expression of a diversity of opinions and the equitable participation of political parties and groups in the democratic life of the Nation". A provision prohibiting direct or indirect representation of political parties or groups on the Committee provided for by Article 25 of the Constitution does not run counter to this Article.
(Decision nº 2008-573 DC, January 8th 2009, para 7, p. 36)

Title II –The President of the Republic

Article 13 – Power of appointment

Application to the appointment, by the President of the Republic, of the President of the Committee provided for in the final paragraph of Article 25 of the Constitution providing that appointment to certain posts or offices shall require prior public consultation of the relevant Standing committee of each House and preventing the President of the Republic from proceeding to make any appointment when the total of negative votes cast in each committee shall represent at least three fifths of the votes cast by these two committees.
(Decision nº 2008-572 DC, January 8th 2009, paras 9 and 11, p. 33)

Article 18 – Communication with Parliament

The amendments made on June 22nd 2009 to the Rules of procedure of the Congress of Parliament conform to Article 18 of the Constitution as amended by the Institutional Act of July 23rd 2008.
(Decision nº 2008-583 DC, June 22nd 2009, paras 1 and 4, p. 118)

Title IV – Parliament

Duties of Parliament (Article 24, para.1)

Under paragraph 1 of Article 24 of the Constitution: " Parliament .. shall monitor the action of the Government. It shall assess public policies". The duties of Parliament shall therefore be performed with respect to the monitoring of the action of the Government and the assessment of public policies but shall not include the monitoring of public policies.
(Decision nº 2008-581 DC, June 25th 2009, paras 57 and 58, p. 120)

National Assembly (Article 24, paragraph 3)

Paragraph 3 of Article 24 of the Constitution provides that the number of Members of the National Assembly shall not exceed 577.
(Decision nº 2008-572 DC, January 8th 2009, para 3, p. 33)

Article 1, paragraph 1 of Article 3 and the paragraph 3 of Article 24 of the Constitution show that the National Assembly, which is elected by direct universal suffrage, must be elected on an essentially demographic basis providing for a distribution of the number of seats and the drawing of boundaries of constituencies which best comply with the principle of equality before suffrage. Although Parliament may take into account considerations of general interest which may affect the scope of this general rule, this may only be done to a limited extent.
(Decision nº 2008-573 DC, January 8th 2009, paras 20 and 21, p. 36)

Title V – On relations between the Government and Parliament

Declaration of war and intervention of the Armed Forces (Article 35)

Paragraph 1 of Article 24 of the Constitution provides that "Parliament shall monitor the action of the Government". When providing, under paragraph 2 of Article 35 of the Constitution, that "The Government shall inform Parliament of its decision to have the Armed Forces intervene abroad, no later than three days after the commencement of said intervention", the Constituent Power intended to ensure that all the groups belonging to each of the two Houses of Parliament be informed of such interventions".
(Decision nº 2009-581 DC, June 25th 2009, paras 46 and 47, p. 120 ; decision nº 2009-582 DC, June 25th 2009, paras 29 and 30, p. 132)

Provisions of an experimental nature (Article 37-1)

Article 37-1 of the Constitution provides: "Statutes and regulations may contain certain provisions enacted on an experimental basis for limited purposes and duration". If, on the basis of this provision, Parliament may, with a view to their possible generalization, authorize experimental provisions departing from the principle of equality before the law for limited purposes and duration, it must define in a sufficiently precise manner the purpose and conditions thereof and not fail to comply with other requirements having constitutional status.
(Decision nº 2009-584 DC, July 16th 2009, para.38, p. 140)

Ordinances (Article 38)

The Government may, in order to enable it to implement its programme, request Parliament, under Article 38 of the Constitution, to authorize it for a limited period of time and in the conditions provided for in paragraph 2 of said Article, to take measures by Ordinance which are normally the preserve of statute law. Among the matters listed by Article 34 of the Constitution as being reserved for statute law is to be found the laying down of the rules governing the system of election to the Houses of Parliament. The distribution of seats of Members of Parliament, within the limits fixed by Article L.O 119 of the Electoral Code as worded pursuant to the Institutional Act passed on December 11th 2008 is an element of this system.
(Decision nº 2008-573 DC, January 8th 2009, para.16, p. 36)

The Government may, in order to enable it to implement its programme, request Parliament, under Article 38 of the Constitution, to authorize it for a limited period of time and in the conditions provided for in paragraph 2 of said Article, to take measures by Ordinance which are normally the preserve of statute law. It must however clearly indicate to Parliament, in order to justify said request, the purposes it is sought to achieve by having recourse to such Ordinances and the scope thereof.
(Decision nº 2008-584 DC, July 16th 2009, para.22, p. 140)

Initiative, presentation and tabling of Government and Private Members'Bills (Article 39)

The final phrase of paragraph 2 of Article 39 of the Constitution, whereby it is "without prejudice to the first paragraph of Article 44" that "Government Bills primarily dealing with the organisation of Territorial Communities shall be tabled first in the Senate" applies solely to Bills and not to amendments (unlike the provisions of the second phrase of paragraph 2 of Article 39 concerning the priority of Finance and Social Security Financing Bills)
(Decision nº 2009-594 DC, December 3rd 1009, paras 3 and 4, p. 200)

Financial inadmissibility (Article 40)

Compliance with Article 40 of the Constitution requires that a systematic examination under said Article be carried out of all Private Members'Bills and amendments tabled by Members of the National Assembly prior to the tabling thereof and thus prior to their publication, distribution and debate, to ensure that after such an examination solely those Private Members'Bills and amendments which have not been found inadmissible are allowed to be tabled. It also requires that the financial inadmissibility of amendments and changes made by Parliamentary committees to texts referred to them be raised at any time.
(Decision nº 2008-581 DC, June 25th 2009, paras 37 and 38, p. 120.)

Under Article 40 and paragraph 1 of Article 42 of the Constitution each House is required to have implemented an effective and systematic system for checking the admissibility of amendments when they are tabled, including with the Committee to which Bills are referred for consideration. The provisions of the Rules of procedure of a House of Parliament which allow the Committee to which a Bill is referred to meet " to examine amendments of the Rapporteur and those tabled no later than the eve of the day prior to this meeting" after having allowed

them to be tabled and distributed without requiring any prior examination as to admissibility, are unconstitutional.
(Decision nº 2008-582 DC, June 25th 2009, paras 19 and 20, p. 132)

Compliance with Article 40 of the Constitution requires that a systematic examination under said Article be carried out of all Private Members'Bills and amendments tabled by Senators prior to the tabling thereof and thus prior to their publication, distribution and debate, to ensure that after such an examination solely those Private Members'Bills and amendments which have not been found inadmissible are allowed to be tabled. It also requires that the financial inadmissibility of amendments and changes made by Parliamentary committees to Bills referred to them be raised at any time.
(Decision nº 2008-582 DC, June 25th 2009, paras 24 and 25, p. 132)

Statutory inadmissibility (Article 41)

The provisions of Article 41 of the Constitution, whereby "If during the legislative process, it appears that a Private Member's Bill or amendment is not a matter for statute or is contrary to a delegation granted under Article 38, the Government may argue that it is inadmissible", require that this inadmissibility be also allowed to be raised with respect to amendments made by Committees to Bills referred to them.
(Decision nº 2008-582 DC, June 25th 2009, paras 24 and 26, p. 132)

Rules of constitutional status pertaining to legislative proceedings (Articles 42 to 45)

The provisions of Article 43 of the Constitution, whereby Government Bills and Private Members'Bills are referred for consideration by a Standing committee or, failing that, a committee specially set up for this purpose, and those of paragraph 1 of Article 42, whereby "debate on the floor of the House on Government and Private Members'Bills shall focus on the text passed by the committee to which the Bill has been referred pursuant to Article 43 or, failing that, the text tabled before the House" exclude the holding of any guideline debate on the floor of the House on the Bill tabled or transmitted prior to the examination by the Committee to which said text has been referred for consideration
(Decision nº 2008-582 DC, June 25th 2009, paras 17 and 18, p. 132)

Monitoring of improper manners of proceeding

Parliament was at liberty to pass in one single statute the provisions laying down the composition and the rules governing the organization and manner of proceeding of said Committee and the provisions authorizing the Government to distribute seats of Members of the National Assembly and draw the boundaries of electoral constituencies. The argument based on an improper manner of proceeding must therefore be dismissed.
(Decision nº 2008-573 DC, January 8th 2009, para.14, p. 36)

Principle of clarity and accuracy of Parliamentary debate.

Transversal norm of reference for monitoring Resolutions amending the Rules of procedure of the Houses of Parliament. Article 6 of the Declaration of 1789 proclaims: " The Law is the expression of the general will". Paragraph 1 of Article 3 of the Constitution provides: "National sovereignty shall vest in the people, who shall exercise it through their representatives". These provisions require compliance with the requirements of clarity and accuracy of Parliamentary debate.
(Decision nº 2008-581 DC, June 25th 2009, para.3, p. 120 ; decision nº 2009-582 DC, June 25th 2009, para.3, p. 132)

Exercising the right of amendment

The condition of admissibility laid down by paragraph 1 of Article 45 of the Constitution, whereby "without prejudice to the application of Articles 40 and 41, any amendments con-

nected, albeit indirectly, with the text tabled or transmitted shall be admissible at first reading", applies both to supplementary and amending provisions.
(Decision nº 2009-582 DC, June 25th 2009, para.27, p. 132)

First application of paragraph 1 of Article 45 of the Constitution as worded pursuant to the Constitutional Act of July 23rd 2008. Holding of non conformity with the Constitution of section 44 of the Act Reforming Hospitals and pertaining to Patients, Health and Territories which amends the Code of Social Security to change the name of the National Higher School of Social Security "which is unconnected, albeit even indirectly", with the provisions found in the initial Bill.
(Decision nº 2009-584 DC, July 16th 2009, paras 40 to 43, p. 140)

Second application of paragraph 1 of Article 45 of the Constitution as reworded pursuant to the Constitutional Act of July 23rd 2008. This paragraph applies in the same conditions to Government and Private Members'Bills. Finding of non-conformity with the Constitution of sections 14 and 16 of the Act designed to further access to credit of small and medium-sized businesses and to improve the operation of financial markets.
(Decision nº 2009-589 DC, October 14th 2009, paras 1 to 3, p. 173)

Existence of a direct connection of section 5 of the statute referred for review inserted by amendment at first reading (legal, property, accounting and financial regime of the organisation of transport, including rail and guided transport of travellers in Ile-de-France) with the initial Bill (provisions relating to the organisation of rail and guided transport).
(Decision nº 2009-594 DC December 3rd 2009, paras 5 and 6, p. 200)

Role of the *Cour des comptes* (Audit Court) (Article 47-2, paragraph 1)

Paragraph 1 of Article 47-2 of the Constitution provides in particular that the *Cour des comptes* "shall assist Parliament ..in assessing public policies". The *Cour des comptes* has the task of assisting the bodies of the Houses of Parliament, in particular the Committee for the Assessment and Monitoring of Public Policies set up by the Resolution of May 27th 2009 amending the Rules of procedure of the National Assembly. However, it is the preserve of statute law, and not regulations, to determine the manner in which a body of Parliament can request such assistance. Absence of conformity.
(Decision nº 2009-581 DC, June 25th 2009, paras 57 and 60, p. 120)

Parliamentary agenda and monitoring of Government action (Article 48)

Under paragraphs 2 and 5 of Article 48 of the Constitution, the Government, Opposition groups and minority groups are entitled, on the day reserved for them each month, to ask the National Assembly or one of the bodies thereof, to give its opinion on a proposal for a European Resolution prior to the expiry of the period of one month provided for in the rules of procedure of said House whereby failure by the Committee in charge of European Affairs and/or the Standing committee to which said proposal has been submitted to reply is deemed to constitute the adoption of said Resolution.
(Decision nº 2009-581 DC, June 25th 2009, paras 64 and 65, p. 120)

The provisions of the Rules of procedure of a House of Parliament must, in accordance with paragraph 2 of Article 48 of the Constitution, allow the Government to decide to modify both its initial choice of weeks reserved for it and the order of Bills and debate which it requests be entered in priority on the agenda. The provisions of the Rules of procedure of the Senate which provide that the agenda shall be determined by the Senate "on the basis of the findings of the Conference of Presidents" and that the Conference shall determine, at the beginning of each ordinary session, the sitting weeks, and share them out between the Senate and the Government with the agreement of the latter and "take note" of the request for priority entries on the agenda made by the Government, are thus in conformity with the Constitution.
(Decision nº 2009-582 DC, June 25th 2009, para.22, p. 132)

Under paragraphs 2 and 5 of Article 48 of the Constitution, the Government, Opposition groups and minority groups are entitled, on the day reserved for them each month, to ask the Senate to give its opinion on a proposal for a European Resolution prior to the expiry of the period of one month provided for in the Rules of procedure of said House whereby failure by

the Standing committee to which said proposal has been submitted to reply is deemed to constitute the adoption of said Resolution.
(Decision nº 2009-582 DC, June 25th 2009, paras 31 and 32, p. 132)

Approval by the Senate of a statement of general policy (Article 49)

The final paragraph of Article 49 of the Constitution, which lays down the conditions in which the Senate shall give its opinion on the action of the Government, prohibits any voting on debate initiated by the Senate, irregardless of whether or not the Government be present during such debate.
(Decision nº 2009-582 DC, June 25th 2009, paras 34 and 35, p. 132)

Right of Parliamentary groups (Article 51-1)

The Rules of procedure of each House may provide that each group is entitled to the setting up of one Committee of inquiry each Parliamentary year. Such a request shall, in all events and in accordance with the principle of the separation of powers, only be admissible if it complies with the provisions of Article 6 of Ordinance nº 58-1100 of November 17th 1958 pertaining to the operating of the Houses of Parliament which firstly prohibit the setting up of Committees of inquiry into acts which have led to legal proceedings as long as these proceedings are still ongoing and secondly requires any Committee of inquiry to cease its work once a preliminary judicial inquiry has been launched as regards the acts which the Committee is enquiring into.
(Decision nº 2009-582 DC, June 25th 2009, paras 4 to 6, p. 132)

Committees of inquiry (Article 51-2)

Article 51-2 of the Constitution makes it the preserve of statute law to determine the conditions in which Committees of inquiry set up in each House may collect information and determine the rules governing the organization and operation of such Committees. Hence the specifying of the manner in which persons heard by such Committees are allowed to take cognizance of the minutes of their hearing and comment thereupon are not matters coming under the scope of the Rules of procedure of each House.
(Decision nº 2009-581 DC, June 25th 2009, paras 51 and 52, p. 120)

The Rules of procedure of each House may provide that each group is entitled to the setting up of one Committee of inquiry each Parliamentary year. Such a request shall, in all events and in accordance with the principle of the separation of powers, only be admissible if it complies with the provisions of Article 6 of Ordinance nº 58-1100 of November 17th 1958 pertaining to the operating of the Houses of Parliament which firstly prohibit the setting up of Committees of inquiry into acts which have led to legal proceedings as long as these proceedings are still ongoing and secondly requires any Committee of inquiry to cease its work once a preliminary judicial inquiry has been launched as regards the acts which the Committee is enquiring into.
(Decision nº 2009-582 DC, June 25th 2009, paras 4 to 6, p. 132)

Title VII – The Constitutional Council

A priori review of the constitutionality of statutes, referenda under paragraph 3 of Article 11 and Rules of procedure of Houses of Parliament (Article 61)

Mandatory review of constitutionality (Article 61, paragraph 1)

Review of Rules of procedure of the Houses of Parliament

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

In view of the specific requirements of the hierarchy of legal norms within the national legal order, the conformity with the Constitution of the Rules of procedure of the Houses of

Parliament must be assessed both with respect to the Constitution itself and the Institutional Acts provided for by the latter and also statutory measures enacted for the application thereof. The latter category includes in particular Ordinance n° 58-1100 of November 17th 1958 pertaining to the proceedings of the Houses of Parliament and all subsequent amendments thereto. These statutory texts are only binding on a House of Parliament, when it amends or completes its Rules of procedure, to the extent that they conform to the Constitution. An ordinary statutory norm (for instance an amendment of the Ordinance of November 17th 1958 referred to above) which had not been submitted for review by the Constitutional Council and which had been found unconstitutional when the Council examined an amendment to the Rules of procedure of a House of Parliament would be implicitly set aside.
(Decision n° 2009-581 DC, June 25th 2009, para 2, p. 120; decision n° 2009-582 DC, June 25th 2009, para 2, p. 132)

Transversal norm of reference for monitoring Resolutions amending the Rules of procedure of the Houses of Parliament. Article 6 of the Declaration of 1789 proclaims: " The Law is the expression of the general will". Paragraph 1 of Article 3 of the Constitution provides: "National sovereignty shall vest in the people, who shall exercise it through their representatives". These provisions require compliance with the requirements of clarity and accuracy of Parliamentary debate.
(Decision n° 2009-581 DC, June 25th 2009, para.3, p. 120; decision n° 2009-582 DC, June 25th 2009, para.3, p. 132)

Scope and limits of the jurisdiction of the Constitutional Council

The Constitutional Council has jurisdiction to rule on the conformity with the Constitution of the Rules of procedure of the Congress of Parliament.
(Decision n° 2009-583 DC, June 22nd 2009, para.1, p. 118)

***A posteriori* review of the constitutionality of statutes – Applications for priority preliminary rulings on the issue of constitutionality (Article 61-1)**

Article 61-1 of the Constitution thus acknowledges the right for each citizen subjected to the jurisdiction of the courts to argue in support of his claim that a statutory provision infringes the rights and freedoms guaranteed by the Constitution. It vests the *Conseil d'Etat* and the *Cour de cassation*, the courts at the pinnacle of the two systems of law recognized by the Constitution, with power to decide whether this issue of constitutionality should be referred to the Constitutional Council. Lastly it vests in the Constitutional Council jurisdiction to rule on such issues and, if need be, to hold that a statutory provision is unconstitutional.
(Decision n° 2009-595 DC, December 3rd 2009, para.3, p. 206)

Effects and *res judicata* nature of decisions of the Constitutional Council (Article 62)

Article 61-1 of the Constitution vests the Constitutional Council with jurisdiction to rule on an issue of constitutionality and, if need be, to hold that a statutory provision is unconstitutional.

The condition provided for by 2° of Section 23-2 of Institutional Ordinance n° 58-1067 of November 7th 1958 which allows for transmission and referral of an application for a priority preliminary ruling on a statutory provision which the court has not previously found to be constitutional conforms to the final paragraph of Article 62 of the Constitution.
(Decision n° 2009-595 DC, December 3rd 2009, paras 3 and 13, p. 206)

Title XIII – Transitional provisions pertaining to New Caledonia

When specifying that a Institutional Act shall "ensure the development of New Caledonia in accordance with the guidelines set out" in the Agreement signed in Noumea on May 5th 1998, Article 77 of the Constitution necessarily left it to said Institutional Act to fix the conditions in which statutes and regulations are applicable.
(Decision n° 2009-587 DC, July 30th 2009, para.13, p. 152)

Under Article 77 of the Constitution, Parliament when enacting Institutional Acts may determine the conditions in which the institutions of New Caledonia are consulted, at the request of the Presidents of the Houses of Parliament, on Private Members'Bills containing provisions specific to New Caledonia.
(Decision nº 2009-587 DC, July 30th 2009, para.16, p. 152)

CHARTER FOR THE ENVIRONMENT

Article 2 – Duty to participate in preserving and enhancing the environment

Affirmation of constitutional status
(Decision nº 2009-599 DC, December 29th 2009, para.79, p. 218)

Article 3 – Duty to foresee and avoid the occurrence of any damage to the environment and limit the consequences thereof

Affirmation of constitutional status.
(Decision nº 2009-599 DC, December 29th 2009, para.79, p. 218)

Article 4 – Contribution to the making good of damage caused

Affirmation of constitutional status.
(Decision nº 2009-599 DC, December 29th 2009, para.79, p. 218)

OBJECTIVES OF CONSTITUTIONAL STATUS

Retained

Diversity

In order to guarantee the independence of national broadcasting companies and implement the principle of freedom of communication, the sole section of the Institutional Act pertaining to the appointment of the Presidents of the companies France Télévisions and Radio France and of the company in charge of France's external audiovisual services was at liberty, when providing that in each House of Parliament, the relevant Standing committee shall give its opinion on such appointments, to specify that the relevant Standing committee shall give its opinion after a public hearing of the person whose appointment has been proposed".
(Decision nº 2009-576 DC, March 3rd 2009, paras 3 and 4, p. 62)

The diversity and independence of the media are objectives of constitutional status
(Decision nº 2009-577 DC, March 3rd 2009, para.3, p. 64)

Proper use of public funds

The requirement that proper use be made of public funds derives from Articles 14 and 15 of the Declaration of 1789.
(Decision nº 2009-575 DC, February 12th 2009, para.4, p. 48)

Good administration of justice

The good administration of justice is an objective of constitutional status deriving from Articles 12, 15 and 16 of the Declaration of the Rights of Man and the Citizen of 1789. It is up to Parliament, competent, when enacting Institutional Acts, to determine the conditions of application of Article 61-1 of the Constitution, to ensure the attainment of this objective without disregarding the right to make a referral for a priority preliminary ruling as to the constitutionality of any statutory provision.
(Decision nº 595 DC, December 3rd 2009, para.4, p. 206)

OTHER CONSTITUTIONAL PRINCIPLES RESULTING FROM THE COMBINATION OF SEVERAL PROVISIONS

Principle of clarity and accuracy of Parliamentary debate

Transversal norm of reference for monitoring Resolutions amending the Rules of procedure of the Houses of Parliament. Article 6 of the Declaration of 1789 proclaims: " The Law is the expression of the general will". Paragraph 1 of Article 3 of the Constitution provides: "National sovereignty shall vest in the people, who shall exercise it through their representatives". These provisions require compliance with the requirements of clarity and accuracy of Parliamentary debate.
(Decision nº 2009-581 DC, June 25th 2009, para.3, p. 120; decision nº 2009-582 DC, June 25th 2009, para.3, p. 132)

Constitutional principles concerning the carrying out of missions of public service

Review by the Constitutional Council of the compliance with the principles of equality and continuity of public hospital services of measures entrusting private healthcare establishments with public service missions.
(Decision nº 2009-584 DC, July 16th 2009, paras 5 and 6, p. 140)

Principle of the continuity of public services

The Constitutional Council makes a qualification, in the name of compliance with the principle of the continuity of public services, in order to ensure the uninterrupted carrying out of missions of public hospital services as a whole.
(Decision nº 2009-584 DC, July 16th 2009, para 6, p. 140)

Principle of protection of the public domain

When subjecting the implementation of a shared building project to the signing of an agreement between the two parties, Public Establishments, Parliament intended that neither of them be involved, especially from a financial standpoint, in such an undertaking without having consented thereto. It thus did not fail to comply with the constitutional requirements concerning the protection of the public domain.
(Decision nº 594 DC, December 3rd 2009, paras 18 to 20, p. 200)

NORMS OF REFERENCE NOT RETAINED AND ELEMENTS NOT TAKEN INTO ACCOUNT

Principles not retained for review of constitutionality

Principle of tax autonomy of Territorial Communities

Neither Article 72-2 of the Constitution nor any other constitutional provision confers any tax autonomy on Territorial Communities.
(Decision nº 2009-599 DC, December 29th 2009, para.64, p. 218)

Neither Article 72-2 of the Constitution nor any other constitutional provision guarantees any tax autonomy of Territorial Communities. The argument based on the infringement of this principle is thus inoperative.
(Decision nº 2009-599 DC, December 29th 2009, paras 64 and 94, p. 218)

INSTITUTIONAL NORMS

PROCEDURE FOR DRAFTING INSTITUTIONAL ACTS

Consultation procedure

Consultation of overseas Communities

The Bill at the origin of the provisions of the Institutional Act pertaining to New Caledonia was the object, in the conditions provided for in section 90 of the Institutional Act of March 19th 1999, of an emergency consultation of the Congress of New Caledonia before the *Conseil d'Etat* gave its opinion.
(Decision nº 2009-587 DC, July 30th 2009, para 4, p. 152)

The Institutional Bill pertaining to the status of Department to be conferred on Mayotte was the object, in the conditions provided for in L.O 6113-3 of the General Code of Territorial Communities, of consultation with the General Council of Mayotte before the *Conseil d'Etat* gave its opinion.
(Decision nº 2009-587 DC, July 30th 2009, para 24, p. 152)

Parliamentary procedure

Government Bills dealing primarily with the organization of Territorial Communities

New Caledonia is a Territorial community of the Republic within the meaning of paragraph 2 of Article 39 of the Constitution which provides " Government Bills dealing primarily with the organization of Territorial communities shall be tabled first in the Senate".
(Decision nº 2009-587 DC, July 30th 2009, para 4, p. 152)

Institutional Act pertaining to the Senate

The Institutional Act Institutional Act pertaining to the appointment of the Presidents of the companies France Télévisions and Radio France and of the company in charge of France's

external audiovisual services which, under the final paragraph of Article 13 of the Constitution, submits the appointment by the President of the Republic to the opinion of the relevant Standing committee of each House of Parliament, is not an Institutional Act concerning the Senate.
(Decision nº 2009-576 DC, March 3rd 2009, para 1, p. 62)

The Institutional Act extending the term of office of members of the Economic, Social and Environmental Council was enacted in compliance with the rules of procedure provided for by the first three paragraphs of Article 46 of the Constitution. It thus does not pertain to the Senate.
(Decision nº 2009-586 DC, July 30th 2009, para 1, p. 150)

Paragraph 10 of section 19 of the Institutional Act on the institutional development of New Caledonia, which concerns the Senate, was enacted in the same terms by both Houses.
(Decision nº 2009-587 DC, July 30th 2009, para 4, p. 152)

The Institutional Act pertaining to the application of Article 61-1 of the Constitution was passed in compliance with the Rules of procedure provided for by the first three paragraphs of Article 46 of the Constitution.
(Decision nº 2009-595 DC, December 3rd 2009 para.1, p. 206)

SCOPE OF INSTITUTIONAL ACTS

Institutional and other norms

Division Institutional Acts/ Ordinary Acts

Provisions which are unseverable from institutional provisions.

Exception for section 11 thereof, the Institutional Act pertaining to the institutional development of New Caledonia and the status of Department of Mayotte comprises provisions which are of an institutional nature *per se* or because they are unseverable from institutional provisions.
(Decision nº 2009-587 DC, July 30th 2009, paras 20 and 25, p. 152)

Provisions of an ordinary statutory nature included in an Institutional Act – Downgrading.

Parliament was at liberty to provide, in order to guarantee the independence of national broadcasting companies and implement the principle of freedom of communication, that "in each House of Parliament, the relevant Standing committee shall give its opinion after a public hearing of the person whose appointment has been proposed". By so doing Parliament has however laid down a rule which does not come under the scope of the Institutional Act defined in the final paragraph of Article 13 of the Constitution
(Decision nº 2009-576 DC, March 3rd 2009, para 4, p. 62)

Encroachment of statute law on the preserve of an Institutional Act – No jurisdiction

Under Article 74 of the Constitution, applicable to Wallis and Futuna under Article 72-3 thereof, "The Overseas Territorial Communities to which this Article applies shall have a status reflecting their respective local interests within the Republic. This status shall be determined by an Institutional Act, passed after consultation of the Deliberative Assembly, which shall specify ... the powers of this Community". Under section 7 of the Act of July 29th 1961 conferring on Wallis and Futuna the status of an Overseas Territory: "The Republic shall ensure .. hygiene and public health".

III of section 99 of the Prison Act, which provides that the State may enter into an agreement with the competent authorities of Wallis and Futuna in order to specify the means of implementation of section 46 of this statute concerning responsibility for the health of prisoners, affects the

distribution of powers between the State and this Community, a matter which comes under the scope of an Institutional Act pursuant to Article 74 of the Constitution. No jurisdiction.
(Decision nº 2009-593 DC, November 19th 2009, paras 8 and 9, p. 196)

Division Institutional Acts/ Regulatory Norms

Section 4 of the Institutional Act pertaining to Article 61-1 of the Constitution refers to a Decree of the Council of Ministers, after consultation of the Constitutional Council and taking the opinion of the *Conseil d'Etat*, to determine the manner of application of section 1.

The provisions of sections 23-4 to 23-7 of Institutional Ordinance nº 58-1067 of November 7th 1958 as worded pursuant to section 1 of the Institutional Act pertaining to the application of Article 61-1 of the Constitution should be interpreted as prescribing before the *Conseil d'Etat* or the *Cour de cassation* the implementation of rules of procedure conforming to the requirements of the right to a fair trial, completed, if need be, by methods of application set down by regulations making it possible for these courts to examine the application for a priority preliminary ruling on the issue of constitutionality in the manner provided for in section 4 of the Institutional Act. Subject to this qualification Parliament when passing the Institutional Act did not fail to exercise its powers to the full
(Decision nº 2009-595 DC, December 3rd 2009, paras 28 and 36, p. 206)

CONSTITUTIONAL FOUNDATIONS OF INSTITUTIONAL ACTS

Article 61-1 – The issue of constitutionality

Institutional Act nº 2009-1523 of December 10th 2009 was enacted under Article 61-1 of the Constitution.
(Decision nº 2009-595 DC, December 3rd 2009 para.1, p. 206)

Article 69 and 71 – Economic, Social and Environmental Council

Institutional Act nº 2009-966 of August 3rd 2009 extending the term of office of the Members of the Economic, Social and Environmental Council.
(Decision nº 2009-586 DC, July 30th 2009, para 2, p. 150)

STATUTORY AND REGULATORY NORMS OF REFERENCE

CONDITION GOVERNING RECOURSE TO STATUTE LAW

Categories of statutes

Specific statutes

Experimental statutes (Art 37-1 of the Constitution)

Health and Social Matters

Article 37-1 of the Constitution provides: "Statutes and regulations may contain certain provisions enacted on an experimental basis for limited purposes and duration". If, on the basis of this provision, Parliament may, with a view to their possible generalization, authorize

experimental provisions departing from the principle of equality before the law for limited purposes and duration, it must define in a sufficiently precise manner the purpose and conditions thereof and not fail to comply with other requirements having constitutional status. When authorizing six experiments without fixing the duration thereof, Parliament failed to comply with Article 37-1 of the Constitution. Having itself decided to depart from the principle of equality before the law, it could not leave it to a regulatory power to fix the duration of this departure. Case law applicable to matters coming not only under the scope of statute law but also of regulations.
(Decision nº 2009-584 DC, July 16th 2009, paras 37 and 38, p. 140)

EXTENT AND LIMITS OF THE POWER TO ENACT STATUTES

Coming into force of a statute

Powers of Parliament

Under I of section 46 of the Constitutional Act of July 23rd 2008, Articles 34-1, 39 and 44 of the Constitution, in their new wording, "shall come into force in the conditions determined by statutes and Institutional Acts necessary for the application thereof". Under II of Article 42, said Article shall come into force on March 1st 2009. Firstly, in view of the provisions to which it applies, section 20 of the Institutional Act pertaining to the application of articles 34-1, 39 and 44 of the Constitution, which provides that chapter II of this statute and section 15 thereof " shall apply to Government Bills tables as from September 1st 2009" is not unconstitutional. Secondly, the other provisions of the Institutional Act come into force, pursuant to Article 1 of the Civil Code, the day following their publication in the Journal officiel.
(Decision nº 2009-579 DC, April 9th 2009, paras 44 to 46, p. 84)

Injunctions to the Government

The injunction addressed to the Government to transmit all new terms of reference and conditions concerning national broadcasting companies to the relevant Parliamentary committees constitutes, once said terms of reference are fixed by Decree and thus of a regulatory nature, the intervention of a legislative body in the implementation of the powers to make regulations, and thus runs counter to the principle of the separation of powers.
(Decision nº 2009-577 DC, March 3rd 2009, paras 29 to 31, p. 64)

Failure to exercise full powers

Case of failure to exercise full powers

Criminal Law and Procedure

Identity checks and criminal procedure

However Article 34 of the Constitution reserves for statute law the laying down of the rules of criminal procedure. Paragraph 2 of Article 495-6-1 of the Code of Criminal Procedure provides that under the summary procedure, the injured party may make a claim for damages and, as the case may be, oppose the criminal order. This provision does not however determine the manner in which such a claim may be brought. It does not specify the effects of any opposition by the injured party and does not guarantee the right of the accused to limit his opposition to the sole civil provisions of the criminal order or to the sole criminal provisions thereof. Parliament has thus failed to fully exercise the powers vested in it.
(Decision nº 2009-590 DC, October 22nd, para.14, p. 179)

No failure to exercise full powers

Parliament has exercised its powers to the full

Parliament has provided for the transferring of some 900 persons from the National Association for Ongoing Professional Training of Adults to the "Pole Emploi" (Employment Pole). Under the terms of the challenged section, Parliament firstly has provided for the automatic transfer no later than April 1st 2010 of the contracts of service of the employees involved to the "Pole Emploi" and secondly specified the collective bargaining agreement applicable to these employees. The challenged section is thus not flawed by any failure to exercise full powers.
(Decision nº 2009-592 DC, November 19th paras 4 to 7, p. 193)

The disciplinary procedure applicable to persons serving terms of imprisonment is not *per se* one of the matters which the Constitution makes the preserve of statute law. It is however incumbent upon Parliament to guarantee the rights and freedoms which continue to inure to the benefit of said persons within the limits inherent in the constraints involved in the serving of terms of imprisonment.

Section 91 of the Prison Act, which rewords Article 726 of the Code of Criminal Procedure, introduces the two most serious disciplinary measures, namely placement in a punishment cell and solitary confinement in a normal cell. It specifies the maximum length of time for such measures. It provides for a shorter time for minors over 16 who may, exceptionally, be placed in a punishment cell. It establishes the right of prisoners subjected to one or other of these disciplinary measures to have weekly access to the 'visiting room'in the conditions to be fixed by Decree after consultation with the *Conseil d'Etat*. It makes the continued application of these disciplinary measures dependent upon their compatibility with the health of the prisoner involved. It guarantees the right of the prisoner to be assisted by an Attorney during disciplinary proceedings and the right of a person placed in a punishment cell or in solitary confinement to petition the judge sitting in summary jurisdiction under Article L 521-2 of the Code of Administrative Justice. As for the rest, section 91 leaves it to a Decree after consultation with the *Conseil d'Etat* to determine the disciplinary procedure applicable to persons serving terms of imprisonment, to define reprehensible behaviour and the various punishments incurred in view of the seriousness of such behaviour, to determine the composition of the Disciplinary Committee and the procedure applicable thereto. It will therefore be incumbent upon the drafters of said Decree not to provide for punishments which adversely affect the rights and freedoms which continue to inure to the benefit of said persons within the limits inherent in the constraints involved in the serving of terms of imprisonment. With this qualification, by leaving it to a Decree issued after consultation with the Council of State to specify punishments other than placement in a punishment cell or in solitary confinement Parliament did not fail to exercise its powers to the full.
(Decision nº 2009-593 DC, November 19th 2009, paras 4 to 6, p. 196)

Referral to regulations governing application

Neither Article 34 of the Constitution, nor the objective of constitutional status of intelligibility and accessibility of the law preclude Parliament from leaving it to regulations to fix by Decree a ceiling to the cumulating of the additional solidarity rent known as "top up rent" and the rent in order to take into account the rents charged in the sector of each piece of rented property.
(Decision nº 2009-578 DC, March 18th 2009, paras 22 to 25, p. 73)

Although Article 34 of the Constitution provides that "statutes shall determine the rules concerning ... the fundamental guarantees granted to citizens for the exercise of their civil liberties" the implementation of the guarantees determined by Parliament is the preserve of the Government. The provisions of Article 21 of the Constitution, which make the Prime Minister responsible for ensuring the implementation of legislation and, subject to the provisions of Article 13, for exercising the power to make regulations, do not preclude Parliament from entrusting a public authority other than the Prime Minister with the task of fixing norms for the implementation of principles laid down by statutes, provided that such empowerment concerns solely measures limited in both scope and content. Such empowerment does not exempt the authority making regulations from compliance with constitutional requirements.
(Decision nº 2009-580 DC, June 10th 2009, para 33, p. 107)

Parliament has not failed to exercise its powers by leaving it to a Decree, in the Act furthering the Diffusion and Protection of Creation on the Internet, to determine the awarding of labels attesting to the "lawful nature" of offers of online public communication services and designed solely to facilitate the identification by the public of offers of services respecting intellectual property rights. Under paragraph 2 of article L 331-23, the High Authority, when application is made to it for the award of such a label, shall be required to respond favourably once it has ascertained that the services proposed by such an offer do not infringe copyright or related rights. Leaving it to a Decree to fix the conditions for the awarding of such a label is solely designed to determine the manner in which applications for the award of such a label are to be received and examined by the High Authority. These provisions do not confer any arbitrary authority on the latter. Secondly, as regards the laying down of the procedure for assessing and labelling the means of monitoring access to Internet, Article L 331-32, as worded subsequent to the censure resulting from paragraphs 19 and 20 hereinabove, is designed solely to facilitate the use of security devices intended to ensure the monitoring of access to the internet in accordance with the requirements of Article L 336-3
(Decision nº 2009-580 DC, June 10th 2009, paras 32 to 35, p. 107)

2.1.1 of section 2 of the Finance Act for 2010 inserts into the General Tax Code Article 1586 ter. Under paragraphs 3 and 4 of Part II of thus section "For maritime or aerial navigation firms which do business both in France and abroad, no account shall be taken of the added value resulting from transactions directly connected with the operating of ships or aircraft which do not correspond to business carried on in France. – A Decree issued after consultation with the *Conseil d'Etat* shall specify the manner of application of the foregoing provision". This section 2 precisely specifies the base for calculating the valued add tax of these firms. The referring to a Decree is merely designed to specify the practicalities of the collection of this tax. Dismissal of the argument that Parliament failed to exercise its powers to the full.
(Decision nº 2009-599 DC, December 29th 2009, paras 32 to 35, p. 218)

Referral to a collective bargaining agreement

Parliament has provided for the transferring of some 900 persons from the National Association for Ongoing Professional Training of Adults to the "Employment Pole". Under the terms of the challenged section, Parliament firstly has provided for the automatic transfer no later than April 1st 2010 of the contracts of service of the employees involved to the "Pole Emploi" and secondly specified the collective bargaining agreement applicable to these employees. The challenged section is thus not flawed by any failure to exercise full powers.
(Decision nº 2009-592 DC, November 19th 2009, paras 4 to 7, p. 193)

Referral to the will of the parties

The parties making the referral contend that by leaving it to an agreement to define " a suitable remuneration for the capital outlay" made by the Paris Transport Authority in the context of its task of manager of the metropolitan network infrastructure, Parliament failed to specify in clear and certain terms the duties in this respect of the Syndicat des transports d'Ile-de-France. They argue that it failed to exercise its full powers. Parliament has laid down the framework in which the long-term agreement on the remuneration of the Paris Transport Authority for carrying out the missions vested in it by the law will be entered into. By making the agreement between the parties depend upon the definition of "a suitable remuneration for the capital outlay", it did not fail to exercise its full powers, nor to comply with the requirement of constitutional status of intelligibility and accessibility of the law.
(Decision nº 2009-594 DC, December 3rd 2009, paras 8 to 11, p. 200)

Repeal or modification of statutes

Although Parliament is at all times at liberty, when acting in those fields reserved for it by Article 34 of the Constitution, to modify or repeal previous statutes and replace the same, if need be, by other provisions, this is on the condition that that such measures do not deprive requirements of a constitutional nature of statutory guarantees

Section 13 of the Act pertaining to Audiovisual Communication and the New Public Television Service which transfers from the Higher Council on Audiovisual Matters, an independent

Administrative Authority, to the President of the Republic the power to appoint Presidents of national broadcasting companies does not deprive constitutional requirements in matters of audiovisual communication of statutory guarantees.
(Decision nº 2009-577 DC, March 3rd 2009, paras 4 to 10, p. 64)

Although Parliament is at all times at liberty to modify or repeal previous statutes and replace the same, if need be, by other provisions, this is on the condition that that such measures do not deprive requirements of a constitutional nature of statutory guarantees.
(Decision nº 2009-588 DC, August 6th 2009, para 4, p. 163)

DELEGATED POWER TO ENACT LAWS

Ordinances under Article 38

Conditions governing recourse to Article 38

Request for authorization

Paragraph 2 of section 11 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution provides that Bills designed to authorize the Government to take by Ordinance measures which are normally the preserve of statute law shall be accompanied "by the documents referred to in paragraphs 2 to 7 and the penultimate paragraph of section 8". The Constitutional Council, by a qualified interpretation, holds that this provision cannot, on pain of non compliance with Article 38 of the Constitution, be interpreted as requiring the Government to inform Parliament of the terms of the Ordinances its intends to issue under the authorization requested to enable it to carry out its programme.
(Decision nº 2009-579 DC, April 9th 2009, para 21, p. 84)

Carrying out of programme

Purpose of measures and field of intervention

Although Article 38 of the Constitution requires the Government to indicate in precise terms to Parliament, to justify its request for authorization to take measures by Ordinance, the purposes it is sought to achieve by Ordinance and the field of intervention of said Ordinances, the Government is not required to inform Parliament of the terms of the Ordinances it intends to issue under the authorization requested. In the case in hand, the statutory provisions covered by the authorization and the conditions in which the same will be adopted by Ordinance are precisely defined.
(Decision nº 2009-573 DC, January 8th 2009, para 18, p. 36)

Under Article 38 of the Constitution, the Government may, to carry out its programme, ask Parliament for authorization to take by Ordinance, for a limited period and in the conditions provided for in paragraph 2 of the Article, measures which are normally the preserve of statute law and must therefore indicate in precise terms to Parliament, to justify its request for authorization, the purposes it is sought to achieve by Ordinances and the field of intervention of said Ordinances. Section 133 of the statute referred for review authorizes the Government to proceed by Ordinances to amend statutory and non codified provisions of Codes in order firstly, to ensure coherence with the statute involved and compliance with the hierarchy of norms and secondly to repeal provisions which have become pointless. According to the parties making the referral, by authorizing the Government to ensure the coherence of existing statutory provisions and those of the statute referred for review, Parliament has failed to exercise its full powers and hence failed to comply with the objective that statute law be accessible and intelligible. As is shown by Parliamentary debate, when passing section 133 of the statute referred for review, Parliament merely intended to authorize the Government to draw the necessary conclusions, by Ordinances, of the statute which it has enacted and thus ensure the coordination of existing statutory provisions with those of this statute. Hence the arguments raised have been dismissed.
(Decision nº 2009-584 DC, July 16th 2009, paras 20 to 23, p. 140)

Object of delegation

Ordinary statutory matters

The Government may, in order to enable it to implement its programme, ask Parliament, under Article 38 of the Constitution, to authorize it for a limited period of time and in the conditions provided for in paragraph 2 of said Article, to take measures by Ordinance which are normally the preserve of statute law. Among the matters listed by Article 34 of the Constitution as being reserved for statute law is to be found the laying down of the rules governing the system of election to the Houses of Parliament. The distribution of seats of Members of Parliament, within the limits fixed by Article L.O 119 of the Electoral Code as worded pursuant to the Institutional Act passed on December 11th 2008 is an element of this system.

Article 38 of the Constitution, allows Parliament to authorize the Government to proceed by Ordinances to fix the total number of Members of the National Assembly elected by French Nationals living abroad and the distribution of seats in the National Assembly between the Departments, Overseas Communities, New Caledonia and electoral constituencies reserved for French Nationals living abroad.
(Decision nº 2008-573 DC, January 8th 2009, paras 16 and 17, p. 36)

Ratification of Ordinances

Paragraph 3 of section 11 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution requires that the provisions of Government Bills providing for ratification of Ordinances be accompanied by a an impact study comprising the documents referred to in the eight final paragraphs of section 8 of this Institutional Act. The third paragraph requires the Government to table before the first House to which this issue is submitted not the impact study of the provisions involved but that of Ordinances previously issued under Article 38 or 74-1 of the Constitution and coming into force "upon publication thereof". Such a requirement, which has no foundation in Article 39 of the Constitution, fails to comply with the requirements of Article 38 and 74-1. Censure
(Decision nº 2008-579 DC, April 9th 2009, para.22, p. 84)

POWER TO MAKE REGULATIONS

National power to make regulations – Competent Authorities

Distribution of the powers of the State between various Authorities

It is the task of those vested with the power to make regulations to decide whether the duties performed by members of the Opinion Survey Committee require that such appointments be made by the Council of Ministers
(Decision nº 2008-215 L, February 12th 2009, para.2, p. 52)

Ministers

Paragraph 2 of Article L 331-5 of the Intellectual Property Code confers on the Minister for Culture the task of deciding which organizations are to appoint the members of the Committee for the payment of the making of copies for private use and the number of persons each of these bodies is required to appoint. It does not call into question either the fundamental principles "of the system of ownership, property rights and civil and commercial obligations" nor any other principle placed by the Constitution under the preserve of statute law.
(Decision nº 2008-216 L, April 9th 2009, paras 1 and 2, p. 93)

CONDITIONS FOR THE IMPLEMENTATION OF ARTICLE 37 PARAGRAPH 4 AND ARTICLE 41 OF THE CONSTITUTION

Article 37, paragraph 2 (procedure for downgrading)

No case to answer

Withdrawal of referral

There is no case to answer regarding an application for downgrading withdrawn by the Prime Minister and requesting the Council to rule on the legal nature of the words " Litigation section", "sub-section", and "sub-sections" found in paragraph 1 of Article L 122-1 of the Code of Administrative Justice, together with the word "sub-section" found in paragraph 2 of this Article.
(Decision nº 2008-217 L, May 14th 2009, para 1, p. 99)

DISTRIBUTION OF POWERS BY SUBJECT MATTER

Guarantee of civil liberties

Freedom of communication

Banning commercial breaks in national TV programmes of France Télévisions, the consequence of which is to deprive this national company of a substantial amount of its revenue, must be considered as affecting the guarantee of its funding, which constitutes an element of its independence. 11° of I of section 28 of the Act pertaining to Audiovisual Communication and the New Public Television Service which is not devoid of normative scope, is thus the preserve of statute law.
(Decision nº 2009-577 DC, March 3rd 2009, para 18, p. 64)

Criminal law, Procedure, Amnesty, Courts of law and Status of Members of the Judiciary

Determination of offences and punishments

The contribution levied on the financial resources of public housing bodies which have property to let is not intended to penalize any failure to perform an obligation under statute law or regulations. It is therefore not a penalty in the nature of a punishment.
(Decision nº 2008-578 DC, March 18th 2009, para 4, p. 73)

Section 8 of the Act pertaining to the Protection under Criminal law of Literary and Artistic Property on the Internet does not introduce a new minor offence but firstly creates a new class of supplementary penalty applicable to certain class five offences and secondly lays down the conditions in which such a penalty may be imposed. It is up to the body vested with the power to make regulations, when exercising the powers vested in it by Article 37 of the Constitution, and under the supervision of the courts with relevant jurisdiction, to define the ingredients of said offence
(Decision nº 2009-590 DC, October 22nd 2009, para.28, p. 179)

Criminal procedure

Article 34 of the Constitution reserves for statute law the laying down of the rules of criminal procedure. Paragraph 2 of Article 495-6-1 of the Code of Criminal Procedure provides that

under the summary procedure, the injured party may make a claim for damages and, as the case may be, oppose the criminal order. This provision does not however determine the manner in which such a claim may be brought. It does not specify the effects of any opposition by the injured party and does not guarantee the right of the accused to limit his opposition to the sole civil provisions of the criminal order or to the sole criminal provisions thereof. Parliament has thus failed to fully exercise the powers vested in it.
(Decision nº 2009-590 DC, October 22nd 2009, para.14, p. 179)

The disciplinary procedure applicable to persons serving terms of imprisonment is not *per se* one of the matters which the Constitution makes the preserve of statute law. It is however incumbent upon Parliament to guarantee the rights and freedoms which continue to inure to the benefit of said persons within the limits inherent in the constraints involved in the serving of terms of imprisonment.
(Decision nº 2009-593 DC, November 19th 2009, para.4, p. 196)

Rules of procedure devoid of any criminal nature

Non litigatious administrative proceedings

The first two phrases of paragraph 3 of Article L 311-5 of the Intellectual Property Code organize the manner of proceeding of the Committee for the payment of copies for private use. They do not call into question either the fundamental principles "of the system of ownership, property rights and civil and commercial obligations" nor any other principle placed by the Constitution under the preserve of statute law.
(Decision nº 2008-216 L, April 9th 2009, paras 1 and 2, p. 93)

Basis, rate and manner of collection of all types of taxes and currency issuing systems

Public revenues

Mandatory levies

Taxes of all types – Definition

The contribution levied on the financial resources of public housing bodies which have property to let is not intended to penalize any failure to perform an obligation under statute law or regulations and falls into the category of " all types of taxes" mentioned in Article 34 of the Constitution.
(Decision nº 2008-578 DC, March 18th 2009, para 4, p. 73)

The costs of computing and collecting local taxes levied by the State under Article 1641 of the General Tax Code are one of the taxes levied for the benefit of the State, as found by the Constitutional Council in its decision of July 25th 1990. The corresponding amounts have been appropriated as non tax revenue in the final amount of revenue and expenditure in the budget for the year 2008 fixed by II of section 1 of the statute referred for review, in accordance with Appendix A of the Finance Act for 2008. The argument based on the erroneous appropriation of this revenue in the budget accounts for 2008 is inoperative as regards the requirement of accuracy of accounts which deals solely with amounts incoming and outgoing during the budget financial year.
(Decision nº 2008-585 DC, August 6th 2009, para 5, p. 159)

Taxes of all types – Determination of base and rate

Although Article 34 of the Constitution makes it the preserve of Parliament to determine "the rules concerning the base, rates and method of collection of all types of taxes", it is the task of those vested with the power to make regulations to lay down the methods of application needed to implement these rules. By leaving it to a Decree after consultation with the *Conseil d'Etat* to determine the methods of calculating the average annual "financial potential", to draw up the list of investments to be taken into consideration when fixing the scope of the levy

involved and to fix the rate thereof, without sufficiently supervising the same, Parliament has left it to those vested with the powers to make regulations to determine the rules concerning the base and rate of a tax. It has thus failed to exercise its powers to the full.
(Decision nº 2008-578 DC, March 18th 2009, paras 5 to 7, p. 73)

Self-government of Territorial Communities

Principle of self-government of Territorial Communities

Power to enact laws

Reaffirmation of the principal whereby if, under Article 72 of the Constitution, "Territorial Communities shall be self-governing though elected councils "this must be done "in the manner provided for by statute law".
(Decision 2009- 591 DC, October 22nd 2009, para.8, p. 187)

Ownership, real rights and civil and commercial obligations

Fundamental principles of ownership.

Miscellaneous

Paragraph 2 and the first two phrases of Article L 311-5 of the Intellectual Property Code confer on the Minister for Culture the task of deciding which organizations are to appoint the members of the Committee for the payment of the making of copies for private use and the number of persons each of these bodies is required to appoint. It also organizes the manner of proceeding of said Committee. These provisions do not call into question either the fundamental principles "of the system of ownership, real rights and civil and commercial obligations" nor any other principle placed by the Constitution under the preserve of statute law.
(Decision nº 2008-216 L, April 9th 2009, paras 1 and 2, p. 93)

Employment Law and Social Security Law

Social Security Law

Operating of Social Security bodies

Supervisory authority

The provisions of the Social Security Code and Act nº 2004-803 of August 9th 2004 pertaining to the public electricity and gas services and electricity and gas companies, which designate the relevant Ministers to exercise powers of supervisory authority over the National Pension, Invalidity and Sickness Fund of religious bodies, the National Military Social Security Fund and the National Fund of the Electricity and Gas industries are of a regulatory nature.
(Decision nº 2009-218 L, October 14th 2009, paras 1 and 2, p. 175)

RIGHTS AND FREEDOMS

GENERAL PRINCPLES APPLICABLE TO CONSTITUTIONALLY GUARANTEED RIGHTS AND FREEDOMS

Scope of rights and freedoms

Application in terms of area

Self-government of Local Communities

Reaffirmation of the principal whereby if, under Article 72 of the Constitution, "Territorial Communities shall be self-governing though elected councils " this must be done "in the manner provided for by statute law".
(Decision 2009-591 DC, October 22nd 2009, paras 8 and 9, p. 187)

The transfer free of charge of the ownership of the infrastructure of the Metropolitan and Regional Express networks of the Syndicat des Transports de l'Ile-de-France (STIF) to the Paris Transport Authority (RATP) does not adversely affect the self-government of the Territorial Communities which are members of the STIF. The argument based on infringement of the principle of self-government of Territorial Communities is not supported by the facts.
(Decision 2009-594 DC, December 3rd 2009, paras 14 and 17, p. 200)

Guarantee of rights

Right of redress

Principle

The powers to impose penalties created section 5 of the Act furthering the Diffusion and Protection of Creation on the Internet vest the Committee for the Protection of Copyright, which is not a court of law, with the power to restrict or deny access to the internet by access holders and those persons whom the latter allow to access the internet. The powers vested in this administrative authority are not limited to a specific category of persons but extend to the entire population. The powers of this Committee may thus lead to restricting the right of any person to exercise his right to express himself and communicate freely, in particular from his own home. In these conditions, in view of the freedom guaranteed by Article 11 of the Declaration of 1789, Parliament was not at liberty, irrespective of the guarantees accompanying the imposition of penalties, to vest an administrative authority with such powers for the purpose of protecting holders of copyright and related rights.
(Decision nº 2009-580 DC, June 10th 2009, para 16, p. 107)

Legal certainty

Adversely affecting a legally acquired instrument or situation

Under II of section 85 of the Finance Act for 2010 the measure introducing partial taxation of the occupational injury allowances provided for by this section shall apply solely to daily allowances paid as from January 1st 2010. The argument based on adversely affecting a legally acquired situation is thus unsupported by the facts.
(Decision nº 2009-599 DC, December 29th 2009, para.86, p. 218)

No retrospective measures

Statutory validation

Principles

The exceptions to the principle of Sunday rest made by the "Act reaffirming the principle of Sunday rest and designed to provide for exceptions to this principle for employees volunteering to work on Sundays in touristic and thermal Communes and areas and certain conurbations" modify for the future the regulations applicable to Sunday working. They are not of a retrospective nature and therefore do not affect the outcome of any ongoing legal proceedings pertaining to failure to comply with existing legislation in such matters. This is not a statutory validation and thus the argument based on infringement of the separation of powers is therefore not supported by the facts.
(Decision nº 2009-588 DC, August 6th 2009, para 11, p. 163)

Freedom and responsibility

Applications

Section 85 of the Finance Act for 2010 which makes temporary occupational injury payments taxable under the rules applicable to wages and salaries, does not adversely affect the right of persons having sustained occupational injuries to obtain relief for the same
(Decision nº 2009-599 DC, December 29th 2009, para.88, p. 218)

DIGNITY OF THE HUMAN BEING

Applications

Deprival of freedom

It is incumbent upon Parliament, competent under Article 34 of the Constitution to determine the rules concerning criminal law and procedure, to lay down the conditions and manner of enforcing custodial sentences while respecting the dignity of the human being.

Section 91 of the Prison Act, which rewords Article 726 of the Code of Criminal Procedure, introduces the two most serious disciplinary measures, namely placement in a punishment cell and solitary confinement in a normal cell. It specifies the maximum length of time for such measures. It provides for a shorter time for minors over 16 who may, exceptionally, be placed in a punishment cell. It establishes the right of prisoners subjected to one or other of these disciplinary measures to have weekly access to the 'visiting room'in the conditions to be fixed by Decree after consultation with the *Conseil d'Etat*. It makes the continued application of these disciplinary measures dependent upon their compatibility with the health of the prisoner involved. It guarantees the right of the prisoner to be assisted by an Attorney during disciplinary proceedings and the right of a person placed in a punishment cell or in solitary confinement to petition the judge sitting in summary jurisdiction under Article L 521-2 of the Code of Administrative Justice. These provisions do not fail to comply with the principle of protection of the dignity of the human being
(Decision nº 2009-593 DC, November 19th 2009, paras 3 and 5, p. 196)

RIGHT TO PRIVACY
(see also below Rights of Foreigners and Political Asylum, Freedom of the Individual and Personal Freedom)

Affirmation of constitutional status

The liberty proclaimed by Article 2 of the Declaration of 1789 implies the right to privacy.

It is the task of Parliament, under Article 34 of the Constitution, to lay down the rules concerning the fundamental guarantees granted to citizens for the exercising of their civil

liberties. It is therefore incumbent upon it to strike a balance between the right to privacy and other constitutional requirements such as the protection of the right to property.
(Decision nº 2009-580 DC, June 10th 2009, paras 22 and 23, p. 107)

Processing of data of a personal nature (see also Title 15: Independent Authorities)

Private data files of offences

The authorization granted to private persons to collect data making it indirectly possible to identify persons having a right of access to online public communication services leads to these same private persons processing data of a personal nature in connection with offences. Such an authorization cannot, without constituting a disproportionate infringement of the right to privacy, have other purposes than to enable holders of copyright and related rights to institute legal proceedings on the same footing as any natural person or legal entity who has been the victim of an offence.

The combined provisions of Article L 34-1 of the Post Office and Electronic Communications Code, as amended by section 14 of the Act furthering the Diffusion and Protection of Creation on the Internet, and of the 3rd and 5th paragraphs of Article L 331-21 of the Intellectual Property Code and of Article L 331-24, as worded pursuant to section 5 of this statute, result in modifying the purposes for which such persons may process data connected with offences. They in fact make it henceforth possible for data thus collected to have a nominative nature not only in the framework of legal proceedings, but also in the framework of proceedings before the Committee for the Protection of Copyright of the High Authority for the Diffusion and Protection of Copyright on the Internet.

Subsequent to the censure resulting from the paragraphs 19 and 20 of the decision of the Constitutional Council, the Committee for the protection of copyright cannot impose the penalties provided for by the statute referred for review. Its sole role consists in taking measures preliminary to the institution of legal proceedings. Its intervention is justified by the extent of copyright infringements committed via the internet and the utility, in the interests of good administration of justice, of limiting the number of offences brought before the courts of law. Hence the processing of data of a personal nature by the companies and bodies referred to hereinabove, together with the transmission of such data to the Committee for the protection of copyright in order to allow it to carry out its mission, are preliminaries to referring cases to the courts with jurisdiction over such matters.

In addition such processing of data shall be subjected to the requirements provided for by the Act of January 6th 1978 on Data Processing, Data Files and Civil Liberties. Such data shall be transmitted solely to this administrative authority or to the judicial authorities. It will be incumbent upon the National Committee on Data Processing and Civil Liberties, when requested to authorize such processing of data, to ensure that the manner in which such processing is carried out, in particular the conditions governing the conservation of such data, is strictly proportionate to the purpose it is sought to achieve.
(Decision nº 2009-580 DC, June 10th 2009, paras 24 to 29, p. 107)

RIGHT TO LEAD A NORMAL FAMILY LIFE

Scope of the principle

Section 58 of the Institutional Act pertaining to the institutional development of New Caledonia applies measures concerning priority of employment to the spouse of a citizen of New Caledonia or a person proving a sufficient length of time of residency, to the partner or common law spouse of the same not being a citizen of New Caledonia or meeting requirements as to length of residency in New Caledonia. This has no foundation in the Noumea agreement and is not a measure necessary for the implementation thereof. Neither is there any constitutional foundation in the right to a normal family life (implied solution). Censure
(Decision nº 2009-587 DC, July 30th 2009, paras 18 and 19, p. 152)

RIGHT TO PROPERTY

Scope of the protection of the right to property

Holders of the right to property

The right to property concerns not only private property of individuals but also property of the State and other public entities, deriving firstly from Articles 6 and 13 of the Declaration of 1789 and secondly from Article 2 and 17 of the same. The right to property guaranteed by these provisions does not preclude Parliament from transferring free of charge ownership of property in the public domain between public entities (in the case in hand between two Public Establishments, the Syndicat des Transports d'Ile-de-France and the Paris Transport Authority (RATP).
(Decision nº 2009-594 DC, December 3rd 2009, para.15, p. 200)

Scope of application

Incorporeal property

Copyright and related rights

Property is one of the rights of man enshrined in Articles 2 and 17 of the Declaration of 1789. The purposes and conditions of exercising the right to property have since 1789 undergone substantial changes characterized by the extension of the scope of this right to new fields. Among the latter exits the right, for copyright holders and holders of related rights to enjoy their intellectual property rights and protect the same within a framework set out by statute and in compliance with the international undertakings entered into by France. The fight against infringement of copyright through internet piracy is a response to the need to safeguard intellectual property.
(Decision nº 2009-580 DC, June 10th 2009, para 13, p. 107)

Protection against infringement of the right to property

Test of the seriousness of the infringement of the right to property

No infringement of the right

According to the parties making the referral, the transfer free of charge of the ownership of property of the infrastructure of the Metropolitan and Regional Express networks of the Syndicat des Transports de l'Ile-de-France (STIF) to the Paris Transport Authority (RATP) fails to comply with constitutional requirements regarding the property of public entities. The principle of equality before the law and before public burden sharing together with the right to property, which concerns not only private property of individuals but also property of the State and other public entities, derive firstly from Articles 6 and 13 of the Declaration of 1789 and secondly from Article 2 and 17 of the same. Respect for right to property guaranteed by these provisions does not preclude Parliament from transferring free of charge ownership of property in the public domain between public entities. The transfer from the STIF Syndicat des Transports d'Ile-de-France to the Paris Transport Authority (RATP) of the part of the property of the infrastructure managed by the latter is accompanied by the transfer of the rights and obligations attached thereto. This transfer does not result in depriving of statutory guarantees constitutional requirements deriving from the existence and continuity of the public services to which they relate. Constitutional requirements in matters of property of public entities have thus not failed to be complied with.
(Decision nº 2009-594 DC, December 3rd 2009, paras 14 to 16, p. 200)

Statutory guarantees

No infringement of the right to property

Parliament intended to ensure the sharing by the Syndicat des transports d'Ile-de-France (STIF) and the Paris Transport Authority (RATP) of the building work of certain operations. For each operation an agreement specifies the conditions in which all such building work shall be organized, followed up and supervised by the Syndicat. When passing such provisions, Parliament intended to encourage cooperation between the STIF and the RATP. It provided in particular that each operation would be the object of a specific agreement as to the organisation, follow-up and supervision by the Syndicat of such work. The parties making the referral argue that these provisions fail to comply with constitutional requirements as to property of public entities. By making the implementation of a shared building project dependent upon the signing of an agreement by both parties, Parliament intended that neither of them be involved, especially from a financial standpoint, in such an undertaking without having consented thereto. It thus did not fail to comply with the constitutional requirements concerning the protection of the public domain.
(Decision nº 2009-594 DC, December 3rd 2009, paras 18 to 20, p. 200)

CONSTITUTIONAL RIGHTS OF WORKERS

Individual rights of workers

Right to rest and the protection of workers'health (paragraph 11 of the Preamble to the Constitution of 1946)

The principle of a weekly rest day is one of the guarantees of the right to rest of employees recognized by paragraph 11 of the Preamble to the Constitution of 1946. However departures from the principle of Sunday rest in certain touristic communes or areas and in" perimeters of exceptional consumer activity" do not deprive the constitutional requirements deriving from paragraphs 10 and 11 of the Preamble of 1946 of statutory guarantees.
(Decision nº 2009-588 DC, August 6th 2009 paras 2, 8 and 13, p. 163)

OTHER RIGHTS AND SOCIAL PRINCIPLES

Right to social protection (paragraph 11 of the Preamble to the Constitution of 1946)

Scope

Welfare

As had previously been the case with the Minimum Insertion Income (RMI), Article L 262-4 of the Family and Social Welfare Code currently in force excludes from the benefit of the Active Solidarity Income young persons under 25 except for those who assume "the financial support of one or more existing or expected children". Section 135 of the Supplementary Finance Act for 2009 was designed to extend the benefit of such welfare payments to persons having been in employment. It therefore tends to reduce disparities between persons under 25 who have some professional experience and those aged 25 who are in the same situation. It thus does not fail to comply with paragraphs 10 and 11 of the Preamble of 1946.
(Decision nº 2009-599 DC, December 29th 2009, paras 102 and 104, p. 218)

Sickness

Daily allowances for occupational injuries are replacement income consequent upon an occupational injury. Parliament was at liberty, in order to take into account the particular nature of these allowances and the origin of the inability to work, to decide that 50 % of the sum paid out be considered as wages. Section 85 of the Finance Act for 2010 has thus not created any unjustified difference in treatment between the beneficiaries of daily allowances for occupational injuries and other persons receiving daily allowances because their physical state makes them unfit for work.
(Decision nº 2009-599 DC, December 29th 2009, para.87, p. 218)

Principle of the protection of the family (paragraph 10 of the Preamble to the Constitution of 1946)

Reconciling family rights and requirements of constitutional status

When providing that the right to rest should be exercised in principle on Sundays, Parliament, competent under Article 34 of the Constitution to determine the fundamental principles of Employment Law intended, in accordance with the task incumbent upon it, to reconcile freedom of enterprise, which derives from Article 4 of the Declaration of the Rights of Man and the Citizen of 1789, and paragraph 10 of the Preamble of 1946. On this basis, the Constitutional Council monitors exceptions made to the principle of Sunday rest by the statute reaffirming this principle and designed to adapt departures from said principle in touristic and thermal communes and areas and other urban conglomerations for employees volunteering to work on such days.

Firstly, by extending the exceptions to all shops situated in these communes and areas, Parliament sought to put an end to the difficulties encountered in applying existing statutory criteria. By extending this exception to cover the entire year, Parliament took into account changing lifestyles and leisure activities and when transforming this ad hoc exception into a statutory departure from existing principles it merely drew the consequences of these changes. Parliament thus used its power of appraisal without depriving the constitutional requirements deriving from paragraphs 10 and 11 of the Preamble of 1946 of the requisite statutory guarantees. Secondly, Parliament was at liberty, when creating "perimeters of exceptional consumer activity" to determine a new system of exceptions to the principle of Sunday rest by taking into account changing consumer habits in conurbations. In both cases Parliament used its power of appraisal without depriving the constitutional requirements deriving from paragraphs 10 and 11 of the Preamble of 1946 of statutory guarantees
(Decision nº 2009-588 DC, August 6th 2009 paras 3, 8 and 13, p. 163)

Principle of the protection of public health

Applications

Public hospital service

2° of Article L. 6112-3 of the Public Health code as worded pursuant to section 1 of the Act reforming Hospitals and pertaining to Patients, Health and Territories provides that private healthcare establishments carrying out public service missions shall ensure permanent reception facilities and care of patients or the transfer of the latter to any establishment or institution "in the framework determined by the Regional Health Agency". It is incumbent upon the latter, when specifying the conditions of such participation and coordinating the same with the activity of public healthcare establishments, to ensure the uninterrupted continuity of the mission of the public hospital service taken as a whole. With this qualification, these provisions do not fail to comply with the requirements of paragraph 11 of the Preamble of the Constitution of 1946 concerning the protection of health.
(Decision nº 2009-584 DC, July 16th 2009, para.6, p. 140)

Regulation of Medical and Paramedical Professions

By reserving access to training leading to the qualification of psychotherapist to holders of the Degree of Doctor of Medicine or Master in Psychology or Psychoanalysis, section 91 of the Act reforming Hospitals and pertaining to Patients, Health and Territories (amending section 52 of Act n° 2004-806 of August 9th 2004 pertaining to public health policy) has ensured a conciliation between freedom of enterprise and the requirements of paragraph 11 of the Preamble to the Constitution of 1946 concerning the protection of health which is not disproportionate and has not failed to comply with the principle of equality.
(Decision n° 2009-584 DC, July 16th 2009, para. 19, p. 140)

Others

The provisions of Article L 1161-4 of the Public Health Code, as worded pursuant to section 84 of the Act reforming Hospitals and pertaining to Patients, Health and Territories merely provide for direct or indirect contribution by private business concerns to the financing of an action or therapeutic programme of education for patients and are subject to the conditions laid down in Article L 1161-1 to L 1161-4 of the Public Health Code. They do not fail to comply with the requirements of paragraph 11 of the Preamble to the Constitution of 1946 regarding the protection of health.
(Decision n° 2009-584 DC, July 16th 2009, para. 15, p. 140)

FREEDOM OF CONTRACT AND RIGHT TO MAINTAIN THE ECONOMY OF CONTRACTS LAWFULLY ENTERED INTO

Freedom of contract

Scope of principle

No constitutional principle guarantees the autonomy of management of public healthcare establishments. Furthermore, the powers conferred on the regional Health Agency by sections 10, 11 and 23 of the Act reforming Hospitals and pertaining to Patients, Health and Territories (Articles L 6143-7-2 and L 6131-2 of the Public Health Code) do not *per se* adversely affect the freedom of contract of these establishments. Dismissal of argument based on infringement of freedom of contract.
(Decision n° 2009-584 DC, July 16th 2009, para. 9, p. 140)

Conciliation of the principle

With requirements of general interest

The interference with contracts lawfully entered into resulting from having the collective bargaining agreement of the "Pole Emploi" apply to employees of the National Association for Ongoing Professional Training of Adults (AFPA) transferred to said Pole Emploi, subject, if need be, to necessary adaptations, is motivated by sufficient general interest. It is justified by the need to have the AFPA comply with rules governing competition without introducing a multiplicity of different statuses of personnel employed at the "Pole Emploi". It is not excessive.
(Decision n° 2009-592 DC, November 19th 2009, paras 11 and 12, p. 193)

Right to maintain the economy of contracts lawfully entered into

Scope of the principle

Parliament cannot adversely affect contracts lawfully entered into on grounds other than the general interest without failing to comply with the requirements deriving from Articles 4 and 16 of the Declaration of 1789.
(Decision n° 2009-578 DC, March 18th 2009, para. 13, p. 73)

Reconciliation of the principle

With the requirements of social law

Sections 61, 64 and 65 of the Act on mobilisation for housing and the fight against exclusion modifies, including for contracts currently in force, the conditions governing the allocation of social low rent housing and the continued occupancy of the same. The parties making the referral contend that this infringes freedom of contract.

Firstly, rental agreements entered into for the allocation of social low rent housing, even if they are be contracts of private law, enable the bodies renting out social housing to carry out the public service mission which the law has assigned to them. This housing is allocated under a procedure and in conditions governed by regulations. Parliament intended to favour mobility of occupancy of the stock of low rent social housing in order to allocate such housing to persons of very modest means. It was thus at liberty to modify, including for contracts currently in force, the statutory framework applicable to the allocation of such housing and the termination of corresponding rental agreements. Furthermore, these provisions contribute to implementing the objective of constitutional status that all persons should have the opportunity of decent housing.

Firstly, in view of the provisions which provide for the continued occupancy of certain elderly persons, handicapped persons or persons residing in sensitive areas, of the obligations imposed on those renting out such housing to help re-house tenants concerned by these provisions and the timeframe constraints applicable to the conditions in which a right of continued occupancy may be terminated, the Council finds that these measures do not deprive any other constitutional requirements of statutory guarantees. Dismissal of argument based on infringement of contracts currently in force.
(Decision nº 2009-578 DC, March 18th 2009, paras 14 to 16, p. 73)

FREEDOM OF EXPRESSION AND COMMUNICATION

Principles

Constitutional Status

In the current state of the means of communication and given the generalized development of public online communication services and the importance of the latter for the participation in democracy and the expression of ideas and opinions, the right to speak and publish freely, guaranteed by Article 11 of the Declaration of 1789, implies freedom to access the Internet.
(Decision nº 2009-580 DC, June 10th 2009, para 12, p. 107)

Scope of this freedom

Fundamental freedom

Parliament is at liberty, under Article 34 of the Constitution, to lay down rules intended to reconcile the pursuit of the objective of fighting infringement of copyright on the internet with the right of free communication and freedom to speak, write and publish. However freedom of expression and communication are all the more precious since they are one of the cornerstones of a democratic society and one of the guarantees of respect for other rights and freedoms. Any restrictions placed on the exercising of such freedom must necessarily be adapted and proportionate to the purpose it is sought to achieve.
(Decision nº 2009-580 DC, June 10th 2009, para 15, p. 107)

When enabling copyright holders or holders of related rights, together with persons authorized to represent the same for the defence of their rights, to petition the *Tribunal de grande instance* to order, after a full hearing of all parties, the taking of measures necessary to prevent

or put an end to such infringement of their rights, Parliament has not failed to respect freedom of expression and communication. It will be incumbent upon the court called upon to hear such petitions to order solely those measures strictly necessary to preserve the rights involved. Qualification
(Decision nº 2009-580 DC, June 10th 2009, para 38, p. 107)

Freedom of expression and communication (other than media)

Individual freedom to speak, write and publish freely

Parliament is at liberty, under Article 34 of the Constitution, to lay down rules intended to reconcile the pursuit of the objective of fighting infringement of copyright on the internet with the right of free communication and freedom to speak, write and publish. Freedom of expression and communication are all the more precious since they are one of the cornerstones of a democratic society and one of the guarantees of respect for other rights and freedoms. Any restrictions placed on the exercising of such freedom must necessarily be adapted and proportionate to the purpose it is sought to achieve.

The powers to impose penalties created by section 5 of the Act furthering the Diffusion and Protection of Creation on the Internet vest the Committee for the protection of copyright, which is not a court of law, with the power to restrict or deny access to the internet by access holders and those persons whom the latter allow to access the internet. The powers vested in this administrative authority are not limited to a specific category of persons but extend to the entire population. The powers of this Committee may thus lead to restricting the right of any person to exercise his right to express himself and communicate freely, in particular from his own home. In these conditions, in view of the freedom guaranteed by Article 11 of the Declaration of 1789, Parliament was not at liberty, irrespective of the guarantees accompanying the imposition of penalties, to vest an administrative authority with such powers for the purpose of protecting holders of copyright and related rights.
(Decision nº 2009-580 DC, June 10th 2009, paras 15 and 16, p. 107)

Press media

Political and general Press

Objective of diversity of opinions

It is up to Parliament, within the framework of the powers vested in it by the Constituent Power, to lay down the rules governing both freedom of communication, which derives from Article 11 of the Declaration of 1789, and the diversity and independence of the media, which are objectives of constitutional status.
(Decision nº 2009-577 DC, March 3rd 2009, para.3, p. 64)

Audiovisual communication

Power of Parliament

Scope of powers

It is up to Parliament, within the framework of the powers vested in it, to lay down the rules governing both freedom of communication, which derives from Article 11 of the Declaration of 1789, and the diversity and independence of the media, which are objectives of constitutional status.

Although Parliament is at all times at liberty, when acting in those fields reserved for it by Article 34 of the Constitution, to modify or repeal previous statutes and replace the same, if

need be, by other provisions, this is on condition that such measures do not deprive requirements of a constitutional nature of statutory guarantees.
(Decision nº 2009-577 DC, March 3rd 2009, paras 3 and 4, p. 64)

Under the final paragraph of VI of section 53 of the statute of September 30th 1986: "The implementation of paragraph I of VI shall give rise to financial compensation on the part of the State. In the conditions determined by each Finance Act, the amount of said compensation shall be allocated to the company mentioned in I of section 44". It is therefore incumbent upon each Finance Act, in accordance with the independence of France Télévisions, to fix the amount of the financial compensation due from the State to set off the loss of commercial revenue sustained by said company in order to enable it to perform the public service duties entrusted to it. With this reservation, Parliament has not failed to exercise fully the powers vested in it nor failed to comply with the requirements deriving from Article 11 of the Declaration of 1789.
(Decision nº 2009-577 DC, March 3rd 2009, para 19, p. 64)

Parliament has not failed to exercise its powers by leaving it to a Decree, in the Act furthering the Diffusion and Protection of Creation on the Internet, to determine the awarding of labels attesting to the "lawful nature" of offers of online public communication services and designed solely to facilitate the identification by the public of offers of services respecting intellectual property rights. Under paragraph 2 of article L 331-23, the High Authority, when application is made to it for the award of such a label, shall be required to respond favourably once it has ascertained that the services proposed by such an offer do not infringe copyright or related rights. Leaving it to a Decree to fix the conditions for the awarding of such a label is solely designed to determine the manner in which applications for the award of such a label are to be received and examined by the High Authority. These provisions do not confer any arbitrary authority on the latter. Secondly, as regards the laying down of the procedure for assessing and labelling the means of monitoring access to Internet, Article L 331-32, as worded subsequent to the censure resulting from paragraphs 19 and 20 hereinabove, is designed solely to facilitate the use of security devices intended to ensure the monitoring of access to the internet in accordance with the requirements of Article L 336-3
(Decision nº 2009-580 DC, June 10th 2009, paras 32 to 35, p. 107)

Objective of diversity

Section 13 of the Act pertaining to Audiovisual Communication and the New Public Television Service transfers from the Higher Council on Audiovisual Matters, an independent Administrative Authority, to the President of the Republic the power to appoint Presidents of national broadcasting companies.

Firstly, this section submits the appointment of the Presidents of national broadcasting bodies to the procedure provided for in the final paragraph of Article 13 of the Constitution (public consultation of Parliamentary committees with a power of veto with a three fifths majority of votes cast) In view of the importance of said posts in guaranteeing rights and freedoms, Parliament intended that such appointments be made after consultation with those representing the Nation, after a public hearing and opinion.

Secondly, the appointments of Presidents of national broadcasting bodies may only be made after the giving of a favourable opinion by the Higher Council on Audiovisual Matters. These appointments thus cannot be decided upon without the agreement of this independent administrative authority.

As is shown by the foregoing, section 13 of the statue does not deprive constitutional requirements in audiovisual matters of statutory guarantees.
(Decision nº 2009-577 DC, March 3rd 2009, paras 5 to 8 and 10, p. 64)

Section 14 of the Act pertaining to Audiovisual Communication and the New Public Television Service allows for the removal from office of the Presidents of national broadcasting bodies from office by the President of the Republic by a Decree giving the reasons for said removal. This section provides that such removal from office requires the giving of reasons to explain the need to terminate before due date the five year term of office provided for by statute. Removal from office requires a favourable opinion, which must also be reasoned, from a

majority of the members of the High Council for Audiovisual Matters The grounds for such a decision are to be submitted beforehand for the public opinion of the relevant Committees of each House of Parliament and lastly, these grounds may, if need be, be challenged before the administrative courts with jurisdiction over such matters.

This section thus does not deprive constitutional requirements in audiovisual matters of statutory guarantees.
(Decision nº 2009-577 DC, March 3rd 2009, paras 11 to 15, p. 64)

FREEDOM OF TEACHING AND GOVERNING LAW

Freedom of teaching

Organisation: Financial assistance from the State and Local Communities

Firstly, Article 1 of the Constitution provides: " France shall be an indivisible, secular, democratic and social Republic. It shall ensure the quality of all citizens before the law, without distinction of origin, race or religion." Paragraph 13 of the Preamble to the Constitution of 1946, confirmed by the Constitution of 1958 provides: " The provision of free, public and secular education at all levels is a duty of the State". Secondly, the freedom of teaching constitutes one of the fundamental principles recognized by the laws of the Republic. Under these rules or principles of constitutional status, the principle of secularity does not preclude Parliament, on condition that its appraisal is based on objective and rational criteria, from providing for the participation of public bodies in the financing of the running of private institutes of education which have entered into a contract with the State, depending on the nature and extent of their contribution to the carrying out of teaching missions.
(Decision nº 2009-591 DC, October 22nd 2009, paras 5 and 6, p. 187)

ECONOMIC FREEDOMS

Freedom of enterprise

Power of Parliament

Parliament is at liberty to impose on freedom of enterprise, which derives from Article 4 of the Declaration of 1789, restrictions connected with constitutional requirements or justified by the general interest, provided that this does not entail any disproportionate adverse effects with respect to the purpose it is sought to achieve.
(Decision nº 2009-584 DC, July 16th 2009, para 18, p. 140)

Reconciliation of a principle

With rules, principles or objectives of constitutional status

By reserving access to training leading to the qualification of psychotherapist to holders of the Degree of Doctor of Medicine or Master in Psychology or Psychoanalysis, section 91 of the Act reforming Hospitals and pertaining to Patients, Health and Territories (amending section 52 of Act nº 2004-806 of August 9th 2004 pertaining to public health policy) has ensured a reconciliation between freedom of enterprise and the requirements of paragraph 11 of the Preamble to the Constitution of 1946 concerning the protection of health which is not disproportionate
(Decision nº 2009-584 DC, July 16th 2009, para. 19, p. 140)

Freedom of competition

The provisions of the Act for the acceleration of building and investment programmes, which enables the sole bidder retained to vary the final cost of his tender, are designed to take temporarily into account the instability of financial markets when determining "methods of financing" of the partnership project. They cannot result in calling into question the conditions of the tender by exempting the Community from the obligation to respect the principle of acceptance of the most economically advantageous offer. With this qualification, they do not infringe the principle of equality before public procurement orders deriving from Article 6 of the Declaration of 1789. Qualified.
(Decision nº 2009-575 DC, February 12th 2009, para. 4, p. 48)

The parties making the referral contend that Parliament has failed to provide, as regards rail transport for travellers in the Ile de France (Greater Paris Region), for the separation of the management of the infrastructures and the running of these transport networks, and argue that this infringes the principle of equality between the Paris Transport Authority (RATP) and other transporters when such networks are opened up to competition. Although the statute referred for review has provided that regular public transport services created before January 1st 2010 will continue to be managed under current agreements for 15 years where road transport is concerned, 20 years for tramway transport, and 30 years for other guided transport, it is not designed to organize the opening up to competition of these transport services before these dates. Hence the argument based on infringement of the principle of equality is inoperative.
(Decision nº 2009-594 DC, December 3rd 2009, paras 9 and 12, p. 200)

PRINCIPLES OF CRIMINAL LAW AND CRIMINAL PROCEDURE

Scope of the application of the principles of Article 8 of the Declaration of 1789

Measures not in the nature of a punishment

Other measures not in the nature of a punishment

Paragraph 3 of Article L 335-7 of the Intellectual Property Code specifies the consequences of the penalty of suspension of access to the Internet as regards the contractual relationship between the access provider and the subscriber. The obligation imposed on the latter to pay the subscription fee, in the absence of any termination of the contract, constitutes neither a penalty nor a measure of a punitive nature. This provision, which is based on the fact that the breach of contract is attributable to the subscriber, does not disregard any constitutional requirement
(Decision nº 2009-590 DC, October 22nd 2009, para.22, p. 179)

Transposition in matters of administrative penalties

Neither the principle of the separation of powers, nor any other principle or rule of constitutional status, precludes an administrative authority, acting within its powers as a public body, from exercising its power to impose penalties needed to enable it to carry out its tasks once the exercising of this power is accompanied by statutory measures designed to ensure the protection of constitutionally guaranteed rights and freedoms. In particular due respect must be shown for the principle of the legality of offences and punishments and the rights of the defence, principles which apply to all penalties intended to serve as a punishment, even though Parliament has left it to a non-judicial authority to impose such penalties.
(Decision nº 2009-580 DC, June 10th 2009, para 14, p. 107)

Principle of legality of offences and punishments

Power of Parliament

Applications

No failure by Parliament to exercise its powers

The first paragraph of Article L336-3 of the Intellectual Property Code as worded pursuant to the Act furthering the Diffusion and Protection of Creation on the Internet provides "A person who has subscribed to internet access to online public communication services is under a duty to ensure that said access is not used for reproducing, showing, making available or communicating to the public works or property protected by copyright or a related right without the authorization of the copyright holders provided for in Books I and II when such authorization is required".

Contrary to what is claimed by the parties making the referral, the definition of this duty is distinct from that of the offence of infringing copyright. It is defined in sufficiently clear and precise terms. When imposing this duty Parliament neither failed to exercise fully the powers vested in it by Article 34 of the Constitution nor failed to comply with the constitutional objective of intelligibility and accessibility of the law.
(Decision nº 2009-580 DC, June 10th 2009, paras 6 and 7, p. 107)

Failure to exercise full powers to legislate

Article 34 of the Constitution reserves for statute law the laying down of the rules of criminal procedure. Paragraph 2 of Article 495-6-1 of the Code of Criminal Procedure provides that under the summary procedure, the injured party may make a claim for damages and, as the case may be, oppose the criminal order. This provision does not however determine the manner in which such a claim may be brought. It does not specify the effects of any opposition by the injured party and does not guarantee the right of the accused to limit his opposition to the sole civil provisions of the criminal order or to the sole criminal provisions thereof. Censure for failure to exercise full powers
(Decision nº 2009-590 DC, October 22nd 2009, para.14, p. 179)

Principles of necessity and proportionality

Nature of review by the Constitutional Council

Review of patent error of appraisal

Article 61 of the Constitution does not vest the Constitutional Council with any general power of appraisal and decision-making similar to that vested in Parliament. It merely confers upon it jurisdiction to rule on the conformity with the Constitution of statutes referred for review. Although the necessity of punishments for offences is the preserve of the power of appraisal of Parliament, it is incumbent upon the Constitutional Council to ensure that there is no patent disproportion between the offence committed and the punishment incurred.
(Decision nº 2009-590 DC, October 22nd 2009, paras 18 to 20, p. 179)

No failure to comply with the principles of necessity and proportionality of punishments

Determination of offences and punishments

The introduction of a supplementary penalty designed to punish offences of infringement of copyright committed by the use of a public online communication service and consisting in suspending access to such a service for a maximum period of one year, together with a

prohibition on entering into another contract for the same services with any other provider does not fail to comply with the principle of the necessity of punishments.
(Decision nº 2009-590 DC, October 22nd 2009, para 21, p. 179)

The proportionate nature of a punishment is to be appraised taking into account all the ingredients of the offence which it is sought to punish. In the case in hand, section 8 of the Act pertaining to the Protection under Criminal law of Literary and Artistic Property on the Internet does not introduce a new offence but firstly creates a new class of supplementary penalty applicable to certain class five offences and secondly clearly specifies the conditions in which such a supplementary penalty may be imposed. It is up to the body vested with the power to make regulations, when exercising the powers vested in it by Article 37 of the Constitution, and under the supervision of the courts with relevant jurisdiction, to define the ingredients of said offence. The arguments that the new charge fails to comply with Article 8 and 9 of the Declaration of 1789 must therefore be dismissed.
(Decision nº 2009-590 DC, October 22nd 2009, para 28, p. 179)

Section 11 of the Act pertaining to the Protection under Criminal law of Literary and Artistic Property on the Internet of amends Article 434-41 of the Criminal Code and punishes by a sentence of two years'imprisonment and a fine of 30 000€ " failure by the convicted offender to comply with the obligations or prohibitions arising from penalties ... prohibiting the entering into any new contract for the access to public online communication services imposed as a supplementary penalty for a criminal offence by Article L 335-7 of the Intellectual Property Code". Contrary to the contentions of the parties making the referral, this provision does not introduce a patently disproportionate penalty.
(Decision nº 2009-590 DC, October 22nd 2009, para 31, p. 179)

Presumption of innocence

Principle of prohibition of presumptions of guilt in criminal matters

Under Article 9 of the Declaration of 1789, every man is presumed innocent until proved guilty. Parliament cannot therefore introduce a principle of presumption of guilt in criminal matters. However, as an exceptional measure, such a presumption may be introduced, particularly in the case of minor offences, once such presumptions are not irrebuttable, the rights of the defence are respected and the available facts tend to confirm the likelihood of the commission of the incriminated act.

In the case in hand, under the provisions referred for review, the commission of an infringement of copyright at the address of the registered subscriber constitutes, according to the terms of the second paragraph of Article L 331-21 "the material ingredients of the breach of duty defined in Article L 336-3". Solely the party to the internet access contract may be the object of the penalties introduced by the provisions referred for review. In order to avoid the imposition of such penalties it is incumbent upon him, under Article L 331-38, to adduce evidence that the infringement of copyright or related rights was due to fraud perpetrated by a third party. Thus by reversing the burden of proof, Article L 331-38, introduces, contrary to the requirements deriving from Article 9 of the Declaration, a presumption of guilt on the part of the internet access holder such as to entail the imposition of penalties restricting or depriving him of his rights.
(Decision nº 2009-580 DC, June 10th 2009, paras 17 and 18, p. 107)

Respect for the rights of the defence, the right to a fair trial and effective judicial redress in criminal matters

Provisions regarding prosecution and alternatives to prosecution

Exceptional proceedings departing from normal principles and requiring the agreement of the offender

Criminal Order

As the Constitutional Council held in paragraphs 78 to 82 of its decision of August 29th 2002, the summary procedure provided for by Articles 495 to 495-6 of the Code of Criminal

Procedure does not fail to comply with the principle of equality before the law. Neither does extending the scope of the application of this procedure to offences of infringement of copyright committed by use of public online communication services and the possibility for ordering suspension of access to said services by a criminal order.
(Decision nº 2009-590 DC, October 22nd 2009, para.12, p. 179)

Enforcement of penalties

No constitutional rule or principal precludes an administrative authority from participating in the enforcement of the supplementary penalty of suspension of access to the Internet.
(Decision nº 2009-590 DC, October 22nd 2009, para.24, p. 179)

Section 91 of the Prison Act, which rewords Article 726 of the Code of Criminal Procedure, introduces the two most serious disciplinary measures, namely placement in a punishment cell and solitary confinement in a normal cell. It specifies the maximum length of time for such measures. It provides for a shorter time for minors over 16 who may, exceptionally, be placed in a punishment cell. It establishes the right of prisoners subjected to one or other of these disciplinary measures to have weekly access to the 'visiting room' in the conditions to be fixed by Decree after consultation with the *Conseil d'Etat*. It makes the continued application of these disciplinary measures dependent upon their compatibility with the health of the prisoner involved. It guarantees the right of the prisoner to be assisted by an Attorney during disciplinary proceedings and the right of a person placed in a punishment cell or in solitary confinement to petition the judge sitting in summary jurisdiction under Article L 521-2 of the Code of Administrative Justice. These provisions do not infringe the principle of protection of the dignity of the human being and do not deprive any constitutional requirements of statutory guarantees.

As for the rest, section 91 leaves it to a Decree after consultation with the *Conseil d'Etat* to determine the disciplinary procedure applicable to persons serving terms of imprisonment, to define reprehensible behaviour and the various punishments incurred in view of the seriousness of such behaviour, to determine the composition of the Disciplinary Committee and the procedure applicable thereto. It will therefore be incumbent upon the drafters of said Decree not to provide for punishments which adversely affect the rights and freedoms which continue to inure to the benefit of said persons within the limits inherent in the constraints involved in the serving of terms of imprisonment. With this qualification, by leaving it to a Decree issued after consultation with the Council of State to specify punishments other than placement in a punishment cell or in solitary confinement Parliament did not fail to exercise its powers to the full.
(Decision nº 2009-593 DC, November 19th 2009, paras 5 and 6, p. 196)

Enforcement of custodial sentences in criminal matters handed down by the *Tribunal Correctionnel* and the *Cour d'Assises* is designed not only to protect Society and ensure punishment of the convicted offender but also to encourage the latter to rethink his behaviour and prepare for his possible reinsertion into Society. It is thus incumbent upon Parliament, competent under Article 34 of the Constitution to determine the rules concerning criminal law and procedure, to lay down the conditions and manner of enforcing custodial sentences while respecting the dignity of the human being.
(Decision nº 2009-593 DC, November 19th 2009, para.3, p. 196)

It is however incumbent upon Parliament to guarantee the rights and freedoms which continue to inure to the benefit of said persons within the limits inherent in the constraints involved in the serving of terms of imprisonment
(Decision nº 2009-593 DC, November 19th 2009, para.4, p. 196)

Guarantee deriving from the intervention of a Court of Law

Imposition of punishments and measures in the nature of a punishment

Paragraph 2 of Article L 335-7 of the Code of Intellectual Property provides that when services are purchased as part of a commercial package including other types of service such as

telephone or television connections, the decision to suspend online access shall not affect subscriptions to these other services. Although, for reasons connected with the features of network communications in certain areas, the impossibility of enforcing the provisions of paragraph 2 of Article L 335-7 of the Code of Intellectual Property may temporarily preclude the actual implementation of the supplementary penalty of suspension of access to the Internet, such a circumstance, which it is up to the judge to take into consideration when imposing the penalty, is not *per se* such as to constitute any failure to comply with the principle of equality before the law.
(Decision nº 2009-590 DC, October 22nd 2009, para.23, p. 179)

EQUALITY

EQUALITY BEFORE THE LAW

Principle

Although, generally speaking, the principle of equality requires that people in the same situation be treated alike, this does not necessarily mean that people in different situations should be treated differently
(Decision nº 2009-573 DC, January 8th 2009, para 30, p. 36)

Article 6 of the Declaration of 1789 proclaims: "The Law ... shall be the same for all, whether it protects or punishes". 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 difference in treatment is directly connected with the purpose sought to be achieved by the statute which introduces such different treatment.
(Decision nº 2009-578 DC, March 18th 2009, para.19, p. 73)

The principle of equality does not prevent Parliament from treating different situations in a different manner, nor from departing from the principle of equality for reasons of general interest, provided that in both cases the resulting difference of treatment is directly connected with the purpose of the statute which provides for the same.
(Decision nº 2009-588 DC, August 6th 2009, para.16, p. 163)

Respect for the principle of equality: no unjustified discrimination

Territorial Communities

Compensation by the State for the loss of tax revenue

3.2 of section 77 of the Finance Act for 2010 specifies the manner of implementation of a new "users'contribution" which has Communes and Public Establishments of Inter-communal cooperation (EPCI) which benefit from specific tax measures finance a fraction of the amount of the reduction of the territorial economic contribution (CET) granted to certain business concerns. The Communes and the ECPI shall be required to bear this fraction if the reduction is granted for longer than one year. The parties making the referral argue that this system might lead to Communes which apply the same tax policy contributing to this reduction in very different proportions and that consequently this system would lead to a difference of treatment between Communes justified by no grounds of general interest. This new system is in fact more favourable than the previous one for Communes and EPCI and does not introduce any patent infringement of equality before public burden sharing. Dismissal.
(Decision nº 2009-599 DC, December 29th 2009, paras 19, 20 and 24, p. 218)

Under II of Article 1640B of the General Tax Code (CGI) by 4.1 of section 2 of the Finance Act for 2010, Territorial Communities and Public Establishments of Inter-Communal Cooperation (ECPI) which benefit from specific tax measures shall receive for the year 2010, instead of the proceeds of the local tax on businesses, a bridging compensation. The amount of the latter shall, for each Community or Public Establishment be equal to the greatest of the two following amounts: "(i) the proceeds of the local business tax which would result .. from the application for the year 2010 of the provisions pertaining to this tax in their version in force as of December 31st 2009. However when computing these proceeds, firstly deliberations applicable in 2009 to the bases of the local tax on businesses shall apply and secondly the rate retained shall be that of the local business rate ..for taxes levied for 2009 in the limit of the rate voted for the year 2008 plus 1 %; and (ii) the proceeds of the local tax on businesses for the Territorial Community or the Public Establishment for 2009". The same provision also provides that Communes and ECPI which benefit from specific tax measures shall, if need be, receive an amount taking into account the effects of the "bridging rate" of the real property tax levied on businesses which they voted under I of the same section. The parties making the referral contend that the system retained would introduce inequalities between Communities depending on whether or not they had increased their local tax on businesses on 2009. The method of computation both of the "bridging compensation" and of the increase in the latter to the benefit of Communes and ECPI which benefit from specific tax measures, implemented for the sole year 2010, makes it possible for it to be based on decisions taken by Territorial Communities during 2009. In view of the transitory nature of this measure, consequent upon the suppression of the local tax on businesses, statute law was free to lay down the rule whereby the rate of the local business tax voted in 2009 would only be taken into account in the limit of the rate applicable in 2008 plus 1 %, in order to preclude any greater increase in this tax for reasons other than the announcement of the suppression of the local tax on businesses. The provisions retained do not introduce any inequality of treatment between Territorial Communities other than that introduced on the grounds of general interest. Dismissal
(Decision nº 2009-599 DC, December 29th 2009, paras. 26 to 30, p. 218)

Criminal law and procedure

Paragraph 2 of Article L 335-7 of the Code of Intellectual Property provides that when services are purchased as part of a commercial package including other types of service such as telephone or television connections, the decision to suspend online access shall not affect subscriptions to these other services. Although, for reasons connected with the features of network communications in certain areas, the impossibility of enforcing the provisions of paragraph 2 of Article L 335-7 of the Code of Intellectual Property may temporarily preclude the actual implementation of the supplementary penalty of suspension of access to the Internet, such a circumstance, which it is up to the judge to take into consideration when imposing the penalty, is not per se such as to constitute any failure to comply with the principle of equality before the law.
(Decision nº 2009-590 DC, October 22nd 2009, para.23, p. 179)

Social Law

Conditions for obtaining of benefits

As had previously been the case with the Minimum Insertion Income (RMI), Article L 262-4 of the Family and Social Welfare Code currently in force excludes from the benefit of the Active Solidarity Income young persons under 25 except for those who assume "the financial support of one or more existing or expected children". Section 135 of the Supplementary Finance Act for 2009 was designed to extend the benefit of such welfare payments to persons having been in employment. It therefore tends to reduce disparities between persons under 25 who have some professional experience and those aged 25 who are in the same situation. It thus does not infringe the principle of equality before the law.
(Decision nº 2009-599 DC, December 29th 2009, para 102, p. 218)

Economic Law

Public procurement order

The provisions of the Act for the acceleration of building and investment programmes, which enables the sole bidder retained to vary the final cost of his tender, are designed to take temporarily into account the instability of financial markets when determining "methods of financing" of the partnership project. They cannot result in calling into question the conditions of the tender by exempting the Community from the obligation to respect the principle of acceptance of the most economically advantageous offer. With this qualification, they do not infringe the principle of equality before public procurement orders deriving from Article 6 of the Declaration of 1789. Qualified.
(Decision nº 2009-575 DC, February 12th 2009, para. 4, p. 48)

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

Social law

By reserving access to training leading to the qualification of psychotherapist to holders of the Degree of Doctor of Medicine or Master in Psychology or Psychoanalysis, section 91 of the Act reforming Hospitals and pertaining to Patients, Health and Territories (amending section 52 of Act nº 2004-806 of August 9th 2004 pertaining to public health policy) has ensured a reconciliation between freedom of enterprise and the requirements of paragraph 11 of the Preamble to the Constitution of 1946 concerning the protection of health which is not disproportionate
(Decision nº 2009-584 DC, July 16th 2009, para. 19, p. 140)

Conditions for obtaining of benefits

Section 135 of the Supplementary Finance Act for 2009 was designed to extend the benefit of such the Active Solidarity Income to young persons under 25 having been in employment. It therefore tends to reduce disparities between persons under 25 who have some professional experience and those aged 25 who are in the same situation. It thus does not infringe the principle of equality before the law.
(Decision nº 2009-599 DC, December 29th 2009, para 103, p. 218)

Employment law and Trade Union law

Employees working on Sunday in touristic Communes or areas under an automatic exception connected with the characteristics of the touristic activities of such areas are, where the statute is concerned, in a different situation from employees working in "perimeters of exceptional consumer activity" under a temporary administrative exception. Parliament was thus free to provide for a statutory increase in pay for employees in the second category in the absence of a collective agreement.

The different treatment arising from the foregoing between automatic exceptions, where employees, in view of the nature of their activity, only have the benefit of contractual guarantees and individual and temporary exceptions for which, in view of their exceptional nature, employees have the benefit of statutory guarantees, is directly connected with the purpose of the statute
(Decision nº 2009-588 DC, August 6th 2009, paras 17 to 20, p. 163)

Infringement of the principle of equality

Territorial Communities

The city of Paris, which has a specific administrative system because of its status as the seat of government, constitutes in itself a category of territorial community. However in view of the

purpose of new Article L 3132-25, namely the procedure of classing a touristic Commune or area within the meaning of the Employment Code, no difference in situation justifies a failure to entrust the Mayor of Paris with the powers to make recommendations, which current statutes vest in the City Council, as is the case in other Communes, including Lyon and Marseille. The 2nd paragraph of Article L 3132-25 is unconstitutional in that it refers to paragraph 2 of Article L 3132-26. The reference to Article L 3132-26 should thus be construed as referring to paragraph 1 of said Article
(Decision nº 2009-588 DC, August 6th 2009, paras 21 to 23, p. 163)

Social law

When excluding from the new procedure of lease termination certain occupants of low cost social housing in view of their legal situation prior to the acquisition or taking over of the management of their building by a low cost social housing bailor or a mixed economy company, sections 61 and 64 of the Act on mobilisation for housing and the fight against exclusion have taken into consideration a difference in situation unconnected with the intended purpose of Parliament to allocation such housing to the most needy. No grounds of general interest justify such difference in treatment. Censure of corresponding provisions.
(Decision nº 2009-578 DC, March 18th 2009, para.20, p. 73)

If the principle of measures favouring persons durably installed in New Caledonia for access to salaried employment or a n independent profession have their constitutional foundation in the Noumea Agreement, the implementation of such a principle, which departs from the constitutional principle of equality before the law guaranteed by Article 6 of the Declaration of the Rights of Man and the Citizen of 1789, cannot serve to justify other restrictions than those strictly necessary for the implementation of said Agreement.
(Decision nº 2009-587 DC, July 30th 2009, paras 18 and 19, p. 152)

EQUALITY BEFORE JUSTICE

Equality and rights – Guarantees of citizens coming under the jurisdiction of the courts

Equality and rules of procedure

Rights of the defence

If Parliament is at liberty to provide for different rules of procedure depending on the facts of a case, the situations and persons involved, this is on condition that such differences do not arise from unjustified distinctions and that all persons enjoy the same guarantees, in particular as regards respect for the rights of the defence, which imply in particular that proceedings be just and fair.
(Decision nº 2009-590 DC, October 22nd 2009, para.10, p. 179)

Exceptional proceedings departing from normal principles for certain offences

Firstly, as regards the particularities of the offence of infringement of copyright committed by the use of a public online communication service, Parliament was at liberty to provide for specific rules governing prosecution for said offences. When providing that these offences be tried by the *Tribunal correctionnel* sitting with a single judge or prosecuted under a summary procedure, Parliament intended to take into account the extent of infringement of copyright committed via these communication services. The rules of procedure introduced by the challenged provisions do not create any difference between persons committing such acts.

Secondly, as the Constitutional Council held in paragraphs 78 to 82 of its decision nº 2002-461 August 29th 2002, the summary procedure provided for by Articles 495 to 495-6 of the Code of

Criminal Procedure does not fail to comply with the principle of equality before the law. Neither does extending the scope of the application of this procedure to offences of infringement of copyright committed by use of public online communication services and the possibility of ordering suspension of access to said services by a criminal order. The argument based on infringement of equality before Justice is thus dismissed.
(Decision nº 2009-590 DC, October 22nd 2009, paras 11 and 12, p. 179)

Courts

Composition and jurisdiction

Sole judge

As regards the particularities of the offence of infringement of copyright committed by the use of a public online communication service, Parliament was at liberty to provide for specific rules governing prosecution for said offences. When providing that these offences be tried by the *Tribunal correctionnel* sitting with a single judge or prosecuted under a summary procedure, Parliament intended to take into account the extent of infringement of copyright committed via these communication services. The rules of procedure introduced by the challenged provisions do not create any difference between persons committing such acts. The argument based on infringement of equality before Justice is thus dismissed.
(Decision nº 2009-590 DC, October 22nd 2009, para 11, p. 179)

EQUALITY BEFORE PUBLIC SERVICE

Equality before the public health service

Under Article L 6112-3 of the Public Health Code, as worded pursuant to section 1 of the Act reforming hospitals and pertaining to Patients, Health and Territories, private health establishments carrying out missions of public service shall be required, when carrying out such missions, to guarantee equal access by all to quality health care and to provide such care at regulated rates and fees. The challenged provisions do thus not infringe the principle of equality before public service deriving from Article 6 of the Declaration of the Rights of Man and the Citizen of 1789.
(Decision nº 2009-584 DC, July 16th 2009, para.5, p. 140)

EQUALITY BEFORE PUBLIC BURDEN SHARING

Meaning of the principle

Forbidding of excessive distinctions

Article 13 of the Declaration of 1789 proclaims "For the maintenance of the forces of law and order and administrative expenses a general tax is indispensable and shall be equally borne by all citizens in proportion to their ability to pay the same". Under Article 34 of the Constitution it is up to Parliament to determine, taking into account constitutional principles and the nature of each tax, to lay down the rules for appraising the ability of each citizen to pay taxes. In particular, to comply with the principle of equality, this appraisal must be based on objective and rational criteria in view of the purpose it is sought to achieve. This appraisal must not

however lead to any clear infringement of the principle of equality before public burden sharing.
(Decision nº 2009-577 DC, March 3rd 2009, para 25, p. 64; decision nº 2009-599 DC, December 29th 2009, paras 15 and 38, p. 218)

Although Article 13 of the Declaration of 1789 does not preclude Parliament from having certain categories of persons bear certain burdens on general interest grounds, this must not lead to lead to any patent infringement of the principle of equality before public burden sharing.
(Decision nº 2009-599 DC, December 29th 2009, para.72, p. 218)

Scope of principle

Purpose of legislation

Granting of advantages

Section 35 of the Supplementary Finance Act for 2009 amends Articles 200, 238bis and 885-0 V bis-A of the General Tax Code. It extends the benefit of certain tax reductions, in matters of income tax, corporation tax and the wealth tax to gifts and payments in favour of bodies having their Registered office in a Member State of the European Community or, on certain conditions, in the European Economic Area.

When passing these provisions Parliament intended to make French statute law conform to European Community law concerning the free circulation of capital. The granting of this tax advantage is thus justified by grounds of general interest.
(Decision nº 2009-600 DC, December 29th 2009, paras 2 to 4, p. 238)

Submission to constraints

In accordance with Article 34 of the Constitution, it is up to Parliament to determine, in compliance with constitutional principles and taking into account the specificities of each tax, the rules governing the taxation of taxpayers. The principle of equality does not preclude the creation of specific taxes designed to encourage taxpayers to change their behaviour in order to conform to objectives of general interest, provided that the rules laid down to said effect are justified as regards the purpose it is sought to achieve.
(Decision nº 2009-599 DC, December 29th 2009, para. 80, p. 218)

Equality in matters of all kinds of taxation

Carbon tax

Parliamentary debate on the Finance Act of 2010 introducing a carbon tax shows that the purpose of this tax is to "introduce means of making it possible to significantly reduce emissions" of greenhouse gas in order to fight against global warming. To attain this purpose the option retained was "to introduce an additional tax on the consumption of fossil fuels" so that businesses, households and administrations be incited to reduce their carbon emissions.

The Constitutional Council found that the reductions in the rate of the carbon tax or special tax rates may be justified by the pursuit of a goal in the general interest, such as safeguarding competitiveness of economic sectors confronted with international competition, and also that exemption from the payment of such a tax may be total if the economic sectors involved are specifically required to contribute by particular means. It found that, although certain businesses exempted from payment of the carbon tax are subjected to a system of exchange of quotas of greenhouse gas emissions in the European Union, these quotas are currently distributed free of charge and that the system of paying quotas will only come into force in 2013 and progressively come on stream in the years up to 2027. It therefore deduced that 93 % of industrial carbon dioxide emissions, exclusive of fuel, will be totally exempt from paying the

carbon tax, and that the activities covered by the carbon tax will represent less than half of the total emissions of greenhouse gas and that the carbon tax will concern essentially fuel and heating products which are only one source of carbon emissions. It concluded that, in view of their substantial nature, the total exemptions introduced by section 7 of the Finance Act run counter to the goal of fighting global warming and introduce a patent infringement of the equality of all before public burden sharing.
(Decision nº 2009-599 DC, December 29th 2009, paras 81 and 82, p. 218)

Territorial Economic Tax (CET)

1.2 of section 2 of the Finance Act for 2010, pertaining to the "general rules governing the real property tax paid by businesses" (CFE) an element of the Territorial Economic Tax (CET), rewords Article 1476 of the General Tax Code (CGI). 2° of this Article introduces a specific regime for those in the liberal professions, business agents, persons acting in a fiduciary capacity, trade intermediaries who employ fewer than five staff and are not subject to corporation tax. For these categories of taxpayers, the real property tax paid by businesses is not based on the sole rental value of property on which a property tax is levied but also takes into account 5.5 % of their revenue. 2.1 of Section 2 of the same statute introduces the tax on added value of businesses (CVAE), another element of the CET which is levied on businesses with a turnover of more than 152 500 euros. However businesses whose turnover is less than 500 000 euros are exempt from the CVAE. Taxpayers referred to in 2° of Article 1467 of the General Tax Code who employ more than 4 staff but have a turnover of under 500 000 euros shall be subjected to the normal rules as regards the CFE, whereas these same taxpayers, if they employ less than 5 staff will be taxed on a base comprising 5.5 % of their revenue in addition to the rental value of their real property. These same taxpayers would, in both events, have been exempted from payment of the CVAE. The system introduced would therefore lead to treating differently two categories of taxpayers in identical situations where the law is concerned. The fact that, among the taxpayers referred to above having a turnover of less than 500 000 euros, those employing fewer than 5 staff would have to bear a greater tax burden constitutes a patent infringement of the principal of equality before taxation. The words " Thus, in 1° of Article 1467 of the General Tax Code, the words " In the case of taxpayers other than those referred to in 2°", the first paragraph of 2° and consequently the second indent of paragraph 1 of Article 1586 of the same Code are thus held to be unconstitutional".
(Decision nº 2009-599 DC, December 29th 2009, paras 13 to 18, p. 218)

Section 2 of the Finance Act for 2010 fixes the manner for computing the tax on added value of businesses (CVAE) an element of the Territorial Economic Tax (CET). It provides that businesses are in principle required to pay this tax at a rate of 1.5 % irregardless of their turnover once the latter exceeds 152 500 euros. It organizes a mechanism for reducing this tax depending on the turnover of a business. The Constitutional Council is not vested with any general power of appraisal and decision-making similar to that vested in Parliament. It is not incumbent upon it to seek to determine whether the purpose which Parliament seeks to attain could have been attained by other means, once the means chosen are not patently inappropriate for attaining said purpose. When retaining the turnover of businesses to assess their ability to pay taxes, Parliament did not commit any patent error of appraisal.
(Decision nº 2009-599 DC, December 29th 2009, paras 36 to 39, p. 218)

2.1.1. of section 2 of the Finance Act for 2010 introduces a mechanism for capping added value used as a base for computing the tax on added value of businesses, an element of the CET. This added value is capped at 80 % of turnover for businesses with a turnover of less than 7.6 million euros and at 85 % of the turnover of businesses with a turnover greater than said amount. When making these two different rates dependent upon whether or not a business has a turnover higher or lower than 7.6 million euros, Parliament intended to take into account the specificities of businesses employing a considerable work-force. Hence the capping mechanism does not lead to different treatment of taxpayers in situations which are objectively identical.
(Decision nº 2009-599 DC, December 29th 2009, paras 40 to 42, p. 218)

Under 2.1.1 of section 2 of the Finance Act for 2010 the added value in the Commune where the taxpayer has premises or employs staff for a period of more than three months is taxed under the tax on the added value of businesses, an element of the CET. When a taxpayer has

premises or employs staff having worked for three months or more in different Communes, the added value shall be taxed in each Commune and divided between them pro rata the number of staff employed there. An "anti-abuse" measure provides in particular that, under certain restrictive conditions, in the event of contributions to capital, cessation of business or splitting of businesses as from October 22nd 2009, the turnover retained for computation of the tax shall be equal to the total turnover of entities in which the holding exceeds 50 %. By only retaining the consolidated turnover at national level of businesses which have establishments in different Communes, Parliament intended to tax the added value in the Commune where the taxpayer has premises or staff employed for longer than three months. The challenged provision does not infringe the principle of equality before taxation.
(Decision nº 2009-599 DC, December 29th 2009, paras 43 to 46, p. 218)

Flat rate taxation on network businesses

When replacing the local tax on businesses by the Territorial economic tax, Parliament intended to preserve the revenue of Territorial Communities by subjecting network businesses to a new flat rate taxation. In view of the field of activity of these businesses, the conditions in which they do business and their presence throughout France, there has been no patent infringement of equality before public burden sharing.
(Decision nº 2009-599 DC, December 29th 2009, para.73, p. 218)

Income tax (private individuals)

Daily allowances for occupational injuries are replacement income consequent upon an occupational injury. Parliament was at liberty, in order to take into account the particular nature of these allowances and the origin of the inability to work, to decide that 50 % of the sum paid out be considered as wages. Section 85 of the Finance Act for 2010 has thus not created any unjustified difference in treatment between the beneficiaries of daily allowances for occupational injuries and other persons receiving daily allowances because their physical state makes them unfit for work.
(Decision nº 2009-599 DC, December 29th 2009, para.87, p. 218)

Tax on operators of electronic communications

All electronic communications operators, within the meaning of Article L 32 of the Post Office and Telecommunications Code, supplying services in France and having duly registered with the Authority for regulating electronic communications and postal services pursuant to Article L 33-1 of the same Code, will be required to pay this new tax. When thus defining the category of companies required to pay said tax, insofar as said companies differ from other companies in particular because of the specific nature of their business and the manner they carry it on, Parliament based its decision on objective and rational criteria directly connected with the purpose it was sought to achieve
(Decision nº 2009-577 DC, March 3rd 2009, para 26, p. 64)

Equality in fields other than all kinds of taxation

Territorial Communities

The parties making the referral argue that the statute designed to guaranteed equal financing of elementary public and private schools infringes the principle of equality before public burden sharing "by exempting the financing of private school from the prior approval of the Mayor whereas such approval is required for public schools". Although Article 13 of the Declaration of the Rights of Man and the Citizen of 1789 does not prohibit making certain categories of persons bear specific burdens in the general interest, this must not lead to any patent infringement of equality before public burden sharing. This participation by the Commune of residence in the operating costs of both public and private elementary schools which have entered into a contract with the State and are not situated on the territory of said Commune is not subject to the prior approval of the Mayor when this expenditure is of an mandatory nature provided for by law. When these conditions are not met, the application of

the statute referred for review does not entail any mandatory financial consequence for the Commune of residence in the case of enrolment of a child in a private school under contract with the State situated in another Commune. The argument of infringement of the principle of equality before public burden sharing is thus unsupported by the facts.
(Decision 2009-591 DC, October 22nd 2009, paras 10 to 12, p. 187)

3.2 of section 77 of the Finance Act for 2010 specifies the manner of implementation of a new "users'contribution" which has Communes and Public Establishments of Inter-communal cooperation (EPCI) which benefit from specific tax measures finance a fraction of the amount of the reduction of the territorial economic contribution (CET) granted to certain business concerns. The Communes and the ECPI shall be required to bear this fraction if the reduction is granted for longer than one year. The parties making the referral argue that this system might lead to Communes which apply the same tax policy contributing to this reduction in very different proportions and that consequently this system would lead to a difference of treatment between Communes justified by no grounds of general interest. This new system is in fact more favourable than the previous one for Communes and EPCI and does not introduce any patent infringement of equality before public burden sharing. Dismissal.
(Decision nº 2009-599 DC, December 29th 2009, paras 19, 20 and 24, p. 218)

Review of the principle – Conditions of review

Scope of the power to enact laws

Determination of nature of reduction

Section 35 of the Supplementary Finance Act for 2009 amends Articles 200, 238bis and 885-0 V bis-A of the General Tax Code. It extends the benefit of certain tax reductions, in matters of income tax, corporation tax and the wealth tax to gifts and payments in favour of bodies having their Registered office in a Member State of the European Community or, on certain conditions, in the European Economic Area.

The conditions governing approval of the bodies to which such gifts and payments are made must be identical to those applicable to bodies situated on French territory. In the case of failure to obtain such approval, the benefit of said tax reductions can only be granted if "the taxpayer has produced within the time allotted for making tax returns written proof that the body involved has the same objectives and similar features to bodies having their Registered Office in France". The argument that Parliament failed to exercise its powers to the full must therefore be dismissed.
(Decision nº 2009-600 DC, December 29th 2009, paras 2 to 4, p. 238)

Monitoring of the principle – exercising of such monitoring

Proportionality of statutory provisions

Proportionality as regards ability of taxpayers to pay taxes (tax of a confiscatory nature)

The new tax is calculated on the amount before VAT of subscriptions and other payments made by users of electronic communication services. Certain amounts paid by operators for services such as access and interconnections, for the supply or distribution of audiovisual communication services and the use of universal directory enquiries services are excluded from the tax computation base. In addition depreciation allowances covering at least ten years for material and equipment necessary for electronic communication infrastructures and networks are also deducted from this base. A deduction of five million euros, designed to preserve new operators in this rapidly growing sector, is also made from the computation base.

In view of all the foregoing provisions, neither the fixing of the computation base for this new tax, nor the fixing of the rate thereof at 0.9 % can be considered as being a patent infringement of the principle of equality before public burden sharing.
(Decision nº 2009-577 DC, March 3rd 2009, para 27, p. 64)

When passing section 101 of the Finance Act for 2010, Parliament intended to ensure a more complete taking into account, when calculating the ceiling of direct taxation, of income from securities actually received by shareholders. Section 56 of the Supplementary Finance Act for 2009 which postpones this reform, does not infringe the principle of equality before public burden sharing.
(Decision nº 2009-600 DC, December 29th 2009, paras 5 to 8, p. 238)

EQUALITY IN PUBLIC EMPLOYMENT

Equal access to public employment

Rules of recruitment for public posts

If the principle of measures favouring persons durably installed in New Caledonia for access to salaried employment or an independent profession have their constitutional foundation in the Noumea Agreement, the implementation of such a principle, which departs from the constitutional principle of equality before the law guaranteed by Article 6 of the Declaration of the Rights of Man and the Citizen of 1789, cannot serve to justify other restrictions than those strictly necessary for the implementation of said Agreement.
(Decision nº 2009-587 DC, July 30th 2009, paras 18 and 19, p. 152)

Neither the principle of equal access to public posts nor the principle of equality of treatment in the unfolding of the career of public agents precludes treating differently applicants or agents in different situations once such different treatment is of an objective nature and is motivated by the interest attached to the continuity of public services. In the case in hand, the State civil servants, hospital or territorial public servants, hospital practitioners, agents under contracts of public or private law, carrying out their duties in services whose activity is transferred to Regional Health Agencies at the date of such transfer are in a different situation from other personnel. Parliament was thus free, without infringing the principle of equality, to provide for their appointment to such Agencies without modifying their previous contractual or legal standing.
(Decision nº 2009-584 DC, July 16th 2009, paras 24 to 27, p. 140)

Compliance with the requirements as to the ability of applicants

The principle of equal access to public posts does not preclude Parliament from providing that persons who are not civil servants may be appointed to permanent managerial posts in public establishments which are normally the preserve of civil servants. However these provisions should not be interpreted as making it possible to proceed to recruit staff without complying with the requirements of Article 6 of the Declaration of 1789. Therefore firstly, it is incumbent upon those vested with the power to make regulations, in charge of taking measures for the implementation of such provisions, to lay down rules designed to guarantee equal access of all applicants to such posts and to specify the manner in which their suitability and abilities are to be examined. Secondly, it is incumbent upon the competent Authorities to base their decision as to appointment on the abilities of the appointee to carry out his/her duties. With this twofold qualification, these provisions do not failure to compliance with the principle of equal access to public posts.
(Decision nº 2009-584 DC, July 16th 2009, para.12, p. 140)

PUBLIC FINANCES

BUDGETARY AND TAX PRINCIPLES

Principle of universality

Contents

Principle of no consolidation

Article 34 of the Constitution provides: " Statutes shall determine ...the base, rates and methods of collection of all types of taxes....". Section 6 of the Institutional Act of August 1st 2001 referred to above provides that "The budgetary income and outgoings of the State are set out in the budget as revenue and expenditure. The budget specifies for one year all budgetary revenue and expenditure of the State. Each item shall be entered in full and no consolidation shall be made between revenue and expenditure.."

Parliament was at liberty, when having the budget of the State compensate for the loss of advertising revenue by the group France Télévisions, to introduce a new tax intended to increase the revenue of the budget of the State to meet this commitment. It was under no constitutional or institutional requirement to depart from the abovementioned principles of budgetary unity and universality referred to above.
(Decision nº 2009-577 DC, March 3rd 2009, paras 23 and 24, p. 64)

Section 30 of the Act pertaining to Audiovisual Communication and the New Public Television Service which excludes as from January 1st 2010 from the beneficiaries of the audiovisual licence fee the public interest group "France Télé Numérique" and deletes the corresponding entry in the mission "Advances to the audiovisual sector" modified the appropriation of this licence fee and thus encroached upon the field exclusively reserved for Finance Acts. It was thus held to be unconstitutional.
(Decision nº 2009-577 DC, March 3rd 2009, paras 32 to 34, p. 64)

Exceptions

Territorial Communities

Section 8 of the Institutional Act of August 1st 2001 on Finance Acts, submitting the budget of the State to the principle of budgetary universality, is not applicable to the budget of Territorial Communities. The argument based on infringement of this principle is thus inoperative.
(Decision nº 2009-599 DC, December 29th 2009, para.95, p. 218)

Principle of accuracy

Finance Act

The Institutional Act pertaining to Finance Acts of 2001

In accordance with Articles 14 and 15 of the Declaration of the Rights of Man and the Citizen revenue and expenditure of the State must be presented accurately. Section 32 of the Institutional Act of August 1st 2001 concerning Finance Acts provides that; "Finance Acts shall give a true and accurate picture of all State revenue and expenditure. Their accuracy shall be assessed in the light of available information and estimates which may reasonably be made on the basis of such information". The principle of accuracy and true and fair presentation does not therefore have the same scope depending on whether it applies to Finance Review Acts or

other Finance Acts. In the case of year Finance Acts, Supplementary Finance Acts and special statutes passed under emergency procedures provided for in section 45 of the Institutional Act, accuracy, true and fair presentation mean the lack of any intention to distort the broad outlines of the equilibrium determined by the Finance Act. When employed in connection with the Finance Review Act the terms accuracy, truthfulness and fairness also mean that the accounts themselves must be accurate, true and fair.
(Decision nº 2009-585 DC, August 6th 2009, para.2, p. 159)

The parties making the referral raise three arguments which, according to them, show failure to comply with the principle of the accuracy and truthfulness of a Finance Review Act. The first argument, that the "expenditure" of the State payable in 2008, relating in particular to premiums paid in home-buyers savings schemes, to monies owed by the State to social security bodies, and "outstanding debts" of the Minister of Defence, had been "carried forward" to the following financial year was dismissed. Section 1 of the Finance Review Act merely retraces, on the basis of the relevant accounts, revenue received and expenditure paid out during the year in question, irregardless of whether or not these operations are regular. The second argument, concerning an error in imputation of expenses involved in computing and collecting local taxes, levied by the State under Article 1641 of the General Tax Code, was held to be inoperative. The imputation of this tax of all types in non tax revenue in the 2008 budget was in fact in conformity with Schedule A of the initial Finance Act, the requirement of accuracy of accounts merely applying to the amount of revenue received and expenditure paid out during the budgetary financial year. The third argument, challenging the mechanism known as " budgetary rents" was dismissed. It had no influence on the budgetary balance fixed by the Finance Review Act, even if it apparently increased the expenditure and revenue of the State. In all events, it is not incumbent upon the Constitutional Council, which is not vested with the same power of appraisal as that enjoyed by Parliament, to rectify the Finance Review Act.
(Decision nº 2009-585 DC, August 6th 2009, paras 4 to 7, p. 159)

Under section 32 of the Institutional Act of August 1st 2001 pertaining to Finance Acts, the accuracy of a year Finance Act means the lack of any intention to distort the broad outlines of the equilibrium as determined by said Act.
(Decision nº 2009-599 DC, December 29th 2009, para.3, p. 218)

The elements submitted to the Constitutional Council do not show that the evaluations of revenue for 2010 are flawed by any deliberate intention to underestimate the same, taking into account the unknown factors inherent in such evaluation and the particular uncertainties concerning the evolution of the economy in 2010. Furthermore, under 10° of paragraph I of section 34 of the Institutional Act of August 1st 2010 pertaining to Finance Acts, paragraph IV of section 67 of the Finance Act for 2010 provides that any surpluses coming from all kinds of taxation "are used in their entirety to reduce the budget deficit". Dismissal of the argument of infringement of the principle of the accuracy of Finance Acts based on the supposed underevaluation of the economic growth hypotheses on which the Finance Act for 2010 is based.
(Decision nº 2009-599 DC, December 29th 2009, paras 4 and 5, p. 218)

Firstly, it is not incumbent upon the Constitutional Council, which is not vested with any general power of appraisal and decision-making similar to that vested in Parliament, to appraise the amount of authorisations of commitments and payment credits voted by Parliament. Even were they shown to be true, the insufficiencies denounced are not patently incompatible with foreseeable needs. Secondly, the indication appended to the Finance Bill of the percentage of temporarily unavailable limited credits complies with the provisions of section 51 of the Institutional Act of August 1st 2001 pertaining to Finance Acts. Dismissal of the argument of infringement of the principle of accuracy of Finance Acts based on the fact that certain budgetary credits were under-estimated and that the temporarily unavailability of credits was designed to finance credit needs during the implementation of the statute
(Decision nº 2009-599 DC, December 29th 2009, paras 6 and 7, p. 218)

The information given by the Government during debate on the Finance Bill regarding the contemplated measures for additional recourse to a loan, which are to give rise to a Supplementary Finance Bill under section 35 of the Institutional Act of August 1st referred to above, does not adversely affect the accuracy of the initial Finance Act. Dismissal of the argument based on the fact that the announced 'great loan'of 35 billion euros was not part of a Finance Act.
(Decision nº 2009-599 DC, December 29th 2009, paras 8 and 9, p. 218)

Accounts of Public Administrations (truth and accuracy)

Accounts kept by the general accounting service of the State must give a true and accurate reflection of the result of the management, of the assets and financial position of the State, as provided for by paragraph 2 of Article 47-2 of the Constitution and are subject to certification for which the *Cour des Comptes* is responsible under 5° of section 58 of the Institutional Act.
(Decision nº 2009-585 DC, August 6th 2009, para 3, p. 159)

EXAMINATION PROCEDURE

Documents appended to Government Bills

Deriving from Article 47 of the Constitution, section 12 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution completes sections 51 and 53 of the Institutional Act of August 1st 2001 on Finance Acts specifying the list of documents to be appended to the tabling of year Finance Bills or Finance Review Bills. It requires, without applying to them the procedure set out in paragraph 4 of Article 39 of the Constitution, that provisions which do not belong to the exclusive field of such Bills be accompanied by the documents referred to in the 10 final paragraphs of section 8 of the Institutional Act. Section 12 is not unconstitutional. However, in the event of any delay in distributing all or part of the documents required, the conformity of the Finance Act with the Constitution would be assessed with regard to the requirements of continuity of the life of the Nation. Qualification
(Decision nº 2009-579 DC, April 9th 2009, paras 27 to 29, p. 84)

Social Security Financing Act

Deriving from Article 47 of the Constitution, section 12 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution completes Article L.O 111-4 of the Social Security Code specifying the list of documents to be appended to the tabling of Social Security Financing Bill. It requires, without applying to them the procedure set out in paragraph 4 of Article 39 of the Constitution, that provisions which do not belong to the exclusive field of such Bills be accompanied by the documents referred to in the 10 final paragraphs of section 8 of the Institutional Act. Section 12 is not unconstitutional. However, in the event of any delay in distributing all or part of the documents required, the conformity of the Social Security Financing Act with the Constitution would be assessed with regards to the requirements of continuity of the life of the Nation. Qualification
(Decision nº 2009-579 DC, April 9th 2009, paras 27 to 29, p. 84)

Right of amendment of Members of Parliament (Art. 40)

Procedure for examining financial admissibility of amendments

Under Article 40 and paragraph 1 of Article 42 of the Constitution, each House must have implemented a system for the effective and systematic monitoring of admissibility when amendments are tabled, including at the level of the Committee to which the Bill is referred for consideration. The provisions of Article 89 of the Rules of procedure of the National Assembly which provide for: a systematic preliminary examination of Private Members'Bills by the Bureau of the National Assembly or some of the Members thereof prior to the tabling of said amendments; an identical monitoring of amendments tabled at the Committee stage by the Chairmen of the Committees to which said amendments are referred, if need be after consultation of the Chairman of the General Rapporteur of the Finance Committee; an assessment by the President of the National Assembly of the financial admissibility of the amendments tabled on the Bureau of the Assembly; the opposing at any moment of the

provisions of Article 40 of the Constitution by the Government or any Member as regards the Private Members'Bills or amendment, or any modifications introduced by the Standing Committees to Bills referred to them, are constitutional.
(Decision nº 2009-581 DC, June 25th 2009, paras 37 and 38, p. 120)

PERIMETER OF STATUTE LAW
(See also Title 3: Statutory and Regulatory norms of reference – Conditions for recourse to the law)

Perimeter of statutes

Exclusive preserve

Finance Act

Section 30 of the Act pertaining to Audiovisual Communication and the New Public Television Service which excludes as from January 1st 2010 from the beneficiaries of the audiovisual licence fee the public interest group "France Télé Numérique" and deletes the corresponding entry in the mission "Advances to the audiovisual sector" modified the appropriation of this licence fee and thus encroached upon the field exclusively reserved for Finance Acts. It was thus held to be unconstitutional.
(Decision nº 2009-577 DC, March 3rd 2009, paras 32 to 34, p. 64)

Optional field

Finance Acts

Under 7° of II of section 34 of the Institutional Act of August 1st 2001 referred to above, the year Finance Act may "include provisions directly affecting budgetary expenditure of the year". Under Paragraph IV of section 135 of the Supplementary Finance Act for 2009, the entire amount of monies paid out as Active Solidarity Income to the young people aged under 25 mentioned in Article L 262-7-1 of the Family and Social Welfare Code is financed for 2010 by the National Active Solidarity Fund. Under Article L. 262-24 of the same Code, the State ensures the equilibrium of this Fund as regards revenue and expenditure. Section 135, which extends to certain young people under 25 the benefit of the Active Solidarity Income has its place in a Finance Act.
(Decision nº 2009-599 DC, December 29th 2009, para.99, p. 218)

Prohibited field ("cavaliers") (*Provisions foreign to the field of Finance Acts*)

Finance Acts

The Institutional Act pertaining to Finance Acts

Section 108 of the Supplementary Finance Act for 2009 specifies the conditions for consulting the Committee for Local Finance and the Consultative Committee for assessment of norms mentioned in Article L.1211-4-2 of the General Code of Territorial Communities. Section 116 allows for the possibility of devolution of national monuments owned by the State and its Public Establishments to Territorial Communities willing to take over the same. Section 145 amends Articles L.112-2 and L 112-3 of the Monetary and Financial Code and Article L.145-34 and L.145-38 of the Commercial Code to reform the index-linking system of certain rents. These provisions are foreign to the field of Finance Acts as deriving from the Institutional Act of August 1st 2001 and were thus passed in proceedings which were unconstitutional.
(Decision nº 2009-599 DC, December 29th 2009, paras 108 to 111, p. 218)

Section 53 of the Supplementary Finance Act for 2009, which amends Article L.112-1 of the Town Planning Code and Article L.111-7-1 of the Building and Housing Code to introduce new possibilities for making exceptions to the rules as to accessibility of buildings and housing for the handicapped has no place in a Finance Act.
(Decision nº 2009-600 DC, December 29th 2009, paras 9 to 11, p. 238)

Section 98 of the Supplementary Finance Act for 2009 which fixes the date for the adhering of the Pole Emploi to the unemployment insurance system has no place in a Finance Act.
(Decision nº 2009-600 DC, December 29th 2009, para.12, p. 238)

Section 110 of the Supplementary Finance Act for 2009 pertaining to subsidies which certain 'Syndicats mixtes'may receive from a Territorial Community has no place in a Finance Act.
(Decision nº 2009-600 DC, December 29th 2009, para.12, p. 238)

Social Security Financing Act

Institutional Act pertaining to Social Security Financing Acts as amended in 2005.

Paragraphs III to IV of section 11 of the Social Security Financing Act for 2010 modify the conditions for the sale of medication not consumed in France and likely to be sold abroad. These provisions have no effect or an effect which is too indirect on revenue of mandatory basic healthcare systems or bodies contributing to the funding thereof. They therefore have no place in a Social Security Financing Act.
(Decision nº 2009-596 DC, December 22nd 2009, para.4, p. 215)

Section 36 of the Social Security Financing Act for 2010 restricts the rights of the holder of an intellectual copyright protecting the appearance and texture of oral forms of a pharmaceutical specialty. Section 38 suppresses the systematic conferring upon a patient's regular physician of the supervision and biological follow-up of local or hormonal contraception prescribed by a midwife. Section 50 authorises the publicizing on computer sites of healthcare centres of information concerning tariffs and fees of health care professionals working in such centres. Section 51 proceeds to coordinate the wording of Articles L.6111-3 and L 6323-1 of the Public Health Code. Section 57 validates the regrading of staff subsequent to the renewal of the national collective bargaining agreement of non profit-making private hospitals, healthcare centres, spa or cure centres and duty centres of October 31st 1951 and the additional clause thereto nº 2002-02 of March 25th 2002. Section 80 of the statute specifies the system of authorisation of Establishments and services managed by a natural person or legal entity in private law receiving children under 6 and also the conditions for approving childcare helpers and family welfare assistants. Section 81 provides for the possibility of granting to such Establishments approval specifying the total permitted number of patients at any one time. Section 82 extends the tasks of the "relay childcare helpers". Section 83 firstly limits to two the number of children to be looked after by a childcare helper when granting initial approval to the same and secondly modifies the conditions of initial and continuous training of childcare helpers. These provisions have no effect or an effect which is too indirect on expenditure of mandatory basic healthcare systems or bodies contributing to the funding thereof. They therefore have no place in a Social security Financing Act.
(Decision nº 2009-596 DC, December 22nd 2009, paras 5 to 7, p. 215)

INTERNATIONAL LAW AND EUROPEAN COMMUNITY LAW

RATIFICATION OR APPROVAL OF INTERNATIONAL TREATIES AND CONVENTIONS

Negotiation

Under Article 52 of the Constitution " The President of the Republic shall negotiate and ratify treaties". The power to negotiate, enter into and approve international Conventions for which

ratification is not required is the preserve of the Executive. The sole power vested in Parliament by the Constitution with respect to international treaties and Conventions is that of authorizing or refusing ratification or approval in the cases referred to in Article 53. The final paragraph of Section 11 of the Institutional Act pertaining to the application of Articles 34-1, 38 and 44 of the Constitution has provided, in order for Parliament to be well informed, that Government Bills intended to authorise ratification of approval of an international treaty or Convention must be accompanied, if need be, by "reservations or declarations as regards interpretation expressed by France". This provision has thus referred to reservations expressed prior to the tabling of a Government Bill. It therefore does not adversely affect the power of the Executive, when a treaty or Convention is to be ratified, to table reservations, to waive reservations which it had contemplated tabling and of which it had informed Parliament, or, after ratification, to withdraw reservations which it had previously made.
(Decision nº 2009-579 DC, April 9th 2009, paras 23 to 25, p. 84)

INTERNATIONAL TREATIES AND AGREEMENTS CURRENTLY IN FORCE

Primacy of Treaties and Agreements (Article 55)

Duty of those vested with the power to make regulations, of administrative authorities and courts of law to comply with International Treaties and Agreements

When requiring that arguments of unconstitutionality be examined in priority before those based on the failure of a statutory provision to comply with international commitments entered into by France, paragraph 2 of section 23-2 of the Institutional Ordinance nº 58-1067 of November 1958 intended to ensure compliance with the Constitution and reiterate the place of the latter at the apex of the national legal system. This priority merely results in specifying the order in which the arguments raised before the court to which the matter is referred be examined. It does not restrict the jurisdiction of said court, once the provisions pertaining to the priority preliminary ruling on the issue of constitutionality have been complied with, to ensure the superiority over national laws of legally ratified or approved treaties or agreements and norms of the European Union. It thus does not fail to comply with either Article 55 of the Constitution or Article 88-1 thereof.
(Decision nº 2009-595 DC, December 3rd 2009, paras 14 and 22, p. 206)

ISSUES SPECIFIC TO EUROPEAN COMMUNITY LAW

Specificity of constitutional foundations

Participation of France in the European Communities (Article 88-1)

When requiring that arguments of unconstitutionality be examined in priority before those based on the failure of a statutory provision to comply with international commitments entered into by France, paragraph 2 of section 23-2 of the Institutional Ordinance nº 58-1067 of November 1958 does not fail to comply with Article 88-1 of the Constitution.
(Decision nº 2009-595 DC, December 3rd 2009, paras 14 and 22, p. 206)

Hierarchy of Norms

Primacy of the Constitution

When requiring that arguments of unconstitutionality be examined in priority before those based on the failure of a statutory provision to comply with international commitments

entered into by France, paragraph 2 of section 23-2 of the Institutional Ordinance n° 58-1067 of November 1958 intended to ensure compliance with the Constitution and reiterate the place of the latter at the apex of the national legal system.
(Decision n° 2009-595 DC, December 3rd 2009, paras 14 and 22, p. 206)

ELECTIONS

PRINCIPLES OF ELECTORAL LAW

Rights and freedoms of voters

Equality between voters

Principle of demographic equilibrium

Election of Members of the National Assembly and Senators

Demographic bases of election

Article 1, paragraph 1 of Article 3 and paragraph 3 of Article 24 of the Constitution show that the National Assembly, which is elected by direct universal suffrage, must be elected on an essentially demographic basis providing for a distribution of the number of seats and the drawing of boundaries of constituencies which best comply with the principle of equality before suffrage. Although Parliament may take into account considerations of general interest which may affect the scope of this general rule, this may only be done to a limited extent.
(Decision n° 2008-573 DC, January 8th 2009, paras 20 and 21, p. 36)

The Members of the National Assembly elected for Overseas Communities governed by Article 74 of the Constitution must, like all Members of the National Assembly, be elected on an essentially demographic basis. No requirement of general interest necessitates that each Overseas Community constitute at least one electoral constituency. The sole exception to this would be if a territory with a relatively small population were situated at some considerable distance from an Overseas Department or Community.
(Decision n° 2008-573 DC, January 8th 2009, para 24, p. 36)

The fundamental rule whereby the National Assembly must be elected on an essentially demographic basis requires that the number of Members representing French Nationals abroad be fixed and constituency boundaries drawn on the basis of total population numbers recorded in the register of French Nationals living abroad in each consular constituency. Prescriptive qualification.
(Decision n° 2008-573 DC, January 8th 2009, para 27, p. 36)

Independent Committee provided for in Article 25 of the Constitution

Paragraph 3 of Article 25 of the Constitution provides for the creation of an "independent committee". This Standing committee is vested with the task of giving its opinion on all Government and Private Members'Bills drawing the boundaries of constituencies for the election of Members of the National Assembly or modifying the distribution of seats in the National Assembly or the Senate. It is incumbent upon the Constitutional Council to check whether, when laying down the rules governing the composition, organization and proceed-

ings of said committee, Parliament has not failed to accompany these rules by statutory guarantees.
(Decision nº 2008-573 DC, January 8th 2009, para 4, p. 36)

For the composition of this Committee, Parliament has intended to provide for the appointment of a member of the *Conseil d'Etat*, and two Judges from the *Cour de cassation* and the *Cour des comptes*, of a rank respectively at least equal to Conseiller d'Etat, Conseiller and Conseiller-Maitre. However the fact that this committee should be seen to be independent implies that Parliament intended that the members appointed by the *Conseil d'Etat*, the Cour de cassation and the *Cour des comptes* be elected solely by those persons actually in post in these bodies at the date of said election.
(Decision nº 2008-573 DC, January 8th 2009, para 5, p. 36)

Under Article L.567-2 of the Electoral Code, the members of the Committee are to be appointed for a non-renewable term of six years. The Committee alone is empowered to "suspend or terminate the term of office of one of its members if it finds unanimously that the situation of said member is incompatible with the holding of said office, that said member is unable to perform or has failed to perform his duties". Article L 567-3 of the Electoral Code firstly makes membership of the committee incompatible with the holding of any elective office governed by the said Code and secondly prohibits the giving of instructions by any Authority whatsoever to members of the committee as regards the carrying out of their duties. Article L 567-5 prohibits revealing anything concerning the proceedings, voting or internal working documents of the committee. Lastly, under Article L 657-8 the Chairman of the Committee has sole authority as regards funding and, furthermore, the Committee is not subject to the provisions of the Act of August 10th 1922 concerning the organization of the verification of expenditure incurred. These provisions ensure that the independence of the Consultative Committee provided for by Article 25 of the Constitution is guaranteed.
(Decision nº 2008-573 DC, January 8th 2009, para 6, p. 36)

Minimum representation of *Départements* by Members of the National Assembly

The Constitutional Council notes firstly that the total number of Members of the National Assembly which cannot, under Article 24 of the Constitution, exceed 577, was fixed at this number by the Institutional Act passed on December 11th 2008. Secondly that the final paragraph of Article 24 of the Constitution furthermore requires the inclusion of the representatives of French Nationals living abroad. Therefore, since the drawing of constituency boundaries for the election of Members of the National Assembly carried out by the Act of November 24th 1986 referred to above, the total number of Members elected in the Departments must be reduced while the population numbers of the latter have increased by more than 7 600 000, figures authenticated by the Decree of December 30th 2008 referred to above. In view of the substantial modification of these factual and legal parameters, the Council finds that maintaining the rule of a minimum of two Members per Department is therefore no longer warranted by a requirement of general interest likely to affect the scope of the fundamental rule whereby the National Assembly must be elected on an essentially demographic basis. Overruling its case law of July 2nd 1986, the Council finds that the rule of a minimum of two Members of the National Assembly by *Département* is unconstitutional.
(Decision nº 2008-573 DC, January 8th 2009, para 23, p. 36)

Drawing of constituency boundaries and differences in representation

The statute referred for review, authorizing the drawing of parliamentary constituency boundaries by Ordinance, provides in indent 3 of 1° of II of section 2 firstly, that "unless warranted by geographical or demographic considerations, constituencies are composed of an uninterrupted territorial area", and secondly, "any commune in which there are fewer than 5000 inhabitants and any canton composed of an uninterrupted territorial area other than the constituencies of Paris, Lyon and Marseille, and which has less than 40 000 inhabitants shall be included in one and the same constituency for the election of a Member of the National Assembly". Lastly indent 4 of 1° of II of section 2 authorizes, in order to take into account requirements of general interest, differences in population size to a limit of 20 % in compari-

son with the average population of the constituencies of the Department, the Overseas Community governed by Article 74 of the Constitution or New Caledonia.

Taken individually, none of these three provisions per se fails to comply with the Constitution. The first two may be usefully employed to guarantee equality before suffrage. However they might, when taken all three together, or due to the manner in which they are applied, lead to arbitrary drawing of constituency boundaries or result in creating situations where the principle of equality was not respected.

The Council thus makes the following prescriptive qualifications: the possibility of not creating a constituency on an uninterrupted territorial area, that of not having to comply with certain commune or canton limits when the abovementioned conditions so permit, together with the reserving of recourse to the maximum difference mentioned in indent 4 of 1° of II of section 2 for exceptional cases which are duly justified. Recourse may only be had to these provisions to a limited extent justified, on a case by case basis, by specific requirements of general interest. Their implementation must be strictly proportionate to the purpose it is sought to achieve.
(Decision nº 2008-573 DC, January 8th 2009, paras 25 and 26, p. 36)

Section 2 of the statute referred for review provides that the drawing of boundaries of constituencies of French Nationals living abroad shall be not governed by the rule prohibiting differences in population size to 20 % more or less of the average number of voters per constituency. However the requirement that the National Assembly be elected on an essentially demographic basis requires, in the absence of an exception specifically warranted by geographical considerations, that the drawing of constituency boundaries take into account the maximum difference tolerated between the population of each constituency and the average population as provided for by indent 4 of 1° of II of section 2 of the statute referred for review, for Departments, Overseas Communities governed by Article 74 of the Constitution and New Caledonia. Prescriptive qualification with which said Ordinance shall comply.
(Decision nº 2008-573 DC, January 8th 2009, para 28, p. 36)

Principle of equality of representation

Types of election

The provisions which merely provide that said Members shall be elected by the same electoral process as that used to elect Members elected on the territory of Republic, do not fail to comply with any constitutional requirement.
(Decision nº 2008-573 DC, January 8th 2009, para 30, p. 36)

Rights and freedoms of political parties and organisations

Diversity of opinion (see also: Rights and Freedoms – Freedom of communication)

Under paragraph 3 of Article 4 of the Constitution: "Statute law shall guarantee the expression of a diversity of opinions and the equitable participation of political parties and groups in the democratic life of the Nation".

The Committee provided for by Article 25 of the Constitution is entrusted with the task of ensuring compliance with the principle of equality before suffrage and the Constituent Power has specifically provided for its independence. If the drawing of boundaries of constituencies for the election of Members of the National Assembly or the modification of the distribution of seats of such Members or Senators participate in the democratic life of the Nation, the guarantee of independence and the rules governing incompatibility as laid down in Article L 567-3 of the Electoral Code which are designed to ensure said independence prohibit direct or indirect representation of political parties or groups on this Committee. The provisions concerning the composition of this Committee do not therefore fail to comply with paragraph 3 of Article 4 of the Constitution.
(Decision nº 2008-573 DC, January 8th 2009, paras 7 to 9, p. 36)

PARLIAMENTARY ELECTIONS

Funding

Keeping Campaign Accounts

Conditions governing filing of accounts

No certification by a Chartered Account or Approved Accountant: ineligibility

A candidate filed with the National Committee for Campaign Accounts and Political Financing an account which showed neither revenue nor expenditure. However, investigations carried out showed that the candidate had incurred or made expenditure in view of the election, in addition to that of the official campaign, and admitted the reality of the same during the hearing of all parties before the Committee. The campaign account should moreover have been presented by a Chartered Accountant and approved Accountant. Since this formality was not complied with, the Committee was right to refuse this account. Ineligibility in accordance with the provisions of Article L.0 128 of the Electoral Code for a period of one year as from the date of the decision.
(Decision nº 2008-4531, May 14th 2009, A.N Marne, 1st constit. para.2, p. 103)

Revenue recorded in a campaign account

Donations or benefits conferred on a candidate by a political party or group

A local newspaper with a substantial circulation has, every Monday since its creation just after the liberation of France, opened its columns to political groups which existed at this date or to those which the newspaper considers as being the heirs thereof. In this context, before the first round of the ballot, some opinion columns of these political groups were published for electoral purposes in connection with the elected candidate and three other candidates. Thus, contrary to the allegations of the parties making the referral, these publications are not donations conferred by a legal entity prohibited by the provisions of Article L 52-8 of the Electoral Code and section 11-4 of the Act of March 11th 1988 referred to above, but a contribution in kind made by political parties to the election campaign of these candidates. They cannot thus be considered as leading to any inequality between candidates which adversely affected the outcome of the ballot. If the elected candidate failed to record the amount of this contribution in his campaign account, investigations carried out show that, in view of the amount of said contribution, the latter cannot be considered as justifying the refusal of the campaign account of the person involved under Article L 52-12 of the Electoral Code. Dismissal
(Decision nº 2008-4527, May 14th 2009, A.N Marne, 1st constit. para.1, p. 101)

Donations conferred on a candidate by a legal entity other than political parties or groups (Article L 52-8, paragraph of the Electoral Code)

Conferment of a donation or benefit leading to the refusal of an account.

In view of the purpose of the legislation pertaining to the financial transparency of political life, financing of electoral campaigns, and the limiting of electoral expenditure, a legal entity in private law which has given itself a political purpose can only be regarded as a "political party or group" within the meaning of Article L 52-8 of the Electoral Code if it comes under the scope of sections 8, 9 and 9-1 of the Act of March 11th 1988 pertaining to the financial transparency of political life, or has complied with the rules, laid down by sections 11 to 11-7 of the same statute, which require in particular political parties and groups to file their accounts and only collect funds through a financial agent appointed by them. In the case in hand, "The Independents of La Marne" made a donation of 2 000€ to the candidate, a sum which constituted a substantial amount of his campaign revenue. Investigations having shown that this Association could not be considered as being a political party within the meaning of the

abovementioned provisions of the Act of March 11th 1988, or that it appointed a financial agent or set up an approved financing association, M.W must be considered as having obtained from a legal entity a benefit prohibited by Article L 52-8 of the Electoral Code. The National Committee for Campaign Accounts and Political Financing was therefore right to refuse his campaign account. Declaration of ineligibility under Article L.O 128 of the Electoral Code for a period of one year as from the date of the decision.
(Decision nº 2008-4532, May 14th 2009, A.N Marne, 1st constit. paras 3 and 4, p. 105)

Expenditure entered in campaign account

Expenditure not required to be entered in campaign account

Expenses connected with the travel and accommodation of representatives of political groups visiting a constituency do not constitute electoral expenditure required to be entered in the campaign account of the candidate whom these representatives have come to support (confirmation of Decision nº 93-1372 of December 1st 1993). The National Committee for Campaign Accounts and Political Financing reintegrated into the campaign account of Mr Y the amount corresponding to the cost of the visit of Mr Z, Prime Minister, and refused to approve the account which it had thus modified. Dismissal of application for finding of ineligibility.
(Decision nº 2009-4533, October 14th 2009, A.N Gironde, 8th constit., para.3, p. 177)

Litigation – Complaints

Insufficiently precise complaints

The complaints are made in terms too imprecise for the Judge reviewing the election to estimate the scope thereof.
(Decision nº 2008-4526, May 14th 2009, A.N Marne, 1st constit., para.2, p. 100)

Litigation – Investigation

Procedural incidents, specific request, no case to answer

Specific requests

Refusal of a request for a hearing, not necessary in the state of investigations.
(Decision nº 2008-4527, May 14th 2009, A.N Marne, 1st constit., para.2, p. 101)

PRESIDENT OF THE REPUBLIC AND THE GOVERNMENT

PRESIDENT OF THE REPUBLIC

Attributions and powers

Power to make appointments to civil and military posts

Supervision of the power to make appointments

Article 13 of the Constitution has introduced a power of veto by a three-fifths majority on the part of the relevant Parliamentary committees solely in the case of the exercising of the power of the President of the Republic to make appointments.

Section 14 of the Act pertaining to Audiovisual communication and the new public television service, which applies such a veto to a decision by the President of the Republic to remove from office the Presidents of national broadcasting companies, has failed to comply both with Article 13 of the Constitution and the principle of the separation of powers.
(Decision nº 2008-577 DC, March 3rd 2009, para 13, p. 64)

Right to address Parliament

The amendments made on June 22nd 2009 to the Rules of procedure of the Congress of Parliament, organising the addressing of said Congress by the President of the Republic, conform to Article 18 of the Constitution as amended by the Constitutional Act of July 23rd 2008.
(Decision nº 2008-583 DC, June 22nd 2009, paras 2 to 4, p. 118)

Decrees in the Council of Ministers

It is the task of those vested with the power to make regulations to decide whether the duties performed by members of the Opinion Survey Committee require that such appointments be made by the Council of Ministers
(Decision nº 2008-215 L, February 12th 2009, para.2, p. 52)

THE GOVERNMENT

Prime Minister

Right to initiate legislation

Government Bills

The power conferred by paragraph 3 of Article 39 of the Constitution to the Institutional Act concerns the tabling of Government Bills. Although Parliament, when enacting an Institutional Act, was at liberty, with the reservations set out in sections 11 and 12 of the Institutional Act pertaining to Articles 34-1, 39 and 44 of the Constitution, to make entry of a Bill on the Parliamentary agenda of the first house to which the issue is submitted dependent on the filing of an impact study, and although it is incumbent upon the Conference of Presidents of said House to ascertain whether said impact study conforms with the requirements of section 8 of this Institutional Act, Parliament was not at liberty to ask the Government to prove that such a study had been carried out as from the onset of the drafting of Government Bills. Censure of this specification.
(Decision nº 2009-579 DC, April 9th 2009, paras 12 and 13, p. 84)

Power to make regulations

The final paragraph of section 8 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution provides that the impact study accompanying Government Bills shall specify "the projected list of necessary application texts, their main orientations and the projected time for the application thereof". Insofar as this paragraph contains an injunction to the Government to inform Parliament of the main orientations and the projected time for publishing the regulatory provisions which it must take in the exercising of its exclusive powers under Article 13 and 21 of the Constitution, this paragraph infringes the principle of the separation of the powers to enact laws and the power to make regulations. Censure of the words " their main orientations and the projected time for their publication".
(Decision nº 2009-579 DC, April 9th 2009, paras 14 and 16, p. 84)

Parliament, when enacting Institutional Acts, was free, when inserting into the Institutional Act of March 19th 1999 section 59-1, to decide that the share of the State in the assuming of expenditure on personnel paid out of the State budget pursuant to the exercising of powers transferred in the field of education would take the form of placing such personnel free of charge at the disposition of New Caledonia. If such a measure were to be terminated, the State would be required to participate financially in the assuming of said expenditure in the normal legal conditions laid down by the Institutional Act. However Parliament when enacting the Institutional Act could not, without infringing Article 77 of the Constitution and the guidelines of the Noumea agreement, make the Decree after consultation of the *Conseil d'Etat* terminating this arrangement and the methods of transfer of such personnel depend upon a proposal of the Congress. The words "after a proposal of the Congress adopted by a majority of the members thereof" are thus unconstitutional.
(Decision nº 2009-587 DC, August 6th 2009, paras 9 to 11, p. 152)

PARLIAMENT

OFFICE OF MEMBER OF PARLIAMENT

Characteristics of the office of Member of Parliament

Representative nature of the office

Just like all other Members of the National Assembly and Senators, the Members representing French Nationals living abroad represent the Nation in its entirety and not merely the population of the constituency which has returned them to Parliament
(Decision nº 2009-573 DC, January 8th 2009, para.30, p. 36)

Incompatibilities

Procedure

Any text providing for an incompatibility and which thus adversely affects the holding of an elective office must be strictly interpreted. Such is the case as regards Article L.O 146 of the Electoral Code. In order to assess the situation of a Member of Parliament with respect to Article L.O 146 of the Electoral Code, the Constitutional Council must make its appraisal in view of the situation prevailing at the time it takes its decision. There should thus not be any taking into consideration of a situation which has ended prior to the taking of said decision. If the information available to the Constitutional Council on the day it takes its decision has not shown that the person involved is not in one of the cases of incompatibility provided for by paragraph 2 of Article L.O 146 of the Electoral Code, it will be incumbent upon the Bureau of the Senate or the Minister of Justice to refer the matter a second time to the Council if information or elements brought to their knowledge after the date of said decision should so warrant. This is in particular the case with companies in the course of formation at the date of the decision.
(Decision nº 2009-27 I, March 18th 2009, paras 3, 4 and 6, p. 82)

Concurrent holding of such office with another public office.

Non elective public office

Section 7 of the Institutional Act on the application of Article 25 of the Constitution which completes Article L.O 132 of the Electoral Code to provide for incompatibility between the

holding of a Parliamentary seat and that of member of the Committee provided for in the final paragraph of Article 25 of the Constitution is in conformity with the Constitution which makes it the preserve of the Institutional Act to lay down the manner of ascertaining incompatibilities.
(Decision nº 2009-572 DC, January 8th 2009, paras 2 and 3, p. 33)

Concurrent holding of office with activities in the private sector

Companies working for or under the control of a public entity (L.O 146 3°)

The various categories of persons referred to in 3° of Article L.O 146 of the Electoral Code are to be taken into account cumulatively.
(Decision nº 2009-27 I, March 18th 2009, paras 4 and 5, p. 82)

Companies or business concerns whose main business is carrying out work, supplying goods or services on behalf of or under the control of the State, a Community or a Public establishment. If the person involved holds in said company a position listed in paragraph 1 of Article L.O 146, investigations have shown that such companies do not come under the scope of this Article. Moreover he does not hold any position referred to in paragraph 1 of this Article in those companies which come under the scope of said Article.
(Decision nº 2009-27 I, March 18th 2009, paras 4 and 5, p. 82)

De facto management (final paragraph of Article L.O 146)

Information available to the Constitutional Council does not show that Mr Y, at the date of the present decision, either directly or via a third party, is the de facto manager of one or more companies coming under the scope of Article L.O 146, whether those covered by his new declaration or those called upon to participate in the capital thereof. It will be incumbent upon the Bureau of the Senate or the Minister of Justice to refer the matter a second time to the Council if information or elements brought to their knowledge after the date of said decision should so warrant. This is in particular the case with companies in the course of formation in the real estate sector at the date of the decision.
(Decision nº 2009-27 I, March 18th 2009, paras 5 and 6, p. 82)

Holding of Parliamentary Office

End of Parliamentary Office

Automatic removal from office

By a decision of the Paris Court of Appeal dated May 16th 2008, Mr X was given a suspended sentence of 2 years'imprisonment, fined €75 000 and ordered to be deprived of his civic and civil rights for a period of five years. This sentence became final subsequent to the decision of the Cour de cassation of May 20th 2009 referred to above. Under Article L.O 136 of the Electoral Code, the Constitutional Council received on July 24th 2009 a referral from the Minister of Justice for an official ascertainment of the automatic removal from office of Mr X as a Member of the National Assembly.

Under Article L.O 136 of the Electoral Code "Whosoever shall be found to be ineligible after the proclamation of the results of an election and after the time allotted for challenging the same or, during his term of office, shall be concerned by one of the cases of ineligibility provided for by the present Code shall automatically be removed from office. Such removal shall be formally ascertained by the Constitutional Council at the request of the Bureau of the National Assembly or the Minister of Justice, or, in the event of any conviction subsequent to an election, by the Public prosecutor at the Court at the origin of said conviction"

Under Article 131-26 of the Criminal Code, deprival of civic rights entails the eligibility of the convicted offender. Under Article L.O 130 of the Electoral Code, persons deprived of their eligibility by a decision of a court of law are thus ineligible.

It is therefore incumbent upon the Constitutional Council, pursuant to Article L.O 136 of the Electoral Code, to ascertain the automatic removal from office of Mr X from his office of Member of the National Assembly due to the ineligibility resulting from his conviction becoming *ex judicata*
(Decision nº 2009-20 D, August 6th 2009, paras 1 to 4, p. 171)

It is not incumbent upon the Constitutional Council, when asked by the Minister of Justice to rule under Article L.O 136 of the Electoral Code as to the automatic removal from office of a Member of Parliament consequent upon a finding of temporary ineligibility so long as such a finding has not become *res judicata*. Stay of ruling until the handing down of the decision of the Cour de cassation.
(Decision nº 2009-21 D, October 22nd 2009, paras 4 and 5, p. 191)

ORGANISATION OF THE HOUSES OF PARLIAMENT AND THE WORK THEREOF

Composition and organisation of Parliament

Composition

Composition of the National Assembly

Fixing of the number of Members of the National Assembly

The amendment of Article L.O 119 of the Electoral Code made by section 1 of the Institutional Act pertaining to the application of Article 25 of the Constitution fixing the total number of Members of the National Assembly at 577 conforms both to Article 25 of the Constitution which makes the fixing of the total number of Members of each House and rules governing incompatibility the preserve of an Institutional Act and to Article 24 paragraph 3 of the Constitution which provides that the number of Members of the National Assembly shall not exceed 577.
(Decision nº 2008-572 DC, January 8th 2009, paras 2 and 3, p. 33)

Départements of Mainland France

The Constitutional Council notes firstly that the total number of Members of the National Assembly which cannot, under Article 24 of the Constitution, exceed 577, was fixed at this number by the Institutional Act passed on December 11th 2008. Secondly that the final paragraph of Article 24 of the Constitution furthermore requires the inclusion of the representatives of French Nationals living abroad. Therefore, since the drawing of constituency boundaries for the election of Members of the National Assembly carried out by the Act of November 24th 1986 referred to above, the total number of Members elected in the *Départements* must be reduced while the population numbers of the latter have increased by more than 7 600 000, figures authenticated by the Decree of December 30th 2008 referred to above. In view of the substantial modification of these factual and legal parameters, the Council finds that maintaining the rule of a minimum of two Members per *Département* is therefore no longer warranted by a requirement of general interest likely to affect the scope of the fundamental rule whereby the National assembly must be elected on an essentially demographic basis. Overruling its case law of July 2nd 1986, the Council finds that the rule of a minimum of two Members of the National Assembly by *Département* is unconstitutional.
(Decision nº 2008-573 DC, January 8th 2009, para 23, p. 36)

Overseas Communities

The repeal by section 8 of the Institutional Act pertaining to Article 25 of the Constitution of Articles L.O 455, L.O 479, L.O 506 and L.O 533 of the Electoral Code which specify the

number of Members to be elected in Mayotte, Saint-Barthélemy, Saint-Martin and Saint-Pierre-et-Miquelon conforms to Article 25 of the Constitution which makes the fixing of the total number of Members of each House the preserve of an Institutional Act The same holds good for the repeal of Article L.O 393-1 of the same Code and the amendment of Article L.O 394-1 thereof as regards New Caledonia, French Polynesia and the Wallis and Futuna Islands.
(Decision nº 2008-572 DC, January 8th 2009, paras 2 and 3, p. 33)

The Members of the National Assembly elected for Overseas Communities governed by Article 74 of the Constitution must, like all members of the National Assembly, be elected on an essentially demographic basis. No requirement of general interest necessitates that each Overseas Community constitute an electoral constituency. The sole exception to this would be if a territory with a relatively small population were situated at some considerable distance from an Overseas Department or Community
(Decision nº 2008-573 DC, January 8th 2009, para 24, p. 36)

Representation of French Nationals living abroad

The fundamental rule whereby the National Assembly must be elected on an essentially demographic basis requires that the number of Members representing French Nationals living abroad be fixed and constituency boundaries drawn on the basis of total population numbers recorded in the register of French Nationals living abroad in each consular constituency. Prescriptive qualification.
(Decision nº 2008-573 DC, January 8th 2009, para 27, p. 36)

Governing body

President

Although, under Article 77 of the Constitution, Parliament when enacting Institutional Acts may determine the conditions in which the institutions of New Caledonia shall be consulted, at the request of the Presidents of the Houses of Parliament, on Private Members'Bills containing provisions specific to New Caledonia, it is not at liberty, without infringing the principle of the separation of powers, to allow them to decide to reduce the time allowed for consultation of the Congress of New Caledonia.
(Decision nº 2009-587 DC, July 30th 2009, para.16, p. 152)

Conference of Presidents

The rules of a House may allow for the convening of the Conference of Presidents by the President of said House at the request of a president of a group in order for said House to exercise, if need be, the prerogatives vested it by paragraph 4 of Article 39 of the Constitution, and by paragraph of Article 45. In this case as in the other cases, such a Conference may be convened on the initiative of the President of the House.
(Decision nº 2009-581 DC, June 25th 2009, para.14, p. 120)

Bodies of the Houses

Political groups

Powers

General considerations

The President of a group may request the convening of the Conference of Presidents in order for said House to exercise, if need be, the prerogatives vested in it by paragraph 4 of Article 39

of the Constitution, and by paragraph of Article 45. In this case as in the other cases, such a Conference may also be convened on the initiative of the President of the House.
(Decision nº 2009-581 DC, June 25th 2009, para.14, p. 120)

The rules of procedure of a House may provide that each group is entitled to a Committee of inquiry each sitting year. Such a request will however only be admissible if it complies with the provisions of Article 6 of Ordinance nº 58-1100 of November 17th 1958 pertaining to the operating of the Houses of Parliament, which firstly prohibit the setting up of Committees of inquiry into acts which have led to legal proceedings as long as these proceedings are still ongoing and secondly requires any Committee of inquiry to cease its work once a preliminary judicial inquiry has been launched as regards the acts which the Committee is enquiring into.
(Decision nº 2009-582 DC, June 25th 2009, paras 4 to 6, p. 132)

Organisation of work

Agenda

Reserved agenda

Under paragraphs 2 and 5 of Article 48 of the Constitution, the Government, Opposition groups and minority groups are entitled, on the day reserved for them each month, to ask the National Assembly or one of the bodies thereof, to give its opinion on a proposal for a European Resolution prior to the expiry of the period of one month provided for in the rules of procedure of said House whereby failure by the Committee in charge of European Affairs and/or the Standing committee to which said proposal has been submitted to reply is deemed to constitute the adoption of said Resolution.
(Decision nº 2009-581 DC, June 25th 2009, paras 64 and 65, p. 120)

Under paragraphs 2 and 5 of Article 48 of the Constitution, the Government, Opposition groups and minority groups are entitled, on the day reserved for them each month, to ask the Senate to give its opinion on a proposal for a European Resolution prior to the expiry of the period of one month provided for in the rules of procedure of said House whereby failure by the Standing committee to which said proposal has been submitted to reply is deemed to constitute the adoption of said Resolution.
(Decision nº 2009-582 DC, June 25th 2009, paras 31 and 32, p. 132)

Priority agenda

Although under Article 48 of the Rules of procedure of the National Assembly, the Government, after being formed or prior to the opening of the session, may "for information purposes" inform the Conference of Presidents of the weeks which it "intends to reserve" for the consideration of Bills and debates which it will request be entered on the agenda, this provision enables the Government to decide whether to modify its initial choice during said session. Although the Conference of Presidents, with due respect for the priorities set out in Article 48 of the Constitution, each week sets the agenda for the week in question and the three following weeks, this provision enables the Government to set the agenda for the consideration of Bills and debates which it requests be entered in priority on the agenda.
(Decision nº 2009-581 DC, June 25th 2009, paras 18 and 19, p. 120)

The provisions of the Rules of procedure of a House of Parliament must, in accordance with paragraph 2 of Article 48 of the Constitution, enable the Government to decide whether to modify its initial choice as regards both the weeks reserved for it and the agenda of the Bills and debates which it requests be entered in priority on the agenda. The provisions of the Rules of procedure of the Senate which provide that the agenda shall be set by the Senate "on the basis of the findings of the Conference of Presidents" and that the Conference shall decide, at the beginning of each ordinary session, the sitting weeks and shall share them between the Senate and the Government with the agreement of the latter and "take note" of requests for priority entries made by the Government are thus constitutional.
(Decision nº 2009-582 DC, June 25th 2009, para.22, p. 132)

LEGISLATIVE PROCEEDINGS

Initiative

Government Bills

Conditions for tabling

Other consultations

Paragraph 3 of Article 25 of the Constitution provides: " An independent Committee ... shall give a public opinion on Government and Private Members'Bills drawing the boundaries of constituencies for the election of Members of the National Assembly or modifying the distribution of seats of such Members or Senators". I of section 2 which authorizes the Government to proceed by way of Ordinance does not *per se* carry out any such operations. Neither does II of section 2, which lays down the general rules concerning the drawing of boundaries of constituencies and the distribution of seats, deprive said Committee of the power to usefully give its opinion on draft Ordinances submitted to it. The provisions of section 2 do not therefore fall into the category of Bills which must be referred to said Committee.
(Decision nº 2008-573 DC, January 8th 2009, para.13, p. 36)

Priority of the Senate

Organisation of Territorial Communities

New Caledonia is a Territorial Community of the Republic within the meaning of paragraph 2 of Article 39 of the Constitution whereby "Bills principally dealing with the organization of Territorial Communities shall be first tabled before the Senate".
(Decision nº 2008-587 DC, July 30th 2009, para.4, p. 152)

The Institutional Bill pertaining to the conferring upon Mayotte of the status of Department was rightly tabled first on the Bureau of the Senate pursuant to paragraph 2 of Article 39 of the Constitution which provides: "Bills principally dealing with the organization of Territorial Communities shall be first tabled before the Senate".
(Decision nº 2008-587 DC, July 30th 2009, para.24, p. 152)

The final phrase of paragraph 2 of Article 39 of the Constitution, whereby it is "without prejudice to the first paragraph of Article 44" that "Government Bills primarily dealing with the organisation of Territorial Communities shall be tabled first in the Senate" does not apply to amendments tabled by the Government or Members of the National Assembly as regards a Bill passed by the Senate. In the case in hand, the provision was inserted into the Bill by a Government amendment passed at first reading by the National Assembly, the second House to which it was referred. Inoperative argument
(Decision nº 2009-594 DC, December 3rd 1009, paras 3 and 4, p. 200)

Conditions governing entry on the agenda – statement of grounds, impact studies

Section 7 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution provides that "Government Bills shall be preceded by an explanatory memorandum setting out the grounds for the same". This thus reflects the hallowed republican tradition whereby the main features of a Bill are set out and reasons put forward for its enactment in the general interest.
(Decision nº 2008-579 DC, April 9th 2009, para.11, p. 84)

The power conferred by paragraph 3 of Article 39 of the Constitution on the Institutional Act concerns the tabling of Government Bills. Although Parliament, when enacting an Institutional Act, was at liberty, with the reservations set out in sections 11 and 12 of the Institutional Act pertaining to Articles 34-1, 39 and 44 of the Constitution, to make entry of a Bill on the Parliamentary agenda of the first House to which the issue is submitted dependent on the

filing of an impact study, and although it is incumbent upon the Conference of Presidents of said House to ascertain whether said impact study complies with the requirements of section 8 of this Institutional Act, Parliament was not at liberty to ask the Government to prove that such a study had been carried out as from the onset of the drafting of Government Bills. Censure of this specification.
(Decision nº 2009-579 DC, April 9th 2009, paras 12 and 13, p. 84)

Paragraphs 2 to 11 of section 8 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution list the information which the impact studies accompanying Bills must specify clearly. The Constitutional Council has given a qualified interpretation when stating that the undertaking of specific studies complying with each of the requirements set out in the said paragraphs can only be contemplated to the extent that such compliance is required in view of the purpose which the provisions of the Bill seek to achieve.
(Decision nº 2009-579 DC, April 9th 2009, para.15, p. 84)

The final paragraph of section 8 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution provides that the impact study accompanying Government Bills shall specify "the projected list of necessary application texts, their main orientations and the projected timeframe for the application thereof". Insofar as this paragraph contains an injunction to the Government to inform Parliament of the main orientations and the projected time for publishing the regulatory provisions which it must take in the exercising of its exclusive powers under Article 13 and 21 of the Constitution, this paragraph infringes the principle of the separation of the powers to enact laws and the power to make regulations. Censure of the words "their main orientations and the projected timeframe for their publication".
(Decision nº 2009-579 DC, April 9th 2009, paras 14 and 16, p. 84)

Paragraphs 2 to 11 of section 8 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution list the information which the impact studies accompanying Bills must specify clearly. The Constitutional Council has given a qualified interpretation when stating that, if due to circumstances, all or part of a document constituting the impact study was made available to the first house before which it was tabled after the tabling thereof, the Constitutional Council would assess, if need be, compliance with the provisions of section 8 of the Institutional Act as regards the requirements of continuity of the life of the Nation.
(Decision nº 2009-579 DC, April 9th 2009, para 17, p. 84)

Paragraph 2 of section 11 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution provides that Bills designed to authorize the Government to take by Ordinance measures which are normally the preserve of statute law shall be accompanied "by the documents referred to in paragraphs 2 to 7 and the penultimate paragraph of section 8". The Constitutional Council, by a qualified interpretation, holds that this provision cannot, on pain of non compliance with Article 38 of the Constitution, be interpreted as requiring the Government to inform Parliament of the terms of the Ordinances its intends to issue under the authorization requested to enable it to carry out its programme.
(Decision nº 2009-579 DC, April 9th 2009, para 21, p. 84)

Paragraph 3 of section 11 of the Institutional Act pertaining to the applications of Articles 34-1, 39 and 44 of the Constitution requires that the provisions of Government Bills providing for ratification of Ordinances be accompanied by a an impact study comprising the documents referred to in the eight final paragraphs of section 8 of this Institutional Act. The third paragraph requires the Government to table before the first House to which this issue is submitted not the impact study of the provisions involved but that of Ordinances previously issued under Article 38 or 74-1 of the Constitution and coming into force "upon publication thereof". Such a requirement, which has no foundation in Article 39 of the Constitution, fails to comply with the requirements of Article 38 and 74-1. Censure
(Decision nº 2008-579 DC, April 9th 2009, para.22, p. 84)

Under Article 52 of the Constitution " The President of the Republic shall negotiate and ratify treaties". The power to negotiate, enter into and approve international Conventions for which ratification is not required is the preserve of the Executive. The sole power vested in Parliament by the Constitution with respect to international treaties and Conventions is that or authorizing or refusing ratification or approval in the cases referred to in Article 53. The final paragraph of Section 11 of the Institutional Act pertaining to the application of Articles 34-1,

38 and 44 of the Constitution has provided, in order for Parliament to be well informed, that Government Bills intended to authorise ratification of approval of an international treaty or Convention must be accompanied, if need be, by "reservations or declarations as regards interpretation expressed by France". This provision has thus referred to reservations expressed prior to the tabling of a Government Bill. It therefore does not adversely affect the power of the Executive, when a treaty or Convention is to be ratified, to table reservations, to waive reservations which it had contemplated tabling and of which it had informed Parliament, or, after ratification, to withdraw reservations which it had previously made.
(Decision nº 2009-579 DC, April 9th 2009, paras 23 to 25, p. 84)

Paragraph 3 of Article 39 has not conferred upon the Institutional Act the power to fix the manner in which Government amendments to Bills and Private Members'Bills tabled before Parliament are to be presented.
(Decision nº 2009-579 DC, April 9th 2009, paras 38 and 39, p. 84)

The Houses of Parliament had at their disposal, as is attested by the reports of the Committees called upon to consider or give their opinion on the Bill and by the minutes of debate, sufficient elements of information on the provisions of the Bill under debate (Bill furthering the Diffusion and Protection of Creation on the Internet) The argument that the Government failed to supply Parliament with objective elements of information needed to ensure clarity and accuracy of debate is thus not supported by the facts.
(Decision nº 2009-580 DC, June 10th 2009, paras 2 and 3, p. 107)

The Rules of procedure of a House may allow for the convening of the Conference of Presidents by the President of said House at the request of a president of a group in order for said House to exercise, if need be, the prerogatives vested in it by paragraph 4 of Article 39 of the Constitution, and by paragraph of Article 45. In this case as in the other cases, such a Conference may be convened on the initiative of the President of the House.
(Decision nº 2009-581 DC, June 25th 2009, para.14, p. 120)

Monitoring by the Conference of Presidents (Art 39 para.4)

Section 9 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution provides that the Conference of Presidents of the House on the Bureau of which a Government Bill was first tabled shall rule within ten days on the compliance thereof with the requirements of Chapter II of the Institutional Act. Neither the length of this period of time, nor the conditions, provided for by paragraph 2 of section 9, in which this time is suspended run contrary to paragraph 4 of Article 39 of the Constitution.
(Decision nº 2009-579 DC, April 9th 2009, para.19, p. 84)

Consideration of Bills in Committee

Meetings

The provisions of Article 43 of the Constitution, whereby Government Bills and Private Members'Bills shall be referred for consideration to one of the Standing committees or, failing that, to a Committee specially set up for this purpose, and those of paragraph 1 of Article 42, whereby "debate on Government Bills and Private Members'Bills shall, when said Committees are sitting, concern the text passed by the Committee to which they have been referred under Article 43, or failing that, the text referred to the House", exclude the organizing of any public guideline debate on the Bill tabled or transmitted prior to the consideration of said Bill by the Committee to which it has been referred".
(Decision nº 2009-582 DC, June 25th 2009, paras 17 and 18, p. 132)

Presence

The combination of Article 42 of the Constitution which provides that " debate on Government Bills and Private Members'Bills shall, on the floor of the House, concern the Bill passed by the Committee", of Article 44 which provides that the Government's right of amendment may be exercised either on the floor of the House or at the Committee stage, of paragraph 1

of Article 31 and Articles 40 and 41, which enable the Government to object to inadmissible amendments when they are undergoing consideration in Committee means that the Government may participate in the work of the Committees called upon to consider Government and Private Members'Bills and amendments thereto and be present during voting designed to determine the text to be debated during the sitting. Censure of the final paragraph of section 13 of the Institutional Act pertaining to the applications of Articles 34-1, 39 and 44. Lapsing of the provisions of the Rules of procedure of the Houses restricting the right of access of the Government to work in Committee.
(Decision nº 2009-579 DC, April 9th 2009, paras 33 and 36, p. 84)

Reducing from three hours to fifteen minutes the length of the interruption of the sitting of a Committee after which voting may validly take place irrespective of the number of members present, which is not intended to do away with the requirement of a quorum but merely amends one of the conditions in which the quorum is verified, does not run counter to any provision of the Constitution.
(Decision nº 2009-581 DC, June 25th 2009, paras 9 and 10, p. 120)

The provisions of paragraph 1 of Article 42 of the Constitution whereby "Debate on Government and Private Members'Bills shall, on the floor of the House, concern the Bill passed by the Committee"; those of Article 44 whereby the Government's right of amendment may be exercised both on the floor of the House and at the Committee stage; those of paragraph 1 of Article 31 whereby "Members of the Government shall have access to both Houses. They shall address either House whenever they shall so request"; those of Articles 40 and 41, whereby the Government may, as from the committee stage, argue that Private Members'Bills and amendments are inadmissible where their enactment would result in either a diminution of public revenue or the creation or increase of any public expenditure and when such Bills or amendments are not matters for statute law or are contrary to a delegation granted under Article 3, thus implying, as stated in Decision nº 2009-579 DC of the Constitutional Council dated April 9th 2009, that the Government may participate, when it so wishes, in the work of Committees called upon to consider Government and Private Members'Bills and amendment thereto and attend all voting sessions intended to determine the text to be submitted on the floor of the House for debate.
(Decision nº 2009-582 DC, June 25th 2009, paras 7 to 10, p. 132)

Publicity of work

The requirements of clarity and accuracy of Parliamentary debate, which apply equally to Committees, mean that a clear record must be kept of interventions before such Committees, of the grounds for proposed amendments to Bills submitted to them and of votes cast, in particular when considering Government and Private Members'Bills upon which debate on the floor of the House will concern the text passed by the Committee to which the Bill has been referred under Article 43 or, failing that, the Bill referred to the House
(Decision nº 2009-581 DC, June 25th 2009, paras 11 and 12, p. 120)

Consideration of amendments in Committee

The Rules of procedure of the National Assembly may provide that: "amendments other than those tabled by the Government, the Chairman or the Rapporteur of the Committee and, where applicable, the relevant Committees, must be transmitted by those introducing such amendments no later than 5 p.m three working days before the date of the beginning of the consideration of the text, unless otherwise decided by the Chairman of the Committee". These provisions only conform to the Constitution on condition that the Chairman of the Committee is able to reconcile compliance of the effectiveness of the right of amendment with the requirements of clarity and accuracy of Parliamentary debate and that under no circumstances the subsequent tabling of sub-amendments be prohibited.
(Decision nº 2009-581 DC, June 25th 2009, paras 34 and 35, p. 120)

Organizing debate

The provisions of Article 43 of the Constitution, whereby Government Bills and Private Members' Bills are referred for consideration by a Standing committee or, failing that, a

committee set up for this purpose, and those of paragraph 1 of Article 42, whereby "debate on the floor of the House on Government and Private Members'Bills shall concern the text passed by the committee to which the Bill has been referred pursuant to Article 43 or, failing that, the text tabled before the House" exclude the holding of any guideline debate on the floor of the House on the text tabled or transmitted prior to the examination by the committee to which said text has been referred.
(Decision nº 2008-582 DC, June 25th 2009, paras 17 and 18, p. 132)

The combination of Article 42 of the Constitution which provides that " debate on Government Bills and Private Members'Bills shall, on the floor of the House, concern the text passed by the Committee", of Article 44 which provides that the Government's right of amendment may be exercised either on the floor of the House or at the Committee stage, of paragraph 1 of Article 31 and Articles 40 and 41, which enable the Government to object to inadmissible amendments when they are undergoing consideration in Committee means that the Government may participate in the work of the Committees called upon to consider Government and Private Members'Bills and amendments thereto and be present during voting designed to determine the text to be debated during the sitting. Censure of the final paragraph of section 13 of the Institutional Act pertaining to the applications of Articles 34-1, 39 and 44. Lapsing of the provisions of the Rules of procedure of the Houses restricting the right of access of the Government to work in Committee.
(Decision nº 2009-579 DC, April 9th 2009, paras 33 and 36, p. 84)

Article 48 of the Rules of procedure of the National Assembly limits to two minutes the time allotted to chairmen of Committees or their delegate having attended the Conference of Presidents making proposals as to the entry of matters on the agenda to give an explanation as to such votes. An identical period of time is allotted to one speaker per group. An identical limitation of such periods is provided for in Articles 54, 57, 58, 59, 91, 95, 100 and 102 of the Rules of procedure as worded pursuant to the Resolution of May 27th 2009. This limitation conforms to the Constitution only if in all these cases, the President of the sitting may apply this limitation on the time allotted for speaking while ensuring compliance with the requirements of clarity and accuracy of Parliamentary debate.
(Decision nº 2009-581 DC, June 25th 2009, para.20, p. 120)

If the Conference of Presidents of a House of Parliament may determine the maximum length of time allowed for debate on all of a Bill, this will conform to the Constitution only insofar as such a timeframe is not determined in such a manner as to deprive of all effect the requirements of clarity and accuracy of Parliamentary debate. The same holds good as regards the fixing of the additional time for debate by Members of the House granted at the request of a President of a group when an amendment is tabled by the Government or the Committee after the expiry of the normally allotted time.
(Decision nº 2009-581 DC, June 25th 2009, para.25, p. 120)

The Rules of procedure of a House may provide, in debate when the allotted time for speaking is limited, that interventions which are not genuine points of order be counted within this timeframe. These provisions will however only conform to the Constitution insofar as Members of the House are not deprived of any opportunity to raise points of order in order to request the application of constitutional provisions.
(Decision nº 2009-581 DC, June 25th 2009, para.26, p. 120)

Closure of debate

An automatic closure of debate on a clause cannot result in prohibiting members of an Opposition group from participating in debate on a clause on pain of non compliance with the requirements of clarity and accuracy of Parliamentary debate.
(Decision nº 2009-581 DC, June 25th 2009, paras 28 and 29, p. 120)

Motions

General points

The Rules of procedure of a House may provide, in debate when the allotted time for speaking is limited, that interventions which are not genuine points of order be counted within this

timeframe. These provisions will however only conform to the Constitution insofar as Members of the House are not deprived of any opportunity to raise points of order in order to request the application of constitutional provisions.
(Decision nº 2009-581 DC, June 25th 2009, para.26, p. 120)

Motion for preliminary rejection

The Resolution of May 27th 2009 provides for replacing the possibility of debating a motion of unconstitutionality followed by a preliminary motion by debate on a single "preliminary motion for rejection", "designed to secure recognition of the fact that the Bill under debate runs counter to one or more constitutional provisions, or to decide that there is no need for debate. To the extent that this amendment preserves the actual possibility for Members of the National Assembly to challenge the constitutional conformity of the provisions of a Bill, these provisions are not unconstitutional.
(Decision nº 2009-581 DC, June 25th 2009, paras 40 and 41, p. 120)

Right of amendment

Exercising the right of amendment

Rules of procedure of the Houses of Parliament may determine the conditions governing the allotting of a timeframe for admissibility of amendments prior to the beginning of examination of a Bill on the floor of the House. This timeframe applies neither to sub-amendments nor Government amendments, nor those of the Committee to which the Bill has been referred for consideration. They cannot determine the manner in which Government amendments are the object of an impact study.

Rules of procedure of the Houses of Parliament may, if they introduce a procedure allotting timeframes for debating a Bill on the floor of the House, determine the conditions in which amendments tabled by Members of Parliament may be put to the vote without debate. In such cases they are required to comply with the conditions governing the passing of Institutional Acts which require additional time for debate, at the request of a President of a group, for Members of Parliament when the Government or the Committee table an amendment after the expiry of the timeframe allotted to members of Parliament, and to guarantee the right of expression of all Parliamentary groups, in particular Opposition and minority groups, and to lay down the conditions in which the right to speak may be granted to any Member of Parliament who so requests in order to personally explain his or her vote on all of a Bill.

Rules of procedure may determine the manner in which amendments tabled by members of Parliament or by the Committee to which a Bill has been referred for consideration may be the object of a prior assessment communicated to the House involved before they are debated on the floor of the House.

Rules of procedure may, if they introduce a simplified examination procedure which does not encounter any opposition by the Government, the Chairman of the Committee to which a Bill has been referred for consideration or the President of a group, provide that the text passed by the Committee to which a Bill has been referred shall be the sole text to be debated upon on the floor of the House.
(Decision nº 2009-579 DC, April 9th 2009, paras 33 to 43, p. 84)

Government's right of amendment

The combination of Article 42 of the Constitution which provides that " debate on Government Bills and Private Members'Bills shall, on the floor of the House, concern the Bill passed by the Committee", of Article 44 which provides that the Government's right of amendment may be exercised either on the floor of the House or at the Committee stage, of paragraph 1 of Article 31 and Articles 40 and 41, which enable the Government to object to inadmissible amendments when they are undergoing consideration in Committee means that the Government may participate in the work of the Committees called upon to consider Government and

Private Members'Bills and amendments thereto and be present during voting designed to determine the text to be debated during the sitting. Censure of the final paragraph of section 13 of the Institutional Act pertaining to the applications of Articles 34-1, 39 and 44. Lapsing of the provisions of the Rules of procedure of the Houses restricting the right of access of the Government to work in Committee.
(Decision nº 2009-579 DC, April 9th 2009, paras 33 and 36, p. 84)

Section 14 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution conferred upon the Rules of procedure of the Houses of Parliament the power to "determine the manner in which Government amendments shall be the object of an impact study communicated to the House prior to debate of the same on the floor of the House ". The 3rd paragraph of Article 39 has not conferred upon the Institutional Act power to specify the manner in which Government amendments of Bills and Private Members'Bills tabled before Parliament should be presented. Although paragraph 1 of Article 44 authorises the Rules of procedure of the Houses to determine the manner in which the Government shall exercise its right of amendment, such power may only be exercised "in the framework set out by an Institutional Act". The very terms of section 14 show that this section merely left it to the Rules of procedure to require the Government to carry out an impact study of its amendments without specifying the contents thereof nor the consequences of any failure to comply with this requirement. Parliament when passing the Institutional Act thus failed to take into account the scope of the powers vested in it by article 44. Censure of Section 14 of the Institutional Act and hence replacement of the words found in section 20 " sections 14 and 15" by the words " section 15"..
(Decision nº 2009-579 DC, April 9th 2009, paras 38 and 39, p. 84)

Members'right of amendment

Any amendment introduced by the Joint Committee must, under paragraph 2 of Article 45 of the Constitution, either be directly connected with a provision still under debate, designed to ensure compliance with the Constitution, coordination with provisions under debate or to rectify a material error.
(Decision nº 2009-578 DC, March 18th 2009, para 29, p. 73)

The Institutional Act may provide that amendments tabled by Members of Parliament may cease to be admissible after commencement of consideration of the text on the floor of the House and that Rules of procedure of the Houses of Parliament may determine the conditions governing the allotting of a timeframe for admissibility of amendments prior to the beginning of examination of a Bill on the floor of the House. This timeframe applies neither to sub-amendments nor Government amendments, nor those of the Committee asked to rule on the merits.

Amendments tabled by Members of Parliament, in the framework of proceedings with an allotted timeframe for consideration of a text on the floor of the House, may be put to the vote without debate. Rules of procedure may determine the manner in which amendments tabled by members of Parliament or by the Committee to which the Bill was referred for consideration may be the object of a prior assessment communicated to the House involved before they are debated on the floor of the House.
(Decision nº 2009-579 DC, April 9th 2009, paras 37, 40, 41 and 43, p. 84)

Additional provisions

The condition of admissibility laid down by paragraph 1 of Article 45 of the Constitution, whereby " Without prejudice to the application of Articles 40 and 41, any amendments connected, albeit indirectly, with the text tabled or transmitted shall be admissible" applies to both supplementary and amending provisions.
(Decision nº 2009-582 DC, June 25th 2009, para.27, p. 132)

Admissibility

An amendment shall be admissible only if it is put forward in writing and brief reasons given for its tabling.
(Decision nº 2009-579 DC, April 9th 2009, para.37, p. 84)

Admissibility as regards Article 40 of the Constitution

Under Article 40 and paragraph 1 of Article 42 of the Constitution, each House must have implemented a system for the effective and systematic monitoring of admissibility when amendments are tabled, including at the level of the Committee to which the Bill is referred for consideration. The provisions of Article 89 of the Rules of procedure of the National Assembly which provide for: a systematic preliminary examination of Private Members'Bills by the Bureau of the National Assembly or some of the Members thereof prior to the tabling of said amendments; an identical monitoring of amendments tabled at the Committee stage by the Chairmen of the Committees to which said amendments are referred, if need be after consultation of the Chairman of the General Rapporteur of the Finance Committee; an assessment by the President of the National Assembly of the financial admissibility of the amendments tabled on the Bureau of the Assembly; the opposing at any moment of the provisions of Article 40 of the Constitution by the Government or any Member as regards Private Members'Bills or amendment, or any amendments introduced by the Standing Committees to Bills referred to them
(Decision nº 2009-581 DC, June 25th 2009, paras 37 and 38, p. 120)

Under Article 40 and paragraph 1 of Article 42 of the Constitution, each House must have implemented a system for the effective and systematic monitoring of admissibility when amendments are tabled, including at the level of the Committee called upon to examine the merits of the amendment. The provisions of the Rules of procedure of a House of Parliament which allow the Committee to which a Bill is referred for consideration to meet " to examine amendments of the Rapporteur and those tabled no later than two days prior to this meeting" after having allowed them to be tabled and distributed without requiring any prior examination as to admissibility, are unconstitutional.
(Decision nº 2008-582 DC, June 25th 2009, paras 19 and 20, p. 132)

Compliance with Article 40 of the Constitution requires that a systematic examination under said Article be carried out of all Private Members'Bills and amendments tabled by Senators prior to the tabling thereof and thus prior to their publication, distribution and debate, to ensure that after such an examination solely those Private Members'Bills and amendments which have not been found inadmissible are allowed to be tabled. It also requires that the financial inadmissibility of amendments and changes made by Parliamentary committees to texts referred to them be raised at any time.
(Decision nº 2008-582 DC, June 25th 2009, paras 24 and 25, p. 132)

Admissibility as regards Article 41 of the Constitution.

Manner whereby Article 41 may be raised to appose an amendment.

The provisions of Article 41 of the Constitution, whereby "If during the legislative process, it appears that a Private Member's Bill or amendment is not a matter for statute or in contrary to a delegation granted under Article 38, the Government may argue that it is inadmissible", require that this inadmissibility be also allowed to be raised with respect to amendments made by Committees to texts referred to them.
(Decision nº 2008-582 DC, June 25th 2009, paras 24 and 26, p. 132)

Timeframe for tabling amendments

The Institutional Act may provide that amendments tabled by Members of Parliament may cease to be admissible after commencement of consideration of the text on the floor of the House and that Rules of procedure of the Houses of Parliament may determine the conditions governing the allotting of a timeframe for admissibility of amendments prior to the beginning of examination of a Bill on the floor of the House. This timeframe applies neither to sub-amendments nor Government amendments, nor those of the Committee to which a Bill ahs been referred for consideration.
(Decision nº 2008-579 DC, April 9th 2009, para 37, p. 132)

The Rules of procedure of the National Assembly may provide that amendments tabled by Members must be transmitted by those introducing such amendments no later than 5 p.m three working days before the date of the beginning of public debate on the text and that these provisions apply neither to sub-amendments nor Government amendments, nor to those of

the Committee to which the Bill has been referred for consideration, nor when the latter have tabled amendments outside the allotted timeframe, nor to amendments tabled by Members regarding the same clauses. These provisions only conform to the Constitution on condition that the Chairman of the Committee is able to reconcile compliance of the effectiveness of the right of amendment with the requirements of clarity and accuracy of Parliamentary debate. See also for amendments at the committee stage, decision n° 2009-581 DC, June 25th 2009, paras 34 and 35.
(Decision n° 2009-581 DC, June 25th 2009, paras 42 and 44, p. 120)

The Rules of procedure of the National Assembly may provide that amendments tabled by Members of the Assembly to missions and clauses of Part Two of a Finance Bill shall be tabled no later than 1 p.m on the eve of the day before debate on such mission or clauses, unless otherwise decided by the Conference of Presidents. These provisions only conform to the Constitution on condition that the Chairman of the Committee is able to reconcile compliance of the effectiveness of the right of amendment with the requirements of clarity and accuracy of Parliamentary debate and that under no circumstances the subsequent tabling of sub-amendments be prohibited.
(Decision n° 2009-581 DC, June 25th 2009, paras 43 and 44, p. 120)

Application of Article 44 paragraph 2

The Government may raise the inadmissibility set forth in paragraph 2, Article 44 of the Constitution as regards sub-amendments which have not been examined by the Standing Committee to which they have been referred for consideration as long as this circumstance is not of a substantial nature such as to render null and void the legislative proceedings in view of the contents of the sub-amendments involved and in normal general conditions of debate (implied solution, cf decision n° 2006-535 DC, March 30th 2006, para.10)
(Decision n° 2009-579 DC, April 9th 2009, para.1, p. 84)

Admissibility at first reading

The condition of admissibility laid down by paragraph 1 of Article 45 of the Constitution, whereby without prejudice to the application of Articles 40 and 41, any amendments connected, albeit indirectly, with the text tabled or transmitted shall be admissible at first reading", applies to both supplementary and amending provisions.
(Decision n° 2009-582 DC, June 25th 2009, para.27, p. 132)

The right of amendment vested by the Constitution in Members of Parliament and the Government is exercised in the conditions and subject to the qualifications provided for by Articles 40, 41, 44, 45, 47 and 47-1. The result of the combination of these provisions is that the right of amendment vested in Members of Parliament and the Government must be able to be exercised freely at 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 be not devoid of any connection with the purpose of the Bill tabled before the first House called upon to debate it.
(Decision n° 2009-578 DC, March 18th 2009, para.30, p. 73)

As is stated in the heading of Title I, the Government Bill contained provisions pertaining to the organisation of rail and guided transport. Section 5 of the statute referred for review modifies and specifies the legal, legal, property, accounting and financial regime of the organisation of transport, including rail and guided transport of travellers in Ile-de-France. The argument of failure to comply with Article 45 of the Constitution must therefore be dismissed.
(Decision n° 2009-594 DC, December 3rd 2009, paras 5 and 6, p. 200)

Amendments with no direct or indirection connection with the Bill under debate.

A provision cannot be introduced by way of amendment when it is devoid of any connection with the purpose of the Bill tabled with the Bureau of the first House called upon to debate it.

The following cannot be deemed to have any connection with the Bill under debate concerning the acceleration of public and private building and investment programmes: the provi-

sions introduced by an amendment concerning the powers of the Architect of the Bâtiments de France in the procedure for granting building permits in the perimeter of areas of protection of the national architectural, urban and landscape heritage; the permission granted to certain wine growers to use the words" grand cru classé" and "premier grand cru classé"; the ratification of an Ordinance modernizing the regulating of competition; the modification of the rules governing the operation of the Association for the management of the pension fund of locally elected officers; the authority conferred on the Government to establish by Ordinance a Public Procurement Code; the fixing at 70 of the retirement age of Presidents of Boards of State Public Establishments.
(Decision nº 2009-575 DC, February 12th 2009, paras 5 to 11, p. 48)

The Government Bill on Mobilization for Housing and the Fight against Exclusion, when tabled with the Bureau of the Senate, the first House called upon to debate it, comprised five chapters: Chapter I dealing with provisions concerning the mobilization of persons in favour of the housing policy and the improvement of the running of property held under joint ownership; Chapter II concerning the national requalification programme for old rundown neighbourhoods; Chapter III providing for measures in favour of developing new offers of housing; Chapter IV bringing together provisions concerning turnover of tenants in social housing and Chapter V dealing with the fight against exclusion, accommodation and access to housing. Sections 115 and 123 of the statute referred for review were inserted by amendments passed at first reading. Section 115 which provided that the occupier of any housing should be required to install at least one smoke detector and ensure its effective working, and section 123 designed to ratify an Ordinance extending certain provisions of the General Code of Territorial Communities to Communes of French Polynesia, groupings and Public Establishments thereof, were devoid of any connection with the provisions of the Bill as it was initially tabled and thus passed in proceedings which were unconstitutional.
(Decision nº 2009-578 DC, March 18th 2009, paras 30 to 35, p. 73)

No indirect connection

First application of paragraph 1 of Article 45 of the Constitution as worded pursuant to the Constitutional Act of July 23rd 2008. Paragraph 1 of Article 45 provides: "Without prejudice to the application of Articles 40 and 41, any amendments connected, albeit indirectly, with the text tabled or transmitted, shall be admissible at first reading". In the case in hand, the initial Bill was designed to modernize health care establishments, facilitate access of all to quality health care, encourage preventive care and enhance public health and lastly, to modernize the territorial organization of the health care system. Section 44, inserted into the Bill by an amendment at first reading by the Senate on June 4th 2009, amended the Social Security Code in order to change the name of the National Higher School of Social Security. This provision, which was devoid of any connection, albeit indirect, with those in the Bill dealing with hospital reform and patients, health care and territories, was passed in proceedings which were unconstitutional and hence must be found to be unconstitutional
(Decision nº 2009-584 DC, July 16th 2009, paras 40 to 43, p. 140)

Second application of paragraph 1 of Article 45 of the Constitution as reworded pursuant to the Constitutional Act of July 23rd 2008. This paragraph applies in the same conditions to Government and Private Members'Bills. The Bill tabled on the Bureau of the first House called upon to debate it was designed solely to further access to credit of small and medium-sized businesses. Section 14, inserted in the Bill by an amendment passed at first reading by the Senate on June 9th 2009, amended the Monetary and Financial Code to exempt Chartered Accountants, when giving legal advice, from making the declaration of suspicion provided for in Part 4 of Chapter I of Title VI of Book V of the same Code. Section 16, inserted into the Bill passed at first reading by the Senate on June 9th 2009, completed Article 2011 of the Civil Code by a provision of general scope whereby "the trustee shall exercise the rights of ownership vested in him over the trust property for the benefit of the beneficiary or beneficiaries as provided for in the trust agreement". These provisions, which were devoid of any connection, albeit indirect, with those found in the Bill were passed in proceedings which were unconstitutional. Finding of non-conformity.
(Decision 2009-589 DC, October 14th 2009, paras 2 and 3, p. 173)

Admissibility after first reading.

Direct connection with the Bill under debate.

Any amendment introduced by the Joint Committee must, under paragraph 2 of Article 45 of the Constitution, either be directly connected with a provision still under debate, designed to ensure compliance with the Constitution, coordination with provisions under debate or to rectify a material error.
(Decision nº 2009-578 DC, March 18th 2009, para 29, p. 73)

No connection

1° of III of section 118 of the statute referred for review completed the final paragraph of Article L 421-8 of the Building and Housing Code to lay down specific rules as to representation of *Départements* within the Board of the Interdepartmental Office of Essonne, Val d'Oise and Yvelines. The amendment giving rise to 1° of III of section 118 was introduced by the Joint Committee. Devoid of any direct connection with a provision still under debate, not designed to ensure compliance with the Constitution, coordination with provisions under debate or to rectify a material error, the amendment was passed in proceedings which were unconstitutional.
(Decision nº 2009-578 DC, March 18th 2009, paras 27 to 29, p. 73)

Sub-amendment

The Government may raise the inadmissibility provided for in paragraph 2, Article 44 of the Constitution as regards sub-amendments which have not been examined by the Standing Committee to which the Bill has been referred for consideration as long as this circumstance is not of a substantial nature such as to render null and void the legislative proceedings in view of the contents of the sub-amendments involved and in the normal general conditions of debate (implied solution, cf decision nº 2006-535 DC, March 30th 2006, para.10)
(Decision nº 2009-579 DC, April 9th 2009, para.1, p. 84)

No timeframe may be opposed to the admissibility of a sub-amendment.
(Decision nº 2009-579 DC, April 9th 2009, para.37, p. 84)

The Rules of procedure of the National Assembly may provide that amendments tabled by Members of the Assembly to missions and clauses of Part Two of a Finance Bill shall be tabled no later than 1 p.m on the eve of the day before debate on such missions or clauses, unless otherwise decided by the Conference of Presidents. These provisions only conform to the Constitution on condition that the Conference of Presidents is able to reconcile compliance of the effectiveness of the right of amendment with the requirements of clarity and accuracy of Parliamentary debate and that under no circumstances the subsequent tabling of sub-amendments be prohibited. Cf also for sub-amendments at the Committee stage decision nº 2009-581 DC, June 25th 2009 paras 34 and 35
(Decision nº 2009-581 DC, June 25th 2009, paras 43 and 44, p. 120)

Voting

Methods of voting

Quorum

The Rules of procedure of a House may change the conditions in which a request for a verification of the presence of a quorum is acceded to, together with the consequences of the length of the suspension of a sitting deriving from the finding of no quorum, provided that such a measure is not designed to do away with the requirement of a quorum.
(Decision nº 2009-581 DC, June 25th 2009, para 31, p. 120)

Successive readings and promulgation

Urgency and accelerated procedure

The Rules of procedure of a House may allow the convening of the Conference of Presidents of said House at the request of the President of a group so that the Conference may exercise, if need be, the prerogatives vested in it by paragraph 4 Article 39 and paragraph 2 Article 45 of the Constitution. In such a case, as in other cases, it may also be convened by the President of the House on his own initiative.
(Decision nº 2009-581 DC, June 25th 2009, para 14, p. 120)

The Government may make known its decision to have recourse to an accelerated procedure as provided for by Article 45 of the Constitution once both the Conferences of Presidents are able, prior to the commencement of consideration of the Bill at first reading, to exercise the prerogative vested in them by Article 45 to oppose such a decision.
(Decision nº 2009-582 DC, June 25th 2009, para 15, p. 132)

Specific procedures

Institutional Acts

Institutional Act pertaining to the Senate

The Institutional Act pertaining to the appointment of the Presidents of the companies France Télévisions and Radio France and of the company in charge of France's external audiovisual services which, pursuant to the final paragraph of Article 13 of the Constitution, submits the appointment made by the President of the Republic to consultation of the relevant Standing committee of each House is not an Institutional Act pertaining to the Senate
(Decision nº 2009-576 DC, March 3rd 2009, para 1, p. 62)

The Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution is not an Institutional Act pertaining to the Senate.
(Decision nº 2009-579 DC, April 9th 2009, para 1, p. 84)

Paragraph 10 of section 19 of the Institutional Act on the institutional development of New Caledonia, which concerns the Senate, was enacted in the same terms by both Houses.
(Decision nº 2009-587 DC, July 30th 2009, para 4, p. 152)

Shortened procedures

Guiding principles

Under paragraph 1 of Article 44 of the Constitution as worded pursuant to the constitutional revision of July 23rd 2008 "Members of Parliament and the Government shall have the right of amendment. This right may be exercised during sittings of the House or in committee as provided for by the Rules of procedure of the House involved within the limits of the provisions determined by an Institutional Act". Rules of procedure may, if they introduce a simplified examination procedure which does not encounter any opposition by the Government, the Chairman of the Committee to which a Bill has been referred for consideration or the President of a group, provide that the Bill passed by the Committee to which it was referred for consideration shall be the sole text to be debated on the floor of the House.
(Decision nº 2009-579 DC, April 9th 2009, para 43, p. 84)

Programmed Procedures

Under paragraph 1 of section 17 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution " The Rules of procedure of the Houses of

Parliament may, if they introduce a procedure allotting timeframes for debating a Bill on the floor of the House, determine the conditions in which amendments tabled by Members of Parliament may be put to the vote without debate". When providing, in Article 44 of the Constitution, that the right of amendment may be exercised "during sittings of the House or in committee as provided for by the Rules of procedure of the House", the Constituent Power wished to ensure that, within the framework of the procedure laid down by Rules of procedure setting timeframes for consideration of a Bill on the floor of the House, debate on amendments may only take place at the committee stage.

This provision did not preclude Parliament from providing for additional guarantees for the right of expression of all Members and Parliamentary groups, in particular Opposition and minority groups. Parliament was thus able, under paragraph 2 of section 17 of the Institutional Act to provide that "when an amendment is tabled by the Government or the Committee after the expiry of the timeframe allotted for the tabling of amendments by Members of Parliament, the Rules of procedure of the House, if they introduce a procedure allotting a timeframe for consideration of a text, shall provide for additional time for debate, at the request of a President of a group". In similar fashion, Parliament when enacting the Institutional Act, was at liberty to require that the Rules of procedure make provision to guarantee the right of expression of all Parliamentary groups, "in particular Opposition and minority groups", and to lay down the conditions in which the right to speak may be granted to any Member of Parliament who so requests in order to personally explain his or her vote on all of a Bill
(Decision nº 2009-579 DC, April 9th 2009, paras 40 and 41, p. 84)

Quality of a statute

Principle of clarity and accuracy of Parliamentary debate

The Houses of Parliament had at their disposal, as is attested by the reports of the Committees called upon to consider or give their opinion on the Bill and by the minutes of debate, sufficient elements of information on the provisions of the Bill under debate (Bill furthering the Diffusion and Protection of Creation on the Internet) The argument that the Government failed to supply Parliament with objective elements of information needed to ensure clarity and accuracy of debate is thus not supported by the facts.
(Decision nº 2009-580 DC, June 10th 2009, paras 2 and 3, p. 107)

Transversal norm of reference for monitoring Resolutions amending the Rules of procedure of the Houses of Parliament. Article 6 of the Declaration of 1789 proclaims: " The Law is the expression of the general will". Paragraph 1 of Article 3 of the Constitution provides: "National sovereignty shall vest in the people, who shall exercise it through their representatives". These provisions require compliance with the requirements of clarity and accuracy of Parliamentary debate.

Application to the limiting to a maximum of two minutes the speaking time allotted in public sittings. Application to the fixing of a maximum period for consideration of a Bill and, when such a period has been determined, to the fixing of additional time for debate granted to Members at the request of a President of a group when an amendment is tabled by the Government or the Committee after the expiry of the allotted timeframe. Application to closure proceedings to debate on a clause not allowing a Member of an Opposition group to be heard. Application to the fixing of a timeframe for tabling amendments on the floor of the House and at the Committee stage.
(Decision nº 2009-581 DC, June 25th 2009, paras. 3, 20, 25, 29, 35 and 44, p. 120)

Transversal norm of reference for monitoring Resolutions amending the Rules of procedure of the Houses of Parliament. Article 6 of the Declaration of 1789 proclaims: " The Law is the expression of the general will". Paragraph 1 of Article 3 of the Constitution provides: "National sovereignty shall vest in the people, who shall exercise it through their representatives". These provisions require compliance with the requirements of clarity and accuracy of Parliamentary debate.
(Decision nº 2009-582 DC, June 25th 2009, para.3, p. 132)

Objective of accessibility and intelligibility of statute law (see also above Principle of clarity of the law)

Parliament did not fail to exercise full powers nor fail to comply with the constitutional requirement of accessibility and intelligibility of statute law when leaving it to regulations to fix by Decree a ceiling to the cumulating of the additional solidarity rent known as "top up rent" and the rent in order to take into account the rents charged in the sector of each piece of rented property.
(Decision nº 2009-578 DC, March 18th 2009, paras 22 to 25, p. 73)

Section 17 of the statute referred for review, which rewords Article L 6415-16 of the Public Health Code, provides that the accounts of Public Healthcare Establishments determined by Decree shall be certified by a Chartered Auditor or the *Cour des comptes* and specifies that the manner of such certification shall be "co-ordinated by the latter" and fixed by regulations. Parliamentary debate shows that Parliament intended to entrust the certification of the accounts of Public Healthcare Establishments to Chartered Auditors or the *Cour des comptes* and leave it to regulations to fix the terms of their respective interventions and the procedures common to both. However when vesting the *Cour des comptes* with the power to co-ordinate the manner of such certification by Chartered Auditors, without specifying the scope and limits of such power, Parliament has failed to exercise its powers to the full. It has thus failed to comply with the constitutional requirement of intelligibility and accessibility of statute law. The words "co-ordinated by the latter" are thus unconstitutional.
(Decision nº 2009-584 DC, July 16th 2009, paras 29 and 31, p. 140)

The text containing the provisions referred for review by the Constitutional Council shows that the application of the new provisions concerning exceptions to the principle of Sunday rest shall be determined on the basis of the sole provisions of the Employment Code. The abovementioned provisions do not merge with or replace those of the Tourism Code, which enable certain communes to be labelled touristic Communes, and which have a different purpose. The argument based on the failure to comply with the constitutional requirement of intelligibility and accessibility of the law must thus be dismissed.
(Decision nº 2009-588 DC, August 6th 2009, paras 6 and 7, p. 163)

Firstly, Parliamentary debate shows that by employing the terms "urban units" Parliament referred to a pre-existing concept, defined by the National Institute for Statistics and Economic Surveys. Although it will be up to the authorities entrusted with the task of implementing these new measures to assess, under the control of the relevant courts, factual situations corresponding to the conditions of "habitual Sunday consumption" and the "substantial number of customers involved" and the "fact that such customers habitually reside outside the perimeter", these concepts are not ambiguous and are sufficiently precise to guarantee the absence of any arbitrary appraisals. The argument based on failure to comply with the constitutional objectives that the law be intelligible and accessible should thus be dismissed.
(Decision nº 2009-588 DC, August 6th 2009, para 12, p. 163)

Firstly, the expression "may ascertain the commission of acts likely to constitute offences" is neither obscure nor ambiguous and does not fail to comply with the constitutional objective of accessibility and intelligibility of the law.

Secondly, it is incumbent upon the courts with relevant jurisdiction to appraise factual situations likely to constitute the "gross negligence" mentioned in Article L 335-7-1 of the Intellectual Property Code. This concept, which is not of an equivocal nature, is sufficiently precise to guarantee against any arbitrariness
(Decision 2009-590 DC, October 22nd 2009, paras 5 and 29, p. 179)

When providing, for the transferring of some 900 persons from the National Association for Ongoing Professional Training of Adults to the "Pole Emploi" (Employment Pole), firstly for the automatic transfer no later than April 1st 2010 of the contracts of service of the employees involved to the "Pole Emploi" and secondly specifying the collective bargaining agreement applicable to these employees, Parliament exercised to the full the powers vested in it by the Constitution, and, in particular, those deriving from Article 34 thereof, and also complied with the constitutional objective of intelligibility and accessibility of the law, which derives from Articles 4,5,6 and 16 of the Declaration of the Rights of Man and the Citizen of 1789.
(Decision nº 2009-592 DC, November 19th 2009, paras 4 to 7, p. 193)

The parties making the referral contend that when making the reference to "a suitable remuneration for the capital outlay" made by the Paris Transport Authority in the context of its task of manager of the metropolitan network infrastructure, Parliament failed to specify in clear and certain terms the duties in this respect of the Syndicat des transports d'Ile-de-France. They argue that it failed to comply with the constitutional requirement of accessibility and intelligibility of the law. The statute referred for review refers to an agreement between the two parties which shall specify "a suitable remuneration" The imprecise nature of this notion in fact makes the determination of such remuneration dependent upon an agreement between the parties. Parliament thus did not fail to exercise its full powers, nor to comply with the requirement of constitutional status of intelligibility and accessibility of the law.
(Decision nº 2009-594 DC, December 3rd 2009, paras 8 to 11, p. 200)

3.2 of section 77 of the Finance Act for 2010 specifies the manner of implementation of a new "users'contribution" which has Communes and Public Establishments of Inter-communal cooperation (EPCI) which benefit from specific tax measures finance a fraction of the amount of the reduction of the territorial economic contribution (CET) granted to certain businesses. The Communes and the ECPI shall be required to bear this fraction as from 2013 if the reduction is granted for longer than one year. The parties making the referral contend that this measure would not make it possible to attain the specified goal and would undermine the objective of intelligibility of the law. The 'technical nature'involved in capping the contribution of the CET at 3 % of the added value of businesses is not *per se* such as make this capping run counter to the constitutional requirement of intelligibility and accessibility of the law. Argument dismissed.
(Decision nº 2009-599 DC, December 29th 2009, paras 19, 20 and 23, p. 218)

Parliament, in the Finance Act for 2010 had created two categories of equalisation account for the tax on the added value of businesses (CVAE). The method of operation of these two categories of account is fixed respectively by Articles 1648 VV and 1648 AB of the General Tax Code. Firstly, if Parliament on this occasion made mistakes in drafting which rendered the statute incomprehensible, it corrected them in the Supplementary Finance Act passed at the end of the year, a statute also referred to the Constitutional Council, and thus re-established the intelligibility of this statute. Secondly, Parliament, notwithstanding their identical name, has created two distinct types of account, characterized by their methods of financing and the criteria governing the apportionment of their different resources, defined in a sufficiently clear and precise manner. Furthermore when providing that the levy created on the basis of Article 1648 AA is made on the total CVAE resources of each Community, including monies transferred from the account created under Article 1648B, it organised the articulation between these two accounts in a sufficiently clear and precise manner. As is shown by the foregoing, the arguments based on the failure to comply with the constitutional requirements of accessibility and intelligibility of the law must be dismissed.
(Decision nº 2009-599 DC, December 29th 2009, paras 48 to 59, p. 218)

Requirement that statute law be precise

Requirement deriving from Article 34 of the Constitution of 1958

The first paragraph of Article L336-3 of the Intellectual Property Code as worded pursuant to the Act furthering the Diffusion and Protection of Creation on the Internet provides: "A person who has subscribed to internet access to online public communication services is under a duty to ensure that said access is not used for reproducing, showing, making available or communicating to the public works or property protected by copyright or a related right without the authorization of the copyright holders provided for in Books I and II when such authorization is required". Contrary to what is claimed by the parties making the referral, the definition of this duty is distinct from that of the offence of infringing copyright. It is defined in sufficiently clear and precise terms. When imposing this duty Parliament neither failed to exercise fully the powers vested in it by Article 34 of the Constitution nor failed to comply with the constitutional objective of intelligibility and accessibility of the law.
(Decision nº 2009-580 DC June 10th 2009 paras 6 and 7, p. 107)

Requirement that statute law be of normative scope

The banning of commercial breaks in national TV programmes of France Télévisions, the consequence of which is to deprive this national company of a substantial amount of its revenue, must be considered as affecting the guarantee of its funding, which constitutes an element of its independence. 11° of I of section 28 of the statute referred for review, is thus not devoid of normative scope.
(Decision nº 2009-577 DC, March 3rd 2009, para.18, p. 64)

POWERS OF MONITORING AND ASSESSMENT

Monitoring of appointments

Section 6 of the Institutional Act on the application of Article 25 of the Constitution, which submits the appointment by the President of the Republic of the Chairman of the Committee provided for in the final paragraph of Article 25 of the Constitution to consultation of the relevant Parliamentary Committees conforms to the final paragraph of Article 13 of the Constitution.
(Decision nº 2008-572 DC, January 8th 2009, paras 10 and 11, p. 33)

Under Articles L.O 567-9 and 567-1 of the Electoral Code the qualified persons sitting on the Committee, who are chosen for their experience or legal or scientific expertise in electoral matters are respectively appointed by the President of the Republic, the President of the National Assembly and the President of the Senate after consultation with the relevant Committees. Appointments cannot be made when the total of negative votes cast in each Committee represents not less than three fifths of the votes cast by these two Committees.
(Decision nº 2008-573 DC, January 8th 2009, para.8, p. 36)

The sole section of the Institutional Act pertaining to Audiovisual Communication and the New Public Television Service submits for the opinion of the relevant Standing Committee in each House the appointment by the President of the Republic of the Presidents of the companies France Télévisions and Radio France and of the company in charge of France's external audiovisual services. In view of the importance of said posts in guaranteeing rights and freedoms and in the economic and social life of the Nation, these posts come under the scope of the final paragraph of Article 13 of the Constitution. However, although Parliament was at liberty to provide, in order to guarantee the independence of national broadcasting companies and implement the principle of freedom of communication, that "in each House of Parliament, the relevant Standing Committee shall give its opinion after a public hearing of the person whose appointment has been proposed" by so doing it has however laid down a rule which does not come under the scope of the Institutional Act defined in the final paragraph of Article 13 of the Constitution
(Decision nº 2009-576 DC, March 3rd 2009, paras 2 to 4, p. 62)

When submitting the appointment of the Presidents of national broadcasting bodies to the procedure provided for in the final paragraph of Article 13 of the Constitution, Parliament, when passing the Institutional Act, intended, in view of the importance of said posts in guaranteeing rights and freedoms, that such appointments be made after consultation with those representing the Nation, after a public hearing and opinion.
(Decision nº 2009-577 DC, March 3rd 2009, para.7, p. 64)

Recourse to the procedure provided for in the final paragraph of Article 13 of the Constitution (public opinion of the relevant Parliamentary Committees with a power of veto with a three fifths majority of votes cast) did not preclude Parliament, mindful of the constraints of the Constitution and in particular the principle of the separation of powers, from laying down or adding rules governing the power of the President of the Republic to make such appointments in order to guarantee the independence of said bodies and thus contribute to the implementation of freedom of communication. The favourable opinion of the Higher Council for Audiovisual Matters with respect to such appointments is thus not contrary to Article 13 of the Constitution.
(Decision nº 2009-577 DC, March 3rd 2009, para.9, p. 64)

Article 13 of the Constitution only permits a veto by the relevant Parliamentary Committees by a three fifths majority of votes cast in the framework of the exercising of the power of appointment vested in the President of the Republic.

Section 14 of the Institutional Act pertaining to Audiovisual Communication and the New Public Television service which submits to such a veto a decision taken by the President of the Republic to remove the Presidents of national broadcasting bodies from office has failed to take into account the scope of Article 13 of the Constitution and disregarded the principle of the separation of powers.
(Decision nº 2009-577 DC, March 3rd 2009, para.13, p. 64)

Rules of procedure of a House of Parliament may provide that the relevant Committee, when giving its opinion on a proposed appointment, shall proceed to a public hearing of the person whose appointment is contemplated. However, firstly, such a provision should not preclude Parliament from providing that such a hearing not be held in public. Secondly, under Article 5 bis of Ordinance nº 58-1100 of November 17th 1958 pertaining to the operating of the Houses of Parliament, the Standing Committee may summon to appear before it any person whom it deems necessary to hear, with the sole exception firstly of issues of a confidential nature involving the national defence, foreign affairs, internal or external security of the State and secondly compliance with the separation of the judicial authority and other powers. In all events, statutes ensuring the preservation of professional confidentiality and secrecy in matters of national defence forbid any person in possession of such information from divulging the same, even when being heard by a Parliamentary Standing committee.
(Decision nº 2009-581 DC, June 25th 2009, paras 5 to 7, p. 120)

Rules of procedure of a House of Parliament may provide that the relevant Committee, when giving its opinion on a proposed appointment, shall proceed to a public hearing of the person whose appointment is contemplated. However, firstly, such a provision should not preclude Parliament from providing that such a hearing not be held in public. Secondly, under Article 5 bis of Ordinance nº 58-1100 of November 17th 1958 pertaining to the operating of the Houses of Parliament, the Standing Committee may summon to appear before it any person whom it deems necessary to hear, with the sole exception firstly of issues of a confidential nature involving the national defence, foreign affairs, internal or external security of the State and secondly compliance with the separation of the judicial authority and other powers. In all events, statutes ensuring the preservation of professional confidentiality and secrecy in matters of national defence forbid any person in possession of such information from divulging the same, even when being heard by a Parliamentary Standing committee.
(Decision nº 2009-582 DC, June 25th 2009, paras 11 to 13, p. 132)

Monitoring of Government activity and assessment of public policies on the floor of the House and in Committee

Monitoring on the floor of the House

Debate

The Rules of procedure of the Senate may provide that " debate at the initiative of Senators" may be entered on the agenda " at the request of a political group, a committee, of the Committee in charge of European Affairs or a delegation". However, in view of the conditions in which the Senate gives its opinion on Government activity as set forth in the final paragraph of Article 49 of the Constitution, such debate cannot lead to the taking of a vote, irrespective of whether of not the Government is present.
(Decision nº 2009-582 DC, June 25th 2009, paras 34 and 35, p. 132)

Role of committees other than Standing committees

Role of Committees of inquiry

Article 51-2 of the Constitution makes the preserve of statute law the laying down of conditions in which Committees of inquiry set up in each House may collect information and determine

the rules of organisation and operation of such committees. The Rules of procedure of each House cannot therefore determine the manner in which such persons heard by a Committee of inquiry are allowed to have access to the minutes of their hearing and make their comments known. Not conform.
(Decision nº 2009-581 DC, June 25th 2009, paras 51 and 52, p. 120)

Provisions providing for information reports on the implementation of findings reached by a Committee which are not themselves of a binding nature, only conform to the Constitution on condition that such Committees are of a temporary nature, confine themselves to supplying information enabling the National Assembly to carry out its task of monitoring the action of the Government in the conditions provided for by the Constitution and that the report presented shall under no circumstances address an injunction to the Government.
(Decision nº 2009-581 DC, June 25th 2009, paras 54 and 55, p. 120)

The rules of procedure of a House may provide that each group is entitled to a Committee of inquiry each sitting year. Such a request, will only be admissible, under the principle of the separation of powers, if it complies with the provisions of Article 6 of Ordinance nº 58-1100 of November 17th 1958 pertaining to the operating of the Houses of Parliament which firstly prohibit the setting up of Committees of inquiry into acts which have led to legal proceedings as long as this proceedings are still ongoing and secondly requires any Committee of inquiry to cease its work once a preliminary judicial inquiry has been launched as regards the acts which the Committee is enquiring into.
(Decision nº 2009-582 DC, June 25th 2009, paras 4 to 6, p. 132)

Role of fact-finding missions

Provisions providing for information reports on the application of statutes and the implementation of findings reached by a fact-finding mission only conform to the Constitution on condition that such missions are of a temporary nature and confine themselves to supplying information enabling the National Assembly to carry out its task of monitoring the action of the Government in the conditions provided for by the Constitution.
(Decision nº 2009-581 DC, June 25th 2009, paras 54 and 55, p. 120)

Role of the Committee for the Assessment and Monitoring of Public Policies

The provisions of Article 129 of the Resolution of May 29th 2009, which inserts into the Rules of procedure of the National Assembly a Chapter VII comprising Article 146-2 to 146-7, have set up a Standing Committee for the Assessment and Monitoring of Public Policies. These provisions will be constitutional under three conditions: all follow-up and monitoring of the implementation of Finance Acts and Social Security Financing Acts and any issue relating to public finance and social security finance are to be excluded from the sphere of competence of such a Committee; secondly the possibility for the Rapporteurs of such a Committee of having the benefit of the help of Experts for which the Government is accountable is to be prohibited; thirdly neither the recommendations of this Committee transmitted to the Government nor the follow-up report of the implementation of the same may on no account address an injunction to the Government. The Committee could not require the assistance of the *Cour des comptes* on the sole basis of the Rules of procedure of the National Assembly. Neither could it organise a debate offering a hearing to all concerned in the presence of the administrative heads of the public policies undergoing assessment. Organising such a debate would firstly run counter to Articles 20 and 21 of the Constitution which make it the preserve of the Government to decide who shall be accountable to Parliament and secondly would run counter to article 24 of the Constitution which limits the monitoring role of Parliament to the actions of the Government to the exclusion of the monitoring of the actions of any other public persons.
(Decision nº 2009-581 DC, June 25th 2009, paras 57 to 62, p. 120)

Role of the *Cour des comptes* (Audit Court)

The Standing Committee for the Assessment and Monitoring of Public Policies set up by the Resolution of May 27th 2009 amending the Rules of procedure of the National Assembly could

not require the assistance of the *Cour des comptes* on the sole basis of the Rules of procedure of the National Assembly. Although, under paragraph 1 of Article 47-2 of the Constitution, the *Cour des comptes* "shall assist Parliament.... in monitoring the actions of the Government", said Court may lend assistance to the Committee in assessing public policies, it is not up to regulations but to statute law to determine the manner in which a parliamentary body may request such assistance. No conformity.
(Decision nº 2009-581 DC, June 25th 2009, paras 57 and 60, p. 120)

Other monitoring and information procedures

Monitoring military interventions abroad

Under paragraph 1 of Article 24 of the Constitution, whereby "Parliament .... shall monitor the action of the Government" and specifying under paragraph 2 of Article 35 of the Constitution, that "The Government shall inform Parliament of its decision to have the Armed Forces intervene abroad, no later than three days after the commencement of said intervention", the Constituent Power wished to ensure that at least all the groups of each House be informed of these interventions.
(Decision nº 2009-581 DC, June 25th 2009, paras 46 and 47, p. 120 ; decision nº 2009-582 DC, June 25th 2009, paras 29 and 30, p. 132)

Follow-up of the activities of the European Union

Proposals dealing with texts transmitted under Article 88-4 of the Constitution

Under paragraphs 2 and 5 of Article 48 of the Constitution, the Government, Opposition groups and minority groups in the framework of the monthly sitting day reserved for them are entitled to request the National Assembly or one of the bodies thereof to give its opinion on a proposal for a European Resolution before the expiry of the timeframe of one month allotted by the Rules of procedure of said House whereby the absence of any response on the part of the European Affairs Committee or/and the Standing Committee to which the proposal has been referred shall be deemed to constitute adoption of the same.
(Decision nº 2009-581 DC, June 25th 2009, paras 64 and 65, p. 120)

Under paragraphs 2 and 5 of Article 48 of the Constitution, the Government, Opposition groups and minority groups in the framework of the monthly sitting day reserved for them are entitled to request the Senate to give its opinion on a proposal for a European Resolution before the expiry of the timeframe of one month allotted by the Rules of procedure of said House whereby the absence of any response on the part of the Standing Committee to which the proposal has been referred shall be deemed to constitute adoption of the same.
(Decision nº 2009-582 DC, June 25th 2009, paras 31 and 32, p. 132)

Resolutions

Under paragraph 1 of Article 34-1 of the Constitution, " The Houses of Parliament may adopt Resolutions in the conditions provided for by the Institutional Act" It is thus incumbent upon the Institutional Act to determine the rules governing the tabling and consideration of proposals for Resolutions.
(Decision nº 2009-579 DC, April 9th 2009, para.3, p. 84)

Insofar as Article 34-1 of the Constitution provides that it is "in the conditions provided for by the Institutional Act" that the Houses of Parliament may adopt Resolutions, Parliament, when passing the Institutional Act, could not, without failing to exercise fully the powers vested in it by the Constitution, confer upon the Rules of procedure of Houses of Parliament power to determine the procedure to be followed for consideration of such proposals and, in particular, to decide whether the latter may or not be referred to a Standing Committee or Special Committee. Censure
(Decision nº 2009-579 DC, April 9th 2009, paras 3 and 4, p. 84)

Under paragraph 2 of Article 34-1 of the Constitution: "Any draft Resolution of which the Government shall deem the adoption or rejection liable to call into question its responsibility or be of an injunctive nature shall be inadmissible and shall not be entered on the agenda of the business of the House". Under these provisions, the appraisal by the Government of the meaning and scope of draft Resolutions in order to decide whether they are admissible must necessarily be carried out before such draft Resolutions are entered on the agenda of business. This therefore means that the text of a draft Resolution cannot be modified by the drafter thereof once this draft Resolution has been entered on the agenda.

When providing that such draft Resolutions may be modified by the drafter thereof until such time as they are considered at a sitting of the House, paragraph 1 of section 6 of the Institutional Act pertaining to article 34-1, 39 and 44 of the Constitution fails to comply with Article 34-1 of the Constitution. Censure.
(Decision nº 2009-579 DC, April 9th 2009, paras 5 to 7, p. 84)

CONSTITUTIONAL COUNCIL AND NORMS OF REFERENCE

SCOPE OF REVIEW OF CONSTITUTIONALITY

No jurisdiction of the Constitutional Council

Referral for interpretation of statute law

The parties making the referral petition the Constitutional Council to specify that the authorities in charge of enforcing the Act pertaining to the Protection under Criminal law of Literary and Artistic Property on the Internet must systematically carry out further investigations before any bringing of prosecutions.

The Council reiterates that it only incumbent upon the Council to construe statutory provisions which are referred to it when such a construction is a prerequisite to its decision as to the constitutionality of said provisions. In the case in hand the relevant judicial authorities will decide on a case by case basis, as they are required to do, whether further investigations or enquiries are required or if the evidence obtained by the civil servants and agents vested with police powers is sufficient to prove the guilt of the person accused and, as the case may be, make it possible to determine the applicable penalty. The Constitutional Council thus refuses to accede to the petition for interpretation of the provisions referred to it.
(Decision nº 2009-590 DC, October 22nd 2009, paras 4 and 6, p. 179)

Litigation giving rise to an application for a priority preliminary ruling on an issue of constitutionality

The Constitutional Council has no jurisdiction concerning the proceedings at the origin of the making of an application for a priority preliminary ruling on an issue of constitutionality. Therefore only the application in writing and the "separate and reasoned" memorandum and submissions pertaining solely to this application for a priority preliminary ruling on the issue of constitutionality are to be transmitted to the Council by the *Conseil d'Etat* or *Cour de cassation*
(Decision nº 2009-595 DC, December 3rd 2009, para.27, p. 206)

Scope of jurisdiction of the Constitutional Council

Laws of the land

Section 3 of the Institutional Act pertaining to the application of Articles 61-1 of the Constitution provides that the provisions of a law of the land may be the object of an application for

a priority preliminary ruling on the issue of constitutionality. Article 77 of the Constitution provides that "certain kinds of decisions taken by the Deliberative Assembly of New Caledonia may be referred to the Constitutional Council for review before publication". Section 99 of the Institutional Act n° 99-209 of March 19th 1999 has defined the field covered by "laws of the land" of New Caledonia and section 107 has conferred upon them "statutory force" in this field. Section 3 referred to hereinabove thus conforms to Article 61-1 of the Constitution which provides that applications for a priority preliminary ruling on the issue of constitutionality shall apply to statutory provisions.
(Decision n° 2009-595 DC, December 3rd 2009, paras 33 and 34, p. 206)

ADMISSIBILITY OF REFERRALS FOR REVIEW
(Article 61 of the Constitution)

Conditions involving the nature of the instrument referred

Conditions for review of an Institutional Act

A letter signed by 79 Members of the National Assembly was considered as being not a referral for review but mere comments, which were referred to in the decision and, in addition, were replied to by the Government in its observations by way of rejoinder

(cf Decision° 92-305 DC of February 21st 1992, paras 1 to 3).
(Decision n° 2009-579 DC, April 9th 2009, paras 1 to 47, p. 84)

ARGUMENTS RAISED
(a priori review of statutes – Article 61 of the Constitution)

Inoperative arguments or arguments unsupported by the facts

Inoperative arguments (examples)

The argument based on the failure by a provision arising from an amendment to comply with the provisions of the final phrase of paragraph 2 of Article 39, which provides that" Government Bills primarily dealing with the organisation of Territorial Communities shall be tabled first in the Senate" is inoperative.
(Decision n° 2009-594 DC, December 3rd 2009, paras 3 and 4, p. 200)

The parties making the referral contend that Parliament has failed to provide, as regards rail transport for travellers in the Ile de France (Greater Paris Region), for the separation of the management of the infrastructures and the running of these transport networks, and argue that this infringes the principle of equality between the Paris Transport Authority (RATP) and other transporters when such networks are opened up to competition. Although the statute referred for review has provided that regular public transport services created before January 1st 2010 will continue to be managed under current agreements for 15 years where road transport is concerned, 20 years for tramway transport, and 30 years for other guided transport, it is not designed to organize the opening up to competition of these transport services before these dates. Hence the argument based on infringement of the principle of equality is inoperative.
(Decision n° 2009-594 DC, December 3rd 2009, paras 9 and 12, p. 200)

Arguments unsupported by the facts (examples)

Two arguments are unsupported by the facts. Firstly, the parties making the referral argue that "by requiring Communes of residence to finance private schools situated in neighbouring

Communes, without providing for any transfer of resources in exchange, the statute has patently infringed the principle of self-government of Territorial Communities". The statute designed to guarantee equal financing between public and private elementary schools neither creates nor extends any powers concerning contributions of Communes to the operating costs of elementary classes of private primary schools under contract with the State. This argument is thus not supported by the facts. Secondly, the parties making the referral argue that the statute referred for review infringes the principle of equality before public burden sharing "by exempting the financing of private school from the prior approval of the Mayor whereas such approval is required for public schools". This participation by the Commune of residence in the operating costs of both public and private elementary schools which have entered into a contract with the State and are not situated on the territory of said Commune is not subject to the prior approval of the Mayor when this expenditure is of a mandatory nature provided for by law. When these conditions are not met, the application of the statute referred for review does not entail any mandatory financial consequence for the Commune of residence in the case of enrolment of a child in a private school under contract with the State situated in another Commune. The argument is thus unsupported by the facts.
(Decision 2009-591 DC, October 22nd 2009, paras 7 to 12, p. 187)

Case of promulgated statutes

Principle: refusal to review

The conformity with the Constitution of a statute which has been promulgated can only be challenged, under Article 61 of the Constitution, when there is a review of statutory provisions amending or completing the same or affecting the scope thereof. One of the sections challenged by the parties making the referral had been repealed (section 89 of Act nº 2004-809 of August 13th 2004 pertaining to Local freedoms and responsibilities) while the other was not amended (section 87 of said statute) by the statute designed to guarantee equal financing between public and private elementary schools. The necessary conditions for a review by the Constitutional Council, under Article 61 of the Constitution, of a promulgated statutory provision have thus not been met.
(Decision 2009-591 DC, October 22nd 2009, paras 14 and 15, p. 187)

Exception: qualified agreement to review

When reviewing section 135 of the Supplementary Finance Act for 2009 extending to certain young people under 25 the benefit of the Active Solidarity Income, the Constitutional Council found that Article L 262.24 of the Family and Social Welfare Code, deriving from Act nº 2008-1249 of December 1st 2008 and pertaining to the financing of this benefit did not fail to comply with paragraph 4 of Article 72-2 of the Constitution.
(Decision 2009-599 DC, December 29th 2009, para.106, p. 218)

APPLICATION FOR A PRIORITY PRELIMINARY RULING ON AN ISSUE OF CONSTITUTIONALITY

Procedure applicable before Courts of Law and Administrative Courts

Priority nature of the application

When requiring that the argument based on the infringement by a statutory provision of the rights and freedoms guaranteed by the Constitution be made in writing in a separate document accompanied by a reasoned justification of this argument, section 23-1 of the Institutional Ordinance nº 58-1067 of November 7th 1958 intended to facilitate the handling

of the referral for a priority preliminary ruling on the issue of constitutionality and enable the court before which the issue is raised to rule in the shortest possible time so as not to delay proceedings, if this matter is to be transmitted to the *Conseil d'Etat* or the *Cour de cassation*.
(Decision nº 2009-595 DC, December 3rd 2009, para.8, p. 206)

When requiring that arguments of unconstitutionality be examined in priority before those based on the failure of a statutory provision to comply with international commitments entered into by France, paragraph 2 of section 23-2 of the Institutional Ordinance nº 58-1067 of November 1958 intended to ensure compliance with the Constitution and reiterate the place of the latter at the apex of the national legal system. This priority merely results in specifying the order in which the arguments raised before the court to which the matter is referred be examined. It does not restrict the jurisdiction of said court, once the provisions pertaining to the priority preliminary ruling on the issue of constitutionality have been complied with, to ensure the superiority over national laws of legally ratified or approved treaties or agreements and norms of the European Union. It thus does not fail to comply with either Article 55 of the Constitution or Article 88-1 thereof.
(Decision nº 2009-595 DC, December 3rd 2009, paras 14 and 22, p. 206)

Specific rules concerning an application for a priority preliminary ruling on an issue of constitutionality

The provisions of Article 61-1 of the Constitution required Parliament, when passing the Institutional Act, to reserve for the sole parties to the proceedings the right to contend that a statutory provision infringes the rights and freedoms guaranteed by the Constitution. Consequently the final phrase of paragraph 1 of Section 23-1, which forbids the court to which the matter is referred to raise *proprio motu* the issue of a preliminary ruling on the issue of constitutionality, does not fail to comply with the Constitution.
(Decision nº 2009-595 DC, December 3rd 2009, para.9, p. 206)

Paragraph 4 of Section 23-1 of the Institutional Ordinance nº 58-1067 of November 7th 1958 forbids the raising of the issue of a priority preliminary ruling before the *Cour d'assises*. Such a matter may be raised during the preliminary criminal investigation which precedes the trial of the offender. It may also be raised on the lodging of notice of appeal against a decision handed down by a *Cour d'assises* at first instance or the lodging of an appeal on a point of law with the *Cour de cassation* against a decision of a *Cour d'assises* sitting in appellate jurisdiction and shall be transmitted immediately to the Cour de cassation. Parliament, when passing the Institutional Act, intended to take into account, in the interests of the good administration of justice, the specific nature of the organisation of the *Cour d'assises* and trial proceedings in this court. In these conditions, forbidding the raising of the issue of a priority preliminary ruling on the issue of constitutionality before the *Cour d'assises* does not fail to comply with the right recognised by Article 61-1 of the Constitution.
(Decision nº 2009-595 DC, December 3rd 2009, para.10, p. 206)

Rules of procedure applicable to consideration of the transmission or referral of an application for a priority preliminary ruling on an issue of constitutionality

When requiring that the argument based on the infringement by a statutory provision of the rights and freedoms guaranteed by the Constitution be made in writing in a separate document accompanied by a reasoned justification of this argument, Parliament did not fail to comply with Article 61-1 of the Constitution.
(Decision nº 2009-595 DC, December 3rd 2009, para.8, p. 206)

The provisions of sections 23-4 to 23-7 of Institutional Ordinance nº 58-1067 of November 7th 1958 should be interpreted as prescribing before the *Conseil d'Etat* or the *Cour de cassation* the implementation of rules of procedure conforming to the requirements of the right to a fair trial, completed, if need be, by methods of application set down by regulations making it possible for these courts to examine the application for a priority preliminary ruling on the issue of constitutionality in the manner provided for in section 4 of the Institutional Act pertaining to Article 61-1 of the Constitution. Qualification
(Decision nº 2009-595 DC, December 3rd 2009, para.28, p. 206)

Stay of ruling

Section 23-3 of Institutional Ordinance n° 58-1067 of November 7th 1958 requires the court hearing the case to stay its ruling until the decision of the *Conseil d'Etat* or *Cour de cassation* or the Constitutional Council, if the matter has been referred to the latter, while reserving those cases where, due to urgency, the nature or circumstances of the case, such a stay of ruling is not possible. In the event of a court ruling on the merits without waiting for the decision of the *Conseil d'Etat* or *Cour de cassation* or the Constitutional Council, if the matter has been referred to the latter, the court called upon to hear an appeal or an appeal on a point of law should in principle stay its ruling. Thus to the extent that they preserve the practical effectiveness for the applicant of the application for a priority preliminary ruling on the issue of constitutionality, these provisions, which contribute to the good administration of justice, do not fail to comply with the right recognised in Article 61-1 of the Constitution.
(Decision n° 2009-595 DC, December 3rd 2009, para.17, p. 206)

The final phrase of the final paragraph of section 23-3 of Institutional Ordinance n° 58-1067 of November 7th1958 and the penultimate phrase of the final paragraph of Article 23-5 provide that the *Cour de cassation* shall rule on an appeal on a point of law, without waiting for the ruling of the Constitutional Court on the application transmitted to it, when the applicant is deprived of his freedom because of the proceedings underway and statute law provides that the *Cour de cassation* shall give its ruling within a specified time. Furthermore, the final phrase of section 23-5 provides that the Cour de cassation and the *Conseil d'Etat* may not stay their ruling when the court is required to rule as a matter of urgency.

These provisions may lead to a final decision being handed down in a case concerning which an application has been made to the Constitutional Council for a priority preliminary ruling on the issue of constitutionality before the latter has in fact ruled on this application. In such a case, neither this provision nor the principle of *res judicata* should be allowed to preclude the person involved in these proceedings from bringing fresh proceedings in order for the decision of the Constitutional Court to be taken into account. Qualification
(Decision n° 2009-595 DC, December 3rd 2009, paras 18 and 23, p. 206)

Criteria for transmission or referral to the Constitutional Council of the application for a priority preliminary ruling on an issue of constitutionality

Applicable to litigation or proceedings underway or grounds for proceedings

1° of section 23-2 and section 23-4 of Institutional Ordinance n° 58-1067 of November 7th1958 provide that an application for a priority preliminary ruling on an issue of constitutionality may only be transmitted to the *Conseil d'Etat* or *Cour de cassation* if the challenged statutory provision is applicable to the litigation or proceedings underway or is the grounds for such proceedings. These provisions do not fail to comply with Article 61-1 of the Constitution.
(Decision n° 2009-595 DC, December 3rd 2009, paras 13 and 24, p. 206)

Absence of any previous decision of the Constitutional Council (1° of Article 23-2 of the Institutional Ordinance of 7/11/1958) (Cf " Meaning and scope of the decision – Authority of decisions of the Constitutional Council)

2° of section 23-2 and section 23-4 of Institutional Ordinance n° 58-1067 of November 7th 1958 provide that an application for a priority preliminary ruling on an issue of constitutionality may only be transmitted to the *Conseil 'Etat* or the *Cour de cassation* or referred to the Constitutional Council if the challenged statutory provision has not previously been held to be constitutional in the grounds and holding of a decision of the Constitutional Council, except in the event of a change of circumstances. This provision does not fail to comply with Article 61-1 or Article 62 of the Constitution.

By reserving the case of a "change of circumstances" these provisions make it possible for a statutory provision found to be constitutional in the grounds and holding of a decision of the Constitutional Council to be examined anew when this fresh examination is justified by

changes which have taken place since the previous decision in the applicable norms of constitutionality or in the circumstances, whether of fact or law, affecting the scope of the challenged statutory provision.
(Decision nº 2009-595 DC, December 3rd 2009 paras 13 and 24, p. 206)

Serious nature of the issue raised

3° of section 23-2 of Institutional Ordinance nº 58-1067 of November 7th 1958 provides that an application for a priority preliminary ruling on an issue of constitutionality may only be transmitted to the *Conseil d'Etat* or the *Cour de cassation* if the issue raised is of a serious nature. This provision does not fail to comply with Article 61-1 of the Constitution.
(Decision nº 2009-595 DC, December 3rd 2009 para.13, p. 206)

Section 23-4 of Institutional Ordinance nº 58-1067 of November 7th 1958 provides that an application for a priority preliminary ruling on an issue of constitutionality may only be referred to the Constitutional Council of this issue raised is of a serious nature. This provision does not fail to comply with Article 61-1 of the Constitution.
(Decision nº 2009-595 DC, December 3rd 2009 para.24, p. 206)

The issue raised is new

The last phrase of paragraph 1 of Article 23-4 and the last phrase of paragraph 3 of section 23-5 of Institutional Ordinance nº 58-1067 of November 7th 1958 provide that the Constitutional Council shall be asked to rule on the application for a priority preliminary ruling on the issue of constitutionality if "the issue raised is new".

By adding this criterion Parliament intended to require that the Constitutional Council be asked to rule on the interpretation of any constitutional provision which it had not yet been asked to rule on. In the other cases, Parliament intended to allow the *Conseil d'Etat* and the *Cour de cassation* to determine whether the issue raised was of sufficient interest to warrant referring the application to the Constitutional Council on these grounds.

Therefore, an issue raised in an application for a priority preliminary ruling on the issue of constitutionality cannot be new within the meaning of these provisions on the sole grounds that the challenged statutory provision has not yet been examined by the Constitutional Council.
(Decision nº 2009-595 DC, December 3rd 2009 para.21, p. 206)

Procedure applicable before the Constitutional Council

Sections 23-8 and 23-9 of Institutional Ordinance nº 58-1067 of November 7th 1958 which determine certain rules of procedure applicable before the Constitutional Council for reviewing applications for a priority preliminary ruling on a an issue of constitutionality are not unconstitutional.
(Decision nº 2009-595 DC, December 3rd 2009 paras 30 and 31, p. 206)

By thus disconnecting, as from the moment when the matter is referred to the Constitutional Council, the application for a priority preliminary ruling on the issue of constitutionality from the proceedings which have given rise to this application, section 23-9 of Institutional Ordinance nº 58-1067 of November 7th 1958 intended to draw the conclusions of the effect of decisions of the Constitutional Council, firstly under paragraph 2 of Article 62 of the Constitution and secondly under 2° of section 23-2 of the Institutional Act.
(Decision nº 2009-595 DC, December 3rd 2009 para 31, p. 206)

REVIEW OF CONSTITUTIONALITY

Nature of review

Power of appraisal vested in the Constitutional Council

It is not the task of the Constitutional Council, which is not vested with any general power of appraisal and decision-making similar to that vested in Parliament, to rectify the Finance Review Act.
(Decision nº 2009-585 DC, August 6th 2009, para.7, p. 159)

Conditions for taking into account extrinsic elements of a statute

Reference to Parliamentary debate and preliminary studies

Reference to Parliamentary debate and preliminary studies on the statute referred

Parliamentary debate shows that when leaving it to regulations to determine the new ceiling, Parliament intended to make it possible to take into account prices charged in the sector of each type of rented property. By thus enacting unequivocal and sufficiently precise provisions, Parliament did not fail to exercise its powers to the full nor to comply with the constitutional objective of intelligibility and accessibility of the law.
(Decision nº 2009-578 DC, March 18th 2009, para.25, p. 73)

SCOPE AND MEANING OF A DECISION

Injunctions to Parliament

Under the final paragraph of VI of section 53 of the statute of September 30th 1986: "The implementation of paragraph I of VI shall give rise to financial compensation on the part of the State. In the conditions determined by each Finance Act, the amount of said compensation shall be allocated to the company mentioned in I of section 44". It is therefore incumbent upon each Finance Act, in accordance with the independence of France Télévisions, to fix the amount of the financial compensation due from the State to set off the loss of commercial revenue sustained by said company in order to enable it to perform the public service duties entrusted to it. With this reservation, Parliament has not failed to exercise fully the powers vested in it nor failed to comply with the requirements deriving from Article 11 of the Declaration of 1789
(Decision nº 2009-577 DC, March 3rd 2009 para.19, p. 64)

Although Government and Private Members'Bills currently under debate cannot be criticized for not having been examined, prior to decision nº 2009-579 of April 9th 2009, in proceedings conforming to Articles 42 and 44 of the Constitution as worded pursuant to the Constitutional Act of July 23rd 2008, examination of future Government and Private Members'Bills must, on pain of being unconstitutional, comply with these provisions and with all other constitutional and institutional rules pertaining to such proceedings, as from the day following the publication in the Journal officiel of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution.
(Decision nº 2009-579 DC, April 9th 2009 paras 44 to 47, p. 84)

Whether provisions found to be unconstitutional are severable or not

Examples of severable provisions

Institutional Acts

The finding of unconstitutionality as regards section 6 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution, which authorized the rectification of proposals for Resolutions, also affects the words "except in the conditions provided for in section 6" found in paragraph 2 of section 3 of the same institutional Act.
(Decision n° 2009-579 DC, April 9th 2009 para.7, p. 84)

Unseverability of unconstitutional provisions from all or the remaining part of a statute

Unseverability within a single section (examples)

Case of unseverability

After having held a series of provisions of sections 5 and 11 of the Act furthering the Diffusion and Protection of Creation on the Internet to be unconstitutional, the Constitutional Council held to be unconstitutional, insofar as they were unseverable, all the provisions concerning the penalty inflicting powers of the Commission for the Protection of Copyright of the High Authority for the Diffusion and Protection of Creation on the Internet.
(Decision n° 2009-580 DC, June 10th 2009 paras 19 and 20, p. 107)

Consequential censure

The finding of unconstitutionality of I of section 4 of the Act on mobilisation for housing and the fight against exclusion also affects II thereof, insofar as these provisions constitute one unseverable whole.
(Decision n° 2009-578 DC, August 6th 2009, para.7, p. 73)

After having held section 7 of the Finance Act for 1010 introducing a carbon tax to be unconstitutional, except for E of paragraph I, the Council finds consequently unconstitutional, without taking into considerations the arguments raised in the referrals, sections 9 and 10 and the two provisions of section 2 mentioning this tax.
(Decision n° 2009-599 DC, December 29th 2009, para 83, p. 218)

Consequential rectification of a statutory provision

After having held the 2nd paragraph of Article L 3132-25 of the Employment Code to be unconstitutional "in that it refers to paragraph 2 of Article L 3132-26" the Constitutional Council holds that in consequence thereof the reference to Article L 3132-26 should thus be construed as referring to paragraph 1 of said Article
(Decision n° 2009-588 DC, August 6th 2009, para.23, p. 163)

Scope of decisions in time

In the framework of an *a posteriori* review under Article 61-1

The final phrase of the final paragraph of section 23-3 of Institutional Ordinance n° 58-1067 of November 7th1958 and the penultimate phrase of the final paragraph of Article 23-5 provide that the Cour de cassation shall rule on an appeal on a point of law, without waiting for the ruling of the Constitutional Court on the application transmitted to it, when the applicant is deprived of his freedom because of the proceedings underway and statute law provides that

the Cour de cassation shall give its ruling within a specified time. Furthermore, the final phrase of section 23-5 provides that the Cour de cassation and the *Conseil d'Etat* may not stay their ruling when the court is required to rule as a matter of urgency.

These provisions may lead to a final decision being handed down in a case concerning which an application has been made to the Constitutional Council for a priority preliminary ruling on the issue of constitutionality before the latter has in fact ruled on this application. In such a case, neither this provision nor the principle of res judicata should be allowed to preclude the person involved in these proceedings from bringing fresh proceedings in order for the decision of the Constitutional Court to be taken into account. Qualification
(Decision nº 2009-595, December 3rd 2009, paras 18 and 23, p. 206)

Authority of decisions of the Constitutional Council

Possible opposing of *res judicata*

Litigation as to norms of reference

Litigation under Article 61.

By its decision nº 2007-555 of August 16th 2007, the Constitutional Council held to conform to Article 13 of the Declaration of the Rights of Man and the Citizen section 11 of Act nº 2007-1223 of August 21st 2007 which amended a) of 4 of Article 1649-0 A of the General Tax Code. When amending these provisions in section 101 of the Finance Act for 2010, Parliament intended to ensure a more complete taking into account, when calculating the ceiling of direct taxation, of income from securities actually received by shareholders. When providing for the progressive coming into force of this amendment, Section 56 of the Supplementary Finance Act for 2009 does not infringe the principle of equality before taxation and public burden sharing.
(Decision nº 2009-600 DC, December 29th 2009, paras 5 to 8, p. 238)

Litigation under Article 61 (a posteriori review)

2° of section 23-2 and section 23-4 of Institutional Ordinance nº 58-1067 of November 7th 1958 provide that an application for a priority preliminary ruling on an issue of constitutionality may only be transmitted to the *Conseil d'Etat* or the *Cour de cassation* or referred to the Constitutional Council if the challenged statutory provision has not previously been held to be constitutional in the grounds and holding of a decision of the Constitutional Council, except in the event of a change of circumstances. This provision does not fail to comply with Article 61-1 or Article 62 of the Constitution.

By reserving the case of a "change of circumstances" these provisions make it possible for a statutory provision found to be constitutional in the grounds and holding of a decision of the Constitutional Council to be examined anew when this fresh examination is justified by changes which have taken place since the previous decision in the applicable norms of constitutionality or in the circumstances, whether of fact or law, affecting the scope of the challenged statutory provision.
(Decision nº 2009-595 DC, December 3rd 2009, paras 13 and 24, p. 206)

Scope of previous decision

Res judicata

The Constitutional Council found in paragraphs 16 and 17 of its decision nº 99-410 of March 15th 1999 that if the principle of measures favouring persons durably installed in New Caledonia for access to salaried employment or an independent profession or employment in the civil service of New Caledonia or the Communal civil service have their constitutional foundation in the Noumea Agreement, the implementation of such a principle, which departs from the constitutional principle of equality before the law guaranteed by Article 6 of the

Declaration of the Rights of Man and the Citizen of 1789, cannot serve to justify other restrictions than those strictly necessary for the implementation of said Agreement.

The application of measures concerning priority of employment given to the spouse of a citizen of New Caledonia or a person proving a sufficient length of time of residency, to the partner or common law spouse of the same not being a citizen of New Caledonia or meeting requirements as to length of residency in New Caledonia has no foundation in the Noumea Agreement and is not a measure necessary for the implementation thereof. The Constitutional Council therefore censures the same.
(Decision nº 2009-587 DC, July 30th 2009, paras 18 and 19, p. 152)

As the Constitutional Council held in paragraphs 78 to 82 of its decision of August 29th 2002, the summary procedure provided for by Articles 495 to 495-6 of the Code of Criminal Procedure does not fail to comply with the principle of equality before the law
(Decision nº 2009-590 DC, October 22nd 2009, para.12, p. 179)

Grounds given by referral to another decision

Section 82 of the Supplementary Finance Act for 2009 introduces a compensation for the carbon tax. In its decision nº 2009-599 of December 29th 2009 the Constitutional Council held the provisions of the Finance Act for 2010 introducing the carbon tax to be unconstitutional. Consequential censure of section 82.
(Decision nº 2009-600 DC, December 29th 2009, para.13, p. 238)

COURTS OF LAW AND JUDICIAL AUTHORITY

COURTS OF LAW AND SEPARATION OF POWERS

Two different systems of law

The *Conseil d'Etat* and the *Cour de cassation* are the courts at the pinnacle of the two systems of law recognized by the Constitution
(Decision nº 2009-595 DC, December 3rd 2009, para.3, p. 206)

Independence of Justice and Courts of Law

Applications

Separation of powers

The powers to impose penalties created by section 5 of the Act furthering the Diffusion and Protection of Creation on the Internet vest the Committee for the protection of copyright, which is not a court of law, with the power to restrict or deny access to the internet by access holders and those persons whom the latter allow to access the internet. The powers vested in this administrative authority are not limited to a specific category of persons but extend to the entire population. The powers of this Committee may thus lead to restricting the right of any person to exercise his right to express himself and communicate freely, in particular from his own home. In these conditions, in view of the freedom guaranteed by Article 11 of the Declaration of 1789, Parliament was not at liberty, irrespective of the guarantees accompanying the imposition of penalties, to vest an administrative authority with such powers for the purpose of protecting holders of copyright and related rights.
(Decision nº 2009-580 DC, June 10th 2009, para 16, p. 107)

ECONOMIC, SOCIAL AND ENVIRONMENTAL COUNCIL

ORGANISATION

Generalities

The sole section of the Institutional Act extends the length of the term of office of the members of the Economic, Social and Environmental Council until the expiry of a period of four months following the promulgation of the Institutional Act modifying the composition of the Council for the application of the Constitutional Act of July 23rd 2008 referred to above and, in all events, until a date no later than September 30th 2010. This extension of the term of five years provided for by article 9 of the Institutional Ordinance of December 29th 1958 referred to above, which is limited in time and of an exceptional and transitory nature, is not unconstitutional.
(Decision nº 2009-586 DC, July 30th 2009, para 2, p. 150)

DECENTRALISED ORGANISATION OF THE REPUBLIC

GENERAL PRINCIPLES

Self-government of Territorial Communities

No infringement of this principle

The parties making the referral argue that "by requiring Communes of residence to finance private schools situated in neighbouring Communes, without providing for any transfer of resources in exchange, the statute has patently infringed the principle of self-government of Territorial Communities". The statute designed to guarantee equal financing between public and private elementary schools neither creates nor extends any powers concerning contributions of Communes to the operating costs of elementary classes of private primary schools under contract with the State. This argument of infringement of the principle of self-government of Territorial Communities is thus not supported by the facts.
(Decision nº 2009-591 DC, October 22nd 2009, paras 7 to 9, p. 187)

The transfer free of charge of the ownership of the infrastructure of the Metropolitan and Regional Express networks of the Syndicat des Transports de l'Ile-de-France (STIF) to the Paris Transport Authority (RATP) does not adversely affect the self-government of the Territorial Communities which are members of the STIF. The argument based on infringement of the principle of self-government of Territorial Communities is not supported by the facts.
(Decision 2009- 594 DC, December 3rd 2009, paras 14 and 17, p. 200)

Parliament intended to ensure the sharing by the Syndicat des transports d'Ile-de-France (STIF) and the Paris Transport Authority (RATP) of the building work of certain operations. For each operation an agreement specifies the conditions in which all such building work shall be organized, followed up and supervised by the Syndicat. When passing such provisions, Parliament intended to encourage cooperation between the STIF, the authority in charge or organizing transport in the Paris region and the RATP, in charge of organizing public transport in Paris and the neighbouring suburbs. It provided in particular that each operation would be the object of a specific agreement as to the organisation, follow-up and supervision

by the Syndicat of such work. The parties making the referral argue that these provisions fail to comply with constitutional requirements as to property of public entities. By making the implementation of a shared building project dependent upon the signing of an agreement by both parties, Parliament intended that neither of them be involved, especially from a financial standpoint, in such an undertaking without having consented thereto. It thus did not fail to comply with the constitutional requirements concerning the protection of the public domain.
(Decision nº 2009-594 DC, December 3rd 2009, paras 18 to 20, p. 200)

Under II of Article 1640B of the General Tax Code (CGI) by 4.1 of section 2 of the Finance Act for 2010, Territorial Communities and Public Establishments of Inter-Communal Cooperation (ECPI) which benefit from specific tax measures shall receive for the year 2010, instead of the proceeds of the local tax on businesses, a bridging compensation. The amount of the latter shall, for each Community or Public Establishment be equal to the greatest of the two following amounts: "(i) the proceeds of the local business tax which would result .. from the application for the year 2010 of the provisions pertaining to this tax in their version in force as of December 31st 2009. However when computing these proceeds, firstly deliberations applicable in 2009 to the bases of the local tax on businesses shall apply and secondly the rate retained shall be that of the local business rate ..for taxes levied for 2009 in the limit of the rate voted for the year 2008 plus 1 %; and (ii) the proceeds of the local tax on businesses for the Territorial Community or the Public Establishment for 2009". The same provision also provides that Communes and ECPI which benefit from specific tax measures shall, if need be, receive an amount taking into account the effects of the "bridging rate" of the real property tax levied on businesses which they voted under I of the same section. The parties making the referral contend that the system retained would introduce inequalities between Communities. The method of computation both of the 'bridging compensation" and of the increase in the latter to the benefit of Communes and ECPI which benefit from specific tax measures, implemented for the sole year 2010, makes it possible for it to be based on decisions taken by Territorial Communities during 2009. In view of the transitory nature of this measure, consequent upon the suppression of the local tax on businesses, statute law was free to lay down the rule whereby the rate of the local business tax voted in 2009 would only be taken into account in the limit of the rate applicable in 2008 plus 1 %, in order to preclude any greater increase in the this tax for reasons other than the announcement of the suppression of the local tax on businesses. The provisions retained do not infringe the constitutional principle of self-government of Territorial Communities. Nor do they deprive them of the possibility of foreseeing the amount of their revenue during 2010.
(Decision nº 2009-599 DC, December 29th 2009, paras. 26 to 31, p. 218)

Section 94 of the Supplementary Finance Act for 2009 enables Regional Councils and the Assembly of Corsica to increase the rate of the internal tax on fuel consumption on condition that such increases be exclusively appropriated to the financing of a sustainable rail or river transport infrastructure defined and programmed by the State. Merely offering such a possibility to these bodies, which are not under any obligation to have recourse to it, does not adversely affect the principle of self-government of Territorial Communities
(Decision nº 2009-599 DC, December 29th 2009, paras. 90 and 93, p. 218)

Cooperation of Territorial Communities

Leading Community and prohibition on vesting any Community with power over another

Lastly, under paragraph 2 of Article L 3132-25-2 of the Employment Code, a "perimeter of exceptional consumer activity" may only be created on the territory of a Commune "at the request" of the Town Council. This would not apply, pursuant to paragraph 6 of the same Article, if said perimeter belonged partly or wholly to a sole commercial entity within the meaning of Article L 752-3 of the Commercial Code. In this hypothesis designed to preserve the indivisible nature of this commercial entity, the Prefect shall give a ruling after consulting the Town Council of the Commune which did not make such a request once the latter does not belong to a public establishment of intercommunal cooperation consulted under paragraph 5 of the same Article. By entrusting the Prefect with the power to take such decisions, the challenged provisions do not vest any territorial community with authority over another
(Decision nº 2009-588 DC August 6th 2009, para.14, p. 163)

Prohibition on one Community exercising authority over another

3.2 of section 77 of the Finance Act for 2010 specifies the manner of implementation of a new "users'contribution" which has Communes and Public Establishments of Inter-communal cooperation (EPCI) which benefit from specific tax measures finance a fraction of the amount of the reduction of the territorial economic contribution (CET) granted to certain business concerns. The Communes and the ECPI shall be required to bear this fraction as from 2013 if the reduction is granted for longer than one year. The parties making the referral contend that this measure would lead to vesting one Territorial Community with authority over another. Under paragraph 5 of Article 72 of the Constitution: " No Territorial Community may exercise authority over another". Capping the CET does not lead to vesting one Territorial Community with authority over another Argument dismissed.
(Decision n° 2009-599 DC, December 29th 2009, paras 19 to 21 and 24, p. 218)

FINANCES OF TERRITORIAL COMMUNITIES

Revenue

Generalities (Article 72-2)

Neither 72-2 of the Constitution nor any other constitutional provision guarantees a principle of autonomy in matters of taxation to any Territorial Community. The argument based on the infringement of this principal is this inoperative.
(Decision n° 2009-599 DC, December 29th 2009, paras 64 and 99, p. 218)

Free disposal of revenue (Article 72-2 paragraph 1)

3.2 of section 77 of the Finance Act for 2010 specifies the manner of implementation of a new "users'contribution" which has Communes and Public Establishments of Inter-communal cooperation (EPCI) which benefit from specific tax measures finance a fraction of the amount of the reduction of the territorial economic contribution (CET) granted to certain business concerns. The Communes and the ECPI shall be required to bear this fraction as from 2013 if the reduction is granted for longer than one year. The parties making the referral contend that this measure is contrary to the principle of free disposal of resources set out in paragraph 1 of Article 72-2 of the Constitution, which provides: "Territorial Communities shall enjoy revenue of which they may dispose freely in the conditions determined by statute". Section 85 of the Finance Act of 2006 has created a mechanism for the participation of Communes and Public Establishments of Inter-communal cooperation (EPCI) in the system for capping taxation on the basis of the added value of businesses. The Finance Act for 2010, which transposes this measure to the CET only requires them to bear the increase in the reduction, under the capping mechanism introduced with effect from 2010, concerning solely those businesses capped two successive years. Dismissal
(Decision n° 2009-599 DC, December 29th 2009, paras 19 to 22, p. 218)

Under II of Article 1640B of the General Tax Code (CGI) by 4.1 of section 2 of the Finance Act for 2010, Territorial Communities and Public Establishments of Inter-Communal Cooperation (ECPI) which benefit from specific tax measures shall receive for the year 2010, instead of the proceeds of the local tax on businesses, a bridging compensation. The amount of the latter shall, for each Community or Public Establishment be equal to the greatest of the two following amounts: "(i) the proceeds of the local business tax which would result .. from the application for the year 2010 of the provisions pertaining to this tax in their version in force as of December 31st 2009. However when computing these proceeds, firstly deliberations applicable in 2009 to the bases of the local tax on businesses shall apply and secondly the rate retained shall be that of the local business rate... for taxes levied for 2009 in the limit of the rate voted for the year 2008 plus 1 %; and (ii) the proceeds of the local tax on businesses for the Territorial Community or the Public Establishment for 2009". The same provision also

provides that Communes and ECPI which benefit from specific tax measures shall, if need be, receive an amount taking into account the effects of the "bridging rate" of the real property tax levied on businesses which they voted under I of the same section. The parties making the referral contend that the system retained would introduce inequalities between Communities. The method of computation both of the 'bridging compensation" and of the increase in the latter to the benefit of Communes and ECPI which benefit from specific tax measures, implemented for the sole year 2010, makes it possible for it to be based on decisions taken by Territorial Communities during 2009. In view of the transitory nature of this measure, consequent upon the suppression of the local tax on businesses, statute law was free to lay down the rule whereby the rate of the local business tax voted in 2009 would only be taken into account in the limit of the rate applicable in 2008 plus 1 %, in order to preclude any greater increase in the this tax for reasons other than the announcement of the suppression of the local tax on businesses. The provisions retained do not infringe the constitutional principle of self-government of Territorial Communities. Nor do they deprive them of the possibility of foreseeing the amount of their revenue during 2010.
(Decision nº 2009-599 DC, December 29th 2009, paras. 26 to 31, p. 218)

Specific own revenue

Parliament, in the Finance Act for 2010 has created a Departmental account and a regional equalisation account for the tax on the added value of businesses (CVAE) which are provisioned by a flat rate share of the CVAE. The parties making the referral contend that this revenue cannot be considered as being specific own revenue. As is shown by the combination of the first 3 paragraphs of Article 72-2 of the Constitution and Article L.O 1114-2 of the General Code of Territorial Communities, tax revenue which falls into the category of own revenue of territorial Communities means the proceeds of all types of taxes not only when statute law authorises said Communities to fix the base, the rate or the tariff but also when it determines, by Community, the rate or local share of the base. To the extent that the added value taxed by the CVAE is that produced in the Commune where the tax payer has premises or employs staff and *Départements* and Regions receive a predetermined fraction thereof, revenue thus received by the latter is determined on the basis of a local share of the tax base. The resources of the equalisation accounts are composed of a fraction of the CVAE decided in each region or *Département*, they are themselves determined on the basis of a share of the local tax base. They are thus specific own revenue. Dismissal of the argument based on infringement of the principle of financial autonomy of Regions and *Départements*.
(Decision nº 2009-599 DC, December 29th 2009, paras 60 to 65, p. 218)

Under 2.1.1 of section 2 of the Finance Act for 2010 the value added in the Commune where the taxpayer has premises or employs staff for a period of more than three months is taxed under the tax on the added value of businesses, an element of the CET. When a taxpayer has premises or employs staff having worked for three months or more in different Communes, the added value shall be taxed in each Commune and divided between them pro rata the number of staff employed there. A "anti-abuse" measure provides in particular that, under certain restrictive conditions, in the event of contributions to capital, cessation of business or splitting of businesses as from October 22nd 2009, the turnover retained for computation of the tax shall be equal to the total turnover of entities in which the holding exceeds 50 %. By only retaining the consolidated turnover at national level of businesses which have establishments in different Communes, Parliament intended to tax the added value in the Commune where the taxpayer has premises or staff employed for longer than three months. The challenged provision does not infringe the principle of financial autonomy of Territorial Communities.
(Decision nº 2009-599 DC, December 29th 2009, paras 43 to 46, p. 218)

Financial autonomy rate

Under paragraph 3 of Article L.O 1114-63 of the General Code of Territorial Communities, based in paragraph 3 of Article 72-2 of the Constitution whereby "The share of own revenue shall not be less than that ascertained for the year 2003", the Constitutional Council can only strike down statutes which necessarily adversely affect the decisive nature of own revenue specific to a category of Territorial Communities.

However the elements put before the Constitutional Council do not prove that replacing the local tax on businesses by the Territorial Economic Tax (CET) would led to reducing the specific own revenue of each category of Territorial Community to a level lower than that of 2003. The argument based on failure to comply with the financial autonomy of Territorial Communities must thus be dismissed.
(Decision nº 2009-599 DC, December 29th 2009, paras 75 and 76, p. 218)

Financial compensation for transfers, creation and extension of powers (Article 72-2, paragraph 4)

Creation and extension of powers

Absence

The statute designed to guarantee equal financing between public and private elementary schools neither creates nor extends any powers concerning contributions of Communes to the operating costs of elementary classes of private primary schools under contract with the State. Argument unsupported by the facts.
(Decision nº 2009-591 DC, October 22nd 2009, paras 8 and 9, p. 187)

Existence

Mandatory powers

Paragraph 4 of Article 72-2 of the Constitution, when referring to creations and extensions of powers, refers solely to those of a mandatory nature. In such cases, Parliament is required solely to accompany such creations or extensions by revenue of which it is free to determine the level, without however adversely affecting the principle of self-government of Territorial Communities.

For the year 2010 all amounts resulting from the extending to certain young people under 25 of the Active Solidarity Income shall be financed by the National Active Solidarity Fund. For subsequent years the *Départements* will have the benefit of the provisions of Article L.262-24 of the Family and Social Welfare Code, which do not run counter to paragraph 4 of Article 72-2 of the Constitution.
(Decision nº 2009-599 DC, December 29th 2009, paras 105 and 106, p. 218)

Equalisation (Article 72-2 paragraph 5)

Under the final paragraph of Article 72-2 of the Constitution: "Equalisation mechanisms intended to promote equality between Territorial Communities shall be provided for by statute". Parliament is at liberty to implement a financial equalisation between these Communities by regrouping them in categories, as long as the definition of such categories is based on objective and rational criteria. The equalisation may correct not only inequalities as regards revenue but also expenditure. It may also be implemented by a grant from the State or, as is the case here, by a fund provisioned by revenue of Territorial Communities. To ensure compliance with the final paragraph of Article 72-2 of the Constitution, Parliament, in Article 1648 AB of the General Tax Code, organised a redistribution of the revenue from a fraction of the tax on the added value of businesses (CVAE) received by Regions or *Départements*, taking into account the inequalities of expenditure between these Communities within a single category. This method of redistribution may, without infringing the objective of equalisation, be accompanied by a mechanism of compensation by a grant from the State for the losses or gains in revenue arising from the equalisation and designed to ensure stability of revenue for Regions and *Départements*. The argument based on failure to comply with constitutional provisions concerning equalisation must therefore be dismissed.
(Decision nº 2009-599 DC, December 29th 2009, paras 66 to 68, p. 218)

ORGANISATION OF TERRITORIAL COMMUNITIES

Territories of Mainland France with a special status

Paris, Marseille, Lyon

The city of Paris, which has a specific administrative system because of its status as the seat of government, constitutes in itself a category of territorial community
(Decision nº 2009-588 DC August 6th 2009, para.23, p. 163)

Overseas Communities governed by Article 74

Common rules

Principle of legislative specialty (article 74, paragraph 3)

The provisions referred for review are applicable throughout the territory of the Republic, except for French Polynesia, an overseas Territorial Community governed by Article 74 of the Constitution. No infringement of the principle of equality before the law
(Decision nº 2009-590 DC, October 22nd 2009, para.23, p. 179)

Transfer from a status under Article 74 to that under Article 73 (Article 72-4)

The procedure provided for by Article 72-4 of the Constitution was followed for the transformation, as from the first meeting following the renewal of its Deliberative Assembly in 2011, of the Departmental Community of Mayotte into a Community governed by Article 73 of the Constitution, to be known as the "*Département* of Mayotte" and exercising the powers conferred upon overseas *Départements* and regions.

By a Decree dated January 20th 2009, the President of the Republic decided, upon the recommendation of the Government, to consult the voters of Mayotte on such a transformation. On February 11th 2009 the Government made a statement before the National Assembly and the following day before the Senate, both followed by debate. On March 29th 2009 the majority of voters of Mayotte approved the change of status.
(Decision nº 2009-587 DC, July 30th 2009, paras 21 to 23, p. 152)

Special rules governing non autonomous Communities

Wallis and Futuna

Under Article 74 of the Constitution, applicable to Wallis and Futuna under Article 72-3 thereof, " The Overseas Territorial Communities to which this Article applies shall have a status reflecting their respective local interests within the Republic. This status shall be determined by an Institutional Act, passed after consultation of the Deliberative Assembly, which shall specify ... the powers of this Community". Under section 7 of the Act of July 29th 1961 conferring on Wallis and Futuna the status of an Overseas Territory: "The Republic shall ensure .. hygiene and public health".

III of section 99 of the Prison Act, which provides that the State may enter into an agreement with the competent authorities of Wallis and Futuna in order to specify the means of implementation of section 46 of this statute concerning responsibility for the health of prisoners, affects the distribution of powers between the State and this Community, a matter which comes under the scope an Institutional Act pursuant to Article 74 of the Constitution. No jurisdiction.
(Decision nº 2009-593 DC, November 19th 2009, paras 8 and 9, p. 196)

TRANSITIONAL PROVISIONS PERTAINING TO NEW CALEDONIA
(Article 77)

New Caledonia

As the Constitutional Council found in paragraphs 16 and 17 of its decision of March 15th 1999, if the principle of measures favouring persons durably installed in New Caledonia for access to salaried employment or an independent profession or employment in the civil service of New Caledonia or the Communal civil service have their constitutional foundation in the Noumea Agreement, the implementation of such a principle, which departs from the constitutional principle of equality before the law guaranteed by Article 6 of the Declaration of the Rights of Man and the Citizen of 1789, cannot serve to justify other restrictions than those strictly necessary for the implementation of said Agreement.

The application of measures concerning priority of employment given to the spouse of a citizen of New Caledonia or a person proving a sufficient length of time of residency, to the partner or common law spouse of the same not being a citizen of New Caledonia or meeting requirements as to length of residency in New Caledonia has no foundation in the Noumea agreement and is not a measure necessary for the implementation thereof. The Constitutional Council therefore censures section 58 of the Institutional Act on the institutional development of New Caledonia which introduced such an extension
(Decision nº 2009-587 DC, July 30th 2009, paras 18 and 19, p. 152)

Institutions of New Caledonia

Congress – Laws of the land

Although under Article 77 of the Constitution, Parliament when passing Institutional Acts may determine the conditions in which the institutions of New Caledonia are consulted, at the request of the Presidents of the Parliamentary Assemblies of New Caledonia, it is not at liberty, without infringing the principle of the separation of powers, to allow them to decide to reduce the time allotted for consultation of the Congress of New Caledonia. Censure
(Decision nº 2009-587 DC, July 30th 2009, para.16, p. 152)

Organisation

Principle of legislative specialty

When providing that an Institutional Act "shall determine the development of New Caledonia in accordance with the guidelines set out" in the agreement signed in Noumea on May 5th 1998, Article 77 of the Constitution necessarily leaves it to said Institutional Act to determine the conditions in which statutes and regulations are to apply.

Section 18 of the Institutional Act on the institutional development of New Caledonia which provides for the manner in which statutes and regulations shall be applied in New Caledonia and which lays down the principle whereby " in matters coming under the jurisdiction of the State, statutory and regulatory provisions including a specific reference to this end shall apply in New Caledonia", which lists the statutory and regulatory provisions which, as an exception to the foregoing principle, are automatically applicable in New Caledonia and which finally specifies that "any other statutory or regulatory provision which, in view of the purpose thereof, is necessarily intended to apply throughout the territory of the Republic shall automatically apply in New Caledonia" is not unconstitutional.
(Decision nº 2009-587 DC, July 30th 2009, paras 12 and 13, p. 152)

Transfer of powers

Defence

The Institutional Act on the institutional development of New Caledonia amends 3° of I of section 21 of the Institutional Act of March 19th 1999 in order to replace the definition of the power exercised by the State in matters of "defence, within the meaning of Ordinance nº 59-147 of January 7th 1959 on the general organisation of defence" by the words " national defence". This amendment is neither aimed at nor results in carrying out any transfer of powers in matters of non military defence. In these conditions, it complies with the Noumea Agreement which, in 3.3 provides that " defence" remains under the jurisdiction of the State" until the new political organisation resulting from the consultation of the population", provided for during the term of office of the Congress of New Caledonia beginning in 2014.
(Decision nº 2009-587 DC, July 30th 2009, para 5, p. 152)

Education

The Institutional Act on the institutional development of New Caledonia inserts into the Institutional Act of March 19th 1999 a section 55-1 which specifies the particular manner of set-off of investment costs incurred by New Caledonia to exercise its powers in the field of secondary public schooling and that of private schooling. It provides in particular that: "the State shall bear, until the term thereof, the financing of operations connected with the High Schools of Mont-Doré and Pouembout in the fields of general, technical and professional teaching which it assumed prior to the actual transfer of powers". Under 2° and 3° of III of sections 21 and 26 of the Institutional Act of march 19th 1999 the abovementioned powers are to be transferred during the period corresponding to the term of office of the Congress commencing in 2009. The abovementioned provisions have thus no effect on the date of the transfer of said powers. Qualification.
(Decision nº 2009-587 DC, July 30th 2009, para 7, p. 152)

Parliament, when enacting Institutional Acts, was free, when inserting into the Institutional Act of March 19th 1999 section 59-1, to decide that the share of the State in the assuming of expenditure on personnel paid out of the State budget pursuant to the exercising of powers transferred in the field of education would take the form of placing such personnel free of charge at the disposition of New Caledonia. If such a measure were to be terminated, the State would be required to participate financially in the assuming of said expenditure in the normal legal conditions laid down by the Institutional Act. However Parliament when enacting the Institutional Act could not, without infringing Article 77 of the Constitution and the guidelines of the Noumea agreement, make the Decree after consultation of the *Conseil d'Etat* terminating this arrangement and the methods of transfer of such personnel depend upon a proposal of the Congress. The words "after a proposal of the Congress adopted by a majority of the members thereof" are thus unconstitutional.
(Decision nº 2009-587 DC, August 6th 2009, paras 9 to 11, p. 152)

Civil Law, Civil Status

The Institutional Act on the institutional development of New Caledonia amends paragraph 2 of section 26 of the Institutional Act of March 19th 1999 pertaining to the transfer to New Caledonia of powers in matters of civil law, civil status, commercial law and civil security. It provides in particular that the law of the land pertaining to the transfer of these powers "shall be enacted no later than the last day of the second year following the beginning of the term of office of the Congress commencing in 2009". It thus postpones to December 31st 2011 the end of the period during which the law of the land pertaining to the transfer of these powers is to be enacted. Thus, in accordance with 3.2.1 of the Noumea Agreement, these powers will effectively be transferred during said term of office.
(Decision nº 2009-587 DC, July 30th 2009, para 6, p. 152)

Provisions of an institutional nature

Section 11 of the Institutional Act on the institutional development of New Caledonia which completes section 59 of the Institutional Act of March 19th 1999 and provides that the Government shall present to the Consultative Committee for the assessment of charges provided for in section 55 of the said Institutional Act a record of the development of state posts between the transfer of powers and the termination of the placing at the disposal of New Caledonia of the corresponding personnel does not come under the scope of the Institutional Act as defined by Article 77 of the Constitution and thus is not of an institutional nature.
(Decision nº 2009-587 DC, July 30th 2009, para.8, p. 152)

Application for a priority preliminary ruling on an issue of constitutionality

Section 3 of the Act pertaining to the application of Article 61-1 of the Constitution provides that the provisions of a law of the land may be the object of an application for a priority preliminary ruling on the issue of constitutionality.

Article 77 of the Constitution provides that "certain kinds of decisions taken by the Deliberative Assembly of New Caledonia may be referred to the Constitutional Council for review before publication". Section 99 of the Institutional Act of March 19th 1999 referred to hereinabove has defined the field covered by "laws of the land" of New Caledonia and section 107 has conferred upon them "statutory force" in this field. Section 3 referred to hereinabove thus conforms to Article 61-1 of the Constitution which provides that applications for a priority preliminary ruling on the issue of constitutionality shall apply to statutory provisions.
(Decision nº 2009-595 DC, December 3rd 2009, paras 33 and 34, p. 206)

INDEPENDENT AUTHORITIES

DUTIES AND POWERS

Power to impose penalties

Scope of power to impose penalties

Power exercised with the limits strictly necessary for the carrying out of duties

Committee for the Protection of Copyright of the High Authority for the Diffusion of Works and Protection of Copyright on the Internet (HADOPI)

Neither the principle of the separation of powers, nor any other principle or rule of constitutional status, precludes an administrative authority, acting within its powers as a public body, from exercising its power to impose penalties needed to enable it to carry out its tasks once the exercising of this power is accompanied by statutory measures designed to ensure the protection of constitutionally guaranteed rights and freedoms. In particular due respect must be shown for the principle of the legality of offences and punishments and the rights of the defence, principles which apply to all penalties intended to serve as a punishment, even though Parliament has left it to a non-judicial authority to impose such penalties.

However the powers to impose penalties created by section 5 of the Act furthering the Diffusion and Protection of Creation on the Internet vest the Committee for the protection of copyright, which is not a court of law, with the power to restrict or deny access to the internet by access holders and those persons whom the latter allow to access the internet. The powers

vested in this administrative authority are not limited to a specific category of persons but extend to the entire population. The powers of this Committee may thus lead to restricting the right of any person to exercise his right to express himself and communicate freely, in particular from his own home. In these conditions, in view of the freedom guaranteed by Article 11 of the Declaration of 1789, Parliament was not at liberty, irrespective of the guarantees accompanying the imposition of penalties, to vest an administrative authority with such powers for the purpose of protecting holders of copyright and related rights.
(Decision nº 2009-580 DC, June 10th 2009, paras 14 and 16, p. 107)

DECISIONS

Scope of decisions

High Authority for the Diffusion of Works and Protection of Copyright on the Internet (HADOPI)

The awarding of labels attesting to the "lawful nature" of offers of online public communication services is designed solely to facilitate the identification by the public of offers of services respecting intellectual property rights. Under paragraph 2 of article L 331-23, the High Authority, when application is made to it for the award of such a label, shall be required to respond favourably once it has ascertained that the services proposed by such an offer do not infringe copyright or related rights. Leaving it to a Decree to fix the conditions for the awarding of such a label is solely designed to determine the manner in which applications for the award of such a label are to be received and examined by the High Authority. These provisions do not confer any arbitrary authority on the latter.

As worded subsequent to the censure resulting from paragraphs 19 and 20 hereinabove, Article L 331-32 providing for the High Authority to assess and label the means of monitoring access to the Internet is designed solely to facilitate the use of security devices intended to ensure the monitoring of access to the internet in accordance with the requirements of Article L 336-3.
(Decision nº 2009-580 DC, June 10th 2009, paras 32 to 35, p. 107)

QUALIFIED INTERPRETATIONS

GENERALITIES

Interpretation of a statute after partial censure

Section 14 of the statute referred for review as worded subsequent to the criticisms set out in paragraph 13, does not deprive the abovementioned constitutional requirements of statutory guarantees.
(Decisions nº 2009-577 DC, March 3rd 2009, para.15, p. 64)

ECONOMIC LAW

Public procurement law (nº 2009-179 of February 17th 2009). Requirements of complexity and urgency for contracts of public-private partnership.

The provisions of the Act for the acceleration of building and investment programmes, which enables the sole bidder retained to vary the final cost of his tender, are designed to take

temporarily into account the instability of financial markets when determining "methods of financing" of the partnership project. They cannot result in calling into question the conditions of the tender by exempting the Community from the obligation to respect the principle of acceptance of the most economically advantageous offer. Neither can they result in allowing the chosen bidder to drastically modify the economics of the partnership bid. In particular, price adjustment can affect solely the financial component of the overall cost of the contract and not be solely based on the variation of "methods of financing" to the exclusion of any other element. With this qualification, they do not infringe the principle of equality before public procurement orders deriving from Article 6 of the Declaration of 1789. Qualified.
(Decision nº 2009-575 DC, February 12th 2009, para. 4, p. 48)

ELECTORAL LAW

Statute pertaining to the Committee provided for by Article 25 of the Constitution and the elected of Members of Parliament (Nº 2009-39 of January 13th 2009)

The members appointed by the *Conseil d'Etat*, the *Cour de cassation* and the *Cour des comptes* shall be elected solely by those persons actually in post in these bodies on the date of said election.
(Decision nº 2008-573 DC, January 8th 2009, para.5, p. 36)

The Members of the National Assembly elected for Overseas Communities governed by Article 74 of the Constitution must also be elected on an essentially demographic basis. No requirement of general interest necessitates that each Overseas Community constitute an electoral constituency. The sole exception to this would be if a territory with a relatively small population were situated at some considerable distance from an Overseas Department or Community. Prescriptive qualification for the attention of the Drafters of the Ordinance distributing seats and drawing electoral boundaries.
(Decision nº 2008-573 DC, January 8th 2009, para.24, p. 36)

The statute referred for review, authorizing the drawing of boundaries for Parliamentary elections by Ordinance provides, in indent 3 of 1° of II of section 2, firstly, that "unless warranted by geographical or demographic considerations, constituencies are composed of an uninterrupted territorial area", and secondly, "any commune in which there are fewer than 5000 inhabitants and any canton composed of an uninterrupted territorial area other than the constituencies of Paris, Lyon and Marseille, and which has less than 40 000 inhabitants shall be included in one and the same constituency for the election of a Member of the National Assembly". Lastly indent 4 of 1° of II of section 2 authorizes, in order to take into account requirements of general interest, differences in population size to a limit of 20 % in comparison with the average population of the constituencies of the Department, the Overseas Community governed by Article 74 of the Constitution or of New Caledonia.

Taken individually, none of these three provisions per se fails to comply with the Constitution. The first two may be usefully employed to guarantee equality before suffrage. However they might, when taken all three together, or due to the manner in which they are applied, lead to arbitrary drawing of constituency boundaries or result in creating situations where the principle of equality was not respected. Consequently, the possibility of not creating a constituency on an uninterrupted territorial area, that of not having to comply with certain commune or canton limits when the abovementioned conditions so permit, together with recourse to the maximum difference mentioned in indent 4 of 1° of II of section 2 must be reserved for exceptional cases and duly justified. Recourse may only be had to these provisions to a limited extent justified, on a case by case basis, by specific requirements of general interest. Their implementation must be strictly proportionate to the purpose it is sought to achieve.
(Decision nº 2008-573 DC, January 8th 2009, paras 25 and 26, p. 36)

The fundamental rule whereby the National Assembly must be elected on an essentially demographic basis requires that the number of Members representing French Nationals living abroad be fixed and constituency boundaries drawn on the basis of total population numbers recorded in the register of French Nationals living abroad in each consular constituency.

Prescriptive qualification for the attention of the Drafters of the Ordinance fixing the number of Members of the National Assembly representing French Nationals living abroad.
(Decision nº 2008-573 DC, January 8th 2009, para 27, p. 36)

Section 2 of the statute referred for review provides that the drawing of boundaries of constituencies of French Nationals living abroad shall be not governed by the rule prohibiting differences in population size to 20 % more or less of the average number of voters per constituency. However the requirement that the National Assembly be elected on an essentially demographic basis requires, in the absence of an exception specifically warranted by geographical considerations, that the drawing of constituency boundaries take into account the maximum difference tolerated between the population of each constituency and the average population as provided for by indent 4 of 1° of II of section 2 of the statute referred for review, for Departments, Overseas Communities governed by Article 74 of the Constitution and New Caledonia. Prescriptive qualification with which said Ordinance shall comply.
(Decision nº 2008-573 DC, January 8th 2009, para 28, p. 36)

PARLIAMENTARY LAW

Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution

Paragraphs 2 to 11 of section 8 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution list the information which impact studies accompanying Government Bills are required to specify in detail. The Constitutional Council makes a qualification as to interpretation when holding that the carrying out of specific studies complying with each of these requirements can only be required when the requirements themselves, or any one of other thereof, are to be effectively complied with in view of the purpose which the provisions of the Bill involved seek to achieve.
(Decision nº 2009-579 DC, April 9th 2009, para 15, p. 84)

Paragraphs 2 to 11 of section 8 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution list the information which the impact studies accompanying Bills must specify clearly. The Constitutional Council has given a qualified interpretation when stating that, if due to circumstances, all or part of a document constituting the impact study was made available to the first house before which it was tabled after the tabling thereof, the Constitutional Council would assess, if need be, compliance with the provisions of section 8 of the Institutional Act as regards the requirements of continuity of the life of the Nation.
(Decision nº 2009-579 DC, April 9th 2009, para 17, p. 84)

Paragraph 2 of section 11 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution provides that Bills designed to authorize the Government to take by Ordinance measures which are normally the preserve of statute law shall be accompanied "by the documents referred to in paragraphs 2 to 7 and the penultimate paragraph of section 8". The Constitutional Council, by a qualified interpretation, holds that this provision cannot, on pain of non compliance with Article 38 of the Constitution, be interpreted as requiring the Government to inform Parliament of the terms of the Ordinances its intends to issue under the authorization requested to enable it to carry out its programme.
(Decision nº 2009-579 DC, April 9th 2009, para 21, p. 84)

Section 12 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution completes sections 51 and 53 of the Institutional Act of August 1st 2001 on Finance Acts and Article L.O 111-4 of the Social Security Code specifying the list of documents to be appended to Finance Bills and Social Security Financing Bills. However, in the event of any delay in distributing all or part of the documents required, the conformity of such statutes with the Constitution would be assessed with regard to the requirements of continuity of the life of the Nation. Qualification
(Decision nº 2009-579 DC, April 9th 2009, paras 27 to 29, p. 84)

Rules of procedure of the National Assembly

Resolution of May 29th 2009

Publicity of the work of Committees in the field of statute law. Article 26 of the Resolution, which rewords Article 46 of the Rules of procedure of the National Assembly, will only be constitutional on condition that, in accordance with the requirements of clarity and accuracy of parliamentary debate which apply to the work of Parliamentary committees, the minutes of the meetings of such Committees give a precise account of interventions made before them, the grounds for any amendments proposed with respect to Bills referred for their consideration and votes cast, in particular when considering Government and Private Members'Bills which will be debated by the House on the basis of the text adopted by the Committee to which the Bill has been referred under Article 43, or, failing that, on the text tabled before the House.
(Decision nº 2009-581 DC, June 25th 2009, para.12, p. 120)

Limiting of leave to speak to two minutes. The provisions of Article 30 of the Resolution which reword the penultimate paragraph of Article 48 of the Rules of procedure of the National Assembly limit to two minutes the speaking time allotted to Chairman of Committees or their delegates having attended the Conference of Presidents which has made proposals for entries on the agenda of business for explanations of voting on said proposals, while an identical timeframe is allotted to one speaker per group. Such limits are provided for by Articles 54, 57,58,59,91, 95, 100 and 121 of the Rules of procedure of the National Assembly as reworded pursuant to the Resolution submitted for review by the Constitutional Council. These provisions are constitutional provided that the chairman of a meeting shall in all cases when applying such limits have due regard for the requirements of clarity and accuracy of Parliamentary debate.
(Decision nº 2009-581 DC, June 25th 2009, para.20, p. 120)

Programmed time for legislating and maximum length of time for debate. The provisions of Article 31 of the Resolution which rewords Article 49 of the Rules of procedure of the National Assembly and allows the Conference of Presidents of the house to set a maximum timeframe for debate on all of a Bill will only be constitutional on condition that such a timeframe be not fixed in such a manner as to deprive of all effect the requirements of clarity and accuracy of Parliamentary debate.
(Decision nº 2009-581 DC, June 25th 2009, para.25, p. 120)

Programmed time for legislation and additional speaking time. Article 36 of the Resolution which amends Article 55 of the Rules of procedure of the National Assembly makes it possible, in debate where speaking time is limited, to allow additional time to each group and to members of the House who did not request leave to speak when the Government or the standing Committee to which the Bill was referred tabled an amendment after the expiry of the allotted timeframe. These provisions will only be constitutional on condition that the determination of the additional speaking time granted at the

request of a President of a group or Members of the House when an amendment is tabled by the Government or the Committee after the expiry of the allotted timeframe does not deprive of all effect the requirements of clarity and accuracy of Parliamentary debate.
(Decision nº 2009-581 DC, June 25th 2009, para.25, p. 120)

Programmed time for legislation and points of order. The provisions of Article 31 of the Resolution which reword Article 49 of the Rules of procedure of the National assembly, provide, in debate when the allotted time for speaking is limited, that interventions which are not genuine points of order be counted within this timeframe. These provisions will however only conform to the Constitution insofar as Members of the House are not deprived of any opportunity to raise points of order in order to request the application of constitutional provisions.
(Decision nº 2009-581 DC, June 25th 2009, para.26, p. 120)

Time allotted for tabling amendments at the committee stage. The provisions of Article 55 of the Resolution which reword Article 86 of the Rules of procedure of the National Assembly provide that: "amendments other than those tabled by the Government, the Chairman or the

Rapporteur of the Committee and, where applicable, of the Committees to which a Bill was referred for consideration must be transmitted by those introducing such amendments no later than 5 p.m three working days before the date of the beginning of the consideration of the text, unless otherwise decided by the Chairman of the Committee". These provisions only conform to the Constitution on condition that the Chairman of the Committee is able to reconcile compliance of the effectiveness of the right of amendment with the requirements of clarity and accuracy of Parliamentary debate and that under no circumstances the subsequent tabling of sub-amendments be prohibited.
(Decision nº 2009-581 DC, June 25th 2009, paras 34 and 35, p. 120)

Time allotted for tabling amendments on the floor of the House. Article 68 of the Resolution which rewords Article 99 of the Rules of procedure of the National Assembly provides that amendments tabled by Members must be transmitted by those introducing such amendments no later than 5 p.m three working days before the date of the beginning of public debate on the text and that these provisions apply neither to sub-amendments nor Government amendments, nor to those of the Standing Committee to which the Bill was referred for consideration, nor when the latter have tabled amendments outside the allotted timeframe, nor to amendments tabled by Members regarding the same clauses. These provisions only conform to the Constitution on condition that the Conference of Presidents is able to reconcile compliance of the effectiveness of the right of amendment with the requirements of clarity and accuracy of Parliamentary debate.
(Decision nº 2009-581 DC, June 25th 2009, paras 42 and 44, p. 120)

Time allotted for tabling amendments to Part II of a Finance Bill on the floor of the House. Article 84 of the Resolution which rewords Article 119 of the Rules of procedure of the National Assembly provides in particular that amendments tabled by Members of the Assembly to missions and clauses of Part Two of a Finance Bill shall be tabled no later than 1 p.m on the eve of the day before debate on such missions or clauses, unless otherwise decided by the Conference of Presidents. These provisions only conform to the Constitution on condition that the Conference of Presidents are able to reconcile compliance of the effectiveness of the right of amendment with the requirements of clarity and accuracy of Parliamentary debate and that under no circumstances the subsequent tabling of sub-amendments be prohibited.
(Decision nº 2009-581 DC, June 25th 2009, paras 43 and 44, p. 120)

Application of Paragraph 2 of Article 35 of the Constitution. The provisions of Article 100 of the Resolution which insert into the Rules of procedure of the National Assembly Article 131 specify in particular the manner in which information is to be given to Parliament, as provided for by paragraph 2 of Article 35 of the Constitution. The imparting of such information may take the form of statement followed or not by debate. These provisions only conform to the Constitution on condition that all the groups in the Senate be informed of these interventions. In the decision on the Resolution amending the Rules of procedure of the Senate handed down on the same day, this qualification took the form of a proviso as to interpretation.
(Decision nº 2009-581 DC, June 25th 2009, paras 46 and 47, p. 120)

Missions of follow-up of applications of statutes and findings of Committees of Inquiry. Article 126 of the Resolution which inserts into the Rules of procedure of the National Assembly Articles 145-7 and 145-8 provides for the possibility of drafting information reports on the application of statutes and the implementation of findings reached by a Committee of Inquiry or those carrying out a mission. These provisions only conform to the Constitution on condition that such follow-up missions are of a temporary nature, confine themselves to supplying information enabling the National Assembly to carry out its task of monitoring the action of the Government in the conditions provided for by the Constitution and that the report presented shall under no circumstances address an injunction to the Government.
(Decision nº 2009-581 DC, June 25th 2009, paras 54 and 55, p. 120)

Committee for the Assessment and Monitoring of Public Policies. The provisions of Article 129 of the Resolution which insert into the Rules of procedure of the National Assembly Article 146-3, will be constitutional under three conditions: all follow-up and monitoring of the implementation of Finance Acts and Social Security Financing Acts and any issue relating to public finance and social security finance are to be excluded from the sphere of competence of such a Committee; secondly the possibility for the Rapporteurs of such a Committee of having the benefit of the help of Experts for which the Government is accountable is to be prohibited; thirdly neither the recommendations of this Committee transmitted to the

Government nor the follow-up report of the implementation of the same may on no account address an injunction to the Government.
(Decision nº 2009-581 DC, June 25th 2009, paras 59, 61 and 62, p. 120)

Rules of procedure of the Senate

Resolution of June 2nd 2009 for the implementation of constitutional reform

I of Article 10 of the Resolution of June 2nd 2009 which rewords the final phrase of paragraph 1 of Article 18 of the Rules of procedure of the Senate only conforms to the Constitution insofar, as stated in Decision nº 2009-579 DC of the Constitutional Council dated April 9th 2009, as the Government may participate, when it so wishes, in the work of Committees called upon to consider Government and Private Members'Bills and amendments thereto and attend all voting sessions intended to determine the text to be submitted on the floor of the House for debate.

I of Article 22 of the Resolution of June 2nd 2009, which rewords Article 45 of the Rules of procedure of the Senate only conforms to the Constitution on two conditions: firstly that in compliance with Article 40 of the Constitution a systematic examination of admissibility be carried out of all Private Members'Bills and amendments tabled by Senators prior to the tabling thereof and thus prior to their publication, distribution and debate, to ensure that after such an examination solely those Private Members'Bills and amendments which have not been found inadmissible are allowed to be tabled and that the financial inadmissibility not only of amendments but also changes made by Standing committees to Bills referred to them may be raised at any time; secondly that inadmissibility pursuant to Article 41 of the Constitution may be raised as regards changes made by Standing Committees to Bills referred to them.

Article 33 of the Resolution of June 2nd 2009 which inserts into the Rules of procedure of the Senate Article 73 octies will only conform to the Constitution if debate at the initiative of Senators cannot lead to the taking of a vote, irrespective of whether of not the Government is present.
(Decision nº 2009-582 DC, June 25th 2009, paras 10, 25, 26, and 35, p. 132)

SOCIAL LAW

Act reforming Hospitals and pertaining to Patients, Health and Territories (nº 2009-879 of July 21st 2009)

2° of Article L. 6112-3 of the Public Health code as worded pursuant to section 1 of the Act reforming Hospitals and pertaining to Patients, Health and Territories provides that private healthcare establishments carrying out public service missions shall ensure permanent reception facilities and care of patients or the transfer of the latter to any establishment or institution "in the framework determined by the Regional Health Agency". It is incumbent upon the latter, when specifying the conditions of such participation and coordinating the same with the activity of public healthcare establishments, to ensure the continued performance of the duties of public service establishments taken as a whole. With this qualification, these provisions do not fail to comply with the requirements of paragraph 11 of the Preamble of the Constitution of 1946 concerning the protection of health.
(Decision nº 2009-584 DC, July 16th 2009, para.6, p. 140)

CIVIL SERVICE LAW

Appointment of persons who are not civil servants to permanent posts in the civil service (nº 2009-879 of July 21st 2009)

The principle of equal access to public posts does not preclude Parliament from providing that persons who are not civil servants may be appointed to permanent managerial posts in public

establishments which are normally the preserve of civil servants. However these provisions should not be interpreted as making it possible to proceed to recruit staff without complying with the requirements of Article 6 of the Declaration of 1789. Therefore firstly, it is incumbent upon those vested with the power to make regulations, in charge of taking measures for the implementation of the challenged modification of section 3 of Act nº 86-33 of January 9th 1986 containing provisions as to the status of those employed by the public hospital service, to lay down rules designed to guarantee equal access of all applicants to such posts and to specify the manner in which their suitability and abilities are to be examined. Secondly, it is incumbent upon the competent Authorities to base their decision as to appointment on the abilities of the appointee to carry out his/her duties. With this twofold qualification, these provisions do not failure to comply with the principle of equal access to public posts.
(Decision nº 2009-584 DC, July 16th 2009, paras 10 to 12, p. 140)

INTELLECTUAL PROPERTY LAW

Powers of the Tribunal de Grande instance to take all necessary measures in the event of an infringement of copyright (Act nº 2009-669 of June 12th 2009)

When enabling copyright holders or holders of related rights, together with persons authorized to represent the same for the defence of their rights, to petition the *Tribunal de grande instance* to order, after a full hearing of all parties, the taking of measures necessary to prevent or put an end to such infringement of their rights, Parliament has not failed to respect freedom of expression and communication. It will be incumbent upon the court called upon to hear such petitions to order solely those measures strictly necessary to preserve the rights involved. Subject to this qualification, section 10 is not unconstitutional.
(Decision nº 2009-580 DC, June 10th 2009, paras 37 and 38, p. 107)

LAW OF TERRITORIAL COMMUNITIES

Institutional Act pertaining to the institutional development of New Caledonia and the conferment of the status of *Département* on Mayotte (nº 2009 xxx of xx August 2009)

The Institutional Act on the institutional development of New Caledonia inserts into the Institutional Act of March 19th 1999 a section 55-1 which specifies the particular manner of set-off of investment costs incurred by New Caledonia to exercise its powers in the field of secondary public schooling and that of private schooling. It provides in particular that: "the State shall bear, until the term thereof, the financing of operations connected with the High Schools of Mont-Doré and Pouembout in the fields of general, technical and professional teaching which it assumed prior to the actual transfer of powers". Under 2° and 3° of III of sections 21 and 26 of the Institutional Act of march 19th 1999 the abovementioned powers are to be transferred during the period corresponding to the term of office of the Congress commencing in 2009. The abovementioned provisions have thus no effect on the date of the transfer of said powers. Qualification.
(Decision nº 2009-587 DC, July 30th 2009, para 7, p. 152)

LAW OF PUBLIC AND SOCIAL FINANCE

Institutional Act pertaining to the Finance Acts of 2001 (nº 2001-692 of August 1st 2001)

Communication of documents or information. Powers of the Judge sitting in summary jurisdiction

Section 12 of the Institutional Act pertaining to the application of Articles 34-1, 39 and 44 of the Constitution completes sections 51 and 53 of the Institutional Act of August 1st 2001 on Finance Acts specifying the list of documents to be appended to the tabling of the Finance Bills and Social Security Financing Bills. However, in the event of any delay in distributing all or part of the documents required, the conformity of such Acts with the Constitution would be assessed with regard to the requirements of continuity of the life of the Nation. Qualification
(Decision nº 2009-579 DC, April 9th 2009, paras 27 to 29, p. 84)

PUBLIC AUTHORITIES

Institutional Act pertaining to Article 61-1 of the Constitution (nº 2009-1523 of December 10th 2009)

The final phrase of the final paragraph of section 23-3 of Institutional Ordinance nº 58-1067 of November 7th1958 and the penultimate phrase of the final paragraph of Article 23-5 provide that the Cour de cassation shall rule on an appeal on a point of law, without waiting for the ruling of the Constitutional Court on the application transmitted to it, when the applicant is deprived of his freedom because of the proceedings underway and statute law provides that the Cour de cassation shall give its ruling within a specified time. Furthermore, the final phrase of section 23-5 provides that the *Cour de cassation* and the *Conseil d'Etat* may not stay their ruling when the court is required to rule as a matter of urgency.

These provisions may lead to a final decision being handed down in a case concerning which an application has been made to the Constitutional Council for a priority preliminary ruling on the issue of constitutionality before the latter has in fact ruled on this application. In such a case, neither this provision nor the principle of *res judicata* should be allowed to preclude the person involved in these proceedings from bringing fresh proceedings in order for the decision of the Constitutional Court to be taken into account. Qualification
(Decision nº 2009-595 DC, December 3rd 2009, para.18, p. 206)

The provisions of sections 23-4 to 23-7 of the Institutional Ordinance nº 58-1067 of November 7th 1958 should be interpreted as prescribing before the *Conseil d'Etat* or the *Cour de cassation* the implementation of rules of procedure conforming to the requirements of the right to a fair trial, completed, if need be, by methods of application set down by regulations making it possible for these courts to examine the application for a priority preliminary ruling on the issue of constitutionality in the manner provided for in section 4 of the Institutional Act pertaining to article 61-1 of the Constitution. Qualification
(Decision nº 2009-595 DC, December 3rd 2009, para.28, p. 206)

CRIMINAL PROCEDURE

Prison Act (nº 2009-1436 of November 24th 2009) – Referral to a Decree to determine the disciplinary measures applicable to persons serving terms of imprisonment

Section 91 of the Prison Act, which rewords Article 726 of the Code of Criminal Procedure, leaves to a Decree after consultation with the *Conseil d'Etat* to determine the disciplinary

procedure applicable to persons serving terms of imprisonment, to define reprehensible behaviour and the various punishments incurred in view of the seriousness of such behaviour, to determine the composition of the Disciplinary Committee and the procedure applicable thereto. It will therefore be incumbent upon the drafters of said Decree not to provide for punishments which adversely affect the rights and freedoms which continue to inure to the benefit of said persons within the limits inherent in the constraints involved in the serving of terms of imprisonment. With this reservation, by leaving it to a Decree issued after consultation with the Council of State to specify punishments other than placement in a punishment cell or in solitary confinement Parliament did not fail to exercise its powers to the full.
(Decision nº 2009-593 DC, November 19th 2009, para.6, p. 196)

MISCELLANEOUS

Statutes pertaining to Data processing, Data Files and Civil Liberties

Act furthering the Diffusion and Protection of Creation on the Internet (Act nº 2009-669 of June 12th 2009)

Processing of data of a personal nature in connection with offences of infringement of copyright committed via the Internet carried out by private agents shall be subjected to the requirements provided for by the Act of January 6th 1978. Such data shall be transmitted solely to the Committee for the Protection of Copyright of the High Authority for the Diffusion of Works and Protection of Copyright on the Internet or to the judicial authorities. It will be incumbent upon the National Committee on Data Processing and Civil Liberties, when requested to authorize such processing of data, to ensure that the manner in which such processing is carried out, in particular the conditions governing the conservation of such data, is strictly proportionate to the purpose it is sought to achieve
(Decision nº 2009-580 DC, June 10th 2009, para 29, p. 107)

INDEX OF ANALYTICAL ENTRIES

A – B

C – D

E – F – G

H – I – J

L – M – N

O – P

Q – R

S – T

U – V – W

GLOSSARY

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

Cour d'assises: Criminal Court which hears crimes and serious indictable offences. Sits with a jury.

Cour de cassation: The highest Court of Law in civil and criminal matters.

***Cour des comptes* (Audit Court)**: Court vested with the task of auditing the finances of the State, public establishments, Social security and bodies receiving State funding.

Département: Territorial Community.

Tribunal correctionnel: Formation of the *Tribunal de grande instance* with jurisdiction in matters of serious criminal offences other than those tried by the *Cour d'assises*. Sits without a jury.

Tribunal de grande instance: Civil Court of first instance whose jurisdiction is defined mainly by the amount of money at stake and the importance of the litigation (cf *Tribunal d'instance* wich hears small claims involving smaller amounts).